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# POLITICAL ANNALS

OF THE

Present UNITED COLONIES,

FROM THEIR

S E T T L E M E N T

TO THE

## PEACE of 1763 :

Compiled chiefly from RECORDS, and authorized often by the  
Insertion of STATE-PAPERS.

*Il faut éclairer l'histoire par les lois, et les lois par l'histoire. — MONTESQUIEU.*

By GEORGE CHALMERS, Esq.

B O O K I.

L O N D O N :

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T H E

P R E F A C E.

*I*F universal history be an agreeable subject, because a natural curiosity is gratified, the annals of no portion of the empire of which we are members can be deemed unworthy of regard, since useful information is acquired. By investigating the causes that have induced men to consider different systems as either expedient or unwise, we acquire knowledge from the experience of others: By inquiring into those circumstances, which display the nature of original institutions, which trace the progress of laws, historic relations become subservient to the purposes of legislation. What can be more important to a people, who are all legislators, because they claim it as their distinguishing prerogative, to vote in the national legislature.

Yet, while the history of Great-Britain and Ireland has been cultivated with the greatest attention, and the jurisprudence and connexion of both have been illustrated with the greatest success, the annals of that considerable part of the empire, the British colonies, have been hitherto resigned to neglect as unworthy of notice. When men of genius, indeed, turned their views to this subject they immediately encountered difficulties which no talents or industry could remove: The records and state-papers were discovered to be on different sides of the Atlantic; no regular collection of their laws had been yet published; the other materials were found of a nature dry and dissatisfactory: And, till the war, which was ended by the peace of 1763, the plantations, deemed only inconsiderable and distant parcels of an extensive empire, had remained extremely obscure, offering little celebrity to their historian. But the confederated provinces have lately demanded the notice of the world with uncommon success, because what is boldly asked is seldom refused.

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*Historical accounts of the colonies have indeed been written; some with greater and some with less success. Yet, while they have recounted the discoveries of Cabot they have not shewn what rights the sovereigns of England thereby acquired; though they have sometimes recited the substance of colonial charters they have not explained what immunities were conferred by them: And, though they have incidentally mentioned acts, not only of the parliament, but of the provincial legislatures, they have seldom traced their policy or pointed out their principles. The most sagacious writers foresaw not the perplexing disputes that time hath at length produced, or the unparalleled events that have actually happened, and they have never mentioned facts with regard to either. The following sheets, which attempt to deduce the political annals of the present united colonies from their settlement to the peace of 1763, do not therefore seem wholly useless or uninteresting; because they are essayed on a plan extremely different, and compiled from authorities either new or more satisfactory.*

*Nothing more was originally intended than to offer a general account of the civil transactions of these colonies prior to the present reign; in order to lay before the public something as an introduction to the history of a war, the most singular in many respects to be met with in the annals of recorded time. But, upon a nearer view of the subject, it was perceived that almost every capital fact had been controverted; that every principle of public law had been disputed; that a shade had been thrown over the whole, either by the inattention of former writers or the misrepresentation of the present. And the author was soon convinced of the necessity of ascertaining the doubtful, of establishing the controverted, of illuminating the obscure. When ancient privileges were said to have been invaded, it seemed of the greatest importance to investigate, with precision, what immunities the colonists were originally entitled to possess; when chartered rights were said to have been infringed, it was deemed of use to ascertain what the charters really contained; when it was zealously contended that a different rule of colonial administration had been adopted soon after the peace of 1763, it became necessary to exhibit the genuine spirit of every government, whether of kings, or parliaments, or protectors, antecedent to the present reign.*

*In order to render late signal events what Lord Bolingbroke calls a complete example, and to develope, as he says, all the honest and salutary precepts with  
which*

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which it is pregnant both to king and people, it was deemed of the greatest consequence to look back to the settlement of the colonies; to ascertain the nature of their connexion with the state, of their original constitutions; to mark the progression of their privileges and pretensions; to point out the chief causes that have led imperceptibly to the subversion of their ancient systems, that have brought on a crisis which England has seldom experienced before. And the production has insensibly swelled to the size in which it now appears.

The work naturally divided itself into two books, containing so many distinct periods: The first will be found to relate the political annals of these colonies from their settlement to the Revolution in 1688; which, by some, may probably be thought the most curious and instructive; because, during that eventful period, the colonies were planted; their constitutions, after various changes, were established; the ground-work of their future jurisprudence was laid; and they were ruled by every different form of government which the singular innovations of those days introduced into England: The second will continue the relation of their history to the peace of 1763, when colonial disputes and woes are said to have begun; which, by others, may be considered as the most interesting, because it is most recent. The first book only is now, with infinite deference, submitted to the censure of the public, because the author thought that it might at this time possibly do some good: The second is in great forwardness, and will be speedily published.

In prosecution of the arduous task which the author had imposed on himself, he searched for materials that had been either overlooked or disregarded by former writers. In order to supply that void, which had arisen from the difficulty of access to the provincial records, he studied the acts of assemblies, "the truest of histories," that often contradict, explain, or confirm, the general accounts. He perused printed collections of state-papers, before unattended to, which throw considerable light on many passages, hitherto dark and entangled. Yet he was still uneasy, because he had been unable to satisfy his own judgement, and he perceived that he should be unable to gratify the curiosity of others. He had every reason to believe that the plantation-office must contain a rich mine of historic materials, at the same time that he thought he saw considerable difficulty in procuring permission to search for the hoped-for vein. But he was soon relieved from his fears by the facility with which his request was no sooner explained

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explained than granted by their lordships of the board of trade: And, on this occasion, he must acknowledge, with thankfulness, the kind interposition of Mr. Cumberland; who, as their secretary, is keeper of the records; who, by his obliging readiness to facilitate the author's researches, shewed equally his anxiety to promote inquiries which tended to gratify the public, by disclosing useful information, and his attachment to the interest of letters. Such an ample repository of evidence, with regard to the affairs of the colonies, was now laid open, as few nations possess, as is sufficient to gratify even the utmost avidity of an antiquarian.

Nevertheless, it must be admitted that the historical evidence to be met with in the plantation-office is not equally abundant with regard to every period or to every colony. During the reign of James I. and a great part of that of his successor, the superintendence of the colonies was lodged in the privy-council, which will be found to have exercised, during those times, very extraordinary powers, though its proceedings are to be found only in its own books: Yet this defect is supplied not only by copies of various consultations, commissions, and charters, which are recorded in the entries in this office, but by the useful compilations of Hackhuyt and Purchas, not only during these but preceding reigns. In April, 1636, a commission, "for regulating plantations," was granted to the great officers of state, investing them with an authority, legislative and executive: But it is not to be regretted that their transactions do not here appear, because little practical wisdom could be gathered from them, because their powers were plainly illegal. Of a similar authority, conferred afterwards by the two houses of parliament, the same remarks may be made, since it was equally unconstitutional. The exertions of the regal and parliamentary commissioners exhibit singular facts, but they offer no useful precedents. From the Restoration the historic materials become abundant, satisfactory, and interesting. From this epoch the superintendence of the colonies was once more restored to the privy-council: But its ancient powers had been extremely curtailed, not only by acts of parliament but by the spirit of the preceding times; and its just authority was established, since its exorbitances had been done away. From the downfall of the restoration-ministry it assumed various shapes, because frequent changes ensued, till the beginning of the year 1675, when several lords of the privy-council were appointed, by a royal commission, "a  
" committee



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“ committee for trade and plantations :” Investing them “ with the immediate care and superintendence of their affairs ;” empowering them “ to meet once a week and to report.” They were honoured with John Locke for their first secretary, because he was the friend of Shaftesbury. And under this form they continued to act till the reign of William, till that sad period when the commerce of England was reduced to a state of degradation which it had never known before, when a new system was introduced, and the board established on its present footing. In February, 1674-5, the journals of their proceedings commence, which contain a variety of useful information, because they often explain transactions and writings which would now be otherwise obscure. The other materials consist of entries and of papers: The first are filled with copies of the commissions and instructions of governors, of dispatches to them and their answers, which have been there entered for preservation: The last are composed of the originals of the several writings, which affairs so various and extensive naturally produced. It is unnecessary to observe how much an attentive perusal of such materials of history gratifies curiosity and informs the understanding; how much it disproves, explains, and confirms, printed accounts: But it naturally begets an incredulity; which, though necessary to form the historian, is not always convenient to the man.

In order to profit from having the key of these archives delivered to him, the author carefully inspected the journals, the entries, the papers, which will be frequently cited in the following pages; though such a tiresome length of time and labour were required, as men of real genius, who are seldom plodders, will rarely bestow. With what success these, and the collections and laws before-mentioned, have been studied, to avoid the mistakes or to correct the errors of former writers, the public will soon decide, to whose judgement the utmost respect and obedience are due.

The author’s researches convinced him of the truth of what hath been remarked by the celebrated writer of “ *An Account of the European Settlements in America* :” “ Whatever is written by the English, settled in our colonies, is to be read with great caution, because very few of them write without a bias to the interests of the particular province to which they belong, or, perhaps, to a particular faction in that province. It is only by comparing the printed accounts with one another, and those with the best private informations,

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“ and correcting all by authentic matter of record, that one can discover the truth; and this hath been a matter of some difficulty.” When, however, the author reflected how much his own errors stood in need of indulgence he forbore to point out the mistakes of others, to whom gratitude was rather due than blame to be imputed, because he had derived a benefit from their writings: Considering it as sufficient to satisfy his own judgement, without assigning the reason why he rejected or admitted their relations, since the labour would have been endless, perhaps invidious. And he hath always cited minutely the various authorities on which he relied; partly in order to authenticate his own assertions, but more to enable succeeding writers, who may be less laborious, because of superior talents, to pursue his track with greater ease to themselves and advantage to the world.

Early historians, without much consideration, have given an account of the British empire in America, by beginning at the north and writing southwards; their successors have continued a similar mode without any apparent reason. The author, however, has followed a different course: He begins with the most ancient, and treats of the several colonies as they were either planted or acquired; in order that a progress might be traced and perceived; that the history of the more ancient might reflect light on the latter. What can be more awkward than to be told that Maryland was formed between Virginia, on the south, and Pennsylvania, on the north, when it is known that the first was settled half a century before the last had any existence? With design to promote the interests of order and chronology, to give some respite to the writer and ease to the reader, the following book was divided into twenty-two chapters, corresponding to the nature of the subject. And, at the end of each, he has added authorities and notes; containing references to printed books, to records, and laws; observations for the purpose of illustration; and such a collection of state-papers as tended either to satisfy curiosity or to authorize the relation; which will enable the reader not only to peruse the text with confidence, but to draw conclusions for himself from the materials of history, a few of which are re-published, because every work ought to be complete within itself, because papers might as well not exist as exist in books which are only in the hands of a few. And all these the author affixed to the end of every chapter, rather than to the margin, because this mode seemed to prevent equally inelegance of appearance and distraction of attention; here rather

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ther than to the end, because they form subordinate parts of the foregoing divisions, and give it additional strength; and they may be perused when recollection is strong or passed over when application is exhausted.

Few sculptors or limners have pleased their own judgement or the world by the most finished productions of their original designs: Few writers have been yet able to execute fully what they had originally sketched. The author was soon convinced that the work he had boldly designed was beyond his abilities to execute; yet he persevered, because he was, however, fond of a subject which appeared of importance, and he was convinced that tolerable execution might have its utility, since perfection was not to be hoped for. When men of acknowledged genius have confessed; "that of such a performance it cannot be expected to be written equally throughout, because the subject sometimes refuses all ornament; the matter, dry in itself, is by no art to be made otherwise; a contagion is often communicated from the dulness of materials which yet were necessary;" what can be reasonably expected of a writer, who could only aim at telling a plain tale in a plain way, who too often sacrificed the manner, which is so important in every thing, to his anxiety to submit to the public authentic matter; who did not always reflect that the polite will not peruse what is not elegant, that the learned will disregard what is not accurate? Yet he was studious not to multiply words, because he knew that brevity is always vivacious, that vivacity often covereth a multitude of faults. In writing of Massachusetts it was thought necessary to use the language of the times and the men, because it was most characteristic and most precise: In compiling the whole it was deemed of use to follow the example of the historian of magna-charta; "to tell the story, as he says, with the same air the writers themselves do, and even to keep close to their very phrase: whereby in several places it is the worse English, though the better history."

On the authenticity of the facts the public may safely rely, because the author used every endeavour to establish their accuracy, because they who doubt may examine the authorities which are exactly cited to encourage inquiry. Of his principles and reasonings he can only declare, that, though they are the convictions of his heart, they may yet be erroneous, since his understanding, like that of other men, is not only fallible, but liable to mistake: The man, however, who regards it as a religious tenet, to fight no one for his opinions, may reasonably expect some indulgence.

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*dulgence to his. The observations of candour are ever received with the attention due to commands, because they are generally just and always well intended. The effusions of captiousness will at all times be derided by the brave and sensible, because they merit only derision or contempt. He, who is naturally attached to established authority, would act inconsistently with himself if he did not implicitly submit to the decisions of those who preside over the republic of letters.*

POLITICAL

# POLITICAL ANNALS

OF THE

## UNITED COLONIES.

### B O O K I.

#### C H A P. I.

*The origin of these colonies is certain. — Columbus discovers a new world. — Its name. — Reflexions. — Henry VII. employs the Cabots to make similar discoveries. — They explore the North-American coast. — Elizabeth grants patents of colonisation, and gives it a name. — But no settlements achieved till the reign of James I. — Observations.*

**O**F these colonies it cannot be asserted, as it is of European nations, that their origin is uncertain or unknown; that their ancient history is fabulous and dark; or that their original institutions have come down the current of time, loaded with the disputations of the antiquary. Here, there is as little room for the dreams of conjecture or the obscurities of tradition, as for the regret of the philosopher, that the establishment of nations, which is the most important



and instructive part of their annals, is generally the most imperfect. The discovery of a quarter of the globe unknown to antiquity is sufficiently ascertained; the first settlement of English plantations on it is perfectly known; and their charters have been preserved and their laws transmitted, with the accuracy of the most authentic records.

The efforts of Europe, during the fifteenth century, to find a new path to the rich countries of the East, brought on the discovery of a new world in the West. Christopher Columbus, a Genoese navigator,<sup>1</sup> was not only the first who conceived the idea so familiar to us, of arriving at the East-Indies by sailing Westward, but possessed, in a high degree, every quality necessary for the successful execution of an adventure so new and extraordinary. Sensible, nevertheless, that though the inclination of the times was favourable to his views, such a voyage could be undertaken only by sovereign powers, he naturally made his first proposal of discovery to the republic of Genoa; but it was considered by them as the vision of a theorist, lost in his reveries. His subsequent applications to various princes, though at first more favourably attended to, in the end proved equally unsuccessful. Yet, animated by the happy spirit of projectors, his disappointments did not discourage him, and he proposed his enterprise to Ferdinand and Isabella of Spain, who listened to him with the extreme caution natural to Spaniards. At the end of an eight years solicitation, which would have totally disconcerted a man of less perseverance, they accepted of his services, and appointed him their admiral in all continents and islands by his ingenuity to be explored.

Columbus sailed from Palos, a port in Spain, in August, 1492, with three small vessels, chiefly navigated by criminals, who were pardoned on condition of going with him as mariners, on an adventure which was then deemed impracticable, and which has since taught this animating lesson to mankind; *never to despair*. Having with the address and intrepidity so natural to him, surmounted the difficulties arising from a mutinous crew and the dangers incident to a long voyage in a trackless ocean, in October, 1492, he descried land; which proved to be one of the islets that have since been denominated the Bahamas: And he soon after discovered not only the Carribean islands, but, at length, a continent.<sup>2</sup>

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It was reserved, nevertheless, for Americus Vespucius, a more obscure and later navigator, who was employed by Ferdinand of Arragon, to draw maps of the new discoveries, to acquire the honour of conferring on them his own name. And thus, as Herera remarks with indignation, he procured that by cunning, to which his talents or his voyages did not entitle him.<sup>4</sup>

Little did the wisdom of those days foresee the consequences, both good and evil, that were to result to the old world from the discovery of the new. Yet, whether we consider the immense streams of the precious metals which have flowed from it into Europe; the subsequent increase of industry and population; the prodigious extension of European commerce and navigation; its influence on manners and the arts; this must be admitted to be one of the most important discoveries in ancient or in modern times. But what discords has that memorable event scattered among the nations of the earth, and what an abundant crop of woes have they gathered during every season! The Portuguese and Spaniards, inflamed by the same spirit of aggrandisement or of gain, instantly contended for the exclusive sovereignty of what Columbus had explored.<sup>5</sup> What devastations of mankind have been occasioned by the avidity of Spain to conquer numerous nations whose only crimes consisted in possessing a country so fruitful in mines as even to gratify the rapacity of their conquerors! Animated by the rancour of commercial jealousy, the Dutch and Portuguese have fought for the Brazils. Contrary to her genuine interests, and to the inclination of her minister, England commenced a war with Spain, in order that the contraband traders on the Mexican Coasts might no longer be searched. A contest for the dominion of the North-American Provinces, heightened by the noble emulation of nations, occasioned a new war with France. And the contention of the confederated colonies against the supreme power of the state closes the scene bloody and disgusting.

During the tediousness of solicitation, Columbus, with the same design, sent his brother Bartholomew to offer his services to Henry VII. of England. But, being taken by pirates and depressed by poverty, it was long before he could make proposals; which, we are assured, were as

joyfully accepted as they were anxiously urged.<sup>6</sup> Yet, so much time had elapsed, that, before he could return into Spain, he heard of his kinsman's arrival from a successful adventure; in which, if that illustrious seaman did not succeed in all his views, he made discoveries, that have not only immortalised his own name, but have changed, in some measure, the political œconomy of Europe. Not only the quantity of gold and silver, which Columbus brought with him into Spain, but the incidents of his voyage, were, as usual, greatly magnified: And Henry, of a temper not easily disconcerted where the acquisition of wealth was in view, in the year 1496, commissioned the Cabots of Bristol to make similar researches.<sup>7</sup> Having endeavoured in vain to penetrate to the East-Indies, by sailing Northwestward, Sebastian Cabot,<sup>8</sup> in the year 1498, explored a great part of the North-American coast. Here he landed, and in the name of that monarch took formal possession of a country, which more naturally acquired the appellation of *the New-found-land*, than did the regions discovered by Columbus that of America.<sup>9</sup>

But though the English, during the reigns of Henry VIII. and his immediate successors, resorted thither, either to fish on the coasts<sup>10</sup> or to traffic with the natives, no plantations were attempted; nor does there seem to have been much attention paid to the discoveries of Cabot till the reign of Elizabeth. That wise princess, in March, 1578, granted to Sir Humphrey Gilbert a patent of discovery and colonisation.<sup>11</sup> She soon after conferred on Walter Raleigh a similar grant, with similar powers.<sup>12</sup> And, in the year 1685, an inconsiderable colony took possession of a part of the North-American coast, which now forms North-Carolina, as the right of that sovereign: And to the whole was then given the name of Virginia. Yet, those miserable settlers, as well as several others who were landed in that country, were either destroyed by the natives, or were removed by succeeding navigators. And Raleigh having assigned his patent in 1590, and with his wonted levity engaged in other projects, no permanent settlement was planted till the reign of James I.<sup>13</sup> The national ardour which sprang from the long and vigorous administration of that princess continued to produce its effects even for some time after she had ceased to animate the whole.

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Those voyages having been thus accomplished, and those researches made, by virtue of commissions under the great seal, the sovereigns of England acquired, by the equity of first discovery and prior possession, a title, in right of the crown, to a great part of the North-American continent. When the earth was the general property of mankind, mere occupancy conferred on the possessor such an interest, as it would have been unjust, because contrary to the law of nature, to take from him without his consent: And this state has been aptly compared to a theatre common to all; but, the individual, having appropriated a place, acquires a privilege of which he cannot be dispossessed without injustice.<sup>14</sup> Yet, man having a right to the world from the gift of the beneficent Creator, must possess and use the general estate according to the grant; which commanded them to multiply and to subsist by labour: And little would the earth have been peopled or cultivated, had men continued to live by hunting, or fishing, or the mere productions of nature. The roving of the erratic tribes over wide extended deserts does not form a possession which excludes the subsequent occupancy of emigrants from countries overstocked with inhabitants. The paucity of their numbers, and their mode of life, render them unable to fulfil the great purposes of the grant. Consistent therefore with the great charter to mankind they may be confined within certain limits. Their rights to the privileges of men nevertheless continue the same. And the Colonists, who conciliated the affections of the aborigines, and gave a consideration for their territory, have acquired the praise due to humanity, and to justice.<sup>15</sup> Nations, with respect to the several communities of the earth, possessing all the rights of men, since they are aggregates of men, are governed by similar rules of action. Upon those principles was founded the right of emigration of old; upon those principles the Phenicians, and Greeks, and Carthaginians, settled colonies in the wilds of the earth.<sup>16</sup>

While Columbus gave a new world to the old, he acquired the additional glory of reviving and adding ancient maxims to the law of nations. The Portuguese having previously explored the Azores and other islands, instantly claimed America, and contended for the exclusion of the Spaniards from the navigation of the Western ocean.<sup>17</sup> But, the discoveries  
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of that admirable failor were altogether new and different. And pope Alexander VI. adjudged the great proces, says Montesquieu,<sup>18</sup> and made the celebrated line of partition: Giving to Spain the countries<sup>19</sup> to be discovered by her to the Westward of a line to be drawn from pole to pole, a hundred leagues West of the Azores; to Portugal her discoveries to the Eastward of that boundary. While neither party however suspected the equity of this decision or the validity of the grant, both were disputed by the parliament of England, at a subsequent period. In the year 1621, they insisted: "That occupancy confers a good title by the law of nations and nature; and if we admit the gift of pope Alexander VI. then the Spaniards will have by the same right both Virginia and Bermudas."<sup>20</sup>

It soon became a law among the European nations, that the countries which each should explore shall be deemed the absolute property of the discoverer, from which all others shall be entirely excluded. The Portuguese accordingly shut out every other people from their settlements in the East, till they were dispossessed by the Dutch, who pursued a similar policy. The Spaniards, with a peculiar jealousy, instantly enforced a similar rule with regard to their dominions in the West. Every sovereign in Europe, who engaged in such enterprizes, and formed settlements, followed their example. And thus it was established by universal consent as a fundamental principle in the jurisprudence of nations, that all commerce with a colony shall be regarded as a mere monopoly.<sup>21</sup> If the Portuguese and Spaniards were the first states which introduced that famous rule, the levity and perfidiousness of France have entailed on her the infamy of being the first that deliberately transgressed it. When a law is disputed by the powerful, and derided by the weak, it is no longer binding on any. While a mighty confederacy insists, that one state shall no more enjoy the exclusive sovereignty of her transatlantic provinces, the commerce of all colonies becomes universally free; because, the principle of exclusion, which arose from the general consent, is annihilated.

#### AUTHORITIES



## AUTHORITIES AND NOTES.

<sup>1</sup> Social compact, book 4, ch. 4. <sup>2</sup> Molloy, anxious to acquire for his country the honour of having produced the discoverer of America, affirms; *that Columbus was born in England, but resided at Genoa.* Pref. to the *De jure marit.* Herera, who was the royal historiographer of Spain, possessed however the best means of information: And see the 1st vol. of Hackluyt's *Voyages.* <sup>3</sup> Herera's *Gen. Hist. of America*, 1 vol. p. 24-48. <sup>4</sup> *Ib.* 218. <sup>5</sup> *Ib.* passim. <sup>6</sup> Hackluyt's *Voyages*, 1 v. p. 507-9.

<sup>7</sup> The commission of Henry VII. to the Cabots is subjoined; because, it is the most ancient American state-paper of England; it evinces how soon after the discovery of America her sovereigns engaged in similar projects; it is truly characteristic of that interested monarch. — The original is in *Rym. Fœd.* 12 v. p. 595.

A. D. 1496. }  
A. R. 11. H. VII. } “ The king to all to whom, &c. — Greeting. —

Be it known and declared, that WE have given and granted, and by these presents do give and grant, to our beloved John Cabot, citizen of Venice, and Lewis, Sebastian, and Sanctius, sons of the said John, or either of them, to their and each of their heirs and deputies, full authority, privilege, and power, to sail to all parts, regions, and bays, of the eastern, western, and northern sea, under our banners, standards, and insignia, with five ships or vessels, of whatever burden or quality they may be, and with so many and such sailors and men as they may chuse to take with them in the said ships at their own proper expence and charges, to find, discover, and explore, whatever islands, countries, regions, or provinces, either of gentiles or infidels, in whatever part of the world situated, which have hitherto been unknown to all Christian people. — WE likewise grant and give licence to the same and either of them, their or either of their heirs and deputies, to affix our aforesaid banners and insignia, in any town, city, castle, island, or continent, by them newly discovered. And that the aforesaid John and his sons or heirs, and their deputies, may possess and occupy all the aforesaid towns, castles, cities, and islands, by them discovered, which of  
right

right may be subjugated and occupied, as our vassals, and their governors, lieutenants, and deputies, they obtaining for Us the dominion, title, and jurisdiction of the said towns, castles, cities, and islands and continents so discovered : So that nevertheless, the said John and his sons, and their heirs and deputies, are held and bound for every voyage as often as they shall land at our port of Bristol, at which port they are strictly bound to land, after deducting the necessary expence by them laid out, to pay unto Us one fifth part of the whole capital profit, whether in merchandise or money, of all the fruits, emoluments, commodities, and gains, arising from the aforesaid navigation : WE giving and granting to the same and their heirs and deputies, that they shall be free and clear of all payment of customs of all and singular the goods and merchandises which they shall bring back with them from the places so newly discovered. ————— And moreover We give and grant to the same and his heirs and deputies, that all the continents, islands, towns, cities, castles, and places, whatsoever, by them discovered, or that may be discovered by them, shall not be visited or frequented by any of our subjects without the leave of the aforesaid John, his sons, and their deputies, under the penalty of forfeiture of the vessels and goods of all those who shall presume to sail to the places so discovered : WE willing and strictly commanding all our subjects, as well by land as sea, that they give all assistance to the aforesaid John and his sons and their deputies, as well in arming the vessels and ships, as in furnishing them with all manner of stores and provisions, and all other things necessary to be purchased by them. Witness the King, at Westminster, the fifth day of March. By the King himself."

In February, 1497, Henry VII. gave permission to John Cabot, " to take six English ships in any haven of England, being of the burden of 200 tons, or under, with all furniture, and to take also in the said ships all such masters, mariners, and subjects of the king, as willingly will go with him." — The licence is in Hackluyt, I v. p. 511. — Yet, it should seem that the discoveries before-mentioned were at last made at the charge of that prince. John Fabian assures us, in his chronicle of the reign of that monarch ; " that Henry VII. in the thirteenth year of his

“ his reign, fitted out a ship at Bristol by means of *one* John Cabot, “ which was named and victualled at the king’s sole expence; that the “ merchants loaded several vessels and sent them out with it to traffic.”  
Ib. 515.

Henry VIII. continued the projects of discovery which his father had begun: And his successor rewarded the eminent navigator who carried them into execution. That excellent prince Edward VI. in consideration of his good and faithful services granted to Sebastian Cabot, in January, 1549, an annuity of 166*l.* 13*s.* 4*d.* — Rymer’s Fœd. 15 v. p. 181. — And it was continued to him by Philip and Mary, in November, 1555. — Ib. 427-66. — <sup>s</sup> Hackl. 1 v. 680.

<sup>10</sup> As early as the reign of Edward VI. the English fishery on the American coasts had become an object of national importance and encouragement. The statute, 2 & 3 Edw. VI. ch. 8. enacted: “ That no officer “ of the Admiralty shall make exactions on adventurers to Newfoundland.” This is the first act of parliament which was passed with regard to America: And money was the object of it. The act of 5 Eliz. ch. 5. “ touching politic constitutions for the maintainance of the navy,” contains very curious regulations for promoting English fisheries. But its chief policy was to compel every one to eat fish; “ not, says the law, “ for any superstition to be maintained in the choice of meats, but politically for the increase of fishermen and mariners, and repairing of “ port-towns, and navigation.” And by 15 Cha. II. ch. 16. no toll was to be exacted in Newfoundland. But the North-American continent had then acquired other appellations, and *Newfoundland* was altogether restricted to the island of that name.

<sup>11</sup> See those grants in Hackluyt, 1 v. 677 - 725. — <sup>12</sup> Ib. - 728, - 37, - 815. — <sup>14</sup> Vattel’s Law of Nations, 89 - 91 — <sup>15</sup> Ib. — <sup>16</sup> Montefq. Spirit of Laws, 2 v. p. 63. Commentaries, 1 v. p. 7. — <sup>17</sup> Herera, 2 v. p. 97. — <sup>18</sup> Spirit of Laws, 2 v. p. 62.

<sup>19</sup> Pope Nicolas V. in January, 1454, granted to Alphonfus, king of Portugal, and to the infant Henry, the empire of Guinea, with authority to subdue it; and he at the same time prohibited all persons from sailing thither, without their permission. — See the bull in Leibnitii codex juris

gent. diplomat. p. 165. — The following extract of the grant of pope Alexander, by which he gave America to Spain, displays the late colonial transactions in a very striking light.

“ From our motion, not moved thereto by your petition, or that of any other in your behalf, but of our own mere liberality and certain knowledge, and the plenitude of apostolic authority, we grant to you and your successors, kings of Castile and Leon, all islands and continents, found and to be found, discovered and to be discovered, towards the West and South, [drawing a line from one pole to the other, at an hundred leagues to the West of the Azores,] by the authority granted us in the blessed Peter, and by the vicarship of Jesus Christ, which we discharge on earth with all the dominions, states, &c. to the same belonging: And we constitute, ordain, and appoint, you, your heirs, and successors, as aforesaid, lords of the same, with full, free, and all manner of, power, authority, and jurisdiction. [Here the pope very properly excepts such countries, as might be in the possession of any other Christian prince, antecedent to the year 1493.] And we strictly command all manner of persons, of whatever dignity, whether imperial or royal, and of whatever state, degree, order, and condition, under the penalty of a sentence of full excommunication, which they incur, *ipso facto*, if they act contrary to the premises, but that they do not presume to go to the said islands and continents, for carrying on of trade, or any other cause, without the special leave of you, your heirs, and successors, aforesaid. Given at Rome, at St. Peter's, 7th of May, 1493: And in the first year of our pontificate.” — From the same, p. 203.

Did not a thousand other circumstances evince it, how finely do those famous grants, so gravely applied for and so gravely given, demonstrate the extreme futility of bulls, charters, and laws, when unsupported by real power! And what excellent lessons of wisdom do they offer both to prince and people!

<sup>20</sup> Parliamentary Debates, 1620-1, published from a MSS. in Oxford Library, p. 250-1. — <sup>21</sup> Spirit of Laws, 2 v. p. 62. — Nevertheless, it was not till after great hostilities had been exercised for years, between England and Spain, that the treaty of Madrid was made, in July, 1670, for

for ascertaining the American territories of both. It was thereby agreed, that each should retain what it then possessed; that the subjects of neither should enter the fortified places of the other for the purposes of trade. And the faithful execution of that treaty was from that time given in charge to all colonial governors. See the representation of the board of trade to the house of Lords, with regard to the famous settlement of Darien. — Record, in the plantation-office, titled, Plantations Gen. B. p. 154.

## C H A P. II.

*James I. is applied to for leave to plant a colony. — The charter. — His instructions. — Observations. — A colony planted. — Its diseases, dissensions, and pursuits. — The adventurers disappointed. — They obtain a second charter. — Its contents. — A numerous emigration. — Its distress. — The settlement abandoned. — Re-established. — The company desponds. — A third charter. — The parliament meets. — The company petitions the commons. — Their proceedings. — State of the plantation. — Martial law. — Legislative power. — Observations.*

THE enterprising genius, which added so much splendour to the active reign of Elizabeth, continued its influence even during that of her indolent successor: Though the causes no longer existed, the effects remained with all their benefits. Gosnold having made a voyage to the Virginian coast, in 1602, resolved to establish a plantation in a country, which pleased him so much. Yet, even in that age of project and adventure, it required some address and time to persuade persons of rank or wealth, to become partners in an enterprise, from which they could not easily perceive what wise men have been unable to discover in the present days, the promised gain to the adventurer or the important advantages to the nation. But, encouraged at length by the junction of other projectors of greater consequence, he applied to James I. “for licence to deduce a colony into that part of America commonly called Virginia.”<sup>1</sup> If that prince was not endowed with talents for war, he was at least master of some of the arts of peace; and, with all his failings and his faults, he possessed a laudable genius for colonisation. With a view to civilize the highlands and Western isles of Scotland, says an elegant writer, and to inspire those countries with the love of peace and industry, before his accession to the crown of England, he established among them colonies of people from the more industrious settlements.<sup>2</sup> With the same wise design, at a subsequent period, he formed plantations of English in  
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the six Northern counties of Ireland: And this measure, as we are assured by one of the best of her historians, first laid the foundation of the security and affluence of that island.<sup>1</sup>

Naturally fond of novelty, that monarch seems to have been prodigiously pleased with the proposal of deducing a colony into Virginia. He greatly commended and graciously accepted the desires of the projectors of it. And, in order to promote *so noble a work*, on the 6th of April, 1606, he granted letters patent, under the great seal of England, to Sir Thomas Gates and his associates. All those territories in America, which either belonged to that monarch, or which were not then possessed by any other Christian prince or people, lying between the 34th and 45th degrees of Northern latitude, were conferred on them. They were divided at their own desire into two several companies; the one, consisting of adventurers of the city of London, was called the first colony; the other, composed of merchants of Bristol and other Western towns, was named the second. The former was required to establish its settlement between the 34th and 41st degrees of latitude; the latter was ordered to plant between 38 and 45 degrees: Yet so that the colony which should be last formed shall not be planted within one hundred miles of the prior establishment. The adventurers were empowered to transport thither so many English subjects as should willingly accompany them, with provision for their use, and arms for their defence, without payment of customs for seven years. It was declared, that the colonists and their children should at all times enjoy the same liberties, within any other dominions of that prince, as if they had remained or were born within the realm. Yet, for the better government of the emigrants, there was established for each of the projected settlements, a council consisting of thirteen, which were to be appointed and removed by the royal instructions: And these were empowered to govern the colonies, according to such laws as should be given under the sign manual and privy seal of England. Two other boards were formed in England, which were in like manner to consist of thirteen persons, and to be appointed equally by the king: And these were invested with the superior direction of affairs with regard to the administration of the colonies. For the benefit of the adventurers, licence was given to them to search for mines of gold,

gold, silver, and copper; yielding one-fifth of the two former metals, and one-fifteenth of the latter, to the king. They were empowered to make a coin that should pass current as well among the colonists as the natives. The president and council, within the colonies, were authorized to repel those, who should attempt to settle or traffic within their jurisdiction, without their authority; to seize their persons and effects, till they should pay a duty of two and a half in the hundred of the value, if a subject; but five, if an alien: And these taxes were to be applied for one and twenty years to the use of the adventurers, but afterwards to be paid into the royal exchequer.\*

Such then is the substance of the most ancient colonial charter, which comprehended all the present colonies, from New-England to Carolina inclusive; and from which the most important privileges have at all times been claimed. Yet little was there in it, alas! favourable to the interests of freedom, or declaratory of the general privileges of the subject. Vain was it to assure the colonists of being considered as Englishmen, if they were by the same instrument deprived of English liberties: And what rights could a people be said to enjoy, who, without possessing the smallest particle of self-government, were at once subjected to the will of the prince; to the edicts of a council they did not appoint; to the ordinances of a commercial association over which they had no controul.

It is a circumstance in the history of the charters of the Colonies extremely remarkable, that with a spirit somewhat unaccountable they declare, "that the emigrants and their posterity shall still be considered as English subjects." Whether the anxiety of the colonists solicited this clause, or the caution of the reigning sovereigns obtruded it, is uncertain. Its existence demonstrates the opinion of both parties on an interesting point of constitutional law. If the planters asked for that declaration, it shews how much they loved the character of Englishmen, which they wished not to forfeit by emigration. If the royal grantors spontaneously conferred what the others seem to have been so ready to receive, it evinces how much they desired to retain the allegiance of their subjects. Yet such clauses were either futile, or declaratory of the ancient law. For a king of England could no more deprive the meanest of his  
people



people of his birthright, than he could confer all their important liberties, included under that term, on aliens to his crown. An Englishman, on the other hand, could not divest himself of the character of subject; he could not say, "I will be no longer an Englishman:" Whithersoever he emigrated, he still owed allegiance to the crown and obedience to the laws of his country; because the weakness of his childhood had been protected by them. We shall discover, however, that the most accurate of all the charters, that of Pennsylvania, contained no such declaration: an omission which arose probably from design rather than accident. That illustrious statesman and lawyer, the lord-keeper Guildford, perused it with attention, and adjusted its various clauses. When William was about to renew the patent of Massachusetts soon after the Revolution; he was advised, by the ablest lawyers in England, that such a declaration was nugatory; because the law necessarily inferred, that the colonists were Englishmen, intitled to the rights and burdened with the duties of Englishmen. If the clause before mentioned was futile, the reservation of a right of legislation with regard to the Colonies in the supreme magistrate was undoubtedly illegal. For whatever was the opinion or the practice of James I. and his immediate successor, a king of England at no period of its annals could legislate for his people without the consent of the state. When such charters were given, it shews that the "ancient liberty" of the original emigrants was not unbounded or extensive.

While the council of the first Colony was occupied during the summer of 1606, in procuring emigrants to accomplish the great object of its wishes, James was equally employed in a business the most arduous of any; in compiling a code of laws for an infant people. On the 20th of November of that year he issued "orders and instructions for the Colonies" under the privy-seal of England. And they merit the greatest attention; because they are explanatory of the charter, as well as characteristic of that monarch.

He invested the general superintendance of the Colonies in a council in England, "composed of a few persons of consideration and talents." He ordered, that the word and service of God should be preached and  
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used according to the rites and doctrines of the church of England. Having thus provided for the interests of religion, by interweaving into the Virginian constitution the establishment of that church, his next cares were turned to the interests of the state. Both the legislative and executive powers within the Colonies were invested in the presidents and councils, without any mention of the representatives of the people or allusion to them : And they were empowered to make laws, and to constitute officers, for their government ; yet, with this proviso, that such ordinances should not touch any man's life or member, should only continue in force till made void by the king or his council, should be in substance consonant to the laws of England. With a cautious jealousy he required that none should be suffered to withdraw the allegiance of the colonists from the king and his successors ; and he commanded, that all offenders, contrary to this essential rule, should be imprisoned till reformation, or sent to England to receive condign punishment. Tumults, mutiny, and rebellion, murder and incest, were to be punished with death ; and for these offences the criminal was to be tried by a jury : He ordered smaller crimes to be punished summarily at the discretion of the president and council. And he required that no person shall remain in the colony without taking the oath of obedience. Lands were to be holden within the colony as the same estates were enjoyed in England. With a humanity and justice that did honour to that legislator, he ordered, that all persons should kindly treat the heathen people in those parts, and use all proper means to draw them to the true service and knowledge of God, and to induce them to enter into a sociable traffic. And in these legislative instructions there was an express reservation, that as the colonies should increase, the king and his successors might ordain farther laws, so that they were consonant to the jurisprudence of England.<sup>6</sup>

The instructions of that monarch contain several things, says the historian of that colony, of an extraordinary nature and extremely arbitrary.<sup>7</sup> But there is not a more common mistake of writers than to judge of the past by the manners of their own times, and to apply principles of law, acknowledged when they write, to transactions of former times, when very dissimilar opinions prevailed. The orders before mentioned are  
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however extremely interesting. They demonstrate as well how unlike were the sentiments of those days to the present, as what the original constitution of Virginia really was, and how much of the law of England was then introduced: They display the legislative talents of that learned prince, and evince his real views with regard to those establishments however mistaken. Yet it seems certain, that though such exertions of prerogative were very common in that age, a king of England could no more exercise a legislative authority over English subjects, because they had removed to a distant territory of the state, than over Englishmen within the realm. For the privileges of both had been derived from the same great charter. Such then was the rotten foundation whereon was erected, with no great skill, the superstructure of the Virginian immunities and laws.

Invested however with such authority, several persons of considerable consequence in the nation undertook the arduous task of planting the Southern colony, for which such a constitution had been thus sketched by the legislative hand of their sovereign. Having chosen Sir Thomas Smith their treasurer, and appointed other officers, they provided a small fleet to transport the emigrants to Virginia. To Newport, who was then famous for his skill in the Western navigation, they committed the charge of this embarkation: And he sailed from the Thames in December, 1606, carrying with him the instructions before-mentioned, and the names of the intended colonial council, carefully concealed. And to this singular policy may be attributed the dissensions which soon commenced among the leaders, and which continued to distract them during a voyage long and disastrous.<sup>s</sup>

The month of April, 1607, is the remarkable epoch of the arrival of the first permanent colony on the Virginian coast. A small party, urged by the anxiety natural to men who have been long at sea, landing on the promontory, which, in honour of the prince of Wales, was named Cape Henry, was instantly attacked by the natives, who considered their invaders as enemies, because, they were strangers; from whom they expected abundant evil, but little good. And this hasty rencounter, in which several on both sides were wounded, gave rise to mutual distrust and ha-

tred, that in aftertimes produced the greatest misfortunes. As nature had blessed this country with those beauties and advantages, which the first colonists viewed with admiration, and described as "having the prerogative over most pleasant places known," it was not long before they discovered a river that they honoured with the name of their king, and a plot of land which admirably suited their purpose. They took possession of a peninsula on the Northern bank of James River, where they began to cut down the grove, which had for centuries afforded shelter and food to the aborigines, to make room for James-Town. But, neglecting the salutary and humane orders of their prince and lawgiver, they neither courted the amity of the tribes nor offered a consideration for their country, which was thus invaded contrary to their inclination, though they held it from nature. And the colonists, with a folly equal to their contempt of order, made no suitable preparations to resist the attacks of an injured but implacable and gallant people. The natives, according to their ancient policy, visited kindly the strangers, while they meditated that assault which security had courted, and was soon after made, but easily repulsed by the fire from the ships. Terrified by a mode of defence new and astonishing, they sued for peace, and delivered over their powerful invaders to their own dissensions, more fatal than the stroke of the enemy.

The code of laws, which their sovereign had given to the emigrants, which contrary to the accustomed practice of legislators had been hitherto cautiously concealed, was at length promulgated; and the names of that council which had been invested with all power were disclosed. Now commenced the rule of the most ancient administration of Virginia; consisting of seven persons, and forming a pure aristocracy. But all the inconveniences of that form of government were soon sadly experienced. Among other deplorable ills, the American climate seems always to have begotten a propensity to disobedience, which soon appeared, and produced disasters that the whole found abundant cause to regret. While the counsellors, agreeably to the orders before mentioned, chose Wingfield their president, they excluded, on the most frivolous pretences, from a seat among them, Smith, so famous in colonial annals, though

though nominated by the same instrument which had given existence to the greater number. These animosities being at length in some measure appeased by the prudent exhortations of Hunt, their chaplain, they turned their undivided attention to the government of a colony feeble in numbers and enterprize, which was thus planted in discord, and grew up in misery.

At the expiration of six weeks, Newport, the admiral, departed for England: Leaving one hundred emigrants, who were doomed, for purposes inscrutable to man, to be the fathers of a mighty people. In vain shall we search their history for the fate of battles, the sack of cities, the conquest of provinces; for those objects that fix the attention or melt the heart: We shall only discover the uninteresting turmoils of a few men, stationed in a desert, whose principal pursuit was for some time only in quest of food. Yet their tale, unimportant as it is, must be told. In little more than a century and a half we shall behold their posterity unsheath the sword against the most potent nation on earth; which had given them being, nursed their childhood, reared them to manhood. And we shall meet with unexampled events that might have been foreseen, and that no wisdom could have prevented, because they necessarily flowed from causes interwoven with their very existence.<sup>9</sup>

Being thus left in a dreary wilderness to their own exertions and pursuits, surrounded by subtle and powerful enemies, the colonists soon experienced the embarrassments incident to such a situation. The damps of a country wholly uncultivated and covered with an immense forest, and their food consisting of viands scanty and unwholesome, brought on diseases that in a few months swept away half their number; among whom was extremely regretted, Gofnold, the zealous projector of the enterprize: Similar distempers, owing to like causes, have afflicted all future adventurers to the present times. Those, who remained, were greatly enfeebled and actuated by the dissatisfactions natural to their conditions. Having no empires to subdue like the Spaniards of the South, nor any object to sustain the mind under affliction, the survivors disputed with each other, because they had no common enemy on whom to vent their indignation. While all received their parsimonious allowance of

aliment from *the common store*, the president, who had escaped the pressures of hunger and disease, was accused of engrossing the general provisions and of designing to abandon the colony. Him they deposed with the genuine spirit of discontent, and appointed Ratcliff in his place, who in his turn gave equal dissatisfaction, because the colonists continued unhappy. During those days of penury, when it was said of the emigrants, "that, had they been as free from all sins as gluttony and drunkenness, they might have been canonised for saints," necessity constrained them to cultivate with the natives that friendly traffic for provisions, which they had refused to the prudent orders of their prince. And Englishmen meanly procured from Indians, the most lazy of mortals, such plenty of the productions of their labour, that no man is said to have wanted. Yet, this melioration of circumstances did not prevent the bad effects of the intrigues of the deposed president, who fomented former discontents, in order to enable him to execute his projects for abandoning the settlement, which the prudent vigour of Smith discovered and disconcerted. Thus that animated adventurer acquired the honour of preserving the colony; and posterity have shewn their gratitude by doing justice to his merits.<sup>10</sup> Yet it is to be lamented that he met with the too common fate of the greatest benefactors of mankind. He departed from Virginia not long after without the acquisition of any thing more solid than empty renown; and died at London, in the year 1631, disregarded or forgotten.

Meanwhile, James was too fond of the character of lawgiver, and too much delighted with the project of colonising America, to withdraw his legislative care from the infant settlements. As experience had shewn, that the former council was composed of too few members to be of any real utility, he issued, in March, 1607, upon the prayer of the colonists, an ordinance for enlarging the number and authority of "his commissioners for directing the affairs of the colonies."<sup>11</sup> It empowered them to appoint and to remove colonial officers; to establish laws for the better ordering the several plantations; to do every other act which was neither contrary to the Virginian patent, to the laws of England, nor in derogation of the prerogative royal. However modern opinions may condemn

demn this regal act, written in the genuine language of legislation, yet it displays at once the sentiments of the king and the colonists, with regard to the prerogative of the one and the privileges of the other. Encouraged by favourable reports, and invigorated by this increase of power, the treasurer and council in England exerted themselves with a laudable diligence to transmit proper supplies to the plantation. Two ships they sent, under the conduct of Newport, with a reinforcement of an hundred and twenty persons; consisting of many gentlemen, a few labourers, several refiners, goldsmiths, and jewellers: The various denominations of these men evince the views of the whole.

The joy of the colony upon the arrival of these vessels was equal to the extent of its late despondency. And a relaxation of discipline ensued, which as usual proved extremely fatal. The sailors, being permitted to traffic with the natives agreeably to their habitual licentiousness, completely ruined that commerce for provisions, which had hitherto chiefly prevented the devastations of famine. And a sect, peculiar probably to America, naturally sprang up from public encouragement, which, with the contemptible avidity of Spaniards, did nothing but search the country for gold; neglecting the obtention of a supply of absolute necessaries, which in the situation of the colonists the precious metals could not provide. The ships were at length sent back; the one loaded by the miners before-mentioned with a glittering earth, which they hoped in vain contained a metal, that would have operated as the bane of their country; the other with cedar, which was of more real utility: And these are recorded as the first Virginian products, transmitted as the first remittance, and as the most early pursuits of an infant people; and Martin returned to claim a reward for what merited punishment; the discovery of a golden mine, which would have proved the ruin of England.

The summer of 1608 is the remarkable æra in Virginian annals for the first voyage which was made towards the source of the bay of Chesapeake. It was to Smith that the colony and the nation were equally obliged for this important service. In an open barge of two tons burden, with fourteen persons on-board, he explored the whole of that trackless extent of water, from Cape Henry where it meets with the ocean, almost to the river Susquehannah, which forms its mighty fountain;

tain ; encountering with various tribes of the natives, and marking the different rivers with the countries among them. And he acquired the honour of performing a voyage of considerable danger, and of great utility, with means little proportioned to the undertaking ; which ought ever to be adverted to in forming a judgement of the comparative merit of navigators. Returning to James-Town, he found the colony relapsed into former diseases, agitated with new dissensions, and animated with a general disposition to depose the president : But the tidings, which were now brought and gratified the expectations of every one, that according to the relations of the Indians the bay stretched into the South-Sea, silenced clamour, and appeased discontent. In reward of his superior merit, that active adventurer was chosen first magistrate, in September, 1608, by the council, with general acclamations. And now a contrary conduct to that which had given so much offence was pursued with success. The wisdom of his administration infused confidence ; the vigour of his conduct commanded obedience. The military exercises, which he obliged all to perform, at once struck the Indians with astonishment, and inspired them with awe." And during his rule the colony saw a gleam of momentary hope.

The treasurer and council were in the mean time not only offended with the colonial factions, and disappointed in their hopes of discovery or gain, but were alarmed with intelligence, that the emigrants proposed to divide the country among themselves, without their assent. Yet that project being disclaimed, and future amity promised, they resolved to persevere in an enterprize of which the end and the utility seem to have been equally uncertain. With Newport, who was again sent with a second supply, fresh instructions were transmitted ; which shews the extent of their designs, which the president and council of the colony were ordered expressly to follow : And these were threatened, if they did not obey, with a punishment which then struck the colonists with horror ; " that they should be allowed to remain as banished men in Virginia." They were instructed ; to explore the western country, in order to procure certain intelligence of the South-Sea ; to transmit as a token of success a lump of gold ; to find one of the lost company sent out by Raleigh : And these



these orders demonstrate, that the chief object of the most active projectors was at this time rather discovery than colonisation. About seventy persons were now transported, among whom were the two first female adventurers, and several Dutchmen and other foreigners, in order to introduce the making of tar, and glass, and ashes; which might have been more easily procured nearer England: And here seems to have commenced the policy, so contrary to the genius of commerce, of procuring from a colony rather than from foreign nations the raw materials of manufacture, though of better quality and of cheaper price. Various *costly novelties* were at the same time sent, with directions to crown the native king of Virginia; though the measure was derided as weak, and the bad consequences were foretold with a confidence which ought to have prevented what humanity seems to have advised.

Long had a personage, who resided in the vicinity of James-Town in barbarous state, who is celebrated in Virginian annals by the name of Powhatan, ruled over that extent of country from James-River to the Potowmack, with the authority of a conqueror. With him had the colonists, since their arrival, had considerable transactions both in peace and in war. And he was now, in consequence of the orders above-mentioned, invested with the usual ensigns of royalty, with all the pomp which the wealth of his own retainers or the poverty of the colony admitted. Whatever may have been the design, whether to flatter the vanity of the great, or to gain the attachment of a sachem, who was said to be powerful, this futile policy inspired that discerning chief with a haughtiness, which not long after incited the resentment and provoked the chastisement of the president. But the inquiries after the South-Sea, or mines of gold, were made then, as fortunately for England they have been at all times since, to no purpose. Samples however of those productions that had been recommended, though with the greatest difficulty and labour, were procured and transmitted: And Ratcliff, the deposed president, was by the same vessel sent to England, that his conduct might be there enquired into conformably to the charter. The colonies being awakened at length from their reveries of gold and silver, because they were at last satisfied that it was in vain to hope for mines of the precious metals, began to turn their

their attention to pursuits of more real importance. And though the country did not afford those objects, which so captivate the foolish hearts of men, it offered to the hand of the diligent a fruitful soil and climate. A law, which was designed to fan the spark of industry that began to kindle, by which the president and council declared, "that he who will "not work shall not eat," was attended with salutary effects. In addition to those commodities that have been mentioned, glass was essayed; timber for the various uses of the cooper and the builder was prepared; the planter was rewarded with plentiful crops of corn: And such were the products of Virginia when tobacco, its important staple in modern times, was uncultivated and unknown; yet the progress of diligence was slow, because it was often interrupted. The poultry and the hogs had multiplied abundantly; but of mankind there had yet been no natural increase; because of the two women, who lately arrived, one was just married:<sup>14</sup> And it was long before Virginia saw a race of men born within her forests, whose labour cultivated her fields, whose swords defended her borders, whose talents supported her rights.

The treasurer and council, in England, had fondly hoped for the rich commodities which the Spaniards had found in the South; and their disappointments were now equal to the extent of expectations, vehement and unbounded. They had just heard, with indignation, of the severe treatment of the Indians by the president, so contrary to their orders as well as to prudence and humanity. And, in return for their anxieties and expence, neither remittances of value had been sent, nor suitable researches had been made. Yet hope did not altogether forsake them; because they still dreamed of future wealth and discoveries more favourable to their designs: And with a perseverance amid their chagrin and losses, which is so commendable, except in pursuit of objects absolutely bad, they resolved to prosecute what was now endeared to them by the difficulties which they had encountered. Partly in order to augment the number of the adventurers by the addition of persons of the greatest consequence in the nation, but more to explain former and to acquire new privileges, they applied for and easily obtained from the *favour* of their sovereign a new charter, in May, 1609.<sup>15</sup>

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The second patent recited and confirmed the first. There were now added to the former adventurers many of the first nobility and gentry, at the head of whom was Robert earl of Salisbury, most of the companies of London, a numerous body of merchants and tradesmen: And all these were incorporated by the name of "the treasurer and company of adventurers, of the city of London, for the first colony in "Virginia." To them were now granted in absolute property what seems formerly to have been conveyed only in trust, the lands extending from Cape Comfort along the sea-coast Southward two hundred miles, from the same promontory two hundred miles Northward, and from the Atlantic Westward to the South-Sea; to be holden of the manor of East Greenwich, in free and common soccage: And paying one-fifth of the gold and silver that should be found in lieu of all services. The corporation was authorised to convey under its common seal particular portions of these lands to subjects or denizens, on such conditions as might promote the intention of the grant. It was empowered to make ordinances for the colony and for those on the seas going thither, so that they may be agreeable to the laws of England: And it was invested with absolute authority to rule and correct the colonists, according to such constitutions as should be thus enacted by it. Licence was given it to transport to Virginia all persons willing to go thither; to export merchandises without paying any customs during seven years. And, as a farther encouragement, there was granted to the treasurer and company, and their assigns, a freedom from all subsidies in Virginia for one and twenty years, and from all impositions on importations and exportations to and from England, or any other of the king's dominions, "except only the five "pounds in the hundred due for customs." The colonists and their posterity were declared to be entitled to the rights of natural subjects, as if they had remained within the realm. The governor of the colony was empowered to use martial law in cases of rebellion or mutiny. And, to prevent the superstitions of the church of Rome from taking root in the plantation, it was declared that none should pass into Virginia but such as shall have first taken the oath of supremacy.<sup>16</sup>

Such then were the powers conferred on the company, and such the privileges granted to the Virginians. Thus it appears decisively, that the colonists were to be governed by the ordinances of a corporation residing in England, in which they were not represented, and over the deliberations of which they had no controul. Thus was affirmed the general right of taxing them without their consent, because they were exempted from duties payable within the colony for a limited time. Though this charter establishes the truth of interesting facts, because they demonstrate the nature of the original establishments; yet, were we to judge of it according to principles of law, known and admitted at present, there seems not to have been granted to the emigrants any one privilege worth contending for.

It is a singular circumstance, in the history of these colonies, that there is no instance of an emigration without the permission of the supreme magistrate of the state first applied for and obtained. The anxiety with which all prayed for charters, under the great seal of England, shews that they deemed them extremely essential to the ultimate success of their designs: And the views of every one we may trace in the jurisprudence of their country. By the ancient law, which was enforced by the great charter of John, all men might go freely out of the kingdom, saving their faith due to the king. But, as inconveniences had probably arisen, though they might have been either prohibited or recalled by the royal proclamation, because every man of right ought to defend the state of which he is a member, no such clause appears in the charter of his successor. In after-times, the wisdom of the great council thought it necessary to adopt measures to prevent emigration; and it was enacted, during the reign of Elizabeth, that, if any subject or denizen shall depart the realm without licence under the great seal, he shall forfeit his personal estate and lose the profits of his lands during life. Though the rigour of this prohibition was afterwards relaxed; yet, even during the present times, when the diffusion of philosophy and common sense has enlightened the world, a king of England may enjoin every subject either not to depart the kingdom or to return; under penalties great and inevitable, from which the declamations of theorists would not relieve him. A licence then,

then, "to deduce colonies," has been at all times applied for, because it was always necessary; and it has been generally granted, because it was deemed good policy to favour such establishments. But though little was conceded to the emigrants by the charter of 1609, much was conferred on the corporation. Yet were its powers great they were not uncontrollable, because it was subject to the superintendence of the courts of justice within the realm, which could compel it to act as well agreeably to the grant as to the laws of the state. It was only when such extensive authority was given to those, who resided beyond the Atlantic, that it became inconvenient and dangerous, because the arm of the state was too limited and feeble to enforce obedience.

The addition of so many persons of rank, of influence, and of fortune, augmented the reputation no less than the wealth of the former adventurers: And they were now enabled to press on with bolder steps to the goal of all their wishes. They soon fitted out nine ships, with five hundred emigrants, and every necessary for the establishment of a colony effectual and permanent. When the mischiefs of former misrule and disobedience were remembered, they appointed Lord Delaware captain-general for life, with extraordinary powers; and they created several other officers with founding names, but of no real authority or use. The general conduct of this embarkation was intrusted to Newport, who had made so many voyages across the ocean. Sir Thomas Gates, Sir George Somers, and that navigator, were severally empowered to recal the command of the president and council, and to assume the administration till the arrival of that nobleman. But, disputing among themselves with regard to precedence, they agreed, with an imprudence of which there are few examples, and which gave rise to the most fatal embarrassments, to embark with the admiral as companions of the same voyage: And fortune seems to have delighted in punishing their folly, by stranding the ship on Bermudas; which, from that deplorable accident, acquired the name of the Somers-isle.<sup>17</sup> Sir George Somers being a member of parliament, the commons declared his seat vacant; because, by accepting a colonial office, he was rendered incapable to execute his trust: And this, it should seem, was the first time that Virginia was noticed by parliament.<sup>18</sup>

Perhaps the annals of the world cannot exhibit an example of colonies established upon principles of policy exactly similar to those of the present. England did not, like the little republics of Greece, oblige her sons to seek new habitations, and to form distinct communities in the wilds of the earth; like Rome, she did not give lands as a gratuity to soldiers, who became a military force for the defence of her frontiers; she did not, like Carthage, subdue the neighbouring states, in order to acquire an exclusive right to their commerce. No conquest was ever attempted over the aboriginal tribes of America: Their country was only considered as waste, because it was uncultivated, and therefore open to the occupancy and use of other nations. Upon principles which the enlightened communities of the world deemed wise, and just, and satisfactory, England deemed a great part of America a desert territory of her empire, because she had first discovered and occupied it; and thence inferred, that she might there form settlements of her subjects, in the same manner as if the surrounding sea had delivered back the lands which had been formerly ravished from her coasts. Whether Virginia was planted, in order to gratify the ambition of a king, to satisfy the avidity of a commercial company, or to promote the national interests by the extension of trade, the emigrants departed with consent of the whole, on condition that they should still be considered as subjects, though they intended to settle in a distant dominion of the state. As Englishmen, they carried with them their former rights: As Englishmen, they owed obedience to their ancient legislature. For, it is a principle of universal equity, "that he who enjoys the benefit shall submit patiently to all its inconveniences."

Of the nine vessels which sailed in May, 1609, seven only arrived safe. But, if that circumstance augmented the numbers, it added nothing to the industry or peace of the settlement. To the former causes of dissension new matter seems to have been superadded. Though common sense, the common law, the charter, all declared, that the former patent, giving authority to the president and council, shall remain in force till the publication of the new commission; yet a majority of *the new-comers* were of a different opinion. These men, being governed chiefly by the suggestions

gestions of those, who had been formerly expelled the colony, and now returned to promote its distractions by former arts, committed a thousand extravagances, which their prudence, as colonists and men, should have taught them to avoid: And they attempted to deprive Smith of the government. But, acting on that emergency with the vigour and good sense which he possessed the most when he most wanted them, he imprisoned the chief promoters of the sedition: And, for some time, regularity and obedience were in a great measure restored. In order partly to form new settlements, but more to purge James-Town of the most turbulent, he detached one hundred persons to the falls of James-River, under the conduct of West; and the same number to Nansamond, under the command of Martin. But change of place made no change in their habits; and, having no desirable object to attract their attention, they continued equally vicious in their new situation as they had been in the old. Having imprudently offended the neighbouring Indians, whose good-will a sense of safety should have taught them to cultivate, many of them were soon cut off; and the few, who escaped the attacks of their enraged enemies, returned in despair to beg the protection of that authority which they had lately contemned. Wasted by a fatal accident to his person, and disgusted in the height of his debility, with distractions which he could neither prevent nor remove, Smith departed for England: Leaving the misconduct of the colonists to the chastisement of those miseries which anarchy never fails to produce,<sup>19</sup> and which now approached with hasty steps.

Various pretenders immediately claimed the supreme command: But the general suffrage, rather than the destination of the late patent, conferred the presidency on Percy, who derived no less consideration from his illustrious family than from the virtues of his heart. Neither his health, however, nor the extent of his talents, qualified him to act with the ability which the times and the people required. A total confusion, with all its mischiefs, ensued; and having, as we are assured, neither ruler nor preacher, they feared neither God nor man. The Indians being informed that the person, whose conduct and vigour they had so often experienced, no longer ruled the colonists, attacked them on all sides; and

and having, in the height of their imprudence, wasted the provisions, on which they could alone rely for aliment, a dreadful famine ensued, that was long remembered by the name of *the starving time*. Of five hundred persons, left in the colony by the late president, there remained only sixty, of all ages and sexes, at the expiration of six months. In this calamitous situation, to which it was reduced by the equal folly of rulers and people, did Sir Thomas Gates, the lieutenant-governor, find the settlement, when he arrived in May, 1610. It was from the mutual complaints of all that he learned the cause of their ruin. He saw no other means to preserve those who survived these complicated evils, than to abandon a country, which had proved so extremely fatal, because it had not yet known the blessings of real government or liberty; and with universal approbation he embarked them, and sailed for England. None dropped a tear, because none had enjoyed one day of happiness. Thus, whatever were the views of those who promoted emigration, they all equally failed. The king acquired no new subjects who might pay him more willing obedience than the old; the avarice of the company was not gratified by the discovery of mines; the national commerce was not extended; and when the colonists awoke from their golden dreams, they found themselves in possession of real misery.

But, before Gates could proceed to sea, Lord Delaware arrived fortunately with three ships, which brought abundant supplies; and he carried back with him to James-Town the feeble remains of the colony. He published his commission, which invested in him the sole command; he appointed a council of six persons to assist him in the administration; and now commenced a very essential change in the form of the ancient Virginian constitution. For the original aristocracy, under which the settlement had suffered such various ills, was now converted to a rule of one; over whose deliberations the people had no controul. That nobleman delivered an oration, which was received with applause, though it reproved them for their late misconduct, and intreated them to amend former follies, lest he should be compelled to draw the sword of justice. And his good sense and vigour soon re-established affairs. He allotted to every one his particular business and condition: He commanded the  
French



French to plant the vine; the English to labour in the woodlands: He appointed officers to see his orders obeyed: And all submitted patiently to an authority which experience convinced them was so necessary and wise. Thus peace, and order, and industry, assumed the place of former distractions and idleness. The incursions of the Indians were repelled, and two forts were built, in order to prevent future attacks. He detached Somers to Bermudas, to procure a supply of provisions; and he sent Gates to England, as well to give an account of affairs, as to solicit farther assistance. But the health of the captain-general did not permit him to contribute much longer to the public happiness by the equity and firmness of his administration, and he sailed for England in the beginning of the subsequent year. He departed: Leaving about two hundred colonists possessed of the blessings of health, of plenty, and of peace with their neighbours who were tractable and friendly; and delivering over the administration once more to Percy, till the arrival of Dale, who was soon expected."

The treasurer and company, still anxious for the fate of the colony, about the same time sent off that gentleman with three ships; carrying adventurers, cattle, and necessary provisions for a year.

He arrived safely in May, 1611. And he beheld with pain the colony relapsing fast into its former state of idleness, and of penury, its natural concomitant. As the same causes continued, new and similar seditions had arisen. But, with a spirit that probably saved the settlement, he published martial law; which he instantly executed by punishing the most guilty: And thus did necessity introduce a system of jurisprudence; which, though little favourable to the genius of liberty, we shall find became the common law of the colony," from length of practice and uniformity of application.

Mean while, the treasurer and company, being little attentive to the maxim of the great Bacon, "that those who plant colonies must be endued with great patience," had expected anxiously some great present advantage; and, as they had hitherto derived no benefit in proportion to the expence, they entertained thoughts of abandoning an enterprise from which they had acquired neither profit nor honour. They asked the  
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real opinion of Sir Thomas Gates and Lord Delaware with regard to the probability of final success; and their flattering representations determined them to persevere in prosecuting an adventure which had appeared lately so hopeless and unprofitable. The most favourable accounts were at the same time given of Bermudas; which, though it cannot now exist without supplies from abroad, was then recommended as an object of importance, because it might furnish provisions to Virginia: But, as it was not included in former patents, they determined to apply for a new grant, which they easily obtained in March, 1611.<sup>23</sup>

Willing to promote every measure that might advance the benefit of the company, and secure the safety of his subjects in Virginia, James confirmed, to both, former charters and immunities. He granted to the treasurer and company the islands situated in the ocean, within three hundred leagues of any part of the Virginian coast, upon the former conditions. The corporation was now considerably new modelled. Four great and general courts of the adventurers were for the first time established, and were to be holden every year, for the determination of affairs of importance: For transacting the common business, weekly meetings were appointed. The treasurer and council were empowered to transport people to the colony, with all merchandises, without paying any custom for seven years; administering the oaths of allegiance and supremacy to persons going thither. As great irregularities had been committed, they were authorized to apprehend, not only those who had agreed to serve in the colony, and afterwards refused to go thither, but those who had returned thence by stealth, that they might be punished as the governor and council should think proper: And in order to promote the effectual settlement of the plantation, which had cost such considerable sums, licence was given to open lotteries in any part of England.<sup>24</sup>

However inconsistent with the liberties of the subject, and consequently contrary to law, were some of the clauses of the above charter, there were privileges conferred by it on the company, of the greatest importance. The lotteries alone, which were the first ever drawn in England, brought twenty-nine thousand pounds into the company's treasury;

fury; and, if we may credit its historian,<sup>25</sup> “ they supplied the real food “ by which Virginia had been nourished.” Yet being at length considered as a national evil, they attracted the notice of parliament. As well the proclamation of that monarch, “ not to speak against the Virginian lottery,” as the prejudice it had been to the commonwealth, were presented by the commons as grievances. And the master of the wards reported to the house, “ that his majesty of himself did never “ like this lottery, but gave way to it because he was told that Virginia “ could not subsist without it; and he will suppress it if it be a grievance.”<sup>26</sup> These lotteries were accordingly suspended in March, 1620, by an order of council; which gave for a reason, that as they had been licensed by proclamation, upon the application of the company, stating the distresses of the colonies, they ought to be suppressed by a similar mode, since the commons house of parliament had complained of them as an abuse detrimental to the commonwealth.<sup>27</sup> These notices, trivial as they may seem, demonstrate not only that Virginia was not settled entirely at the cost of her first inhabitants, but the modes of public business, and the decisive interposition of the commons.

Encouraged thus by the favour of their sovereign, and aided by the contributions of the freemen, the treasurer and council dispatched Sir Thomas Gates, with six large ships, carrying three hundred adventurers, one hundred cattle, and other useful supplies. He arrived in August, 1611; and assumed the government. Parties were immediately sent out from James-Town to form distant settlements. Sir Thomas Dale laid the foundation of Henrico in the following September. He soon after expelled the neighbouring Indians, whose injuries to the colony afforded a pretence, and established in their room New Bermudas. A considerable extent on both sides of the river was laid out into hundreds; and over all these captains were appointed to protect and govern them. Yet, one of the instructions before-mentioned, however well intended, seems to have proved extremely pernicious, and long prevented the growth of the colony. During five years next after their landing, the colonists were ordered to trade jointly; that the fruits of the general industry should be placed in a public magazine, whence every one should

be supplied agreeably to the directions of the council. But, when men are not to profit, they will labour little; and, when all are fed from a common granary, few will concern themselves how it is filled: And with this reasoning the Virginian story exactly corresponds. The emigrants were too often in want of food, and all the energy of martial law became necessary to promote diligence and to preserve peace. There appear to have been moreover two capital defects in the institution of the settlement. The first colonists had neither women nor property, the two objects which the hearts of men desire the most: Women to smooth the asperities of life, and property to interest and invigorate: And these, probably, were the sad causes of all their woes. The term of five years being now happily expired, the governor, in the year 1613, relaxed somewhat from the severity of the regulation before-mentioned: And now, three acres of cleared lands were allotted to each in the settlement of James-Town, in the nature of farms, for which he was bound to labour eleven months for the public; but in Bermudas hundred, one month's labour and a few bushels of corn discharged the miserable farmer from farther services. However extraordinary these singular regulations may now appear, "they then gave the colonists, says their historian," much "content;" which is but too seldom, alas! the ruling virtue of man. Yet the farmers did not possess the lands that were assigned them by a tenure of common soccage, which carries with it freedom and ownership; but enjoyed them as tenants at will, which produces a dependence, destitute of property, and unworthy of freemen.

The resources of James I. were wholly insufficient to supply his wants, which were in proportion to the extent of his improvidence; and he was constrained to call a parliament in the beginning of the year 1614. The treasurer and company, being equally distressed, resolved to apply to the commons for similar relief. Their petition was received; and a day was appointed to hear them by their counsel. He impertinently digressed to matters of much weight; he took upon him to censure some things, and to advise: And he offended the house, and was reprimanded by the speaker. But Lord Delaware, whose attachment to the colony ceased only with life, spoke in support of the application.

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He gave the house an account of the conquest of the country, and of the planting of the colony: And to the objection, "that, were this enterprise undertaken by the house and king, it might prove the cause of a war," he answered; this was no just ground of offence. For, the country was named by the queen: The Spaniards defend the West-Indies; the Portuguese the East; the French the river St. Laurence; the Hollanders the Moluccas: He added; that all the plantation required was but a few honest labourers burdened with children. And he concluded by moving, "that a committee may consider of the means for this for seven years, at which some of the company may be present." It was objected however, that the treasurer and those of that corporation shall withdraw themselves till the matter be debated; but to this was answered, what seems to have been the sense of the house, "if a bill be brought in that concerneth York, her representative ought not to be withdrawn, because it relateth to the commonwealth." The petition appears not on the journals, which were then taken imperfectly; but it is apparent, that the treasurer and company applied to the commons, to assist them in prosecuting an enterprise, which had cost them immense sums of money, without any adequate profit. They were heard in a manner solemn and unusual; because it was said, during the debate, "that it is an extraordinary favour to admit counsel here upon a petition."<sup>26</sup> Nothing, it should seem, was effectually resolved on: The house appears to have been "greatly perplexed, between his majesty's wants on the one hand, and the peoples grievances on the other." Distrust, so baneful to concord and to every laudable pursuit, had gone forth: And that monarch and the commons soon after separated mutually displeased.<sup>27</sup> Thus early were the affairs of the colonies brought before the parliament: But, how extremely remarkable is it, that, before the colonists had acquired property, or a participation in a provincial legislature, the commons exercised jurisdiction.

Alteration of system is sufficiently pernicious in the best established government; but, in an infant colony, frequent change of governors is extremely destructive: And owing to this, among other causes, the prosperity of Virginia was greatly retarded. The administration de-

involved once more on Sir Thomas Dale, upon the return of Gates to England, in the beginning of the year 1614. Of the conduct of Dale, it is recorded; "that, by war upon enemies, and kindness to friends, he brought the affairs of the settlement into good order." It was to this governor, to whose memory the colonists are very justly grateful, that they owe the introduction of landed property. For the restrictive orders before-mentioned, having been found extremely destructive, were now laid wholly aside, and a contrary policy pursued with the most happy effect. Fifty acres of land were granted, in the year 1615, to every adventurer and his heirs; and the same quantity for every person imported by others: And this, says Stith,<sup>28</sup> was the ancient legal method of granting lands in Virginia, to encourage people to come themselves, and to send others thither, to inhabit the country. Thus the tenure at will was changed to that of common soccage: And thus, with this advantageous alteration, freedom first rooted in colonial soil; and, though choked at the beginning, it soon acquired strength in so fruitful a climate, and flourished. Dale sailed for England in the beginning of the year 1616; giving up the trust, that he had executed with such advantage to the colony and reputation to himself, to Yeardley, as deputy-governor.

The acquisition of property naturally added vigour to the pursuits of the colonists. They now not only supplied themselves with corn, but repaid amply what had been formerly received from the indolent natives: And the year 1616 is remarkable for the introduction of tobacco, which is at present so well known in the circle of our commerce and laws. The history of this plant is alone sufficient to evince, that persecution has seldom been able to destroy the object of her hate. James I. detesting tobacco with a step-mother's rancour, wrote against it, what the royal author entitled a counter-blast; the parliamentary orators derided it, as a vile weed that had equally ruined the manners and estates of the subject; the company issued edicts against the cultivation of it: Yet, it struck so deep into Virginian mould as to out-grow opposition, to become a favourite of the world, and to animate the disputes of nations. To the production of this plant, which had been originally carried from Tobago to England, the planters applied with that ardour which novelty and gain  
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never fail to inspire. When a new governor arrived in the subsequent year, he found the streets of their capital overspread by it, and the colonists dispersed over the country as best suited their convenience in the prosecution of this favourite object.<sup>99</sup> And Virginia prospered in proportion as she was awakened from her lethargy; because nothing is so advantageous to a people as to give a spring to their ardour.

The rule of deputy-governors was as little propitious to the colony, in those days, as it has ever been since. When Argal, a new deputy, arrived in May, 1617, he found that fresh discontents had arisen; he saw, with concern, the capital almost in ruins, and public and private edifices equally prostrated; he beheld, with apprehension, the Indians frequenting daily their houses, whereby they had become expert in their arms, of which they had acquired possession: And for all these inconveniences, with a true legislative spirit, he provided an adequate remedy. He procured, by traffic with the Indians, a considerable quantity of corn; the growth of which had been lately somewhat neglected: And this is the remarkable period of the first introduction of the labours of the plough; which, in all civilized countries, are of prodigious importance, because they form the basis of their power. The colonists solicited for a supply of husbandmen and implements of agriculture, with a solicitude which shews that they had at length discovered the importance of both. The treasurer and council, in the mean while, complied with the wishes of the colony, when they sent out Lord Delaware, the captain-general, with abundant supplies: But that nobleman did not live to behold once more those whom he regarded with the affection of a father. His memory is, to this day, held in the highest estimation, as one of their first and most disinterested benefactors. The tidings of this deplorable event seem to have changed the whole conduct of Argal: And martial law, which had been proclaimed and executed during the turbulence of former times, was now continued even in the season of peace. A dispute having arisen between the first magistrate and Brewster, a person of consideration, with regard to the management of Lord Delaware's estate, this gentleman was now tried, by martial law, for contemptuous words spoken of the governor. He was found guilty and condemned, according to that arbitrary system;

system; which, if we may credit the colonial historian, “ was then the “ standing rule of proceeding, and had become the common law and “ custom of the country.” The sentence was respited upon great interest made by the humane: And he appealed to the treasurer and council in England, who reversed the judgement of the court-martial. This is the first instance of an appeal carried from the colonies to England: And it is equally remarkable, that it was made to the company, and not to the king in council; to whom appeals were not probably transmitted till, by the dissolution of the corporation, the reins of government were grasped by royal hands: Nor were they commonly prosecuted till a period subsequent to the restoration. Since such was then the common law, we ought naturally to expect that the legislative power was not more propitious to freedom: And the supreme authority was, at that period, exercised by the governor alone. Argal published, in the year 1618, a variety of edicts, which not only evince this fact, but disclose several interesting particulars of the condition of the colony. He ordered: That merchandises should be sold at an advance of twenty-five in the hundred, and tobacco taken in payment at the rate of three shillings a pound, on the penalty of three years servitude to the company: That no one should traffic privately with the Indians, or teach them the use of fire-arms, upon pain of death to teacher and scholar: That no person should hunt deer, or hogs, without the governor’s leave: That no man should shoot, except in his own necessary defence, till a new supply of ammunition arrived, on pain of a year’s personal service: That none should go on-board the ships, at James-Town, without the governor’s leave: That every person should go to church Sundays and holydays, on pain of slavery during the following week; for the second offence he was declared a slave for a month; and, for the third, a year and a day.<sup>3</sup>

Such then was the legislature of Virginia during those days; such its common and statute laws; and so dreadful to freemen, and extraordinary, were the penalties annexed. Argal was not only accused of many offences in matters of government, of waste of the public revenues, but of wrongs done to individuals, and of general oppression. The treasurer and council received informations of all these accusations with indignation:



tion : Pitying the condition of a miserable people, they appointed Yeardley captain-general, and empowered him to examine, with great attention, the complaints before-mentioned, in order that redress might be given in proportion to their wrongs. He arrived in April, 1619, bringing with him several instructions favourable to the interests of freedom. And he soon after declared his intention of calling a general assembly ;" which gave the greatest joy to men, who had long groaned under the defects of their constitution, the orders of a capricious governor, and beneath the weight of their own folly and misconduct.

It is impossible to view mankind, in a political situation, more truly deplorable than were the Virginians during the foregoing sad period of their story. They were subjected to the arbitrary orders of their prince ; to the interested ordinances of a corporation within the realm ; to the edicts of a haughty governor ; and they enjoyed none of those liberties which Englishmen claim as their birthright. They were assuredly reduced to the condition of a conquered people : And we shall soon hear the secretary of state asserting, in the house of commons, " that Virginia " was a country gotten by conquest, and to be governed as such by " the king's prerogative." But, it is altogether impossible to support the notion of conquest. For, none was made or attempted over the aborigines ; and it is utterly incongruous, to speak of men, who were sent to conquer, as subjugated to the will of the conqueror. The colonists, indeed, had been hitherto ruled rather as soldiers in garrison, by martial law ; or as the humble slaves of a despot ; than as English subjects, who settled in a desert territory of the crown, and who were justly entitled to possess former privileges, as fully as so distant a situation admitted. Yet it will be somewhat difficult to discover, in this most ancient portion of colonial annals, peculiar immunities, or provincial authority, exclusive of parliamentary jurisdiction.

## AUTHORITIES

## AUTHORITIES AND NOTES.

<sup>1</sup> Purchas's Pilgrims, 4 v. p. 1705 : This book was published so early as 1625. — <sup>2</sup> Robert. Hist. Scot. 2 v. p. 282. — <sup>3</sup> Lel. Hist. Ireland, 2 v. p. 204-13. — <sup>4</sup> This charter is in the Virginian Entries in the Plantation-Office, vol. 1, p. 1 ; and in the appendix to Stith's Hist. Virg. N°. 1. — <sup>5</sup> The instructions are in Stith's Hist. 25-30.

<sup>6</sup> The very intelligent observer on the ancient statutes, in summing up the legislative character of James I. remarks : “ Some laws passed which “ deserve much to be enforced, nor do I find any one which has the least “ tendency to extend the prerogative, or abridge the liberties and rights “ of his subjects ; a negative merit in a king, which deserves to be set “ against many positive ones.” Observ. p. 227-8.

<sup>7</sup> Stith's Hist. p. 30-5. — <sup>8</sup> Smith's Voyages, p. 41 ; which were published, in 1630, at the request of the Virginian company. — <sup>9</sup> Ib. ch. 1, 2. — <sup>10</sup> Ib. — <sup>11</sup> Virg. Entries, 1 v. p. 44. — <sup>12</sup> Smith's Voyages, ch. 3, 4. — <sup>13</sup> Ib. ch. 5, 6, 7. — <sup>14</sup> Ib. 7, 8, 9, 10. — <sup>15</sup> Ib. ch. 11 ; and see this charter in Virg. Entr. 1 v. p. 49 ; and Stith's append. N°. 2.

<sup>16</sup> This oath is subjoined ; because it is to be found in books which are not in the hands of every one ; it throws light on the nature of the king's ecclesiastical authority in the colonies ; it shews what were the engagements of the emigrants, religious and political. — “ I, A. B. do utterly testify and declare in my conscience, that the queen's highness is the only supreme governor of this realm, and of all other her majesty's dominions and countries, as well in all spiritual or ecclesiastical things or causes as temporal ; and that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm ; and therefore I do hereby utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities ; and do promise, that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs, and successors, and to my power shall assist and defend all jurisdictions, pre-eminences, privileges, and authorities, granted

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to or belonging to the queen's highness, her heirs, and successors, or united and annexed to the imperial crown of this realm." — 1 Eliz. ch. 1. And such remained the law of England till the Revolution; when that statute was repealed by 1 Wm and M: 1 sess. ch. 8, f. 2.

REMARK. James I. wrote *an Apology* for the before-recited oath, which he defended against the attack of Cardinal Bellarmine with an infinite profusion of learning, scriptural and legal. — See King James's works, p. 247.

<sup>17</sup> Smith, ch. 12. — <sup>18</sup> Com. Journal, 1 v. p. 392, 3. The common law disability, which was declared by this resolution, was not probably adverted to at a subsequent day, when it was enacted by 6 An. ch. 7, f. 25, "that no governor, or deputy-governor, of any of the plantations, shall be eligible to parliament."

<sup>19</sup> Smith, ch. 12; and Purchas's Pilg. 4 v. p. 716-29. — <sup>20</sup> Ib. 1732; and Smith, p. 106. — <sup>21</sup> Ib. 106-9. — <sup>22</sup> Ib. 109-11; and Stith's Hist. 122, 3. — <sup>23</sup> Smith, p. 109, 10. — <sup>24</sup> Virg. Entries in Plant. Off. 1 v. 131; Stith's Appendix, N<sup>o</sup> 3. — <sup>25</sup> Stith, p. 191. — <sup>26</sup> Parliam. Deb. 1620, 1. vol. 1. p. 81-99. — <sup>26</sup> Virg. Ent. 1 v. p. 201. — <sup>27</sup> Stith, 39-131, 2; Smith, 111-114. — <sup>26</sup> Com. Journ. 1 v. p. 581-7, 8. — <sup>27</sup> Ib. 505, 6. — <sup>28</sup> Hist. 139; and Smith, 114. — <sup>29</sup> Ib. 120, 3. — <sup>30</sup> Smith, 123-5; Purchas's Pilg. 4 v. p. 1774; and Stith, 146-56, in which may be seen those singular edicts. — <sup>31</sup> Smith, 126; Purchas, 1775; Stith, 157.

From the epoch of the conquest of New-York, till the accession of James II. to the throne, appeals were prosecuted from the judicatories of that colony, as well to the duke of York as to the king in council. N. York Entries in Plant. Off. 1 v. throughout.

In June, 1620, James I. issued a proclamation, "for restraint of the disordered trading in tobacco;" the recital of which is not only curious in itself, but supports the foregoing reasoning. — "Whereas we, out of the dislike we had of the use of tobacco, tending to a general and new corruption both of mens bodies and manners, and nevertheless holding it of the two more honourable that the same should be imported among other vanities and superfluities which come from beyond the seas,

than be permitted to be planted here within the realm, whereby to abuse and misemploy the soil of this fruitful kingdom, did prohibit the planting of it in England after the 2d of February, 1620," &c. — Rymer's *Fœd.* 18 v. p. 233. — The corporation, at the head of which were then some of the wisest men in the nation, seems to have thought that it would have been an equal prostitution of the Virginian glebe to plant tobacco in it. Sir Edwin Sands, the treasurer, informed the general court, in the year 1619, " That he had, by the advice of the council, caused to be " drawn a new covenant, to be inserted in all future grants of land, " that the patentees should not apply themselves chiefly to tobacco, but " to other commodities therein specified." — Stith's *Hist.* p. 165. — Such then were the sentiments of statesmen in that age, which were then probably very just and politic, and which change of manners and circumstances has rendered ridiculous. The Independents of Massachusetts, comparing the smoke of tobacco, in the language of James, to that of the bottomless pit, prohibited the use of it in the year 1640, when the fanaticism of the colony was at its greatest height : But some of the clergy having at length adopted the practice of smoking, " tobacco, by " an act of the general court, was set at liberty." Hutch. *Hist. Mass.* 1 v. p. 152.

## C H A P. III.

*The first assembly called. — Wives sent to the colonists. — Convicts transported as servants. — Tobacco first imported. — Taxes imposed. — Parliament meets. — Its debates. — The Virginian constitution established. — Tobacco sent to Holland. — The colony ordered to bring its products to England. — A massacre and famine. — A supply sent. — Contests in the company. — A commission of enquiry ordered. — The report. — The corporation refuses to surrender the charters. — A writ of quo warranto issued. — Patents cancelled. — Commissioners sent to enquire into the state of Virginia. — The proceedings of its assembly. — The company applies to the commons for protection. — The government of that dominion assumed by the king. — Death of James. — A review of his colonial administration.*

THE month of June, 1619, is the happy epoch, in Virginian annals, of the introduction of a provincial legislature, in which the colonists were represented. The colony had been divided only into seven hundreds or distinct settlements, which seem to have enjoyed some of the privileges of boroughs: And from this circumstance the democratic branch of the assembly has been called, to this day, the house of burgesses, though composed almost entirely of the representatives of counties. To these Yeardley, the governor, in pursuance of his instructions from the company, issued writs for the election of delegates. The assembly, formed of the governor, the council, the deputies, then met together in one apartment, and transacted affairs like the parliament of Scotland of old; which mode continued unchanged till a period subsequent to the restoration. Thus composed, and thus convened, the legislature “debated all matters thought expedient for the good of the whole.” The laws, which were then enacted, and which do not now exist, were transmitted to England for the approbation of the treasurer and company, without whose confirmation they were of no validity: And, though they seem not to have been formally approved, it was said of them, “that they were very judiciously formed.” Nor were the colonists ungrateful for a change

so advantageous and just, as allowing them to participate in the government of themselves. Feeling the settlement degraded by the arbitrary system that had rooted in its jurisprudence, the assembly, while it thanked the company for the late favour, begged the general court "to reduce" into a compendious form, with his majesty's approbation, the laws of "England proper for Virginia, with suitable additions:" Giving a reason, which shews a spirit very different from that of recent times, "that" it was not fit that his subjects should be governed by any other rules "than such as received their influence from him." The introduction of an assembly was attended with the happiest effects. The governor was now restrained to act with the advice of his council. If martial law was not entirely abolished, it was reduced within the limits prescribed by the royal instructions; and the laudable forms of justice and government, which were used in England, were established: And the emigrants, for the first time, resolved to settle themselves, and to perpetuate the plantation.

Thus, at the expiration of twelve years from their settlement, was given to the Virginians, by the company, a local legislature, in which they were represented. They received that with gratitude, we have seen, as a favour, which they might have claimed as one of the invaluable rights that they carried with them as Englishmen. The charters, which empowered the corporation to make ordinances for the rule and correction of the colonists, were undoubtedly inconsistent with every sound principle of the constitution; because, at no one period of the English annals, could a king of England rightfully legislate for his subjects, since they were not bound by rules of action prescribed by any other authority than the great council of the state, which carried with it the consent of the whole: And the sovereign could not delegate to others what he did not himself possess. The forms, whether aristocratic or monarchical, under which the people had so long groaned, were still more invalid; because they were derived from a power which was itself altogether illegal. Had the parliament, actuated by the spirit which we shall find animating the commons in 1628, when they passed a bill to give validity to a similar patent of the Bermudean company, confirmed the charters before-

fore-mentioned, what was so extremely doubtful would have become the law of the state, and the emigrants would have been governed by the same authority in their new as they had been in their ancient settlements. Had the parliament continued to legislate for them, with regard to all the minute particulars which new habits, different situations, and change of circumstances, required; had a revenue been at once established for all the local uses that continually might arise; no assembly had been necessary. Under such a regimen Virginia would have only required a supreme magistrate to carry into effect the rules prescribed by the sovereign legislature: And the colonists would have enjoyed similar rights, and would have been equally free, as the numerous fellow-subjects which remained within the realm, and were in the same manner precluded from giving their suffrages. The security and freedom of both would have arisen from the mixed nature of the government, which necessarily produces opposition to the executive power; from the excellent balance of the constitution, which offers so many checks to the spirit of domination; from the responsibility of ministers, which, in modern times, forms the best barrier of any against oppression. But it was impossible in those days, and it is more so in the present, for the parliament to extend their legislative care to the various little wants of an inconsiderable colony; to the making of roads; the building of churches; to the affording of remedies for inconveniences which alteration of circumstances daily brought forth: Time would have failed: And, uninstructed in their minute affairs, the provision would not have been always adequate to their necessities. Hence a local legislature for local purposes became necessary. We have seen the source from which the Virginians derived theirs; and the legislative body from which, with a spirit degraded by oppression, they begged for "a proper form of laws suitable to their condition." And from that epoch, when the colonial liberties were sunk to the lowest point of depression, we may trace them in their gradual rise and exaltation to the æra of revolt.

Meanwhile, the treasurer and company were neither unmindful of the affairs of Virginia nor negligent in promoting them. Measures were taken, as well for collecting the orders of the company, that every one might

might know what he was bound to obey, as for establishing that body of laws which the assembly had solicited as the greatest of blessings. A considerable emigration was transported at a prodigious expence: And, in order “ to fettle the minds of the colonists, and to induce them to make “ Virginia their place of rest and continuance,” it was proposed to send thither one hundred maids, as wives for them: Ninety girls, “ young “ and uncorrupt,” were transported in the beginning of the year 1620; and sixty more, “ handsome, and recommended for virtuous demeanour,” in the subsequent year: And almost all these were immediately blessed with the object of their wishes. The price of a wife to the husband, who purchased her, was one hundred pounds of tobacco, for each of which there were then allowed, in money, three shillings; but, with the increase of the demand, it rose by degrees to one hundred and fifty pounds: And it was justly established, as a fundamental law, “ that the price of a wife “ shall have precedence of all other debts in recovery and payment, because this merchandize of all other was deemed the most desirable.” Having thus provided wives for the Virginians, the treasurer and company naturally turned their attention to the education of children. They prepared to erect a college, which they amply endowed with lands; they sent tenants to cultivate them: And James, with an attachment to the cause of learning and to the instruction of his distant subjects, that does honour to his memory, ordered collections to be made for it in the dioceses of England; by which means very considerable sums were procured.<sup>2</sup> But the effectual execution of that salutary project was reserved for the hands of William and Mary.

It is to James, however, that the nation and the colonies owe the policy, whether salutary or baneful, of sending convicts to the plantations. From him the treasurer and council received a letter, in the year 1619, “ commanding them to send a hundred dissolute persons to Virginia, which the knight-marshal would deliver to them.” And, in obedience to the royal mandate, they resolved to transport them as servants, though at a considerable expence. Whatever offence a similar policy has given the colonists in modern times, “ those dissolute persons,” if we may credit their historian,<sup>3</sup> “ were then very acceptable to them.”

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The good sense of those days, justly considering that their labour would be more beneficial in an infant settlement, which had an immense wilderness to cultivate, than their vices could possibly be pernicious. The only law, which at that time justified the infliction of expulsion as a punishment, was the statute of Elizabeth;<sup>4</sup> which enacted, "that dangerous rogues might be banished out of the realm:" But, from the circumstances of that transaction, it is probable that the obnoxious men above-mentioned were transported agreeably to the genius of the administration of that reign, by prerogative.

The treasurer and company began at length to reap some profit from an enterprise which had hitherto rewarded all their labours with fruitless cares and expence. They imported from Virginia, during the summer of 1619, twenty thousand pounds of tobacco; which was the whole crop of the preceding year.<sup>5</sup> But a new scene of sorrow opened on them, which closed only with the dissolution of the corporation. Irregularities, prompted by hope of gain, were then very frequently committed in the national commerce, as they have been at all times since; and the reigning prince being informed, "that divers conceal and utter tobacco without paying any impost, notwithstanding any statute to the contrary," in May, 1619, prohibited, by proclamation,<sup>6</sup> the sale of that commodity, in gross or retail, either in England or in Ireland, till the custom should be paid, and the royal seal affixed. When the importation above-mentioned was made, the farmers of the revenue, making a general rate of the value of the commodity at ten shillings the pound, because Spanish tobacco was usually sold at eighteen shillings, demanded a duty of sixpence for that of the company; and they seized the merchandise till the impost was paid. After the usual altercation with the farmers, and a hearing before the privy-council, it was at length ordered to be delivered up, upon payment of all lawful duties. By the charter of 1611, the treasurer and company were exempted from all taxes for seven years; but this term was now expired. By the patents of 1606 and 1609, an exemption was granted of all subsidies for one and twenty years, "except only the five pounds in the hundred due for custom, according to the ancient trade of merchants." This duty was

was assuredly payable by virtue of the act<sup>7</sup> of tonnage and poundage, which passed in the first year of the present reign ; though that prince, turning his face from the parliamentary grant, considered the custom as due, according to the ancient trade of merchants ; and the taxation reserved by all the colonial grants above-mentioned was consequently that of the legislature. The only disputable point, it should seem, was with regard to the true value of the merchandise ; and the treasurer and company were finally obliged to pay the sixpence a pound assessed by the farmers.

The reigning monarch, who was actuated rather by his singular dislikes, than by sound policy, or a just regard to the privileges of his subjects, reflecting on the daily consumption of the wealth of the kingdom, and diminution of the health of the people, in December, 1619, prohibited the growth of the plant before-mentioned in England. Early in the subsequent year he appointed special commissioners<sup>8</sup> “ for garbling “ the drug called tobacco ;” giving as a reason, in support of this measure, “ that he continued of the same mind to preserve the health of the “ subjects, and that the good may be distinguished from the bad.” What vexations, what discouragements, must not traders have experienced from the exercise of an authority altogether arbitrary, since over the men, who were thus appointed the inspectors and judges of their property, they had no controul ; and strange had it been, in that age of universal monopoly, had there not arisen one of a drug thus contemned and persecuted ! In order to reduce the commerce of it into the hands of able persons, who might manage the same without inconvenience, a fresh proclamation was issued in June, 1620, prohibiting the importation of tobacco without licence under the great seal ; and the opposers of the royal command were threatened with prosecutions in the Star-chamber.<sup>9</sup> These measures, so characteristic of the administration of those days, affected equally the interest of the adventurers in England, and the prosperity of the plantation. While the treasurer and company refused the farm of the impost on that branch of trade, in order to avoid the embarrassments which they foresaw, they agreed to pay twelvepence a pound on the importation of that commodity, provided the proclamation,

proclamation, prohibiting the planting of it in England, should continue in force :<sup>o</sup> And this condition was equally necessary and prudent. For a royal edict, so contrary to national interests, did not escape the notice of the commons ; who resolved, in the subsequent year, that it was against the freedom of the subject.<sup>11</sup> How extraordinary and illegal soever may now appear those exertions of prerogative, such proclamations were extremely common in those days, and seem to have commenced during the reign of Elizabeth. For, in a debate on public grievances in the session of 1621, Sir Edward Cooke asserted : “ That never till within these forty years was there any restraint made, other than by act of parliament, “ that a subject, being a freeholder, shall not plant what he list in his “ own ground.”<sup>12</sup> Were it not that the human mind naturally resists the object of its dislike ; were it not that the overweening sense of his own wisdom made James despise the judgement of others ; we ought to expect that the strong assertions of the wisest lawyers and statesmen, the firm resolutions of the commons, would have prevented the future promulgation of such legislative ordinances, or at least have taught that prince, and his successor, moderation and caution in the use of them.

The year 1620 is remarkable in Virginian annals for the introduction of freedom into colonial commerce ; and, by bringing with it competition, which never fails to invigorate the exertions both of buyers and sellers, it had the most beneficial influence on affairs. Before that time the traffic of the colony had been engrossed by the company alone. All consignments seem to have been made to its factor, who sold the manufactures of Europe, and transmitted in return the products of Virginia. But the treasurer and company, finding little real advantage to result from a monopoly which depressed the settlement, now laid the trade of that ancient dominion open to every one ; and, as no law precluded the Hollanders from prowling in search of gain, they soon found their way to that country. This is the sad epoch of the introduction of African slaves into the colonies. A Dutch vessel then carried thither a cargo of Negroes : Dutchmen first trafficked in human flesh ; and the Virginians, who had just emerged from a state of slavery themselves, first reduced their fellow-men to the condition of brutes.<sup>13</sup> The second assembly was

convened in May ; and, among other objects which engaged its attention, the church seems to have attracted its peculiar care. The eleven hundreds, into which the colony had been divided, were now erected into so many parishes ; the stipends of ministers were settled at fifteen hundred pounds of tobacco, and fifteen barrels of corn, which were supposed to be equal in money to two hundred pounds : Yet these measures, and the paucity of ministers, who did not then exceed five in number, demonstrate the deplorable state of religion, though the company, with a laudable piety, had granted considerable encouragements. As the colonists had now acquired freedom and property, they became extremely solicitous with regard to the defence of both ; and, when they considered the unfortified state of the country, they solicited the treasurer and company to send them engineers to raise fortifications, promising to bear the charge of what was then deemed so advantageous to themselves :<sup>14</sup> And future events demonstrated the prudence of their present conduct.

A parliament assembled in January, 1621 : The deliberations of which are extremely interesting to Englishmen, because those disputes were then agitated, which ended at length in the improvement of the constitution. The main errand, to speak truly, said James, why I called you together, is for a supply of my urgent necessities, in urgent causes : And they unanimously granted, on that extraordinary occasion, two subsidies, amounting to about one hundred and sixty-four thousand pounds.<sup>15</sup> But the chief object which engaged the deliberations of an assembly, composed of the profoundest lawyers and ablest statesmen to be met with probably in the English annals, was the redress of the various grievances which then depressed the nation. In a committee of the commons, “ concerning the decay of money in England,” it was urged by Sir Edwin Sands : That the fountain of money is Spain, and we have had annually from that country, by traffic, one hundred thousand pounds ; but now we have our returns from it in tobacco : That it will be a double profit for us to divert the bringing of that commodity from Spain, and to cause it to be brought from Virginia and the Somers-isles. For thereby we shall enrich those countries under our dominion, and England will be better stored with money, when we take our returns in bullion  
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from Spain.<sup>16</sup> This is the first instance, which occurs, of the modern policy of promoting the importation of the commodities of the colonies, because they were “countries under our dominion,” in preference to the productions of foreign nations: Nor could a statesman or merchant of the present days, aided by experience, have reasoned more justly on the nature of trade, or the use of colonies. It was, nevertheless, warmly contended by some, who were actuated more by prejudice than policy, that tobacco should be wholly banished out of the kingdom; otherwise, said they, it will overthrow one hundred thousand men in England. For, it is now so common, that ploughmen take it as they are at plough. The deputy-chairman of the Virginian company replied: That, if we banish all, then the four thousand men now in Virginia will perish; they having there as yet no other commodity. The house at length resolved; “that all foreign tobacco shall be barred; but that of Virginia, or any of the king’s dominions, shall not be held foreign.”<sup>17</sup> And, accordingly, “an act for the restraint of the inordinate use of tobacco” was soon after brought in. Its provisions are extremely remarkable: No tobacco was to be imported after the 1st of October, 1621, but from Virginia and the Somer-isles; and, after that day, none was to be planted in England: There were to be paid to the king, for custom, six-pence a pound, in consideration of the loss he might sustain in his revenue: None was to be sold by the merchant for more than eight shillings, and, by the retailer, none for more than ten shillings, the pound: But, “such as sell tobacco by the pipe may make the most they can.” This singular bill, wherein there is so much policy, considering the manners and temper of the times, after various debates and amendments, which naturally arose when each thought it his duty to speak the sentiments of his heart, was passed in May, 1621.<sup>18</sup> But, like much of the important business of that session, it was blasted by the same spirit which had overspread the land with monopolies, so destructive of commercial ardour.

The unwise, not to say unconstitutional, measures of James embarrassed not only the company but the plantation; and individuals had suffered prodigiously, no less from the irregularity of his conduct than from the exclusive regulations before-mentioned. To be relieved from these grie-

vances, they applied to parliament for redress, who received their petition with the attention due to the oppressed. During the debate on this subject, two planters of Virginia complained of the irregularities of the farmers of the revenue: "The barbarous usages of divers others that have brought in tobacco" were also mentioned. And a committee was appointed "to examine this business, and to consider in what manner to relieve them; with power to send for the patentees, and to see the patents."<sup>19</sup> Yet, owing to causes which do not appear, though they may be easily conjectured from the nature of the complaints, which so immediately tended to impeach the conduct of royal officers, those applications did not receive the relief that was prayed for; though the commons exerted the laudable spirit of the great inquest of the state.

Thus wronged and disappointed of the hoped-for remedy, the treasurer and company once more addressed a petition to the humanity of their prince: But, though his answer was gracious, he gave them only unsubstantial professions of regard for them and of love for the colonies. And necessity at length discovered a remedy for those evils, which even interest had been unable to prevent or to cure. They procured warehouses and appointed factors at Middleburgh and Flushing. They compounded with the magistrates of these towns, at the rate of a penny a pound on the import, and the same on the export, of their only merchandize. And, to the diminution of the customs; which was soon extremely felt; and, to the injury of the national trade, no Virginian products were imported into England during the year 1621; all were sent to Holland, and there disposed of. Thus the interest of the nation, the utility of the colonies, the rights of individuals, were all sacrificed at the shrine of mistaken policy, of arbitrary will. The Virginians, in the moment of their distress, transmitted a petition to James, in style and sentiment very different from those of recent times: "They besought him, in his princely compassion, either to revoke that proclamation and to restore them to their ancient liberty, or else to send for them home, and not permit the heathen to triumph over them."<sup>20</sup> But before it arrived, a defalcation of the revenue had inspired that wisdom which experience had been unable to impart: And, though too late, he became sensible of an error that had proved

proved extremely inconvenient. The deputy and others of the company received "an angry rebuke" from the privy-council; and they were required to answer, whether they would bring their commodities to England or continue their trade in the Low Countries. They were again solemnly heard at the council-board: But their arguments did not convince predetermined minds.<sup>21</sup> And an order was issued, in October, 1621, commanding, "that no tobacco, or other productions of the colonies, shall thenceforth be carried into foreign parts, till they are first landed in England, and the custom paid:" The privy-council assigning these remarkable reasons; "that the king, weighing the great advantage which this crown and state might receive from a well-ordered plantation in Virginia, granted several immunities to the colonies, as not doubting but that they would apply themselves to such courses as might most firmly incorporate that plantation into his commonwealth; that to suffer therefore a foreign trade is as inconsistent with the view in the planting of Virginia as with just policy or the honour of the state."<sup>22</sup> The deputy and council, offering some reasons to shew the impropriety and hardship of this order, were told, in the stern language of those days, "that they were not to dispute, but to obey."<sup>23</sup> Here then were for the first time disclosed all those principles of policy, with regard to the colonial trade, which were carried into execution by an act of the legislature at a subsequent day.

Yet the order above-mentioned, being either disregarded or eluded, did not prove successful. Not only was tobacco still sent from Virginia, but from the Somer-ishes, to Holland. And the former prohibition was renewed in March, 1622, and extended.<sup>24</sup> The governor and colonists were required to prevent as well the like practices in future, as to procure the return of those ships which had been lately sent to foreign parts, "upon those penalties that the contemners of the authority of the board may expect." The colonial officers were commanded to publish this order in their several courts, "and to look that it be executed." And it was transmitted to Virginia, says its historian, for the information of the people, that they might know how to comport themselves therein.<sup>25</sup> If this regulation, so different in principle and extent from those of later times,

times, so much complained of, and so outrageously resented, were not altogether contrary to the charters, which had reserved a legislative power to the king; yet, as no grant of the prince can divest the people of their birthrights, the edicts of the privy-council before-mentioned may well be pronounced wholly unconstitutional. Not only did that board exercise in those days a legislative but a judicial authority of original jurisdiction. Complaints were then frequently made to it against the company and the colonists: And redress was as often given as applied for.<sup>26</sup> But though those powers, so contrary to every sound principle of the law of England, have been long exploded as illegal, the former exertions of them demonstrate the greatness of the authority which that body exercised over the plantations.

Mean while the treasurer and company carried into execution, in July, 1621, the resolution which they had formerly taken, for establishing a proper constitution for the colony. They passed an ordinance,<sup>27</sup> which is no less remarkable for the wisdom of its provisions than for being the principal step in the progress of freedom. It declared, that henceforward there shall be two supreme councils in Virginia; the one to be called the council of state, which was to be appointed and displaced by the treasurer and company, and which was to assist the governor with advice in the affairs of government; the other was to be denominated the general assembly, which was to consist of the governor, of the council, and of two burgesses, to be chosen, for the present by the inhabitants of every town, hundred, or settlement in the colony. The assembly was empowered to consult and determine of the public weal by the greater part of the voices then present, and to enact general laws for the government of the colony, reserving to the governor a negative voice: And both the assembly and the council of state were required to imitate and follow, in their deliberations, the policy of the form of government, laws, customs, and administration of justice, which are used in the realm of England. With a good sense and equality, which degrade modern theories of colonial legislation, it declared, “ That no acts passed by the assembly should  
 “ be in force till confirmed by the general court in England, and the  
 “ ratification returned under its seal; that, on the other hand, no or-  
 “ der



“ der of the general court should bind the colony, till assented to by the  
“ assembly.”

Such then is the substance of the ordinance, on the basis of which has been erected the constitutional government of that dominion, and from which its assembly has derived all the power and importance of the present times. Yet it is extremely remarkable, that among all the privileges hitherto granted to the treasurer and company, and by them to the colonists, no authority was given to impose taxes within Virginia. As the exercise of this important power may be regularly traced from the Restoration, perhaps nearly from the establishment of assemblies, whence did the legislature derive the right? After the colonists had acquired property, each individual might have disposed of his possessions as he thought proper, because this privilege was inseparably annexed to ownership. When the same individuals were formed into aggregates, they assuredly possessed the same power, because they brought with them all the rights of the individuals. When, by the progress which has been noticed, an assembly of the colonists was established, and, from the paucity of numbers, almost every man was present who was free and an owner, that body certainly had a right to exercise all the authority of the aggregates, because it was composed of them, and its powers would have been incompetent to the purposes of its meeting, which were to agree on common measures, for the interest, the safety, and protection of all. The assembly, therefore, forming the body politic of this infant people, possessed and exerted all the rights of the whole. And what man, whose understanding was not perverted by theory, or system, or party, ever asserted, that the whole of a people might not appropriate a part of the property of every individual for the defence of what remained, and the rights of his person, which is still more interesting. The governor and council of state, who were thus appointed by the treasurer and company, and who formed essential parts of the assembly, could however be deemed with little propriety the representatives of the inhabitants; nor could the burgesses, who were chosen by them, exercise or claim any peculiar power over the purses of the people, till they ceased to vote in the same apartment with the other two, and formed a distinct branch of the legislature.

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The Virginian assembly, therefore, must have deemed the right of taxation to have resulted to it from the same principle whence it is derived in every community on earth. It is the legislative power, because there the authority of the state is reposed, that alone rightfully exercises the inestimable privilege of imposing taxes any where. And that assembly has for ages exerted the same privilege for internal purposes; because, it was the legislature of the colony, though dependent and inferior; since it was neither sovereign nor co-ordinate.

With that ordinance, and instructions tending to promote the religion, the morality, the loyalty, the œconomical pursuits, of the colonists, the treasurer and council dispatched Wyatt, as governor, in July, 1621, in the room of Yeardley, whose commission expired by effluxion of time. Yet, alas! what availed every immunity, which was then conferred, or which was acquired in succeeding times, if the Virginians did not enjoy any personal security, that includes so many interesting rights! And what freedom can a people be said to possess, if the individual hath not an adequate remedy when his person is improperly restrained! The colonists did not assuredly in those days possess the remedy, and consequently enjoyed not the right, till the reign of Anne: And, if we may credit the two houses of assembly, they received with gratitude, as a favour, the extension of the invaluable habeas corpus act, which, as English subjects, they were justly entitled to as their birthright.<sup>28</sup> The persons of the colonists being thus emancipated, we shall find the reign of Anne, in the same manner, the happy epoch when their minds were equally set free, by the establishment of the *liberty of the press*. And these we shall discover to be, by far, the most important steps in the progress of their privileges to their present extent.

The resources of the treasurer and company, owing in some measure to the embarrassments before-mentioned, were far from equal to the greatness of their project and to the expences of their numerous officers. And necessity compelled them to adopt a measure, which good policy ought to have dictated from the beginning; They offered territory to those, who should either emigrate themselves, or engage to transport people to the colony. Upon such conditions, fifty patents, containing considerable tracts

tracts of land, were granted during the year 1621. And so successful had been this policy, that upwards of three thousand five hundred persons emigrated to Virginia during that and the two preceding years. Actuated partly by sound policy, but more by his prejudices, James strongly urged the company to cause the colonists to turn the course of their labour to the raising of silk, which he insisted was a more solid commodity than tobacco, which, besides the expence, introduces the greatest disorders: And the royal recommendations were transmitted to Virginia, but to no purpose. French vigneronns were at the same time sent thither, because the country was said to be proper for vines; yet this project has hitherto proved equally unsuccessful.<sup>9</sup> And so difficult is it to change the favourite inclinations of a people, that the treasurer and company published edicts to regulate the cultivation of that plant, the production of which they could not altogether prevent. Wyat, the governor, no sooner arrived, than he sent a deputy to confirm former leagues with the tribes: But, the seeming satisfaction with which they assented to this measure, and professed their content that the English should inhabit the country, inspired a security and inattention at which prudence revolted, and which soon engendered calamities, fatal and deplorable.<sup>10</sup>

The disputes with regard to tobacco, between James and the treasurer and company, the rise and progress of which we have seen, were closed by compromise in the beginning of the year 1622. They were now to enjoy the sole importation of it; he was invested with the absolute property of one third, and with a duty of sixpence a pound on the other two thirds. But the experience of a twelvemonth having convinced both parties that this extraordinary agreement was not only destructive of itself by its extravagance, but ruinous in the highest degree to the colonies, it was dissolved after great debate and consideration. That prince now consented to receive, in future, a duty of nine-pence, in lieu of all charges; they were still to enjoy the sole importation, upon this express condition, "that the whole productions of the colony should be brought

"to England." The merchandize, which had been imported by individuals from the Somer-isles, and which had been seized by the farmers of the customs, was ordered to be delivered to them, upon paying the

duty of nine-pence a pound.<sup>31</sup> The wife remarked : “ That when the  
“ poverty of the prince arises chiefly from the extreme parsimony of the  
“ people, the disgrace of the one, and the vexation of the others, must  
“ necessarily be the result.”

The colony, in the mean time, notwithstanding every obstruction, natural and artificial, increased gradually in numbers and in opulence. Various and distant settlements had been now established along the banks of James-River, as the advantages of the country, or the caprice of the inhabitants, had directed ; and it was conceived to be extremely inconvenient to bring all causes for determination before the governor and council at James-Town. In order therefore to render the administration of justice more commodious and cheap, inferior courts were erected at proper distances :<sup>32</sup> And this laid the foundation of the county-courts of modern times. Yet that measure, which at first view appears so salutary, by encouraging the inclination of the colonists for dispersed habitation and distant settlement, produced a weakness and insecurity that well nigh buried the honours of Virginia for ever in the grave. Murders, both on the part of the English and the Indians, were committed sometimes then, as they have been at times since, notwithstanding every preventive : By the former they were soon forgotten ; by the latter they were eternally remembered, and every fresh recollection incited a new desire of revenge : And the year 1622 has been rendered extremely remarkable, in Virginian annals, by a most barbarous massacre of the colonists by the natives ; which was executed with all the cunning and cruelty peculiar to that savage people. No regard was paid by them to age, or sex, or dignity : A well-concerted attack on all the settlements destroyed, in one hour, and almost at the same time, three hundred and forty-seven persons, unresisting and defenceless.<sup>33</sup> A long train of woes to both was at that time laid. A consuming war ensued. And a repetition of mutual wrongs hath transmitted to their posterity mutual abhorrence. When the Indians of the present day would express their hatred and fear of the Virginians, they call them “ the long knife.” Nevertheless, it ought to be observed, that the emigrants, notwithstanding the humane instructions of their sovereign and the prudent orders of the company, had  
never

never been solicitous to cultivate the good-will of the aborigines; and had neither asked permission when their country was occupied, nor had given a price for invaluable property, which was taken without authority. To the horrors of massacre were soon superadded the miseries of famine. Of eighty plantations, which grew fast to completion, only eight remained: And of the numbers, which had been transported thither, at so great an expence, only eighteen hundred survived those manifold disasters.<sup>34</sup>

Tidings of these deplorable events no sooner reached England than the privy-council, with an attention and humanity which deduct much from its general irregularity, ordered an instant contribution of the adventurers for the relief of that signal calamity. Upon application of the treasurer and company, arms from the Tower were delivered them: And several vessels were soon dispatched with every thing which could alleviate complicated distress.<sup>35</sup> The news of these misfortunes embittered the cup of dissension which the company had lately drunk to the lees. Not only was it greatly embarrassed by the irregular interference of the privy-council, but its affairs were distracted by two violent factions which contended for the supreme direction. These assumed the regular appearance of the court and country parties; the one, headed by the Earl of Warwick, promoted the views of the former; the other, led by Lord Cavendish and Sir Edwin Sandys, supported the interests of the company. And their animosities affected, in a high degree, not only their own transactions, but the quiet and prosperity of the plantation.<sup>36</sup> Frequent complaints were made to James of the oppressions of the treasurer and company. The calamities, which had lately laid waste Virginia, were attributed to their misconduct or neglect. And not only they, and the corporation of the Somer-isles, but all those who had complained of the oppression of either, were heard before the privy-council, in April, 1623. After considering the allegations of all parties, it was determined, that a commission should issue to enquire into the affairs of Virginia and the Somer-isles, from the earliest settlement of both. What sums of money had been collected for these colonies; how these had been expended; the grievances of which all complain; who preys on the inhabitants by

extortion; their present condition; all were objects of that enquiry, which was now directed as the foundation of future measures. But, that the planters might not, in the mean time, “be discouraged by private suggestions,” all letters to them, but those of business, were prohibited: And the treasurer and company were ordered to request the colonists to live in that amity “which becomes believers of such a religion, “and the subjects of such a king.”<sup>37</sup>

The commission of enquiry was not deemed either so consistent with the prosperity of the colonies, or the designs of the company, as to merit their approbation or aid. It was armed with an inquisitorial power over their charters, their books, their writings, which they were ordered to exhibit to the commissioners. All private letters were required to be delivered to them: And a ship arriving meanwhile from Virginia, the deputy-treasurer was commanded to seize the packets it brought, and to lay them unopened before the privy-council. These transactions, so characteristic of the administration of that reign, added fuel to the flame, which then consumed the company. The Earl of Warwick complained to the privy-council of a paper delivered to the commissioners, “which aspersed him as a tool of the court.” Lord Cavendish and Sir Edwin Sandys, avowing themselves to be the authors of the offensive writing, were confined in their own houses: The council assigning as a reason, “that they were found guilty of a contempt of the “commands of the table.” The treasurer and company were at the same time peremptorily directed to comply with the former order, and to deliver particularly the book which they had concealed.<sup>38</sup> Thus evincing to all, that when the power to will and the authority to command are united, the liberty of the subject is endangered, or gone.

The commissioners of enquiry perused every document that could illustrate a subject dark and perplexed, and examined every person who could give any intelligence with regard to Virginian affairs. They proposed a variety of questions to Smith, who acted so conspicuous a part at the settlement of the country, and received such full and intelligent answers as at once shewed his own profound knowledge of the subject, and gave them the greatest satisfaction. Among various remedies, which he proposed

posed for those evils that were so much lamented, two are worthy of notice: That his majesty would please to entitle Virginia to his crown; that, by act of parliament, some small tax should be granted throughout his dominions, which would be sufficient to transport substantial colonists, for paying only homage to the crown, and such duties to the public as their estates increased and reason should require.<sup>39</sup> Such then was the sense of wise men in those days: And thus they considered the power of the supreme legislature to levy imposts on every territory of the state as unquestionable, which the emigrants ought to pay in consideration of services done them. After much deliberation, the commissioners at length certified: That those inhabitants, who yet survived the late disasters, now lived in want and in danger; but that the country was fruitful and would produce various staples were industry used, and was healthful after the English had been some time there; that former miscarriages ought to be attributed to the governors and company here, who had power to direct the plantations there; which were of great importance, and would probably remain to all posterity a monument of the gracious and happy government of that reign.<sup>40</sup> James did not hesitate long with regard to the plan which he should adopt for the alleviation of the past and prevention of future mischiefs. And the privy-council, in October, 1623, informed the treasurer and company, “that the king, having considered “the distressed state of the colonies, occasioned, as it should seem, by “their mismanagement,” had resolved to grant a new charter, in order to reduce the government to fewer hands, preserving the rights of individuals inviolable. And they were required to assemble a court of adventurers, to determine whether they would surrender their former grants and accept a new one: The council adding, in the ungracious language of those days, “that the king was determined, in default of submission, to “proceed for recalling them, as may be just.” It was in vain for the deputy-governor to insist, at a subsequent day, “that, by their constitution, such important affairs could only be considered at a “quarterly court of the company.” He was peremptorily ordered to proceed.<sup>41</sup> But the treasurer and company refused to comply: And determined,

terminated, with the spirit of Englishmen, to defend their rights with a vigour in proportion to the supposed importance of them.<sup>42</sup>

Mean while the greater number of the adventurers were extremely alarmed when they heard of these transactions, which seemed to them so destructive of their interests; and the privy-council thought it necessary to declare, that the king's sole intention was for change of government, but that all private estates should be fully preserved: And in order that a similar alarm might not extend beyond the Atlantic, the same declaration was transmitted to Virginia.<sup>43</sup> Doubting still the final success of the colony, and distrusting the intelligence that he had received, that prince at the same time sent John Harvey, and other commissioners, thither, to procure information of the present state of the plantations, for advancing the great work of reformation.<sup>44</sup>

A writ of quo warranto issued, in November, 1623, against the patents of the corporation: And, upon the representation of the attorney-general, that no defence could be made without its papers, these were restored. That body, being little embarrassed with modern scruples with regard to its authority over property, justly resolved, that the rights of all should be defended at the expence of all: But those who were willing to surrender the powers of government, in conformity to the royal intentions, complained to the privy-council of the injustice of a resolution, which obliged them to contribute to the support of a measure that they did not approve: And it was ordered, "that they should be exempted, but that the costs should be defrayed solely by those who defended the quo warranto." Judgement was given by the court of King's-Bench against the treasurer and company, in Trinity-term, 1624.<sup>45</sup> And thus were cancelled, by a formal process of law, the patents before-mentioned. How extraordinary would such proceedings appear in the present days! Yet they were so much of a piece with the general strain of the arbitrary administration of that reign, that they made little impression at the time, though the Virginian company was composed of persons of the first quality, wealth, and consequence, in the nation.

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The colonial historians have deplored that interesting event with the same zeal as if the fate of the colony had depended on the dissolution of the charters. Nevertheless, the length of its infancy, the miseries of its youth, the disasters of its riper years, may all be attributed to the monstrous government under which it suffered. History, both ancient and modern, evinces what unexperienced reason would infer, that no plantation ever took deep root, or advanced to maturity, under the influence of the interested edicts of a commercial combination. And the assembly of Virginia, after it had tasted the sweets of a simple government, opposed, with a firm spirit, during the subsequent reign, the attempts of those who endeavoured to revive the patents, and to restore the corporation. While the wisest of those days exerted their talents, with a laudable ardour, to discover the most efficacious remedy for those diseases which wasted the colonists, they proposed, with the usual refinement of statesmen, every restorative except the true one, because it was simple. Nothing was there wanting to establish their prosperity, their happiness, their final success, but an assurance of general protection, of unqualified permission to manage their own affairs their own way.

The Virginians, being animated in the mean time by the timely supplies from England, displayed a vigour in design and action, which men, when left to themselves amid dangers, never fail to exert. They rejected the timid counsels of those, who advised them to abandon their settlements and to retire to the eastern shore of Chesapeake. They not only resisted the attacks of their implacable enemies, but, with the accustomed bravery of Englishmen, pursued them into their fastnesses. And now, for the first time, the aborigines receded from the rivers and from the plantations around; leaving their opponents in possession of the territories that their swords had won.<sup>46</sup> Yet the colonists were by no means happy and free from internal aggrivance, though their spirit had thus driven the tribes from their borders. Notwithstanding the ordinance before-mentioned, the governor exercised very oppressive authority; so difficult is it to restrain delegated power within reasonable bounds. He alone exerted the power of imposing duties on the freemen, for the building of castles, for the payment of public debts, and for various other purposes.

fes. In order to remove grievances, which were felt and deplored, an assembly was once more convened in February, 1624.<sup>47</sup> And now "the preceding orders and proclamations of the governor and council" were enacted into laws; which are the oldest legislative rules of action now remaining upon record. Various regulations with regard to the church of England and ministry were piously established, to which all persons were required to yield a ready obedience. With regard to the governor's former power, it was declared; "that he should not impose any taxes on the colony otherwise than by the authority of the general assembly; that he should not withdraw the inhabitants from their private labour to any service of his own." Here then we see a wide step in the progression of Virginian liberties: The assembly, for the first time, acquired the right of participating with the governor in the power of taxation; yet far was this from claiming the sole right of granting money for public purposes, and still farther from possessing any privilege exclusive of parliamentary jurisdiction.<sup>48</sup> The burgesses, envying the immunities of the counsellors, declared, that they too should be free from arrest during the sitting of assembly; which enabled them to extend their authority during the course of subsequent events. A variety of other measures, tending either to restrain former evils, to prevent future inconveniences, or to direct the pursuits of the inhabitants, were then pursued: While the introduction of new staples were zealously enjoined, their old one was improved by requiring, "that men should be sworn, in every plantation, to censure the tobacco."<sup>49</sup> And the laws of that session do honour to the good sense, the prudence, the real patriotism of men, who, without the least tincture of faction, were animated alone with desires to promote the genuine interests of the colony.

The royal commissioners, having arrived in the beginning of that year, executed their trust with great zeal and industry. They endeavoured in vain to procure an address to the king, from an assembly, in which so many of the company's officers sat; professing "its willingness to submit itself to his princely pleasure in revoking the ancient patents."<sup>50</sup> That body transmitted, however, a petition to James on that occasion; acknowledging its satisfaction that he had taken the plantation into his

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more especial care : It beseeched him to continue, and even farther confirm, the then form of government ; to grant to Virginia and the Sommer-Isles the sole importation of tobacco ; which contemptible weed was not affected as a thing desirable in itself, but as a present means of support. Should it please that prince to lend the promised aid of soldiers, it solicited that the governor and general assembly might have a voice in their disposal ; because none could direct their operations so advantageously as those who were perfectly acquainted with the country.<sup>51</sup> Yet how distant is this from insisting that the generalissimo of the empire can send no troops to the colonies without the assent of a local legislature ! A representation was at the same time transmitted, by a special agent, to the privy-council, who was empowered to solicit the affairs of the colony. It desired that the custom on one third of the colonial labour might be reduced to five in the hundred, according to the express tenor of the original charters. It professed not to see the ruin that was said to threaten the colonists as the government then stood : And, above all, it requested that the people might still retain the liberty of their general assemblies, than which nothing could more conduce to the public satisfaction and utility.<sup>52</sup> Yet it ought to be remembered that the tax above-mentioned had been imposed by the act of tonnage and poundage, and the oppressions so justly complained of arose not from any additional duty, but from the frequent change in the value of the commodity on which it was calculated by the farmers of the revenue, who are generally so prone to promote their own interests at the expence of the national commerce.

The parliament again assembled, in February, 1624. And the treasurer and company, feeling themselves too weak to resist a power that had drawn to itself almost every authority in the state, determined to apply to the commons for protection. They accordingly presented a petition in April following. After stating at length their merits in establishing the colony, and the undeserved oppressions which they had suffered, “ they prayed the house to take into its consideration the distressed colony and the oppressed company.”<sup>53</sup> The debate on this subject was respited till the twenty-ninth of the same month ; “ then to hear the

“petitioners and all that will come to have voices.”<sup>54</sup> When, proceeding on the business of the day, the speaker informed the house, “that he had received a letter from his majesty concerning a petition then before them, with regard to the Virginian business.” And that inauspicious missive was no sooner mentioned than the company’s petition, “by general resolution, was withdrawn.” It was the misfortune of those affairs, says Stith, to have been brought into parliament late in the session; and they were besides of a very delicate nature: For the petition complained of the enormities of the privy-council, and the prerogative was supposed to be impeached.<sup>55</sup> The tameness of the commons arose partly from their not seeing the transactions of the times in the same glaring light in which the eyes of their posterity beheld them, but more from their not knowing, nor feeling, the full extent of their own authority and power. Singular as the royal application above-mentioned may now appear, it was extremely common in those days, when the king intermeddled in every material transaction of the house, though not always without the animadversion of the most intelligent and zealous of the members.<sup>56</sup>

But, if the commons, from their deference to that prince, and their apprehensions of interfering with the prerogative, which was held so sacred till the indiscretions of the subsequent reign exposed it to universal contempt, did not grant the distressed colony and oppressed company the relief which was prayed for, they gave them very considerable indirect assistance. In order to favour the colonial trade, as well as to promote the national interests, they presented a petition of grace to the king, agreeably to the custom of the house in those days, praying for the banishment of all tobacco not of the growth of his majesty’s dominions.<sup>57</sup> And they did not apply altogether in vain.

No sooner were the patents cancelled than James applied himself, with great assiduity, to rebuild the fair structure which he had thus laid in ruins. In June, 1624, he appointed a committee of the privy-council “to order the government of the colonies;” declaring, that it was his resolution to renew a charter with former privileges, but with amendment of former imperfections: And, in conformity to the spirit of the times,

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the late deputy-governor was ordered to bring into that committee the patents, books, and writings, belonging to the late corporation.<sup>58</sup> In prosecution of his views, he issued a special commission,<sup>59</sup> in August, 1624, "concerning the administration in Virginia." It recited the colonial history to that time: It appointed Wyat governor, and several other persons as counsellors, during pleasure; authorizing them to rule the colony, and to punish his subjects, as fully as any governor and council might have done during the five years last passed. No assembly was mentioned, nor was any intended to be allowed; because that prince deemed "so popular a course" the real cause of the late disasters: And those magistrates were referred back for a rule of conduct to a period of the greatest oppression. Yet, while he thus established a real tyranny, he not long after enacted regulations of the greatest advantage to that ancient dominion. To the humble petition of the parliament, to the importunities of the planters, to the advice of his committee, he sacrificed his dislike of tobacco; which he had so long pursued with unabating hate. He issued therefore a proclamation, in September, 1624, directing, that none of that commodity shall be imported into England or Ireland, but from Virginia and the Somer-islands, and but in ships belonging to his subjects; that none of it shall be planted in England, Ireland, or in the isles to the same belonging. And he soon after gave, to the desires of the colony, a last of gun-powder for its defence; which was deemed in those days a present of considerable value. But those salutary regulations were too feeble to guard against the temptations of interest: And, on the second of March, 1625, a fresh proclamation was published, "for prohibiting the importation and use of all tobacco, which is not of the proper growth of Virginia and the Somer-isles." In order, however, to reimburse the loss of the customs, and to repay the sums of money which he had undertaken to advance yearly for the general protection of the plantations, the merchandize before-mentioned was now to be received by the royal agents at a stipulated price, and to be sold by them for the royal use.<sup>60</sup> He lived not however to perform his part of the contract, which he now promised inviolably to observe. And his demise, a few

days after, put an end to a reign of more real advantage to his subjects than glory to himself.

It seems unnecessary to review the colonial administration during the foregoing period. James I. notwithstanding his prejudices and mistakes, may be justly considered as the father of the English colonies; which, but for his peculiar spirit, had probably never been planted. Yet he assuredly considered them as countries acquired by conquest: He inferred from what was neither true in principle nor fact, that they ought to be holden of his person independent of his crown or political capacity, and might be ruled consequently, according to his good will, by prerogative. And he endeavoured, according to the strange œconomy of his reign, to convert them into a mere private estate, descendible to his personal heirs. But, happily, neither his opinion nor his practice changed the allegiance of the emigrants, the nature of the relation of the plantations to the sovereign state, or the laws: And the strong resolutions of the commons, with regard to both, would have inspired wisdom into the councils of a prince less fond of his own opinions. Though he had often declared, by charters, that the colonists and their posterity should be considered as much English subjects in their new as they had been in their ancient settlements; yet it was reserved for modern times to see and to claim all the important rights deducible from that circumstance alone: And they did not, in fact, possess English liberties during that wretched period of their story. Too long were they governed by martial law, by the ordinances of a corporation in England, by the edicts of governors, by the royal orders: And, after they had acquired property, they did not enjoy what is of more real importance, personal security, freedom of thought, and of action. They supplicated the king, in the language of universal complaint, to be restored to their ancient liberties: They petitioned the parliament in the day of their miseries. Yet they applied to both without effect. The colonists sighed, during that reign, for a government of law, accompanied with temper and attention to the rights of men and the privileges of citizens. Their posterity have fully enjoyed what the original adventurers prayed for in vain. But prosperity and enjoyment are too

too seldom, alas! the best instructors of man in the lessons of gratitude and content.

The final settlement of a permanent colony in Virginia occasioned a lamentable waste of the human species. Thither were transported, during the foregoing period, upwards of nine thousand English subjects, at the enormous expence to the nation of one hundred and fifty thousand pounds.<sup>61</sup> But, the distempers incident to such a country, the desolation of famine, the strokes of the natives, thinned their numbers prodigiously. And we are assured accordingly by Smith, that of all the emigrants there remained only about eighteen hundred in the year 1625.<sup>62</sup> These notices offer an excellent lesson to those, who, in future, may engage in similar projects. For, if the establishment of distant plantations is necessarily destructive of the lives of men, this circumstance alone ought to inspire the humane at least with caution, how they promote enterprises so pernicious and fatal. If, to the numbers above-mentioned, we add about two hundred persons, who we shall immediately find had nestled on the coast of northern Virginia, the amount of English colonists, who were settled on the American continent, at the accession of Charles I. will be two thousand. The same and other causes continued to operate so forcibly, that, in 1670, forty-five years after, Virginia contained no more than forty-thousand inhabitants. So fallible are all political reasonings, that it yet remains a question to be determined by time, what seems heretofore to have been decided, whether those who promoted, or those who obstructed, such emigrations, were the best benefactors to England. To exhibit the most striking characters of nations and of men is the most pleasing duty of historians. The original planters of that most ancient colony are said, by contemporary writers, to have been “ poor  
“ gentlemen, tradesmen, serving-men, libertines, and such like, ten  
“ times more fit to spoil a commonwealth than either to begin or main-  
“ tain one.”<sup>63</sup> The peculiar principles of such men were naturally transmitted to their posterity. And we may easily trace them in the pride of family, the dissipation, the contempt of the commercial spirit, of the modern Virginians, attended with their usual concomitants, gaiety of manners, hospitality, and munificence. It was owing chiefly to the  
want

want of ardour, incident to such a people, that Virginia, notwithstanding every possible natural advantage, remained for ages poor, inconceivable, and feeble.

#### AUTHORITIES AND NOTES.

<sup>1</sup> Smith's Voyages, p. 126; — Purchas's Pilg. 4 v. p. 1775-6; and Stith's Hist. 160-1. — <sup>2</sup> Ib. 162-4-6. — <sup>3</sup> Ib. 167. — <sup>4</sup> 39 Eliz. ch. 4. — <sup>5</sup> Stith, 168-9. — <sup>6</sup> Rymer's Fœd. 18 v. p. 190. — <sup>7</sup> 1 James I. ch. 33.

<sup>8</sup> This curious commission is in Rym. Fœd. 18 v. p. 190-91. It empowered certain persons to establish ordinances for garbling the herb tobacco; and, with a caution which shews the opinion of those days, it provided, that, of the commissioners, there should be always present, a physician, a merchant, a grocer, and an apothecary.

<sup>9</sup> Ib. 233. — <sup>10</sup> Stith, 169-70. — <sup>11</sup> Com. Journal, 1 v. 579. — <sup>12</sup> Parliam. Deb. 1620-1. 1 v. 105-270-1. — <sup>13</sup> Stith, 171. — <sup>14</sup> Ib. 173-82. — <sup>15</sup> Parl. Deb. 1620-1. 1 v. p. 6-104-48, 9. — <sup>16</sup> Ib. 105-270, 1.

<sup>17</sup> The debate on this subject, which is to be found only in a book in the hands of a few, shews the opinions of the wisest men on several interesting points, and supports the foregoing reasoning.

*Parliamentary debate concerning tobacco, 17th April, 1621.*

Master of the Wards: — That Sir Edwin Sands, from the sub-committee, delivered to the grand-committee five heads of the decay of trade.

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3dly. The importation of Spanish tobacco; for which 60,000l. paid yearly, and 60,000l. loss in commodity: So a loss of importing 120,000l. in bullion. And resolved 100,000l. yearly at least. The remedy: — To supply tobacco out of Virginia and the Somer-islands; — and to prohibit all other tobacco.

Resolved, by all the committee, Spanish tobacco might be banished. By calculation, 1000lb. wt. of tobacco spent every day in England.



18th April, 1621.

Lord Cavendish : — That the business of foreign tobacco being put off to the committee yesterday, no time for it. To have it resolved now in the house.

Resolved : — To have it farther debated.

Sir Samuel Sandys : — When a report by a committee, and none oppose it, must [not] be questioned.

Sir Edward Coke : — That this pointeth directly at Virginia. That no commodity can be banished, but by act of parliament. Would have Virginia have the tobacco; but an act of parliament for it. The privy-council may do it before a parliament; but a parliament then there. Would not consent to have the subject hindered from planting it here.

Sir Edwin Sands : — Concurreth for that; but for the order of the house as Sir Samuel Sands: And to have the resolution of the house in point of remedy; *viz.* the forbidding of foreign tobacco.

Sir George Moore : — Concordat; that being the point committed.

Sir Edwin Sands : — That no words in the treaty, but free commerce; which, incident to all nations in amity. That the king hath prohibited pepper, the commodity of Spain: So whale-fins: Gold thread forbidden from Venice. That the king, by his proclamation, hath forbidden Spanish merchants to bring in any. A clause in the treaty, “to be according to ancient customs.” That the framing a bill no prejudice. That the fear of the Spaniards prohibiting the importation of our commodities of no value; for our trade with Spain in time of war is better than now. Now in Spain his payment brass, sometimes all; though, by law of Spain, but a third part payable in brass. By this, 3 in the C. lost for silver; and 3 in the C. to export his money. The Spanish commodities trifles to ours. His commodities of superfluities; ours of necessity.

Mr. Delbridge : — That importation of Spanish commodity hath overthrown our trade for our commodities there; the shopkeepers selling 15 in the C. under other merchants, to return tobacco: And this is the cause of the falsification of our commodities here.

Sir

Sir Edwin Sands : — That all the king's subjects may freely trade thither [Virginia], and without licence of the company.

Sir William Stroude : — That the importation of Spanish tobacco a greater mischief than we can think of. — To banish tobacco generally; and to allow Virginia but a certain time for it; and then to —

Mr. Chancellor : — Doubteth this within the league : And gave his voice at the council-table, that it was within the league.

Sir Robert Phillipps : — A ground that, not to hinder ourselves of the same liberty, which Spain hath taken. That Spain hath barred the bringing in of quicksilver, pepper, &c. Not to suffer a peace to make us poor, which is to make us rich.

Master of the Wards : — That tobacco a great prejudice to our state beyond all question. That Spain hath prohibited none of our commodities. To banish all tobacco, in respect of the decay of trade and coin by it; and the spoiling the subjects manners by it: For this cause to banish it generally; but not to meddle with exposition of the league.

Mr. Cary : — To banish tobacco generally, and to help Virginia by some other means.

Sir Edward Sackvyle : — Fit for us to study a way for us to enrich our own state. *Amor incipit a seipso*. We make treaties for our own good, and not for theirs with whom we treat.

Sir J. Perrot : — Not to banish all tobacco, in respect of Virginia and the Somer-illes. To give them some time; else overthroweth the plantation.

Mr. Solicitor : — Loveth England better than Virginia. A great hurt to all the state of our kingdom. To contribute rather to Virginia otherwise.

Sir D. Digges : — Tobacco in the king's dominions hindereth not importation of coin : — Yet wisheth tobacco of Virginia prove good.

Mr. Towerfon : — Except we banish all tobacco, Spanish tobacco will be brought in as plentifully as now.

Sir Richard Worfeley : — To banish all.

Sir Edward Sackvyle : — Not to banish all, till order for supply of Virginia; else all the people there undone.

Mr.

Mr. Ferrar : — Not fit to banish all ; yet now 4000 English there, who have no means as yet to live on.

Sir George Moore : — To divide the question : 1st. Whether to banish foreign ; 2dly. For our own dominions.

Sir Guy Palmes : — That tobacco hindereth all the kingdom in health and otherwise. To banish all.

Mr. Pymme : — Fit to banish all ; but not without some deliberation.

Sir H. Poole : — Against all in general : — To pull it up by the roots. To help Virginia otherwise.

Sir J. Horsey : — Thought not to speak of this vile weed. When he first a parliament-man, this vile weed not known. Thousands have died of this vile weed. Abhorreth it the more, because the king disliketh it. Prohibited to be used in alehouses. No good ground for Virginia. To banish all.

Sir Thomas Jermyn : — Loveth tobacco as ill as any, if ill tobacco. To put the first question, and refer the second to a committee to consider what time to be given for Virginia.

Sir Edward Cecil : — The question now ; whether one question, or two.

Sir Francis Goodwyn : — Accordat. Fit to distinguish these questions, lest the last cross the first, which else will be clear.

Sir Jos. Jephson : — Accordat : The Virginia company never heard. Wine and drink hurt many ; yet to banish it will kill here.

Mr. Smyth : — Hath his interest in Virginia and the Somer-islands. The company restraineth it by all means it can. To give it some time ; else we overthrow the plantation. Somer-islands and Virginia holden of East-Greenwich.

Mr. Delbridge : — The consequence of the Somer-islands exceeding great.

Mr. Raynscroft : — Fit to draw a bill, and not to go to question till then.

Mr. Alford : — That for foreign tobacco thought of and reported ; this for all not ; We read a bill thrice.

Upon question: — Importation of all foreign tobacco thought fit to be barred; no one negative. — From 1 vol. of Com. Journal, of those dates.

REMARK. The bill to prevent the inordinate use of tobacco, which has been noticed, was soon after brought in, and passed. *Ib.* p. 586-605-27.

<sup>18</sup> Parl. Deb. 1620, 1, 1 v. p. 296. — <sup>19</sup> Com. Journ. 1 v. 586-91. — <sup>20</sup> Stith, 199-201. — <sup>21</sup> *Ib.* 201-3. — <sup>22</sup> The order of council is in the Virg. Entries, Plant. Off. 1 v. p. 201. — <sup>23</sup> Stith, 203. — <sup>24</sup> Virg. Ent. 1 v. p. 203. — <sup>25</sup> Stith, 262, 3. — <sup>26</sup> Virg. Ent. 1 v. throughout. — <sup>27</sup> See the ordinance, Stith's Append. N<sup>o</sup> 4.

<sup>28</sup> There is no circumstance, in the history of colonial jurisprudence, better established than the fact, "that the habeas-corpus act was not extended to the plantations till the reign of Anne." The assembly of Massachusetts having passed a great variety of laws during the session of 1692, many of which were very favourable to liberty, the ministers of England perused them, at a subsequent day, with the greatest attention, and disallowed several of them: And, in December, 1695, they gave the governor and council the reasons of their dissent, at great length. The following extract from the letter, which was then transmitted by the committee of plantations, is subjoined, because it is so extraordinary and decisive. — From N. England Entries in Plant. Off. 4 v. p. 200.

"Whereas, by the act for securing the liberty of the subject, and preventing illegal imprisonments, the writ of habeas-corpus is required to be granted, in like manner as is appointed by the statute of 31 Car. II. in England; which privilege has not as yet been granted in any of his majesty's plantations; it was not thought fit, in his majesty's absence, that the said act should be continued in force, and therefore the same hath been repealed. — Your loving friends,

J. Somers, C. S.  
Shrewsbury,  
Pembroke,  
J. Bridgewater,

Pembroke, C. P. S.  
Romney,  
Godolphin,  
Wm. Trumbul."

How

How astonishing, that some of the most renowned statesmen, and lawyers, and whigs, in the English annals, should have supposed, what the reasonings in the extract before-mentioned affirm, that Englishmen are entitled to personal liberty from the grant of the king! They seem not to have reflected, that English colonists, being English subjects, derived their privileges from the same charter which placed the crown on the head of William. It is at the same time pleasing to remark, that a prince, who has been misrepresented by the voice of faction as a despot, whose misrule demanded resistance, instructed the governor of a neighbouring colony, in the following memorable words.

“ Security to personal liberty is a fundamental principle of justice in all free governments, and the making due provision for that is an object the legislature ought never to lose sight of; nor can they follow a better example, than that which the common law of this kingdom hath set in the provision made for a writ of habeas-corpus, which is the right of every British subject.”

Posterity will do justice to sentiments so worthy of a sovereign of free-men, when the clamour of dissatisfaction is no longer heard. These two extracts will enable the wise to contrast the reasonings of English statesmen, during the former and present times, on the subject of freedom.

The ancient colonists, being thus destitute of *personal security*, were in fact most grievously oppressed. Edward Randolph, the surveyor-general of the plantations during the reign of William, represented their lamentable condition to the Board of Trade, in March, 1700; and, among other beneficial regulations, he recommended; “ That, it being the practice for governors to imprison the subjects without bail, the habeas-corpus act should be extended as fully to the colonies as it is in England.” — See his curious memorial in the Record, Plant. Off. titled, Plantations Gen. B. p. 404. — It was accordingly soon after conferred on Virginia by Anne: And how it was received by the two houses of assembly will appear from their addresses to that princess, which are subjoined. — From Boyer’s Polit. State of the four last Years of Q. Anne, 4 v. p. 446,7.

“ We, your majesty’s most dutiful and loyal subjects, the council of Virginia, beg leave in all humility to acknowledge your majesty’s late favour to this country, in allowing us the benefit of the habeas-corpus act, and in appointing courts of oyer and terminer, for the more speedy execution of justice, and relief from long imprisonments.”

“ We, your majesty’s most loyal and obedient subjects, the burgessees now assembled, do in all humility beseech your majesty to accept our sincere and humble thanks for your many bountiful and gracious favours bestowed on your subjects of this colony. We shall not pretend to enumerate the particulars, nor can we without the highest ingratitude omit mentioning these lately communicated to us by your majesty’s royal instructions to your governor, wherein you have asserted to your subjects here their legal rights and properties — by allowing them the habeas-corpus act.”

<sup>29</sup> Purchas’s Pilg. 4 v. p. 1787. — <sup>30</sup> Stith, 204,5. — <sup>31</sup> Virg. Ent. 1 v. p. 203,4. — <sup>32</sup> Stith, 207. — <sup>33</sup> Ib. p. 209. — <sup>34</sup> Purchas, 4 v. 1792. — <sup>35</sup> Virg. Ent. 1 v. p. 202. — <sup>36</sup> Stith, 232. — <sup>37</sup> Virg. Ent. 1 v. p. 203-5. — <sup>38</sup> Ib. 205-7. — <sup>39</sup> See the commissioners questions and Smith’s answers, in his Voyages, p. 162-8. — <sup>40</sup> Rym. Fœd. 18 v. p. 618. — <sup>41</sup> Virg. Ent. 1 v. p. 195-9. — <sup>42</sup> Stith, 294. — <sup>43</sup> Virg. Ent. 1 v. p. 199.

<sup>44</sup> The Virginians of those days could not discern the intentions of the royal commissioners, who visited them in the year 1624; and their historians have been equally embarrassed. The following order of the privy-council, of the 24th of October, 1623, shews what were the real objects of the inquiry which was then made. — From Virg. Ent. 1 v. p. 200.

His majesty having taken into his royal care the plantation of Virginia, besides the order he hath here given for the redress and reformation of the government, hath been pleased, for the better advancing of so great a work, to command that information be taken of the present state of the plantations in divers considerable points: For which cause we have thought fit, and do hereby will and require you, John Harvey, &c. — in regard you are well acquainted with the courses and conditions of things there, to make diligent inquiry of these things following, and certify us according to what you shall find; viz. — How many several plantations

plantations there be, and which of them be public and which private and particular: What people, men, women, and children, there be in each plantation: What fortifications, or what place is best to be fortified; what houses, and how many; what cattle; what arms, ammunition, and ordnance, mounted and serviceable; what boats and barges; what bridges and public works; how the colony standeth in respect of the savages; what hopes may be truly and really conceived of that plantation: And, lastly, the directest means to attain those hopes.

<sup>45</sup> Virg. Ent. i v. p. 108-10. — <sup>46</sup> Stith, p. 235. — <sup>47</sup> Ib. 304-18-22.

<sup>48</sup> The spirit, however, of that assembly was extremely different from the temper of a neighbouring house of delegates in modern times; which resolved, in the following memorable words: — “ That we, the burgesses of Maryland, have the *sole* right, with the *consent* of the *other branches of the legislature*, of imposing taxes on the good people of this province.” — It is remarkable, that the revenue-act, which was passed by the Virginian assembly during the administration of Lord Culpeper, was transmitted thither under the great seal by Charles II. And, it being afterwards enacted with amendments, these were dissented to by that prince. — Virg. Ent. 2 v. p. 394-5. — According to the good sense of the English constitution, the only bills, which commence with the king, are those of pardon and grace; but, here is an instance, and they were common in that reign, of a money-bill being originally framed by the king and afterwards amended by him. — The following extract of a letter from Virginia, dated the 22d of December, 1623, to the author of the Pilgrims, shews not only the deplorable state of the colony, but those grievances, which induced the assembly to pass the law mentioned in the text.

“ Nothing can be more grievous than the intolerable rate we pay here  
 “ for commodities; as 10 l. sterling for a hoghead of meal, 16 shillings  
 “ for a gallon of Alicant, 3 l. sterling for a hen and eight chickens; and  
 “ so according to this rate for every thing else. Lastly, the heavy taxes,  
 “ that are laid upon us freemen, for building of castles, paying of public  
 “ debts, for the not gathering of sassafras, &c. So that it will come  
 “ to my share, with that that is paid, and that that is to pay in corn  
 “ and

“ and tobacco, to at least 20l. or 25l. sterling this year. And, when I  
 “ have paid this, and paid my faithless servants their wages, I shall scarce  
 “ have good tobacco enough to buy myself for the next year a pint of  
 “ aqua vitæ.” — From Purchas, 4 v. p. 1806.

<sup>49</sup> Stith, 318-22. — <sup>50</sup> Ib. 316. — <sup>51</sup> Ib. 312-13. — <sup>52</sup> Ib. 314-15. —  
<sup>53</sup> Ib. 326. — <sup>54</sup> Com. Journ. 1 v. 691. — <sup>55</sup> Stith, 327. — <sup>56</sup> Parl. Deb.  
 1620-1. every where. — <sup>57</sup> Com. Journ. 1 v. 720. — <sup>58</sup> Virg. Ent. 1 v.  
 p. 210-77. — <sup>59</sup> Rym. Fœd. 18 v. 618. — <sup>60</sup> Ib. 621-68. Virg. Ent. 1 v.  
 p. 278. — <sup>61</sup> Smith, ch. 21. — <sup>62</sup> Ib. ch. 23. — <sup>63</sup> Ib. p. 94.



## C H A P. IV.

*A colony is planted in Northern Virginia. — But abandons the country. — Its coast more fully explored. — And is called New-England. — A patent is granted to the Plymouth-company. — The discoveries and settlements of France. — The parliament disputes the validity of that charter. — The Brownists achieve the first permanent settlement in New-England. — Their story. — The council of Plymouth endeavours to plant that country. — Nova-Scotia granted. — Remarks. — Its revolutions. — Proceedings of parliament. — The council of Plymouth surrenders its patent. — The story of the Brownists concluded.*

OF the transactions of that company in the West of England, which undertook to plant Northern Virginia, little has hitherto been said. The paucity indeed, and feebleness of its exertions, in executing the policy of the grant, or in promoting its own views, offer few materials for history.

The first vessel, which was sent out under the command of Chalons, in the year 1606, was attacked on the voyage and confiscated by the Spaniards; who viewed the enterprizes of other nations with jealousy, who attempted to exclude them from the navigation of the American seas. Yet, though somewhat disconcerted, the adventurers, animated by the vigour of Popham, the chief-justice of England, detached, in the subsequent year, two ships under the command of Gilbert, carrying with them emigrants to form a colony. And they took possession of a part of Northern Virginia, near the confluence of the river Sagadahock, in the autumn of 1607, where they built Fort Saint-George. The calamities, which they suffered during the subsequent winter, demonstrate what men are capable of undertaking when actuated by expectation of gain, and what they can endure and perform when left to their own exertions. But, when they heard of the decease of the chief-justice, their patron, by the vessels which brought them supplies; when they looked at the numerous graves of the dead, among whom was Gilbert; their chief,

chief, they resolved to desert a country, which as yet they had discovered to be only fruitful in evils.<sup>1</sup>

The abandonment of the colony, and the frightful pictures which were exhibited of that coast, so discouraged the adventurers and the people of England, that similar projects were not for some time thought of as practicable. Yet a trade with the aborigines for furs, and a fishery, were continued. And, in order to prosecute these gainful enterprises, Smith, who is so famous in Virginian story, was fitted out by the Plymouth-company in the year 1614. But his adventurous spirit prompted him to pursue discovery rather than to execute the real objects of his voyage. He explored, with some degree of accuracy, that part of the coast which stretches from Penobscot to Cape Cod. He formed his discoveries into a chart, which he presented to Charles, prince of Wales. And that country, which had been equally called Norumbega, Virginia, Canada, New-France, and Acadie, was then denominated by him New-England.<sup>2</sup> The French exclaimed, at a future day, with their accustomed vanity, that they had for years discovered and planted New-France before New-England had a name: And the fact was assuredly as they asserted,<sup>3</sup> though colonial historians and English statesmen seem to have uniformly denied it. That prince lived to experience the ingratitude of a peculiar people, who were to inhabit that territory which he had thus honoured with the appellation of his principal kingdom, and who derived, from the favour of his grant, special immunities.

The Western adventurers nevertheless continued to send out vessels to that country, partly in order to make farther researches, but more to carry on a commerce which experience had discovered to be extremely gainful. Yet all their designs were either disconcerted or opposed. The French and Dutch, whom they could not exclude, at the same time engaged with ardour in similar enterprises. The Virginian company too, with the same views, carried on the same projects; which they effectually executed, notwithstanding every obstruction that the commercial jealousy of rivals could suggest. And individuals, claiming equal privileges, performed more successful voyages than either, because superior œconomy directed their operations. Envyng the greatness and fame of the South-

ern company, and feeling sensibly all the inconveniences which they could not prevent or remove, the adventurers determined, in the year 1618, to strengthen themselves by the obtention of a new patent. But they were vigorously opposed by their competitors; the interests and clamour of the nation stood as mighty obstacles in their way; and it was not till after two years of painful solicitation that they procured the object of their wishes. <sup>4</sup>

Being informed that a considerable country in America had been lately dispeopled by a plague, and that no part thereof was then inhabited by the subjects of any Christian prince; being desirous to advance the Christian religion, and to stretch out the boundaries of his dominions; James I. on the 3d of November, 1620, granted that territory, which lies between the fortieth and forty-eighth degrees of Northern latitude, to the duke of Lenox, the Marquis of Buckingham, the Marquis of Hamilton, and their associates, in absolute property. The grantees were incorporated by a charter, which was afterwards distinguished as "the grand Plymouth patent," by the name of "the council, established at Plymouth, for planting and governing that country called New-England." The same authority and privileges were now conferred on them which we have seen given to the treasurer and company of Virginia: And they were equally empowered to exclude all from trading within the boundaries of their jurisdiction, and from fishing in the neighbouring seas. <sup>5</sup> Thus was New-England subjected to the government and laws of a corporation within the realm: And thus the inhabitants of that colony were to be ruled not with their own consent, but by the regulations of a commercial association: Yet, it is a singular circumstance in the history of this famous grant, that the validity of it was strongly denied by the French nation and by the parliament of England.

When Francis I. of France beheld the glory and advantage which his contemporaries and rivals derived from American discovery and conquest, he gave every encouragement to his subjects to engage in similar enterprises. So early as the year 1540, he granted letters patent to Jacques Quartier for the establishment of a colony in Canada. <sup>6</sup> A fort was  
M accordingly

accordingly built by that adventurer in the year 1545, with design rather to explore the great river St. Laurence than to take formal possession of the country. The civil contentions which ensued in that kingdom extremely retarded the progress of colonisation. Yet, at a time, when there existed no English subjects in America, the first permanent settlement was made in Canada during the year 1604. The foundation of the city of Quebec was laid in the year 1608 :<sup>7</sup> And this circumstance gave the French a fine opportunity of gratifying their own vanity without mortifying that of others, by boasting, " that the capital of New-France was built upwards of twenty years before the town of Boston " existed." Emulous of the merits of Francis I. no sooner had the virtues and talents of Henry IV. calmed the civil troubles of his kingdom, than he followed his example with regard to such enterprises. In November, 1603, he appointed De Mont lieutenant-general of that American territory lying between the fortieth and forty-sixth degrees of Northern latitude, and which was now called Acadie,<sup>8</sup> empowering him to colonise and to rule it : And he soon after granted to that gentleman and his associates an exclusive right to the commerce of peltry in Acadie and the gulf of St. Laurence.<sup>9</sup> A settlement was accordingly formed on that coast, near the river St. Croix, in the subsequent year. And in 1605 Port-Royal was built ;<sup>10</sup> which, during the reign of Anne, was denominated Annapolis by its conqueror. Of Acadie the French retained quiet possession, though the colony continued feeble and unprosperous, till the year 1614, when Argal attacked them by command of Dale, the governor of Virginia ;<sup>11</sup> because they were deemed invaders of that ancient dominion. That conduct, so contrary to the law of nations, because inconsistent with their peace, has been celebrated by historians, though it was equally inconsistent with the Virginian charters and instructions, though during later times it would have occasioned an immediate rupture, with all its attendant ills. Notwithstanding this irruption, so unwarrantable and irregular, the French continued their occupancy. And their ministers, with their usual haughtiness, derided, at a future period, the grand Plymouth-patent, because it gave away the same region, in 1620, which had been granted by Henry IV. seventeen years before ; and, with great

great plausibility, they declared it invalid, because it expressly stipulated that it should not extend to territories which were then in possession of any Christian state." From these signal facts, and the just inferences of the law of nations from them, colonial writers have fastidiously turned their faces, and English statesmen have followed their example. The follies of both have cost England one hundred millions of good sterling pounds. The time is now arrived when truth should be divulged: It is to be lamented, that it may be revealed when former errors or concealments are deplored in vain, when experience may add to the stock of political knowledge to little purpose.

Nothing engaged more the attention of the parliament, which assembled in January, 1621, than the numerous patents of monopoly which had been obtained from the imprudence or facility of James, and which, we are assured, sprang up like hydras: And none was deemed more mischievous or illegal than that which we have seen so lately granted to the Plymouth-company; which, with a monstrous improvidence, excluded English subjects from that freedom of fishing on the American coasts which the people of other nations then freely enjoyed. But a charter of the king, so contrary to law, and so inconsistent with national interests, did not fail to attract the animadversion of the great inquest of the state. And, the patent being inspected by the committee of grievances, the house resolved that it was void; giving, as a reason, what shews the sense of the kingdom, and at the same time inflicted a deep wound on the prosperity of the company, "that the clause of forfeiture was "by grant, and not by act of parliament." Thus the nation and the colonies received equal protection and relief from the decisive conduct of an English house of commons, at a time when its jurisdiction was not perfectly known or defined, when it did not feel the full extent of its own authority.

To place a right however of so great importance upon the firmest foundation, a measure more effectual and permanent was soon adopted by the commons. A bill was brought in "for a freer liberty of fishing "on the sea-coasts of Virginia, New-England, and other parts of America." Yet it did not pass without opposition, because it had to en-

counter not only the prejudices that naturally rise up against every novelty, but the weight of the influence of the court, in a case wherein the regal power was supposed to be involved. Sir George Calvert, the secretary of state, considering it as an invasion of the royal prerogative, insisted: "That those foreign countries are not yet annexed to the crown of England, but are the king's, as gotten by conquest; and, therefore, in such new plantations the king may govern as his majesty shall think fit; that the fishermen, for whose advantage this bill only provideth, are the true cause of the disorder in those parts, by destroying the woods, and casting ballast into the havens:" And he recommended to the consideration of the house, "whether we shall here make laws for the government of those parts." But to doctrines, which were so fashionable at the court of James I. and which, by a strange revolution in the sentiments of men, have been adopted, in a great measure, by those who oppose the prerogative in all things, it was properly answered, and it was the sense of the house and of the nation: "That the king's prerogative is not impeached by the present measure; because, what is here agreed on, is done by the king himself, who hath a negative, and may refuse whether any such bill shall pass; that those countries, being holden of the manor of East-Greenwich, are annexed to the crown by the same charter, by which that manor itself is possessed; and we may therefore make laws here for Virginia and New-England, because, if the king and lords assent to the act, it will controul the patent." The bill, after various debates, was regularly passed. But, owing to the reasons suggested by the secretary of state, this salutary regulation, like much of the interesting business of that session, did not become the law of the realm.\* Nevertheless, we shall find, in the sequel, the same proposal insisted on by the commons, till, by their persevering spirit in asserting their own and the nations rights, they obtained, for all, the free liberty of fishing on the coasts of America.

It had long been a custom, in many parishes on the coast of England, for the clergy to receive tithes of the fish caught by their parishioners in the neighbouring seas; and, being generally paid in kind, they were called *Christ's dole*. But, when fishing voyages were first made to the American

rican shores, the dissimilarity of circumstances was not immediately attended to. The parsons naturally demanded what they considered as their accustomed dues: And, for many years, had they received tithes on such adventures without opposition or complaint. No sooner, however, had those fisheries become objects of national importance than those exactions were deemed a great and general inconvenience. To redress this evil, therefore, was brought in, during the present session, “ an act  
“ to suppress the exaction of tithes on fishing voyages to Newfoundland  
“ and other places beyond the sea.” After various debates and amendments, occasioned partly by a just regard to the interests of the clergy, but more by a zeal for the public good, it was at length passed by the commons.<sup>15</sup> Yet it met the fate of other excellent bills of that session, and received not the approbation of the other branches of the legislature. The parliament, having thus exerted as much authority over the feeble colonies and given them as much protection as the peculiar maxims of that reign allowed, soon after rose disappointed and disgusted: And, as they did not meet again for some years, we shall not soon have an opportunity of reviewing their conduct with regard to colonial affairs.

Meanwhile an obscure sect, which had acquired the appellation of *Brownists*, from the name of its founder, obtained the honour of planting the first permanent colony in New-England. So early as the year 1602 they had formed a separate society at Yarmouth, and began to propagate their peculiar tenets; but, attracting immediately the notice of the vigilant administration of Elizabeth, the persecution that ensued obliged them to remove, though with the greatest difficulty and danger, to Leyden. Yet, after twelve years unmolested residence in Holland, they became unhappy in their situation, because they foresaw the destruction of their society in the toleration they enjoyed; and determined to seek new adventures in America. With this design they sent agents to treat with the Virginian company for a grant of land within its jurisdiction. They offered to transport themselves at their own expence, would the company procure them the royal licence, under the great seal, for the free enjoyment of their own notions in religion. But James, having already established the church of England in Virginia, refused to grant their

their desire; though he assured them, that while they lived peaceably he would not disturb their repose. They were somewhat disconcerted: Yet, continuing unhappy in a country where they were obscure and unpersecuted, they at length resolved to trust to his verbal declarations. They procured a considerable tract of land from that corporation, which then gave every aid towards the settlement of Virginia. They entered into a commercial association with several merchants of London, in order to prosecute a common trade for mutual advantage: And having now procured two vessels, by the aid of these men, of greater wealth and importance, they sailed from England in August, 1620, and arrived on the American coast in the subsequent November. They immediately discovered that they had been carried to the northward of their destination, and beyond the jurisdiction of Virginia. But the season of the year, as well as the weakness of their condition, prevented their removal southward in search of the great object of their fatigues and dangers.<sup>16</sup> And here they determined to put an end to a voyage long and disastrous, which would have discouraged any other than men animated with peculiar motives of ambition, religion, or interest.

The more sagacious beheld, with concern, "that some rather inclining to faction were not well affected to unity," and they foresaw that religion alone, without the authority of government, would not be sufficient to preserve peace, or even the appearance of society: They proposed therefore a *covenant*, which was signed before they landed, on the 11th of November, 1620, by the heads of families and freemen. It recited: That they had undertaken to plant a colony for the glory of God, and for the honour of their king and country: And, professing their loyalty to their sovereign lord king James, they combined themselves into a body politic, for the making of equal laws for the general good.<sup>17</sup> Near Cape Cod, on the coast of New England, about one hundred and twenty persons landed, within the jurisdiction of the council of Plymouth: And from this circumstance probably they called the place of their settlement New-Plymouth.

The members of this little society being Englishmen, prior to their emigration, were therefore the subjects of the English monarch, in right  
of



of the crown of England, or of his corporate capacity, and not of his person. Their removal across the Atlantic, from one part of the dominions of the state to another, did not alter the nature of their allegiance or of their former connexion. For, allegiance they owed as a debt from the moment of their birth, which neither their own act could change, nor the grant of the prince could abrogate: And, having derived advantages from the country of which they had been members, they could not cease to be citizens without its consent. Settling in a desert territory of the empire, without a charter, the jurisprudence of England, as far as it was applicable to their condition, became the law of the colony; because, they had carried it with them as their birthright. To their voluntary association, as far as it was consistent with their allegiance and with the constitution of the state, no rational objection can be made. But it is contrary to all principles to argue, that they could, by the transaction before-mentioned, acquire peculiar immunities or exclusive jurisdiction. And, as they had freely placed themselves within the boundaries of the Plymouth company's patent, they necessarily consented to obey its ordinances; though that body seems never to have exercised any authority over them. Could they have done any one act of themselves contrary to the laws of the realm, very different maxims must be presumed to have prevailed: It must have been supposed, that they no longer continued subjects, who owed obedience, but became aliens by their emigration, who owed none; that now, denying submission to the rules prescribed by the supreme legislature, they had acquired co-ordinate and sovereign authority. Yet the association itself opposes the admission of reasonings visionary and independent, and recognises England as their country; themselves as subjects; and the king as their sovereign lord.

Having thus formed a community, by a compact which every one was bound to obey, because all had consented, the emigrants chose Carver their governor for one year: And the practice of an annual choice continued unchanged during the existence of their government. In order to enable that magistrate to discharge a trust the most important, because he was the common guardian of common rights, they appointed one assistant; but in the year 1624 they added four more, and they afterwards enlarged

enlarged that number to seven. During the infancy of the colony the legislature consisted of "the whole body of the male inhabitants;" who, in the true spirit of Rousseau, frequently assembled to determine affairs both legislative and executive: And it was not till the year 1639 that they departed from the system of that theorist, and, by establishing a house of representatives, composed of deputies from the several towns, enslaved themselves. With a good sense, which shews that fanaticism had not yet depraved their understandings, they resolved to make the laws of England the rule of their government, till they agreed upon regulations more suitable to their peculiar circumstances: "And to these laws, says their "most ancient historian,"<sup>18</sup> they were willing to be subject unto though "in a foreign land; adding some municipal laws of their own, in such "cases, where the common and statute laws of England could not well "reach, and afford them help in emergent cases." Yet, when they did essay their legislative talents, like the other independents, they did not exactly proportion the penalty of crimes to their nature or enormity: While fornication was punished by whipping, and adultery with death, on forgery was inflicted only a moderate fine. And these punishments gave rise probably among that *godly and sober people* to the too common perpetration of a crime, which the laws of England, with peculiar modesty, assures us is not fit to be named: The same offence appears to have frequently occurred, from similar causes, in all the colonies of New-England.<sup>19</sup> Of the sufficiency of a jurisdiction, which had been thus founded on the stable basis of consent, with regard to the infliction of corporal punishments, the emigrants entertained little doubt: But, a homicide being committed ten years after, they very properly conceived the greatest scruples concerning their authority to punish that crime with death. They consulted their neighbours, who had by that time settled around Massachusetts-Bay. And that singular people, with a temerity peculiar to them, adopted the rule of Moses, and advised, "that the slayer ought "to die, that the land might be purged from blood." The criminal was tried by a jury, found guilty, and executed.<sup>20</sup> What an admirable subject for disputation does this fact offer to theorists, who are so fond of inquiring into the validity of the reasons on which establishments are founded!

ed! What can justify the putting that man to death, if he even formally consented to a penalty, which divested him of what was not in his own power; and, consequently, not subject to his special agreement?

The Brownists of New-Plymouth are supposed to have been the first of the Independents. Though they relaxed somewhat from the rigour of the original principles of their sect, and disdained its name, they could not conform to the notions of the Puritans, and deemed their own a distinct and co-ordinate church. During thirteen years the whole colony formed only one religious society; and, having no minister during that time, their elder generally prayed and prophesied to them.<sup>21</sup> But their tenets were moderate, and their practice was generally tolerating.

From the incommodioufness of the voyage, the inclemency of the weather, the want of every accommodation, the emigrants contracted diseases, which soon carried off fifty of their number. But they encountered every danger, and suffered every inconvenience, with a patient spirit, because they enjoyed their own peculiarities, and governed themselves. Their associates in England sent them a supply of necessaries, and a reinforcement of colonists, in the subsequent year; and, while they derived considerable advantages from the numerous vessels which frequented their coasts for the purposes of fishing and commerce, their property was frequently destroyed, and their navigation injured, by the improvidence of English sailors. At the same time that these colonists very prudently preferred the blessings of peace, they were not afraid of the disasters of war. They easily repelled an unprovoked attack of the neighbouring Indians with a becoming bravery. They soon after made a peace with that people, which does equal honour to their justice and good sense:<sup>22</sup> And they long enjoyed all the blessings of a government conducted at once with prudence and vigour.

Yet, of all the colonies, none seems to have increased so slowly in population and in power as New-Plymouth. Its soil was the most barren of any; its religion was somewhat unsocial: Its views, being originally turned rather to the establishment of a factory for trade than to the planting of a desert, favoured the spirit of monopoly, which is generally unpropitious to every laudable exertion. That pernicious policy, which

James had established in Virginia by his instructions, these emigrants imprudently adopted for themselves. During several years, all commerce was carried on, agreeably to the original contract, in one joint stock : All things were common to all ; and, from the public store, daily necessaries were distributed to every one. But, in all countries and situations, the same causes will produce their correspondent effects : And, what the Virginians had sadly experienced, these colonists now found abundant reason to deplore. For they were sometimes *in danger of starving* ; and *severe whipping*, which was often administered to promote labour, had no other effect than to create *constant discontent*. But the vanity of this absurd policy, even among *godly and sober men*, though it has been honoured by the recommendation of enlightened theorists at all times, soon became universally apparent : And the introduction of property and other exclusive rights, by engaging the affections and invigorating the pursuits of men, immediately produced the happiest change. Yet, owing to the causes before-mentioned, New-Plymouth continued for years poor and unprosperous, and remained long in a state of independent insignificance.<sup>23</sup>

While those emigrants thus took possession of its territory without its knowledge or assent, the council of Plymouth adopted two measures for effecting the policy of the patent : It requested a contribution of the patentees ; it offered the freedom of the company to individuals : But neither proved successful. Men do not freely give money to procure advantages distant and problematical : And it was constrained to grant various portions of New-England to private adventurers, who soon after planted several distinct but feeble settlements in that country. The imprudence of this last measure bequeathed to the posterity of the colonists innumerable disputes, either with regard to the boundaries of territory, or the extent of jurisdiction ; which were regretted, in after-times, in proportion as they were found vexatious and expensive.<sup>24</sup> Nor was the company more successful in its attempts to prevent the people of England from approaching the shores of its dominions. The merchants, being invigorated by the resolves of the commons before-mentioned, carried on the fishery and commerce for peltry to considerable advantage and

and extent. And it applied to James for relief. Being informed that interlopers had not only attacked the planters in their possessions, and taken their timber without satisfaction, but had cast ballast into the harbours, and sold warlike stores to the natives; that monarch, with an impolicy and inattention to the resolutions of parliament, which appear very striking in the present times, issued a proclamation,<sup>25</sup> in November, 1622: It commanded; that none should frequent the coasts of New-England but the adventurers and planters, or traffic with Indians otherwise than by the licence of the council of Plymouth, or according to the orders of the privy-council. But, though various oppressions were committed under the authority of this remarkable edict, yet we shall find that, far from proving beneficial to the company, it really brought on its dissolution: So common is it for an apparent good to produce a real evil.

A measure of still greater importance was, about the same time, adopted by the company, in order to promote its general intentions; but was attended with the same success. When Sir Ferdinando Gorges, who was chiefly intrusted with the direction of affairs, reflected on the prodigious extent of the region to be planted, on the little progress of colonisation hitherto, he conceived the design of persuading the Scottish nation to form a settlement within the limits of New-England: And he easily procured the consent of the company, and the approbation of Sir William Alexander of Menstry, a person of considerable influence during that reign; who instantly entered into all his views, because they promoted his interest.<sup>26</sup> Being desirous, on all occasions, to procure the glory and utility of his kingdom of Scotland, James I. in September, 1621, granted, under the great seal of that realm, to the last-mentioned gentleman, who afterwards acquired the title of Stirling, the country bounded on the North, and East, and South, by the river St. Laurence and the ocean, on the West by the river St. Croix. It was called Nova-Scotia, and erected into a palatinate, to be holden as a fief of the crown of Scotland; and the proprietary was invested with the accustomed regal powers belonging to a count-palatine.<sup>27</sup> Yet it would probably have embarrassed the wisest civilian of that kingdom to discover by what right the

king of Scotland conveyed that extensive dominion. The law of nations communicated no title to those who did not discover and occupy : And the recitals, neither of records nor of history, evince, that the sovereigns of that realm ever employed navigators, in order to explore and possess. Henry IV. of France had granted the same tract in 1603 ; which was instantly occupied by his subjects : And James I. of England had conferred the same lands, in 1620, on the Plymouth company. When the charter of the Scottish king was produced, in after-times, to prove the right of the crown of England to Nova-Scotia, it was derided with more than usual triumph by the ministers of France : They insisted, and justly, that the king of Scotland could not grant, in 1621, what had been already given away by the predecessor of their sovereign ; that it could not extend to a country which had been so long possessed by the people of their nation, because it expressly stipulated that it should regard only those lands which were uncultivated and inhabited by savages.<sup>28</sup> The various circumstances of that memorable transaction prove how little the wisest statesmen of those days understood the colonial rights, either of individuals or of nations, because they had not been then formally considered or debated : And the sad history of Darien demonstrates how such a charter would have been received in England during the reign of William.

The vicissitudes of few states afford better lessons of instruction to kings, and statesmen, and nations, than do the revolutions of an inconsiderable territory, for the name of which mighty kingdoms have formerly contended. Some of its changes have been already mentioned. Alexander sent out a colony, in the year 1622, which looked at the coast of Nova-Scotia, and returned. Yet the ingenious writings of that gentleman promoted the interests of colonisation, by inflaming the spirit of emigration.<sup>29</sup> In June, 1625, he obtained, from Charles I. a confirmation of his title, under the great seal of Scotland, in the same words as the former grant. But, finding that neither considerable profit nor honour were soon or easily to be acquired from such adventures, he sold almost the whole of his interest, in Nova-Scotia, to Saint Etienne, a French hugonot, in the year 1630, upon this condition, that the inhabi-

tants

tants of it should continue subjects of the Scottish crown. The French nevertheless retained possession. And, when the follies of Buckingham engaged the rival nations in warfare, a commission was given, by Charles I. to Kirk and his valiant kinsmen, to conquer the American dominions of France. He attacked Canada in July, 1628: He obliged Quebec to capitulate in July, 1629.<sup>30</sup> And thus was the capital of New-France subdued by the arms of England just one hundred and thirty years before its final conquest conferred immortality on Wolfe. This signal event was unknown in Europe when peace was re-established in April, 1629. And Charles I. therefore, by the treaty<sup>31</sup> of St. Germain, concluded in March, 1632, absolutely restored, to France, Acadie, New-France, and Canada, generally and without limits; and particularly Fort-Royal, Quebec, and Cape Breton. The French gloried at a future day, not that they had recovered without consideration what the bravery of Englishmen had won, but that, in these transactions, the name of Nova-Scotia did not appear. Colonial historians, with an inattention or interestedness of which there are few examples, have always insisted, that, notwithstanding the absolute restitution before-mentioned, certain rights, with regard to that territory, still remained in England: And her statesmen, with a credulity and want of wisdom equally unexampled, have implicitly adopted their sentiments. But, in what consists the justice or policy of preserving latent pretensions, which cannot be defended by candid discussion? The law of nations reprobates whatsoever contributes to disturb their repose. And the present generation has abundant cause to deplore that system of mistaken politics, which entailed on this realm contentions and debts, that posterity may possibly regret in vain.

Meanwhile the parliament, which assembled in March, 1624, beheld the conduct of the company above-mentioned, and the edict of James, with equal jealousy and indignation. The committee of grievances attacked the validity of the patent. Gorges was heard by his counsel in its defence. But, as he could not justify the clause of forfeiture, the patentees agreed, that the English fishermen may visit the coasts of New-England without interruption. The commons however were too zealous.

to rely on the precarious security of a promise which seemed to imply some kind of right. They, with one voice, resolved, that the clause of confiscation, being only by patent, and not by act of parliament, was void and against law; that the people of England shall enjoy the fishery there with every thing necessary. And the same act, for a freer liberty of fishing on the coasts of New-England and other parts of America, which had been passed in 1621, was brought in; and, after some debate, was once more transmitted to the lords. It is remarkable that the power of parliament, to make laws for that country, was now no longer disputed even by the secretary of state. For he, at present, only insisted, that the free fishery granted by this bill, giving authority to cut down wood within a quarter of a mile of a dwelling-house, was so extremely prejudicial to the planters, that it will overthrow all the plantations.<sup>32</sup> Yet, the influence of prerogative still existing, it met with its former fate, and became not a law. Thus did the commons defend their own and the nation's rights: Thus did they assert their power of giving away the property of the inhabitants of New-England without their explicit assent. For no part of ownership is generally held more sacred and interesting to mankind than that which is annexed to the freehold. What an excellent train of reflection do the colonial transactions of parliament, during the reign of James, offer to the discerning: We have seen the colonies applying to the commons for protection against the arbitrary administration of the king; the house taking cognizance of their affairs, and asserting, by resolution and by bill, as well their rights and those of the state as its own just authority. And what a fine contrast do they form to the conduct and reasonings of all parties in later times.

A few short notices, though they must necessarily reach beyond the limits of the present reign, will shew, with sufficient exactness, in what manner an end was put to the existence of the company, and to the independence of New-Plymouth. And this attention is equally due to both; because, but for their persevering exertions, New-England had probably never been peopled.

The resources of the council of Plymouth being thus cut off by the vigorous resolutions of the commons, it seems to have no longer thought it practicable



practicable to settle a plantation, though it appointed a governor-general for New-England. As the great purpose for which the charter had been procured no more existed, the patentees prudently resolved to divide the country among themselves. And, in the presence of James, they cast lots for the shares which each was to enjoy as his own in fealty : Proposing to obtain the royal confirmation, for the particular portions, by special names, which fortune had given to every one. Nevertheless, they continued for a few years longer to act as a body politic. And, during that period, they granted various parts of the coast to different societies ; which, we shall find, performed successfully what the council of Plymouth had been unable to effect. In the beginning of the year 1635, the patentees agreed to surrender their charter to the king ; in order that the powers of government might in future be exerted by Charles I. who already directed the administration of the sovereign state with a judgement immature and desultory. They executed deeds of feoffment, for the various shares before-mentioned, under the seal of the corporation : They petitioned that monarch for patents of confirmation ; which seem, however, to have never been granted, except of the province of Maine to Gorges. And, in June, 1635, the act of surrender, as well of the charter, as of every right and demand of the company, passed under the common seal ; which was immediately accepted by that prince." Thus was dissolved by voluntary consent, arising from mere debility, the council of Plymouth, so famous in the story of New-England, after the expenditure of considerable sums of money, without the acquisition of profit or glory.

What a fatality seems to have attended the conduct and existence of all the great companies, established for colonising America, which have appeared in the foregoing period ! It must have been owing to some radical defect, that every one was equally unsuccessful. Whatever were their pursuits, disappointment uniformly attended their steps. If they searched for mines of the precious metals, their inquiries proved fruitless, because they were directed to unattainable ends. If commerce was the object, barren was the field, and unprofitable, where they had only to traffic with savages, indolent and poor, who disdained labour and trade, as degrading

grading to warriors and unworthy of men. If colonisation and government were their chief ambition, their ultimate failure might have been foreseen; because the former demanded an enormous expence without hope of retribution; because the latter required a genius, dissimilar to what generally actuates such combinations; the narrow regulations of commercial bodies are little consistent with that freedom of action, which men should enjoy, who adventure their lives in dangerous enterprizes; the intrigues and dissentions, incident to numerous associations, are little suited to the spirit or progress of enlarged legislation. To these causes may be added the want of œconomy and attention, the never-failing attendants of every extensive undertaking, which is not directed by individuals deeply interested in its success. History had demonstrated, that the colonies of antiquity, which had been planted and governed by states commercial and republican, by the Greeks, the Carthaginians, the Romans, had struggled with every difficulty that tends to enervate exertion and depress the noblest pursuits of men: And they had groaned under the accumulated miseries of misrule, of poverty, and of that want of energy which generally arises from both, but is always more fatal than either. The reign of James I. was an age of great speculative learning, yet of little practical wisdom. And, in opposition to the experience which reading afforded, the peopling of America was intrusted to the great corporate bodies, the story of which has been told. The plantations, therefore, languished in immaturity, grew up stunted and unpromising, and seemed to wither away without hope of ultimate completion. The annihilation of the great companies before-mentioned infused, however, a principle of new life. And restraint was no sooner removed, and men were left free to manage their own affairs in the way most agreeable to themselves, than the colonists engaged in every laudable pursuit, and acquired an extent of population, of commerce, of wealth, and of power, unexampled in the annals of the world.

Amid all its disasters, none gave more real concern to the colony of New-Plymouth than the want of a title to the country which it possessed. It had built a town, erected a citadel for its defence, and laid out farms for its support; yet it had no other claim than what mere occupancy confers,

confers, in opposition to municipal rights. During ten years it had solicited a grant without success, owing chiefly to the infidelity of its agents. The council of Plymouth, at length, in January, 1630, conveyed, as well a considerable territory around the original settlement, as a tract of land on the banks of the river Kenebeck. It conferred not only various privileges, but power to make ordinances for the government of colonists, *godly and sober*; on this condition, that they should not be contrary to the laws of England. Yet this patent was not confirmed by the crown, though the contrary has been affirmed by colonial historians. And now the emigrants, who were increased by this time to three hundred, could wish for no better title to their lands, because their possession was clothed with the legal right. But they still doubted the validity of their authority with regard to government. For, however comprehensive were the expressions of their charter, the powers of jurisdiction could not be communicated by the council of Plymouth; because they had been bestowed on it and its successors, for special purposes, and it could not grant away, by parcels, a trust so important, without the consent of the king who conferred it. Nevertheless this defect was not probably altogether unfavourable to the real interests of the settlers, or their happiness: Their administration was actuated generally by principles of greater moderation and good sense, than some of their neighbours; and it was more conciliatory, and less oppressive. It was not till about this period that they had any person chosen and appropriated to the office of pastor: And, having now established a church, they professed the same faith with that of the reformed societies in Europe, except only in the article of government, which they endeavoured farther to improve. It ought to be recorded, to their honour, that however rigid they may have been when they separated from the church of England, they seldom discovered that spirit of persecution which so degraded Massachusetts at a subsequent period.<sup>14</sup>

Thus New-Plymouth continued unimportant and unknown till the year 1643; when it emerged into notice, by entering into that confederation which united into one commonwealth the four colonies of New-England. As it now derived every advantage from mutual aid and protection,

tection, it began to send out colonists to form other settlements among the natives; and it continued to act, till the Restoration, as it had always done, as an independent, though feeble, community.<sup>35</sup>

The general court congratulated Charles II. upon his accession, in expressions of loyalty which seem to evince that they were really sincere, and which were received with an attention due to the most loyal of his subjects. That colony entertained the royal commissioners, who were sent to New-England, in 1664, to settle universal disputes, "according to the meanness of its condition:" And it submitted to the regulations proposed by them with a readiness which shews equally its purity of intention and its sense of weakness. It engaged with great ardour in the Indian war, which afterwards broke out, and which threatened its ruin; but, owing to its bravery and perseverance, proved the destruction of its enemy: And while the governor and general court apologized to that monarch for not informing him of their troubles, during the existence of them, which they attributed to Philip, "an ambitious and proud sachem," they begged his acceptance of his spoils. In return, they solicited the protection of their sovereign against the encroachments of their ungrateful neighbours on the conquered lands. Though their present was never received, their compliment and expressions of loyalty were extremely acceptable. A tract of land, denominated Mount-Hope, that had been subdued by their valour, was granted to them. A reason was assigned in support of this liberality, which discloses the opinion which was then entertained of the other colonies of New-England; "that, as they were loyal, and shewed a disposition to be obedient, it may be an example to others." And they were promised, at the same time, farther privileges.<sup>36</sup> Nor were they ungrateful.<sup>37</sup> For, while they acknowledged the late favours conferred on "that poor colony," they petitioned, in terms which shewed how much they envied Connecticut and Rhode-island, for a new charter, in the room of their "old and indeed imperfect grant."<sup>38</sup> Yet they did not acquire the object of their wishes and prayers. The agent, who was entrusted to solicit their affairs, immediately died; their papers were unhappily lost; and, above all, Charles II. with a spirit that does honour to his reign, at that time meditated

ditated important plans of reformation for New-England. In November, 1683, they transmitted a new address<sup>19</sup> to that prince, praying for what it was already determined should never be granted; but humbly submitting, in all things, to his desires and commands. The mere language of compliment was construed into a formal surrender of their ancient government. And when that fabric of independence, which we shall soon remark Massachusetts rear up with so much attention and address, was overturned, New-Plymouth was annexed to that powerful neighbour, and was for ever divested of the honours incident to a separate community:

Thus, from a beginning so extremely inconsiderable, have grown up, in a little period of years, almost unperceived, the populous, wealthy, and powerful, plantations of New-England. Whether we compare them with the Virginians of the South, or with the French who settled in their vicinity on the North, the rapidity of their progress will appear extraordinary. They were embarrassed neither with the narrow regulations of a commercial association which long clogged the exertions of the former, nor with the monopolies that so long fettered the Acadians, and lengthened the days of their poverty. Freedom then was the enlivening principle of their pursuits; and property, landed and personal, invigorated the nerve of every enterprise. The same causes have at all times regularly contributed to the rise or declension of colonies in every quarter of the globe.

#### AUTHORITIES AND NOTES.

<sup>1</sup> See a relation of the discovery and planting of New-England, which was published by the president and council, and dedicated to the prince of Wales, in 1622; Purchas's Pilg. 4 v. 1817. — <sup>2</sup> Ib. 1828; Smith's Voy. 46. — <sup>3</sup> See the Memorials published by the French court, subsequent to the peace of Aix-la-Chapelle, with regard to the boundaries of New-France and Nova-Scotia. — <sup>4</sup> Purchas, 4 v. p. 1831; Stith's Hist. Virg. 185. — <sup>5</sup> This patent, which has never been printed, because so early surrendered, is in the old entries of New-England, in the Plant.

Off. — <sup>6</sup> It is in L'Escarbot's Hist. New-France, 397. — <sup>7</sup> Champlain's Voy. 1st part; and Purchas, 4 v. 1603-45, which he published, as he assures us, for the benefit of the English plantations. — <sup>8</sup> It is in L'Escarbot, 417; and a translation, in Purchas, as above. — <sup>9</sup> Ib. — <sup>10</sup> L'Escarbot, in Purchas, as before. — <sup>11</sup> Smith, 115. — <sup>12</sup> Their memorials above-mentioned. — <sup>13</sup> Com. Jour. 1 v. p. 620-40-4.

<sup>14</sup> Parl. Deb. 1620-1, 1 v. p. 260-318-19. The following parliamentary debate, on the American fishery, which is important in itself, confirms the reasoning in the text, and is therefore annexed. — From 1 v. Com. Jour. of the 25th of April, 1620, and p. 640-54.

Sir Edwin Sands: — That some have gotten a grant from the king, a grant of the land in Virginia. Two colonies first in Virginia; northern and southward: The last hath proceeded with 100,000*l.* charge; the northern not. Now desire to proceed; which called now New-England. That this fishery twice a year far better than that of Newfoundland. That the Virginian company, by deceit of masters of ships, spent about eight years thence about 6,000*l.* That the northern colony hath got a sole fishing there, yea, the company of Virginia. The king acquainted with it stayed the patent. That the colony of Virginia claimeth no appropriation of this fishing to then. This will bring in 100,000*l.* per annum hither in coin. The English, as yet, little frequent this, in respect of this prohibition; but the Dutch and French. This costeth the kingdom nothing, but employeth shipping: Is carried on to Spain and Bilboa; where the people willingly pay for it silver; which may be lawfully transported, being for victual.

Moveth, therefore, a free liberty for all the king's subjects for fishing there. That the taking timber no prejudice to the colony. A beneficial fishing hoped for on the South of America. Pitiful! any of the king's subjects should be prohibited, thence French and Dutch at liberty, who come and will fish there notwithstanding the colony. That the northern colony of Virginia [New-England] now prohibiteth timber, where it is nothing worth, and take away the salt the merchants leave there.

Mr. Glanville: — That this committee may direct some government for the mariners; who spoil havens by casting out ballast, &c.

Mr.

Mr. Secretary [Calvert]: — Doubteth the sub-committee hath not heard the other part; doubteth the fishermen the hinderers of the plantation. That they burn great store of woods, and choke the havens. Never will strain the king's prerogative against the good of the commonwealth. Not fit to make any laws here for those countries, which not as yet annexed to the crown.

Mr. Neale: — Three hundred ships at least gone to Newfoundland out of these parts, [West country]. That this complained of heretofore to the lords of the council. London engroffeth all trades and places. That the patentees for this northern plantation, intended for the public good, intend their private; which hurteth the commonwealth. Second Edward VI. free liberty for all the subjects to go to the Newfoundland for fish: Now make men compound for places: Take away their salt. They cannot carry even proportion; but must either leave or lack. That the fishing there little above seven weeks. No leisure to attend an admiral court. Pretence to reform abuses; but was to set fines. Taxed a hog-head of train-oil on every master of a ship that appeared not at his court. That the lords of the council gave an order against this, which those planters have disobeyed. Exacted great sums, and shot off ordnance against the king's subjects. That London merchants, by restraining trade, undo all trade. That many things may be added to this bill; casting out of ballast, &c.

Mr. Chidleigh: — To give some long day for the committing of this bill.

Mr. Guy: — If this house hath jurisdiction to meddle with this bill; would consent to the proceeding thereof. That there are divers patents. He engaged for the plantation of Newfoundland. The Londoners in this to be commended, however their greediness in other things justly found fault with. That the king hath already done as much by his great seal as can be done here-by this act. That the French planted there about thirty years since. That provision made, the fishermen might have timber there. That the plantation ever furthered our English merchants. Moveth that the pirates may be repulsed if any come thither; and this to be provided for by the bill.

Mr.

Mr. Brooke : — That we may make laws here for Virginia ; for, if the king give consent to this bill passed here, and by the lords, this will controul the patent. The case divers for Gafcoyne, &c. which principality of themselves. To commit it.

Sir Edwin Sands : — That Virginia holden of the manor of East-Greenwich.

Committed to Sir Edwin Sands, burgesſes of London and York, all burgesſes of port-towns, and all that will come to have voices ; this day seven-night in the Exchequer-chamber.

<sup>15</sup> Parl. Deb. 1620-1, 1. v. p. 116-17. — <sup>16</sup> Smith, 46-230 ; Purchas, 4 v. 1840.

<sup>17</sup> Voluntary agreements formed a very important title in the ancient jurisprudence of New-England. Wherever the Independents settled a colony without the authority of a charter, they founded their policy upon a contract, to which every one agreed. The following one, which is the oldest of any, shews the basis whereon was erected the superstructure of the laws and constitution of New-Plymouth, and is therefore subjoined. — From Purchas, 4 v. p. 1843 ; and see the historians of New-England.

*Association of New-Plymouth.*

In the name of God, amen. We, whose names are here-underwritten, the loyal subjects of our dread soveraign lord king James, by the grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. having undertaken, for the glory of God, and advancement of the Christian faith, and honour of our king and country, a voyage, to plant the first colony in the northern parts of Virginia, do, by these presents, solemnly and mutually, in the presence of God and of one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid ; and, by virtue hereof, do enact, constitute, and frame, such just and equal laws and ordinances, acts, constitutions, and ordinances, from time to time, as shall be thought most meet for the general good of the colony, unto which we promise all due subjection and obedience. In witness whereof we have subscribed our names, at Cape Cod, 11th November, 1620. — Signed by forty-one persons.

<sup>18</sup> Hubbard,



<sup>18</sup> Hubbard, in Hutch. Hist. Mass. 2 v. p. 463-7. — <sup>19</sup> Ib. 464; and New-Eng. Laws, abridg. 88; Rhode-Is. Laws, 171. — <sup>20</sup> Hutch. 2 v. p. 463-5. — <sup>21</sup> Ib. 468-71. — <sup>22</sup> Ib. 479-80. — <sup>23</sup> Neale's New-Eng. c. 3. — <sup>24</sup> Purchas, 4 v. 1831. — <sup>25</sup> Rym. Fœd. 18 v. 416. — <sup>26</sup> Purch. 4 v. p. 1872-3. — <sup>27</sup> Ib. for a copy of the charter: This patent, and its confirmation, in 1625, which were procured from the records in Scotland, were published in the French Memorials before-mentioned. — <sup>28</sup> These Memorials. — <sup>29</sup> Purchas, 4 v. 1878. — <sup>30</sup> The letters of correspondence between Kirk and the commander of Quebec, as well as the capitulation, are in Champlain's Voy. 2d part. 157-8, 215-16. — <sup>31</sup> Corps diplomatique, 6 v. p. 31.

<sup>32</sup> The following debate and resolves of the commons, which are equally interesting and decisive as the former, establish several important facts, and are published here, because they equally authenticate the foregoing reasoning. — From the 1st vol. Com. Jour. 688-97.

*17th March, 1624.*

Sir Edward Coke reporteth from the committee of grievances. Have condemned one, viz. Sir Ferdinand Gorges his patent for a plantation in New-England. Their counsel heard; the exceptions being first delivered them. Resolved by consent; that, notwithstanding the clause in the patent, dated 3<sup>o</sup> Nov. 18<sup>o</sup> Jac. that no subject of England shall visit the coast, upon pain of forfeiture of ship and goods, the patentees have yielded, that the English fishermen shall visit, and that they will not interrupt any fishermen to fish there: For, he no new discoverer; fishermen of this and other nations having fished there before his patent. Drying of nets, salting of their fish, &c. incident to their fishing: Whereunto he also agreed. After he was gone after the debate, over-ruled the fishermen might take timber for repair of their ships: 1<sup>o</sup> Quia incident; 2<sup>o</sup> taken so before his patent; 3<sup>o</sup> fishermen never take any timber with them; 4<sup>o</sup> bring in great store of money for fish.

Resolved: — English fishermen shall have fishing with all incidents of drying fish, nets, timber, &c. 2dly, That the clause of forfeiture, being only by patent, and not by act of parliament, void.

Resolved

Resolved upon question : — That the house thinketh fit, the fishermen of England shall have fishing there, with all the incidents necessary, of drying nets, and salting, and packing.

Upon the second question ; in the opinion of this house, una voce, the clause of confiscation void and against law.

Upon the third question ; in the opinion of this house, the fishermen of England may take necessary wood and timber for their ships and boats use in fishing there.

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*3d May, 1624.*

The debate concerning the fishing in New-England renewed.

Sir Wm. Earle : — For the planters ; who more beneficial to the commonwealth than the fishers.

A proviso in parchment tendered to this bill, which read.

A second proviso tendered by Mr. Guy, which read.

Sir Ed. Cooke : — Sir F. Gorges his patent condemned, for the clause that none shall visit with fishing upon the sea-coast. This to make a monopoly upon the sea, which wont to be free : A monopoly attempted of the wind and the sun, by the sole packing and drying of fish.

Mr. Secretary : — That free fishing prayed by this bill overthroweth all plantations in those countries. That liberty by this bill to cut down wood, within one quarter of a mile of a dwelling-house ; which exceeding prejudicial to the planters. So for Newfoundland.

[REMARK. Sir George Calvert then possessed the territory of Avalon in that island, where he had planted a colony.]

Mr. Glanvyle : — The first stage worth ten of the rest. The provision for timber in Newfoundland omitted ; because, that an island having no rivers : But New-England hath divers rivers into it.

Both the provisos upon question rejected. The bill upon question passed.

<sup>31</sup> Smith, 47 ; and see his Map of New-England, which was divided into shares, and published by Purchas. 4 v. p. 1873 ; New-England Ent. in Plant. Off. A. p. 222.

<sup>34</sup> Neale's

<sup>34</sup> Neal's New-Eng. ch. 3. Hutch. Append. 2 v. N<sup>o</sup>. 1. — <sup>35</sup> Ib. —

<sup>36</sup> New-Eng. Papers, Plant. Off. 18-36. New-Eng. Ent. 2 v. p. 5. —

<sup>37</sup> Their grateful addrefs to Charles II. Ib. 76.

<sup>38</sup> The petition of the general court, which exhibits a sketch of the ancient history of the colony as drawn by itself, shews a very different spirit from the addreeses of modern times. — From New-Eng. Papers, v. 3. N<sup>o</sup>. 353.

Most gracious and dread soveraign,

It may justly render us guilty of the high crime of ingratitude to God and your majesty, should we not in all humble thankfulness acknowledge your majesty's most signal clemency and especial grace, in stooping so low as to cast an eye of royal favour upon this your poor colony: Not only upon our first addrees to your majesty (soon after your happy restoration) in your gracious acceptance of that poor scrip to be a transcript (as indeed it was) of our loyal hearts: And with like grace accepting that poor mite of our respects in our reception and entertainment (according to the meanness of our condition) of your majesty's royal commissioners in the year 1664; together with the gracious assurance given us, under your royal hand, of the continuance and enlargement of our liberties and privileges, civil and religious: But now also again, with a superadded act of your royal bounty and justice, in confirming to us the lands of Mount-Hope, (notwithstanding the earnest petition and endeavours of some to obtain it from us,) which, in defence of your majesty's interest and our lives, cost us so much blood and treasure, being undoubtedly within our patent grant: And farther, that, out of the gracious disposition and free motion of your own princely benign mind, you were pleased to invite and encourage us to make our due application to your majesty, for the granting and confirming such liberties and franchises to us, as may be for the more happy government of your majesty's subjects in this colony, which the largeness of your royal understanding espied to be wanting in our former charter, (from the honourable the council of Plymouth,) not so easy for ourselves to discern, and through your princely care therein become as eyes to the blind, and a royal foster-father to this your poor

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nursling in this remote wilderness : The contemplating whereof both influenceth and animateth us (notwithstanding the deep sense of our own ineptness to speak unto our lord the king, and of our great impotency, by reason of our poverty, remoteness, and otherwise, as to these approaches) to present our humble supplication unto our prince, (in whose sight we hope to find grace,) for your majesty's gracious protection of us, in the continuance of our civil privileges and religious liberties, in the walking with peaceable and loyal minds in the faith of the gospel, according to the order of the gospel ; which order, according to the general profession here, is the congregational way therein, only differing from our orthodox brethren, but agreeing as to the doctrinal points of religion with the profession of the church of England and other reformed churches, and not enforcing the liberties of others, who are of orthodox principles and good conversation, though differing from us in point of church order ; each doing their parts for the due support and encouragement of an able, godly, orthodox, ministry, in every township and plantation, to preach sound doctrine and further true piety on gospel principles, which is the best means to secure and oblige to true loyalty, (though they should be of differing persuasions as to church order,) and the best preservative against degeneracy from the Christian manners, and religion of the English, into atheism and brutish paganism : The pure exercise of which religion, without offence and without the imposition of other ceremonies on them in the public worship of God, together with the enlargement of his majesty's dominions, was the known end of the first comers hither in the year 1620 ; leaving the pleasant land of their nativity, transporting themselves and children over the vast ocean, willingly conflicting with many grievous difficulties and sufferings, in this vast howling-wilderness, amongst wild men and wild beasts : For, though they might have enjoyed those religious liberties, according to the best light of their consciences, under the states of Holland, who offered them great favour there, yet, through their innate loyalty, were restless that they themselves, and their children after them, might live under the protection of their own native prince, and enlarge his dominions : And therefore, ha-

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ving first obtained leave of king James, of happy memory, did adventure, (at their own proper costs and charges,) through many foreseen and afterwards felt sufferings, to break the ice, and settle the first English plantation in this then uncultivated remote part of your dominions: Where, through the great goodness of God's protecting favour and blessing on their extraordinary care and hard labour, they became a succour and help to many of his majesty's subjects, both planters and others, who fell upon this coast; and, after some years here spent, and by consent of their then gracious sovereign, did obtain letters patent from the honourable council of Plymouth, which, among other privileges therein granted, and through the good hand of God upon us, and the favour of your royal progenitors and of your majesty, we have had now near about sixty years lively experience of the good consistency of the order of these churches, with civil government and order, together with loyalty to kingly government and authority, and the tranquillity of this colony, with the propagating of religion among sundry of the poor native Indians. May it therefore please your most excellent majesty, of your especial grace and mere motion, to favour us with your gracious letters patents for our incorporation into a body politic, with singular the privileges as your majesty has been accustomed to grant to other colonies, so to your majesty's colony of Connecticut: It becoming us to be humbly confident in your majesty's favour for granting us as ample privileges as to them; seeing that we bore the brunt of the first English colony, here settled for the propagating of the gospel and enlarging your majesty's dominions, and, by the providence of God, here first arriving in the winter season, exposed to the extremity thereof, without houses to shelter in; had not the opportunity to view the country, but were forced to sit down in the barrenest part thereof, (as is by many well known,) and destitute of every convenient place, within our precincts, for trade of beaver or fishing, as other parts of the country are advantaged with; especially since Penobscot, and other of those eastern parts fit for trade, granted to us in our patent, were by the French forcibly taken and detained from us, and (as we are informed) were since granted by your majesty to his highness the duke of

York; besides our great poverty, by reason of the late wars with our barbarous enemies.

New-Plymouth,  
5 Septemb. 1680.

JOSIAH WINSLOW, governor,  
for the general court.

39 The subjoined address of the general court to Charles II. shews, among other things, the very slight declarations of submission, which were construed to contain a resignation of its ancient government. — From N. Eng. Ent. 2 v. p. 190.

We, the governor and council, in behalf of the general court — Sheweth — We look upon ourselves as under the highest obligations to pray for the life of our sovereign lord the king, under whose favour and protection we enjoy such tranquillity: So understanding, by your majesty's declaration, and by the friendly courtesy of Mr. Randolph, that God was graciously pleased wonderfully to deliver your sacred person from that late horrid treasonable conspiracy therein mentioned [the Rye-house plot]: We could do no less than in duty we were bound, to appoint the 15th of this instant November as a day of thanksgiving to God for his great mercy in his signal salvation of your royal person from that and all other hellish conspiracies and most wicked designs. Partly by your majesty's weighty occasions, and partly by the mislaying of the copy of our former patent, sent over by governor Winslow; so it is, that we have received no other answer to our humble petition, than that some hopeful progress had been made in the business of our patent, and that your majesty hath a good opinion of our loyalty, for which we are thankful: And now, having sent over another copy of our patent, we have found in our hearts to renew our supplication, that your majesty may graciously please to give direction that a bill may be prepared for your royal signature; granting such powers and privileges, as hath been formerly petitioned for, as soon as your majesty's more weighty concerns may give admittance thereto, and with as much ease, as to the charge thereof, as may be; considering our great poverty, partly by the great barrenness of the most of our lands, late blastings of our grain, and great desolations

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tions of the barbarous Indians. — We still desire to submit these proposals of our desires to your majesty's regulations, as you shall see fit for us, hoping to find grace in your sight, especially as to our religious liberties; to enjoy which, without offence, under our natural prince and liege lord, and the enlargement of his dominions, was the known end of the first comers great adventure into this remote wilderness, whose posterity have continued in the same principles, both of religion and loyalty; and we hope never to depart from the same. — Most gracious and dread sovereign; — we humbly prostrate ourselves at your royal feet, begging pardon for this boldness, and for what else your piercing eye hath at any time seen amiss in us, desiring readily to submit to your majesty's desires and commands. — Now may God most high still preserve your royal person from all traitorous, bloody, and deceitful, men! &c.

New-Plymouth,  
Novemb. 1683.

THO. HINKLEY, governor,  
in the name of the general court.

## C H A P. V.

*Charles I. proclaimed. — His opinion of the colonies. — Establishes a government for Virginia. — Reflections. — The parliament meets. — Its character. — The second parliament assembles. — Its proceedings. — Harvey's administration over Virginia. — A legal constitution restored. — Berkeley's government. — Assembly's loyal petition to the king. — Charles II. transmits a commission from Breda. — Ordinance of the parliament. — Subjected to their power. — Colonial trade restrained. — The Virginians throw off the usurpation. — Observations.*

CHARLES I. a prince young and unexperienced, ascended the throne of his ancestors in the beginning of the year 1625. And, most unhappily for himself, together with the crown, he inherited the unfortunate principles and prejudices of his father. The seeds of discord, that had already been disseminated in a fruitful soil, soon produced the most disagreeable fruits. And a spirit of jealousy overspread the land, which the unadvised king possessed not the talents either to prevent or allay.

The English colonies that monarch justly deemed “ a part of the royal empire, descended upon him with the other dominions of the crown ;” and, professing himself of similar sentiments, with regard to colonial transactions, as those of his predecessor, he consistently resolved, “ that there should be only one uniform course of government through his whole monarchy.” When the writ of quo warranto had struck the reins of administration from the hands of the Virginian company, they were seized on therefore by him, as only fit for royal guidance. The affairs of the plantations were too much the object of his care to permit him to hesitate long with regard to the course he should follow. And being “ of the same judgement as his father was for the government of the dominion of Virginia,” he determined to tread in the same steps.’

Together with his crown Charles seems to have inherited the dislikes of his predecessor. Vain was it for James to oppose the introduction of tobacco,



tobacco, not only with the authority of his proclamation but by the eloquence of his pen. In vain he assured his subjects that the smoking of that vile weed was a custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs. According to the usual course of things, opposition gained over profelytes, and what was detested by the prince was naturally admired by the people. Deeming it of great consequence neither to desert nor neglect the colonies, which his father had so happily planted; considering them as yet in their infancy, and possessed of no other commodity than tobacco; observing that the desire of taking it still increased, notwithstanding every obstruction; the present king, during the first years of his reign, issued a great variety of proclamations on this subject, which demonstrate equally the caprice of his policy and the extent of the legislative authority that he exerted, during the recess of parliament, over England as well as her subordinate dominions. No commerce however gainful, except that of a luxury, which came recommended by the influence of novelty, or was intruded by the all-powerful decrees of fashion, could have withstood the regulations before-mentioned, equally frequent, irregular, and pernicious. The meeting of parliament, however, not long after, gave a check to the exercise of pretensions that would have soon swallowed up every other power in the state.

The demise of the crown having annulled all former appointments, that monarch, in May, 1625, named a new governor and council for Virginia: And their commission and instructions demonstrate the state of the colony at that period, as well as the nature of the new constitution which was then established. They were empowered to govern and punish "his subjects inhabiting Virginia," and to direct its affairs as fully as any governor and council residing there might have done within five years last past: They were invested with the general authority incident to those officers in that colony; never reflecting, that the absolute power, which he thus conferred, was equally inconsistent with the rights of the colonists as Englishmen, as contrary to the acts of assembly passed in the year 1624, with the express design of restraining the irregularities of the governor within the boundaries of law: And they were required,

“ to proceed in all things according to former and present instructions, “ and to such as they may receive from his commissioners of plantations.” They were instructed, to take care that God shall be duly served; “ to administer the oaths of allegiance and supremacy to all refidants,” and to ship home immediately those who shall refuse them; to enquire, “ by lawful way,” what estate belonged to the late company, in November, 1623, and to apply the remains of it to the public use; to cause the “ old settlers” to entertain “ new comers,” who shall be allowed to plant on the company’s land, on the former conditions; to oblige all to go to the wars, and “ to rate them in proportion to their “ abilities for their defence;” to allow freedom of commerce in the colony, notwithstanding the proclamation obliging the merchants to receive tobacco at three shillings a pound; to cause the people to plant corn, that they may at all times have previously a year’s provision, and to raise more staple commodities, as tobacco was daily falling in value. And they were warned “ against all intercourse with ships newly arrived;” giving as a reason, “ that foreign war may be daily expected.” The piques of ministers had already engaged England in a contest with Spain; the misguided Charles was now ready to plunge into a fresh one with France, upon the most frivolous of all pretences, the amours of a favourite.

The conquest of Canada and Acadie, by Kirk, during the war that ensued, has been passed over in silence by historians, because it appeared in those days of no real consequence in the system of European politics. But, from the restitution of those territories to France, in the year 1632, may be dated the commencement of a long train of ills to the colonies and to England. To that transaction may be fairly traced back the recent colonial disputes, and the present momentous crisis.

But neither the commission nor the instructions mention expressly, or even allude to, an assembly, neither do they refer to the laws of England, nor to the acts of the provincial legislature, as a rule of government. Entertaining no warm predilection for the rights of the subject, that monarch probably inferred, that, as the colony had derived its right to a provincial legislature, in which the people were represented, from an ordinance

ordinance of the company, the privileges of the former were buried in the same grave with the charters of the latter; that, as the colonial constitution was laid in the dust, the laws which had been enacted under its authority remained no longer in force; that it was but just to rule a subordinate territory with the same arbitrary sway with which he had determined to govern the state. And facts justify this argumentation. The authority invested in the governor and council was purely legislative and arbitrary; and the commission referred them back, for a rule of conduct, to that period of the Virginian annals, when the greatest tyranny prevailed. With a strange disregard of the principles of the constitution, they were empowered to make laws, and to execute them; to impose taxes, and to enforce payment. They were ordered to seize the property of the company, and to apply it, without its assent, to the use of the public. And they were required to transport colonists to England, to be there punished for crimes committed in Virginia. On the pretence, as frivolous as it was untrue, "that the tobacco of the planters " could not be managed for their good, unless it was brought into one " hand," a rigorous monopoly of the sole importation of that commodity was established, to be managed by the royal factors for the royal use.\* And their commerce was restrained at the same time that their persons were enslaved.

Thus the Virginians, far from going forward in acquiring new privileges, were once more plunged into that abyss of servitude from which they had emerged upon the introduction of an assembly; and, during that long period, from the demise of James almost to the commencement of the civil wars, they suffered those miseries which freemen feel, when, to the injury of being bereaved of their birthright, insult is added. Yet, for a few years, they did not undergo probably much real oppression. The company being dissolved, they were left, as we are assured, in a manner to themselves, and wonderfully increased beyond expectation; they remained under the administration of their late governors and other officers, who respected their privileges, because they loved the colony: And they found means to elude the force of the various edicts which were published to regulate or restrain the commerce of a staple, that has at all times so

much promoted the prosperity of Virginia. Provoked by the cruelty of the Indians, and encouraged by the many adventurers lately arrived, the colonists sent out different expeditions for the extirpation of the aborigines, who no more appeared on the banks of James-River, or intermixed with the new-comers, whom they mortally hated, and now feared. The capital was in a great measure deserted; and, pursuing their own inclinations, the whole inhabitants formed once more about eighteen several plantations.

When the first parliament of this reign assembled meanwhile, in February, 1625-6, they soon discovered symptoms of that jealousy which had gone forth. And, composed chiefly of the same great men as those of the late reign, they uniformly went over the same track of colonial policy, but with steps far more firm and decisive. The bill, which had engaged so much of the time and the attention of former sessions, was instantly adopted by the present, but with a title more expressive of its genuine policy. And an act, “for maintenance and increase of shipping and navigation, and for the freer liberty of fishing voyages upon the sea-coasts of Newfoundland, Virginia, and New-England,” was brought in. It was soon passed by the commons, and sent to the lords by the treasurer: From whom, however, it never returned. A bill, so often discussed and then so thoroughly understood, had become acceptable to all, and found its way through every stage in the house of commons, without opposition or debate: And these notices, however trivial they may seem, shew a progress in the understandings of men, and a firmness in asserting what they deemed their rights. Nor was the spirit of the commons to be repressed by the loss of a bill, which at length had become a favourite of the nation. In a strong representation of grievances, which they presented to Charles, in May, 1626, they insisted, among other objects, “that the restraint of the subject from the liberty of a free fishing, with all the necessary incidents, was a great national grievance.” As well the spirit displayed by that animated assembly as its refusal to grant to the necessities of the sovereign a second subsidy, during the same session, brought on a dissolution; which, while it raised, in a high degree, the reputation of the national representatives in the eyes  
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of their countrymen, only lowered his. And a proclamation, that could have been issued by imprudence itself, prohibiting the publication of a remonstrance of the late dissolved parliament, tended only to raise the public curiosity, and prepared the minds of men for future events.

That misguided prince neither possessed the œconomy to enable him to live within his income, nor prudence to induce him to yield with a good grace to the desires of his people. His necessities constrained him to call a new parliament in the beginning of the year 1627-8; and they appear to have been as attentive, but more vigorous and determined in asserting the national freedom and supporting their own rights, as any of their predecessors. But, the progress of the commons, not only in their conceptions of what they deemed their own and the nation's rights, but their spirit in protecting both, had been prodigious from the reign of James to this time. During the former period they suffered it to be debated amongst them, whether that prince, by his prerogative alone, might not tax the subject; and Coke and Selden had been employed to prove, by ransacking public archives, that he could exercise no such authority: Yet, without search of records, or debate, it was now resolved, with one voice, "that the king cannot levy any imposition or duty on the people "without their consent by act of parliament:" And they compelled their sovereign, after a vehement struggle, to give his assent, without reserve, to the justly-celebrated petition of right. Applications redressive of grievances had been formerly waved upon the interference of a king of England, which would appear so extraordinary in modern times; but now relief from oppression was firmly insisted on as an indisputable right.<sup>7</sup> Living under a constitution, which is now ascertained and known, and beneath a government the mildest and most rational on earth, we can observe, in tranquillity, the contentions of our fathers, the progress of public principles and of laws, as objects of curiosity or instruction.

The bill, which had so often miscarried, was once more revived; and, after hearing, in opposition to it, the counsel of Sir George Calvert, who had been lately created baron of Baltimore, and who had for some years ruled a colony in Newfoundland, by the name of Avalon, was again pas-

fed by the commons : But, owing to the continuance of former clauses, it met with its accustomed fate.<sup>8</sup> The vigorous and persevering efforts of the commons proved nevertheless decisive. For the important rights, which they had so strenuously contended for, were expressly reserved to all the subjects of England and Ireland, in the subsequent colonial charters, which were granted by Charles I. and his successor.<sup>9</sup> Thus animated exertions, in a good cause, always prove successful; and success never fails to enliven perseverance.

The Somer-isles, which are now better known by the name of Bermudas, having been granted to the Virginian company, by the third charter of James, were immediately conveyed by them to one hundred and twenty of their own number. And these, obtaining a patent from that prince for its government, long ruled that little community with the spirit of a corporation severe and illiberal. Among other oppressions, they imposed a tax of four-pence a pound on the importation of tobacco of the island, and seized it till the duty was paid. The colonists felt no less the severity than the illegality of a proceeding that would now appear so extraordinary and intolerable. And they applied to the privy-council for reparation. Their complaint was referred to the commissioners of enquiry concerning the affairs of Virginia; who ordered that commodity to be delivered to them on paying two-pence a pound: And this imposition, however unjust, was ordered to be collected till the company's debts were discharged.<sup>10</sup> The Bermudeans submitted to an authority which they were unable to withstand, though they could not admit its equity, till a new scene of relief opened to view. And they were now no longer at a loss where to apply for redress. For, a power had at length arisen in the nation, which reviewed the administration of the laws; which inspected the conduct of every department of state, sometimes making the greatest ministers tremble; which listened, with attention, to every complaint of oppression: And to the commons, therefore, they now complained. According to the usual custom of those days, the house ordered "a petition concerning this imposition to be presented to the king;" which, at that time, had nearly the decisive effect of command." But, though Charles promised to take it into consideration, no effectual relief seems  
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to have been given. For, a bill was soon after brought in "for confirmation of the letters patent, made by king James, to the governor and company of the Somer-islands." It regularly passed that house, but, owing to the distractions of public proceedings, became not an act of the legislature.<sup>12</sup> The commons, considering a royal patent too unconstitutional to empower a corporation within the realm to impose taxes on the colonists, intended to have given a jurisdiction, which could not be legally exercised without the authority of the state, and which an act of parliament could alone confer. And the petition of right fully justified this reasoning. The planters of Virginia were then equally aggrieved, and equally sought a similar remedy. Their complaint was immediately referred, by the commons, to the committee for the Somer-isles, who afforded them the same relief, with the same success. The parliament was, soon after, suddenly prorogued:<sup>13</sup> And Charles and the commons, feeling mutual wrongs and foreseeing more, separated, not soon to meet again, because both were highly disgusted with each other; and because the pretensions of both parties appeared to each other undefinable, and consequently altogether inadmissible as a ground of accommodation.

The discontents of that unfortunate reign now ripened fast into perfect maturity; and those disputes commenced, which closed a civil war by the exaltation of Cromwell upon the ruins of the constitution. From the termination of that session, the parliament did not assemble again for twelve years; and, when they at length convened, they were too much engaged either in repairing the breaches that Charles had made in the system of laws, or in pursuing interested projects of ambition or revenge; to attend much to colonial affairs. And little notice shall we find taken of them by the sovereign legislature, till the momentous contention for power, between the different orders of the state, was almost finally closed.

That governor, whom Charles had been so anxious to appoint for Virginia, had no opportunity of exercising those powers, equally illegal and extraordinary, with which he had been invested. His death, in the beginning of the year 1627, put an end to his authority, and prevented that

that colony from ever feeling the full extent of it. In his room, John Harvey was nominated governor, in March, 1629; and his commission and instructions were precisely the same as those of the former.<sup>13</sup> He departed soon after for the colony, carrying with him a considerable emigration. All historians agree in representing the tenor and spirit of his administration as an exact counterpart of that which unhappily too long ruled in England: "Severe in his extortions and forfeitures, proud in his councils, and unjust and arbitrary in every department of his government."<sup>14</sup> The irregularity of the conduct of his sovereign, with regard to colonial affairs, kept pace with that of the governor in Virginia. The "inordinate desire of taking tobacco increasing, and the profit by planting it in England continuing," notwithstanding the proclamations of the late king, a new ordinance was promulgated in August, 1627. It commanded; that no tobacco shall be planted in England or Ireland, and that justices of the peace and constables shall pluck it up; that all imported from the colonies shall be delivered to the king's commissioners, at a price to be agreed on, of whom every one shall buy it; and that, for the prevention of frauds, no foreign tobacco shall be imported from the colonies.<sup>15</sup> And to be relieved from all these oppressions, as impolitic as they were unjust, we have seen the Virginians applying to the commons, for redress, in vain.

The committee of council for the colonies, at length however pitying the miseries of men, transmitted a new instruction to the governor and council, in July, 1634. It required, that "interests acquired under the corporation" should not be impeached; that the colonists "for the present may enjoy their estates and trades," as before the recalling of the patents; that lands "shall be disposed of to freemen, as was done before the year 1625."<sup>16</sup> But these concessions came far short of that remedy which the enormity of their oppressions seems to have required; and, though they may have palliated the disorders of the colony, they by no means effectuated a satisfactory cure. The Virginians, roused almost to madness by oppression, seized their governor, and sent him prisoner to England, accompanied by two deputies, to represent their grievances and his misconduct.<sup>17</sup> But little suited was the manner  
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of the application to procure them redress from the administration of those days. The conduct of both appeared in a very different light in England to what it had done within the colony; and the governor, being honoured with a new commission, which conferred former powers, was sent back to Virginia in April, 1637.<sup>18</sup> The wife reflected; that the government, which knows not when to give way to the just complaints of the subject, is fated to be undone.

The vanity of triumph had probably more influence, over a mind naturally severe, than the virtue of moderation; and, upon his return, he continued a rule of administration, which, at the same time that it had procured him reward, has entailed disgrace upon the reputation of his sovereign.<sup>19</sup> But, the complaints of the colonists became at length too loud to be unattended to, and too vehement to be any longer withstood; and Harvey's commission was revoked in January, 1638-9. During the ten years administration of that magistrate, the Virginians seem to have been ruled rather as the vassals of an eastern despot than as the subjects of the king of England, entitled to English liberties. The governor and council, appointed by the crown, were invested with the legislative power. They imposed taxes on the colonists without their consent. The prince restrained their trade by his proclamations. They enjoyed hardly the privilege of complaining, the last resource of the unfortunate and the weak. And these facts demonstrate, that they were governed as a conquered people, without either moderation, or good humour, or justice. The progress which the Virginians made, during that sad period of their annals, in population, industry, wealth, or in those pursuits that tend to refine or animate a people, was in exact proportion to the extent of the liberty which they enjoyed.

It is adversity which draws forth every latent virtue of the human mind. The opposition, that Charles had now met with in every part of his dominions, probably softened his spirit into some respect for the rights of men, for the privileges of his subjects. And he at length perceived the justice, perhaps the necessity, "of giving due encouragement to that plantation." Sir William Berkeley was appointed governor of Virginia in the beginning of the year 1639; and his commission was extremely

extremely similar to that of his predecessor.<sup>30</sup> But its recital declares the royal intention, “ that the colony should be regulated, as well in ecclesiastical as temporal government, according to the laws of this realm,” which he intended to establish there. And his instructions<sup>31</sup> evince a prodigious change in colonial policy. Among other things he was directed : To summon the burgesses of all the plantations, who, with the governor and council, shall constitute the grand assembly, with power to make acts for the government of the colony, as near as may be to the laws of England ; to cause speedy justice to be administered to all, according to the forms of this realm ; to oblige the masters of vessels, freighted with the productions of the colony, to give bond before their departure to bring the same into England ; giving for reason, “ that many ships carry such commodities into foreign countries, whereby the king loses the duties thereupon due, nothing being answered in Virginia ;” and to forbid all trade with foreign vessels, except upon necessity. Thus, while in England and in Scotland they were preparing for civil war, were given, to the wishes of the Virginians, a provincial legislature, a regular administration of justice, a government of laws. And, if the structure of liberty was not absolutely completed, “ that which was given them, says their historian,<sup>32</sup> was a constitution to their hearts content.” They were restored to that system of freedom, which they had derived from the Virginian company, and which the writ of quo warranto had involved in the same ruin with the corporation itself. And this beneficial change in their government made an alteration in the spirit of the people equally advantageous.

To the genius of Cromwell has been mistakingly attributed the measure of creating the monopoly of the colonial trade, which was established by an ordinance of the parliament, carried into execution during the protectorate, and, at a subsequent period, completely settled by the act of navigation. But, it is now apparent to whom the praise or the demerit of that policy ought to be ascribed. If the principle of that famous system descended from the father to the son, it was Charles who first attempted to carry it into practice, by the very means now so familiar in our laws. And its design was declared to be, “ that the sta-  
“ ple

“ ple of the commodities of the colony may be made here;” that “ the king might not be defrauded of his customs;” that “ the nation might be benefited, after expending so much upon that plantation, and transporting thither so many subjects.” But we shall find that it required the continued exertion of ages to execute it, without perfect success at last.

The appointment of a governor so different from Harvey, but, above all, a revolution in its constitution so essential and considerable, gave the greatest satisfaction to Virginia: And its former good humour returned with its present happiness and prosperity.” Yet, a felicity so great as it now enjoyed was, alas! of short duration. Alterations in political œconomy, when sudden and extraordinary, are always pernicious, and, even when well-intended and advantageous, are sometimes extremely inconvenient. When those instructions, and that policy, which have been mentioned, were rigorously executed, that province sadly experienced the truth of this observation. A commerce, then only in its infancy, and which had long struggled under the pressure of arbitrary regulations by proclamation, was at length almost totally destroyed. A similar spirit to that which then desolated England arose, and filled up the measure of its unhappiness. The cup of civil dissension was embittered by the intermixture of religious differences: Nor was the disease in the least mollified, but rather inflamed, by the acts that were made, “ to prevent sectary infection;” which prohibited the preaching of the doctrines of the puritans:” And those ministers of Massachusetts, whose zeal carried them thither in order to convert the ungodly Virginians, were obliged to return without success.

The discontented party did not find it difficult, at a time when every complaint against Charles was received with avidity, to present a petition to the house of commons, in the name of the assembly; “ praying for the restoration of the antient patents and corporation government.” But the governor, the council, the burgesses, actuated by a very different spirit from that of their predecessors in the year 1624, no sooner heard of a transaction so contrary to their views and to truth, than they transmitted an explicit disavowal of it: And they sent an address to that

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prince, acknowledging his bounty and favour towards them, and earnestly desiring to continue under his immediate protection. Nothing could be more acceptable to him than this spirited disavowal; and, after his retirement to York, he did not fail to assure them, “that he would never consent to the introduction of any company over them.”<sup>24</sup> The Virginians were not ungrateful. Animated with a genuine spirit of loyalty, they suffered every inconvenience; they braved every danger: And they remained unalterably attached to the cause of their sovereign.<sup>25</sup> What a fine lesson of instruction does this transaction offer to princes! It shews them, at what a cheap rate they may make their people happy, and procure their gratitude.

The exile of Charles II. did not altogether prevent his attention to his faithful Virginians. He transmitted from Breda, in June, 1650, a new commission to Sir William Berkeley, as governor: And it was almost the same as his former one. It declared the royal intention “of ruling and ordering Virginia according to the laws and statutes of England, which are to be established there.” It appointed the governor and council a court for determining all crimes and misdemeanors, conformably to the rules of English jurisprudence. It contained an additional clause, dictated by his situation: For the prevention of the rebellion of subjects, or the invasion of enemies, it empowered them “to build castles and fortifications, at the expence of the planters.”<sup>26</sup> And the event demonstrated, that this provision was as prudent as it was necessary. Thus, while that prince was not permitted to rule over England, he exercised the jurisdiction which belonged to him over Virginia.

The commons, having at length, by the most extraordinary exertions of skill, of courage, of power, gained a complete triumph over their opponents in Europe, had full leisure to turn their undivided attention to the plantations; to grant favours to their friends, and to inflict punishment on their adversaries. An ordinance was passed, in October, 1650, “for prohibiting trade with Barbadoes, Virginia, Bermuda, and Antego.”<sup>27</sup> It recited; that in Virginia, and divers other places in America, there are colonies which were planted at the cost, and settled by the people and by the authority, of this nation, which are and ought

ought to be subordinate to, and dependent upon, England; that they ever have been, and ought to be, subject to such laws and regulations as are, or shall be, made by the parliament; that divers acts of rebellion have been committed by many persons inhabiting Virginia, whereby they have most traiterously usurped a power of government, and set up themselves in opposition to this commonwealth. It therefore declared such persons "notorious robbers and traitors;"<sup>28</sup> and it forbade all persons to have any connexion or confederacy with them. It prohibited all vessels of foreign nations from going to, or trading in, any of the English plantations in America; empowering the ships of the parliament to seize them. It authorized the council of state to send a fleet thither, and to grant commissions to proper persons, to enforce all such to obedience as stood opposed to the authority of the parliament; "any letters patents to the contrary notwithstanding." In pursuance of this ordinance, the ruling powers instantly appointed commissioners, and detached Sir George Ayscue, with a powerful fleet and army, to reduce all their enemies to submission. And the instructions,<sup>28</sup> which were given them on that occasion, are singularly remarkable. They were empowered, to use their endeavours, by the granting of pardons and other peaceful arts, to bring the colonists to the obedience of the state of England; but, if these means should prove ineffectual, then to employ every act of hostility; to set free such servants and slaves of masters, who oppose the present government, as will serve as soldiers to subdue them; to cause the acts of parliament to be executed, and justice to be administered, in the name of the commonwealth. Modern transactions have rendered extremely interesting the ordinance and the instructions of a body of men so celebrated in English history, whose principles and achievements have been described by the favourite daughter of liberty as "unexampled in the annals of recorded time."<sup>29</sup> In addition to this panegyric, it may be truly said of them, that they were too wise to make the declaratory ordinance before-mentioned without meaning, and too vigorous to claim rights that they were not ready to enforce by the sword. The colonies, during those days, had but too much cause to regret the truth of this observation.

The governor of Virginia continued nevertheless firmly attached to his sovereign. Having hired a few Dutch ships, which were then trading there contrary to the royal instructions, and being well supported by the loyalists, he made a gallant resistance. But it was impossible to contend long against a faction within, and a potent enemy without; and he was constrained to submit to the good fortune of the commonwealth; procuring a general pardon for the colony, regardless of himself. "It ought to be remembered, to the honour of Virginia, says its "historian," that it was the last which submitted to the usurpation." And thus was it compelled to obey that power, which the parliament had asserted, of binding the colonists by regulations in all cases whatsoever.

The commons had no sooner overcome all their adversaries than they were themselves subdued by Cromwell, in April, 1653. This extraordinary personage, the most singular character in history, possessed a genius, it should seem, that, in whatever way he turned his views, expanded in proportion to his object, or correspondent to his situation. Were he not the first, who best understood the nature and utility of plantations, he at least was the first ruler of England who had the spirit and the power to carry his projects into effectual execution. While the beloved New-England was exempted, he rigorously enforced the ordinance of 1650 over the obnoxious Virginians. The restrictions on their trade, at a time when the state could neither take off their commodities nor sufficiently supply them with its own, and while Massachusetts enjoyed a monopoly against them, were productive of all the inconveniences which sudden changes in policy always produce: And they felt that resentment which the hearts of the high-minded always feel when they observe contumely added to wrongs. Actuated partly by a sense of their injuries, perhaps more by their loyalty, they seized the occasion of the death of the protector's governor to throw off the tyranny of the usurpation. They applied to Sir William Berkeley, who had lived privately on his estate, during the revolutions of the times, to resume the government of the colony: But he did not consent till they solemnly promised to venture their lives and fortunes with him for their king. Before they had heard of the death of  
Cromwell,

Cromwell, or of the anarchy that ensued in England, Charles II. was proclaimed, by them, king of England, Scotland, Ireland, and of Virginia. "And thus, says their historian," his majesty was actually king "in that colony before he was so in England." The Restoration soon after ensued, and fortunately prevented that chastisement which the ruling powers had the ability, and probably would have had the inclination, to inflict. Yet the Virginians were not soon gratified with tidings of that pleasing event; though, in the mean time, "they did not arrogate, "if we may believe Sir William Berkeley," any power farther than the "miserable distractions of England forced them to. For, when God "shall be pleased, in his mercy, to dissipate the unnatural divisions of "their native country, they will immediately return to their professed "obedience." Thus acting with the becoming spirit of Englishmen, without the least tincture of independence.

Originally settled by men only, who, for years, could hardly procure "wives, it was a long time, says their historian,"<sup>34</sup> before Virginia saw a "race of English born on the spot." But, after the difficulties incident to the settlement of colonies were in some measure surmounted, and the voyage thither had been shortened by the improvement of navigation, and rendered more familiar by use, whole families transported themselves thither. When the instructions of Charles I. gave large tracts of land to individuals, men of consideration and wealth, roused by religion, or ambition, or caprice, removed thither; and the population of that colony had increased to about twenty thousand souls at the commencement of the civil wars. The colonists, enjoying plenty of good land, and subsisting with ease, naturally increased abundantly. And the cavaliers resorting thither, during the distresses of those times, Virginia contained about thirty thousand persons at the epoch of the Restoration.<sup>35</sup>

## AUTHORITIES

## AUTHORITIES AND NOTES.

The following authentic paper, which contains a variety of interesting particulars, illustrates the principles of those days, and exhibits recent transactions in a very striking light. — From Rym. Fœd. 18 vol. p. 72-4.

“ *A proclamation for settling the plantation of Virginia.*

1625. } Whereas the colony of Virginia, planted by the  
 1 An. Car. I. } hands of our most dear father, of blessed memory, for the propagation of the Christian religion, the increase of trade, and the enlarging of his royal empire, hath not hitherto prospered so happily as was hoped and desired; a great occasion whereof his late majesty conceived to be, for that the government of that colony was committed to the company of Virginia, incorporated of a multitude of persons of several dispositions, amongst whom the affairs of greatest moment were and must be ruled by the greatest number of votes and voices; and therefore his late majesty, out of his great wisdom and depth of judgement, did desire to resume that popular government; and, accordingly, the letters patent of that incorporation were, by his highness's direction, in a legal course questioned, and thereupon judicially repealed, and adjudged to be void: Wherein his majesty's aim was only to reduce that government into such a right course as might best agree with that form which was held in the rest of his royal monarchy, and was not intended by him to take away or impeach the particular interests of any private planter or adventurer, nor to alter the same otherwise than shall be of necessity for the good of the public. And whereas we continue the like care of those colonies and plantations as our late dear father did, and upon deliberate advice and consideration, are of the same judgement as our said father was for the government of that colony of Virginia. Now, lest the apprehension of former personal differences, which have heretofore happened, (the reviving and continuing whereof we utterly disallow and strictly forbid,) might distract the minds of the planters and adventurers, or the opinion



opinion that we would neglect those plantations might discourage men to go or send thither, and so hinder the perfecting of that work, wherein we hold the honour of our dear father, deceased, and our own honour to be deeply engaged; we have thought fit to declare, and by our royal proclamation to publish, our own judgement and resolution in these things; which, by God's assistance, we purpose constantly to pursue, and therefore we do, by these presents, publish and declare to all our loving subjects, and to the whole world, that we hold those territories of Virginia and the Somer-islands, as also that of New-England, where our colonies are already planted, and within the limits and bounds whereof our late dear father, by his letters patent, under the great seal of England, remaining on record, hath given leave and liberty to his subjects to plant and inhabit, to be a part of our royal empire descended upon us: And that we hold ourself as well bound, by our royal office, to protect, maintain, and support, the same, and are so resolved to do, as any other part of our dominions; and that our full resolution is, that there may be one uniform course of government in and through all our whole monarchy, that the government of the colony of Virginia shall immediately depend upon ourself, and not be committed to any company, or corporation; to whom it may be proper to trust matters of trade and commerce, but cannot be fit or safe to communicate the ordering of state-affairs, be they of never so mean consequence; and that therefore we have determined, that our commissioners for those affairs shall proceed according to the tenor of our commission directed unto them: Nevertheless we do hereby declare, that we are resolved, with as much convenient expedition as our affairs of greater importance will give leave, to establish a council, consisting of a few persons of understanding and quality, to whom we will give trust for the immediate care of the affairs of that colony, and who shall be answerable to us for their proceeding, and, in matters of greater moment, shall be subordinate and attendant unto our privy-council here: And that we will also establish another council to be resident in Virginia, who shall be subordinate to our council here for that colony: And that at our own charge we will maintain those public officers and ministers, and that strength of men, munition, and fortifications,

tions, as shall be fit and necessary for the defence of that plantation; and will, by any course that shall be desired of us, settle and assure the particular rights and interests of every planter and adventurer in any of those territories, which shall desire the same, to give them full satisfaction for their quiet and assured enjoying thereof: — And, lastly, whereas it is agreed, on all sides, that the tobacco of those plantations and the Somers-lands (which is the only present means of their subsisting) cannot be managed for the good of the plantations unless it be brought into one hand, whereby the foreign tobacco may be carefully kept out, and the tobacco of those plantations may yield a certain and ready price to the owners thereof, we do hereby declare, that, to avoid all differences and contrarieties in opinions, which will hardly be reconciled between the planters and adventurers themselves, we are resolved to take the same into our own hands, and, by our servants, or agents, for us to give full prices to the planters and adventurers for the same, as may give them reasonable satisfaction and encouragement, but of the manner thereof we will determine hereafter at better leisure: And, in the mean time, because of the importation and use of foreign tobacco, which is not of the growth of those plantations, or of one them, will visibly and assuredly undermine and destroy those plantations, by taking away the means of their subsistence, — we do hereby strictly charge and command, that our late proclamation, bearing date the ninth day of April last, intitled, “ a proclamation touching tobacco,” shall, in all points and parts thereof, be duly and strictly observed, upon pain of our high displeasure, and such farther penalty and punishment as by the said proclamation are to be inflicted upon the offenders. And we do hereby advise all our loving subjects, and all others whom it may concern, not to adventure the breach of our royal commandment in any of the premises, we being fully resolved, upon no importunity or intercession whatsoever, to release or remit the deserved punishment of such as shall dare to offend against the same, seeing we hold not ourself only, but our people interested therein. Given at our court, at Whitehall, the 13th of May. — By the king himself.”

<sup>2</sup> The story of tobacco would contain almost the whole politics of the southern colonies during that age. Charles I. holding it to be a matter of great consequence to him, and to the honour of his crown, not to desert or to neglect those colonies, whereof the foundation had been so happily laid by his father, in April, 1625, issued a proclamation, enforcing that of his predecessor in the foregoing March. — Rym. Fœd. 18 v. p. 19. — Considering the plantations as only in their infancy, as having yet no other commodity, he empowered certain persons, in January, 1627, to seize all foreign tobacco, and to contract for all of the plantations; giving this additional reason, that the colonies will be utterly destroyed if any other be allowed. — The commission is in Rym. Fœd. 18 v. p. 831. — Yet, observing, in the subsequent February, that the desire of taking tobacco still increased notwithstanding every opposition, that his subjects preferred the Spanish, and being willing to give way to the infirmities of his people, he allowed the importation of 50,000 lb. of foreign tobacco into the port of London; he prohibited the growth of it in England or in Ireland: And he threatened all with the star-chamber who disobeyed his proclamation. — Ib. 848. — He soon after issued an order for sealing all colonial tobacco. — Ib. 886. — In August, 1627, he published a proclamation for the discouragement of it; commanding, that none shall be imported without licence, and even then to be delivered to his commissioners, that all planted in England shall be plucked up. — Ib. 920. — An ordinance was promulgated in January, 1631; commanding, that none shall be planted in England, that no foreign tobacco shall be imported; that none shall be brought from the colonies, but only into the port of London. — Ib. 19 v. p. 235. — In October, 1633, a proclamation was published, “for preventing the abuses growing by the unordered retailing of tobacco.” — Ib. 474. — A new edict was soon after issued for preventing the abusive vending of that merchandise, and prohibiting the growth of it in the king’s dominions. — Ib. 522-53.

<sup>3</sup> The commission and instructions are in the record in the Plantation-Office, titled Virginia, vol. 1. p. 248-57.

<sup>4</sup> The proclamation before inserted.

<sup>5</sup> Commons Journ. 1 v. p. 819-25-830-1. — <sup>6</sup> Ib. 863. — <sup>7</sup> Ib. during that session. — <sup>8</sup> Ib. 874-84-6-890-8.

<sup>9</sup> The several charters, of Massachusetts in 1629 and 1692, of Maryland in 1632, of Connecticut and Rhode-Island in 1662-3, of Pennsylvania in 1681; all contain an express clause, reserving this important right, in almost the very words of the resolves of the commons; who had only contended for the common law and common right of the subject. The charters were merely declaratory of both: Nor could the king, by his grant, restrain Englishmen from fishing whither gain directed their adventures. It is pleasing to remark; that the wisdom of Elizabeth spontaneously reserved that to all her subjects, which the folly of James refused to their prayers. — See the patent, granted by her to Raleigh, in Hackluyt, 1 v. p. 725-8.

The history of this clause in the charter of Maryland, which has been so fully given, decides a long-contested point in the jurisprudence of that province. Whether the reservation of the right of fishing related to the subjects of England and Ireland only, according to the express words of it, or to the inhabitants of Maryland also, has been long, and sometimes forcibly debated. The latter, adjudging the dispute in their own favour, have at all times exercised the privilege, though not always without opposition. By the common law they may assuredly fish in all navigable creeks and rivers: But, a freedom to tread the soil of the freehold, or to appropriate any of the productions of it, requires some special authority. Such is the law of Virginia: All may fish in its numerous bays and rivers; but, none can land on their banks without the consent of the owners. The ancient law of Massachusetts, though contradictory to the express reservation of the charter, gave the fishermen a right to use any harbour, to occupy the adjoining shores for curing their fish, to take timber and fire-wood; “paying the town, or persons who are the proprietors, for the same.” — New-Eng. laws abridged, p. 40. — Thus history becomes subservient to the purposes of law as a science.

<sup>10</sup> Mod. Univ. Hist. 41 v. p. 340; Record, titled Virginia, v. 1. p. 204-8. — <sup>11</sup> Com. Journ. 1 v. p. 914-18. — <sup>12</sup> Ib. 926-32. — <sup>13</sup> Ib. 919-20. — <sup>14</sup> Rym. Fœd. 18 v. p. 980.

<sup>15</sup> Present

<sup>15</sup> Present State of Virg. p. 47-50; Brit. Emp. Am. 1 v. p. 230.

<sup>16</sup> Rym. Fœd. 18 v. p. 920.

<sup>16</sup> The following paper is subjoined; because it shews equally the state of Virginia, during those days, and the temper of the administration of Charles I. — From Virg. Ent. 1 v. p. 211.

*A letter from the committee of colonies to the governor and council of Virginia.*

After our hearty commendations. We have thought fit to let you know, that his majesty, of his royal favour, and for the better encouragement of the planters there, doth let you know, that 'tis not intended, that interests, which men have settled when you were a corporation, should be impeached, that for the present they may enjoy their estates with the same freedom and privilege as they did before the recalling of their patents; to which purpose also, in pursuance of his majesty's gracious intention, we do hereby authorise you to dispose of such proportions of lands to all those planters, being freemen, as you had power to do, before the year 1625. — Whitehall, 22 July, 1634.

To our loving friends,  
the governor and  
council in Virginia.

Manchester. Kelley. E. New-  
burgh. T. Coventry. F. Cot-  
tington. T. Germin. F.  
Windebank.

<sup>17</sup> Brit. Emp. in Am. 1 v. p. 240. — <sup>18</sup> Record, Virgin. 1 v. p. 212. —  
<sup>19</sup> Brit. Emp. in Amer. 1 v. p. 240.

<sup>20</sup> The annexed extracts of the instructions given to Sir William Berkeley, at the same time that they contain a variety of particulars, which demonstrate the condition of the colony at the commencement of the civil wars, justify the foregoing observations.

1st. That God may be served according to the form established in the church of England; a parsonage-house and a stipend to be allowed to the minister by every congregation: And no innovation in matters of religion to be suffered. 2dly. The oaths of supremacy and allegiance to be ad-

ministered to residents; and the refusers of them to be sent home. 3dly. To be vigilant to prevent delay or corruption in the administration of justice. 4thly. May establish courts of justice to hold plea of the value of 10l. or under; and for the punishment of such crimes as the council should think fit. 5thly. The governor may appoint magistrates for the execution of acts of assembly and of the council, and all officers under the degree of a counsellor. 6thly. All counsellors shall be exempted from public charges. 7thly. The governor may make probate of wills and grant letters of administration, as heretofore used. 8thly. "New-comers" to be exempted from public burdens for one year; to grant 50 acres of land to every person transported thither, since the year 1625, according to the orders of the late company, and since allowed by his majesty: And to convey, to others, lands, formerly granted, and deserted for many years. 9thly. To oblige every one possessing 500 acres of land to build a brick-house: And, with the consent of the assembly, may remove the capital to a more healthy place, still calling it James-Town. 10thly. To oblige the planters to inclose their orchards and their fields; to allow no corn to be sent out of the country without leave of the governor. 11thly. Whereas the staple of tobacco is still falling in its value, the planting of it to be stinted to a far less proportion than was made the former year: And because of the great debts due by the planters, occasioned by the excessive rates of commodities, that the course formerly commanded by his majesty, for regulating the debts of the colony, shall be duly observed. 12thly. That the governor use his best endeavour to cause the people to apply to the raising of hemp, flax, rape-seed, madder, pitch, tar, turpentine, vines, mulberry-trees, and silk-worms. 13thly. That merchants shall not be allowed to bring in excessive quantities of liquors, but necessary commodities; nor shall they be restrained, but may make their own bargain for tobacco. 14thly. Whereas many ships, laden with tobacco and other merchandises, have thence carried the same directly to foreign countries, whereby his majesty loseth the duties thereupon due, there being nothing answered in Virginia; you shall be very careful that no vessel depart thence loaded with those commodities, before bond, with sufficient sureties, be taken to his majesty's use, to bring the same into his majesty's

majeſty's dominions, and to carry a lading from thence; that the ſtaple of thoſe commodities may be made here; whereby his majeſty, after ſo great an expence upon that plantation, and ſo many of his ſubjects transported thither, may not be defrauded of what is juſtly due for customs on the goods: The bonds to be tranſmitted, that delinquents may be proceeded againſt. 15thly. To forbid all trade with any foreign veſſels, except upon neceſſity: The governor ſhall take good bonds of the owners of tobacco, that it be brought to the port of London, there to pay ſuch duties as are due. — See the Inſtructions in Record, Virginia, vol. 1, p. 218.

<sup>21</sup> Preſent State of Virg. p. 47. — <sup>22</sup> Ib. 52. — <sup>23</sup> Brit. Emp. in Am. i v. p. 240-2.

<sup>24</sup> The following letter from Charles I. to the aſſembly of Virginia eſtabliſhes ſeveral important facts, and ſhews how much the mind of that prince had been ſoftened by adverſity. — From Virg. Ent. v. 1. p. 237.

C. R.

Truſty and well-beloved, we greet you well. Whereas we have received a petition from you, our governor, council, and burgeſſes of the grand aſſembly in Virginia, together with a declaration and proteſtation, of the firſt of April, againſt a petition preſented in your names to our houſe of commons in this our kingdom, for reſtoring of the letters patent for the incorporation of the late treaſurer and council, contrary to our intent and meaning, and againſt all ſuch as ſhall go about to alienate you from our immediate proteſtion. And whereas you deſire, by your petition, that we ſhould confirm this your declaration and proteſtation under our royal ſignet, and tranſmit the ſame to that our colony; theſe are to ſignify, that your acknowledgements of our great bounty and favours towards you, and your ſo earneſt deſire to continue under our immediate proteſtion, are very acceptable to us; and that, as we had not before the leaſt intention to conſent to the introduction of any company over that our colony, ſo we are by it much confirmed in our former reſolutions, as thinking it unfit to change a form of government wherein (beſides many other reaſons given and to be given) our ſubjects there (having had ſo long experience of it) receive ſo much content and ſatisfaction.

fatisfaction. And this our approbation of your petition and proteſtation we have thought fit to tranſmit unto you under our royal ſignet. — Given at our court at York, the 5th day of July, 1642.

To our truſty and well-beloved our governor, council, and burgeſſes, of the grand aſſembly of Virginia.

<sup>25</sup> Brit. Emp. in Am. 1 v. p. 242. Hume's Hiſt. of Engl. 4to. 2 v. p. 35. — <sup>26</sup> Record, Virgin. 1 v. p. 238. — <sup>27</sup> Scobel's Acts, 1650, ch. 28. — <sup>28</sup> Theſe inſtructions are in Thurloe's State Pap. 1 v. p. 197-8. — <sup>29</sup> Macaulay's Hiſt. of England, 5 v. p. 91. — <sup>30</sup> Hume's Hiſt. of Engl. 4to. 2 v. p. 35. Brit. Emp. in Am. 1 v. p. 242, 3. Preſent State of Virgin. p. 54. — <sup>31</sup> Ib. 55, 6. — <sup>32</sup> Brit. Emp. in Am. 1 v. p. 244, 5. — <sup>33</sup> See his letter, dated in Auguſt, 1660, to Stuyveſant, the governor of New-Netherlands, in Smith's Hiſt. of N. York, p. 10. — <sup>34</sup> Brit. Emp. in Am. 1 v. p. 242-89. — <sup>35</sup> Preſent State, 2 pt. 50.

The following extract of a letter, dated at Barbadoes, 30 March, 1655, from Edward Winſlow, one of the protector's commiſſioners in the famous Weſt-Indian expedition, to ſecretary Thurloe, demonſtrates as well the temper with which Cromwell and his associates ruled the colonies during the ſeaſon of their triumph, as ſupports the reaſonings in the text. — From a collection of papers by Mr. Hutchinſon, p. 269.

“ The general hath ſettled the militia of the iſland, and given commiſſions to four regiments of horſe and four of foot, and made the governor his lieutenant-general. I hope it will conduce to the public weal of the place. We have made bold to refer our commiſſioners to make uſe of their exciſe-office, whereof the governor had a 3d, which 3d we ſtill leave him to poſſeſs ; but, whereas they call upon their articles, I tell them they have broken that article ; for, whereas they were to pay the public debts of the iſland therewith, they have received all theſe two years profits paſt, and we none at all ; and now we ſhall reap the crop of this third year, but with a great deal of indignation to many. We aſk them how long his highneſs ſhall wait their pleaſure to receive his royalties.”



## CHAP. VI.

*Various colonies settled around Massachusetts-Bay. — An assylum for silenced ministers projected. — A grant of lands obtained from the council of Plymouth. — Confirmed by Charles I. — Charter of Massachusetts. — Remarks. — A colony formed at Salem. — Its church established. — Observations. — Church of England suppressed. — Its principal members expelled. — Distresses of the settlement. — The persecuted apply to the governor and company for redress. — Reflections.*

WHEN the Brownists nestled at Cape Cod they found a considerable part of the neighbouring country paying prompt obedience to the virtues and talents of Massasoet, a renowned sachem of those days, who has acquired the glory of conferring his name on an arm of the ocean, which stretched far into his dominions. Of the territory around Massachusetts-Bay various grants had been made, at different times, by the council of Plymouth, which were afterwards either derided or disregarded. And upon its shores several inconsiderable settlements were made, with a success in proportion to the views or imbecillity of the planters.

Actuated partly by the restless spirit of the times, but more by religious motives, a little colony emigrated from the West of England, under the conduct of Conant, in the year 1626; and settled on that part of the American coast which afterwards acquired the name of Salem. But, encountering soon all the disasters incident to the formation of plantations, his followers became miserable in a situation where they found only an inhospitable wilderness; and, when they recollected the pleasures of their youth, they resolved to return to their native land. Meanwhile, White, a minister of Dorchester, had projected an assylum for the silenced non-conformist clergy, who then thought themselves persecuted, because they were not allowed to persecute. And he exhorted his countrymen by no means to desert their settlement: Promising to send them speedily a patent, necessaries, and friends. Relying on these assurances, the emigrants determined

determined to suffer patiently all the miseries which appeared lately so intolerable, because they were unattended with hope.<sup>2</sup>

In prosecution of these views, that gentleman entered into a treaty with the council of Plymouth for a grant of part of New-England; which was soon concluded, because the interest of both concurred. In March 1627-8, that corporation conveyed the territory, at the bottom of Massachusetts-Bay, situated between the rivers Merrimack on the North, and Charles on the South, to Sir Henry Roswell<sup>3</sup> and others, for ever, with various privileges and powers. Planters and servants were soon after dispatched under the command of Endicot, whose deep enthusiasm engaged him zealously to promote the success of an enterprise which was to gratify the favourite passions of every one. And, in September, 1628, he laid the foundation of Salem, the first permanent town of Massachusetts:<sup>4</sup> Thus marking the extent of their fanaticism by the name which they gave to their settlement.

But the patentees were soon convinced, that to transport a colony to so distant a country, and to maintain it for years, without return of profit, was a project far beyond their abilities: And they applied to several persons of greater fortune and consideration to become partners in their adventure, with a success equal to the prudence of the measure. Yet, judging from the experience of former colonial companies, these men doubted partly the validity of the late conveyance, but more the authority given by it to rule the intended plantation. And they insisted therefore, not only that a charter should be obtained from the crown, to confirm the grant of the council of Plymouth and to authorise them to govern the colonists, but that their names should be inserted in it, and their affairs transacted at London.<sup>5</sup> With all these intentions a patent was accordingly applied for; and obtained, by the solicitation of Lord Dorchester, from Charles I. in March, 1628-9.<sup>6</sup> And, whether we reflect, that this is the only charter which Massachusetts possessed prior to the Revolution, which contained its most ancient privileges; that on this was most dexterously established not only the original government of that colony but independence itself: A minute discussion of it must appear equally necessary and interesting.

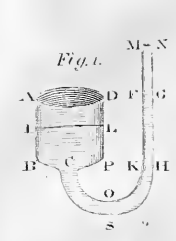


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Fig. 3.



Fig. 4.



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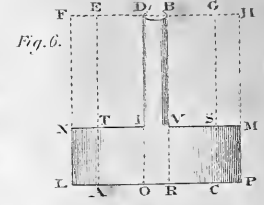


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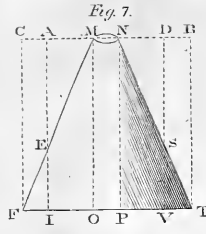


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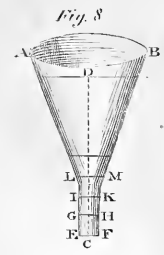


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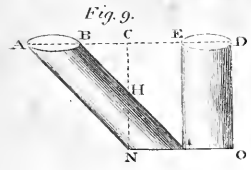


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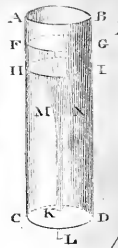


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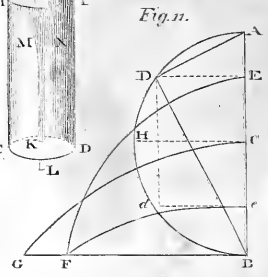


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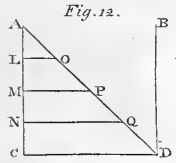


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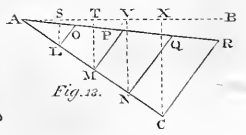


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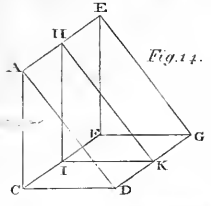


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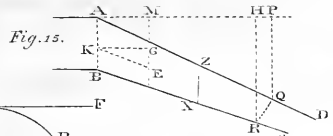


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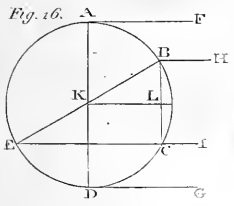


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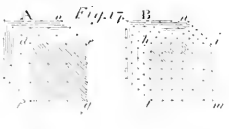


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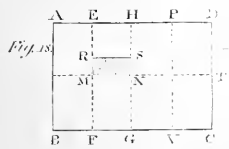


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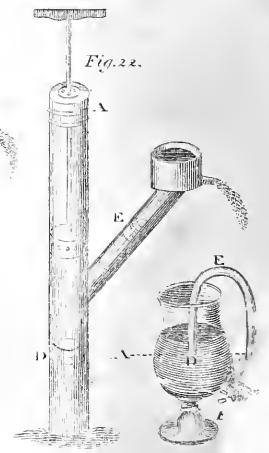
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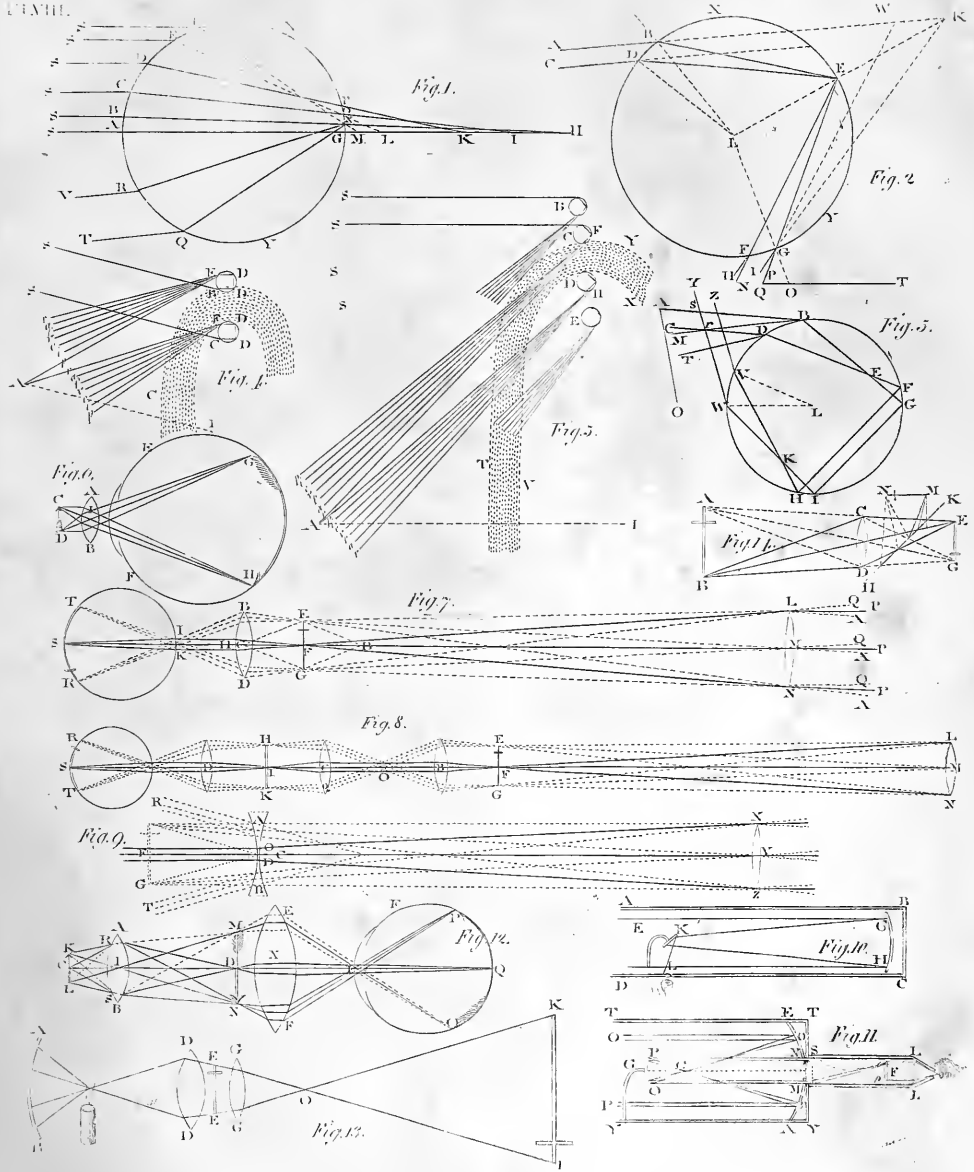
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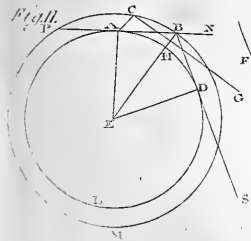
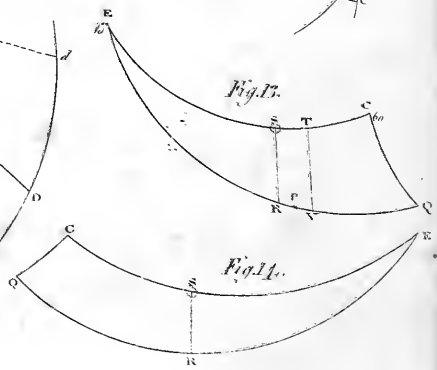
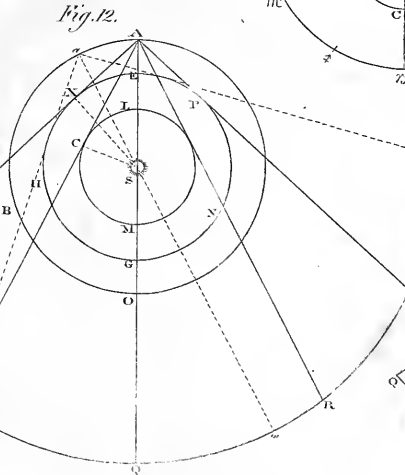
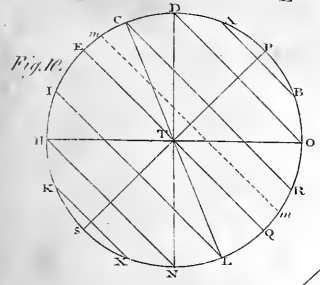
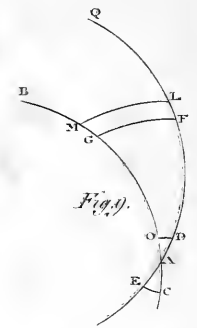
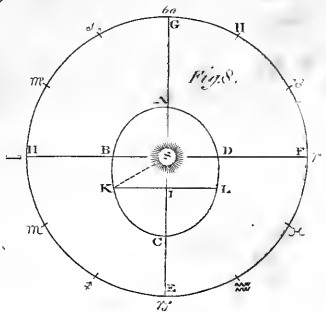
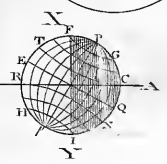
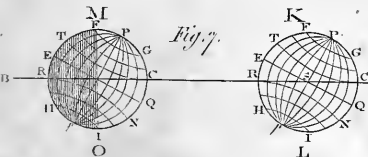
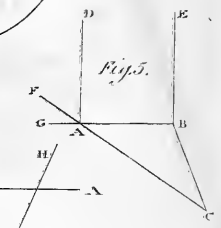
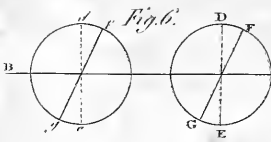
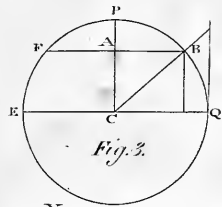
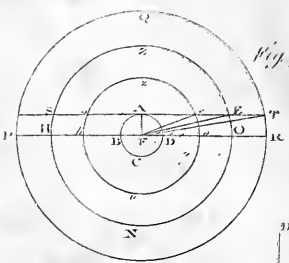
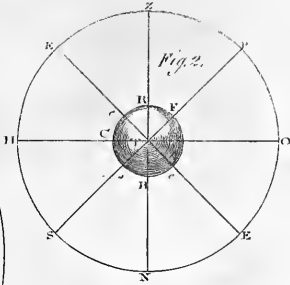
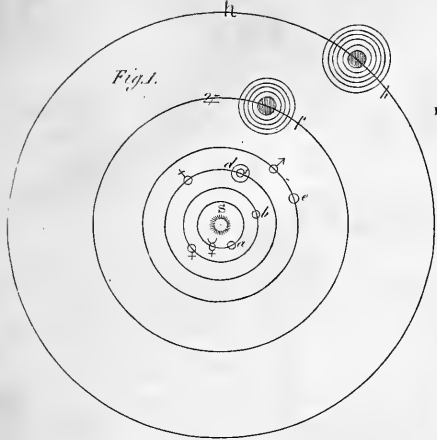
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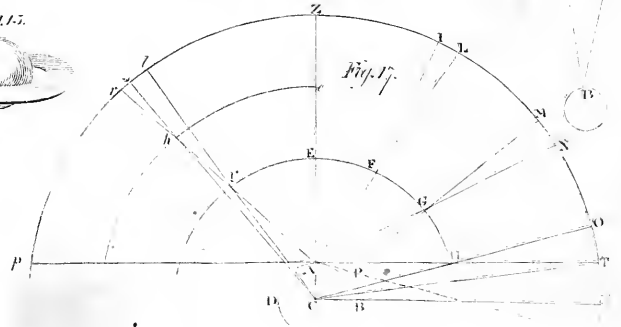
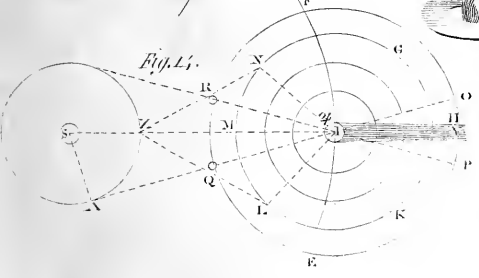
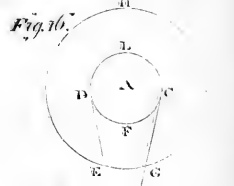
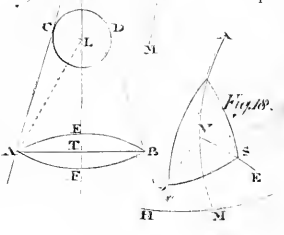
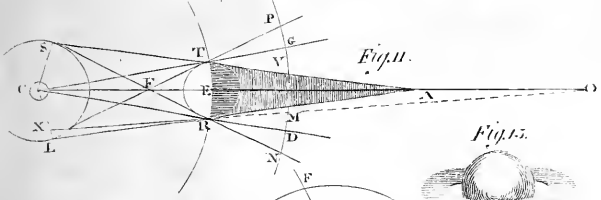
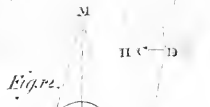
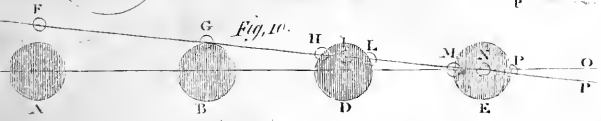
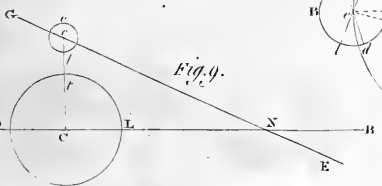
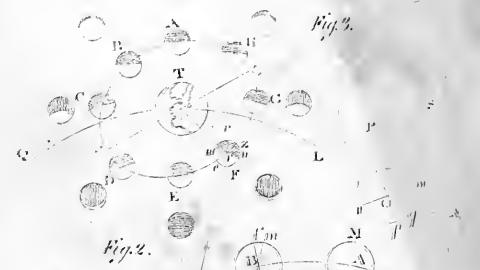
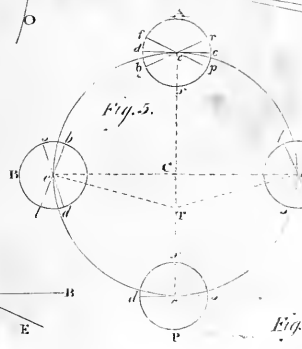
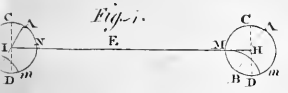
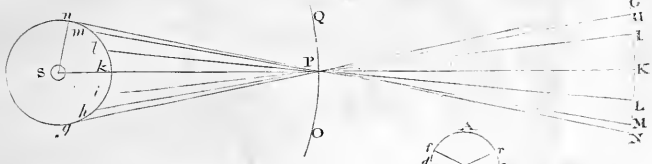








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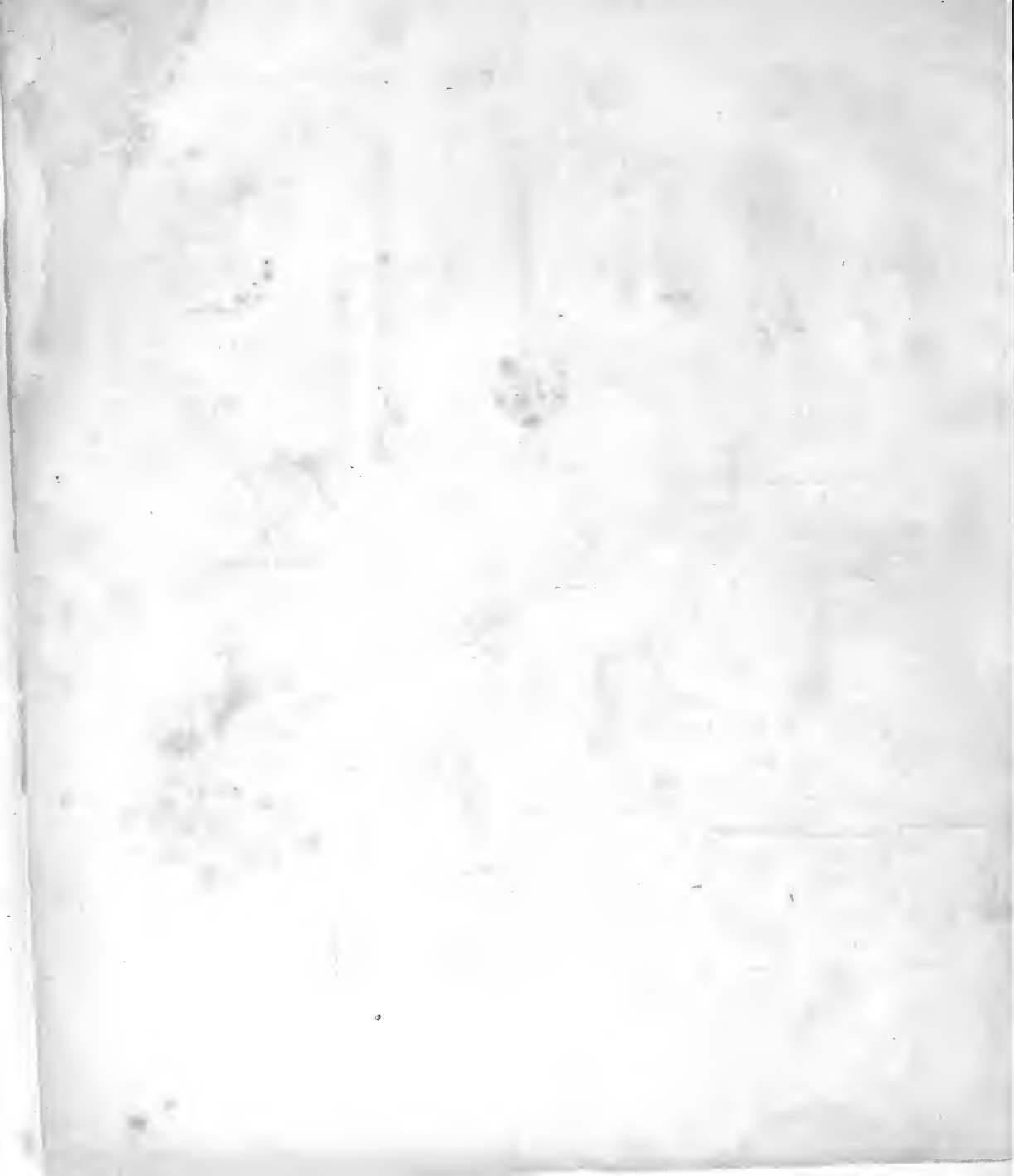


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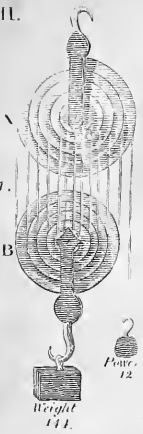


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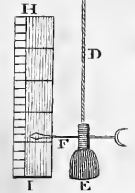


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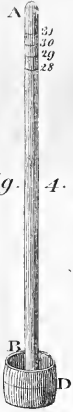


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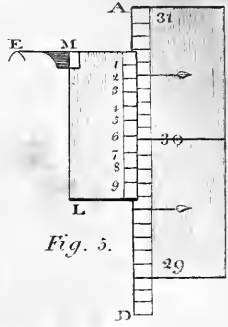


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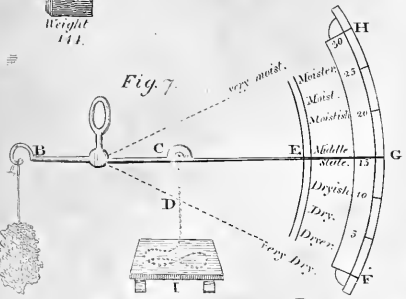


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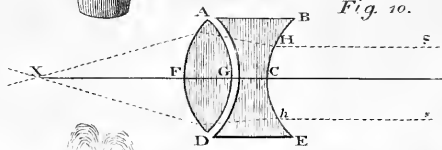


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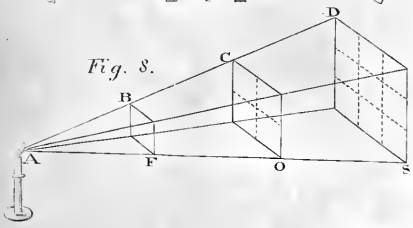


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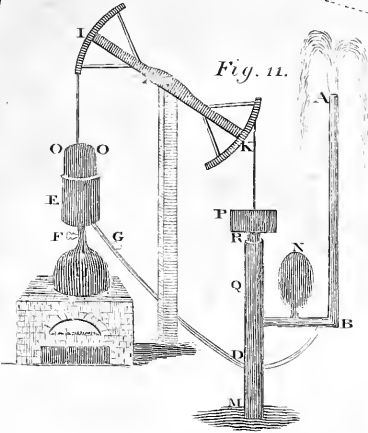


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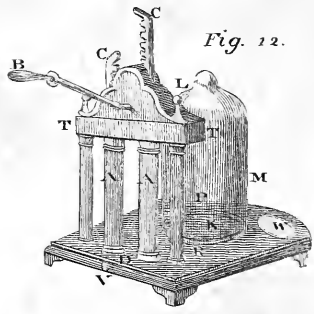


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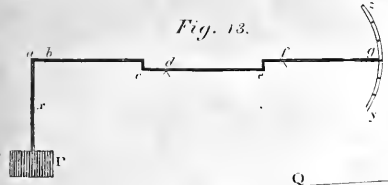
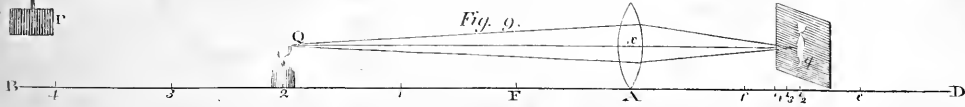
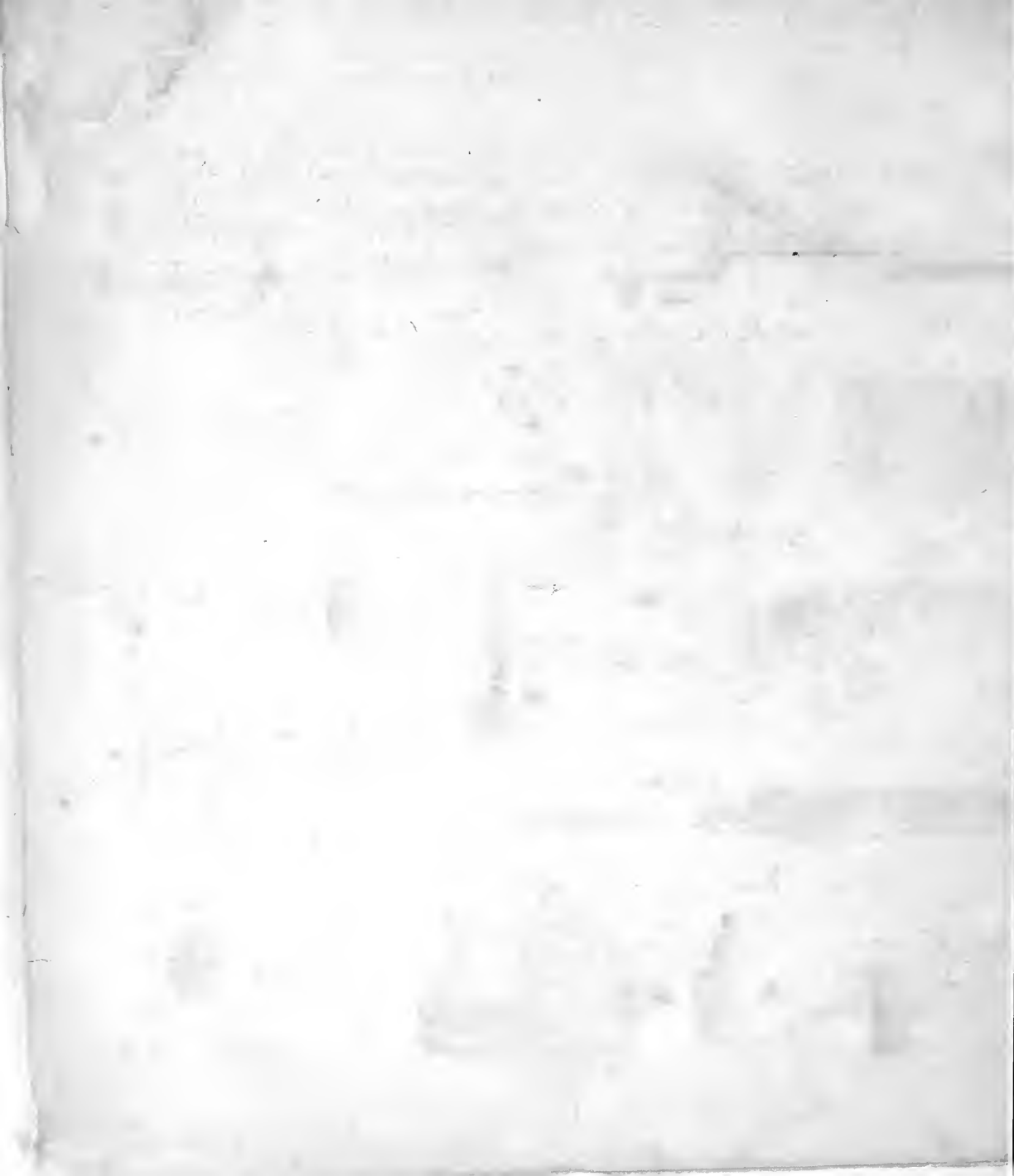
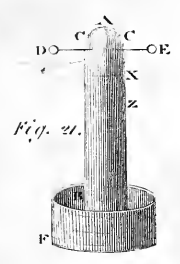
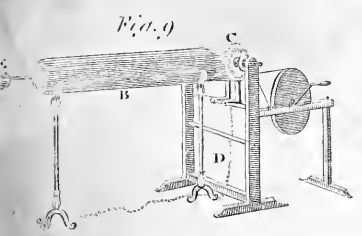
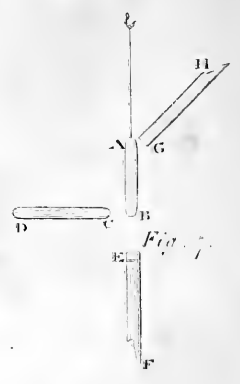
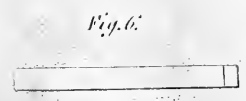
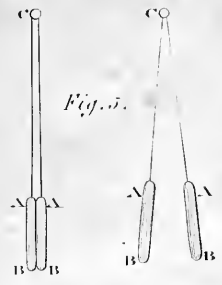
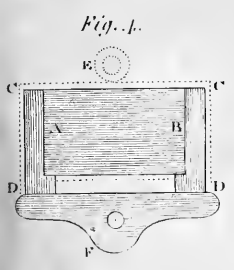
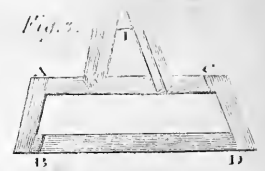
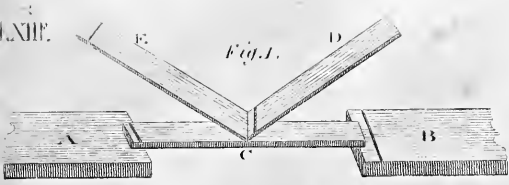


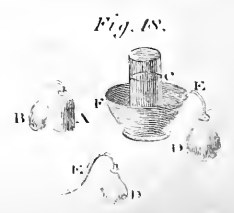
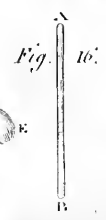
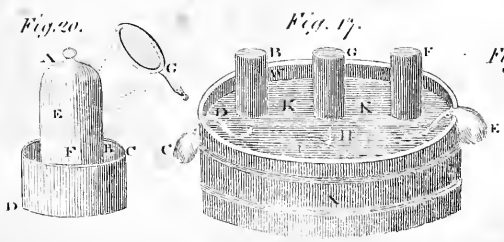
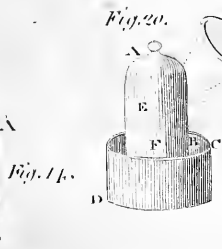
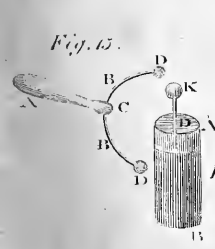
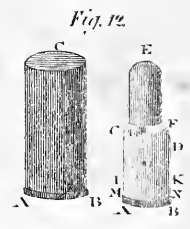
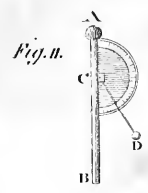
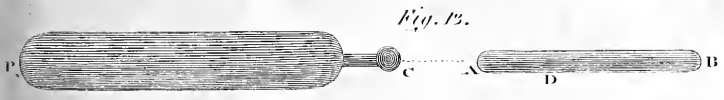
Fig. 9.







*Fig. 11.*





This patent recited the grant of American territory to the council of Plymouth, in 1620, and its subsequent sale of a small portion thereof before-mentioned. It re-granted to Sir Henry Roswell and others that part of New-England which extendeth between the rivers Merrimack and Charles, and also those lands situated within the space of three English miles of the south-side of Charles-River, and of the northern margin of Merrimack, or to the southward of the most southern part of the former, or to the northward of every part of the other, for its length; and, for its breadth, from the Atlantic to the South-Sea: To be holden by them, their heirs, and assigns, in free and common soccage, as of the manor of East-Greenwich; paying in lieu of all services one-fifth of the gold and silver that should be found. The necessity "of good government, for the prosperous success of the intended emigration," being apparent, the grantees were incorporated by the name of "the governor and company of Massachusetts-Bay, in New-England." The whole executive power of the corporation was invested in a governor, a deputy, and eighteen assistants: And their general duty was, "for the best disposing and ordering of the lands granted, of the affairs of the plantation, of the government of the people there." The governor, and seven or more assistants, were authorized to meet in monthly-courts, "for dispatching such businesses as concerned the company or settlement." But, the legislative power of the corporation was invested in "a more solemn assembly:" And this body was to be composed of the governor, the deputy, the assistants, and of the whole freemen of the company in person. It was directed to be held "every last Wednesday in the four terms;" and these meetings were named "the four great and general courts." It was empowered to make ordinances for the good of the body politic, for the government of the plantation and its inhabitants; "so that they should not be repugnant to the laws of England." It was authorized to elect freemen, a governor, a deputy, assistants, and other necessary officers. The governor and company were enabled to transport to New-England "all such of the subjects of that prince as shall be willing to accompany them, and such strangers as will become subjects and live under his allegiance;" yet, upon this proviso, "that none of the said

“ persons be such as shall be especially restrained.” And the emigrants and their posterity were declared “ to be natural-born subjects, and entitled to the immunities of Englishmen within every other dominion of the crown, as if born within the realm.” They were empowered to carry thither warlike stores and merchandises, without paying any custom for the space of seven years : And, as a farther encouragement, they were exempted from the payment of taxes in New-England during the same term, and from any duty on commodities imported to England or any dominion of the crown, or exported from them, for one-and-twenty years after the expiration of the former term of exemption, except five in the hundred of the value for custom. “ That the colony, which was “ to be planted, might be so religiously and civilly governed, as the good “ life and orderly conversation of the inhabitants might invite the natives to the knowledge of the Christian faith ; which, in the royal intention, and in the adventurers free profession, was the principal end “ of the plantation ;” power was conferred on the general-court and its successors, to establish ordinances and instructions, which should not be contrary to the laws of the realm, for settling forms of government for the colonists ; for appointing such lawful fines, imprisonments, or other lawful correction, according to the course of other corporations in this realm ; for naming necessary officers. And these ordinances, being published under the seal of the company, were to be duly observed and executed within the plantation. The chief commander and other magistrates, who should from time to time be employed, by the governor and company, in the government of the colony and its inhabitants, were invested with absolute power to punish or pardon, to rule the colonists or emigrants going thither, according to the above-mentioned ordinances and instructions. They were authorised to defend themselves against invaders : But, should they do any injury to foreign states, or to other subjects, without making proper reparation, a right was given to the injured to prosecute them with every act of hostility. Agreeably to the repeated resolutions of the commons, there was reserved, to the other subjects of the crown, a right of free-fishing, with the necessary incidents  
of



of drying fish on the shores, and of taking timber, upon the coasts of New-England.

Such then is the substance of a charter, which the enthusiasm of those days considered as sacred, because supposed to be derived from the providence of heaven; which has been often appealed to, as so comprehensive and important; and from which such considerable privileges have been at all times claimed and exercised. Yet, Massachusetts assuredly was not erected into a province of the English empire, to be regularly governed by the acts of a provincial legislature. Nothing more was prayed for, and nothing more was granted, than the establishment of a body politic, with special authority, "for disposing the lands of the plantation, and "for the government of the people there." The design of the grant was to confer the same immunities that had been given originally to the council of Plymouth: The intention of the grantees was to accept of the same powers that are usually granted to corporations within the realm.<sup>7</sup>

The clause, providing with a cautious spirit, that the ordinances of the company should not be repugnant to the laws of England, though uniformly inserted in all the colonial charters, was merely declaratory of the ancient jurisprudence of the state: And it was equally unnecessary as would be a similar provision in the constitution of any other corporation within the kingdom; being attended with little practical good, and giving rise to the various constructions of interest or of faction. Yet it contained a proposition of policy extremely simple and intelligible. The common law asserted, that no change of time or place shall make any alteration in the nature of the allegiance of the subject; that no inferior person or community shall do any act inconsistent with the nature of their inferiority; that no subordinate legislature shall prescribe any rule of action repugnant to the spirit of its subordination, or contradictory to the acts of the supreme legislative power; that appeals may be made from the courts of the dependent dominion to the judicatories of the sovereign state, because they are equally the right of the individual and the nation: And the inference drawn from these just premises, by the clause before-mentioned, was plainly this; that, though power is now conferred to make regulations suitable and necessary for your distant colony,

lony, you shall make no ordinances inconsistent with the connexion between the territory and the country of which it is a member. The junction of England and Scotland, once separate and independent nations, is formed by statute-law; the coalition of Great-Britain and her dependencies is established by common-law: And both are equally binding and equally effectual for knitting together the various regions of which the British empire is composed. The union of England and Scotland alone demonstrates, that the laws of the two kingdoms may be extremely different, and even contradictory, yet the principles of their junction remain entire and unimpeached. So a colony may adopt new customs; may abrogate that part of the common-law which is unsuitable to its new situation; may repeal the statute-law wherein it is inapplicable to its condition: All it may change, except only the principles of its coalition with the state, or the special regulations of the supreme power or great body politic of the empire, with regard to it. Were subordinate legislatures of whatever denomination to make ordinances, altering the nature of the allegiance of the territorial inhabitants, making itself less inferior than formerly, restraining appeals, or abrogating the principles of the connexion with the nation; all such attempts must be consequently either construed as void or deemed assertions of independence. Such ordinances have, in fact, been passed. And an act of the sovereign legislature, in order to vindicate its own authority, declared soon after the Revolution, when the extent of its own powers were fully understood:<sup>s</sup> That all by-laws and customs, which shall be in force in any of the plantations, repugnant to any law made or to be made in this kingdom, with regard to them, shall be utterly void. This famous statute, therefore, is merely declaratory of the common-law principles before-mentioned.

It was declared, indeed, that the colonists and their children should be entitled to every privilege, as if they were born within the kingdom; but, as no grant of a king of England could divest them of the character of subjects, so this conveyed to them no other rights than the common-law had assured to every Englishman. Had they emigrated with the consent of the state, but without a charter, they would have been fully entitled to enjoy their former immunities, as completely as they could exercise

exercise them where they freely placed themselves. Far from conferring, therefore, new privileges on the emigrants, their patent was really restrictive of their ancient rights. They were excluded from the legislative power, and were subjected to the ordinances of a corporation within the realm, because distance excluded them from a general-court, where personal presence was necessary. The company, as well as the colonists, was exempted from the payment of taxes within New-England for a limited time: But if, according to the decision of common-sense, every exception affirms the general principle, the right of imposing duties without their consent was reserved. Yet it was not assuredly the pretensions of the royal prerogative which were saved. For the petition of right had just then irrevocably decided, that no tallages shall be levied on the subject without the general assent by act of parliament: It was therefore the just power of the English legislature. The enjoyment of liberty of conscience, the free worship of the Supreme Being in the manner most agreeable to themselves, were the great objects of the colonists, which they often declared was the principal end of their emigration. Nevertheless, though their historians assert the contrary, the charter did not grant spontaneously to them a freedom, which had been denied to the sollicitations of the Brownists: And it is extremely probable that so essential an omission arose not from accident but design. In conformity to his intention of establishing the church of England in the plantations, James had refused to grant to that sect the privilege of exercising its own peculiar modes, though sollicitated by the powerful interest of the Virginian company. His successor adopted and pursued the same policy under the direction of Laud, "who, we are assured, kept a jealous eye over New-England." And this reasoning is confirmed by the present patent, which required, with peculiar caution, "that the oath of supremacy shall be administered to every one who shall pass to the colony to inhabit there."

When this charter, says Neal, "was, by the agents of Massachusetts, laid before some of the best politicians and lawyers, after the Revolution, Somers, Holt, Treby, Ward, they thus remarked its defects: That, being originally granted to a great company resident in England, it was wholly

wholly inapplicable to the circumstances of a distant colony, because it gave the body politic no more jurisdiction than had every other corporation within the kingdom; that no authority was conferred to call special assemblies, wherein should appear the delegates of the people, because representation was expressly excluded by the clause, requiring the presence of the freemen in the general-courts; that no permission was given to raise money either on the colonists or on strangers trading thither, because the king could not give an authority which he did not himself possess; that it did not enable the legislative-body to erect various judicatories, either of admiralty, of probate of wills, or of chancery, because that required such a special grant as did not here exist.

Thus defective and inapplicable, the patent was no sooner obtained, than the governor and company began to execute, with great ardour, the chief views of the grantees. A general court, composed as the charter required, was regularly convened, in May, 1629. It chose Cradock chief governor and other officers of the corporation. In order to raise a fund to supply the expected charges, it was resolved, that every one subscribing fifty pounds should be entitled to two hundred acres of land, as the first dividend. A fresh embarkation being at the same time resolved on, six vessels were provided to transport it, with every necessary, to New-England. Endicot was now confirmed governor within the colony, and was honoured with new instructions. It would have been extraordinary had the interests of religion been forgotten by men so extremely zealous. Four ministers of approved orthodoxy were accepted by the general court, and proper encouragements were given them, that they might attend the emigration. Thus the governor and company acted, on that occasion, as a mere corporation within the kingdom: And it is a striking circumstance, in the story of Massachusetts, that the general court, which then assembled, will be found to be the only one that proceeded in conformity to the charter, or agreeably to the principles of English law.

The fleet, which sailed from the Isle of Wight in May, 1629, carrying about two hundred persons, with abundance of all things requisite to form a settlement, arrived at Cape Anne, after a prosperous voyage,

in

in the subsequent June. They found Salem to consist of eight miserable hovels, and the whole colony to contain only one hundred planters, who yet had been unable to provide themselves with food: And both parties equally rejoiced; the old colonists, that important supplies were arrived; the "new-comers," that they met associates in the same cause, on a coast woody and inhospitable. Dissatisfied, however, with a situation which suffered prodigiously when compared with the beautiful island from which they had departed, about one hundred persons soon removed farther into the wilderness, and laid the foundation of Charles-Town."

Religion, being the principal incentive to their emigration, naturally became the chief object of their care. Their zeal therefore soon appointed a day for the establishment of church order and discipline. Endicot, having in the mean-time corresponded with their neighbours of New-Plymouth, "found them right in their outward form of worship, because they had adopted a mode extremely similar to the reformed churches of France:" And their brethren of that colony were invited to be witnesses of their conduct. Having declared their assent to a confession of faith drawn up by one of the ministers, the greater number, agreeably to the spirit of independence, signed an association, in August, 1629, which is extremely characteristic of them." "We covenant, said they, with the Lord, and with one another, to walk together in all his ways, according as he is pleased to reveal himself to us; nor will we deal oppressingly with any wherein we are the Lord's stewards." They immediately chose pastors and other ecclesiastical officers, who were separated to their several functions by the imposition of the hands of the brethren. A religious society, or church, being thus formed, several persons were received into it by giving testimony of their sober conversations: And none was admitted to communion with them without giving satisfaction to the church concerning his faith and manners. But the mode how that should be given was left to the arbitrary discretion of the elders, as particular cases should arise: Thus erecting in wilds, which freedom was to people and cultivate, that inquisitorial power which had laid waste the fruitfulest European plains.

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It will be extremely difficult, if not impossible, to support the legality of the association before-mentioned; except on principles of pure independence, or as a voluntary compact, which was obligatory on none but the associators. The emigrants carrying with them those laws of the realm which were suitable to their situation, so much of the jurisprudence of England instantly became that of the colony. According to the ancient common law, which hath been declared by statute, there can be no provincial church established, nor any ecclesiastical proceeding, without the consent of the king, the supreme head.<sup>4</sup> These salutary principles of policy were expressly enforced by their charter, with a caution which seemed to foresee, though it could not prevent, what afterwards happened. Nor did they ask the approbation of the governor and company in England, who were invested, as we have seen, with a legislative authority over them. Yet, by the covenant itself, they promised “to carry themselves in all lawful obedience to those that are over them in church or commonwealth.” Those emigrants were men, however, above all worldly ordinances. The laws of England, so justly celebrated by the panegyric of nations, they considered as not binding on them; because inapplicable to so godly a people. And the Jewish system of rules they almost literally adopted; because more suitable to their condition. Men of discernment perceived with regret the ruling principle of Massachusetts for the first time disclosed. It verbally admitted the king to be supreme head of the church, and promised all lawful obedience to his power: But it asked not his assent when the church was established. And it would probably have deemed the royal interference as an invasion of its chartered rights.

Of all compacts not strictly legal, it is to be lamented as a misfortune, that what in the beginning is merely voluntary too soon becomes compulsory, when bigotry is accompanied with power. Among the first emigrants there were some persons of a religion extremely different from that of the members of the before-mentioned society; and they were persons too of estates and consequence, and of the number of the first patentees. Observing that the ministers did not use the book of common-prayer, these men, with a laudable spirit of attachment to the usages

usages of their fathers, established a separate meeting, according to the forms of the church of England. And this measure, it should seem, was equally reasonable as the former; perhaps more consistent with the charter, and more agreeable to the constitutions of the state. The societies of the colony were founded on a principle of freedom and independence; which is always so respectable even when productive of inconvenience. It is only to be deplored, that their zealous members did not, according to the admirable temper of Christianity, allow that liberty of choice and of action to others, which they had themselves exerted. The governor, being nevertheless greatly alarmed, summoned before him the supporters of the church of England, to give an account of their proceedings: Thus considering nonconformity as a crime, which the civil magistrate ought to watch and to punish. They accused the ministers, in their defence, of departing from the order of the ancient establishment: Adding, "that they were Separatists, and would soon be Anabaptists; but, as for themselves, they would hold fast to the forms of the church established by law." The ministers denied the charge, and insisted; "that they did not separate from the church of England, but only from her disorders; that, far from being Separatists or Anabaptists, they had only come away from the common-prayer and ceremonies, because they judged the imposition of these things to be sinful corruptions of the word of God." These answers, so agreeable to the sentiments of the majority, were generally approved of: And two of their accusers, who were persons of consideration, on the pretence so common on such occasions, of their endeavouring to raise a mutiny among the people, were expelled and sent to London. The expulsion of its chiefs inflicted a wound on the church of England, which it never recovered: And the liberal-minded exclaimed, that the same conduct has been invariably pursued at all times, and in every country; the persecuted, when they acquire power, will always persecute. With such a church, and such ministers, Blackstone, an episcopal clergyman, could never be induced to communicate: Giving, for a reason, what ought to have taught moderation to all; that, as he came from England, because he did not like

the lord-bishops, so he would not join with them, because he could not be under the lord-brethren.<sup>15</sup>

During the first winter after their arrival, the emigrants encountered those disasters which had uniformly afflicted the other colonists during the early years of their settlement.<sup>16</sup> About a hundred of them departed, lamenting that they did not live to see the rising glories of the faithful. But the survivors firmly sustained every inconvenience, and braved every danger, because they now exercised their peculiarities in peace, and enjoyed the pleasure of inflicting on others those severities which they had formerly suffered themselves.

When the persons, who had been thus expelled, arrived in England, they naturally applied to the governor and company for reparation of their wrongs; but it appears not from their records that they ever received any redress. The insolence of contempt was superadded to the injustice of power. The letters, which those gentlemen had written to their friends, were intercepted, and read publicly in the general-court, on the pretence, equally mean and unjust, "that they might possibly injure the plantation."<sup>17</sup> Thus early was introduced into the politics of Massachusetts the dishonourable practice of appropriating the communications of private friendship, wrongfully obtained, to the malevolent purposes of party: It then rooted in her system, and in after-times produced abundantly.<sup>18</sup> The general-court was at that time too much occupied, in preparing for an important change, to attend to the first duty of all rulers; to give protection to the injured. This signal transaction, in all its circumstances, exhibits to mankind, for their instruction, one of the most striking examples, to be met with in history, of the grossest invasion of the rights of men, of the privileges of citizens, of the liberties of Englishmen.

#### AUTHORITIES.



## AUTHORITIES AND NOTES.

<sup>1</sup> See various grants in the old New-England Entries in the Plant. Office.

<sup>2</sup> Neal's N. Eng. 1 v. p. 136.

<sup>3</sup> In opposition to the pretensions of the truly celebrated Sir Samuel Luke, it has been zealously contended by the partisans of this knight, so famous in the story of Massachusetts, that Sir Henry was assuredly the great prototype of the incomparable Sir Hudibras. — See the subject discussed in the Introduction to Grey's Hudibras, and the Supplement to Granger's Biography.

<sup>4</sup> Joffelyn, 250. — <sup>5</sup> Neal, 1 v. p. 138.

<sup>6</sup> There is a copy of this patent in the old N. England Ent. in the Plant. Off. See Mauduit's Short View of the Charters, and Mr. Hutchinson's Collection of Papers.

<sup>7</sup> The following paper demonstrates what is asserted in the text, and is therefore subjoined; it evinces too, that what was so strongly asserted, during the reign of Charles II. to prove that the charter was surreptitiously obtained, is unjust.

“ *A copy of the docquet of the grant to Sir Henry Rosewell and others, taken out of the Privy-seal-office, at Whitehall.*” — From the N. Eng. Papers, bundle 4, p. 996.

“ A grant and confirmation unto Sir Henry Rosewell, his partners, and their associates, to their heirs and assigns for ever, of a part of America, called New-England, granted unto him by a charter from divers noblemen and others, to whom the same was granted by the late king James, with a tenure in soccage, and reservation of one-third part of the gold and silver ore: Incorporating them by the name of the governor and company of the Massachusetts-Bay, in New-England, in America, with such other privileges, for electing governors and officers here in England for the said company; with such other privileges and immunities as were originally granted to the said noblemen and others, and are usually allowed to corporations here in England. His majesty's pleasure, signified

by Sir Ralph Freeman, upon direction of the lord-keeper of the great-seal; subscribed by Mr. Attorney-general; procured by the lord viscount Dorchester; February, 1628. Memorandum. Their charter passed 4th March following."

In the same papers, bundle 5, p. 322, there is a sketch, drawn by Mr. Blathwayt, stating "the clauses in the charter, shewing, that it was "intended thereby that the corporation should be resident in England." And, indeed, the whole tenor of the patent, as well as the subsequent conduct of the corporation, evinces the truth of that important fact. But the following extract of an agreement, entered into at Cambridge, the 26th of August, 1629, between Saltonstall, Dudley, Winthrop, and other chief leaders of Massachusetts, demonstrates that truth. — From a collection of papers, made by Mr. Hutchinson, relative to the history of Massachusetts, p. 25-6.

"We sincerely promise — to embark for the said plantation, by the first of March next, — to the end to pass the seas (under God's protection) to inhabit and continue in New-England. Provided always, that before the last of September next, the whole government, together with the patent for the said plantation, be first, by an order of court, legally transferred and established to remain with us and others which shall inhabit upon the said plantation."

<sup>8</sup> 7 and 8 Will. ch. 22. — <sup>9</sup> Hutch. Hist. Mass. 1 v. p. 86. — <sup>10</sup> See the oath before, ch. 2. — <sup>11</sup> Hist. New-Eng. 2 v. p. 477-8. — <sup>12</sup> Ib. 1 v. p. 139-40; Josselyn, p. 251. — <sup>13</sup> This curious paper is in Neal, 1 v. p. 141-3 — <sup>14</sup> See Coke's 5th Report, the case of the king's ecclesiastical law. — <sup>15</sup> Josselyn, 151-2; Neal, 1 v. p. 143-5. — <sup>16</sup> Ib. 145. — <sup>17</sup> Hutch. 1 v. p. 12, who cites the records.

<sup>18</sup> The memorials and other public papers, which were presented to the committee of colonies during the disputes with Massachusetts in the reign of Charles II. were constantly obtained "by indirect means," and transmitted by the colonial agents: "Whereby, said the complainants "on this subject, not only the king's councils have been discovered, but "there has been laid a scene of ruin to those suspected of loyalty." — N. Eng. Ent. 1 v. 250-60. — That monarch, extremely offended with a conduct

a conduct so offensive and dangerous, exerted himself vigorously in defence of his few friends at Boston. And the general court, either overawed, or apprehensive at that time for the future, did not carry matters to extremity against them, otherwise it might have proved extremely fatal. For, by an ancient law of that colony: "If any man attempt the alteration or subversion of the government, he shall suffer death. — Ordin. of N. Eng. abridged, p. 32. — The following extract of a letter, dated in October, 1666, from Colonel Nichols, who was one of the king's commissioners and the conqueror of New-York, to the secretary of state, shews the dishonourable practices of those days. — From New-York Ent. i. v. p. 28.

"I think it my duty to inform you, that a copy of his majesty's signification to the Massachusetts was surreptitiously conveyed over to them, by some unknown hand, before the original came to Boston; and, formerly, the very original of Mr. Meverick's petition to the king in council [concerning Massachusetts] was stolen out of Lord Arlington's office by Captain John Scot, and delivered to the governor and council at Boston. This I affirm positively to be true; though Scot, when I questioned him upon the matter, said, a clerk of Mr. Williamson's gave it him."

## C H A P. VII.

*Several persons resolve to emigrate.—They purchase the charter of Massachusetts.—The corporation removed thither.—The unwarrantable conduct of the colony.—Proceedings of the privy-council.—Sectaries arise in Massachusetts.—They are persecuted, and emigrate.—Complaint against it.—A writ of quo warranto issued against its charter.—A remarkable petition of the general-court.—New persecutions and emigrations.—Synods called.—Observations.—State of the colony at the commencement of the civil wars.*

**W**HEN Charles I. in anger dissolved the parliament, in the year 1628, he resolved, with his wonted imprudence, never to call it again. His subsequent government, equally illegal and irregular, was, for too many years, conducted agreeably to the spirit of the resolution he had formed. And, though persecution had only confirmed men in their religious scruples, and had augmented the number of dissenters from the established church, the ecclesiastical administration became daily more intolerable to men, who considered all establishments, which they did not themselves direct, as burdensome and tyrannous.

Several persons of considerable consequence in the nation, who had adopted the principles of the Puritans, and who wished to enjoy their own mode of worship, formed the resolution of emigrating to Massachusetts. But they felt themselves inferior neither to the governor nor assistants of the company; they saw and dreaded the inconvenience of being governed by laws made for them without their consent: And it appeared more rational to them, that the colony should be ruled by those who made it the place of their residence, than by men dwelling at the distance of three thousand miles, over whom they had no controul. At the same time, therefore, that they proposed to transport themselves, their families, their estates, to that country, they insisted, that the charter should be transmitted with them, that the corporate powers, which were conferred by it, should be executed in future in New-England.

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Larger sums of money had been already expended, in this enterprize, than the company had any immediate prospect of being soon reimbursed from the profits of the adventure: And, though the greatest doubts were justly entertained with regard to the legality of the proposed measures, the expediency of engaging many persons of wealth and interest to assist them in that expensive undertaking was apparent to every one. The governor and company, having entered into all their views, called a general-court in August, 1629; when it was unanimously resolved, “that the patent shall be transferred, and the government of the corporation removed from London to Massachusetts-Bay.”

A transaction, similar to this in all its circumstances, is not to be easily met with in story. A corporation had been invested, by a patent, with special privileges, for the execution of an important trust, the government of a colony: It was at the same time implied, that, for every abuse of its franchises, and for every misuse of its authority, the charter should instantly become void; that, when the body politic had broken the condition on which it was granted, the incorporation instantly ceased: And these doctrines, not only of the law of England, but of universal jurisprudence, were so determined by the highest courts of England immediately after the Revolution.<sup>2</sup> To every corporation is necessarily incident the right to purchase and to sell; but this is the first instance of a corporate body that ever sold itself. All the subsequent proceedings of the governor and company must partake of this signal irregularity.

In order to carry this extraordinary resolution more effectually into execution, a general-court was called in October, 1629. And of those, who intended to settle in the colony, the company chose Winthrop, governor, Humphries, deputy-governor, and assistants, as directed by the charter. But, it was not till the beginning of the subsequent year, that seventeen vessels sailed from Southampton, transporting to New-England about fifteen hundred emigrants, the officers above-mentioned, with their patent: The expence was upwards of one-and-twenty thousand pounds. And, after a tedious voyage, during which they contracted various distempers, this fleet arrived at Salem in July, 1630. But, disliking a situation that did not appear to advantage when compared with what they had

had left, some of the emigrants removed to Charles-town, at the same time that others of them settled on the peninsula, at the bottom of the Bay, and laid the foundation of the famous town of Boston. The year 1630 is the remarkable æra of the commencement of the government and the foundation of the capital of Massachusetts. When Josselyn visited Boston, in the year 1638, “ he found it rather a village than a town, “ there being not above twenty or thirty houses.”

The emigrants too soon encountered all the difficulties necessarily incident to their undertaking. Little had they to shelter themselves from the inclemency of the weather but the miserable hovels that had been hastily reared; they were obliged to feed on the productions of nature: And, before the subsequent December, two hundred of them had perished. Humanity will drop a tear over the graves of the dead, though she cannot altogether approve of the savage fury with which they deserted their native land, when it required the aid of their exertions. The colony was threatened with famine. And about one hundred persons, of weaker minds, totally discouraged, returned by the same vessels to England.<sup>3</sup> But what cannot men encounter and endure, when their minds are wound high either with hope of relief from present evil, or with expectation of future happiness!

The colonists were obliged to attend so much to the erection of habitations, and the procurement of food, that little public business was for some time transacted. The governor and assistants mean-while formed a court for the determination of the greatest affairs, whether civil or criminal. In August, various officers were appointed; and, for the preservation of tranquillity, justices of the peace, with the same authority as that of the same magistrates in England, were instituted. A homicide having been soon after committed, the criminal was tried by a jury, and acquitted.<sup>4</sup> But, were it proper to judge of the proceedings of such a people by the law of England and their charter, the legality of that transaction might be well questioned. Their patent gave them no power to punish with death, and nothing but positive words could have conferred such authority on a mere corporation. The only jurisdiction, that was granted, was, permission “ to impose fines, imprisonment, or other  
“ lawful

“lawful correction, according to the course of such corporations in England.” Yet trivial was this deviation, when compared with those which we shall meet with in the sequel.

The first general court, composed, as the charter required, of the governor, deputy-governor, assistants, and freemen in person, was held in October, 1630. There were chosen, for the first time, many freemen; some of whom were not members of the established church. Innovations began now to multiply. It was enacted, that the freemen shall in future choose the assistants; who were empowered to make laws, and appoint officers, to nominate two of themselves as the chief and deputy governor. Here was a new instance of a deviation from their charter, which supposed the manifest incongruity, that a corporate body may confer new powers upon itself. While the spirit of innovation thus went forth, the ruling men shewed their own temper, by sending forcibly to England those whose opinions or practice they did not believe were sufficiently orthodox.

Having survived the severity of the winter, with great difficulty, the general court once more convened, in the beginning of the year 1631; when the rule, which had been so lately established, was instantly reprobated: And it was ordained, “that the governor, deputy-governor, and assistants shall in future be chosen by the freemen alone.” Nothing can evince, more clearly than this proceeding, still more inconsistent with the charter, how prone mankind are to change, when they have once departed from the strict principles, from the letter, of their constitutions: And the intolerant spirit, which then animated the greater number, at the same time decreed, that none shall be admitted to the freedom of the company, but such as were church-members; that none but freemen shall vote at elections, or act as magistrates or jurymen. This severe law, which was made in the true spirit of retaliation, notwithstanding the vigorous exertions of Charles II. continued in force, till the writ of quo warranto laid in ruins the structure of government that had thus established it. And such were the necessary requisites to qualify for membership among that singular people, that many, unable to comply, were excluded, as well from the communion of the church, as from any participation in the

government :<sup>6</sup> Thus retaliating on others what they had formerly deemed intolerable severities ; and shewing how apt men are, when under improper influence, to inflict what they will not patiently endure. The distresses of the former year seem to have inspired an attention to the operations of tillage, which produced in due season an abundant harvest : And, in order to cultivate a spirit which was so extremely beneficial, it was enacted, “ that Indian corn shall be deemed a legal tender in discharge of debts. The numerous colonists, who arrived in 1631, consequently enjoyed a plenty, which their predecessors had sighed for to no purpose.

During the subsequent year, the governor conciliated, with great attention, the friendship of New-Plymouth. Nor could any measure be more necessary or prudent. Not only that colony, but Massachusetts, was extremely alarmed with the conduct of the neighbouring French ; who, in taking possession of Acadie, subsequent to its restitution by the treaty of St. Germain, dispossessed the people of New-Plymouth of their trading house at Penobscat. And then commenced those mutual complaints of mutual encroachments, which produced, in after-times, the most important events ; and which involved England in expences and debts that have been long deplored, without hope of relief from those who chiefly derived the advantage. Massachusetts was meanwhile considerably disturbed by the commotions of the aborigines around. And a treaty of friendship was the result, which proved as fortunate to the one party as fatal to the other. Yet it does not appear that any compensation was given to the natives, when possession was taken of their country, by a people who soon overspread the land, and unjustly deemed every exertion in its defence an act of rebellion against their laws.<sup>6</sup> Had the tribes any other mode of acquiring experience, than from the tradition of their fathers, what a school of knowledge, moral and political, would the colonial annals open to their researches !

The proceedings of the governor and company had been extremely irregular, not to say illegal, and inconsistent with their charter. And, in the end of the year 1632, those, who had been expelled the colony, because their principles and practice were disapproved of, presented a petition



tion to Charles, complaining of their tyranny, and of the wrongs which they had suffered. That monarch had indeed been informed “ of great “ distraction and much disorder in that plantation.” The complaint, being referred to the committee of privy-council for colonies, was heard in January, 1632: But, “ most of the things informed being denied, “ and resting to be proved by parties that must be brought from that “ place,” the committee, to avoid discouragement to the adventurers, “ who were upon dispatch of men, victuals, and merchandises,” and in hopes that the colony, which then had a fair appearance, might prove beneficial to the kingdom, dismissed the petition: Giving this additional reason, “ that they were not disposed to lay the faults or fancies, if any “ be, of some particular men upon the general government, which in “ due time is to be farther inquired into.”<sup>7</sup> From this and similar transactions, the leaders of that colony learned all the advantages of delay, which must never fail to result from distance of situation and effluxion of time; and from which, in after-times, they profited extremely.

The prudent had waited with anxiety, in England, to observe the success of the first emigrations, before they should venture a-cross the ocean. They had been lately assured of their happy success. The administration of that misguided reign became daily more offensive to them. And great numbers, animated with the various passions which then occupied the minds of men, prepared to follow their example. But, whether from the greatness of the intended transportation, or that there were among the emigrants “ divers persons, as the order says, known to be ill-affected, discontented not only with civil but ecclesiastical government here,” the government seems to have been alarmed; and an order was issued by the privy-council, in February, 1633, “ to stay the ships ready to sail, “ freighted with passengers and provisions.” Were we to judge of that transaction by the law and principles of modern times, how unconstitutional and arbitrary would it appear! Yet it ought to be remembered, and it justifies in some measure the irregularity before-mentioned, that a power was reserved, by the charter, to restrain any persons by special name from transporting themselves to that colony. And, with a jealousy, which evinces that all the pernicious consequences of removing the feat

of the corporation from London to Massachusetts were seen, Cradock, the first named governor of the company, was required to cause the letters patent to be brought to the board. The order, it should seem, was not effectually executed, and great numbers emigrated during the year 1633: Flattering themselves that they should enjoy there perfect freedom, civil and religious.

It would have been extraordinary indeed, had there not arisen, in those days and among such a people, men, who preached the wildest doctrines in religion and in government. Roger Williams, the famous minister of Salem, always fruitful in religious frenzies, maintained a variety of opinions, tending equally to sap the foundation of the establishment in church and state, and to weaken the principles on which the leading men in both had acquired their influence. And, being a popular preacher; he soon gained many disciples, who were pleased with the novelty of his sentiments. Endicot, one of his followers, in his zeal against superstition, "cut the red cross out of the king's colours," as a relique of anti-christian superstition; and though this act of religious folly was generally considered as seditious, the people soon became divided in their notions "concerning the lawfulness of the cross in the banner." Learned treatises were written and published on both sides. Even the train-bands, who, upon such occasions, enter into religious controversy, differed in opinion on this interesting subject; some refusing to follow the colours with a cross, that they might not be thought to do honour to an idol; while others followed it lest they should be deemed wanting in their allegiance to the king. After this controversy had for some time distracted the colony, it was ended by compromise; the cross was retained in the banners of ships and castles, but in the colours of the train-bands it was generally omitted.<sup>9</sup> Nothing can demonstrate more clearly the dark fanaticism of the times and of the people than this singular dispute.

But all endeavours having been used in vain to convince Williams of his errors, and to prevent him from propagating doctrines so inconsistent with their opinions, of various kinds, so contrary to their views and interests,

interests, the magistrates, according to the genius of that government, at length interposed. They banished him as a disturber of the peace, both of church and commonwealth. He laid the foundation of Providence plantation. And Endicot was sentenced "to be sadly admonished, and to be disabled from holding any office during a year, for his indiscretion and uncharitableness." Yet this gentleman lived to be honoured with the resentment of Charles II. subsequent to the Restoration, who, in some measure, asked it as a favour of that colony no more to choose one as governor who had shewn himself an enemy to regal power.

As the colonists increased in numbers, by the arrival of fresh emigrations from England, they spread themselves wide over the country, and planted various towns; they naturally fell into peculiar customs, and became impatient under those laws, which had been made for them by a legislature, that had been created by their charter, and new-modelled by themselves. Hitherto the legislative power had consisted of the governor, deputy-governor, the assistants, and of the freemen in person: "But the real power was chiefly engrossed then, as it has been at all times since, by an oligarchy, consisting of those officers, aided by the clergy, from which the great body of the inhabitants were wholly excluded. And they soon became jealous of an authority that was so destructive of their own importance. As if, by general consent, though the measure was probably suggested by those who hoped to gain by it, they resolved to change their chartered constitution, and to add representatives of their own, to assist in transacting the affairs of the colony. In prosecution of these views they sent twenty-four deputies to the general-court, which convened in May, 1634." But how much soever were the governor and assistants astonished to see these appear instead of the freemen, who alone had a right to vote, they were constrained to submit to an innovation which they had not power to oppose, and which, in after-times, occasioned considerable embarrassments. Here then is the remarkable epoch of the introduction of delegates into the general-court: "And thus, were we to decide according to the principles of theorists, did the freemen at once give up their own rights and enslave the colony. But it is history which

which throws a ridicule upon the gravest reasonings of enlightened men on the nature of government. It was the inconvenience, perhaps impossibility, of the whole freemen meeting in one assembly, which induced them to assume the power of electing persons to represent them, and to take care of their interests. But how reasonable or necessary soever was this important change, and it had been unexceptionable had Massachusetts been an independent state, it was altogether inconsistent with their charter, which neither gave power to admit deputies, nor to call special assemblies. That spirit of innovation, which had actuated the inhabitants, now continued to operate in the general-court. And a variety of regulations were ordained, which almost wholly changed the nature of their former government: Enacting, among other regulations, that none but the general-court should raise taxes, grant lands, or appoint officers. The legality of these measures, however, cannot easily be supported by fair discussion, or by any other than those principles of independence which naturally sprang up among such a people, during such a season, and have at all times governed their actions.

The colonies mean while not only greatly engaged the public attention, but attracted the particular notice of the jealous administration in England. The loudest complaints had been made to Charles I. against the governor and company of Massachusetts; which had induced the privy-council to declare, "that their conduct, in due time, was farther to be inquired into." With this, and other designs, a commission was directed, in April, 1635, to the great officers of state and to some of the nobility, "for the regulation and government of plantations." It recited: "That divers subjects, by virtue of royal authority granted to them with a view to enlarge the territories of the empire, had deduced several colonies." For the ease and tranquillity, for the protection and government, of those subjects, absolute power was granted to the archbishop of Canterbury, and to others, "to make laws and constitutions, concerning either their state-public, or the utility of individuals." For the relief and support of the clergy, the commissioners were authorized "to assign convenient maintenance unto them, by tithes, oblations, and other profits, according to their discretion."

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They were empowered to inflict punishment on violators of their ordinances, either by imprisonment or by the loss of life and members, according to the quality of the offence. They were authorized to remove governors of plantations, to appoint others, and to punish delinquents. They were enabled to constitute tribunals and courts of justice, ecclesiastical and civil, with such authority and form as they should think proper; provided, however, that those laws and constitutions should not be put in execution till the royal assent was first obtained, nor till they were proclaimed in the several colonies. The commissioners were constituted a committee to hear and determine all complaints, whether against colonies, or against governors, or other officers; and, for punishment of the guilty, "to remand and cause the offender to return to England." If, upon inquiry, they found any letters patent, granted for establishing colonies, to have been unduly obtained, or that the liberties granted were hurtful to the prerogative royal, they were directed to cause such to be revoked.<sup>14</sup>

This commission, dictated in the genuine spirit of those days, is no less remarkable than important; because it demonstrates the opinion and practice of the times, and exhibits a true picture of the violent administration of the colonies during that reign. Unnecessary is it to observe, that, like the ship-money and other similar enormities, that royal edict is not only inconsistent with every salutary principle of just government, but is contrary to that law, which the petition of right had been so lately enacted to declare and enforce. Yet, when contrasted with modern transactions, what abundant reflexions doth it offer to the wise! And that extraordinary authority was perhaps very seldom exerted, because the time now fast approached, when a similar jurisdiction was invested in different hands by a different power.

Among the numerous emigrants, who arrived in Massachusetts in the year 1635, Hugh Peters and Sir Harry Vane, junior, appeared conspicuous: Even then this personage was considered "as a warm hot-headed young gentleman, whose zeal for pure religion made him desirous to come into those parts." In compliment to his family, and to his talents, he was chosen governor of the colony in the subsequent year;

year; but, may we credit the more ancient colonial writers, "Vane's election will remain a blemish on their judgements, who did elect him, while New-England remains a nation." He was too deep an enthusiast, it should seem, even for the enthusiasts of Massachusetts. After enjoying the first offices, and entering zealously into all the factious and fanatical contentions of that turbulent government, he returned to England in August, 1637. And, being chosen a member of the long parliament, he at length entered a field worthy of his abilities. The fate of both after the Restoration is sufficiently known to every one. The year 1635 is chiefly remarkable for an attempt to introduce fresh innovations into the colonial constitution. Several persons having applied to the general court for leave to remove from Massachusetts in quest of other settlements, great contrariety of opinions arose: A majority of the assistants refusing, and the greater number of the deputies granting, their request. The latter insisted, that the vote of a majority of the whole legislature was decisive; the former, seeing their utility and importance in the commonwealth in danger of being annihilated, contended, that the consent of the greater number of them was essential to every act. As both sides were obstinate, public business could be no more transacted. A day of humiliation was appointed for all the congregations to seek the divine direction: Yet the charter was neither inspected, nor thought of, on an occasion which seemed so extremely proper. Partly owing to a pertinent sermon of the famous Cotton, but more to the influence of the elders with the people, the delegates were prevailed on to wave, for that time, the controverted point. And an irruption of the Indians gave warning to both parties of the great danger of zeal.<sup>15</sup>

The government of England, both in church and state, became daily more intolerable; and all men perceived a tyranny introduced, and the constitution in a great measure subverted. Sir Matthew Boynton, Sir William Constable, Sir Arthur Hazeling, Hampden, Pym, Oliver Cromwell, who bore so able and important a share in the conduct of that interesting period, resolved to leave a country<sup>16</sup> whence freedom was banished, that they might enjoy the object of their wishes in New-England. But the administration, "being informed that many persons  
"transported

“ transported themselves to that country, whose end was to live out of  
“ the reach of authority,” appears to have been both offended and alarmed. For, in April, 1637, a proclamation was issued,<sup>17</sup> “ to restrain the disorderly transporting of his majesty’s subjects to the colonies without leave :” It commanded, “ that no licence should be given them, without a certificate that they had taken the oaths of supremacy and allegiance, and had conformed to the discipline of the church of England.” But, as extreme violence generally defeats itself, this mandate seems not to have been effectually executed. And, in May, 1638, a fresh proclamation was published,<sup>18</sup> “ commanding owners and masters of vessels, that they do not fit out any with passengers and provisions to New-England, without licence from the commissioners of plantations.” Happy perhaps would it have been, for himself at least, had the misguided Charles suffered those vessels to have sailed, that they might have transported passengers beyond the Atlantic, who afterwards proved so fatal to him ! “ This proceeding, we are assured, increased the murmurs and complaints of the people, and raised the cry of double persecution, to be vexed at home, and not suffered to seek peace abroad.”<sup>20</sup> But so difficult is it to restrain men whose minds are greatly agitated, either by fear or hope, that great numbers found means to elude the vigilance of government, and to transport themselves, in the year 1637, to Massachusetts ; which proportionably augmented its numbers and power.

The general administration of that corporation had been hitherto not only inconsistent with English laws, and contrary to its charter, but extremely oppressive over those who were not members of its church. And it soon felt the effects of the royal commission before-mentioned : The legality of which the general court neither presumed to deny nor dared to question. A writ of quo warranto was issued therefore against its charter. Judgement was given, that the liberties of Massachusetts shall be seized into the hands which conferred them, because they had been improperly exercised.<sup>21</sup> And the privy-council, not long after, “ ordered the governor and company to deliver up their patent, and to send it back by the next ship to England.” Yet, prudently bending

before a storm which they could not then withstand, they easily eluded the force of its violence.

When the council of Plymouth surrendered its patent, in June, 1635, it was instantly determined, by Charles I. to assume the government of a country which corporations seemed to have ruled to so little purpose. In order to execute this favourite project, most of the violent proceedings before-mentioned were adopted. And at length, upon complaints of several disorders in New-England, that prince, in July, 1637, appointed Sir Ferdinando Gorges general governor over the whole. It was at the same time ordained, that no persons should transport themselves to that country without special warrant; reserving only a liberty of that kind to those who had joined in the surrender of the great charter, and should take out new patents for their several plantations, to be holden immediately from the king. Yet this extensive measure, owing to its real difficulty, was never executed: And the attention of all was attracted, in a few years, to more interesting objects.<sup>22</sup>

The general court, however, which convened in September, 1638, instead of complying with the command above-mentioned, transmitted a petition to the royal commissioners. It represented, in characteristic language, and in a strain of sentiment far different from that of recent times: "We dare not question your lordships proceedings, in requiring our patent to be sent unto you; we only desire to open our griefs; and if, in any thing, we have offended his majesty or your lordships, we humbly prostrate ourselves at the footstool of supreme authority; we are sincerely ready to yield all due obedience to both; we are not conscious that we have offended in any thing, as our government is according to law: We pray that we may be heard before condemnation, and that we may be suffered to live in the wilderness."<sup>23</sup> The general court was probably sincere; its history shews how far these representations were true. But, may we rely on the opinion of Jones and Winnington, the quo warranto was neither so brought, nor the judgement so given, as to cause a dissolution of the charter.<sup>24</sup> And the insurrections, which soon after broke out in Scotland, turned the views of that monarch to transactions which more nearly concerned him. The  
general-



general-court long retained quiet possession of the patent, and of that government, which, however contrary to the principles of its connexion with England, it had erected for itself. Those, who compare the whole circumstances of those proceedings with the administration of the colonies during the present times, will probably find abundant cause for reflexion.

Mean-while, the colony was divided within itself into two potent factions : The one was composed of those who contended for " a covenant of works ;" the other contained those who were equally zealous for " a covenant of grace." Those contentions, proceeding from religious disputes and subtilties altogether unintelligible, while the fear of God and the love of their neighbours were too much neglected by every one, prevailed not only in private families, but in the church and the legislature. The affections of the inhabitants being alienated from one another, they carried their animosities to the greatest extremity ; almost to civil war. The army too, generally little prone to religious controversy, was seized with the universal contagion, and refused to march against the Indians, because it was under a covenant of works.<sup>25</sup>

In order to heal those disorders which then distracted the colony, to restore peace to the state, and if possible to procure unanimity in the church, a synod was assembled for the first time in August, 1637, by order of the general-court. And there were admitted to that assembly the favourers of the new opinions, at the head of whom were Sir Harry Vane and Mrs. Hutchinson, a famous leader of the Antinomians. After sitting three weeks, the synod unanimously condemned no less than eighty-two erroneous opinions, which had been maintained in different parts of the colony. But unanimity was not however restored. And it was determined, by the ruling powers, to have recourse to the ultimate remedy, the sword of the magistrate. The general-court, actuated by the genuine spirit of bigotry, and by an unexampled inconsistency of principle and practice, on the usual pretences of preserving the peace of the country, of preventing " sectary infection," commenced a severe persecution against all who differed from the church in opinion. Some were disfranchised, but more were banished.<sup>25</sup> Fearful of a tumult at Boston,

which even in those days was remarkable for turbulence, that body, with a vigour peculiar to it, disarmed many of the inhabitants; and it passed a law, inflicting heavy penalties on all who should defame any court of justice. Those measures, equally unnatural and unjust, occasioned a considerable emigration from Massachusetts, which laid the foundation of Rhode-Island<sup>26</sup> and other settlements.

With similar views, and if possible to establish a similar uniformity in faith and in discipline to that from which the colonists had fled, another synod was called in September, 1648.<sup>27</sup> But an attempt, which has been found in every country an impossibility, as might have been foreseen, proved nugatory in Massachusetts. And experience, when too late, convinced the general-court, what it had already demonstrated to the world, that, to preserve freedom to the individual, and peace to the whole, a liberal toleration<sup>28</sup> is the only effectual expedient. A third synod was held, in the year 1662, with design to compose those debates which then distracted the colony, with regard to the right of grand-children of church members to baptism, whose parents had not entered into communion with the church.<sup>29</sup> A fourth synod, which is the last that occurs in the story of that colony, assembled in May, 1678, for the determination of two questions; “ what are the reasons that have provoked “ the Lord to bring his judgements on New-England? what is to be “ done that those evils may be removed?”<sup>30</sup> And these questions evince, that when fanaticism had happily departed from England it continued to shed its baneful influence on Massachusetts. A convention of ministers, indeed, assembled at Boston, in May, 1724, and petitioned the general-court to call the several churches of the province, to meet by their pastors and messengers in synod. But the consideration of that business being postponed till the subsequent session, the lords justices, who then governed the nation, observed the transaction with great jealousy, “ as a “ matter which highly concerned the royal prerogative,” and referred the consideration of it to the attorney and solicitor general. “ Upon mature deliberation,” they delivered their opinion; that his majesty’s supremacy in ecclesiastical affairs, being a branch of his royal prerogative, does take place in the plantations; and that synods cannot be held, nor

is it lawful for the clergy to assemble, as in synods, without authority from his majesty.<sup>31</sup>

How amusing is it to remark the prodigious difference, which history often points out, between the theoretic reasonings of men, in opposition to established systems and their own practical administration, when they have acquired power! The puritans revolted in former times, against the authority of the church of England, with a vehemence and zeal, as if their existence and salvation had depended upon the observance of ceremonies purely indifferent, or upon the practice of singularities perfectly ridiculous. Yet, they no sooner acquired superiority in Massachusetts than they adopted the same ecclesiastical powers, which they had formerly rejected with abhorrence, as equally contrary to reason and scripture. And they soon enacted: That no churches shall be gathered but such as are approved by the magistrate. Now, the policy, established by this law, is exactly the same as the common-law principle before suggested; substituting the colonial officer in the place of the king, and creating that authority which they had formerly abhorred. We have beheld the church of England already suppressed. Several persons, who arrived at Boston in the year 1643, attempted to establish presbyterian government, under the authority of the convention of divines at Westminster; but, as we are assured, "a New-England assembly, the general court, soon put them to "the rout."<sup>32</sup> Consistence of principle or of action is not to be expected, however, from bigotry, civil or religious: And, were it not for the numerous ills which it too often brings into the world, we might view its follies with pity or contempt.

When the parliament assembled, in the year 1640, after so long a recess, persecution ceased in England, and the recovery of domestic liberty prevented the desire of enjoying it in Massachusetts. Partly owing to this circumstance, but more to an ordinance passed in 1637, which enacted, with a signal folly, "that none shall entertain any stranger who should "arrive with an intent to reside, or shall allow the use of any habitation, "without liberty from the standing council," emigrations wholly ceased. And historians ascribe to this circumstance a remarkable change in the political œconomy of that colony: A cow, which formerly sold for

twenty pounds, now selling for six; and every colonial production in proportion. In the preceding twenty years about four thousand families, or twenty thousand persons, had emigrated to New-England; but, from that time, as many returned hither from that country as went from England to Massachusetts. There had been not only a prodigious alteration of the manners and principles of the times but a total revolution of power. Several of the most considerable emigrants returned therefore to participate, with their brethren in England, of those offices of profit and trust which they only enjoyed, and of which they had now acquired the exclusive disposal. Many of the clergy too, among whom was the noted Hugh Peters, forsook those sanctified regions, as they called New-England, and returned to their native country, to enjoy more abundant livings in a better land.<sup>33</sup>

Though religious matters engaged much of the attention of the first planters, they seem to have been extremely industrious in temporal affairs. Necessity at first introduced what their jurisprudence afterwards cultivated: All their laws had a natural tendency to exclude luxury and to promote diligence. When the civil wars commenced, they had already planted fifty towns and villages; they had erected upwards of thirty churches and ministers houses; and they had improved their plantations to a high degree of cultivation.<sup>34</sup>

For years after the remarkable innovation of admitting delegates into the general-court, instead of the freemen, the whole formed the legislature of the colony, and voted together in one apartment. But another interesting change occurred in March, 1644; when it was ordained, that the governor and assistants shall sit apart: And thus commenced the democratic branch of the legislature, or house of representatives.

The governors and assistants composed the superior court, for the determination of causes, civil and criminal; though not without being disturbed by the claims of the deputies, who insisted on an equal participation with them in the exercise of that important power. The colony had been divided, in more early times, into three counties, and inferior courts were established in each for the determination of smaller affairs. A small body of maritime laws were enacted for the convenience of com-

merce;

merce ; which was greatly encouraged. A court-merchant, for the speedy administration of justice to strangers, was established : And, with similar views, fairs and markets were erected.<sup>35</sup>

Their code of criminal law was perfectly congenial with the principles of this singular people. Jesuits and popish priests were subjected to banishment, and, upon their return, to death. This severe law was afterwards extended to the Quakers, upon their appearance in the colony ; and it was ordained, in the year 1652, that none of “ that cursed sect ” shall be imported into the colony ; that Quakers convicted shall be banished, upon pain of death :<sup>36</sup> And those abominable ordinances are the more extraordinary, because they were as little warranted by the charter as by the principles of humanity ;<sup>37</sup> the Independents, as we are assured,<sup>38</sup> of all the English fanatics, approach the nearest to the Quakers ; and it is the enormity and dangerous tendency of the crime which can alone justify any human legislature in depriving him of life who commits it.<sup>39</sup> But the usual punishments of great crimes were disfranchisement, servitude, and banishment :<sup>40</sup> Yet no persons were allowed to be slaves, but such as were lawfully taken in the wars ; and these were to be treated with Christian usage, as was given to bondmen by the law of Moses.<sup>41</sup> Adultery was punished with death ; and fornication by the compelling of marriage, or by fine or imprisonment.<sup>42</sup> Burglary, or robbery, was to be punished for the first offence by branding, for the second by the superaddition of a severe whipping, and for the third to be put to death ; but, if those crimes were committed on the “ Lord’s-day,” an ear was to be cut off, in addition to other punishments.<sup>43</sup> Blasphemy was punishable with death ; and, though it was acknowledged, “ that “ no human power is lord over the faith and consciences of men ; ” yet heresy was punished with banishment, and idolatry by death.<sup>44</sup> Persons conspiring an invasion or public rebellion against the commonwealth, or attempting the alteration or subversion of the government, were to suffer death.<sup>45</sup> After conviction, a criminal, refusing to discover his confederates, might be tortured, yet not with such tortures as are barbarous and inhuman ; but their law generally compelled humanity to servants, to criminals, and to beasts.<sup>46</sup> No feasts or festivals, such as Christmas, Easter,

Easter, or Whitfuntide, were allowed. All gaming was prohibited; nor were any cards or dice to be imported: And, to preserve the purity of their manners, dancing in ordinaries was proscribed.<sup>47</sup>

But the common or statute-laws of England, founded in reason, and matured by the successive wisdom of ages, were deemed of no force, because they were thought inapplicable to such religious colonists: It was enacted therefore, that when the customs of the commonwealth were found defective, the crime shall be decided according to the word of God: And in those days, as we are assured, "the Bible was their body of laws, "in civil, ecclesiastical, and criminal, cases."<sup>48</sup> Marriages were regulated; and none were allowed to perform the marriage-ceremony but the magistrate, or such other persons as the general-court shall authorize. Their law of tenures was extremely simple and concise. The charter had conveyed the general territory to the company and its assigns: And it was very early enacted, "that five years quiet-possession shall be deemed "a sufficient title."<sup>49</sup>

This uncommon system of laws, proceeding from the spirit of the people, not only evinces the nature of their principles, but has greatly influenced the progress of their manners, and their political conduct, from the epoch of their emigration to the present times.

#### AUTHORITIES AND NOTES.

<sup>1</sup> Neal's N. England, 1 v. p. 146-7. Hutch. Hist. Mass. 1 v. p. 12-14. — <sup>2</sup> Modern Reports, 4 v. p. 52. — <sup>3</sup> Neal's N. Eng. 1 v. p. 147-9. Dougl. Sum. 1 v. p. 426. Josselyn, p. 19. — <sup>4</sup> Hutch. Hist. Mass. 1 v. p. 25-6. — <sup>5</sup> Ib. 26. — <sup>6</sup> Ib. 27. Charles I. in November, 1630, issued a proclamation, "forbidding the disorderly trading with the salvages "in New-England for weapons of war." Rym. Fœd. 18 v. p. 210; and Neal, 1 v. p. 151-7. — <sup>7</sup> See the minute of the council, in Neal's N. England, 1 v. p. 153,4. — <sup>8</sup> Hutch. Hist. Mass. p. 32,3. — <sup>9</sup> Neal's N. England, 1 v. p. 158,9. — <sup>10</sup> Ib. — <sup>11</sup> Dougl. Sum. 1 v. p. 431. — <sup>12</sup> Hutch. Hist. Mass. 1 v. p. 35,6-94; who cites the records of the colony.

<sup>13</sup> At

"As the wisest often differ, so the founders of nations will sometimes disagree. J. J. Rousseau insists, with his accustomed spirit; that, as the sovereignty cannot be represented, no sooner are representatives introduced than the state is already enslaved; that, though the English imagine themselves free, yet, when their elections are over, they become instantly slaves: Nor does he consider it as any objection to the assembling of the freemen that their numbers amount to 400,000 or more. — Social Comp. b. 4. — The wisdom of Massachusetts thought otherwise. Though the charter, in the genuine language of that theorist, required the freemen to meet in person, yet a body of delegates that commonwealth deemed essential to its freedom. But this innovation was generally kept out of sight. When the agents of the colony were pressed, by the committee of plantations, in the year 1678, with this pointed question; "how is the "general-court composed?" they answered; "of the governor, deputy-governor, magistrates, and *freemen*, as by the patent is granted and "constituted." — Record, Plant. Off. titled N. England, 1 vol. p. 285. — The governor, writing in the name of the general-court, in the year 1680, gave the same answer to the same question. — *Ib.* vol. 2, p. 40-2. — And it was not till the house of delegates dissented, at an after period, from the governor and assistants, with regard to the resignation of their charter, that it manifestly appeared, that the *freemen* did not vote in the general-court. — *Ib.* p. 197; and see Hutch. Hist. Mass. 1 vol. p. 339.

"See the original commission in "the Administration of the Colonies;" and a copy in Hutch. Hist. Mass. 1 v. p. 502. — <sup>15</sup> Neal's N. Eng. 1 v. p. 161; Hutch. 1 v. p. 44. — <sup>16</sup> See the historians of New-England. — <sup>17</sup> Rym. Fœd. 20 v. p. 143. — <sup>18</sup> *Ib.* p. 223. — <sup>19</sup> Brit. Emp. Am. 1 v. p. 42. — <sup>20</sup> Hutch. Hist. Mass. 1 v. p. 86-7. — <sup>21</sup> Dougl. Sum. 1 v. p. 410; N. Eng. A. p. 222; Hutch. 1 v. p. 31. — <sup>22</sup> See this remarkable petition in Hutch. Hist. Mass. 1 v. Append. N° 5. — <sup>23</sup> Record, N. Eng. 1 v. p. 265-6, and post. — <sup>24</sup> Neal's N. Eng. 1 v. p. 184-5. — <sup>25</sup> *Ib.* 187-90. — <sup>26</sup> Dougl. Sum. 1 v. p. 439. — <sup>27</sup> Neal's N. Eng. 1 v. p. 291.

<sup>28</sup> Intolerance was interwoven into the frame of that government which Massachusetts had erected for itself. From the public proceedings of those days, it is evident that inquisition was made, not only into the

public declarations and practice of men, but even into their private judgements. The ministers of that sanctified region preached against toleration as a sin in government, that would bring down the judgements of heaven upon the land. Even the gentle spirit of the muses was overborne by the universal degeneracy; and, throwing their persuasive influence into the scale of persecution, they promoted the unchristian temper of the times. The following are the dying lines of governor Dudley:

“ Let men of God, in court and churches, watch

“ O'er such as do a toleration hatch.”

Hutch. Hist. Mass. 1 v. p. 75.

If the poetry is bad the sentiment is abominable. But, let us contrast those of a poet of a different *country* and *religion*.

“ For virtue's self may too much zeal be had;

“ The worst of madmen is a *saint* turn'd mad.” — Pope.

It was not till all had learned wisdom and moderation in the school of adversity, that they were convinced of the truth of the Christian precept, which enjoins; “ that men ought not to inflict what they are not willing “ to endure.” The declaration of James II. for a general liberty of worship, which sapped the basis of his throne, was to them extremely welcome; and they thanked that monarch for allowing to them, what they had deemed it matter of conscience to deny to others. — Hutch. Hist. Mass. 1 v. p. 75-6; and see the fulsome addresses of the independent ministers of the colony to that prince, in N. Eng. papers, bundle 5.

<sup>29</sup> Neal's N. Eng. 1 v. p. 335. — <sup>30</sup> Hutch. Hist. Mass. 1 v. p. 32-4.

<sup>31</sup> See the minute of the council, and the opinion of the crown-lawyers, Dougl. Sum. 2 v. p. 337-8.

The supremacy of the crown of England, in matters ecclesiastical, is a most unquestionable right, derived from the common-law; which, as Sir Matthew Hale assures us, may be proved by records of undoubted truth and authority: — Pleas of the Crown, 1 v. p. 75: — And though, as he says, the pope made great encroachments on this authority, yet these were always complained of as illegal, and are now pared off by the statutes, 25 Hen. VIII. ch. 19, 20, 21; by 26 Hen. VIII. ch. 1. And  
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by 1 Eliz. ch. 1. such authority as the pope had, claiming as supreme ordinary, was annexed to the crown, and declared to belong thereto as of right. — See Coke's 4th Institute, p. 341; Shower's Reports, 1 vol. p. 218. — No sooner however had a right, thus unquestionable and important, been vindicated by the vigorous exertions of an English parliament, than fresh usurpations of a similar nature, but of very different men, commenced. The law of England, that admirable system of reason and common-sense, disregarding names, generally exerts its authority over things. As it had formerly *pared off* the encroachments of the pope, upon principles equally wise, it now as vigorously opposed the usurpations of the *lord-bretbren* of Massachusetts. The pretensions of both, equally founded in the delusions of mankind, were equally inconsistent with every sound maxim of just government. If the common-law, accommodating itself as it does to new circumstances and situations, accompanies English subjects whither soever they emigrate; if, in return for their allegiance and obedience, they are entitled to protection, in war by the sword, in peace by the administration of the laws; the constitutional prerogative of the crown, which is part of the common-law, must necessarily be co-extensive with their emigrations: Hence we may infer, that the supremacy of the crown, or the king's ecclesiastical capacity, instantly took place with the settlement of the colony. This argumentation the charter of Massachusetts confirmed and enforced: And, by the solemn covenant which established their church, the first emigrants professed all lawful obedience to those in authority over them in church and state. But, though they admitted the validity of the principle in theory, it was inconsistent with the peculiar maxims of their government to have asked the consent or approbation of the supreme head, with regard to their practical deliberations. If the legality of their church-establishment is so extremely questionable, the calling and holding of those various synods were, similar to much of the ancient administration of Massachusetts, mere usurpation, as contrary to its charter, as inconsistent with the laws of the realm.

<sup>31</sup> Laws, p. 140-5; Hutch. Hist. 1 v. p. 117.

<sup>33</sup> Brit. Emp. in Am. 1 v. p. 46; Dougl. Sum. 1 v. p. 427; Neal's N. Engl. 1 v. p. 210-18.

Peters, Hibbins, and Weld, were the first standing agents who were employed by Massachusetts, and sent to England, in the year 1641. "Though their particular instructions have not been preserved," the object of their agency at that critical time is now no longer a secret. They borrowed considerable sums of money for the service of that colony; and, though these were distributed by them agreeably to their orders, they were never altogether repaid. — Historical Account of Hugh Peters; p. 9; and see Hutch. Hist. 1 v. p. 98, 2 v. p. 132. — The notable talents of Peters recommended him to Cromwell as his chaplain: And, having preached the sermon which was to prepare the minds of men for the unparalleled trial and execution of the unhappy Charles, he was condemned as a regicide after the restoration. It was proved on his trial, by Dr. Young, a clergyman, "that Peters had confessed to him, that he "was employed, out of New-England, for promoting the interest of "reformation, by stirring up the war, and driving it on." — Trial of the Regicides, p. 170. — The uses, to which the borrowed money above-mentioned was applied, are here sufficiently disclosed. Unhappy is the country, the flames of the civil wars of which are stirred up, not only by its natural rivals but by its own dependencies! Charles II. received notice immediately after the Restoration: "That a committee, on behalf "of Massachusetts, sat every Saturday at Coopers-hall, for promoting "the Business which Hugh Peters confessed." — The information is in the N. Eng. papers, bundle 4, p. 500.

<sup>34</sup> Neal's New-Eng. 1 v. p. 218. — <sup>35</sup> Dougl. Sum. 1 v. p. 431-7. — <sup>36</sup> Ib. 435. — <sup>37</sup> Ib. 438. — <sup>38</sup> Hume's Ess. 1 v. p. 72. — <sup>39</sup> Commentaries, 4 v. p. 9. — <sup>40</sup> Ordinances of New-Eng. abridg. p. 10.

<sup>41</sup> The Indians, who were taken, or who surrendered themselves, as well in the war of the Pequots as in that of sachem Philip, were either "sold and shipped off to Bermudas and other parts, or reduced to slavery "in New-England." — See Hutch. Hist. Mass. 1 v. p. 307.

<sup>42</sup> Ordinances of New-England abridg. p. 10-12-37. — Antecedent to the civil wars, fornication and adultery were never deemed crimes by the

the law of England; they were offences of ecclesiastical cognizance and censure. Massachusetts, as is well known, borrowed almost all its pristine institutions from the Jewish jurisprudence: And it probably adopted the rule given by Judah in the case of Tamar; “bring her forth, and let her be burnt.” — Genes. ch. 38, v. 24. — Adultery was distinguished into many varieties by the wisdom of the Gentoos: And its punishment was most accurately adjusted to the supposed guilt; extending, in some cases, to the putting both the agents to death. — See Code, ch. 19.

<sup>43</sup> Ordin. N. Eng. abridg. p. 12. — <sup>44</sup> Ib. p. 13-44-5. — <sup>45</sup> Ib. 32. — <sup>46</sup> Ib. 84. — <sup>47</sup> Ib. 43-4. — <sup>48</sup> Dougl. Sum. 1 v. 433. — <sup>49</sup> Ib. 437.

<sup>50</sup> Yet it must be observed, that the attorney-general, Sawyer, at a subsequent period, gave it as his official opinion, “that the patent having created the grantees, *and their assigns*, a body corporate, they might transfer their charter, and act in New-England.” — See Record, Plant. Off. N. Eng. v. 2, p. 101-20. — But he had probably neither perused it with attention, nor studied its history. It conveyed the foil to the corporation and *its assigns*; it conferred the powers of government on it and *its successors*. And to all, who have been the least accustomed to legal or accurate reasoning, these expressions must appear as different in sense as they are in sound. The two chief-justices, Rainsford and North, fell into a similar mistake, by supposing that the corporate powers were to have been originally executed in New-England.

## C H A P. VIII.

*New-England favours the parliament. — The commons exempt it from duties. — Commissioners appointed to regulate the colonies. — They are freed from taxes. — Confederacy of New-England. — Remarks. — Discontents in Massachusetts. — Conduct of the general-court. — An appeal to parliament. — The deputy-governor tried. — His singular speech. — Massachusetts acts as an independent state. — Gives the law to its confederates. — Foils the parliament. — Out-cants Cromwell. — He conquers Acadie. — He grants it to Saint Etienne. — Persecutions of Massachusetts. — Reflections.*

**T**HE colonies of New-England, actuated by similar political maxims, and professing a similar religion, approved as much of the pretensions of the parliament, as they abhorred the conduct of the king. They considered the momentous contest between those illustrious disputants, as proceeding from the same causes which had constrained them to seek an asylum in the wilderness. Their ruling men, animated with the same zeal, corresponded with the leaders of the parliament, and assured them of their inclinations, and of the prayers of the faithful for the success of reformation: And, were they incapable of affording their friends any considerable assistance, the intrigues of the agents promoted the interests of discord in England.

The commons, having by their dexterity engrossed all power, at length found leisure to extend their protection to New-England, in return for its zealous attachment: And, with this view, they passed, in 1642, a memorable ordinance for its advancement. In order the better to encourage the planters to proceed in their undertaking, they exempted them from the payment of customs, or other duties, on their merchandises exported to New-England, or imported into this realm, “ till the house shall take farther order therein to the contrary.” The commons, though disposed to favour the colony, were not forgetful of their

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own just authority: While they granted exemption, they asserted the general right, by saving the principle. When this ordinance was transmitted, however, to Massachusetts, the general-court, far from considering what was received rather as a benevolence than as a breach of its chartered privileges, ordered it to be entered in its records, "as a proof "to posterity of the gracious favours of parliament."<sup>2</sup> Nor is this strain of gratitude, which now appears so extraordinary in that rugged people, in the least unaccountable. The patent had asserted a power of taxation in stronger language: The right of parliament was not doubted in those days; and it was the irregular exertions of prerogative, and not the just authority of the legislature, that were alone dreaded as unconstitutional, or feared as oppressive.

The general-court seized the earliest opportunity of making a return in some measure equal to the advantage of the benefit conferred. It passed an ordinance,<sup>3</sup> in the year 1644, declaring, "that whoever disturbed the peace of the commonwealth, by endeavouring to draw a party "under the pretence that he is for the king of England, shall be proceeded with either capitally or otherwise." But, while it courted the stronger party, its own interests were not forgotten: And, in order that the commerce of the colony might not be injured, the same ordinance provided, "that it shall not be extended against any merchants or shipmen, albeit they come from parts in the hands of the king." How extremely different are the language and sentiment of this law from the sycophantic address of 1638! But the colonists had now acquired the most powerful protectors: They were no longer constrained to use words which contradicted the genuine emotions of the heart: And they might have spoken a language of equal indifference of a sovereign of France or of Spain.

Amid the arduous affairs, which then engrossed the attention of parliament, the plantations did not in the mean time escape their notice. When they considered their growing importance, when they regarded their attachments, they passed an ordinance,<sup>4</sup> in the year 1643, which is no less remarkable for the extent of power exerted on that occasion, than for the extraordinary regulations established by it. It appointed the earl

of Warwick governor in chief and lord high-admiral of the colonies ; with a council of five peers and twelve commoners to assist him : It empowered him, in conjunction with his associates, to examine the state of their affairs ; to send for papers and persons ; to remove governors and officers, appointing others in their place ; to assign over to these such part of the powers, that were then granted, as he should think proper. Such then was the authority which the parliament alone exerted over the transatlantic dominions of the state during those days. It is apparent, that, by virtue of the powers then conferred, their various governments might have been wholly new-modelled, and their charters entirely abrogated. The colonists explicitly admitted its rectitude, by applying to the commissioners for protection and patents : And we shall find them in the sequel granting both. It is recent transactions that have rendered the whole interesting, by enabling the curious to compare speculations with recorded facts.

The parliament, pleased probably with the attentions of Massachusetts, passed a new ordinance,<sup>5</sup> in the subsequent year, which exempted New-England from all taxes, “ till both houses shall take farther order therein to the contrary :” Still saving their own rights while they conferred favours on others. But that body at length extended their views, and enlarged the numbers who were now to partake of their bounty. They passed a fresh edict<sup>6</sup> in the year 1646, which exempted the colonies, for three years, from all tallages, “ except the excise ;” “ provided their productions should not be exported but only in English vessels.” And this law is remarkable, as well for asserting over the plantations the parliamentary right of internal taxation, as for establishing in part what was afterwards extended and executed by the famous act of navigation. Such then were the rules of action, prescribed for them by the only legislative power then existing in the nation, by which regulations were established, comprehending all cases whatsoever : And these were considered by them rather as bounties conferred, than invasions of their privileges as colonists, or their rights as Englishmen. It was impossible for that age to foresee the perplexing disputes that have since arisen with regard to these ; nor could they perhaps have been prevented had they been foretold.

foretold. Whether modern reasonings throw a ridicule on those interesting edicts of an assembly, justly celebrated for profound knowledge of the laws; or if the authentic facts before-mentioned expose recent pretensions to the imputation of innovation, is somewhat doubtful: Posterity must decide what at present are objects of disputation.

Mean-while, the general court were neither ignorant of the interests of the colony nor dilatory in pursuing them. It saw, and dreaded, the hostile intentions of the neighbouring Indians. And a sense of impending danger dictated the policy of forming a confederate union with the other settlements of New-England, in the manner of the states of Holland, for the mutual defence of the whole. This measure being at length proposed, after considerable deliberation, to the colonies of Plymouth, Connecticut, New-Haven, was approved, because it appeared to them equally necessary and efficacious. In order to carry their intentions into effectual execution, they entered into formal articles of confederation, in May, 1643. It was agreed: That the parties to it shall be henceforth called "the united colonies of New-England;" that a perpetual league, for offence and defence, both for preserving and propagating the truth and liberties of the gospel, and for their mutual safety and welfare, shall be established; that the confederates shall remain separate and distinct, and each shall have exclusive jurisdiction within its own territory; that the charge of all just wars shall be defrayed by them, according to certain proportions agreed on; that, for the management of the common affairs, two commissioners, being in church-membership, shall be chosen by each, who shall have power to determine all matters of peace and war, of aids or of leagues, and, in general, of what respected the general interests: And a variety of other regulations, for the more effectual execution of the great intention of the contracting parties, were clearly ascertained.<sup>7</sup> Such, then, were the terms of the first confederacy, to be met with in colonial story. The most inattentive must perceive the exact resemblance it bears to a similar junction of the colonies, more recent, extensive, and powerful. Both originated from Massachusetts, always fruitful in projects of independence. And wise men, at the æra of both, remarked: That those memorable associations established a complete system of abso-

lute sovereignty; because, the principles, upon which it was erected, necessarily led to what it was not the policy of the principal agents, at either period, to avow.

From the epoch of this league, the members of it were deemed, by all their neighbours, as one body, with regard to their public transactions, though the peculiar affairs of each continued to be managed by the magistrates and courts belonging to itself.\* The advantages of this coalition seem to have been considered, in those days, as an object of considerable importance: And Rhode-Island, petitioning to be admitted a member of it, was absolutely refused, unless, by submitting to the jurisdiction of New-Plymouth, it ceased to be a separate state; but it preferred the flattering benefits of independence to all the advantages of the union with its haughty neighbours.

The principles, upon which this famous association was formed, were altogether those of independency, and it cannot easily be supported upon any other. The colonies of Connecticut and Newhaven had at that time enjoyed no charter, and derived their title to their soil from mere occupancy, and their powers of government from voluntary agreement. New-Plymouth had acquired a right to their lands from a grant of a company in England, which conferred, however, no jurisdiction. And no other authority, with regard to the making of peace, or war, or leagues, did the charter of Massachusetts convey, than that of defending itself, by force of arms, against all invaders. But, if no patent legalized the confederacy, neither was it confirmed by the approbation of the governing powers in England. Their consent was never applied for, and was never given. The various colonies, of which that celebrated league was composed, being perfectly independent of one another, and having no other connexion than as subjects of the same crown, and as territories of the same state, might, with equal propriety and consistence, have entered into a similar compact with alien colonies, or a foreign nation: They did make treaties with the neighbouring plantations of the French and Dutch. And in this light was their conduct seen in England, and at a subsequent period did not fail to attract the attention of Charles II.

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The union continued in force till the final dissolution of the charters of all.

But if peace with the Indians was preserved by the prudence or vigour of the general-court, the colony, from the extreme bigotry of its rulers, was greatly distracted by internal commotions. Among the emigrants thither, there were several persons, who, not being Independents in their religion, were not admitted church-members, and, not being allowed membership, were not elected freemen; and who consequently enjoyed no share in the government. They were bound by laws, to which they had not assented; and they were taxed by a general-court, wherein they were not represented: And, having no will, they enjoyed no political freedom. To be relieved from grievances, which are supposed to have given rise, during the present times, to the most momentous disputes, they presented a petition to the general-court, in the year 1645, "for freedom of speech to plead their common liberties." They complained: "That, not having a settled form of government, according to the laws of England, they had not a free enjoyment of their lives, liberties, and estates, as free-born subjects of England; that they were debarred from all civil employments, and had no vote in the choosing of officers civil or military; that they were forced to contribute to the maintenance of those ministers, who received them not into their flocks, though they desired it." They prayed: "That civil liberty be granted to all truly English; that neither their persons nor goods may be impressed; that the members of the church of England, not scandalous in their lives, may be received into congregational societies:" Or else, concluded they; "we shall be necessitated to lay our case before the parliament." A petition, which would now appear so humble and so reasonable, we ought naturally to infer, met with the most gracious attention. But no conclusion however would be more erroneous. Of those petitioners, six were charged with great offences contained in their petition, and they were imprisoned and fined. Against a judgement, so contrary, as they conceived, to their rights as men, and to the principles of justice, they appealed to the parliament; but the general-court, unwilling probably to admit a measure so contrary to its views, and to its

construction of the charter, refused the appeal. The circumstances of that signal transaction exhibit the truest picture of the ancient government of Massachusetts, and display those principles of aggrandisement which it seems to have had constantly in view, as the only rules of its conduct. The petitioners, animated by opposition rather than overborne by oppression, resolved to lay their deplorable condition before the supreme power; and two deputies, with this design, were sent to England. But the governor, alarmed at this decisive step, attempted to seize their papers, and instructed Peters, Hibbins, and Weld, the agents, to counter-act their proceedings, and to answer their complaints. The clergy too, equally engaged in similar projects, exerted themselves on that memorable occasion: And the famous Cotton asserted, in one of his sermons; "that, if any shall carry writings or complaints against the people of God in that country, to England, it would be as Jonas in the ship." A storm unfortunately arising, during the voyage, the mariners, often prone to superstition, recollected this sage prediction, and insisted that all obnoxious papers should be thrown overboard. The deputies were constrained to consign their credentials to the waves. The parliament, probably influenced by the intrigues of the agents, or too much engaged in their own important affairs, took no cognizance of this extraordinary transaction. And the petitioners never received any redress." Were not speculation universally contradicted by fact and experience, we ought naturally to find those constitutions the most free in practice which are so in theory and name. The ancient government of Massachusetts adds one to the numbers, to be met with in history, which justify this observation: Under no form were ever the indifferent actions of the citizens regulated upon occasions less frivolous: Under none had ever the natural rights of men been trampled on with circumstances of greater outrage. And the tyranny exercised over those who complained on that occasion, because they were not church-members, alone demonstrates the truth of these remarks.

Winthrop, the deputy-governor, being accused of arbitrary conduct; with regard to those complainants, was obliged to plead his own cause, like a criminal at the bar, before a vast concourse of people; which, in that interesting trial, had assembled. He was most honourably acquitted:

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But, with design to rectify the opinions of men on the nature of government, he delivered a speech<sup>12</sup> from the bench, as remarkable for the singular doctrine it contains, as for the perfect satisfaction which it gave to the court and auditors. “ The questions, said he, which have troubled the country of late, and from which these disturbances in the state have arisen, have been about the authority of the magistrate, and the liberty of the people. Magistracy is certainly an appointment from God. We take an oath to govern you according to God’s law and our own; and, if we commit errors not willingly, but for want of skill, you ought to bear with us: Because, being chosen from among yourselves, we are but men, and subject to the like passions as yourselves. Nor would I have you mistake your own liberty; there is a freedom of doing what we list, without regard to law or justice; this liberty indeed is inconsistent with authority: But civil, moral, and œdederal, liberty, consists in every man’s enjoying his property, and having the benefit of the laws of his country; which is very consistent with a due subjection to the civil magistrate. And for this you ought to contend with the hazard of your lives.” The sentiments of this excellent harangue<sup>13</sup> are all perfectly just, if we except perhaps the proposition, “ that magistracy is certainly an appointment from God;” which is equally genuine also when properly qualified and understood. The opinions of that respectable magistrate, whose writings shew him to have been a man of great reach of thought, were probably derived from the sacred code, and are extremely similar to those of the Gentoos, a people of prodigious antiquity, and of admirable wisdom. But how different are these reasonings with regard to the origin and nature of government, and of the privileges of the people, from those so much inculcated of late, by the posterity of the men to whom they were delivered, “ and gave entire satisfaction.” “ He was chosen governor of the province every year after as long as he lived.”<sup>14</sup>

Massachusetts, in conformity to its accustomed principles, acted, during the civil wars, almost altogether as an independent state. It formed leagues not only with the neighbouring colonies, but with foreign nations,<sup>15</sup> without the consent or knowledge of the government of England.

land. It permitted no appeals from its courts to the judicatories of the sovereign state, without which a dependence cannot be preserved or enforced: And it refused to exercise its jurisdiction in the name of the commonwealth of England. It assumed the government of that part of New-England which is now called New-Hampshire, and even extended its power farther eastward, over the province of Main: And, by force of arms, it compelled those, who had fled from its persecutions, beyond its boundaries, into the wilderness, to submit to its authority. It erected a mint at Boston; impressing the year 1652 on the coin, as the æra of independence: "Though, as we are assured,<sup>16</sup> the coining of money is the prerogative of the sovereign, and not the privilege of a colony:" Though the charter gave no such authority as was given to the Virginian company by the patent of James I. Here, silver pieces of the denomination of shillings, sixpences, and threepences, were coined; which were ordered to be good silver of the alloy of English sterling money, though of less value than it, at the rate of two-pence in the shilling:<sup>17</sup> No other coin was allowed to pass in that commonwealth except that of England: None were suffered to carry the colonial money out of that jurisdiction, except twenty shillings for necessary expences, on penalty of the confiscation of all the visible estate of the offender.<sup>18</sup> At a subsequent period, the general-court gravely justified this irregularity, by reversing the maxim; that ignorance of law shall not excuse. The practice however was continued till the dissolution of its government. Thus evincing to all what had been foreseen by the wise; that a people of such principles, religious and political, settling at so great a distance from controul, would necessarily form an independent state.<sup>19</sup>

A contention, which had arisen some years before between that colony and Connecticut, was finally closed, in the year 1649: And, as it displays the principles of both, and is probably the first of provincial disputes with regard to taxation, it merits particular discussion. The latter having imposed a tax on the exportation of commodities from the river Connecticut, the inhabitants of a village situated on it, though within the limits of Massachusetts, refused to pay a duty which they deemed unjust. Agreeably to an article of the confederacy, Connecticut laid

laid the controversy before the commissioners of those colonies which were not interested in the dispute. When the pretensions of both were at length heard, in the year 1647, the former insisted, “ that Connecticut had no authority to impose a tax on the inhabitants of a different colony, because they were not members of its legislature; that the fort, for the maintenance of which the duty had been collected, was of no use to them, and therefore they derived no benefit; that, having first settled on that river, they had been at great expence, never expecting that such a duty would ever be imposed; and that the general-court had the same right, had it the inclination, to impose a similar custom on goods imported from that river to Boston.” But, against this plausible, perhaps just, reasoning, that colony urged “ the practice of Europe; that the fort being a security to the traders, the principle was the same as if the navigation had been improved, which would create an obligation, on the part of those who derived an advantage, to pay a consideration.” The commissioners, having adjourned in order to advise, ordered the tax to be collected in the meantime. Knowing that the original could not be obtained, Massachusetts insisted that Connecticut should produce its patent, to evince its authority; and a dispute having arisen with regard to the boundaries of the contending colonies, the commissioners ordered these to be ascertained, and the duty to be levied as formerly. Mean-while, the former, probably suspecting the partiality of the judges, or foreseeing that judgement would be finally given against it, at once cut the knot which it was so difficult to unravel; and, in a way peculiar to itself, closed the debate: It produced an ordinance of the general-court, which ordered, “ that all goods any way appertaining to the inhabitants of Plymouth, of Connecticut, or of Newhaven, that should be laden or unladen within the caffle, shall pay the customs therein mentioned, on pain of forfeiture.” Though principles of retaliation might have justified the imposition of a tax on Connecticut, it was assuredly unjust to levy a custom on the other members of the confederacy, who acted only as umpires, in conformity to the league. Against a measure, so contrary to every rule of fair conduct, the confederates had nothing to oppose, but the

the never-failing though ineffectual expedient of the weak: They presented a representation to the general-court; in which they prayed it, “seriously to consider whether such proceedings agree with the law of love, and the tenor of the articles of confederation.” The fort, which had given rise to this dispute, was deserted; the collection of the disputed duty was discontinued; and Massachusetts, in all the pride of power, condescended, in the year 1650, to suspend the decisive ordinance.”

That colony not only thus gave the law to its confederates, but had the dexterity to foil the long-parliament, so celebrated for talents and power. The committee of state, having resolved to oblige it to acknowledge their authority, by taking a new patent from them, and by keeping its courts in their name, communicated these intentions to the general-court. But, instead of complying, it transmitted, according to its wonted policy, a petition “to the parliament of England, the supreme power.” After noticing the desire of the committee, it insisted, “that, these things not being done or used, in the late king’s time or since, it was not able to discern the need of such an injunction:” It represented, upon what conditions, and with what authority, the emigrants came thither: It reminded the parliament of their demeanour for these ten years, since the beginning of their differences with the late king, and in the war that ensued; that they had constantly adhered to them, without withdrawing themselves, in their weakest condition and most doubtful times; that such was the love they bore the parliament, that they were ready to stand or fall with them; that, for all this, they had suffered the hatred and threats of other English colonies, “now in rebellion against you,” and also the loss of divers ships and goods, taken by the king’s party that is dead, by others commissioned by the king of Scots, and by the Portugals: It acknowledged the many undeserved favours conferred upon the colony by parliament, among which are enumerated, “the taking off the customs, and the stopping of all appeals from hence:” It prayed that it might not go worse with New-England now, than in the time of the late king; and, instead of a governor and magistrates, yearly chosen by the people, to have others imposed on them against their wills. The general-court at the same time transmitted

ted a letter “ to his excellence the lord-general Cromwell,” to the end “ that no private information might occasion his honour to prejudice “ the poor despised colony of Massachusetts,” by inviting over many of the inhabitants into Ireland. After stating at large its reasons against this project, which are very curious, it petitioned “ his excellence to be “ pleased to shew them whatsoever God shall be pleased to direct him “ unto, on the behalf of the colony, to the most honourable parliament.”

These petitions, so characteristic of all the parties, did not probably give perfect satisfaction to the ruling powers in England. Here, a clamour, as violent as it was well-founded, had gone forth, because the united-colonies, with the true spirit of Dutchmen, supplied Virginia and Barbadoes, “ though enemies to the commonwealth,” with great quantities of warlike stores and other commodities; enriching themselves at the expence of others, who were not equally exempted from taxes. It was seriously debated, by the council of state, “ whether their free “ customs and excise should not be revoked:” And the usual arguments and arts of Winslow, their agent, were scarcely sufficient to stop their proceedings for the present. And he warned his constituents to prevent the irregularities of merchants, and to oblige all to be careful that they did not abuse the immunities granted by the parliament. Nevertheless the requisitions above-mentioned were never complied with, and the general-court consequently gained the point in controversy.<sup>22</sup>

Not only did Massachusetts proudly dictate to its confederates, and artfully foil the parliament, but it out-fawned and out-witted Cromwell. Though a war had been declared by the parliament against the Dutch, in the year 1651, yet their colony at Manhattans, on the river Hudson, too feeble to annoy the neighbouring confederates, requested the continuance of peace. It was their mutual interest, as they carried on an advantageous trade, and they readily granted what was now desired. But soon was information brought, from all parts, by the Indians, that the Dutch were privately inciting them to commence universal war against New-England. To consider of these reports, a general meeting of the members of the league was held at Boston in the Year 1653. And, though “ the

“ proofs of the execrable plot, tending to the destruction of so many of  
“ the dear saints of God, were such as to induce a belief of the reality  
“ of it,” and the deputies were almost unanimous for a war against  
their neighbours, yet their resolutions were defeated, and the association  
itself almost dissolved, by a declaration of the general court, “ that no de-  
“ termination of the commissioners, though they all agreed, shall bind it to  
“ join in an offensive war, which shall appear to it to be unjust.” Out-  
faced thus, and sensible of its danger, because it was nearest to Manhat-  
tans, Newhaven sent agents to represent its unhappy situation to Crom-  
well. With his accustomed promptitude he instantly detached a few ves-  
sels, with a small number of troops, to reduce the Dutch settlement : and  
he at the same time recommended to Massachusetts to afford his officers its  
best assistance in so laudable an enterprise. All the colonies of New-  
England his generals “ found ready to assist ;” but that alone. The  
general court pursued its usual policy on that occasion. It transmitted  
an address to the protector, acknowledging the continued series of fa-  
vours, which he had conferred on the colonists, “ poor exiles in these ut-  
“ most ends of the earth ;” informing him, that, in devotion to his ser-  
vice, it had permitted those bearing his commission to raise five hundred  
volunteers for his use ; that it had debarred the colony of all commerce  
with the Dutch ; that it had been exercised with serious thoughts of its  
duty at that juncture, which were, “ that it was most agreeable to the  
“ gospel of peace, and safest for these plantations, to forbear the use of  
“ the sword ; that, if it had been misled, it humbly craved his pardon.” “  
Peace, meanwhile, was concluded with Holland, “ and the Dutch, not-  
withstanding the furious storm which had threatened them, remained,  
till the Year 1664, in peace and security at Mannhattans.”<sup>26</sup>

The protector's officers however were actuated too much by the vigour  
of their master to remain long inactive, though that people were no longer  
the object of their hostilities. No sooner was Acadie restored to France in  
1632 than her sovereign granted to De Razilly the lands around the bay  
and river of St. Croix. The company of New-France conveyed, in 1635,  
the territory on the banks of the river St. John to Saint Etienne, before-  
mentioned, and to La Tour, the general of that colony.<sup>27</sup> Massachusetts, as  
well.



well as the other settlements of New-England, beheld with regret the progress of the French on the adjacent coast, and dreaded their ultimate success: And Sedgewicke, who was commander in chief of Cromwell's forces in New-England, was easily persuaded to attack a people, whose religious tenets he detested, and whose country he hated. He acquired Port-royal, by capitulation, in August, 1654; <sup>28</sup> giving to the inhabitants liberty in their religion, and security for their property: And, on these conditions, Acadie soon after submitted to his power. The French in after-times consoled themselves, with their usual gaiety, that, in the whole of a transaction, which other nations would have considered as disgraceful, the name of Nova-Scotia did not appear. During the treaty of Westminster, <sup>29</sup> in November, 1655, their ministers demanded restitution of the forts of Pentagoet, St. John, and Port-royal, which, they insisted, were wrongfully retained. But, on that occasion, they met with the same mortification which they have but too often inflicted on others, and their pretensions were referred to the arbitrators, who were appointed to adjust the damages committed on either side since the year 1640. The restoration of Acadie was postponed to future discussion.

Yet Cromwell seems to have had no real intention to return what his arms had conquered. For, in August, 1656, he granted, <sup>30</sup> under the great seal of England, to Saint Etienne above-mentioned, to Crown, and to Temple, for ever, the territory, denominated Acadie, and part of the country commonly called Nova-Scotia, extending along the coast to Pentagoet and to the river St. George. It was erected into a province, perfectly independent of New-England or any other of his dominions, of which they were appointed hereditary governors. It was required of them, however, as an express stipulation; that they should not suffer any soldiers, or any other persons, to inhabit within the regions above specified, but only those, who shall be of the protestant religion, who shall submit to the government of this republic, who shall obey such commands as shall be given them by him and his successors. And, as a farther encouragement, was conferred an exemption from all subsidies within the said countries, as freely as other colonies enjoyed, notwithstanding any usages to the contrary. Thus, whosoever governed in Eng-

land, whether a king, a parliament, a protector, grants of American dominions were made, authority to govern was given, exemptions from taxation were conferred. Thus for the first time was introduced that confusion, with regard to Acadie and Nova-Scotia, which so perplexed statesmen in after-times, by considering those as two different countries that were in truth the same; the former containing the latter and more, and Acadie advancing westward till it met with the settlements of New-England. For it ought always to be remembered; that the southern boundary of Acadie, as established by the grant of Henry IV. in 1603, was the 40th degree of North latitude; that the south-western limits of Nova-Scotia, as appointed by the patent of James I. in 1621, was the river St. Croix. And thus was the stream of St. George now affixed as the utmost extent of both towards the South-west.

The address above-mentioned, it should seem, gave perfect satisfaction to Cromwell. For, after the conquest of Jamaica, with his usual vehemence, he conceived, that the colonists of New-England should remove thither: He thought they had as clear a call to transport themselves to that island as had they to remove from England to Massachusetts; in order to the bettering of their outward condition: God having promised his people that they should be the head and not the tail. With these sage designs he sent Gooken to New-England, to solicit the removal of the inhabitants: But he found the minds of all averse from his proposals, because they had heard of the sickness of the climate.<sup>31</sup> The general-court, too sensible of its present happiness to go in quest of new adventures, transmitted an address to excuse the colonists, and “to beseech his highness not to impute it to them, as declining his service, much less as disregarding his endeavours for promoting their welfare.”<sup>32</sup> The winning courtship of Massachusetts seems to have captivated the rugged heart of Cromwell; and, notwithstanding a variety of complaints were made to him against that colony, so strong were his attachments, that all attempts, either to obtain redress or to prejudice it in his esteem were to no purpose.<sup>33</sup>

Having thus, by the prudence or vigour of its councils, triumphed over its opponents abroad, the general-court had now full leisure to turn

its

its undiminished wisdom to domestic affairs. From the year 1650 to the Restoration, Massachusetts was chiefly employed in a business that of all others seems to have been most congenial to it; in preserving, by persecution, uniformity in opinion and discipline. The Anabaptists separated from the congregational churches in the year 1650: Not thinking it lawful to communicate with persons whom they deemed unbaptized. Actuated by this notion, Holmes and his disciples withdrew from them, and established a distinct meeting. Continuing obstinate, though he was admonished, he at length was excommunicated. And the general-court took the most speedy course to suppress the growing schism. That zealot and his followers still insisting, "that it was better to obey God than man," and continuing in a state of separation, were sentenced to various punishments. But the prisoners having declined to pay their fines, Holmes was publicly whipped: His friends being spectators of his sufferings, praised God, "in the face of the people," for his courage and constancy. This conduct was not only deemed seditious, but they were adjudged, by the general-court, to suffer similar punishments.<sup>34</sup> And these severities were justified upon this principle by Mather, a famous divine of Massachusetts; that the separation of the Anabaptists was a manifest violation of the laws of the commonwealth, concerning the orderly gathering of churches.<sup>35</sup> Strange! that it occurred not to the man, who had himself suffered persecution, that this was the language of his persecutors; that, were this reasoning admitted, as decisive or just, no dissenting congregation could exist; that such were the pretences which persecution had used at all times and in every country. And thus, says Neal,<sup>36</sup> those unhappy persons were so unkindly treated, for following the light of their own consciences, and the churches of New-England would neither suffer the Anabaptists to live quietly in their communion nor to separate peaceably from them.

No sooner was that sect suppressed, by the severity of the general-court, than the Quakers arose. Upon them, as upon their predecessors, the magistrates imposed fines, imprisonments, whipping: And, when all these proved ineffectual, the last of human punishments was inflicted without remorse. The first Quakers who appeared in New-England, arrived

rived from Barbadoes in July, 1656; and, having suffered five weeks imprisonment, they were sent off by the vessel which had brought them thither: The commander being obliged to pay the expences of their imprisonment and exportation. The sanguinary laws against that sect, which have been mentioned, were then enacted; but the same spirit, which induced that zealous people to visit the colony, soon moved them to return, and to propagate their opinions, notwithstanding the severity of the laws and the frequency of punishment. The vigilance of that government was found insufficient to prevent their doctrines from being adopted; and private meetings of the Friends were soon established. Those, who absented themselves from public worship, were fined; the teachers were sent to the house of correction or banished:<sup>37</sup> But all was in vain. The general-court, alarmed for that uniformity of opinion and practice which it so much admired, in October, 1656, enacted: "That all Quakers, coming into that jurisdiction, shall, for the first offence, be sent to the house of correction and have one ear cut off; shall, for the second offence, undergo the same punishment; for the third offence, shall have their tongues bored, and shall be confined till sent away at their own charges:"<sup>38</sup> And, by virtue of this abominable law, three of those sectaries actually suffered these severe punishments in September, 1658.<sup>39</sup> Agreeably to the wonted custom of enthusiasts, they gloried in their sufferings; and, as the persecutions against them increased in extent and severity, their profelytes grew proportionally in numbers and ardour: Many of the Quakers, unable or unwilling to pay the expences of their prosecutions and exportation, "were ordered to be sold to any of the English plantations of Virginia or Barbadoes, to answer the same."<sup>40</sup> But the general-court, in the vehemence of its zeal, seems not to have adverted that neither its orders nor its laws had any effect in other colonies, and that consequently the unhappy convict could not be detained in servitude. The ordinances hitherto made having thus proved ineffectual, the general-court passed a new one; which banished "all of the accursed sect of the Quakers," upon pain of death: And, by virtue of this law,<sup>41</sup> written in the genuine spirit of Draco, four Quakers were actually executed in the year 1659.<sup>42</sup> The spirit

spirit and talents displayed by Wenlock Christison, on his trial, would have done honour to Sidney. Being asked what he had to say, why he ought not to suffer the law; he inquired by what law they would put him to death? And the court answering, by the late ordinance made against the Quakers; he desired to know who empowered them to make such an edict, and if it was not repugnant to the laws of England. The governor replied, with an impertinence which shewed that the question was decisive, that there was a statute in England to hang the Jesuits. But, rejoined the prisoner, if you put me to death, it is not because I go by the name of a Jesuit, but of a Quaker. I appeal to the judicatories of our common country: I never read nor heard of any statute that was in Old England to hang Quakers. Thus reason and law were pleaded in vain to judges, whose understandings were darkened by the most degrading fanaticism: And the court disgraced itself by over-ruling his defence. But the excessive severity of laws prevents their execution: And this man was pardoned and banished.<sup>43</sup>

The abominable persecutions of Massachusetts were however highly approved of by Cromwell; "who, we are assured, no way favoured sectaries."<sup>44</sup> He applauded the colony for banishing the evil seducers that had risen up among them; stoutly insisting, that the general-court had acted like wise men, and God had broke the designs of evil instruments, and borne witness with them.<sup>45</sup> But if those severities, so contrary to humanity, to law, and to Christianity, were not altogether prevented, they were at least greatly mollified by a letter from Charles II. soon after the Restoration, to the general-court. It required, that no farther prosecutions shall be carried on against the Quakers; but that such persons may be sent to England, to the end that they may be proceeded against according to the laws and their demerits.<sup>46</sup> Clemency is the peculiar characteristic of kings: Nor was it ever more laudably exerted, than in rescuing, from the fangs of bigotry, that sect, which did not persecute when it acquired power.

Thus, says Neal,<sup>47</sup> the government of New-England, for the sake of uniformity in divine worship, broke in upon the natural rights of mankind; punished men, not for disturbing the state, but for their different religious

religious opinions. This unworthy conduct detracts from the merits of the colonists in achieving the settlement of that country. We think with less asperity of the persecutors of such men: And, when we see them struggling with disease and with famine in the wilderness, we are too apt to give them less of our pity than humanity would otherwise bestow. There is nothing more irregular than the human mind when governed by unnatural impulses. The general-court, while persecuting all who differed from it in opinion, religious or political, ordained, "that all strangers, professing the Christian religion, who shall flee to this country from the tyranny of their persecutors, shall be succoured at the public charge, till some provision can be made for them."<sup>48</sup> And that body received, with a benevolence that covereth a multitude of faults, the Scots, "whom the Lord had delivered into Cromwell's hands at Dunbar," and who were transported to Massachusetts, to suffer for their own credulity, and the folly of their rulers.<sup>49</sup>

Notwithstanding every infelicity and danger, the colony had extended itself far over the country at the Restoration, and the natural increase of its numbers was considerable. Two causes, which have at all times proved extremely favourable to the growth of such establishments, chiefly contributed to their prosperity; plenty of good land, to be obtained easily by all; and freedom to manage their own affairs in the manner most agreeable to themselves. The people were moreover exempted from the payment of taxes, except for the support of their internal government, which were very inconsiderable: And they enjoyed the extraordinary privilege of importing into England commodities free from that custom, which others were constrained to pay. Having joined with the strongest party during the civil wars, they enjoyed a freedom of commerce, which the other colonies, less temporizing, did not possess: And, being the favourites of Cromwell, the act of navigation, of which the other plantations so greatly complained, was not enforced against them, and they continued to trade whither they pleased. All these causes contributed to the rapid increase of Massachusetts, to that extent of numbers, wealth, and consequence, in which the Restoration found it.

#### AUTHORITIES

## AUTHORITIES AND NOTES.

<sup>1</sup> See a copy of this ordinance in Hutch. Hist. Mass. 1 v. p. 114, 15. —  
<sup>2</sup> Ib. 114. — <sup>3</sup> Ib. 136. — <sup>4</sup> Lords Journ. 6 v. p. 291. — <sup>5</sup> Ib. 7 v. p. 75.  
 — <sup>6</sup> Ib. 8 v. p. 685. — <sup>7</sup> See the articles of confederation in Neal's New-  
 England, 1 v. p. 223. — <sup>8</sup> Ib. 231.

<sup>9</sup> In all public works, a magistrate had power, by his warrant, to cause the constable to impress labourers and artificers, and to pay them such wages as he should judge the work deserved. But no one's cattle or goods might be impressed, except by a warrant grounded on some act of the general-court: And no man could be forced to go out of that jurisdiction, upon any offensive war, except those undertaken by the general-court. — Ordin. of N. Engl. abr. 57, 8. — Warrants for the impressing of soldiers were to be directed to the commissioners of the militia, who might suppress all raising of men without their licence. — Ib. 74. — The constables were empowered to disburse the charges in apprehending, whipping, and passing, of Quakers, to be repaid out of the next county-rate; and they were authorized to impress carts, oxen, or men, for the execution of this law. — Ib. 47. — It is unnecessary to observe how dreadfully men, who were obnoxious to those in power, might have been oppressed under the authority of such laws: And, accordingly, those, who petitioned the general-court in 1645, complained loudly of their persons having been impressed, and their goods taken forcibly from them.

<sup>10</sup> See the petition, in Neal, 1 v. p. 233. — <sup>11</sup> Ib. 233. Hutch. 1 v. p. 145. — <sup>12</sup> See the speech, in Neal, 1 v. p. 236.

<sup>13</sup> It is pleasing to contrast the sentiments of that remarkable speech with the opinions of the Hindoos, a very ancient and sensible people, on this interesting subject. Providence, says their code, created the magistrate for the guardianship of all. The magistrate must not be considered as a mere man; even in the case of the magistrate's being a child, he must still be looked upon in the light of the Dewtâh (the Deity); in truth the magistrate is the Dewtâh in a human form, born in this world: The magistrate must never be held low and contemptible; whosoever

vilifies and abuses the magistrate sports with his own life. Providence created punishment for the preservation of the magistracy; if the magistrate inflicts punishment according to the Shafter, (book of laws,) his subjects are obedient to his commands; if he omits to punish according to the Shafter, his kingdom and his property become ruined and desolate. — The magistrates shall not be impatient and angry at hearing any subject's complaints; and if any person, not having gained his cause, speaks abusively to the magistrate, even then he shall not be enraged against that person, but shall forgive his error. — Gentoo Code, pref. p. cx. — The speech and the code equally derive government from the same source; but they draw different conclusions, according to the dissimilar nature of their constitutions: The one was monarchical; the other republican.

<sup>14</sup> Neal, 1 v. p. 235-7. — <sup>15</sup> Hutch. 1 v. p. 127-32. — <sup>16</sup> Ib. p. 110.

<sup>17</sup> Douglas's Sum. 1 v. p. 433. N. Eng. Ordin. abridged, p. 78.

<sup>18</sup> When the project of coining money in Massachusetts was referred, during the reign of James II. to the officers of the mint, they reported to the lords of the committee of plantations; "that, though the general-court had promised, that every shilling, and so proportionably for smaller pieces, should be only two-pence in the shilling of less value than sterling money; yet, after the silver was delivered to be coined, the mint-master was ordered to pay it out at three-pence troy for the shilling, and so in proportion: Now, three-pence troy is worth only nine-pence farthing sterling, besides the charges of coining." — New-Eng. Entries, 2 v. p. 221-6. — The owners of silver were consequently defrauded of three farthings in a shilling, or 22½ per centum.

<sup>19</sup> The following notices and papers will exhibit a genuine picture of that spirit of aggrandisement, of cruelty, and uncharitableness, which were the real characteristics of Massachusetts during that age. Her persecutions planted many small settlements on the coast of New-England, both on her south-eastern and north-western borders. A little religious society, which was called *the Grotists*, from the name of its leader, was received at Providence by Roger Williams, with the benevolence natural to the man, and with the attention of one who had known adversity, and had



had himself wanted an asylum. They purchased the lands of Shaw-omet of the sachem of Narraganset, and built the town of Warwick. But Massachusetts, envying their repose, sent commissioners, supported by an armed force, in 1643, to reduce them to obedience to her jurisdiction. — Hutch. 1 v. 117-23. — On that affecting emergence they published the following manifesto, which shews the temper and maxims of both sides.

“ To certain men, styled commissioners, sent from the Massachusetts, now upon the way towards Shaw-omet, whose names we know not.

Whereas ye are sent, by the government of Massachusetts, under a pretence of having things ordered among us in a way of justice and equity to be distributed among ourselves, consisting, as they say, of English and Indians; and that upon this ground, that we have given them an invitation to that purpose.

Know, therefore, our whole intent and meaning therein, which may not bear any other interpretation in a rational mind, that, as they invited us unto them as clients to have our causes tried by them, and not as warriors to fight with them, so did we, and no otherwise, invite them: Mistake us not therefore, neither deceive yourselves through their or your own pretences; for, if you come to treat with us in ways of equity and peace, together therewith shaking a rod over our heads in a band of soldiers; be assured we have passed our childhood and nonage, in that point, and are under commission of the great God not to be children in understanding, neither in courage, but to acquit ourselves like men.

We strictly charge you therefore hereby, that you set not a foot upon our lands in any hostile way, but upon your perils, and that, if any blood be shed, upon your own heads shall it be: And know, that if you set an army of men upon any part of our land, contrary to our just prohibition therein, we are under command, and have our commission sealed, all ready to resist you unto death. For this is the law of our God, by whom we stand, which is written in all mens hearts, that, if ye spread a table before us as friends, we sit not as men invective, envious, or malcontent, not touching a morsel, nor looking from you who point us unto our dish, but we eat with you by virtue of the unfeigned law of rela-

tions, not only to satisfy our stomachs, but to increase friendship and love; the end of feasting: So also, if you visit us as combatants, or warriors, by the same law of relations we as cheerfully and freely answer you unto death; not to kill and take away the lives of men, but to increase wrath and horror; the end of war, in the souls of all men that seek after it, where the peace of God appears not. And they that work otherwise, and answer not unto this law, they are not men of truth, but base dissembling hypocrites, shadows, and abominable idols, set up in the form of men. — By the owners and inhabitants of Shaw-omet; the 28th of October, 1643.” — From the N. Eng. pap. bund. 3. p. 6.

The vigour of this sentiment and conduct did not, however, prove successful. After some resistance they were overpowered by superior numbers; and Gorton, Holden, and other of their principal commanders, were taken, and imprisoned at Boston. Gorton was accused “ as a blasphemous enemy of the true religion and its ordinances, and to all civil authority, but particularly in that jurisdiction.” The general-court, with its accustomed spirit, but contrary to the declarations of the great charter of England, adjudged him “ to be confined, and set to work, and to bear such bolts as may hinder his escape, during the pleasure of the court;” but, should he break his confinement, and pursue his former conduct, then to suffer death. — *Ib.* p. 6. and Hutch.

IV. 120-1.

When the royal commissioners arrived in New-England, soon after the Restoration, that unfortunate enthusiast, who had mean-while regained his liberty, with the loss of his estate, applied to them for reparation. What success he met with, appears from the following letter of one of the commissioners. — From the same pap. bund. 3. p. 6.

“ Mr. Gorton: — These gentlemen of Boston would make us believe, that they verily think, that the king hath given them so much power in their charter to do unjustly, that he reserved none for himself to call them to an account for doing so: In short, they refuse to let us hear complaints against them; so that at present we can do nothing in your behalf. But I hope shortly to go for England, where (if God blefs

blefs me thither) I fhall truly repreſent your ſufferings and your loyalty.

Boston, 26 May, 1665.

Your affured friend,

GEO. CARTWRIGHT."

REMARK. Constructive treason has long been exploded in our laws, because inconsistent with the genius of freedom: Happy would it have been, for the interests of conscience and true religion, had constructive blasphemy never existed in ecclesiastical policy; because, the writings of the sectaries in general, during those days, seem now utterly unintelligible.

The following paper shews on what conditions the inhabitants of Warwick were at length discharged. — From the same pap. bund. 3. P. 32.

“ At a general-court, at Boston, 7th of the 1st month, 1643-4.

It is ordered, that Randal Holden, and the rest of that company, shall be set at liberty; provided, that if they, or any of them, shall, after fourteen days after such enlargement, come within any part of our jurisdiction, either in the Massachusetts, or in or near Providence, or any of the lands of Pomham, or Sakonoko, or elsewhere within our jurisdiction, then such person or persons shall be apprehended, and shall suffer death by due course of law.

Per Cur.

INCREASE NOWEL, Secretary."

At a subsequent day Holden presented a petition to Charles II. which, after stating the miseries he had endured, “ though the government of Massachusetts had nothing to lay to his charge,” prayed: “ That, in regard he was about to return to his home, and might be driven, by stress of weather or other exigencies, into the jurisdiction of that colony, that his majesty would please to command the magistrates to repeal the order of banishment.” That prince, in compassion to his aggrieved subjects, and for their future security from the  
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like outrages, granted the desire of the petition: He transmitted an order, in December, 1678, requiring the magistrates of his said colony to repeal the ordinance complained of, that the said persons may enjoy such liberty of free intercourse, within Massachusetts, as unto his majesty's good subjects of right appertaineth. — From N. Eng. Ent. 1 v. p. 312. — The agents of that colony justified the proceedings above-mentioned, by saying, among other things: — That the principal ground of the controversy was not any thing of religion, but of a mere civil nature, with regard to disputes with the Indians about lands; which might have proved of dangerous consequence to the English in general. — N. Eng. pap. bund. 3. p. 48. — What a contrast is there between the good-natured careless monarch of England and the unfeeling and interested bigots of Massachusetts. When the failings of Charles II. are mentioned, it ought to be remembered, that, during his reign, he exerted himself with more than usual vigour in protecting his subjects against the injustice and oppression of that government.

<sup>20</sup> Hutch. 1 v. p. 154; who cites the records of the united-colonies; and see the ordinances, *ib.* 154. — <sup>21</sup> *Ib.* 156. — <sup>22</sup> Both these remarkable papers are in his Appendix, N<sup>o</sup>. 8, 9; and see Winflow's letter to the commissioners of the united-colonies, and their answer, in the collection of papers by Mr. Hutchinson, p. 228-31. — <sup>23</sup> The letter is in Thurloe's State Papers, 2 v. p. 420. — <sup>24</sup> See this singular address, in Hutch. 1 v. Append. N<sup>o</sup>. 10. — <sup>25</sup> Thurl. St. Pap. 2 v. 420. — <sup>26</sup> Hutch. 1 v. 179. — <sup>27</sup> These grants have been published from the Dépôt de la Marine at Paris. — <sup>28</sup> It has been published from the same Dépôt. — <sup>29</sup> Corps diplomatique, 6 v. p. 121. — <sup>30</sup> This curious grant has been published from the same Dépôt. — <sup>31</sup> Thurl. St. Pap. 5 vol. p. 5, 6. — <sup>32</sup> See the address, Hutch. 1 v. 190-2. — <sup>33</sup> *Ib.* 192, 3. — <sup>34</sup> Neal, 1 v. p. 298, 9-302. — <sup>35</sup> *Ib.* 304. — <sup>36</sup> *Ib.* 305. — <sup>37</sup> New-Engl. Ordin. abridg. 46. — <sup>38</sup> *Ib.* 47. — <sup>39</sup> Neal, 1 v. 315, 16. — <sup>40</sup> *Ib.* 323. — <sup>41</sup> N. Eng. Ordin. abridg. 47. — <sup>42</sup> The statute of 31 Hen. VIII. ch. 14. "for abolishing diversity of opinions in certain articles concerning the Christian religion," was denominated, by the chronicles of those days, "the bloody statute." — Observ. on the ancient Stat. p. 396. — But, though the religious

religious tenets, established by that law, are either abominable or absurd, it inflicted no punishment on offenders. What would those ancient writers have said of the ordinances of Massachusetts before-mentioned? — <sup>41</sup> Neal, I v. 333. — <sup>44</sup> Hutch. I v. p. 193. — <sup>45</sup> Ib. 192. — <sup>46</sup> Neal, I v. 335. — <sup>47</sup> Ib. 303. — <sup>48</sup> N. Engl. Ordin. abridg. p. 96. — <sup>49</sup> Cotton's letter to Cromwell, in the collection of papers made by Mr. Hutchinson, p. 235.

## C H A P. IX.

*Anecdotes of Sir George Calvert. — Obtains the charter of Maryland. — Its construction argued. — Discoveries in Chesapeake. — The province settled. — Treaty with the aborigines. — Jealousy and opposition of the Virginians. — The first assembly. — Cleyborne's claims. — The second assembly. — Application to parliament against the charter. — Happiness and gratitude of Maryland. — Indian war. — The validity of the charter finally decided. — A rebellion. — A singular law concerning religion. — The assembly of 1650. — The province subjected to the parliament; to the usurpation of Cromwell. — Laws of the protector's assembly. — Distractions. — Restoration.*

MARYLAND has always enjoyed the unrivalled honour of being the first colony which was erected into a province of the English empire, and governed regularly by laws enacted in a provincial legislature. The only plantations of England, which in 1632 graced the coasts of the American continent, were Virginia and New-England. The former, originally placed under the regimen of a great commercial association, was ruled by its ordinances, by the orders of the prince, by the edicts of the governor: Nor was its political situation greatly meliorated by the dissolution of the Virginian company, by the administration of Charles during the early years of his reign. The government of the latter, we have seen, was invested in a similar corporation, with similar powers. And a like body politic was created for the rule of Massachusetts, though, with a peculiar dexterity, she soon abolished her chartered constitution, and erected a provincial system, suitable indeed to her own views, but utterly inconsistent with the patent.

Early in life Sir George Calvert, the projector of Maryland, was received into the patronage of that illustrious statesman, Sir Robert Cecil, by whose interest he was made secretary of state to James I. The friendship of the no less celebrated Sir Thomas Wentworth brought him into the parliament of 1620-1, as one of the representatives for Yorkshire. '

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And, as principal manager of the interest of the court, we have heard him opposing the bill for a free fishing, because supposed contrary to the royal authority; and insisting with that confidence which conviction always inspires, that the American territory, being gotten by conquest, ought to be governed by prerogative as the king pleases. For such was the fashionable language during that and the succeeding reign. Sir George was one of the original associates in the great Virginian company, and continued a member of that respectable corporation during its existence.<sup>2</sup> And, as secretary of state, he acted as one of the committee of council, for the affairs of the plantations, during the life of James.<sup>3</sup> Perfectly acquainted with affairs, and foreseeing probably the considerable advantages that would accrue to his posterity at a future period, he procured a grant of territory in Newfoundland, by the appellation of Avalon, the name of which only continued in his family till the present times. In the year 1622 he established a small but flourishing settlement in that island, at Ferryland, which he governed by his deputy, which he visited in person in the beginning of the reign of Charles I.<sup>4</sup> And, in the year 1628, we have seen him admitted by his counsel to oppose the bill, brought into the house of commons, for a freer liberty of fishing, because deemed by him subversive of his right. But neither the climate nor the soil of that inhospitable island answered expectation. In order, therefore, to procure a settlement in a better land, he visited Virginia, of the fertility and advantages of which he had heard so much. It was not long before he remarked, that though the Virginians had established trading houses in some of the islands, towards the source of the bay of Chesapeake, they had formed no settlements to the northward of the river Potowmack. He determined to procure a grant of territory in that happier clime. And Charles I. with the facility of that age, readily complied with his solicitations. But owing to the tediousness of public business, before a patent could be finally adjusted and pass the seals, that eminent statesman unhappily died.<sup>5</sup> These notices, trivial as they may seem, are curious and important, only as they throw light on a charter so famous in colonial story, and enable us to establish its genuine construction.

Whatever were the real causes, which procured this remarkable grant, the ostensible motives were declared to be “ a laudable zeal for extending the Christian religion and the territories of the empire.” And that monarch, in June, 1632, confirmed to Cecilius, now baron of Baltimore, for ever, that region, bounded by a line, drawn from Watkins’s point, on Chesapeake-Bay, to the ocean on the East; thence, “ to that part of the estuary of Delaware on the North, which lieth under the fortieth degree, where New-England is terminated; thence in a right line, by the degree aforesaid, to the meridian of the fountain of Potowmack; thence following its course, by the farther bank, to its confluence.” That a territory, thus precisely bounded, “ might be eminently distinguished by more ample titles, it was incorporated into a province, and denominated Maryland:” And it was separated from Virginia, and was no longer to be subordinate to any other colony, but immediately subject to the crown of England, and dependent on the same for ever. That nobleman was created the absolute proprietary of it; saving the allegiance and sovereign dominion due to the crown. He was empowered with assent of the freemen or their delegates, whom he was required to assemble for that purpose, to make laws of what kind soever for the province; “ so that they be not repugnant but agreeable to the jurisprudence and rights of the realm of England:” And the acts of assembly he was authorized to execute. Thus the powers of government, legislative and executive, were established. That the new colony might increase in people, licence was given to all subjects to transport themselves thither; and they and their posterity were declared to be liegemen of the king and his successors, and entitled to the liberties of Englishmen, as if they had been born within the kingdom. They were enabled to carry any merchandises to the province, paying the usual customs; and to import into England and Ireland its productions, rendering such taxes as other subjects should be obliged to contribute. Power was given to the proprietary, with the assent of the people, to impose subsidies there, upon just cause and in due proportion; which were granted to him for ever: And there was a covenant on the part of Charles, that neither he nor his successors should, at any time, impose, or cause



to be imposed, any tallages on the colonists, or their goods and tenements, or on their commodities, to be laden within the province. Thus was conferred on Maryland that exemption for ever, which had been granted to other colonies for years. This region was erected into a palatinate, and the proprietary was invested with all the royal rights of the palace, as fully as any bishop of Durham had ever enjoyed: And he was authorised to appoint officers, to repel invasions, to suppress rebellions. The advowsons of those churches, which should be consecrated according to the ecclesiastical laws of England, were granted to him. Power was given to erect ports; but with an express saving of that right, which the commons had so long contended for, of fishing within the various bays, harbours, and creeks, of the province. And the charter finally provided, which was of great importance, that, should any doubts arise concerning the true meaning of it, such an interpretation shall obtain as is most favourable to the proprietary; yet, that no construction should be made whereby the Christian religion, or the allegiance due to the crown, shall suffer any diminution.<sup>6</sup>

But it must be observed, that, in this patent, there is no clause which obliges the proprietary to transmit the acts of assembly to the king, for approbation or dissent; nor any saving of the royal interference in the government of the province. These essential omissions induced the commissioners of plantations to represent to the commons, in 1733; <sup>7</sup> “that Maryland is under no obligation, by its constitution, to return authentic copies of its laws to the sovereign, for confirmation or disallowance; or to give any account of its proceedings.” Nothing can afford more decisive proof, than these material omissions, that Sir George Calvert was the chief penman of the grant. For the rights of the proprietary were carefully attended to, but the prerogatives of the crown, the rights of the nation, were in a great measure overlooked or forgotten. And an act of parliament was about the same time proposed as the only remedy for those defects, which the improvidence of Charles I. had created.

Such then is the substance of this remarkable charter, which appears to have been drawn with great precision and ability. The powers given

to the proprietary are extremely large; the privileges conferred on the people are assuredly superior to those granted to other colonists: And there is a covenant on the part of the king and his successors, which is to be met with in no other colonial patent, which has given rise, during the present days, to a claim of exemption from parliamentary taxation. But well may be questioned the validity of a pretension so extraordinary and novel. For it supposes that prince to have transferred a power which the constitution had cautiously refused to the supreme executive magistrate: <sup>8</sup> And it will be easily admitted, that one cannot give generally that to another which he does not himself possess. The monarchy of England had been at all times circumscribed by a limited constitution, though the privileges of the different members of the great body politic of the state had been variously modified, at different and distant periods of her annals. But, when kings ascended the throne, who attempted to exalt the prerogative upon the ruins of national liberty, either English barons or English commons sufficiently asserted the nature of the constitution, by the great charter, by its various confirmations, by the petition of right, which had been just wrung from the misguided Charles. No epoch, therefore, can be assigned in the history of England, when the king possessed the right, which had been sometimes exerted without it, of taxing the people, except with the national consent. And a privilege, thus ancient and important, the commons declared and enforced, when they resolved, in April, 1628: "That it is the undoubted right of the "subject, that no tax, or benevolence, or tallage, can be levied by the "king, or any of his ministers, without common assent, by act of parliament."<sup>9</sup> The inhabitants of Maryland, continuing, when they emigrated, English subjects, were entitled to the protection of English laws, and to the enjoyment of English liberties: They could no more consequently be subjected to taxes imposed, or to rules prescribed, by the royal prerogative alone, than could the people of England. And the covenant before-mentioned was merely declaratory therefore of the ancient constitution, and granted nothing more than they were already entitled to possess from the common-laws of the realm. But, as the king could not divest the people of any one privilege, so neither could he transfer  
any

any one right of the legislature. For, being only one constituent member of the supreme power, he must be subordinate to himself in parliament, the great body politic of the empire, and can alone perform no legislative act. And it is altogether incongruous, and contrary to principle, to argue, that the rules of action, prescribed by the inferior, can bind the superior person or state.

An exemption, nevertheless, from parliamentary taxation or legislation, was not probably within the contemplation of the parties to the charter of Maryland. All former colonial grants had conferred freedom from imposts for limited times; which, in the opinion of the grantees, plainly supposed, that the right to exert the authority, when the period of exemption was expired, to exist in the grantors. And the rule of James and Charles, equally unconstitutional and vexatious, was exercised over every dependency of the crown, agreeably to the principle that had been reserved: They imposed taxes, without the consent of the people or the parliament, over Ireland<sup>10</sup> as well as the American plantations. And the governor of Virginia followed their example, till checked by an act of assembly. Of all these circumstances Sir George Calvert was perfectly informed; because, as secretary of state, he had the best intelligence, and none had more zealously defended in parliament those exertions of prerogative, as equally legal and just. That sagacious statesman had beheld the arbitrary administration of the colonies during those days; and now, when out of power, he dreaded a continuance of a mode of government, over his intended settlement, which he had formerly supported with regard to others. To guard against the irregularities of prerogative, therefore, and not the constitutional authority of parliament, he procured, with that caution which experience inspires, the various clauses before-mentioned to be inserted in his patent. And from all such taxation, and even legislation, the people of Maryland were most assuredly exempted.

Thus was the charter of that province obtained; and such is its genuine construction. The wisdom and vigour of lord Baltimore successfully performed what the colonial companies had been unable to achieve. And, at an immense expence, he established a colony; which, after various

various

rious revolutions, has descended to his posterity, and has added to the importance and power of the English empire.

From the date of the original discovery of Smith, the Virginians were too much occupied, for several years, either in procuring food or in defending themselves against the attacks of a subtle enemy, to find leisure to explore more minutely the capacious Chesapeake, so justly praised for beauty and commodiousness. John Pory however sailed, during the year 1620, into the great bay northward; and, though he did not penetrate to its source, he discovered, as he assures us, one hundred English happily settled, who were animated with the hope of a very good trade of furs. He adventured soon after sixty miles over land, through a pleasant and fruitful country to the South river. And, on its margin, he was received with friendly entertainment by the ruling sachem of the land, who seemed extremely desirous to enter into a league of amity and commerce with the Virginians. " Thus neither the French, nor Dutch, nor Swedes, possessed then any settlements on the banks of the Delaware; because Pory must have either seen traces of their possession, or at least heard something of their renown. From the accession of Charles I. similar discoveries were made with greater frequency and diligence, because that prince instructed the governors of Virginia to procure exact information of the rivers and the country." In May, 1631, he granted a licence, under the sign-manual, to William Cleyborne, who was described as one of the council and secretary of state of Virginia, " to traffic in those parts of America for which there is already no patent granted for sole trade." " And Harvy, the captain-general of Virginia, in the beginning of the subsequent year, enforced what his sovereign had commanded." Cleyborne and his associates, with the spirit of exclusion, which was so common in those days, and which prevails in every country during the infancy of its commerce, attempted to monopolize the trade of Chesapeake. And with this intention a small colony seems to have been planted on the isle of Kent, which is situated in the center of Maryland, and now graces that admirable bay, where it washes Annapolis, its present capital. The Virginians boasted, in after-times, with their wonted pride, that the colonists of Kent sent burgesses to their assembly, and were

were subjected to their jurisdiction before Maryland had a name.<sup>15</sup> This province found abundant cause to regret, that a people had nestled within its limits who paid unwilling obedience to its laws.

The first emigration, consisting of about two hundred gentlemen of considerable fortune and rank, with their adherents, who were composed chiefly of Roman-catholics, sailed from England, in November, 1632: And, after a prosperous voyage, landed in Maryland, near the confluence of the river Potowmack, in the beginning of the subsequent year. Animated by very different principles, Calvert, their leader, pursued a very different conduct from those who first planted the shores of James-River. He purchased the rights of the aborigines for a consideration which seems to have given them satisfaction; and, with their free consent, in the subsequent March, he took possession of their town, which he called Saint Mary's. Prudence as well as justice dictated the continuation of this salutary policy with regard to that people; and, having carefully cultivated their friendship, he lived with them on terms of perfect amity, till it was interrupted by the interested intrigues of an individual. The providing of food and habitations must necessarily have engrossed much of the attention of the first emigrants: Nor would legislative regulations be extremely wanted while their numbers were few, and their minds so usefully occupied. And they lived, for some time, rather under the domestic regimen of a family than according to the diffusive regulations of a provincial establishment. The lands, which had been thus ceded to them, were planted with facility, because they had already undergone the discipline of Indian tillage, and they had prudently commenced their settlement at that season when the operations of agriculture naturally begin. Food was, therefore, easily provided for those whom they expected to follow them from England. And the Roman-Catholics, unhappy in their native land, desirous of a peaceful asylum in Maryland, emigrated in considerable numbers. Now Lord Baltimore laid the foundation of his province upon the broad basis of security to property, and of freedom in religion; granting, in absolute fee, fifty acres of land to every emigrant; establishing Christianity agreeably to the old common-law, of which it is a part, without allowing pre-eminence

nence to any particular sect. The wisdom of his choice soon converted a dreary wilderness into a prosperous colony, because men exert themselves in every pursuit only in proportion as they are assured of enjoying in safety what they wish for the most. The transportation of people and necessary stores and provisions; during the two first years, cost that nobleman upwards of forty thousand pounds; which, if estimated according to the then value of money, and the price of all things, must be allowed to have been a considerable sum. The freemen of the province thought so. For, even during the young and poor estate of the colony, they granted him a subsidy of fifteen pounds of tobacco on every poll, "as a testimony of their gratitude for his great charge and sollicitude in maintaining the government, in protecting the inhabitants in their rights, for reimbursing his vast charge."<sup>16</sup> And this donation does equal honour to both: Because it shews that the one had merited; that the others were grateful.

From Virginia, which had now been settled seven and twenty years, the emigrants derived many of the benefits, and some of the disadvantages of neighbourhood. They procured some little supplies for domestic wants: But they were considered as intruders on another's territory, and as the obstructors of that traffic which had been long exercised for the relief of the necessities of others. They were received, therefore, by the governor and council of that most ancient dominion, with that cold civility which proceeded from the commands of their common sovereign; who, "desirous to encourage the noble purpose of Lord Baltimore, required that all lawful assistance should be given him, in seating himself and his associates in Maryland."<sup>17</sup> But, though that government, "in humble submission to his majesty's pleasure," determined, in March, 1633-4, "to observe all good correspondence with them," it resolved "to maintain the rights of the prior settlement." Happy that both owned one common sovereign, to whom both submitted the decision of their mutual disputes!

Mean-while, a petition of the planters of Virginia was presented to Charles I. remonstrating against "some grants of a great portion of lands of that colony, so near their habitations as will be a general dis-  
"heartening

“heartening to them, if they shall be divided into several governments.” Lord Baltimore, as well as the petitioners, was heard in support of their different pretensions. They were ordered to accommodate their controversy in a friendly manner, and to set down in writing the propositions made by each party. But, as the validity of his charter was questioned, this was not a dispute that could be composed by amicable treaty. And the privy-council, having, in July, 1633, heard whatsoever was alledged on each side, thought fit to leave that nobleman to his patent, and the complainants to the course of law. Yet, for the preventing of farther differences, their lordships ordered; that free and mutual commerce shall be permitted; that neither colony shall receive any fugitive persons from the other; or do any act which may bring on a war with the natives; and that both shall, on all occasions, assist each other in such manner as becomes fellow-subjects of the same state.<sup>18</sup> The wisdom as well as equity of the decisions of the privy-council, with regard to Maryland, may be attributed to the presence of Lord Strafford, who was the friend of Sir George Calvert, and extended his protection to the son, because he recollected the good offices of the father. But interest is an obstinate passion: And we shall find, that a determination so prudent and wise was attended with little good effect; it neither procured conviction, nor enforced obedience.

William Cleyborne continued to claim Kent-island, for no better reason than because he had received a licence under the royal sign manual to traffic; and he refused his submission to the jurisdiction of Maryland, because the government of Virginia, “knowing no reason why the rights of that place should be rendered up,” countenanced his opposition. Yet against the charter it was never objected, that it was unfairly obtained. For in those days it was only said, what indeed was true, that there was already a small settlement of Virginians within the limits of the grant. But the soil belonged to the king, which he might therefore convey to another: The powers of government had flowed from him, and he might consequently confer them on one whom he thought worthy of trust. And this transaction offers the first example, in colonial story, of the dismemberment of an ancient colony, by the formation of a new

province, with separate and equal rights. It was reserved for modern times to discover, what had not occurred to contemporary men and parties, that there were then rightly settled, on the banks of the Delaware, within the boundaries of Maryland, plantations of Dutch and Swedes, whose settlements had been concealed from the king with a criminal intention, which invalidated the royal purpose. Lord Baltimore, however, animated as well by a consciousness of his own powers, as by the authority of the judgement before-mentioned, gave orders, in September, 1634, to seize Cleyborne if he did not submit to his government; "judging, wisely, that subordination would cease, should an independent jurisdiction be established in the center of his province.

The first assembly, of which any record remains, composed probably of the whole freemen of the province, because their numbers were few, convened in February, 1634-5. Little of their proceedings are now known. Yet certain it is that, "among other wholesome laws," it was then enacted, "that offenders, in all murders and felonies, shall suffer the same pains and forfeitures as for the same crimes in England." Thus the provincials, whose minds were not vitiated by fanatic notions of superior sanctity or knowledge, wisely decided, that the laws of England are the most proper rules of action for Englishmen. The acts of this first assembly were transmitted to the proprietary for his assent, who probably did not altogether approve of them, because he transmitted, not long after, a code composed by himself, which was in its turn disapproved of by the freemen.

Cleyborne, who seems to have been born to be the bane of Maryland; was too interested to relinquish his pretensions, and too proud to own the authority of an infant province; the powers of which he therefore probably derided. He scattered jealousies among the aborigines, persuading them, that the "new-comers" were Spaniards, and enemies to the Virginians: He infused his own spirit of disobedience into the inhabitants of Kent-island: And he was at length indicted, and found guilty of murder, piracy, and sedition: But he fled from justice, and his estate was seized, as forfeited to those laws which he had formerly condemned as invalid.<sup>21</sup> By a singular reverse of fortune, this man lived to  
command



command in the province whence he was now driven with infamy, to feel the pangs of old age when accompanied with poverty, to apply to a prince for support, whose beneficence was not even extended to those who had suffered for his family and himself.

As emigrants arrived, and extended themselves at a greater distance from St. Mary's, their metropolis, legislative regulations became more necessary. In order chiefly to procure the assent of the freemen to a body of laws which the proprietary had transmitted, Calvert, the governor, called a new assembly, in January, 1637-8. But, rejecting these with a becoming spirit, they prepared a collection of regulations, which demonstrate equally their good sense and the state of their affairs. The province was divided into baronies and manors; the privileges of which were carefully regulated. A bill was passed, "for settling the glebe." Others were enacted, "for the liberties of the people," and "for swearing allegiance to their sovereign." The interests of property were properly attended to: Passing bills "for assurance of titles to lands and "regulating their mode of descent," and "for succession of the goods of the deceased intestate." The law, both "for civil causes," and "for crimes," was ascertained. The planters of Maryland seem to have equally adopted tobacco as a favourite, and to have applied to the production of it with that anxiety which the hope of present gain always inspires, and it had already become the measure of commerce: Laws were therefore passed, "for the payment of tobacco, for the planting "of corn." And a variety of other regulations of domestic œconomy and of commerce were established. When the freemen reflected on the crimes of Cleyborne, that he had committed as well divers felonies as seditions, had exercised government within the province without authority, and had practised with the Indians for the destruction of the colony; they passed an act for his attainder, because he had been indicted and fled from justice. And, when they remembered "the vast charge" of the proprietary, they framed a bill "for his support." The various proceedings before-mentioned "were never, as we are assured, enacted "into laws, nor are any copies of them; or of those sent from England, to be found in the provincial records."

Cleyborne was not only too spirited, but relied too much on powerful support, to submit quietly to an expulsion, which he deemed so oppressive and unjust. He complained to his sovereign of the wrongs that had been done him, and prayed for a confirmation under the great seal of his former licence, for a grant of other lands adjoining to the isle of Kent, with power to govern them. Partly by misrepresentation, but more by the influence of Sir William Alexander, he procured, in July, 1638, a royal order to Lord Baltimore;<sup>23</sup> commanding him, to allow the planters and their agents, before-mentioned, to enjoy their possessions in security till these contests should be finally decided. That nobleman, with an attention which he deemed due to the commands of his prince though founded on misinformation, said; that he would wait on the king, and give him perfect satisfaction.<sup>24</sup> The lords commissioners of colonies, to whom this tedious controversy was referred, after hearing all parties, in April, 1639, adjudged:<sup>25</sup> “ That the lands in question absolutely belonged to Lord Baltimore, and that no plantation, or trade with the Indians, ought to be allowed, within the limits of his patent, without his permission; that, with regard to the violences complained of, no cause for any relief appeared, but that both parties should be left to the ordinary course of justice.” The principle of this decision strikes deep into the validity of the patents of Nova-Scotia, passed under the great seal of Scotland in 1621-25; because the privy-council allowed no force to a licence under the privy signet of that kingdom, when pleaded against a grant under the great seal of England. Yet, it is to be lamented, that similar adjudications have not been at all times perfectly uniform, and, with a spirit of inconsistency which equity reprobates, different men have received different measures of justice. Yet that contentious disputant was as little satisfied with the present as the former judgement against him, because he probably derided the authority of the privy-council: And, though his own pretensions gave him no title, legal or equitable, he carried on intrigues in Maryland, which produced events that she afterwards feelingly deplored.

Mean-while, the affairs of the province requiring farther regulation, a third assembly was held at St. John's in February, 1638-9. And now a change

a change of considerable consequence ensued. While the paucity of their numbers continued, the whole freemen seem to have consented in person to every law: But now an act was passed "for establishing the house of assembly." It enacted; that those, who shall be elected pursuant to writs issued, should be called burgeses, and shall supply the place of the freemen who chose them, in the same manner, and to the same intents, as the representatives in the parliament of England; that the gentlemen summoned by the special writ of the proprietary, and those freemen who shall not have voted at any of the elections, together with the governor and secretary, shall be called "the house of assembly;" that all acts, assented to by that body, shall be deemed of the same force as if the proprietary and freemen had been personally present. The legislative power being thus created, the assembly passed what seems to have been intended to form a code of laws, till a complete system of provincial jurisprudence could be established. "Holy church within this province, said the good Catholics, shall have all her rights and liberties."<sup>26</sup>

It is remarkable enough, that these expressions were copied literally from the great charter of England, and its subsequent confirmations; and it is no less singular, that almost all the compilations of ancient laws, particularly the Scottish, contained a similar provision in favour of the church: And we are assured, this signal attention to the interests of religion proceeded from a laudable jealousy of the papal jurisdiction. But what the franchises of the church of Maryland were do not appear, and probably the wisest of her doctors would have been puzzled to tell. This act, however, was re-enacted in the subsequent year: It was confirmed, in 1676, as a perpetual law; though the province was not divided into parishes till after the Revolution. From the church the assembly naturally turned its next regard to the interests of the state. All inhabitants were required to take the oath of allegiance to his majesty; the prerogatives of the proprietary were recognised: And it was declared, that the colonists shall enjoy their liberties according to the great charter of England. The acts of assembly of Maryland demonstrate, that none of the English provincials better understood the nature of their rights, or were more ready to acknowledge their duties, than were the people of that province.

province. In this one law is pointed out, in language the most unequivocal, their constitutional connexions with the sovereign state: They swore allegiance to the king, as he stood related in his political capacity to the English nation; they submitted to the prerogative of their lord paramount, because the charter gave what they could not deny without impeaching their own powers; they insisted on enjoying the same privileges as they had formerly possessed, as far as they could possibly exercise them in their new situation. And here we discover no one principle of independence. Every thing necessary followed from the assertion: "We are Englishmen." Yet Sir Thomas Trevor, the attorney-general, during the reign of William III. we shall hear gravely reporting; that he knew not whether the great charter had ever been extended to Maryland, or whether it was proper to allow the people there the various privileges contained in it. It was by the same law enacted; that justice shall be administered according to the acts and usages of the province, or otherwise agreeably to the laws and laudable customs of England: Thus wisely engrafting the jurisprudence of the kingdom into that of the colony. At the same time that the planting of corn was enforced, a custom of five in the hundred of the value was imposed on the exportation of tobacco, except to England, Ireland, or Virginia. We have already seen the freemen, when convened in person, grant a tax for the support of the proprietary; every man giving a part of what he possessed, because he felt the blessings of security and protection: And now, when the assembly possessed all the powers of the freemen, it equally granted a custom for similar reasons, to be applied to similar uses. Here we trace the origin of the right of taxation in all countries on earth: And what man will assert, that the duty imposed by the assembly was not as constitutional and just as that imposed by the freemen, who might surely give away what belonged to themselves. We may easily estimate the numbers, and wealth, and power, of a people, who think it necessary, by general contribution, "to erect a water-mill for the use of the colony." It is in the laws of an infant people that we trace their principles and discover their policy. Slavery seems to have rooted in Maryland with the original emigration:

emigration: Because an act of this assembly describes "the people" to consist of all Christian inhabitants, "slaves only excepted."<sup>27</sup>

While the legislature was thus endeavouring with a laudable anxiety to promote the interest of the province; while it prospered extremely under the influence of those salutary regulations; fresh attempts were made in England to disturb the general repose. As the validity of the charter had stood the test of the severest trials, as it had acquired stability from opposition, a fresh attack was now made on different ground. It was not difficult in those days to procure "prime lawyers" who gave it as their opinion, that the ancient Virginian patents still remained in force, notwithstanding the judgement of the courts of justice, and the length of acquiescence; and who thence inferred, that the grant of Maryland was void, because it gave away to one what had formerly been conferred on many. In the beginning of the parliament, which assembled in 1640, an attempt was made to establish once more over Virginia the government of the ancient corporation; and thereby to annul the charter of Maryland.<sup>28</sup> But owing partly to the vigorous opposition of the assembly of that ancient dominion, which had now learned, from experience, that more real liberty was enjoyed under any form than beneath the rule of a commercial company, but more to the injustice and difficulty of the measure, that project was dropped: And thus, what commenced in wickedness ended in disappointment.

Never did a people enjoy more real happiness, or were more grateful for it, than were the inhabitants of Maryland under Cecilius, the excellent founder of that province. We have already seen them establish taxes, to reimburse in part his vast charge, and to support his government. During the session of October, 1640, they conferred on the proprietary "all uncertain goods, to which no party justly claimeth right." The spirit which the emigrants displayed on all occasions, as well as their legislative talents, evince, that they understood their own interest, and pursued it; that, while they cherished the just prerogative of the proprietary, they never lost sight of the rights of freedom. The constitution was now farther improved by providing a remedy against the evils of a suspension of government, in case of the death of the lord palatine. Among other laws

laws of domestic œconomy, which were then passed, one is remarkable, because it has been properly denominated “ their ancient inspection law,” which established many salutary regulations for the improvement of the staple of the colony, and the protection of purchasers from frauds.<sup>29</sup> But from legislative regulations, which are interesting only as they illustrate the progress of laws, and display the pursuits of a people during their early years, the attention of the colonists was not long after turned to more active scenes.

The wise and prudent measures of the governor, with regard to the Indians, had hitherto ensured a peace which had proved extremely beneficial to the province during its weakness. The intrigues of Cleyborne, however, infused a jealousy that was never altogether eradicated; they saw what must have at all times given them the greatest uneasiness, though they could not avow it, that rapid increase of the strangers, which threatened their own annihilation as a people; individuals procured donations of their lands, without the authority of government, for considerations which were extremely inadequate; and which, upon reflexion, must have given them the greatest dissatisfaction: All these causes brought on an Indian war in the beginning of the year 1642. It continued, for several years to administer its accustomed evils, though attended with no circumstance of advantage or glory. And a peace was at length concluded on the usual conditions, of present submission and of future amity. Laws were soon after made to prevent the existence of the same causes in succeeding times. All acquisitions of lands from the aborigines, without the consent of the proprietary, were declared illegal and void; because they were deemed equally prejudicial to his dignity and rights, as of dangerous consequence to the safety of the people. It was made “ felony of death” for any person “ to sell or transport any friendly Indians.” And it was declared to be highly penal to deliver any arms or ammunition to them.<sup>30</sup> These salutary regulations, with the prudent conduct of the governor, preserved a long peace with that people, which proved extremely advantageous to both.

The public tranquillity was scarcely restored, when it was disturbed by mischiefs of greater magnitude and of more malignant consequences.

The

The restless Cleyborne was no-wise discouraged by the various defeats which he had received. As he no longer hoped for any advantage from the regal government in England, he lent his aid to the opponents of it. Actuated partly by the desire of recovering what he deemed his right, perhaps more by revenge, he continued his intrigues in Maryland. He was naturally joined by Richard Ingle, who was of consequence enough to be proclaimed a traitor against his king, in July, 1643, and who was animated by similar passions. These men, aided by the turbulent spirit of the times when the minds of all were roused from their usual repose, and supported by those who in every country wish for change, had the influence to raise a rebellion in that province, in the beginning of the year 1645. Calvert, the governor, unsupported by any real power, was constrained to flee into Virginia for protection. The administration, which he had been constrained to relinquish, they instantly seized on as fallen to them; which they exercised with the accustomed violence of the rebellious: And, notwithstanding his most vigorous exertions and the assistance of the well-affected, the revolt was not suppressed, nor quiet once more established, till August, 1646. The calamities of that period are sufficiently described by the assembly, when it assures us, "that the province had been wasted by a miserable dissension and unhappy war, which had been closed by a happy restitution of a blessed peace." In order to restore general tranquillity by quieting the minds of the inhabitants, an act of oblivion was passed: It granted a free pardon of all offences committed during the rebellion by any persons whatsoever; except Ingle, and a few others of the isle of Kent, who had not been previously pardoned by the governor: It discharged all actions for wrongs done during the revolt: And, to prevent the return of those evils which the legislature so much lamented, it passed "an act, prohibiting all compliance with William Cleyborne, in opposition to the proprietary's right and dominion."

But all the bad consequences of this inconsiderate insurrection did not end here. The assembly, which convened in April, 1649, granted the proprietary a custom of ten shillings a hundred on tobacco which should be exported by any Dutch ship for seven years: The one half of this

duty was appropriated " towards the satisfaction of all claims touching " the recovery and defence of the province ;" the other was absolutely conferred on him ; giving a reason, which shews as well the state of their own minds as of the colony, " that the proprietary might better perceive the good-will of the freemen in complying with him as far as " their poor distracted condition could well bear, and to the end that he " might be the better enabled to protect them in their lives, liberties, " and estates." An assessment on the inhabitants was also granted to him, " for replacing his former stock of cattle, which had been distributed towards the preservation of the colony." And, with a similar spirit, the assembly soon after enacted, " that the charges of all domestic " insurrections shall be defrayed by an equal tax upon the persons and " estates of the inhabitants." Thus history seems to demonstrate, that rebellions, in superaddition to all other evils, never fail to entail grievous burdens on the unfortunate countries which they had previously cursed.

The revolt being thus suppressed, and order restored in the state, the assembly endeavoured, with a laudable anxiety, to preserve the peace of the church ; and, though composed chiefly of Roman-Catholics, it adopted that measure which could alone prove absolutely successful. The act which it passed, " concerning religion," recited : That the enforcement of the conscience had been of dangerous consequence in those countries wherein it had been practised. And it enacted : That no persons professing to believe in Jesus Christ shall be molested in respect of their religion, or in the free exercise thereof, or be compelled to the belief or exercise of any other religion against their consent ; so that they be not unfaithful to the proprietary, or conspire against the civil government : That persons molesting any other in respect of his religious tenets shall pay treble damages to the party aggrieved, and twenty shillings to the proprietary : That those reproaching any with opprobrious names of religious distinction shall forfeit ten shillings to the persons injured : That any one speaking reproachfully against the blessed virgin, or the apostles, shall forfeit five pounds ; but blasphemy against God shall be punished with death." What a fine contrast does the christian liberality of the Roman-Catholics of Maryland form to the intolerant temper and practice



tice of the Independents of Massachusetts! Even during the triumph of fanaticism, Lord Baltimore had the spirit to declare, that he never would assent to the repeal of a law, which protected the natural rights of men, by giving freedom of thought and of action to every one.<sup>34</sup> And a conduct, so worthy of the first magistrate of a free people, will reflect honour on his memory, so long as bigotry of every kind is contemned by the liberal and wise. This remarkable act was confirmed, in the year 1676, by the successor to his virtues and his rights, among the perpetual laws of the province.<sup>35</sup> It was the Revolution which levelled the venerable trunk to the ground.

Virginia, animated by her peculiar attachments, displayed, at that period, a very different spirit. She passed severe laws against the Puritans, whose ministers she would not suffer to preach. This severity of resentment or orthodoxy constrained them to emigrate, in considerable numbers, to Maryland:<sup>36</sup> And the prudence of the one colony acquired what the folly of the other had thrown away. Mankind then beheld a scene, new and uncommon, exhibited on colonial theatres: They saw, in Massachusetts, the Independents persecuting every different sect; the church retaliating on them in Virginia; the Roman-Catholics of Maryland, alone actuated by the generous spirit of Christianity, tolerating and protecting all.

The year 1650 is remarkable, in the story of Maryland, for the final establishment of that constitution which has continued to the present times. The burgesses, who convened in 1642, either actuated by the spirit natural to representatives, or animated by the example of the commons of England, "desired that they might be separated, and sit by themselves, and have a negative:" Yet, though the governor did not then grant their request, they were afterwards more successful, during the distractions which ensued; because the assembly of 1649 was assuredly divided into two distinct parts, and transacted affairs in the form of upper and lower house. And now a law was passed, "for settling this present assembly." It enacted; that those who were called by special writ shall form the upper house; that those who were chosen by the hundreds shall compose the lower house; and that all bills which should

be assented to by the two branches of the legislature, thus established and assented to by the governor, shall be deemed the laws of the province, and have the same effect as if the freemen were personally present.<sup>17</sup> It is from this epoch of its existence, that the democratic part of the assembly, consisting of fourteen delegates, must date the origin of its peculiar immunities or exclusive privileges: Nothing would have sounded harsher, at that time, than a claim of superior powers to the other independent parts of the legislative power, than a pretension of an origin of its authority more sacred than this consent of the whole.

An act of recognition of the undoubted right of Lord Baltimore to that province was at the same session passed.<sup>18</sup> The assembly declared itself bound, both by the laws of God and man, to acknowledge his just title, by virtue of the grant of the late king Charles of England: It submitted to his authority, which it explicitly admitted, and it obliged its posterity for ever to defend him, and his heirs, in his royal rights and pre-eminences; so far as they do not infringe the just liberties of the free-born subjects of England: And it besought him to accept that act as a testimony to his posterity of its fidelity and thankfulness for the manifold benefits which the colony had derived from his industry and charge. A law, which thus did so much honour to both parties, continued in force to the present days: Yet its principle has been, probably, either derided or forgotten. And it hath been observed by the wise: How feeble are the mere declarations of laws, when opposed to the resolutions of faction, to the delusions of the multitude, or to the gripe of power.

But, while the assembly was thus grateful to the wise founder of the province, it did not forget the rights of the people. It passed "an act against raising money without the consent of the assembly:" It declared; "that no taxes shall be assessed or levied on the freemen of the province without their own consent, or that of their deputies, first declared in a general assembly."<sup>19</sup> Yet this is extremely different from the modern resolution, which has been noticed, that the representatives possess the sole right of imposing duties on the whole, with the consent only of the other members of the legislature. The recital of the act evinces, that the true cause, which produced this comprehensive declaration,

tion, was a laudable jealousy of the power of the proprietary. For it remarks, " that, as his strength doth consist in the affection of his people, on them he doth rely for his supplies; not doubting of their duty " and assistance on all just occasions." An assembly of Maryland would not, probably, have presumed, in those days, to claim rights exclusive of the authority of parliament, then in the zenith of power; who, in the year 1646, exempted the colonies, as we have seen, from all taxes except the excise: And, if the province was not declared to be in a state of rebellion by the famous ordinance of 1650, yet it asserted, that the plantations were, and of right ought to be, dependent on England, and subject to its laws.

The colony was now divided into three counties, which contained eight hundreds. And we may decide with regard to the then state of the arts, even the most common and most useful, from an order, passed the preceding year, " providing for the smith." Laws were, however, now enacted for peopling Maryland, while an order was made " for relief of " the poor;" which seems to have been the first notice that any such existed. Punishments were provided for various crimes; the fees of officers were regulated: And the interests of agriculture and commerce were encouraged.<sup>40</sup> Thus public prosperity and private happiness were promoted by salutary laws, which were as prudently executed as wisely planned. But a sad change was at hand, which brought numerous calamities along with it; and which, by inflicting the strokes of adversity, called forth into action the virtues of the heart.

Amid the most arduous affairs, the council of state for the commonwealth did not neglect the plantations. No sooner had all the European dominions of England been reduced to obedience than it stretched its views beyond the Atlantic. And the great object of the parliament assuredly was to establish the same authority, legislative and executive, over the subordinate territories which they had already acquired with regard to the sovereign state. In September, 1651, commissioners were appointed " for reducing and governing the colonies within the bay of " Chesapeake:" Among whom was Cleyborne, who has been so often mentioned as the evil genius of Maryland; and who, with his natural interestedness,

interestedness, had joined the strongest party in the momentous contention of those times, in order to prosecute his unjust claims on that province. Never were the vigour and wisdom of the parliament more conspicuously displayed than in the instructions which were given their deputies on that occasion. They sacrificed every thing to success, as the only deity worthy of their adoration. And the commissioners seem to have executed their trust with great attention and dexterity.

In the subsequent year they issued a variety of orders with regard to Maryland. Yet, while they established the authority of the commonwealth, they did not entirely disregard the rights of the proprietary. As, in July, 1652, he acknowledged a power which had compelled all to obey, he was permitted to rule the province as formerly, though in the name of the keepers of the liberties of England, till July, 1654, when the government was seized by the rough hands of Cromwell.<sup>41</sup>

The distractions of England, in the mean-time, extended their baneful influence then across the ocean, as they have at every period. The contentions of Maryland, which had been long animated and frequent, at length ended in civil war. The Roman-catholics naturally adhered to the constitution, and supported the government of the proprietary, and with it the laws. The Puritans, and those who wished for alteration, because they hoped to gain in the scramble, promoted the good old cause of innovation and the views of the protector. After various skirmishes, which were fought with alternate success, the contending parties came at length to a decisive engagement. But zeal will always prove an overmatch for good intentions. The wonted good fortune of Cromwell prevailed. And governor Stone being worsted and taken prisoner, was, with the usual rancour of party, ordered to be executed according to martial law; yet the equanimity of his administration had endeared him to the soldiers of his adversaries, by whose intercession his sentence was respited: And he suffered a long and rigorous confinement.<sup>42</sup> These notices, while they illustrate the spirit of those contenders for power, evince how much more dreadful, and by all possible means to be avoided, is domestic than foreign war.

In

In July, 1654, Cleyborne and Bennet appointed Fuller, Preston, and others, commissioners “ for directing the affairs of Maryland, under his “highness the lord protector.” And these men soon called an assembly, to meet in the subsequent October. Amid the frequent changes and the deviations from the usual rules of conduct, which too frequently occurred in those days, it is pleasing to observe the delicate sentiments of honour regarded by a few. Chandler and Hatton, being returned burgesses for St. Mary’s county, refused to serve in that capacity; because they deemed it “ inconsistent with the oaths which they had taken to Lord Baltimore.” The act of recognition and gratitude, of 1650, seems to have been forgotten by the greater number in the tumult of faction. Nor is it one of the least evils attending similar revolutions, that they necessarily tend to corrupt the minds of men, because they beget a total disregard of former engagements, either civil or religious. The assembly naturally passed, in the first place, “ an act of recognition of Cromwell’s just title “ and authority;” because from him it had derived its present power. It next established “ an act concerning religion,” declaring: That none, who professed the popish religion, could be protected in this province by the laws of England, formerly established, and yet unrepealed; nor by the government of the commonwealth: That such, as profess faith in God, by Jesus Christ, though differing in judgement from the doctrine and discipline publicly held forth, should not be restrained from the exercise of their religion; “ provided such liberty was not extended to popery or “ prelacy; or to such as, under the profession of Christ, practised licentiousness.” But how different are the temper and conduct of this assembly from that of 1649! Yet it would be incongruous to argue with men who thus contemned the laws of the province without cause; and it would be improper to point out the inconsistency of those, who professedly acted contrary to the common principles of the world, without a blush. A variety of other laws, equally characteristic of the ruling party, were at the same time enacted; which happily did not endure long, and deserve not to be now remembered.

Virginia seems to have attempted once more, during those times of innovation, to recover its lost authority over Maryland: But her forwardness

ness was immediately checked by Cromwell. He gave strict orders to the governor and council "not to meddle in the business that hath happened between the men of Severn and Lord Baltimore's officers, but to leave that affair to be settled by the commissioners of the parliament."<sup>43</sup> The deputies of the protector in Maryland seem neither to have been men of much political knowledge, nor extremely attentive to the punctualities of duty. They were reprimanded by their master for not understanding orders that were probably unintelligible. And, in September, 1655, he informed them: "That they had mistaken his former letter, as if he would have had a stop put to their proceedings for settling the civil government; whereas he only intended to prevent any violence to be offered to Virginia with regard to bounds; they being now under consideration."<sup>44</sup> Thus the protector generally made up in vigour of conduct what he wanted in perspicuity of diction.

Nevertheless, though disputes with their neighbours were composed by the decisive interposition of Cromwell, the intemperate proceedings of his commissioners did not preserve internal tranquillity, or insure their own repose. Those disorders, which never fail to result from religious persecution, when embittered by the triumph of party in civil contention, necessarily ensued. And an insurrection was easily raised by Josias Fendal, a man of restless intrigue, in the end of the year 1656. But, like all unsuccessful commotions, it served only to rivet faster the chains which already galled the friends of the ancient constitution, and to burden the province with additional impositions.<sup>45</sup>

In this distracted state did the affairs of the province continue, till March, 1658. The government was then surrendered by the commissioners to Fendal, who had been appointed governor by the proprietary; because his habitual turbulence had been mistaken for a principle of attachment to his lord. But so far was the public quiet from being restored, that those mischiefs, which had so long unhappily wasted Maryland, were rather aggravated by the intrigues of that interested man, whose duty required him to promote its repose. And no sooner did the assembly meet, in February, 1659, than the burgesses, following the example of that detestable band who had usurped the name and authority

of

of the commons, by his direction or connivance, dissolved the upper house, and assumed every power in the state. Into their hands he surrendered, with peculiar treachery, what had been so lately intrusted to him, and from them accepted a new commission as governor. The evil of bad example was not the only one which the province found cause to lament: The assembly of 1661 regretted, what might have been foreseen, "the vast charge that had been drawn upon it by the late treacherous revolt of Fendal and his accomplices."<sup>46</sup> Yet it is still more to be deplored, that history holds up examples to mankind, for their instruction, in vain; because men act generally from the impulse of the moment, disregarding the well-earned experience of their fathers. Nothing could be more inconsistent with the fundamental constitution of the province, and at the same time exhibit a more striking picture of that usurpation, than the persecution of the Quakers. That sect, whose principles and conduct are now so respectable, because they are so favourable to the interests of society, was then described "as composed of vagabonds, that have of late presumed to come into the country, and dissuade the people from complying with military discipline, from giving testimony, from serving as jurors, or in office:" And the ruling powers commanded the justices of the peace "to cause them to be apprehended and whipped."<sup>47</sup> When those grossnesses, which naturally adhere to the founders of every sect, were at length purged off, these men, or their immediate descendants, were justly deemed among the most reputable of all the inhabitants that Maryland could boast. Fendal continued not long, however, to misrule a colony, the miseries of which, like those of the sovereign state, commenced only when it departed from the just principles of the ancient constitution.

Philip Calvert being appointed governor by the proprietary in June, 1660, assumed the administration in the subsequent December. His predecessor was now tried for high-treason, and found guilty: But the accustomed magnanimity of the founder of the province prevailed over his resentments, and he granted him a pardon on paying a moderate fine. Thus was he reserved, though justly rendered incapable of future trust, to disturb the public repose, by other intrigues and treachery, at an after

period. And his accomplices, upon a timely submission, were fully pardoned without prosecution. With the commission of the proprietary was transmitted a letter from Charles II. commanding all officers and others his subjects in Maryland, to assist that gentleman in the re-establishment of Lord Baltimore's just rights and jurisdictions.<sup>43</sup>

Notwithstanding those various distractions and revolutions, proceeding from the turbulent spirit of the times, when men had broken loose from the usual restraints of law and order, the province continued to increase in population, in industry, and in wealth. And it contained, at the epoch of the Restoration, about twelve thousand persons.<sup>49</sup>

#### AUTHORITIES AND NOTES.

<sup>1</sup> Parliamentary Debates, 1620-1, 1 v. p. 175.

<sup>2</sup> Smith's Hist. Virg. which has preserved a list of the old company of Virginia, p. 130; and see the charter of 1609 in Stith.

<sup>3</sup> Virg. Ent. in Plant. Office, 1 v. p. 201-78. A commission in Rymer's *Fœdera*, 17 v. p. 649. dated in February, 1625, shews, in opposition to what was mistakingly said in the Miscellaneous State-papers lately published, — "that Sir George Calvert continued to act as secretary of state during the reign of James I."

<sup>4</sup> Purchas's Pilgrim, 4 v. and the letters of Sir George Calvert in the Strafford papers.

<sup>5</sup> Virg. papers, 75. B. p. 135. and see the recital of the charter.

<sup>6</sup> There is an excellent copy of the charter, taken from the records in the chapel of the Rolls, annexed to Bacon's laws of the province; there is a copy in the Maryland Ent. Plant. Office, 1 v. p. 1.

<sup>7</sup> Historical Register, 18 v. p. 39.

<sup>8</sup> Sir Edward Cooke assured the Commons, during the session of 1620-1, in a debate on the royal prerogative: "That in 4<sup>o</sup> H. VII. a dispensation was granted, that some should not pay subsidies: This was after repealed by act of parliament; for otherwise it would have grown so common, that no man would have paid, seeing others freed." — Parl. Deb. 1621, 1 v. p. 65.

? Com.



9 Com. Journ. 1 v. p. 878-9. — 10 Rym. Fœd. 18 v. p. 932-1010.

11 Purchas's Pilgrim, 4 v. p. 1784-7.

12 During the years 1627, 28, 29, the governors of Virginia gave authority to William Cleyborne, "the secretary of state of this kingdom," as that most ancient dominion was then called, to discover the source of the bay of Chesapeake, or any part of that government, from the 34th to the 41st degree of North latitude. — Virg. papers, 75 B. p. 133-4. — Thus were the boundaries of Virginia extended in those years to the 41st degree of latitude, "where New-England began:" And we may thence infer, that, though the subjects of other nations traded with the aborigines in the bay of Delaware, yet no settlements had been then formed on either margin of it by the Dutch or Swedes.

13 The following royal licence is subjoined; because, it is the most ancient state-paper of Maryland; it laid a train of numerous woes to that province; by giving an interested man a pretence to claim a large part of it. — From Virg. pap. 75 B. p. 131.

" CHARLES REX.

Whereas our trusty and well-beloved William Cleyborne, one of the council and secretary of state for our colony of Virginia, and some other adventurers, which with him have condescended, with our trusty and well-beloved counsellor, Sir William Alexander, Knight, our principal secretary of state for our kingdom of Scotland, and others of our loving subjects, who have charge over our colonies of New-England and Nova-Scotia, to keep a course for interchange of trade among them as they shall have occasion, as also to make discoveries for increase of trade in those parts; and because we do very much approve of all such worthy intentions, and are desirous to give good encouragement to their proceedings therein, being for the relief and comfort of those our subjects, and enlargement of our dominions: These are to license and authorize you, the said William Cleyborne, his associates, and company, freely, without interruption, from time to time, to trade for corn, furs, or any other commodity whatsoever, with their ships, boats, men, and merchandise, in all seas, coasts, harbours, lands, or territories, in or near about those parts of America, for which there is not already a patent granted to

others for sole trade; and, to that effect, we command you and every one of you, and particularly our trusty and well-beloved Sir John Harvey, Knight, governor, and the rest of our council of our colony of Virginia, to permit him and them, with their ships, mariners, merchandises, servants, and such as shall willingly accompany or be employed by them from time to time, freely to repair and trade to and again in all the aforesaid parts as they shall think fit and their occasions shall require, without any hindrance whatsoever, as you and every of you will answer the contrary at your perils: Giving, and by these presents granting, unto the said William Cleyborne, full power to direct and govern, correct and punish, such of our subjects as shall be under his command in his voyages and discoveries; and for his so doing these presents shall be a sufficient warrant. Given at our manor of East-Greenwich, the 16th of May, in the seventh year of our reign, 1631.

To our trusty and well beloved our governor and council of Virginia, and to all our lieutenants of provinces and countries in America, governors, and others having charge of colonies of any of our subjects, captains and masters of ships, and, generally, to all our subjects whatsoever, whom these presents do or may concern."

REMARK. This paper was evidently drawn by Sir William Alexander, and afterwards passed under the privy signet of Scotland: What right within an English colony could that convey?

"The following commission shews how the former was obeyed, and is the second state-paper of Maryland. — From Virg. Pap. 75 B. p. 130.

"To all to whom these presents shall come. I, Sir John Harvey, Knight, governor and captain-general of Virginia, send greeting, in our Lord God everlasting. Whereas my trusty and well-beloved friend, William Cleyborne, Esquire, and one of the council of state for this colony, hath

hath desired, for increase of trade, to obtain this my commission to sail and traffic unto the adjoining plantations of the Dutch seated upon this territory of America; which may tend to an intermutual benefit, wherein we may be useful to one another: Now know ye, that I, the said Sir John Harvey, out of the good opinion I conceive of the discretion and understanding of the said Captain William Cleyborne, do, by these presents, with the consent of the council of state, authorise him, with the first convenience of wind and weather, to set sail from hence, in such barques and pinnaces, and with such companies of men, as shall willingly accompany him to go unto the said plantations of the Dutch, or unto any English plantation, or to such other harbours, rivers, and places, as he shall find occasions; praying all governors, captains, and commanders, to afford to him and them all lawful favour and respect, they behaving themselves fairly and honestly in all things: Giving, and by these presents granting, unto him, the said Captain William Cleyborne, full power and authority to direct and govern such persons as shall accompany him in his said voyage. — Given at James-City, the 8th of March, A. D. after the computation of the church of England, 1631; and in the five and twentieth year of this southern colony of Virginia.

JOHN HARVEY."

REMARK. Had this commission been discovered, during the long contest between Baltimore and Penn. when it was as strongly insisted on by one as denied by the other, that subjects of Sweden or of Holland were then settled on the south-western bank of the Delaware, what an admirable litigation of words would not the expressions, "adjoining plantations of the Dutch," have offered to the lawyers! Yet the travels of Pory, in 1620; the several commissions of discovery before-mentioned; the notices of contemporary history; all seem to evince, that the language or intentions of Harvey must not be literally understood: And it is extremely probable, that the word "adjoining" was applied to the Dutch plantation of Manhattans; because the Swedes, who were the first settlers on the Delaware, are not mentioned or alluded to.

<sup>25</sup> Virg. Papers, 75 B. p. 135.

<sup>16</sup> Brit. Emp. in Am. 1 v. 186-7; Douglas's Sum. 2 vol. p. 356-8; Bacon's Laws of the Province, 1641, ch. 6.

<sup>17</sup> Sir J. Harvey's letter. — Amer. Library, p. 79.

The subjoined consultation of the governor and council of Virginia, on the 14th of March, 1633-4, demonstrates the temper with which Calvert and his followers were received on their arrival in Chesapeake. — From Maryland Papers, v. 1. bundle C.

“ Present,

Sir John Harvey, governor,	Capt. Cleyborne,	Capt. Tho. Purfry,
Capt. John West,	Mr. Wm. Farar,	Capt. Jos. Bullock,
Capt. Sam. Mathews,	Capt. John Uty,	Capt. Wm. Perry.

Captain William Cleyborne requested the opinion of the board, how he should demean himself in respect of Lord Baltimore's patent, and his deputies now seated in the bay; for that they had signified to Captain Cleyborne, that he was now a member of that plantation, and therefore should relinquish all relation and dependence on this colony. It was answered by the board, that they wonder why any such question was made; that they knew no reason why they should render up the rights of that place of the isle of Kent, more than any other formerly given to this colony by his majesty's patent; and that, the right of my lord's grant being yet undetermined in England, we are bound in duty and by our oaths to maintain the rights and privileges of this colony: Nevertheless, in all humble submission to his majesty's pleasure, we resolve to keep and observe all good correspondence with them, no way doubting that they on their parts will not entrench upon the interests of this his majesty's plantation.”

<sup>18</sup> The following minute of the proceedings of the privy-council will shew how “ the right of my lord's grant” was decided, though that circumstance was unknown in Virginia, in March, 1634. — From Maryland Pap. vol. 1, bundle C.

“ At

“ At the Star-Chamber : — 3d July, 1633.  
Present,

Lord Keeper,	Earl Danby,
Lord Privy-Seal,	Lord Viscount Wentworth,
Lord High Chamberlain,	Lord Viscount Falkland,
Earl Dorset,	Lord Cottington,
Earl Bridgewater,	Mr. Secretary Windebank.

Whereas an humble petition of the planters of Virginia was presented to his majesty, in which they remonstrate, that some grants have lately been obtained of a great portion of lands and territories of the colony there, being the places of their traffic, and so near to their habitations, as will give a general disheartening to the planters, if they be divided into several governments, and a bar put to that trade which they have long since exercised towards their supportation and relief, under the confidence of his majesty's royal and gracious intentions towards them, as by the said petition more largely appeareth : Forasmuch as his majesty was pleased, on the 12th of May last, to refer to this board the consideration of this petition, that, upon the advice and report of their lordships such orders might be taken as to his majesty might seem best : It was thereupon ordered, on the 4th of June last, that the business should be heard on the second Friday in this term, which was the 28th of the last month, and that all parties interested should then attend ; which was accordingly performed ; and their lordships, having heard the cause, did then order, that the Lord Baltimore, being one of the parties, and the adventurers and planters of Virginia, should meet together betwixt that time and this day, and accommodate their controversy in a friendly manner, if it might be, and likewise set down in writing the propositions made by either party, with their several answers and reasons, to be presented to the board this day ; which was likewise accordingly done. Now, their lordships, having heard and maturely considered the said propositions, answers, and reasons, and whatever else was alledged on either side, did think fit to leave Lord Baltimore to his patent, and the other parties to the course of law, according to their desire. But, for the preventing of farther questions and differences, their lordships did also think  
fit

fit and order, that, things standing as they do, the planters on either side shall have free traffic and commerce each with the other, and that neither party shall receive any fugitive persons belonging to the other, nor do any act which may draw on a war from the natives upon either of them: And, lastly, that they shall sincerely entertain all good correspondence, and assist each other on all occasions, in such manner as becometh fellow-subjects and members of the same state."

<sup>19</sup> Virg. Pap. 75 B. p. 125.

<sup>20</sup> The Reverend Thomas Bacon, the admirable editor of the Laws of Maryland, cautiously remarked, of the acts of the assembly of 1637-8; "That they are the first of which any record appears in this province." But, among the Virg. Pap. [75 B. p. 126.] there is a copy of the Act of Attainder of Cleyborne, the title of which Bacon had only seen, which recites the proceedings of an assembly held at St. Mary's the 26th of February, 1634-5.

<sup>21</sup> In the same papers [p. 139] there is an examination of the king of Patuxent relative to Cleyborne's intrigues; there is a copy of his indictment, and of the inquisition finding the forfeiture of his estate. — *Ib.* 126-8.

<sup>22</sup> Bac. Laws, 1637. — Bills, number 1-42.

<sup>23</sup> The following letter from Charles I. to Lord Baltimore evinces how little the pretensions of Cleyborne were then understood, and disclose facts not generally known. — From Maryland Papers, vol. 1. bundle C.

“ CHARLES REX.

Right, trusty, &c. Whereas formerly, by our royal letters to our governor and council of Virginia, and to others, our officers and subjects, in these parts, we signified our pleasure, that William Cleyborne, David Morehead, and other planters in the island near Virginia, which they have nominated Kentish-island, should in no sort be interrupted in their trade or plantation by you, or any other in your right, but rather be encouraged to proceed cheerfully in so good a work; we do now understand, that, though your agents had notice of our said pleasure, signified by

by our letters, yet, contrary thereto, they have slain three of our subjects there, and by force possessed themselves by night of that island, and seized and carried away both the persons and estates of the said planters. Now, out of our royal care to prevent such disorders, as we have referred to our commissioners of plantations the examination of the truth of these complaints, and required them to proceed therein according to justice; so now, by these particular letters to yourself, we strictly require and command you to perform what our former general letter did injoin, and that the above-named planters and their agents may enjoy, in the mean time, their possessions, and be safe in their persons and goods there, without disturbance or farther trouble by you or any of yours, till that cause be decided: And herein we expect your ready conformity, that we may have no cause of any farther dislike. Given under our signet, at our manor of Greenwich, the 14th day of July, in the 14th year of our reign, 1638."

<sup>24</sup> Virg. Pap. 75 B. p. 147.

<sup>25</sup> The following minute of the proceedings of the lords' commissioners of plantations shews the final determination of the claims of Cleyborne to part of Maryland. — From Maryland Papers, vol 1. bundle C.

“ At Whitehall: — 4th of April, 1639.

Present,

Lord Archbishop of Canterbury,  
 Lord Keeper,  
 Lord Treasurer,  
 Lord Privy Seal,  
 Earl Marshal,  
 Earl Dorset,

Lord Cottington,  
 Mr. Treasurer,  
 Mr. Comptroller,  
 Mr. Secretary Cooke,  
 Mr. Secretary Windebank.

Whereas a petition was presented to his majesty by Captain William Cleyborne, on the behalf of himself and partners, shewing, that, by virtue of a commission under his majesty's hand and signet, they, divers years past, discovered and planted upon an island in the great bay of Chesapeake in Virginia, named by them the isle of Kent; whereupon, as they pretended, they had bestowed great charges; and that the Lord Baltimore, as they alledged, taking notice of the great benefit that was like to arise to

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them

them thereby, obtained a patent from his majesty, comprehending the said island within the limits thereof; and that they had likewise settled another plantation upon the mouth of a river in the bottom of the said bay, in the Sufquehohanough's country, which the said Lord Baltimore's agents there, as they alledge, fought to dispossess them of, pretending likewise great injuries and violence offered to them in their trade and possessions in those parts by the said agents, in killing some of the said captain Cleyborne's men and taking their boats, contrary to the said commission, and the express words of a letter from his majesty under his hand and signet: And therefore besought his majesty to grant to the petitioners a confirmation, under the great seal, of his majesty's said commission and letter, for the quiet keeping, enjoying, and governing, of the said island, plantation, and people, with other additaments of lands and immunities in those parts; and likewise that his majesty would refer the examination of the said wrongs and injuries to such as his majesty should think fit, as by the said petition more at large appeareth. For as much as his majesty was pleased, at Newmarket, on the 26th of February, 1637, to refer the consideration of the petitioners request unto the lord-archbishop of Canterbury, the lord-keeper, the lord privy-seal, and other the commissioners for plantations, who should be near at hand, and whom they pleased to call, and withal to advise with Mr. Attorney-general, for the preparing and settling the grant desired for his majesty's signature, and to examine the wrongs complained of, and to certify to his majesty what they thought fit to be done for redress thereof. Whereupon all parties attending their lordships this day, with their counsel learned, and being fully heard, the said commission and letters being likewise read, it appeared clearly to their lordships, and was confessed by the said Cleyborne himself, then present, that the said isle of Kent is within the bounds of the Lord Baltimore's patent; and the said Cleyborne's commission (as it likewise appeared) was only a licence, under the signet of Scotland, to trade with the Indians in America, in such places where the said trade had not been formerly granted by his majesty to any other; which commission their lordships were of opinion did not extend nor give any warrant to the said Cleyborne or any other, nor had they any right or title thereby



thereby to the said island of Kent, or to plant or trade there, or in any other parts or places with the savages within the precincts of the Lord Baltimore's patent. And their lordships did likewise declare, that the aforesaid letter, under his majesty's signature, which had reference to the said commission under the signet of Scotland, was grounded upon misinformation, by supposing that the said commission warranted the plantation in the isle of Kent, which (as now appears) it did not. Whereupon, as also upon consideration of a former order of this board, of the 3d of July, 1633, wherein it appeared, that the differences now in question being then controverted, the lord Baltimore was left to the right of his patent, and the petitioners to the course of law; their lordships having resolved and declared as aforesaid the right and title to the said isle of Kent and other places in question, to be absolutely belonging to the said Lord Baltimore; and that no plantation or trade with the Indians ought to be within the precincts of his patent without licence from him; did, therefore, think fit and declare, that no grant from his majesty should pass to the said Cleyborne or any others, of the said isle of Kent or other places within the said patent; whereof his majesty's attorney and solicitor general are hereby prayed to take notice. And, concerning the violences and wrongs, by the said Cleyborne and the rest complained of, in the said petition to his majesty, did now also declare, that they found no cause at all to relieve them, but do leave both sides therein to the ordinary course of justice.

<sup>26</sup> Observat. on the ancient Stat. p. 6. — Yet, in the oath taken by the governor and council, between the years 1637 and 1657, there was the following clause, which ought to be administered to the rulers of every country. “ I will not, by myself or any other, directly or indirectly, trouble, molest, or discountenance, any person professing to believe in Jesus Christ, for or in respect of religion.” The scruples of king William, when taking the Scottish coronation oath, which he conceived obliged him to become a persecutor, have been justly celebrated. But the laws of Maryland, with a spirit that cannot be too much praised, obliged those, who were intrusted with the execution of them, to swear, “ that they would not persecute.”

<sup>27</sup> Bac. Laws, 1638, ch. 1-2.

<sup>28</sup> See before the last chapter of Virginia; and see an elaborate memorial, which was written in those days, entitled: "A declaration, shewing the illegality and unlawfulness of the patent of Maryland." — Virg. Papers, 75 B. p. 135.

<sup>29</sup> Bac. Laws, 1640, ch. 2-10. — <sup>30</sup> Bac. Laws, 1642, ch. 54. — 1649, ch. 3-6. — <sup>31</sup> Bacon's Preface, which cites the provincial records; Laws, 1650, ch. 24; Ib. 1650, ch. 4. — <sup>32</sup> Ib. 1649, ch. 9; 1650, ch. 26. — <sup>33</sup> Ib. 1649, ch. 1.

<sup>34</sup> See a book published, 1655, for the author, John Langford, entitled "a just and clear Refutation of a false and scandalous Pamphlet, named, "Babylon's Fall in Maryland."

<sup>35</sup> Laws, 1676, ch. 2. — <sup>36</sup> Brit. Emp. in Amer. 1 v. p. 191-246. — <sup>37</sup> Laws, 1649, ch. 12; 1650, ch. 1. — <sup>38</sup> Ib. 1650, ch. 23. — <sup>39</sup> Ib. 1650, ch. 25. — <sup>40</sup> Ib. 1649, ch. 12; 1650, ch. 1-33. — <sup>41</sup> Bacon's Pref. which cites the provincial records; Thurlow's State Pap. 1 v. 197-8. — <sup>42</sup> Bacon's Pref.

<sup>43</sup> Bac. Laws, 1654, N<sup>o</sup> 1-46. — There is much reason to believe "that Cromwell talked to men and to sectaries in their own way:" And there is a letter from him to his commissioners still remaining among the records of the province; "commanding them not to busy themselves about "religion, but to settle the civil government."

<sup>44</sup> Thurlow's State Papers, 3 v. 592; vol. 4. p. 55. — <sup>45</sup> Laws, 1657, ch. 8.

<sup>46</sup> Laws, 1658, ch. 1; 1661, ch. 6. — No sooner was the assembly convened, than the burgessees sent the following paper to the upper house:

To the honourable the governor and council,

That this assembly of burgessees, judging themselves to be a lawful assembly, without dependence upon any other power in the province now in being, is the highest court of judicature: And, if any objection can be made, we desire to hear it." A conference ensued. And the upper house refusing to betray at once its trust and its own just authority, was dissolved by the burgessees. — Laws, 1659.

<sup>47</sup> Maryland Papers, D. p. 33.

<sup>48</sup> Laws,

<sup>48</sup> Laws, 1659. — Charles, lord Baltimore, says, in a letter to Mr. Blathwayt, one of the clerks of the council, dated in January, 1682: “ That, though Fendal was pardoned in 1659, yet that he had endeavored, on all occasions, to raise a mutiny in the province; and, truly, he had almost effected it in July last.” Fendal was tried in November, 1681, for seditious practices, and found guilty: He was fined 40,000 lb. weight of tobacco; imprisoned till payment; and banished the province. — See his trial at large, and lord Baltimore’s letter annexed, in Maryland Papers, vol. 1.

<sup>49</sup> Brit. Emp. in Amer. 1 vol. p. 191.

## C H A P. X.

*Preliminary remarks.—The Restoration.—Observations.—Subsequent administration of the colonies.—Proceedings of the restoration-parliament.—Instructions to the governor of Virginia.—Conduct of the assembly.—Laws of Maryland.—The Indians repelled.—Massachusetts receives the news of the Restoration.—Its subsequent conduct.—Sends an address to Charles.—Makes a declaration of rights.—At length proclaims that monarch.—The manner.—Sends deputies to England.—That prince's answer.—How received in the colony.—Remarks.*

THE constitution of England had lain, antecedent to the civil wars, in a kind of confusion, says an admirable writer ;<sup>1</sup> yet so that the people possessed many noble privileges, which, though not clearly specified or exactly bounded, were universally deemed to belong to them as their birthright. But it must be admitted, that the nation, at every period of her story, had been ruled by a limited monarchy, though the component parts of the legislature exercised very different powers during various and distant ages. And the sovereign and the subject had derived their mutual rights from the same infallible source of established laws, which both were equally bound to revere and defend.

Were we, agreeably to the spirit of this reasoning, to judge of the conduct of the two great parties, which, during the last century, divided, distracted, and enslaved, the English empire, we should find something to commend, but much to blame. The administration of the misguided Charles was, for too many years, not only contrary to law, but necessarily tended to subvert the whole system of English jurisprudence. Yet redress was at length sought, and by him constitutionally given, in full parliament, before the civil war commenced : And this circumstance alone deducts considerably from the demerits of a prince, who, when too late, evinced that he possessed virtues and talents, which, during any other season, were sufficient to render himself great, and his people happy. Much praise is due to his opponents for procuring an abolition  
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of encroachment, and an improvement of the constitution. But their subsequent conduct was equally contrary to law, and tended equally to subvert the established balance of the supreme power, wherein was lodged the authority of every order in the state: And the blame, which ought to be imputed to them, should be in proportion to the extent of their proceedings with regard to both. The event of the wars that ensued is well known to every one; fatal to the king first, to the parliament afterwards: Affording, however, this instructive lesson to free states, that true liberty is never more endangered than when intemperate zeal directs the hands which defend her rights.

The restoration of Charles II. to the throne of his ancestors, in May, 1660, forms a remarkable epoch, as well in the history of the colonies, as in that of the sovereign state. For usurpation had long reigned triumphant equally on both sides of the Atlantic: And with that event was the constitution of both happily re-established. Though the general administration of that prince is unworthy of commendation, and iniquities contrary to all principles were practised during his reign; yet, by the statutes favourable to the interests of freedom, which were then enacted, English liberty was completely restored: And nothing was there wanting, to render the excellent system absolutely perfect, but what the Revolution in a great measure supplied, a practical mode of government according to the laws of the land.<sup>2</sup> The same rules of conduct, whether salutary or baneful, which during that reign were adopted for England, constantly extended their influence, either good or evil, across the ocean: And the colonies, now no longer considered by the court as the mere property of the prince, were deemed, what they assuredly always were, territories of the crown, inhabited by English subjects, who possessed rights, and were justly entitled to consideration.

The only plantations which, after the emigrations of half a century, embellished the American continent, were, Virginia, New-England, and Maryland: And all these probably contained no more than eighty-thousand inhabitants. In their infancy they had scarcely been objects of parliamentary taxation or legislation. Nevertheless we have observed the parliament, during every reign, and under every form of government,

as well of James and Charles, as the commonwealth and protector, establishing regulations, and granting exemptions; asserting their right to exercise such authority in language the most forcible; compelling their obedience by the sword: And this conduct of the legislature, we have seen, was deemed by them rather favourable to the interests of colonial freedom than inconsistent with their immunities. Yet, during the foregoing period, the colonies, owing to the distractions of the times, and to their former insignificance, had not attracted the attention of the courts of justice in Westminster-hall. But, the strong declarations of the long parliament, their present importance, and other causes, raised them into judicial notice. When the judges reflected on the nature of the constitution, when they considered those principles of the common law which bind the territories to the state, they declared the plantations to be in all respects like the other subordinate dominions of the crown, and like them to be equally bound by acts of parliament, when specially named, or when necessarily supposed within the contemplation of the legislature. Such was their universal opinion, during the reign of Charles II. and James, so the same sentiment has been constantly recognised by the wisest of their successors to the present times.' The uniform conduct of parliament has confirmed and enforced the declarations of the courts of justice. And the wise have at all times thought these circumstances conjoined the best evidence of the existence and validity of a constitutional principle.

Charles II. was no sooner restored, than the parliament granted, among other duties, a subsidy of twelve pence in the pound of the value of merchandises, exported from this realm or imported into it, "or any of his majesty's dominions to the same belonging."<sup>4</sup> But, some doubts soon after arising from the misapprehensions of interest, not whether the power of the supreme legislature was co-extensive with the boundaries of the empire, but, with regard to the territories which were really intended by the legislature, they were judicially explained by the sensible Vaughan,<sup>5</sup> chief justice, to be those only of the crown of England: Giving for a reason, what policy had previously adopted; "that nothing can be enacted here concerning his majesty's dominions not of the crown of  
" England."

“ England.” And it is extremely remarkable, that the same expressions are literally copied into all the subsequent acts which established the one-third subsidy of Anne,<sup>6</sup> the two-thirds subsidy,<sup>7</sup> and the imposition of 1747.<sup>8</sup> Thus, the duty of tonnage and poundage, the collection of which without the national consent had deservedly occasioned so great a ferment during the preceding reign, was imposed by the parliament over every territory of the English empire, whether in Europe or Asia, Africa or America.

From the exertions of taxation the legislature turned its attention to those of legislation. The commercial regulations, which James I. and Charles had attempted to establish for the plantations by prerogative alone, which were more vigorously enforced by the ordinances of the commonwealth, but had never been punctually executed or obeyed, were now adopted as a system of sound policy. And a law was passed “ for the encouragement of navigation.”<sup>9</sup> It enacted: That no merchandise shall be imported into the plantations, or territories to his majesty belonging in Asia, Africa, and America, or exported from them, but in English vessels, navigated by Englishmen; declaring that these terms should include the shipping and the men of every dominion of the crown, however distant and however separated: That no sugar, tobacco, ginger, indigo, cotton, fustic, dying woods, of the growth of the English territories in America, Asia, or Africa, shall be transported thence to any other country than those belonging to the crown of England, under the penalty of forfeiture: Divesting the colonists of their property, should they act contrary to the rule prescribed. The specification of those various productions, which were no longer to be sent directly from the plantations to foreign nations, has given rise to the well-known term, in the law of customs, of “ enumerated commodities;” and, when new articles were brought into commerce, as the rice of Carolina, the melasses of the West-Indies, the copper ore of the northern colonies, they were instantly inserted in the list, and subjected to the same regulations: But every object of trade, which was not specified, the provincials might transport whither they pleased; because, with regard to that, they enjoyed the freedom of traffic, which the common-law gave them as English subjects.

In order to execute this system, the law required, that the governors of the plantations shall take an oath, before they entered on their offices, to obey fully every part thereof; yet, though it imposed a duty, it did not supply them with power: And, though no vessels were allowed to load with any of the enumerated commodities till those officers were satisfied, that a bond had been given, obliging the owners to carry the colonial productions to some dominion of the crown; yet no mode was established by which obedience could be easily enforced. It prohibited aliens from acting as merchants or factors in the plantations, on pain of forfeiture of their goods. But it is extremely remarkable that this statute, with the liberality of the law of England, makes no distinction with regard to any of the subjects of the crown, wheresoever residing; they were all equally restrained: And, though Scotland was mentioned, yet, being then perfectly independent of England, it was deemed a foreign country. Persons, however, who were born in it, subsequent to the accession of James I. to the English throne, might have acted in the colonies, as merchants, or factors, or navigators, because they were, in judgement of law, natural-born subjects, and consequently were entitled to the rights of Englishmen.<sup>10</sup>

Nevertheless it was much more easy to establish that famous regulation than to carry it into actual execution. The most submissive colonists considered it as grievous; interest discovered modes of evasion of what was deemed prejudicial; the governors were not prone to enforce what they saw was disagreeable to the men over whom they presided: And we shall find that it has required the constant exertions of English government, to the present times, though without absolute success, to oblige all to regard and to obey the acts of navigation, so essential to its power.<sup>11</sup>

The parliament, however, were not attentive to the interests of England alone. The national importance of the colonies being now apparent, it was assumed as a maxim of true policy, that all possible encouragement should be given to them. The people of England and of Ireland, incited by the demand of former times, had begun early to cultivate tobacco; which they continued to do, notwithstanding the proclamations



mations of James and Charles before-mentioned. But the legislature now enacted : " That no tobacco shall be planted, or made, within England or Ireland, Guernsey or Jersey ; that the sheriffs and justices of the peace shall destroy all that they should find growing contrary to that act ; giving as a reason for this memorable prohibition, that the plantations of this kingdom in America ought to be defended and maintained, because considerable dominions had been added to the imperial crown of this realm ; that tobacco, being one of their main productions, ought to be promoted, because what is planted in these parts is not so wholesome for the takers thereof, and his majesty would be deprived of a considerable revenue on the importation of it. Thus the supreme power extended its superintendance over every dominion of the crown : The monopolies, which were then established, being plainly reciprocal, restrained the colonial trade to England, and conferred the sole production of tobacco on the plantations.

Having sat from April, 1660, to the end of the year, the commons were then obligingly dissolved by a monarch who owed to them his crown. Among other gracious expressions, he said : " That former parliaments, " from what they had done, had received particular denominations ; that " they had been stiled learned and unlearned ; and some had worse epithets : " I pray let us all resolve, that this be for ever called the healing and " blessed parliament." Happy had it been, for his own reputation at least, had Charles II. steadily pursued, during the extent of his administration, the rule which he thus laid down for his future conduct : " What is a parliament like to think of this action or of this council ?" "

That prince had received so many proofs of the attachment of the colonies, during the season of trial, New-England only excepted, that he judged rightly, when he presumed they would listen to the news of his restoration with pleasure, and submit to his just authority with alacrity. Nor was he in the least deceived. They proclaimed his accession with a joy in proportion to their recollection of their late sufferings, and to their hope of future blessings. Of the recent conduct of Massachusetts he was well instructed ; he foresaw what really happened, that it would receive the tidings of his good fortune with extreme coldness ; he was in-

formed of the proceedings of a society which assembled at Coopers-hall, in order to promote its interests, and with them the good old cause of enmity to regal power: And, in May, 1661, he appointed the great officers of state a committee, "touching the settlement of New-Eng-  
"land." "That prince and that colony mutually hated, contemned, and feared, each other, during his reign; because the one suspected its principles of attachment, the other dreaded an invasion of privileges.

The illustrious Clarendon, however, inspired his sovereign with true notions of the nature and the utility of the plantations. And the instructions, which were transmitted to Sir William Berkeley, the governor of Virginia, soon after the Restoration, demonstrate the truth of this observation. He was empowered and required: To call an assembly as soon as might be, and to assure it of the royal intention to grant a general pardon and oblivion to all persons, those only excepted who were attainted by act of parliament; provided that body shall repeal all acts made during the rebellion, derogatory from the obedience, "which the  
"colonies owe to us and our government:" That, if any attainted persons, either now are in that dominion, or shall come thither, to cause them to be sent to England: To leave it to the assembly to do what is best for the plantation; giving a reason worthy of the king of a commercial country, that, though he had been solicited to stint tobacco, and to restrain the number of ships, yet he meant to promote the general good and their future advancement, and not private profit: To confirm any imposition the assembly should think fit to make for the good of the colony and the support of government; applying one thousand pounds as his salary, and the remainder for the general encouragement: To transmit an account of all tobacco shipped from that colony; in order that every one might be punished who transgressed the act of navigation: To revoke such grants of land as had been made contrary to the instructions of Charles I. and the good of the people; because the selfishness of individuals had converted what was intended as a blessing into a curse, by appropriating large portions of territory, which they could not cultivate; and which had been exempted from the payment of quit-rents for seven years: To transmit his opinion of the practicability of establishing an  
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iron work, "which is proposed to be undertaken by ourself;" but a project, which requires the greatest attention while directed by the fruitful hand of individuals, must have proved a fruitful source of expence when guided by that of a careless prince. Sir William Berkeley executed his trust with great attention and ability.

The Restoration, which had occasioned such uncommon festivity in England, gave the greatest satisfaction to the Virginians. They no longer dreaded the chastisement of the late ruling powers for their forward proclamation of their prince: There was now re-established that constitution which had formerly given their hearts content. During this joyous season, the grand assembly was convened in March, 1662, agreeably to the governors instructions. With a laudable attention to the royal inclinations it reviewed the whole body of laws: Giving, as a reason, what shews equally its present temper as its recent miseries; "that the late unhappy distractions had caused frequent change in the government, which produced so many alterations in the laws, that the people knew not what to obey, or the judges what to punish, proposing to adhere to those excellent and often refined customs of England, as nearly as the capacity of the country would admit, to which it acknowledged all obedience." Ecclesiastical affairs being the first object of its attention, the church of England was now, with the approbation of the people, regularly established: Churches were ordered to be built; glebes were laid out, and vestries were appointed; ministers, who had received their ordination from some bishop in England, were alone to be inducted by the governor: And all others were prohibited from preaching, upon pain of suspension or banishment. "In order to shew its detestation of the barbarous massacre of the late king Charles, of ever blessed memory," the 30th of January was ordered to be solemnized with fasting and with prayers: And, "in testimony of the joy of the colony for the happy restitution of Charles II. the 29th of May was appointed to be annually celebrated as a holyday." The charge of assemblies being much augmented by the great number of burgeses unnecessarily chosen, it was enacted: That no county shall send above two, except James-Town, the capital, which may send one; that every district,

tract, which shall people a hundred acres of land with the same number of tithable persons, shall be allowed a similar privilege: And that the burgessees, who should be thus chosen, shall not be arrested during the sitting of assemblies or for ten days thereafter. With the same attention the courts of justice were regulated. Crimes punishable with loss of life or limb were to be tried at the general-court. For the due administration of justice in the several counties, and for the greater ease of the people, the governor and two of the council were appointed to go the circuit: County-courts were established, which were empowered to determine small crimes and misdemeanours, “ according to the laws of England and “ of that country;” to grant letters of administration and probate of wills. Thus was finally erected that system which has continued to the present times, because it was approved by the people. As that deserved favourite, the trial by jury, had been discontinued during the late confusions, and that they might in all their proceedings come as near as possible to the laws of England, “ by which they were to be governed,” it was now once more restored: This regulation alone is sufficient to demonstrate the extreme ignorance or temerity of those who ruled Virginia during the usurpation, who were probably afraid to trust the decision of causes to an impartial jury of the country. When the assembly considered how much of the late misery had arisen from the falsehood of rumour, it enacted a law, extremely necessary in a territory distant from the seat of government, “ against the divulgers of false news:” And, happy had it been for that colony, had a rule so promotive of internal quiet been carefully attended to and enforced.

A tax of two shillings a hoghead on tobacco, exported, having been imposed for the support of government, with an exemption in favour of Virginian owners of vessels, this important privilege was declared to extend to such only “ as solely and wholly belonged to the inhabitants of “ this country.” And, for their greater encouragement, they were afterwards exempted from the payment of cattle-duties. The modern pretensions of the colonies render these laws of exemption, which were dictated by the narrow spirit of corporations, or the never-failing jealousy of subordinate legislatures, extremely interesting; and it will be found, upon

on inquiry, that the practice of the colonial assemblies, of exempting those who were represented, and imposing it on those who were not, has been universal at all times. The right of the assembly to assess those various duties must have arisen from its character of local legislature of the colony. For its component members then sat in one apartment; and, though the burgesses, in order to put themselves on an equality with the counsellors, provided against arrests, yet they had then acquired no peculiar powers with regard to money, or indeed any other exclusive authority. Various other beneficial regulations were at the same session established, which long served as the code of provincial jurisprudence.<sup>16</sup>

Nothing can shew more clearly than the laws which were then enacted how much Virginia had suffered during the usurpation, its joy on the Restoration, its former and present attachments. It is an instance of moderation, which is worthy of imitation, and which proceeded probably from the example and orders of the government of England, that no act of punishment or of oblivion, with regard to late transactions, was passed: No other notice was taken of the late usurpation than a declaration of the assembly, "that, in order to avoid like inconveniences, it had reviewed  
" the whole body of laws, expunging all the unnecessary acts, and chief-  
" ly such as might keep in memory the late forced deviation of the people  
" from his majesty's obedience, and bringing into one volume those that  
" are in force."<sup>17</sup> The Virginians were now blessed with a governor, who had shared in their adversity, who now partook in their joy, and with that form of government, that had formerly given them so much satisfaction. And, as they neither felt the pressures of grievance, nor experienced the fever of distrust, they continued, for some time, in that desirable but unimportant state of tranquillity, which adds nothing to the stock of historical knowledge.

If, from that most ancient dominion, we turn our eyes to Maryland, we shall behold the existence of similar principles producing the same good effects. All obeyed willingly the commands of Charles II. because all approved of his Restoration: And the province joyfully submitted to the just authority of the proprietary, because it had experienced his wise and equitable administration, which it had often approved of with gratitude.

If we except the moderate punishment of Fendal, and his accomplice Gerard, for a recent and aggravated breach of trust, the late usurpations were passed over in silence, and buried in oblivion. During the general festivity for the re-establishment of public quietude, the assembly was convened in May, 1662. When the freemen reflected “on the great hindrance to the advancement of the colony in trade, from the want of money, they besought his lordship to take order for setting up a mint.” It was enacted, that the money coined shall be of as good silver as English sterling; that every shilling, and so in proportion for other pieces, shall weigh above nine-pence in such silver; that the proprietary shall accept of it in payment of his rents and other debts; and this coin being afterwards circulated, the present was confirmed among the perpetual laws in 1676. But these acts being repealed, and the practice of coining having unhappily fallen into disuse, more pernicious projects for supplying the purposes of commerce succeeded: And this is the only law for coining money which occurs in colonial jurisprudence, if we except the ordinance of Massachusetts in 1652. An act “for port-duties” was at the same time passed; which conferred on the proprietary half a pound of powder and three pounds of shot for every ton burden of vessels, not properly belonging to the province: And this was afterwards explained by a law, declaring, “that no vessel, belonging to the province, shall be chargeable with any port-duties whatsoever.”<sup>18</sup> One letter in this act has occasioned much political controversy in Maryland. It has been contended, that the real intention of the legislature was, to grant a port-duty, which, though given generally to the proprietary, was conferred merely as a trust for the uses of the public. The first assembly which met subsequent to the Revolution made a tender of the produce of this tax to William. But, though poor, he rejected, with a spirit that does him honour, a considerable revenue, which was pressed upon him during the ardour of party zeal, because his solicitor-general informed him, “that the duty did belong to Lord Baltimore, to be received to his own use; that it would be of dangerous consequence to receive parole proof of an intention in the legislature different from the words of the law.” The tax was levied to the present times, though the refusal and judgement of that

that monarch did not procure conviction, or enforce acquiescence.<sup>19</sup> How finely do those laws, and that conduct, demonstrate how little the modern doctrine, with regard to taxation, was in those days known or attended to, and how different has been, at all times, the practice of the colonies from their late precepts.

The felicity of the province was however considerably checked by the incursions of the Janadoa Indians, whose name seems now extinct or forgotten. At the same time that military discipline was promoted, maintenance was provided for those soldiers, who should be maimed in defence of their country: But, by soliciting the aid of the Susquehannahs, a very powerful tribe, the enemies of the province were repelled, probably annihilated.<sup>20</sup> And Maryland once more felt the blessings of peace, and of rational government, which it long happily enjoyed.

If, from the colonies of the South, we look to those of the North, we shall discover that dissimilarity of principle and of action which had always prevailed, which continues to form so remarkable a contrast. During the frequent changes which ensued in England upon the death of Cromwell, Massachusetts acted, it should seem, with a cautious neutrality. She refused indeed to acknowledge the authority of Richard, any more than that of the parliament or protector; because all submission would have been inconsistent with her independence. She heard the tidings of the Restoration with that scrupulous incredulity with which men listen to news which they wish not to be true. By a ship, however, which entered Boston, in July, 1660, she was exactly informed of the solemn proclamation of Charles II. And that vessel brought two men, who were extremely qualified to give the most precise intelligence of the situation of affairs; no less persons than the generals Whaley and Goffe, two of the infamous murderers of their king, who had fled from the approach of their sovereign, and who dared not abide the judgement of those laws of their country which they had so grossly contemned. Far from concealing themselves, they immediately waited on Endicott, the governor, "who received them very courteously." The universal regard, with which these men were entertained in New-England, shewed only the attachments of the people: It became not criminal till after it appeared

that they were attainted by act of parliament. So late as February, 1660-1, the governor and assistants refused to secure them. But finding it no longer safe to remain in that jurisdiction, as a warrant was issued in the subsequent month to seize them, they retired to Newhaven; "where they were well-treated by the ministers and magistrates, and seemed to be out of danger :." And they made themselves known to Leate, the governor of Connecticut, who even then took no steps to detain them. Yet the royal proclamation, promising a reward for apprehending them, being published in the colony, they were constrained to abscond. The universal favour, however, of the inhabitants, who probably pitied the unfortunate, though criminal, ensured their safety. They were joined in their retreat, in Connecticut, by Dixwell, another regicide, who was also attainted. And here, after a long and miserable life, which became a burden to themselves, they quietly breathed their last. Of these transactions Charles II. was perfectly informed; and with this conduct he afterwards reproached Massachusetts.<sup>21</sup>

But neither was the king proclaimed, nor was there any change made in the usual form of proceedings. And when the general-court convened, in October, 1660, though an address to that monarch was proposed and earnestly pressed by some, yet rumours being propagated, "that England was in a very unsettled state, that the people were greatly dissatisfied," these had then that mighty effect which they have always had within the colonies; and the motion was over-ruled: Alledging what shews the extent of the views of men; "that such an address might fall into the hands of a committee of safety, or of other improper persons." A vessel having at length brought certain intelligence of the complete settlement of affairs, with the joyful and universal approbation of the nation, of the complaints which had been preferred against those in power to the king and to the parliament, a general-court was instantly called, in December, 1660. It was no longer the season of debate. An address to Charles was instantly agreed on, which was extremely different in style and sentiment from modern compositions, which justified the conduct of the colony, and prayed for protection of its rights, civil and religious, and which evinces with what ease oppression generally descends



to sycophancy. A similar paper was transmitted to both houses of parliament; and various letters were written to those puritanic nobles who had degraded themselves by sacrificing their order, who loved Massachusetts better than England, "to intercede in behalf of the colony." Agreeably to ancient custom, a day was appointed to beg the intercession of heaven, "to incline the king to accept favourably, and to answer, "the address:" And it was presented in February, 1660-1, and most graciously received. Leveret, the agent, was on that occasion instructed: "Not only to engage as many members of parliament as possible to favour the cause of that people; but, should he find the king and the legislature propitious to them, to endeavour to procure the re-enactment of the ordinance of 1642, that freed them from customs." But the times were extremely unfavourable to their views. The parliament had already established the duties of tonnage and poundage over every dominion of the crown: And we shall find that no exemption from customs, which was now asked for as a favour, was ever obtained till the sad epoch when it was demanded as an indubitable right.<sup>22</sup>

While the governor and council "were yet under no small degree of fear, and were alarmed with reports from all parts," they animadverted on a book which had been published, not long before, by Elliot, so famous in the story of that colony as the apostle of the Indians, entitled, "The Christian Commonwealth." They found it "full of seditious notions in relation to all established governments in the Christian world, especially against the constitution of their native country." The elders were consulted on a subject so momentous; and censure was deferred, that the author might make a public recantation in the mean time. He now condemned himself; and, as a public atonement, he acknowledged to the general-court, "that the constitution of England, by king, lords, and commons, far from being antichristian, was not only a lawful, but an eminent, form of government;" he bore testimony against such expressions as justified the late innovators; and he confessed, "that all forms of civil government, deduced from scripture, are of God, and ought to be obeyed for conscience sake." The books were ordered to be suppressed, and this disavowal to be published.<sup>23</sup> How

much to be regretted is it, that men, whose conduct is in other respects commendable, whose duty leads them to inculcate peace and moderation, should busy themselves in publishing such writings ! It is presumptuous in the weak to impeach the authority of a system which they do not comprehend : It is wicked in the intelligent to promulgate “ seditious “ notions, not only against that of their native country, but all established governments in the Christian world.”

The general-court soon turned its attention to a subject of higher concernment ; the present condition of affairs. In order rightly to understand that duty which the people owed to themselves, and that obedience which was due to the authority of England, a committee at length reported a declaration of rights, which at once shews the extent of their claims, and their dexterity at involving what they wished to conceal. The general-court resolved : That the patent (under God) was the first and main foundation of the civil polity of that colony ; that the governor and company are, by the patent, a body politic, which is vested with power to make freemen ; that these have authority to choose a governor, deputy-governor, assistants, and select representatives ; that this government hath ability to set up all kinds of officers ; that the governor, deputy-governor, assistants, and select deputies, have full jurisdiction, both legislative and executive, for the government of the people here, without appeals, “ excepting law or laws repugnant to the laws of England ;” that this company is privileged to defend itself against all who shall attempt its annoyance ; that any imposition, prejudicial to the country, contrary to any of its just ordinances, (not repugnant to the laws of England,) is an infringement of its rights. Having thus, with a genuine air of sovereignty, by its own act, established its own privileges, it decided “ concerning its duties of allegiance :” And these were declared to consist ; in upholding that colony as of right belonging to his majesty, and not subject to any foreign potentate, because it had been accused, in England, of an inclination to sell the country to the Spaniards ; in preserving his person and dominions ; in settling the peace and prosperity of the king and nation, by punishing crimes, and by propagating the gospel. It was at the same time determined, that the royal  
warrant

warrant for apprehending Whaley and Goffe ought to be faithfully executed; that, if any legally obnoxious, and fleeing from the civil justice of the state of England, shall come over to these parts, they may not expect shelter.<sup>24</sup> What a delightful picture do these resolutions display of the embarrassments of the general-court, between its principles of independence on the one hand, and its apprehensions of giving offence to the state of England on the other. It is unnecessary to remark, that, notwithstanding the strong affirmations above-mentioned, there were no select deputies allowed by the charter. And it would be improper, after what has been said, to point out the necessary incongruity of a subordinate legislature, deciding with regard to its own privileges, and the spirit of aggrandizement which runs through the whole.

Mean-while various complaints were made, with great earnestness, to Charles, against the governor and council. The Quakers represented their sufferings, and begged for protection in language which required not the heightenings of eloquence, because their oppressions were real and enormous. Gorges and Mason set forth the usurpations of the general-court over their colonies of New-Hampshire and Main; and prayed for redress, by restoring them to their rights, ancient and indubitable. Informations were given of the premeditated delays in proclaiming the king. Many persons appeared, and were examined with regard to a conduct which gave such just offence. And that monarch, now seeing the principles and practice of Massachusetts in their genuine colours, commanded the governor and council "to send persons to England, to answer these various accusations."<sup>25</sup> And his commands, for once, were attended with some real effect.

Information of all these proceedings in England hastened the steps of that body. And, after various debates, the general-court, in August, 1661, gave directions "to proclaim Charles II. to be lawful king of Great-Britain, and all other the territories to the same belonging; recognizing him as its sovereign lord."<sup>26</sup> But the authority from which that monarch derived his kingship was carefully concealed, in order that the people of that jurisdiction might consider the whole as an election recent and provincial. As there existed no ordinance of Massachusetts, which

which placed the diadem on his head, from what system of jurisprudence did he derive his sovereignty over that territory? Neither that prince nor any of his successors could claim any connexion with English colonies, or exercise any authority over them, but what they received from the laws of England, at least since the right divine has been so completely exploded. And though the people of Massachusetts recognized Charles as their "lawful king," and thereby virtually admitted the efficacy of the system whence he had derived his kingly office, yet they did not acknowledge explicitly the obligatory force of English laws. In what confusion, contradiction, and perplexity, do men involve themselves when they once depart from strict principle, from the letter of the constitution, which their fathers had defended and transmitted! But what gave such unfeigned joy over the empire was performed even at that late hour with a very bad grace at Boston. With a characteristic surliness, the general-court published an order the same day; "prohibiting all disorderly behaviour, and particularly that no person shall presume to drink his majesty's health; which, says the prohibition, he hath in a special manner forbidden." Yet that prince had given no other commands than what existed in the ordinances of Massachusetts; because he was as little a foe to jollity as he was any friend to sadness." A second address was at the same time transmitted to him, couched in similar terms as the first: Thus repairing, by the mere profession of compliment, what was wanting in the sincerity of action.

Farther intelligence being received "of what was doing in England, to the prejudice of the colony," the governor called the general-court in December, 1661. "After much agitation and opposition," Bradstreet and Norton were appointed agents to repair thither; and they were instructed: "To represent the colonists as his majesty's loyal and obedient subjects; to endeavour to take off all scandal and objections; to discover his apprehensions concerning them; to do nothing prejudicial to the charter." These men, however, undertook that thankless office with great reluctance. They departed: "Having first received a public assurance, that all damages they might sustain, by the detention of their persons in England, or otherwise, should be  
 " made

“made good to them.”<sup>28</sup> But what must have been the guilt or the misinformation of a people, who could conceive that the persons of agents would be subjected to punishment for the offences of the whole, under such a government as that of England!

Nevertheless, they were favourably received at the court of Charles; because he was more forward to accept than they were to profess submission. They soon returned: Bringing with them the royal answer. Yet neither their conduct, which was probably misrepresented, nor the king's letter, gave general or perfect satisfaction; though that was ordered to be published, and a day of thanksgiving was appointed, “for the return of the messengers, and the continuance of the mercies of peace, liberty, and the gospel.” For there were some things, as we are assured, in the royal missive hard to comply with. That prince did thereby confirm the charter and all privileges contained in it; he promised to renew it under the great-seal, at what time soever it should be desired: And, with the unexampled spirit of forgiveness of those times, he granted pardon to all his subjects for treasons committed during the late troubles; those only excepted who were attainted by act of parliament. But he required the general-court to review its ordinances, and to repeal such of them as were repugnant to the royal authority; that the oath of allegiance should be duly administered to every one; that the administration of justice should be performed in his name; that freedom should be granted to all who desired to use the book of Common-prayer; and perform their devotions in the manner established in England; that freeholders, not vicious, and of competent estates, should be allowed to vote in the election of officers, civil and military, though they were of different persuasions in church-government. Some parts of this answer are said to have cheered the hearts of the people: And they often afterwards recurred to it as an explicit confirmation of their chartered liberties, and as an amnesty of past errors. But of what was required by the king, to be performed by them on their parts, little was ever done. However reasonable, however legal, may now appear the requisitions of that prince, “many of them were then thought grievous by all, and as introductory of popery by a few.” Some of them they evaded with their accustomed

accustomed dexterity; with others they never complied; because, in the smallest change, they dreaded farther innovation. The only one of all the above requests which were now performed, was, the giving of orders that all writs and other legal proceedings should run in the royal name. And a committee was appointed to consider which of the other requisitions were proper to be adopted, and to report something "which might be satisfactory and safe, conducing to the glory of God, and to the felicity of the whole." By these means the inhabitants of that colony incurred then his displeasure, which continued during his reign. And thus was laid the commencement of a long train of vexations to the prince, and of woes to the people; which ended only with his life, and with their enslavement.

In the annals of territories, barren of incidents, and destitute of events striking and splendid, like the adventures of the Spaniards of the South, attention can only be awakened, and the heart interested, by contrasting the colonies with each other, and their ancient story with recent occurrences. The peculiar religion of the original colonists necessarily inspired different sentiments and very dissimilar designs. The church of England of Virginia, the Roman-catholic of Maryland, naturally animated their votaries with love of their prince, attention to ancient forms, and attachment to their native country and its constitution. The congregational societies of New-England equally infused a desire of equality, impatient of any superior, an anxiety for change, irreconcilable to any establishment, and an affection for that colony which was supposed to be sanctified by heaven, utterly inconsistent with any regard to the parent state, or obedience to its laws. Actuated by such principles, the conduct of the planters was, on all occasions, extremely opposite to each other. During the momentous contentions of the reign of Charles I. those of the South, we have seen, adhered to the royal cause and the constitution of their fathers, without disregarding their rights as Englishmen: The people of New-England, *stirred up* the fire of civil dissention, leagued themselves with the promoters of innovation, and profited from the deplorable distractions of the parent. The former received the news of the Restoration with joy, eagerly proclaimed their king, and submitted to the decision of parliament

parliament on that occasion, with the attention of men, who deemed themselves subjects, invested with English liberties, and therefore bound by English laws : The latter received the tidings of that interesting event with a caution bordering on incredulity, announced the king in a manner almost insulting, and submitted not to the resolutions of the supreme power, till they had, by their own resolves, declared their own privileges. The religious principle before-mentioned affected considerably the personal virtues of the heart. While we admire their opposites in the planters of the Southern colonies, we must detest, in those of the North, oppression, descending, on proper occasions, to sycophancy, an affectation of superior sanctity bordering on blasphemy, and a dissimulation approaching to dishonesty. While the first, by education, by communication with strangers, have refined their manners, have improved their taste, and cultivated the elegant arts; the last, notwithstanding the diffusion of philosophy, remained nearly in their original state; and strangers, during those days, observed their peculiarities with that mixture of wonder and contempt, with which they generally behold a people different from all others almost in every thing. The singular maxims of both have descended to their posterity with less variation than could have been foreseen, and have constantly animated their conduct, private and political, to the present times.

## AUTHORITIES AND NOTES.

<sup>1</sup> Hume's Ess. 1 v. p. 62. — <sup>2</sup> Commentaries, 4 v. p. 429-32.

<sup>3</sup> Freeman's Reports, p. 175; Modern Rep. 3 v. p. 159-60; Vaughan's Rep. 400; Modern Rep. 4 v. 225; Salkeld's Rep. 2 v. p. 6; and Commentaries, 1 v. p. 106-9.

<sup>4</sup> 12 Cha. II. ch. 4. — <sup>5</sup> Vaughan's Rep. p. 170. — <sup>6</sup> 2 An. ch. 9. — <sup>7</sup> 3 An. ch. 5. — <sup>8</sup> 21 Geo. II. ch. 2.

<sup>9</sup> 12 Cha. II. ch. 18. — It is extremely remarkable, that, as early as the year 1381, a law was passed with the same design, and almost in the same language. The statute of 5 Rich. II. ch. 3. declared : " That, to increase the navy of England, no goods or merchandises shall be either exported or imported, but only in ships belonging to the king's sub-

“jects.” This, says the truly intelligent observer on the statutes, may be styled the first navigation-act. — Observ. 261.

” To trace a principle is always interesting, because curiosity is gratified. During the reign of James I. it was for the first time decided, by all the judges of England, in the case of the *post-nati*, which has been reported, by Sir Edward Coke, with such an elaborate display of learning, “ that persons born in Scotland, subsequent to the accession of that monarch to the English throne, were natural-born subjects of England ; “ because they drew their first breath under the same liegeance as “ Englishmen.” The inference of law, from this proposition, was inevitable ; “ that both were equally entitled to the same privileges.” The journals of parliament are full of applications, during the sessions of that prince and his immediate successor, for the naturalisation of Scotsmen : But, as the *ante-nati* departed, this became unnecessary. Though no vessels could be carried directly from Scotland to the English plantations subsequent to the act of navigation, yet thither Scotsmen began to traffic, with their usual ardour, in the reign of Charles II. they extended their operations during that of James II. and in that of William they procured and executed colonial offices of trust and of profit. They naturally applied the principles above-mentioned to new situations and new circumstances ; concluding, justly, that they were entitled to the same rights in the colonies as they enjoyed within the realm. Yet the ministers of William were extremely perplexed with regard to this subject ; because apprehension had not been quickened by interest. What is more amusing than to remark the perplexities of wise men on self-evident propositions ? They continually applied to the crown-lawyers for advice : And these uniformly reported, “ that Scotsmen were, in judgement of “ law, natural-born subjects of England.” The commercial spirit of the natives of Scotland was viewed nevertheless, within the plantations, with envy. Their vessels were seized, by the governors and custom-house officers, with avidity ; because they were to acquire forfeitures, and at the same time gratified those over whom they ruled. But perseverance overcame difficulties : And, among other opinions, was procured that of Sir John Hawles, who was the solicitor-general of King William, but  
who



who is now better known as the author of an admired treatise on juries : And his sentiments display the reasonings of sensible men and able lawyers, during those days, on a subject as well of curiosity as of use. — From Virg. Pap. C. N<sup>o</sup>. 4.

“ Whether a Scotsman, that for three or four years has been in England or in the English plantations, or has been five or six years employed by Englishmen in navigating English ships from England to the plantations, or from plantation to plantation, may not act as a master or sailor ? Doth it any ways alter the case, whether such Scotsman be married and a house-keeper, or unmarried and a lodger ?

I think a native of Scotland will be accounted an Englishman, and will be well qualified to be master or mariner of an English ship, within the words of the act of navigation ; they being by their births as much Englishmen as foreigners will be by an act of naturalization.

The word *English* in the said acts being applicable to privileges of persons born in England, must be construed according to the rule of common law in like cases : And since the union of the two crowns, at least at this day, it has been undoubtedly held, that persons born in Scotland should have the same privileges as if born in England, as to the purchasing freeholds, inheriting lands of inheritance here in England, and all other matters.

I think it will be the same thing where any act of parliament gives a privilege to an Englishman : For a Scotsman will be an Englishman by privilege, though a native of Scotland. Wherever the act mentions a subject of England and Ireland, I think the words *England* and *Ireland* will be redundant ; so will be neglected : And consequently will not exclude Scotchmen, without negative words. And I think such acts will include all the king's subjects born in any other of the king's dominions than England or Ireland. I think it will not at all alter the case, whether such a Scotchman be a house-keeper, or single, or a married man.

By a clause in the act of 14 Cha. II. it is said : “ And whereas it is required by the act of navigation, in sundry cases, that the master and three-fourths of the mariners shall be English :” Is it to be understood,

that any of his majesty's subjects of England, or Ireland, or of any of the plantations, are to be accounted English, and no other?

Q. Whether any thing herein contained doth alter the case of the Scotchman before-mentioned; and whether he is not to be accounted his majesty's subject within the meaning of this clause?

Whatever might have been the intention of the parliament by that clause in the act; yet, since by law a man born in Scotland is a subject of England; and since the two kingdoms, as to matters of privilege, while they remain united under the same king, are accounted but one nation; the above clause will not exclude a Scotchman from being an English subject."

REMARK. We may infer, then, that all persons born within the dominions of the king of Great-Britain, owing allegiance to him, and yielding obedience to the laws, are entitled to the same equal privileges; varied only by the inequalities of nature, the distinctions of society, the disabilities of situation. And the common law of England, with a spirit favourable to coalition, to disunion adverse, would have adopted the Hanoverians: But they have been excluded, it should seem, by what Sir John Hawles called "negative words;" by positive statute. And thence it appears, that the whole reasonings lately employed in support of the rights of the colonists, though not of their independence, end in this simple affirmation: "We are Englishmen." Inconsistence of principle, as well as incongruity of inference, only arose, when it was thence asserted: "We are consequently not bound by English laws."

"The following letter, of the lords of the committee of colonies, to the governors of the plantations, not only supports the reasonings in the text, but shews that the act of navigation was contemned from the epoch of its enactment, and evinces how early began the exertions of English statesmen to enforce that favourite law.—From New Eng. Ent. 1 vol. p. 11.

Whereas, by a late act for encouragement of shipping, all foreign trade is prohibited to any of his majesty's plantations; and all those of his majesty's subjects that sail unto any of them are required to give security

curity to return, with their lading, to England or Ireland, as in the said act is expressed, with strict command to the governors of the said plantations to see the same performed accordingly, with great penalties on such governors as connive or neglect putting the said act in execution, who are enjoined also to take an oath that the said act be punctually observed: Yet, being informed by masters of ships and others trading to Virginia, Maryland, and others his majesty's plantations, of many neglects, or rather contempts, of his majesty's commands for the true observance of the said act, (which so highly concerns the increase of shipping, and the regulation of the trade of the plantations, together with his revenue that proceeds from thence,) by trading into foreign parts from Virginia, Maryland, and other plantations, both by sea and land, as well into the Monadoes, [New-York,] and other plantations of the Hollanders, as into Spain, Venice, and Holland; occasioned through the neglects of those governors, in not taking a view of all foreign-built ships which come into their plantations, whether they have a certificate of their being made free according to the act, as also in not duly taking bond (before any ship be permitted to lade) that whatever commodities they shall take in at any of his majesty's plantations, the same shall be carried to some other of his majesty's plantations, or into England or Ireland; which bonds are to be returned twice every year into the office of the custom-house, in London: But hitherto it hath not been done; of which neglect and contempt his majesty is sensible, and therefore doth require and command you, that, for the time to come, a perfect account be kept by you, in that plantation, of all ships that shall load there, and return the names both of the masters and the ships, together with true copies of all such bonds as shall be taken by you there, twice in every year, unto the office of the custom-house, in London, as aforesaid; which, if you shall forbear to do, upon information thereof, and that any ships freighted there, shall, contrary to the law, trade into foreign parts, his majesty will interpret it a very great neglect in you, for which he is resolved to cause the breach of the said act to be prosecuted according to the tenor thereof, and discharge you from that employment: It being his pleasure that the said law be very strictly observed, in regard it much concerneth

cerneth the trade of his kingdom. All which we have thought fit to let you know, that you may not pretend ignorance, but observe all such orders as are directed by the said act, whereof you are not to fail, as you will answer the contrary at your peril. And so, &c.

(Signed)

Whitehall,  
24 June, 1663.

CLARENDON, C:  
and other lords.

REMARK. But though the above letter was circular, there is reason to believe that it was not transmitted to Massachusetts. For, in May, 1675, the committee of colonies applied to the lord-treasurer Danby, “to understand the opinion of the commissioners of the customs how far the acts of trade take cognizance of New-England.” — *Ib.* 24. — And he soon after sent the committee the subjoined report. — *From N. Eng. Ent.* 2 v. p. 29.

1st Q. How far the acts of navigation take notice of New-England?

A. We conceive that New-England (being one of the plantations under his majesty's government) is equally subject to those laws which relate to the plantation trade.

2d Q. What violations thereof we have observed by the inhabitants of that country?

A. That, before the act 25<sup>o</sup> reg. which imposed certain duties, several of those commodities were brought thither, and thence exported to foreign parts. But, since making that law, and officers are appointed to put it in execution, we hope that may be in a great measure prevented. Informed, that ships load the manufactures of Europe, and carry them directly to New-England.

3d Q. What inconvenience and loss?

A. New-England is made a staple, which England ought to be. — Remedy. The governors to take the oaths required; bonds to be taken; seizures to be made.

<sup>12</sup> 12 Cha. II. ch. 34. — <sup>13</sup> Com. Jour. 8 v. p. 236-7. — <sup>14</sup> New-Eng. Ent. 1 v. p. 1-2. — <sup>15</sup> Virg. Ent. 1 v. p. 265. — <sup>16</sup> Laws, p. 1, 59. — <sup>17</sup> Preamble to the Laws, p. 1. — <sup>18</sup> Bacon's Laws, 1661, ch. 14, 4-7.

<sup>19</sup> Right

<sup>19</sup> Right to the Tonnage stated, p. 7-8. — <sup>20</sup> Bacon's Laws, 1661, ch. 1, 6, 8, 12.

<sup>21</sup> Neal's N. Eng. 1 vol. ch. 8; Hutch. Hist. 1 v. p. 209-19. — The following deposition confirms as well the text, as shews how well informed was Charles II. of what passed at Boston. — From N. Eng. Papers, 3 vol. N° 14.

John Crown, gentleman, maketh oath, that, while he was at Boston, in New-England, soon after his majesty's happy Restoration, Goffe and Whaley, two of the execrable murderers of his majesty's royal father, of blessed memory, landed there; and, at their landing, were conducted to the house of John Endicot, then governor of the Massachusetts colony, and that it was reported, by all the deponent conversed with, that the said governor embraced them, bade them welcome to New-England, and wished more such good men as they would come over. That, after the said Goffe and Whaley resided some time at Boston, visiting and being visited by the principal persons in the town, and that, among others, they visited Mr. John Norton, the teacher of the principal independent church in the said town, and one of those who came over with the address and letter of the said colony to his majesty: That the deponent then boarded in the house of Mr. Norton, and was present when they visited him, and that he received them with great demonstrations of tenderness; that, after this the said Goffe and Whaley went and resided in Cambridge, (the university of New-England, of which the deponent was a member,) and that, having acquaintance with many of that university, he inquired of them how the said Goffe and Whaley were received; and that it was reported to him by all persons, that they were in exceeding great esteem for their parts; that they held meetings in their house, where they preached and prayed, and gained universal applause and admiration, and were looked upon as men dropped down from heaven; that this was the phrase of all the deponent heard discourse about them, but that penitence for the horrid murder for which they fled did not appear to be any part of that piety, which fainted them in their esteem, for that Whaley said openly, almost in all places where he came, that, if what he had done against the king

were

were to be done, he would do it again; and that it was the general report of the place, that he was frequently heard to say these words: That in the aforefaid town Whaley and Goffe refided, until commands came from his majesty to the governor of Maffachufets for their apprehenfion; but that thofe commands were neither executed, nor, to the beft of the deponent's remembrance, publifhed, nor any proclamation or order, by their own authority, iffued out for it; otherwife it had been almoft impoffible for the murderers to efcape as they did, by reafon of their living and converfing fo publicly, and their having no places to fly to, befides there being feveral loyal perfons in Boston, (though no members of the church or ftate,) who, if they might have had permiffion from the government, would have ventured to feize them: And the deponent doth likewife remember, that, being afterwards in company of feveral merchants at Boston, and difcourfing of Hugh Peters and his execution, fome perfons did there fay, that there were many godly in New-England that dared not condemn what Hugh Peters had done.

REMARK. Lord Say and Seal, when his glafs was almoft run out, informed the governor of Maffachufets, in July, 1661; " I muft fay, for " Mr. Crown, he hath appeared both here, in the council, and to the " Lord Chamberlain and others, as really and cordially for you as any " could do, and hath allayed the ill opinion of your cruelty againft the " Quakers. — I muft request you will accordingly requite Mr. Crown " his love, care, and pains, for you." — See the letter in Hutch. Hift. I vol. 220.

" Hutch. Hift. I vol. 210-11. — Candour requires, that, as all men fhould be allowed to fpeak their own juftification, the people of Maffachufets fhould be permitted to tell their own ftory their own way: The addrefs of the general-court is therefore fubjoined. — From N. Eng. Papers, 4 vol. p. 490.

" Moft gracious and dread fovereign,

May it please your majesty (in the day wherein you happily fay, you now know, that you are again king over your Britifh Ifrael) to caft a favourable eye upon your poor Mephibofeths now, and by reafon of lameness,

ness, in respect of distance, not until now appearing in your presence, we mean New-England, kneeling, with the rest of your subjects, before your majesty, as her restored king. We forget not our ineptness as to these approaches. We at present own such impotency, as renders us unable to excuse our impotency of speaking unto our lord the king: Yet, contemplating such a king, who hath also seen adversity, that he knoweth the hearts of exiles, who hath been himself an exile, the aspect of majesty, thus extraordinarily circumstanced, influenceth and animateth exanimated outcasts, (yet outcasts as we hope for the truth,) to make this address unto their prince, hoping to find grace in his sight: We present this scrip, the transcript of our loyal hearts, into your royal hands, wherein we crave leave:

To supplicate your majesty for your gracious protection of us, in the continuance both of our civil privileges, according to (and of our religious liberty, the grantees known end of) the patent conferred upon the plantation by your royal father. This, this, viz. our liberty to walk in the faith of the gospel, with all good conscience, according to the order of the gospel, (unto which the former, in these ends of the earth, are but subservient,) was the cause of our transporting ourselves, with our wives, our little ones, our substance, from that pleasant land, over the Atlantic Ocean, into this vast and waste wilderness; choosing rather the pure scripture worship, with a good conscience, in this poor remote wilderness, among the heathens, than the pleasures of England, with subjection to the then so disposed and so far prevailing hierarchy, which we could not do without an evil conscience. For this cause we are this day in a land, which lately was not sown, wherein we have conflicted with the sufferings thereof much longer than Jacob was in Syria. Our witness is in heaven, that we left not our country upon any dissatisfaction, as to the constitution of the civil state: Our lot, after the example of the good old non-conformist, hath been only to act a passive part, through these late vicissitudes and successive overturnings of state; our separation from our brethren in this desert hath been, and is, a suffering, bringing to mind the application of Joseph; but providential exceptions of us thereby from the

late wars, and temptation of either party, we account as a favour from God; the former clothes us with sackcloth, the latter with innocency.

What reception, courtesy, and equanimity, those gentlemen and other adherers to the royal interest, who in adverse changes visited these parts, were entertained with amongst us, according to the meanness of our conditions, we appeal to their own reports.

Touching complaints put in against us, our humble request only is, that, for the interim wherein we are dumb, by reason of absence, your majesty would permit nothing to make an impression upon your royal heart against us, until we have opportunity and licence to answer for ourselves. Few will be nocent, said that impleader, if it be enough to deny; few will be innocent, replied the then emperor, if it be enough to accuse.

Concerning the Quakers, open capital blasphemers, open seducers from the glorious Trinity, the Lord's Christ, our Lord Jesus Christ, the blessed gospel, and from the holy scriptures, as the rule of life, open enemies to government itself, as established in the hands of any but men of their own principles, malignant and assiduous promoters of doctrines directly tending to subvert both our church and state: After all other means, for a long time used in vain, we were at last constrained, for our own safety, to pass a sentence of banishment against them, upon pain of death; such was their dangerous, impetuous, and desperate, turbulency to religion and to the state, civil and ecclesiastical, as that, how unwilling soever, could it have been avoided, the magistrate at last, in conscience both to God and man, judged himself called, for the defence of all, to keep the passage with the point of the sword held towards them: This could do no harm to him that would be warned thereby; their willingly rushing themselves thereupon was their own act, and, we with all humility conceive, a crime, bringing their bloods upon their own heads. The Quakers died not because of their other crimes, how capital soever; but upon their superadded presumptuous and incorrigible contempt of authority, breaking in upon us notwithstanding the sentence of banishment made known to them: Had they not been restrained, so far as appeared, there was too much cause to fear that we ourselves must quickly have died,



died, or worse; and such was their insolency, that they would not be restrained but by death; nay, had they at last but promised to depart the jurisdiction, and not to return without leave from authority, we should have been glad of such an opportunity to have said they should not die.

Let not the king hear mens words; your servants are true men, fearers of God and the king, and not given to change, zealous of government and order, orthodox and peaceable in Israel: We are not seditious as to the interest of Cæsar; nor schismatics as to matters of religion; we distinguish between churches and their impurities; between a living man, though not without sickness and infirmities, and no man. Irregularities, either in ourselves or others, we desire may be amended; we could not live without the worship of God; we were not permitted the use of public worship without such a yoke of subscription and conformity as we could not consent unto without sin. That we might, therefore, enjoy divine worship without human mixtures, without offence either to God or man or our consciences; we, with leave, (but not without tears,) departed from our country, kindred, and fathers houses, into this Patmos; in regard whereunto, we do not say our garments are become old by reason of a very long journey, but that ourselves, who came away in our strength, are, by reason of very long absence, many of us become grey-headed, and some of us stooping for age. The omission of the prementioned injunctions, together with the walking of our churches, as to the point of order in the congregational way, is all wherein we differ from our orthodox brethren.

Sir, we lie not before your sacred majesty: The Lord of Gods, the Lord God of Gods, he knoweth, and Israel he shall know, if it were in rebellion or schism that we willingly left our dwelling in our own, or continue our dwellings in a strange land, save us not this day.

Royal Sir, if, according to our humble petition and good hope, the God of the spirits of all flesh, the Father of mercies, (who comforteth the abject,) shall make the punishment of the bereavement of that all, for which we do leave and do suffer the loss of all, precious, so precious, in your sight; or that your royal heart shall be inclined to shew unto us that kindness of the Lord in your majesty's protection of us in these li-

berties, for which we hither came, and which hitherto we have enjoyed, upon Hezekiah's speaking comfortably to us as to sons; this orphan shall not continue fatherless, but grow up as a revived infant under its nursing-father: These churches shall be comforted in a door of hope opened by so signal a pledge of the lengthening of their tranquillity; these poor and naked gentiles, not a few of which through grace are come and coming in, shall still see their wonted teachers, with encouragement of a more plentiful increase of the kingdom of Christ among them; and the blessing of your poor afflicted (and yet we hope trusting in God) shall come upon the head and heart of that great king, who was sometime an exile as we are. With a religious salutation of our prayers, we (prostrate at your royal feet) beg pardon for this our boldness; craving finally that our names may be enrolled among your majesty's most humble subjects and suppliants.

JOHN ENDICOT, Gov. — In the name, and  
with the consent of the general-court."

<sup>22</sup> The instructions, which are extremely remarkable, are in the collection of papers made by Mr. Hutchinson, p. 328.

<sup>23</sup> Hutch. Hist. 1 v. p. 211, 12. — <sup>24</sup> Ib. 213; and see the Court's Declaration of Rights, appendix, N<sup>o</sup> 13. — <sup>25</sup> N. Engl. Ent. 1 v. 4-9-29; Hutch. Hist. 1 v. p. 219. — <sup>26</sup> See the proclamation, ib. 218. — <sup>27</sup> Ib. 219. — <sup>28</sup> Ib. 220. — <sup>29</sup> Ib. 220-3.

## C H A P. XI.

*Persecution gives rise to Providence ; — to Rhode-Island. — The emigrants purchase lands of the Indians. — They enter into an association. — They procure a patent from the parliament. — The first assembly meets. — The government suspended by the commonwealth. — The charter of Charles II. — An assembly. — Remarks. — The reception of the royal commissioners. — Laws made to enforce the acts of trade. — Accession of James II. — Articles exhibited against these colonies. — A writ of quo warranto issued. — They surrender their charter. — Government dissolved. — They are joined to Massachusetts. — They resume their charter upon the Revolution. — Remarks.*

**H**OW degrading is it to the cause of true liberty, civil and religious, that her zealous partisans never fail to inflict on others what they will not themselves endure ! The original settlers of Massachusetts had scarcely landed on the American coast before they erected a similar hierarchy to that from which they had fled with abhorrence “ in- to the remote wilderness among the heathens ;” different indeed in name, but the same in principle and action. Retaliation perhaps might have naturally dictated the suppression of the church of England. But what argument could justify the rancorous persecution of those sectaries which necessarily sprang from her former doctrines and present practices.

When Williams, the famous minister of Salem, disapproving of that conduct, because he insisted “ for freedom of conscience in worship, “ even to Papists and Arminians, with security of civil peace,” gathered a separate society of his followers, in the year 1634, he instantly attracted the notice of that jealous government. It was in vain for the ministers of the other churches to endeavour to convince him of the irregularity of his conduct. He easily penetrated their shallow pretences “ of not persecuting men for conscience, but correcting them for sinning against “ conscience, and so not persecuting but punishing heretics.” And the magistrates banished him from their jurisdiction as a disturber of the peace

peace of the church and commonwealth. When the sentence of exile was published, the whole town of Salem, as we are assured, was in an uproar, because he was esteemed an honest man, and of popular talents in the pulpit. And, had not the ministers of Boston vigorously interposed, "he would have carried off the greatest part of the inhabitants."

Nevertheless, his disciples, too zealous to abandon their leader, resolved to hazard their lives and fortunes with him. They journeyed southwards, in quest of peace and security, without the jurisdiction of Massachusetts. Agreeably to one of their favourite maxims, which is so just and humane, they carefully cultivated the good will of the aborigines: And, having purchased a considerable tract of land of the Narragansets, who were then a powerful tribe, they established there a settlement in the beginning of the year 1635; and naturally called it Providence. Here they entered into a voluntary association, similar to those we have remarked, for preserving peace, and for making equal laws: Thus realizing in practice, because they were few, what has been so often proposed by theorists for mighty nations. They followed the example which Massachusetts had given them only five years before, because they had the same natural right, and created a church, by collecting a religious society: But proceeding, says their historian, from one whimsey to another, every one followed his own fancy, till religion itself at length grew into contempt, and public worship was generally neglected. What excellent lessons of wisdom do those transactions offer to mankind! They shew them the danger of removing the foundations of those establishments, political and religious, which the wisdom of their fathers had laid; because, when men once depart from ancient and acknowledged principles, there is no boundary to innovation. At Providence, for almost half a century, did Williams rule; "employing himself continually in acts of kindness" to his persecutors, affording relief to the distressed, offering an asylum to the persecuted. And the liberal minded observed: That in this conduct alone was there more sound religion than in the embodied churches of New-England.

But the banishment of that minister did not procure either unanimity of opinion or conformity of practice, because the principles of the Independents

pendents necessarily lead to disunion. And a synod, which was convened in August, 1637, having condemned a variety of religious tenets, a fresh persecution instantly commenced, according to the usual maxims of Massachusetts. The Antinomians were disfranchised and banished: They were led chiefly by Mrs. Hutchinson, who "was well beloved, says Cotton, the famous minister, and all the faithful embraced her conference, and blessed God for her fruitful discourses." They naturally followed the steps of Williams. And having arrived in his vicinity, they also entered into a treaty with the same tribe.<sup>3</sup> In March, 1638, two sachems, by virtue of the command invested in them, and in consideration of fifty fathoms of white beads, sold, to Coddington and his associates, the great island of Adquidneck, and other isles in Narraganset-bay, two only excepted which had been formerly disposed of. And the native inhabitants soon after agreed, upon receiving ten coats and twenty hoes, to remove before the subsequent winter.<sup>4</sup> The larger was soon after denominated the isle of Rhodes; and, by an easy declension, Rhode-island. Having thus acquired a title and possession for considerations, which gave satisfaction to the original owners, here they planted: And, copying the conduct of their neighbours, they formed a similar association for the establishment of civil government. Though the numbers of the associators were few, yet the soil being fruitful, and the climate agreeable, many persons soon resorted where they found protection; and the island, in a few years, became so populous as to send out colonists to the adjacent shores. Those men are represented by Mather, an early writer of Massachusetts, "as a generation of libertines, familists, Antinomians, and Quakers, whose posterity, for want of schools and a public ministry, are become so barbarous as not to be capable of either good English or good sense."<sup>5</sup> But that author, approving probably the example of the most polished states of antiquity, considered all as barbarians who differed from him in opinion or in action.

Having soon discovered, however, the inefficacy of voluntary government, and dreading the encroachments and violence of Massachusetts, the inhabitants of Rhode-Island and Providence sent Williams to England, as their agent, in the year 1643. But, as Charles I. was now driven

driven from his capital, he naturally applied to those who had engrossed all power. His former associate, Sir Henry Vane, received him with kindness, and promoted his views. Notwithstanding the opposition of the other colonies of New-England, the two houses of parliament granted, in March, 1644, a patent for the incorporation of the towns of Providence, Newport, and Portsmouth, for the absolute government of themselves; but according to the laws of England. Nothing can shew more clearly, than did the transaction before-mentioned, that, in the opinion of those men, and of those times, their voluntary associations, or any act proceeding from themselves alone, were insufficient to legalize their settlements, to acquire a valid title to their lands, or jurisdiction to their governments. Williams seems to have been considerably regarded by the principal members of the parliament: And from them he brought with him a recommendatory letter to the governor and assistants of Massachusetts; representing his merits and his sufferings by their common enemy, the oppressors of God's people, the prelates; and recommending "the actual performance of all friendly offices, the rather because of those bad neighbours, which both were likely to find too, too, near in Virginia." A recommendation, couched in such terms, from such men, naturally procured a profession of christian love, and mutual correspondence: But, while he retained what were deemed dangerous principles of separation, the governor and assistants thought it imprudent to grant him liberty of "ingress and egress, lest the people should be drawn away with his erroneous opinions." Yet what an admirable picture does this trivial transaction exhibit of the attachments and principles of all the parties! And thus the Virginians were hated, as well by parliamentary leaders, as by Massachusetts; because they adhered to the religious and civil establishments of their fathers, since they were not equally fond of innovation; because they were firmly attached to their sovereign, who now supported the falling constitution, though he had formerly been misled.

When the wants of the colonies of New-England induced them in the mean time to think of a confederacy for mutual defence, these plantations were willing enough, as we are assured, to have joined with the rest:

rest: But Massachusetts, disliking their principles, would not even admit them into treaty.<sup>7</sup> Necessity therefore obliged them to provide for their security by other means. They cultivated the friendship of the neighbouring sachems with the greatest success; whereby they acquired considerable influence over their minds, which was of considerable importance: And that ascendancy they employed, during the year 1644, to procure from the chiefs of the Narragansets a formal surrender of their country, which was afterwards called the King's Province, to Charles I. in right of his crown, in consideration of that protection which the unhappy monarch then wanted for himself. Yet no measure could be more offensive to Massachusetts, or could provoke more her resentment; because it was equally inconsistent with her usual practice and present views of acquiring the subjection of the same territory to herself. The deputies of these plantations boasted to Charles II. of the merits of this transaction, and at the same time "challenged the agents of Boston to display any " one act of duty or loyalty shewn by their constituents to Charles I. " or to the present king, from their first establishment in New-England."<sup>8</sup> The challenge thus confidently given was not accepted.

Rhode-Island and Providence being thus left to themselves, and being thus permitted by the parliament to manage their own affairs as they thought proper, naturally adopted similar customs, and assumed the like policy, as those of their neighbours. At length, in May, 1647, an assembly was convened, consisting, in the genuine spirit of democracy, of the collective freemen of the various plantations. Their necessities dictated many salutary regulations, which did not continue long in force, and deserve not therefore to be now recorded. The whole executive power seems to have been invested in a president and four assistants, who were chosen from among the freemen by their several towns, and who formed the supreme court for the administration of justice. And every township, forming within itself a corporation, elected a council of six, for the management of its peculiar affairs, and for the settlement of the smallest disputes.<sup>9</sup>

Nevertheless, a form of government, which was so agreeable to their inclinations and their views, they did not enjoy long in tranquillity. It

was suspended in October, 1652, by an order of the council of state for the commonwealth. The parliament assuredly wished to acquire a participation at least in the administration of affairs, by establishing here those plans of reformation, which they attempted in Massachusetts, which they actually effected in Virginia and in Maryland. But Providence and Rhode-Island deriving the same advantage from the distractions which soon after ensued in England, that the colonies have always taken of the disorders of the sovereign state, resumed its former government: And this it continued to enjoy without farther interruption till the Restoration."

That event gave great satisfaction to these plantations, because they hoped to be relieved from that constant dread of Massachusetts which had so long afflicted them. And they immediately proclaimed Charles II. because they wished for protection, and intended soon to beg for favours. They not long after sent Clarke as their agent to the court of that monarch, to solicit for a patent, which was deemed in New-England so essential to real jurisdiction. And in September, 1662, he obtained the object of his prayers. Yet, owing to the opposition of Connecticut, the present charter was not finally passed till July, 1663." The emigrations before-mentioned from Massachusetts and the subsequent settlements at Providence and Rhode-Island were recapitulated; which, being convenient for commerce, says the patent, may much advance the trade of this realm, and greatly enlarge the territories thereof: And we being willing, said that prince, to encourage the undertaking of our subjects, and to secure to them the free enjoyment of their civil and religious rights, which belonged to them as Englishmen, he conferred on them ample liberty in religion, and special privileges with regard to jurisdiction. The patentees, and such as should be admitted free of the society, were incorporated by the name of "the governor and company of the English colony of Rhode-Island and Providence." The supreme or legislative power was invested in an assembly; the constituent members of which were to consist of the governor, the assistants, and such of the freemen as should be chosen by the towns; but the governor, or deputy-governor, and six assistants, were to be always present. Being thus constituted, the



the assembly was empowered to make ordinances and forms of government and magistracy, for the rule of the lands and inhabitants; so that they should not be repugnant but agreeable to the laws of England, considering the nature of the place and people; to erect such courts of justice, for determining all acts within the colony, as they should think fit; to regulate the manner of elections to places of trust and of freemen to the assembly; to impose lawful punishments, pecuniary and corporal, "according to the course of other corporations within the realm;" and to pardon such criminals as they should think fit. That the inhabitants might be religiously and civilly governed, a governor, deputy-governor, and ten assistants, were appointed for the management of their affairs: And they were authorized to execute the ordinances before-mentioned, which every one was commanded to obey. The governor and company were enabled to transport such merchandise and persons as were not prohibited by any statute of the kingdom, and "paying such customs as are "and ought to be paid for the same:" They were empowered to exercise martial law; and, upon just causes, to invade and destroy the native Indians or other enemies. There was granted to the governor and company, and their successors, "that part of the dominions of the crown, "in New-England, containing the islands in Narraganset-bay and the "countries and parts adjacent: To be holden of the manor of East-Greenwich, in common soccage." The inhabitants of those territories, and their children, were declared fully entitled to the same immunities as if they had resided or had been born within the realm: And, to guard against the experienced oppressions of Massachusetts, they were enabled to pass and repass through any other English colonies, and to traffic with them. But with this proviso, that nothing should hinder any subjects whatsoever from fishing on the coast of New-England."

Such then is the substance of the charter of Rhode-Island; and such were the privileges conferred by it. Corporations had formerly been erected within the realm for the government of the plantations; but now a body politic was created with specific powers for ruling the colony within itself. Yet ingenuity or interest will scarcely discover in this transaction a grant of exclusive rights. Those settlements were acknowledged

to be parts of the territories of the state, the planters were considered as English subjects, and the authority of the supreme legislature was expressly referred to and saved. It required great address, even when aided by the successive inattention of English statesmen, to extract from this patent a system of independence.

Amid the satisfaction occasioned by the obtention of the great object of the wishes of every one, an assembly, composed agreeably to the charter, was convened in March, 1663. Among a great variety of ordinances, which the circumstances of the colony required, and which were enacted, one, "for declaring the privileges of his majesty's subjects," is remarkable. It enacted: That no freeman shall be imprisoned, or deprived of his freehold, or condemned, but by the judgement of his peers, or the law of the colony; that no tax shall be imposed or required of the colonists, but by the act of the general assembly; that all men of competent estates, and of civil conversation, Roman-catholics only excepted, shall be admitted freemen, or may choose or be chosen colonial officers. What abundant reflexions does this ordinance afford to the wise! Nothing is assuredly more incongruous than for a corporation, created with special powers, to endeavour, by its own act, to acquire privileges inconsistent with the patent which gave it existence. Yet that law, plainly designed as its great charter, is manifestly repugnant to the grant. By it "none were at any time thereafter to be molested for any difference in matters of religion." Nevertheless, a persecution was immediately commenced against the Roman-catholics, who were deprived of the rights of citizens, and of the liberties of Englishmen, though they might have pleaded their chartered privileges: And, had the ordinance before-mentioned been insisted on, they might have justly contended, that the assembly could not make a regulation contrary to the royal act which gave it existence. The corporation had been empowered to make laws which should not be repugnant to the jurisprudence of England, yet the acts of assembly, and customs of the colony, were established as the only rules of action. Did the colonists intend to exclude the jurisdiction of the supreme legislature they must have considered themselves as aliens, and the assembly must have deemed itself possessed of co-ordinate or even independent

pendent power. Whatever were its views, the parliament had then actually imposed duties on Rhode-Island, as a dominion of the crown, by the act of tonnage and poundage, they had regulated its trade by the laws of navigation: And we shall find them levying taxes on its inhabitants, notwithstanding the ordinance before-mentioned. The ancient usages and forms of these settlements were at the same time in a great measure re-established and confirmed: "And the system which was then erected has continued to influence their principles and conduct to the present times.

But though Rhode-Island and Providence had thus acquired legal jurisdiction, and had thus superinduced additional powers, they did not enjoy either in tranquillity: A considerable part of their lands were claimed by their neighbours: They were involved in those distractions and complaints which induced Charles II. to send commissioners to New-England, in the year 1664. Actuated partly by their religious and political tenets, but more by a sense of their weakness, they received the royal deputies with the greatest attention and deference. Their conduct received the warmest approbation of that prince. And he assured them, that he should never be unmindful of their dutiful behaviour; which, he observed, was set off with the more lustre by the contrary deportment of Massachusetts; as if, by its refractoriness, it had designed to recommend and heighten their merits.<sup>14</sup>

Encouraged by these flattering distinctions, they were more moderate in their opposition to the rule of England, to the introduction of the acts of trade, than any of their neighbours. And that monarch having previously directed them to execute the acts of trade, the assembly, in May, 1682, enacted, that the governor shall appoint naval officers, to take entries of vessels, to observe that the laws relating to navigation, or to customs on merchandize, should be duly executed. But it was not till the year 1700, when the existence of the charter and the independence of the settlements were equally in danger, that the governor was expressly empowered "to put the acts of navigation in execution."<sup>15</sup> Yet nothing could be more contradictory in principle, than the two ordinances just mentioned. The former recognized the legality of the parliamentary taxation, and the acts of trade, as of force within the colony by their  
proper

proper vigour ; the latter proceeded, it should seem, on those reasonings of Massachusetts, which we shall soon meet with, and enforced the regulations of trade by a law of their own. And these incongruities arose partly from their want of knowledge of the English constitution, of the principles of their connexion, perhaps more from the infection of the maxims and conduct of their neighbours. The ignorance and intelligence of both have at all times proved equally fatal to the interests of England. Yet the general strain of the government of Rhode-Island and Providence was conciliatory, though independent, and seems to have given satisfaction to Charles II. during the remainder of his reign.

They immediately transmitted an address to James II. on his accession ; acknowledging themselves his loyal subjects, professing obedience to his power, and begging protection for their chartered rights.<sup>16</sup> Yet the humility of their supplications could not protect them from the effects of those plans of reformation for New-England which were now resolved on. “ Articles of high misdemeanour ” were exhibited against them before the lords of the committee of colonies, accusing them of breaches of their charter, and of opposition to the acts of navigation.<sup>17</sup> These charges were referred, in July, 1685, to Sawyer, attorney-general, with orders forthwith to issue a writ of quo-warranto against their patent : And formal notice of the legal process was soon after communicated to the governor and company. But, without much hesitation, they resolved, that they would not stand suit with their king. They passed an act, in full assembly, which we are assured “ was afterwards made away “ with, agreeably to a common practice,” formally surrendering their charter, and the various powers contained in it.<sup>18</sup> By a fresh address,<sup>19</sup> “ they humbly prostrated themselves, their privileges, their all, at the “ gracious feet of his majesty, with an entire resolution to serve him “ with faithful hearts.” What an excellent contrast do these expressions form to recent declamations ! Men of independent minds remarked, that such language of submission equally dishonoured both parties ; because it was as improper for free subjects to use, as for a king of England to receive. The address was no sooner received, than it was ordered by the committee of colonies, and approved by the king : That Sir Edmund

Andros,

Andros, the governor of Massachusetts, shall demand the surrender of their charter, and govern them as other colonies of New-England; that prince assuring them of his protection, and of his determination to extend no other rule of administration over them, than over the neighbouring plantations. In December, 1686, Andros, agreeably to his orders, dissolved the government of Rhode-Island; broke its seal; admitted five of its inhabitants into his legislative council; and assumed the administration in the place of that which he had thus annihilated.<sup>20</sup>

When the Revolution put an end to his power, Rhode-Island and Providence resumed a charter, which had been thus solemnly surrendered, and which they have enjoyed to the present times, though not without interruption.<sup>21</sup> They probably reflected, that an act, which was extorted by terror, might be justly recalled when restraint no longer remained. But, unless it could be proved, that the whole proceeding was either irregular or illegal, their subsequent administration, without the formal assent of the sovereign state, must be considered, in notion of law, as mere usurpation.

#### AUTHORITIES AND NOTES.

<sup>1</sup> Neal's N. Eng. 1 vol. p. 160; Dougl. Sum. 2 vol. p. 76-8; and see Williams's publication, in the year 1652, entitled, "The bloody Tendent yet more bloody." — <sup>2</sup> Neal's N. Eng. 1 vol. p. 160; Hutch. Hist. Mass. 1 vol. 37-9. — <sup>3</sup> *Ib.* 66-74. — <sup>4</sup> There is a curious copy of the Indian deed among the New-England Papers, bundle 3. p. 229. — <sup>5</sup> Dougl. Sum. 2 vol. p. 80. — <sup>6</sup> Hutch. 1 vol. p. 39; N. Eng. Pap. 3 vol. p. 25. — <sup>7</sup> Hutch. 1 vol. p. 124-5. — <sup>8</sup> There is a copy of the Indian Surrender in New-Eng. Papers, bundle 3; and see the same p. 25. — <sup>9</sup> Dougl. Sum. 2 vol. p. 80-1. — <sup>10</sup> *Ib.* — <sup>11</sup> Entries, titled, Proprieties, B. 171-9. — <sup>12</sup> See the charter annexed to the laws of Rhode-Island; and a copy, examined with the Record in the Crown-office, in the Entries, titled, Proprieties, A. p. 123. — <sup>13</sup> Laws, p. 1-4. — <sup>14</sup> See the King's Letter in N. Eng. Pap. 3 vol. p. 22. — <sup>15</sup> Laws, p. 30-43. — <sup>16</sup> The address is in New-Eng. Pap. 3 vol. p. 294.

<sup>17</sup> *Articles of high misdemeanour exhibited to the lords of the committee of foreign plantations against the governor and company of the colony of Rhode-island and Providence.* — From N. Eng. Ent. 2 vol. p. 245-6.

1. They raise great sums of money upon the inhabitants of that colony and others, by fines, taxes, and arbitrary imprisonment, contrary to law, and deny appeals to his majesty.

2. They make and execute laws contrary to the laws of England.

3. They deny his majesty's subjects the benefit of the laws of England, and will not suffer them to be pleaded in their courts.

4. They keep no authentic record of their laws, neither will they suffer the inhabitants to have copies of them.

5. They raze and cancel their laws as they please, without the consent of the assembly.

6. Their governor, deputy-governor, assistants, and deputies, and other officers for the administration of justice, are under no legal oaths.

7. They violate the acts of trade, and have taken from THOMAS BRINDLEY, Esq. his late majesty's commission, appointing him and others to administer an oath to the governor of that colony, for his duly putting in execution the acts of trade and navigation; the governor of that colony not having taken the said oath these three or four years last past, as is required in the said act.

All which is humbly submitted.

EDWARD RANDOLPH.

<sup>18</sup> Proprieties, B. p. 171-2; Lond. Gazette of September 1686.

<sup>19</sup> *The address of the governor and company of Rhode-island and Providence to James II.* — From N. Eng. Ent. 2 vol. 304.

Most dread soveraign,

We, your majesty's most dutiful and loyal subjects, do, with all humble and due submission, prostrate ourselves and privileges at your majesty's feet, humbly acknowledging your majesty's gracious favour, in your royal letters of the 26th of June, 1685, in the first year of your reign, directed to our honoured governor, wherein you are graciously pleased to signify; (we shall at all times extend our royal care and protection to them in  
the

the preservation of their rights, and in the defence and security of their persons and estates, which we do think fit that you should signify to the inhabitants of that our colony.) We, your majesty's most dutiful subjects, humbly acknowledge the receipt of your quo-warranto, by the hand of Edward Randolph, Esq. against the charter of your majesty's colony, which we received the 22d of June, 1686, requiring our appearance before his majesty, wherever he shall then be in England, to answer, from the day of Easter, in fifteen days, which was the 22d of June, 1686: Notwithstanding, in obedience to your gracious majesty's commands, your governor and company convened, and, upon serious consideration thereof, saw cause forthwith to publish and declare, by open proclamation, that they would not stand suit with your majesty, but to address themselves to your most excellent majesty for favour and relief, praying and imploring your princely bounty in our said charter continued, both in religious and civil concernments; and the rather because we are a people that have been and are real to your majesty's interest, and despised by our neighbouring colonies. May it please your majesty to know, that, before we received a quo-warranto, or so much as a copy of your majesty's commands to the honoured president, Joseph Dudley, Esq. that the greatest part of our colony was assumed from us, called the King's Province, which we did not oppose: And farther, we beg that, in your princely clemency, you will please to continue our privileges in *statu quo prius*, with respect to indulgence in matters of religious concernments, and forming of oaths and attestations. And farther, we humbly petition your royal favour, that, forasmuch as the port of Newport, in Rhode-Island, lies in the heart of all your majesty's colonies, it may be a free port for navigation and entries, *paying duties*. And farther, we humbly beg your majesty's gracious favour herein, that no person may be imposed over us that suits not the nature and constitution of your majesty's subjects here, which his late majesty, of blessed memory, was graciously pleased to indulge us in: And finally, we pray and beseech your royal majesty, that, in all things, wherein we have been weak and short through ignorance, may be remitted and pardoned; and cannot but think, that, through the disaffection of some, many things may have been misrepresented. All which

is humbly submitted; and we beseech your most excellent majesty to accept hereof, prostrating our all at your gracious feet, with our entire resolution to serve our sovereign with faithful hearts, praying for your majesty's long life and prosperous reign over us. And we remain your majesty's loyal subjects and supplicants.

Newport, Rhode-Island,

3 July, 1686.

WALTER CLARK, governor.

<sup>20</sup> Proprieties, B. p. 171-2; N. Eng. Ent. 2 vol. p. 306-7.

<sup>21</sup> *Ib*; and see bundle of papers, Proprieties, E. p. 5-23. — The following answers to various inquiries transmitted formerly by the lords of the committee of colonies disclose many remarkable particulars of the state of those settlements, at the expiration of five and forty years, as related by themselves: The queries are implied in the answers, which are somewhat abridged. — From N. Eng. Papers, 3 vol. p. 122.

“ Whereas we, the governor and council of the colony of Rhode-Island and Providence, have received several heads of inquiry from the lords of the council appointed a committee for the plantations, we make answer according to the best of our understandings as follows :

1. That the councils and assemblies are stated according to his majesty's appointment in his gracious letters patent : And our courts of judicature are two in the year certain, appointed according to charter, and are carried on by judges and jurors.
2. Concerning the court of admiralty, we have made provision by act according to the laws of England, as well as the constitution of our place will bear; having but little occasion thereof.
3. The legislative power is stated in the assembly; and the executive power of the government is, in the courts of trials, settled according to the charter.
4. The laws are made according to the charter; not repugnant, but agreeable, to the laws of England.
5. That, as for horse, [cavalry,] we have but few; but the chief of our militia consists of ten companies of foot; being train-bands under one commander; and their arms are firelocks.

6. That,



6. That, in the late Indian war, we fortified ourselves against the Indians as necessity required: But, as for fortifications against a foreign enemy, as yet we have had no occasion: However, we have made as good provision as at present we are capacitated to do.

7. That our coast is little frequented, and not at all at this present time, with privateers or pirates.

8. That the French, seated at Canada, and upon the bay of Fundy, are a considerable number; as we judge, about 2000: But as for the Indians, that were inhabitants of this colony, they are generally cut off by the late war.

9. That, as for foreigners and Indians, we have no commerce with them: But, as for our neighbouring English, we have, and shall endeavour to keep a good correspondence with them.

10. The boundaries of the colony are as declared by the charter.

11. } That the principal place for trade is Newport; where the  
16. } generality of the buildings are of wood, and small. We have nine towns or divisions. We have several harbours, of very good depth of water, navigable for any shipping. The principal merchandises that are exported are horses and provisions; and the goods chiefly imported are a small quantity of the productions of Barbadoes for our own use.— We have several men who deal in buying and selling, though they cannot properly be called merchants; and, for planters, we conceive there are above 500, and about 500 men besides. We have no salt-petre.

17. } We have lately had few or no new-comers, either of English,  
20. } Scotch, Irish, or foreigners; only a few blacks imported. There may be, of whites and blacks, about two hundred born in a year.— We have 50 marriages a year. The burials for the last seven years, according to computation, amount to four hundred fifty and five.

21. } We have few merchants; but the most of our colony live com-  
25. } fortably, by improving the wilderness. We have no shipping belonging to the colony, but only a few sloops. The great obstruction concerning trade is the want of merchants and men of considerable estates among us. A fishing trade might prove very beneficial, were there men

of property willing to carry it on. — As for goods, exported or imported, there are very few; and there is no custom imposed.

26. } Those people who go under the name of Baptists and Quakers  
 27. } are the most that congregate together; but there are others of  
 divers persuasions and principles, all which, together with them, enjoy  
 their liberty according to his majesty's gracious charter; wherein all our  
 people in our colony are to enjoy their freedom of conscience, provided  
 that liberty extended not to licentiousness: But as for Papists, we know  
 of none among us. We leave every man to walk as God shall persuade  
 their hearts, and do actively or passively yield obedience to the civil ma-  
 gistrate, and have liberty to frequent any meetings of worship for their  
 better instruction: — But, as for beggars and vagabonds, we have none  
 among us; and as for lame and impotent persons, there is a due course  
 taken.

This may farther humbly inform your lordships, that our predecessors, about forty years since, left their native country and comfortable settle-  
 ments there, because they could not, in their private opinions, conform  
 to the liturgy, forms, and ceremonies, of the church of England, and  
 transported themselves and families over the ocean seas, to dwell in this  
 remote wilderness, that they might enjoy their liberty in their opinions;  
 which upon application to his gracious majesty, after his happy restora-  
 tion, did of his bountiful goodness grant us a charter full of liberty of  
 conscience; in which said charter there is liberty for any persons that  
 will build churches, and maintain such as are called ministers, without  
 the least molestation.

Rhode-Island,  
 Newport, 8 May,  
 1680.

In the behalf, and with the consent,  
 of the council,  
 PELEG SANDFORD, Governor."

REMARK. The act before-mentioned, excluding Roman-Catholics  
 from the privileges of freemen, was carefully concealed. It ought to be  
 remembered, that the representations of none of the colonial govern-  
 ments during those days, especially of those which talked the most of re-  
 ligion, are to be implicitly relied on; because they were all strongly tinctured

ture with the principles of Wotton's ambassadors : And it was the policy of former times to depress the consequence of the colonies, as much as it has been of late years to magnify their importance. Their historians have been somewhat infected with similar prepossessions.

CHAP.

## C H A P. XII.

*Connecticut settled. — Conduct of Massachusetts on that occasion. — Remarks. — The emigrants form an association and assert their independence. — Say-brook built by noblemen who intended to plant a colony. — Newhaven settled. — Forms a separate state. — The Pequod war. — Four colonies join in a confederacy. — They act as independent commonwealths during the civil wars. — Connecticut sends an agent to England. — He obtains the charter. — Observations. — Newhaven admits her jurisdiction. — The conduct of both during the reign of Charles II. — The administration of James II. — A writ of quo warranto issued against the charter. — Ancient government dissolved. — Annexed to Massachusetts. — Resumes the charter at the Revolution.*

CONNECTICUT, any more than Rhode-Island, was not originally settled by colonists from England, but by emigrants from the vicinity of Boston. Actuated by the restless spirit of the times, these men had determined to remove as early as the year 1634. And they applied to the general-court of Massachusetts for permission to go in quest of new adventures in a better land. But, owing to a division in that body, with regard to the propriety of the measure, they did not now obtain their desires; “yet they could not be satisfied till they had accomplished their intention, and had obtained the leave of the court.” For, “it was the general sense, as we are assured, that the inhabitants were all mutually bound to one another by the oath of a freeman, as well as the original compact; so as not to be at liberty to separate without the consent of the whole.”<sup>1</sup>

Nothing could be more just and wise than this conduct and reasoning. And this transaction evinces, that mankind will always think and act properly, except only when their understandings are perverted by the enticements of interest or faction. Yet the notion of the Independents before-mentioned is nothing more than the fundamental principle of society: That the individual can no longer decide for himself, but must in all

all things submit to the determination of the aggregate body. And the common-law of England has adopted what had been enforced by universal jurisprudence, because it is so essential to the very existence of every community. How much is it to be regretted, that the wisest theorists should have contended for a contrary doctrine; which is so fruitful in evils, accompanied with so little good; and which, in the present times, has been again broached and propagated with all the zeal of bigotry, but with less honest intentions! Nothing is so amusing as to apply mens principles to their conduct. When the Independents of Massachusetts were about to depart from England, they obtained a licence which sufficiently pointed out the nature of their future connexion with the state: When they arrived on the farther shore of the ocean they deemed that relation to have ceased, as to all the purposes of practice: When their own associates applied for leave to remove, they granted permission; but still considered them as citizens, who, in their new situation, owed subjection to the colony which they had thus abandoned.

The emigrants, under the conduct of Pynchon, and Hooker, and Haines, at length departed; and, after a fatiguing march through the wilderness, they, in June, 1636, pitched their tents on the western bank of the river Connecticut; laying the foundation of the towns of Springfield, Hartford, and Weathersfield. The commission which they carried with them from the general-court was, as we are assured, of a pretty extraordinary nature: It recited; that the lands, of which they intended to take possession, were without the commonwealth of Massachusetts; that certain noble personages in England challenged the jurisdiction there, by virtue of a patent, but their minds, as to government, was unknown, and there was a necessity that some authority should be established: It therefore empowered Roger Ludlow to promulgate necessary orders for the plantation, to inflict corporal punishments, imprisonment, and fines, to determine all differences in a judicial way, and to convene the inhabitants in general-court, if it should be thought meet. But it was granted only for one year, and might have been sooner recalled, if a form of government should be agreed on between those noble personages, the inhabitants and the jurisdiction of Massachusetts. The validity of this signal but com-

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mon exertion of power has been rather palliated than defended by a principle, which was then generally admitted; that the oath of fidelity to the commonwealth was binding, even though the person should no longer reside within its limits.<sup>2</sup> Nothing can be more just than this maxim of universal policy, if we except the awkwardness of its present application. A rule, which all nations have adopted, because it proceeds from the natural instincts of men, the common law of England has enforced: Declaring, that no alteration of time or place shall change the obedience of the subject, which he owed for that protection which the state had given him from his birth and before it: The oath of allegiance adds only the sacred tie of religion to the obligation of prior duty. That the Independents should have assumed this reasoning is not surprising, because it naturally occurs to men in every situation: But how to reconcile the solemn promise of fidelity of a freeman to the no less solemn declaration of allegiance to the English crown, which was required by the charter, is more than the wisest doctors of the churches of New-England could tell.

The annals of colonisation, ancient or modern, can scarcely shew the commencement of a settlement so extremely faulty as that of Connecticut. The territory, of which they thus took possession, was not only already occupied by the Dutch, but had been granted sixteen years before to the Plymouth company. The whole coast of New-England was, not long after, divided into twelve different parts; and, in the presence of James I. allotted to so many distinct members of that body. And, in April, 1635, that portion of it was assuredly granted to James, marquis of Hamilton, as his share, which stretches from the river Connecticut, eastward, to the Narraganset-Bay; and, from its source, one hundred miles into the continent. That part of it which extends from Connecticut to Hudson's-River was probably conveyed to the earl of Stirling, as his proportion: And since the patent was now surrendered, as we have seen, into the royal hands, the powers of government, which had been formerly given in trust to that famous corporation, again reverted to the crown.<sup>3</sup> The emigrants before-mentioned can be considered in no other light, therefore, than as mere intruders on the rights of others.

thers. The jurisdiction supposed to be invested in English nobles was undoubtedly groundless: And it is unnecessary to mention those governmental acts of Massachusetts which proceeded from acknowledged usurpation.

The colonists of Connecticut seem to have soon decided that commission as invalid, or disregarded it as inadequate to their occasions: And they entered into a voluntary association, like those which have been mentioned, for the establishment of a body-politic, in order to make equal laws for the benefit of all. They were followed, in the subsequent year, by fresh emigrations, which were attracted by novelty, and they extended their plantations wide over the country, as their numbers thus increased. But they had not as yet any other title to the lands that they occupied than what possession conferred in opposition to legal rights and the title of others, nor any other authority in government than what was derived from mere voluntary consent. Like the Grecian colonies, they were ready to repay with gratitude what they owed to Massachusetts for former connexion; but they seem to have been unwilling to yield subjection. Yet the general-court, too tenacious to relinquish former pretensions, continued its claim of superiority: And, upon a petition of some of the inhabitants to be received again into its protection, that body formally asserted its right of jurisdiction, and gave a commission to Pynchon to hold courts and to distribute justice; but with the reservation of an appeal to the court of assistants.\* When Connecticut refused obedience to the rules of action prescribed, and denied the transfer of causes to the judicatories of Boston, it acquired independence; because both are of the essence of subordination.

If its numbers were not increased, its frontiers were considerably strengthened by the exertions of those puritanic nobles who have been mentioned, and who wished to enjoy greater liberty, with former privileges, in New-England. Fenwick, who conducted their affairs, built a fort near the confluence of the river Connecticut, and called it Say-Brook; and of this he retained possession, on their behalf, till the ardour of emigration cooled. The nobility naturally proposed the creation of a new form of government, altogether aristocratic, with an hereditary ma-

gistry: But the people objected to an establishment under which they would have enjoyed no will, and consequently no freedom. And their immediate change of habitation was thereby checked. The civil wars, which soon ensued, because their order, with a criminal neglect, no longer balanced the English constitution, attracted their attention to other objects of ambition or revenge. And, in December, 1644, the lords Brooke, Say and Seal, and others, sold their right to the lands in that vicinity to Connecticut.<sup>s</sup> Thus a title, though extremely doubtful and defective, was acquired to the soil: But none of the powers of government were transferred; because these noblemen, however forward were they to erect new systems and to acquire colonial privileges, did not themselves possess any real authority. The conduct of all parties demonstrates into what incongruities men necessarily fall, when misled by zeal they depart from the sober principles and conduct of their fathers.

Among the various emigrations from England, a small colony, conducted by Eaton and Davenport, arrived at Boston, in June, 1637. But though every persuasion was used to induce them to remain within that jurisdiction; yet, actuated by peculiar motives of ambition or interest, they removed thence to the neighbourhood of the Dutch, at Manhattans: And, notwithstanding their opposition and threats, began the little plantation of Newhaven. Conformably to the wonted practice of the Independents in those days, they established for themselves, by voluntary association, a government in church and state, extremely similar to that of Massachusetts. Thus, without attention to the rights of others, they occupied the soil; without regard to the laws of England they erected a system, suitable indeed to their own views, but altogether inconsistent with their dependence on the sovereign state. The principles which they carried with them into the wilderness, and propagated, have continued to produce their necessary effects to the present times. One remarkable circumstance in the jurisprudence of Newhaven alone shews their self-sufficiency: They abrogated the admirable trial by jury, both in civil and in criminal cases, for which Englishmen have always contended with an ardour in proportion to its importance. As colonists arrived they extended their settlements as well on the continent as to Long-Island. They long  
formed



formed a barrier against the Dutch, who viewed their beginning and their progress with great jealousy. And however inconsiderable, either as to numbers or power, they for eight and twenty years enjoyed all the delights of independent insignificance.<sup>6</sup>

Nevertheless, neither of these colonies enjoyed their possessions in tranquillity. Their conduct by no means gave satisfaction to the neighbouring Pequots, the most powerful tribe in New-England, who had the sagacity to see their own destruction in the progress of the strangers. Agreeably to their ancient customs, which seem to be now adopted by the most polished nations, they commenced hostilities as early as the year 1636, by the slaughter of several colonists, without previous notice of war. Both parties courted the friendship of the Narragansets with the greatest assiduity. The Pequots begged them to forget their former enmity in their opposition to the new-comers, whose conduct shewed their intention to dispossess both of their country; that they ought to remember, that the only good which either could expect from their friendship, would be at last to be devoured; whereas, were both to unite their common force, one magnanimous effort would, with ease and without danger, oblige them to abandon a land which they seemed so eager to engross. The reasonings of the Pequots were just; and the event has shewn that their apprehensions were well founded: Both tribes have been successively annihilated. The Narragansets, bewitched by that spirit of discord which seems natural to the American Indians, entered into a league, offensive and defensive, with Massachusetts. Common and immediate danger united for once the colonies of New-England in common measures. During the summer of 1637, the war was carried on with the greatest energy; and with that success, which vigour, when conducted by common sense, will always procure. The Pequots defended themselves with the spirit of a people contending for their country, for their existence. But superior arms, and knowledge, and perhaps bravery, prevailed. And this tribe was extirpated. The prisoners were either transported to the West-Indies, and there sold for slaves, or reduced to a more painful servitude in New-England, because they daily beheld those regions where they had once enjoyed freedom and happiness.

The allies, disagreeing with regard to the property of the female captives, butchered several of them with a barbarity which would have disgraced a better cause. And the colonists took possession of the country which they had thus won.<sup>7</sup>

It was impossible for such confederates to remain long in amity. The Narragansets, dissatisfied with the division of the plunder, began to express their dislike of the colonists, and to concert measures to put it out of their power to prescribe for them in future. Connecticut and Newhaven had but too much reason to expect that the neighbouring Dutch would disturb their repose. All these circumstances convinced the plantations of New-England of the utility and importance of a mutual junction for common advantage. The confederacy, which was accordingly proposed in the year 1638, was not finally concluded till May, 1643. The "united colonies," acted now as one joint body, and enjoyed most of the advantages of concord and coalition. Few circumstances gave them more real unhappiness, in these days, than the vicinity of the Dutch. That people, as we are assured, kept a trading house at Hartford after that place was under the jurisdiction of Connecticut. Disagreement and jealousy naturally arose, either with regard to commerce or jurisdiction; both parties watched opportunities of benefiting themselves, and of annoying their rivals: And it was either the weakness or moderation of the Hollanders which prevented actual hostilities. But that people, by a formal treaty entered into with the commissioners of the confederacy, relinquished their claims to every part of the river Connecticut. Yet it was the decisive vigour of Cromwell which at length procured security for Newhaven, on the side of Manhattans. From that period, till the Restoration, these settlements, following the example and adopting the customs of Massachusetts almost in every thing, exercised like her the various powers of independent states.<sup>8</sup>

Though Connecticut did not receive the tidings of that event which placed Charles II. on his throne with the hilarity of the southern colonies; yet a prudent regard to her own interest induced her to send Winthrop to England, to promote her interests. During those days of rejoicing, before distrust was awaked, he easily succeeded in all his views.

And,

And, to his solicitations, that monarch granted a charter of incorporation, in April, 1662.

Similar to that of Rhode-Island almost in every respect, it was conferred on similar motives. That the affairs of the colony “ might be duly “ ordered and managed;” a body politic was created and invested with the privileges therein mentioned, by the name of “ the governor and “ company of the English colony of Connecticut, in New-England:” And it was empowered to exercise the same rights and powers “ as any “ other corporation within the realm.” For the better management of the affairs of the company, a governor, deputy-governor, and twelve assistants were appointed. A general assembly was established to be holden twice a year; which was to consist of the officers before-mentioned, and of two deputies from every town; which was to advise about the affairs of the company; which was to elect freemen; to appoint annually the governors and assistants, and other officers; to erect courts of justice; which was to make necessary laws for the colony, “ that should not however “ be contrary to those of the realm of England;” and to impose fines, imprisonments, and other punishments, “ according to the course of other corporations within the kingdom.” And thus were created all the various powers of government, as well legislative as executive. That part of his dominions in New-England, bounded on the East by Narraganset-bay, on the North by the southern line of Massachusetts, on the South by the sea, and extending in longitude from East to West, with the line of Massachusetts before-mentioned to the South-Sea, was granted to the governor and company and their successors: To be holden of the manor of East-Greenwich, in common soccage; paying one-fifth of the ore of gold and silver to the king, in lieu of all services. Thus were given away equally the possessions of Newhaven, of the Dutch at Manhattans, of the Spaniards on the margin of the Pacific-ocean, exclusive of private claims: But all laws declare, that no transfer of another’s right shall ever have any effect, because it is in its nature void. The governor and company were empowered to transport thither such persons as should willingly accompany them; with all necessaries and merchandises; but “ not discharged from the payment of the customs, which are or ought “ to

“ to be paid for the same.” The word *are* referring to the tonnage and poundage that had been already imposed ; the term *ought* to such duties as might be granted in future by the same authority : And thus was reserved the power of parliament to impose similar taxes. The colonists and their posterity were declared to be entitled to the same immunities as natural-born subjects within any dominions of the crown ; but the governor was required to administer to them the oath of supremacy and obedience : Thus adding the sanctions of religion to that duty which had been previously implanted in the heart, and recognizing the authority of the king, civil and ecclesiastical, and with it the laws. All lands, havens, fishings, mines, and other franchises, were granted to the governor and company ; but with a reservation of the right of free fishery on the coasts and rivers of Connecticut to every subject. They were empowered to array the inhabitants, and to conduct them to war against any invaders ; and, upon just cause, to attack and destroy the natives or other enemies ; but upon this condition, that they should not offer any unlawful violence to the subjects of states in amity with England. By the grant to Rhode-Island, engagements were appointed, because the colonists scrupled to swear at all ; but, by this, a variety of oaths were imposed : By the former, liberty of conscience was granted in the fullest extent ; the present is silent with regard to religion. 9

Such then is the substance of the charter of Connecticut, which is obnoxious to the same objections as the original settlement itself ; because the persons whose rights were then given away were not informed of the solicitation. The crown-lawyers were equally regardless of the interests of the nation, by adopting a policy for colonial government, which future statesmen regretted in vain. Thus was established, in Rhode-Island and Connecticut, a mere democracy, or rule of the people. Every power, as well deliberative as active, was invested in the freemen of the corporation or their delegates ; and the supreme executive magistrate of the empire, by an inattention which does little honour to the statesmen of those days, was wholly excluded. Yet the legality of what was so extremely impolitic may be justly questioned. Though a king of England may relinquish his station, yet by his own grant he cannot assuredly divest

vest himself or his successors of the essential qualities of his high office : He must necessarily continue to be the supreme administrator of the laws in every part of the dominions of the state, or cease to be at all. For it is a solecism in policy to suppose rules of action prescribed by the foreign legislature, without any efficient power to oblige all to obey them. Nevertheless this monstrous incongruity may be found in various colonial charters. When, subsequent to the Restoration, the parliament, as we have seen, extended its superintendence and regulation to the plantations, Charles II. found it impossible to carry into execution the parliamentary acts in Massachusetts and Maryland, in Rhode-Island and Connecticut. Subsequent statutes were passed, in order to enforce former rules ; but with no decisive effect ; though that of William<sup>3</sup> required the royal approbation, as essential to the appointment of a colonial governor. Neither were these colonies under any obligation to communicate the acts of their local legislature for the assent of the king. When Northey, the attorney-general, perceived at length, in 1714, what had been so long deplored, he advised, “ that it will be necessary to have an act of parliament to oblige them to transmit their laws for royal approbation.” But the accession of a new monarch and of new ministers produced a change of system : And the lords commissioners of colonies represented to the commons, in the year 1733, in language which must afford reflexions to men of discernment : “ That Rhode-Island and Connecticut, being charter-governments, hold little or no correspondence with our office, and we are very little informed of what is doing in these governments ; they not being under any obligation, by their respective constitutions, to return authentic copies of their laws to the crown for disallowance, or to give any account of their proceedings.” During the reigns of Charles II. and his successor, plans of reformation were not only begun, but in some measure matured. From the Revolution, to the present times, English statesmen, more than any other on earth, have substituted temporary expedient for uniformity of system, because their attention was perpetually dragged to objects nearer and more interesting. The present race feel the consequences, and lament what it is perhaps now too late to repair.

While

While the attainment of this patent, so favourable to its interests and views, gave the greatest joy to Connecticut, it afforded little satisfaction to Newhaven, which had been included in it without its assent. Her pride was offended, and she saw her independence in danger. A general meeting, which was convened in November, 1662, soon determined, that it was not lawful to join, and therefore unanimously resolved to adhere to its former combination; insinuating, with the wonted inaccuracy of such resolutions, not that the charter, with regard to the possessions and people of Newhaven was void, but that they were not included within its boundaries. But when, in the year 1664, she heard of the arrival of the royal commissioners, to inquire into the state of New-England, she prudently changed her former resolution, and became forever the county of an artful neighbour."

Originally settled by the same kind of people, a similar policy naturally rooted in all the colonies of New-England. Their forms of government, their laws, their courts of justice, their manners, and their religious tenets, which gave birth to all these, were nearly the same." The affectionate reception, which Connecticut gave to the regicides, even after their attainder by parliament, who here enjoyed a long life of miserable security and died in peace, sufficiently demonstrates her principles and attachments. She received the royal commissioners with a studied indifference, but with a fixed resolution to deride their authority, and to disobey their commands." Yet they seem to have decided a controversy of considerable importance in her favour. On this occasion, various pretenders claimed the country of the Narragansets, stretching along the western shore of the bay of that name. Edward Randolph appeared on behalf of the duke of Hamilton, and prayed to be put into possession of what had been granted to his ancestor in 1635: Connecticut saying, that she had nothing to object against his claim, but those writings were burnt which would demonstrate her former purchase of what the king had so lately confirmed. The whole conduct of the commissioners evinces that their talents were unequal to the importance of the trust reposed in them. They decided, with a spirit which shews their want of knowledge of English law, that the property of the soil belonged

longed to various owners, but that the right of government was invested in Connecticut.<sup>14</sup>

During the remainder of the reign of Charles II. that colony in a great measure acted rather as an independent state, than as the inconsiderable territory of a great nation. The general orders of that prince were contemned, because the royal interposition was deemed inconsistent with the charter. The acts of navigation were despised and disobeyed, because they were considered equally inconsistent with the freedom of trade as with the security of ancient privileges: And the courts of justice refused to allow appeals to England, because the powers of ultimate jurisdiction were claimed from the patent. That monarch beheld this conduct with regret, because he plainly perceived all its bad tendency: But he was too much engaged with other affairs, more interesting and important, and probably waited the issue of his contest with Massachusetts, which involved the fate of the whole, before he attempted to reduce it to a more immediate dependence on his crown.

Connecticut, with the other colonies, congratulated James II. on his accession to the throne, acknowledged his authority, and begged for protection of their chartered privileges. He received the compliment with satisfaction, though he had already decided what course he should pursue with regard to colonial policy. Various articles of high misdemeanour were exhibited, in July, 1685, against the governor and company, before the lords commissioners of colonies;<sup>15</sup> impeaching them of making laws contrary to those of England; of extorting unreasonable fines; of enforcing an oath of fidelity in opposition to that of allegiance; of intolerance in religion; of denial of justice. These various accusations, which were supposed to infer a forfeiture of the charter, were instantly sent to Sawyer, attorney-general, with orders to issue a writ of *quovarranto* forthwith against the colony. He obeyed. And Randolph, who had acted as a public accuser, now offered his services to carry it beyond the Atlantic.<sup>16</sup> The governor and company had for some time seen the storm approaching which threatened to lay their beloved system in the dust: And they endeavoured, with great address, to elude the force of what they were unable to resist.

dent which had formerly bereaved them of their ancient conveyance, they now carefully concealed their charter in a venerable elm ; which to this day is deemed sacred, as the preserver of their constitution. They wrote to the secretary of state, in January, 1687 ; professing their loyalty ; desiring to continue in the same station ; but, were it the royal purpose to dispose otherwise of them, submitting to the royal commands.<sup>17</sup> Randolph about the same time proposed it to the lords of the committee of colonies, as a thing absolutely necessary, “ that the charter of Connecticut should “ be prosecuted with effect :” Giving as a reason, what shews the extent of his views, “ that they will employ none to defend it, but let the law “ take its course ; that with the late government of Boston they may be “ passive, and not be said to give away the people’s right.”<sup>17</sup> Though the advice was politic, nothing more seems to have been done than to order Andros to accept the submission of the colony, and to annex it to Massachusetts in conformity to its request. After receiving a variety of addresses<sup>18</sup> from the governor and company, dictated by despair and hope alternately, as they were actuated by inclinations of resistance or desires of submission, Andros went to Hartford, in October, 1687. He published, in the general-court, his orders and commission ; which every one tacitly obeyed : He dissolved the former government ; he assumed the administration : And Treat, the late governor, and Alleyn, the secretary, he received into his legislative council “ for the better carrying on the “ service of Connecticut.”<sup>19</sup>

When “ the amazing tidings of the revolution at Boston” reached Connecticut, the inhabitants determined no longer to obey a governor, who, from commanding one half the colonies, was now confined in a jail. The chartered government was soon resumed ;<sup>20</sup> because the safety of the people was deemed the supreme law. And this they have enjoyed, notwithstanding the submission before-mentioned, with the approbation of eminent lawyers, though not without subsequent attacks, to the present days. English statesmen regretted, in after-times, that Randolph’s advice was not literally pursued.

#### AUTHORITIES



## A U T H O R I T I E S   A N D   N O T E S.

<sup>1</sup> Dougl. Sum. 2 v. p. 159; Neal's N. Eng. 1 v. p. 164,5; and Hutch. Hist. Mass. 1 v. 44. — <sup>2</sup> Ib. 98-100.

<sup>3</sup> In order to establish the title of the first settlers of Connecticut to the soil, colonial historians have recited royal grants with the same confidence as if they had actually perused them. "The Lord Say and Brooke's title to that territory, says Neal, came by a grant to Robert, Earl of Warwick, to whom King Charles, about the year 1630, made a grant of that part of New-England, which extends from the river Narraganset forty leagues along the coast towards Virginia, and from the Western ocean to the South-Sea; which the Earl of Warwick made over to Lord Say, Brooke, and others, as appears by a copy of the patent, bearing date 1631." — Hist. 1 v. p. 165-6. — "Having obtained a grant, 1630, from the council of Plymouth, the Earl of Warwick, says Douglas, procured a patent from King Charles I. which he afterwards made over to Lord Say." — Sum. 2 v. p. 163. — Nevertheless, the lords commissioners of colonies, "having carefully examined the books and papers in the office," in order to report to the king the title of the Duchefs of Hamilton, during the reign of William, could not find that Charles I. confirmed the titles of any of the members of the Plymouth company except that of Gorges." — New-Eng. A. 222. — And their remark is probably extremely just. Soon after the famous grant of New-England, of 1620, the council of Plymouth, discouraged by difficulties which it could not surmount, divided the whole coast into shares, and cast lots for them in the presence of James I. The map, published by Purchas in the year 1625, displays what part of it fell to each, and proves that the proportion of the Earl of Warwick lay somewhat to the Northward of the bay of Massachusetts. — Pilgrims, 4 v. 1872. — "The Earl of Warwick, we are assured, had a patent for Massachusetts-bay about the same time, [1623,] but the bounds are not known." — Hutch. Hist. Mass. 1 v. p. 7. — Here then are the lands which were granted to that nobleman, if any charter ever passed the

great seal or that of the council of Plymouth. It was not, however, till April, 1635, that several deeds were granted by that body, to the individual members, for those shares which had formerly fallen to each: And now, to James, Marquis of Hamilton, was conveyed, as his portion, almost the same territory that was said to have been transferred to the Earl of Warwick in the year 1630, five years before; because it extended from the Narraganset-bay to the river Connecticut. — There is a collated copy of his feofment in the record, New-Eng. A. p. 201. — From colonisation the attention of the Marquis of Hamilton was soon attracted to what more nearly affected him. He drew his sword in defence of his king and the ancient constitution of his country. And, while he sacrificed his life to both, the people of Connecticut took possession of his colonial estate: Crossing from the western bank of their river, after the destruction of the Pequods, and overspreading his lands on its eastern shore. At the Restoration, when it was reasonably to be expected that the claims of the children of loyalists would be favourably attended to, that nobleman's daughter applied to Charles II. for relief: Stating what ought to have been decisive at least with him; "that the true reason of her supplication was, because, her father had died fighting for his." Though an agent was soon after sent to New-England to solicit redress of the royal commissioners, yet the singular talents and zeal, which have lately been exerted in support of the rights of that illustrious family, were not then employed. Neither the king's ministers nor commissioners comprehended the most simple of claims, because they introduced extrinsic circumstances. The earl of Arran once more applied to William: But; though his rank commanded attention, he had acted with too much honour and too little policy at the Revolution to expect a very favourable decision. The lords commissioners of colonies stated his title after considerable research; which, if judged by English law, was perfectly irrefragable; but referred him for remedy to a colonial court of justice, composed of judges and jurors, who were in actual possession of the contested property. The governor and company gave in a formal answer to those claims, which states the patents recited by the historians before-mentioned, with a confusion and inaccuracy which evince

evince that no written evidence remained of them. That nobleman replied; "that, when they produced a grant from the Plymouth-company to the Earl of Warwick, it should have an answer." They were silent. — See Record, New-Eng. A. p. 170-201. — As this conveyance then either never existed, or could not be shewn, the charter of Connecticut was void, with regard to what had been formerly conferred by James I. on the council of Plymouth, and by it regularly transmitted to the marquis, with the approbation of Charles I. Of one half of that colony therefore the present Duke of Hamilton enjoys what English lawyers call "the mere right:" When, and in what manner, he will be able to clothe that with possession, the wisest probably will be unable to inform him. Effluxion of time, and a momentous alteration of circumstances, have rendered these notices somewhat uninteresting: But it must always be of importance and of use to detect error by the establishment of truth, to confront the laxity of misrepresentation with the accuracy of records.

<sup>4</sup> Hutch. Hist. 1 v. p. 100. — <sup>5</sup> Ib. 94-100-1. — <sup>6</sup> Ib. 82-5; Neal, 1 v. 169. — <sup>7</sup> Hutch. Hist. p. 76-80. — <sup>8</sup> Ib. 60-124-5. — <sup>9</sup> See the charter in the Record, Proprieties, A. p. 320. — <sup>10</sup> 7-8 Will. III. ch. 22. — <sup>11</sup> Hutch. Hist. 1 vol. p. 83. — <sup>12</sup> Dougl. Sum. 2 vol. p. 174-6. — <sup>13</sup> Hutch. 1 v. p. 218-49. — <sup>14</sup> New-Eng. Papers, 3 v. p. 303.

<sup>15</sup> *Articles of high-misdemeanour, exhibited against the governor and company of Connecticut, to the lords-commissioners for plantations, the 15th of July, 1685.* — From N. Eng. Ent. 2 v. p. 241.

*Proofs out of the law-book of that colony, printed at Cambridge, in New-England, 1673.*

1. They have made laws contrary to the laws of England.

1. Pag. 1. It is ordered that no man's life shall be taken away, unless it is by virtue or equity of some express law of this colony, and sufficiently published; or in case of the defects of a law in any particular:

lar case, by some clear and plain rule of the word of God, in which the whole court shall concur.

Pag. 30. Title, Houses and lands. It is ordered, that no inhabitant of this colony shall have power to make sale of his accommodations of houses or lands to any but the inhabitants of the town, wherein the said house and land are situated, without the consent of the town; or, unless he hath first propounded the sale thereof to the town where situated, and they refuse to give so much as any other chapman will.

Pag. 37. Title, Judges and jurors. It is ordered, that the judges of the courts shall have liberty, if they do find, in their judgement, the juries not to have attended the evidence given in, and true issue of the case in their verdict, to cause them to return to a second consideration of the case; and, if they shall still persist in their former opinions, to the dissatisfaction of the court, to nominate another jury, and commit the consideration of the case to them. And it is also left in the power of the bench to vary and alter the damages given in by any jury, as they shall think most equal and righteous; provided that what alteration shall be made in that kind be done in open court, before the  
plaintiff

2. They impose fines upon the inhabitants and convert them to their own use.

3. They enforce an oath of fidelity upon the inhabitants without administering the oath of supremacy and allegiance, as in their charter is directed.

4. They deny to the inhabitants the exercise of the religion of the church of England; arbitrarily fining those who refuse to come to their congregational assemblies.

5. His majesty's subjects, inhabiting there, cannot obtain justice in

plaintiff and defendant be released from their attendance.

Pag. 46. Title, Marriage. For the prosecution of unlawful marriages, it is ordered, that no person, within that jurisdiction, shall join any persons together in marriage but the magistrates.

2. Pag. 3. Title, Alarm. Five pounds fine to be paid to the public treasurer.

3. Pag. 53. Oath of fidelity.

4. Pag. 22. It is ordered, that, where the ministry of the word is established, according to the order of the gospel throughout this colony, every person shall duly resort and attend thereunto respectively upon the Lord's-day, and upon such public fast-days, days of thanksgiving, as are to be generally kept by the appointment of the authority: And, if any person within this jurisdiction, without necessary cause, withdraw himself from the public ministry of the word, he shall forfeit for his absence from every such meeting five shillings.

5. Pag. 41. It is ordered, that whosoever shall defame any court of

the courts of that colony.

of justice, or the sentences or proceedings of the same, or any of the magistrates or judges of any such courts, in respect of any act or sentence therein passed; and, being thereof lawfully convicted in any court of assistants, or general-court, he shall be punished for the same, by fine, imprisonment, disfranchisement, or banishment, as the quality or nature of the offence shall deserve.

6. They discourage and exclude the government all gentlemen of known loyalty, and keep it in the hands of the independent party in the colony.

All which is humbly submitted by

EDWARD RANDOLPH.

REMARK. Had that man's talents been equal to his zeal, he might have discovered other articles, in the policy and laws of Connecticut, which would have more strongly implied a forfeiture of the charter than those he selected: "No appeals are allowed to the king in council." — Dougl. Summ. 2 v. p. 174. — A denial of appeal is an assertion of independence; because, without it, the subordination cannot be preserved. The colony struggled hard, during the reign of William, to establish that essential point: But it was decided by that monarch: "That it was equally the inherent right of the subject to prosecute appeals, as of the sovereign to receive them from the colonies, without any reservation of charters." — Record, Proprieties, B. p. 353-5, 403. — This is a fundamental principle of the English constitution: Yet English statesmen have not been uniform in their application of it in practice. For, if an appeal is an inherent right of the subject, two deductions of law

law are inevitable: A king of England cannot take it away, or refrain it; because he can exert no legislative act over the people: A subordinate-legislature, a colonial assembly, cannot regulate or abolish the right; because it can make no laws affecting the principles of the subordination, or of its connexion with the sovereign state; it cannot divest the privileges of subjects who are not represented. Secondly, the general-court assumed the power of punishing, with death, idolators, blasphemers, conspirators against the colony, rebellious or disobedient children. — Laws, p. 9. — The charter only authorized the corporation to inflict such punishments as are imposed by other corporations within the realm. Now, the law of England permits no subordinate body-politic to take away life, as a punishment, unless empowered by special words for that end. Thirdly, the general-court imposed a great variety of taxes; it obliged the owners of all vessels, not owned in the colony, to pay, at clearing, powder-money to the naval officer. — Laws, 31; Dougl. Summ. 2 v. 178. — The charter gave no such power; and, to have conferred it, express words were necessary. But it was in this manner probably inferred: That every freeman might dispose of his own property; that, the whole being formed into one body-politic, the general assembly must possess the power of the people; and the assembly, consequently, as legislature of the colony, might rightfully impose duties for the general advantage. This reasoning seems just when applied to the inhabitants; but must fail when extended to fellow-subjects who were not represented. Yet how contradictory is this to the argumentation of modern independents! who insist, with an incongruity degrading to common-sense, “that the legislative power of the state cannot impose taxes for the uses of the state;” that the whole does not possess all the powers of one.

<sup>16</sup> New-England Ent. 2 v. 246-51.

<sup>17</sup> The following letter, from the governor and general-court, to the secretary of state, shews not only the art of that body, but the slight ground on which that paper was construed to contain a surrender of their charter. — From New-Engl. Ent. 2 v. p. 344.

Right Hon.

Hartford, 26 Jan. 1686-7.

The occasion of these lines are to inform your lordship, that we have formerly sent several addresses to be presented to his majesty; but have no return, that they ever came to his majesty's view. The last year two writs of quo-warranto were served upon us by Mr. Randolph, which were issued out of the Crown-office of the court of King's Bench at Westminster, but served upon us after the time of appearance had elapsed, as we understand it: But then we prepared an address to his majesty, and appointed Mr. William Whiting, a merchant in London, to be our attorney, to present our address to his majesty: And, in case we should be called upon to answer before his majesty, or any court or judges, by what authority we hold, possess, and enjoy, divers rights, privileges, and franchises, that he might on our behalf make answer thereto. And since that, December last past, another quo-warranto was served upon us, requiring our appearance before eight days of the Purification of the blessed virgin Mary; which is so sudden, by reason of our remoteness, and the sharpness of the winter-season, that we cannot make such suitable return as we ought: Yet we have again requested and empowered Mr. Whiting to appear on our behalf, if we must come to answer, so that, by reason of our non-appearance or silence, we may not be proceeded against to an outlawry, or forfeiture of our liberties and privileges.

May it please your honour, we are his majesty's loyal subjects, and we are heartily desirous that we may continue in the same station that we are in, if it may consist with his princely wisdom to continue us so: But, if his majesty's royal purposes be otherwise to dispose of us, we shall, as in duty bound, submit to his royal commands; and, if it be to conjoin us with the other colonies and provinces, under Sir Edmund Andros, his majesty's present governor, it will be more pleasing than to be joined with any other province.

Sir: We pray your honour's pardon for this address, which is only occasioned for fear any mishap should befall our former letters, requesting your honour to acquaint his majesty, that we are his obedient and loyal  
 subjects,



subjects, and shall so approve ourselves, notwithstanding any misrepresentation that may be made of us; who are, &c.

ROBERT TREAT, Governor.

By order of the general-court,

JOHN ALLYN, Secretary.

The following answers of the general-court to the inquiries of the lords of the committee of colonies are subjoined; because they disclose a variety of curious particulars of the state of Connecticut at the end of four-and-forty years; they shew the manner in which they tell their own story. — From New-Eng. papers, 3 v. p. 117. — The queries are implied in the answers, which are somewhat abridged.

1. We have two yearly general-courts, as they are stated in his majesty's most gracious charter. — We have two courts of assistants, which consist of the governor and assistants, which are for the trial of capital offenders, and for the hearing of all appeals with a jury. — Our colony is divided into four counties; and in each there are two county-courts annually, of magistrates and jury, to hear and determine all actions of debt, and the case, and criminal matters of a less nature. — As there is any special occasion the governor calls his assistants, who are of his council, and meet and consider of such matters, as fall in the interval of the general courts, and determine the same.

2. The legislative power is only in the general-court; the executive is in those courts appointed, as before.

3. We have little traffic abroad; and so, little occasion for a court of admiralty, distinct from the court of assistants.

4. We have sent one of our law-books: Wherein are what laws were of force when we printed them, since which some few have been made which are not yet printed, and so have not sent them. Your lordships may please to take notice, that, in our preface to our laws, we say we have been careful not to make any repugnant to the statute-laws of England, so far as we understand them: Professing ourselves always willing to receive light for emendation; what we then said is our present purpose, and shall be our constant practice.

5. As to the number of our forces: We have, for the present, only one troop, which consists of about sixty horse, but we are upon raising three more. Our forces are train-bands: In each county there is a major, who commands its militia, under the general.

In Hartford county there are 835. In Newhaven, 623.

New-London, ——— 509. Fairfield, 540.

The whole militia, 2507.

6. We have one small fort at the mouth of Connecticut river. Good towns we have; one especially, called New-London, formerly Pequot: Near which the English obtained a memorable victory over the Pequots; the first and most signal blow the Indians received. It greatly needs fortifications, but we want estates to raise them, and to purchase artillery: And we should thankfully acknowledge the favour of any good benefactors that would contribute to so good a work.

7. It is rare that any privateers or pirates come on these dangerous coasts; only, two years ago, a French one wintered at New-London, and went away in the spring.

8. As for our Indian neighbours; we compute them to be about 500 fighting men: We are strangers to the French, and know nothing of their strength or commerce. Our chief trade for procuring clothing is by sending what provisions we raise to Boston, where we buy goods. The trade with our Indians is worth nothing, because their frequent wars hinder their getting peltry.

9. We have neighbourly correspondence with New-Plymouth, with Massachusetts, since Major Andros came to New-York with him, but not like what we had with his predecessor: With Rhode-Island we have not such good correspondence as we desire.

10. Our boundaries are as expressed in the charter: We cannot guess the number of acres settled or manurable; the country being mountainous, full of rocks, swamps, hills, and vales; what is fit is taken up; what remains must be gained out of the fire, by hard blows, and for small recompence.

11. } Our principal towns are Hartford, New-London, Newhaven,

13. } and Fairfield: Our buildings are generally of wood; some are  
of

of stone and brick ; and some of them are of good strength, and comely, for a wilderness. We have twenty-six small towns already seated ; and in one of them there are two churches. — Our rivers are numerous and navigable.

14. } The commodities of the country are, provisions, lumber, and  
15. } horses ; but we cannot guess the yearly value : The most are transported to Boston, and bartered for clothing ; some small quantity is sent to the Caribbee islands, and there bartered for products and some money : And now and then (rarely) vessels are laden and sent to Madeira and Fyal, and the cargoes bartered for wine. We have no need of Virginia trade ; as most people plant so much tobacco as they need. We have good materials for ship-building. The value of our annual imports probably amounts to 9000l. We raise no salt-petre.

16. } We have about twenty petty merchants ; some trade to Boston ;  
20. } some to the Indies, and other colonies : But few foreign merchants trade here. The number of our planters is included in our trainbands ; which consist of all from 16 to 60 years of age. There are but few servants, and fewer slaves ; not above 30 in the colony. There are so few English, Scotch, or Irish, come in, that we can give no account of them : There come sometimes three or four blacks from Barbadoes, which are sold for 22l. each. We do not know the exact number of persons born ; nor of marriages ; nor of burials : But the increase is as follows : The numbers of men, in the year 1671, were 2050 ; in 1676, were 2303 ; in 1677, were 2362 ; in 1678, were 2490 ; in 1679, were 2507.

21. } We cannot guess the estates of the merchants ; but the property  
25. } of the whole corporation doth not amount to 110,788l. sterling. Few vessels trade here but from Boston and New-York, which carry off our produce. Twenty-four small vessels belong to the colony. The obstruction of trade is owing to want of estates, and to the high price of labour. Commerce would be improved, were New-London, Fairfield, and Newhaven, made free ports for 15 or 20 years ; this would increase the trade and wealth of this poor colony. There are no duties on goods,  
exported,

exported or imported, except on wines and liquors; which, though inconsiderable, are appropriated to maintain free-schools.

26. } The people are strict congregationalists; a few more, large con-  
 27. } gregationalists; and some, moderate Presbyterians: But the congregationalists are the greatest number. There are about four or five seven-day men, and about as many Quakers. Great care is taken of the instruction of the people in the Christian religion, by ministers catechizing and preaching twice every sabbath, and sometimes on lecture-days; and also by masters of families instructing their children and servants, which the law commands them to do. We have 26 towns, and there are 21 churches in them; and in every one there is a settled minister, except in two newly planted. The stipend, which is more or less according to duty, is from 50l. to 100l. Every town maintains its own poor: But there is seldom any want, because labour is dear; being from 2s. to 2s. 6d. a day for a labourer; because provisions are cheap; wheat is 4s. a bushel Winchester, pease 3s. Indian corn 2s. 6d. pork 3d. a pound, beef 2d.  $\frac{1}{2}$  a pound, butter 6d. and so other matters in proportion: Beggars and vagabonds are not suffered, but, when discovered, they are bound out to service; vagabonds, who pass up and down, are punished by law.

15 July, 1680.

WM. LEATE, Governor.

JN<sup>o</sup>. ALLYN, Secretary.

<sup>17</sup> His letter in New-Eng. Ent. 2 v. p. 342.

<sup>18</sup> The address is among the New-Eng. papers; vol. 3.

<sup>19</sup> His letter to the committee of colonies, in the New-Eng. Ent. 2 v. p. 372.

<sup>20</sup> Hutch. Hist. Mass. 1 v. p. 383-406.

## C H A P. XIII.

*The parliament meets. — Their proceedings. — Discontents in Virginia. — Birkenhead's conspiracy. — The assembly endeavours to remove the cause of them. — Its laws. — Maryland refuses to concur. — The parliament prohibits planting tobacco in England. — Other laws. — Foreigners resort to the southern colonies. — Acts of naturalization. — The parliament convened. — They impose taxes on the colonies. — Remarks.*

**M**EAN-WHILE the parliament, which was convened in July, 1663, taking into their consideration the encouragement of commerce, naturally turned their attention to colonial affairs. And, in order “ to maintain a greater correspondence and kindness between the colonies and England; to keep them in a firmer dependence on it; to make this kingdom a staple, not only of the productions of the plantations, but of the merchandises of other countries for supplying them;” it was enacted: That no commodity of the growth or manufacture of Europe shall be imported into the settlements in Asia, Africa, or America, but such as shall be shipped in England, and proceed directly on-board English ships, navigated by Englishmen; under the penalty of forfeiture of goods and vessel; the one half to the governor of the colony, the other to the informer, to be recovered either in the judicatories of England or the colonies.’ But, in order to encourage them, and counter-balance these restrictions, there were excepted out of the general rule, salt for the fisheries of New-England and Newfoundland, wine from Madeira and the Azores, and servants, horses, and victual, from Scotland and Ireland: Duties were imposed on dried or salted fish, if caught or imported in other vessels than those of subjects; sea-coal was allowed to be exported to the plantations upon paying twenty-pence a chaldron. And the parliament, having remarked that the making of tobacco increased in England, notwithstanding the penalties of former laws, “ to the loss of his majesty’s customs, and the discouragement of the colonies,” then enforced former regulations for prevention of the growth of that commodity in the European dominions of the crown.’

Thus

Thus the supreme legislature regulated and strengthened the commercial interests of the state and its dependencies : Thus was finally established the famous monopoly of the colonial trade ; which, the parliament then asserted, was conformable to the common usage of nations. Its commencement, we have seen, was coeval with the discovery of America. And we have remarked the rulers of England at all times endeavouring to enforce similar regulations in vain. But, though it has been celebrated as a policy equally liberal and wise, yet experience seems to have demonstrated the fallacy of the principles on which it was originally founded, and hath since been supported. All monopolies are necessarily prejudicial to the commercial system, which has at every period of its annals flourished while protected by freedom, and decayed when repressed by restraint. The colonial trade has been always extremely advantageous to the nation : Yet men of discernment have thought, that the monopoly of it, however beneficial to the interests of individuals, has proved detrimental to the prosperity of the whole. The national commerce ought undoubtedly to be protected and encouraged ; but no particular branch of it will good policy favour and support : And when, in superaddition to the establishment of that famous system, bounties and drawbacks were given as special encouragements, a disease, equally unnatural and destructive, was really introduced into the body politic. The general habit of trade and manufactures was proportionally discouraged and debilitated. And, when future accidents produced those obstructions that might have been foreseen, disorders broke out, which expedients might palliate, but time only could effectually cure.\* The trade of the colonies came at length to be considered as the only one possessed by the empire, or worthy of its care. Had a system, thus pernicious and favoured, continued without interruption, the state might in a little period of years have become enslaved by its own dependencies. What was dreaded, as one of the greatest evils, has been productive of a benefit pleasing and advantageous : The sudden defalcation of the colonial commerce has evinced, what no argumentation could have proved, though wise men foresaw it, that England, even when engaged in an expensive war, would be a great, a wealthy,

a wealthy, and commercial, nation, were her transatlantic provinces to sink into non-existence.

Nevertheless, it was far more easy to enact those various laws than to enforce their punctual execution. Even the best affected colonies, Barbadoes, Virginia, Maryland, considering them either as inconsistent with their privileges, or destructive of their infant commerce, hesitated to obey, or eluded their provisions.<sup>39</sup> And they trafficked, without restraint, wherever hope of gain directed their navigators. Informed of a conduct so contrary to the acts of navigation and to the interests of the nation, Charles II. wrote letters to the colonial governors: He reprimanded them for their neglects, or rather contempts, of former orders; and, that they might no more pretend ignorance, he informed them; that, as he resolved to put those laws strictly in execution, he would consider their negligence as the highest misdemeanour: Giving a reason worthy of the monarch of a commercial nation, “that it so much concerneth the trade of this “kingdom.”<sup>5</sup> His successors formed these sentiments into standing instructions, but without effect.

The good-humour and felicity, which prevailed so much in Virginia upon the Restoration, appear not to have been of long continuance; because a variety of causes concurred to disturb its repose. A severe law had been made by the grand assembly, in the year 1663, against the importation of Quakers, under the penalty of five thousand pounds of tobacco on the importer of them, “unless by virtue of an act of parliament of the fourteenth of our sovereign lord the king.”<sup>6</sup> Tobacco, which was then the chief, the only, staple of the colony, partly owing to the great quantities raised in America and in England, but more to the exclusion of the trade of foreigners and to the Dutch war, was reduced to a price extremely inconsiderable, when compared with that of former times. All supplies of European commodities, without which the Virginians could not exist, were now restrained to England; and the price was enhanced, as we are assured, to what the merchant pleased to put on them. And the frontiers had been for some time infested by the incursions of the Susquehannahs, a powerful tribe which inhabited the banks of Potowmack. Great discontents, owing to all these causes,

prevailed in Virginia; and being fomented by some of Cromwell's soldiers, who remained there, they at length ended in Birkinhead's conspiracy to seize the government: But, being timely discovered, the prudence of the governor easily disappointed it, without bloodshed. And this trivial plot was thought of importance enough to induce the assembly to make a law "for keeping holy the thirteenth of September," being the day on which it was disconcerted.<sup>8</sup>

The assembly endeavoured, with a laudable solicitude, to remove the cause of discontents, that too often, when neglected, swell into disaffection. It enacted: "That no claim whatsoever shall be pleadable against any inhabitant, but for goods imported; that, in payment of debts, country creditors shall have priority, and all courts of justice shall give precedence, in judgement, to contracts made within the colony."<sup>9</sup> These singular regulations, arising probably from motives of resentment or retaliation, can be defended only by a necessity which new circumstances produced. To enhance, if possible, the price of a commodity on which the existence of the colony depended, the assembly prohibited the growth of tobacco for a limited time: But, Maryland refusing to concur in a similar policy, that measure, however well intended, was not productive of the good effects expected from it. The same distresses renewed the same measures; which now acquired the name of "acts of cessation." And the same inconvenience being at length probably felt in Maryland, a law was passed,<sup>10</sup> in April, 1666, to enforce a similar project. But the proprietary, considering that this regulation might greatly injure the poorer sort of planters, and affect the royal customs, dissented from a law, the policy of which was so extremely doubtful. The acts of cessation proved unsuccessful.

But, at the same time that the production of that famous luxury was thought unprofitable in the colonies, it was deemed extremely advantageous in England; where it was still planted, notwithstanding the severity of former prohibitions. The parliament, in the year 1670, required the constables and other public officers, from time to time, "to pluck up and utterly destroy" all tobacco planted or growing in any field in England.<sup>11</sup> And this law, "which, we are told, was the most  
"effectually



“ effectually executed of any in the statute-book,”<sup>12</sup> assuredly proved decisive. Thus we discover the policy of acts of the supreme legislature in the history of the plantations: Thus the advantage and inclination of the people of England were plainly sacrificed at the shrine of colonial interest: And the ancient colonists justly deemed these laws, what they really were, greater favours conferred, than their posterity have of late been disposed to consider them.

“ Many complaints having been made, of vessels belonging to the American colonies, which, contrary to the intent of former laws, had transported their commodities to Europe;” the parliament enacted: “ That the governors of the respective plantations shall annually make return of a list of such vessels as have laded any of the productions of the plantations; and, if they shall be found to have unladed any enumerated goods in any part of Europe other than in England, they shall be forfeited, with their furniture and lading: That the penalty shall be prosecuted in any court of admiralty in England.” Nothing can evince more clearly the difficulty of executing the acts of navigation, arising from the opposition of mistaken principles, or the evasions of interest; the great jealousy of the legislature and the nation of breaches of the commercial system, which has been long the favourite of England.

Though the general-court of Massachusetts had, as early as the year 1662, readily granted, to a few French protestant refugees, “ liberty to inhabit there;”<sup>14</sup> yet the first act which occurs, of any colonial assembly, for the naturalization of aliens, was passed in Maryland, in May, 1666:<sup>15</sup> And from the many similar laws, which were enacted in every subsequent session till the Revolution,<sup>16</sup> it appears that great numbers of foreigners transported themselves thither during that period. They at no time emigrated to New-England; because none were welcome in that country who were not Independents in religion. The first act of this kind was made in Virginia, in September, 1671; and from that time many others appear, till June, 1680; when a general law, for naturalization of aliens, on certain conditions, was established. “ With a view

“ to the more speedy peopling of the colony, says the assembly, and to

“ give all possible encouragement to persons of different nations to transport themselves, their families, and stock, to settle there ;” the governor was empowered, by an instrument under the great-seal, to declare any alien, upon taking the oath of allegiance, to be completely naturalized : But with this condition, “ that nothing shall be construed to give power to foreigners to execute any matter, which, by acts made in England concerning his majesty’s plantations, they are disabled to do.”<sup>17</sup> This clause is remarkable, as well for cautiously giving the rule that construction, which it must have received from the common-law exclusive of it, as for evincing how well that subordinate legislature understood the English jurisprudence, and how attentive it was in adhering to it. An act of naturalization of one colony cannot assuredly operate in any other ; because all are independent and co-ordinate with regard to each other : And the laws of an inferior dominion can no more govern beyond its boundary than the edicts of France can extend to Germany, or the by-laws of a corporation can reach without its walls. It gave to aliens indeed many valuable privileges within the colony where naturalized ; such as to acquire lands and to vote at elections ; but they were not thereby enabled to act as merchants or factors, or to own vessels ; because that would have been directly contrary to the letter of the acts of navigation : And this argumentation is supported by facts. The vessels of aliens, who were naturalized by colonial legislatures, have been seized and condemned by the courts of admiralty, because trading contrary to law, though the act of assembly was pleaded. And these judgements were properly affirmed upon appeals, from the subordinate judicatories, to the king in council : Giving as a reason ; “ that the acts of a provincial legislative power, comprehensive as they may be in their terms, cannot operate against the general jurisprudence of the empire.”<sup>18</sup> Yet this signal decision, on a proposition of colonial law extremely interesting, did not prove absolutely decisive. Several governors even of royal appointment, with an ignorance or inattention unworthy of their station, granted letters of denization to aliens, under the authority of which they trafficked contrary to law : And the American courts of justice, with a still grosser spirit, supported their pretensions in opposition to the  
acts

a<sup>c</sup>ts of navigation. But their judgements were properly reversed, by the king in council, during the reign of William ; because a governor could not dispense with an a<sup>c</sup>t of parliament ; because his proceeding alone must be of less authority than an a<sup>c</sup>t of assembly, which could confer no such power, and to which he was necessarily subordinate. And orders were then transmitted that no more denizations should be granted.

The parliament mean-while was convened in February, 1672. And the cause of their meeting sufficiently appears from the speech which Charles II. made then on that occasion : " Though I am glad to see you here, I have not called you together till there was an absolute necessity. Since you were here last, I have been forced into a most necessary and expensive war ; and I doubt not you will give me effectual assistance to go through with it." The commons soon turned their views beyond the Atlantic. The commerce of the colonies had been before regulated and restrained ; they were now considered by them as proper objects of taxation. They observed : That it had been permitted by several former laws to transport the enumerated productions of the plantations, in America, Asia, and Africa, from the places of their growth, to other English colonies in those parts, without paying custom for the same, either at the lading or unlading ; whereby the trade in those commodities was greatly increased ; that the inhabitants of those settlements, not content with being supplied themselves with those merchandises for their own use, free from all duties, while the subjects in England had paid great impositions for what they used, had sent great quantities to divers parts of Europe, and daily vend the same to the shipping of other nations, to the diminution of the customs and of the navigation of the kingdom. They enacted therefore : That if any vessel, which by law may trade in the plantations, shall take on-board any enumerated commodities, and a bond, with sufficient security, shall not have been given to unlade them in England, there shall be rendered to his majesty, for sugars, tobacco, ginger, cocoa-nut, indigo, logwood, fustic, cotton wool, the several duties mentioned in the law ; to be paid in such places in the plantations, and to such officers, as shall be appointed to collect the same : And, for the better collection of those taxes, it was enacted : That the whole

whole business shall be managed, and the imposts shall be levied, by officers who shall be appointed by the commissioners of the customs in England, under the authority of the lords of the treasury.”

The policy of the legislature is extremely clear; no duties were to be demanded for the commodities exported to England, because, under the authority of former laws, customs were already collected: The exportation of those merchandises to foreign nations had been already prohibited by the acts of navigation, though they were still allowed to be carried from one plantation of the crown to any other; and now the same duties were imposed, on such transportation, as were then paid upon the consumption within the realm. This law was made the corner-stone of a system which was afterwards erected; it was extended to other productions of the colonies as they became objects of commerce; it was explained and enforced: “And the money arising from it was ordered to be paid into the exchequer for the disposal of parliament.” The duties of tonnage and poundage had been imposed, we have seen, and extended to every dominion of the crown at the Restoration. But this is the first act which imposed customs on the colonies alone, to be regularly collected by colonial revenue-officers. During the season of high passion, the clearest propositions of fact and of law are made objects of doubt or of dispute; and history is often compelled to enter the lists of controversy. Whether the duties, which were then imposed, ought to be deemed regulations of trade, or exertions of taxation, for the uses of revenue, has been formally debated in modern times. Yet the nature of the question necessarily leads to an altercation of words, as frivolous as degrading. We may rely therefore on the weighty authority of Sir Edward Coke, who assures us: “That every burden whatsoever, set upon any man, is a tallage, which cannot be imposed without common assent, by act of parliament.” And the commons, the great assessors of the state, have invigorated the sentiment of that most eminent lawyer by continual approbation. They acted agreeably to his reasoning, it should seem, when they rejected, in 1733, the petition of the colony of Rhode-Island, against the act imposing duties on the products of the foreign West-Indies, when imported into the English plantations: “Giving as a reason, what shews

shews the sense of the house and the nation; "that it was a money-bill."

But the colonists of former times were assuredly as desirous to admit the legality of the tax, and to deny the policy of the regulation, to pay the one, yet to evade the other, as their posterity have been zealous to dispute the former and allow the latter. The agents of Massachusetts represented to the committee of colonies, in 1678; "that, for the encouragement of their trade, they humbly proposed it as a thing that would be joyfully accepted, that, when they export their fish and staves to foreign countries, they may have liberty to bring back such goods as New-England wants for its own supplies, without coming first to England: they being most willing to pay all his majesty's duties upon their arrival in New-England."<sup>27</sup> When the colonists were accused, in those days, of breaches of the acts of trade, they insisted: That, after they had paid the tax, they might, by law, carry their commodities whither they pleased. Yet, the lords of the committee submitting this pretension, in the year 1675, to the attorney-general, Jones, he gave it as his opinion, "that the tax must be paid, and security also given, to carry their productions to a dominion of the crown; because the law imposing the custom did not repeal that requiring the bond."<sup>28</sup> The pertinacity of mankind is unbounded when strengthened by interest or encouraged by faction. Former practices nevertheless continued, because they were in some measure justified by former pretences. And the doubts before-mentioned were at length decided, in conformity to the opinion of that eminent lawyer, by a statute of William and Mary.

During the session of 1672, the colonies were not only deemed objects of taxation, but of regulation: And the parliament, observing the national importance of the whale-fishing, for its farther encouragement, permitted all persons residing in England; whether natives or aliens, to import, from Greenland, Newfoundland, or the colonies, whatsoever was made of any creature living in the sea, caught in ships properly belonging to England, and in them brought in, without paying any custom: But for the oil or fins, imported in vessels belonging to the plantations,

tions, several small duties were imposed ; and, on the importation of such commodities in foreign vessels, taxes were laid, amounting almost to a prohibition.<sup>29</sup> The policy of this regulation is extremely obvious : The fishing, in general, being of national importance, was to be encouraged ; the people of England were preferred to the inhabitants of the colonies ; but these were allowed greater advantages than foreigners. And this is the only law, which appears in the statute-book, that makes any distinction between the vessels of the colonies and those of England, by giving a preference to the latter over the former.

Such then was the power exercised by the parliament, during those days, over the plantations : But, from that period, the attention of the members was drawn to other objects more near and interesting ; and we shall find the legislature taking little farther notice of colonial affairs during the reign of Charles II.

The commissioners of the customs proceeded immediately to execute the trust so lately reposed in them by parliament. They appointed officers for Virginia, whose duty was twofold ; to collect the various duties assessed by the statute just mentioned ; to superintend the punctual execution of the acts of navigation.<sup>31</sup> And these men were received in that loyal dominion with the attention due to persons invested with legal powers from royal authority. As early as the session of September, 1672, an act was passed,<sup>32</sup> obliging “ masters of ships to pay the country dues “ to the collectors.” Thus the assembly recognised their power, and enlarged it, by extending their commission to taxes that were not within their authority, by contradistinguishing *country dues*, imposed by itself, from the *customs* established by parliament. The example of Virginia was followed by Maryland. Charles Calvert, the governor, was the first collector appointed for it ; and this office he exercised, with approbation, till he became proprietary, in 1676. And the assembly seems to have first recognised that officer during the session of April, 1682 ; by regulating “ the fees which should be paid at the entries of vessels belonging “ to the province.”<sup>33</sup> Nevertheless, a collector, it should seem, was not appointed for New-England till the year 1679 : And, when Edward Randolph for the first time attempted to execute that office at Boston, he

he was opposed with the steady zeal of men who deemed their chartered privileges invaded: And we shall find this conduct one of the chief causes of the dissolution of the ancient government of Massachusetts. Thus were collectors first introduced into colonial jurisprudence: And such was their reception in the different provinces, according to their dissimilar principles.

## AUTHORITIES AND NOTES.

<sup>1</sup> 15 Cha. II. ch. 7.

<sup>2</sup> The importation of such fish by aliens was soon altogether prohibited, by 18 Cha. II. ch. 21. f. 2. and at a subsequent period it was effectually enforced, by 1 Geo. I. stat. 2. ch. 18. f. 2.

<sup>3</sup> 13, 14, Cha. II. ch. 11. f. 6.

<sup>4</sup> See Dr. Smith's *Wealth of Nations*, on this subject.

<sup>5</sup> Record in *Plantat. Off.* titled *New-England*, v. 2. p. 11-15.

<sup>6</sup> *Laws of Virg.* p. 61, 2. — The act of parliament here alluded to is the stat. 13, 14, Cha. II. ch. 1. “for preventing the dangers that may arise by certain persons called Quakers, and others refusing to take the lawful oaths; which enacted, “that it shall be lawful for his majesty to cause them to be transported to the plantations beyond the seas.” Hence, transportation to the colonies, as a punishment, has been said to have commenced immediately after the Restoration.

<sup>7</sup> *Brit. Emp. in Am.* 1 vol. p. 246; *Present State*, p. 59, 60.

<sup>8</sup> *Laws*, p. 63. — <sup>9</sup> *Ib.* 64-7. — <sup>10</sup> *Bacon's Laws*, 1666, ch. 21.

<sup>11</sup> 22, 23 Cha. II. ch. 26. — <sup>12</sup> *Observ. on the Stat.* 336.

<sup>13</sup> 22, 3, Cha. II. ch. 22. f. 12, 13. — <sup>14</sup> *Hutch. Hist.* 1 v. p. 224.

<sup>15</sup> *Bac. Laws*, 1666, ch. 7. — <sup>16</sup> *Ib.* pass. — <sup>17</sup> *Laws of Virg.* p. 132. — It must be observed, however, that this, among other acts, was framed in England, transmitted to Virginia, and passed by the assembly. — See *Journal in Plant. Off.* v. 3. p. 209.

<sup>18</sup> The vessel of Brunet, a Frenchman, was seized at St. Christopher's, in the year 1682, and there condemned by the court of Admiralty; because it was the property of an alien trading contrary to the laws of navigation;

vigation ; though he pleaded the act mentioned in the text. He appealed to the king in council. And two questions were proposed to Lord Chief-Justice North : 1°. If an alien naturalized in Virginia may trade in any other colony : 2°. If this condemnation was legal. His lordship reported : That the seizure and adjudication were according to law ; and that a naturalization in Virginia, or in any other plantation, is only local, not extending to any other colony. And this opinion was approved, and the judgement affirmed. — Journ. Plant. Off. 4 v. p. 27-32-4. — See this subject admirably discussed, in the case of *Craw and Ramsay*, in *Vaughan's Reports*. How gradual is the advance of the jurisprudence of a great empire to maturity ; and how curious is it to trace the progress ! *Seymour*, governor of Maryland, transmitting to the lords-commissioners of colonies, in 1704, several acts of naturalization, informed them, “ that these are only intended to enable them [naturalized aliens] to “ purchase lands ; but not to qualify them to trade, or to be owners or “ masters of ships : It being always acknowledged, that any act of naturalization, made in this province, extends no farther than its limits, “ and is circumscribed by the 7 and 8 Wm. III.” — *Maryland Papers*, G. N°. 25. — And the laws of that colony justified his observation. The acts passed by the assembly, during the reign of that prince, contained a declaration similar to that mentioned in the text : That they should not be construed to enable the alien to do what was prohibited by the statutes of England. — *Bacon's Acts*, 1692, ch. 71. 1694, ch. 4. 1695, ch. 35. — The assembly shewed, that it understood the law, and was willing to conform to it. And the principle upon which it then acted applied equally to every case whatsoever : That a provincial legislature can establish no regulation in opposition to the rules of action prescribed by the supreme power in the state.

<sup>19</sup> *Com. Journ.* 9 v. p. 246. — <sup>20</sup> 25 *Cha. II.* ch. 7. f. 2, 3. — <sup>21</sup> 4 *An.* ch. 5. f. 12 ; 8 *Geo. I.* ch. 18. f. 22. — <sup>22</sup> 7-8 *Will. III.* ch. 22. — <sup>23</sup> 1 *Geo. I.* stat. 2. ch. 12. f. 4.

<sup>24</sup> 2 *Institute*, 533. The authors of the *Farmer's Letters*, addressed to the *Pennsylvanians*, compiled chiefly by *Livingston* and others, but adopted by *Dickenson*, opposed the act of parliament, compelling *New-York*



York to furnish the king's troops with necessaries, upon the principle of Sir Edward Coke, mentioned in the text. They argued: That an act of parliament, commanding us to do a certain thing, if it has any validity, is a tax upon us for the expence that accrues in complying with it. — Let. p. 8. — But confidence of argumentation is not to be expected from zealots in any cause. They consider a duty imposed, either as a custom or as a regulation, as best suits the present purpose, without regarding consequences, good or evil.

<sup>25</sup> Hist. Reg. 18 v. p. 211-17. — <sup>26</sup> See a remarkable parliamentary debate on this petition, Gent. Mag. 3 v. p. 509-11. — <sup>27</sup> See the representation of the agents of Massachusetts post.

<sup>28</sup> Upon the complaints of the merchants, trading to New-England, of breaches of the acts of navigation, the lords of the committee of plantations wrote to the attorney-general, that it was doubted, whether those, paying the duty required by law, might not carry the productions of the colonies to foreign countries, and desired his opinion. — Record, Plant. Off. titled New-England, 2 v. p. 88.

*The answer of Sir William Jones.* — Ib. 106.

“ Upon consideration of the statute of the 25th of the king, and also of the 12th of the king, I find: —

1°. That, by the act of the 12th, it is expressly provided, that none of the goods, therein enumerated, (being of the growth or production of any of the English plantations, in America, Asia, or Africa,) shall be carried to any other places, than to some other English plantation, or to England or Ireland, under pain of forfeiting ship and goods. For prevention of carrying them to other places, ships, going out of England or Ireland, were to enter into bond to bring such goods only into England or Ireland, the bonds to be given to the officers of the custom-house here, before the ships begin their voyage: Ships coming from other places, who were permitted to trade, were to give bond to the governor of the plantation, where such goods were laden, that the goods should be carried to England or Ireland, or some other English plantation.

By a later statute Ireland is excluded, 22-3 Charles II. ch. 2. — The act of the 25th doth enact: That where bond shall not be first given to bring the goods to England, and to no other place, there a duty shall be paid, as by that act.

Now, from both these statutes, I am of opinion, that bonds are still to be taken. — If the ship be of England, &c. then to bring the goods into England only, and in that case no duty is to be paid at the plantation: But, if the ship comes from any other place than England, then the duty must be paid, and also a bond given to the governor, &c. as before, to carry the goods to some English plantation, or to England. For the statute of the 25th doth not in any sort repeal the act of the 12th, but only imposes a duty, where the bond was not confined to a bringing to England.

W. JONES.”

REMARK. The reasonings of the above opinion were confirmed by the statute, 7 & 8 William III. ch. 22.

<sup>29</sup> 25 Charles II. chap. 7. s. 1.

<sup>30</sup> Barbadoes complained to the committee of plantations, in the year 1676, of the acts of trade as grievances; inasmuch as “a free trade is necessary for settling new colonies:” But this was deemed a dangerous notion in regard to England. — Journal in Plant. Off. 1 v. p. 234. — A relaxation of those laws being urged by the agents of that island, the proposal was debated at the committee on a subsequent day; but rejected: Giving for a reason, “that they ought to be supported, as being the settled laws of the land.” — Ib. 242. — And see Sir William Berkeley’s letter post.

<sup>31</sup> The collector’s commission empowered him: 1°. “To collect the duties, growing due to his majesty by virtue of the act of 25 Charles II. 2°. To enter houses, and execute all other lawful authorities for the better managing the said duties: 3°. To observe that the acts of navigation be duly executed and obeyed.” — New-York papers, D. N°. 33.

<sup>32</sup> Virg. papers, 3 v. p. 12; Laws, p. 101. In April, 1679, the assembly passed an act; “ascertaining collector’s fees for entering and clearing ships.” — Ib. 126. — The commissioners of the customs reported

ported to the lords of the treasury, in February, 1698-9: "That the duties, imposed by the assemblies, are wholly different from those which the collector is charged with, and are not under our direction." — Record, Proprieties, A. p. 344-8. — Thus the assemblies and the commissioners of the customs distinguish equally between taxes established by provincial legislatures, which the royal collectors were not empowered to demand, and those imposed by parliament, which were put under the management of the board of customs: Both revenues then commenced, and continued without opposition to the present times.

<sup>33</sup> Bacon's laws, 1681, ch. 4.

Those, who are curious to read a minute account of the condition of Virginia in the sixty-fourth year of its existence, will be gratified with the perusal of the following answers of the famous Sir William Berkeley to the inquiries of the lords of the committee of colonies. — From Virg. pap. 75 B. p. 4.

1. } There are a governor and sixteen counsellors, who have from his  
 3. } sacred majesty a commission of oyer and terminer, and who judge all causes that are above 15l. sterling. For what is under that value there are particular courts in every county, which are twenty in number. Every year at least the assembly is called; before whom lie appeals: And this assembly is composed of two burgesses out of every county. These lay the necessary taxes, as the necessity of the war with the Indians, or other exigences, require. — In twenty-eight years there has not been one prize brought into this country; so that there is no need of a particular court of admiralty. — The legislative and executive powers are seated in the governor, council, and assembly, and officers substituted by them.

4. The secretary of this country sends every year to the lord-chancellor, or one of the principal secretaries of state, what laws are yearly made; which, for the most part, concern only our private exigence. For, contrary to the laws of England, we never did, nor dare, make any; only this, that no sale of land is good and legal, unless, within three months after the conveyance, it be recorded in the general-court or county-courts.

5. All

5. All our freemen are bound to be trained every month in their particular county; which, we do suppose, and do not much mistake in the calculation, are near 8000. Horfe we have none; because they would be too chargeable for the poor people.

6. } There are five forts: But, God knows, we have neither skill  
7. } nor ability to make or maintain them. For there is not, nor, as far as my inquiries can reach, ever was, one engineer in the country; so that we are at continual charge to repair inartificial buildings. There are not above thirty serviceable great guns; which we yearly supply with powder and shot, as our ability will permit. We have no privateers since the late Dutch war.

8. We have no European neighbours seated nearer to us than St. Christopher's or Mexico, that we know of; except some few French that are beyond New-England. The Indian neighbours are absolutely subjected; so that there is no fear of them. We have no correspondence with any European stranger, nor is there a possibility to have it with our own nation, farther than our traffic concerns.

9. } When I came into the country, I found only one ruined fort,  
10. } with eight unserviceable great guns dismounted, and situated in a most unhealthy place, and where any enemy, if he knew the soundings, might keep out of the reach of the best guns in Europe. Before, or since, we never had one great or small gun sent us, since my coming hither, nor, I believe, in twenty years before: All that were sent by his sacred majesty are still in the country, with a few more that we bought. Besides these guns, we never had any money of his majesty towards the buying of ammunition or building of forts: But what can be spared out of the public revenue we yearly lay out in it.

11. As for the boundaries of our land: They were once great; ten degrees at least: But now it hath pleased his majesty to confine us to half a degree; knowingly I speak this: Pray God it may be for his majesty's service; but I much fear the contrary.

12. } Commodities of the growth of this country, we never had any,  
14. } till of late, but tobacco; which yet is considerable, and yields his majesty a great revenue. But of late we have begun to make silk;  
and

and so many mulberry-trees are planted, that, if we had skilful men from Naples or Sicily to teach us the art of making it, in less than half an age we should make as much silk, in a year, as England did yearly expend threescore years since; but now we hear it is grown to a greater excess, and of more common and vulgar usage. — Now, for shipping, we have admirable masts, and very good oaks; but, for iron ore, I dare not say there is sufficient to keep one iron-mill going for seven years. — Salt-petre we have none. — Rivers we have four; all able to harbour safely a thousand ships of any burden.

15. } We suppose, and I am very sure we do not much miscount,  
 16. } that there is in Virginia above 40,000 persons, men, women, and children: Of which there are 2000 black slaves; 6000 Christian servants for a short time; and the rest have been born in the country, or have come in to settle or serve, in hope of bettering their condition in a growing country. Yearly we suppose there comes in of servants about 1500; of which most are English, few Scotch, and fewer Irish; and not above two or three ships of negroes in seven years.

17. All new plantations are, for an age or two, unhealthy, till they are thoroughly cleared of wood; but, unless we had a particular register-office, for the denoting all that die, I cannot give a particular answer to this query; only this I can say, that there are not ten unseasoned hands (as we term them) that die now: Whereas, heretofore, not one of five escaped the first year.

18. English ships, near eighty, come out of England and Ireland every year for tobacco; some few New-England ketches; but of our own we never yet had more than two at a time, and those not more than twenty tons burden.

19. } Mighty and destructive have been the obstructions to our trade  
 20. } and navigation by that severe act of parliament which excludes us from having any commerce with any nation in Europe but our own; so that we cannot add to our plantation any commodity that grows out of it; as olive-trees, cotton, or vines: Besides this, we cannot procure any skilful men for our now hopeful commodity of silk: And it is not lawful for us to carry a pipe-stave, or a bushel of corn, to any place

in

in Europe out of the king's dominions. If this were for his majesty's service, or the good of the subject, we should not repine, whatever were our sufferings: But, on my soul, it is the contrary for both; and this is the cause why no small or great vessels are built here. For we are most obedient to all laws, whilst the New-England men break through them, and trade to any place that their interest leads them to. I know of no improvement that can be made in trade, unless we had liberty to transport our pipe-staves, timber, and corn, to other places besides the king's dominions.

REMARK. The law did not prohibit what made Sir William so unhappy.

21. } No goods, either imported or exported, pay any duties here,

22. } only the 2s. a hoghead on tobacco exported, which is to defray all public charges: And this year we could not get an account of more than 15,000 hogheads. But of this revenue the king allows me 1000 l. yearly; with which I must maintain the port of my place, and a hundred extraordinary charges that cannot be put into any public account: And I can knowingly affirm, that there is no government of ten years standing but is allowed thrice as much; but I am supported by my hopes that his majesty will one day consider me. — There is no revenue arising to his majesty, but out of the quit-rents: And this he hath given away to a deserving servant, Colonel Henry Norwood.

23. The same course is taken here, for instructing the people, as there is in England: Out of towns every man instructs his own children according to his ability. We have forty-eight parishes, and our ministers are well paid, and by my consent should be better, if they would pray oftener and preach less: But, as of all other commodities, so of this, the worst are sent us, and we have few that we can boast of, since the persecution in Cromwell's tyranny drove divers worthy men hither. Yet, I thank God, there are no free-schools, nor printing; and I hope we shall not have, these hundred years. For learning has brought disobedience, and heresy, and sects, into the world, and printing has divulged them and libels against the best government: God keep us from both!

Virginia,

WILLIAM BERKELEY,

20 June, 1671.

CHAP.

## C H A P. XIV.

*The discontents of Virginia continue. — The assembly endeavours to remove the chief cause of them. — Sends deputies to England. — Their representation. — A charter of privileges ordered. — Bacon's rebellion defeats it. — Suppressed. — Subsequent acts of the assembly. — Charles II. sends aid to the governor. — He appoints commissioners to inquire into grievances. — Sir William Berkeley recalled. — Lord Culpeper appointed governor. — Proceedings of his assembly. — A fresh insurrection. — Suppressed. — The consequences. — Domestic industry encouraged. — The Revolution.*

**T**HOSE discontents of Virginia, which have already been remarked, not only continued, but seem to have swelled into disaffection, partly by the superaddition of fresh matter, but more by the inflammatory arts of the designing. The original emigrants now slept with their fathers, and they had been succeeded by a race of men, born within her forests, who were extremely uninformed, because no seminaries of instruction then existed in the colony, and who were therefore liable to imposition in proportion to their want of intelligence. Ignorant of their own rights, and sunk into that slothful repose, which never fails to produce a want of ardour in nations, similar to the listlessness of the individual, with their attendant infelicities, the Virginians were miserable, because they were uninstructed, and indolent, and poor. And, as they did not enjoy *the liberty of printing*, because no press then existed in the province, they could not ease their pain by giving vent to their indignation. Owing to these and former causes, two insurrections broke out in the beginning of the year 1675, which were easily suppressed by the prudent vigour of the governor, because they had been raised without sufficient grounds, and without any concert. The assembly, with a parental anxiety, still endeavoured, though in vain, to remove disorders that had hitherto baffled its utmost skill. It recollected, that Maryland had been early separated from that ancient dominion on the North; that Carolina had been lately formed out of the southern frontiers: It now

beheld *the northern neck*, containing one half of the whole, given away to strangers, who had shared neither the danger nor expence of the original settlement. During the extreme distress of the royal party in the year 1649, when, as it was afterwards said, Virginia was as little cultivated as Carolina in 1664, or Pennsylvania in 1680, that immense territory, lying between the rivers Rappahannock and Potowmack, had been granted to Lord Hopton, Berkeley, Jermyn, Culpeper, and other cavaliers; who, probably wished to make Virginia that asylum which their opponents had found in New-England. As the validity of the patent was probably questioned, it was surrendered in May, 1669, and Lord Culpeper, having purchased the shares of his noble associates, then obtained that grant which occasioned so much discontent; because he endeavoured to take possession of those plantations within it which had been long possessed and cultivated: And, in February, 1673, he obtained, from the improvidence of his prince, a lease for one and thirty years of the quit-rents, escheats, and other casualties, of the whole. The legislature feared, that the entire colony might be thus frittered away, leaving scarcely the beloved name of Virginia. In order to frustrate so dreadful a calamity, and to procure a redress of other grievances, it sent Moryson and two other agents to England in April, 1675. But, to defray the charges of a solicitation, on which so much depended, taxes unusual and weighty were imposed; which, as too often happens, fell heaviest on the poorest of the inhabitants. And we shall find that the means, which were thus employed to procure them relief, were used by the artful to inflame their discontents.

The agents seem to have executed the trust reposed in them with the greatest ability and address. To Charles and his ministers they represented: That the public revenue, arising from the customs on the productions of that colony, then amounted to one hundred thousand pounds a year; that the inhabitants, who now amounted, by the favour of the king, to fifty thousand, were the last who submitted to the Usurpation, and the first who had declared for the Restoration, whose posterity would deem it an honour and happiness to live in perpetual dependence on the crown of England; that grants had been obtained, under the great seal, of large tracts.



tracts of land, contrary to their interest and to the profit of the crown. They prayed: That the grand assembly might be enabled by a patent of incorporation to purchase the northern neck of the patentee; that all lands might be assured to the present possessors and owners, and escheats granted as formerly, at two pounds of tobacco for every hundred acres; that the governor and council might be empowered to hear and determine all treasons and other felonies; that the public officers might be obliged to reside within the colony; that there should be no imposition laid upon the inhabitants but by their consent in assembly; that Virginia might have no other dependence than on the crown, and might not in future be *cantonized* in parcels to particular persons.\* The crown-lawyers, animated by a strong sense of their merits or their wrongs, reported; that it would be equally for the king's service and the public good to grant, not only what was solicited, but other privileges which they then specified. The committee of plantations, at the same time that it was extremely desirous to reward the acknowledged loyalty of the Virginians, were not forgetful of the interests of England. In November, 1675, it confirmed the report with a few amendments: Adding, in the presence of the agents, this prophetic condition, with regard to the power of the assembly to levy taxes; "that this shall be no bar to any imposition which " may be laid here by the king in parliament."† Charles II. approved of the whole, with his usual facility, and ordered letters patent to be prepared. But the tediousness incident to public business, perhaps the intelligence, that had reached London, of the seditions in the colony, for some months prevented the completion of that important transaction: And the agents, presaging that some fatal accident might destroy all their labours and their hopes, petitioned, in April, 1676, that the charter, which had been for some time stopped, might pass. The privy-council, after some debate, granted their request. But certain information being received, that a rebellion had broken out in Virginia, the chancellor was ordered "to forbear putting the seal to the intended patent."‡ Thus were dashed the expectations of the agents; thus was for ever lost a grant of privileges, as ample as it had been justly merited: And here commenced a train of evils that long afflicted and well nigh ruined the plan-

tation. How often, alas! have the unworthy intrigues of the factious, or the thoughtless precipitation of the multitude, defeated the genuine good of the people! And how much more to be regretted is it, that they will continue to do so, notwithstanding the successive remonstrances of history!

Mean while the disaffection of the Virginians swelled, with its usual progress, to insurrection, which soon ended in avowed rebellion. The low price of their staple, which no art had hitherto been able to enhance; the improvident grants of land before-mentioned, which had given such just offence; the unusual taxes, which had been lately imposed on them by the assembly, and which the factious gave out would answer no good purpose, as the agents had been unable to procure a redress of their wrongs. All these are said to have been the afflictions of the colony, when a war with the Susquehannah Indians, who lived around the falls of Potowmack, which had some time raged notwithstanding the endeavours of the aged governor to suppress it, became more general and dangerous; the expence of which the people were taught to believe was intolerable. This last event was assuredly the immediate, though probably not the true, cause, of the rebellion, which broke out in June, 1676. Yet the mal-contents were for some months at a loss on whom to vent their indignation. For, "Sir William Berkeley, the governor, says their historian,<sup>s</sup> had been always industrious for the good of the country, against whom, in thirty-five years experience, there had never been one single complaint." Yet to his age and incapacity was attributed the long and unsuccessful continuance of the war, and with it the burdens of the people. But, amid the distractions of those times, he felt great consolation from reflecting, that, during the three last years, he had received no presents of the assembly. They at length determined to make the Indians feel the whole force of their resentment. Nathaniel Bacon, who had been taken prisoner during the insurrection of 1675, and pardoned, who had forgotten the mercy that was shewn him, now offered himself as their leader: Young, bold, seditious, eloquent, he was finely qualified to govern the unreflecting multitude, to lead them whither interest, or revenge, or ambition, pointed the way. Him they elected.

elected their general. And, in return, he assured them, that never would he lay down his arms till he had revenged their sufferings on their enemies, and redressed their grievances. To give, however, some colour to the authority which he had thus acquired, he applied to the governor for a commission, appointing him general against the Indians: But designs of a different kind were suspected, and, according to the accustomed policy of the weak, he thought it prudent to temporize. And Bacon, having gone too far to retreat with safety, being too vigorous to be easily disconcerted, entered James-Town with six hundred armed followers; and having "besieged the grand assembly, which was then convened to consult the great concerns of the country, he compelled it to grant whatsoever he demanded."<sup>6</sup> No sooner however had he retired, than it advised the governor to issue a proclamation, denouncing Bacon a rebel, and commanding his followers to deliver him up, and to retire to their habitations in peace. But, as might have been foreseen, the general and his forces were filled with the greatest indignation at that inconsiderate proceeding; and, instead of marching against the public enemy, instantly returned to James-Town. The governor, unsupported by any real power, and almost abandoned by all, fled precipitately to Accomack, on the eastern shore of the colony.<sup>7</sup> Thus vigour, address, and promptitude, will always prove successful: Timidity, irresolution, and want of concert, never fail to sap and overturn every government when attacked by rebellion.

That power, which Bacon had thus acquired, he employed with great address to add reputation and strength to his party. He called a convention of such gentlemen of the country as adhered to him. And, to justify their own and the general's proceedings, they published a declaration; which, according to the usual practice on such occasions, held up reasons to the vulgar that they did not feel. They inveighed: That Sir William Berkeley had fomented a civil war among the people; contrary to his trust, and without provocation; that he had abdicated the government, and had withdrawn himself, to the great astonishment of the country; that the army raised by the general was for the good of the public, who justified him in all his actions; that the governor having  
informed

informed the king, as was reported, that their commander and his followers were rebellious, and having advised his majesty to send forces to reduce them, it consisted with the welfare of the colony, and their allegiance to his most sacred majesty, that they suppress all forces whatsoever, till the king be fully informed of the state of the case, by such persons as shall be sent by Nathaniel Bacon. They obliged the inhabitants to take an oath of allegiance to that leader.<sup>8</sup> The wife exclaimed: That the pretences and practices of insurrection are at all times and in every country the same. But all remarked; that the manifesto, which ought naturally to have displayed the genuine reasons of their revolt, mentioned none of the original causes of their discontents; that it contained nothing but groundless accusations against a governor, "who had been the idol of the "people," and had been constrained by his situation and his duty to oppose seditions, which were as unjustifiable by any principle of law as of reason or common sense. Like recent declarations, that conduct of the governor, which was the necessary result of their own misconduct, was insisted on as the principal cause of their revolt: And, as the practices of men placed in similar situations are always the same, they found many advocates in England, and even within the parliament;<sup>9</sup> because the insurrection added to the vexation and embarrassments of their sovereign, without giving spirit to the rebellion.

The governor, in the mean time, having collected the well-affected, to whom he was liberal in promises, and being powerfully supported by the commanders and sailors of the English vessels which were then in that country, began to oppose the insurgents.<sup>10</sup> Several skirmishes were fought with various success, that were even then of little consequence, and deserve not to be now remembered. Few countries have suffered greater calamities from their wars, foreign or domestic, than did Virginia during the short period of that revolt. A party of the insurgents, with the improvidence and temerity natural to the rebellious, burnt James-Town, its capital.<sup>11</sup> Those districts of the colony which remained peaceable, and preserved their fidelity, were laid waste by the mal-contented with a rage that civil discord alone can inspire. The estates of the loyalists were confiscated, as justly forfeited to them by their opposition,

opposition, and appropriated for carrying on the war; and women, whose fathers or husbands obeyed what they deemed the legal government, were forcibly carried along with the soldiers, without regard to the delicacies of the sex or the tenderest relations of nature." The governor, in his turn, retaliated on the insurgents. He seized the estates of many; he executed several of their leaders by martial law, either as the dictates of resentment or as the implacable calls of domestic contention prevailed. Amidst all these evils, with which his ambition or revenge had cursed his country, Bacon, happily for himself and it, unexpectedly sickened, and died. And there being among his followers no one tolerably qualified to supply his place, with the death of their general the flames of war expired. Thus ended, in January, 1676-7, this inconsiderate insurrection; which, in Virginian story, has acquired the name of Bacon's rebellion; with "the loss, as we are assured, of one hundred thousand pounds to the colony." "What were the real designs of that famous leader and his chief confidants it seems now impossible to discover: But there were not wanting eye-witnesses, perfectly acquainted with his character and actions, who asserted; "that they intended to seize the government of Virginia into their own hands." Perhaps, like all other insurgents who have figured on the theatre of the world, they proposed to take advantage of circumstances, as they should arise, to promote their private views. An assembly was convened in the subsequent February, which seems to have been partly governed by the revengeful spirit of triumphant party, but more by an unforgiving sense of wrongs, mutually given and received. It attainted Bacon and a few of his principal officers; it inflicted pains, penalties, and fines, on great offenders; it granted an act of indemnity and free pardon to others; it passed an act for the relief of such loyal persons as have suffered loss by the late rebels; it set apart a day of thanksgiving and humiliation; it declared void the proceedings of the assembly which had been constrained by the threats and violence of Bacon.<sup>14</sup> But the laws, which were now passed, were afterwards disallowed by Charles II. because they were deemed contrary to his proclamation of October, 1676:<sup>15</sup> And the act of attainder

was

was deemed void in the creation, though unjustly, for a defect of power in that subordinate legislature.

That monarch was no sooner informed that a rebellion had overthrown his government, at a time when he was rewarding with a liberal hand the former loyalty of the Virginians, than he adopted every measure that wisdom suggested or vigour could execute. He dispatched Sir John Berry with a small fleet, which transported the first troops ever sent to Virginia, to the assistance of Sir William Berkeley; with orders to proceed against the rebels with all speed.<sup>16</sup> He issued a proclamation,<sup>17</sup> to be published within the colony; the contents of which are extremely remarkable: It declared Bacon, and his followers, traitors, and required every one to apprehend them; offering a reward of three hundred pounds to the person who should seize him:<sup>18</sup> But it granted pardon to all who should take the oath of obedience and give security for their future good behaviour: Copying the vigorous conduct of the commonwealth, on a similar occasion, it offered freedom to such servants and slaves of rebels as should serve as soldiers for suppressing the revolt. In order to prevent one cause of complaint in future, it asserted, “that he had reduced the wages of assembly-men, so that they might be no longer burdensome.” He laid an embargo on vessels bound to Virginia.<sup>19</sup> He wrote letters to the several colonies; commanding them neither to aid, nor conceal, Bacon, whom he described as the sole promoter of the insurrection.<sup>20</sup> He appointed Sir John Berry, Colonel Jeffereys, who was then nominated lieutenant-governor, Colonel Moryson, who had been one of the colonial agents, commissioners, “to inquire, and to report those things that have occasioned the late distractions:” Giving a reason, worthy of a king of freemen; “that redress may be given of grievances, to us unknown, because of the distance.”<sup>21</sup>

When the commissioners arrived, in April, 1677, they found the colony settled, after such a paroxysm of frenzy, into its former repose; and, as there was now no field for displaying their military talents, they had an opportunity of exhibiting ample specimens of their civil abilities. Colonel Jeffereys immediately issued a proclamation; giving notice of his own appointment and of the recal of Sir William Berkeley. Having governed

governed Virginia forty years, in times of great difficulty and danger, with a high reputation, this gentleman lived not to see his sovereign, that he might have spoken his own justification, and claimed the reward of his long and faithful services. Some time after he had ceased to be an object of flattery or of hate, the assembly declared, in expressions which did honour to both: "That he had been an excellent and well-deserving governor." It recommended, to the common sovereign of both, the payment to Lady Berkeley of three hundred pounds, "as not only a right, but as due from that colony to his services and merits."<sup>22</sup> What honourable testimonies! What encouragement to all future governors to follow the example of Berkeley, in order to merit similar rewards!

The only remarkable event of the short administration of Jeffereys was, the conclusion of the Indian war which had so long raged, which had given rise to such calamitous events, by a peace that was approved by his sovereign, "as equally for his service, and for the security of his subjects."<sup>23</sup> The commissioners, who seem to have carried with them the strongest prepossessions in favour of the insurgents, because their cause was popular in England, executed the important trust confided to them, with a greater degree of zeal than of temper and knowledge. They began their inquiries, according to the usual practice of men raised to sudden elevation, by censuring the conduct of the governor and council, though composed of men of the greatest knowledge of the affairs of the colony. They represented the imprudence of the governor, as having chiefly contributed to raise the storm, which had laid waste the province, and brought it to the verge of ruin.<sup>24</sup> They insisted, that the activity of some of the counsellors was a rashness, which rendered them unfit either for that elevated station, or for farther employment.<sup>25</sup> And the loyalists, who had sacrificed their estates and their blood at the altar of duty to their prince, and of attachment to the laws, they discountenanced as men who deserved not favour, because the greatest favours were unequal to their merits.<sup>26</sup> Having "sent about the country to desire the people to bring in their grievances without fear," almost every district, and every man, exhibited afflictions, that were as different from each other, as they were all dissimilar to the original complaints of the colony. The happy county

of Westmoreland said that it felt no grievances. Accomack claimed, as a reward of its loyalty, an exemption from taxes for one and twenty years.<sup>27</sup> Yet the intemperance of the commissioners introduced an evil of greater political magnitude than any that their solicitations had been able to procure. "They forced the records of the assembly from its "clerk:" And, with a jealousy and discontent, which popular conventions can alone feel, or resent in proportion to their feelings, the burgesses, who were convened by Jeffereys, in October, 1677, "demanded "satisfaction of him for their injured privileges;" insisting, with a spirit uncommon in that age, "that such a breach of privilege could not be "commanded under the great-seal, because they could not find that any "king of England had ever done so in former times." Yet, at a subsequent period, Charles II. in a strain of language which would have done honour to the reign of his grandfather, ordered Lord Culpeper, the succeeding governor, "to signify the royal indignation at this seditious declaration, and to give the leaders marks of the royal displeasure."<sup>28</sup> The wife among them remarked, "that impotent expressions of resentment, which are unworthy of men, are always degrading to kings." The governor, however, found it necessary rather to conciliate the goodwill of the burgesses, than to revive the spirit of animosity, by attempting to obey what he had not power to perform.

The commissioners soon returned to England; leaving the colony in a ferment; because their conduct and principles had pleased neither party. The loyalists were highly offended, because they not only felt themselves neglected, notwithstanding their merits and sufferings, but beheld their own and their sovereign's enemies caressed: And the mal-contented, whom it was impossible to gratify, because their principles prompted them to make new demands, in the late breach of privilege thought they saw cause to fear for the future. Jeffereys being also dead, the administration devolved on Sir Henry Chicheley, as lieutenant-governor; who was now worn out in the service of his country. The colony seems to have sunk into that lethargic state of debility, which never fails to succeed great public convulsions, and which is generally the more deplorable, because



caufe no remedy, except time and perfeverance in a prudent line of conduct, can either mollify or eradicate the difeafe.

In the mean time, however, new grievances were fuperinduced upon the old. Partly owing to his negligence, but more to the real poverty of Charles II. no money was remitted for paying the few troops which had been carried thither by Sir John Berry, and which were billeted on the inhabitants, and now lived at free quarter: "So that his majefty's fubjects and foldiers, faid the governor, are equally diftreffed." The quit-rents of Virginia feem to have been at all times negligently collected; but being altogether refigned to neglect, during the three laft years of diftraction, the arrears, "amounting to a vaft fum, if rigoroufly collected, would have now fallen heavy upon all, and efpecially upon the pooreft." To be relieved from thefe afflictions, the affembly which convened in April, 1679, reprefented to that monarch: "That the late intestine divifions of the colony, together with the charges of a tedious war with the Indians, have reduced it to a poor and diftreffed eftate;" that, out of the fmall remnants of its ftock, it had furnifhed his foldiers with neceffaries; and, as in duty it was bound, it fhould continue its care of them, till he fhall commiferate its condition: And, in confideration of its late loffes, it foli-cited from his royal goodnefs a remiffion of all arrears of quit-rents, which the poverty of the colony could not difcharge; and that they might be appropriated in future to the defence of the frontiers." Thus did Virginia gather the harveft of woes, that difcontent had formerly fown: And thus were the people afflicted with thofe evils, which the interefted arts of the factious had begotten on their own credulity.

But, before the friendly representations of the good old governor, or the addrefs of the affembly, arrived, Charles II. had often recon- sidered the lift of grievances which the minute diligence of his commiffioners had procured." And, though many of them were of a nature that it was impoffible to relieve, yet others were attended to and redreffed. The improvident grants before-mentioned were recalled. The quit-rents were taken into the royal hands, and they were ordered to be applied in future to the defence of the colony. The arrears, which appeared fo

vast and so terrible to the colony, were appropriated for satisfaction of the debts of the soldiers; who were in future to be supported without any charge to the country. And these salutary measures were punctually executed, and assuredly proved decisive: For “the different interests of the colonists were settled by the succeeding governor; the quarters of the troops were paid off;” and the long enumeration of miseries, which had been lately so much deplored, was reduced, before July, 1680, to one; “the low price of tobacco.”<sup>11</sup>

Though Lord Culpeper had been appointed governor of Virginia upon the decease of Sir William Berkeley, he seems not to have been impatient to take possession of that important charge. His procrastination offended even the facility of Charles II. and an order was issued, in December, 1679, “checking that nobleman for not going on-board.”<sup>12</sup> Among other particulars, he was instructed to call an assembly; which was empowered to establish regulations, that should be neither contrary to the laws of England, nor enforced till they received the royal assent; to raise taxes upon urgent necessity, without special direction or transmission of the acts: And he was directed to advise the assembly to discover a mode of taxation less grievous than that of a poll-duty, which had been lately complained of; to suffer no counsellor, who should be displaced, to be elected a burgess. The loyalty of Accomack, which had protected the governor in the hour of his distress, was not, as had too often happened during that reign, consigned to oblivion; and he was ordered to reward it with a grant of special favours:<sup>13</sup> But the acknowledgement of its merits seems to have been the only recompence which it ever enjoyed.

When the governor arrived, in May, 1680, “he found the country in peace, all things in good order; except the low price of its staple,” which bade fair to desolate the colony.<sup>14</sup> He immediately convened the assembly; and before it he laid the several bills that had been framed in England, and transmitted under the great-seal.<sup>15</sup> The only laws, which, agreeably to the wisdom of the English constitution, are framed by the royal hand, are those of grace: And there was now accordingly proposed to the assembly, as the first object of its attention,

“an

“ an act of free and general pardon and oblivion.”<sup>36</sup> It recited the late rebellion, and the repentance of the colony : It pardoned all crimes and misdemeanours committed antecedent to January, 1676 ; and restored all estates to the owners, as freely as if they had never been forfeited : But it very properly excepted Bacon, “ the principal contriver” of the revolt ; several persons who had been legally convicted and executed “ for their horrid treasons ;” Richard Laurence, “ who had fired James-city,” and a few others, if they should exercise any office within the colony. For avoiding endless prosecutions, all wrongs committed during the rebellion were discharged, nor was any satisfaction to be required or given ; except where the goods of persons, not actually engaged in it, had been wrongfully taken away, and were found in the possession of any one. It provided that no farther punishment shall be inflicted on Christian servants, who had deserted and been active in the rebellion, than that the period of their absence shall be accounted no part of their time of service. And reciting, that, during the licentiousness of late times, ill-disposed persons had taken upon them to asperse the government, without which the inhabitants could not have been so easily led away ; it imposed severe penalties on those who shall maliciously stir up the people to a dislike of the governor, or who shall by words or writing defame the administration of the colony.<sup>37</sup> Similar laws against “ the propagation of false news,” arising from the situation of dependent territories distant from the seat of government, occur among the more early acts of assembly of all the colonies.<sup>38</sup> Happy would it have been for them, perhaps, and for the empire, had they at all times been vigorously executed. Never did any country suffer so much as these plantations from the misrepresentations of party, or the falsehoods of the interested.

The attention of the assembly was next directed to “ an act for raising a revenue for the support of government.”<sup>39</sup> And, for this purpose, it imposed two shillings sterling on every hoghead,<sup>40</sup> or five hundred pounds of tobacco exported, fifteen pence sterling a ton on every vessel coming into the colony, and six-pence a poll for every person imported ; but it expressly provided, “ that these duties shall not be  
“ levied.

“ levied on Virginian owners of vessels.” And the acts, which imposed similar duties in the year 1661, were repealed. This law is no less remarkable for having commenced with the king, though it was a money-bill, than for exempting those, who, according to modern principles, ought to have been the only objects of taxation. When the acts of that assembly, “ which did not pass without difficulty,” were transmitted by the governor to the committee of plantations, the proviso in favour of Virginian owners was extremely disapproved of by them: Assigning a reason, worthy of the guardians of the general trade of the empire; “ that it was irregular and unequal, giving greater encouragement to ships belonging to the colony than to those of his majesty’s other subjects; and, there being no such difference put upon Virginian owners here in England, similar exemptions shall not be allowed of in future.”<sup>41</sup> Yet, however just was this reasoning of the committee, and however contrary to the custom of parliament, which makes no other difference in imposing taxes than between subjects, wheresoever resident, and aliens, this mode of taxation, so contrary to their own doctrines and pretensions during late times, has been assuredly uniform in all the colonies, from their emigrations to the present days.<sup>42</sup>

From those important regulations, the assembly turned its views to “ the presentation of grievances.” And, having remarked, “ that it had been too frequently the practice of ill-disposed persons to deliver to their burgessees, and they to the assembly, seditious papers, and to entitle them the grievances of the inhabitants;” it enacted: That the sheriffs shall, in every county, appoint a time and place, before each assembly, for receiving all grievances, which shall be signed by the party grieved, and attested by the chief magistrate.<sup>43</sup> Nothing can evince more clearly, than does this law, the practices of former times to promote discontent, and how little that assembly was governed by party motives, at the same time that it entertained a just regard for the interests of its constituents.

The assembly endeavoured to promote the true interest of Virginia by other salutary laws. It passed acts “ for a general naturalization of foreign reiguers;” for “ cohabitation, and encouragement of trade and manufactures;”

“ manufactures;” which were, however, dissented to in England, because they were deemed “ of bad consequence to the collection of his majesty’s revenue of a penny a pound on exported tobacco;” for “ the continuation of the garrisons at the head of the four great rivers;” for “ licencing a free trade with the Indians.” It transmitted at the same time an address to Charles II. It represented the low price to which had fallen the only staple of the colony: It prayed; that he would prohibit, by proclamation, the planting of it for one year in Virginia, Maryland, and Carolina; thus unwisely soliciting a king of England to exert an authority which the constitution had not given him, and which, were it executed in the present times, would spread through the colonies universal insurrection: It implored him to remit to those, who should constantly reside in towns, the custom of one penny a pound, payable on tobacco; thus admitting the legality of the tax and the constitutional authority of that power which imposed it: It asked for leave to enhance the value of coins five and twenty in the hundred. And thus have we seen the disorders which then afflicted Virginia, and the remedies which the legislature thought it prudent to apply.

The administration of Lord Culpeper is remarkable for a signal change in the jurisprudence of that colony. The assembly seems to have acquired, in early times, what it asserted it had always enjoyed, the power of ultimate appeal from the provincial judicatories. But the burgessees insisting at length, with the usual spirit of such men, that the counsellors ought not to vote again in a cause which they had already determined in the general-court, the inconvenience of admitting the sole power in the representative branch of the legislature was seen and dreaded: And that nobleman was instructed, notwithstanding the opposition of the burgessees, to allow of no appeals from the general-court but only to the king in council. The same instruction, owing to this unconstitutional pretension, was continued to all future governors of the transatlantic provinces. He at the same time wrested from the house of burgessees the undoubted right of appointing their own clerk, which they did not regain till the reign of Anne. From trivial facts may be often investigated important principles: What must have been the power or the  
spirit

spirit of the representatives of the people, when they suffered a governor to appoint their confidential officer! Lord Culpeper having thus settled the affairs of Virginia, and promoted his own views, departed for England in August, 1680: Leaving the colony in one of those treacherous calms that often forbode a storm.

Notwithstanding every endeavour of the assembly, a bitterness of spirit remained, which unhappily prevented the return of former good humour or of peace. And though a variety of regulations were established at a subsequent session, “for encouraging its manufactures, for the advancement of its native productions;” no remedy had been found for the low price of its staple which had been so long and feelingly deplored. A new and extraordinary cure for this inveterate evil was attempted in May, 1682. Many of the inhabitants, in order to render farther increase impossible, and incited by those who hoped for gain, associated to destroy the tobacco-plants which were preparing for fresh crops. They destroyed their own property, and would assuredly have laid waste that of the whole but for the prudent and vigorous interposition of the lieutenant-governor,<sup>44</sup> who soon re-established tranquillity: And patrols of horse, through the disaffected counties, preserved the public quiet and order, though the same causes of discontent continued with similar dispositions. Charles II. no sooner heard of this unexpected insurrection than he ordered Lord Culpeper, the governor, to repair thither; and, for the preservation of the dignity of the laws, to punish the most active of the insurgents.<sup>45</sup> “Some notorious actors” were indicted for high-treason, and executed. “And thus, says the assembly, they suffered such punishments as for their crimes and rebellions they justly deserved.”<sup>46</sup> This judgement of the legislature, with regard to the nature of that offence, is perfectly consonant to that of the great luminary of the law; who assures us:<sup>47</sup> “That, if any attempt, by force, to deliver men out of all prisons, to cast down all enclosures, or to any other end, pretending reformation of their own heads, without warrant, this is levying war against the king, because the pretence is general and public, and not private.” The assembly, impressed with the enormity of such associations, “declared it high-treason for eight or more persons, being as-  
 “sembled

“ fembled with intent to deftróy tobacco, and being commanded by a “ magiftrate to difperfe themfelves, fhall continue together four hours.”<sup>48</sup> And this fevere law, which neceffity only could dictate or juftify, demonftrates the unhappy temper of the times, when Virginia fuffered for her former follies or crimes. The feverity of example and the terrors of the law long preferved internal peace; and the people, by a natural progrefs, fell into that ftate of quietude which is little fuitable to the activity of man, or promotive of that ardent fpirit which carries a nation on to wealth and greatnefs.

Lord Culpeper no fooner returned a fecond time to England, contrary to his orders, and without leave, than he was ordered into confinement. He was accufed of having acted inconfiftent with his inftructions, and of obtaining from the affembly a grant of five hundred pounds out of the revenue for the fupport of government; the grant of which the committee of plantations infifted was illegal: Affigning this fingular reafon, “ that it had no power to give away what had been already appropriated by law.” And his commiffion being for life, an inquiry of a jury of Middlefex declared it forfeited, and the profits of his office to be now invested in the crown.<sup>49</sup> This probably is the only commiffion, if we except that of lord Delaware before-mentioned, of a governor for life, to be met with in colonial annals: And the imprudence of the meafure was the genuine caufe of that nobleman’s ruin. Owing to this caufe, probably, all future commiffions were given during pleafure.

Lord Effingham was appointed governor of Virginia in Auguft, 1683: And to him were given fimilar powers and inftructions to thofe of his predeceffor; which were varied only by the difference of time and the change of circumftances. He was ordered, agreeably to the prayers of Sir William Berkeley, “ to allow no perfon to ufe a printing-refs on any “ occafion whatfoever.” A mandate, however, which was fo unfriendly to the interefts of freedom, was nothing more than the continuance of a regulation that the council of the colony had formerly made, and was no uncommon exertion of its powers during that fad period of Virginian annals.<sup>49</sup> With that nobleman was fent a frigate, in order to enforce the

acts of navigation; which, during late times, had been considerably difregarded.

The governor called an assembly in April, 1684. It endeavoured, with a laudable sollicitude, to promote the prosperity of the province by a variety of useful regulations.<sup>51</sup> Agreeably to a former recommendation, it now passed “an act for lessening the poll-duty, by laying an imposition on liquors.” It raised the general credit of the colony, by declaring, “that debts contracted in Maryland and Carolina shall be recoverable in Virginia by the same lawful means as if contracted there, notwithstanding any law to the contrary.” It encouraged domestic industry, by passing “an act for the advancement of manufactures of the growth of the colony;” which however was disallowed by the committee of plantations, because it was deemed contrary to the acts of navigation. It enhanced the price of its staple, by obliging the inhabitants to make it really more valuable. It provided “for the better defence of the country; for the better preservation of its peace.” Thus did the assembly sow the seeds of future prosperity, which Virginia reaped abundantly at a happier period. Lord Howard soon after went to New-York, in order to make peace with the Seneca Indians, whose depredations had for some time infested the frontiers of his province; which, by freeing the colonists from a war, of all others the most to be avoided, enabled them to profit from the salutary regulations before-mentioned.<sup>52</sup>

James II. was proclaimed in that ancient dominion “with extraordinary joy;” which, however, was not of long continuance. The Virginians soon heard, with regret, that the first parliament of that reign had imposed a tax on the consumption of their only commodity. Yet, according to the accustomed practice of those who are governed by their prejudices, they deplored, as an evil, what ought to have given them satisfaction, as the greatest good. For the duty, by raising the nominal price of the merchandize, in some measure augmented its real value. And, actuated by these motives, they supplicated that prince for a suspension of the duty before-mentioned, in expressions of submission which did little honour to either party; but in vain. While, under the influence of their hopes and their fears, they affected to rejoice when they

heard;



heard of the defeat of Monmouth, they presented an address of felicitation on that event: Yet, by receiving into their families his convicted followers, who were transported thither as servants, the colonists were put in constant remembrance of the past, and of events to come: And they made no law, conformably to the orders of their prince, to prevent the unfortunate from redeeming themselves from a ten years servitude, which to freemen was a punishment more severe than death.<sup>53</sup> Seldom have the views of the colonial planter and the English merchant been exactly the same, though their true interests have generally been so. The traders to Virginia and Maryland complained to the committee of colonies, in August, 1687, of the exportation of tobacco in bulk, as equally contrary to the interests of the royal revenue, of the navigation of the kingdom, and of fair commerce: And letters were transmitted, recommending to the assemblies to enact a law for the prevention of an evil which was deemed so extremely pernicious. But the legislature, animated by ancient prejudice, rather than by just attention to the real interests of the people, refused to concur in a measure which would have assuredly raised the value of a staple, the degradation of which had so long distracted the colony. The parliament, during the subsequent reign, established that regulation which the assembly now mistakingly denied to the wishes of the merchants and the recommendations of their common sovereign.<sup>54</sup>

Lord Effingham is said to have solicited his commission "with the same resolution, to get money, as his predecessor had done." He established new jurisdictions at the same time that an appeal was denied to the assembly: He appointed the fees of a variety of officers, which, we are assured, "he shared with his clerks."<sup>55</sup> He at length became uneasy among a people by whom he was not perfectly beloved: And, with the permission of his prince, he returned to England, in the beginning of the year 1688. He was accompanied by Ludwel, as agent for the assembly, in order to complain of his conduct. But, before they arrived, a mighty change had transferred the allegiance of all parties to new sovereigns. Some of the colonial grievances were redressed, because they were well founded; others were explained, because they arose from

the mistakes of the assembly in a point of English law.<sup>56</sup> But it ought to be remembered, that most of the disputes of free states, during their infancy, proceed from the discordant claims of the different branches of their constitutions, before time and precedents have fixed the limits of each, and given consistence to the whole.

Though the Virginians, during the reign of James II. recovered in some measure from the distractions of former times, they made no progress in the re-establishment of their English liberties. They were then governed by the same arbitrary hand as that which ruled in England. They enjoyed little personal freedom, because they were allowed no remedy when improperly restrained. Being deprived of the liberty of the press, they were bereaved of the last resource of the miserable, the power of complaining. And they seem to have little interested themselves in those important events which obliged them to obey new monarchs, though their consent had not been asked when their allegiance was changed; because, from the former, they hoped for no good; from the present they saw cause to fear for the future.

#### AUTHORITIES AND NOTES.

<sup>1</sup> Brit. Emp. Am. 1 v. p. 251; and see all these facts in Virg. papers, 3 v. p. 25-94.

<sup>2</sup> See the petition and report in the Virg. Ent. 2 v. p. 33-8.

<sup>3</sup> Journal in Plant. Off. vol. 1. p. 71.

<sup>4</sup> Virg. Ent. 2 v. p. 40-6-56. A patent was granted in September, 1676: But it contained few of the important privileges which had formerly been conceded. It granted, out of special grace, that Virginia shall always be dependent on the crown of England, and ruled by a governor, who should be appointed by the king, and reside within the province; that the present possessions shall be confirmed; that fifty acres of land shall be granted to every emigrant, for the encouragement of settlers; that escheats shall be confirmed, as formerly, at the rate of two pounds of tobacco for every hundred acres; that the governor and council shall be a court of oyer and terminer for the punishment of crimes;

crimes; that, in case of any doubt, the charter shall be explained in favour of the colony. — From *Virg. Ent.* 2 v. p. 94.

<sup>5</sup> Present State, p. 66. *Brit. Emp. Am.* 1 v. p. 250-3.

<sup>6</sup> Laws, p. 113. This assembly was pardoned, under the great seal of England, for consenting to laws, and granting a commission to Bacon, for fear of life. — *Virg. Ent.* 2 v. p. 91.

<sup>7</sup> Present State, p. 74. — <sup>8</sup> *Ib.* p. 74-6. — <sup>9</sup> *Mod. Un. Hist.* 41 v. p. 358.

<sup>10</sup> *Virg. Ent.* 2 v. p. 274. — “ *Brit. Emp. in Am.* 1 v. p. 257.

<sup>11</sup> *Extract of a letter from Colonel Ludwel, secretary of Virginia, who saw what he describes, to Mr. Secretary Coventry. Dated 10 April, 1677.* — *Virg. Ent.* 2 v. p. 152.

“ I am of opinion it will appear, that the grounds of this rebellion have not proceeded from any real fault in the government, but rather from the lewd disposition of desperate fortunes lately sprung up amongst us, which, meeting with people of like inclinations, easily seduced their willing minds from their allegiance to their king, and indeed from all fear of God or man, laying before them the plunder of the best part of the country, in the vain hopes of taking the country wholly out of his majesty's hands into their own. But, by the prudent conduct of the governor, with the assistance of the few that obeyed him, the rebellion was checked, and the country reduced to its obedience. Bacon never intended more by the prosecution of the Indian war, than as a covert to his villainies. The commissioners sent all about the country to desire the people to bring in their grievances without fear: — If, to have their whole estates seized and confiscated, and presently carried away: If, burning of houses, with their corn, and provisions, to the ruin of whole families, where the men were loyal, by a formal pretence of law and justice, as being traitors to the country for opposing them in their destructive actions; submitting all law, reason, and justice, to *sic volo, sic jubeo*, written with their swords: If, to have the honour and reputation of those loyal persons, that stood to maintain his majesty's interest here, prostituted to the base liberty of every scurrilous tongue: If, torturing people with exquisite torments for what their laws thought faults: If, ravishing,

ravishing of women from their homes, and hurrying them about the country in their rude camps, often threatening them with death, because their husbands and fathers obeyed his majesty's lawful power here: If these, and many more like these, are grievances, then, I do assure you, there is a truly distressed party in Virginia."

<sup>13</sup> Brit. Emp. Am. 1 v. p. 255-7. The whole value of warlike stores, sent to Virginia by Sir John Berry, amounted to 11,178l. 3s. 7d. sterling. — Virg. Ent. 2 v. p. 77.

<sup>14</sup> Laws, p. 113-14. — <sup>15</sup> Virg. Ent. 2 v. p. 224-7. — <sup>16</sup> Ib. 121-6. — <sup>17</sup> Ib. 115-16. — <sup>18</sup> Sir William Berkeley was ordered to send Bacon to England for trial. — Ib. 111. — <sup>19</sup> Ib. 134-5. — <sup>20</sup> Ib. 115-6. — <sup>21</sup> Ib. 83.

<sup>22</sup> Ib. 145. See the addresses to Charles II. in Virg. Pap. 75 B. 411-12. Sir William Berkeley's memory was defended, against the misrepresentations of the commissioners, by his brother, Lord Berkeley. The defence is in Virg. Ent. 2 v. p. 230; and see Journ. Plant. Off. 2 v. p. 77-105. — <sup>23</sup> Ib. p. 131.

<sup>24</sup> The following are the causes of Bacon's rebellion, which were assigned by the commissioners. — From Journal, Plant. Off. 2 vol. p. 170-6-8.

" 1stly. Stopping the expedition of Brent and Mason against the Indians, and the murdering of five Indians by the frontier inhabitants, were the principal causes. 2dly. There was not sufficient care taken to subdue the Indians. 3dly. The people thought the reason why the governor would not appoint a general against the Indians was owing to present interest of his, and they appointed Bacon. 4thly. The governor pardoned him when taken prisoner, and admitted him to be a counsellor. 5thly. He promised him a commission as general, which raised the expectations of the people; and, when Bacon retired from James-town, they flocked from all parts to join him, and compelled the governor to grant it, which induced them to consider it as legal."

<sup>25</sup> Virg. Ent. 2 v. p. 210. — <sup>26</sup> Ib. 204. — <sup>27</sup> Journal, 2 v. p. 170-182-192. — <sup>28</sup> Virg. Ent. 2 v. p. 272.

<sup>29</sup> *Extract of a letter, dated 20 May, 1679, from Lieutenant-governor Sir Henry Chicheley, to Mr. Secretary Coventry. — From Virg. Ent. 2 v. p. 360.*

“ The inclosed is a letter from the grand assembly of Virginia to his most sacred majesty, being a compendious narrative of this country's sufferings, and our humble supplications for such relief as to his majesty shall seem meet. Upon which I beg leave to enlarge in this address to your worthy self, to whose province the affairs of this province do properly belong, and of whose justice and favour, to our low and calamitous condition, myself and the whole country are well assured, by many past instances. This present session, the assembly received complaints from the counties of Isle of Wight, Nansemond, York, and James-city, in relation to the quartering of his majesty's soldiers. The two first named, by virtue of a warrant from the late lieutenant-governor, having received commission to quarter and provide for Major Mutlow's company, from the 14 July, 1677, till 16th January following, for which they are still indebted to the said inhabitants the full and just sum of 249l. 6s. 3d. The two last mentioned have yet had no satisfaction for twelve months quarters and provisions, allowed to his majesty's soldiers, now under the command of Captain William Morris, whose pay for no part of that time is yet arrived. So that his majesty's subjects and soldiers in this colony are equally distressed. To this may be added, that our late troubles and distractions, with the frequent incursions of Indians for these three years last past, and recent murder of our frontier people, hath so much impaired our stocks, that the remnant of them will barely give assistance for defence of the colony and support of our families. I therefore humbly beg your honour, that, in consideration of the vast charge the inhabitants of this colony have been and daily are at for preservation of this weak and depopulated place, you would be pleased to further our humble motion to his majesty for release of all arrears of quit-rents, which, having been so long due, and amounting to so vast a sum, would otherwise fall heavy upon all, and especially the poorest; with this addition, that, for such time as may be agreeable to his majesty's royal compassion, the  
money,

money, growing due from the same, may be appropriated to defray part of the expence necessary for our safety. I am, &c.

HEN. CHICHELEY."

*Address from the assembly, inclosed in the above.*

" May it please your most excellent majesty.

The late intestine divisions of this your majesty's colony of Virginia, together with the charges of a tedious war with the Indians, who daily make incursions, and sometimes murder, upon us, have reduced us to a poor and distressed estate, and enforced us to interrupt your majesty's most weighty affairs with this our humble supplication on behalf of your majesty's soldiers and ourselves. The first of which we have, out of the small remnants of our stock, furnished with what is necessary for a twelve-month past, and, as in duty bound, shall continue our care towards them until your majesty shall be pleased to commiserate both our conditions; and, in regard of our great losses we have lately sustained, we hope your royal goodness will pardon our request for remission of all arrears of quit-rents due to your sacred majesty, and for the supply of the excessive charges we must necessarily undergo in the defence of our frontiers, that for such time as your royal wisdom shall allow the same to be to that use appropriated. — That your majesty may be protected by the King of kings from all temporal and spiritual enemies, and reign long in peace and prosperity, are the incessant prayers of, &c.

HEN. CHICHELEY.

MATTHEW KEMPE, speaker."

REMARK. The soldiers before-mentioned were the first regular troops sent to the colonies for the suppression of a revolt. It was determined, in November, 1681, to disband them, " unless the assembly will pay them." — Journ. Plant. Off. 3 v. p. 308. — And they were soon after paid off.

<sup>30</sup> Journ. Plant. Off. 2 v. p. 73-170-182-276-8-283-92. — <sup>31</sup> Virg. Ent. 2 v. p. 268-9-364-384. — <sup>32</sup> Ib. 230-375. — <sup>33</sup> Ib. 330-40. — <sup>34</sup> Ib. 379-85. — <sup>35</sup> Ib. 395. — <sup>36</sup> Laws, p. 129. — <sup>37</sup> Ib. 132.

<sup>38</sup> Ordinances of New-England abridg. p. 67-8; Pennsylv. Laws, appendix; Laws of Maryland, 1671, ch. 4. " Thou shalt not raise a false  
" report,"

“ report,” was the precept of Moses. — Exod. ch. 23. v. 1. — And this salutary rule was vigorously enforced by a law of Alfred, that admirable founder of the jurisprudence of England; which declared, “ That who-  
 “ soever spreads a false report among the vulgar shall have his tongue  
 “ cut out.” — Observ. ancient Stat. p. 257. — “ Laws, p. 133.

“ The amount and appropriation of this duty, in the year 1675, was as follows.

Money collected on 23,036 hhds. of tobacco exported, at 2s. a hhd.  
 is - - - - - £.2303 12 0

Paid out of this sum — namely :

The governor's salary, by the royal instruction,	£.1000	0	0
Ditto, by the assembly, in lieu of 10s. a hhd.	- 200	0	0
Allowed the council by ditto	- - - - - 250	0	0
Charges of collection	- - - - - 314	19	2½
Auditor's salary, at 5 per cent. on £.1988 12 9½	- 99	8	7½
Incidental charges	- - - - -		
Balance in favour of the colony	- - - - - 439	4	2
		————— £.2303 12 0	

The collection was, in the year 1676, on 25135 hhds of tobacco exported; and the appropriation was exactly similar, except as to casual expences. But these were far from the whole of the taxes levied on that colony by the authority of the assembly, exclusive of parliamentary duties, or all its provincial disbursements.

The assembly of 1676 stated the public account thus :

Various internal charges	- - - - - 753,669	cwt. of tobacco.
The maintenance of eight forts	- - - - - 387,270	

Total, 1,140,939 at 10s. per cwt.

When the paucity of the inhabitants is considered, this must be allowed to have been a taxation of considerable magnitude: Had it not been paid in kind, and in a commodity which was not then of great value, it would have been insupportable. The sum remitted to England, in the year 1675, to defray the expences of the agents, was £. 2895 13 10 sterling; which was appropriated by the assembly, in the subsequent year,

“ for satisfaction of the public debts.” — See all those accounts detailed in *Virg. Ent.* 2 v. p. 165-7-174-7-138-9.

“ *Ib.* 384-5-8-94. — The whole custom on tobacco from Virginia, collected in England in the year 1676, was £. 135,000; of which was exported to the amount of £. 35,000: Probably Maryland was included: — *Ib.* 240.

“ Already have we remarked the commencement of the practice, of exempting those who were, and of imposing the duty on those who were not represented, in the provincial legislatures of Virginia, of Maryland, of Connecticut, soon after the Restoration. By the ancient ordinance of Massachusetts, all ships anchoring in any port of the jurisdiction were obliged to pay half a pound of gunpowder for every ton, “ excepting “ such ships whose owners are inhabitants of this country.” — Ordinances abridged, p. 90. — A tonnage duty was imposed by the assembly of Rhode-Island, in the year 1704, on all vessels “ not wholly owned “ by the inhabitants of this colony.” — *Laws*, p. 49. — The assembly of New-York imposed, in 1709, two shillings a ton on every vessel, “ the “ one half of which does not belong to the inhabitants of the colony.” — *Laws*, p. 97. — The assembly of Pennsylvania imposed 5*l.* on each convict imported, to be paid by the importer: And, though the Pennsylvanians are not expressly exempted; yet, as the British merchants, who were characterized “ as persons importing convicts for lucre,” were the only importers, they alone were the objects of a tax in other respects extremely exceptionable. — *Laws*, 293. — The laws of Maryland obliged “ non-residents” to pay a variety of duties toward the maintenance of their free-schools: And, in the year 1715, the duties payable on the importation of negroes, servants, liquors, were declared “ not to extend “ to such as were imported in vessels whose owners are all residents in “ the province.” — *Laws*, 1704, ch. 27. 1715, ch. 36. — The assembly of South-Carolina, in the year 1701, imposed a duty of three farthings a skin exported by residents, but double if sent out in English vessels: Against which, however, the commissioners of plantations remonstrated to the proprietaries of that province, “ as a great discouragement to the “ trade of England.” — *Carolina Ent.* 3 v. p. 85-6. — Those various  
duties.



duties, being actually collected, the British subjects, who were not represented in the legislatures that imposed them, contentedly paid, till they were totally excluded from the colonial commerce. Nor was a mode of taxation, so universal and so contrary to their own precepts, practised only antecedent to the epoch of the stamp-act, when the modern doctrines were first authoritatively insisted on. Even as late as the year 1773, a duty, not altogether the same, but similar in principle, was imposed by the assemblies of Maryland and Virginia on all vessels sailing into Chesapeake-bay, for building and supporting a light-house on Cape Henry. — Laws of Maryland, 1773, ch. 29. — There was here indeed no exemption of the colonists: But, as the commerce of those plantations was chiefly carried on by non-residents, they were the chief objects of the laws and of the taxation. How different has been the practice of statesmen and legislators, at all times, and in every country, from the reasonings of the theorist and the party-man!

<sup>43</sup> Laws, p. 137. — <sup>44</sup> Brit. Emp. Amer. 1 v. p. 260-1. — <sup>45</sup> Jour. Plant. Off. 4 v. p. 31-4. — <sup>46</sup> Laws, p. 146. — <sup>47</sup> Coke's 3d Institute, p. 9. — <sup>48</sup> Laws, p. 146. — <sup>49</sup> Journ. 4 v. p. 187-190-2. — <sup>50</sup> Ib. p. 177-208. — <sup>51</sup> Laws, p. 149-152-3. — <sup>52</sup> Journ. 4 v. p. 233.

<sup>53</sup> Brit. Emp. Am. 1 v. p. 264; Virg. Pap. 76, p. 202-11-32.

The following *state of Virginia*, which was delivered to the committee of colonies in December, 1681, by Lord Culpeper, is subjoined; because it is supplementary to that of Sir William Berkeley; it contains several interesting particulars of the condition of that ancient dominion. — From Virg. Pap. 75. B. 446.

The house of burgeses consists of forty-one persons; viz. for twenty counties two, and one for James-Town.

The charges of government are maintained: 1. By private levies raised in each parish, for the minister, church, courts of justice, burgeses wages, &c. which are never brought to the audit, and yet are high, unequal, and burdensome, to the people, as any other; being most commonly managed by sly cheating fellows, that combine to defraud the public, and ought to be supervised by the government,

2. By public levies, raised from time to time, by act of assembly, and accounted for in assembly; which, though much better ordered than the first, is and hath been, I believe, often misapplied; both these impositions are raised on the tithables, or working hands, of which there are about 14000 in the colony; a method extremely unequal and chargeable in the raising of it, (at least 20 per cent.) causing prodigious quantities of trash tobacco to be raised, which not only clogs the market, but disparages the commodity, and ruins the country: Could the assembly be induced to raise much less on the importation of liquors, &c. it would go a great way to remedy our sad condition.

3. By the two shillings a hoghead, with one shilling and three-pence a ton, paid for fort-duties, which amount to 3000l. a year; and, if well collected, might amount to 600l. more.

[REMARK. These taxes were paid only by those who were not represented in the assembly, by the British merchants.]

As to judicature: There are county-courts in each of the said twenty counties, of which there are three in the year; from whence there lies an appeal to the governor and council; and from them heretofore to the assembly, but now to his majesty in great causes. [300l. sterling.]

The ecclesiastical government is under his majesty's governor, who grants probates of wills, and doth or ought to present to all livings, which ought to be worth threescore pounds a year, and are in number 76 or 7: But the poorness of the country, and the low price of tobacco, have made them of so much less value, scarcely the half; and the parishes, paying the ministers themselves, have used to claim the right of presentation, (or rather of not paying,) whether the governor will or not; which must not be allowed, and yet must be managed with great caution.

As to the military power: There is not one fort in the whole country that is defensible against an European enemy. I do not think it possible to secure ships any where against a superior sea force. There may be 15000 fighting men in the country; and yet they used to count 300 an army royal.

In relation to our neighbours: Carolina (I mean the North part of it) always was and is the sink of America, the refuge of our renagadoes, and,

and, till in better order, dangerous to us. Maryland is now in a ferment, and not only troubled with our disease, poverty, but in a very great danger of falling in pieces; whether it be that the old Lord Baltimore's politic maxims are not followed by the son, or that they will not do in the present age: In a word, it is so far from being in a condition to assist us; that it is worthy of your lordships prudence to take care of Maryland, as well for the sake of Virginia as his own; for, if some speedy and effectual course be not taken, we shall soon be involved in the same fate.

In relation to the Indians: We are at present at peace with all, at least in war with none, but there is no relying on them; and, when we least suspect any thing from them, we have, by long experience, found ourselves in most danger.

But that which is more to us than all other things, which bids fair to be the speedy and certain ruin of this colony, is the low or rather no price of the only product of our lands, and our only commodity, tobacco: A thing so fatal and desperate, that it is almost impossible to remedy it: For the market is overstocked, and every crop overstocks it more. Our thriving is our undoing, and our buying of blacks hath extremely contributed thereto, by making more tobacco: We are too many for that, and too few for any thing else.

THOMAS CULPEPER.

REMARK. The general policy of Virginia, as above described, has continued to the present times. The number of half-armed trainbands in the year 1680, as stated by general Smith, from actual returns,

were - - - - - 7268 foot,  
 1300 horse.

8568 — Virg. Pap. 76. p. 95.

The following letter from James II. to Lord Effingham, with regard to the followers of Monmouth, who had escaped the cruelties of Jeffereys, is published, in order to shew the temper of that prince, and the singular situation of his minister. — From Virg. Ent. 4. v. p. 63.

JAMES.

JAMES, R.

Right trusty and well beloved, we greet you well. As it has pleased God to deliver into our hands such of our rebellious subjects as have taken up arms against us, for which traiterous practices some of them have suffered death according to law, so we have been graciously pleased to extend our mercy to many others, by ordering their transportation to several parts of our dominions in America, where they are to be kept as servants to the inhabitants of the same: And, to the end their punishment may in some measure answer their crimes, we do think fit hereby to signify our pleasure unto you, our governor and council of Virginia, that you take all necessary care that such convicted persons, as were guilty of the late rebellion, that shall arrive within that our colony, whose names are hereunto annexed, be kept there, and continue to serve their masters, for the space of ten years at least. And that they be not permitted in any manner to redeem themselves, by money or otherwise, until that term be fully expired. And, for the better effecting hereof, you are to frame and propose a bill to the assembly of that our colony, with such provisos and clauses as shall be requisite for this purpose, to which you, our governor, are to give your assent, and to transmit the same unto us, for our royal confirmation. Wherein expecting a ready compliance we bid you heartily farewell. Given, at our court, at Whitehall, the 4th of October, 1685, in the first year of our reign.

SUNDERLAND.

REMARK. It is a problem in the annals of those times, and there are questions in history of as difficult solution as in the sciences, Whether the prince of Orange encouraged Monmouth, or connived at his enterprize, in order to draw advantages from events to himself. The banished followers of that once-popular nobleman were pardoned by King William in December, 1689. — Journ. in Plant. Off. 6 v. p. 306. — It is a singular spectacle, to see the same minister, who had promoted the rebellion, sign the order for the transportation and servitude of the miserable victims of his perfidy. — See Sir John Dalrymple's Mem. 1 v. p. 125-6.

<sup>54</sup> Virg. Ent. 4 v. p. 161-215. By the statute of 10 & 11 William III. ch. 21. s. 29. it was enacted, that no tobacco should be exported by the colonies,

colonies, except only in cask or chest. By the statute of 1 James II. ch. 4. a duty of 3 d. per pound was imposed on the consumption of tobacco in England.

<sup>55</sup> Brit. Emp. in Am. 1 v. p. 263-4.

<sup>56</sup> Journ. Plant. Off. 6 v. p. 146-244-5. There is no clearer proposition of English jurisprudence than this; that, where a statute, which annulled a law, is itself repealed, the rule, that had been abrogated, instantly revives. Yet one of the grievances, complained of by the burgesses of Virginia, was; that Lord Effingham, having by a proclamation declared the royal dissent to an act of assembly, which repealed a former one, gave notice that the abrogated law was now in force. This was deemed an exertion of legislation. And on this subject vehement debates ensued between the two houses of assembly; the burgesses insisting that the governor's conduct was unconstitutional; the upper house contending that it was a mere act of the usual executive power, and perfectly consistent with law. Happy is the country which has no other grievance to complain of! Lord Effingham was re-appointed governor of Virginia, by King William. — Journ. Plant. Off. 6 v. p. 217-20.

## C H A P. XV.

*Maryland flourishes. — Its gratitude. — The founder of the province dies. — Its state. — He is succeeded by Governor Calvert. — Laws passed. — The gratitude of the assembly. — He returns to England. — Complaints against him. — Seditions in Maryland. — Fresh complaints against him. — Laws for the encouragement of domestic industry. — James II. proclaimed. — A writ of quo-warranto ordered against the charter. — The birth of a prince celebrated. — The government of the proprietary overturned.*

WHEN the Restoration re-established his authority, the proprietary, with his wonted prudence, appointed Charles Calvert, his eldest son, governor of Maryland; in order that he might know the people, and learn how to rule them. In the beginning of the year 1662 he assumed the administration: And, may we decide from the various “acts of gratitude,” which were passed by the assembly, he followed, with the greatest success, the salutary maxims of his father. He convened the legislature in April, 1662; and, with a spirit natural to English subjects, it passed “an act concerning proceedings at law:” Declaring, that, in all cases where the usages of the province are silent, justice shall be administered according to the customs and statutes of England, if pleaded, “so far as the court shall judge them not inconsistent with the condition of the colony.” The act, which thus engrafted the jurisprudence of England upon that of Maryland, was at different times continued till the year 1684: But, though the legislative energy was then withdrawn, the rule continued to the present times; because it was really an essential principle of the common-law. The interests of agriculture were promoted by an “act for the encouragement of the sowing of English grain.” And other laws of political oeconomy, which were then made, evince equally the condition of the colony, and the wisdom of the legislature.

The public tranquillity was disturbed in those days, as well by the encroachments of the Dutch on the western banks of the Delaware, which they

they had commenced some years before, as by the incursions of foreign Indians, which with their usual inconstancy they had lately begun. The vigorous remonstrances of Calvert obliged the Hollanders to desert the Whorekill and the country around Cape Henlopen, of which he instantly took possession: And his prudence restored peace with the tribes, which was confirmed in May, 1666, by an act of assembly. The fidelity of the allies of the province, the Indians of Choptank, was soon after rewarded, by settling on them and their descendants a considerable territory: And being assured to them, at different times, by various acts of the legislature, it continued in their possession till the present days; when it was sold for a considerable price, under the inspection of Johnson, the famous superintendant of Indian affairs. Not only the prior weakness, but the final expulsion of the Dutch from the Delaware, obliged many of their colonists to emigrate to Maryland; where they were received with attention; and, being naturalized in considerable numbers, were incorporated completely with the ancient inhabitants. Internal quiet, which is always so desirable, because it is so extremely advantageous, was preserved, partly by an act, passed in March, 1671, "against the "divulgers of false news," but more by the real wisdom of Calvert's administration over a people, who had banished distrust as the greatest of evils.

While discontent, insurrection, and rebellion, laid waste Virginia, Maryland seems to have enjoyed all the blessings of peace and prosperity under the wise and equitable government of the excellent founder of that province. Nor was it insensible of its felicity, or slow in making suitable returns. The assembly, "reflecting with gratitude on the unwearied "care of the proprietary, and the vast expence that he had been put to "in preserving the inhabitants in the enjoyment of their lives and liberties, and the increase and improvement of their estates," passed a law, in the year 1671, "for his support, and defraying the charges of government:" It imposed a duty of two shillings sterling on every hoghead of tobacco exported; the one-half of which was to be applied towards maintaining a magazine of arms and discharging the necessary expences of government; the other half was settled on the proprietary,

in confideration of his receiving merchantable tobacco, for his rents and alienation fines, at two-pence a pound : Giving as a reason, what good-sense might have adopted for its own ; “ That, as government is necessary for the support of all societies, the charges of that, without which they cannot subsist, ought in reason to be borne by those whose conservation depends upon it.” And this was soon after continued, during the life of the heir of the proprietary, by what the assembly called, “ an act of gratitude to Charles Calvert, the governor ;” which, while it expresses the sense of the colony, does great honour to both ; because it shews, that the one had merited, and the other was grateful. And these laws demonstrate, as well the spirit of the assemblies of those days, as the happiness of the colonists under the excellent rule of the father of Maryland, and his immediate successor, though they were Roman-Catholics. Nor was the true interest of the province forgotten amid their attentions to the emolument and gratification of the first magistrate. Among a great variety of regulations, that were then established with a view to promote its commerce, or to direct the course of its industry, the assembly passed acts for “ encouraging the importation of negroes and slaves ;” for “ making void and punishing fraudulent practices, tending to defraud real purchasers and creditors ;” for “ quieting possessions ;” for “ the advancement of foreign coins ;” “ for the encouragement of the sowing and making of hemp and flax.” And we may thence form an opinion of the state of the colony, and of the pursuits of its inhabitants.

Cecilius, the father of his province, having lived to enjoy what few men ever possess, the fruit of the tree which his own hands had planted and watered, died in the beginning of 1676, covered with age and reputation, in the forty-fourth year of his government. Too honest a man to scatter the idle theories of the projector among the million, he published no scheme of ideal commonwealths to delude his followers ; and too wise not to mark the solid texture and excellent balance of the English constitution, he resolved to build upon its plan, and to rear that of Maryland with all possible consimilarity. After a few gradual changes, proceeding from the increase of population and alteration  
of



of circumstances, the present form was soon established, which has happily continued to the present times. In the proprietary, the council, and house of burgesses, we see the king, the lords, and commons, of England, in miniature. In contemplation of the many blessings poured on that province by his unwearied care, we have observed the assembly recognize his rights, that it might remain as a memorial, to all posterity, of their thankfulness, fidelity, and obedience. It was his constant maxim, which he often recommended to the legislature; "That, by concord, a small colony may grow into a great and renowned nation; but that, by dissension, mighty and glorious kingdoms have declined and fallen into nothing." On his tomb-stone ought to be engraven: "That, while fanaticism deluged the empire, he refused his assent to the repeal of a law; which, in the true spirit of Christianity, gave liberty of conscience to all."

The rules of colonial administration, which the proprietary had thus adopted and practised, were probably successful beyond his warmest expectations. For he lived to see the plantation, that he had established, grow almost to maturity, which increased daily in vigour and in fruitfulness. The province had been divided into ten counties, and it then contained about sixteen thousand inhabitants; of whom the Roman-Catholics were to the number of Protestants in the proportion of one to a hundred: But there were no parishes laid out, nor churches erected, nor public maintenance granted for the support of a ministry; and there were then in Maryland only three clergymen of the church of England. One of these, who thought he was well assured of what he wrote, represented: "That the Lord's-day was openly profaned, religion was despised, every notorious vice was committed; so that the province is become a Sodom of uncleanness, and a pest-house of iniquity." But, in all likelihood, this hideous picture is greatly overcharged. The sole intention of the painter was to display to the archbishop of Canterbury the necessity and the use of a religious establishment; the laws, the execution of which was committed to the various inquests, assuredly prohibited the evils and the crimes which were so greatly deplored: And it may be safely asserted, that there existed in those days no other offences,

either against the municipal or divine precepts, than generally prevail in countries ruled by the mildest of governments, where the inhabitants live widely scattered over the face of the country, and every man enjoys the shade of his own tree without molestation.

Charles Calvert, who had governed the province from the year 1665, with a high reputation for virtue and abilities, succeeded his father as proprietary in the year 1676. He immediately convened an assembly, in which he presided in person. And they performed, on that occasion, what has been often recommended to other legislatures, but seldom executed: They carefully revised the whole code of laws; they repealed the unnecessary; they explained the obscure; they confirmed the salutary.<sup>6</sup> Whether from the too great numbers brought in, or from an apprehension perhaps that their vices might contaminate the morals of the colonists, the introduction of criminals was then deemed an inconvenience: And a law was passed "against the importation of convicted persons into the province;"<sup>7</sup> which was continued, at different times, till towards the beginning of the reign of Anne. Transportation, as a punishment, was unknown to the common law of England; yet it permitted the felon, who chose rather to lose his country than his life, to abjure the realm. It was a statute<sup>8</sup> of Elizabeth which first inflicted "banishment on dangerous rogues." And it was James I. who, without any regard to this law, but by the plenitude of his prerogative royal, adopted the measure of "ordering dissolute persons to be sent to Virginia." A practice, conformable to the usage of all other nations that have colonies, and similar to that of modern times, of transporting felons, to atone, by servitude, for their offences against the laws,<sup>9</sup> commenced soon after the Restoration; <sup>10</sup> probably from the statute,<sup>11</sup> which empowered the king, as we have remarked, to send Quakers convicted to the colonies. But this is the first act of assembly which occurs for restraining a practice that had become inconvenient or disagreeable. Yet men of discernment must perceive, that this and every law of a subordinate legislature, which was passed to restrain a measure that was allowed and encouraged by acts of parliament, were void in the creation; because contrary to the principles of their connexion. The assembly at the same time established various regulations

regulations which demonstrate its good sense and genuine patriotism. No sooner did the proprietary communicate his intention of returning to England than the burgesses "considering that he had lived long in the province, and had done the people many signal favours, as a token of their love, duty and respects, unanimously desired his acceptance of all the public tobacco, which remained unappropriated, requesting the concurrence of the upper house;"<sup>13</sup> because without that their proposed liberality would have been ineffectual. And that conduct and those expressions, which, at the same time that they reflect the highest honour on both, shew all rulers what they owe to their people, engaged his lasting affection, and insured their future gratitude.<sup>13</sup>

When the proprietary, however, arrived in England, he was saluted with the voice of complaint. The bishop of London represented, to the committee of plantations, the deplorable state of Maryland with regard to religion; that, while the Roman-Catholic priests were endowed with valuable lands, the Protestant ministers of the church of England were utterly destitute of support; whereby immorality reigned triumphant there. Lord Baltimore, in justification of himself and the province, shewed the act of 1649, concerning religion; which had been confirmed in the year 1676, as a perpetual law, and which tolerated and protected every sect of Christians, but gave special privileges to none. He asserted, that four ministers of the church of England were in possession of plantations, which afforded them a decent subsistence: But that, from the various religious tenets of the members of assembly, it would be extremely difficult, if not impossible, to induce it to consent to a law that should oblige any sect to maintain other ministers than its own. However satisfactory and decisive was this answer, it seems not to have procured perfect acquiescence. The committee declared, that they thought fit there should be some maintenance for the clergy of the church, and that he should propose some means for the support of a competent number: And the pious ministers of Charles II. commanded, that the laws against vice should be punctually executed.<sup>14</sup> Virginia complained of it as a grievance, inconvenient and dangerous, that Maryland did not protect its frontiers against the incursions of the Indians. But the proprietary,

tary, attending, in pursuance of an order, to answer this charge, informed the committee of colonies, that the peace with that people bordering on his province had held for twenty years, which was annually confirmed; that, in all his treaties with them, Virginia was expressly included: And he “ produced several testimonial letters, and his commissions and instructions to the governor and council, vouching his assertion.” This evidence was too convincing not to satisfy the most prejudiced. The committee reported to that monarch, “ that due care had been taken by him to include Virginia; but that, in her alliances, she had not been equally careful of the interests of Maryland.”<sup>15</sup> Notwithstanding this defeat, that dominion soon after renewed its attack. She complained, that the proprietary had endeavoured to compel vessels navigating Potowmack to enter in his ports, in order to gain from the duties payable for anchorage.<sup>16</sup> But nothing could be worse founded, or more unjust, though extremely specious, than this accusation. For the words and the intention of his charter extended the boundaries of the province, and consequently its jurisdiction, to the southern margin of the river; and such vessels must therefore have been necessarily subject to its laws. During the reign of William, however, when colonial patents were not much attended to, this pretension of Maryland was derided, as equally frivolous and inconvenient.

Having thus, by his prudence, silenced all complaints for the present, by shewing the falsehood of them, the proprietary returned to Maryland, and convened an assembly; wherein he presided in person. In order, probably, to comply with those orders, which had been so piously given, an act was passed,<sup>17</sup> “ for speedy suppression of crimes, and limiting their punishments, when prosecuted in the county-courts:” A law had been already enacted, “ for keeping holy the Lord’s-day.”<sup>18</sup> Those inconveniences, which that province suffered from the depreciation of its staple, and which the Virginians felt so much and resented so outrageously, if not altogether removed, were at least greatly diminished, by the encouragement given to provincial productions, and to colonial commerce. Laws were accordingly enacted, for “ promoting tillage,<sup>19</sup> and raising provisions for exportation;”<sup>19</sup> for “ restraining the ex-  
“ port

“ port of leather and hides ;”<sup>20</sup> for “ the support of tanners and shoe-makers ;” for “ encouraging the making of linen and woollen cloth.”<sup>21</sup> Thus early did the legislature attempt to introduce manufactures into Maryland ; but nature and peculiar circumstances concurred to obstruct them ; and, though domestic industry has produced some things for domestic uses, it has not yet become a manufacturing country. “ For the “ advancement of trade,”<sup>22</sup> a variety of ports was erected ; where merchants were to reside, and commerce was to be carried on : And here all ships trading thither were obliged to unlade the commodities of Europe, and to take on-board the productions of the province. But, from the situation of the country, full of navigable rivers, and from the immense number of ports erected, every planter desiring to have one on his own plantation, this salutary regulation was attended with very little effect. Considerable inconvenience seems to have arisen in those days, because traffic was extremely impeded, from “ the great want of ready-money :” And, to remedy this evil, a law was made “ for the advancement of “ coins :”<sup>23</sup> French crowns, pieces of eight, and rix-dollars, were to be received in all payments, at six shillings each ; all other coins at the advance of threepence in the shilling ; the sixpences and shillings of New-England were to be received, according to their denominations, as sterling. Contracts appear to have been at that time made, and accounts kept, in tobacco ; and the coins then advanced were to be taken at the rate of six shillings for every hundred weight of that commodity ; with an exception, however, as to the payment of the proprietary’s rents, and protested bills of exchange. If we except an act which was made in the year 1671, something similar to the present, this is the law which first gave rise, in Maryland, to colonial currency, in contradistinction to sterling money : And, though the value of coins has greatly fluctuated, this has continued to be the *legal currency* of the province to the present times.

But, amid all this seeming cordiality, and the mutual endeavours of all to promote the true interests of the province, there lurked the seeds of present discontent and of future insurrection. The fiction of the popish plot, that has stained the annals of England with so foul a die, extended

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its baneful influence even to Maryland, and was by other politicians made the corner-stone of similar projects. — The rebellion in Scotland; the discontents in England; the vehement disputes with regard to the exclusion of the duke of York from the throne; the continued disagreement between the king and parliament: All appeared, in a country so distant from the seat of government and of just information, through the uncertain medium of rumour, to forebode the same civil wars, which, in the late reign, had drenched three kingdoms with blood. And parties, and men, prepared to draw those advantages to themselves, that have been ever made in the colonies from the distractions of the parent state. Fendal, who had raised insurrection against the administration of Cromwell, and betrayed the government of the proprietary, now used the lenity, which had been shewn him, to promote commotions in Maryland. He seems to have had no other view than to scramble for property and power, amid those convulsions that might ensue: And he insisted to those of similar views, who listened with attentive ears, “that, during the wars of England; they might easily possess themselves here of what estates they pleased.”<sup>24</sup> But the proprietary, partly by the triumph of Charles II. over his opponents subsequent to the dissolution of the Oxford parliament, but more by a vigorous application of the laws, preserved the tranquillity of the province. Fendal was tried, in the year 1681, for seditious practices; and, though the acts of assembly had annexed the penalty of death to the offence of which he was convicted, he was now only fined and banished the province for ever.<sup>25</sup> Among others, who were prosecuted for the same offence, John Coode was acquitted, who lived to command in the place where he was then arraigned as a criminal. And a few others, of less guiltiness, were punished by fine.<sup>26</sup> Thus vigour and prudence conjoined will ever prove successful. But a new scene of trouble at this time opened, by the arrival of the followers of William Penn on the banks of Delaware, which closed only with the disunion of a large portion of the province.

The “late troubles in Maryland” were made a foundation, whereon were raised fresh complaints, against the proprietary, in England, “of partiality to papists.” It was in vain for him to represent; that the laws

laws of his province gave equal encouragement to men of every sect, without favouring any; that he had endeavoured to divide the offices of his government as nearly equal, among Protestants and Roman-Catholics, as their different abilities would permit; that he had given almost the whole command of the militia to the former, who were entrusted with the care of the arms and military stores.<sup>27</sup> The ministers of Charles II. to throw the imputation of popery from their own shoulders, commanded, “that all offices should be put into protestant hands:” Never reflecting, in the height of their zeal, that, while they showered favours on some, they deprived others unjustly of rights, and that their orders were not only contrary to that equality which is the very essence of justice, but inconsistent with the ancient constitution and present laws of the province. But it was not so easy for the proprietary to defend himself against a very different charge, which, being founded in truth, involved him in considerable difficulty. He was accused of obstructing the custom-house officers in the collection of the parliamentary duties, which we have seen so lately imposed. Without disputing the authority of parliament, or claiming the revenue as his property from a clause of his charter, for which there was some foundation, he considered them merely as discouragements of the commerce of the colony; and, at the same time that he insisted, that, when the tax was paid it was unnecessary to give a bond, obliging the merchant to carry the commodity to England or Ireland, he recriminated on the collectors, “as great knaves to the king, as disturbers of the trade and peace of the province.”<sup>28</sup> They were found innocent; he was severely rebuked for his erroneous construction of the law, and for preventing its execution: And he was threatened with a writ of quo-warranto, “if he did not reimburse the large sum, of which his majesty’s revenue had been wrongfully defrauded.”<sup>29</sup> Charles II. complained bitterly, “that he should obstruct his service, and discourage the officers of the customs in the execution of their duty, after the many favours which had been heaped upon him and his father;” and he strictly commanded him, to take care, in future, “that the laws, relating to the trade of the plantations, be duly observed, and that all encouragement and assistance be given to the officers of the customs

“ under his government.”<sup>30</sup> The proprietary had lately beheld the scene that had been acted in England, in which, by the forfeiture of charters, the constitution had been shaken to its center : And he was too prudent to disobey. Yet the cry, with regard to popery, did not altogether cease, and the dissatisfaction of the collectors of the parliamentary revenue continued ; because they did not meet with all the support which they wished for and expected.

The moment James II. ascended the throne of his brother, he transmitted to the colonies a proclamation of that interesting event, to be published there with the usual solemnities.<sup>31</sup> His accession was notified in Maryland, in June, 1685, with uncommon and unaffected demonstrations of joy.<sup>32</sup> And loyal addresses were instantly sent to England, felicitating that prince with real sincerity on an event so pleasing to him. The committee of plantations, during the reign of Charles II. had taken too much care to be perfectly informed of their affairs, of the tempers of their people, not to know how much they were always affected by reports from England, and how they conducted themselves in the day of her distractions or prosperity. Upon the invasions of Monmouth and Argyle, that monarch wrote to the proprietary, giving him intelligence of these signal occurrences : Assigning as a reason, that it might prevent any false rumours which may be spread among his people at that distance by the malicious insinuations of ill men. He at the same time informed him, with marks of peculiar exultation, “ that the parliament had cheerfully granted him an aid, to be levied on the importation of sugars and tobacco ; which he hoped “ would not be burdensome to the inhabitants of that province, as the imposition was not laid on the planter, “ but on the retailers and consumptioners.”<sup>33</sup> It was remarked by the discerning ; “ that the law, which was then transmitted, while it was “ characteristic of that prince, was neither favourable to the colonies “ nor friendly to the liberties of England.”

Main, being appointed surveyor-general of the customs in Virginia and in Maryland, no sooner applied to the council for a writ of assistance to the officers of the revenue, than it was granted with alacrity : And he had the justice to confess, that the province had been greatly misrepresented



represented with regard to its opposition to the acts of trade.<sup>34</sup> The former collectors, irritated by neglect or opposition, probably ran beyond the truth in their representations on that subject. At the same time that James II. had resolved to level the constitution of England to the ground, he determined to annihilate the proprietary governments of the colonies: Giving as a reason; “ that it was of very great and growing prejudice “ to his affairs in the plantations, and to the customs here, that such “ independent administrations should be maintained, without more im- “ mediate dependence on his crown.”<sup>35</sup> It was in vain for the proprietary to plead; that the administration of his province had been at all times conducted conformably to his charter, and to the laws of England; that he never was informed of the pleasure of his prince, but it was always obeyed; that neither he nor his father had done any act which could incur a forfeiture of a patent, which they had dearly purchased in adding a considerable province to the empire. In April, 1687, the attorney-general received orders “ to issue a writ of quo-warranto against his “ charter.”<sup>36</sup> But owing to the difficulty of the business, to the necessary length of time, to the attraction of the royal attention to more important objects, no judgement was ever obtained. Thus that prince, with the infatuation characteristic of his later years, disregarding equally the protestant principles of New-England and the popish tenets of Maryland, involved both in the same undistinguishing project of tyranny, ruinous and degrading.

The birth of a son to James II. which gave so much cause of unhappiness to many while they doubted its reality, and which produced events so extremely interesting, was no sooner communicated by the privy-council to the proprietary, and by him to his governors, than it gave the greatest joy in Maryland. They instantly ordered a day to be set apart, to render thanks to heaven “ for so inestimable a blessing.”<sup>37</sup> And amid this festivity an assembly was soon after called. Joseph, the president, who with others then governed in the absence of the proprietary, recommended to both houses their duty to God, by providing for the due punishment of vice; their allegiance to the king, by obeying his orders, for concurring with Virginia in making a law to prevent the exportation

of tobacco in bulk, by establishing a general anniversary for the birth of so hopeful and glorious a prince; their duty to the proprietary, who desired nothing so much as the general good; their care of the people, by making useful laws.<sup>38</sup> Yet the burgessees proved somewhat refractory, and it was not without considerable difficulty that they were prevailed on to take the oath of fidelity to the proprietary.<sup>39</sup> Among a variety of excellent regulations, which were then established, that is extremely remarkable which was passed “for a perpetual commemoration and thanksgiving, every tenth day of June, for the birth of a prince.”<sup>40</sup> But the legislature did not obey the royal requisition on the subject of tobacco, because the Virginians had not complied. And the deputy-governors excused the province, by transmitting the above-mentioned act; which they hoped would be taken acceptably, “as the intent was loyal.”<sup>41</sup> The house of burgessees nevertheless was not forgetful of the interests of its constituents. It presented a spirited representation of grievances, which it then deemed the only oppressions of the province. And these were constitutionally redressed in assembly to “their hearts content.”<sup>42</sup>

But neither the public felicity nor private happiness were of long continuance, notwithstanding this seeming cordiality. The cry against popery, which had been attended with such prodigious effects in England, during the reigns of Charles II. and his successor, was re-echoed in Maryland, where the factious made the same use of it, to promote similar purposes of interest or ambition. The spirit of party nevertheless, though excited and continued by religious differences, of all others the most apt to sharpen the resentments of men, had been hitherto moderated by the liberal spirit of the laws, and restrained by the prudent administration of the proprietary. But no sooner were the tidings of the Revolution told in that province than those latent dissensions, inflamed by fresh incentives, blazed out into insurrection. And those, who had for some time waited impatiently for the season of harvest during the distraction of the times, now reaped abundantly.

When the deputy-governors were informed, in January, 1689, of the intended invasion of England by the Dutch, they thought it prudent to put Maryland in the best state of defence. For it was then unknown, even

to those who were the most trusted, what an extraordinary use was to be made of that memorable achievement. They collected the public arms that had been dispersed in the various counties. They apprehended several persons who were accused of spreading false news, to disturb the general tranquillity.<sup>43</sup> But these measures, whether salutary or baneful, were frustrated, and even the whole fabric of government was blown up in a moment, when a rumour was disseminated, which faction framed and credulity believed, "that a popish administration, supported by Papists, had leagued with Indians, to cut off the whole Protestants in the province." Confusion, dismay, and indignation, instantly seized the people. Every art was tried to satisfy them of the falsehood, the folly, the absurdity, of the report; but to no purpose.<sup>44</sup> During times of high passion it is natural for the human mind to credit implicitly stories the most nonsensical and incredible. Extremely similar to the popish plot of England, various accidents occurred, that tended wonderfully to support the universal delusion. Though Lord Baltimore received orders to proclaim William and Mary, which he promised readily to obey, yet some fatal accident happened to the commands which he transmitted to his deputies for that purpose.<sup>45</sup> They received therefore no official notice or legal orders with regard to a transaction, delicate and important, long after the prince and princess of Orange were formally proclaimed in Virginia. And they at that juncture concluded a treaty of peace with the neighbouring Indians, which had long been annually confirmed.<sup>46</sup> As always happens during times of public commotion, the very arts which the president and council employed to exculpate themselves, to remove the general illusion, to support the falling government, were turned against them as the most convincing proofs of guilt. "And an association in arms, for the defence of the protestant religion, and for asserting the right of king William and queen Mary to that province and all the English dominions," was formed in April, 1689. The associators placed at their head John Coode, who had been tried for seditious practices in 1681, who now found an excellent opportunity of carrying into action those principles which he had before only taught. He seems to have been a man of utter profligacy; since he openly avowed  
a contempt

a contempt for all morality and religion. Yet, being overlooked at the settlement of the administration of Maryland, by William, because he was deemed unworthy of trust, he acted the same seditious part against the government of that monarch; and he was driven out of the province, because he did not think it prudent to abide the sentence of the law.<sup>47</sup> The deputies endeavoured at first to oppose the associators with force; but they soon found that a falling government meets with few supporters, and they were constrained to deliver up the fort, with the powers of government, by capitulation:<sup>48</sup> And a revolution in government and in power, of great extent and duration, ensued in Maryland.

Thus were the prerogatives of the proprietary, which he had exerted with an unexampled attention to the rights of the people, the privileges of the Roman-Catholics, which they had hitherto enjoyed under the mildest of laws, with a moderation unparalleled in the annals of the world, overwhelmed at once by the provincial popish plot, and buried in the same grave. William approved of a revolution which ran before his wishes, which was so consistent with his views; and he transmitted orders to those, who had thus acquired power, to exercise it in his name, for the preservation of peace.<sup>49</sup> Yet there were not wanting men, who remarked: That the successors of that monarch might possibly live to regret the impolicy of countenancing a spirit of revolt, that in other times may shake the throne on which he then sat. Happy, had the associators executed the authority they now possessed, with the approbation of their sovereign, with less triumph and oppression<sup>50</sup> over men, who were fellow-subjects of the same state, who were entitled to the same immunities, who had been guilty of no other crime than that they thought differently, perhaps absurdly, in religion and in politics!

#### AUTHORITIES AND NOTES.

<sup>1</sup> Bacon's Laws, 1671, ch. 11. — <sup>2</sup> Ib. 1674, ch. 1. — <sup>3</sup> Ib. 1671, ch. 2; Ib. 1671, ch. 5; Ib. 1671, ch. 6; 1671, ch. 12; 1671, ch. 20.

<sup>4</sup> *Extract*

<sup>4</sup> *Extract of a letter, from the Reverend John Yeo, to the archbishop of Canterbury, dated the 25th of May, 1676, at Patuxent.*

“ The province of Maryland is in a deplorable condition for want of an established ministry : Here are ten or twelve counties, and in them at least twenty thousand souls, and but three protestant ministers of the church of England. The priests are provided for ; and the Quakers take care of those that are speakers ; but no care is taken to build up churches in the protestant religion. The Lord’s-day is profaned, religion is despised, and all notorious vices are committed ; so that it is become a Sodom of uncleanness, and a pest-house of iniquity. As the Lord Baltimore is lately gone for England, I have made bold to address this to your grace, to beg that your grace would be pleased to solicit him for some established support for a protestant ministry.” — The original, with one from the archbishop, recommending it to the bishop of London, is in the bundle of Maryland Pap. in Plant. Off. v. 1. The Brit. Emp. in Am. 1 v. p. 204, says, “ there were in Maryland, in 1678, “ only 16000 inhabitants.” Ogilby says, “ that it had been so effectually supplied with people and necessaries by Lord Baltimore, that, in “ the year 1671, there were then 15, or 20,000 souls in it.” — Hist. Ch. Maryland.

<sup>5</sup> 1674, ch. 22. — <sup>6</sup> 1676, ch. 1-2. — <sup>7</sup> 1676, ch. 16. — <sup>8</sup> 39 Eliz. ch. 4. — <sup>9</sup> Observ. on ancient Stat. 352. — <sup>10</sup> Principles of penal Law, 30. — <sup>11</sup> 13-14 Cha. II. ch. 1. — <sup>12</sup> Right to the tonnage stated, 20 ; Laws, 1676, ch. 18.

<sup>13</sup> The assembly, in the year 1682, “ to demonstrate its gratitude, “ duty, and affection, to the proprietary, prayed his acceptance of “ 100,000 lb. wt. of tobacco, to be levied this present year. He returned his thanks for the kind tender, but said, that, considering the “ great charge of the province, he did not think fit to accept thereof.” — *Ib.*

<sup>14</sup> Maryland Ent. vol. 1. p. 28-9 ; Journal, 2 v. p. 83-7. — <sup>15</sup> *Ib.* 184-6. — <sup>16</sup> *Ib.* 5 v. p. 16. — <sup>17</sup> 1681, ch. 3. — <sup>18</sup> 1678, ch. 1. — <sup>19</sup> 1681, ch. 1. — <sup>20</sup> 1681, ch. 6. — <sup>21</sup> 1682, ch. 5. — <sup>22</sup> 1683, ch. 5. — <sup>23</sup> 1686, ch. 4.

<sup>24</sup> *Extract*

<sup>24</sup> *Extract of a letter from Lord Baltimore, 19 July, 1681, to the Earl of Anglesey, president of the council.* — From the Maryland Papers, vol. 1.

“ Upon these disturbances, given us by the heathen rogues, [the Indians,] some ill-disposed persons here have been tampering to stir up the people of Maryland, and the north parts of Virginia, to mutiny; but, having notice of the chief contrivers of the design, I gave orders to apprehend Josias Fendal and John Coode, two rank Baconists. The first of these was, some twenty years since, my father’s lieutenant-governor here; but, upon his breach of trust and rebellion, he escaped the gallows very narrowly; since which, and in the time of Bacon’s rebellion, he endeavoured to raise a rebellion here, and then Maryland had been embroiled and ruined as Virginia was. The encouragement this fellow had, to lay the wicked design, was the hopes he had, that, upon his majesty’s meeting his parliament, there would be such differences as would occasion civil wars, and then there would be no laws in England; and so he and his crew might possess themselves here of what estates they pleased.” — The commander of a ship, who arrived from Maryland in October, 1681, being examined by the committee of plantations, with regard to the troubles of that province, said, “ That there were thirty “ Protestants to one Papist, between whom there was no quarrel; but “ that two persons had been apprehended for saying, that, were the parliament dissolved, Baltimore should not be quiet in Maryland.” — Journal, 3 v. p. 299. — There is the following passage in an affidavit of Colonel Vincent Lowe, one of the council: “ That, in conversing with “ Mr. Rousby, who was collector of his majesty’s customs, and who “ shewed him a bundle of news-books, with regard to the bill of exclusion, which Lord Halifax was said to have opposed, Mr. Rousby “ made answer, that great men were great knaves and turn-coats, and “ began to p—s backward.” — It is in the same bundle of Maryland Papers. — When such a man said such things, we may easily form a judgment of the conversation of others, and thence conclude how much the politics of England then influenced those of the colony. Yet it ought to be remarked, that Mr. Rousby denied that he had ever used such expressions.

<sup>25</sup> From

<sup>25</sup> From the trial at large, in the bundle of Maryland Papers, it not only appears that the proceedings were remarkably regular and fair, but that Fendal excepted against all Roman-Catholics as jurymen.

<sup>26</sup> Their trials are in the same bundle.

<sup>27</sup> There are, among the same papers, lists of the council of Maryland, and of the militia-officers, shewing the religion of each ; which justifies the proprietary's assertion. — See Maryland Papers, vol. i. p. 56-57-65.

<sup>28</sup> *Extract of a letter from Lord Baltimore, 7th June, 1681, to the Earl of Anglesey, the president of the council.*— From Maryland Ent. i v. p. 46.

“ I have already written twice to your lordship about Christopher Rousby, who I desired might be removed from his place of collector of his majesty's customs, he having been a great knave to the king, and a disturber of the trade and peace of the province.” — He excuses his conduct, as to the certificates of ships for securing the duties. Yet Lord Baltimore, having been collector during his father's life-time, recommended Rousby, five years before, to succeed him. — *Ib.* 67. — The board of customs reported against the proprietary, in favour of that gentleman. — *Ib.* 72. — It is remarkable, that, in the short period from 1684 to 1689, no less than two collectors of the customs were murdered in that province ; Mr. Rousby, by Col. Talbot, one of the council, who, being carried into Virginia, was there tried and convicted, but was pardoned by James II. and Mr. Payne, by the servants of Mr. Sewel, one of the council, during the distractions of the Revolution, who, having escaped into Virginia, were ordered thence by William III. to Maryland, and were tried during the administration of the associators, and one of them executed. — See Maryland Ent. vol. i. 105.

<sup>29</sup> Journ. 3 v. p. 342.

<sup>30</sup> *Extract of a letter, dated the 16th of August, 1682, from Charles II. to Lord Baltimore.* — From Maryland Ent. i v. p. 80.

“ We are not a little surprized to find that you have obstructed our service, and discouraged our officers in the execution of their duty ; and although, by several letters, we have already directed you to be aiding to

the collector and officers of our customs in Maryland, *and particularly in the due collection of the impositions payable to us by act of parliament, made the twenty-fifth of our reign, whereby certain rates were imposed, among which was one penny a pound on tobacco*; we are nevertheless informed, that, instead of your being assisting to our said officers in the due collection thereof, you have hindered and forbidden them to receive the same; and particularly that you had hindered our collector of our customs from receiving the said penny per pound, due for tobacco sent to Ireland, and that you told him that he should not meddle with them, for that he had nothing to do therewith; by means whereof the said ships went away with their cargoes of tobacco, without paying any of the said duties; whereby we are damnified in our customs to the value of £. 2500 sterling. And although your proceedings above-mentioned, in the obstruction of our officers, and contempt of our laws, are of such a nature, as that we might justly direct a writ of quo-warranto to be issued out, we have, nevertheless, out of our great clemency, thought fit, for the present, only to require the commissioners of our customs to charge you with the payment of the said sum, and to cause a demand to be made from you for the same. And we do strictly command you, for the future, to take care that all our laws relating to the trade of our plantations be duly observed and executed; and that all encouragement and assistance be given to the officers of our customs under your government."

<sup>31</sup> Ib. 89. — <sup>32</sup> See a letter from Colonel Digges, giving an account of the joyful proclamation of James II. in Maryland. — Ib. 94.

<sup>33</sup> *Extract of a letter, dated the 26th of June, 1685, from James II. to Lord Baltimore.* — From Maryland Ent. 1 v. 96.

" Upon the meeting our parliament, they, for repairs of our navy, and other important occasions, cheerfully granted to us an aid to be levied upon all tobacco and sugar to be imported into this our kingdom; according to such rates, and during such time, and in manner as, by the act herewith sent you, more fully is set forth. Yet the imposition, as it is not laid on the planter or merchant, but only on the retailer, consumptioner,



sumptioner, or shop-keeper, we are well assured will not be burdensome to our subjects under your government, but on the contrary it will be of great advantage to them, by enabling us the better to protect the navigation of this kingdom, and the trade of our plantations. — We have thought fit to acquaint you, for the information of our subjects under your government, that the peace and quiet of our kingdom of Scotland has received some disturbance from the traitorous practices and rebellion of the late earl of Argyle, by his landing in the west highlands with men and arms; but it has pleased God to deliver that traitor and his rebel followers into our hands; so that, upon seizing his ships, and arms, and materials of war, and defeating the multitude that he had gathered together, he is now secured in our castle of Edinburgh, in order to his execution; whereby the peace of that kingdom is perfectly re-established. — We are likewise pleased to inform you, that the late duke of Monmouth, since attainted of treason, is, in the same traitorous and rebellious manner, landed in the western parts of this kingdom; and, with a number of men of the lowest degree, and many of them unarmed, has given disquiet to those parts: But, by the care we have taken in sending thither a sufficient number of our standing forces, who are now in pursuit of him, we are expecting to hear of the total defeat of that traitor and his accomplices: And we being perfectly assured of the constant and undoubted fidelity of our nobility and gentry, we cannot fail, by the blessing of God, of a happy issue and success in our said affairs. All which we have thought fit to intimate to you, for the preventing any false rumours or reports, which might be spread amongst our subjects, at that distance, by the malicious and traitorous insinuations of ill men.”

<sup>34</sup> Council-book of Maryland in Plantat. Office, p. 75-8-85. — <sup>35</sup> Maryland Ent. 1 v. p. 102-3. — <sup>36</sup> *Ib.* 109. — <sup>37</sup> Council-book of Maryland, p. 183-7.

<sup>38</sup> See this most curious speech in the bundle of Maryland papers, vol. 1. It is of the length of a modern sermon; and it is, in fact, one.

<sup>39</sup> Council-book of Maryland, p. 205. — <sup>40</sup> Laws, 1688, ch. 1.

<sup>41</sup> Council-book of Maryland, 206.

*Articles of grievances, presented by the house of delegates to the deputy-governors, in November session, 1688.*      *Answers, given by the governors in the council-chamber.*

1stly. Whereas it is provided, by several acts of assembly, that the proprietary and his receivers shall accept merchantable tobacco for his rents, fines on alienations reserved upon the grants of lands, at the rate of two-pence per pound; yet his officers, contrary to law, not only refuse tobacco, but exact sterling money, to the oppression of the people.

2dly. The secretary charges fees in his office, not due by law.

3dly. Proper officers have not been appointed to carry into execution the act for the advancement of trade.

4thly. As no laws can be repealed but by the assembly, it desired to know, if the proprietary intended to annul a clause in the act for bringing tobacco to towns;

5thly. The attorney-general oppresses the people.

1stly. The tenor and true intent of the laws shall be pursued.

2dly. We are willing that a law, relating to officers and their fees, shall be made, to explain that clause mentioned in the second grievance, in order to clear up doubts for the future.

3dly. We are apprehensive, that the proprietary as well as the people are losers thereby, and therefore shall write him for his instructions as desired.

4thly. The proprietary does not intend to annul the clause mentioned without an act of repeal.

5thly. If such proceedings have been practised, the law is open against

6thly. Certain persons, under a pretended authority from some militia officers, have pressed provisions in time of peace.

7thly. The late adjournment of the provincial court to the last Tuesday in January is a time most incommodious for the people.

8thly. Several officers of towns have exacted 3d. a hoghead for tobacco, though not brought thither according to law.

The lower house returned their thanks for the favourable answers above-mentioned; took their leave; and returned to their own house. — Right to the tonnage stated, p. 18-19: And Council-book of Maryland, p. 205.

Nevertheless, the following extracts, from “the declaration of the motives for the present appearing in arms of their majesties protestant subjects in Maryland,” demonstrate, that, during the triumph of party, a multitude of other grievances was discovered, antecedent to those which we have just seen presented by the great inquest of the province, and constitutionally redressed in assembly. — From Maryland papers, D. N°. 1.

“Although the state of affairs is so well known as might excuse any apology for this present inevitable appearance; yet, as by the plots, and insinuations, carried on by Lord Baltimore his officers here, the tyranny under which we groan is palliated, and the particulars of our grievances are shrouded from the eye of observation and the hand of redress, we thought fit, for general satisfaction, to publish this declaration. —

1st. His lordship’s right to the government is by virtue of a charter to his father from Charles I. How his present lordship has managed the authority

gainst the offender, who is not countenanced by government.

6thly. We know of no such offenders; but, when informed of them, we shall proceed against them according to law and matter of fact.

7thly. At the request of the lower house, they will adjourn the provincial court by proclamation.

8thly. They referred to the act in that case made, and justice shall be done.

erty granted, we could only lament in silence. — There is a reservation in the charter of the faith due to the crown of England, (the province and inhabitants being immediately subject thereunto,) but how little that is manifested is obvious to all unbiassed persons: The very owning that sovereign power is a crime that renders us obnoxious, as ill-affected to the government: *The ill-usages and affronts to the king's officers of the customs were a sufficient argument of this.* Allegiance here is little talked of; except that they insist, that fidelity to the proprietary is allegiance to the king. — 2d. How the *jus regale* is improved here is too sensibly felt by us all; in the seizure of our persons and the forfeiture of our goods and inheritances. — 3d. The churches, which by the charter should be consecrated according to the ecclesiastical laws of England, are converted to the use of popish idolatry. — 4th. How well the power to enact laws has been executed is too notorious: His lordship declaring the best of the laws void by proclamation, though assented to in his name by the governor; whereby our liberty and property have become uncertain under the arbitrary disposition of the judges. Nor is this suspending power the only grievance that burdens us. For the most unjust laws are countenanced, as they are agreeable to the good liking of the governors: Especially one that, against all reason and law, punishes all speeches, practices against his lordship's government, that shall be thought mutinous by the provincial court, with whipping, boring the tongue, imprisonment, banishment, or death. — 5th. Excessive fees have been imposed against law. — 6th. Impressing men, provisions, &c. often to gratify private designs. — 7th. Seizing Protestants in their houses with armed Papists, and detaining them long without trial. — 8th. Private murders and public outrages committed by Papists upon Protestants without redress, but are connived at by men in chief authority, who are governed by Jesuits, and who are our chief judges and officers, civil and military. — 9th. When, after we had long groaned under these pressures, and we expected relief from the best of princes, our most gracious king William, to our great consternation, upon the news of the happy change in England, we found the strongest endeavours of lord Baltimore's deputies to defeat us, and we every where heard not only public protestations  
against

againſt their majeſties right and poſſeſſion of the crown, but their illuſtrious perſons vilified by the moſt traiterous obloquy. — 10th. We were daily threatened with the loſs of our lives, liberties, and eſtates, by thoſe machinations that were on foot to betray us to the French and Indians; of which ſome have been dealt withal and others invited to aſſiſt in our deſtruction. — 11th. We have conſidered that all other branches of their majeſties dominions in this part of the world have done their duty in proclaiming their majeſties, and aſſerting their undoubted right in theſe and all other territories of the crown of England. — 12th. But, above all, we conſider ourſelves, during this general jubilee, diſcharged from all manner of fidelity to the chief magiſtrates here; becauſe they have departed from their allegiance, upon which alone fidelity depends, by their agents endeavouring to deprive us of our lives, properties, and liberties, which they were bound to protect.”

REMARK. The foregoing hiſtory, the tranſactions of former aſſemblies, ſhew how much truth was contained in the declaration before recited. Yet ſuch were the accuſations, as frivolous as unjuſt, which the convention preſented to William and Mary as reaſons for depriving the proprietary of his rights.

<sup>43</sup> Council-book of Maryland, p. 190-8-210. — <sup>44</sup> Ib. 211-22. — <sup>45</sup> Maryland Ent. 1 v. p. 111-124-5. — <sup>46</sup> Council-book, Ib.

<sup>47</sup> Bacon's Laws, 1689. — Of this man, governor Nicholſon wrote the miniſters of William: “ It will be an extraordinary thing when theſe “ governments are without ſuch ſort of perſons as Coode; who, I think, “ is a diminutive Ferguſon [the famous republican plotter] in point of “ government, and a Hobbift, or worſe, in point of religion: It was his “ maxim, that if much dirt is thrown ſome of it will ſtick.” — He was indited in the year 1695, of blaſphemy againſt his God, and of treaſon againſt his king. Among other abandoned expreſſions, which juſtly gave offence to the province, he ſaid: “ That there was no religion but “ what was in Tully's Offices.” In order to make theſe expreſſions ſtill plainer, the indictment charged: “ That they were ſpoken of *one* Tully, “ a Roman orator meaning.” — See the proceedings againſt Coode, in the Virg. Pap. 3 v. p. 357.

<sup>48</sup> See the capitulation, in the bundle of Maryl. Pa. v. 1. — <sup>49</sup> Maryland Ent. v. 1. p. 146-8.

<sup>50</sup> There are a multitude of letters and addressees of the inhabitants of the colony, both Protestants and Roman-Catholics, in the bundle of papers, v. 1. complaining of the insult and oppression of the associators: But the redress of their wrongs was referred by William to the new governor; who, as might have been foreseen, joined those who had thus forced themselves into power.

The declaration of the associators was printed at St. Mary's, by the printer of the province. In Virginia we have seen no printing-press was allowed. In New-England and New-York there was assuredly none permitted. The other provinces probably were not more fortunate, because they did not enjoy greater liberty. We may thence justly infer; that Maryland, under the mild government of the proprietary, and the rational protection of the assembly, of all the colonies, enjoyed the most genuine freedom at the æra of the Revolution, notwithstanding the ill-founded assertions of those who now overturned its government.

## C H A P. XVI.

*Charles II. offended with Massachusetts. — Appoints commissioners to inquire into its affairs. — The conduct of the general-court on that occasion. — Its address to the king. — Its altercation with the commissioners. — Its real principles of action. — Indian war. — Fresh complaints against the colony. — The arts of the general-court to soften Charles. — It enforces the acts of trade by a law of its own. — It opposes the officers of the customs. — It appoints agents to answer complaints. — Writs of quo-warranto issued. — Reflections. — An arbitrary government established in New-England. — Sir Edmond Andros's administration. — A revolution at Boston. — Remarks.*

**F**ROM the commencement of the reign of Charles II. the general-court never was without alarming apprehensions of being deprived of what it deemed the well-earned privileges of the colony; because its spies in England gave it the most minute though exaggerated information of every interesting occurrence. Its former fears were considerably increased, upon receiving intelligence of the appointment of commissioners to inquire into the affairs of New-England; because it had every thing to fear, but nothing to hope. Agreeably to its wonted practice on all important occasions, it ordered a day of fasting and of prayer to be observed, to implore the divine mercy on the many distractions of the settlement. And, with peculiar jealousy, it commanded, that the charter should be brought into court, “to be kept safe and secret for the country.”<sup>1</sup> Thus dreading, in royal commissioners, sent to regulate its government, those hidden arts which itself had long successfully practised.

From the Restoration to the dissolution of its government, “that colony, as we are assured, never stood well in England.”<sup>2</sup> Its conduct, during that period, seems indeed to have been rather of a kind which tends to provoke resentment than to conciliate good-will. The manner of proclaiming that prince, so different from that of every other dominion

of the crown, was extremely difobliging. His requisitions, fo reasonable and important, in return for pardon and oblivion, it either evaded or difputed. Complaints, as well of individuals as of neighbouring colonies, had been made and repeated; “ of differences which had arifen upon the boundaries of their charters and jurisdictions.” And the Indian fachems, feeling their wrongs with the ardour of untutored minds, represented “ the breach of faith on the part of the colony, and the acts of violence which they had undergone.” Charles II. having received addreffes from the general-court, either denying or explaining thofe complaints, declared his intention, in April, 1663, “ to preferve its charter, but to fend commiffioners thither to fee how it was obferved by that body.”<sup>4</sup> Yet it was not till the fubfequent year that a meafure fo fruitful of events was fully executed. “ Upon thefe motives, and to the end that we may be truly informed of the condition of our fubjects there,” that monarch, in April, 1664, iffued a commiffion; empowering Richard Nichols’ and three others “ to hear and determine complaints and appeals in cafes, as well military and civil as criminal, within New-England, and to proceed in all things for fettling the peace and fecurity of the country.”<sup>6</sup> Intelligence of this appointment, and of feveral fhips “ of war that were coming from England,” was foon received at Bofton. And the general-court made preparations to receive them “ with that prudent precaution” as if it had expected the hoftile invafion of a foreign enemy.<sup>7</sup> The conduct of both parties fhewed the fenfe that each entertained of the other.

The commiffioners no fooner arrived than they laid before the council their commiffion, and an inftruction, requiring affiftance for the reduction of New-Netherlands. But that body, with a caution bordering on timidity, advifed that the whole fhould be fubmitted to the general-court, which was foon to meet. And the commiffioners proceeded in the mean time againft the Dutch colony. That affembly immediately refolved, in words which fhew what impreffion the arrival of the royal officers had made; “ to bear true allegiance to his majefty, and to adhere to a patent, fo dearly obtained and fo long enjoyed by undoubted right.”<sup>8</sup> It went a ftep farther now, however, than it had done upon the requifition of Cromwell.



Cromwell on a similar occasion: It raised two hundred men for the king's service, though they did not join the expedition, because it had been crowned with success before they were embodied: And it complied with the former requisition of Charles, as to the admission of freemen. In conformity to its accustomed policy, it transmitted, in October, 1664, an address to that prince, which was received with the same sincerity as it was probably intended: It professed the subjection of the colonists, and their willingness to testify their duty in any righteous way: It complained feelingly of "the misinformations of adversaries," whose constant solicitations had procured a commission, subjecting them to the arbitrary power of strangers: It stated the grievances of the colony with the force of men who feared that the power of the commissioners might be improved "to the subversion of their all:" And it concluded in this rapturous strain: "Let our government live, our patent live, our magistrates live, our laws and liberties live, our religious enjoyments live, so shall we all yet have farther cause to say, from our hearts, let the king live for ever"<sup>9</sup> Letters, suing for favour, were at the same time transmitted to several of the English nobility. For, thus early did that practice commence, which has been considerably extended and improved in modern times. And, on that occasion, was not forgotten the lord-chancellor Clarendon, whose good opinion was deemed of the greatest importance.

Notwithstanding all these arts, the application of the general-court did not prove as successful as was fondly expected. Charles II. while he was extremely displeased with the petition, affected to consider it as "the contrivance of a few persons, who infuse jealousies into his subjects, as if their charter were in danger." Secretary Morrice transmitted his answer in February, 1665: Blaming the general-court for making unreasonable and groundless complaints; justifying the commission as the only way in which he could proceed upon so many complaints presented to him of injustice done: And assuring the general-court of the full enjoyment of the privileges granted by the charter, which he was ready to renew. The answer of the chancellor was equally unfavourable to the views of that body. "We were all amazed, said he, that you should demand a revocation of the commission, without laying the least charge

“ of crime or mismanagement against the commissioners: You had long  
 “ cause to expect such a measure, which was become absolutely neces-  
 “ sary, to compose the differences among yourselves, of which his ma-  
 “ jesty had received complaint; and to do justice to your neighbours,  
 “ which they demanded at his royal hands. I know not what you mean  
 “ by saying, that the commissioners have power to exercise government  
 “ inconsistent with your patent and privileges; since I am sure, the  
 “ commission is to provide for the due observation of it, and that the  
 “ immunities granted may be equally enjoyed by all the subjects there.”

How different were the opinions of the general-court and of that illustrious statesman with regard to the genuine construction of the writing complained of: Perhaps the extreme jealousy of the former enabled it to see farther than even the great abilities of the latter. The proceedings of both shew the views of both. It appeared to him that the governments of New-England were in the greatest disorder, and required regulation. The general-court considered the least infringement of those forms that had been established, however contrary to the letter or intention of the patent, as an attack on the chartered rights of the colony. The truth lay as usual in the middle between both. No grant, no usage, however ancient or inveterate, could exclude a king of England from the power of executing the general laws of the state within the dominions of the state. But that commission was liable to great objection; because it might have been extended to affect English liberties, which no prerogative of the crown can abridge. And an act of parliament was assuredly necessary, in order to cut up effectually those principles of independence that had rooted with the settlement of New-England; and, during the present reign, produced fruits abundant and pernicious. But, from the commencement of the colonies to the present times, palliatives seem to have been generally applied to disorders which required effectual remedies.

When the commissioners returned from the reduction of the Dutch colony, invigorated by their success, they began, in April, 1665, to execute the important trust reposed in them. The governor having communicated their commission and a variety of instructions to the general-court, it immediately sent an answer, which tended to shew that it had  
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already done most of the things required, and was willing to comply in others. The commissioners, pleased with this seeming cordiality, replied in substance, that they would not aggravate former neglects, but hoped that the general-court, by "practical assertions" of duty, would give his majesty satisfaction upon the points contained in his letter of 1662, which had so long slept. While the one side was buoyed up by the vanity of power and of prejudice, and the other was actuated by an extreme jealousy of endangered rights, we ought not to wonder that such a conference should degenerate soon into altercation. The commissioners at length peremptorily asked that body; "do you acknowledge the royal commission to be of full force to all the purposes contained in it?" But, to a question at once so decisive and embarrassing, the general-court excused itself from giving a direct answer, and chose rather "to plead his majesty's charter." The commissioners, however, attempting to hear a complaint against the governor and company, the general-court, with a characteristic vigour, published, by sound of trumpet, its disapprobation of this proceeding, and prohibited every one from abetting a conduct so inconsistent with their duty to God and their allegiance to the king. And, in May, 1665, the commissioners determined "to lose no more labour upon men, who misconstrued all their endeavours, and opposed the royal authority." They soon after departed; threatening their opponents "with the punishment which so many concerned "in the late rebellion had met with in England." "

In Connecticut, Rhode-Island, and New-Plymouth, the commissioners met with a success equal to their expectations; because these colonies were conscious of their own weakness, and hoped for protection against the encroachments and violences of Massachusetts. They endeavoured, though with better intentions than success, to decide the controversy which had so long existed between Massachusetts on the one side, and Mason and Gorges on the other, with regard to the boundaries, the right to the jurisdiction and the soil of New-Hampshire and Main. They established a royal government in each, by appointing justices, in the king's name, for the preservation of peace. They gave a kind of possession to those claimants. But they had no sooner retired than the general-court re-established

re-established its former authority, though not without some difficulty and violence." That body, by persecuting about the same time several persons for their religious scruples, added authenticity and force to the representations of those who had been sent to watch over its conduct, and to correct its errors.

Charles, being at length fully informed of all those transactions, both by the commissioners and the general-court, was greatly satisfied with the conduct of all the colonies, "except only that of Massachusetts." It did not escape his sagacity, that, notwithstanding many expressions of great affection, that jealous body "deemed his commission an apparent violation of its patent, and believed that he had no jurisdiction over it." "Upon due consideration of the whole matter," that monarch was pleased, in April, 1666, to recal the commissioners, to the end that he might receive a particular account of the condition of New-England." He at the same time commanded the general-court to send agents to hear and to answer the complaints against it; and mean-while to make no change in the government of Main, as established by the commissioners; nor alteration in the boundaries of New-Plymouth and Rhode-Island, as set by them; till cause should be seen to reverse the same. When the letter of recal was delivered by one of the commissioners, the general-court, with an uncommon strain of dissimulation, doubted its genuineness.<sup>4</sup> Reports were scattered among the vulgar, "that it was neither known to, nor owned by, his majesty." It was vain for the commissioners to insist that it was a "real original, which ought to be received as authentic, and was so entertained in all the other colonies of New-England:" They protested against the extraordinary proceedings of their opponents on that occasion to no purpose. For, with their accustomed dexterity, they excused themselves from sending agents to England, as had been required, giving this singular reason; "that the ablest of the inhabitants could not declare their cause more fully than it had been already done."<sup>5</sup> Thus a commission, which was so well intended by that prince, and from which he ardently expected the most beneficial effects; in a great measure proved fruitless; partly from the jealousy of the colonists and the opposition of ancient forms, but more from the real difficulty

culty of the business, to which nothing was equal, except the wisdom and authority of an English parliament. And this event, so contrary to his expectation and his views, sunk deep into his mind, and made an impression as strong as it proved lasting. He determined to bring back that government to its first principles.

It is not in open professions, or in official addresses, that we ought to search for the true causes of human actions; but in private and confidential writings, compared with a long course of conduct in a variety of situations. From this unerring source we may trace the real sentiments of the leading men of Massachusetts on the nature of their government and connexion with the parent state, which sufficiently explains the genuine motives of their proceedings, from the epoch of their emigration to the present times. They considered civil subjection as either necessary or voluntary: The former, arising from actual residence within any jurisdiction, created an obligation to submit to its authority; in the same manner as every alien, who resides in England, owes a temporary allegiance to the king, and obedience to the laws: The latter proceeded from special compact: But the mere circumstance of birth they deemed no necessary cause of allegiance; and they thence inferred, that the subjects of all states might remove to a different country whenever they pleased, whose removal discharged all former connexion. From this reasoning, so repugnant to universal jurisprudence, because contrary to the repose and existence of nations, they deduced this practical principle of independence; “that they no longer owed any allegiance to the crown, or any obedience to the laws of the state from which they had emigrated without its consent.” Their charter, nevertheless, they deemed a compact, whence voluntary subjection arose; and by this test, to which they always appealed, they insisted the nature and the extent of their obedience ought to be determined. But, though no natural allegiance was due, they thought themselves bound by their patent to subject the colony to no other sovereign, to make no laws contrary to those of England; but that they were to be governed alone by regulations established, and by officers elected by themselves. The considerable innovations, which we have remarked, they did not regard, therefore, as any breach  
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of contract on their side. And when Englishmen emigrated to Massachusetts, a necessary subjection to that commonwealth was supposed to commence, and they were deemed no longer English subjects, who carried with them the laws of England, and who in return owed obedience to them, and allegiance to the crown.<sup>16</sup> Though principles somewhat dissimilar, or rather conclusions altogether different, have been generally avowed, yet such were the reasonings on which the government of that colony has invariably acted: And they have been adopted and improved, in the present age, by a genuine son of independence, whose name has added consideration to what his eloquence has adorned.<sup>17</sup>

A trivial transaction, which occurred in the year 1668, throws additional light on the nature of the peculiar maxims of Massachusetts. A printing-press having been erected at Cambridge as early as 1638, licensers were immediately appointed by the government, who were authorized to prohibit any publication which should not be supervised by them. And a licence being now obtained for the well-known book of Thomas-à-Kempis, the general-court was instantly alarmed. It recommended to the licensers a more full revival, and ordered the press in the mean time to stop; giving for a reason, "that it, being written by a "popish minister, contained things less safe to be infused among the "people."<sup>18</sup> Men of discernment remarked, "that the most rigid of "Protestants now adopted, without scruple, the same principles which "they had formerly abhorred and opposed in Papists, as equally contrary to reason and scripture." It is not under forms the most popular, where that invaluable privilege, *the liberty of the press*, is enjoyed in the greatest perfection; but in Great-Britain alone, and in no other government, either republican or monarchical; in Holland or Venice, any more than in France or Spain. The reason of a peculiarity so happy and beneficial is derived, as we are assured by an admirable philosopher,<sup>19</sup> from the nature of the British constitution; where all discretionary powers are removed, and every man's life or fortune is secured by inflexible laws; where a watchful jealousy is constantly kept up, in order to prevent the introduction of that arbitrary system which might steal in, were not its advances carefully attended to, and the alarm constantly spread.

spread. But, in republican governments, such as Holland or Massachusetts, where there is no magistrate so eminent as to give jealousy to the people, there is less danger of entrusting them with discretionary powers; and though advantages may result from such authority, yet mens actions are considerably restrained, and every citizen is obliged to pay a great respect to the government: So that freedom of writing can neither be permitted, nor liberty of printing allowed.

Nothing ever contributed more to promote the commerce and security of New-England than the conquest of Acadie by Cromwell: Nothing can shew more clearly how much the French felt the loss of it than their extreme sollicitude to regain what his vigour had acquired, and his prudence retained. Baffled at the treaty of Westminster, in 1655, their ambassadors were continually employed, from the Restoration to the peace of Breda in 1667, in negotiating the restitution of that country; but to no purpose. The ministers of England either denied the validity of their right, or found means to elude the force of their requisitions. And it was not till February, 1668, that, in consideration of the cession of part of St. Christopher's, and other islands in the West-Indies that might be taken, Charles restored, to France, Acadie, generally without specification of limits, and particularly Pentagoet, St. John, Port-Royal, La Have, and Cape Sable, lying within it. But Temple, the proprietary of Nova-Scotia, by virtue of Cromwell's charter, hesitated to deliver up these fortifications in pursuance of his orders: And the inhabitants of Massachusetts, fearing the loss of their commerce, their fishery, the security of their borders, sent agents to England, to remonstrate against what they dreaded as the greatest misfortune; but in vain: The influence of the French proved too powerful for the interest of the people. And a definitive order was transmitted, in August, 1669, to deliver up Acadie, according to the letter of the agreement; which was effectually obeyed in the subsequent year. Thus the French once more acquired possession of that most ancient colony: The plantations and England often found occasion in future to regret the admission of a neighbour restless and litigious, who for years exerted her peculiar arts of intrigue, to interrupt their pursuits, and to disturb their repose.<sup>20</sup>

No tranſaction ever diſturbed the quiet of Maſſachuſets more than did at all times the claims of Gorges and Maſon to certain territories ſituated upon its northern boundary. Conſiderable parcels of New-England, which lay to the northward of the rivers Merrimack and Piſcattaway, had been granted, during the reign of Charles I. by the names of New-Hampſhire and Main: But, though large ſums of money were expended in transporting planters thither, partly owing to the commencement of the civil wars, but more to the intrigues of the general-court, which formed pretenſions to thoſe countries, the proprietors ſeem never to have eſtabliſhed any effectual colony or permanent government. That body, “ thinking it the duty of good goverors to amplify juriſdiction,” about the year 1652 inquired minutely into the extent of the boundaries of its grant. After tracing the former river far weſtward into the country, it was diſcovered to run from the North, and, mounting its ſtream, the ſurveyors at laſt pitched their inſtruments three Engliſh miles to the northward of its ſource; they thence marked a due Eaſt track to the ocean: And here they found themſelves upwards of ſixty miles to the northward of the place where that mighty ſtream met the Atlantic. From this ſurvey the general-court, always forward to make conſtructions favourable to its views, inferred; that the whole of the intervenient territory lay within its juriſdiction. Plauſibly arguing, that, as the patent had granted all the lands ſituated within the ſpace of three Engliſh miles to the northward of that river, and of the moſt northerly part of it, the whole tract included in the menſuration before-mentioned belonged to Maſſachuſets. The intention of the original conveyance of the Plymouth-company, and of the confirmation of the crown, were extremely manifeſt: The rivers of Charles and Merrimack were deſigned to be the boundaries of the colony on the South and North; but that it might derive every benefit from them, and be fully included within its juriſdiction, a tract of three miles along their banks was thrown in. Had the controverſy ariſen between the Plymouth-company, the grantors, and the original purchaſers, there could have been little foundation for diſpute. For the pretenſion would have appeared very extraordinary, that, becauſe the one party had granted lands of the breadth



of sixteen miles, the other should add sixty more by a forced construction of the deed. The general-court, however, being no longer under any restraint, naturally decided every doubt in its own favour; it annexed the disputed country to Massachusetts: And it ruled the inhabitants by the same system of laws that it had established for itself.

The reiterated complaints of the grandsons of Gorges and of Mason, subsequent to the Restoration, being a principal cause of sending commissioners to New-England, they restored them to their possessions. But all the anarchy of contested authority instantly ensued. And though Charles had expressly commanded, “ that there might be no alteration; “ with reference to what the commissioners had done, till he should “ farther determine,” yet the general-court, judging it meet, as in duty “ it stood bound to God and his majesty, again to exert its power of “ jurisdiction,” re-established, in July, 1668, its former authority over that country, though not without opposition.<sup>21</sup> Against this ungracious conduct former complaints were reiterated. But neither the exhortations nor orders of that prince were sufficient for some time to induce that body to send agents to England, to defend its proceedings or to explain its pretensions: It excused itself, by saying, rather in the language of contempt than of just attention, “ that the colony was too poor to employ agents, and had no meet instruments.”<sup>22</sup> Wearied with the incessant application of the oppressed, the common sovereign of both at length resolved to give judgement against the general-court, even in its absence, if it should persist in a line of conduct so inconsistent with justice and with proper regard to his authority. Edward Randolph, a special messenger, was sent to Boston to give formal notice of this spirited determination: Assigning a reason, which shews the state of his mind; “ that he may be no longer tired with the complaints of his subjects, “ but may do them justice.”<sup>23</sup> This appearance of decisiveness had the same effects then which it always has, and convinced Massachusetts that he was now really in earnest. Its emissaries, in England, had given constant information of the various proceedings with regard to this perplexing business; and, on that occasion, forewarned it of the danger,

and advised; "that some presents, and yet of no great value, might be placed to the country's advantage."

Instructed by all these notices, and impressed with a sense of the present emergency, the governor instantly convened a general-court. The elders, who, in this as in the Jewish commonwealth, were generally consulted on all extraordinary affairs, were invited to attend: And to them this question was proposed; whether to answer these complaints by sending attorneys, or by writing. They advised the appointment of agents, "provided their instructions were qualified with the utmost care, and caution, by which they might negotiate that affair with safety to the country and duty to the king." Stoughton and Bulkley were accordingly soon after sent. And the general-court excused its former dilatory conduct, by observing; "that it did not establish that government, which it claimed from its patent, by force, but by the consent and solicitation of the inhabitants, nor was it afraid to submit to a just determination."<sup>24</sup>

When all parties, at length, appeared in July, 1677, before the two chief-justices, to whom this tedious controversy was referred, ancient pretensions seemed to vanish before their sagacity. The general-court, seeing that its claims could not be supported, and fearing for the fate of its charter, disclaimed, with a provoking facility, after so much expence and delay, any title to the lands in controversy. Mason, being convinced by his counsel, that no jurisdiction could be transferred by the Plymouth-company, under whom he claimed, waved all pretence of government over New-Hampshire. And the soil, being possessed by persons who were not then present to defend their rights, it was deemed improper to judge of a title which had not been defended. With regard to the boundaries of Massachusetts the judges decided; "that they cannot be construed to extend farther northward, along the river Merrimack, than three English miles beyond it."<sup>25</sup> And Main was adjudged to Gorges. All parties being again heard before the committee of plantations, and alledging nothing material against a determination which was dictated by good sense and justice, the judgement was confirmed, and all parties were ordered to acquiesce.<sup>26</sup>

Yet,

Yet, an adjudication, so rational and satisfactory, only sowed the seeds of future discord, which produced abundantly. While Charles, before the complaints above-mentioned were fully adjusted, was in treaty with Gorges in order to acquire his interest, the general-court sily purchased his title. Mortified and offended beyond measure, that monarch, "though willing to forget past errors and mistakes, required it to give "up the purchase, and to return the writings, upon being reimbursed "the price."<sup>27</sup> But that body, at the same time that it justified this disingenuous transaction, by remarking, "that it was done at the desire "of the inhabitants, and in favour to them," silently declined to comply.<sup>28</sup> And, by thus inflaming his resentments, at the expence of character, it only added force to a resolution which he had already taken. It now considered itself as standing exactly in the place of the original proprietary, and as lord of Main, invested with all the prerogatives conferred by his patent. It at the same time perceived a necessity for a different administration over that colony than it had formerly exercised. And it appointed the deputy-governor, as president of Main, to rule it with a delegated sway. Yet the inhabitants never cordially submitted. While they were considered as entitled to the same privileges, and were governed in the same manner as Massachusetts, "they were well content." But, to be degraded thus from a state of equality, and reduced to the condition of a subordinate territory, both mortified their pride, and deprived them of rights. They reasoned: "That though that colony itself was a free state, yet "this was no security to others, that they should be less arbitrarily ruled "than when a single person was the proprietary." Nor were these apprehensions altogether groundless. "Charles had heard, in the year "1679, of the effects of a severe hand laid by the general-court on his "subjects there." And, in August, 1680, the deputy-governor sailed from Boston with two transports, and sixty foldiers on-board, "to still "the people of Casco-Bay."<sup>29</sup> Thus was that body as prompt to support its authority, or pretensions, by the sword, as it was slow to do that justice to others which it was clamorous to obtain. Philosophic spirits remarked: "That the conduct<sup>30</sup> of the ancient republics, with regard "to their dependent territories, ought alone to teach this lesson of cau-

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“tion to mankind, that it is not the colonies of democratic or popular states which are generally the most happy and free; because their inhabitants are considered as the subjects of the people.”

During forty years had Massachusetts and its neighbours enjoyed a season of profound peace, which they prudently employed in subduing the woodlands and in planting their settlements around. The most ancient emigrants had now finished their pilgrimage, and slept with their fathers: They departed; lamenting, with their last breath, that they had been born too soon to see New-England in its zenith.” The aborigines had beheld its beginning, its progress, and they now began to dread its maturity. During its infant state, the colonists had cultivated the goodwill of the natives with a humanity equal to its prudence. And the tribes, as early as 1621, had acknowledged themselves to be the subjects of the crown of England. But, by this and similar transactions, they probably intended nothing more than to be ranked among the brothers of the English, with whom they wished at all times to smoke the pipe of peace. Though they continued to reside and to hunt within the boundaries of the colonies, they remained perfectly independent, and owned no obedience to the various jurisdictions which were established. But they decreased continually in numbers and in power, as the extent of their hunting-grounds was narrowed by gifts, or sales, or perhaps encroachments. Sachem Philip, a descendant of the famous Massasoet, at length arose, who had sagacity to perceive the interest of the Indians, and spirit to resent what he deemed their wrongs. And a war commenced in the year 1674, which had well nigh laid the glories of New-England for ever in the dust.” The cause of that destructive evil has been variously reported. The colonists have discovered its origin in the ambition and perfidy of Philip: The historian of that chief would trace its source, perhaps with greater probability, to the continued invasions of the planters, to their attempts to subject an independent people to municipal laws, which were as unintelligible to them as they were inapplicable, and to the patriotic efforts of that gallant sachem to rescue his country from impending slavery. After raging furiously for some time, the war was at length finished by a peace, which was sealed with the death  
of

of Philip, in the year 1677. A devastation of three thousand Indians is said to have almost annihilated the tribes within the boundaries of the four colonies which had been engaged in the war. If the loss of lives to that country was considerable, the destruction of property was calculated at 250,000l. While the provincials demanded no aid from England, they refused the proffered assistance of New-York. And, at the same time that their friends in the parent country deplored their misfortunes, there were not wanting others who converted their distresses into crimes. These represented: "That the obstinacy or parsimony of the ruling men of New-England would assuredly deprive England of an important territory, which they affected to consider as independent, by declining to apply for effectual assistance."<sup>3</sup> The devout among themselves remarked, that, though they were delivered from the hands of their enemies, the judgements of God seemed still to pursue them. In order, therefore, to examine the state of religion, and to prevent the farther growth of profaneness, the general-court called a synod of all the churches. It agreed, as might have been expected, "that there was not only a great decay of piety among the inhabitants, but that pride, intemperance, Sabbath-breaking, and covetousness, were at an uncommon height." And it advised, what had then the decisive effect of commands, that the ministers ought to preach, and the magistrates to put the laws in execution, against vices, as abominable as they were unchristian. Among other sins, which were said to have brought on the Indian war as a chastisement, the toleration of the Quakers was deemed a principal one: And now, in opposition to the requisition of its sovereign, contrary to the advice of its best friends in England, the general-court passed a new ordinance; requiring constables to apprehend officially all persons found at a Quaker meeting, and to commit them to the house of correction. Both the persecutors and persecuted, who were now equally pitied by the humane, lived to enjoy real liberty under a form of government altogether arbitrary; which the former regarded as a curse, because it deprived them of the power of tyrannizing over fellow-subjects entitled to equal consideration; which the other deemed the greatest of blessings, because they enjoyed under it genuine freedom.<sup>4</sup>

Notwithstanding

Notwithstanding the infelicities we have remarked, historians are confirmed by the evidence of records when they assert, “ that Massachusetts, “ from the Restoration to the present time, made a greater figure than “ it ever did at any other time.”<sup>35</sup> It continued to act, as it had always done, as an independent state.<sup>36</sup> “ Its trade, as we are assured, “ was as extensive as it could wish.” The acts of navigation were not enforced by the governor, who was annually chosen by a people, “ whose “ interest it was that they should not be observed :” No custom-house was consequently established. It carried on the greater part of the trade of the plantations to every quarter of the globe, and its ships visited every port in quest of gain. Vessels from every European country, as well from France and Spain as from Holland and Italy, were seen in the port of Boston.<sup>37</sup> And, as the commercial spirit pervaded the whole, wealth poured out her blessings on the colony in abundant streams.

But a scene of troubles now ensued, which closed only with the dissolution of its ancient government, and the loss of its original liberties. Amid the variety of daily complaints against Massachusetts, whether of individuals, of neighbouring colonies, or of the Indian sachems, none made so deep or lasting an impression as those of the merchants and manufacturers of England. To Charles II. in the beginning of the year 1675, they represented, and complained with their usual spirit: That the inhabitants of New-England, disregarding the acts of navigation, not only traded to most parts of Europe, but encouraged foreigners to go thither and traffic with them; that they supplied the other plantations with those foreign productions, which ought only to be sent from England; that, having thus made New-England the great staple of the colonies, the navigation of the kingdom was greatly prejudiced, the national revenues were impaired, the people were extremely impoverished; that such abuses, at the same time that they will entirely destroy the trade of England, will leave no sort of dependence from that country to this. They prayed, that the subjects of New-England might be compelled to trade according to law, and that the colonies might receive no supplies but from England, as good policy dictated, and the laws required. They were solemnly heard in support of the truth of their complaints,

plaints, and the justness of their reasonings. And the committee of plantations, after a consideration equal to the importance of the subject, at length resolved, that there should be no retrospect; but, in order to prevent the like abuses in future, proper persons ought to be appointed to administer the oaths to the governors, obliging them to execute the laws of trade; that officers should be settled in New-England, as in other places, to receive *the duties*, and to transmit the bonds which acts of parliament required; that, in case of refusal to admit the officers, the other plantations should be forbidden to allow the people of New-England any intercourse of trade. But the most important and effectual of all was their concluding resolution, which by anticipation deprived a future minister of the praise or the demerit of carrying into execution a similar measure: They determined, “that captains of his majesty’s frigates should have instructions to seize and bring in offenders that avoided to make their entries in England.” Of these proceedings, which shew the sentiments and the practice of all parties during those days, the general-court was faithfully informed by its emissaries; who gave warning “how any offence of this kind should be given, lest a little profit to particular persons should occasion to the whole the loss of their chiefest enjoyments.”<sup>38</sup>

Those resolutions, nevertheless, equally prudent and decisive, were not at that time put in practice with a vigour and perseverance in proportion to what the prosperity of the national commerce, and the support of the authority of the laws, required. The councils of Charles, like those of his successors, were either divided or distracted by a variety of more interesting objects. Partly owing to the arts of his enemies, but more to his own imprudence and arbitrary administration, that monarch, towards the conclusion of the second Dutch war, which all parties in England condemned, wholly lost the popularity that he had enjoyed since the Restoration, though he tried every winning art to regain it. A jealousy of popery and other causes diffeminated a discontent through the nation, which his most strenuous exertions could not prevent from producing the bitterest fruits. From that unfortunate epoch there existed a continued contention, for several years, between that prince and the commons,

whom in the course of two years he four times in anger dissolved.<sup>39</sup> Governed by leaders whom the money of France had gained to its interests, they were too much engaged in domestic faction to find leisure to attend to colonial affairs. He and his ministers, anxiously employed in warding off the attacks of their opponents, which were directed by the councils of a foreign power unfriendly to England, were little able, for some years, to extend their undivided aims beyond the Atlantic. The ruling men of Massachusetts, whose first lessons were received in the school of civil commotion, and whose education was finished in the court of Cromwell, were in the mean time neither ignorant of the affairs of England, because they received, from a variety of hands, the most minute information, nor unskilful in turning its distractions to the promotion of their own views. They for years found resources in their own talents or in the embarrassments of that monarch, either to elude or to delay a compliance with his repeated requests or commands. And the prospect of a civil war in England, from the disputes with regard to the famous bill of exclusion, or the final triumph of Charles over all his opponents, either confirmed their obstinacy or softened the spirit of their deliberations into compliance.<sup>41</sup>

Notwithstanding the reiterated complaints of the merchants and manufacturers, and the breaches of the acts of trade, were sufficiently apparent from a variety of evidence; yet, of all the resolutions before-mentioned, little more seems to have been done than to write to the governors of the colonies, in April, 1676, commanding them to enforce a strict obedience to the laws: And commissions were at the same time transmitted, empowering proper persons to administer to them the oath, which had been framed for binding all by the most sacred of ties, to perform what had been given them in charge. To add weight to these measures, it was determined, “that no Mediterranean passes should be granted to New-England, to protect its vessels against the Turks, till it is seen what dependence it will acknowledge on his majesty, or whether his custom-house officers are received as in other colonies.”<sup>42</sup> Yet Charles, still embarrassed at home, and fearful of contradiction and disrespect from the general-court, under pretext of infringements of its charter,



charter, hesitated long, and determined to proceed upon the best information, before he adopted that plan of "general reformation of the abuses in the government of Massachusetts, which he had finally resolved on, so as to reduce it to the same dependence as the other colonies." That prince merits as much commendation for his perseverance of spirit, in reducing every dominion of the crown to obedience to the laws, as some parts of his conduct of a very different tendency deserve the greatest blame.

Edward Randolph was dispatched in the beginning of the year 1676, as well to convey that monarch's letter to the general-court, which enjoined it to send agents to England fully instructed to answer complaints, as to inquire minutely into the state of the country, of its government and laws. This person, so noted in the annals of New-England, during the reign of Charles and his successor, was characterised, by the colonists, as one "who went up and down seeking to devour them."<sup>43</sup> He made no less than eight voyages thither in nine years, either to procure intelligence, to execute the offices with which he was intrusted, or to notify the writs of quo-warranto, which laid the fabric of independence in ruins. He had studied thoroughly their history, their jurisprudence, their manners; and his accounts of those colonies are by far the most intelligent, decisive, and satisfactory. The arrival of a special messenger, who was "ordered to hear read the royal commands in full council,"<sup>44</sup> determined the general-court, after great advice, to comply. It sent agents, but with instructions "drawn with the utmost caution, for the preservation of its patent liberties."<sup>45</sup> Though they concurred in the settlement of the tedious controversy with Mason and Gorges, which we have seen was decided against the colony; yet, when they were examined by the committee of plantations, with regard to the extent of their authority, they said, that they had no other power than to defend the claims of these men, but were not authorised to answer any other question than as private men.<sup>46</sup> Nothing could be more dissatisfactory, or contrary to expectation, than the coldness and reserve of this declaration. They were told, in language which sufficiently spoke disappointment and chagrin: "That his majesty did not think of treating with

“ his own subjects as with strangers, and to expect the formality of powers ; but, being determined to do what was right, they might inform their employers, that, though he will not destroy their charter, he had resolved to reduce them to a more palpable dependence on his crown, in order that they might be of use to him in times of necessity.”<sup>47</sup> And yet, with an inconsistency which would have convinced men of less penetration of a want of real vigour, they were ordered to procure larger authority, to enable them to consent to a regulation of the government by a new patent. The designs of the administration being here fully disclosed, an opportunity was given to those, who had determined never to give up one letter of the charter but with life, to counteract them : And fresh powers for such a purpose were asked for in vain.

Were not, however, the agents instructed to yield any thing on the part of the colony, they were ordered to request favours of the parent country. After stating, with great force, the various burdens that depressed its commerce, they humbly requested what would conduce much to its encouragement, what would be most thankfully accepted ; *that they might not be obliged to pay double-taxes on the productions of their neighbouring plantations ; that they might be allowed to import the necessary supplies for New-England, of the commodities of Europe, without coming first to England ; being most willing to pay all his majesty's duties upon their arrival at Boston.*<sup>48</sup> Thus did they solicit, with a happy moderation, a relaxation of the acts of navigation while the manufacturers of England clamoured for a rigorous execution of them ; while the colonists denied their authority, and prevented their operation : Thus did they propose to pay, with alacrity, duties imposed by act of parliament, at a time when no custom-house had been erected, and the introduction of its officers was opposed as an evil destructive of freedom. But, as a palliative to a line of conduct, which it probably foresaw must occasion disgust, the general-court ordered the agents to deliver answers to the inquiries that had been formerly transmitted by the committee of plantations. This extraordinary paper is remarkable, not only for disclosing many curious particulars of the condition of Massachusetts, but for evincing the admirable talents of the agents, for discolouring

discolouring truths which they wished to conceal.<sup>49</sup> Randolph, however, gave in a very different representation of things.<sup>50</sup> Yet neither is to be altogether relied on. The designs of the agents led them on that occasion to shew “the very mean condition of the plantation.” His duty, as a person who wished to promote the views of the court and his own interest, required him to display the greatness of its wealth, the extent of its commerce, the magnitude of its power, the irregularity of its conduct. Men of discernment saw enough of the truth, notwithstanding every disguise, to induce them to wish for a reformation of abuses, which had rooted with the settlement of the colony, which had become sanctified by time, which at present were not only inconvenient, but led to consequences in future extremely to be feared.

The committee having thus received every possible information, and entered into a serious consideration of the affairs of New-England, in April, 1678, desired the opinion of the crown-lawyers, whether the original patent had ever any legal entity; whether the corporation, by mal-administration of its powers, had not forfeited whatever authority it may have once had; so as to be now in his majesty's disposal. They sent Randolph, the usual agent on such occasions, “to inform them of several matters of fact:” But the answer of Jones and Winnington “was evasive and cold.” They however delivered separate reports of those ordinances of Massachusetts, which they conceived to have been enacted contrary to its charter, and to the laws of England; the former remarking, “that the agents seemed ashamed of many of the regulations which had been objected to.”<sup>51</sup> The lords commissioners at length delivered to the agents, to be by them transmitted to the general-court, a long and specific list of those various evils that had commenced with the constitution itself, that had expanded themselves in its progress, and now produced so much disorder and vexation, for which they demanded an immediate remedy: Declaring, “how much they resented that no more notice had been taken of what had been formerly intimated with so much softness to the agents; and, far from advising his majesty to grant a pardon to the colony, they are of opinion the whole matter ought to be severely searched to the very root.”<sup>52</sup> They soon after

after recommended Randolph to the Lord-treasurer Danby, as the properest person for collector of Boston: Assuring that minister, "that they had received more information from him about New-England than of all other men."<sup>44</sup> Being approved of, a commission for the appointment of a custom-house officer for New-England was, for the first time, granted, in May, 1678. Yet the treasurer having, in the beginning of the subsequent year, desired to know how the contingent charges of that office were to be defrayed, unless from the exchequer, they gave it as their opinion, that, until his majesty shall convince the colony that he is absolutely bent upon a general reformation of the abuses of that government, they cannot hope for any good from the single endeavour of one man; and, as expedients were soon to be offered, for bringing it to such a dependence on his majesty's authority as the other colonies, they submitted it to his judgement if it were not best to suspend the departure of such an officer for the present.<sup>45</sup> Thus was laid the train of that mine, which was in a few years to blow up that fabric of government, which the pristine emigrants had erected with so much address, which their posterity guarded with a zeal bordering on enthusiasm. They considered their chartered privileges as derived from above: They would have deemed it sacrilege to permit them to be taken away with their consent, or invaded.

It was impossible for the agents to shut their ears against the popular clamour in England, with regard to the conduct of their employers. They heard with pain the reiterated complaints of the unoffending Quakers, who had been again persecuted, as we have seen, for the faults of others, for the gratification of fanatic minds; and they gave notice to the general-court, among other things, "that this conduct had lost them many friends;" but, above all, "that the country's not observing the acts of navigation had been the most unhappy neglect of any, since every day it appeared more certain that, without a fair compliance in that matter, there could be nothing expected but a total breach." While the agents thus gave a just representation of affairs in England, they found that, as had been often experienced by ambassadors of greater name and importance, the exhibition of a genuine picture

ture did not gain them much credit or popularity at Boston : And, as generally happens in popular states, their deficiency of spirits and success were equally attributed to want of talents or zeal.<sup>6</sup> All their successors, who did not deceive the people or promote their factions, have met with a similar fate.

Mean-while the colony, according to ancient custom, fasted and prayed repeatedly, in order to procure success to the endeavours of the agents for obtaining the king's favour, and the continuance of chartered privileges : And a synod was convened, to inquire what reasons had provoked the Lord to bring his judgements on New-England ; what was to be done to remove them. Whatever may have been the success of these pious arts, the general-court, with its accustomed adroitness, used a variety of natural means to avert " the storms of displeasure," which threatened its existence. It transmitted, in the beginning of the year 1679, several addresses, couched in the usual terms of profession, the frequency of which now blunted their efficacy, in order, if possible, to divert Charles from his avowed purpose. It enacted laws to remove the causes of some of the complaints against the colony : Passing an ordinance to punish high-treason with death ; to require all persons to take the oath of allegiance, shewing itself an example to others. " The king's arms were put up in the court-house." But, as we are assured, " it was a more difficult thing to conform to the acts of trade." It wrote to the agents what had been done ; acknowledging what was known to all, that no regard had been paid to these laws. It argued ; " that the acts of navigation were an invasion of the rights and privileges of the subjects of his majesty in that colony, they not being represented in the parliament ; because, according to the usual sayings of the learned in the law, the laws of England were bounded within the four seas, and did not reach America ; but that, as his majesty had signified his pleasure, that they should be observed, it had made provision by an ordinance of the colony, which obliged masters of vessels to yield faithful obedience, which commanded officers to see them strictly observed."<sup>7</sup> Thus we hear, for the first time, that the colonists, though in the same breath swearing allegiance to the crown of England,

were

were not bound by acts of parliament, because they were not represented in it. But this *uncommon* pretension was in a confidential letter to the agents, who had been questioned on this subject in terms of great discontent and jealousy. In public any *formal* opposition was disclaimed. To the secretary of state the governor excused the colony, by saying, “ that it was impossible to prevent some vessels going to France and “ Holland, the owners of which *paid the duties in the colony*; but that it “ had never traded irregularly for more than five thousand pounds a “ year.”<sup>58</sup> How extremely remarkable, that the topic of representation should have been opposed, in those days, to the acts of navigation, that were deemed an invasion of colonial liberties, and not to parliamentary taxation, which had been exercised, which the colonists most willingly admitted, the produce of which they actually paid! What a revolution in the sentiments of men! How singular, that the object of grievance should have gradually veered round; that their posterity should have found it, in the present times, blowing from the very opposite quarter!

The agents, no longer easy in England, because the great object of their embassy had failed while their affairs suffered at Boston, again petitioned for that leave to depart, which was granted to their prayers in May, 1679. Randolph instantly followed them, to execute his office of collector, and at the same time to act as a spy upon the ruling men.<sup>59</sup> Charles affected to be pleased with what the general court had done for the observation of the acts of trade. But, though past errors and mistakes were covered with oblivion, he resolved to keep its affairs “ in a “ fair way of amendment,” till a “ fitter season” permitted him to resume their consideration, and to regulate that government; which was equally necessary for his dignity and for their settlement. With all these views he wrote to the general-court, in July, 1679, that, being then taken up with the prosecution of a popish plot, he could not find speedy leisure to enter on transactions that might have been determined, had the agents brought with them sufficient authority, which they disclaimed. He required that others should be sent over within six months, properly instructed: Giving a reason which struck at the foundation of its power; “ that, since the charter, by its frame, was originally to have been exe-

“ cuted

“ cuted within the kingdom, otherwise than by deputy, it is not possible to establish perfect settlement till those things are better understood.” Among other requisitions, he commanded: That liberty of conscience should be allowed to those of the church of England, or other subjects, not being papists; that all of competent estates should be admitted freemen and magistrates; that the number of assistants, which the charter required, should be chosen in future; that those, who were invested with any privilege or office, should take the oath of allegiance; that military commissions and process of courts should run in his name; that all ordinances, repugnant to the laws of trade, should be abolished; that every assistance should be given to the collector of his customs, in discharge of his duty.<sup>65</sup> Nothing can more fully demonstrate, than did these requests, the greatness of his embarrassments, the extent of his projects, the obstinacy of his perseverance in reducing the independence of that colony to subjection to his crown and the laws. His conduct, on that occasion, shewed, that steadiness, conducted by prudence, will overcome the greatest difficulties.

Nevertheless Randolph no sooner attempted to execute his office, than all his efforts proved as fruitless as had been foretold by the committee of plantations. He complained vehemently of the difficulty of his situation, and of the obstructions that were daily opposed to his exertions.<sup>66</sup> The governor defended the colony, by remarking; “ that Randolph had been very active, and had as much help from himself as he could give, yet he had complained of affronts and discouragements; because the people did not shew much respect to the man who was considered as an enemy.”<sup>67</sup> When informations were filed by the collector, in the courts of justice, for breaches of the acts of navigation, “ he was generally, if not always, condemned in costs.” The general-court, however, did not altogether disregard the requisitions before-mentioned: It filled up the number of the assistants agreeably to the charter; it ordered all commissions to issue in the royal name; it commanded the oath of allegiance to be taken; the governor was sworn to execute the laws of trade: But the command the most material of all, that of sending agents to England, it passed over in silence; apologizing for this neglect by saying,

“ that the country was poor, proper persons were afraid of the seas as  
 “ the Turkish pirates had lately taken their vessels, and that his majesty  
 “ was still employed in the most important affairs :” And it appointed a  
 committee to review its whole system, that whatever might be found re-  
 pugnant to the laws of England might be repealed.<sup>63</sup> Randolph returned  
 to England in the end of the year 1680 to complain of those obstructions;  
 which had been foreseen, and to solicit fresh authority, that was equally  
 derided, because there existed no power to support what the principles  
 of the people and the forms of the government equally opposed.

When the transactions before-mentioned were, however, communi-  
 cated by the governor to Charles in September, 1680, far from being  
 gratified by concessions, which appeared to the general-court so considera-  
 ble and to him so trivial, his former resentments seem to have been only  
 roused. He was now thoroughly acquainted with its affairs, its maxims,  
 its usual arts; and his sagacity easily penetrated the thin covering which  
 it had thrown over its intentions. In prosecution of his former policy,  
 “ of keeping the business of New-England in a fair way of amendment,”  
 he soon after remonstrated: That, on the most insufficient pretences, the  
 general-court had taken no notice of several of his late requisitions;  
 that it had repealed no ordinances contrary to the laws of England or the  
 royal prerogative; that it continued to raise taxes on traders who were not  
 members of the corporation; that it discouraged the officers of the  
 customs; that it continued its irregular trade: And he admonished it  
 of its duty, and required that agents should be sent to England, in three  
 months, fully instructed to attend the regulation of its government.<sup>64</sup>  
 Encouraged by this vigorous step, and armed with additional powers,  
 Randolph made one more animated attempt, in the beginning of the  
 year 1681, to execute his office. He laid his commission before the gene-  
 ral-court, and requested its countenance and aid, to enable him to render  
 it effectual. But little attention was given to an authority which was  
 so abhorred, or to a person who was so obnoxious: And, by a letter to  
 the governor, he demanded the final resolution of the court, “ whether  
 “ it will admit the patent above-mentioned to be in force or not; that  
 “ he may know how to govern himself.” It remained silent.<sup>65</sup> Thus  
 shewing;



shewing equally its contempt for the man and the embarrassment of its situation.

Being fully informed of this conduct, so contrary to the laws of England, and to those projects of reformation that he had long revolved in his mind, Charles, in October, 1681, once more remonstrated: That the collector of his revenues had been unable to execute his office with effect, and not only were attachments brought against him and his officers, but he had been obliged to deposit money before he could bring actions against offenders; that appeals to England, in matters of revenue, had been refused; that the general-court had seized the moiety of forfeitures, due to him by law: And he required it to make restitution of the money levied of the officers, that they might be encouraged in putting the laws of trade in execution, as in England; that it shall, without delay, give an account of forfeitures; that appeals shall be allowed: And he threatened it with a writ of quo-warranto, should it any longer delay to obey his repeated commands. "To what a state of degradation was a king of England reduced, in a controversy tedious and disgusting; in which, from the peculiarity of his situation, he could only support the commercial system with the feebleness of representation. The first magistrate of a great empire found reason to exclaim: How weak are the declarations of positive law in opposition to the spirit of a people!

The general-court exculpated itself, as well by denying the charge as by saying; that the collector was acknowledged, since his commission had been enrolled; that no improper suits had been commenced against the officers, from whom no deposit should in future be required; that it knew of no forfeitures: But, as to appeals, it hoped they would be farther considered. In this singular transaction, wherein we behold the struggle made in opposition to the acts of navigation and to the officers of the revenue, we find displayed an invariable principle of that colony: It acknowledged, by words, the authority of the collector; but its actions prevented the effectual execution of his office. Randolph, having written that he was in danger of being punished with death, as a subverter of the constitution, by virtue of an ancient law, was, in September, 1682, ordered to return to England: And this additional reason

was given; "as he cannot perform his duty, and may be useful here  
"in the regulation of that government."<sup>67</sup>

Two parties naturally sprang up within the colony during those days of distraction, or rather had at all times existed in it. All agreed in the importance of their chartered privileges, but they differed with regard to their nature, their extent, the means of defending them. The faction, which was directed by Danforth, the deputy-governor, opposed sending agents to England, or submitting to the acts of navigation; and it contended for adhering to the patent, according to its own construction of it, which amounted to independence. But the moderate party, which was led by the aged Bradstreet, the governor, who had survived all the original emigrants, wished to promote the interest of the colony, by taking advantage of times and events. The victory, which Charles II. obtained over his opponents in England, assuredly gave him a similar triumph over his adversaries in Massachusetts. And men of moderation had the influence to obtain the appointment of agents, in February, 1682, though it was a matter of some difficulty to get men to accept of an office so extremely thankless; as well to answer the various complaints against the colony as to dispel, if possible, the cloud of displeasure which had so long hung over it. Yet they were expressly instructed to consent to no act that should infringe the liberties granted by charter, or the government established thereby. And, according to the never-failing practice, a fast-day was appointed, to pray for the preservation of the patent, for success to their agency.<sup>68</sup> At the same time, however, that the general-court steadily adhered to what it deemed its just rights, it endeavoured to mollify that monarch, as well by their accustomed professions of loyalty as by more substantial arguments; which shew that its sagacity had discovered his real character. It had formerly presented him with a ship-load of masts, for the use of the navy of England, the freight of which alone had cost sixteen hundred pounds, which he graciously accepted.<sup>69</sup> The royal fleet being in want of provisions, when in the West-Indies, a seasonable supply was transmitted, and it received, in return, a letter, signifying how well taken it was by his majesty. From the Restoration to this year, the ministers of England had been corrupted; the clerks of  
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the council had been retained in constant pay by the wages of iniquity, in order to communicate the secrets of administration: The general-court now attempted to bribe the king himself. Urged by the necessity of the occasion, when every thing dear was at stake, because the beloved charter was in danger, it easily listened to the advice of Cranfield, the governor of New-Hampshire, who is said to have suggested, “ to tender Lord Hyde an acknowledgement of two thousand guineas, for his majesty’s private use.” But the secret of this delicate transaction being disclosed, as we are assured, by the adviser of it, the ridicule of the court was turned against the colony with irresistible success.<sup>70</sup> Yet the failure of this intrigue may, with greater probability, be attributed, partly to the awkwardness of the agents, but more to the probity of Lord Rochester, who, amid corruption, retained his integrity. That body discovered, when it was too late, that *honesty is on all occasions the best policy*.

It soon appeared, however, that the deputies were not invested with the powers which had been required, and therefore expected. It was in vain for them to present the address of the general-court, “ humbly craving the royal pardon for former irregularities, which had been continued through inadvertence and not through contradiction; promising to hold itself strictly obliged, for the future, to the rules prescribed by the charter.”<sup>71</sup> As these promises gave little satisfaction, because they were deemed insincere, the deputies were ordered, in September, 1682, to apply to their principals, for full powers to enable them to consent to a regulation of that government: And they were again threatened with a writ of *quo-warranto*.<sup>72</sup> The agents represented to the general-court the condition of the colony as desperate; that, as many cities in England and some of the plantations had submitted, they desired it to determine, whether it was better to resign itself to the king’s pleasure or to suffer a writ to issue. Not only the general-court, but the inhabitants, by the advice of their ministers, resolved, after considerable debate and consideration; “ that it was better to die by the hands of others than by their own:” Thinking it more honourable and more safe to submit to an exertion of power which it could not resist, than,

by an act of the legislature, to abrogate a beloved constitution, that could not afterwards be easily resumed upon a change of times. It again transmitted an address, containing similar professions and similar promises. It instructed the agents "to deliver up the deeds for the province "of Main," should that act be considered as an equivalent for the preservation of the patent; but to make no concessions of any of its chartered privileges."<sup>73</sup> What a picture do these transactions display of the temper of the people of Massachusetts: And what lessons of prudence ought they to have taught to the ministers of England!

But as the one party in this singular controversy refused to submit to that regulation which the other had resolved on, because it was necessary, articles of high-crimes and misdemeanour were presented to the committee of plantations, by Randolph, against the corporation, in June, 1683.<sup>74</sup> The writ of quo-warranto was at length ordered. Randolph's was the ominous hand which carried it across the Atlantic: And, to give weight to the messenger, who, in Massachusetts, had little in himself, and to the proceeding, which was equally obnoxious, a frigate was ordered to transport him thither.<sup>75</sup> The agents, fearing lest their stay in England might countenance the present conduct of the court, desired leave to return, as they had no power, neither were they willing, to answer the writ. But, to prevent too great an alarm within the colony, a royal declaration was at the same time transmitted; that, notwithstanding the quo-warranto, no private rights should be affected.<sup>76</sup> When all these arrived at Boston, the general-court once more considered the critical state of its affairs. The governor and the greater number of assistants, actuated by the caution of age, resolved to submit to the royal pleasure, and transmitted an address for that purpose. The delegates, animated by the principles natural to a representative body, and invigorated by the decisive influence of the clergy, who foresaw a loss of consequence in the alteration of government, in November, 1683, refused their assent. So much did the people of Boston detest Randolph as the author of all their woes, that they believed he had carried a torch through their streets, because a conflagration happened on the day after his arrival: The same passions have prompted the populace of all countries to adopt similar sus-  
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picious, and to credit implicitly similar imputations. After a variety of obstructions, arising from the distance, the novelty, and real difficulty, of the business, a judgement was given for the king, by the high-court of chancery, in Trinity-term, 1684, against the governor and company of Massachusetts, "that their letters patents and the enrollment thereof " be cancelled." 77

Thus ended the ancient government of that colony, by legal process; the validity of which, however, has been questioned by very great authority. The house of commons, inflamed probably by the just and general indignation against the violent proceedings with regard to the corporations in England, at a subsequent period resolved, "that those quo-warrantos against the charters of New-England were illegal and void." But, when the judgement before-mentioned was re-considered by those eminent lawyers and Whigs, Treby, Somers, and Holt, they gave it as their opinion, "that, were it reversed, and the general court exercised " the same powers that before the quo-warranto it had done, a new writ " would issue against it, and there would probably be such a judgement " as to leave no room for a writ of error." 78 It was plainly perceived, notwithstanding every endeavour to conceal it, that the general strain of the government, which had been established in Massachusetts, was as inconsistent with its charter, as with any kind of dependence on England, or attention to its laws, which could not have been defended by fair discussion in any court of law, under the most equitable administration. Charles II. was undoubtedly reduced to that perplexing dilemma, which has occurred in modern times, and occasioned such embarrassments, of either admitting the real independence, though nominal subordination, of Massachusetts, or of adopting some vigorous and decisive measure, for defending the just authority of the laws, and enforcing their execution; for supporting the actual government of the state over its dependent province. The general-court, indeed, had obliged the colonists to swear allegiance to that monarch as their king; had ordered all process to issue in his name; had caused his arms to be displayed over the seat of justice. But his kingship was merely nominal, without any authority; because he was admitted to perform no one governmental act. By a strange solecism in policy;

policy, the supreme executive magistrate of the empire had been excluded from the power of executing the acts of the sovereign legislature, or of preventing the establishment of regulations utterly inconsistent with the nature of the relation between that colony and the parent-country, of which it was a territory.

Notwithstanding the long train of public disputes which have been remarked, New-England flourished prodigiously. She promoted successfully the operations of agriculture; she augmented her manufactures, and extended her commerce; and she acquired wealth and population in proportion to the greatness of all these; because the rough hand of oppression had not touched the labours of the inhabitants, or interrupted the freedom of their pursuits. The infelicities before-mentioned only promoted their interests by giving life to their exertions. It is general habits of inattention, of indolence, and of universal lethargy, the never-failing consequence of both, that depress a people, that produce a disquietude and poverty which always bring along with them dissatisfaction, insurrection, and every disorder that can afflict a nation. While the Dutch was ruined the traffic of the southern colonies, they little interrupted the trade of New-England, because it was her constant maxim to engage in commercial dealings equally with friend and foe. And she was little disturbed by some inconsiderable incursions of the Indians on her eastern borders; because her superior vigour easily repelled their assaults, and compelled them to sue for peace on the usual terms of Indian treaties; which we are assured was the first made by that colony with the eastern tribes.

The charter being now vacated, the ministers of England, as early as November, 1684, thought it prudent to consider of a proper mode of government for that colony. Colonel Kirk, whose notoriety has procured him a conspicuous place in the annals of his country, was then appointed governor of Massachusetts, New-Hampshire, Main, and New-Plymouth: And it was determined that there should be no mention of an assembly, but that the power to make laws should be invested in a governor and council during pleasure. But, before his commission and instructions could be finally settled, the demise of Charles, in the begin-  
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ning of the subsequent year, annulled his appointment,<sup>79</sup> and for the present defeated the arbitrary system which was thus intended. That monarch lived not to complete the plan of reformation which he had vigorously begun, or to rear up a fabric of government for Massachusetts in the place of what he had thus laid in ruins. And Kirk, having never assumed the guidance of reins which he was disqualified by nature to direct, was reserved to contribute, by his cruelties to the unfortunate at a subsequent period, to bring unpopularity and exile on the immediate successor of a monarch, who was regretted by his subjects in proportion as they dreaded events to come.

James II. no sooner ascended the throne, than he transmitted proclamations of that event, to be published in New-England.<sup>80</sup> The letter, which conveyed official notice of that deplored event to the governor and magistrates, informed them, in the language of insult, which ought never to be spoken to the afflicted, "that they were not written to as a government, their patent being cancelled;"<sup>81</sup> which, by putting them in remembrance of what they had lost, served only to throw a gloom over a transaction where gladness should alone have presided. This prince was proclaimed at Boston, in April, 1685, with sorrowful and affected pomp.<sup>82</sup>

Ten months had passed away since the dissolution of the patent, during which the former administration, though feeble and consumptive, governed the colony, when it was deemed necessary to establish a temporary government for the preservation of order. With this design, a commission passed, in September, 1685, appointing a president and council, composed of the most loyal of the inhabitants, for the government of Massachusetts, New-Hampshire, Main, Narraganset, till the chief governor should arrive. They were created a court of record, for the administration of justice, in affairs civil and criminal; so that the forms of proceedings and judgements be consonant to English laws, as near as the circumstances of the colony will admit: And an appeal was reserved to the judicatories of England. They were empowered to establish county-courts, and to appoint judges and officers. Liberty of conscience was allowed to all; but the church of England was to be peculiarly encour-

ged. For the support of that government, which they were thus empowered to exercise, they were authorized to continue the collection of those taxes that had been already imposed.<sup>83</sup> Thus the authority of the president and council was merely executive, since they were invested with no portion of the legislative power: They might enforce the laws already in being; but they could enact none.

Dudley, a native of the colony, who was now appointed president, because, when agent, he had promoted the views of the court, was received with the less reluctance, though he had rendered himself obnoxious to his countrymen, from the general expectation of Kirk as governor; "from whom they apprehended something of the same tragedy as he had been acting in the west of England." In May, 1686, was read to a great concourse of people, "in open court," the exemplification of the judgement against the patent; the royal commission was published; and, with the proclamation of the change of government, was promulgated "indulgence in matters of religion." The president soon after laid before the council "a libellous paper," containing a declaration of some of the deputies of the late general-court. They insisted, that the whole unquestioned privilege of the subject was transferred by the commission to the president and council; there being no mention of an assembly: And they reluctantly submitted to a power which they could not then oppose; protesting, "that, though they could not give their assent thereto, they should demean themselves as loyal subjects, and humbly make their addresses to God, and in due time to their gracious prince, for relief." The president and council at the same time continued the duty of a penny a pound of the value of merchandise imported, and other taxes, which they ordered to be collected as formerly. They empowered the town of Boston to levy the accustomed duties for internal purposes. And they declared in force the ancient ordinances of the general-court. The colony, nevertheless, underwent little change. Its laws and customs, its church, both in worship and discipline, continued the same. The courts of justice remained nearly on the former plan. And the short administration of the president, though the house of delegates was laid aside, "was not, as we are assured, very grievous:"<sup>84</sup> Yet



it met with opposition. While the president and council transmitted a loyal address to their sovereign, in return for the flattering change of government, they sent a memorial to the lords of the council for colonies by a special agent. It solicited the annexation of Rhode-Island and Connecticut to Massachusetts should their charters be cancelled: It represented "that a well-regulated assembly, to represent the people, ought to be allowed, as extremely needful:" It begged for an abatement of the taxes imposed by parliament. But their conduct did not give perfect satisfaction in England. Complaints were transmitted against them, that they connived at former practices in opposition to the laws of trade, and countenanced ancient principles in religion and in government.<sup>85</sup> They too complained of their inability to support government, as the acts of taxation were nearly expired, and they had not authority to renew them without an assembly.<sup>86</sup> In the beginning of the year 1686, it was therefore deemed necessary to establish a permanent administration for New-England. Happy, had James rebuilt the structure with a regard to the constitution, and to the privileges of his subjects, equal to the perseverance and prudence of the most careless of monarchs in pulling it down! He was entitled to possess the whole executive power; they had as just a right to participate in the legislature. It was in vain for the crown-lawyers to give their official opinion; "that, notwithstanding the forfeiture of the charter of Massachusetts, its inhabitants continued English subjects, invested with English liberties."<sup>87</sup> For, alas! the heart of James was enamoured of arbitrary power. Jeffereys was now chancellor of England. And it was determined to conjoin the legislative and executive authority in the same persons; whereby a tyranny was established.

Sir Edmond Andros, "who, we are assured,<sup>88</sup> excepting his bigotry "to popery and to the arbitrary power of his prince, was a good moral man," was appointed captain-general and vice-admiral of Massachusetts, New-Hampshire, Main, New-Plymouth, Pemaquid, Narraganset, during pleasure. He was empowered, with consent of a council, to be appointed by the crown, to make ordinances, for those colonies, which should not be inconsistent with the laws of the realm, and which should

be transmitted for approbation or dissent, and to impose taxes for the support of government. He was authorized to govern them, according to his commission, his instructions, and to the laws which were then in force or might be afterwards established. The governor and council were constituted a court of record, to hold plea of actions, civil and criminal; provided the forms of proceeding, and judgements, were as consonant to the laws of England as the circumstances of the country would admit: He was enabled to erect county-courts; reserving an appeal to the governor and council, and from them to the king: And to appoint necessary officers and magistrates. The greater part of the instructions, which were given on that occasion, would have done honour to a patriot king during the most virtuous times: And nothing was there wanting to insure the real happiness of the people, but an effectual check against the abuse of the powers which were thus conferred. Andros was instructed: To appoint no one of the council, or any to other offices, but those of the best estates and characters, and to displace none without sufficient cause; to continue the former laws of the country, so far as they were not inconsistent with his commission or instructions, till other regulations were established by the governor and council; to confirm and dispose of such lands as were in the power of the crown to grant, at a quit-rent of two shillings and six-pence a hundred acres; “to take away or to harm no man’s life, member, freehold, or goods; but by established laws of the country, not repugnant to those of the realm;” neither to impair the revenue, nor to grant escheats, or forfeitures, of greater value than ten pounds, without special direction; to levy the former taxes for the support of the establishment, and to discipline and arm the inhabitants for the defence of the country, but not to impede their necessary affairs; to encourage freedom of commerce, by preventing ingrossers; to hinder the excessive severity of masters to their servants, and to punish with death the killers of Indians or Negroes; to allow no printing-press; to give universal toleration in religion, but encouragement to the church of England; to execute the laws of trade, and prevent frauds in the customs.<sup>89</sup> Never, perhaps, was there exhibited, in the same state-paper, so great a regard to the rights of men and to the privileges of the citizen,

citizen, or such a disregard to both, as were displayed in these instructions, and in the constitution which was then established for New-England: The form was altogether arbitrary; the essence was favourable to real freedom. That measure was adopted, which could alone support such a government over such a people: A small military establishment, consisting of two companies of soldiers, was formed, and military stores were transported.<sup>90</sup> In order to facilitate the colonial commerce, Andros applied for leave to continue the practice, that had commenced in the year 1652, that had been pursued to this time notwithstanding the prohibitions of Charles, of coining money at Boston. But the project being referred to the officers of the mint, they confuted his arguments, and decided against his application. But he was empowered to regulate the circulation and value of foreign coins.<sup>91</sup>

Andros arrived at Boston in December, 1686. He was received with a satisfaction in proportion only as he was less dreaded than Kirk. He immediately published his commission, and assumed the administration of the various colonies committed to his charge. And to the others he at the same time annexed Rhode-Island, by virtue of an order which he brought with him for that purpose; demanding its charter of Clarke, the late governor, which he promised to deliver "at a fitter season."<sup>92</sup> The colonial historians concur in representing: That though his administration at first gave great encouragement, he too soon copied the arbitrary rule of James in England; going even beyond it, by depriving the colonists of their lands, on pretence, that when the charter was vacated these became forfeited; that he threatened them with the loss of their religious liberties, by no longer tolerating the congregational mode of worship, and taking from them their churches; that he levied troops by an impress, so inconsistent with freedom, however agreeable to the ancient law; that he restrained the liberty of the press, though there was not the same reason, as we are assured, to complain of this, as if it had been free before; that he enacted laws, and imposed taxes, without an assembly; that a restraint was laid upon marriages, by not suffering "magistrates to join people in matrimony;" that his arbitrary fees and exactions were intolerable. Such is the frightful picture exhibited of the administration.

administration of Andros. But it is extremely heightened by numerous strokes of the hand of party, which never views affairs in their true light, and seldom condescends to examine with accuracy. And the charges of greatest magnitude were not the faults of the governor, but of the constitution; the smaller accusations arose from actions directly contrary to his instructions. Did he act contrary to them and to his commission, he had been the most faithless of servants, and most criminal of men. But he did not. For, when the agents of the province impeached him before William, they accused him not of acting inconsistent with either, but of having exercised an authority unconstitutional and tyrannous.<sup>91</sup> His conduct was approved of by James; and he was again appointed a colonial governor by William, because he equally appeared to him worthy of trust. Unhappily oppressed by a real tyranny, the colonists of those days beheld every action with diseased eyes, and their distempers have descended in a great measure to their historians, who have retailed political fictions as indubitable truths.

The grand legislative council, which had been thus established, and was composed of the principal persons of the various colonies before-mentioned, readily assembled, and soon passed a variety of laws, either for continuing the former system, or for establishing regulations which so considerable a change made absolutely necessary. The act for reviving the late mode of taxation passed, however, with that reluctance which men always discover when they feel themselves made the instruments of power to rivet the shackles of their country. It met with opposition from a different quarter, of a kind much more to be dreaded. The inhabitants of several towns in the county of Essex, feeling themselves freemen, and insisting that they were such, refused to lay the assessments, without which the taxes could not be collected. The feeble, but magnanimous, efforts of expiring freedom were considered as the ebullitions of a dangerous sedition, which merited punishment in proportion as the example was pernicious: And the leaders of the people, whose laudable exertion merited praise, were instantly punished, as incendiaries, by the courts of justice, which were interested to preserve the public quiet.<sup>92</sup> And this feeble effort seems to have been the only oppo-  
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fiction which was made within those colonies to that system of tyranny which James had established, and Andros was appointed to execute. He gave notice that the whole public revenue would be insufficient to defray the public expence; and he proposed either to change the mode of collection, or to enhance those duties which had been already imposed. But, with a candour which does him honour, and with an attention to the interests of New-England which has been ill-requited, he represented, at the same time, that he found the country extremely poor; owing to its losses, by land, from the late Indian war; by sea, from pirates and shipwreck. Yet that monarch, with a severity of temper which misfortunes only could mollify, gave orders to raise the amount of the taxes to an equality with the necessary charges of the administration.<sup>95</sup> He ordered his declaration for liberty of conscience, that contributed to entail on his family so many woes, to be published in New-England; which was accordingly performed in August, 1687. He announced a treaty of neutrality, with the French, for America; which he commanded to be strictly obeyed. He directed the governor to grant pardons to all his subjects who desired them; but no one seems to have asked for what appeared to the people only of use to the guilty. His general instructions, and these orders, Andros seems to have punctually obeyed; because, as a soldier, he deemed it a point of honour to execute whatsoever was given him in charge. The acts of navigation, the breaches of which were the principal causes of the present unhappiness, were now strictly executed. Having procured the use of the South meeting-house at Boston, while not otherwise employed, the service of the church of England was here regularly performed; was constantly attended by the governor, who has been misrepresented as a Papist, because he was fond of prelacy; and by the principal officers and a small society. But, in this trivial transaction, the colonists, with a spirit incident to a people whose passions are agitated, thought they saw the congregational form universally abolished, and their favourite meeting-houses either taken from them, or shut up.

The Quakers seemed now only to enjoy genuine freedom, while all others considered themselves as enslaved: And this fact seems alone to evince,

evinced, that liberty consists rather in opinion, which every one forms for himself, than in any thing positive, which it is so difficult to define. Relying on the assurances held forth in the governor's commission, but above all on the late declaration of indulgence to conscience, this sect refused any longer to contribute to the maintenance of their ancient persecutors, the independent clergy. The property of the Quakers was seized: But, having appealed to the courts of justice for relief, what had been taken was ordered to be delivered back, because the seizure was deemed contrary to the present system.<sup>96</sup> Thus, for the first time, genuine liberty in religion flourished in New-England. For it is in vain to talk of indulgence to conscience, or of toleration, if men are distressed in any manner, because they differ in sentiment and in action from those in power. What a spectacle does the administration of Andros hold up to mankind for their instruction: Under a form of government, plainly arbitrary and tyrannous, more real liberty was actually enjoyed than under the boasted system, which appeared so fair, which had been defended with enthusiastic ardour, and was now so much deplored!

To be relieved from all their oppressions, real or supposed, which they felt more acutely when they reflected on what they had lost, the colonists sent Mather, an eminent minister and politician of those days, to England, in April, 1688, in order "to make their moan and complaint to his excellent majesty;" flattering themselves that they might possibly procure at least partial redress. Though that trusty messenger "embarked in the night and in disguise," neither his voyage nor his intentions escaped the sagacity of Randolph, who now acted as secretary, in reward of former services. He gave notice to the ministers of England of his designs, of his peculiar attachments, of his late connexions with the popular party, with Shaftesbury, and Ferguson, and Oates: And he forewarned them of his future intrigues, which were thus disappointed, because they were exposed to the view of those with whom he was to act.<sup>97</sup>

While James II. with an infatuation which occasioned his own ruin and entailed numberless ills on his posterity, pursued a variety of plans for raising his arbitrary will above the laws in England, he extended, in  
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the mean time, his aims even beyond the Atlantic. No barriers, whether erected by grants from his predecessors, by ancient forms, or by the common-law, were sufficient to stop his progress. And he issued, in the year 1687, writs of quo-warranto, to vacate the charters of the several proprietors and corporations of the colonies. But, besides that he wished to reduce their governments to simple systems, though at the expence of the rights of his subjects, he meditated other and more salutary projects. His reign is remarkable for being the epoch of the open encroachments of France on the American territories of England. Then was Canada pushed to the southward of the lake Champlain; then were fortresses erected within the immense forest which at that time divided it from New-York and New-England. That monarch, with a speculative wisdom which he was seldom able to carry into practice, adopted the policy of uniting all the colonies, from the banks of the Delaware to the shores of Nova-Scotia, into one province: Giving a reason worthy of a king of England; "that, besides other advantages, it will be terrible to the French, "and make them proceed with more caution than they have lately "done."<sup>98</sup> Men of discernment remarked: That, while he was assisted with French money and troops, to give success to his arbitrary and illegal measures in Great-Britain and Ireland, James effected measures for limiting the power of France in America. At the same time, however, that he appointed commissioners to settle the disputed boundaries of the two nations in America, which, however desirable, had been always neglected, because neither acknowledged principles nor facts could be assigned, he gave orders to Andros to cultivate a good correspondence with the French, to prevent hostilities, but to protect the five nations of Indians. And that governor punctually obeyed his orders, and made an advantageous peace for the tribes. As no power now remained to oppose the will of the prince, it was determined to superadd to the jurisdiction of the four colonies of New-England, New-York and the Jerseys. A new commission was accordingly passed in March, 1688, appointing Andros captain-general and vice-admiral over the whole. And Francis Nicholson, who afterwards became so considerable in colonial annals, was soon after named his lieutenant with the accustomed au-

thority. The powers with which both were invested were exactly similar to those of his former instructions and commission.<sup>99</sup> And the constitution, established on that occasion, was a legislative and executive governor and council, which were appointed by the king without the assent of the people. They issued edicts and imposed taxes; they enforced the former and collected the latter. Assemblies, wherein the colonists ought to have been present by representation and concurred in the establishment of rules which were to bind all, because all consented, were now no longer convened throughout one half the colonies. Thus a system, unconstitutional and arbitrary, depressed, during the remainder of that reign, an unfortunate country, which was deprived even of the scanty alleviation of the miserable, the power of complaining to its neighbours and to the world; since freedom of printing was equally involved in the general ruin. Yet, though actual oppression did not probably fall heavy on the inhabitants, they were equally enslaved; because they deemed the whole unquestioned rights of the subject as not only endangered, but gone: So decisive is opinion in all things, even in opposition to substantial enjoyment.

The moment Mather arrived in England, he presented to James what was very graciously received, “the address<sup>100</sup> of several congregations;” offering cordial thanks for his unparalleled grace in securing their liberty of conscience, by his late happy declaration of indulgence: Thus flattering the inconsiderate folly of their prince at the greatest price which freemen can pay, the sacrifice of their own rights, and together with them the laws. Having now secured a favourable attention, he presented a petition of the dissenters of New-England, complaining of hardships; and begging, with a strange inconsistency, for a grant of liberty of conscience, of security to property. But, while they may have gratified the prejudices of the king, by speaking harshly of the church of England, which they hated, because it was struggling into existence at Boston, they offended the prepossessions of his ministers. And they thought it prudent to withdraw an application which had rather administered cause of disgust than ensured success or approbation. Yet Mather was too zealous to despair.<sup>101</sup> Being joined by several other persons from New-England, who were equally interested, and being animated by the favour of father Peters,

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the royal confessor, whose good opinion and aid had been in the mean time dexterously gained, they not long after presented a petition to that monarch, with various proposals on behalf of their country.<sup>102</sup> But what must have at once struck every one, who had ever perused the commission of Andros, instantly appeared to the council for colonies, that every thing prayed for had been already established under the present system, if we except only the request for an assembly, in which the people might be represented. And though Powis, the attorney-general, who had been also gained by similar means, reported in favour of the measure, the ministers saw no cause to grant what the petitioners in truth already possessed. But these men still hoped to gain something, that might gratify their countrymen, from perseverance. And they presented a representation to the lords of the committee in October, 1688,<sup>103</sup> praying for their favourable report, “that, till his majesty shall be pleased to grant an assembly, the council should consist of considerable proprietors of land from every county, without whose consent no laws shall pass.” But however modest these desires may now appear, they could not prevail, says their historian, in the reign of James II. The views of all being now fixed on a momentous object, little attention was probably paid to a prayer, however reasonable, which was lost in the general expectation. In this extremity several aged persons of New-England “made their moan and complaint” to the king; stating their grievances, and praying for a confirmation of their possessions. And that prince, who now, in the height of his infatuation, acted without the advice of his official counsellors, fully conceded what was prayed for with so much anxiety.<sup>104</sup> But they shewed that they were unworthy of his bounty, because they proved ungrateful. Both the agents and historians of New-England have carefully concealed, that James II. humanely granted to the prayers of his subjects what had been steadily refused by his ministers.

In the mean time, Andros, in pursuance of his commission and instructions, annexed to his government not only Connecticut, but New-York and the Jerseys. He established Nicholson his lieutenant-governor at New-York, who, with part of the council, were empowered to take charge of these colonies. He appointed various judges to go through this

extensive dominion, and to administer justice to the people, according to the laws of England and their local usages. And a very considerable revenue was raised under the authority of an edict of the legislative council before-mentioned, for the support of government. He held a treaty with the six confederated tribes at Albany, who gladly promised submission to his government, because they derived considerable advantage from his vigour. He transmitted to the governor of Canada a remonstrance, couched in the strongest language, against the French encroachments upon the hunting-grounds of the Indians and the territories of England. And owing partly to this animated measure, but more to the distresses of the Canadians, the fort at Niagara was soon after evacuated. Happy, had similar measures been pursued, at all times, with a steadiness in proportion to the importance of them! <sup>105</sup>

While Andros was laudably busied in defending the south-western frontiers, and promoting their quiet, the eastern provinces were disturbed by an irruption of the neighbouring Indians. New-England had now cause to regret the restitution of Acadie to France. The present disturbances arose not only from the intrigues of this nation, but from the imprudence of the people. The governor, with a spirit which does him honour; had endeavoured to win the tribes “ by good words “ and small courtesies ;” supposing, justly, that they had been “ treated “ with too great severity, if not injustice,” by the former government. The loss of a few cattle being attributed, as usual, to the Indians, a justice of peace, of more zeal than prudence, immediately seized those whom he considered as the aggressors. Réprisals were made with equal promptitude. And thus the war commenced in summer, 1680. Its furies were for some time mitigated by the good sense of the governor, who ordered the captives to be set at liberty. The tribes paid a proper compliment to his humanity, by following his example. But he commanded them, in vain, to deliver up the guilty persons to punishment; because they held it as a maxim, that all punishment is unworthy of freemen and warriors. Hostilities continued, because both sides were confident of their own rectitude, and of their own power. While various rumours were spread against Andros, which were easily credited, because

because they reflected on the men they hated, he speedily raised eight hundred men, and, in November, 1688, "marched at their head, "through frost and snow," against the enemy. But, while the minds of a people are greatly agitated, they deride every measure which their rulers pursue for their safety. His opponents accused him of a design "to starve "or freeze" the soldiers; though the more candid acknowledged, that he fully shared in their hardships and dangers, and treated them with a humanity worthy of a good general. At his approach, the Indians, with their usual policy, retired into their fastnesses. But, by the establishment of garrisons, by detaching numerous parties to attack their settlements and to destroy their scanty provisions, he reduced them to the greatest distress, and secured the country committed to his charge.<sup>106</sup>

During the winter that the governor remained on the frontiers, exerting all the arts of a wise officer to erect a sufficient barrier against the peculiar attacks of a bold and crafty enemy, a train was laid, which, not long after, laid his administration in ruins. Tidings of the Revolution no sooner reached Boston, in April, 1689, than the flame which had been so long smothered, which had been carefully fanned by the agents in England, burst out into insurrection. The governor, with the spirit of the man, at first thought of making resistance; but, finding the whole country in arms, he deemed it prudent to surrender the government into the hands of the insurgents. He, with other officers and obnoxious persons, were instantly seized and imprisoned. And they remained in confinement till, upon an application to William, they were sent to England in conformity to his orders, "to "answer before him what might be objected against them."<sup>107</sup> The government being thus dissolved, naturally fell into the hands of the most active promoters of the Revolution, who instantly assumed the conduct of affairs under the name of "a committee of safety." In order to justify their proceedings they published soon after a declaration, finely calculated for the times, and the men to whom it was addressed. They inveighed: That the deprivation of their civil privileges was merely the forerunner of the loss of their religious liberties, as appeared by the discovery of a horrid popish plot; that they would have been most insensible;

if they had not thought a country so remarkable as New-England is for the true profession and pure exercise of the protestant religion was wholly unconcerned in the infamous plot; that the vacating of their charter, the hedge which kept them from the wild beasts of the field, was the first step towards the accomplishment of the desolation projected for them; that, during the administration of Sir Edmond Andros, equally illegal and arbitrary, they had beheld, with fears and sighs, the wicked walking on every side, and the vilest men exalted, to be relieved from which they had applied to the king in vain; that they had understood how God had been pleased to prosper the noble undertaking of the prince of Orange, to preserve the three kingdoms from the horrible brinks of popery and slavery, and they ought now to follow the pattern which the people of England had set before them, though that country chiefly proposed to prevent what this already endured.<sup>108</sup> During the present ferment, the committee of safety called a general-court, in the subsequent May. After various debates, during which all parties concurred in the propriety of the present measures, it at length determined "to resume "the government according to charter rights." This decisive measure it declared to be correspondent to the noble undertaking of the prince, in the settlement of the affairs of the renowned English nation. It resolved; that there was an absolute necessity for a civil government, without which the colony could not enjoy peace, safety, and tranquillity; that the method of the settlement of affairs at that juncture lay wholly in the voice of the people; that it is an undertaking allowed by our renowned prince, which he has given patterns of in the realm of England, on which we have a dependence, and to which we stand in so near a relation. No sooner were these resolves agreed on, which are equally remarkable for their decisiveness and obscurity, than it chose a governor, a deputy-governor, and assistants, "according to ancient custom:" And to them was intrusted the administration of government, "till orders "should come from the higher powers in England."<sup>109</sup> But the prince and princess of Orange were not proclaimed; because it was not in support of their rights that the people had rushed to arms. As they had renounced their former allegiance, and had not renewed their submission to

to any new sovereign, they considered themselves as the subjects of none, because they did not regard the authority of England. And they now fully enjoyed that beloved independence, which their fathers had planted in the desert, which had been watered with so much care, which had been defended with so much vigour, which they now supported at the risk of every thing dear to men.

It was long before any directions with regard to public affairs arrived; because Mather and Phips had obstructed the transmission of orders, with design to ensure the success of their friends at Boston. The ruling men, distrusting their own powers, guided the reins of government with feeble and unsteady hands; and all the disorders and crimes, which necessarily result from anarchy, prevailed to a great degree. The governor and magistrates were at length relieved from their embarrassments and apprehensions, by receiving a letter from William, authorizing them to continue the administration in his name; "till he should give such directions for the government, as shall most conduce to his service, and to the security of his subjects within that colony."<sup>10</sup> And being now fully instructed by their agents in the affairs of England, being informed of the final success of the Revolution, and how much it behoved them to concur in that measure, William and Mary were proclaimed at Boston, on the 29th of May, 1689, with greater ceremony than had ever been known in that colony.<sup>11</sup>

What a remarkable contrast does the conduct of Massachusetts at that great æra form to that of the colonies of the south! The inhabitants of Virginia and of Maryland at once proclaimed William and Mary king and queen of England, and the dominions thereto belonging; properly considering the right of kingship, to every territory of the crown, to result necessarily from their being declared by parliament the king and queen of the sovereign state; and acknowledging the transfer of their allegiance, without their consent, to new rulers. But, though the people of Massachusetts spoke with deference of the higher powers in England, and of their relationship to it, they resolved, with their peculiar spirit, that the settlement of government on that extraordinary occasion belonged wholly to themselves. Though they had heard of the settle-

ment of the affairs of the English nation, upon which they admitted a dependence, yet, without regarding its constitution, they resumed their former government according to charter rights: And, "the fears of the people, of any bad consequence from their late actions, being over," they at length proclaimed William and Mary, when they found that circumstance essentially promoted their designs. In the colonists of the south we see a just regard to their liberties as Englishmen, and to the laws of the state: But, in the proceedings of those of the north, we behold their characteristic principles breaking out; and their expressions of "dependence upon England, and relationship to it," were at that time what they have always been, mere words. For the essence of subordination is obedience.

#### AUTHORITIES AND NOTES.

<sup>1</sup> Hutch. hist. Mass. 1 v. 229; and see the collection of papers by Mr. Hutchinson throughout. — <sup>2</sup> Ib. 230. — <sup>3</sup> See preamble of the commission of inquiry. — <sup>4</sup> Record, Plant. Off. New-England, 1 v. p. 9-11. — <sup>5</sup> The privy-council referred it to the duke of York "to consider of fit men" as commissioners for New-England. Ib. p. 10. — <sup>6</sup> See the commission in Hutch. 1 v. append. N<sup>o</sup>. 4. — <sup>7</sup> Ib. 229. — <sup>8</sup> Ib. 231-2. — <sup>9</sup> Ib. 233. — <sup>10</sup> See this curious letter in Hutch. append. N<sup>o</sup>. 17; and the collection of papers by Mr. Hutchinson. — <sup>11</sup> See the proceedings of the commissioners in Hutch. 1 v. 233-256. — <sup>12</sup> Ib. 261-7. — <sup>13</sup> Record, New-Eng. 1 v. 21-2. — <sup>14</sup> See this letter; which is published in Hutch. 1 v. append. N<sup>o</sup>. 19. — <sup>15</sup> Ib. 253. — <sup>16</sup> Ib. 251-2. — <sup>17</sup> Social Compact, b. 4. ch. 2. — <sup>18</sup> Hutch. 1 v. 257. — <sup>19</sup> Hume's Essays, 1 v. p. 11-12. — <sup>20</sup> See D'Estrade's letters; and the papers published with regard to this subject in the memorials of the French court, made public subsequent to the peace of Aix-la-Chapelle. — <sup>21</sup> Hutch. Hist. 1 v. 260-8. — <sup>22</sup> See Governor Leveret's letter to the earl of Anglesey. New-Eng. Ent. Plant. Off. 1 v. p. 95: The revenue of the colony was then represented to be 20,000*l*. which was wholly at the disposal of the general-court: But there is reason to believe that it did not amount to one half of this sum

sum. *Ib.* 114-60-23p. — <sup>23</sup> *Ib.* p. 61; and see the notices sent to the general-court with regard to the controversy with Gorges and Mason; in the collection of papers by Mr. Hutchinson throughout. — <sup>24</sup> *New-Eng. Ent.* 1 v. 111. — <sup>25</sup> The report of the two chief-justices, which see after in the chapter of New-Hampshire and Main. — <sup>26</sup> *New-Eng. Ent.* 1 v. p. 222. — <sup>27</sup> *Ib.* p. 251. — <sup>28</sup> *Hutch. Hist. Mass.* 1 v. p. 327.

<sup>29</sup> *Ib.* p. 326-9: Governor Andros wrote from New-York, the 25th of March, 1679, to the committee of colonies, — “ of the hard dealings “ of Massachusetts with the inhabitants of Main; ” — *Journ. Plant. Off.* 3 v. p. 26: In July, 1680, a petition was presented to the lords of the committee from sundry inhabitants of Main, complaining — “ of hard- “ ships put on them by the government of Massachusetts.” *Ib.* p. 204-326-9.

<sup>30</sup> See the History of the colonies of the free states of antiquity, throughout. — <sup>31</sup> *Hutch. Hist.* 1 v. p. 258-275-83. — <sup>32</sup> *Neal's New-Eng.* 2 v. p. 376-406. — <sup>33</sup> *New-Eng. Ent.* 1 v. p. 114-60-249-253. — <sup>34</sup> *Neal's New-Eng.* 2 v. 409-10. — <sup>35</sup> *Hutch. Hist.* 1 v. 269. — <sup>36</sup> *New-Eng. Ent.* 1 v. p. 54.

<sup>37</sup> The subsequent extracts of the relation of Captain Cleyborne of the Garland frigate, who was at Boston in the year 1673, discloses several particulars of the œconomy of Massachusetts, with regard — to its commerce — to its conduct during the Dutch war — to its political principles — to the cause of the Indian war. — *New-Eng. Ent.* 2 v. p. 54.

The trade of New-England is very great to all parts. It hath become a magazine of all commodities. Ships daily arrive there from Holland, France, Spain, &c. bringing with them the productions of these countries. He required the seizure of a ship from Ostend; but the magistrates answered, that they were his majesty's vice-admirals in those seas, and would do what seemed good to them.

That many English sailors having sheltered themselves in New-England during the Dutch war, he applied to have them sent home; but the magistrates exasperated a mob against him.

That he found the disposition of the people in general good, and inclined to a submission to his majesty's government; but wish for a viceroy.

That the oppression of the Massachusetts government was the true cause of the Indian war: It makes laws to punish the Indians, which it rigorously executes.

That, when New-York was taken during the second Dutch war, he solicited the assistance of the general-court to retake it; offering his own ship, and asking a few sailors, soldiers, and provisions: But it declined; saying, that it would contribute its endeavours, provided the conquest might be added to Massachusetts; and, if that were refused, it would rather that Manhattans remained in possession of the Dutch than it should be put into the hands of Colonel Lovelace, the former governor. And he adds, that the magistrates of Massachusetts consider themselves as a free state.

REMARK. This relation is to be perused with caution; because the captain had been publicly insulted.

The annexed paper, intitled, “ Observations made by the curious on “ New-England, about the year 1673,” which was given to Randolph for his direction, that he may prove or disprove them, shews — the probable extent of its populousness — of its shipping — of the numbers and wealth of the merchants — its general condition. — From New-Eng. Ent. 2 v. p. 103-5.

	<u>M.</u>
There are about	{ 120 souls.
	{ 13 families.
	{ 16 that can bear arms.
There are - - -	{ 12 ships of between 100 and 200 tons.
	{ 190 ditto - - - - 20 and 100 ditto.
	{ 500 fisher-boats - - - - about 6 ditto.
There are not - -	{ 12 ships of 200 tons each.
	{ 500 fishing-boats.
There be five iron-works, which cast no guns.	
There are fifteen merchants, worth about 50,000l. or about 500l. one with another.	
500 persons, worth 3000l. each.	



No house in New-England has above 20 rooms. Not 20 in Boston hath 10 rooms each.

About 1500 families in Boston.

The worst cottages in New-England are lofted.

No beggars.

Not three persons put to death for theft [annually.]

About 35 rivers and harbours.

About 23 islands and fishing-places.

The three provinces, of Boston, Main, and New-Hampshire, are three-fourths of the whole in wealth and strength; the other three, of Kennecticut, Rhode-Island, and Kennebeck, being but one-fourth of the whole in effect.

Not above three of their military men have ever been actual soldiers, but many are such soldiers as the artillery-men at London.

Among the magistrates the most popular are	}	Leveret, the governor.
		Major Dennison.
		Major Clarke.
		Mr. Bradstreet.
Among the ministers	}	Mr. Thatcher.
		Mr. Oxenbridge.
		Mr. Higgenfon.

There are no musicians by trade.

A dancing-school was set up; but put down.

A fencing-school is allowed.

All cordage, sail-cloth, and nets, come from England.

No cloth made there worth 4s. a yard.

No linen above 2s. 6d.

No allum, nor copperas, nor salt, made by their sun.

They take an oath of fidelity to the governor, but none to the king.

The governor is chosen by every freeman.

A freeman must be	}	orthodox.
		above 20 years old.
		worth about 200l.

<sup>38</sup> See the petition from the mercers and silk-weavers, from the merchants who trade to New-England, and the proceedings on them. — New-Eng. Ent. 2 v. p. 85-108-10. — <sup>39</sup> Com. Jour. 9 v. throughout. — <sup>40</sup> Sir John Dalrymple's Memoirs. — <sup>41</sup> Hutch. Hist. 180-269; and Randolph's Relation. New-Eng. Ent. 2 v. 114-60. — <sup>42</sup> Journ. Plant. Off. 1 v. p. 101-2-4-9-291. — <sup>43</sup> Hutch. Hist. 1 v. p. 311-29. — <sup>44</sup> New-Eng. Ent. 1 v. p. 82. — <sup>45</sup> Hutch. Hist. 1 v. p. 311. — <sup>46</sup> Jour. Plant. Off. 2 v. p. 89-90. — <sup>47</sup> *Ib.* p. 97. — <sup>48</sup> *Ib.* p. 262-3.

<sup>49</sup> The following extracts of the answers of the agents, Stoughton and Bulkley, to the inquiries of the committee of colonies, which were delivered in April, 1678, not only contain a general account of the policy of Massachusetts, but display the talents of the agents at a time when the general-court complained, "that it had no meet instruments." — From N. Eng. Ent. 1 v. 284-95.

1. The standing council of Massachusetts consists of the governor, deputy-governor, and magistrates; who transact matters in the absence of the general-court.

2. The general-court consists of the governor, deputy-governor, magistrates, and freemen; as by the patent is granted and constituted; who have the power of making laws, which every one must obey.

3. A single magistrate may determine causes under forty shillings value; from him lies an appeal to the county-court, which sits at stated times, and holds plea of all actions, civil and criminal, where the punishment extends not to life or banishment; from it lies an appeal to the court of assistants, which consists of the governor, deputy-governor, and assistants, which sits twice a year, and holds plea of all actions; but from it lies an appeal to the general-court.

4. Cases of admiralty are decided by the court of assistants.

5. The boundaries of the colony extend in longitude from sea to sea; the latitude depends upon the rivers Merrimack and Charles; and by the late decision there may prove a retrenchment of about sixty miles on the sea-coast.

6. Foreign merchants we know of none. The number of English merchants is very small; and of the other inhabitants, who are chiefly planters,

planters, we know of no calculation that hath been made. New planters have rarely come over for many years past; much less Irish or Scotch, or any foreigners: Nor are any blacks imported.

7. The estates of the planters in general are very mean; consisting chiefly of wilderness lands and of some stock. There are very few merchants who have considerable estates: We are confident, that there will not be found above twelve or fourteen worth each 5,000*l.* and not half of these worth 10,000*l.* a piece.

8. A considerable number of small vessels are built in the country under a hundred tons burden; but those that are larger belong to owners in England, or to other colonies.

9. There are three principal discouragements upon the trade and navigation of New-England. 1stly. Though it receives its necessary supplies from England, and *the merchants take great care to make good returns thither*, yet its commodities being chiefly fit for foreign markets, few can be immediately sent to England. 2dly. When they trade with the other colonies, and procure greater supplies than needful at home; yet such is the state of the trade, that they cannot return the product of those colonies directly to England from the place of their growth, but must send them from New-England; whereby the charge of freight is much increased; and, when landed in England, the king's duties upon those goods are paid over again, notwithstanding the payment of them before, when first shipped in the plantation: 3dly. When the New-England people send their fish and staves (*not proper for the markets of England*) to foreign parts, and procure salt, (*a free commodity,*) yet, if they take any other goods, as wine, oil, fruit, for their own necessary use, (*not to supply the other colonies,*) they are obliged to come to England and pay his majesty's duties.

10. For the encouragement of the trade of New-England, it is at present only proposed, as a thing that would much conduce thereto, and would be most thankfully and joyfully accepted: 1stly. That, when the merchants have once paid the duties, for the product of the other colonies which they carry to New-England, because they cannot give bond to bring them directly to England, they may be freed from paying the duties a second time, when such goods are imported to England: 2dly.

zdy. When they export their fish and staves to foreign countries, they may have liberty, together with salt, to bring back such other goods of those parts as New-England wants for its own use, (*which would not be much,*) without coming first to England; *they being most willing to pay all his majesty's duties upon their arrival in New-England.* [Which taxes had been imposed by act of parliament.]

11. There is nothing imposed on goods exported from Massachusetts; but merchandises imported pay a penny a pound of the value, except salt, wool, fish, &c. Wines and brandy have a peculiar duty on them. Each vessel which arrives pays a small tax for the maintenance of the fortification. [Which customs had been imposed by the general court, though it was not empowered by the patent, though the British merchants, who chiefly paid them, were not represented in that legislature.]

12. The doctrines of religion fully agree with the church of England; but the discipline and government are congregational.

\* See Randolph's representation, which is very intelligent and voluminous; in N. Eng. Ent. 1 vol. p. 114-60: — It is printed in the collection of papers, made by Mr. Hutchinson, with regard to Massachusetts, though that very intelligent gentleman seems to doubt, without reason, the authenticity of it. The lords of the committee of colonies distrusting Randolph's reports, because they appeared so extraordinary, sent his papers to Lord Culpeper, the governor of Virginia, who had called at Boston on his voyage to England, who answered, in August, 1681: "I have perused Mr. Randolph's writings sent me, and, during my stay at Boston, did hear most of the matters of fact specified therein: He added; "that the coinage of New-England was greatly prejudicial to the king's subjects." — N. Eng. Pap. vol. 2. p. 220.

"The annexed letter, from the committee of plantations to the crown-lawyers, with their answer, shews the opinion of both with regard to the objections which were made against the charter in those days. — From New-Eng. Ent. 2 v. p. 265-6.

Gentlemen,

The lords of the committee of trade and plantations, having entered into a very serious consideration of what concerns his majesty's service in New-England,

New-England, have commanded me to signify their desires, that you would forthwith examine the grounds of what hath some time been objected before them.

*Objections.*

1stly. That the people of the Massachusetts colony have not any legal charter at all.

2dly. That, by reason of several irregularities, there was, about the year 1635, a quo-warranto brought for the dissolution of such charter as they had. That the prosecution thereof went far, and stopped only on account of the public troubles ensuing.

*Answers.*

1stly. The first matter propounded to us, being, whether the patent of 4<sup>o</sup> Car. were, in point of creation, a good patent? We do find that his majesty's two chief-justices, upon hearing counsel on both sides, have given their opinion to their lordships, that the same patent was good in point of creation, notwithstanding the objection, that the patent to the company of Plymouth was then in being. And, although it is represented to us, that the case was not truly stated to them, yet, it being upon hearing of counsel and parties, we humbly submit it to your lordships, whether it can be satisfactory to your lordships or the parties to have our opinion, or rather, whether the case should not be truly stated to the same chief-justices, to have their opinion thereupon.

2dly. Upon view of a copy of the record of the quo-warranto, we find, that neither the quo-warranto was so brought, nor the judgement thereupon so given, as could cause a dissolution of the said charter.

3dly and lastly. Supposing that the charter were originally good, their lordships desire to know, whether the corporation have, by mal-administration of their powers, or otherwise, forfeited the same, so as to be now in his majesty's mercy and disposal.

3dly. As to the misdemeanours, objected against the corporation of the Massachusetts, in New-England, in managing their patent, we are of opinion, that, if the same can be proved to be true, and that they were committed since the act of oblivion, they do contain sufficient matter to avoid the patent, but that cannot be otherwise done than by a quo-warranto, &c.

The lords have appointed Mr. Randolph to attend you with several matters of fact. And, because the affair will be of much consequence, your very particular consideration is desired herein, and a speedy report of your opinion upon the whole case.

WI. JONES.  
FR. WINNINGTON.

To Mr. Attorney and Solicitor  
General.

I am, &c.

<sup>52</sup> Journal, 2 v. 232.

<sup>51</sup> The following extracts exhibit the full result of the deliberations of the committee of plantations, with regard to the dependence of New-England, which was delivered to its agents in April, 1678. — From N. Eng. Ent. 2 v. p. 241.

1stly. That the general-court should confine itself to such boundaries, with regard to the extent of soil and jurisdiction, as had been reported by the judges.

2dly. That, unless it would freely yield the property of the soil in the province of New-Hampshire and Main, his majesty would appoint a third authority to determine the same.

3dly. That though his majesty may, upon due application, grant the colony a charter, with power of coining, yet they must solicit his majesty's pardon.

4thly. That the acts of navigation for the future be rigidly observed,

5thly.

5thly. That the general-court should allow no laws repugnant to those of England.

6thly. That the charter should be inspected, and the general-court shall in future administer such power only as is therein given.

7thly. That no taxes should be raised but with his majesty's approbation, in his name, and applied by his appointment to the use of the government. And, above all, that the method of swearing all to be true to that government should be abolished.

8thly. That the many repugnancies, found by Mr. Attorney in their laws against those of England, should be all repealed.

9thly. That the principles of the general-court were faulty, in raising taxes on the king's subjects who traded thither, over whom it had not the same power as over the members of the corporation; which it must amend.

Upon the whole matter, their lordships seem very much to resent, that no more notice is taken, in New-England, of what was so freely, and with so much softness, intimated to the agents: And they are so far from advising his majesty immediately to grant the colony a pardon, much less the accession of government of the country claimed by Mr. Mason, which the agents had petitioned for, that they are of opinion, that this whole matter ought severely to be considered from the very root. For, if fair persuasions will not take place, neither will they take notice of commands that are sent, if nobody be there on the place to give countenance to his majesty's order, and truly to represent from that country what obedience is given to them. Agreed that it must be by a governor wholly to be supported by his majesty; and that such a governor many of the people there did languish after. But referred to Mr. Attorney and Solicitor, to consider whether his majesty is at liberty to do herein as may be required.

<sup>54</sup> New-England Ent. 2 v. 276-7.

<sup>55</sup> The following letter from the committee of plantations, dated 10 March, 1678-9, to Lord-Treasurer Danby, exhibits a very striking picture of the embarrassments of the ministers of England, and of the dif-

faculties which occurred in establishing the first revenue-officer at Boston. — From New-Engl. Ent. 2 v. p. 280.

“ We have received intimation, from Mr. Chancellor of the Exchequer, that your lordship desired our consideration of a paper presented by Mr. Randolph, containing several heads which concerned the better execution of his employment of collector, surveyor, and searcher, in New-England, and how the charges incident to those offices might be supported, otherwise than from his majesty's exchequer; and also how the said Mr. Randolph might be armed with authority sufficient to carry him through the execution of the same. We have, upon this occasion, reflected what hath happened in New-England since his majesty's restoration, and do find, not only by the affronts and rejections of those commissioners which his majesty sent out in 1665, but by the whole current of their behaviour since, that, until his majesty shall give those his subjects to understand, that he is absolutely bent upon a general reformation of the abuses in that government, we cannot hope for any good from the single endeavour of any officer that may be sent, but rather contradiction and disrespect in all that shall be endeavoured for his majesty's service, if they will but call it an infringement of their charter. Nor can we think how any the charges incident to those employments, could they have any execution, can be otherwise supported than from his majesty's exchequer. Wherefore, seeing there is now in preparation such a general state of that colony, and such expedients to be offered his majesty, as may bring it to a dependence on his majesty's authority, equal to that of any other colony, which we think his majesty's steady resolution may effect; we therefore leave it to your lordship's consideration, whether it be not best to suspend the departure of any such officer, until there be a final resolution taken in this matter. And so, &c.

Essex,	Bridgewater,	Northampton,
Craven,	Ailsbury,	Sunderland,
G. Carteret,	J. Ernle,	Clarendon.

<sup>56</sup> Hutch. 1 v. 319-20. — <sup>57</sup> Ib. 319-22. — <sup>58</sup> Record of New-England, 2 v. 40-2. — The subjoined extract of a letter, from Governor Nicholson



Nicholson of Maryland, who was extremely intelligent, to the Board of Trade, dated in August, 1698, demonstrates, that the opinions of New-England, twenty years before, with regard to the authority of acts of parliament, had become general in the colonies. — From Record, Maryland, A. p. 335.

“ I have observed, that a great many people in all these provinces and colonies, especially in those under proprietaries, and the two others under Connecticut and Rhode-Island, think that no law of England ought to be in force and binding to them without their own consent : For they foolishly say, they have no representatives sent from themselves to the parliament of England : And they look upon all laws made in England, that put any restraint upon them, to be great hardships.”

REMARK. The famous declaratory act of the 7 and 8 of William III. ch. 22. had been passed just two years before, in 1696 : Molyneux's Case of Ireland, asserting publicly the same doctrines, was first published in February, 1697-8.

<sup>59</sup> Journal, 3 v. 9-10-70. — <sup>60</sup> N. Eng. Ent. 1 v. p. 251. — <sup>61</sup> Hutch. Hist. 1 v. 330. — <sup>62</sup> N. Eng. Ent. 2 v. p. 40-2. — <sup>63</sup> Ib. 87-94. — <sup>64</sup> Ib. 83. — <sup>65</sup> Hutch. Hist. 1 v. p. 30-1.

<sup>66</sup> The lords of the committee for plantations, having waited expecting the effects of the obedience of the general-court to the king's commands, signified the 13th of September, 1680, and having received no other return but that of the 3d of June last, whereby it appeared that it had not sent agents, offered the following letter, for the royal signature, in October, 1681, to be transmitted to the governor and assistants : And it is perhaps the most extraordinary one ever sent by a sovereign to his subjects ; containing a sketch of the history of the disobedience of Massachusetts, as drawn by the then ministers of England. — From the N. Engl. Papers, 3 v. N°. 138. and see the N. Eng. Ent. 2 v. p. 132.

C. R.

Trusty and well beloved, we greet you well. When, by the gracious favour of our royal predecessor, you obtained a charter, conferring unto you all that extent of land in New-England formerly granted by our great council of Plymouth, together with such powers and authorities

as were thought necessary for the better government of our subjects at so remote a distance from this our kingdom, no doubt was then conceived, but, as nothing was denied which you then deemed requisite for the full enjoyment of your property and the liberty of your conscience, so you would always contain yourselves within that duty which the bonds of inseparable allegiance bind you to. But, it is with great trouble of mind, that we reflect on those methods, which, from the very beginning of your plantation, you have not forborne to use, so much tending to the prejudice of our sovereign right and your natural dependence upon the crown. No sooner were you settled by the indulgence of our royal father, of blessed memory, but various complaints were brought over of your ill behaviour and contempt of the royal authority; and your misdemeanours became so notorious, that, in the year 1635, a quo-warranto was brought against your company, and judgement passed, that the privileges and franchises of that corporation should be seized into the hands of our royal father; who, in pursuance thereof, did order in council, that the attorney-general should be required to call for it in and present it to the board, as plainly appears upon record.

What your comportment was, until our happy restoration, we will not mention. But, indeed, we were met with an address from your general-court, containing many expressions of loyalty and affection to our government; but neither at that time did you give your agent such instructions as empowered him finally to act on your behalf, or to agree to what then might have been proposed for the better regulation of your government. But, as we have been always graciously willing to pass over all those faults, of which we could hope for an amendment, we immediately returned our royal letters unto you, conceived in all the terms our favourable disposition towards you could express. In the mean time we came to understand, that two of the murderers of our royal father, of ever blessed memory, did not only find shelter amongst you, but were openly treated and caressed by the chief officers of our government; and, at the same time, complaints were presented unto us, by several persons, on behalf of themselves and many thousands of our subjects who groaned under your oppression; being refused appeals unto us, and made subject unto

unto laws absolutely contrary to the laws of England; for remedy whereof they prayed for protection, and that a general governor might be appointed over them.

Another petition was presented unto us by several merchants, complaining of great hardships from your company, whereby they had been endamaged many thousand pounds. Others appeared before us, with evidences of their sufferings and torture, and of the persecution of others, even unto death, on the score of conscience only. Several persons complain, that, after twenty-five years living, and some time governing, in the province of Main, they were violently dispossessed of their rights and privileges, to their utter ruin. But no complaints have been of longer duration, and are rendered more remarkable by the continued violence and unreasonable pretensions of your government, than those presented unto us by Robert Mason and Ferdinando Gorges, esquires, whom you had, in a hostile manner, dispossessed of a great tract of land, by virtue of an imaginary line; which, upon the report of our chief-justices, we disallowed and wholly set aside; for which injustice and oppression, nevertheless, no reparation has been yet made to the proprietors. Addresses were also made us by the natives of that country, of breach of faith, and of acts of violence and injustice they had suffered from you.

Upon these motives, and other complaints of differences and disputes touching the bounds of the several charters and jurisdictions of our colonies, as well as the neglect of our orders, contained in our royal letters, bearing date the 28th of June, 1662, we thought fit, in the sixteenth year of our reign, to appoint certain commissioners to visit, to hear and receive, examine and determine, all complaints and appeals, and to provide in all things for settling the peace and security of the said country, pursuant to our instructions: And, accordingly, these our commissioners were received into the other colonies with all the submission and obedience that our commands did require; but found so different a reception within your government, as their reports inform us, that nothing could prevail with you to let them hear and determine those particular causes which we had commanded them to take care of. And, in opposition to our authority, it was then proclaimed, by sound of trumpet, within our

town of Boston, that the general-court was the supreme judicature in that province; and that the commissioners pretending to hear appeals was a breach of your charter; and a paper was also published, by order of court, to deter all persons from making any complaints and appeals unto them; and many of our subjects were also imprisoned for applying to our commissioners: By which means our royal commission and gracious intentions for the settlement of that our colony were then totally defeated.

Upon a full information, given us by our said commissioners, of their fruitless endeavours to carry on our service within that our colony, we could not but highly resent the ill-treatment they had met with, and the contempt of our royal authority; and therefore, by our gracious declaration of April, 1666, we thought fit to recal our said commissioners, and to charge and command you, among other things, to make choice of five or four persons to attend us: But even these, and other our commands, contained in the same declaration, were so little regarded, though a court were called, and our pleasure duly signified, that, after a solemn debate, it was agreed, that no person should be sent unto us, notwithstanding our positive directions therein.

Matters rested thus, without any one real instance of duty on your parts, nor did our aggrieved subjects find in the mean time any ease from your oppressions, by which their property was detained, and their sufferings increased, until the year 1674, when the petition of Robert Mason and Ferdinando Gorges, Esq. were renewed unto us; and, after the examination of their complaints, we commanded you to send over agents to appear before us on your behalf.

During their attendance at our court, great and heavy complaints, besides the particular cases of the petitions above-mentioned, were brought against the administration of your government: And, at several hearings before us in council, and by the lords of our committee of trade and foreign plantations, your agents were made sensible of the great crimes you were answerable for in coining money, for which they therefore besought our royal pardon. And it then appeared, by the petition of divers considerable merchants, by the reports of the commissioners of our customs,  
and

and by other undeniable testimony, that an unlawful course of trade had for many years past been encouraged, and was yet countenanced by the laws and practice of that government, to the great diminution of our customs in England, violation of divers acts of parliament, and great prejudice of our subjects, who with unequal advantages contained themselves within the rules which the law directs for the management of trade.

It was then referred to our attorney and solicitor general to examine your laws, many of which they marked out, to those your agents, as repugnant to the laws of England, and contrary to the power of your charter, of which they promised an amendment; and divers other irregularities in that government were then mentioned to your agents, which they assured us would be speedily redressed: And, upon their humble supplications to return home, we were graciously pleased to grant their request, and then signified to you our pleasure, by our letters, bearing date the 19th of June, 1679, that you should choose such other fit persons, and send them over, within six months after the receipt of those our letters, to attend us here in the regulation of your affairs, as well in respect of our royal dignity as of your own perfect settlement.

In answer whereunto, we first received a letter from you, dated the 22d of May, 1680, without any mention made therein of agents to be sent pursuant to our commands, nor of several other particulars directed by our former letters, whilst we were informed, that you yet continued the same hardships upon our subjects in their property, privileges, and conscience: And though your other letter, dated the 12th of June following, gave us no better satisfaction, we were graciously pleased, nevertheless, by our letters, bearing date the 15th of September next ensuing, to renew our former admonitions, strictly requiring and commanding you, as you tendered your allegiance unto us, seriously to reflect on our former commands, and particularly charging you, amongst other things, to send over, within three months after the receipt of those our letters, some fit person or persons to attend the regulation of that our government; and, whilst we were justly expecting a substantial return to so gracious an opportunity given you of answering the complaints

plaints brought against you, we understood, by your letter to our secretary of state, dated the 3d of June last, that, instead of accepting our favour, you had only represented unto us some frivolous and insufficient pretences, to excuse your omission of sending agents; without giving us any direct testimony of your obedience in any other respect whatsoever.

We were also at the same time presented with fresh complaints, that the several acts of parliament for the encouragement of trade and navigation are not duly observed within your jurisdiction: That, instead of encouraging our officers appointed in that behalf, you suffered attachments to be granted against them for doing their duty; thereby giving opportunity to irregular traders of compassing their frauds: That the said officers, prosecuting offenders in our name, have been forced to deposit several sums of money before any trial at law could be obtained, and have been obliged to pay costs after such trials: That, although by the said acts of parliament one moiety of the forfeiture is belonging unto us, you have nevertheless seized them into your own hands, without rendering an account thereof unto us: And that you have also denied appeals to be made to us.

All which being contrary to law and the rules of your charter, we do therefore expect that speedy restitution be made of the money levied by you of our said officers, and that an account be rendered unto us of all fines, forfeitures, and other profits, accruing unto us; as also that our officers be permitted, at all times, and without charges, to prosecute all such as shall presume to violate the acts of trade and navigation; and that appeals be permitted to be made unto us, and good security given, to answer our determination.

We are likewise given to understand, that the former restrictions in the choice of freemen and magistrates are continued among you.

That divers laws, repugnant to the laws of England, are kept in force.

That you presume to continue your mint, without regard to the penalties thereby incurred.

That, notwithstanding our pleasure signified to you, that such as desire to serve God in the way of the church of England be not thereby  
made

made obnoxious or discountenanced by you, yet are they made liable to such discouragements; Their children withheld from baptism, and the free exercise of religion, according to the church of England, impeded by you.

That, though your agents were often-times advised, at our council-board, that no taxes or customs were to be raised, but by our approbation, in our name, and by our appointment, to the use of our government there; yet have you not taken notice thereof, nor forborne to lay impositions upon persons not free of your company, as also upon ships and goods arriving within your jurisdiction from other colonies; which is neither agreeable to law, nor conformable to your charter.

That you have exercised great excesses towards our subjects in our province of Main, and laid taxes upon them in an arbitrary manner, without making us acquainted with your proceedings in that government; which, by the express words of our grant, derived unto you from Ferdinando Gorges, is subordinate and subject to the power and regulation of the lords and others our council for foreign plantations.

These and many other irregularities, crimes, and misdemeanours, having been objected against you, (which we hope nevertheless are but the faults of a few persons in the government,) we find it altogether necessary for our service, and the peace of our colonies, that the grievances of our good subjects be speedily redressed, and our authority acknowledged, in pursuance of these our commands, and our pleasure at divers times signified to you by our royal letters and otherwise, to which we again refer you, and once more charge and require you forthwith to send over your agents fully empowered and instructed to attend the regulation of that our government, and to answer the irregularity of your proceedings therein: In default whereof, we are fully resolved, in Trinity-term next ensuing, to direct our attorney-general to bring a quarranto in our court of King's-bench, whereby our charter granted unto you, with all the powers thereof, may be legally evicted and made void: And so we bid you farewell, &c."

When the general-court discovered, not only from the tenor of the above remonstrance, but from the private informations of its emissaries in England, that its system of delay and expedient was no longer safe, because it was no more practicable, it appointed Dudley and Richards its agents to repair to England: And, in August, 1682, they presented the subjoined paper, which shews the defence that they thought proper to set up on behalf of their country, which will enable the dispassionate of the present day to form a proper judgement of the controversy between Charles II. and his opponents in Massachusetts.

*Answers of the New-England agents, to matters charged against the colony of the Massachusetts-Bay.* — From New-Eng. Papers, 4 vol. p. 165.

*Charges.*

His majesty's letter, of the 24 July, 1679, to the governor and company of the Massachusetts colony, requires: — 1stly. That agents be sent over in six months, fully instructed to answer and transact what undetermined at the time.

2dly. That freedom and liberty of conscience be given to such persons as desire to serve God in the way of the church of England, so as not to

*Answers.*

To which the agents of the said colony humbly answer:

That the delay of sending such agents hath been occasioned by the danger of the seas; Connecticut agent and several others having been taken by the Turks, and ransomed at extreme rates. That the arrear of debt, by reason of the late war with the Indians, had so far impoverished them, as to make them almost incapable of the expence of such attendance.

There is no law nor usage there to bar the use of the English liturgy, nor have any persons been obstructed who desired the same; nor is there any law to hinder any persons of the church of England from being chosen into

*Proofs.*

This the agents know.

And the debt of the colony was, at the receipt of those letters, about 20,000 l.

New Engl. Laws, p. 56. The law, prohibiting all persons, except members of churches, from



*Charges.*

be made thereby obnoxious, or discountenanced from sharing in the government. Much less that they, or any other of his majesty's subjects, (not being Papists,) who do not agree in the congregational way, be by law subjected to fine or forfeitures, or to other incapacities, for the same.

3dly. That no other distinction be observed in making of freemen, than that they be men of competent estates, rateable at 10s. according to the rules of the place; and that such, in their turn, be capable of magistracy, and all laws to be made void that obstruct the same.

4thly. That the ancient number of eighteen assistants be

*Answers.*

the government, but the vote and suffrage of the people are free and without any restraint for such, as well as any others.

Whatever has been formerly, there is now no law put in execution against dissenters but what is consonant to the law of England, and of like force against those of the congregational way as any others.

There is no other distinction made in the making of freemen, than that they be freeholders of 10s. rateable estate, and of the protestant religion.

And all freemen are capable of being chosen to any trust in the magistracy there; and all laws, obstructing the same, repealed on his majesty's particular commands for the same.

This was immediately done on his majesty's pleasure signified.

*Proofs.*

from being freemen, is repealed. And the agents know the practice to be as in their answer.

The agents know this to be true. Vid. Laws, fo. 45-67: - Meeting-houses: - And absence from meeting.

The Laws, p. 56, make out this.

And men of the church of England are admitted freemen; as also all Protestants of 10s. rateable estate.

Law Book, p. 78.

*Charges.**Answers.**Proofs.*

henceforth observed ;  
as by the charter.

5thly. That all persons, coming to any privilege, trust, or office, take the oath of allegiance.

6thly. That all military commissions, as well as the proceedings of justice, run in his majesty's name.

7thly. That all laws, repugnant to or inconsistent with the laws of England for trade, be abolished.

And the said letter complains :

8thly. That, while Mr. Gorges's complaint was before the council, the agents of the said colony, without his majesty's permission, who was some time in treaty for the same, bought Mr. Gorges's interest in the province of Main for 1200 l.

This is cheerfully obeyed.

Ib. 62.

This was also obeyed.

Ib. p. 75-6.  
Vid. The commissions.

This is also fully obeyed.

Ib. pa. 58.  
The strict observation of the acts of trade and navigation enjoined.

To this they humbly offer :  
That the purchase of the province of Main was made by them not out of any disloyal inclination, or intention to infringe his majesty's royal prerogative, or to prevent his majesty's taking the same into his own hands, but upon real desire to accommodate his majesty's subjects, the inhabitants of that province, and their own mutual peace and safety, and with good advice first had that they might do so.

Wherein

*Charges.*

*Answers.*

*Proofs.*

Wherein the respondents case stands thus :

In 1640 the now inhabitants, or those under whom they claim, sat down upon the lands in the province of Main, being then all a wilderness, buying out the Indians ; and governing themselves by common agreement.

When their families encreased, and divisions growing among them, they grew uneasy to themselves, and prayed the Massachusetts to extend their government over them. And all of them submitted the regulation and adjustment of their lands to the Massachusetts.

In 1657 a law was made for quieting possessions, that, where no claim had been made 5 years before, and should not be made in 5 years after, the possessors should quietly enjoy the land, so held by them against all claimers. P.123.

That his majesty, even then, heard of some effects of a severe hand laid by the Massachusetts on his subjects there.

And his majesty requires an assignment of the said province

The Massachusetts in the last Indian war were at 10,000*l.* charge in defending the said province, when most of it was laid waste. Mr. Gorges petitioned his majesty, that he might have the said province upon some dormant letters patents he had thereof; whereupon : — The then agent for the

The agents know the truth of this case.

Massachusetts

*Charges.*

of Main on repayment  
of the said 1200 l.

*Answers.*

Massachusetts colony bought Mr. Gorges' pretended title to the said province for 1250 l. to no other end than to quiet the inhabitants in the possessions that they had improved with the expence of so much sweat and coin, and preserved with their blood, without taking one farthing from them for it. So that the Massachusetts, by their purchase, could design no more than a generous charity; since, to have bought a litigated title with intent to have prosecuted a recovery therein, had been champerty, and punishable by the laws of England: Of which purchase what assignment can they make which can benefit any assignee, but what were unlawful to be taken, and must be destructive of the pious and charitable end now effected?

That, it not being intimated what effects of a severe hand, hinted to have been acted by the Massachusetts against his majesty's subjects there were, they cannot make any answer thereto.

And requires: —  
9thly. That, as for  
that part of New-  
Hampshire province,

That was readily obeyed, and  
a new governor was admitted,  
without any hesitation.

*Proofs.*

This the a-  
gents know to  
be true.

*Charges.*

*Answers.*

*Proofs.*

three miles northward of Merrimack-river, granted to Mr. Mafon, the government of which remained invested in his majesty, his majesty desiring to settle the same to the satisfaction of his subjects there; that the Massachusetts recal all commissions granted by them for governing there.

His majesty, by letter of the 13 September, 1680, complains:

1stly. That few of his directions in his former letter had been pursued by the general-court in New-England, and that the consideration of the remaining part of them were put off on insufficient pretences.

And that the sending agents within six months after the said former letter, with full instructions to at-

That their delay, or slowness of procedure, proceeded not from any want of allegiance or doubt of giving his majesty all satisfaction therein, nor was it any disadvantage to any his majesty's subjects there for whose avail the said complaints were made; but that they might proceed with satisfaction amongst themselves.

Which is since brought to pass.

*Charges.**Answers.**Proofs.*

tend his majesty's pleasure in relation to the said government, had been wholly neglected.

2dly. That Mr. Mason, claiming a tract of land between Merrimack and Ne-amkeck rivers, by grant of the 19th of king James; whose right had been settled, had not the agents, from New-England, suspended the determination thereof until new agents came, empowered to defend the inhabitants right thereto.

His majesty commanded: — That agents should, in three months after the receipt of that letter, be sent over, and authorized to attend the regulation and settlement of that government: And, that Mason's complaint might

This, we believe, his majesty hath given order shall be first tried upon the place.

And a public signification to the ter-tenants was forthwith by an address from This appears by an address from

*Charges.*

be then determined, those agents should come prepared, not only to shew such evidence of right as the said company had to the said soil claimed by Mason, but should make public signification of his majesty's pleasure to the inhabitants and tenants of the soil; that they might furnish those agents, or whom they should depute, with the proofs of their titles to the lands possessed by them; that they might make their full defence before his majesty in council.

3dly. That, on receipt of the said letter, a general-court should be forthwith called, and the letter read therein, and provision made for his majesty's speedy satisfaction in the premises.

*Answers.*

made by his majesty's government the

*Proofs.*

from the inhabitants.

Done.

This the agents know.

*Charges.*

His majesty, by letter of 21st of October, 1681, complains:

istly. That Mr. Randolph, being appointed searcher, collector, and surveyor, of his majesty's customs, in Massachusetts colony, to prevent the the breaches of the acts of navigation.

That all his care had no effect; in regard, attachments were granted against him and his officers for doing their duties.

And, when any offenders were prosecuted in his majesty's name, the officers were obliged (against law) to deposit money before trial could be obtained, and afterwards forced to pay costs and suffer other hardships.

*Answers.*

Answer.

That Mr. Randolph, on sight of his majesty's letters patents, was received and acknowledged as collector, searcher, and surveyor, of his majesty's customs, and his letters patents accordingly enrolled.

That no other complaint, or suit, against his majesty's officers hath been at any time countenanced, or damage given thereupon, but such as in their best judgement has been pursuant to the providing damages for the officers just vexing the subjects.

That, for ordinary trials in his majesty's stated courts, nothing hath been demanded or taken of Mr. Randolph but in extraordinary cases; where juries were summoned at his instance, and travelled far on purpose, so much has been taken as to defray their necessary attendance; which will be prevented in future, and all cases referred to the ordinary terms if the officer be directed thereto.

*Proofs.*

This the agents know to be true.

Vid. the act.

That



*Charges.*

*Answers.*

*Proofs.*

That appeals to his majesty in matters of revenue were refused to be admitted.

That if, without either restriction of the sum or difficulty of the case, all matters indifferently may, by the officer or his deputy, be removed from his majesty's courts there, and the subject forced to transport himself into this kingdom of England, it will force them to quit their woods upon any pretence rather than suffer such inconvenience, and thereby wholly discourage all trade in that his majesty's plantation, of which we humbly pray his majesty's gracious consideration.

That the Massachusetts had seized into their hands the moiety of forfeitures, belonging to his majesty by law.

We know of no instance of that nature except one particular case, wherein a master of a ship was fined for an abuse of his majesty's government there established, wherein the judgement was mistakingly entered by the officer, of which, nevertheless, the moiety, or thereabouts, was given to Mr. Randolph.

And required :

2dly. That fit persons be sent to answer all matters complained of without farther delay.

Done. As we humbly hope.

3dly. That all encouragement be given

It is by law established, and in all courts practised.

Laws, p. 90.

*Charges.**Answers.**Proofs.*

Mr. Randolph in the execution of his office.

4thly. That restitution be made of all money levied from his majesty's officers.

5thly. That an account be given his majesty of the moiety of all forfeitures by them received.

6thly. That the act for encouragement of shipping and navigation, of 12 Car. II. and the act for securing the plantation trade, 25 Car. II. and all trade acts, be put in execution.

7thly. That his majesty's officers may prosecute such as should violate the acts without charge, as in England.

Nothing has been taken of his majesty's officers but in extraordinary trials, where jurors and others have travelled far, for the defraying of the expences necessary, which cannot be had again of the several parties; and we hope his majesty will not charge the government for the same.

There hath yet been no forfeiture of ship and goods; but when it shall happen will be carefully preserved.

These have been fully put in execution to the best discretion of the government there; and, if the method used answer not the end designed, the government will be ready to amend the same upon any direction from hence.

This is allowed in all his majesty's stated courts.

*Charges.**Answers.**Proofs.*

8thly. That appeals, This it is hoped will be confi-  
 in matters of revenue, dered of.  
 be admitted to his  
 majesty.

All which is humbly submitted.

<sup>67</sup> Journ. Plant. Off. 4 v. p. 34-64; Hutch. Hist. 1 v. p. 302-3.

— <sup>68</sup> Ib. p. 331-4. — <sup>69</sup> Ib. p. 256-7.

<sup>70</sup> Hutch. Hist. 1 v. 337. During the reign of Charles II. the general-court maintained no standing agents in England: But it enjoyed the advantages arising from the services of emissaries, zealous and intelligent, Colins, Knowles, Thompson, and others, who procured and transmitted intelligence and papers from the public offices, who intrigued, who distributed money, though to no great amount. — See the letters of these men in the collection of papers made by Mr. Hutchinson, p. 435-75. — There is reason to believe, that Lord Anglesey, the keeper of the privy-seal, who, says Burnet, “ stuck at nothing and was ashamed of no thing,” had touched the wages of corruption. — Ib. p. 473. — Rushworth, who published the memorials with regard to the affairs of England during the reign of Charles I. was employed in his old age, at a very small salary, to procure state-papers from the public offices, though without much success. “ A feeling was given to such clerks of the council as served them with true intelligence.” — Ib. — The emissaries, however, complained of the parsimoniousness of the general-court, because they were unable — “ to stop a gap, by way of present, — which would have entangled for a long time and perhaps everted the business.” — Ib. — But, as the patent, which was regarded “ as their hearts blood,” was involved in greater danger, the general-court more freely opened the purses of the people. And the following notices, extracted from New-Eng. pap. 3 v. p. 250. display the money-transactions of the agents, Dudley and Richards.

“ On the 5th of May, 1682, the committee, appointed by the general-court to correspond with the agents, empowered them, that in case by the disbursement of money, not exceeding 1000l. that can improve  
 “ any

“ any meet instrument for the obtaining any general pardon of past errors, and continuance of the charter, and their attendance thereby shortened and dismissal obtained, that then they take up money upon the credit of the country. — On the 14th of June, the committee ordered the treasurer to procure the agents credit in England for 3000l. in case they could obtain pardon of all passed offences under the broad seal, and a confirmation of our patent privileges. — At a new meeting of the committee, the treasurer was ordered to send 3000l. to the agents with all speed.” — There is no evidence in history, or records, or papers, to shew, that any of the other colonies employed similar means to gain their ends in England.

<sup>71</sup> Jour. Plant. Off. 4 v. p. 57-8; N. Eng. Ent. 2 v. p. 143. — <sup>72</sup> Ib. p. 165-6. — <sup>73</sup> Hutch. Hist. 1 v. p. 336-7.

<sup>74</sup> Extracts of the articles of high-misdemeanour, exhibited by Randolph, the general accuser during those days, against the governor and company of Massachusetts, in June, 1683. — From New-England Ent. 2 v. p. 173.

1stly. They assume powers that are not warranted by the charter, which is executed in another place than was intended. — 2dly. They make laws repugnant to those of England. — 3dly. They levy money on subjects not inhabiting the colony: [And consequently not represented in the general-court.] 4thly. They impose an oath of fidelity to themselves, without regarding the oath of allegiance to the king. — 5thly. They refuse justice, by withholding appeals to the king in council. — 6thly. They oppose the acts of navigation, and imprison the king's officers for doing their duty. — 7thly. They have established a naval office with a view to defraud the customs. — 8thly. No verdicts are ever found for the king in relation to customs, and the courts impose costs on the prosecutors, in order to discourage trials. — 9thly. They levy customs on the importation of goods from England. — 10thly. They do not administer the oath of supremacy, as required by charter. — 11thly. They have erected a court of admiralty, though not empowered by charter. — 12thly. They discountenance the church of England. — 13thly. They persist in coining money, though they had asked forgiveness for that offence.

<sup>75</sup> Jour.

<sup>75</sup> Jour. Plant. Off. 4 v. p. 171-6. — Randolph was ordered to carry with him to Boston copies of the declaration concerning the late conspiracy. Ib. 180. — <sup>76</sup> New Eng. Ent. 2 v. p. 183-5-6.

<sup>77</sup> Hutch. Hist. 1 v. p. 340; Neal's N. Eng. 2 v. p. 415-16. — The address of the governor and assistants to the king, offering to surrender their government, and blaming the burgessees for their refusal, is in N. Ent. 2 v. p. 197.

<sup>78</sup> Neal's New-Eng. 2 v. p. 477-8; Hutch. Hist. 1 v. p. 414-15. — <sup>79</sup> N. Eng. Ent. 2 v. p. 218; Jour. Plant. Off. 5 v. p. 22-62. — <sup>80</sup> Ib. p. 86. — <sup>81</sup> Hutch. Hist. 1 v. p. 371. — <sup>82</sup> Jour. Plant. Off. 5 v. p. 158. — <sup>83</sup> N. Eng. Ent. 2 v. p. 266: Randolph was then rewarded for all his toils, by being appointed, by the lord-treasurer Rochester, deputy post-master of New-England; which is the first instance of such an appointment that probably occurs in colonial annals. — Ib. p. 269.

<sup>84</sup> Hutch. Hist. 1 v. p. 342-50-2; and Massachusetts council-book, in the Plant. Off. This book, which is not complete, is the more valuable; because “there are no public records in that province from the dissolution of the old charter government, in 1686, till the Revolution, in ‘1689.’” — Hutch. Hist. 1 v. p. 354.

<sup>85</sup> N. Eng. Ent. 2 v. p. 327. — <sup>86</sup> Ib. p. 320. — <sup>87</sup> Jour. Plant. Off. 5 v. p. 251. — <sup>88</sup> Dougl. Sum. 2 v. p. 247.

<sup>89</sup> See Andros's commission and instructions, New-Eng. Ent. 2 v. p. 270-83-306-7-81: — There was a new great seal appointed for New-England under the administration of Andros, which was honoured with a remarkable motto: *Nunquam libertas gratior extat.* — Ib. p. 311. — His salary was 1200 l. sterling a year, payable in England till settled in the colony. — Ib. p. 282.

<sup>90</sup> Ib. p. 308-15. — <sup>91</sup> Ib. p. 321-5. — <sup>92</sup> Council-book of Mass. in Plant. Off.

<sup>93</sup> Both the accusation against Andros by the agents of the colony, during the reign of William, and the governor's answer, are recorded in the New-Eng. Ent. 3 v. p. 188-9; though they were not read before the privy-council, because the deputies, being governed by Sir John Somers, their counsel, refused to prosecute or to support the charge. Never was there

there a more frivolous complaint exhibited against any ruler : There is not so much as an insinuation that Andros had acted contrary to his commission and instructions ; which were supposed to be illegal : And thence the criminality of his conduct was inferred. The following paper shews the real motives of Somers when he advised the agents against the prosecution.

*The case of John Usher, who was treasurer of New-England, during the administration of Andros.* — From N. Eng. Ent. 3 v. p. 352-4.

It states the writ of quo-warranto ; — the judgement against the corporation ; — the commission to Andros ; — an act passed by the governor and council, continuing the collection of the former taxes ; — the warrants issued for their collection, in pursuance thereof.

Q. Whether the said warrants, grounded upon the said commission and act, be not sufficient in law to bear out the said John Usher in collecting and receiving the revenue : He having given security to his majesty to make good what shall appear to be due upon the balance of his accounts ?

*The opinion of the attorney-general.*

I conceive that the writs, grounded on the commission and act, are sufficient to justify the said John Usher. If the judgement had not been given, the laws in being would have warranted this his doing ; but, since the judgement was actually given and remained unreversed, the proper way to erect and renew a government in their place, in supply of that which was thus taken away, was (as in other plantations) by the king's commission ; and it would make an intolerable confusion, if acts should not be allowed, which were done by reason of judgements given in proper courts, although those judgements ought not to have been given, and are reverfable. Besides, these proceedings are the more fit to be allowed ; for that they follow the pattern of the printed laws.

2 Dec. 1689.

GEO. TREBY.

*The solicitor-general's opinion.*

I conceive Mr. Usher will not be liable to any action for what he did in pursuance of this authority under the great seal, at a time, when, by the judgement on the quo-warranto, the corporation was in the king's hands,

hands, and their former government ceased : It being necessary for the preservation of the people, that the public charge should be supported, for which, at that time, no other provision could be made but by authority under the great seal. J. SOMERS.

The reasonings of those eminent whigs and constitutional lawyers, though they would not perhaps bear examination in the present days, apply with equal force to prove the legality of the administration of Andros. The truly candid and learned Somers saw that the charge against him could not be supported by fair discussion. And the man, " who it " was thought would have been severely, if not capitally, punished," is praised by historians, " as far from making a bad governor for Virginia." — Mod. Un. Hist. 41 v. p. 545.

<sup>94</sup> N. Eng. Ent. 2 v. p. 342-5-318.

<sup>95</sup> The following state, transmitted by Andros to James II. proves that the accounts, given of the taxes imposed by the ancient government, were greatly exaggerated : It shews the nature and amount of the revenue under the present government ; the extent of its establishment. — From N. Engl. Ent. 2 v. p. 360-1.

	£	s.	d.
Customs - - - - -	1596	4	7
The excise, (farmed by the late government for £ 450,)			
but now under commissioners - - - - -	1050	0	0
A pound rate of one penny, (paid formerly in commodities, with an abatement, if paid in money, £. 670,)			
but no deduction now allowed - - - - -	1200	0	0
<i>Charges of government.</i>	£	s.	d.
Military establishment - - - - -	2278	19	2
Three judges ; a chief, £ 150 ; two others, £ 240 - - - - -	390	0	0
Charges of collection - - - - -	651	18	9
Governor's salary, as paid in England -	1200	0	0
	£ 4520	17	11
Deficiency, exclusive of repairs, fire, candles for the guards, contingent charges - - - - -		674	13
		4	4
	£	4520	17
		11	11
0 0 0			In

In order to supply what was wanting, he proposed to raise the customs on wine 1 l. 10 s. a pipe; the excise on wine to 1 s. a gallon; the same on brandy, &c. that on beer to 2 s. 6 d. a barrel: And the defect to be made up by a county-rate. He was soon after ordered by James to levy the rates proposed by him by an ordinance of the council, and to transmit an account of their amount every six months. — N. Engl. Ent. 2 v. p. 369. — And an act was accordingly passed, by the governor and council, in February, 1687, “for collecting an additional impost and excise.” — Journ. Plant. Off. 6 v. p. 169. — Such was the system of taxation during those days, and such was the authority by which it was imposed.

<sup>96</sup> In November, 1687, James wrote to Andros to assist the governor of New-York against the French. — N. Engl. Ent. 368. — In January, 1688, he informed him, that commissioners had been appointed to settle the boundaries of the two nations in America; and he commanded him to cultivate a good correspondence with the Canadians, and not to invade them, till February, 1689. — Ib. p. 378. — And, for the genuine spirit of the internal administration of Andros, see ib. p. 340-5, and the council-book of Massachusetts, in Plant. Off.

<sup>97</sup> Hutch. Hist. 1 v. p. 366-9; Randolph's correspondence in N. Eng. pap. v. 4. — <sup>98</sup> See Blathway's letter in Hutch. Hist. 1 v. p. 371. — <sup>99</sup> See both in the N. Eng. Ent. 2 v. 381. — <sup>100</sup> The address is in the Lond. Gaz. 18 June, 1688.

<sup>101</sup> The petition of the dissenters of New-England, after complaining of hardships, supplicates such a grant as shall secure them liberty of conscience and property, according to his majesty's late declaration of indulgence, and a confirmation of the government of the college of Cambridge. There was a memorial subjoined, urging, in very indecent language, the encroachments of the church of England, and the hardship of corporal oaths. On these Blathway remarks: “This petition and  
“memorial being referred to the committee, and the petitioners summoned to attend, the 19th of June, they withdrew their petition, and  
“did not appear.” — N. Eng. Pap. F. N°. 20. — REMARK. It is a singular spectacle to see men, who enjoyed religious freedom in the fullest extent,



extent, petitioning for liberty of conscience, while they thanked the king for conferring, by his declaration, what they now asked. This strange incongruity is explained in a letter from Cranfield, the governor of New-Hampshire, to the committee for colonies: He says, "that, though liberty in religion was allowed in this colony, yet that the independent ministers were not satisfied, because they wanted the power to command others." — N. Hamp. Ent. 1 v. p. 102.

<sup>102</sup> The intrigues of Mather are disclosed in Randolph's Correspondence, 19 Oct. 1688. — N. Eng. Pap. 4 v. 876-7-82-3-7-8.

<sup>103</sup> The following paper shews the accurate state of that transaction.

*Petition and proposal of J. Mather, S. Noel, and E. Hutchinson, on behalf of themselves and many others of his majesty's subjects in New-England.* — N. Eng. Pap. 4 v. 1012-13.

That, since the dissolution of the late government there, many inconveniences have and will attend your petitioners, unless relieved therein by your majesty; in order whereto they humbly propose to your majesty's consideration the heads in the annexed paper.

That the subjects in New-England may be confirmed in the possession of their property, as they enjoyed it before the last Indian war, or the 29 May, 1686.

That all townships may have liberty to assemble and determine all their public business, and that their commerce may be confirmed to them.

That courts of conscience may decide causes under 40s.

That probate of wills, and administrations, not exceeding 10l. value, may be made in such courts of conscience, and for greater estates in the county-courts.

That marriages may be ratified and registered in a court of conscience.

That there may be courts of equity for all considerable causes.

Blathwayt remarks, that these paragraphs were struck out at the committee.

{	That, a revenue of 5000 <i>l.</i> per annum being first provided for maintaining the government, no other impositions are to be laid but by a general assembly.
}	That the general assembly shall consist of governor, council, and members, to be elected by the freeholders.
}	That no laws shall be made but in such assembly.

That there shall be free liberty of conscience, as proposed by his majesty in England.

That no person be obliged to maintain the religion he doth not profess.

That each religion be left to make maintenance for their own religion.

That the present college at Cambridge be confirmed to those that erected it, and all the present meeting-houses left free to those that built them.

REMARK. These last five articles were dictated merely by their fears; because they enjoyed more fully, at that time, than they had ever done before, the liberties prayed for. See the council-book of Massachusetts, in Plant. Off. throughout.

<sup>104</sup> The annexed little paper demonstrates what is said in the text, and shews how unjust have been the agents, who procured it, to the memory of James II. — From N. Eng. Pap, 5 bundle, p. 1037.

“ His majesty hath been pleased to declare, upon the petition of several gentlemen on behalf of New-England, that he will grant them a full and free liberty of conscience and exercise of religion, and their several properties and possessions of houses and lands, according to their ancient records; and also their college of Cambridge, to be governed by a president and fellows, as formerly. All to be confirmed to them under the great-seal of England.”

REMARK. The approach of the prince of Orange prevented the execution of what had been thus humanely promised.

<sup>105</sup> N. Eng. Pap. 5 bund. p. 223. — <sup>106</sup> *Ib.* and Hutch. Hist. 1 v. p. 364-70-1.

<sup>107</sup> Randolph

<sup>107</sup> Randolph wrote to the committee of plantations, in September, 1689: " I may not omit to inform your lordships, that the revolt of " this people was pushed on by their agent, Mr. Mather, who sent his " letter to Mr. Simon Bradstreet, the late governor, in which he en- " couraged them to go on cheerfully to so acceptable a piece of service " to all good people." — N. Eng. Pap. 5 bund. p. 94. Neal's N. Eng. 2 v. 431-2; Hutch. Hist. 1 v. p. 374-391.

<sup>108</sup> Neal's N. Eng. 2 v. 433. — <sup>109</sup> Ib. p. 444-7. — <sup>110</sup> Hutch. Hist. 1 v. 387-90-1.

The relations of those who were most active in achieving this famous revolution in N. England may be seen in all the histories of that country. The account, which Andros gave of it to the ministers of England, is in the N. Eng. Pap. bund. 5, p. 223. But the following extract of a letter from Captain George, of the *Rose* frigate, to Papys, secretary of the admiralty, dated at Boston, 12 June, 1689, contains a more intelligent and impartial relation than either; because he was less interested. — Same papers, p. 34.

" These last five months this place hath been filled with various re-  
 " ports of transactions in England; of the prince of Orange's landing;  
 " that his majesty went to France, and there died; that afterwards the  
 " prince and princess of Orange were proclaimed king and queen: But  
 " no reasonable confirmation till the arrival of two ships from London;  
 " the first of the 26th, and the other of the 29th of May: Sir Wil-  
 " liam Phips coming in the latter, who brought several proclamations  
 " put forth by their majesties. But before this confirmation, on the  
 " 18th of April last, the people of this place and country, pretending  
 " themselves dissatisfied with the government of Sir Edmond Andros,  
 " rose up in arms, seized me first, and run me into the common jail;  
 " and, some hours after, his excellency coming down to sit in council,  
 " pretending he had a design to deliver the government to the French,  
 " and rumours being spread among the people, that at least he intended  
 " to fire the town at one end, and I at the other, and then go away in  
 " the smoke for France; which doubtless will be thought unreasonable  
 " to believe. The fort, being surrounded by about 1500 men, was fur-  
 " rendered.

“ rendered. The next day the governor was committed prisoner to the  
“ fort, under strong guards, and myself to Colonel Shrimpton’s house,  
“ who was very kind to me. The same day the castle, about three miles  
“ below the town, upon an island, was summoned, and surrendered. I  
“ was also sent for to the council of safety, as they term themselves, con-  
“ sisting of the chief gentlemen and inhabitants of Boston, who deman-  
“ ded of me an order to the lieutenant for surrendering the ship. In  
“ answer to which, I said it was not in my power, being a prisoner,  
“ nor would I ever be brought to give such order, which the lieutenant  
“ would not obey. They told me my commission was now of no force,  
“ and urged me to take a commission from them, and serve the coun-  
“ try. I told them my commission was good till one from the crown of  
“ England made it invalid. While they were thus discoursing with me,  
“ they sent on-board two or three men, who persuaded the lieutenant  
“ and company to declare for the prince of Orange; which was pre-  
“ sently done; and they immediately informed me of it, and remanded  
“ me back to confinement. On the 23d of the same month, an order  
“ was sent on-board by the said council to the lieutenant, for the deli-  
“ very of the sails; which was accordingly executed, and now remain  
“ in custody of them. What they intend to do I do not know, but  
“ they threaten to have the ship farther dismantled; but I hope they will  
“ be prevented by a speedy arrival of orders from your hands to return  
“ home.

JO. GEORGE.”

CHAP.

## C H A P. XVII.

*Attempts to plant the banks of Piscataqua. — New-Hampshire granted to Mason. — His efforts. — Main conferred on Gorges. — He establishes a colony and government. — Persecutions of Massachusetts found Exeter. — Its association. — Dover built by an emigration from England. — Its compact. — The story of both. — Massachusetts acquires New-Hampshire. — Main emerges from obscurity. — Massachusetts extends its jurisdiction over it. — Complaints of its oppressions. — Mason and Gorges apply to Charles II. for relief. — The attempts of the royal commissioners. — Agents appointed to settle the pretensions of all parties. — Opinion of the judges. — Main purchased by the general-court. — Its subsequent conduct. — A royal government established over New-Hampshire. — A president and council appointed. — Their administration disapproved of. — Cranfield named governor. — His proceedings. — An insurrection. — Complaints against him. — Unhappiness of the colony. — Annexed to Massachusetts.*

**O**F all the members of the Plymouth-company, none were so conspicuous for the energy of their exertions, in colonizing New-England, though not for the greatness of their titles, as Sir Ferdinando Gorges and John Mason. Yet the country, which owed them so much, because they contributed so much to give her existence, has been ungrateful to their memory; either neglecting their names, as unworthy the regard of posterity, or deriding them as meriting contempt. The clergy of Massachusetts, who were at the same time her historians, who, possessed of considerable abilities, have transmitted the memorials of her affairs, disliked their persons, because they formed pretensions on that *sanctified region*, and hated their principles, because they were attached to monarchy and the church of England. They, however, who engage in laudable enterprises, who are neither rewarded during their lives with renown, or transmit to their descendants little except their pretensions and disputes, deserve at least the simple notice of history, because it is the only gift she can bestow on the benefactors of mankind.

During

During the fifteen years of the existence of that company, it adopted the policy of conferring on various men several interfering parcels of New-England; which has thrown the greatest obscurity over its early history; which long occasioned perplexing embarrassments to the different claimants, to the colonies, and to England. A variety of little settlements were however planted during that period along the tract of coast which stretches Eastward from the river Merrimack to Sagadahock, for the purpose of fishery; but their prosperity was extremely inconsiderable, because they seem to have been animated by no enlivening principle of action: They were rather temporary establishments for traffic than the seed-plots of future plantations. And though the two gentlemen before-mentioned made the most vigorous efforts to form colonies on the river Piscataqua, by transporting planters and servants at very considerable expence, by establishing a kind of government for them, yet they too seem to have been equally unsuccessful. The emigrants were not attached to their persons, as were the people of Maryland to Baltimore; they did not regard with enthusiasm their principles, as we shall find the Pennsylvanians did those of Penn. There being then no mutual attraction between the proprietors and people, the settlements declined in proportion as the whole were disunited; because there existed no common measure of union. Yet a small emigration of planters and traders was sent out by those gentlemen in the year 1631, which was conducted by Williams, who then laid the foundation of Portsmouth, near the confluence of the river Piscataqua, and who long ruled this feeble community with a prudence that has done honour to his name. But what a length of years does it require to convert a desert into cultivated fields; how slow is the change of several lonely huts into a populous town, the busy scene of commerce; how gradual is the progress of a few families in their rise to considerable cities! And, when Josselyn sailed along the coast, in July, 1638, he saw “no other than a mere wilderness; here and there, by the sea side, scattered plantations with a few houses.”

Dissatisfied with their various late conveyances, because they had been thus unsuccessful, and desirous to hold in severalty what they seem to have formerly enjoyed in common, Mason and Gorges obtained from the Plymouth-company,

mouth-company, when it divided New-England among its members, two considerable tracts of land in that country. In April, 1635, to the former was granted for ever that territory, lying along the coast from Ne-amkeck river, near the northern boundary of Massachusetts, to the river Piscataqua, extending sixty miles into the country from their sources; with such powers of government as that corporation itself possessed: And the region, thus conveyed, was for the first time called New-Hampshire. As no more ancient patents stood in the way of the present, as length of occupancy formed no bar, Mason then assuredly acquired that kind of right to the soil which the law of England considered as perfectly valid: And it was such a title as that by which almost all other American territory was then held. But it gave him none of the powers of government, because the trust reposed in the company could not be transferred, since it could be executed in no other manner than what had been originally prescribed. Though he sent agents to dispose of his lands, to take general care of his interests, he seems never to have established any regular administration in this province; because he soon after died, leaving to others to enjoy his rights, to exercise his powers, and to experience his vexations.\* How much is it to be lamented, that the adventurous men, who engage in undertakings which tend to add to the comforts of mankind, are seldom rewarded with success, or generally live to enjoy any other recompence than the derision of the world!

The month of April, 1635, is equally the epoch of the grant of the same company of that more considerable region, extending from the northern limits of New-Hampshire north-eastward to the river Kennebeck, and from thence sixty miles into the country, to Sir Ferdinando Gorges, in absolute property, with such powers of jurisdiction as the grantors possessed; but with a reservation of an appeal, from the colonial judicatories, to the corporation, at a time when it ceased to exist. Thus, whatever pretensions, to the soil, the council of Plymouth might form, were now enjoyed by that gentleman. During the same year he dispatched William Gorges, his nephew, to govern that territory, which was then called Somersetshire, who ruled, for some years, a few traders and fishers with a good sense equal to the importance of the trust. But,

whether the proprietary distrusted his own powers, or was actuated by the prudent caution which experience inspires, he obtained, from the favour of his prince, a patent of confirmation in April, 1639. His limits were now extended to one hundred miles from the rivers south-westward into the desert. This immense region was now denominated Main: And he was invested with all the royal rights of a count-palatine, with a reference to the powers formerly exercised by any bishop of Durham. Animated by these attentions, and invested with these powers, he established a civil government within his province in the subsequent year. With a variety of ordinances, he transmitted, in March, 1639-40, a commission to Joffelyn and others, appointing them his counsellors, for the preservation of peace, the punishment of crimes, the administration of justice. But, though he had long directed chiefly the affairs of the Plymouth-company, which seem never indeed to have prospered, Gorges was by no means equal either to the ancient or to modern legislators. The constitution, which he then established for Main, was merely executive, without any of the powers of legislation; nor was an assembly, in which the people were represented, either mentioned or alluded to. He did not even offer liberal terms, on which men might purchase and enjoy his lands, though they had been at all times proposed as the best means to promote settlement and augment population. What could he expect from such a form of government during such a season, when the pulse of freedom beat high, and in the vicinity of a people who carried the principles of liberty to extremes! The province languished for years in hopeless imbecillity: And its languors only ceased, and it acquired a principle of life, when he ceased to be its proprietary and lawgiver. Yet he incorporated the town of York in the year 1641, giving it a mayor, aldermen, and a recorder; though this circumstance seems not to have added to its wealth or its importance: And it long partook of the distractions, with their attendant evils, of the neighbouring villages of Main. From his province the cares of the proprietary were not long after turned to more interesting objects, because they were nearer. He entered with zeal into the civil war which ensued: Fighting, in his old age, with the spirit of youth, for his prince and benefactor. And, while  
he



he shared in common misfortunes, he shewed that he deserved a better fate, because he was grateful, and sacrificed his all to his attachment to principle.<sup>3</sup>

Mean-while persecution contributed to people a country, which neither persuasions nor money had been able to effect. Among the numbers, which the Antinomian distractions at Boston, during the year 1637, forced into banishment, Wheelwright, the minister, appeared conspicuous, as a leader, who carried with him a considerable number of his followers. They retired only a few miles beyond the north-eastern boundary of Massachusetts, and, amid the forest which then skirted the shore of the great bay of Piscataqua, they planted the town of Exeter. They at once took possession of the lands of Mason, without his consent, in opposition to his legal rights: They probably derided his authority, because they neither saw nor feared his power. And, while they respected the person and opinions of their spiritual guide, they determined to raise their community on the broad basis of general consent. When they reflected, that it was impossible "to live without wholesome laws," of which they were then altogether destitute, in October, 1639, thirty-five persons "combined themselves, in the name of Christ, to erect such a government as should appear agreeable to the will of God:" They professed themselves subjects of their sovereign, King Charles, according to the liberty of the English colony of Massachusetts: They solemnly bound themselves to submit to such Christian laws as were established in the realm of England, according to their best knowledge, and to such other regulations as should, upon good grounds, be enacted among themselves. If the expressions of this remarkable combination appear at present unusual, the sense is sufficiently intelligible: The associators admitted themselves to be subjects of the king of England; they recognized the laws of this realm to be obligatory on them; they promised obedience to such ordinances as should be made by themselves.<sup>4</sup> Having thus established such a form as at once pleased the people and shewed their principles, they chose Underhill as governor, who was at the same time a deep enthusiast and an immoral man: Two characters, which were then, as in all ages, by no means incompatible. But, though they now ruled themselves, and

were freed from persecution, they did not enjoy much happiness or prosperity, because, nature fought against them, they were opposed by rivals, their minds were four and therefore not easily pleased.

Not long after, arrived in their vicinity, on the banks of the same river, a small emigration from England; composed of persons of greater estates, of very different religious and political opinions. Mischiefs had already befallen them for want of government, which seems so necessary for man in every situation, and they dreaded future inconveniences. And to the number of forty-one, which seem to have been the heads of families and freemen, they entered into a similar association, in October, 1640. In order that they might enjoy more comfortably the customs of their country, they entered into a voluntary compact, by which they engaged themselves to submit to the royal laws, together with such others as should be concluded by a major part of the freemen; provided they were not repugnant to the customs of England, and were administered in behalf of the king: And this they mutually promised to do till his excellent majesty should give other orders concerning them. Nothing can be more explicit than the language of this declaration; and nothing can shew more clearly the attachment of these men to their native land, to its form of government, to its jurisprudence, to its religious establishment. And they soon graced the shore of the bay of Piscataqua with the town of Dover. But they seem to have made no application to the proprietary of New-Hampshire, where they settled, or rather to have acted under those who claimed from a very different right. The greater number chose Underhill before-mentioned for their governor, though not without the opposition of a considerable party; which soon introduced all the confusions of anarchy that they had been so solicitous to avoid. And religious differences, superadded to these, filled up the measure of their distractions. The church, which was governed by Larkham, and the Antinomians, which were led by Knolles, contended for superiority. Both were equally zealous; and a civil war ensued within the compass of an inconsiderable village. Williams, who had for some years ruled with great prudence at Portsmouth, who seems to have been entitled from the appointment of the proprietary to the government of the province, soon interposed.

interposed. Bringing with him to Dover a company of armed men, which could alone give effect to his commands where every thing was disputed with force, he easily suppressed the disturbance. He expelled Underhill, and Knolles, and Larkham, who appear to have been all equally unfit for those stations of trust, to which they had raised themselves by the arts of intrigue among an enthusiastic people. Thus man, wherefoever he is placed, cannot exist without government, because he was born for society: Yet how often is he miserable even under the direction of self-rule; because, of the multitudes born, how few are capable of governing themselves! And the towns of New-Hampshire did not therefore long enjoy that insignificant independence, which they had thus reared for themselves, and of which they had thus shewn themselves to be unworthy.<sup>5</sup>

From the transfer of the charter before-mentioned, to the year 1639; the government of Massachusetts freely admitted the validity of the title of Mason to the lands along its north-eastern boundary; fixing, at the distance of three long miles beyond the river Merrimack, what was for years remembered as “the bound-house.” It even agreed to surrender to that gentleman the inconsiderable territory, of the breadth of three miles, lying along the northern bank of that mighty stream, in lieu of his pretensions to lands, by virtue of a prior grant, about Cape-Anne, within the acknowledged limits of its patent. For, the real course of the Merrimack was not then perfectly known; struggling for existence, the extent of the colony was fully equal to the number of its settlers, perhaps to the wishes of its rulers: And it was over-awed by the government of England, which had made a vigorous attack on its charter.<sup>6</sup> Having, however, fully explored that river; having, with the augmentation of its people, extended its views of aggrandisement, it determined that New-Hampshire was included within its patent; because it is easy to find arguments to support a predetermined measure: And, during the year 1640, it began to grant lands, and to form settlements, avowedly within this province; because there now remained no power to obstruct its proceedings, however unfair or inconsistent with the rights of neighbourhood. In order to execute fully its design of extending its jurisdiction.

tion over the whole, it intrigued in that colony with its usual art and success. And, in April, 1641, it entered into an agreement with several inhabitants of the banks of Piscataqua, who claimed their lands under a different title than the grant to Mason: The one party submitting to the government of Massachusetts in the same manner as its original settlers; the other promising "to be helpful in the maintenance of the right of the "patentees in all legal courses." The men, who were not included in the present compact, were soon worked on by their hopes and fears: And the general-court, in October, 1641, passed an ordinance, declaring; that the people, inhabiting on the river Piscataquack, shall henceforth be reputed under its power, as are already the other inhabitants; that they shall have the same order for the administration of justice; that they shall be exempted from all public charges, except such as shall arise among themselves, or shall be for their own benefit; that they shall be allowed the same liberties of fishing, of planting, and of felling timber, as formerly; that they shall be allowed to send two deputies to the court at Boston.<sup>7</sup> And in this manner, and on these conditions, the whole seem to have equally submitted. Thus New-Hampshire, at the end of six years only, ceased to be a separate province: Thus the various towns, planted within her forests, relinquished their voluntary associations before-mentioned, which had only been productive of anarchy, and gave up the flattering distinctions of self-government, that they had exercised to so little purpose.

The general-court having, in this manner, conferred on its neighbours the greatest of blessings, general protection, and a regular administration of justice, turned its next cares to their future welfare. It sent them several ministers, Moody, Cotton, Reyner, and others; "by whose "care and diligence, as we are assured,<sup>8</sup> the people were very much civilized and reformed." But Wheelwright and his followers, who had formerly sought an asylum in the desert, from the persecutions of their bigotted enemies, once more fled across the Piscataqua into the province of Main; because, in the present change, they feared future injuries. Nothing could be more profound than the views of the general-court in this transaction; because the religious tenets of the independents, and the

the political maxims of Massachusetts, mutually support each other. By converting the inhabitants, who were already prepared for instruction, they insured their obedience. But they were rendered unfit to be the colonial subjects of England; because their religious principles are utterly incompatible with subordination. And that measure we shall find in its consequences as lasting, as they proved perplexing to the proprietary, and embarrassing to the councils of the parent state. Yet there were a few men, who, having derived their possession from John Mason, still paid their rents to his heirs; because they continued attached to the laws and church of England, which favoured rights that had been derived from the crown of England. It was in vain for Mason, who now acted as agent for his kinsmen, to protest in July, 1651, against the daily encroachments on their lands: It was to no purpose for him to petition the general-court in May, 1653; stating their wrongs, and praying for protection. It had been stipulated as the ground-work on which was established the subjection of New-Hampshire, that the pretensions of their opponents should be strenuously countenanced, and the legal rights of the proprietors consequently depressed. Being now freed from the weighty cares of government; being protected from the attacks of their Indian enemies, and from their internal dissensions, still more fatal; the people of New-Hampshire, during the space of forty years, enjoyed the advantages and blessings of a regular administration, and engaged successfully in all the pursuits that naturally tend to promote the prosperity, and wealth, and greatness, of nations.

Mean-while the counsellors of Sir Ferdinando Gorges ruled the province of Main with a sway feeble and ill-directed, because they were unsupported by any real power, and seldom received instructions from a proprietary who was too deeply engaged in civil warfare to attend to distant objects. Nor was such a government, which preserved internal quietude, probably at all inconvenient; because, whilst it did not burden a people emerging into existence with a multitude of rules, it suffered every one to manage his own affairs in the way most agreeable to himself. What was deplored in those days by some, as an evil, promoted universal prosperity: The hope of immunity, from the laxity of administration,

ministration, invited settlers: And Main offered a quiet retreat to the unfortunate, and a sure asylum to the persecuted. Along that line of coast, which stretches eastward from the bay of Piscataqua, sixty miles, to Kenebeck, arose successively the towns of Kittery, York, Wells, Cape Porpus, Saco, Blackpoint, Casco, and Kenebeck.<sup>10</sup> The convenience of fishery laid their foundations, and the traffic of lumber, for the various uses of the cooper and the builder, reared them to completion: And they flourished, because they pursued the occupations, which they had chosen for themselves, without interruption.

Massachusetts saw and envied their prosperity. By the annexation of New-Hampshire she had already acquired sixteen miles to her original extent of territory: But the prospect of adding sixty more not only flattered her ruling passion, but the greatness of the object, and the difficulty of the pursuit, served only to incite her anxiety, and to animate her exertions. The former pretence of the great northerly extent of the river Merrimack equally served as an argument when applied to Main, as it had done in the acquirement of New-Hampshire. Through the clergy, who had formed an alliance with the state, because the interests of both were promoted, she intrigued among a people ignorant and fanatical. The interests of discord and disorder were promoted. And those confusions naturally ensued which are but too often increased by the designing, that they may profit from their own wrongs. The general-court, therefore, "encouraged the disposition which prevailed in many of "the inhabitants to submit to its jurisdiction." Having thus prepared the minds of men, it appointed, in the year 1651, Bradstreet, Denison, and Hawthorn, to procure that surrender of the government by treaty, to which the people had been thus pre-disposed. And, in November, 1652, the nearest towns of Kittery and York formally subscribed a declaration of their submission.<sup>11</sup> Yet, as these proceedings were obstinately opposed by the principal inhabitants, because they dreaded the loss of their own consequence in the subjection of the province, the towns of Wells, Cape Porpus, and Saco, did not submit till the subsequent year. The villages lying still farther eastward appear not to have surrendered their independence till July, 1658. And, though not only the incentives

tives of hope and fear were employed, but "violent compulsory means" were used, some of the most respectable inhabitants never owned the authority of Massachusetts, which they considered as usurpation; and they were treated as rebels against a government, just in its origin, and sanctified by the length of its continuance.<sup>12</sup> In this manner did the general-court extend its authority over the province of Main. It used the most prudent means to preserve what it had thus acquired by its dexterity and vigour. It declared the inhabitants, whether members of the church or of any other religion, to be all equally freemen of the corporation, upon taking the oath of fidelity to the commonwealth. This province was now converted into a county; to which was given the name of Yorkshire. Here justice was administered in the same manner as in the other districts of Massachusetts; and the towns were henceforth allowed the important privilege of sending deputies to represent them in the general-court. While we cannot approve either the spirit of aggrandizement which prompted this measure, or the pretence by which it was justified, we must admire the address by which it was executed, and the prudence and good policy by which the acquisition was preserved.

Nevertheless men, whose pride is hurt at the same time that their interests are affected, are not often patient of wrongs. The friends of the late government therefore applied to the parliamentary commissioners of colonies for redress, to little purpose. The loyal part, which the proprietary had acted during the late interesting scenes, had rendered him obnoxious; the attachments of Massachusetts procured her esteem and favour. They equally applied to the protector "for restitution of the right of government." But the general-court had the influence to procure an address from several towns to Cromwell; stating, that former experience had fully evinced how much their weakness had occasioned distraction, their paucity division, their means contempt, to the total subversion of all civil order; and praying, that he would continue them under the government of Massachusetts, because their weakness called for support, their manners for strictness of rule. Oliver was "gathered to his fathers" before it arrived, and Richard promised to consider it at a more leisure time, which, however, he never enjoyed during the

days of his exaltation.<sup>12</sup> The injured felt their wrongs too sensibly to remain inactive long: And they petitioned the parliament,<sup>13</sup> which assumed the government upon his deposition, for relief, without success; because they were too much engaged in their own interesting affairs to attend to colonial applications, or to the redress of the injured. Thus we behold the principles and pretences of all parties: Thus, whoever ruled in England, their sovereignty was admitted, because to them applications were made which supposed submission; their jurisdiction was recognized, because from them reparation was sought.

The Restoration was no sooner achieved, than every party and every man who had even suffered injury from Massachusetts complained to Charles II. because, from a prince who had himself been wronged by the foes to monarchy, instant relief was expected. Among these appeared conspicuous Gorges and Mason, the grandsons of the original patentees, who stated, in strong language, both the merits of their fathers and their own sufferings.<sup>14</sup> Nothing could be more evident than the justness of their pretensions, except the frivolity of the pretences on which they had been deprived of their possessions. For there was nothing in controversy but the north-eastern boundary of that colony. The first agents, who appeared at the court of Charles, seem to have been ashamed of the reasons upon which it had been extended upwards of seventy miles' along an admirable shore, contrary to the original expectations of the patentees; to the intention of the Plymouth council, which granted the territory; of the king, who confirmed it; in opposition to the dictates of common sense: And they, in some measure, disclaimed, on behalf of their constituents, any title to Main; saying, they only governed it till orders should come from England; though their moderation and candour gave little satisfaction at Boston. Having received the decided opinion of Palmer, attorney-general, in favour of his right, that monarch wrote to the people of that province; stating the right of the proprietary, and requiring them to deliver to his commissioners peaceable restitution of what he had been so long dispossessed.<sup>15</sup> Yet, though these men, as early as March, 1662, had proclaimed that prince, had administered the oaths of allegiance to the inhabitants, had endeavoured to hold courts as  
formerly,



formerly, their active zeal answered no good purpose: The general-court opposed them secretly by its intrigues, and openly by superior force. And the efforts of the friends of the ancient government, and the mandates of the common sovereign of all, proved equally unsuccessful; <sup>16</sup> because they were not directed by the same steady spirit as those of their opponents.

As the appointment of the royal commissioners, in the year 1664, was owing chiefly to the complaints before-mentioned, as the discussion of claims and the settlement of boundary were chief objects of their voyage to New-England; during the summer of 1665 they entered the province of Main, in order to restore that repose of which it had been for some time bereaved by the mutual claims of contending parties, which alternately exercised jurisdiction over this distracted province. Being now applied to by the zealous deputies of Gorges, they in some measure restored him to what they deemed his undoubted right: They established a temporary government in the royal name; appointing justices of the peace, and other officers, for the preservation of public tranquillity, by the administration of justice. But the general-court, neither convinced by the reasonings in the king's letter, nor over-awed by the power of his commissioners, vigorously opposed all their proceedings, because it deemed its own pretensions as valid as the conduct of its opponents was unjust. Considering their proceedings as breaches of the public quietude, it desired a treaty, in order if possible to convince them of its own rectitude, and the unreasonableness of others. But this was declined in such language as shewed that its hopes of amicable agreement were ill-founded. It published a formal protest against their conduct, giving warning to the people to yield no obedience to commands which were worthy of none, because they were contrary to charter privileges. It sent officers to administer justice as formerly; though the same prompt obedience was not now paid to their decrees. And all the anarchy and consequent distractions of disputed jurisdiction ensued.<sup>17</sup> It was to little purpose for the commissioners to communicate the king's orders, of April, 1666, to the general-court; commanding, "that their decisions, with regard to boundaries, shall be observed till he shall give a final determination."<sup>18</sup>

It was in vain for them to recommend obedience, and to warn them of the bad consequences of a contrary conduct.<sup>19</sup> As soon as the commissioners had returned to England, it appointed Leveret and three commissioners "to settle all affairs for the government of the people there." And these, attended by a troop of horse, to give weight to their proceedings, entered the province in July, 1668, and easily re-established the authority of Massachusetts upon the ruins of a feeble proprietary administration.<sup>20</sup> As both parties foresaw that this conduct, so contrary to the royal intention and orders, must necessarily give the greatest offence in England, they procured addresses from the people in support of their own pretensions, and praying for a continuance of their own power. But to these little regard seems to have been paid, because the signers were deemed there what they have been at all times, nothing but instruments in the hands of others for promoting the purposes of interest or ambition. It is only to be lamented, that, in the contentions of all, the authority of the laws was despised, because none looked up to them for a rule of their actions.

While Massachusetts enjoyed that undisturbed authority in Main, which her superior power and perseverance had procured, the proprietary was incessant in his application to their common sovereign for relief. And his complaints were listened to with the greater attention, because they were supported by the popular clamour of England. Having now contended with the general-court upwards of fourteen years to no purpose, Gorges and Mason made a tender of their claims to Charles, who received proposals favourably, which promised future advantages to his family. For he intended to form New-Hampshire and Main into an establishment for the duke of Monmouth, the most beloved of all his sons. Jones and Winnington, the crown-lawyers, asserted the legality of the title to both. But the intrigues of an emissary laid discouragements in the way, by shewing the folly of expecting a great present revenue from a country yet in its infancy, and consequently poor.<sup>21</sup> The province of New-Hampshire having undergone similar revolutions, its proprietary co-operated with Gorges in procuring redress of wrongs, which equally pressed both. The general-court, relying on its own construction of its  
patent,

patent, which the world considered as equally frivolous as interested, though it condescended to explain its conduct and pretensions, declined long either to give them possession or to appoint deputies to defend its proceedings. That monarch was wearied with continued solicitation. And the committee of plantations at length determined to propose to that body, either to receive commissioners, authorised to decide amicably the claims of all, or to send agents to answer before the king in council: Adding, what was probably decisive; "that, should it still  
" prove refractory, notwithstanding the equity of this overture, every  
" means would be used to interrupt the trade of the colony, which by  
" the acts of trade may be given it." After sixteen years of the various exertions of the whole energy of government, to procure what was so extremely reasonable, the general-court, upon great consideration, sent agents to England, who were empowered to consent to the final settlement of claims that had at last become serious. What a view do these notices display of the weakness of the one administration and of the vigour of the other. Men, who did not sufficiently regard either the infelicity of the times, or the natural difficulties attending the exercise of distant power, remarked; that the system which cannot give redress to the injured, and protection to all, ought no longer to exist.

When the disputants appeared in July, 1677, before Rainsford and North, the two chief-justices, to whom this controversy, famous rather for the length than the difficulty of it, was referred, a striking scene ensued. The agents at once disclaimed pretensions which had been so long defended with the greatest ability as sacred; because their counsel informed them that they could not possibly be defended before such judges. Mason, by the same advice, waved his claim to the government of New-Hampshire, which the council of Plymouth could not convey to others, because it was a trust not subject to alienation. The limits of Massachusetts were restrained to the literal expression of its charter, and its jurisdiction within the boundaries of the soil. The province of Main was adjudged to Gorges, with such right of government as had been granted by the patent under which he claimed. But it was deemed improper to decide with regard to the rights of the possessors of the territory, because they

they were not present : And all parties were directed “ to have recourse “ to the courts of justice, upon the place, for the decision of the question of title to the possession.”<sup>23</sup> Nothing could be more plausible, and yet nothing could be more unjust, than this advice. Those eminent lawyers seem not to have reflected, that they directed the claimant to bring his action before the men who actually occupied themselves the disputed property ; because the proprietary claimed a province. This observation discloses a defect in colonial jurisprudence, which has remained without remedy to the present times. No suit could be instituted in English judicatories, because the wisdom of the law of England had provided, that all disputes, with regard to territory, shall be decided by jurors, who lived in its vicinity : And universal jurisprudence has reprobated all persons as judges, who are themselves interested in the controversy. An act of the supreme legislature was therefore necessary to establish a new jurisdiction, to obviate so great a difficulty, which has been at all times felt and complained of ; because the advice before-mentioned was afterwards followed as a proper example, though contrary to every principle which should govern in the administration of justice. The equity of this decision, however, commanded the acquiescence of all parties : The one saw difficulties enough which yet remained, because the others had obtained only a simple declaration in their favour, that could not be easily executed.

Long had Charles II. been in treaty with the proprietors of New-Hampshire and Main. But his poverty, which was well known in New-England, the wars that happened in the mean time, the intrigues of his adversaries, the high expectations of the owners ; all prevented the completion of a business which would have probably proved so advantageous both to prince and people. For years had the friends of Massachusetts warned her of the danger of suffering such claims to exist, and requested that authority to treat with Gorges which was given them in August, 1674.<sup>24</sup> The vigorous proceedings before-mentioned hastened her steps, because she saw the danger increase. And when it was perceived that the judges would decide in his favour, because the validity of his title was apparent, the agents prudently purchased what had been so long opposed.

opposed. It was to no purpose for that monarch to remonstrate, in terms of great discontent, against a conduct so contrary to every principle of fair dealing, so disobliging to himself; to insist that what had been thus acquired contrary to his assent, perhaps to law, should be surrendered.<sup>25</sup> The general-court had now acquired the legal right, in addition to long possession; and, having determined to retain what its superior address had gained, it easily found excuses to palliate what it could not defend. Neither the great judges, who decided that famous controversy, nor the wisest men of those days, appear to have been governed by that uniformity of principle, from which so many benefits are derived to the subjects of a free country, which constitutes the chief excellence of the law as a science. It was admitted by every one, by the greatest lawyers and statesmen of the times, that the Plymouth company could not transfer the powers of government either to Mason or to Gorges. Was it not equally apparent that the latter was as little able now to convey to others the trust reposed in his ancestor? Yet, during the contentions of that period, this objection seems not to have occurred, though so extremely obvious, perhaps just.

The general-court applied now, with an ability equal to the prudence with which it had made the acquisition, to derive some advantage from what had cost so much money and vexation. It properly rejected the council of those who advised, "that it should be sold again to the highest bidder, towards reimbursing the prodigious expence of defending it:" And it determined to govern Main in the form of a province. Nothing could be more just or wise than its policy with regard to this colony when it was formerly annexed to Massachusetts: Nothing can shew more clearly how much communities, as well as individuals, are carried out of the paths of rectitude by ambition, than the present resolution. A colony, on which were conferred even greater privileges than were enjoyed by those who were not freemen, was now reduced to the condition of a mere dependency. Being no longer allowed representatives in the general-court, it was bound by rules, and obliged to pay taxes, to which it had not consented. As proprietary, the general-court appointed the deputy-governor president of Main; it named officers; it established various

rious judicatories; and justice was administered in the mode prescribed by the patent of Gorges. No assembly, of which the representatives of the people composed a constituent part, was allowed, because none had been mentioned in the original grant. But they did not submit peaceably to this degrading state of servitude, because they felt an insult offered to their understandings as men, while they were bereaved of their rights as citizens.<sup>26</sup> And sad experience convinced them of a truth which they could not foresee, that the general-court was as prompt to support its authority by the sword, as it was ever slow to yield obedience to the rules prescribed by the parent-state. Nothing is more amusing than to observe how frequently each of the contending parties, during the foregoing controversy, insisted, that it alone was supported by the voice of *the people*: And, in order to demonstrate this fact, each procured, on all occasions, addresses from the inhabitants in support of its own pretensions. But they now discovered, when it was too late, that they had only been converted into instruments to procure the gratification of others, as had happened at all times, and in every quarter of the globe: It is to be lamented that successive examples are held up to the multitude to so little purpose. While Main remained subject to Massachusetts, it discovered by experiment what history might have taught, the great difference which there is, with regard to freedom and happiness, between being the subjects of a prince, and being the subjects of a people. It was relieved a few years afterwards from this deplorable state of servitude, when, by the dissolution of the charter of its superior, the colonies of New-England were put upon an equal footing. And now the trust of its government, attended by the property in the unappropriated lands, was deemed to revert to the king, whose predecessor had given both a way.<sup>27</sup>

When the decision before-mentioned was confirmed by Charles II. the province of New-Hampshire was left without a regular government; because the jurisdiction of Massachusetts was now restrained to the limits of its soil, extending northward to the distance of three miles beyond the Merrimack. Having endeavoured in vain to obstruct the royal decision in favour of Mason, with regard to the property of the lands, the agents

gents represented, that New-Hampshire was inhabited by a race of men of mean estates, and was occupied only by four towns of little commerce, which, since they had been long under the jurisdiction of Massachusetts, wished to continue so. Thus, without reflecting that punishment was due to usurpation of the rights of others and to the vexation of delay, with a happy moderation they solicited reward: They asked it as a thing that would be deemed a mighty favour, that the power of coining might be confirmed to the general-court; that New-Hampshire might be added to its jurisdiction. But, though the towns of Dover and Portsmouth, of Exeter and Hampton, had been prompted to second their prayers, because they were equally interested, the solicitations of the agents proved fruitless. That monarch had now too much experience of the principles and practice of the general-court, to add strength to a power which he had so long wished to weaken: He recollected, with disapprobation, the late purchase of Main: He meditated important projects of reformation, which he every day discovered to be more necessary. Far from gratifying those who had given him reiterated offence, he informed that body, that it must not expect the requested annexation of New-Hampshire, because he had determined to establish such a method as shall be of most benefit and satisfaction to the people there: He commanded that all commissions for governing this province should be instantly recalled.<sup>28</sup> We may infer what impression the repeated provocations of the general-court had made on the mind of a prince who was not remarkable for steadiness, when we see him pursuing so long, with such uniformity, one plan of reformation.

Influenced by all these motives, it was determined, after great deliberation, in July, 1679, “to establish a temporary administration in New-Hampshire, which may have a more immediate dependence on regal authority.”<sup>29</sup> Nothing could be more wise than this policy: It is only to be lamented that it was not executed with a prudence equal to the importance of it. The whole executive power was now invested in a president and council, to be appointed by the king. Instead of inquiring for men whose principles attached them to the English nation and to English laws, the statesmen of those days sent to Wapping for recom-

mendations of proper persons to discharge that weighty trust. John Cutt was accordingly appointed president; Waldron, Martin, Vaughan, and others, who were all either members or officers of the general-court, who were governed by its maxims, who were enthusiastically attached to the tenets of the Independents, were appointed counsellors.<sup>3</sup> Such were the men who were now empowered to administer justice according to the laws of England, the authority of which they did not admit, "as far as the circumstances of the place will admit:" Allowing appeals to English judicatories, which they deemed inconsistent with their rights, because contrary to their projects of independence. They were empowered to call an assembly. The legislative power of the colony was vested in the president, the counsellors, the burgesses of the towns. And these were authorised to levy taxes for the support of government, to make laws for the interest of the province: "Transmitting them, "by the first ship to England, for confirmation." Thus was erected for the first time, in New-England, a royal government, wherein the just prerogatives of the crown and the constitutional privileges of the people were equally attended to, and such a happy balance of power established as to make opposition to the laws a crime in the subject. In addition to the security of civil rights, liberty of conscience was at the same time allowed to every Protestant, while the church of England was particularly encouraged. But one matter of contest still remained, which embittered the enjoyments of New-Hampshire. The property of the soil was claimed upon very opposite pretensions. The inhabitants had long possessed it either under grants from the original occupiers or from Massachusetts: As general proprietary, Mason demanded what his patent from the Plymouth-company had conferred: And the titles of both were equally just; the former enjoying an equitable, but the latter, a legal right. Never was there a contention fitter for amicable compromise than the present; wherein both should have sacrificed much to peace, because much was controverted, and much might be lost. And Charles, with the attention of a father, obliged Mason *to agree* to demand nothing for the past, nor to molest the landholders for the future; "provided they "should pay sixpence in the pound of the just value of their possessions."



“ fions.”<sup>31</sup> But an offer, which has the appearance of fo much moderation and equity, was only derided by a people, who were animated by principles which never recede, becaufe they claim the gifts of fociety as the rights of nature.

Edward Randolph had the pleasure, becaufe every thing gratified him which mortified the general-court, to deliver the commiffion above-mentioned to Cutt, the prefident, in December, 1679. What might have been forefeen, perhaps prevented, now enfued. Waldron, Martin, and other counfellors, defired time to confider whether they would be instrumental in eftablifhing fo great an innovation. They confulted the wife men of Bofton, with regard to what they fhould do on that emergency. And they not only refufed themfelves to admit the authority of the commiffion, but advifed the prefident alfo to difown it, hoping that the meafure might be defeated by the refufal of all to a $\dot{c}$ t. But, having confulted the principal inhabitants, he declared his refolution to difcharge the duty which did him fo much honour, and he required all to affift him to execute the royal intentions. Many both rejoiced and mourned, as their various paffions were affected. The advice of the minifters was now asked; who gave it as their opinion, that thofe who had fo lately declined to accept the commiffion fhould now affume the government, left the prefident fhould fill up their places: Giving as a reafon, what fhews the motives by which all were influenced; “ that it was better for thofe “ to govern, who had formerly a $\dot{c}$ ted under Maffachufets, than for others “ of different principles to command them.” And thefe reafons were tranfmitted to Bofton to fhew the neceffity of their prefent conduct. When they did condefcend to exercife their duty as counfellors, they refufed to take the accuftomed oaths as the Englifh law required, becaufe liberty of confcience was allowed them.<sup>32</sup> Wife men faw and regretted the anarchy that muft enfue from the eftablifhment of a government, however falutary and legal, in oppofition to the principles of a people.

Though the form was changed, yet ancient maxims continued to give a tone to every a $\dot{c}$ t of the adminiftration. An affembly was foon called, which, by means of the ufual intrigues, was compofed of perfons extremely favourable to the projects of thofe who now engroffed power.<sup>33</sup>

They immediately voted an address to the general-court; apologizing “ for the late turn of Providence made among them by the all-ordering hand;” thankfully acknowledging former kindness, in taking them under its government; assuring it “ that they would have rejoiced had it seemed good to the Lord and his majesty to have settled them in their ancient capacity, as it was merely in submission to divine Providence, to their sovereign’s commands, whose subjects they all were, that they submitted to their present separation.” To Charles they at the same time transmitted an address; couched in similar language, and breathing a similar spirit. But, while they were so grateful for favours conferred, they were extremely slow in conforming to present requisitions. They passed no laws during this first session of assembly; they opposed all appeals from the courts of the colony to the judicatories of England: Giving as a reason; that the shortness of the summer had prevented them from doing the one, and they were afraid that the other might obstruct justice.<sup>34</sup>

When, however, they did some time after essay their legislative talents, they had not the good fortune to please. The laws which they transmitted,<sup>35</sup> in conformity to their constitution, were disapproved of by the lords of the committee of plantations, in December, 1681, “ both as to stile and matter,” because they were considered “ as unequal, incongruous, and absurd.” The act, which, in the true spirit of selfishness, confirmed to the inhabitants the titles to their lands without the consent of the proprietary, was justly disallowed. Complaints were at the same exhibited against those who had acquired pre-eminence subsequent to the death of Cutt, who was allowed to have been an “ honest man and a loyal subject,” as favouring too much ancient principles of government, as opposing the operations of the acts of navigation. The same committee reported: That various irregularities had been carried on by those at present in the government, which were neither consistent with the king’s service nor with the intended settlement of the province, which precluded hope of such a regulation of affairs as their dependence and the welfare of the place required.<sup>36</sup> And these were deemed sufficient reasons, because they were founded in truth, for putting an end to an administration

ministration which had shewn so little inclination to promote the views of those who had given it birth. The statesmen of those days lamented, that they had put trust in men, who only acted according to their principle when they opposed the laws and government of England.

In order, therefore, to prevent farther irregularities, it was determined, in the beginning of the year 1682, to appoint "an able person and of tried fidelity to settle that place." And Lionel Cranfield was soon after appointed lieutenant-governor and admiral of New-Hampshire during pleasure. His commission was nearly the same as those of other royal governors; his instructions were copied with little variation from those given to the chief rulers of Virginia:<sup>37</sup> And the form of government now established was exactly the same. The governor and council were moreover empowered to continue the collection of former taxes, for the support of government, till others shall be raised by the assembly. The governor was alone authorized to appoint custom-houses; to cause every one to obey the acts of navigation; to nominate the clerk of the assembly. And not only was the former commission revoked, but all laws passed under its authority were annulled: Giving for a reason, what shewed the extent of the disapprobation of the prince; "that others more suitable to the dignity of government might be enacted." The proprietary, who had surrendered the fines and forfeitures for the support of government, was now placed at the head of the council, was enabled to choose two burgesses for the assembly: And the governor was required to adjust, if possible, the differences between him and the people, in order that he might be restored to his right, and they to peace. The other colonies of New-England were informed of the appointment of a royal governor for New-Hampshire, and commanded to give every aid to this province, in case it should be attacked. And such was the form of government, such were the instructions, which a governor, without a salary, without power, and without a friend, was appointed to support and to execute!

When Cranfield arrived, in October, 1682, he found the province only of the breadth of seventeen miles from the northern line of Massachusetts to the river Piscataqua, which divided it from Main; occupied by four townships, containing four thousand inhabitants, mustering four hundred

hundred and fifty militia, so extremely poor, from the devastations of the late Indian war, that they were scarcely able to pay their ministers salaries. But, when he spoke contemptuously of the country which he had been sent to rule, he seems not to have reflected, that all colonies had once known the like paucity of numbers, the same weakness, and the same poverty; animated only by a dissimilar spirit from that of New-Hampshire, which now disdained that independence on her neighbours that other provinces had contended for with enthusiasm. And other plantations, actuated by very different maxims, had not complained, even in their weakest days, of their inability to defend their frontiers against the attacks of a foe that has never proved dangerous, except to the effeminate, the factious, or the cowardly. When New-Plymouth consisted only of two hundred persons of all ages and sexes, it repulsed its enemies and secured its borders with a gallantry worthy of its parent country, because it stood alone in the desert without hope of aid. The moment a nation thinks itself feeble, and unable to defend itself, it is already undone. The governor no sooner communicated his commission, in the accustomed manner, and desired the counsellors to administer the usual oaths, than Waldron, the late president, paused; desiring to know first, "by what method the people were to be governed." But the prudent firmness of Cranfield commanded submission on that occasion, as it generally does. And he commenced his administration by suspending, agreeably to his orders, those members of his council, who, under the late commission, had given so little satisfaction. He now endeavoured, by his politeness to all, to acquire the good will of every one; by his attentions, that have so great an effect on the most "rugged people," to gain the confidence of the party which adhered to Massachusetts, which was much the most potent from its numbers, but more from its enthusiasm. The ministers and other leaders were equally attentive to him, because "they deemed him gained over to the Independents." But, the moment he avowed his purpose to execute the acts of navigation, and to support the indefatigable Randolph, the collector of the customs, he not only lost their confidence, but incurred their hatred.<sup>38</sup> And now commenced a train of vexations, that ruined his fortune and drove him from

from the province. It was experience that convinced him, that every one was reduced to the sad dilemma of either acting with such a people or becoming the object of their persecution.

As the governor was not yet altogether deserted by hope, he called his first assembly in December, 1682. And now he discovered that the democratic branch of it was composed of eleven members only, who were governed entirely by his opponents. Having sat three weeks, without either passing laws, or granting money for the uses of the state, he dissolved them; never reflecting, that, though such a measure may shew repentment, it can never be attended, during times of high passion, with any salutary effect. He discovered, when too late, that he had only gratified the wishes of his enemies, who derived advantages to themselves from his imprudence: And he was astonished to hear, soon after, that Gove, one of the late burgeses, hurried along by his passions, had erected the standard of insurrection. Cranfield, knowing that it was to little purpose to argue with armed enthusiasts, instantly proclaimed him a rebel; and, having hastily collected a superior force, he seized him and his followers, before they had been joined by considerable numbers. A special court was immediately appointed for their trial. Gove denied that he was guilty; but in some measure avowed the part he had acted; insisting that he only opposed a commission, instructions, and governor, which were all equally unconstitutional. He was however convicted, because "some art had been used to procure a proper jury." Nine of his adherents were also found guilty, but recommended for mercy. Nevertheless the usual advantages derived from the suppression of unsuccessful rebellion did not accrue from this. The chief men of the province, and, above all, the ministers, were connected with him in the same party and designs; the great body of the people were animated by the same principles: And it was only the precipitation of Gove, who sounded the trumpet of revolt without concert or preparation, that prevented the whole from joining him. While the governor hoped that an end was put to insurrection, a considerable body of men riotously entered his house, in February, 1683, and "remonstrated against several things in his commission." Uneasy, and fearful for the future, he sent Gove under

under a strong guard to Boston, with orders to send him to England "to be executed," in conformity to one of his instructions; never reflecting, that he thus converted punishment, which ought ever to operate as an example, into an act of revenge. He dismissed several of the counsellors, because he knew them to be embarked in the same cause. But the ministers, who now ruled an enthusiastic people with the same sway as did the popish clergy during the darkest ages, "proved so troublesome, that he deemed it unsafe to remain any longer among them." And he sought an asylum at Boston, where was moved the spring which put in motion those designs and actions that he had thus found irresistible; leaving the conduct of affairs to Barefoot, the deputy-governor.<sup>9</sup> The principles of the Quakers and Independents enlightened men have discovered to be nearly allied, though they differ extremely in one important tenet: The former act passively in all things; the latter resist on all occasions that they perceive favourable to their views, because they regard little the ties of society. But the extremes of neither form salutary examples. And, while we cannot approve the machinations of these during that period, or all the means employed to ensure success, we must admire their address, their promptitude, their vigour, because these must always be estimable qualities.

Cranfield's proceedings were approved by the ministers of England. Upon his solicitation Gove's adherents were pardoned; and he himself, after lying a twelvemonth in the tower, was also admitted to mercy; because it was hoped, that lenity might soften the spirit of a people, who could not be either persuaded or frightened into submission.<sup>42</sup> Not long after, Weir arrived, as agent for the people, to exhibit charges against the governor; complaining that he had, by his sole authority, erected various courts of justice, wherein he determined causes without the assembly; that he had raised the value of money by his sole authority; that he had made laws without the consent of the legislature; that he had dismissed the counsellors without cause; that he had not endeavoured to reconcile the differences between Mason and the landholders. But, while he either denied or explained those various charges, for which there was great foundation, because the governor and council exercised a legislative

lative power, he recriminated on them “ as mutinously inclined.” But it was at length determined, by their common sovereign, that he had not pursued his instructions : And he received reprimand, at the same time that he solicited reward ; because he had spent his own estate in the public service, without perceiving how he was to be reimbursed.<sup>41</sup> Neither party was gratified ; because the hopes of both were, as usual, disappointed.

In the mean time the news of the proceedings in England only animated the dissensions of the colony. After Mason had waited a year, endeavouring to procure the assent of the people to that agreement which had been made for them by their sovereign, to no purpose, he adopted that mode of decision which they had themselves proposed, a trial at law. He prevailed, because the law was on his side. Yet it was in vain to obtain judgements which the usual officers were unable to execute. He applied to the governor for aid : But the chief magistrate of a country, supposed to be governed by established rules, refused to call out the militia in support of justice, because he feared an insurrection : And all men saw the extreme futility of attempting to decide on the rights of a people in opposition to their principles. During this ferment Cranfield called another assembly, in January, 1684. But, composed of the same members as the former, and governed by the same maxims, it acted the same part : It refused to raise money, or to establish regulations, except such only as were contrary to the laws of England. And he gave warning to the ministers of his country, “ that, while the clergy were allowed “ to preach, no true allegiance would be found in those parts.” With the consent of the council, the taxes formerly laid were continued ; but it was at the same time deemed unsafe to collect them “ without strength “ to countenance their proceedings.”<sup>42</sup> Amid all these causes of weakness, their borders were threatened by an irruption of the eastern Indians ; which taught every one the great danger of dissensions, which pointed the force of their ardour to another object.<sup>43</sup> Perceiving at length that his opponents had taken their ultimate measures, that no hope remained of obtaining their co-operation, he solicited his recal in language which shews the state of his own mind and that of New-

Hampshire: "I shall esteem it, said he, the greatest happiness in the world to be allowed to remove from those unreasonable people; because then all men will see, that it is what is enjoined in the royal commission which they cavil at, and not my person; and time will shew, that no one shall be accepted by them who puts the king's commands in execution." His ardent prayers were granted; and Barefoot was appointed deputy-governor, in June, 1685.<sup>1</sup>

During this state of things, that province was annexed to Massachusetts; because the people wished to inhabit rather the county of a neighbour, than to enjoy the gratifications attending on real independence. During the successive administrations of Dudley and of Andros, the same measure, either of just government or degrading misrule, was allotted to both. But the revolution at Boston once more conferred that separate station among the provinces of the English empire against which they had contended with so much zeal. Yet, as New-Hampshire had no patent to resume, it waited patiently for its fate from the wisdom of William. And, being excluded by this monarch from the charter granted to Massachusetts, it has continued to the present time a different though inconsiderable settlement; "irregular, as we are assured, and factious in its œconomy, affording no precedents that may be of exemplary use to other colonies."

#### AUTHORITIES AND NOTES.

<sup>1</sup> Hutch. Hist. Mass. 1 v. p. 103-5. who cites ancient MSS. Josselyn, p. 20; and see notes of those various grants in N. Eng. Pap. 2 v. p. 1-20. — <sup>2</sup> Same pap. p. 2-6. — Henry Josselyn, and other agents of John Mason, made various grants of land during the year 1637, which were given in evidence at the trials of the proprietor's rights, in 1682. — N. Engl. Pap. 3 v. p. 566. — The oldest record of New-Hampshire is dated in 1640. — *Ib.* p. 841. — Hence we may infer the prior state of the colony; because, what must be the state of society in that country, which possessed no written memorials of its ordinary transactions?

<sup>3</sup> *Ib.*



<sup>3</sup> Ib. p. 4-6; Joffelyn, p. 256; and Hutch. Hist. Mass. I v. p. 176. —  
<sup>4</sup> See the combination, in Hutch. I v. p. 107. — <sup>5</sup> The compact and their proceedings are in Ib. p. 106-7. — <sup>6</sup> See the relation of the royal commissioners, in Col. of Pap. by Mr. Hutchinson, p. 422. — <sup>7</sup> Hutch. Hist. Mass. I v. p. 108-9. — <sup>8</sup> Neal's N. Eng. I v. p. 210. — <sup>9</sup> See the N. Eng. Pap. 4 v. p. 470-4. — <sup>10</sup> Joffelyn, p. 199-202. — <sup>11</sup> Hutch. Hist. Mass. I v. p. 176-7.

<sup>12</sup> The annexed papers throw considerable light on this obscure portion of colonial history; they shew the extent of the claims of Massachusetts, and the arts by which they were supported. — From N. Eng. Pap. 4 v. p. 487.

*Protest of the general-court against the pretensions of the family of Gorges.*

“ Whereas we have declared the right of the Massachusetts government to the towns of Wells, Cape Porpus, and Saco, and the inhabitants thereof, being summoned, did appear before us at Wells, on the 5th of July, 1653, and acknowledged themselves subject thereunto, and took the oath of freemen and fidelity to the said government, which by us their commissioners have appointed and settled a government over them: We do therefore hereby protest against all persons whatsoever that shall challenge jurisdiction, or exercise any act of authority over them, or over any other persons to the northward, inhabiting within the limits of our patent, which doth extend to the latitude of forty-three degrees, forty-three minutes, and eleven seconds, of northerly latitude, but what shall be derived from us the commissioners, or of the general-court of the Massachusetts. Given under our hands at Wells, in the county of York, the 6th of July, 1653.

Tho. Wiggan,      Rich. Bellingham,  
 Ed. Rawson,      Dan. Denison,  
 Brian Pendleton.”

*Proclamation, declaring John Bonithon a rebel.*

It not only shews how the general-court treated those who refused to obey, but demonstrates how little it availed a man in those days to plead

that he had not consented. For, Bonithon had never submitted to its authority, because he was attached to the rights of the proprietary.

At a general-court, held at Boston, 20th of May, 1658.

“ Whereas the town of Saco, (within the line of our patent,) in or near the bounds whereof John Bonithon liveth, have generally submitted themselves and their lands to the government and jurisdiction of the Massachusetts: And whereas there are great and frequent complaints made to this court, by several credible persons, that the said Bonithon, attending no government, doth molest both his neighbours and others that do occasionally traffic in those parts; and, by his outrageous carriage, hath maimed some and put others in danger of their lives, by his lawless and imperious actions. And whereas legal courses have been taken and much patience hath been used for his reducement into some tolerable demeanour, hitherto not only in vain, but, instead of compliance, he hath sent contemptuous and railing returns to this government or authority here: Whereupon this court, considering the premises, doth declare the said John Bonithon a rebel, or common enemy, and intend to proceed against him accordingly: Yet, because this court is very lothe to use extremity, (if it may stand with justice, peace, or their honour, to exercise any farther delay,) therefore this court doth hereby express themselves willing to give the said Bonithon time, till the first day of September next, peaceably to render himself into the hands of the governor and such other of the magistrates as shall be then in or near Boston: That his case, being duly and seasonably considered, there may be such an issue put to the same as shall be meet: Which clemency, thus tendered, if neglected or contemned, it is resolved by the court to proceed against him as a rebel or common enemy to the people of these parts of New-England, this government, and especially the people inhabiting near unto the place of his residence. And farther, this court doth empower any person that hath submitted to this government, after the said first day of September to apprehend the said Bonithon by force, and bring him alive or dead to Boston; declaring and proclaiming, that whosoever shall so do shall have twenty pounds paid him out of the common treasury, which shall be levied, with other charges, upon the said Bonithon his estate.

estate. This to be proclaimed forthwith in Boston, Salem, Portsmouth, York, and Saco.

By the court,

EDWARD RAWSON, Secretary."

*A summons, requiring various towns to submit.*

It evinces with what reluctance many of the inhabitants of Main submitted to Massachusetts.

" Whereas the general-court hath formerly declared the right of jurisdiction over the inhabitants of Black-point, Blue-point, Richman's-iland, of Casco, and of the Clap-board-islans, or by what name or names so ever called or known, to the latitude of 43 d. 43 m. and it was by the commissioners of the county-court of York last summer by their public act declared, that all such inhabitants, as failed to appear by themselves or delegates at the general-court, in October, 1657, and answer thereunto, should thenceforward be included and concluded within the jurisdiction of Massachusetts; which order, the said inhabitants not attending, this court understands and accounts them to be in the same condition, in point of subjection, as the rest of the people of this jurisdiction are generally in, saving, they want such privileges, which others in the county of Yorkshire have, who submitted themselves: Yet, notwithstanding, by favour of this court we do intend to give a farther opportunity to such, who personally appear at the next county-court, holden at York, upon the 4th day of July next, yielding their consent to be under this jurisdiction, to have like privileges as the rest of the inhabitants of the county of Yorkshire have had granted unto them. You are, therefore, hereby required to summon all and every the inhabitants of the said places respectively, personally to appear at the next court, to be holden for the county of York, at the town of York; which court hath special commission from the general-court to settle government throughout the whole county, to the uttermost extent of their line eastward. Hereof you are not to fail at your peril. Given the 11th day of June, 1658."

To the marshal of the county of York, [Main.]

Commissioners of the general-court, { Sam. Symonds.  
Tho. Wiggan.  
Ed. Rushworth.

" Col-

<sup>12</sup> Collection of Papers, by Mr. Hutchinson, p. 314-17-20. — <sup>13</sup> The petition to parliament is in the N. Eng. Pap. 4 v. p. 500. — <sup>14</sup> Col. of Pap. by Mr. Hutchinson, p. 317. — <sup>15</sup> Ib. p. 385-96. — <sup>16</sup> N. Eng. Pap. 4 v. 507: and see the relation of Archdale, one of Gorges's commissioners, giving an account of his transactions with the general-court on this subject. — <sup>17</sup> The commissioners narrative, with regard to New-Hampshire and Main. — Col. of Pap. by Mr. Hutchinson, 422. — <sup>18</sup> Ib. p. 427, where see colonel Nichols's letter to the general-court.

<sup>19</sup> The annexed letter, from the royal commissioners to the general-court, will display an admirable picture of the principles and practice of all the parties. — From N. Eng. Pap. 3 v. 28.

“ Gentlemen,

We have received a letter from your marshal, subscribed by the secretary, so full of untruths, and in some places wanting grammar construction, that we are unwilling to believe it penned with your knowledge and approbation, (though in the name, and by the order, as it is said, of the general-court). Though it was great reason and high time for us to give over treating in private with those, who, by the sound of trumpet, denied that authority which the king had over them, and by which we were to act; yet, neither that denial nor any thing they can do can enervate the king's commission, or hinder us from obeying the king's commands, as near as we can.

The fixing, naming, and owning a boundhouse, three long miles north from Merrimack-river, about twelve years together, by the corporation of Massachusetts, after the fixing of which bound many patents were granted by the council of Plymouth and by the king, must necessarily determine the limits of the said corporation, and answer all the false and fraudulent expositions of the charter. We now let you know our judgements, how much those that have penned that letter were mistaken, though for some reasons we will not publish it as our decree.

That last letter we received from his majesty was the ground of the warrant we sent to Portsmouth, and of those we sent to several other towns. His majesty's commands are and shall be our directions. When

we

we are convinced of our error, we shall be ready to acknowledge and amend it; but shall not concern ourselves with your sense in this, who have already, and, we fear, wilfully, misconstrued too many of his majesty's most gracious letters.

That duty, which we owe to God, to the king, to all his subjects, constrains us to persuade you not to suffer yourselves to be so much misled by *the spirit of independency*: The king did not grant away his sovereignty over you when he made you a corporation. When his majesty gave you power to make wholesome laws, and to administer justice by them, he parted not with his right of judging whether those laws were wholesome, or whether justice were administered or no. When his majesty gave you authority over his subjects as lived within the limits of your jurisdiction, he made them not your subjects, nor you their supreme authority: That prerogative his majesty certainly reserved for himself; and this certainly you might have seen, if ambition and covetousness, or something as ill, had not darkened both your eyes and understandings.

Remember, we pray you seriously, that the pardon you so much pretend to from his majesty's clemency, in his letter of June, 1662, was promised to you upon the condition of being for the future his good subjects; which must necessarily imply obedience: Striving to grasp too much may make you hold but little.

It is possible that the charter which you so much idolize may be forfeited; and it may probably be supposed that it hath many ways been forfeited, while you have cleared yourselves of those many unjust oppressions, violences, and blood, for which you are complained against. To which complaints you have refused to answer until you have his majesty's pardon; which can neither be obtained by, nor effectual to those who deny the king's supremacy.

The deserved destruction and punishment of some of those, who of late made use of the king's authority to oppose his majesty's power, and raised armies and fought against his majesty, and yet pretended the defence and safety of the king, we think might deter all from broaching or acting according to such illusive and destructive sophisms. Many of  
your

your actions, and the warrant sent to the constable of Portsmouth, the 12 July, 1665, give us just ground to fear, that, if you had power, you would try your success the same way.

Gentlemen; remember, we pray you, that you profess yourselves to be Christians, and pretend to be of the best sort; pray make it apparent that you are so, by obedience to the king's authority, by your peaceableness towards your neighbours, and by your justice among yourselves, which are Christian virtues, that men may see your good works, and then, &c.

The other colonies have set you so many good examples, even that of Rhode-Island, one whom you have so long despised and disowned, and now lately derided for its submission to his majesty. The dangerousness of these ways you are in hath extorted thus much from us at present for caution. But the particulars of your letter we refer to be examined in another place.

In fine, we desire and in his majesty's name require you not to contradict those orders which we made by virtue of his majesty's commission, nor to disturb the peace and quiet of those whom we have taken under his majesty's government, nor to molest those who, in obedience to his majesty's authority, have observed any orders or warrants made by us. And we assure you, that, as you approve yourselves his majesty's good subjects, we shall approve ourselves your real friends, ready to serve you.

Piscataqua-River,  
16 July, 1668.

Rob. Carr,  
Geo. Cartwright,  
Sam. Maverick."

<sup>20</sup> See Pateshul's deposition in N. Eng. Pap. 2 v. p. 121. — <sup>21</sup> Collins's letter in coll. of pap. by Mr. Hutchinson, p. 451. — <sup>22</sup> N. Eng. Ent. 1 v. p. 23. and throughout.

<sup>23</sup> The following *Report of the two chief-justices, touching the pretensions of Gorges and Mason against the government of Boston*, not only shews precisely how this controversy was settled, the 17th of July, 1677, but illustrates some parts of the foregoing Annals, and confirms the reasonings in the text. — From N. Eng. Ent. 1 v. p. 213.

“ In obedience to your lordships order we appointed a day for hearing of all parties and confidering the matter referred, having received from them fuch papers of their cafes as they were pleafed to deliver. At which time all parties appearing, the refpondents [the agents of the general-court] did difclaim title to the lands claimed by the petitioners. And it appeared to us, that the faid lands are now in poffeffion of feveral other perfons not before us. Whereupon we thought not fit to examine any claims upon the faid lands ; it being, in our opinion, improper to judge of any title of land without hearing the ter-tenants, or fome other perfons on their behalf : And, if there be any courts of juftice upon the place, having jurifdiction, we efteem it moft proper to direct the parties to have recourfe thither for the decifion of any queftion, until it fhall appear that there is any juft caufe of complaint againft the courts of juftice, or grievance.

We did, in prefence of the faid parties, examine their feveral claims to the government ; and the petitioners having waved any pretence of a grant of government from the council at Plymouth, wherein they were convinced by their own counfel that no fuch power or jurifdiction could be transferred or affigned by any colour of law.

The queftion was reduced to the province of Main, whereto the petitioner Gorges made his title by a grant from King Charles I. in the 15°. reg. made to Sir Ferdinando Gorges and his heirs, of the province of Main and the government thereof.

In anfwer to this, the refpondents alledged, that long before, viz. in 4°. Car. I. the government was granted to them ; and produced copies of letters-patent, wherein it is recited, that the council at Plymouth having granted to certain perfons a territory thus defcribed, viz. all that, &c. By the faid letters-patents the king confirmed the grant, made them a corporation, and gave them power to make laws for the government of the lands and the people therein.

To this it was replied, that the patent 4°. Car. I. is invalid. 1°. There was a precedent grant, 18°. Jac. of the fame things, then in being ; which patent was furrendered afterwards, and before the date of the other, 15°. Car. I. 2°. The grant of the government can extend no farther

ther than the ownership of the foil; the boundaries of which are recited in that patent, wholly excluding the province of Main, which lies northward more than 3 m. beyond the river Merrimack.

We, having considered these matters, do humbly conceive, as to the first matter, that the patent 4°. Car. I. is good, notwithstanding the grant 18°. Jac. for it appeared to us, from the recital in the patent 4°. Car. that the council of Plymouth had granted away all their interest the year before: And it must be presumed that they deserted the government; whereupon it was lawful and necessary for the king to establish a suitable frame of government, according to his royal wisdom, which was done by that 4°. Car. I. making the adventurers a corporation upon the place. As to the 2d matter, it seems to us to be very clear, that the grant of the government 4°. Car. extends no farther than the boundaries expressed in the patent; and these boundaries cannot be construed to extend farther northward along the river Merrimack than 3 English miles.

For the north and south bounds of the lands granted, so far as the rivers extend, are to follow the course of the rivers, which make the breadth of the grant; and the words, describing the length to comprehend all the lands from the Atlantic Ocean to the South Sea, of and in all the breadth aforesaid, do not warrant the over-reaching these bounds by imaginary lines or boundaries. Other expositions would (in our humble opinion) be unreasonable, and against the intent of the grant. The words, “of and in the breadth aforesaid,” shew that the breadth was not intended an imaginary line of breadth laid upon the broadest part, but the breadth respecting the continuance of the boundaries of the rivers as far as the rivers go; but, when the known boundaries of the breadth determine, it must be carried on by imaginary lines to the South Sea. And if the province of Main lies more northerly than 3 English miles from the river Merrimack, the patent of 4°. Car. gives no right to govern there; and thereupon the patent 15 Car. to the petitioner Gorges will be valid.

So that, upon the whole matter, we are humbly of opinion, as to the power of government, that the respondents, the Massachusetts, and their successors, by the grant of 4°. Car. have such right of government as is granted



granted by the same patent within the boundaries of the lands expressed therein, according to such description and exposition as we have thereof made as aforesaid. And the petitioner, Sir Ferdinando Gorges, his heirs, and assigns, by the patent 15<sup>o</sup>. Car. have such right of government as is granted them by the same patent, within the lands called the province of Main, according to the boundaries of the same, expressed in the same patent.

Ri. Rainsford,  
Fran. North."

<sup>24</sup> The letters, in Col. of Pap. by Mr. Hutchinson, p. 451-72. — <sup>25</sup> Ib. 321. the king's letter to the general-court. — <sup>26</sup> Hutch. Hist. 1 v. p. 329. — <sup>27</sup> See the attorney-general Sawyer's opinion, in N. Eng. Pap. 3 v. p. 282. — We may form some judgement of the populousness of Main at that time, and of the greatness of its various towns, by the annexed *state of its militia*; which was brought into the committee of colonies in the year 1675. — From N. Eng. Pap. 2 v. p. 201.

The town of Kittery, - - - - -	180
York, - - - - -	80
Wells and Cape Porpus, - -	80
Saco and Winter Harbour, -	100
Black-point, - - - - -	100
Casco-bay, - - - - -	80
Sagadahock, - - - - -	80

— whole militia, 700.

<sup>28</sup> N. Eng. Ent. 1 v. p. 237-40-360. — <sup>29</sup> Jour. Plant. Off. 3 v. p. 29-42. — <sup>30</sup> N. Eng. Pap. 3 v. 424. — <sup>31</sup> New-Hampshire Ent. 1 v. p. 1-12. — <sup>32</sup> See a narrative of the proceedings of the council, in N. Eng. Pap. 3 v. p. 426. — <sup>33</sup> The council transmitted to the different towns a list of those who should be allowed to vote. Ib. 853. — But a similar practice is not to be met with in the history of the colonies, which arose probably from these persons being only deemed freemen under the ancient government.

<sup>34</sup> The proceedings of the council and the assembly may be seen in the N. Eng. Pap. 3 v. p. 830-60. — As the general-court of Massachusetts

formed the court of appeals, so the assembly, including the delegates, regularly met to hear appeals; because it pursued the former practice almost in every thing. — <sup>35</sup> These laws are in the same bundle of papers, and appear to have been copied chiefly from those of Massachusetts.

<sup>36</sup> The subjoined report of the committee of plantations to Charles will shew in what light the lords viewed the conduct of those men, to whom they had delegated power. — From N. Hamp. Ent. 1 v. p. 30.

May it please your majesty,

We have had under our consideration the state of your majesty's province of New-Hampshire, in New-England, which has been lately separated from the province of Massachusetts-Bay, and is now governed by a president and council, appointed by your majesty's commission, dated the 18th of September, 1679. We have also perused several letters, orders of council, and acts of assembly, lately received from that place; [all these are preserved in the bundle of New-Eng. Pap. v. 3.] whereby it appears to us, that some persons now in the government there have carried on and abetted divers irregular proceedings, which are in no manner consistent with your majesty's service and the intended settlement of that province. And we do likewise find the public acts and orders (the most part of them) so unequal, incongruous, and absurd, and the method, whereby the council and assembly have proceeded in the establishment of the same, so disagreeable and repugnant to the powers and directions of your majesty's said commissioners, that we cannot hope for such a settlement and regulation of affairs in that province as their dependence on your majesty and welfare of the plantation do require, unless your majesty shall appoint some fit and able person, of whose fidelity and sufficiency your majesty is well assured, who may be authorized by your majesty's commission and instructions to settle that place under such rules of government and laws as are necessary for the regulation and improvement of that province: Which we humbly offer to your majesty as the best means to prevent all farther irregularities, and to render that place

as

as well useful to the crown as able to defend itself from the attempts of the natives or any foreign invasion.

Council-chamber, Craven, Clarendon, Aillsbury,  
13th January, 1681-2. Faulkenberg, L. Jenkins, Ed. Seymour.

<sup>37</sup> See Cranfield's commission and instructions, in N. Hamp. Ent. i v. p. 34. — <sup>38</sup> The governor's letters to the committee. Ib. p. 72-6-88. —

<sup>39</sup> Ib. and see a narrative of Gove's infurrection and his trial among the N. Eng. Pap. v. 3. — The following letter, from the deputy-governor to the committee of plantations, will not only shew the unhappy state of New-Hampshire, the intrigues which disturbed its repose, but confirm the relation in the text. — From New-Hamp. Ent. i v. p. 88.

Right honourable,

It having pleased the honourable Edward Cranfield, esq. governor of his majesty's province of New-Hampshire, to appoint me his deputy during his absence in visiting the neighbouring colonies, I humbly presume to lay before your lordships a brief state of the condition of this province, wherein I have been an inhabitant above five and twenty years, during which time I have not only made my observations upon the humours and carriage of this people, but, by the means of some of my near relations being married into the wealthiest families of this country, I have been thoroughly informed of the intrigues and designs of the factious and malignant party, who managed all public affairs here whilst this province was under the Massachusetts jurisdiction, and very unwillingly submitted to a change of government which his majesty, by his royal commission, hath established; and, though the Massachusetts exercise no authority in this province, yet they influence things as they please, there being a strict confederacy between the ministers and church-members of this province and those of the Massachusetts colony, who govern and sway the people as they please; no pope ever acting with greater arrogance than these preachers, who influence these people to their fanatic humours, and debauch them from their duty and obedience to his majesty and his laws, and are ever stirring them up to disloyalty, and intermeddling in all civil affairs, and censuring all persons and actions that agree

agree not with their principles and peevish humours. These their ill proceedings have given our honourable governor much trouble and disquiet in his government; they influencing the assembly, that no good bills could pass that had any respect to his majesty's honour and dignity, and the good and ease of his subjects; so that the governor was necessitated to dissolve the assembly; upon which followed an insurrection, raised by one of the chief of that assembly, which, if by the prudence and vigilance of his honour had not been timely suppressed, might have been of dangerous consequence to this place, wherein the preachers have been too busy; and, unless these factious preachers are turned out of this province, there will be disquiets here, and, without some visible force to keep these people under, it will be a very difficult if not an impossible thing, to put in execution his majesty's commands, or the laws of trade, which, by the countenance of one of his majesty's ships in this port, would easily be effected. This I thought it my duty to let your lordships know, and subscribe myself, &c.

New-Hampshire,  
29th March, 1683.

WALTER BAREFOOT.

REMARK. There are a great variety of letters, written in a similar strain, in the N. Hamp. Ent. v. 1. every where.

<sup>40</sup> N. Hamp. Ent. 1 v. p. 95. — <sup>41</sup> Ib. 107-38. — <sup>42</sup> Ib. 115. — <sup>43</sup> A peace was concluded with the provincial Indians, by Barefoot, the deputy-governor, in September, 1685. N. Eng. Pap. 3 v. p. 827. — <sup>44</sup> N. Hamp. Ent. 1 v. p. 143-5-9. — <sup>45</sup> Neal's N. Eng. 1 v. p. 578; charter of Massachusetts annexed to its laws; and Dougl. Sum. 2v. p. 75.

New-Hampshire has been blessed with only one port, which is remarkable for easiness of access and security from danger. It appears from a list, transmitted to the committee of colonies, that there were entered at Portsmouth, during the year, ending with April, 1681, forty-nine vessels from 10 to 150 tons burden. — N. Eng. Pap. 3 v. p. 869. — We might thence form some judgement of the extent of its commerce. But there is a note, subjoined to the list, informing us, “ That many of the said ships were driven in by stresses of weather, and made no stay.” Yet it

it must be remembered, that this account was drawn up by an officer, appointed by the president and council, who ruled prior to the appointment of Cranfield, by men who deemed it a principle of patriotism to represent *the low condition* of their country. The amount of the *provincial customs*, since there were no parliamentary duties then collected at Portsmouth, levied at that port, during the same year, arising from taxes on wines and liquors, and one penny a pound of the value on the first cost of goods imported, was 61l. 3s. 1d. money of the province, which was of less value than sterling  $33\frac{1}{3}$  per cent. — *Ib.* p. 868.

The public expence of the province, during the year 1680, exclusive of the ministers salaries and the town-rates, including the charges of the assembly and council, the stipends of the marshal and jailers, the bounty for the killing of wolves, amounted to 131l. 13s. 4d.

It appears from the same papers, p. 868, that the province rate on estates, real and personal, of one penny in the pound of the value, was laid on the only four towns, as follow; viz.

	£	s.	d.
Portsmouth, - - - - -	29	17	3
Dover, - - - - -	20	0	0
Hampton, - - - - -	23	17	3
Exeter, - - - - -	11	9	4
	£ 85 4 0		

From these notices the politician may draw conclusions with regard to the commerce, the wealth, the populousness, the power, of New-Hampshire, during those days.

## C H A P. XVIII.

*Attempts prior to the Restoration to settle the country; — by the French; — by the English. — An emigration from Massachusetts. — The first charter granted. — The coast acquires the name of Carolina. — First transactions of the proprietaries. — A second charter obtained. — The colony languishes. — Fundamental constitutions. — Reflexions. — Albemarle settled. — Its assembly. — Southern colony encouraged. — Discontents in Albemarle. — An insurrection. — Culpeper, the principal insurgent, tried in England. — Observations. — Government re-established. — Sobel's administration; — and banishment. — Emigrations to South-Carolina. — Charles-Town founded. — An Indian war. — A parliament convened. — Pirates encouraged. — Invasion of the Spaniards. — An attack on St. Augustine meditated. — Remarks. — Factions. — Their consequences. — James II. proclaimed. — Acts of navigation opposed. — A writ of quo-warranto against the charter. — Administration of Colleton. — Usurpation of Sobel. — The fundamental constitutions abrogated.*

**T**HAT level region, which stretches from the thirty-sixth degree of northern latitude to Cape Florida, enjoys the honour of being the first theatre on which the three great naval powers of Europe, Spain, England, and France, contended for American sovereignty. And their pretensions and disputes arose from the discoveries of Columbus, of Cabot, of Verazzan; who, being all Italians, were all equally strangers in the countries, whose renown they extended, whose commerce they enlarged. The adventures of the two former have been already noticed. The exploits of the last originated in the anxiety of Francis I. of France to engage in every enterprise that could confer celebrity on his name, who employed him to discover shores then unknown and unoccupied. And, during the years 1523-24-25, Verazzan explored, with some degree of accuracy, the coast of Florida; but returned not, alas! to enjoy those rewards which that munificent prince was ever happy to bestow on superior genius and fortitude. Yet Francis, any more than Elizabeth, did not live to establish

blish any permanent colony of his subjects in the New World. The civil troubles which ensued turned the ardour of the French from colonisation to objects perhaps less salutary. And it was not till the year 1562, that the illustrious, but unfortunate, statesman, the Admiral Coligny, in order at once to promote the interest of his country, and to form an asylum for the French Protestants, sent a colony under the conduct of Ribaud, who built Fort-Charles on the river Edisto. A larger emigration, composed entirely of the same sect, was led thither, in 1664, by Laudoniere, which settled on the river May, that was denominated afterwards, by the Spaniards, St. Matheo. But this people not only observed the proceedings of the French with their accustomed jealousy, but detested their religious tenets: And a croisade was soon carried by Menendez to the western world, with the same zeal and folly as it had been formerly conducted to the east; in order at once to destroy the heretics, and to people Florida with genuine Christians. During the year 1565, the Spaniards massacred the French with the same relentless cruelty as they had achieved all their American conquests. Yet this signal act of barbarity did not rouse the indignation of France; because, during the moment of her zeal, she did not consider the Hugonots as objects of her pity. One man alone, the Chevalier Gourgues, had the spirit to revenge the hard fate of his friends; who, at his own expence, and without orders, conducted a faithful band against their persecutors, and, during the year 1567, retaliated severely those miseries which they had inflicted on others without remorse. But, as he soon after evacuated Florida, because his sovereign, blinded by bigotry, did not avow his enterprise, his countrymen bade it a final adieu. How often are nations, as well as men, prevented, by their momentary fits of madness or of faction, from perceiving the true interest of the state, or regarding its glory! Had France given spirit to Coligny, rather than repressed his ardour, had she protected his colony, what a vent had been opened for those humours which then corroded the body-politic; what an American empire might she have possessed before Virginia had a name! Englishmen may perhaps now believe what they have been formerly taught to discredit, that their rivals in every laudable pursuit were actually the first *occupiers*

of the northern and southern extremities of North-America. Recent events, however, have in some measure rendered problematical what seems formerly to have been sufficiently evident, whether the misconduct of that nation was unfortunate or happy for England. The Spaniards nevertheless soon regained possession of Saint Augustine.

Elizabeth imitated the wise policy of Francis, rather than the bigotted folly of Charles IX. in rousing the ardour of her people, and directing their commercial enterprises to the uses of the state. She conferred the before-mentioned patents of discovery and colonisation on Gilbert and on Raleigh. And, just eighteen years after the final expulsion of the French, in August, 1685, a colony sent out by the latter, under the conduct of Lane, a person of prudence and spirit, landed on the isle of Roanoak, situated on the same coast, but more northerly than the settlements for which France and Spain had contended. During the twelvemonth that the emigrants remained, they discovered the rivers to be shallow, and the country to be inhabited by men, who "lived by fishing and hunting till harvest," who were extremely powerful, because, though badly armed, they were numerous and brave.

But the colonists seem not to have been provided with what was necessary to maintain them long in a wilderness, because they had been uninstructed in a project so new and uncommon. What was of still greater importance, they seem not to have carried with them minds prepared to encounter every difficulty: And being visited by Drake, so renowned in naval annals, as he returned along the coast from the destruction of St. Augustine, they deemed it prudent to desert "that paradise of the world." The pious among them remarked, that the misfortunes which they had encountered were judgements for the outrages offered to the natives, who merited attention because they were entitled to the rights of men. The French have boasted, that they alone had found the secret of conciliating the affection of the tribes. Yet the inclinations of all governments seem to have been equally good, because every one gave instructions to treat the aborigines with kindness, since they wished to civilize them. The emigrants too generally disobeyed these salutary commands, because they were placed in a singular situation: They were deemed



deemed enemies by the natives, because they were strangers : They enjoyed no common language, by which they could profess friendship, or communicate their intentions. And the tribes, while they seem to have practised few of the rules of morality, were, like all untutored men, extremely revengeful, and therefore prompt to resent supposed injury, because they felt themselves brave. A fresh emigration arrived, under the conduct of Greenfield, in the year 1587, in order to support the former : But it encountered similar dangers, and expired in a similar manner. Thus ended the exertions of Raleigh for colonizing Virginia ; which proved unsuccessful, because the enterprise had been undertaken without sufficient information, because the project was new, and the means employed were not equal to the end. His name has been justly celebrated, because his talents and adventures added renown to the English nation ; and his fate was pitied, because it was severe, perhaps undeserved.

When Englishmen recollected the misfortunes of their countrymen, they wished not to tread in their steps, lest they should meet with the same success : And they formed, therefore, no projects for planting that part of the Virginian coast, which stretches southward from the 36th degree of north latitude, till the beginning of the reign of Charles I. At a time when many persons of consideration wished to form colonies, because the spirit of emigration ran high, Sir Robert Heath, the attorney-general of that prince, obtained a grant, in the year 1630, of that region, by the name of *Carolana*, for which mighty nations had hitherto contended to so little purpose. But his resolution failed, or his attention was drawn to other objects ; and he seems to have made no one effort to execute the powers conferred on him. At a future day his patent was declared to have become void, because the conditions on which it had been granted were never fulfilled. Nothing could be more just or wise : It is only to be regretted, that the principle of that decision has not been more generally extended to similar cases, and more steadily applied.

About the epoch of the Restoration, a few adventurers, prompted by their natural disposition, emigrated from Massachusetts, and settled round Cape Fear. It is a characteristic of the Independents to consider themselves as bound by no tie to their native land, because they deride the

maxims which knit society together. Their tenets, so contrary to the common law of England, necessarily lead therefore to disunion, to distractions, to constant change: And hence the various emigrations from that colony which have been already noticed. The people who have strongly imbibed their principles are already undone. Those emigrants seem to have carried with them, to their new settlement, little except their habitual prejudices: They considered mere occupancy, with a transfer from the natives, without any grant from the king, as a good title to the lands which they occupied: They deemed themselves entitled to the same "civil privileges" as those of the country whence they had emigrated. While we ought to admire the seeming liberality of these reasonings, we must not approve what in truth leads to universal anarchy. That colonists from England, carrying with them their ancient rights, should claim former privileges, is no less just in theory than wise in practice; but that emigrants from Massachusetts should deem themselves invested with the immunities of this colony, however natural, is not so consistent with the general jurisprudence of the state. Mankind, however, placed in similar situations will at all times reason alike: And such will always be the arguments and pretensions of the Independents, in whatever clime they inhabit; because, being of the essence of their religion, they are inculcated with the milk of the parent. As neither the climate, nor the lands, where they settled, were equal in goodness to those they had left, as the waters offered not the same advantages of fishery, as they yet enjoyed none of the benefits of neighbourhood, these men for some years experienced the complicated miseries of want. They solicited the aid of their countrymen. And the general-court, with an attention and humanity which do it the greatest honour, ordered an universal contribution for their relief.\* To the settlement of such colonists may be fairly traced back the various distractions which afterwards ensued. For, when the forms of a government and the principles of a people are contradictory to each other, a sad scene of turbulence necessarily opens, which must close in consimilarity, by making both coincide, or the state is undone.

The

The country, which had been denominated Florida by the French and Spaniards, by the English Virginia, at length owed its final settlement as much to the rapacity of the courtiers of Charles II. as to the facility of a prince, who wished to reward those, to whom he was so much indebted, with a liberality that cost him little. The pretence, which had been used on former occasions, of a pious zeal for the propagation of the gospel among a barbarous people, who inhabited an uncultivated country, was successfully employed to procure a grant of that immense region, lying on the Atlantic Ocean, between the thirty-sixth degree of north latitude and the river Saint Matheo. On the 24th of March, 1663, this territory was erected into a province, by the name of Carolina, and conferred on Lord Clarendon, Duke of Albemarle, Lord Craven, Lord Berkeley, Lord Ashley, Sir George Cateret, Sir John Colleton, Sir William Berkeley, as absolute lords proprietaries for ever: saving the sovereign allegiance due to the crown. They were invested with as ample rights and jurisdictions within their American palatinate as any bishop of Durham enjoyed within his diocese. And the present charter seems to have been copied from that of Maryland, so extensive in its powers and so noble in its privileges. Whether this fine province derived its name from Charles IX. of France, or Charles II. of England, has been formally debated by historians. In support of the former hypothesis no evidence has been produced; the present patent demonstrates the latter. When the privy-council, not long after, considered the present condition of Carolina, it decided that all former grants were now void, because they had never been executed: Giving a reason for its present conduct, which shews the extent of its zeal; "that the proprietaries ought to be favoured."

Animated by this attention, these noblemen held their first meeting in May, 1663, in order to agree on measures for executing the chief purpose of their patent. They formed a joint stock, by general contribution, for the transporting of colonists, for the payment of other considerable expences: And what was of more real importance, because it more effectually promoted their views, they published "proposals to all that will plant in Carolina," at the desire of "the New-England  
" people"

“ people” before-mentioned. They declared : That all persons, settling on Charles-river, to the southward of Cape Fear, shall have power to fortify its banks, taking the oath of allegiance to the king and submitting to the government of the proprietaries ; that the emigrants may present to them thirteen persons, in order that they may appoint a governor and a council of six for three years ; that an assembly, composed of the governor, the council, and delegates of the freemen, should be called as soon as the circumstances of the colony would allow, with power to make laws, which should be neither contrary to the laws of England nor of any validity after the publication of the dissent of the proprietaries ; that every one should enjoy the most perfect freedom in religion ; that, during five years, every freeman should be allowed one hundred acres of land and fifty for every servant, paying only one halfpenny an acre ; that the same freedom from customs, which had been conferred by the royal charter, should be allowed to every one. Such then were the original conditions on which Carolina was planted.<sup>6</sup> And thus was that colony established upon the broad foundation of a regular system of freedom of every kind ; which it was now deemed necessary to offer to Englishmen, to induce them to encounter all the difficulties of planting a distant country, covered with forests, inhabited by numerous tribes, to endure the dangers of famine and the damps of the climate. For men will not generally leave their native land, however wretched, unless they are urged by the strongest incentives.

As early as the year 1609 we have seen a small colony sent out from James-Town, to plant Nanfamond, the most southern settlement of Virginia, nearly under the thirty-sixth degree of north latitude. As the aborigines receded from the vicinity of the river, the planters naturally followed their tracks, extending their plantations still farther southwestward, into the bosom of the wilderness. And as colonists increased, and the most desirable situations were occupied, they traversed the forests till they met with the streams, which, instead of discharging their waters into the capacious Chesapeake, pursued a south-eastern course, and flowed into the ocean.

At

At the epoch of the Carolinian patent of 1663, a small plantation had been accordingly, for some years, established within its boundaries, on the north-eastern shores of the river Chowan, which was now honoured with the name of Albemarle, in compliment to the title of Monk, who had gained so much renown by restoring a king and saving three kingdoms from destruction. But, as it was so distant from the seat of Virginian government, the inhabitants yielded little obedience to its power, and had lived for some time without any perceivable rule. And nothing could be more wise than the appointment of Sir William Berkeley, the governor of Virginia, as general superintendant of the affairs of the county of Albemarle. In September, 1663, he was empowered, by the proprietaries, to nominate a governor and a council of six, who were authorised to rule that little community according to the powers granted by the royal charter; to confirm former possessions, and to grant lands to every one, allowing them three years to pay the quit-rents; to make laws, with the consent of the delegates of the freemen, for the general good, transmitting them for the approbation of the proprietaries. And he was requested to visit the colony in person, and to employ skilful persons to explore its bays, its rivers, and its shores, which were then extremely unknown. From these notices we may judge of the then condition of this most ancient settlement of Carolina, with regard to the freedom of its constitution and the mode of acquiring property; the two circumstances which are the most apt to engage the affections of mankind. Berkeley appears to have discharged the trust reposed in him, during the subsequent year, with the greatest fidelity. He confirmed and granted lands to every one on the conditions before-mentioned; he appointed Drummond, a man of sufficient prudence and abilities, the first governor, with other officers: And he departed; leaving the whole to follow their various pursuits in peace. The colonists for some time remained in this state of happiness; because, governing themselves, they felt not oppression; and, being equally destitute of religion and clergy, they were not disturbed, like the early colonists of the North, with religious controversy. But, as the day approached when the payment of quit-rents was to commence, they became dissatisfied with the tenures by which they held their lands.

And.

And the assembly of 1666, being probably the first of which any memorial now remains, transmitted a petition to the proprietaries; praying, that the people of Albemarle might hold their possessions on the same terms as the Virginians enjoyed theirs. The proprietaries, animated at all times by the strongest inclination to do every thing that might promote the settlement of their province, that might gratify the wishes of the people, agreed to a request which appeared so reasonable; commanding the governor to grant the lands in future on the terms prescribed by themselves.<sup>7</sup> Such is the early history of North-Carolina, which is probably as important and instructive as the annals of the most renowned states of antiquity, if we deduct from them the agreeable fables with which their eloquent authors have adorned them.

The proprietaries having thus reared, with attentive care, the feebleness of Albemarle, turned their chief regard to that finer region which lies more southerly along the coast. In August, 1663, they proposed to establish a new colony, to the southward of Cape Fear, on the river Charles, which was now denominated the county of Clarendon. Several gentlemen of Barbadoes, dissatisfied with their present condition and anxious to become the heads of a less considerable establishment, proposed to remove thither. But while they solicited the grant of a district, thirty-two miles square, and all the powers of a corporation, they fitted out a vessel, under the conduct of Hinton, an able navigator, to explore the coast from that promontory to the thirty-first degree of latitude; because they had been discouraged by *the evil reports of the New-England people*. The proprietaries mean-while had given orders to dispatch a ship from Virginia to examine the same shores; in order to determine what rivers and countries were the most proper for habitation. These notices demonstrate how much that region had been neglected by England from the days of Raleigh and Drake to the present, and how much better the French had been instructed by the enterprises before-mentioned. The reports above alluded to were happily found, by the most accurate researches, to be entirely groundless. And, though the proprietaries refused to confer the district or the corporate powers which had been asked, they gave the adventurers of Barbadoes every possible encouragement, because

because they seem to have been perfectly satisfied. In January, 1664-5, John Yeamans, a respectable planter of this island, was appointed commander in chief of Clarendon county, stretching from Cape Fear to the river Saint Matheo, and he was at the same time created a baronet, in order to give weight to his station, to add splendour to a colony which as yet had but little in itself. The same powers were now conferred and the same constitution was established as those which had made Albemarle happy. He was ordered to grant lands to every one, according to the conditions agreed on with the adventurers, reserving one halfpenny sterling for every acre, payable in March, 1670: He was directed "to make every thing easy to the people of New-England, from which the greatest emigrations are expected, as the southern colonies are already drained." There was an order at the same time made, that the commission of Yeamans should not prevent the appointment of a new governor for the projected settlement to the southward of Cape Romain, which soon after acquired the name of Carteret. Thus establishing for Carolina a variety of separate and independent colonies, each of which had its own government, its own assembly, its own customs and laws: A policy, which occasioned probably the long continued feebleness and distractions of that province, the proprietaries found leisure to regret. The reigning monarch, desirous to lend his aid to the laudable exertions of his courtiers, gave them twelve pieces of ordnance, which were now sent to Charles-river with a considerable quantity of warlike stores.<sup>3</sup>

Having thus acquired the most minute information of the whole coast, having discovered on both extremes of their province tracts of land that would form advantageous additions, the proprietaries easily obtained, from the facility and favour of their sovereign, a second charter, in June, 1665.<sup>9</sup> It recited and confirmed the former. It granted, to the same patentees, that province situated within the king's dominions in America, extending north-eastward to Carahutke-inlet, thence in a straight line to Wyonoke, which lies under 36 deg. and 30 min. north latitude; south-westward to the 29th degree; and from the Ocean to the South Seas. It conferred on them all the rights, jurisdictions, and royalties, which the bishop of Durham ever possessed. This region was to

be holden of the manor of East-Greenwich, paying a rent of twenty marks and one fourth of the gold and silver that should be found. All persons, except those who should be expressly forbidden, were allowed to transport themselves to Carolina; and they and their children were declared to be denizens of England, who should be always considered as the same people, and possess the same privileges as those dwelling within the realm. They were empowered to trade in all commodities which were not prohibited by the statutes of England: They were authorized to lade the productions of the province, and to bring them into England, Scotland, or Ireland; paying such duties as other subjects: And they were exempted, for seven years, from the payment of any customs on the importation, into any of the dominions of the crown, of wines and other enumerated products of the colony. The proprietaries were enabled to make laws for the province, with the consent of the freemen or their delegates; so that they should be reasonable, and as near as might be to those of England. They were empowered to erect ports for the convenience of commerce; and there were granted to them such customs as should be imposed by the assembly. They were allowed to grant titles of honour by the creation of a nobility. Carolina was declared independent of any other province, but subject immediately to the crown of England; and the inhabitants were never to be compelled to answer in other dominions of the crown, except only within the realm. The proprietaries were authorized to grant indulgences to those who could not conform to the church of England, who should not be molested for their religion while they disturbed not the peace of the province. Such then is the substance of the last of the Carolinian charters; which conferred on the noble grantees a most extensive territory and royal rights; on the people, English liberties; which saved the power of parliament with regard to regulation and taxation. But no one prerogative of the crown was reserved, except only the sovereign dominion. Lord Clarendon, the chancellor, was not long after impeached; because, among other offences, *he had introduced arbitrary government into the plantations.*<sup>10</sup> Yet they who attentively peruse the charters, granted to Connecticut, Rhode-Island, and Carolina, while he held the seals, will probably



bably be of opinion that his crime consisted in sacrificing the legal powers of the crown, and the national rights, at the shrine of his colonial prepossessions. Against the charges of party that unfortunate statesman easily defended himself, because they were unjust; to this he would have probably found it more difficult to answer.

Though the proprietaries, encouraged by this fresh instance of the royal favour, exerted themselves for several years to procure adventurers from Scotland, from Ireland, the West-Indies, and the northern colonies, Carolina, like almost all the other plantations, increased slowly in population and in power. Owing partly to the climate, which, though celebrated during those times, is known to be unhealthy; but more to the dispersion of a few settlers over the face of an extensive desert, it languished during a considerable length of years; because similar obstructions occurred here to stop its growth. Notwithstanding the greatness of their power, and the expensiveness of their exertions, the noble projectors were taught, by experience, that nature compels all to obey. The emigrants of Barbadoes, conducted by Sir John Yeamans, at length landed, during the autumn of 1665, on the southern bank of the river of Cape Fear. Like that of all other men who have undertaken the arduous task of subduing a wilderness, their first labour was applied to the erection of habitations, and to the procurement of food. Their leader ruled them with the affection of a father, rather than with the authority of the governor, according to the instructions that had been given him in charge. At the same time that he cultivated the good-will of the aborigines, he only obeyed the humane orders he was honoured with; which insured a seven years peace, that was at length disturbed by the interestedness of individuals; and the people, as usual, suffered for the follies or crimes of their rulers. While the planters opened the forest, to make room for the operations of tillage, they necessarily prepared timber for the uses of the cooper and builder; which they transmitted to the island whence they had emigrated, as the first object of a feeble commerce, that kindled the spark of industry which soon gave animation to the whole." As the emigrants had no other grievance to complain of than what was incident to the situation which they had chosen for them-

selves, their early story offers no other lesson to mankind, than by putting future adventurers in constant remembrance of the sufferings of others, to convince them of the necessity and the use of steeling their minds, for the approach of difficulties, for the conquest of danger.

Being gratified in their first request, the inhabitants of Albemarle pursued their original employments in peace, though not with alacrity, because they had emigrated from a colony where the commercial spirit did not exist. Yet, like their neighbours of Virginia, they continued to cultivate tobacco and Indian corn, which promoted an inconsiderable traffic with the traders of New-England, who seem alone to have then frequented their shallow rivers, and to have supplied their little wants. In October, 1667, Samuel Stevens, a man whose abilities and virtues were thought equal to the trust, was appointed governor of Albemarle, in the room of Drummond. And now was given to that colony such a constitution as must have rendered it completely happy, had it been faithfully supported. He was commanded to act altogether by the advice of a council of twelve; the one half of which he was empowered to appoint; the other six the assembly was authorized to choose. And here seems to be a sufficient remedy for that defect which wise men have discovered in the establishment of that body, in the colonial constitutions, which forms equally the senatorial branch of the legislature, the privy-council of the supreme magistrate, and the court of appeals. The assembly was composed of the governor, of the council, of twelve delegates chosen annually by the freeholders. The legislature was not only invested with the power to make laws, but with a large portion of the executive authority; with the right of convening and adjourning itself, of appointing officers, of presenting to churches. Various regulations provided for the security of property: No taxes could be imposed without the consent of the assembly: Their lands were confirmed and granted to be now holden by the free tenure of socage, which always carries with it a certain rent and independence. Perfect freedom in religion was offered to a people who seem hitherto to have been little attached to any: And all men were declared to be entitled to equal privileges, upon taking the oath of allegiance to the king, and of fidelity to the proprietaries. This admirable system

system the inhabitants received with a satisfaction in proportion to the importance of it. But it was not till the autumn of 1669 that an assembly thus constituted was convened, for the making of laws for men, who being yet few in number, seem to have been governed chiefly by the customs they had brought with them from their ancient establishment. Owing to peculiar motives it has always been an universal principle of colonial policy *to obstruct the recovery of debts*: And, as the legislature remarked, that sufficient encouragement had not been yet given to the peopling of Albemarle, it was now enacted; that none shall be sued, during five years, for any cause of action arising out of the country; that none shall accept a power of attorney, to receive debts contracted abroad. Hence this colony was long considered as the refuge of the criminal and the asylum of the fugitive debtor. But a more natural mode of promoting population was at the same time established, by *an act concerning marriage*: It declared; that, as people might wish to marry, and there being yet no ministers, in order that none might be hindered from so necessary a work for the preservation of mankind, any two persons, carrying before the governor and council a few of their neighbours, and declaring their mutual assent, shall be deemed husband and wife. From this remarkable law we may judge of the then state of religion and of morals. And here we see a prodigious contrast between the Southern and Northern colonists. All the emigrations of New-England were conducted by ecclesiastics, who long directed, with almost equal authority, in temporal as in spiritual affairs. During almost twenty years we can trace nothing of clergymen in the history or laws of Carolina: And it was not till the dissenters had emigrated thither in considerable numbers, and began to contend for equality, perhaps for pre-eminence, that we hear of religious controversy, or indeed any thing of religion. Other regulations, which were equally necessary, were at that time enacted. *New comers* were exempted from taxes for one year. Engrossing was prohibited. The peace of the country was insured, by prohibiting *strangers* from trading with the Indians. Every one was restrained from “transferring his lands for two years.” A duty of thirty pounds of tobacco on every law-suit was imposed, for paying the expences of the governor and

and council during the sitting of assemblies, *as no course had yet been taken for defraying their charges.*" And these laws, which demonstrate the weakness, and illustrate the early policy of that inconsiderable settlement, were ratified by the proprietaries in January, 1670. As it received little augmentation to its numbers from abroad, the colonists increased but slowly, and they only then began to plant the southern banks of the river Albemarle; which shews that the extent of its frontier was equal to the paucity of its people.<sup>12</sup>

Mean-while, the proprietaries, dissatisfied with every system which they had hitherto created for their province, in July, 1669, signed a body of *fundamental constitutions*, that had been compiled by the celebrated Locke: Giving as a reason, what shews how much they had repented of their former conduct; "that we may establish a government agreeable to the "monarchy of which Carolina is a part, that we may avoid making too "numerous a democracy." By this edict<sup>13</sup> a palatine was to be chosen from among the proprietaries for life, who was empowered to act as president of the palatine-court, composed of the whole, which was intrusted with the execution of the powers of the charter. A body of hereditary nobility was created, and denominated landgraves and caciques, because they were to be unlike those of England in name; the former to be invested with four baronies, consisting each of six thousand acres; the latter to have two, containing one half of that quantity: And these estates were to descend with the dignities inseparably. The provincial legislature, dignified with the name of parliament, was to be biennial, and to consist of the proprietaries or of the deputy of each, which each might appoint; of the nobility; of the representatives of the freeholders of every district: And, like the ancient Scottish parliament, all were to meet in one apartment, and every member to enjoy an equal vote: But no business was to be proposed till it had been debated in the grand council, whose duty it was, like the lords of articles of the Scottish constitution, to prepare bills for its consideration. At the end of every century the laws enacted by it were to become void without the formality of repeal, similar also to a principle of the jurisprudence of Scotland. A grand council, composed of the governor, the nobility, and

and deputies of proprietors, was established, and invested with the executive power of the province. Various judicatories, from that of the hundred to the court of the chief justice, were erected. As an encouragement to emigration, fifty acres of land were offered to every colonist, paying for ever a quit-rent of a penny an acre. The church of England alone was to be allowed a public maintenance by parliament; but every congregation might tax its own members for the support of its own ministers: And to every one was allowed perfect freedom in religion. Yet the most degrading slavery was introduced, by investing in every freeman the property of his negro. And these constitutions, consisting of one hundred and twenty articles, and containing an infinite variety of perplexing regulations, were declared to be the sacred and unalterable rule of government in Carolina for ever. They offer few *practical maxims* which are alone useful; they were never altogether adopted; and they merit therefore no farther discussion.

But the wise men, who were chiefly engaged in that famous act of legislation, seem not to have reflected, during their ardour, that the provincials had settled on conditions which it was no longer in their power to abrogate; that, in the forms of government which had been actually established, the people had acquired an interest which could not be taken away without their consent; that, while they gave a supposed freedom to some, they reduced others, who were equally entitled to the rights of nature, to bondage. Of these constitutions it has been said, that they were intended to form a miniature of the ancient Saxon government in England: But the Carolinians should have been placed in a similar situation as the Saxons, before their system had been established as the unalterable rule. For laws are made for men, who seldom adopt the projects of others, and not for a desert, which is yet to be filled with a people suitable to the laws: And the history alone of Carolina and of Georgia demonstrates this important truth, which the proprietaries seem not to have foreseen. Nothing can shew more clearly the fallibility of the human understanding than the singular fate of these constitutions. Discovered instantly to be wholly inapplicable to the circumstances of an inconsiderable colony, and in a variety of cases to be altogether impracticable, they

they were immediately changed. The identity of them was debated by those to whom they were offered as a rule of conduct, because they had not been consulted in the formation of them. They gave rise to the greatest dissensions, which long distracted the province, which engendered civil discord. And, after a little period of years, the whole, found inconvenient and even dangerous, were laid aside, and a much simpler form established. Nor is this any imputation of the admirable talents of the compiler of these famous constitutions, or of the wisdom of those who approved them. For the art of legislation, as it is the noblest, is also the most difficult of any. The jurisprudence of every community, receiving additional improvement from every new situation at which it arrives, during its progress, can only acquire that state of perfection which seems to give satisfaction to all from the accumulated wisdom and experience of ages. And men of discernment have remarked; that the illustrious legislators, the Solons, the Numas, the Alfreds, only collected those customs which they found already adopted by their tribes, which they afterwards distributed with illustrations. If the various forms of New-England were altogether democratic, these constitutions erred in the other extreme, by establishing a rule of the nobles: Both were defective, because both wanted the excellent balance of the English constitution.

The proprietaries having thus established a constitution, which they presumed the Carolinians would receive with satisfaction, because it pleased themselves; which they deemed immortal, because it was declared to be unalterable; proceeded immediately to execute what depended on them. By choosing the famous duke of Albemarle their palatine, he was placed at their head, as the representative of the king, and in some measure invested with the supreme direction: But he did not long survive this additional dignity; and, because Lord Berkeley was the next oldest of the proprietors, he succeeded him in the year 1670, in conformity to the constitutions. The other proprietaries were at the same time appointed to other offices of high name and sound, but of no real importance or use. As a reward of his services, John Locke was not long after created a landgrave; who, like the other Carolinian nobles, had been consigned to

to oblivion, but for those writings that have enlightened the world while they have immortalized himself. Leaving Albemarle to its own exertions, the proprietaries turned their whole attention to the settlement of the southern parts of the province. With this view a considerable number of emigrants was sent out in January, 1670, in order to form a colony at Port-royal, under the conduct of William Sayle, a man of experience, who had been appointed governor of that part of the coast lying fourth-westward of Cape Carteret. He was accompanied by Joseph West, who was now entrusted with the commercial affairs of the proprietaries, who, for upwards of twenty years, bore the chief sway in Carolina. These noblemen for some time were the only merchants, in order to supply the wants of the colonists rather than to acquire profit. And they now employed vessels to carry on a circuitous traffic, for the purpose of procuring colonists, cattle, provisions, from Virginia, Bermudas, and Barbadoes; of carrying off the inconsiderable products of the land. Before the year 1679 they had expended eighteen thousand pounds on a project which had then only yielded them vexation and poverty.<sup>14</sup>

The emigrants, after touching at Ireland and Barbadoes, arrived safe at the place of their destination. And now the defects of their constitutions appeared to every one. A colony intended to be ruled in a great measure by nobles was found to have neither landgraves nor caciques: In the same manner, the people to be ruled were extremely few. And at the same time that it was deemed impracticable “to execute the grand model, it was determined to come as nigh to it as possible.” Writs were therefore immediately issued, requiring the freeholders to elect five persons, who, with five others chosen by the proprietaries, were to form the grand council, without whose assent the governor could perform no governmental act. Of these, and twenty delegates chosen by the same electors, the parliament was composed, which was invested with legislative power. As encouragements to settle at Port-royal, one hundred and fifty acres of land were given to every emigrant at an easy quit-rent; clothes and provisions were distributed, from the store of the proprietaries, to those who could not provide for themselves. And, in order to

secure the good-will of the neighbouring tribes, and consequently the safety of the settlement, considerable presents were prudently given to the *Indian caciques*, who bore considerable sway. Scarcely had Sayle performed what was given him in charge, when, his constitution yielding to the damps of the climate, he died: Leaving the colonists to the common lot of those who engage in such enterprifes."

The command of Sir John Yeamans, who had hitherto ruled the plantation around Cape Fear with a prudence which precluded complaint, was extended, in August, 1671, over that which lay south-westward of Cape Carteret: And the authority given him was exactly the same as that of his predecessor. The shores, the streams, and the country, being now perfectly known, because they had been accurately surveyed, the planters, from Clarendon on the north, from Port-Royal on the south, resorted to the banks of Ashley-river, "for the convenience of pasture and tillage." And here, "on the first high-land," was laid, during the same year, the foundation of *Old Charles-Town*, which became for some years the capital of the southern settlements. The proprietaries, with their former spirit, promulgated "*temporary laws*, till, by a sufficient number of inhabitants, government could be administered according to the fundamental constitutions." One of these rules humanity dictated, and policy approved: It commanded, that every one shall cultivate the friendship of their neighbours the Indians, shall make them satisfaction for wrongs; that none of them, on any pretence, shall be enslaved or sent out of the country: And the whole concluded with this general direction, "that so much of the fundamental constitutions as can be exerted shall be the rule of proceeding." But the temporary laws were not of long duration, because they were derided by a people without whose consent they had been established, and they deserve not to be now remembered. Far from being able to raise commodities to exchange for the various necessaries which the colonists wanted from abroad, they were for years only capable to procure food. During this period of their weakness, the proprietaries supplied them abundantly; but they were either unwilling or unable to repay them; and, before the end of the year 1673, a debt of several thousand pounds had been incurred.

Yet



Yet they now solicited fresh supplies, though they shewed not how the late or future expences were ever to be reimbursed. And they complained of neglect, and insinuated reproach, because their creditors "would no longer continue to feed and to clothe them." This conduct, which has been at all times too common in the world, rather than the Dutch war, put an end to a correspondence which was so useful, so necessary, to them, because the proprietaries thought it time to give over such a charge, since the country was not worth having at so dear a rate. Willing, however, to encourage the industrious, particularly the emigrants from England, New-York, and the northern colonies, who were real friends to the settlement, they sent another supply, and promised an annual one; but they warned the planters to consider how they were to be repaid, since they were determined "to make no more desperate debts." They soon after transmitted them what was of more real importance, "vines and other useful plants, and men skilled in the management of them." The whole conduct of Sir John Yeamans, as too frequently happens, seems to have been changed by his promotion to more extensive command. Instead of dedicating his chief attention to promote the happiness of the people by a salutary administration, he acted as the only trader of that little community, "buying of the poor planters their provisions at low prices, and shipping them off to Barbadoes." His improper management was supposed to have reduced the colony to "no higher pitch than to be subservient to that island in provisions and timber:" And his commission was revoked in May, 1674. At the same time that the proprietaries refused to send the Carolinians "a stock of cattle," because "they wished not to encourage graziers, but planters," they strongly recommended the cultivation of tobacco, till more beneficial staples could be introduced; since, where there can be no barter, no traffic can exist.<sup>6</sup> Mutual jealousy and discontent seem to have then commenced between the rulers and the people, which embittered the cup of future intercourse. Yet it is from this epoch that we may date the prosperity of Carolina, because she was then taught a lesson which it is of the greatest importance for every individual and every state to know; "that she must altogether depend on her own exertions."

In the mean time, the same instructions which were given to Sayle, for the government of the southern colony, were transmitted, in the beginning of the year 1670, to Stevens, the governor of Albemarle, because they were here equally necessary: But a system which established a change so unfavourable to the interests of freedom, without the consent of the people, was received with dissatisfaction, perhaps derision. And there were not wanting men who promoted the public discontent; because, like those to be met with in every country, they found no pleasure in repose. It was now insinuated, though there seems to have been no foundation for it, that the proprietaries intended to dismember their provinces, and to give, to Sir William Berkeley, Albemarle, as his portion of the whole. The assembly of October, 1675, feeling for the independence of the colony, remonstrated to the proprietaries against a measure so injurious to individuals, and so degrading to the country. A favourable answer was given in the subsequent year: Those noblemen assuring the colonists, that they would always maintain the province entire, in order that they might preserve their English rights; that every advantage might be derived from the vicinity of Virginia: Yet they confessed that they had been wanting in attention to the people of Albemarle, because they looked upon them as men who regarded the interests of others, since they had neither planted the banks of the rivers Pimlico and Neuse, nor discovered "a way by land" to the settlement of Ashley. During the discontents of those times, Miller, a person of some consideration, being accused of speaking seditious words, was sent to James-Town for trial, because the power of Sir William Berkeley was then dreaded. But the rulers of Albemarle seem not to have reflected, during their ill-grounded fears, that they deprived him equally of his chartered privileges and legal rights. He was acquitted. Yet, at a future day, the proprietaries disapproved of a conduct so destructive of their jurisdiction, which in all countries is defended with so much ardour, because its preservation inviolate is so flattering to the pride of men. Amid distractions which shew a total debility of government, proceeding from the frequency of the late changes, from the establishment of forms contrary to the inclinations of the people, Albemarle was deprived of a governor, by the death of Stevens,

in

in the beginning of the year 1674. Agreeably to a prudent instruction for that purpose, the assembly chose Cartwright in his room, "till orders should come from England." Yet disgusted, probably, with a situation wherein he could acquire neither much profit nor reputation, he returned to England in the beginning of the year 1676; leaving "the administration in ill order and worse hands."<sup>17</sup>

When the proprietaries reflected how much their former instructions had been neglected, and their designs opposed, by those who were intrusted with the execution of both; how much the trade of New-England thither had been promoted contrary to the former, and the settlement of the southern bank of the Albemarle had been discouraged notwithstanding the latter, they resolved to appoint such a governor as should execute both. In November, 1676, they named therefore Eastchurch, whose address and abilities had raised him to the dignity of speaker of the assembly, who had lately arrived in England, to represent the situation of affairs: And his instructions were framed so as to remedy the late, and to prevent future, disorders. Miller, who now solicited reparation for his wrongs, was at the same time appointed secretary and Lord Shaftesbury's deputy; by the commissioners of the customs he was constituted the first collector of the parliamentary revenue in that colony. They departed in the beginning of the subsequent year, in order to take upon them these important offices. But Eastchurch, being detained in the West-Indies by an agreeable engagement, thought it prudent to detach the companion of his voyage to govern the colony as president till his arrival.<sup>18</sup>

As chief magistrate and collector of the royal customs, Miller was received in July, 1677, with a treacherous facility which did not forebode a peaceful administration. He found the colony to consist of a few inconsiderable plantations, dispersed over the north-eastern bank of the Albemarle, and divided into four districts. The colonists were far from numerous, because the *titables*, consisting of all the *working bands*, from sixteen to sixty years of age, one-third of which was composed of *Indians*, *negroes*, and *women*, amounted only to fourteen hundred: And, exclusive of the cattle and the Indian corn, eight hundred thousand pounds

of

of tobacco were the annual productions of their labour. These formed the basis of an inconsiderable commerce, which was almost entirely carried on by the people of New-England, who supplied their little wants, who sent their commodities all over Europe, who, in a great measure, governed the colony and directed the pursuits of the planter to their own advantage.<sup>19</sup> Thus that country acquired, by the address of its traders, that staple which it had been the policy of the acts of navigation to establish in England. And though the situation of Virginia ought to have commanded the whole of a traffic of which she now only enjoyed a part, yet so little was she governed by commercial motives, that two years after she prohibited<sup>20</sup> “ the importation of tobacco from Carolina; as it had “ been found very prejudicial.” Yet let us not think meanly of the population, of the products, or the wealth, of Albemarle, since, with regard to all these, she was then superior to her neighbour on Ashley. Uninstructed in the precepts of religion, the colonists were ignorant; uninformed of the affairs of the world, they were extremely credulous: And they formed therefore fine instruments to perform the work of those who wished to profit by them. In conformity to his instructions, Miller began the work of reformation, which, in all countries, must be conducted by the hand of prudence; which has shaken the thrones of princes, though supported by talents and power, that this man did not possess. He easily obliged Bird, who had been appointed collector by the assembly, to refund a considerable sum which he had collected under the authority of the act of parliament before-mentioned:<sup>21</sup> He endeavoured to promote a more direct trade with England and the other colonies, in order to destroy the monopoly enjoyed by the people of New-England; who, said the proprietaries, cannot be friends to the prosperity and interest of Carolina, which will certainly in time render them inconsiderable. But, as president, “ he did many extravagant things, “ whereby, as we are assured, he lost the affections of the people.” Yet the regular discharge of his duty, when obliged to perform such instructions, tended necessarily to render him obnoxious. The usual arts of the seditious were moreover employed to disseminate discontent and raise disaffection.<sup>22</sup> And the traders of New-England, conscious of the orders

ders that threatened the loss of an advantageous commerce, watered the seeds of disorder, which they foresaw would yield them an abundant harvest.<sup>22</sup> The moment an armed vessel arrived, which was conducted by Gillam, a name then famous in Albemarle, an insurrection broke out in December, 1677. The insurgents were chiefly conducted by Culpeper, who had, in 1671, been appointed surveyor-general of Carolina, who had raised commotions on Ashley-river, who was now greatly listened to, because he was deemed so experienced in such enterprises. As there was no power to resist them, they easily acquired undisputed possession of the country. They imprisoned the president, who was the chief object of their indignation, and seven proprietary deputies; they seized the royal revenue, amounting to three thousand pounds, which they appropriated for supporting the revolt; they established courts of justice; they appointed officers; they called a parliament: And they, for years, exercised all the authority of an independent state.<sup>23</sup> As there had been no example of a revolt, which was not accompanied by a manifesto, so now the inhabitants of *Pasquetanke* addressed a *remonstrance to the rest of the people of Albemarle*; <sup>24</sup> in order to justify a conduct which might have appeared unprovoked; to induce the planters of the three other districts to favour their views and to lend them their aid. It complained of the various oppressions of Miller, and assigned, as a principal reason why they had seized the records and imprisoned the president, “that thereby the country may have a free parliament, to represent their grievances to the proprietaries.” Though this writing is not remarkable either for elegance of diction or vigour of sentiment, yet it was adapted to the understandings of all the parties, and answered its end: It is to be lamented, that such publications seldom contain the real motives of the chief actors on such occasions. Of this insurrection contemporary men of discernment remarked: That it was owing to no sudden provocation, but was the effect of deliberate contrivance, in order that the conductors of it, and some other men of New-England, might get the trade of this country into their own hands, might defraud the king of his customs, and buy the goods of the inhabitants at their own rates. And thus the people are made the constant bubbles of their own credulity and of others

crimes:

crimes: We may deplore their miseries, though it seems to little purpose to lament what cannot possibly be in future prevented!

When Eastchurch at length arrived, to whose commission or conduct there could be no objection, the insurgents derided his authority and denied him obedience. He was constrained to apply to the governor of Virginia for aid: But he died of vexation before a sufficient number of troops could be collected to answer his purpose. Yet, still apprehensive of an invasion from this province, of the punishment that would probably be inflicted, his opponents, at the end of two years successful revolt, dispatched Culpeper and Holden to England, to promise submission to the proprietaries, but to insist on the punishment of Miller. And the late president, and other officers, who had languished mean-while in prison, having found means to escape, appeared in England about the same time, and filled the court and the nation with complaints of their own sufferings, with accusations against their persecutors.<sup>35</sup> Men, who regarded neither, saw, in the continuance of the present revolt, the degradation of the proprietary government, of the authority of England; and foretold, that, when the present actors no longer gave animation to the scene, the colony and the state would equally feel and regret the evil of bad example, which must necessarily result from successful insurrection.

When Culpeper had executed his commission, and was about to return, he was impeached, by the commissioners of the customs, of the crimes of acting as collector without their authority, of embezzling the king's revenue. He was seized on-board a vessel in the Downs, by virtue of a warrant from the privy-council. It was in vain for him to acknowledge the facts and to beg for mercy; or, were this refused, to request that he might be sent to Carolina for trial, where the offences were supposed to have been committed: His powerful accusers insisted that no favour might be shewn him, unless he refunded the duties which he had wrongfully seized.<sup>36</sup> And, in Trinity-term, 1680, he was tried in the court of King's-Bench, on an indictment of high-treason committed without the realm. Though five witnesses fully proved those circumstances which constituted the crime, yet the famous Shaftesbury, who was then in the zenith of his popularity, appearing on his behalf, and representing,

representing, contrary to the most undoubted facts, “ that there had never been any regular government in Albemarle ; that its disorders were “ only feuds between the planters, which could only amount to a riot ;” Culpeper was acquitted :<sup>27</sup> The judges declaring, that to take up arms against the proprietary government was treason against the king.

Though historians concur in representing mistakingly, that Culpeper was sent from Carolina, and tried in England for high-treason committed within that colony, yet none of them deny, or even doubt, the legality of the trial.<sup>28</sup> That was reserved for modern times. And Sir Peyton Ventris, the reporter of his case, remarks, with approbation, “ that, by the statute of Henry VIII. foreign treasons may be either “ tried by a special commission, or in the king’s-bench by a jury of the “ county where that court sits.”<sup>29</sup> It seems to have been anciently a matter of uncertainty in what manner treasons committed without the kingdom were to be inquired of ; “ they wanted trial at common law, “ says Sir Edward Coke,<sup>30</sup> and therefore to establish certainty therein, “ the above-mentioned law was made.” How much the vigorous reign of Elizabeth was disturbed by various rebellions in Ireland is known to every one : And several offenders, against the duty of their allegiance, were punished within the realm, agreeably to a resolution of the judges, “ though Ireland had the same laws for treason that England hath, and “ some more.”<sup>31</sup> A similar practice continued in the two subsequent reigns, because similar crimes occurred. And though a peer of Ireland insisted, that, were he tried in England, he would be deprived of the beneficial trial by his peers, he was yet convicted by a jury of Middlesex.<sup>32</sup> No proposition of law, therefore, could be better established or known, at the epoch of American colonisation, than that foreign treasons might be tried within the realm : And none could be more applicable to the condition of subjects residing within a distant territory of the crown. It was accordingly declared, we have seen, to be a fundamental principle in the Virginian constitution ; “ that every offender against the duty of his “ allegiance, shall be sent to England, there to receive condign punishment.” The same rule was expressly established and enforced by the Carolinian charter of 1665. The practice seems to have been com-

mon and univerfal during the reign of Charles II. to fend colonifts to England, charged with high-treafon.<sup>33</sup> It was continued by William at the Revolution, and ftrengthened by Anne. But Culpeper is the firft colonift who appears to have been regularly tried in the court of king's-bench by virtue of the ftatute before-mentioned. And the learned of former times remarked: That long ufage, uniformity in principle, the approbation of ages, are the beft evidences of a conftitutional right.<sup>34</sup>

To put an end to an ufurpation that had fo long oppreffed the people and fet at naught the power of the proprietaries, two propofals were fubmitted to them; either, by a vigorous exertion of an inconfiderable armament, to fubdue the infurgents by force; or to accept of their proffered fubmiffion on the terms propofed by themfelves. Agreeably to the wonted praftice of the weak, the proprietaries temporized for fome time; now fhewing a difpofition, while they were incited by their refentments, to exhibit an example to pofterity, by punifhing the moft guilty; at other times, blaming the conduct of their officers, and juftifying the actions of their opponents: But, with the acquittal of Culpeper, they determined to adopt the laft, which at once difplayed their own imbecility, and offered up, at the fhrine of miftaken policy, thofe friends who had rifqued every thing in defence of their rights. And they refolved to govern, in future, according to that portion of obedience which the infurgents fhould be difpofed to yield them.<sup>35</sup> The wife exclaimed, in the language of prediction; "that a government, actuated by fuch principles, cannot poffibly be of long continuance."

In profecution of this determination, the proprietaries eftablifhed a temporary adminiftration in the beginning of the year 1680, at the head of which was placed Harvey as prefident: Refolving to fend thither Seth Sothel, who had lately purchafed Lord Clarendon's fhare of the province, that, by his authority, he might reduce the late diftractions to order. Yet they were difappointed. Little regard was paid to the rule of Harvey, becaufe men yield unwilling obedience to a government which they know to be of fhort duration: And Sothel was taken by the Algerines on his voyage thither. Henry Wilkinfon, a perfon from whofe prudence much was expected, was appointed governor, in February, 1681, of that part  
of



of Carolina stretching from Virginia to the river Pemlico, and five miles beyond it. Means were now employed to heal former disorders. An act of oblivion was passed, but with an exception with regard to "the duties due to the king and to the estates of his collector." To the governor and council the proprietaries remonstrated: "We hope your own interest, as well as our injunction, will induce you to use your utmost endeavours to settle order amongst yourselves, without which you can never expect an increase of strength or trade; and these considerations ought to prevail so far, that we shall not be constrained to use force to reduce the seditious to reason; since it is the good of the inhabitants we most desire, and not the taking away of any man's life and estate."<sup>35</sup> But this sensible representation was attended with little effect, because former causes continued. Strangers to that moderation which the lenity and good intentions of the proprietaries ought naturally to have inspired, those who bore chief sway were actuated alone by the vindictive spirit of a triumphant faction. They proceeded against their opponents by imprisonment, and fine, and banishment; who were obliged to flee into Virginia for protection: And with them departed justice and freedom from a country, doomed to suffer a long misery, as a punishment for its follies or crimes.<sup>36</sup>

This lamentable scene of anarchy was not however changed, nor was the condition of the colony meliorated by the arrival of Sothel, the governor, in the year 1683. Though required to expel those from the council who were concerned in the late disorders; to establish a court of the most impartial of the inhabitants, for the determination of wrongs done during the distractions of the times; to assist the officers of the customs in collecting the royal revenue, in executing the acts of navigation; he declined to comply. The annals of delegated authority have not recorded a name which deserves so much to be transmitted to posterity with infamy as that of Sothel. Bribery, extortion, injustice, rapacity, with breach of trust and disobedience of orders, are the crimes of which he was accused during the five years that he misruled a miserable colony.<sup>37</sup> Strange, that the man, who had beheld tyranny in all its odious forms on the coast of Barbary, did not feel for the sufferings of men, and re-

spect their rights! Driven almost to despair, the inhabitants seized his person, in 1688, in order to send him to England, to answer their complaints: But, upon his intreaties, and offering to submit their mutual accusations to the next assembly, they accepted of his proposal, with a moderation which shews the extent of their wrongs. The assembly “gave judgement against him in all the above-mentioned particulars, and compelled him to abjure the country for twelve months, and the government for ever.”<sup>18</sup> Yet at the same time that the proprietaries did not altogether approve of the conduct of the people, because “pre-judicial to the prerogative of the crown and to their honour,” they heard, with abhorrence, of their sufferings; they endeavoured, with a laudable spirit, to prevent such for the future.<sup>19</sup> And such was the sad condition to which North-Carolina was reduced at the epoch of the Revolution, partly by her own folly, but more by the intrigues and crimes of others.

When the dissatisfaction of the proprietaries with the conduct of Yeamans, which was said *to have altered the face of things*, procured his recall, Joseph West, whose prudent management had recommended him, was in the mean time appointed governor of the Southern colony in May, 1674. He is justly celebrated for his courage, his wisdom, his moderation. And, as the province enjoyed the influence of these virtues, it prospered for some years; it felt no other infelicity than what arose from a penury which disabled the planters from discharging what they owed to the proprietaries. As the debtors had promised to pay the governor’s salary, which was extremely inconsiderable, as they however failed, there were assigned him, in April, 1677, the plantation and stock, the merchandises and debts, belonging to his constituents in Carolina, in discharge of his claims. This is the first factor, who, at the end of ten years *prudent management*, received the whole product of his traffic, as the reward of his services, without any impeachment of his morals. Other nobles may learn, from this trivial transaction, how unprofitable and unavailing it is for them to engage in similar commercial enterprises. Yet the proprietaries, by the application of eighteen thousand pounds, without aiming at the profit of merchants, had mastered the difficulty of the undertaking:

undertaking : People going thither now at their own expence, and men of estate venturing where they were assured of fair dealing. It was on this occasion that the dissenters, made uneasy in England by what they beheld, which they deemed nothing to what they dreaded “ from a possible successor,” emigrated thither in considerable numbers. While these men augmented its numbers they acquired the honour of introducing religion into Carolina, but with it religious controversy and political altercation, which neither promoted the interests of morality nor of peace. In April, 1679, Charles II. with a munificence which does him honour, ordered two small vessels to be provided at his expence, to transport thither several foreign Protestants, who proposed to raise wine, oil, silk, and other productions of the South. He exempted that province from the payment of taxes on these commodities for a limited time, though the commissioners of the customs remonstrated, with a prophetic prudence, against “ the encouraging of people to remove to the plantations, as too many go thither, to the unpeopling and ruin of the kingdom :” But, owing to their weighty reasons, there was refused an exemption on the exportation of tobacco from Carolina, which was now asked, which they foretold would occasion abuses more easy to prevent than to abolish. The renown of that country, the encouragement given by the proprietaries, induced many foreigners of various nations to emigrate thither from this time to the Revolution. And though they have never been able to enrich it with the valuable commodities which were now so confidently promised, their descendants form a respectable part of the present inhabitants. Instructed that “ the Oyster-point,” so delightfully formed by the confluence of the rivers Ashley and Cooper, was more convenient than what the *first settlers* had chosen, the proprietaries encouraged the inclination of the people, who began to remove thither in 1679. And, in the subsequent year, the foundation was laid of Charles-Town, so famous for the regularity of its streets, the extent of its commerce, the elegance of its inhabitants ; and, during this year, thirty houses were built. It was instantly declared *the port* for the various purposes of traffic; *the capital* for the general administration of government. But it was long unhealthful. From the month of June to October the courts of justice were annually shut

shut up; no public business was transacted; men fled from it as from pestilence; and orders were given to inquire for situations more friendly to health. Yet how happy and how singular is the reverse! It is now allowed to enjoy the most salubrious air of Carolina. And the inhabitants resort to it at present, during the same season, with the ardour of those who hope to enjoy the greatest of blessings." Men of discernment have attributed this fortunate revolution to the dispersion or purification of the noxious vapour, by the smoke issuing from the numerous culinary fires.

Notwithstanding the early instructions of the proprietaries to cultivate the good-will of the aborigines, and the more recent orders to prohibit all trade with them for seven years, till the inhabitants are more numerous and better able to defend themselves, a war commenced, in the beginning of the year 1680, with the Westoes, a very powerful tribe on the southern boundary; which was "not only extremely troublesome, but had well nigh ruined that hopeful settlement." The cause of hostilities, thus inconvenient and dangerous, may be found in injuries, which had been for some years mutually given and received, which by both parties were still more dreaded in future. But, as every evil was to be feared, as no possible good could be expected, from the continuance of a war which is never attended with glory or profit, a peace was concluded in the subsequent year; the old giving security for the good conduct of the young. In order to prevent the return of similar mischiefs, that more than ordinary care might be taken to do justice to the natives, commissioners were appointed by the proprietaries, to decide all complaints between the contending parties. Though the tribes within four hundred miles of Charles-Town were at the same time taken under the protection of those noblemen, a dishonourable practice then commenced, which all their authority was unable to prevent or abolish. Not only the principal inhabitants, but the officers of government, encouraged that spirit of discord which reigns among untutored savages, and promoted that inclination for war so natural to the American Indian, to every nation in a similar state of improvement, merely with design to procure the captives, whom they purchased as slaves: And they but too frequently inflamed the colonists to make war on the men whom they had promised to civilize,

civilize, “ to introduce to a knowledge of God,” whom they were under every obligation to protect. It was in vain for the governor and council to insist, as a justification, that a policy, which weakened the tribes by their mutual wars, secured the colony against their attacks; that it was humane to buy prisoners who were already doomed to die: The proprietaries, dissatisfied with these reasons, represented, how jealous they were that the private gains, which some make by the traffic for slaves, sway more to these opinions than the public safety; that they could not answer it to God, to the king, to the people intrusted to their government, any longer to suffer a conduct which had been so detrimental to the province, by discouraging many considerable persons from going thither. Yet it required the future remonstrances of the proprietaries, against “ this barbarous practice,” to procure a law to regulate, and at length to prohibit, what was so ignoble in itself, and had given such deserved offence.<sup>41</sup> A mutual hatred then commenced between the natives and the colonists, which length of time has been unable to allay. And the aborigines in after-times revenged severely their misconduct or crimes upon the innocent posterity of the original settlers; making Carolina regret that her founders had reduced the freest of men to a condition more truly deplorable than that of the beasts, their fellow-labourers, unconscious of what the others had lost.

While the province thus suffered complicated ills from the misconduct of her governors, the proprietaries exerted themselves to promote her populousness, her security, her happiness. At the desire of several wealthy persons, who proposed to emigrate thither, they “ once more” revised the unalterable constitutions. They declared, that no farther changes should be made without the consent of the representatives of the people. It is unnecessary to point out the nature of alterations which were never admitted in Carolina, though they relaxed the rigour of the constitutions in favour of freedom: For the people were persuaded to see, in a measure intended probably for their good, the danger of destructive precedent. Incited by these attentions, Ferguson not long after conducted thither an emigration from Ireland, which instantly mingled with the mass of the inhabitants. Lord Cardross led a colony from Scotland, which

which settled at Port-royal ; which claiming, from an agreement with the proprietaries, co-ordinate authority with the governor and grand council of Charles-Town, was compelled, with circumstances of outrage, to acknowledge submission ; and, having provoked the Spaniards at St. Augustine, by inciting the Indians against them, the Scottish settlement was in after-times totally destroyed : Thus acquiring, when it was no more of any avail, that prudence, from sad experience, which its leaders ought always to have possessed and exerted. Though the province had been formed before this time into manors and baronies, as caciques and landgraves were created, yet it was during the year 1682 that it was first divided into three counties. Berkeley filled the space around the capital as far as Stono-creek on the north, and the Sewee on the south. Craven occupied the district to the northward of it, towards Cape Fear, which was formerly denominated Clarendon, the most ancient settlement of the whole. On the south, Colleton contained Port-royal and the lands in its vicinity, to the distance of thirty miles. Yet the first only was so stocked with inhabitants as to be honoured with a county-court for the determination of its local affairs : And at Charles-Town the twenty members, which composed the lower house of parliament, were chosen. Such was the inconsiderable progress of a province which afterwards became so opulent and great. West held a parliament in autumn, 1682 ; wherein were enacted laws for the settling a militia, which the late war had taught them to be so necessary ; for making ways through the boundless forest which every where surrounded the capital ; for promoting the morality of a people who did not enjoy the instruction of a public ministry. And that gentleman immediately resigned his administration to Joseph Moreton, who was deemed at that time worthy of this important trust.<sup>42</sup> Then commenced that re-iterated change of governors, appointing successively Kyrle, West, Quarry, Moreton, of every public officer, which was productive of those evils in Carolina that have uniformly attended it in every country on earth ; the degradation of the proprietary government ; the introduction of faction ; the turbulence of a people no longer attached to their benefactors and rulers.

Moreton

Moreton convened a parliament in September, 1683. And it established a great variety of regulations for those little inconveniences which all colonies experience in their early years ; because laws every where arise from the wants of men, and not from the speculations of theorists. In order to remedy the distress felt from the want of a common measure of commerce, “ the value of foreign coins was raised ;” which first gave rise to the currency of Carolina, that in after-times became so extremely depreciated. In imitation of the former conduct of Albemarle, “ all prosecutions for *foreign debts* were suspended :” But the proprietaries beholding, not long after, with abhorrence, what they had lately confirmed without animadversion, dissented from this law, because it was contrary to the king’s honour, since it was in effect to stop the course of justice ; because the parliament had no power to enact a law so contrary to those of England : And, astonished that their deputies would have assented to what gave such just offence, they issued orders, “ that all officers should “ be displaced who had promoted it.” “ The representatives sent to this parliament seem to have been chosen contrary to instructions which had been transmitted the year before ; that, of the twenty members, Berkeley and Colleton should each choose ten : The people of the former, because most numerous, opposing any choice by the latter ; and the third county being yet too little inhabited to be thought worthy of that important privilege. But, considering it as a very unequal thing that the other inhabitants should be deprived of “ the right of representation,” by a combination to have all members chosen at Charles-Town, the proprietaries gave orders that the present should be dissolved, and no other parliament called till their instruction should be complied with. But they issued their commands in vain. And we shall behold, in after-times, the people rising as one man to put an end to this signal inequality, which was at length countenanced by the power that now wished to abolish it ; because the sentiments of men changed with the new situation to which all had arrived. Sensible of the reiterated misbehaviour of their deputies, the proprietaries informed the governor and council, in language which at least shews good intentions: “ We would have you take notice that power of magistracy is put into your hands for the good of

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“ the people, who ought not to be turned into prey, as we doubt hath “ been too much practised.” It is remarkable enough, “ that the “ greatest dealers in Indian slaves were the fiercest sticklers against al- “ lowing members of parliament to Colleton county :”<sup>44</sup> Thus afford- ing an example, how men, by acquaintance with corruption, become steeled against the sense of what they owe to the rights of others.

The war, which the ambition of Lewis XIV. lighted up in Europe during that age, put in motion numerous privateers, whose successful depredations encouraged the people of Carolina to pursue similar projects. But the too anxious zeal of Charles II. to preserve a neutrality with regard to the belligerent powers, induced him to transmit, in April, 1684, a declaration of his intentions, which the proprietaries ordered should be punctually executed : And this measure gave a check to enterprizes that were as contrary to the law of nations as they were pernicious, by promoting what are inconvenient every where, but destructive of an infant colony ; *the desire of sudden wealth, the spirit of dissipation.*<sup>45</sup> The peace which ensued, by an easy gradation, transformed the privateers into pirates, which long infested the American seas, which almost annihilated commerce. The governor of Carolina, the proprietary-deputies, the principal inhabitants, all degraded themselves to a level with the meanest of mankind, by assisting pirates, by receiving the plunder of nations. The proprietaries remonstrated against practices that reflected infamy on the province : But in vain did they displace their officers, when the numbers and credit of the offenders in some measure sanctified the crime.<sup>46</sup> Charles II. urged by his allies, and sensible how much the trade of his own subjects had been injured, transmitted, in April, 1684, “ a law against pirates,” which the proprietaries required might be enacted by the parliament, which they afterwards confirmed, and ordered to be rigorously enforced. But unexecuted laws are a dead letter : And what had been so gainful, however dishonourable, settled into a general use. The naval knowledge of James II. acquired him the honour of destroying the enemies of mankind. He detached Sir Robert Holmes, with a small fleet, in August, 1687, and with an extraordinary commission, “ for suppressing pirates in the West-Indies.” Notice of both

was



was sent to the governor and council at Charles-Town, who received orders to shew an example of submission to his powers, to afford every assistance to his armament.<sup>47</sup> And this sensible project proved at length successful; till new causes not long after gave rise to piratical adventures, which required the continued energy of William and Anne to suppress.

The disgrace, with which those piracies covered South-Carolina, was not the only inconvenience that they entailed on it. The Spaniards, at St. Augustine, had always viewed the Southern plantations with peculiar jealousy; they suspected the colonists, with reason, of inflaming the Indians against them; and they beheld, with indignation, the plunderers of their wealth openly encouraged at Charles-Town: They at first threatened hostilities; but, towards the end of the year 1686, they invaded the southernmost frontiers, and laid waste the feeble settlements of Port-royal. Unable to defend a wide extended boundary, the Carolinians, countenanced by the governor and council, and persuaded that they had sufficient authority from their charter to make war on their neighbours, prepared to take St. Augustine; to defend themselves, by striking boldly at once at the heart of their enemy. But the proprietaries, informed of this project, remonstrated: "That every rational man must have foreseen that the Spaniards, thus provoked, would assuredly retaliate; that the clause in the patent, that had been relied on to justify the measure, meant only a pursuit in heat of victory, but not a deliberate making war upon the king of Spain's subjects within his own territories; nor do we claim any such power: No man, however, can think that the dependencies of England can have power to make war upon the king's allies without his knowledge or consent."<sup>48</sup> A clause, similar to that before alluded to, was inserted in every colonial charter, out of abundant caution; but it was merely declaratory of the common law, which would have taken place without it, wherever Englishmen formed a colony. For the right of self-defence is inseparable from man, whithersoever he goes. The construction of the proprietaries is equally sensible and decisive. And, though the colonists of New-England pursued a different rule, it may safely be asserted, that it is altogether contrary to principle to argue that the dependent territories of a state may right-

fully make war or peace without its knowledge and assent. For, the sovereign nation might be involved in warfare, and bloodshed, and expence, till it ceased to be at all. The proprietaries prudently dissented to the law for raising men and money for the projected invasion of the Spanish territories. The inhabitants being either convinced by the reasonings of the remonstrance before-mentioned, or the sinews of war being thus cut asunder, the expedition was discontinued. And those prudent noblemen congratulated the governor and council upon this event in terms which shewed how much in earnest they had been: "We are glad you have laid aside your project, as, had it proceeded, Moreton, Godfrey, and others, might have answered it perhaps with their lives." While they were ordered to write "a civil letter" to the governor of St. Augustine, to inquire by what authority he acted, they were warned to put the province in the best posture of defence.<sup>49</sup> At that time a mutual hatred and dread of each other commenced, between the Carolinians and Spaniards, which ceased only when the latter ceased to be the lords of Florida.

The demise of Charles II. being mean-while formally communicated to the governor and council, James II. was joyfully proclaimed. For the people, either too much engaged in domestic faction, in throwing off grievances which they deemed intolerable, because they had felt no real ones; or in acquiring wealth by the plunder of their neighbours; little interested themselves in European politics or intrigues. And, in return for *their expressions of loyalty*, this monarch assured them of his protection, with an unusual insincerity, while he meditated the revocation of a patent which had conferred the most important privileges.<sup>50</sup> The first collector was established at Charles-Town during the year 1685; because at that time its commerce, inconsiderable as it then was, began to attract the notice of the world. The governor and council were at the same time ordered "not to fail to shew their forwardness in assisting of the collection of the duty on tobacco transported to other colonies; in seizing ships that presumed to trade contrary to the acts of navigation." But the commands of the proprietaries were never received with much attention in a province where; in theory, they seem to have engrossed all power. And, as during the present season, little regard was paid to  
orders

orders so contrary to the views of every one, an illicit trade was not only practised, but justified under a clause of the patent, *which the people believed to be of superior force to the law*. Yet the proprietaries never claimed any exemption by virtue of their charter: Nor did it in the least support a pretension so contrary to itself. For, as we have seen, it expressly required the submission of the colonists to commercial regulations, to the payment of the usual customs. Though the royal grant of 1665 was passed subsequent to the act of navigation, the present exemption was, *notwithstanding*, insisted on, with the same spirit that it was contended, during this reign, that a king of England may dispense with the law. The principle of the Carolinians, and the doctrine so fashionable at the court of James, which sapped the foundations of his throne, were therefore exactly the same. But how amusing is it to trace the extraordinary changes which often happen in the sentiments of men! The Revolution, the claim of rights, were supposed to have buried *the dispensing power* for ever in oblivion. Yet it has been revived during recent times, in order to build on it ideal systems, though the actual exertion of it would be opposed with a zeal irreconcilable to the sincerity of those who maintain it. Neither awed by the authority, nor convinced by the reasonings, of the proprietaries, the provincials continued the practice which they had avowed as legal. While their vessels were seized, the court of England was filled with complaints of the irregularity of their conduct. And, when the reigning prince had adopted the resolution of annihilating all proprietary governments, a writ of quo-warranto was issued against the patent of Carolina. Thus, neither their submission to every royal mandate, nor their readiness to aid, with their feeble power, in the collection of the royal revenue, in the execution of the acts of navigation, protected the rights of the proprietaries from attack. Yet, prudently bending before a storm which it seemed vain to resist, they eluded the force of a blast that had laid the charters and governments of New-England in ruins. And, by offering a treaty for a surrender, they gained that precious time, which, in political intrigue, is generally of such decisive consequence.<sup>51</sup>

Opposed

Opposed in all their views by the men whose duty it was to promote them, and offended at the reiterated disobedience of their officers, the proprietaries, in August, 1686, appointed James Colleton governor; expecting much from his talents, but more from his attachments. The commencement of his administration seems to have given satisfaction to every one. But his instructions, which required him to punish the former governor and officers for various offences, to execute that law against pirates with rigour which was so contrary to the ruling principles of the times, naturally rendered him obnoxious to such a people, during the season of universal degeneracy.<sup>2</sup> The form of the constitution, composed of a variety of jurisdictions, and investing the parliament with the choice of members for the grand council, necessarily gave rise to perpetual intrigue: And factions, consisting of men of various views, and avowing different principles, “sprang up, as we are assured, as rampant there, as if the people had been made wanton by many ages of prosperity.”<sup>3</sup> An assembly having been called, in November, 1685, a majority of the members refused to acknowledge the authority of the fundamental constitutions, because they deemed that writing to be genuine which the proprietaries had transmitted as a sketch. These were excluded the house, as men who struck at the very foundation of the government. But, protesting against the validity of laws that should be made by a minority of the commons, they retired into the country; spreading their own principles and discontents among a people whose minds had been already prepared to listen to both with favour. When a new parliament was therefore called, in the year 1687, “they chose members, “says their historian, to oppose whatsoever the governor proposed.”<sup>4</sup> From an assembly, which convened in such a disposition, no laws, either salutary or evil, were to be expected. Animated by the pertinacity natural to the discontented, it refused to settle a militia-act, though the safety of the province depended upon it: And, “because some members were “not humoured in every thing, they declined to pass any law at all.” Apprehensive, during this situation of affairs, of an invasion from the Spaniards and their Indian allies, the governor published an ordinance, declaring martial law, and requiring every one to appear in arms for the defence

defence of the province. However necessary, however consistent with the declarations of the charter, this measure was certainly imprudent, because the colonists were more inclined to turn their arms against their ruler than against the public enemy: And his opponents gave out, that nothing more was intended than to acquire for himself the monopoly of the Indian trade. He entirely lost what it is of the greatest consequence for all rulers to possess, the affections of the people, because every thing was believed of the object of their dislike. By the dissolution of the assembly, the province was left destitute of any statute-law as a rule of conduct. Though all parties lately rejoiced in the felicity of James for the birth of a son, William and Mary were soon after proclaimed with an apathy, which shews how much they were interested in the distracted state of their own affairs,<sup>55</sup> which all governors ought to dread as the greatest misfortune, because a government that is looked up to with indifference is already undone.

During this ferment, Seth Sothel, whom we have seen banished from Albemarle, and recalled by the proprietaries to justify his conduct, suddenly arrived at Charles-Town. Countenanced by a powerful faction, and presuming on his powers as a proprietary, he seized the reins of government; in the year 1690, notwithstanding the opposition of the governor and council,<sup>56</sup> who protested in vain when the public voice ran in his favour. He easily granted the prayer of petitions which had been suggested by himself for convening a parliament: And, during the distraction of the times, it was easy to procure the general return of members, who were ready to sanctify by their votes whatsoever should be dictated by those who had thus acquired power. Colleton, whose conduct had been far from blameless,<sup>57</sup> was instantly impeached of high crimes and misdemeanours, and disabled from holding any office, and banished. Others, who were accused of abetting his tyranny, were fined, imprisoned, and expelled the province. But the proprietaries heard, with astonishment, of the proceedings of Sothel and his parliament; and, considering the whole as illegal, dissented from laws which partook so much of the violence and irregularity of the framers of them.<sup>58</sup> They wrote the strongest letters of recal to the man whom, though a proprietary, they considered

as an usurper; threatening, if he refused to obey, to lay his proceedings before the king, to procure a mandamus “to compel his appearance in “England.”<sup>59</sup> They appointed a new governor, in the year 1692, with orders “to inquire into the grievances complained of, and to inform them what was best to be done.”<sup>60</sup> They granted to the inhabitants a general pardon for crimes formerly committed: “And in April, 1693, they resolved: “That, as the people have declared they would “rather be governed by the powers granted by the charter, without regard to the fundamental constitutions, it will be for their quiet, and “the protection of the well-disposed, to grant their request.”<sup>61</sup>

Thus, at the end of three and twenty years, perished the labours of Locke: Thus was abrogated, upon the requisition of the Carolinians, who had scarcely known one day of real enjoyment, a system of laws which had been originally intended to remain for ever sacred; which, far from having answered their end, introduced only dissatisfaction and disorders, that were cured at length by the final dissolution of the proprietary government. The Carolinian annals shew all projectors the vanity of attempting to make laws for a people, whose voice, proceeding from their principles, must be for ever the supreme law. How inadequate must have been the constitutions, or how defective the execution, which neither ensured obedience to the proprietaries, nor satisfaction to the governed! It was not till seven and twenty years after that this province acquired the present appellations of *North* and *South Carolina*: It was not till it was blessed with a simple form of government that it began to prosper; when the one acquired the manufacture of *naval stores*, the other the production of rice and indigo; which have made both, in modern times, populous, wealthy, and great.

#### AUTHORITIES AND NOTES.

<sup>1</sup> L'Escarbot's Hist. of N. France, p. 225, 401; which was written by an advocate of Paris as early as the year 1606. — <sup>2</sup> Hackluyt's Voy. 1 v. p. 737-48-70. — <sup>3</sup> Carolina Ent. 1 v. p. 6. — <sup>4</sup> Hutch. Hist. Mass. 1 v. p. 226. — <sup>5</sup> Carol. Ent. 1 v. p. 1-15. — <sup>6</sup> Ib.

7 See

<sup>7</sup> See Sir William Berkeley's instructions, Car. Ent. 1 v. p. 4; and see p. 22-29. The subjoined *letter from the proprietaries to that gentleman* not only throws considerable light on this obscure portion of the history of Carolina, but will explain to the planter and to the practical lawyer the reason that the most ancient patents for land of this colony are signed by *William Berkeley*. — From Car. Ent. 1 v. p. 6.

“ Sir,

Cockpit, 8 Sept. 1663.

Since you left us we have endeavoured to procure, and have at length obtained, his majesty's charter for the province of Carolina: A copy of which we do herewith send you. Since the sealing whereof there hath started a title, under a patent granted in the 5 year of King Charles I. to Sir Robert Heath, under which there hath been a claim by the duke of Norfolk's agents, and another by Sir Richard Greenfield's heirs; but that all those that shall plant notwithstanding that patent are, by an act of king and council, secured, and that patent by king and council made null, and ordered to be made so by the king's attorney in the courts of law; a copy of which order we herewith send you; so that no person need scruple planting under our patent: Besides, we have many more advantages than is in the other to encourage the undertakers. We are informed, that there are some people settled on the north-east part of the river Chowan, and that others have inclinations to plant there, as also on the larboard side, entering of the same river; so that we hold it convenient that a government be forthwith appointed for that colony: And for that end we have, by captain Whitey, sent you a power to constitute one or two governors and councils, and other officers; unto which power we refer ourselves, we having only reserved the nomination of a surveyor and secretary, as officers that will be fit to take care of your and our interests; the one by faithfully laying out all lands, the other by justly recording the same. We do likewise send you proposals, to all that will plant, which we prepared upon receipt of a paper from persons that desired to settle near Cape Fear, in which our considerations are as low as it is possible for us to descend. This was not intended for your meridian, where we hope to find more facile people; who, by your interest, may settle upon better terms for us, which we leave to your ma-

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nagement, with our opinion that you grant as much as is possible, rather than deter any from planting there. By our instructions and proposals you will see what proportions of land we intend for each master and servant, and in what manner to be allowed; but we understand that the people that are there have bought great tracts of land from the Indians; which, if they shall enjoy, will weaken the plantation; first, because those persons will probably keep all those lands to themselves, and so make the neighbourhood of others remote from their assistance, in case of danger; secondly, if any new comers would settle near their habitations, they will not, peradventure, admit it without purchasing, and possibly upon hard terms, which will discourage people from planting: Wherefore it is our resolution and desire that you persuade or compel those persons to be satisfied with such proportions as we allot to others, which will be more than any such number of men, to and for whom these proportions are to be given, can manage, and therefore enough; more will but scatter the people and render them liable to be easily destroyed by any enemy; so that the fixing the way that our instructions mention, will be the best course of settling as we conceive: However, we do leave it to you that are on the place and can best judge. The reason of giving you power to settle two governors, that is, of either side of the river one, is, because some persons that are for liberty of conscience may desire a governor of their own proposing, which those on the other side of the river may not so well like; and our desire being to encourage those people to plant abroad, and to stock well those parts with planters, incite us to comply always with all sorts of persons, as far as possibly we can. You will be best able to judge when you hear all parties, and therefore refer the thing wholly to you. The entrance into Chowan river is difficult, and water but for small vessels: But we understand that there is an entrance, bold and deep water in the latitude of 34, which is near the rivers called the Neus and Pimlico, which we conceive may be best discovered from your parts. In order to which, we desire you to procure at freight or otherwise some small vessel, that draws little water, to make that discovery and some others into the Sound, through which great ships may, peradventure, come to Chowan, and give us admittance into the other  
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brave rivers that lie in the Sound ; and, whilst they are abroad, they may look into Charles-river, a very little to the southward of Cape Fear, and give us an account of what is there. This work we hold necessary to be done, that the king may see we sleep not with his grant, but are promoting his service, and his subjects profit. By captain Whitley's relation, you may easily pass by land and river from your government to Chowan river, and ride but twenty-five miles by land, which makes us presume earnestly to entreat you to make a journey thither, whereby you may, upon your own knowledge, give us your opinion of it, and direct such discoveries to be made by that river as you shall see fit. We remain, &c."

<sup>8</sup> Car. Ent. 1 v. p. 8-10-12-18-20. — <sup>9</sup> See this charter, in Car. Ent. N<sup>o</sup>. 2. p. 1-38. — The proprietaries, writing to colonel Ludwel, the governor, in April, 1693, remarked: " We are informed, that some in Carolina say, the laws of England are not in force there: But, by those gentlemen's favour, who so say, it is expressed in our grant from the crown, that the inhabitants of Carolina shall be of the king's allegiance, which makes them subject to the laws of England." — Ib. p. 219. — Such were the sentiments of rulers and people during that age. Yet the inference of the proprietaries seems extremely just: That, as the Carolinians were English subjects they necessarily owed subjection to English laws. For it is a proposition which at first sight appears extremely incongruous, and not easily proved; that the rules prescribed by the legislature of a state *are not* all equally obligatory on the people of the same state.

<sup>10</sup> Com. Jour. 9 v. p. 16. — <sup>11</sup> Car. Ent. 1 v. p. 18-19. — <sup>12</sup> Ib. p. 23-48-52. — <sup>13</sup> There is a printed copy of the constitutions among the *papers of Carolina*; a copy is subjoined to the works of the author. It is a remarkable singularity in the history of this province, that the identity of the instrument which was designed to be its *great charter* was disputed. The proprietaries transmitted, in July, 1669, a *rough sketch* of what was in contemplation, and the perfect constitutions were signed by them in the subsequent March: The former, being most favourable to the interests of the people, were accepted; the latter were soon after denied to be genuine, and exploded: And this was the chief cause of the abrogation

tion of that famous system, in the year 1693. — Car. Ent. 2 v. p. 108-9; and see the representation to Seth Sothel, in old Ent. N<sup>o</sup>. 2.

<sup>14</sup> Car. Ent. 1 v. p. 31-46-81. — <sup>15</sup> Ib. p. 66-71.

<sup>16</sup> Ib. p. 66-72-9-93. — The subjoined letter, from the proprietaries to the governor and council at *Astley-river*, illustrates this obscure part of its annals, and will demonstrate not only the temper of rulers and colonists, but at whose expence the present opulent province of Carolina was planted.

“ Gentlemen,

Whitehall, 8 May, 1674.

We have herewith sent a patent to Mr. West to be landgrave, and a commission to be governor, who has all along, by his care, fidelity, and prudence, in the management of our affairs to our general satisfaction, recommended himself to us as the fittest man there for this trust. This we cannot forbear plainly to say, though we have a great regard to Sir John Yeamans, as a considerable man that hath come and settled amongst us. When Mr. West had formerly the management of affairs, things were then put into such a posture (as appears by the act of parliament made at the latter end of his government, which we herewith send you confirmed). Then we had some encouragement to send supplies to men who took into consideration how we might be reimbursed as well as they could, which was all we expected: But immediately with Sir John Yeamans's assuming the government the face of things altered. The first news was of several proposals for the increasing of our charge; the same hath ever since continued on, and in our very last dispatches a scheme sent to us of ways of supplying you, which would presently require the disbursement of several thousand pounds; and all this without the least mention of any thought how we might be repaid either our past debts, which already amount to several thousand pounds, or be better answered for the future: But, instead thereof, complaints made, and reproaches insinuated, as if we had dealt ill or unjustly by you, because we would not continue *to feed and clothe you without expectation or demand of any return*. This, we must let you know, put a stop to your supplies more than the Dutch war: For we thought it time to give over a charge which was like to have no end, and the country was not worth the having at that

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that rate: For it must be a bad foil that will not maintain industrious people, or we must be very silly that would maintain the idle. But we have no suspicion at all of the barrenness or any bad qualities of the country; which some of us are so well assured of, that at their own private charge they are going to settle a plantation at Edisto, without expecting a farthing assistance from us. That Sir John Yeamans's management has brought things to this pass, we are well satisfied; which yet we cannot charge upon his mistake; the character we have received of him, and his long acquaintance with Barbadoes and the world, give us other thoughts of him; and perhaps it would very well have served his purpose if we had supplied you, and he had reaped the profits of your labour at his own rates, and our own plantation been so ordered, that, in reputation, people, and improvement, it might arrive at no other pitch than to be subservient, in provisions and timber, to the interest of Barbadoes. Considering at what rates Sir John bought your poor planters provisions in their necessity, and how industrious and useful to you the generality of the people that came from Barbadoes have been, and then tell us whether we have not reason to be of this mind: For we would not have those that went from hence (whom we are still willing to encourage) be any longer misled; and the people that have come to you from New-York and the northward have, by their planting and way of living amongst you, fully satisfied us that they are friends to, and do in earnest mean and desire the settlement and prosperity of our province. Being therefore willing to give all reasonable encouragement to honest and industrious men, we have sent another supply for clothes and tools, and have entered into an engagement one to another to send one yearly to you, whereby our stores shall never want necessaries for the use of the industrious planter, to be had at moderate rates by those that will pay for them: Yet we do not intend any more carelessly to throw away our stock and charges upon the idle: For, though we, the lords proprietors, have tied one another by covenant, that none shall be behind other in the charge of carrying on this plantation, yet we are all agreed not to make any more desperate debts amongst you, though we intend to be at the charge of procuring vines, olives, or any other useful  
plants

plants or commodities fit for your climate, out of any part of the world, and men skilled in the management of them. And therefore, if you intend to have supplies for the future, you will do well to consider how you are to pay us, in what commodities you can best do it, and how the trade of those commodities you can produce may be so managed as to turn to account: For, in our trade with you, we aim not at the profit of merchants, but the encouragement of landlords. In your letter you have been frequent in the mention of a stock of cattle; but, not having paid us for tools and clothes, how do you think that we should be at so far a greater charge in cattle? You say it will enable you to pay your debts; but do you not think, if we bring cattle thither, we, who do not want ground, can keep them, and make the profit of our charge, and venture as well as others, especially it being our design to have planters there, and not graziers? For, if our inclinations were to stock Carolina at that rate, we could do better by bailiffs and servants of our own, who would be more observant of our orders than you have been; plant in towns where we directed them; take up no more land than what they had use for; nor, by a scattered settlement, and large tracts of land taken up, not like to be planted these many years, exclude others from coming near them; and yet complain for want of neighbours. We rest your very affectionate friends,

Craven, Shaftesbury, G. Carteret."

<sup>17</sup> Car. Ent. i v. p. 111-17-18. — <sup>18</sup> Ib. Car. Pap. p. 255. — <sup>19</sup> Same Papers, p. 224-46. — <sup>20</sup> Laws, Virg. p. 127. — <sup>21</sup> Miller collected, from July to December, 1677, 327068 lb. weight of tobacco, and 12421. 8s. 1d. sterling; being the parliamentary duty of one penny a pound on tobacco exported to other colonies: As almost the whole was sent to New-England, whence it was carried all over Europe, the annual parliamentary revenue, arising in that little colony, amounted to 3000l. sterling, though it was very badly collected. Car. Pap. p. 246. — <sup>22</sup> Ib. 255. — <sup>23</sup> Among the same papers there are several *affidavits*, which uniformly assert: That the traders of New-England were extremely active in fomenting and supporting the rebellion; see p. 303-17. — A person, who was  
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known by the name of *the Boston ambassador*, was extremely active among the late *regulators* of North-Carolina. The masters and sailors of the ships of New-England were equally instrumental in promoting the more recent disturbances of that province. Mankind should make a common cause against a people whose rooted principles necessarily incite them to disturb the repose of their neighbours. — <sup>23</sup> *Ib.* p. 225-55.

<sup>24</sup> The following *remonstrance of the inhabitants of Pasquetanke, to all the rest of the county of Albemarle*, (from *Car. Pap.* p. 299.) will shew the extent of the talents of the framers of it, and of the understandings of the men who could be influenced by it.

“ First, The occasion of their seizing the records and imprisoning the president, is, that thereby the county may have a free parliament, and that from them their grievances may be sent home to the lords; which are briefly these: In the first place, (omitting many heinous matters,) he denied a free election of an assembly, and hath positively cheated the country of one hundred and thirty thousand pounds of tobacco, which hath raised the levy to two hundred and fifty pounds of tobacco a head more than otherwise it would have been; besides, near twenty thousand pounds of tobacco charge he hath brought upon us by his piping-guard. And now captain Gillam is come among us with three times the goods he brought last year, but had not been two hours ashore, but, for the slip of a word, was arrested for one thousand pounds sterling; and many affronts and indignities put upon him by the president himself; insomuch that had he not been earnestly persuaded by some, he had gone directly out of the country: And the same night, about midnight, he went on-board with a brace of pistols; and, presenting one of them cocked to Mr. George Durant’s breast, and with his other arrested him as a traitor. And many other injuries, mischiefs, and grievances, he hath brought upon us, that thereby an inevitable ruin is coming, (unless prevented,) which we are now about to do, and hope and expect that you will join with us therein: And subscribed this the 3d December, 1677.

Signed by thirty-four persons.”

<sup>25</sup> The

23 The two subjoined papers will throw sufficient light on the origin and progress of an insurrection, which has been so little noticed by historians, which has hitherto remained in perfect obscurity.

*Extract of the case of the commotions of Albemarle, presented by the proprietaries to the committee of foreign plantations.* — From Carolina Papers, p.

255.

“ Mr. Cartwright, the governor, returning to England, left the government in ill order and worse hands; the proprietaries resolved to send another governor, and such a one as would put in execution their instructions, orders, and designs: The former governors having very much failed them, especially in two points. The first was, the encouraging the New-England trade there; the second, their discouraging the planting on the South-side of the river Albemarle. The latter was extremely the interest of the proprietaries, but crossed always by the governors and some of the chief of the country, who had engrossed the Indian trade, and feared that it would be intercepted by those that should plant farther amongst them. The illness of the harbour was the cause that this northern part of Carolina had no other vent for their commodities, but either by Virginia, where they paid a duty to the governor, or to New-England, who were the only immediate traders, and ventured in small vessels; and had so managed their affairs that they bought their goods at very low rates; eat out and ruined the place; defrauded the king of his customs; and yet governed the people against their own interests. To cure these evils, the proprietaries made choice of one Mr. Eastchurch to be their governor; whom we dispatched in summer, 1677, together with Mr. Miller, who was the king's officer, and made by us one of our deputies. They took their passage to Mevis; where Mr. Eastchurch, meeting with a woman of a considerable fortune, married her, and sent away Mr. Miller to Carolina, to settle affairs against his coming, who carried with him a commission, as president of the council, till his arrival, with very full powers. He was quietly received and submitted to as governor and collector. In discharge of the last he made considerable progress. But, as governor, he did many very extravagant things; whereby he lost the  
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the affections of the people. In the mean time there arrived captain Gillam, in a small armed vessel, with Durant; and about the same time Culpeper, who, finding that Miller had lost his interest, stirred up a commotion; seized him and all the writings belonging to the proprietaries, and the tobacco belonging to the king's customs; which they employed in supporting their unlawful actions. Culpeper was a very ill man, having some time before fled from South-Carolina, where he was in danger of hanging, for endeavouring to set the poor people to plunder the rich. Gillam, he, Crawford, and some other New-England men, had a design (as we conceive) to get the trade of this part of the country into their own hands for some years at least: And not only defraud the king of all his customs, but buy goods of the inhabitants at their own rates. When these men had formed themselves into what Culpeper calls the government of the country, Mr. Eastchurch arrives in Virginia, whose commission and authority they had not the least reason to dispute; yet they kept him out by force of arms, so that he was constrained to apply to the governor of Virginia for assistance to reduce them; which had been done, but he unfortunately died. Presently after the insurgents sent two commissioners to promise all obedience to the proprietaries, but insisting very highly for right against Miller."

*Extract of a representation, presented to the proprietaries. — From Carol. Pap. p. 225.*

“ The rebellion of the inhabitants of Albemarle was not accidental; or arose from any sudden provocation; but rather was the effect of a deliberate contrivance, which appears from these particulars, that can be proved by undoubted witnesses. The heads of the rebellion, at several times, disturbing the courts of justice, subverting the government, dissolving parliaments; their industrious labour to be popular, by continually making factions and parties; their poisoning the people's ears and disquieting their minds, by diffusing abroad dangerous and false reports; namely, that the proprietaries intended to raise the quit-rents to two-pence, and from that to six-pence, an acre; their general arming upon the first appearance of Gillam's ship in Pasquetanke river, and im-

prisoning the proprietaries deputies, and putting the president in irons; their arrogating to themselves the supreme power, by first dissolving, then erecting, courts of justice; by convening parliaments without writs; and appointing all officers."

<sup>26</sup> The subjoined *report of the lords of the committee of plantations* will shew the sentiments of the ministers of England with regard to this insurrection. — From Car. Pap. p. 249.

"May it please your majesty,

In obedience to your majesty's order of council, of the 4th instant, we have heard the complaint of the commissioners of the customs against John Culpeper; and, being attended by the lord-proprietaries of Carolina, we are fully satisfied that the said John Culpeper hath, by divers seditious practices, abetted and encouraged a rebellion in that province; whereby seven of the lawful magistrates, deputies to the lords proprietaries, were all imprisoned, (the eighth of them only being drawn into that confederacy,) and that the said John Culpeper, by colour and force of that rebellious authority, imprisoned the collector of your majesty's customs; and, having seized into his own hands the customs belonging to your majesty, did, by a proclamation in his own name, declare himself the lawful collector, endamaging your majesty's customs to a considerable value. All which being proved upon oath before us, the said Culpeper acknowledged the facts, and lays himself at your majesty's feet for your gracious pardon. And, in case your majesty shall not think fit to extend your mercy towards him, he desires he may be tried in Carolina, where the fact was committed. But, withal, the commissioners of your majesty's customs humbly beseech your majesty, that no favour may be shewed him unless he make or procure satisfaction for the customs seized and embezzled by him, which we are informed do amount to three thousand pounds sterling. All which, &c.

Anglesey, Worcester, Lauderdale,  
Bridgewater, L. Hyde, H. Coventry."

<sup>27</sup> Car. Pap. p. 283. — <sup>28</sup> Mod. Un. Hist. 40 v. p. 424-5; Brit. Emp. Am. 1 v. p. 333. — <sup>29</sup> Reports, 349. — <sup>30</sup> 3d Institute, p. 11-113. —

<sup>31</sup> Ib.



<sup>31</sup> *Ib.* p. 11; Hale's *Hift. Pleas of the Crown*, 1 vol. p. 156. — <sup>32</sup> *State Trials*, 1 vol. p. 181. — <sup>33</sup> *Mod. Univer. Hift.* 40 vol. p. 147-154. — <sup>34</sup> *Foster's Crown-Law*, 8vo edit. p. 412. — The following *opinion of the attorney and solicitor general of Barbadoes, delivered officially to the governor*, displays the sentiments of *colonial lawyers* during that age on this important point of English jurisprudence. — From *Record, Plantations Gen. C.* p. 475.

“ We are humbly of opinion, that, as long as the stat. 35 Hen. VIII. ch. 2. continues in force, no person whatsoever can be tried in this island for a *foreign treason* without a special commission from her majesty for that purpose. The said statute positively directing that all foreign treasons shall be tried either in the kingdom of England or by a special commission from her majesty: And *such always has been the exposition of that statute.*

E. Chilton.

12 Jan. 1703-4.

W. Rawlin.”

<sup>34</sup> See Bigg's proposals for suppressing the revolt. *Car. Pap.* 224; and the representations of the proprietaries. *Ib.* 275. — <sup>35</sup> *Car. Ent.* 1 v. p. 135-7-72-3. — <sup>36</sup> See the address of several inhabitants to Charles II. praying for protection; and Bigg's letter and deposition. *Car. Pap.* p. 267-71. — <sup>37</sup> *Car. Ent.* 2 v. p. 177-8. — <sup>38</sup> *Ib.* p. 157-9. — <sup>39</sup> See the proprietaries letter to the governor, council, and inhabitants.

<sup>40</sup> *Car. Ent.* 1 v. p. 93-120. — The governor's salary, during that age, was only 100 l. sterling a year. *Ib.* 125-164; *Car. Ent.* 2 v. p. 42; and *Car. Pap.* p. 1-20. — <sup>41</sup> *Car. Ent.* 1 v. p. 130; 2 v. p. 80. — <sup>42</sup> *Car. Ent.* 1 v. p. 176-9-84; *Ib.* 2 v. p. 9-15-28. — <sup>43</sup> *Ib.* p. 36. — <sup>44</sup> *Ib.* p. 50-4. — <sup>45</sup> *Ib.* p. 20-4. — <sup>46</sup> *Ib.* p. 75-9. — <sup>47</sup> *Ib.* p. 130-5. — <sup>48</sup> *Ib.* p. 106. — <sup>49</sup> *Ib.* p. 121. — <sup>50</sup> *Ib.* p. 82.

<sup>51</sup> The following papers will illustrate and support the text, and shew the principles and conduct of all parties.

*Part of a letter from George Muschamp, the first collector of Charles-Town, dated 11 April, 1687, to the commissioners of the customs. — From Car. Ent. 2 v. p. 373.*

“ I have received your letter and instructions, which I shall endeavour to follow ; but fear it will be difficult to maintain the acts of navigation : It being not a week since I had a trial with a master of a vessel for that he was navigated with four-fifths Scotchmen ; but I own the evidence was not very clear ; for which reason the court gave it against me. However, in effect it was declared, that, if it had been never so clear, they would have pleaded the benefit of their charter ; pretending that it gives them power to trade with Scotland and Ireland, and likewise that the natives have liberty to transport their own product in ships navigated with Scotchmen ; which I am sure is against the law, *which the people believe to be of no force against their charter, which was granted after the act was passed.*” — REMARK. It hath been shewn that Scotchmen might navigate English ships, because they were considered in notion of law as natural-born subjects : Hence we may infer that Muschamp’s opinion was erroneous.

*Report of the attorney-general, to whom this letter was referred. — From Car. Ent. 2 v. p. 375.*

“ May it please your lordships,

I have perused these papers, and have also considered the several statutes of 12 Cha. II. ch. 18. of 15 Cha. II. ch. 7. of 22-3 Cha. II. ch. 26. And it is most clear, that what, by Mr. Muschamp’s letter is held at Carolina to be a lawful trade, is most directly contrary to these acts of parliament ; and, though their charter be subsequent to these statutes, by which he says they justify, yet is there no colour for their opinion, *unless within their charter there be also a power granted them to trade contrary to these laws, with express non-obstantes to the same* : The charter therefore ought to be inspected ; and, if it contains such licence and such non-obstantes, (as I am apt to believe it doth not,) then there may a question arise, how far it will be valid against these acts of parliament ; wherein  
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if it shall appear to be the case, I shall be ready to give my opinion, if your lordships shall desire it.

T. POWIS."

*Extract of a letter from the proprietaries, to whom these papers were sent, to the committee of plantations. — From Car. Ent. 2 v. p. 381.*

" In obedience to your lordships commands, we have considered Muschamp's complaints, that the people in Carolina pretend a right to trade with Scotland and Ireland, contrary to the acts of navigation ; which we humbly conceive must be the discourse of ignorant and loose people only, and not of any concerned in the government : For that we have constantly commanded the governor and council strictly to observe the several acts of trade, which we took care to send thither : And, in our letter of 10 September, 1685, we did again remind them of their duty therein, and as soon as we were acquainted that Mr. Muschamp was appointed to be *collector of the plantation-duties in Carolina*, we did (as in duty bound) enjoin the governor to be assisting him ; so that we do no ways doubt, but that the ship seized by Mr. Muschamp would have been condemned if there had been sufficient proof : *We never claiming or pretending, by our charter, any exemption from said acts.* Nor do we know what encouragement any ship from Scotland or Ireland can have to trade to the south parts of Carolina, the inhabitants having hardly overcome the want of victuals, and not as yet any commodity fit for the markets of Europe, but a few skins and a little cedar ; both of which do not amount yearly to £ 2000."

*A letter from Lord Shaftesbury to Lord Craven, the palatine, with regard to the quo-warranto, the surrender of the charter, the reimbursement of the expences of the settlement. — From Car. Ent. 2 v. p. 369.*

" My lord,

St. Giles's, 7 July, 1686.

I received yours ; but, not knowing upon what grounds the quo-warranto was intended to be brought against our patent for Carolina, am able to give no result upon it. There have been considerable sums of money disbursed by the proprietaries to bring it to this effect ; and,  
when

when the patent is surrendered, I cannot see any way by which they will in probability be reimbursed. I shall be as unwilling to dispute his majesty's pleasure as any man; but, this being a public concern, it is not in any particular man's power to dispose of it. Therefore, whatever shall be approved of by the rest of the proprietaries, or the majority of them, to be done in this affair, I shall acquiesce in.

SHAFTESBURY."

<sup>53</sup> Car. Ent. 2 v. p. 87-103-207. — <sup>54</sup> Brit. Emp. Am. 1 v. p. 345. — <sup>54</sup> Ib. 341; see their singular protest, in old Car. Ent. N<sup>o</sup>. 2. — One of the protesting members signed his mark, as he could not write: We may thence form an opinion of the extent of his political knowledge. — <sup>55</sup> Car. Ent. 2 v. p. 167-8-71. — <sup>56</sup> Ib. p. 175. — <sup>57</sup> The governor, among other irregularities so common during those times, fined a minister 100l. and imprisoned him till payment, *for preaching a seditious sermon*: But the proprietaries remitted the fine, because they deemed it extravagant. Ib. p. 160. — <sup>58</sup> Ib. p. 165-6. — <sup>59</sup> Ib. p. 177-8. — <sup>60</sup> Ib. 194. — <sup>61</sup> Ib. 213. — <sup>62</sup> Ib. 215.

CHAP.

## C H A P. XIX.

*The voyages of Hudson. — A commerce established by the Dutch on the river Mana-batan. — West-India company formed. — The settlement; — disputes; — and extinction; — of New-Netherlands. — Conquered by the English; — and called New-York. — The administration of Nichols; — of Lovelace. — Retaken by the Dutch. — Restored. — Administration of Andros. — Discontents. — Government of Dongan. — First assembly convened. — Sketch of the history of the Five Nations. — Commencement of the Indian trade. — The province devolves on the crown. — Dongan's commission renewed. — A tyranny re-established. — Indian affairs. — Treaty of neutrality. — Its consequences. — Dongan recalled. — Province annexed to New-England. — Discontents arise. — The fort seized by the populace; — who are headed by Leisler. — A convention called. — William and Mary proclaimed. — Leisler's administration. — Slougher appointed governor. — Assumes the government. — Seizes Leisler; — who is tried for treason; — and is executed. — His attainder reversed by act of parliament.*

THE vanity of individuals, and the pride of nations, prompt them equally to deduce the origin of their progenitors from the remotest antiquity, in order to conceal the meanness of their original in the obscurity of distant ages. Influenced by such sentiments, historians have formally contended whether the renowned Hudson made his first voyage to the New-World in the year 1608 or in 1609; disregarding that satisfactory evidence which could alone decide a controversy so extremely interesting. He departed from the Texel assuredly in the beginning of the year 1609, with design to penetrate to the East-Indies by sailing north-westward, though his journals do not inform us, whether he was sent out by the East-India company of Holland, or by individuals. Having attempted to execute the object of his voyage to no purpose, he followed the track which the Cabots had marked for him nearly two centuries before. He coasted along the foggy shores of Newfoundland; he

shaped

shaped his course for Cape-Cod; he looked into Chesapeake, *where the English were settled*; he anchored off the Delaware; and he sailed into the river *Mana-batan*. Here he admired the beauty of the country and the stateliness of the trees; he skirmished with the natives, who received him unkindly; and he departed in October for England. But he did not land without opposition; he did not, like Cabot, take formal possession of what the aborigines had enjoyed from a period beyond calculation. He lived not, alas! to return thither; because, having sailed from the Thames in the beginning of the subsequent year, in order to make similar discoveries for private adventurers, he perished miserably in the icy seas of Greenland. His countrymen long regretted the fate of a man, whose abilities and achievements did honour even to the nation which had produced so many illustrious navigators. What interest he could acquire from his American discovery, or what right he could transfer to others, it is not easy to divine, though historians have told us, "that he sold his title to the Dutch." He can scarcely be called *the first discoverer* of a coast which had been so often explored before, from the days of Cabot to the present. As he had never occupied the land, he could not transfer what he had never possessed. The sovereign of France, during the year 1603, and the king of England, in 1606, had formally declared their intention to appropriate the same region, which their subjects immediately planted. And, whether the states of Holland had, at the death of Hudson, been admitted into the community of nations by the acknowledgement of their independence, or whether they were then capable of deriving rights from the law of nations, are subjects which might have been once extremely proper for a Dutch civilian to discuss.

While they yet struggled for existence, the Hollanders grew wealthy from the spirit of their commercial enterprises. After several voyages to the river *Mana-hatan*, which at length acquired the honour of Hudson's name, they had built a *trading-house*, near its confluence, as early as 1614. For here they were then discovered by Argal, as he returned from the destruction of Port-royal; who obliged them "to submit to the king of England, and to the governor of Virginia under him." The Dutch yielded to their fate without complaint, because they had yet scarcely acquired

quired independence; because they had been extremely indebted to James I. and yet stood in need of his aid. But, though they did not repent the conduct of Argal, as an outrage offered to their sovereignty, since they really claimed none, they continued a gainful commerce to the English colonies, and to every part of North-America, till the acts of navigation prevented what they were unable to enforce. And from this circumstance, therefore, they could derive none of the rights of dominion, any more than they could form claims on England, because they trafficked in her ports.

The month of June, 1620, is the epoch of the establishment of the famous *West-India* company of Holland. It was invested, for the first time, with an exclusive trade to the western coast of Africa, to the eastern shores of America, from Newfoundland to the Straights of Magellan. It was empowered to make treaties with the princes of the land; to build fortresses for the protection of commerce, appointing officers and soldiers for their defence; and to nominate magistrates for the preservation "of good government." Such is the substance of this signal edict,<sup>3</sup> which neither claims the sovereignty of any part of those mighty continents, nor mentions *New-Netherlands*, nor even alludes to any prior colony. We may therefore safely conclude, that neither any plantation, nor the name of New-Netherlands, at that time had any existence. But, while historians have overlooked an ordinance which contains so many useful notices, they assure us, with confidence, "that the states-general made a grant of the country, in 1621, to the West-India-Company," that had been thus established the year before, and had been thus invested with sufficient power to trade and to govern. Though this charter has been often mentioned by writers, and relied on by governors, they have neither given it to the world, nor informed their readers where it may be perused.<sup>4</sup> And there are reasons, moreover, to infer, that they have uniformly confounded what may have happened in 1621 with what actually occurred in June, 1620. But, were we to admit as a fact what seems so extremely questionable, what right could the states-general acquire to a region which had been first discovered and first occupied by others? They could not grant, in 1621, what had

been given to the Plymouth-Company, by the king of England, the year before. The law of nations never confers an interest in opposition to first possession, because the preservation of their repose is its first object.

Animated, however, by the favour of the states, the West-India-Company established, about that time, trading-houses in the island of Manhattans, at the confluence of the Hudson, which gave rise to New-York; and at the distance of one hundred and fifty miles towards its source, which laid the foundation of Albany. The Dutch factors naturally cultivated a commerce with their neighbours at New-Plymouth, to whom they sent their secretary Rosier, in February, 1626-7. Both parties were pleased with a mutual intercourse, because the interests of both were promoted. He brought with him peltry and other Indian commodities, which he exchanged for *their corn and fish*.<sup>5</sup> And, from these trivial notices we may infer, that no plantations had yet been established; because they must have produced what was now sought for with avidity, as essential to the existence of man in every situation. Resolved at length to establish a colony, the Hollanders appointed Van Twiller governor, who arrived at *Fort-Amsterdam* in June, 1629, who began to grant lands in the subsequent year. And at this time commenced the first permanent settlement of the Dutch, which now probably acquired the name of *New Netherlands*, though this people, like the French and English, were never able to assign to them any specific boundaries. Yet, as this province was not much attended to by the states, because they were more interested in other objects; and rather neglected by the company, which then engaged with ardour in other enterprises; it increased but slowly in populousness and power. It contended with New-Plymouth, in 1633, for the first possession of the river Connecticut, though without success, because its opposition was feeble:<sup>6</sup> It not long after erected a trading-house on the eastern bank of the Delaware; in order, probably, to establish the two rivers as the extreme limits of New-Netherlands. And, though the Dutch exerted their usual patience and industry, though they cultivated the good-will of the surrounding tribes, which insured them a long peace, they continued extremely inconsiderable during the administration of their first governor. For no civilized society



society can have existed long which enjoys no written memorials of its affairs, and there “ remain not here any records relating to state-matters “ before the arrival of his successor.”<sup>7</sup> The traditions of no country merit much regard, but those of such a people are worthy of none.

Kieft, who was appointed governor in the year 1637, found that his station required what he seems to have really possessed, great vigour and address. For the people of New-England began now to emigrate to the river Connecticut, where they settled, notwithstanding his remonstrances and his threats; which are generally derided, because they are often impotent. New-Haven was planted, during the year 1638, still nearer to the seat of his government, in opposition to his protest, which was despised, because it was unsupported.<sup>8</sup> In June, 1639, Forrest, the agent of Earl Stirling, transferred a considerable part of the eastern extremity of Long-Island to Howel and his associates, with such powers of government as had been communicated to that nobleman by the Plymouth-company:<sup>9</sup> And, encouraged by a title so extremely specious, perhaps just, the inhabitants of Connecticut, having overspread the eastern end of that island, advanced westward to Oyster-bay. But they were driven back by Kieft, during the year 1642, because they now appeared within sight of the place of his residence. And, as they were not a people patient of injury, they instantly seized the Dutch garrison of Fort-Hope, on the river Connecticut, in the vicinity of Hartford, obliging them to recede within ten miles of the Hudson, which was afterwards confirmed by treaty.<sup>10</sup> These notices demonstrate not only the extreme feebleness of New-Netherlands, but the sense which their rulers entertained of the validity of a title specious, but invalid. For, happily for the world, men seldom exert themselves in support of what they feel to be unjust.

About the time that the people of New-England advanced to Connecticut, the Swedes established a *trading-house* on the eastern bank of the Delaware, which gave rise to the village of Elfsburgh, at no great distance from the Ocean. Considering them as intruders on another's territory, Kieft remonstrated against their conduct in May, 1638; asserting, with a confidence which shews the sincerity of his own belief, “ that “ the Dutch had been in possession of the south river many years, which

“ had been unhappily sealed with their blood.” The pretensions of both, however, were equally faulty; because both were advanced contrary to the declaration of the law of nations in favour of first discovery and prior possession. As neither was convinced by the reasons nor terrified by the power of the other, both continued their occupancy and pursued their inconsiderable traffic with the natives. And, as disputes naturally arose between such rivals, either with regard to extent of territory or commerce, a bloodless war ensued. The Dutch dictated the terms of peace. The Swedish colonists became the subjects of the states-general, in September, 1655, by capitulation; “ thirty Swedes taking the oath of fidelity, a few others retiring to Sweden.” But, though the Hollanders had thus acquired sole possession of what they called New-Netherlands, they did not enjoy their good fortune in tranquillity. They were continually pressed on all sides by those who considered them as equally intruders; because their opponents did not admit the equity of their title. The people of New-England advanced upon them with hasty steps from the east: On the south-west Lord Baltimore justly claimed the territory stretching to the fortieth degree of latitude, *where New-England is terminated*. And these expressions alone shew how much English statesmen disregarded the Dutch possession or claims; because, when the charter of Maryland was granted, in 1632, they supposed them not to exist. Stuyvesant, the succeeding governor, represented pathetically to the states the desperate situation of New-Netherlands, from the causes before-mentioned; stating what concern the demands, encroachments, and usurpations, of the English gave the people.” Their history contains nothing but their settlement, their constant turmoils, their extinction. And it ought to teach a lesson to nations and to men, how they admit others to invade their rights, because continued possession at length forms a title, specious if not just.

The aversion and even personal antipathy of Charles II. to the Dutch, influenced his political conduct towards them during his reign, because these passions were unbounded.” Seeing him actuated by his dislikes; the interested incited him, soon after his restoration, to acquire possession of New-Netherlands, which, they informed him, had been formerly usurped

usurped by the people whom he hated and despised. And, while he was distributing American territory with his accustomed profusion, it had been strange had he refused his bounty to a brother whom he loved. Resolved upon the conquest of the Dutch colony, he granted to the duke of York, in March, 1664, the region extending from the western banks of Connecticut to the eastern shore of the Delaware, together with Long-island; conferring the powers of government, civil and military: <sup>13</sup> And considering neither the plantations of Connecticut nor of Holland to exist. Colonel Nichols, who had learned, with the prince, the rudiments of war under Turenne, was however immediately dispatched with four frigates, carrying three hundred soldiers on-board, for the reduction of New-Netherlands: Relying on the promised aid of New-England.

After a disastrous voyage, during which the fleet was separated, it at length arrived at Boston, where the commanders were received with extreme caution. Nichols immediately communicated his instructions to the general-court, which received them with more than usual attention, because it was influenced by its dread of expected reformation. Without much hesitation, it therefore resolved; “to raise a number of men for his majesty’s service, not exceeding two hundred:” But, though actually embodied, they did not share the honour of the conquest of New-Netherlands, because they did not join the armament. <sup>14</sup> Little was the Dutch governor prepared for an attack, though he had long known of the intention of the court of England. And the frigates no sooner anchored in the harbour than he sent a message to the commander, couched in the affected terms of civility, which the weak know how to use on such occasions, to request the reason of their approach. While Nichols did not yield to him in that politeness which softens the rigour of war, he asserted the right of the king, his master, to New-Netherlands, which he insisted had been usurped by the Dutch, and he demanded an instant surrender of the country; offering security to every man’s life, estate, and liberty, who should submit to his power. Stuyvesant found it more easy to defend the right of his masters, the states-general, to that country, by giving an historical account of the colony, in which some fable is agreeably blended, than to resist the force of his opponent: And, protesting

testing against all hostility, he endeavoured to gain time by offering to treat. But the English commander having, in the mean time, published a proclamation, offering to the inhabitants the king's protection, the enjoyment of their property, the privileges of subjects, the governor was constrained to capitulate; because it was impossible to resist his public enemies from without, and the clamour of the burghers within. The proclamation was made the basis of the treaty: The Dutch were to *continue free denizens*; to possess their estates undiminished; to enjoy their ancient customs with regard to inheritances, to their modes of worship, and church discipline: And they were allowed a freedom of trade to Holland, which Nichols had no power to confer, because a king of England could not dispense with the laws, by permitting a commerce which they had prohibited. The dependencies soon followed the fate of New-Amsterdam, the capital. Thus, in September, 1664, submitted New-Netherlands to the English crown, without a struggle, or without any other change than only of their rulers. The conquest conferred rather celebrity on the prudence of the commander than added any thing to his military reputation. Few of the Dutch removed from a country where they had acquired some property, and hoped for greater: And here remained Stuyvesant, who had long governed the country, during difficult times, with considerable abilities and valour; and, in a good old age, breathed his last amid the tears of his countrymen; because his good offices did not cease long after he had ceased to rule the whole! "

Of the country which his prudence and vigour had won, which was now denominated New-York, Nichols instantly assumed the government, as deputy-governor of the duke of York, the proprietary. If we except Jamaica, this is the first colony which had been gained by the valour of Englishmen: And now their sovereign acquired all the rights of a conqueror, bounded only by the principles of humanity, and by the terms of the capitulation; because, being the *generalissimo* of the state, he must be invested with the necessary powers of the supreme commander, for the preservation of his conquests. Hence the well-known principle of the law of England, "that, where a country is conquered by the English  
" arms, the king may exercise over it a legislative authority, and may  
" establish

“ establish such a constitution as he may think prudent.”<sup>16</sup> The duke of York, animated by his peculiar principles, and impressed with an opinion that he was invested by his patent with regal authority, had conferred all his powers on his deputy. Judging wisely that nothing could so much ensure his conquest as giving to the various inhabitants the same uniform constitution and laws, Nichols now “ put the whole government into one frame and policy.” Prudently copying what had been already established by the Dutch, he erected a court of assizes, composed of the governor, the council, the justices of the peace; which was invested with every power in the colony, legislative, executive, and judicial.<sup>17</sup> He found the town composed of a few miserable houses, occupied by men who were extremely poor, and the whole in “ a mean condition ;”<sup>18</sup> but he foretold its greatness should it be encouraged with the immunities which he then recommended. The people of Long-Island were equally inconsiderable, and depressed with similar penury, because the exertions of their labour had only procured them necessary food and clothing. And the Dutch had only begun to raise a little corn and a few cattle, which were now the only products, and gave little spirit to a commerce which had long been solely confined to peltry procured of the Indians. With a laudable intention, he endeavoured to promote the prosperity of the whole, by giving a spring to their ardour: He encouraged the inhabitants to buy lands of the natives, which he afterwards granted, reserving a quit-rent of a penny an acre: And he allowed what was of still greater importance, freedom of conscience to every one. Yet, owing to the first Dutch war, which soon ensued, and to other causes, the populousness or power of the province remained for years extremely inconsiderable, because a few Hollanders only, attracted by their kinsmen, emigrated thither: And Englishmen, influenced probably by the dislikes of their sovereign, resorted to English colonies.<sup>19</sup> Not only had New-Netherlands been granted to the duke of York, but one half of Connecticut; which gave rise to one of those disputes that can only be settled by amicable treaty, because no acknowledged principles existed that were applicable to the pretensions of both. This colony accordingly sent commissioners to New-York, in December, 1664, to decide

cide a dispute which so much involved the peace of both. Long-Island was resigned to the duke of York ; the river Mamaroneck, reputed thirteen miles east of West Chester, and a line drawn from it, north-north-west to the boundary of Massachusetts, were declared to be the eastern limits of New York. Thus the people of New England had driven the Dutch from the river Connecticut almost to the Hudson, to within thirty miles of their capital. But a treaty which was founded, as we are assured, in ignorance and fraud, only engendered future controversy :<sup>29</sup> And Connecticut was convinced in after times, that fair dealing is not only the most honourable, but always the most safe.

As the war was now commenced, Nichols laboured with his usual energy to put his conquest in the best posture of defence. He augmented the number of his foldiers, and consequently an expence, which the poverty of the whole was little able to support. And while the people were taxed, and the foldiers were quartered on the burghers, who were not enabled to pay in proportion as their burthens were encreased, as they were destitute of shipping, their trade was totally lost. And as they received no supplies from England, a general calamity ensued. In this extremity, the governor, with a spirit worthy of imitation, advanced his own money, and extended his credit to supply the public exigences. But happily the West India company of Holland did not put in execution its threats, by attempting now to regain what its former imbecillity had lost. During these embarrassments, the vicinity of Albany was somewhat disturbed by the inroads of the *five nations* of Indians, who in the height of their bloody disputes with Canada, were sometimes regardless of their friends. Though the Dutch have not been equally boastful of their own virtues, they have been assuredly more successful than the French, in conciliating the affection of the tribes. From their settlement on the Hudson, to the present time, a continued peace existed between them, and that renowned confederacy : Nor is it worthy of inquiry, whether this remarkable circumstance was owing to their superior address, or to their peculiar situation, which gave them an opportunity of supplying the latter with warlike stores during their long wars with the former. It was to the ancient influence of the Dutch that the province was now indebted for  
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the peace, which was concluded with the most formidable of all the nations. While Nichols, in August, 1666, endeavoured to cultivate a good agreement with Tracy, governor of Canada, he warned him, by no means to invade the dominions of his sovereign.<sup>21</sup>

Amid his prudent military precautions for the defence of the province, he endeavoured to promote its internal prosperity and quiet by legislative regulations. The court of assizes in June, 1665, collected into one code the ancient customs, with such additional improvements as so great a change required, regarding the laws of England, as the supreme rule: And being transmitted for that approbation, without which they acquired little authority, these ordinances were confirmed by the duke of York in the subsequent year. In order to discharge the public expences, the same authority imposed a general rate on the estates of the inhabitants without their consent, because they were deemed a conquered people. The city of New-York, which had formerly enjoyed extensive privileges under its ancient government, was now incorporated, and placed under the administration of a mayor, aldermen, and sheriff.<sup>22</sup> The settlement of Long-Island, so remarkable for beauty of situation and for the fruitfulness of its plains, had been nearly co-eval with the existence of New-Netherlands and Connecticut. The Dutch soon occupied its western extremity; from the latter, emigrants passed the Sound and occupied the opposite shores: And now the Hollanders enjoyed one third, and the English the other two. Disputes naturally arose between men so dissimilar in all things. And the good sense of Nichols induced him to call together two deputies from every township, in order to settle late controversies, to prevent future ones. They took this opportunity to transmit an address to the duke of York; <sup>23</sup> acknowledging their dependence on him, *according to his patent*; promising to submit cheerfully to such laws as shall be made, under his authority, to defend his rights; requesting that their declaration might be accepted as a memorial against them and their heirs, when they should fail in duty. It has been supposed by some, but denied with reason by others, that the most ancient code of laws of New-York was enacted at this general meeting at Hempstead; in order to evince that an assembly was thus early introduced

into the jurisprudence of that province. But, while there is the most decisive evidence that the code was compiled at the affizes before-mentioned, there is none that any laws were enacted by this convention, composed of deputies from Long-Island alone, who could form no legislative regulations for the whole : And history declares, that they were called for the special purpose of settling the boundaries of townships, though that probably was made the pretence, whilst the real design of Nichols was to procure a declaration of submission to his master. The difficulty seems to have arisen from denominating *the court of affizes*, during those days, *the assembly*, though the people were not represented in it. Pleased with the situation of security and of quiet, to which he had brought the province, the governor flattered himself, though perhaps without cause, “ that now even the most factious republicans must acknowledge themselves fully satisfied with the method and way they are in.”<sup>24</sup> Yet he himself became at length uneasy in his situation, because he felt the pecuniary burdens of the war too heavy, and he begged that a better man might be appointed to supply his place. He retired in the beginning of the year 1667. While he governed the inhabitants as a conquered people, he paid attention even to their prejudices ; they loved the man whose orders they disliked :<sup>25</sup> And it is recorded to his honour, that he exercised his extraordinary powers with moderation and integrity.<sup>26</sup> His conduct was approved by his sovereign, who rewarded the conqueror and saviour of a province with *two hundred pounds*. Yet, on a gratuity, which he knew ought not to be estimated by its extent, he set a proper value, because it had been conferred *when it could be least spared*, and he betrayed no discontent, because true merit is always modest.<sup>27</sup> By the peace of Breda, concluded in July, 1667, New Netherlands remained in possession of the conquerors, by virtue of the general clause, “ that each nation shall retain what it had acquired in the war.” In this stipulation, the politicians of those days regretted the loss of Surinam with a zeal which shews how little present impressions ought to influence the judgement in political calculations.

Lovelace assumed the administration in May, 1667. And with a spirit, which does honour to his prudence, he followed the excellent track which had



had been marked by his predecessor. The people, committed to his charge, enjoyed all the felicity which flows from that desirable situation, in which no complaints are heard, because none exist. But he was unfortunate: He lost the province, which he had not power to protect: And his estate was afterwards seized, to repay a debt to his master, whom he had offended, perhaps without cause. Soon after the commencement of the second Dutch war, begun without necessity, and ended without glory, a small squadron was sent from Holland, under the conduct of Binkes and Evertzen, to destroy the commerce of the colonies. This service they effectually performed on the Virginian coast. And having here procured intelligence of the defenceless state of New-York, of the neglectful absence of Lovelace, they seized the opportunity to regain now what had been formerly lost. Knowing how advantageous in war are sudden impressions, they sailed up to the fort, which surrendered in July, 1673, in a manner which shews either the remissness or treachery of Manning, the commander. The city instantly followed its example, by submitting at discretion. Neither the facility of the present conquest, nor that nine years before, conferred any additional military honour on those who achieved them. But, at both periods, they acquired the praise which is due to humanity in war, to attention to the conquered. The Dutch admirals, imitating the moderation of Nichols, rather than the accustomed rigour of the successful, granted the inhabitants the full enjoyment of their privileges. They offered the same flattering terms to the other districts of the province, on condition of sending deputies to swear allegiance to their masters. Actuated partly by their inclination, but more by their fears, the inhabitants of the whole extent of New-Netherlands submitted to their fate. But neither the triumph of the one party, nor the mortification of the other, was of long continuance. The peace of London, concluded in February, 1674, prudently provided, “ that “ whatsoever may have been taken, during the war, shall be restored to “ the former possessor.” <sup>28</sup>

As the validity of the grant to the duke of York, while the Dutch were in quiet possession of the country, had been very justly questioned, he thought it prudent to obtain a new one in June, 1674. <sup>29</sup> It recited

and confirmed the former: It empowered him to govern the inhabitants "by such ordinances, as he or his assigns should establish;" to administer justice according to the laws of England, allowing an appeal to the king in council: It prohibited trade thither without his permission: And though it allowed the provincials to import merchandises, yet it required them "to pay customs according to the laws of the realm." Such is the substance of a charter, under the authority of which he ruled New-York till his accession to the throne. But it is unnecessary to point out the defects of what could not have been defended, by fair discussion, and it soon became extinguished by the event just mentioned. Edmund Andros, whose talents now recommended him to notice, whose subsequent conduct rendered him so conspicuous in colonial annals during twenty years, was soon after appointed governor. He was ordered to disturb no man's estate, while he received possession of the country from the Dutch; to distribute justice in the king's name, as had been practised under the government of his two predecessors. In order to maintain the government which was now established, a great variety of rates were at the same time imposed by the sole authority of the duke of York, who, in order to encourage the trade of his province, reduced the customs six in the hundred. And of these duties Dyer was appointed collector, who was not long after arraigned as a traitor, because he acted under the authority of a commission, which was now solicited with avidity, because its authority was disputed by none.<sup>28</sup>

To Andros the Dutch resigned their authority in October, 1674. He immediately received the submission of the inhabitants as far westward as the Delaware. And he soon after "reduced the east end of Long-Island, and some other turbulent places." In order, however, "to settle the minds of the inhabitants," the governor thought it prudent to declare in the subsequent month: That former privileges and estates, legally possessed prior to the late conquest, should remain sacred; that the judicial proceedings during the Dutch government should continue in force; that the *known book of laws* formerly established, being once more confirmed, should be again punctually obeyed.<sup>29</sup> Thus was New-York happily regained: And thus were its inhabitants again enslaved to the will of the conqueror,

conqueror, because, being admitted to no share in the legislature, they were subjected to laws, to which they had never assented. Manning, through whose neglect or treachery the province had been lost, because the fate of nations often depends on the conduct of one man, was now degraded from the rank of a soldier, by the sentence of a court martial, and justly declared incapable of future trust. Andros endeavoured, during May, 1675, to little purpose, to acquire the country lying to the westward of Connecticut river, which had been conferred on the duke of York, though it had been possessed from 1637, and confirmed by the king in 1662. The general court, with the spirit of men who understood their rights, and determined to defend them, protested against his conduct in terms which convinced him how necessary it was to act with caution. The advisers of the duke of York approved of reviving the claim on Connecticut, because "thereafter some good use might be made of it:" And it long disturbed the peace of the two colonies, because it was constantly revived without necessity or use. His conduct was highly approved of by that prince, "who rejoiced that he had reduced the factious towns on "Long-island;" who informed him, in language which at once evinces his own temper and the inclinations of the people, "that he had done "well to discourage any mention of assemblies, of which the inhabitants are desirous, as they are neither in your instructions nor consistent "with your form of government." Yet Andros, with an attachment to the cause of the people of which he has been supposed, by historians, incapable, solicited the duke of York for an assembly; which was steadily refused, because he foresaw danger from its encroachments, and could not perceive its utility.<sup>39</sup> The governor used the permission which had been given him, and he hastened to England in November, 1677: Leaving the province in profound peace under the care of the deputy-governor.

Though the people felt no real oppression under a form of government altogether arbitrary, yet they enjoyed no happiness, because their desires had been denied, and they envied the superior enjoyments of their neighbours. The orders which Andros brought with him from England, in the subsequent year, contributed to augment an indisposition which at length became incurable. As the revenue, which had been imposed for three

three years by the duke of York's instructions to the governor, was now about to cease, this prince commanded, in the genuine language of despotism, to publish his pleasure, " that the same duties should continue three years longer : " And the tax on the importation of liquors was increased, by a similar order, in the year 1679. " The public indignation was directed against Andros, who executed only what another commanded ; which ought to teach a lesson to men, in similar situations, how they fulfil what it is neither safe to give nor to receive. He was recalled in the beginning of the year 1680, in order to answer complaints which originated in the unhappiness of the people rather than in his misconduct. Yet, as might have been expected, he was honourably acquitted upon a full hearing, because " it was not proved that he had " either misbehaved or broken his trust. " " From the accusations and the proofs, it appears, that his chief, his only, crime, consisted in having acted under a constitution tyrannous and illegal. It has been the lot of Andros, as well as of others, that every thing has been said against him, but nothing in his favour ; because writers, disregarding the forms of the government and ignorant of his instructions, attributed all to the temper of the man. It has been hitherto unknown, but ought no longer to be concealed, that *humanity* and *gentleness* were recommended to him " as the greatest of virtues in the ruler of a distant territory. Being thus disappointed in their expected relief, the people turned their resentment against a person of less consequence and of less power. Dyer had regularly collected the public revenue, without opposition, to the present time : But, as the legality of the duties lately imposed was now justly questioned, he was accused of high-treason, because he collected taxes without the authority of law. A special court was appointed for his trial in the beginning of the year 1681. The prisoner, however, demanded to know by what power the judges sat ; whether they did not act under an authority derived from the same prince with whose commission he was honoured ? The court thought it prudent, " during the present disorders, " to send him, with his accuser, to England for trial. Nothing could be more irregular, and consequently more oppressive, than the whole of this proceeding. Dyer was not indicted for an offence against

against the *statute of treasons*, that admirable barrier against oppression, but for the ancient and exploded crime of *encroaching power*, by collecting taxes without legal authority. He might have safely admitted the truth of the facts charged against him; denying the inference, that they amounted to treason: He might have appealed to the king in council, had the judges given their opinion against him. But the mode, which was then pursued, shews how little the principal persons of that province were informed of English law. He was discharged, as his prosecutor did not appear against him, since the end of the prosecution was answered.<sup>34</sup> This spirited measure, however irregular it may now appear, had the greatest effect in laying in ruins that system of despotism which had so long afflicted the people.”<sup>35</sup>

In order to be relieved from a servitude that had degraded the colony, and now gave dissatisfaction to every one, the council, the court of assizes, the corporation of New-York, concurred in soliciting the duke of York “to permit the people to participate in the legislative power.”<sup>36</sup> But, though their desires were not immediately granted, they were received with the greatest attention. And various causes induced that prince to gratify the petitioners, notwithstanding his aversion to popular assemblies. The ordinances, which, by his sole authority, had established the public revenue, expired at a time when his power to renew them was not only denied within the province, but vigorously opposed: This conduct was justified by the opinion of lawyers of great eminence in England: His own advisers doubted the sufficiency of his power: And, above all, the continued adversity which had so long embittered his life, made him regard the rights and feel for the sufferings of others. Brockholes, the deputy-governor, on whom the administration devolved upon the departure of Andros, was directed “to keep things quiet at New-York in the mean time.” It was intimated to him, in February, 1682, “that the duke will condescend to grant the desires of the inhabitants, but on condition that they raise money for the support of government.” And he was desired “to found the principal people, and to procure a written promise.” He was soon after informed, by the duke himself, “that he intended to establish the same frame of government as the

“ other

“ other plantations enjoyed, particularly in the choosing of an assembly.”<sup>37</sup> Actuated by all these motives, Dongan, who, as we are assured, “ was a “ man of integrity, moderation, and genteel manners, though a professed “ Papist,” was appointed by him governor in September, 1682. In addition to former powers, he was instructed to call an assembly, which should consist of a council, consisting of ten ; of a house of representatives, chosen by the freeholders, of the number of eighteen members. Like all other provincial legislatures, it was empowered to make laws for the people, which should be agreeable to the general jurisprudence of the state ; which should be of no force, however, without the ratification of the proprietary.<sup>38</sup> Thus, says their historian, “ the inhabitants of New-York, “ after being ruled almost twenty years at the will of the duke’s deputies, “ were first admitted to participate in the legislative power.”<sup>39</sup> For they had been so long ruled as a conquered people, though with humanity, moderation, and wisdom. Nothing could be more acceptable to them than this interesting change in their political situation ; for which they expressed their gratitude in terms that equally evinced their late unhappiness and present satisfaction.

When Dongan arrived, in August, 1683, he found the country somewhat prepared for his reception and for an agreeable alteration, though still greatly discontented, because many of the people still feared for the future. As nothing could tend more to quiet the apprehensions of every one, he immediately issued writs to the sheriffs to convene the freeholders, for choosing deputies to represent them in the legislature. And, when the assembly met, it was governed by the same motives that had actuated all others upon the like occasion. It passed an act of general naturalisation, in order to give equal privileges to the various kinds of people who then inhabited a province, which was now, for the first time, divided into counties. Together with an act, “ declaring the “ liberties of the people,” there was now passed one for “ defraying “ the requisite charges of government for a limited time :” Thus performing the promise that had been ignobly required as the price of their present enjoyments, and improperly given. Being transmitted with a few other laws, with regard to internal œconomy, they were all confirmed

firmed by the duke of York in the subsequent year.<sup>40</sup> The legislature was convened once more in August, 1684, when it explained the act for defraying the charges of government. And these seem to have been the only assemblies which were ever called prior to the Revolution. Ashamed of being so long ruled as a conquered people, the legislature and courts of justice of this province equally disregard all legislative regulations made antecedent to that epoch.<sup>41</sup> The assembly of 1690 resolved: That the laws enacted, during the years 1683 and 1684, and the privileges of the people declared by them, are void; because they had not been confirmed or observed by the duke of York or the late king: That the several ordinances, made by the late governors and their councils, are equally invalid; because contrary to the constitution of England, to the practice of other plantations. But resolutions, which were dictated by that vehemence of spirit which then agitated the whole, merit little credit; because, in the determinations of party, truth is seldom to be found. The edicts of the duke of York and his governors, prior to the year 1683, being established by the only legislative authority which that conquered territory had ever enjoyed, formed really its laws: The constitutions of the various colonies being extremely different, and depending on dissimilar charters and instructions, the practice of one province affords no rule with regard to the proceedings of another. And the acts of assemblies, wherein sat the people's representatives, had assuredly the force of laws till dissented to, because they were complete legislatures. But, from these singular resolves, we may infer, that the inhabitants of New-York claim no peculiar immunities from any authority prior to the Revolution. From this æra they have been deemed English subjects, inhabiting a dependent province of the state: And, having never had a charter, they can, from this source, claim no peculiar privileges.

Owing to his temper as well as to his situation, Dongan engaged more than any of his predecessors in the affairs of the tribes bordering on his province, which had so great an influence on its prosperity and peace. When the French settled in Canada, during the year 1603, they found the *Five nations*, which, under the names of Mohawks, Oneydoes, Onondagas, Cayugas, and Senekas, had been confederated from the most ancient

times, engaged in implacable warfare with the Adirondacks, the most powerful tribe in that country. Though, in the wars of such people few striking events occur, in the present two signal revolutions happened which deserve to be remembered, because they were attended with important consequences. The contending parties had been, in their turn, forced to abandon their native land. The former had been already driven from their possessions around Montreal, to seek an asylum on the south-eastern coast of the lake Ontario: The latter had been constrained, in their turn, to abandon their lands situated above the *Three rivers*, and to look for safety behind the strait where Quebec was built; because they had too much despised their enemy till it was too late. Prompted by the warlike spirit of his nation, and by his interest, Champlain, who conducted the French colony, joined the Adirondacks, because he had settled on their lands and expected to promote his views. The tide of success instantly turned. The conduct, the bravery, but, above all, the fire-arms, of the allies, proved too many for the intrepidity and stratagem of the Five nations. And they were, in their turn, defeated in several battles, and reduced to the greatest distress. At this critical juncture arrived the first Dutch ship in that part of the river Mana-hatan, where Fort-Orange of the Hollanders, the Albany of the English, was built. They now procured that which had alone given superiority to their enemies. And the Adirondacks were, not long after, annihilated as a nation.

It was at this time that the mutual dread and enmity between the Five nations and the French commenced, which brought so many calamities on both. It was at the same time that a peace ensued between the former and the Dutch, which continued without interruption, because it was advantageous to both; the one was constantly engaged in war, the other was occupied with the arts of peace. When the English acquired possession of New-York they were adopted, by the tribes, in the place of their ancient allies, and a similar good correspondence continued, because the same causes existed. Engaged in continual warfare, and neglected by France, the colony remained long inconsiderable and feeble: And it was not till the year 1640 that the French laid the foundation of Montreal, which long formed rather a mart for the trade  
of



of the western Indians than a plantation for the purpose of tillage. All parties being at length tired of a war, which was attended with neither honour nor advantage, a general peace was concluded in the year 1667, which continued till the arrival of Dongan without any considerable interruption. The French now advanced along the river St. Lawrence; and, during the year 1672, built Fort Frontenac on its north-western bank, where it rushes from Ontario, its mighty source. But a peace, which was so advantageous to the Canadians, by enabling them to erect distant fortifications, and to extend their commerce over an immense country, proved extremely inconvenient to the English colonies. The Five nations, in order to gratify their passion for war, to revenge insults offered during the time of their distress, turned their arms southward, and conquered the country from the Mississippi to the borders of the plantations as far as Carolina, destroying numerous nations, whose names no longer remain. And Virginia and Maryland were involved often in the calamities of their allies, whom they were unable to protect, except by treaties; which were generally infringed, because they could not be enforced. In July, 1684, however, Lord Effingham and Dongan concluded a definitive peace with these powerful tribes for all the settlements, which was long inviolably kept, because they soon renewed the war with their ancient enemies, the French. It was at this time that the traders of New-York first adventured on the great lakes westward, in order to participate with the Canadians in a commerce which was so extremely gainful, and which was obstructed by their rivals in proportion to its importance. Animated by a zeal which has justly acquired him honour, Dongan solicited the ministers of England to prevent the Canadians from navigating the lakes which belonged to the Five nations, and consequently to England. But he was told, what he might have known: That it was to no purpose to ask the government of France to prohibit her subjects from pursuing an advantageous commerce in favour of their rivals: He was directed to encourage the Indians, in order that they might adhere to England; to act prudently, so as to give no umbrage to European neighbours: And, by peaceful arts, to make it the interest of all the tribes to trade rather with the colonists than the French.\* Then commenced dis-

putes between the two nations, which long endangered both, the consequences of which are perhaps at this day felt.

When the duke of York ascended the throne of his brother, this province, with its dependencies, devolved on the crown. And notice of this interesting event being formally transmitted thither, he was proclaimed within his ancient territories with every demonstration of unfeigned joy: All men joining in felicitations of his good fortune, while they had cause to deplore it as the greatest of evils.<sup>43</sup> Long had they solicited, with anxiety, for a grant of privileges similar to those of other colonies, with design to perpetuate that form of government which had been given formerly to their prayers, and had been received with satisfaction. And a patent had been actually signed by that prince, which required only some trivial solemnity to render it complete and irrevocable. But a king of England degraded his station when he refused to confirm what, as duke of York, he had formerly agreed to. In vain did the corporation of New-York, and various public and private bodies, beg for a confirmation of their privileges. Having determined to establish the same arbitrary rule in this province as he had designed for New-England, far from conferring new immunities, he even withdrew the old.<sup>44</sup> In June, 1686, Dongan's commission was renewed:<sup>45</sup> Empowering him, with consent of the council, to make laws as near as might be to those of England, to continue former taxes, and to impose new ones: And he was instructed to govern according to his commission; to take away no man's life, member, or estate, contrary to the law of the province; to allow no printing-press: Thus establishing a real tyranny, and depriving the objects of it of the most powerful means of rendering it odious in the sight of mankind, and consequently less permanent. Thus, deprived of the assembly, was New-York unhappily reduced once more to the condition of a conquered province.

Dongan continued to execute the trust thus reposed in him with a zeal and fidelity equal to the extensiveness of it. And it is recorded of him, that, "at the same time that he was a Roman-catholic, he was much of a patriot, and an irreconcilable enemy to a French power." Though subjected to a form altogether arbitrary, the people lived without grievan-

ces and without complaints during the continuance of his administration, which was equally remarkable for its wisdom and moderation. But the chief attention of every one, during those days, was turned to the frequent, the continued, wars of the Five nations and the French, because they ruined their Indian traffic, which was then in its infancy, and alarmed their frontier. During the peace, from 1667 to 1683, the French, with a spirit of enterprise and perseverance which do them honour, formed a settlement at Detroit, established a fort still farther westward at Missilimakinack, and extended their commerce among the numerous tribes that hunt on the banks of the great lakes and on the higher branches of the Mississippi. They were, however, steadily opposed by the Five nations; who, untutored as they were, had sagacity to perceive what seems not to have occurred to the ministers of England. They saw their own destruction, and with it the loss of the colonies, in the extensive projects of France. Feeling all the inconveniences arising from the constant supplies furnished their numerous enemies, they constantly attacked the Canadian traders, who carried warlike stores to those with whom they were at war. The French not only lost their commerce, but what was of greater importance, their reputation for power, among their Indian allies.

Under the conduct of De la Barre and Nonville, two successive governors of Canada, the French endeavoured either by force or treaty to prevent a conduct so inconsistent with their present and future views; but to no purpose.<sup>46</sup> Dongan mean-while received orders, in consequence of his repeated solicitations, to give aid to the Five nations, and to repel their powerful oppressors. But the ministers of France, having received notice of commands so inconsistent with their designs, perceived that it would be easier to execute their projects in Europe than beyond the Atlantic: And, in November, 1686, they had the address to conclude a treaty of neutrality for America with James, stipulating what seems to have been its chief object, that no assistance should be given to savages. Dongan was ordered to execute strictly what seems to have sacrificed the tribes, which had long formed a mighty wall against the irruptions of the Canadians, to the mistaken politics of his master.<sup>47</sup> And, according to their

their usual policy, the French either debauched or chastised the Indian allies of England, to whom that gentleman could give no other aid than the most salutary advice, which had proved of more real advantage than the forces of his province, had it been at all times carefully followed. The ministers of England, in the following year, discovered, when it was too late, what ought to have been foreseen; "that a treaty of neutrality, in America, was not for the interest of England."

Though a fresh treaty was executed in December, 1687, for the prevention of hostilities between the French and English colonists, till January, 1689, James executed a project of the greatest consequence, had it proved as lasting as it was well designed. In the union of the northern colonies, formed as a barrier against the encroachments of Canada, New-York was included. And, as the services of Dongan were now no longer necessary, his commission was superseded in April, 1688. He was ordered, at the same time, to deliver over his charge to Sir Edmond Andros; who soon after assumed the administration in his room. Thus, at the end of four-and-twenty years, from the epoch of its conquest, during which it had acquired no great augmentation of people, of commerce, or wealth, New-York ceased to be a separate province. And it had now the mortification to be ruled by Nicholson, the lieutenant-governor, with the advice of part of the grand council of New-England. During their short administration, the people felt no other grievance, than the disquietude, which naturally afflicts men, who perceive themselves reduced to an unmerited state of degradation.<sup>48</sup>

But a change, which hurt the pride of all, gave the greatest dissatisfaction to every one. The weak who had seen "papists settle in the province under the smiles of the late governor," deemed their religion in danger, and "trembled for the protestant cause."<sup>49</sup> The wise, observing the province degraded by its annexation to a hated rival, with greater reason considered their civil rights as annihilated. During this state of the minds of men, intelligence of designs, in favour of the prince of Orange, fanned the spark of discontent and inflamed the public expectation. Yet all remained quiet, till tidings arrived of the revolution at Boston, which deprived Andros of power; and every one seemed disposed to wait patiently

patiently till orders should be transmitted by the prince, had not the seeds of sedition been blown thence to New-York. Information of the accession of William and Mary to the throne was received with joy, because it was equally agreeable to people and rulers, and the lieutenant-governor, and council, waited with anxiety for orders to proclaim their new sovereigns. But, while the principal officers and magistrates were assembled to consult of the public safety, the fort was seized by "the rabble,"<sup>50</sup> who are always impatient, and seldom promote their own good in the numerous changes of which they are made the instruments. It was on this occasion that Jacob Leisler, a merchant of ruined fortunes, a foreigner of the lowest education, a man of the weakest abilities, emerged from the crowd, and placed himself at the head of the insurgents. He was not at first supported openly by men of property and consequence, who usually fear the loss of their interests in popular innovation. A report, however, being circulated, that a fleet was arrived from the prince of Orange, it had then that prodigious effect, which rumours generally have when the minds of the multitude are greatly agitated; and he was instantly joined by great numbers in arms. In order to bind the whole together, a declaration<sup>51</sup> was signed, promising to guard the fort, on behalf of the powers now governing England, to be surrendered to the person, of the protestant religion, who shall be sent to take possession thereof. Amid a ferment, which it had been unable to prevent or to extinguish, the council "thought it advisable that Nicholson should depart to England, to give an account of affairs." And with a spirit, which does honour to that body, it at the same time represented, to the secretary of state, "how fatal it had been to New-York to be annexed to Boston, and prayed for a redress of grievances, before any settlement should be made."<sup>52</sup> Its patriotic efforts were attended with the most salutary effects, though the province seems never to have rewarded, as it ought, the laudable conduct of its benefactors.

In order to add reputation and strength to his party, Leisler soon called a convention of deputies from the towns and counties, to which his influence extended: And, to it were admitted two persons, delegated by the assembly of Connecticut, to assist with their advice. The convention immediately

immediately conferred the command of the fort on Leisler, as a reward of his forward zeal. It raised a few troops for the common defence ; that colony agreeing “ to send ten soldiers out of mere affection for New-York.” It appointed a new collector of the customs ; displacing Plowman, *because he was a papist*. In order to induce those to return, who had fled from the storm of the times, it published a declaration, promising protection to all that will pursue their occupations in peace. And it ordered a day of thanksgiving for this signal deliverance of the province ; directing, with peculiar propriety, that it should be inculcated on the people “ to fear God, to honour the king, and not to meddle with those “ that are given to change.” William and Mary were proclaimed in June, 1689. And, now was the province ruled by a *committee of safety*, which had been suggested by New-England, at the head of which Leisler was placed, as the properest instrument in the hands of others. <sup>53</sup>

When William was informed of the dutiful submission of the province, of the attachment of the council and officers, he transmitted a letter to lieutenant-governor Nicholson, or to such as for the time execute the law ; empowering him to administer the government in his name. <sup>54</sup> Considering the royal order as addressed to himself, in the absence of that gentleman, Leisler compelled the messenger to deliver it to him, notwithstanding the protest of the late council. And he instantly assumed the name, and exerted the authority of governor. He convened two sessions of assembly, during the year 1690 ; which passed a variety of laws, with the same unconcern as if their power had been established from the remotest antiquity, and imposed considerable taxes, either for the support of the present power, or for defence of the province. But not only the authority of Leisler, which indeed was liable to great exception, but the legality of those duties was disputed by a party, considerable from its numbers and former rank, which refused to obey the one or to pay the other. And it required force to maintain his authority within the city of New-York, where he was often insulted, though this was the seat of his power. <sup>55</sup> The whole southern parts of the colony submitted to Leisler with a cheerfulness, in proportion as they approved his conduct or dreaded his power. The inhabitants of the eastern districts of Long-Island,

Island, who had originally emigrated from New-England, and had never cordially obeyed, professed their submission, while, with their usual dissimulation, they solicited Connecticut to receive them under its jurisdiction. But he was opposed by the people of Albany, who, being equally friends of the Revolution, formed a convention, which resolved to maintain the garriſon for William and Mary, but independent of a man, whom they considered juſtly, perhaps, as an uſurper, and whoſe violence they feared. Inebriated with power, newly acquired and unmerited, which has too often corrupted wiſer minds, conſidering all as rebels againſt the king, who did not ſubmit to his authority, he determined to reduce them by the terror of his power to that ſubmiſſion, which they reſuſed to his name and pretenſions. Animated by theſe motives, both parties prepared, the one to reduce, the other to retain poſſeſſion of Albany. But a cruel irruption of the French and their Indians on that frontier, which ought to have taught the virtue of moderation to all, proved favourable to the views of Leiſler. And, his arms conducted by his confident Milbourn, and reinforced by eighty men ſent him from Connecticut, at length proved victorious. The principal inhabitants fled into the neighbouring colonies, and their eſtates were conſiſcated by the conquerors, with the true ſpirit of civil diſcord, unfeeling and improvident. “ The poſterity “ of the ſufferers,” as we are aſſured, “ never ſpeak of thoſe troubles “ without the bittereſt invectives againſt Leiſler and his adherents.”<sup>56</sup> Yet hiſtory diſplays ſuch revolutions to the obſervation of mankind in vain, becauſe they ſeldom expect ſimilar events, till they have already occurred with their attendant evils. It was on this occaſion, that Maſſachuſets, New-Plymouth, and Connecticut, formed a league with Leiſler; agreeing to raiſe nine-hundred men for mutual defence.<sup>57</sup> Of New-England it is a remarkable characteristic, that ſhe has at all times found delight amid ſcenes of turbulence. No governor of royal appointment, either before this æra or ſince, could ever engage her in ſimilar meaſures, though conjunctures have often occurred equally proper, becauſe equally dangerous to common intereſts. Addreſſes were ſent to William, from all parts of this diſtracted province, by every denomination of men; repreſenting their oppreſſions, and praying for ſpeedy pro-

tection : And, Leisler sent Blagg as a special messenger to England, to set forth those services, which occasioned the present and future miseries of the people, and to sue for reward.

Meanwhile, Nicholson having arrived at court, and represented the sad condition of the province, to which it was reduced equally by foreign invasion and domestic faction, Colonel Sloughter was appointed governor of New-York, in August, 1689. Thus was that colony again separated from Boston, because the council had represented this policy as essential to its existence. But, owing to the embarrassed situation of the affairs of England, and to other causes, he did not arrive within his government till March, 1691. He immediately published his commission in the usual form, and assumed the administration. Yet Leisler, enamoured of power, or betrayed by ignorance, refused to surrender the fort when formally demanded in the name of the common sovereign of both ; pretending “ that he knew him not,” and saying, that “ he would own no governor without orders under the king’s hand.” The prudent vigour, however, of that magistrate, aided by a numerous body of the inhabitants, who appeared in arms to support the royal authority, soon compelled that infatuated man to submit at discretion ; who soon experienced that rigour which he had often inflicted on others, because civil discord delights in retaliation. A special court, composed chiefly of those who had lately suffered oppression, was soon appointed for the trial of the late governor and his associates for treason and murder. Six pleaded, and were found guilty. Leisler, and Milbourn, his principal adviser, denying the jurisdiction of the court, with the true spirit of enthusiasm, refused to answer, and were condemned. The former were pardoned : The two latter, upon the solicitation of the two houses of assembly, were not long after executed.<sup>59</sup> And though this event gratified their numerous enemies, it gave rise to two violent factions, which long distracted public affairs, and embittered private enjoyment. The parliament, influenced in after-times by the intrigues of Massachusetts, reversed their attainder :<sup>60</sup> And this memorable exertion of parliamentary power, even in the reign of William, which annulled the judgement of a colonial court of justice, during the season of distrust and opposition, would



would have spread discontent and infurrection through the American continent.

#### AUTHORITIES AND NOTES.

<sup>1</sup> The journals of the four successive voyages of Hudson, during the years 1607-8-9-10, have been preserved by Purchas, and shew precisely the nature and extent of each. — Pilg. 3 v. p. 530-95. — The lords of the committee of colonies *considered*, during the year 1674, “ of employing a “ proper person to continue Purchas’s Collections.” Nothing would have been of more importance; because such works form the very essence of history: As early as the years 1615-16, those renowned navigators, Le Mere and Schouten, took formal possession of several islands in the southern hemisphere in the name of the States-general. — Corps Diplomat. 5 v. p. 282. — The same book, and the collection of treaties, shew how gradually the independence of the states was admitted by various nations, from their first alliance with Elizabeth, in 1578, to the treaty of Munster in 1648, when it was acknowledged by Spain. — Treat. of peace, 3 v. p. 516.

<sup>2</sup> Stith’s Hist. Virg. p. 153. — <sup>3</sup> This Edict may be seen in Corps Diplomatique, 5 v. 2d. part, p. 363; in Leonard; and in other similar collections. — <sup>4</sup> But it is in vain to search such voluminous compilations for the grant of New-Netherlands of 1621. Their governor had no copy of it in 1660; he refers to it at the conquest of the colony in 1664: Yet what seems to have formed the *great charter* of the province is not to be found among the Dutch records at New-York. — Smith’s Hist. p. 3-11-19.

<sup>5</sup> Neal’s N. Eng. 1 v. p. 126. — <sup>6</sup> Hutch. Hist. Massa. 2 v. Apen. p. 469; which cites Bradford’s MSS. — <sup>7</sup> There are no books, with regard to *state-affairs*, among the Dutch records at New-York prior to the year 1638. — Smith’s Hist. p. 4. — <sup>8</sup> Ib. and the historians of New England. — <sup>9</sup> See a copy of the deed among N. York Pap. Plant. Off. 1 v.

p. 1. — <sup>10</sup> Smith's Hist. p. 5. — <sup>11</sup> Ib. p. 4-13, and the charter of Maryland:

<sup>12</sup> See Sir John Dalrymple's Mem. 2 v. p. 4. for a singular instance of the contempt of Charles II. for the Dutch. — <sup>13</sup> See the grant in N. York, Ent. 1. v. p. 7. — <sup>14</sup> Hutch. Hist. Mass. 1 v. p. 231. — <sup>15</sup> Smith's Hist. p. 13-23: See the articles of capitulation in N. York pap. 1 v. p. 59. — Of all the stipulations in their favour, the Dutch considered that as the most important, which conferred an open trade with Holland, which afterwards occasioned considerable difficulty. Having petitioned in October, 1667, that they might enjoy their free trade, according to the law of nations; the committee of plantations reported to the king: "That  
" in regard of the necessity of a commerce, which cannot at present be  
" supported from hence, a temporary permission should be allowed them  
" for seven years." But the merchants and manufacturers fearing the loss of their own traffic, remonstrated against this licence, and it was not long after taken away. — N. York pap. 1 v. p. 67-8. — The corporation of New-York once more petitioned the duke of York to be allowed a free trade to Holland, without being obliged to enter in the ports of England; "being willing to pay the customs in the colony:" But without success. Ib. 127.

<sup>16</sup> Coke's Reports, Calvin's case. — <sup>17</sup> The following "*answers transmitted by Colonel Nichols, in July, 1665*" to inquiries sent him, will not only shew the nature of the government established by him, and many particulars of the early condition of the colony, but demonstrate how much the lawyers and historians of New-York have been mistaken with regard to its ancient jurisprudence. — From N. York pap. 1 v. p. 30. Compare Smith's Hist. p. 36 and 45, with the subjoined *representation of Nichols*.

1. The governor and council, the high sheriff, and the justices of the peace, in the court of the general assizes, have the supreme power of making, altering, and abolishing, any laws in this government. The county sessions are held by justices on the bench, particular town courts by a constable and eight overseers; the city court of New-York, by a mayor and aldermen: And all causes are tried by *juries*.

2. The

2. The land is naturally apt to produce corn and cattle; so that the several proportions or dividends of land are always allowed, with respect to the number of the planters, what they are able to manage, and in what time to accomplish their undertaking; the *feed* of cattle is free in commonage to all townships; the lots of meadow or corn ground are peculiar to each planter.

3. The tenure of lands is derived from his royal highness, who grants lands to planters as their freehold for ever; they paying the customary rates with others towards the defraying of public charges: The highest rent or acknowledgement will be one penny an acre; the least, two shillings and six-pence for every hundred acres, whereof the planters themselves are purchasers of the Indians.

4. The governor gives liberty to planters to find out and buy lands from the Indians where it pleaseth best; but the seating of towns together is necessary in these parts of America, especially upon the main-land.

5. Liberty of conscience is granted, with proviso of not disturbing the peace of the government.

6. Liberty of fishing and fowling is free to all, by the patents.

7. No laws contrary to the laws of England. Soldiers only are triable by a court martial, and none others, except in cases of sudden invasion, mutiny, or rebellion; as his majesty's lieutenants in any of his counties in England may or ought to exercise.

8. There is no tax, impost, or custom, payable by the planters upon corn or cattle; the country at present has little other product: The rate for public charges was agreed unto, in a *general assembly*, and is now managed by the governor and council, and the justices in the court of assizes, to that only behoof.

9. Every man who desires to trade for furs, at his request, has liberty to do so.

<sup>18</sup> Nichols informed the duke of York, by his letter, dated in November, 1665: "That such is the mean condition of this town, [New-York,] that not one soldier to this day has lain in sheets, or upon any other bed than canvas and straw." N. York Pap. 1 v. p. 6. — There were in this city, during the year 1678, only 343 houses. According

to

to the common computation of six to every dwelling, the number of people ought to have been 2058: But there were afterwards found ten persons in every house; so that the whole would even then amount only to 3430. During this year there belonged to it three ships, eight floops, and seven boats. They had increased, in the year 1686, to nine or ten three-mast vessels of about 80 or 100 tons, two or three ketches or barks of about 40 tons, and about twenty floops of 25 tons. At the end of eighteen years, the number of houses had increased to 594; the inhabitants to 6000; and the vessels belonging to them, in the year 1696, were 40 ships, 62 floops, and 62 boats. We may thence form a judgment with regard to the extent of the commerce of New-York at those different periods. See a paper, transmitted by the corporation to the board of trade, in N. York Pap. G. p. 69.

<sup>19</sup> N. York Pap. 1 v. p. 6. — <sup>20</sup> Smith's Hist. p. 53-4. — <sup>21</sup> N. York Pap. 1 v. p. 8-9. — <sup>22</sup> Smith's Hist. p. 35. — <sup>23</sup> The subjoined *declaration of the deputies of Long-island* will not only illustrate this obscure portion of the history of New-York, and confirm the text, but will place recent occurrences in a very striking light. — From N. York Pap. 1 v. p. 129.

“ We, the deputies, duly elected from the several towns upon Long-island, being assembled at Hampstead, in a general meeting, by authority derived from your royal highness unto the honourable Colonel Nichols, as deputy-governor, do most humbly and thankfully acknowledge to your royal highness the great honour and satisfaction we receive in our dependence upon your royal highness, according to the tenor of his sacred majesty's patent, granted the day of 1664; wherein we acknowledge ourselves, our heirs, and successors, for ever, to be comprized to all intents and purposes, as therein is more at large expressed. And we do publicly and unanimously declare our cheerful submission to all such laws, statutes, and ordinances, which are or shall be made by virtue of authority from your royal highness, your heirs, and successors, for ever: As also, that we will maintain, uphold, and defend, to the outmost of our power and peril of us, our heirs, and successors, for ever, all the rights, title, and interest, granted by his sacred majesty to your  
royal

royal highness, against all pretensions or invasions, foreign or domestic; we being already well assured, that, in so doing, we perform our duty of allegiance to his majesty, *as free-born subjects of the kingdom of England, inhabiting in these his majesty's dominions.* We do farther beseech your royal highness to accept of this address, as the first fruits in this general meeting, for a memorial and record against us, our heirs, and successors, when we or any of them shall fail in our duties. Lastly, we beseech your royal highness to take our poverties and necessities, in this wilderness-country, into speedy consideration; that, by constant supplies of trade, and your royal highness' more particular countenance of grace to us, and protection of us, we may daily more and more be encouraged to bestow our labours to the improvement of those his majesty's western dominions, under your royal highness; for whose health, long life, and eternal happiness, we shall ever pray, as in duty bound."

<sup>24</sup> Smith's Hist. p. 35. — The following *extract of a letter from Colonel Nichols, of November, 1665, to the duke of York*, supports the reasonings in the text. — From N. York Pap. 1 v. p. 6.

"My endeavours have not been wanting to put the whole government into one frame and policy, and now the most factious republicans cannot but acknowledge themselves fully satisfied with the way and method they are in. My resolutions are, to send over to your royal highness, this winter, a copy of the laws as they now stand, with the alterations made at the last general assizes; which, if you shall confirm and cause to be printed at London, the country will be infinitely obliged to you." He expressed his joy for the duke's victory over the Dutch.

<sup>25</sup> N. York Pap. 1 v. p. 31-41. — <sup>26</sup> Smith's Hist. p. 36. — <sup>27</sup> Nichols's letter to Secretary Morrice, of October, 1666. N. York Pap. 1 v. p. 28. — <sup>28</sup> Smith's Hist. 37-9; and see a variety of evidence on this subject, in N. York Ent. 1 v. — The most memorable act of the administration of Lovelace, was the purchase of Staten-island from the Indians, which shews how far the settlements had been then extended around the capital.

<sup>27</sup> See a copy of it in Record, Proprieties, A. p. 113. — <sup>28</sup> N. York Ent. 1 v. p. 156-60. — <sup>29</sup> N. York Pap. C. p. 72. — <sup>30</sup> Ib. 1 v. p. 162;

N. York

N. York Ent. 1 v. 17-18. — The subjoined *extract of a letter, dated January, 1676, from the duke of York to Andros*, will shew, in opposition to the assertions of historians, that the latter was friendly to the rights of the people; it will demonstrate the extreme aversion of that prince to popular conventions. — From N. York Ent. 2 v. p. 21.

“ I have formerly written to you concerning assemblies in those countries, and have since observed what several of the latest letters hint about that matter; but, unless you have offered what qualifications are usual and proper to such assemblies, I cannot but suspect they would be of dangerous consequence; nothing being more known than the aptness of such bodies to assume to themselves many privileges, which prove destructive to, or very often disturb, the peace of government, when they are allowed: Neither do I see any use for them, which is not as well provided for, whilst you and your council govern according to the established laws, (thereby preserving every man's property inviolate,) and whilst all things that need redress may be sure of finding it, either at the quarter sessions or by the legal and ordinary ways; or, lastly, by appeals to myself. But, however, if you continue of the same opinion, I shall be ready to consider of any proposal you shall send for that purpose.”

<sup>31</sup> N. York Ent. 2 v. p. 24-5-30-7. — <sup>32</sup> N. York Pap. 1 v. 287. —

<sup>33</sup> Sir John Werden, the secretary of the duke of York, in writing to Andros, in January, 1675-6, says: “ I think it not unreasonable (though I believe it not necessary) to put you in mind, that it is his royal highness's intention to have all persons whatsoever treated with all the humanity and gentleness possible, that can consist with the safety of the government; so that, though the laws inflict punishment, it may seem rather an example to deter others than as an act of severity. — From N. York Ent. 2 v. p. 21.

<sup>34</sup> See the proceedings against Dyer, in N. York Ent. 1 v. p. 239. —

<sup>35</sup> The subjoined *answers of Sir Edmond Andros, dated in April, 1678, to the inquiries of the committee of colonies*, will shew the condition of the province when Dongan was appointed governor, and the nature of the government was changed. — From N. York Pap. 1 v. p. 139.

1. } The governor is to have a council not exceeding ten, with  
 4. } whose advice he is to act for the safety and good of the country ;  
 and, in every village, town, or parish, there are a petty-court and court  
 of sessions : And the general court of assizes, composed of the governor  
 and council, and all the justices and magistrates, at New-York, once a  
 year. The petty-courts judge of five pounds, from which there is an  
 appeal to the sessions ; these may judge of twenty pounds, and from them  
 lies an appeal to the assizes ; and from them to the king. The court of  
 admiralty hath been by special commission, or by the court of mayor and  
 aldermen at New-York. The chief legislative power is in the governor,  
 with advice of the council : The executive power of judgements, given  
 by the courts, is in the sheriffs and other civil officers. The law-book,  
 in force, was made by the governor and assembly, at Hampstead, in 1665,  
 and since confirmed by his royal highness. [REMARK. This has been al-  
 ready shewn to be a mistake, proceeding from the assizes being improperly  
 called an assembly.]

5. } The militia is about 2000 ; of which about 140 horse, in three  
 6. } troops ; the foot formed into companies, mostly under 100 men  
 each : All are indifferently armed with fire-arms of all sizes : They are  
 ordered and exercised according to law, and are good *fire-men*. There is  
 one standing company of soldiers, with gunners and other officers, for  
 the forts of Albany and New-York, which are always victualled in Oc-  
 tober and November for one year. Fortresses are, James-Fort, situated  
 upon a point of New-York town, between Hudson's river and the Sound :  
 It is a square, with stone walls, four bastions almost regular, and in it 46  
 guns, mounted. Albany is a small long stockadoed fort with four bastions  
 in it ; with 12 guns, which is sufficient against Indians. There are no  
 privateers about our coasts. [REMARK. The militia, or men able to bear  
 arms, had increased, before the year 1686, to 4000 foot, 300 horse, and  
 one company of dragoons. Dongan then observed to the ministers of  
 England : I wish for more fortifications, as the people every day grow  
 more numerous, and are of a turbulent disposition. — N. York Pap. I v.  
 p. 377.]

8. } We keep good correspondence with all our neighbours, as to  
 10. } civil, legal, or judicial, proceedings; but differ with Connecticut for our bounds and mutual assistance, which they [Connecticut] nor Massachusetts will not admit. Our boundaries are, south, the sea; west, Delaware; north, to the lakes or to the French; east, Connecticut river: Some islands eastward, and a tract beyond Kenebeck river, called Pemaquid. New-York is in 40 d. 35 m. Albany about 43 d. The colony is in several long narrow slips, of which a great part of the settlement was made by adventurers before any regulation, by which encroachments without patents have been formed; but, by reason of continual wars, no survey of the wilderness has been made: No computation can be made of the planted and unplanted [lands]. These last two years, about 20,000 acres have been taken up and patented for particular persons; besides Delaware, most of the lands are taken up; and, except upon Long-island, are improved: And, unless the bounds of the duke's patent are asserted, no great quantities at hand will be undisposed of.

11. } Our principal places of trade are New-York and South-town,  
 16. } except Albany for the Indians. Our buildings are mostly wood; some lately of stone and brick; good country houses and strong, of their several kinds. We have about twenty-four towns, villages, or parishes, in six precincts, divisions, ridings, or courts of sessions. We have several rivers, harbours, and roads. Hudson's river, the chief, has about four fathom of water at coming in, but six, ten, or more, within; and very good anchorage either in Hudson's river or in the Sound, the usual road before the town. Our produce is land-provisions of all sorts; as of wheat, exported yearly about 60,000 bushels; pease, beef, pork, and some refuse fish, tobacco, peltry from the Indians; deal and oak timber, lumber; horses; pitch and tar are begun to be lately made: Commodities imported are, all sorts of English manufactures for Christians, and blankets, duffels, &c. for Indians, about 50,000 *l.* yearly. We have no experience in making salt-petre. Our merchants are not many; but, with inhabitants and planters, about 2000 able to bear arms, old inhabitants of the place or of England; except in and near New-York,  
 of



of Dutch extraction, and some of all nations: But few servants, who are much wanted, and but very few slaves.

17. No persons whatsoever are to come from any place but according to act of parliament, which the magistrates are to take care of accordingly. The plantation is of late years increased, but no general account hath been taken, so it is not known how much nor of what persons. Some few slaves are sometimes brought from Barbadoes, in exchange for provisions, and are sold for about 30*l.* or 35*l.* country pay.

18. } Ministers have been so scarce and religions so many, that no  
20. } account can be given of the number of births. Scarcity of ministers, and the law allowing justices to marry, no account can be given of the number of marriages. No account can be given of funerals, forms of burial not being generally observed, and few ministers till very lately.

21. } A merchant, worth a 1000*l.* or 500*l.* is accounted a good sub-

22. } stantial merchant; and a planter, worth half that in moveables, is accounted rich. All the estates may be valued at 150,000*l.* There may have lately traded to the colony, in a year, from 10 to 15 ships or vessels, upon an average, of 100 tons each, English, New-England, and of our own, built; of which 5 small ships and a ketch are now belonging to New-York; four of them built there.

23. } Obstructions to improvement of planting and navigation are

25. } owing to the distinctions of colonies for our own produce, as if different nations, though next neighbours. The advantages would be great if the colonies might, without distinction, supply each other with their own produce, punctually observing all acts of parliament for exportation. The duties upon goods exported are, 2*s.* for each hoghead of tobacco, and 1*s.* on a beaver skin, and other peltry proportionably; provisions, and every thing besides, pay nothing. Goods imported pay 2 per cent. except liquors, particularly rated something more: Indian trade, going up the river, pays 3 per cent. There are some few quit-rents; as also excise or licence money for retailing strong drink, and a weigh-house or public scale: All which taxes are applied to the garrison and public charge; which they have not yet satisfied by a great deal.

26. } There are religions of all forts; one church of England; fe-  
 27. } veral Presbyterians and Independents, Quakers and Anabaptists,  
 of several sects; some Jews; but the Presbyterians and Independents are the  
 most numerous and substantial. The duke maintains a chaplain, which is  
 all the certain allowance to the church of England. All places are obliged  
 to build churches, and provide for a minister, in which most are very want-  
 ing; but Presbyterians and Independents are most desirous to have and  
 maintain ministers, if to be had. There are about twenty churches or  
 meeting-places, of which above half are vacant; their allowances are  
 like to be from 40*l.* to 70*l.* a year, with a house and garden. There  
 are no beggars, but all poor are taken care of. If good ministers could  
 be had to go thither, they might do well, and gain much upon those  
 people.

April, 1678.

E. ANDROS.

<sup>36</sup> Smith's Hist. p. 44-5. — <sup>37</sup> The two following papers throw confi-  
 derable light on that important part of the history of New-York, with  
 regard to the introduction of the first assembly.

*A letter from the Secretary of the duke of York to Brockholes, the deputy-  
 governor: Desiring him to keep things quiet: Intimating that an assem-  
 bly would be allowed: But to get security that a revenue should be gran-  
 ted. — From N. York Ent. 2 v. p. 37.*

“ Sir,

St. James's, 1st February, 1681-2.

His royal highness's commissioners have, by his orders, had divers  
 meetings of late, touching the state of affairs at New-York, and are, as  
 fast as they can, preparing all things for the next opportunity: But, by  
 reason of his royal highness's living in Scotland, and the suddeness of  
 the ship's departure, I am directed to write this letter to you at present,  
 to desire you to take the best care you can (in the interim) to keep all  
 things in the government of New-York and its dependencies in quiet  
 and good order, especially that the soldiers may behave themselves dis-  
 creetly, that the civil magistrates may have their legal authority preserved,  
 and that all forts of people may enjoy their rights and properties. And,  
 though I cannot yet positively assure you that it will be so, yet I may  
 hint

hint to you that we believe his royal highness will condescend to the desires of that colony, in granting them equal privileges, in choosing an assembly, &c. as the other English plantations in America have: But, if that be, it will be upon a supposition that the inhabitants will agree to raise money, to discharge the public debts, and to settle such a fund for the future as may be sufficient for the maintenance of the government and garrison. Wherefore you are privately to sound the inclination of the principal inhabitants there upon this great point; and, if you find them willing to give any assurance of their readiness herein, you must then endeavour to get some overtures of the methods of raising such monies and fund for the future, and a certification of such their consent, under the hands of the most eminent persons for abilities and estates in those parts; and whatsoever you do herein, or in any other particular, that relates to his royal highness's service, you are constantly to send an account of it to me, for the fuller information of his royal highness and his commissioners. And this is all at present from

JOHN WERDEN."

*A Letter from the duke of York to the Deputy-governor.* — From N. York Ent. 2 v. p. 40. — Assuring him of his intention to grant an assembly: Desiring him to dispose the people to establish funds for the maintenance of the government and garrison.

“ Lieutenant Brockholes,

Newmarket, 28 March, 1682.

Since my arrival here I have had the result of divers meetings of my commissioners, touching the state of affairs at New-York; but, until I come to London, (which I doubt will not be till this ship be sailed,) I cannot perfect those resolutions which I shall take thereupon; only for the present, in confirmation of what my secretary lately wrote to you, I send this to tell you, that I intend to establish such a frame of government at New-York as shall have all the advantages and privileges to the inhabitants and traders there which his majesty's other plantations in America do enjoy, particularly in the choosing of an assembly, and in all other things as near as may be to the laws of England. But then I shall expect that the country of New-York, and its dependencies, shall provide

vide some certain funds for the necessary support of the government and garrison, and for discharging the arrears which are or shall be incurred, since the obstructions that have lately been to the collection of the public revenue there. Wherefore you are to use all diligence to induce the people there, of best note and estates, to dispose themselves and their friends to a cheerful compliance in this point; and you may assure them, that whatsoever shall be thus raised shall be applied to those public uses. For I seek the common good and protection of the country, and the increase of their trade, before any advantage to myself in this matter. By the next ship I intend you shall hear farther from me. I am, &c.

JAMES."

<sup>38</sup> N. York Ent. 2 v. p. 40-1. — <sup>39</sup> Smith's Hist. p. 60. — <sup>40</sup> N. York Ent. 1 v. p. 50-2. — <sup>41</sup> Smith, p. 73-5. — <sup>42</sup> Colden's Hist. Five Nations, ch. 1-2-3; Charlevoix Hist. N. France, 1 v. p. 220-7-37; N. York Ent. 1 v. 50-1. — They, who are desirous to peruse a minute account of the situation, the numbers, the practices, of the Five nations, will be gratified by the subjoined paper; because it shews better, than any thing yet published, the former condition of a mighty confederacy, which once made so great a figure, which is now almost extinct.

*Observations of Wentworth Greenbalph, in a journey from Albany to the Indians westward, [the Five nations.]* Begun the 28th of May, 1677, and ended the 14th of July following. — From N. York Pap. 1 v. p. 132.

*Situation and strength of the Maquas [Mohawks.]*

The Maquas have four towns; viz. Cahaniaga, Canagora, Canajorha, Tionondague, besides a small village, about 110 miles from Albany.

Cahaniaga is double stockadoed round, has four ports, about four feet wide: contains about twenty-four houses, and is situated upon the edge of a hill, about a bow-shot from the river side.

Canagora is only singly stockadoed, has four ports like the former; contains about sixteen houses, is situated upon a flat, about a stone-throw from the water side.

Canajorha

Canajorha is also singly stockadoed, and has the like number of ports and quantity of houses as Canagora; the like situation, only about two miles distant from the water.

Tionondague is double stockadoed, has four ports four feet wide; contains about thirty houses; is situated on a hill, about a bow-shot from the river.

The small village is without any fence, and contains about ten houses, close by the river side: On the north side of the river, as are all the former.

The Maquas pass in all for about 300 fighting men. Their corn grows close by the river side.

*Of the situation of the Oneydoes and the Onondagoes, and their strength.*

The Oneydoes have but one town, which lies about 130 miles westward of the Maquas. It is situated about 20 miles from a small river, which comes out of the hills to the southward, and runs into the lake Tershirogue; and about 30 miles distant from the Maquas river, which lies to the northward. The town is newly settled, double stockadoed; but little cleared ground, so that they are forced to send to the Onondagoes to buy corn. The town consists of about 100 houses. They are said to have about 200 fighting men. Their corn-grounds are round about the town.

The Onondagoes have but one town; but it is very large, consisting of about 140 houses; not fenced. It is situated on a hill that is very large, the bank on each side extending itself at least two miles; all cleared lands, whereon the corn is planted. They have likewise a small village, about 2 miles beyond that, consisting of about 24 houses. They lie southward about 36 miles from the Oneydoes. They plant abundance of corn, which they sell to the Oneydoes.

The Onondagoes are said to be about 350 fighting men, and live about 15 miles from Tershirogue.

*Of the Cayugas and Senekas, their situation and strength.*

The Cayugas have three towns, about a mile distant from each other, but are not stockadoed; they do in all consist of about 100 houses; they are

are about 60 miles to the southward of the Onondagoes. They intend, next spring, to build all their houses together, and stockado them. They have abundance of corn. They lie within 2 or 3 miles of the lake Ter-shirogue. They pass for above 300 fighting men.

The Senekas have four towns; viz. Canagorah, Tistehatan, Canoenada, and Keint-he. Canagorah and Tistehatan lie within 30 miles of the lake Frontenac; the other two about 4 or 5 miles to the southward of these. They have abundance of corn. None of their towns are stockadoed.

Canagorah lies on the top of a great hill, and, in that as well as in the bigness, much like Onondagoe, containing 150 houses, northwestward of Cayuga 72 miles.

Here the Indians were very desirous to see us ride our horses, which we did. They made feasts and dancing, and invited us, that, when all the maids were together, both we and our Indians might choose such as liked us to lie with.

Tistehaten lies on the edge of a hill: Not much cleared ground; is near the river Tistehaten, which signifies *bending*. It lies to the northward of Canagorah about 30 miles; contains about 120 houses, being the largest of all the houses we saw; the ordinary being 50 or 60 feet, and some 130 or 140 feet long, with 13 or 14 fires in one house. They have good store of corn growing about a mile to the northward of the town.

Being at this place, on the 17th of June, there came 50 prisoners from the southward, and they were of two nations; some whereof have a few guns, the other none: One nation is about ten days journey from any Christians, and trade only with one great house, not far from the sea; and the other, as they say, trade only with a black people. This day, of them were burnt two women and a man, and a child killed with a stone. At night we heard a great noise, as if the houses had all fallen; but it was only the inhabitants driving away the ghosts of the murdered.

The 18th, going to Canagorah, we overtook the prisoners. When the soldiers saw us, they stopped each his prisoner, and made him sing,  
and

and cut off their fingers and flashed their bodies with a knife; and, when they had fung, each man confessed how many men he had killed. That day, at Canagorah, there were most cruelly burned four men, four women, and one boy; the cruelty lasted about seven hours: When they were almost dead, letting them loose to the mercy of the boys, and taking the hearts of such as were dead to feast on.

Canoenada lies about 4 miles to the southward of Canagorah; contains about 30 houses; well furnished with corn.

Keint-he lies about 4 or 5 miles to the southward of Tistehaten; contains about 24 houses; well furnished with corn.

The Senekas are counted to be in all about 1000 fighting men.

Whole force.	{	Maquas - - - - -	300
		Oneydoes - - - - -	200
		Onondagoes - - - - -	350
		Cayugas - - - - -	300
		Senekas - - - - -	1000

2150 fighting men.

REMARK. During the year 1685 an accurate account was taken, by order of the governor, of the people of Canada, which amounted to 17,000; of whom 3000 were supposed to be able to carry arms.—N. York Pap. 1 v. p. 386. — We may thence form a judgement with regard to the comparative strength of the two belligerent powers, whose wars were so long and destructive.

<sup>43</sup> Governor Dongan, giving the secretary of state an account of the joy of the people of New-York on the accession of James II. said, in his letter, dated 11th August, 1685: “ We were all glad to hear such good news as his majesty’s success against the rebels. Your letter came very seasonably, to give us a true account of the rebellion in England and Scotland; malicious and factious reports having pestered this place, which came every day by the way of Boston.” — N. York Pap. 1 v. p. 310.

<sup>44</sup> Jour. Plant. Off. 5 v. p. 90-101-264; Ib. 6 v. p. 70-1; N. York Ent. 2 v. p. 48. — <sup>45</sup> Ib. 61-118-20. — There was no printing-press at New-York during the year 1689. For the proceedings of the insur-

gents, under Leifler, were printed at Boston. See these in N. York Pap. 2 v. p. 118.

<sup>46</sup> Colden's Hist. Five Nations, ch. 4-5. — <sup>47</sup> N. York Ent. 2 v. p. 157-65-7. — <sup>48</sup> Ib. p. 185-6. — <sup>49</sup> Smith's Hist. p. 58-9. — <sup>50</sup> N. York Ent. 2 v. p. 187-200. — <sup>51</sup> The subjoined *declaration of the inhabitants and soldiers of the train-bands of New-York* shews the principles and motives of the insurgents. — From N. York Pap. 2 v. p. 108.

“ That, notwithstanding the many grievances that we suffered under a wicked popish governor Dongan, we were resolved to expect our redemption from England; but, when we challenged our liberties, properties, and laws, we were cajoled and terrified out of our reason by lieutenant-governor Nicholson, *who threatened to set fire to the city for doing our duty.* We have thought fit, for our conservation, and daily seeing soldiers arrive, of whom there were a number of papists, contrary to law, we resolved to secure the fort, which we effected without resistance. *We declare to be entirely opposite to papists and their religion,* and, expecting orders from England, we shall faithfully guard the fort in behalf of the power now governing England, *to be surrendered to the person of the protestant religion,* that shall be sent by said power.”

<sup>52</sup> N. York Ent. 2 v. p. 187-200. — <sup>53</sup> The transactions of the convention may be seen among N. York Pap. 2 v. p. 118, &c. — <sup>54</sup> N. York Ent. 2 v. p. 194. — <sup>55</sup> N. York Pap. 2 v. p. 330-8-60. — <sup>56</sup> Smith's Hist. p. 63. — <sup>57</sup> N. York Pap. 2 v. p. 338, and throughout. — <sup>58</sup> The following extracts will exhibit the sufferings, the merits, the pretensions, of all parties.

*Part of the address of the merchants and principal inhabitants of New-York to William.* — From N. York Ent. 2 v. p. 279.

“ We beg leave to represent how long we have been sorely oppressed, having now groaned near twelve months under the burden of slavery and arbitrary power, exercised over us by the enraged fury of ill men, who have assumed all authority, and ruling us by the sword, at the will of an insolent alien, [Leifler,] assisted by those, who formerly were thought unfit to be in the meanest offices among us. We, therefore, supplicate your majesty for speedy protection and relief.”

REMARK,



REMARK. Colonel Sloughter at a subsequent day asserted, “that the facts contained in this address were all true.” — *Ib.* p. 295.

To that prince Blagg represented, on behalf of Leisler: That the majority of the people had deposed the late lieutenant-governor, and chosen him: That he had proclaimed the king and queen, and administered the government in their names; that it was necessary to remove Nicholson, because he had neglected to repair the fortifications *with a view to betray it to the enemy, and had shewn a design to burn the city about their ears*: And he prayed for approbation of his conduct. — *Ib.* 263-5.

<sup>59</sup> The subjoined *extract of a letter from Governor Sloughter, dated 7th of May, 1691, to the secretary of state*, throws abundant light on a transaction, which gave rise to the most important occurrences, during the two subsequent reigns, which has been obscured by the united misrepresentations of ignorance and of faction. — From *N. York Ent.* 2 v. p. 297.

“ I arrived here the 18th of March; and proposed not to go to the town before the man of war: But, understanding the distress the inhabitants laboured under, I went up in the pinnace, when I found all in arms. Near four hundred men had come out of the country to defend the city and their majesties stores and forces against Leisler, who had raised near three hundred men, and fortified the fort against them; declaring, by public proclamation, them all traitors, papists, and King James’s men, and that we were sent to betray the country to the French; and he not only denied his majesty’s officers the fort, but committed open hostilities upon them, by sallying out of the fort, and taking their men prisoners, shooting their centinels, and firing of great shot through the streets. Upon my arrival, I caused my patent to be publicly read; took the oaths appointed; and swore-in as many of the council as were at liberty. I then sent Major Ingoldby to demand the fort to be instantly delivered, and those of the council, who were detained, to be sent to the board. Both demands Leisler refused; pretending, he knew me not, neither would he own any governor, without orders under the king’s own hand: Yet, that night he sent one Stol, who had seen me in England, to satisfy him that I was the person who was said to have been ap-

pointed governor; and he knew me. I then sent, and made a second demand; but received for answer, that the fort was not to be delivered upon such easy terms. I then determined to send no more messengers; but ordered the man of war to moor as close as possible, being resolved to attack him immediately: But, before any was made, Leisler sent his secretary, Mr. Milbourne, and one De Laney, to capitulate with me; and, instead of entering into any treaty, I presently secured them. I sent Major Ingoldsby to order Leisler's men to ground their arms, and to seize Leisler and his council. After some debate, most of the men grounding their arms, the Major seized his prisoners, and brought them before me. By the advice of the council, I issued a commission of oyer and terminer for the trial of Leisler and his council for murder and treason. Six pleaded, and were found guilty. But Leisler and Milbourne refused to plead; and so received sentence of death with the others. The record of the whole proceedings is now sent you. Certainly, never greater villains lived, as by other papers will appear. I am much solicited to execute the condemned, but am resolved first to know their majesties pleasure, if by other means I can keep the people quiet."

REMARK. Upon the application of the son of Leisler to William, the privy-council reported: That the trial and execution were legal; but recommended the restoration of the forfeited estates. — N. York Ent. 2 v. p. 386-7. — And a general pardon for the province was soon after granted. — *Ib.* p. 388.

“6-7. Will. 3. ch. 30. (private). — The intrigue, which gave existence to this act of parliament, will be developed in the following book. It will then appear, that one agent of Massachusetts framed the bill, while the other sat as chairman of the committee, which reported it.

## C H A P. XX.

*New-Jersey granted. — Remarks. — Concessions given. — Administration of Nichols. — Origin of the claims of New-York. — Surrenders the government to Carteret. — His administration. — An insurrection. — His expulsion. — Re-conquered by the Dutch. — The rule of Andros. — The country divided. — East-Jersey restored to Carteret. — West-Jersey retained. — The second administration of Carteret. — The Jerseys delivered from illegal taxes. — West-Jersey restored. — Disputes in East-Jersey. — Carteret sells his province. — Various new proprietors. — Distractions arise. — Acts of trade opposed. — A writ of quo-warranto issued. — Annexed to New-England. — Proprietors of East-Jersey resign their charter. — Revolution.*

**T**HE duke of York, considering the conquest of New-Netherlands as already atchieved, because an armament had been sent out with that design, conferred a considerable part of them on Lord Berkeley and Sir George Carteret, whom he esteemed for their principles, because they resembled his own. In June, 1664, he conveyed to them in absolute property, that tract of land adjacent to New-England, lying westward of Long-Island, bounded, on the east, south, and west, by the river Hudson, the sea, and the Delaware; on the north, by the 41st degree and 40 minutes of latitude. In compliment to the latter, this region he denominated New-Jersey. And he transferred to them every right, every royalty, and all the powers of government, which he himself possessed. They who compare the charter given to that prince, conferring the country from Connecticut to the Delaware, with those given to the proprietors of Maryland or of Carolina, will perceive a prodigious inferiority. Relying on the greatness of his connexion, he seems to have been little solicitous to procure the royal privileges conferred on them: And while, as counts-palatine, they exercised every act of government in their own names, because they were invested with the ample powers possessed by the prætors of the Roman provinces, he ruled his territory

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in the name of the king. Scanty, however, as his real jurisdiction was, he conceived he might confer it on others. Yet the law of England did not consider the government of a great province of the empire as a personal trust, as a species of property subject to every act of ownership, which, like every other estate, is subject to alienation. And though the proprietaries were not disposed to acknowledge the truth of this observation, because it would have mortified their vanity, they sadly felt the force of it from the establishment to the extinction of their power. The ministers of England, during the reigns of William and Anne, derided an authority, which appeared to them founded in imprudence, and supported by no principle of English law.

Being thus, however, gratified in what was the ruling passion of the times, in the acquisition of American territory, because the ardour of men had assumed a new direction, Berkeley and Carteret, who were already proprietors of Carolina, began soon after to promote their views by the settlement of a colony, to exert their powers by the establishment of government. In order to promote the spirit of emigration to a country almost destitute of inhabitants, at a time when it required no additional incentive, in February, 1665, they offered various privileges to planters. It was now established as a fundamental principle, without which the whole had been faulty, "that all vacant territory shall be purchased for their use, of the Aborigines," whose rights were respected, because they derived them from nature. As a bounty to those who settled in New-Jersey before the year 1685, eighty acres of land were offered to each, at a quit-rent of a penny an acre; the payment of which, however, was not to commence till March, 1670. Acquainted with the human heart, and instructed in English jurisprudence, they declared, that the province should be ruled only by laws made by an assembly in which the people were represented: Reserving to themselves the whole executive power. As they deemed the quit-rents their private estate, it was at the same time declared, that all public expences should be discharged by general contribution. Such was the liberal constitution which the wisdom of the proprietaries established for New-Jersey. As new immunities were conferred, or the old explained by future proclamations, they were

were denominated by the people *the laws of concessions*, which being considered as their *great charter*, were deemed by them of higher authority than even acts of assembly, because the former were held sacred and unalterable, the latter might be repealed. Philip Carteret was not long after appointed governor, to execute the whole.<sup>2</sup> In their present vehemence of expectation, the proprietaries, with a blindness mortifying to the pride of men, saw not future disappointment and vexation, from the difficulty of an enterprize in which none but enthusiasts should ever engage.

In the mean time Nichols, the conqueror of New-Netherlands, as deputy-governor, took possession of the whole, unconscious of the rights of Berkeley and Carteret, till November, 1665. During this interval, he gave permission to various persons to acquire lands of the aboriginal proprietors, within New-Jersey, in conformity to the policy which he had adopted for all. And three small townships were immediately formed, by emigrants, chiefly from Long-Island, who laid the foundation of Elizabeth-Town, Woodbridge, and Piscataway. This conduct, and these measures, gave rise to disputes at that time, which lasted half a century, and so long disturbed its repose, either with regard to the property of the soil between those purchasers and the proprietors, or the claims of New-York, that resigned its jurisdiction unwillingly. He remonstrated against the impolicy of his master, in thus creating divisions, where he ought to have conjoined, but to no purpose. And he deplored feelingly, the loss of a territory, to which he gave the name of Albania, which was so remarkable for the fertility of its soil, the commodiousness of its rivers, the richness of its minerals. He foretold what really happened, what ought to teach a lesson of prudence to others, that the settlement of a desert would cost the proprietors an immense sum before it yielded a penny, and would only become an estate "to the children of their children."

In the end of the year 1665, he reluctantly resigned the government of New-Jersey to Carteret, the governor, who took possession of Elizabeth-town, the capital; consisting then of four families just settled in the wilderness. Here he ruled a few years in peace over a desert, which filled gradually with people from the provinces of New-York and New-England,

England, who carried with them their peculiar religion, and established their ancient usages. But they encountered none of the disasters which had proved so fatal to other colonies, because they settled in the vicinity of cultivated countries, which furnished them with food, and of New-York, whose commerce supplied them with all things: Yet this last circumstance, however advantageous at present, proved at length equally pernicious, because it has to this day prevented the rise of a mart among themselves to give life to their traffic. They naturally engaged in the same pursuits as their neighbours, in purchasing peltry of the numerous little tribes, which then roved over the adjacent forest, in raising cattle and grain, which long supplied their inconsiderable wants. They never were disturbed by wars with the Indians, because all the smaller tribes were either subdued by the *Five nations*, or were over-awed by their power; who were themselves influenced by the governors of New-York. And, owing to these causes, and to the salubrity of the climate, New-Jersey became extremely desirable, and was in those days accounted by men of peculiar dispositions as worthy of the name of *paradise*, because *it had no lawyers, or physicians, or parsons.*<sup>4</sup> Yet the tranquillity of this place of felicity was at last interrupted by the approach of that dreaded day, when the payment of quit-rents was to commence. In order to evade the discharge of a duty which appeared intolerable to men who had never paid it before, they set up titles, derived from the original possessors, in opposition to those of the proprietors, because people, who determine to dispute, never want pretences. Discontent, as usual, soon ripened into insurrection, when not timely allayed, which in due season grew up to revolt. Disowning the government of the proprietaries, in November, 1672, the insurgents expelled Carteret, who had ruled them with approbation, since they did not complain of his misconduct: And they appointed Carteret, a natural son of the proprietor, as governor in his place. But the conquest of the Dutch, in the subsequent year, gave them a fine opportunity of deciding on the merits of the constitution they had thrown away, and of the delegated rule of a government, as popular in name as in practice severe.<sup>5</sup>

When the treaty of London re-established the peace which had been interrupted by an inglorious war, the duke of York appointed Andros his lieutenant

lieutenant over his territories, extending from the western bank of Connecticut to the farther shore of the Delaware, because he deemed his former grant of New-Jersey annulled by the conquest. The whole powers of government, as well legislative as executive, were invested in a governor and council; whereby a tyranny was established here as at New-York. Dyer was at the same time appointed collector of "those duties, which, said that prince, I have thought fit to establish throughout my territories:"<sup>6</sup> And Andros took possession of his charge in November, 1674: Confirming the late proceedings of the Dutch, because the law of nations had already declared them in force, and continuing the taxes imposed by the conquerors, because they supported his power. Though that prince had directed his counsel to prepare a grant to Sir George Carteret of the eastern half of the province, yet, as nothing was done in the subsequent January towards adjusting his pretensions, the governor was then instructed "to take care to keep things in the same posture, as to the duke's prerogative and profit, as they were in during his predecessor's time."<sup>7</sup> For, when he recollected the salutary remonstrances of Nichols against the disjunction of his province, he hesitated long, and at length sacrificed his own interest and the prosperity of New-York to his fatal esteem for Carteret. Mean-while, Lord Berkeley, offended, probably, with the late insurgents, and dissatisfied with an estate, which, as had been foretold, brought him neither profit nor honour, assigned his pretensions to William Pen and his three associates during the year 1674. But, as all parties soon perceived the disadvantage of a joint property, they divided the province with Carteret, because they deemed a separate estate for the interest of every one: And now, for the first time, was the country formed into East and West-Jersey; the former was released in July, 1676, by the assignees of Lord Berkeley to Carteret; and he in return conveyed to them the latter: The government of the last the duke retained as a dependency of New-York; the first was resigned to this gentleman.<sup>8</sup> And here commenced a confusion of jurisdiction, and an uncertainty of property, which long distracted the people, and at length ended in the annihilation of the rule of the proprietors.

Carteret, who had been expelled with so much outrage in 1672, once more returned to East-Jersey in the beginning of 1675; and who was now kindly received by the inhabitants, because they had felt the rigours of conquest, which had not been softened by Andros. Having postponed the payment of quit-rents to a future day, and published new concessions with regard to the tenure of lands, tranquillity was once more restored. And from this time *all remained quiet*, as we are assured,<sup>9</sup> *and the rules of property were well observed*. Desirous to promote the commercial interests of the colony, because he perceived its neighbour growing great and rich by trade, Carteret began, in 1676, to clear out vessels from East-Jersey: But he was steadily opposed by Andros, who saw that it tended equally to ruin the commerce and to lessen the customs of New-York, on which so much depended. The various taxes which were imposed by the governor and council on the one province, in the year 1678, were at the same time extended to Jersey. And it was in vain for Carteret to establish here a free port, since the governor of New-York seized and condemned the vessels trading thither; and, however unjust, this measure was decisive, because it was supported by superior power, which so easily determines every controversy. Informed of these disputes, the duke of York was little inclined “to let go any of that prerogative which had been “always exercised over Jersey,” because he was actuated by his natural principles, and because, though those severities were at present meliorated in compliment to Carteret, yet it was feared that “favours might, at a “future day, be claimed as rights.”<sup>10</sup> And the present apprehensions were verified by future occurrences.

Mortified to be deprived of that power of government which Carteret enjoyed, the proprietors of West-Jersey had, in the mean time, unceasingly begged the duke of York to be restored to the rights which they derived from his grant of 1664: Insisting to be exempted from the taxes before-mentioned, that their province should be discharged from all future dependence on New-York. After various consultations, their pretensions were at length referred to that eminent lawyer, Sir William Jones, so renowned during those days for his politics and connexions. He found  
little



little difficulty in deciding, because there really was none, “ that as the “ grant to Berkeley and Carteret had reserved no profit or jurisdiction, “ the legality of the taxes could not be defended.”<sup>11</sup> In compliance with a determination, which had the most decisive authority, because he had previously agreed to be concluded by it, the duke without hesitation confirmed West-Jersey to the proprietors in August, 1680.<sup>12</sup> Thus, after being so long ruled as a conquered country, this province was restored to its former privileges : Thus were the inhabitants delivered from a grievance extremely dissimilar to that of their posterity, taxation by the mere prerogative of the prince. It had hitherto remained a desert, because men did not willingly resort to a country, where, instead of acquiring new, they were deprived of their ancient, rights. Byllying, one of the proprietors, who had been very instrumental in procuring this advantageous change, was appointed first governor of West-Jersey. But it never acquired the appearance of a cultivated country till its populousness was promoted by the overflowings of its neighbours ; and it was overshadowed by Pennsylvania, which grew up with rapidity along its western borders.<sup>13</sup> When the duke remembered his esteem for Sir George Carteret, he thought it but a proper tribute to his memory to confer on his son the same favour which he had granted to strangers : And in September, 1680, he released therefore to him his pretensions over East-Jersey.<sup>14</sup> Notice of these grants was immediately communicated to Andros for his future government.<sup>15</sup> But, whatever satisfaction the proprietors may have derived from their success, these transactions were deplored by New-York *as the certain loss of its trade*, and by others *as the destruction of its revenue*. And the corporation of this city remonstrated, but to no purpose, against what it dreaded as the greatest of evils, though the real cause of an event which it received as the greatest of blessings.<sup>16</sup> For, the decisive opinion of Jones, and the subsequent independence of the Jerseys, were assuredly the principal causes of the introduction of an assembly ; because it was foreseen, that, had the duke even an indisputable right to impose customs on New-York, the exertion of it would only drive people across the Hudson to the neighbouring colony. None of the parties reflected, “ that it is impossible to ruin a people animated

“ by the commercial principle, whose diligence and œconomy remain un-  
 “ impaired.”

The spirit of discord, which had once disturbed the repose of East-Jersey, seems to have been never perfectly allayed, because former causes continued. And the effects of them were no longer seen in the field, but heard in the senate. When the assembly convened at Elizabeth-town, in October, 1681, a violent dissention commenced between the governor and council on the one side, and the representatives on the other; who differed extremely, whether “ the late grant from the duke of York to  
 “ the proprietor ought to be considered as the foundation of their go-  
 “ vernment.” The detail of what was once interesting, like controversies of greater magnitude, is now no longer so. Conferences ensued to little purpose, when both sides were equally pertinacious. The deputies resolved: “ That the people were not obliged to conform to any other  
 “ grant of privileges than that of 1665, which ought to be literally con-  
 “ strued.” The council insisted in vain: That the proprietors “ had  
 “ expressly reserved a right of alteration.” To put an end to fruitless altercation, the governor dissolved the assembly. But the deputies protested against a measure so fatal to their power, which they insisted was inconsistent with his commission and instructions.<sup>17</sup> Such is a specimen of the contests of New-Jersey. Men, connected with neither party, remarked; that when jealousy has shed her baneful influence on a people, it is easy to find a subject for contention. As the same causes remained, similar disputes continued long to embitter the private enjoyments of the inhabitants, to disturb their public affairs.

Offended with a province, which he could neither please nor govern, Carteret transferred his rights in February, 1682, to William Pen and eleven associates of the same religion. These men, immediately conveyed one half of their interest to the earl of Perth and eleven others; <sup>18</sup> because they wished for aid in the arduous task of peopling and ruling a distant colony. Desirous rather to hold the province by an immediate charter from the duke of York than under their purchase, because they doubted the validity of the title, these proprietors successfully solicited a new patent. In March, 1683, such a grant was conferred on the earl of Perth

Perth and others, as had been lately passed to Carteret. <sup>19</sup> Thus the property of the soil of East-Jersey became invested in owners of different kinds ; in the general proprietors ; in the purchasers under them ; in claimants under patents, and from Indian purchases. What a fruitful seed-plot of future litigation was here sown in a colony, which once considered the absence of lawyers as the greatest felicity ! Yet we ought naturally to expect the future prevalence of concord in a country, which was now honoured with Robert Barclay for its governor, whose writings adorned while they apologized for the tenets of a sect, the fundamental principles of which is peace. Charles II. at the same time transmitted a letter to the governor, the council, and inhabitants, of this province ; stating the title of the proprietors to the soil and jurisdiction, and requiring all to yield obedience to their government and the laws. <sup>20</sup>

Though oppression fell not heavy on the people, so as to interrupt their pursuits, the Jerseys did not enjoy perfect tranquillity, owing chiefly to the claims of a more powerful neighbour. It was to little purpose to declare them independent of New-York if she still claimed and exercised real jurisdiction. When, subsequent to the year 1683, her assembly was introduced, it extended the same taxes to them as it had established for its constituents, though it seems now impossible to discover by what principle such a measure could be defended, except by power. The governors of New-York constantly represented the great inconvenience of having two distinct governments upon one river, and solicited the re-annexation of the Jerseys, notwithstanding the remonstrances of the proprietors, <sup>21</sup> who did not foresee the vexations which afterwards ensued. Here they did not yet enjoy the benefit of a port of entry, because no custom-house was established : And the collector of New-York continued to exercise over them his former authority under his ancient commission. Being opposed in the discharge of his duty, he complained, in June, 1685, to the commissioners of the customs ; “ that, when he prosecuted vessels, the juries found their verdicts against the most undoubted facts.” <sup>22</sup> The ministers of England, to whom this complaint was referred, instantly ordered a writ of quo-warranto to issue, with a promptitude which shewed that they only wished for a pretence to execute what  
they

they had already predetermined. And, in April, 1686, they commanded the attorney-general to prosecute writs against both East and West Jersey with effect: Affixing a reason, which evinces the extent of their views; "that it was of great prejudice in the plantations and to the customs here, if such abuses should be any longer suffered in a country which ought to be more dependent on his majesty."<sup>23</sup> The proprietors of East-Jersey, feeling the blow struck at their own consequence and at the prosperity of their colony, represented to James: That they had not received this province as a benevolence, since they had paid for it twelve thousand pounds; neither would they have been concerned in it had they not obtained the king's confirmation and assurance of protection; that they had already sent thither several hundreds of people from Scotland; and they were willing to propose to the assembly of Jersey to impose the same taxes there as were then paid at New-York: They prayed, that their province might be only annexed to West-Jersey, over which the king might name a governor from among the proprietors; that justice might be administered within the province, with an appeal only to England; and that "an officer might be appointed, at Perth-Amboy, to collect the customs, to cause the acts of navigation to be executed."<sup>24</sup> But, of all that was asked with so much anxiety, the last only was granted, because it was a proposal that did not militate against the mighty project which was then in contemplation. And an order was transmitted to the governor of New-York, in May, 1687, "to permit vessels to pass, without interruption, to East-Jersey, paying the same customs as at New-York." The Jerseys were not long after annexed to New-England. In order to evince their loyalty and their inclinations to facilitate the king's measures, the proprietors of East-Jersey made a formal surrender of their patent, which was instantly accepted: Praying only for a new grant, securing their title to the soil.<sup>25</sup> But, before a request so reasonable could be granted, a revolution ensued, which transferred the allegiance of proprietors and people to new sovereigns without their consent. From June, 1689, to August, 1692, the Jerseys were left without a government, because that of Andros had been overthrown and none was established in its place. Partly owing to this

this singular circumstance, but more to the doubts that were justly entertained of the authority of the proprietors, distractions then ensued, which, during ten years, continued to inflict the severest wounds on a miserable country, which have been therefore emphatically stiled, by historians, *the revolutions*.<sup>26</sup>

Such is the history of an inconsiderable province, the one-fourth of which was not then cultivated, was not then purchased of the native owners. West-Jersey remained one general waste: East-Jersey had been already divided into five counties. But what must have been the population of a country which did not annually consume the value of one thousand pounds of European manufactures! What must have been the extent of its commerce, when three ships, trading in its ports in one year, were taken notice of as considerable! The first emigrants thither were the immediate descendants of the men who passed the Sound from Connecticut, and settled on Long-island: And in the principles, civil and religious, of such a people we may easily trace the true cause of that turbulence for which the Jerseys were so long remarkable. When the colony was transferred to Pen, Barclay, and other Quakers, who found it convenient to place at their head Lord Perth and other noblemen of Scotland, because they wished for patrons, considerable numbers removed thither from Scotland; “where, as we are assured, they were as much persecuted for their religion as the English.” Nor were the tenets of the former settlers much improved by the intercourse of those who had been bred amid the commotions of that kingdom, during the reign of Charles II. Yet the whole seems to have been admirably qualified for colonists, because their peculiar religion and habits necessarily promoted diligence and œconomy as the greatest of virtues. As they emigrated without a royal charter they have not been able to derive from this source any peculiar privileges. And, when they claim therefore exclusive immunities, they must necessarily deduce them from this, that they were, as English subjects residing in a subordinate territory of the crown, entitled to English liberties. Such they have been always considered, though they have not always enjoyed their rights. But their obedience has not been generally equal, in extent and uniformity, to the protection they have at all times experienced.<sup>27</sup>

## AUTHORITIES AND NOTES.

<sup>1</sup> See the grants, in the Record, Plant. Off. titled, Proprieties, A. p. 113-18. — <sup>2</sup> Smith's Hist. N. York Pap. p. 11; Brit. Emp. in Amer. 1 v. p. 134; Dougl. Sum. 2 v. p. 274-9. — <sup>3</sup> The subjoined *extract of a letter, dated in November, 1685, from Colonel Nichols to the duke of York*, will throw considerable light on a portion of history, the obscurity of which has long perplexed lawyers and historians. — From N. York Pap. 1 v. p. 7.

“ I must now descend to the particular occasion of giving your royal highness this trouble, wherein my Lord Berkeley and Sir George Carteret are concerned; who, I know also, will be so just to me as to have me excused for manifesting clearly my knowledge to your royal highness. About ten days past, Captain Bollan shewed me a letter from my Lord Berkeley and Sir George Carteret, and therewith a grant from your royal highness to them, for all the lands to the west of Hudson's river, as more fully may appear in the said grant; wherein is comprehended all the improvable part of your royal highness's patent, and capable to receive twenty times more people than Long-island and all the remaining tracts, in respect not only to the quantity of the land, but to the sea-coast and Delaware river, the fertility of the soil, the neighbourhood to Hudson's river, and lastly the fair hopes of rich mines, to the utter discouragement of any that shall desire to live under your royal highness's protection. In short, I hold myself obliged to give your royal highness this account upon certain knowledge, having exactly considered and preferred the advance of your royal highness's reputation in these parts above all considerations or obligations whatsoever; and, for my boldness, I can at last but beg pardon. Neither can I suppose that my Lord Berkeley or Sir George Carteret knew how prejudicial such a grant would prove to your royal highness, but must charge it upon Captain Scot, who was born to work mischief, as far as he is credited or his parts serve him. This Scot, it seems, aimed at the same patent which your royal highness hath; and has given out words that he had injury done him by your royal highness; whereupon

whereupon he contrived and betrayed my Lord Berkeley and Sir George Carteret into a design (contrary to their knowledge) of ruining all the hopes of increase in this territory, which he hath fully completed, unless your royal highness take farther order herein. Upon this tract of land several new purchases are made from the Indians since my coming, and three towns beginning. I gave it the name of Albania, lying to the west of Hudson's river, and to Long-Island the name of Yorkshire, as to this place the name of New-York, to comprehend all the titles of your royal highness. Far be it from me to aggravate any thing beyond the bounds of a faithful servant; for, when it may conduce most for your royal highness's service, I shall as freely surrender up all parts to your royal highness's pleasure as it becomes me to do. I presume farther to propose a better and more entire tract of land, worthy of great consideration, to my Lord Berkeley and Sir George Carteret, which is that part of Delaware river which is reduced from the Dutch, if it is not already disposed; if so, then that my Lord Berkeley and Sir George Carteret may have a hundred thousand acres along the sea-coast, which is a most noble tract of land; but it will cost them 20,000*l.* before it will yield them a penny, and their children's children may reap the profit. Great has been the abuse of false reports, whereof I am now fully satisfied, and yet I hope to render a satisfactory account to your royal highness, by word of mouth, when it shall please you to give me liberty, and that your affairs here are upon such a foundation as will not be shaken by my absence."

<sup>4</sup> Brit. Emp. Amer. 1 v. p. 144. — <sup>5</sup> Dougl. Sum. 2 v. p. 268-9-71. — <sup>6</sup> See his commission and instructions, by which a great variety of taxes were imposed on that immense region by the sole authority of the duke of York; and the collector's commission, by which he was empowered to collect them. N. York Ent. 1 v. p. 2-6. — <sup>7</sup> Ib. p. 13-17. — <sup>8</sup> Dougl. Sum. 2 v. p. 272-3. — <sup>9</sup> Ib. p. 169. — <sup>10</sup> N. York Ent. 1 v. p. 23-28-32. — <sup>11</sup> *The opinion of Sir William Jones* is subjoined, because it shews the cautious sentiments of an eminent lawyer, during those days, with regard to taxation by prerogative alone. — From N. York Ent. 1 v. p. 33.

“ I do hereby humbly certify, that, having heard what hath been insisted on for his royal highness, to make good the legality of the demand of five per cent. from the inhabitants of New-Jersey, I am not satisfied (by any thing I have yet heard) that the duke can demand that or any other duty from the inhabitants of those lands. And that which makes the case the stronger against his royal highness is, that those inhabitants claim under a grant from his royal highness to the Lord Berkeley and Sir George Carteret; in which grant there is no reservation of any profit, or so much as jurisdiction.

WM JONES.”

REMARK. The inhabitants being thus freed from taxes, levied by prerogative, were equally aggrieved, during the reign of William, by the imposition of duties by the assembly of New-York, which could be as little supported by any principle of equity or law. In June, 1697, the proprietors, therefore, applied to Sir John Hawles and Sir Creswell Levinz for their advice on this subject; who both concurred in opinion, “ that no customs could be imposed on the people of Jerseys, otherwise than by act of parliament or their own assembly.” — Rec. Prop. A. 158.

“ N. York Ent. 1 v. p. 33-4. — ” Brit. Emp. Am. 1 v. p. 147. —  
 “ N. York Ent. 1 v. p. 33. — ” The following *letter from Sir John Werden, secretary to the duke of York, to Sir Edmond Andros*, shews the embarrassments of the prince, and the nature of the notice sent to the governor of New-York of the interesting change mentioned in the text. — From N. York Ent. 1 v. p. 34.

“ Sir,

St. James's, 6 Nov. 1680.

I presume you will have heard already that his royal highness, in obedience to his majesty's commands, is gone again into Scotland; but that, before he went, he was pleased (upon such advice as he relied on) to confirm and re-leave to the proprietors of both moieties of the New-Jerseys all their and his right to any thing (besides the rent reserved) which heretofore may have been doubtful, whether as to government or public duties, in or upon the places within the grants. And, though I believe the deeds themselves respectively, when produced to you, will enough satisfy you in this matter, yet I thought it convenient herein to give you notice



notice of them, to prevent as much as in me lies any doubt of the validity thereof, or the having been surreptitiously obtained, or any other inconvenience that may happen either to you or to the proprietors, for want of such intimation. I am, &c."

<sup>16</sup> N. York Ent. 1 v. p. 37; Journ. Plant. Off. 5 v. p. 162. — <sup>17</sup> N. York Pap. 1 v. p. 249. — <sup>18</sup> Dougl. Sum. 2 v. p. 272-3. — <sup>19</sup> N. York Ent. 1 v. p. 40. — <sup>20</sup> N. York Pap. D. N<sup>o</sup> 33. — <sup>21</sup> The two subjoined papers shew the nature of the disputes in which New-York and the Jerseys were then engaged. — From N. York Pap. p. 308.

*A remonstrance from three of the proprietors of East-Jersey to the governor of New-York.* — They blame him for his treatment of their colony; they boast of their connexion with his master; who abhors doing any thing unjust.

“ Sir,

We did promise ourselves in you a good and kind neighbour, both judging you would have so inclined to a colony wherein we are so much concerned, and that the regard you have to your master's honour and interest would have obliged you to it; considering we are such as have the happiness to claim an interest in his favour. We have discoursed with his commissioners, at London, of those things that were by you proposed in relation to the bringing our colony under the government of New-York, and doubt not but we have convinced them of the reason which induced us not to yield to such a proposal; and we doubt not both the duke and they are fully convinced of our right in every respect, both of government, ports, and harbours, free trade, and navigation: And, having conversed with the duke, we found him very just, and to abhor the thoughts of allowing any thing to be done contrary to what he hath past under his hand and seal: And we persuade ourselves you will lay aside all thoughts of attempting what may reflect upon the justice or honour of your master, or may give us just reason to complain; since there shall be nothing wanting on our part that may tend to any advantageous correspondence; which, as we expect from you, so shall

be seriously recommended by us to our agents, and always entertained by your assured friends and servants,

Edinburgh,  
22d August, 1684.

Perth,  
Geo. M<sup>c</sup>Kenzie,  
Drummond.”

*Colonel Dongan's spirited answer*, which probably contributed to procure his recal, through the influence of his opponents with James II.

“ My honoured lord,

I had the honour of a letter from you and some other proprietors of East-Jersey, and am mightily surpris'd to find that I am accus'd to act some things to the disadvantage of your colony and dishonour of my master; did I know my accusers and the crime objected I could be better able to answer. Your lordship may believe me, I have acted nothing unjustly to the prejudice of your agents or people; so far from it, that, when I found them take wrong measures, I advis'd them for the best, as I thought, both for the proprietors and people: What complaints they make of me I know not, but am sure the people cry out very much against them. What I wrote to his royal highness and his commissioners, as his servant, I was certainly oblig'd to, and to give my opinion what is convenient for the interest of this province: And, I believe, had your lordship been in my station, you would have represent'd the great incon-  
veniency of having two distinct governments upon one river; yours having the advantage of being some leagues nearer to the sea than we are. Your agents have dispers'd printed papers, to the disturbance of the inhabitants of Staten-land, which hath been in possession of his royal highness above twenty years, (except the little time the Dutch had it,) purchas'd by governor Lovelace, of the Indians, in the time of Sir George Carteret, without any pretences, till your agents made claim of it: It is peopled with above two hundred families. To convince your lordship that I have done nothing amiss in writing how convenient it would be to regain East-Jersey, I do assure you that some of the proprietors themselves are of the same opinion, and have told me so: And, to shew your lordship how favourably I act, I am inform'd that, in the  
time

time of other governors, ships that came to Amboy made entry at New-York; yet, during my time, several ships have gone thither, and I have desired no such thing, nor will I, till I am assured of his royal highness's pleasure. It shall not be my fault if there be not an advantageous correspondence. I had almost forgot to tell your lordship, that to the end a fair correspondence may be preserved between these governments, in an act lately made by the assembly, amongst other things, almost equal privileges were allowed to East-Jersey with this province; and all the thanks I have is to be misrepresented, who will always endeavour to prove that I am

New-York,

THO. DONGAN."

13th February, 1684-5.

<sup>22</sup> N. Jersey Pap. p. 67-9. — <sup>23</sup> Jour. Plant. Off. 5 v. 162-3-257. — <sup>24</sup> N. Jersey Pap. p. 73-83. — <sup>25</sup> Ib. 95. — <sup>26</sup> Dougl. Sum. 2 v. p. 192. — <sup>27</sup> N. York Pap. 380; Brit. Emp. Am. 1 v. 143. — The assembly which convened at Perth-Amboy, in May, 1687, granted a tax of a penny in the pound on estates, to enable the governor of New-York to repel the threatened invasion of the Canadians, "because the king had instructed him to call on other provinces for aid, in case he was invaded." From this law it appears that East-Jersey had been then divided into five counties; that lands were rated at 10*l.* a hundred acres; an ox, four years old, at 4*l.* a cow, of three years, at 3*l.* horses, rising three years, 3*l.* Wheat, 4*s.* a bushel; Indian corn, 2*s.* a bushel; butter, 6*d.* a lb. pork, 2½*d.* a lb. tobacco, 2½*d.* a lb. and every male inhabitant, of sixteen and upwards, at 10*d.* — See the act, in N. Jersey Pap. p. 89. — And from these prices, though the nature of the money is not mentioned, the politician may form some judgement with regard to the quantity at market of those commodities, the demand for them, the nature of trade, the extent of taxation.

## C H A P. XXI.

*When a colony was first planted on Delaware river discussed. — A sketch of its history. — William Pen petitions for a grant of American territory. — His charter. — Observations. — First emigration under Markham. — His negotiation with Lord Baltimore. — The frame of government of Pennsylvania. — Reflections. — Pen obtains a grant of the Delaware colony. — He arrives in the province. — His conduct. — The first assembly. — Its proceedings. — His conference with Lord Baltimore. — He changes the frame of government. — The second assembly. — He returns to England. — His disputes with Lord Baltimore finally settled. — Distractions arise. — A deputy-governor appointed. — His contentions with the assembly. — Remarks. — Conduct of the province at the Revolution.*

**A**T what precise period of time the fruitful banks of South-river of the Dutch, of Delaware of the English, were first planted by Europeans, was once a question of importance, because the fate of provinces depended on it; though, during the present times, it has become an inquiry of mere speculation. Curiosity, however, cannot now be perfectly gratified. If we may credit the relations of a disinterested man, who travelled thither, no settlement existed during the year 1620. While Harvey, the governor of Virginia, in March, 1631-2, recognized “the adjoining plantations of the Dutch,” he considered the 41st degree of north latitude as the northern boundary of that most ancient dominion; which would carry it up almost to New-Amsterdam of the Hollanders, to New-York of the English. And thus the literal import of the expression, *adjoining*, may be naturally gratified, without contradicting records or doing violence to probability. The foregoing history has shewn that the Dutch colony, which commenced long after a *trading-house* had been built, extended a little beyond the island of Mana-hattans itself in 1633. And Harvey, who had made discoveries by order of his sovereign, during the years 1627-8-9, “not only in Cheapeake-bay, but “in every part of his government,” could not be ignorant of the precise

cise extent of it.<sup>1</sup> Thus, though various Europeans may have then trafficked in Delaware, their plantations had not embellished her margin probably during the year 1632. Yet, after receiving proofs and examining the question, the lords of the committee of colonies, at the distance of half a century, resolved: "That the western shore of the Delaware had been planted by Christians before and at the date of Lord Baltimore's patent." The authority is high, perhaps decisive, and would have forced conviction on the most incredulous, were it not that they had been too much influenced by the suggestions of an interested man, that the evidence which convinced them does not remain for the examination of the present times. But it was a possession formed on the territories of England, either of Virginia or New-England; and her ministers, with an inconsistency which shews how little they were governed by true policy, admitted, by their decision, the rectitude of it.<sup>2</sup> When statesmen are guided by the influence of present passion, rather than by uniformity of principle, they generally deviate from the interest of their country, involving themselves and the world.

If, from the period of conjecture, we turn however to the authentic notices of records, we shall discover the commencement of the occupancy of the Swedes and Dutch. Scarcely had a Swedish factory, conducted by Minuit, reared, near the confluence of Delaware, on her eastern banks, habitations for shelter, when Kieft, the governor of New-Netherlands, transmitted a remonstrance, in May, 1638. He asserted, with a confidence which shews at least his own sincerity: "That the whole *South river* had been in the Dutch possession *many years*, above and below beset with forts, and sealed with their blood."<sup>3</sup> But neither his assertions nor his threats were otherwise regarded, by Minuit, than as they always are by the wise and brave. He retained possession, though his operations continued extremely feeble, because they were unsupported. And, at the treaty of Stockholm, concluded in September, 1640, Sweden and Holland prudently passed over in silence colonial squabbles and American territory.<sup>4</sup> For the pretensions of neither party could have been supported by fair and accurate discussion.

An emigration from Maryland not long after took possession of the margin of the Dutch *Schuyl-kill*, the *Hiding-creek* of the English. But, when the governor of New-Netherlands heard of what he deemed intrusion, he sent Alpendam, from Mana-hattans, with two sloops, in May, 1642; who easily dispossessed colonists that were little prepared to resist him. The weakness of Maryland, which had been settled only nine years before, the distractions of the parent country, involved in civil war, prevented the effects of that resentment which a great nation will always feel when insult is offered to her sovereignty.

When the Dutch recollected the frequency of the murders committed on their traders by the Indians, during their fits of ebriety, the continued invasion of what they deemed their territory by the English and Swedes, they determined to build a fort, in order to secure both. During the year 1651 they erected a trading-house, rather than a fortification, on a low point of land, which commanded the river, near which the present Newcastle was built. And here Hudde was left to rule and to traffic. In July, 1651, he purchased, from the Minquaas, the lands on the western shore of the Delaware, from Christiana-creek to the river of Bompt-hook; which is the most early Indian purchase made here by the Dutch: And, from this transaction alone, we may infer, that no colony had hitherto been settled, that the possession of all parties was recent and unsubstantial. But he did not continue long to exercise his feeble authority. The Swedes had not only observed this conduct of their rivals, but protested against what was considered as injurious to them; though he did not regard much what had been so often done before, without bloodshed, without consequence. And, during the subsequent year, a vessel of considerable force, with a few troops on-board, conducted by Rivingh, anchored near the fort; of which he instantly acquired possession by stratagem rather than by force, because his attack was unexpected, since his power was derided. Agreeably to the practice of conquerors, he named what his superior dexterity had acquired Fort Casimir, which he soon strengthened and enlarged. And he soon after erected, on the same river, five miles higher, Fort Christiana, in honour of his queen. Mean-while the government of Maryland knew little of these revolutions  
of

of unimportant sovereignty, except from rumour, because no communications had been yet formed from the source of Chesapeake to the bay of Delaware. And it could not oppose what it did not certainly know. The West-India company felt the blow struck at its interest and its power, but was too feeble to resent it in proportion to its feelings, because it was poor. And it applied for aid to the city of Amsterdam, which equally abounded in wealth. Invigorated by this powerful ally, the company sent an armament from Mana-hattans, under the command of Stuyvesant, the governor; who, in September, 1655, easily acquired possession of the two forts, and compelled the Swedish colonists to submit to the government of the states-general. The facility of his conquest shews the weakness of his opponents; the paucity of the Swedes demonstrates the imbecillity of their colony. The fortress of Casimir was now denominated Newer-Amstel by the Dutch, by the English Newcastle. And a village naturally arose under its walls, because the inhabitants derived protection from it; and the Dutch colonists followed the custom of their countrymen, who delight to reside in towns. A subordinate government was here established, which was guided by a lieutenant-governor, under the command of the director-general of New-Netherlands. But neither this little colony nor his limited authority extended beyond the limits of the Indian sale before-mentioned. And, in pursuance of orders which he received in 1658, he purchased of the natives, in the subsequent year, the lands around Cape Henlopen, in order to raise a fortification and to extend the settlements. These trivial notices sufficiently demonstrate the real commencement of a permanent plantation on Delaware, and the littleness of its extent so late as the Restoration, thirty years after it has been said to have begun. The evidence of records shews how little are to be relied on the assertions of interest or the stories of tradition.

Informed at length of all these transactions, the governor of Maryland was roused from his late inactivity in proportion as he perceived that the interest of the proprietary was affected: He dispatched Colonel Uty and other commissioners to Newcastle in the year 1659, in order to shew Lord Baltimore's right, to claim the country to the southward of the fortieth

tieth degree of north latitude, to warn the Dutch to retire to the northward of it. But the requisitions of these men seem not to have been much attended to, because the power of Maryland was not dreaded. And this nobleman sent Neal, as his agent, to Holland, during the subsequent year, to make similar demands, and to protest against the conduct of the West-India company. Though that body, however, refused his requests, it sent private orders to its officers to withdraw to the northward of Lord Baltimore's boundary, in order to prevent the threatened hostilities. After those affected delays and contradictory conduct, which are natural to men who are obliged to execute disagreeable commands, the Dutch actually retired, during the year 1662, from the country around Cape Henlopen. And Charles Calvert, the son of the proprietary, immediately occupied what his opponents had relinquished.<sup>7</sup> Yet they retained possession of Newcastle and the higher parts of the country till October, 1664; when the whole submitted to Sir Robert Car. He admitted the Dutch colonists, by a formal capitulation, to the honourable rank of English subjects, who consequently acquired, by their subjection, the invaluable rights of Englishmen.<sup>8</sup> But what must have been the populousness of a colony, which, twenty years after, when it had acquired additional numbers from its neighbours, contained only three thousand persons? From its conquest, the Delaware plantation, of which Newcastle was the capital, was annexed to New-York as an appendage, because it had been long subordinate to her. And, till the period of final separation, it underwent the various vicissitudes of its superior, partaking of her fortunes, both good and evil; feeling no other disturbance than what arose from the claims of Lord Baltimore, which were rejected without ceremony; from an insurrection of the ancient colonists, which was easily suppressed, because it was unprovoked. With New-Netherlands the duke of York assumed the government of this little territory in the same manner as of his other dominions, though without authority. For it ought to be remembered, that his grants extended only to the eastern margin of the Delaware, and the plantation before-mentioned stretched in a narrow slip along her western bank. It is a singular circumstance in the history of this inconsiderable colony that it seems



seems to have been at all times governed by usurpers, because their titles were defective.

In the mean time the renowned William Pen, the head of a considerable party, a man of great depth of understanding, attended by equal dissimulation; of extreme interestedness, accompanied with insatiable ambition; and of an address in proportion to all these; engaged in colonisation during an age when all men's minds were inflamed either with the desire of emigration, because they were unhappy in England, or with an anxiety to acquire distant territory, because their sovereign was profuse of what had cost him nothing. As an American adventurer, Pen first appeared at the head of the Quakers; who, during the year 1674, purchased the western part of the Jerseys of Lord Berkeley; who soon after bought of Carteret what remained. And, from this time, his active mind was extremely engaged not only in the administration of a country in which he was so deeply interested, but in acquiring knowledge of colonial affairs. It was on this occasion that he received the most exact information of the country lying westward of the Delaware, which inflamed his ambition; while his dissatisfaction with his numerous associates incited a desire to acquire a separate estate.<sup>9</sup> And a man of his address was little at a loss for pretences or expedients.

In June, 1680, he presented a petition to Charles II. stating not only his relationship to the late admiral, but that he was deprived of a debt, due from the crown, when the exchequer was shut up; praying, in compassion to the afflicted, for a grant of lands, lying northward of Maryland and westward of Delaware; and adding, that, by his interest, he should be able to settle a province which might, in time, repay his claims.<sup>10</sup> His petition was immediately sent to Werden, the duke of York's secretary, and to Lord Baltimore's agents; in order "that they might report how far the petitioner's pretensions may consist with their boundaries." Both agreed to the proposals of Pen, provided "his patent might be so worded as not to affect the rights of others."<sup>11</sup> To every thing that was asked of him he readily agreed, because he knew the importance of concession while he asked for what might be extremely endangered by opposition. He had the art to procure not

only the consent, but the recommendation, of the duke of York. And, in November, 1680, the sketch of a patent, which he had chiefly copied from the charter of Maryland, was sent to the attorney-general "for his opinion of it;" who not long after communicated his observations, "shewing the clauses that are not agreeable to the laws here, though "they are in Lord Baltimore's patent." After a considerable struggle with the duke's commissioners, who insisted that Pen's southern line should run at least twenty miles northward of Newcastle, his boundaries were at length adjusted, so as to please both parties. And, in January, 1681, the committee of plantations requested that eminent statesman and lawyer, North, chief-justice, "to take his patent into consideration; to provide, by fit clauses, that the sovereignty of the king be reserved; that acts of parliament, concerning trade, and navigation, and the customs, be duly observed; and, in general, that it be so drawn that it may consist with the king's interest and service, and give sufficient encouragement to settlers." The charter shews that it had been corrected by the hand of a master. We shall probably hear no future historians speak of it as "an historical phenomenon, that so excellent a set of constitutions took their rise from an arbitrary court and a bigotted prince." When we consider the time at which it was granted, long after the acts of trade and revenue had been established; its singular provisions, which were assuredly settled after the greatest consideration by the most eminent lawyers and statesmen; the disputes in which the nation was then engaged with Massachusetts; the charter of Pennsylvania must be deemed an object of singular curiosity and of minute discussion.

In consideration of "the merits of the father, and the good purposes of the son," in order "to extend the English empire," and to promote useful commodities, Charles II. granted to William Pen, as proprietary, in absolute property, that immense region, bounded on the east by the river Delaware, extending westward five degrees of longitude, stretching to the north from twelve miles northward of Newcastle to the three-and-fortieth degree of latitude, limited on the south by a circle of twelve miles, drawn round Newcastle to the beginning of the fortieth degree

of

of latitude. The whole was erected into a province, by the name of Pennsylvania: Saving to the crown its sovereignty and the allegiance of the proprietary and people. In order that the colony might increase by the multitude of people resorting thither, liberty was given to subjects, those only excepted who should be specially forbidden, to transport themselves in such shipping, "as by the laws of England they ought to use," with such merchandises as they should think proper, "saving the customs for the same, by any statute due, or to be due;" to import the productions of the province into England, "but into no other country "whatsoever," and to export them thence within one year, paying such duties as other subjects, and observing the acts of navigation. Pen was empowered to assemble the freemen, or their delegates, in such form as he should think proper, for raising money for the uses of the colony, and for making useful laws, provided they should not be contrary to those of England or the rights of the kingdom. To the end that the proprietary, or the people, might not through inadvertence or design depart from that allegiance, which, by the laws of the realm, they *and all other subjects* owe to the crown, a duplicate of the acts of assembly was required to be transmitted within five years to the king in council; in order that, should they be found inconsistent with the sovereignty, or contrary to legal government, they might within six months be declared void. He was empowered to erect courts of justice, to hold plea of causes, civil and criminal; saving to every one the right of appeal to the king in council: And he was enabled to pardon crimes committed within his jurisdiction, treason and murder only excepted. It was required, that the rules for governing property, as well for descent of lands as for succession of chattels, shall remain, according to the course of the laws of England, till changed by the assembly. The proprietary was empowered to constitute ports, for the convenience of commerce; provided, "that the officers "appointed by the commissioners of the customs should be freely admitted." The assembly was authorized to assess reasonable subsidies on the commodities loaded or unloaded in the harbours of the colony, which were granted to Pen; "saving to the crown such customs, as by act of "parliament are or shall be appointed;" the word *are* referring to those  
those

those already established ; the term *ball*, to those that might be imposed in future : And the whole distinguishing between the provincial revenue for local purposes and the parliamentary taxes for the uses of the empire. He was required to appoint an agent to reside in London, to answer for misdemeanours or wilful neglect *against the acts of trade* ; and, in case of failure, the government might be resumed, saving the rights of the people. As incursions might happen, he was empowered to train the inhabitants, to pursue the invaders by sea and land ; provided that no correspondence should be maintained with the enemies of the crown, that no war should be made on any state in amity. He was enabled to alien the soil to the colonists, who might hold their lands under his grants, notwithstanding the statute prohibiting such subinfeudation. It was stipulated by the king, for himself and his successors, “ that no custom, or  
 “ other contribution, shall be levied on the inhabitants or their estates,  
 “ unless by the consent of the proprietary, or governor and assembly, or by  
 “ *act of parliament in England.*”<sup>18</sup> Yet the precision of this language did not preclude disputation, because ingenuity can easily frame objections at the command of interest or ambition. By the desire of the bishop of London,<sup>19</sup> it was stipulated, that, when twenty inhabitants should request a preacher to be sent them, who should be approved by him or his successor, he shall be allowed to reside without molestation. Should doubts arise, with regard to the true construction of the charter, it was commanded, that an interpretation favourable to the proprietary shall always be made, provided that none shall be admitted, by which the allegiance due to the crown may suffer diminution.

Such is the substance of a grant, whereon has been established the Pennsylvania government and laws, so highly celebrated for their moderation, their wisdom, their excellent provisions in favour of liberty. “ It is remarkable, says their historian,<sup>20</sup> that such an instrument,  
 “ penned with all the appearance of candour and simplicity imaginable,  
 “ and equally agreeable to law and reason, to the claims of the crown  
 “ and the rights of the subject, should be the growth of an arbitrary  
 “ court.” Perhaps, it is no less singular, that the national rights, the  
 “ authority of the laws and the supreme legislature, should have been so  
 “ carefully

“carefully attended to and preserved.” But, it is in the history of Massachusetts that we shall find this mystery fully explained. Charles II. and his ministers had been long deeply engaged in a contention with this colony, which had given them infinite vexation, and impressed both with the strongest sense of the inconveniences which they felt, to which they found it so difficult, if not impossible, to apply an effectual remedy. It was an anxiety to prevent the like disputes and disorders from arising in Pennsylvania, which dictated the chief clauses of her charter. The general court had deemed the acts of navigation of no force within its jurisdiction, till legalized by its own ordinance ; but this grant carefully provided for a compliance with them, under the penalty of forfeiture : Acts had been made by that provincial legislature inconsistent with the laws and rights of the sovereign state ; but this incongruity is here cautiously prohibited : The general court had coined money, and afterwards pleaded its ignorance as an excuse ; but, to prevent the dangers of misconstruction or design, all laws were required to be transmitted for approbation or dissent, though this prudent proviso answered little good practical purpose : A standing agent was now required, because that body had either refused, or delayed to appoint any, to answer the most urgent complaints : And, the rights of the church of England were now regarded, because she had been suppressed in Massachusetts. Like all the others, this charter, however, thus legal and reasonable, is merely declaratory of the common law, when properly understood and properly applied ; and every privilege conferred, or right reserved, would have necessarily followed a colony, settled by English subjects, without a charter ; because, their immunities and duties adhere to them wheresoever they go. In New-York and the Jerseys, the same privileges were enjoyed subsequent to the Revolution, as in Maryland, or Pennsylvania. For, they all equally owed allegiance to the crown and obedience to the laws ; in return, they were entitled to general protection and legal government. Yet there was in this no express stipulation, as had been inserted in all other colonial patents, “that the Pennsylvanians and their descendants should be considered as subjects born within the realm,” because the great  
lawyers,

lawyers, who revised it, knew that such declarations were nugatory, since they were inferred by law.

Mean-while the proprietary seems to have exerted his usual address and activity in procuring inhabitants for the wilderness which a tedious solicitation had procured. In May, 1681, he detached Markham, his kinsman, with a small emigration, in order to take possession of the country, and to prepare it for a more numerous colony. He published, in the subsequent July, "certain concessions, agreed on between the proprietary and the adventurers."<sup>21</sup> But they contain nothing besides the manner of acquiring lands, by which, contrary to the remonstrances of his followers, a considerable quit-rent was reserved; the mode of treatment of the Indians, whose rights were humanely attended to, because they were men; and a few general regulations for the preservation of internal order till his arrival, and the establishment of a regular legislature. Judging of the interestedness of Lord Baltimore by his own feelings, he supposed that this nobleman had extended his province beyond his true limits: And in October, 1681, Pen transmitted a letter to Frisby, Harman, and to other principal inhabitants of the eastern shore of Maryland,<sup>22</sup> telling them, in language which shews either his misinformation or his confidence, that they resided in Pennsylvania, and ought no longer to pay their rents or their taxes as formerly. They derided this warning, because they perfectly knew their own affairs. But others, either of weaker minds, or of less honesty, who, like those to be found in every country, wished only for a pretence to withhold their duties, refused to pay the public levies, till they were compelled by force; "the people hoping to be under no government."<sup>23</sup> And here commenced, from the forward selfishness of Pen, a controversy, which, for upwards of half a century, created infinite expence and vexation to the two proprietaries, and anxiety to the people.

In August, 1681, Markham received from the governor of New-York, that extensive forest, lying twelve miles northward of Newcastle, on the western side of the Delaware, and finely watered by her, and by smaller streams: As it enjoyed the advantages of a settled neighbourhood on the south and east, his followers were not embarrassed with the difficulties

culties which depressed their predecessors in the same pursuits. And they made preparations with their habitual diligence for the numerous emigration expected in the subsequent year. Markham soon visited Lord Baltimore, to deliver the royal letter of April, 1681; informing him of the grant of Pennsylvania, recommending the infant colony and its leader to his friendly aid, requiring him "to make a true division of the two provinces, according to the boundaries and degrees expressed in their patents."<sup>24</sup> This nobleman received him with the affection of a father, and professed his readiness to comply with requisitions, which to him had the force of commands, because they promoted the views of his sovereign, and his own interest. In order therefore to fulfil both, he met that gentleman, in the subsequent year, in conformity to his own request, at the village of Upland; which has since been denominated Chester. But a skilful observation, with an accurate instrument, having discovered what seems to have been a secret to both parties, that the place of treaty was twelve miles southward of the fortieth degree of latitude; that the real boundaries of Maryland would consequently run up to the Schuyl-kill; Markham was now as backward as he had been lately solicitous to establish the limits of Pennsylvania. It was to no purpose to renew their conferences at a subsequent day, because the one determined to derive every benefit from the precision of his boundaries, while the other equally resolved to draw advantages from the uncertainty of his.<sup>25</sup>

The concessions before-mentioned, given merely as a temporary expedient, would have afforded little satisfaction to his followers, and added nothing to the fame of Pen as a legislator. And in April, 1682, he published "the frame of government for Pennsylvania."<sup>26</sup> The chief intention of this famous charter was declared to be, what was said ought to be the end of all true government, "for the support of power in reverence with the people, and to secure the people from the abuse of power. For, liberty without obedience is confusion, and obedience without liberty is slavery." In prosecution of these salutary objects, the chief aim of the proprietary was to establish the supreme power, legislative and executive, upon proper principles. The assembly, there-

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fore, was directed to consist at first of the whole freemen, afterwards of two, but never to exceed five hundred. A provincial council was established, consisting of seventy-two members, to be chosen by the freemen ; of these counsellors there was to be an annual succession of twenty-four new ones ; the same number annually going out : And here was the governor to preside, invested with a treble vote. Thus composed, the council was not only invested with the whole executive powers, but with the same authority as had been given by the Carolinian constitutions, from which it was probably copied, of preparing such bills as ought to be presented to the assembly. The Penſylvanian *frame* was drawn chiefly from the Oceana of Harrington, which we are assured is the only valuable model of a commonwealth hitherto offered to the public :<sup>27</sup> Yet it is singular, that all the principal defects of the one are literally transcribed into the other, because Pen was actuated by the usual spirit of copyists. It is unnecessary to point out either the beauties or the faults of a system which was too visionary to be ever carried into practice. The frame of government, however, which was extorted from Pen by the clamour of his followers,<sup>28</sup> was considered as so excellently calculated for securing liberty, religious and civil, that many embraced it, in the persuasion that it would be punctually executed. But complex forms of government, like complicated movements in mechanics, will be ever found unmanageable in execution. The theoretical frame of Pen underwent a similar fate as the no less impracticable constitutions of Locke : It was at once found to be inapplicable to the condition of the colony : And, after a variety of alterations, which did not amend it, it was at length wholly laid aside, and the present simpler form established. What happened to both, and the distractions engendered by them, offer this instructive lesson to mankind : To be content with the constitution handed down to them by the wisdom of their fathers ; to be cautious how they remove ancient foundations in their eagerness to adopt the speculations of theorists. As a supplement to *the frame*, there was published, in the subsequent May, a body of “ laws agreed upon in England by the adventurers,” which was intended as a *great charter*. And it does great honour to their wisdom as statesmen, to their morals as men, to their spirit



spirit as colonists. A plantation, reared on such a seed-plot, could not fail to grow up with rapidity, to advance fast to maturity, to attract the notice of the world.

Dissatisfied with the immense region which he had lately acquired, or considering the whole as unprofitable “ unless he could carry it southward to Chesapeake,” Pen had continually solicited the duke of York, though in vain, for a grant of *the Delaware colony*.<sup>29</sup> Wearied at length with solicitation, or hoping for benefit from a possession which had hitherto yielded him none, the prince conveyed in August, 1682, as well the town of Newcastle, with a territory of twelve miles around it, as that tract of land extending southward from it upon the river Delaware to Cape Henlopen.<sup>30</sup> But no transaction could be more liable to objection: None could reflect more dishonour on both parties, because both knew that the title of what was now sold was extremely exceptionable, since it belonged to another. For the duke’s patents did not include it within his boundaries: And for twenty years his counsellors had advised him against procuring an inclusive grant, because they foresaw that the whole must one day devolve on him, with the crown itself. He could transfer, therefore, no other right than mere occupancy in opposition to the legal claim of Lord Baltimore, whose charter carried up his northern limits “ to *that part* of the estuary of Delaware which lieth under the “ fortieth degree of latitude.” And he conveyed to him only the soil of a territory, whose extent it was impossible to describe, because it could not be ascertained, without any of the powers of jurisdiction, which were, however, immediately assumed by Pen, because grave men and philosophers can do without ceremony what would cover others with shame. Having thus gratified his followers and his ambition, he departed for Pennsylvania, in order to enlarge the scene of action, because his active mind was never happy except while engaged in intrigue.

When the proprietary, for the first time, arrived on the banks of the Delaware in October, 1682, he found them inhabited by three thousand persons, composed of Swedes, Dutch, Finlanders, and English. They were described as *a plain, strong, industrious, people*, though they had made no great progress in culture,<sup>31</sup> because their possession was recent. And

by these, as well as by his colonists, he was received with joy and respect, because they had nothing to fear and much to hope. He was accompanied thither by about two thousand emigrants, who, being either Quakers or other dissenters, wished to enjoy their peculiarities and religion in a country which offered a peaceful asylum to the persecuted. As numbers in England during the reign of Charles II. suffered more from what they dreaded than from what they felt, they naturally deserted a land where they were miserable, in order to enjoy that freedom and property, which were now offered them as the price of their change of habitation. And it became soon a gainful branch of commerce from the west of England to carry passengers to Pennsylvania, because the spirit of emigration pervaded a dissatisfied people. Agreeably to *the counsel* of the good bishop of London, *to buy the natives land*, Pen immediately entered into treaty with the Indians, from whom he purchased as much of the soil as the circumstances of the colony required, for a price that seems to have given them satisfaction, and *with whom he settled a very kind correspondence*. This policy, equally humane and wise, not only long ensured an advantageous peace to the province, but has conferred undiminished celebrity on his name, while the adviser of it has been hitherto either unknown or forgotten. Nothing seems to be liable to more objection than the mode in which lands have generally been acquired of the aborigines, because the ownership was invested in the tribes, and not in their sachems, who too often sold them at a time when they were incapable of disposing of what really belonged to others. The general dominion of the immense forest, which at that time skirted the frontiers of the settlements, appears to have been invested in the *Five nations*, by the right of conquest. And, during the year 1684, they absolutely refused to sell the lands on the river Susquehannah to Pen; because he was opposed by the governor of New-York, whose influence was unbounded over this powerful people, who feared the loss of the trade of peltry to his province, which that gentleman was supposed to have wronged in his anxiety to promote his own designs. The proprietary, however, enjoyed the satisfaction of having completed “the settlement of six-and-twenty fail of  
“people to content within the space of one year.”<sup>12</sup> It was on this occasion,

occasion, that the foundation of Philadelphia was laid on a narrow tongue of land, formed by the junction of the rivers Schuyl-kill and Delaware; "which, we are assured, flourished so much, that there were near a hundred houses and cottages built within a twelvemonth from its commencement in 1682;" which afterwards became so justly famous for the regularity of its structure, the convenience of its wharfs, the number of its warehouses, the extent of its commerce, the greatness of its wealth, and the excellence of its police.

Nothing can be more amusing than to remark the singular legislative conduct of Locke and of Pen, so renowned as colonial legislators: The former, less skilled in the science of man, thought it sufficient to establish a learned system for a desert, expecting that the multitude would no sooner comprehend the beauty of its parts than obey it: The latter judged more wisely when he decided, "that there must be a people, before there can be a government; that the people must be united and free, before there can be a permanent government." In prosecution of these large views, he convened the first assembly at Chester, in December, 1682; consisting of seventy-two delegates, from the six counties, into which had been already divided Pennsylvania and the Delaware colony, that was soon denominated *the territories*. Here, according to *the frame*, the freemen might have come for this time in their own persons, in the true spirit of Rousseau. But, not only the sheriffs by their returns, but the inhabitants by their petitions to the proprietary, declared, that the fewness of the people, their inability in estate, and unskilfulness in matters of government, will not permit them to act; thus shewing an example of humiliation, not common in the world. And they desired, therefore, that the deputies now chosen, may serve both for the provincial council and general assembly; three out of every county for the former, and nine for the latter. These representations, so agreeable to the designs of the proprietary, probably procured by him, were passed by the assembly without hesitation into *an act of settlement*.<sup>13</sup> The persons, thus returned, were declared to be the legal council and assembly; and every county was empowered to send the same number in future, which in the same manner should constitute the legislature: And, after

after the addition of a few other explanations, the modified frame of government was solemnly recognized and accepted. When the whole reflected, "that nothing is more desirable than the union of a people," an act was passed, annexing *the territories* to the *province*, communicating to the one the same privileges, government, and laws, as the other already enjoyed.<sup>34</sup> Nothing could be more wise than this policy; it is only to be regretted, that it was founded in usurpation, because, though to the soil of the Delaware colony Pen had the semblance of right, to the jurisdiction he had none. Over this transaction the assembly of 1704, with *great grief*, lamented, while it remonstrated to Pen in characteristic language: "That thou, who knew how precarious thy power was to govern the lower counties, should bring thy province into such a condition, that, when the crown had assumed that government, the privileges granted by thy second charter should become of no effect."<sup>35</sup> Every foreigner, who promised allegiance to the king and obedience to the proprietary, was at the same time declared to be a freeman, and entitled to his rights. The numerous laws, which were enacted at this first assembly, which do so much honour to its good sense, display the principles of the people; these legislative regulations kept them alive long after the original spirit began to droop and expire. Had Pennsylvania been less blessed by nature, she must have become flourishing and great, because it was a principle of her great charter, "that children should be taught some useful trade, to the end that none may be idle, but the poor may work to live, and the rich, if they became poor, may not want." That country must become commercial, which compels "factors, wronging their employers, to make satisfaction, and one-third over;" which subjects not only the goods but the lands of the debtor to the payment of debts; because it is the credit given by all to all that forms the essence of traffic. We ought naturally to expect great internal order when a fundamental law declares, that every thing, "which excites the people to rudeness, cruelty, and irreligion, shall be discouraged and severely punished." And religious controversy could not disturb her repose, when none, acknowledging one God and living peaceably in society, could be molested for his opinions or his practice, or compelled to frequent or maintain

tain any ministry whatsoever.<sup>36</sup> To the regulations, which were thus established as fundamentals, must chiefly be attributed the rapid improvement of this colony, the spirit of diligence, order, and œconomy, for which the Pennsylvanians have been at all times so justly celebrated. It is a singularity in the history of this province, that neither its various systems, nor its fundamental laws, were communicated to the king for dissent or approbation, though so strongly enforced by the charter, which was really forfeited by an omission rather of design than neglect: Thus, evincing to the world how apt are the most rigid of men to disregard the rights of others when absorbed in what nearly interests themselves.

Having thus promoted his own designs and the happiness of the people, which, fortunately, on that occasion both coincided; having thus secured internal quiet; the proprietary thought it prudent to turn his attention to those disorders that had already arisen from disputed jurisdiction, owing to the unsettled state of his southern boundary. In December, 1682, he met Lord Baltimore in Maryland, who received him with great, perhaps affected, civility. As he had been informed, by Markham, of the former proceedings with regard to this important business, he had the address to procure from Charles II. another recommendatory letter before his departure from England. This he now presented to his opponent. It directed the settlement of mutual claims, because it would conduce to the royal service, to the peace of both: It required this nobleman to determine his northern limits, by the admeasurement from his southern boundary, of the two degrees granted by his patent, according to the usual computation of sixty miles to each; which cannot, said that monarch, be so certainly effected otherwise. It was received with the respect due to the recommendation of his sovereign, though its contents, so different from that of the preceding year, rather merited disregard. Lord Baltimore observed: “ That his majesty had  
“ undoubtedly received misinformation, because his patent, which he  
“ recommended to the attention of his antagonist, would clearly shew  
“ not only that no specific number of degrees were granted, but that it  
“ carried his northern line to the fortieth degree of latitude; that, as  
“ nothing could be controverted but where it intersected the Delaware,  
“ the

“ the true mode of ascertaining that disputed object would be by an observation on land, by a sextant of six feet radius ; by which he was willing to be concluded, though the instrument belonged to his opponent.” And he insisted, with a spirit worthy of a subject of England ; that a royal mandate could not deprive him of what had been granted under the great seal.” Perceiving that the letter had rather inspired confidence than terror, Pen waved the message he had brought, because he was ashamed of having given misinformation ; which was so easily detected, which degraded his prince and disgraced himself. And, admitting that the latitudes expressed in their charters ought to bound the provinces of both, he proposed : That the properest mode to discover the fortieth degree was by actual mensuration from the capes of Virginia, whose true situation had been once ascertained, which was transmitted by tradition and invigorated by common fame. Had it been a degree of longitude which was controverted, what has perplexed mathematicians might have easily embarrassed them. But though each descended to explanations of his own proposal, which wanted little, yet both steadily adhered to what they deemed their own interest. In order, if possible, to adjust a controversy that had disturbed the eastern parts of his province, Lord Baltimore went to Newcastle in the subsequent year : Yet nothing was agreed on, because the same proposals were renewed in similar language ; and the obstinacy of each was confirmed, since the views of each were now apparent. The one dreaded innovation, because he knew not where it might end ; the heart of the other was set upon “ opening a door by the Chesapeake, for peopling his colony.”<sup>37</sup> And to this favourite object were at once sacrificed candour, moderation, good neighbourhood ; any one of which is of more real value, in the estimation of true philosophers, than the ownership of provinces, however wealthy and great.

The mind of Pen, ever active, ever fruitful in new schemes, was soon turned to an object extremely different in kind and extent. Dissatisfied with the act of settlement, which his own management had so lately procured, he, without difficulty, created a second frame ;<sup>38</sup> agreeing partly with the first, modified according to the act of settlement, and in some measure

measure essentially different from both : And to this, with his usual address, he easily procured the assent of the assembly. For the encouragement of aliens, it declared, that, in case of death, without naturalisation, their lands shall descend to their heirs : In order that the inhabitants might be accommodated with such food as *Providence had freely afforded*, liberty was given to every one to hunt on uninclosed lands, to fish in all waters belonging to the province. It is a singular circumstance in the Pennsylvanian history, that, in all the attempts of the proprietary, either to simplify the constitution or to gratify his own inclination, the interests of freedom were promoted. Whatever were his real intentions in this important change, the motives which were then avowed, on which all acted, are extremely remarkable : That the great number of representatives would prove burdensome to the province ; that, as the governor had only a treble vote, the people, through their unskilfulness in the acts of navigation, might pass some laws repugnant thereto, which might occasion a forfeiture of the patent. But these reasons, whether real or affected, gave little satisfaction to the assembly of 1704 ; which, in this manner, concluded its remonstrance to Pen : “ Thus was  
“ the first charter laid aside, contrary to the true intent of the first ad-  
“ venturers, and the second accepted by the assembly, where thou so-  
“ lemnly testified that it was intended solely for the good of the freemen,  
“ being prosecuted with much earnestness in thy spirit towards God.” \*  
The present shared the fate of the former, because not a trace of it remains in the present Pennsylvanian constitution. Yet, while the assembly of April, 1683, thus admitted an innovation which gave such unhappiness to its successors, it established various salutary regulations. Abrogating the common law with regard to the descent of land, which had been introduced by the charter, it enacted ; “ that the estate of the in-  
“ testate shall be disposed of, one-third of the personal property abso-  
“ lutely, and one-third of the lands, during life, to the widow ; two-  
“ thirds of both among the children, *the eldest son having a double share.*” \*\*  
However consonant it might have been to feudal principles to give the lands of the feudary undiminished to him who was first able to defend them, this policy was extremely unfuitable to colonists, who had a wil-  
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dernefs to cultivate; becaufe, by giving property to every one, the exertions of all were invigorated. By the promulgation of fuch laws, the growing profperity of the province was promoted: Their beneficial effects were felt for years after their legislative energy had ceafed. While Penfylvania profpered by the wifdom of her regulations, the enjoyments of the proprietary were embittered by his difputes with Lord Baltimore. In order to promote the fettlement of the country around Cape Henlopen, as well on the fhore of Delaware as on that of the ocean, becaufe it was not only within his boundaries, but had been gained by him from the Dutch, this nobleman iffued a proclamation, in May, 1683, offering fpecial encouragement to planters. But it feems to have been attended with little fuccefs, becaufe it was ftrenuoufly oppofed by his rival, who deemed the lands in controverfy within his conveyance from the duke of York. In return, Pen not long after iffued a proclamation of a different kind; declaring that he had bought the lands lying between Delaware river and Chefapeake-bay, and the Sufquehannah, of Mackaloha, their fovereign; warning all perfons how they fettled on them without leave, how they injured him or his fellow Indians.<sup>42</sup> Whither this fachem poffeffed the rights of fovereignty, which he now conveyed, was a queftion that had never been asked: The proprietary, like other rulers, had only looked for a pretence to raife objections, to ftrengthen an invalid title; and here he found it. Having fucceeded in all his views, except only with regard to his fouthern boundary, which difinterefted men faw could never be fettled by amicable treaty, becaufe the principles and pretentions of both were extremely different; having learned, from his agent, that his prefence was neceffary in England; Pen departed for this country in Auguft, 1684: Leaving his province in profound peace, “when it began to wear a thriving face,” under the adminiftration of five commiffioners, chofen from the provincial council, at the head of whom was Lloyd, the prefident.<sup>43</sup>

Mean-while, in order to invigorate the title of the duke of York to the Delaware colony, a new grant had been folicited, but delayed for fome time by the oppofition of Lord Baltimore, who equally felt the blow ftruck at his rights and the infult offered to his underftanding. The arrival



arrival of Pen, however, hastened the determination of this controversy to final conclusion. James II. now reigned in England: And his spirit directed the decision of his ministers. Having considered the matter in controversy, the committee of plantations, in November, 1685, reported: That the land, intended to have been granted to Lord Baltimore, was such as was inhabited by savages, but that the tract, now claimed by him, had been planted by Christians antecedent to his grant; yet, to avoid farther differences, the peninsula, between the bays of Chesapeake and Delaware, shall be divided into two equal parts, by a line drawn from the latitude of Cape Henlopen to the fortieth degree; that the portion, lying towards the latter, shall belong to his majesty; the other to that nobleman. An adjudication, so agreeable to the royal intentions and to the designs of Pen, was approved, and ordered to be immediately executed.<sup>44</sup> But nothing could be more liable to objection than the principle upon which this judgement was founded. For it admitted the lawfulness of the intrusion of foreigners upon ancient Virginia; it denied the rectitude of the grant of New-Netherlands to the duke of York in 1664, under which he had so long possessed the disputed property; it invalidated the reasonings upon which England had always contended for American sovereignty. Lord Baltimore submitted: Happy that he had been deprived of no more; since a writ of quo-warranto had been issued against his charter. Yet his contention with Pen, who at present had gained so considerable an advantage, with regard to the extent of the two provinces remained. And it continued to distract the inhabitants on the borders of both till it was finally closed in May, 1750, by the illustrious Hardwick; who, disregarding the merits of the controversy, as extra-judicial, adjudged the agreement entered into between the posterity of the original disputants, in 1732, to be specifically executed.<sup>45</sup>

Notwithstanding so much care had been taken “to support power in  
“reverence with the people, and to secure the people from the abuse of  
“power,” the proprietary had scarcely departed when the most violent  
dissentions ensued. The provincial council and the assembly contended  
with regard to their mutual privileges and powers, as might have been

foreseen, because controversy necessarily grew out of a constitution so extremely complicated. Moore, a proprietary officer, who was some times characterised by the assembly as "a corrupt minister of state;" at other times as a "busy meddling fellow;" was impeached by the delegates of the people, before the council, of high-misdemeanours, but to no purpose. And Pennsylvania was now instructed by experience in what had been oracularly delivered by her sagacious founder, when he published his first frame of government: "That, though good laws do well, good men do better: For good laws may want good men, because they may be evaded or abolished by ill men." Disgusted with the disputes of a province where he expected harmony to preside, and dissatisfied with a frame of government which had assuredly given them birth, he gave orders to his commissioners, in 1686, to procure its dissolution. But these were steadily opposed by the assembly; which, in the danger of frequent innovation, perceived the loss of the people's rights and its own privileges. And it had reason to exclaim, in the words of Pen himself: "If men be bad, let the government be never so good, they will endeavour to warp and spoil it to their turn!" The commissioners being thus unable to execute orders, which sapped his future credit in the province, they were not long after superseded, and a deputy-governor for the first time appointed.<sup>46</sup>

Blackwell, trained under Cromwell, and perfectly acquainted with the party-management of those times, began his administration, in December, 1688, by sowing discords among the freemen, by endeavouring to overawe the timid, by a display of power. But he knew not the real spirit of the people over whom he presided; who, at the same time that they professed peace and obedience, were obstinately firm. With this last design he executed a measure which is of all others the most provoking to popular assemblies, because it shakes the foundation of their power. The moment White, the late speaker, who had been active in the prosecution of Moore, was chosen a delegate, he was imprisoned, by the governor's orders, on the most frivolous pretence: And, though a writ of habeas-corpus, the distinguishing privilege of Englishmen, was procured, he remained long in confinement, because means were found  
to

to evade it. Justly suspecting that the assembly would open the session with a discussion of grievances, Blackwell delayed to convene it till March, 1689. And the speech which he delivered on this occasion was calculated to provoke resentment rather than to conciliate good will. As had been foreseen, the assembly instantly presented a representation of grievances to the governor and council: Complaining; "that three coun-  
"fellors, in whose wisdom and faithfulness it confided, had been too  
"long kept out without cause; that one of its own members was  
"treated with undeserved rigour, during the sitting of assembly, and  
"was not allowed to attend." It therefore prayed; that a tender regard should be paid to the public grievances; that it might not be dismissed "till righted in just complaints;" that it might not be "discouraged in charging, before the provincial council, the ill ministers  
"and chief authors of the present arbitrariness in government." Too little attention was given to a remonstrance, which ought to have convinced those, to whom it was addressed, of the real spirit of its framers. And the assembly, therefore, resolved: "That no person, appointed to  
"receive the public fines or revenues, shall sit in judgement in any cause  
"where emolument shall accrue to the governor:" Thus levelling its resentment against the *ill ministers*, of whom it had complained to no purpose. To the governor it at the same time represented: "That, as to the proprietary's absence, as it may be to his disappointment, so it was extremely to the people's prejudice; that, as  
"to the project of letting all the laws fall, it conceived he had no  
"reason so to do, because those, which were not declared void by the  
"king, remained in force; that, even with the consent of the freemen;  
"the proprietary can make no rules to bind the province but in the  
"granted way of the charter and act of settlement: And, as it desired,  
"so it hoped, no laws of any other make will be imposed upon the  
"people." Thus vigorously opposed, the governor used an expedient no more consistent with his own dignity than with any principle of sound policy; he prevailed on certain delegates to withdraw themselves: But, as might have been expected, the assembly voted their conduct a treachery.<sup>47</sup> Those signal transactions, proceeding partly from the levity, perhaps interestedness, of that famous legislator, from the confusion of the  
constitution

constitution itself, but more from those causes which exist in the infancy of every free government, before time and practice have produced precedents, exhibit the temper of those men and those times, and demonstrate the public infelicity under the rule of the celebrated founder of the Pennsylvania government.

It is amusing, at this day, to observe how differently the reputations of the fathers of Maryland and Pennsylvania have been transmitted to posterity. Baltimore is utterly forgotten and unknown to fame, while Pen is celebrated as the wisest of legislators, equal to Lycurgus or Solon. The assemblies of Maryland, however, have always spoken "with gratitude of the unwearied care of the former, in preserving their lives and liberties; of his vast expence in the improvement of their estates." On the other hand, the assembly of Pennsylvania has complained with *grief of the latter*, "for undermining his own foundations; and, by a subtle contrivance, laid deeper than the capacities of some could fathom, finding a way to lay aside the act of settlement, to dissolve his second charter." The constitution, established by the former, though less striking, was more solid and more durable, under which the people enjoyed great repose to the present times: Though that of the latter flattered the vanities of men, it was too theoretic to be practicable, too flimsy to prove lasting, too complicated to ensure continual harmony. What did honour to the good sense of the one has conferred no celebrity on his name: What was too wild to be useful has acquired the other the praise of philosophers.

Too much engaged in their own contests and pursuits, and actuated by the principles of their superior, whose attachments and intrigues, during those days, are known to every one, the colonists and their rulers seem to have disregarded the signal revolution which transferred their allegiance, and Pennsylvania, to the prince and princess of Orange. As the accession of James II. had been announced with joy, because Pen enjoyed advantages from his elevation, so the laws and government of this province were administered in the name of the abdicated monarch, long after William and Mary had been formally proclaimed in other colonies.<sup>48</sup> Notwithstanding the infelicities we have remarked, Pennsylvania, owing to causes

causes that have been already suggested, flourished prodigiously, and increased so fast in population, industry, and wealth, that she soon outstripped her neighbours, and in a short period hath become, perhaps, the most commercial, rich, and powerful, of all the plantations. This province is a singular instance, how public disputes may even promote private prosperity, because, when the spirit of a people is roused, they naturally turn the energy which they thence acquire to the usual occupations of life.

#### AUTHORITIES AND NOTES.

<sup>1</sup> Ant. p. 229. — <sup>2</sup> Maryland Ent. 1 v. p. 107-9. — <sup>3</sup> See an extract of his letter from the Dutch records. — Smith's Hist. N. York, p. 4. — <sup>4</sup> Treaties of peace, 3 v. p. 402. — <sup>5</sup> Smith's Hist. N. York, p. 5; which cites Alpendam's instructions. — <sup>6</sup> Ib. p. 7-18; and see a very long and intelligent deposition of Van Sweringen on this subject. — Maryl. Pap. 1 v. C. 35. — <sup>7</sup> Ib. — <sup>8</sup> Smith's Hist. N. York, p. 31: And see the capitulation, N. York Pap. 1 v. — <sup>9</sup> See the chapter of New-Jersey, Ant. — <sup>10</sup> His petition is among Pensyl. Pap. p. 1; and see Journ. Plant. Off. 3 v. p. 174. — <sup>11</sup> The two subjoined papers will not only shew the precise answers returned to the notice of the committee of colonies, but disclose several facts with regard to this dark portion of Penfylvanian history

*Sir John Werden's answer to Secretary Blatbwayt.* — From Pensyl. Pap. p. 5.

“ S I R,

St. James's, 23d June, 1680.

“ I had answered your letter of the 14th instant sooner, but that my going to Windsor, just when I received it, hindered me then, and also made me think it proper, to acquaint the duke with the contents of it first. What I have now to say is this: That by all which I can observe of the boundaries mentioned in Mr. Pen's petition, they agree well enough with that colony, which hath been hitherto (ever since the conquest of New-York by Colonel Nichols) held as an appendix and part  
of

of the government of New-York, by the name of Delaware colony, or more particularly Newcastle colony (that being the name of the principal place in it, the whole being planted promiscuously by Swedes, Finlanders, Dutch, and English) all which hath been under the actual government of his royal highness's lieutenant at New-York hitherto : But what are its proper boundaries (those of latitude and longitude being so very little known, or so ill observed, as experience tells us, in all the West-Indies) I am not able to say. If this be what Mr. Pen would have, I presume the right honourable the lords of the committee of plantations will not encourage his pretensions to it, because of what is abovementioned, which shews plainly the duke's right preferable to all others, (under his majesty's good liking,) though it should not prove to be strictly within the limits of the duke's patent. But if it be any other parcel of land, unimproved in those parts, which is without all other patents, and not interfering with the possessions of his majesty's subjects already settled there, I humbly submit to their lordships how far they may think it convenient (under fitting restrictions and qualifications, whereby to tie up the government of such new colony as near as may be to the laws of England) to recommend the petitioners request to his majesty.

I remain, &c.

JOHN WERDEN."

*The answer of the agents of Maryland to Secretary Blatbway — From Pensyl. Pap. p. 7.*

“ S I R,

In answer to yours, in reference to Mr. Pen's petition, some things are thought proper to be offered, in respect of the particular concerns of my Lord Baltimore ; something in reference to the public, on his lordship's behalf. It is desired, that if the grant pass unto Mr. Pen of the land petitioned for by him in America, that it be expressed to be of land that shall lie north of Susquehannah fort, and north of all lands in a direct line between the said fort and Delaware river, and also north of all lands upon a direct line westward from the said fort. For, that fort is the boundary of Maryland northward. It is farther desired, that there  
may

may be contained general words of restriction, as to any interest granted to Lord Baltimore: And saving to him all rights granted. It is also prayed, that my lord's counsel may have a sight of the grant before it pass. On the public account it is offered, that some due caution be provided, that no arms, powder, shot, or other ammunition, be sold by any that shall settle in this new plantation to the Indians or natives. For thereby a common mischief may happen unto all his majesty's neighbouring plantations. This, with our thanks on my Lord Baltimore's behalf for your care on him, is all at present from

23d June,  
1680.

Barnaby Dunch,  
Richard Burke."

" Pen agreed : " That Susquehannah fort shall be the limits of Maryland, and professed himself ready to submit to any restraint as to furnishing the Indians with arms." — Journ. Pl. Of. 3 v. p. 179. — Yet these agreements were overlooked when the charter was adjusted, because the notice sent to the agents of Maryland had been merely formal. — " The attorney-general's observations on the charter are among the Pensyl. Pap. p. 23. — " The boundaries were settled by lord chief justice North: Yet the obscurity of the following expressions seems to prove, that no distinct notion was entertained of what were to be the southern limits of Pennsylvania: " And on the south, by a circle drawn at twelve miles distance " from Newcastle northward and westward, unto the beginning of the " fortieth degree of northern latitude." Charter. — The latitude of Newcastle, according to an accurate observation taken in 1682, by Lord Baltimore and Markham, was 39 d. 40 m; that of Chester, 39 d. 47 m. 5 s. So that the 40 d. intersected the Delaware twenty miles northward of Newcastle. — See Maryl. Pap. 1 v. C. 51. — If the fortieth degree of latitude be that mathematical point in the meridian, which is forty degrees from the equator and fifty from the pole, then the fortieth degree can neither have a beginning nor an end. — It had been easier to have said: " That the *northern* boundary of Maryland shall be the " *southern* of Pennsylvania." Yet this would not have prevented dispute, unless the charter had directed: " That the 40th degree of north latitude " shall be ascertained by an accurate observation." Perhaps it is im-

possible to exclude controversy, when an artful, able, and interested, man is countenanced by power.

<sup>15</sup> Journ. 3 v. p. 249-50: His lordship's observations on the charter are among Penfyl. Pap. p. 33. — <sup>16</sup> Mod. Un. Hist. 41 v. p. 5. — <sup>17</sup> See the charter annexed to the laws of the province, printed by B. Franklin.

<sup>18</sup> When examined by the house of commons, Doctor Franklin said: "He knows there is such a clause in the Pennsylvania charter; but the people understood it thus: By *the same charter and otherwise*, they are entitled to all the liberties and privileges of Englishmen: They find, in the great charter and the petition and declaration of rights, that one of the privileges of English subjects is, that they are not to be taxed but by their common consent: They have therefore relied upon it, from the settlement of the province, that the parliament never would, nor could *by colour of that clause* of the charter, assume a right of taxing them till it had qualified itself to exercise such right by admitting representatives from the people taxed." Yet it may be observed: That *the Pennsylvaniaians were not declared by the patent to be English subjects*, entitled to the liberties of Englishmen; because the great lawyers, who revised it, knew the futility of such a declaration; but it reserved their allegiance to the crown, and the common law thence inferred that they were subjects: And, being subjects, they were necessarily entitled to the rights of Englishmen, at the same time that they owed the obedience and performed the duties of Englishmen. The great charter; the petition of right of 1628; the declaration of right of 1688; all indeed asserted, that the people shall not be taxed, except by *common consent*; yet all equally declared how this should be given; by *act of parliament*. Nothing can be more simple or more liberal than the undoubted rule of the law of England on this subject: *That no burdens shall be imposed on the English nation, but by the English nation itself*. The will of the whole is invested in the great body politic, in the legislature. And, when taxes are established, this will is expressed by the assent of the commons, the lords, and the king. Pennsylvania had been created a province of the English empire by its patent; the Pennsylvaniaians consequently must have been at all times members of the  
English



English nation, parts of a whole : And their will, therefore, hath always been included in the will of the state. Nothing is so fatal to the speculation of philosophers as the assertions of authentic facts. Being one of the proprietors of the Jerseys, Pen was equally engaged, at the epoch of the Pennsylvania charter, in soliciting the duke of York for a similar patent to release the power of taxation, which he had long exercised by virtue of his prerogative alone, which he formally relinquished upon hearing the opinion of Sir William Jones : The same proprietors requested, in 1688, *that an officer might be sent to Perth-Amboy to collect the customs which had been imposed by parliament.* Copied literally from the charter of Maryland, that of Pennsylvania is extremely similar, because the object of Pen was the same, as had been that of Calvert, to guard against the exertions of prerogative which experience had taught both was so inconvenient. But, of the clause of exemption, the attorney-general remarked, *that it was illegal* : And the saving of the right of parliament was added by chief-justice North, because he was of the same opinion, and observed its tendency. The charter then introduced no new law, but merely declared the old. For, it did not restrain any power of the king, which the common-law had not already restrained ; it did not confer any authority on the parliament, which the ancient constitution had not conferred : And though the legislature have constantly imposed burdens on Pennsylvania, the power was not exerted *by colour of that clause*, but by virtue of the title whereby they have always taxed every subject of the crown. For neither commons, nor lords, when assembled in parliament; claim any of the powers of legislation from the grant of a king of England, because; forming constituent parts of the supreme power, they are both equally sovereign. Such were the genuine views of Pen, who sketched the Pennsylvania charter, of the eminent lawyers and statesmen, who revised it. It is contrary to universal jurisprudence, because inconsistent with the dictates of common sense, destructive of mutual faith, to plead for a latent intention in opposition to express declarations.

” In January, 1681, the bishop of London requested the committee of plantations ; “ that Pen may be obliged by his patent to admit a chap-

“lain of his appointment upon the request of any number of planters.” Journ. Plant. Off. 3 v. p. 250.

<sup>20</sup> Hist. Rev. of the Const. of Pensyl. p. 11. — <sup>21</sup> The concessions are annexed to the laws of the province. — <sup>22</sup> It is among the Maryl. Pap. B. 44 — <sup>23</sup> Ib. 43. — <sup>24</sup> Maryl. Ent. 1 v. p. 83-4. — <sup>25</sup> There is a minute account of this negotiation among the Maryl. Pap. vol. 1. — <sup>26</sup> It is annexed to Colden’s Hist. of Five nations. — <sup>27</sup> Hume’s Ess. 1 v. p. 516. — <sup>28</sup> Markham, who had been the secretary of Pen, and was afterwards the deputy-governor of Pennsylvania, in writing to Fletcher, governor of New-York, in May, 1696, says: “I very well know that it [the frame of “government] was forced from him by *friends*, when, unless pleased and “granted whatever they demanded, would not have settled his country.” N. York Pap. A. N. 12.— This anecdote sufficiently explains the true cause of all the different changes effected by the proprietary during his residence in Pennsylvania.

<sup>29</sup> Sir John Werden wrote to Pen in July, 1681; “that the duke of “York was not yet disposed to grant the lands about Newcastle.”— He, at the same time, informed him, that he thought his claims to the islands in the Delaware ill-founded, because they were not included by the words of his patent, and were never intended to be granted.— He immediately warned Dongan, governor of New-York, “to prevent Pen’s “encroachments on his province or its dependencies:” Giving a reason, which shews the opinions of men who had done much business with him; “that he was very intent on his own interest in those parts, as you ob- “serve.” — N. York Ent. 35-6-47.

<sup>30</sup> See the deeds, in Record, Proprieties, B. 445-51. — <sup>31</sup> Brit. Emp. Am. p. 165. — <sup>32</sup> See Dongan’s relation, in the N. York. Pap. vol. 1; Pen’s letter, post. — <sup>33</sup> See this annexed to Colden’s Hist. Five Nations. — <sup>34</sup> See the act of union, Proprieties, B. 457. — <sup>35</sup> Hist. Rev. p. 16. — <sup>36</sup> Appendix to Laws of Pensyl. — <sup>37</sup> Maryl. Ent. 1 v. p. 85-6. — <sup>38</sup> See this remarkable conference, which was taken in short hand, and transmitted, by lord Baltimore, to the committee of plantations.— Maryl. Pap. 1 v.— Of this transaction, however, Pen feelingly complained, in the subjoined letter, to the same committee; which was the first writ-

ten by him from Philadelphia to the ministers of England, which will shew how much a man of art and abilities may write, without giving any real information. — From Penfyl. Pap. p. 39.

“ Philadelphia, 14th of the 6th month, August, 1683.

Though it be a duty, I humbly own, to inform the lords of the committee of plantations of what concerns his majesty's interest in the success of this province, I thought myself equally obliged to be discreet and cautious in doing it; to write when there was need, and not trouble persons of their honour and business with things trivial, at least raw and unfinished, for their view. This, hitherto, put me by giving any account of the state of our affairs; to say nothing of the mighty difficulties I have laboured under in the settlement of six and twenty fail of people to content, within the space of one year, which makes my case singular and excusable above any other of the king's plantations. But, because my agent has informed me that the proprietor of Maryland has been early in his account of our conference, about the fixing of our bounds, and made a narrative of my affairs, as well before as at the time, a little to my disadvantage; and the rather, because my silence might be interpreted neglect, I am necessitated to make some defence for myself; which, as it will not be hard to make, so I hope it will be received as just.

I humbly say then first, that it seemed to me improper to trouble the lords with my transactions with this proprietor till we were come to some result, which we were not; for we parted till spring, and even then were but to meet about the methods of our proceeding. Next, this narrative was taken by this lord's order without my consent or knowledge, in a corner of a room, by one of his own attendants; and, lastly, when, upon notice given of this usage, I complained to him, he promised, upon his word and honour, it should go no farther, and that it was for his own satisfaction he did it: I told him that mitigated the thing a little; but, if he should divulge it before I saw and agreed to the copy, he must pardon me if I looked upon it as a most unfair practice: What that lord has done, and what to call it, I leave to my betters: but the surprize and indignation.

indignation of the whole will, I hope, excuse me of neglect or disrespect; for, though I am inceremonious, I would by no means act the rude or undutiful. This said, I humbly beg that I may give a brief narrative of the matter as it then past, since has been, and now stands, without the weakness and tautology his relation makes me guilty of.

So soon as I arrived, which was on the 24th of October last, I immediately dispatched two persons to the lord Baltimore, proprietary of Maryland, with my respects, to ask of his health, offer kind neighbourhood, and agree to a time of meeting, the better to establish it. Whilst they were gone in this errand I went to New-York, that I might pay my duty to the duke, in the visit of his government and colony: At my return, which was towards the end of November, I found the messengers I had sent to Maryland newly arrived; and the time fixed being the 19th of December, I prepared myself in a few days for that province. The 11th of that month I came to West-river, where I met the proprietor, attended suitable to his character, who took the occasion, by his civilities, to shew me the greatness of his power. The next day we had a conference about our business of the bounds, both at the same table, with our respective members of council. The first thing I did was to present the king's letter, which consisted of two parts; one, that the lord Baltimore had but two degrees; and the other, that, beginning at Watkins's point, he should admeasure his said degrees at sixty miles to a degree. This being read by him first privately, then publicly, he told me that the king was greatly mistaken, and that he would not leave his patent to follow the king's letter, nor could a letter void his patent, and by that he would stand. This was the substance of what he said, from first to last, during the whole conference. To this I answered, that the king might be misinformed rather than mistaken, and that I was afraid the mistake would fall on his side. For, though his patent begins at Watkins's point, and goes to the 40th degree of north latitude, yet it presumed that to lie in the 38th; else Virginia would be wronged, should that extend to that degree: However, this I assured him, that, when I petitioned the king for five degrees north latitude, and that petition was referred to the lords of the committee of plantations, at that time it  
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was urged, by some present, that the lord Baltimore had but two degrees ; upon which the lord-president, turning his face to me, at whose chair I stood, said, Mr. Pen, will not three degrees serve your turn? I answered, I submit both the what and how to this honourable board. To this his uncle and chancellor returned, that, to convince me his father's patent was not by degrees, he had more of Virginia given him ; but, being planted, and the grant only intending land not planted or possessed but of savage natives, he left it out, that it might not forfeit the rest, of which the lord Baltimore takes no notice in his narrative that I remember ; but, by that answer, he can pretend nothing to Delaware, *that was at and before the passing of that patent, bought and planted by the Dutch,* and so could not be given ; but, if it were, it was forfeited for not reducing it, during forty years, under the English sovereignty, of which he held it : But was at last reduced by the king, and therefore his to give as he pleaseth. Perceiving that my pressing the king's letter was uneasy, and that I had determined myself to dispose him with the outmost softness to a good compliance, I waved that of the two degrees, and pressed the admeasurement only, the next part of the letter. For, though it were two degrees and a half from Watkins's point to 40 ; yet, let it be measured at 60 miles to a degree, and I would begin at 40, fall as it would ; my design was, that, every degree being 70 miles, I should get all that was over 60, the proportion intended the lord Baltimore by the grant, and the computation of a degree at that time of the day. Thus he had enjoyed the full favour intended him, and I had gained a door of great importance to the peopling and improving of his majesty's province. But this he also rejected. I told him it was not the love or need of the land, but the water, that he abounded in, what I wanted, and had access and has carriage even to excess ; that I would not be thus importunate, but for the importance of the thing, to save a province ; and, because there was no proportion in the concern, if I were a hundred times more urgent and tenacious the case would excuse it, because the thing insisted on was more than ninety-nine times more valuable to me than to him ; to him the head to me the tail. I added, that if it were his, and he gave it me, planting it would recompence the favour ; not only

only by laying his country between two thriving provinces, but the ships that come yearly to Maryland, for tobacco, would have the bringing of both our people and merchandise, because they can afford it cheaper; whereby Maryland would, for one age or two, be the mart of trade; but this had no other entertainment but hopes that I would not insist on these things at our next meeting. After three days we parted, and I returned for this province.

When the spring came, I sent an express to pray the time when and where I should meet him, to effect the business we adjourned to that time. I followed close upon the messenger, that no time might be lost; but the expectation he twice had of the lord Culpeper's visit disappointed any meeting in our affair till the month called May. He then sent three gentlemen to let me know he would meet me at the head of the bay of Chesapeake: I was then in treaty with the kings of the nations for lands: But three days after we met, ten miles from Newcastle, (which is thirty from the bay,) I invited him to the town; where, having entertained him as well as the town could afford on so little notice, and finding him only desirous of speaking with me privately, I pressed that we might, at our distinct lodgings, sit severally with our council, and treat by way of written memorials, which would prevent the mistakes or abuses that might follow from ill design or ill memory; but he avoided it, saying, he was not well, the weather sultry, and would return with what speed he could, reserving any other treaty to another season. Thus we parted at that time; I had before been told, by several, that the lord Baltimore had issued forth a proclamation to invite people, by lower prices and greater quantities of land, to plant in the lower counties, in which the duke's goodness had interested me, as an inseparable benefit to this whole province: I was not willing to believe it, and, he being in haste, I omitted to ask him; but I had not been long returned, before two letters came from two judges of two of the county-courts, that such a proclamation was abroad, that the people abhorred to hearken to it, but yet prayed my directions. I bid them keep their ground, and not fear, for the king would be judge. Upon this, I dispatched to the lord Baltimore three of my council with the clerk of it. As they went, they  
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got an authentic copy of one of his sheriffs, to whom an original had been directed; but, as the last civility I would yield him, I forbid them to seem to believe any thing but what they had from his own mouth. Thus they delivered my letter; at first he denied any such proclamation, turning to two gentlemen of his council that stood by, asked them if they remembered any such thing, they also denied it; upon which the persons I sent produced an attested copy, which, refreshing their memories, they confessed there was such a proclamation; but the lord Baltimore told them it was his ancient form, and he only did it to renew his ancient claim, not that he would encourage any to plant there. They then prayed him to call it in, lest any trouble should ensue; but he refused it. This was during a civil treaty, without any demand made, and after the place had been many years in the quiet possession of the duke. What to call this I still humbly refer to my superiors. For his pretensions to those parts I have fully instructed my agents, who, I hope, will be able to detect them of weakness and inconsistency. This is a true, though brief, narrative of the entertainment I have had from that lord in the business between us.

And because I have, as in duty bound, sent an agent extraordinary to wait upon the king and his ministers in the affairs of this province, (so soon as I could make any settlement in it,) I shall only humbly pray leave to hint at two or three things relating to the business depending between this lord and myself, about finding the fortieth degree of north latitude.

That I have common fame on my side, grounded upon an ancient and constant judgement, that the fortieth degree of north latitude lieth above Poole's island; this the lord Baltimore himself hath not denied, the country confesseth, and I shall, when required, prove by some able masters of ships.

If this were an error, it is grounded upon such skill and instruments as gave measure to the times in which his patent was granted; and, if he hath got upon Virginia by that error, he should not get upon me by an exacter knowledge, considering that Carolina, which endeth by degrees, would as much advance upon Virginia if the reputed latitude of unpre-

judiced times should take no place; for, by advancing her bounds twenty miles, by a new instrument, beyond the place which hath generally been taken for thirty-six and a half, and Virginia not being equally able to advance upon Maryland, (because of its beginning upon a place certain,) she will be narrowed between both.

I therefore most humbly pray that the judgement of ancient times, by which persons, at the distance of England from America, have governed themselves, may conclude that lord's bounds; or, that he may measure his two degrees according to the scale and computation of those times, which was sixty miles to a degree; *or, if it be allowed that he had not his grant by degrees*, that, at least, I might not lose the benefit of admeasurement as before-mentioned, from Watkins's point (in whatsoever degree of latitude that shall be found) to the fortieth degree of north; which I humbly take the more courage to press, because a province lieth at stake in the success of it.

I have only humbly to add, that the province hath the prospect of an extraordinary improvement, as well by divers sorts of strangers as English subjects; *that, in all acts of justice, we name and venerate the king's authority; that I have exactly followed the bishop of London's counsel, by buying, and not taking away, the natives land, with whom I have settled a very kind correspondence.* I return my most humble thanks for your former favours in the passing of my patent, and pray God reward you. I am most ready to obey all your commands, according to the obligations of it; and beseech you to take this province into your protection, under his majesty; and him, whom his goodness hath made governor of it, into your favour; for that I am, with most sincere devotion, your thankful, faithful, friend and servant,

WILLIAM PEN."

<sup>39</sup> This frame of government, of 1683, is annexed to Colden's Hist. Five Nations. — <sup>40</sup> Hist. Rev. p. 17-18. — <sup>41</sup> Append. to Laws — <sup>42</sup> See these two proclamations, in Maryl. Pap. 1 v. C. 8-32. — <sup>43</sup> Hist. Rev. p. 18. — <sup>44</sup> Maryl. Ent. 1 v. p. 105-9; Journ. Plant. Off. 4 v. p. 138-9-55-71; *Ib.* 5 v. 188-99-207-26. — <sup>45</sup> Vesey's Rep. 1 v. p. 144. — <sup>46</sup> Hist. Rev. 19. — <sup>47</sup> *Ib.* p. 20-5; Mod. Univ. Hist. 41 v. p. 7-9.

<sup>48</sup> It



<sup>48</sup> It appears, from a deposition of Forat's, among the Pensylv. Pap. p. 147. that William and Mary were not proclaimed, in Pennsylvania, so late as September, 1689; that the laws continued to be still administered in the name of James, whose health was commonly drunk. The sub-joined *extract of a letter from Jacob Leisler*, who had acquired the command of New-York, dated 7th February, 1689, to *bishop Burnet*, shews how the principles and practice of the Quakers were regarded by men who had run into the other extreme. — From N. Jersey Pap. p. 153.

“ Many resort to our neighbours of East-Jersey and Pennsylvania, (there being many Quakers in those parts,) who (*without abusing them*) encourage, if not out-do, the Roman-catholics: And most of our calamities are truly indebted to them; covering their pernicious practices by their blind scruples and impudent interpretations, depending still upon, and asserting, Mr. Pen to be a person of undoubted sincerity. In the mean time they advance the interests of king James, and say that all commissions are good to this day; owning none, save king James; openly drinking his health, &c. whom, in due time, we hope to subdue.”

REMARK. There are a great number of letters, in the bundle of New-York papers, from Leisler to the bishop, which are written in a similar strain; but they only merit the regard due to the writings of one violent party-man to another.

## C H A P. XXII.

*A pause may be here necessary. — The reason. — Colonisation always practised. — The colonies of Greece ; — of Carthage ; — of Rome. — How governed. — The ancient dependencies of England. — Their constitutions. — What authority the supreme legislature exerted over them. — The extent of its power discussed. — The views of every one in planting America. — What privileges the emigrants carried with them. — Whether the plantations formed distinct countries. — How far the jurisprudence of England became that of the colonies. — The genuine rights of the colonists. — How these differed from the privileges of the provincials of ancient or modern democracies ; — of monarchies. — The first colonial constitutions. — The beneficial change after the Restoration. — The powers of the governor ; — of the council ; — of the delegates. — The authority of all these when convened in assembly. — Compared with the power of parliament. — Recapitulation. — Conclusion.*

WE have now attempted, though with very unequal powers, to trace the great outlines of the history of the present confederated colonies, from their settlement to that important period in their annals, when the Revolution, by establishing a system of legal government, rescued the greater half of them from slavery, and the other from an anarchy more degrading, because it was more pernicious. We have beheld America discovered, the desert planted by English subjects, charters granted, and colonial constitutions established ; we have seen the dawn of liberty on the wilderness, its various eclipses, its subsequent illuminations, its final extinction. We have remarked the spirit of the administration of the colonies under dissimilar forms of government in England, monarchical, republican, and a mixture of both ; the various acts, passed during the foregoing period by the English legislature, either attempted only or fully executed ; the subsequent submission of the plantations or their opposition. And it may be of use and importance to pause a little here ; in order to inquire briefly what privileges the emigrants really

really were entitled to possess as subjects of the crown of England, or as colonists settling a desert territory of the state. History recites facts, authentic and interesting, to little purpose, if we stop not to consider what lessons may be drawn from them favourable to the study of politics as a science, useful in the conduct of life.

Colonisation has been practised at all times and by every tribe, because it was the means employed by infinite wisdom to spread population and improvement over the globe. How amusing, how instructive, had been the history of universal emigration, had it been written with the accuracy of records, had it been transmitted with every circumstance of credibility. Yet, with regard to the colonial policy of the wisest and freest nations of antiquity, the Greeks, the Carthaginians, the Romans, sufficient evidence happily remains to illustrate its nature and to inform the world. When the states of the former, either from a situation extremely circumscribed or from their peculiar institutions, became overstocked with inhabitants, they sent out their supernumeraries, who settled in the wilds of the earth, *without* the dominions of their native land. Here the emigrants established a government for themselves; they enacted their own laws; they chose their own magistrates; they made peace and war with the surrounding tribes: And they became independent, because no subjection was required by the parent-nation, though they, perhaps, owed gratitude for former kindness, and respect for present good offices. But the new situations, at which communities arrive by alteration of circumstances, change their whole policy. And the Persian invasion is no less remarkable for the celebrity which it conferred upon Greece than for the total revolution it produced with regard to the Grecian colonies. Two of the most renowned of her states, Athens and Sparta, from that epoch considered their colonists as subjects, because they had now discovered the importance of the union of force and of counsels. And they, from this time, regulated their affairs; they imposed taxes for the uses of the public: And they compelled obedience and payment by fire and the sword. While we admire the wisdom of uniting the citizens in one common cause we must not approve of the barbarity with which this policy was often enforced.\*

Though

Though the history of Carthage, owing to the lamentable fate of this mighty nation, is extremely obscure, sufficient testimony remains to point out the nature of her provincial regimen. Animated alone by the spirit of commerce, the Carthaginians restrained the trade of their subordinate territories; they excluded the traffic of other nations with peculiar jealousy; they regulated their domestic œconomy; they imposed taxes, exorbitant and oppressive: And, with a rigour which would at present disgust the world, they compelled all to obey. The provincials had but too much cause to lament that they were the subjects of a democracy, which at last even sacrificed itself to avarice or to faction.<sup>2</sup>

The commencement of the Roman emigrations must have necessarily been nearly as ancient as the date of the Roman conquests. But, neither urged by the distress of the former, nor inspired by the commercial ardour of the latter, the Romans were governed by maxims different from both. And their colonies consisted of a number of citizens, sent out by the authority of the state to form establishments *within her dominions*; either to enjoy lands given them as a gratuity, or to compose a military barrier for the defence of her frontiers. For this mighty people derided maritime affairs, and despised commerce, because both were incompatible with the form of their constitution. The colonists made laws for their local government, but they were subject to the edicts and general superintendence of Rome. And, assessed by the senate, they contributed, though not always without complaint, their proportion of taxes, which were the badges of the Roman dominion, to the support of the Roman power. They formed therefore no independent states. The irruption of the northern nations at length put an end to their provincial establishments, the characteristics of which were oppression and tyranny.<sup>3</sup> When Rome lost her liberty, her provinces rejoiced, because they thence dated the epoch of their own freedom. The moment she had lost her military barrier, because they did not feel for her fate, she shrunk into herself, and expired.

When actuated by a mixture of the principles of Carthage and Rome, England transplanted her subjects to the new-world, she already possessed, from the most ancient times, various territories, lying *without the realm*, though

though *within the limits of the empire*, and dependent on the state. The kingdoms of Ireland and Man, the islands of Guernsey, Jersey, and others, had for ages confessed her power and obeyed her laws.<sup>4</sup> Like the municipalities of the Romans, they had always enjoyed the beneficial privilege of enacting local regulations, suitable to the necessity of their own affairs; but neither inconsistent with the nature of their connexion, nor repugnant to the general jurisprudence of England: And though not usually obliged to observe the rules of action prescribed by the supreme legislature, because they were not supposed to be in its daily contemplation, yet, when necessity or convenience required its universal superintendance, all were bound to obey. For the obligation of the inferior to submit to the dictates of the superior is dependence: And, in proportion as obedience is denied or withdrawn, independence begins. Hence, the law of England has inferred, that the legislatures of dependent territories can make no change, with regard to the nature of their relation, nor declare themselves less subordinate than formerly. For, though they enjoy legislative power, it is not self-created or absolute, because England would have no more power over them subsequent to subordination than before. Similar to the *Latin privilege* of the Romans, these provincials enjoyed exemption from the *ordinary jurisdiction* of the English judicatories: And justice was administered in the *first instance* in the provincial courts, according to provincial usages and laws. But, though none had ever been reserved by the charters of English kings, yet an appeal had been always carried from these to the tribunals of England. For the power of application to the fountain of justice, for the redress of wrongs, is an essential privilege of every Englishman, of which he cannot be deprived, except by an act of the sovereign legislature, wherein his own assent is included. The law permitted in the inferior country might be otherwise insensibly changed without the consent of the superior. And judgements might be given in diminution of the superiority, or in conversion of the dependence on the political capacity to that of the person of the prince.<sup>5</sup>

The sovereign legislature, thus co-extensive with the then limits of the empire, possessed a power, which, as we are assured by the wisest practical

cal writers<sup>6</sup> on the law of England, was so transcendent in its nature, that it cannot be restrained either as to persons or to causes. For, were its authority confined to less space than the limits of the empire, or to fewer persons or things than all, it would not be legislative and supreme. The principle of the common law, always founded in strong sense and in sound policy, could amount only to this, that the nation, however dispersed as to situation and composed as to numbers, must have authority to make laws in all cases whatsoever for herself; since inconveniences might otherwise exist, and even the dissolution of the whole ensue, without any adequate power to apply a remedy. This transcendent power, invested by the wisdom of our fathers in the legislature, whether denominated a wittenagemot, a great council, a parliament, has been at all times exercised with an approbation, in proportion to the importance of it, from the remotest period of her annals to the present times. And, composed of the king, of the different estates of the realm, it forms the great body politic of the empire, or, in other words, the empire itself. In whatever manner may have been created the political compact, which originally united the several persons for common safety, every individual was subjected by it to the body of aggregates in whatsoever related to the general welfare. The authority of all over every member must necessarily be every where lodged in the state, wherever it may be invested, according to the different forms established in different countries. And the individual can no more say, I will no longer obey the rules prescribed by the supreme power, than can one of the republics which compose the states of Holland declare, I will no more be a member of your association. As nature hath given every man an absolute power over his limbs, to move and direct them at pleasure, so the social compact, says Rousseau, that genuine son of independence, gives to the body politic absolute power over all its members, and it is this power, which, directed by the general will, bears the name of *the sovereignty*.<sup>7</sup>

Few doctrines are too absurd or destructive not to have been propagated and defended by the leaders of faction at all times, and in every country. We ought not to be surprised, therefore, that even the just authority of the legislature has been impugned by different men, with different views. In other

other times objection was only formed against one part of its authority. And it was formerly contended, with a greater share of plausibility than force, “ that insufficient was the power of parliament to change or regulate the descent of the crown.” When we consider, however, the various instances in which this essential right had been exerted from the accession of Henry IV. to that of Elizabeth, it must appear singular that any doubt should have been entertained of the extent of parliamentary power. We must attribute it to the extreme pertinacity of mankind, when influenced by party motives, that, notwithstanding the vigorous declarations of the parliament during the reign of that prince, the same objections were continued throughout the subsequent age. And the year 1680 is remarkable in English annals, not only for being the epoch of the justly exploded party names of Whig and Tory, but for those projects for excluding the duke of York from the throne, which created so great a ferment towards the conclusion of the reign of his brother. But it was apparent to every one, that, were the authority of parliament incompetent to alter the succession, an act of exclusion would pass to little purpose. The two great parties of the nation prepared, the one to impeach, the other to defend, the power of the legislature. When the bill was debated by the commons, the whigs very properly contended in its favour: That, government being founded by accident rather than in natural right, the rules of mere positive institution must be subject to the legislature, since they derived their energy from its will; that there must be lodged consequently somewhere, in every state, an authority absolute and supreme, the great fountain of the laws, which all must revere and obey; that, in the English constitution, this transcendent power is happily placed where it is most safe, in the parliament, which, composed of every order of the state, must necessarily possess the will, the energy, of the state; that whatsoever determination receives the powerful approbation of its sanction cannot afterwards admit of any dispute or controul, since there would be no end to alteration, and the whole might be undone. But against reasonings, which, during those days, it was so difficult to answer, because they were popular, because they proceeded from the voice of the laws and the people, the courtiers and Tories insisted: That it was ridiculous to speak

of an authority altogether absolute, since such was to be found under no form of government, and omnipotence itself can do nothing inconsistent or impossible; far less could such a power be invested in judicatories, composed of men subject to human infirmities, since every exertion must partake of their weakness; and, consequently, acts of parliament may easily be figured, which must necessarily be deemed void, either from the defect of their formation, or from the impossibility of execution.<sup>8</sup> The fate of the bill; the consequent accession of James II. the following resolution: All have been related by writers of the greatest talents, and are universally known. Upon the before-mentioned principles of the whigs was founded the interesting event which placed William on the throne; upon those principles has the present happy establishment been defended by the best and ablest friends of the constitution; upon no other can the rectitude of both be possibly supported. The maxims of the law of England will be found too stubborn to give way to the speculations of theorists, however ingenious or respectable.

How amusing is it to contemplate the vicissitudes of those parties, which, under different forms, must ever exist, while freedom animates the whole. - How frequently do they insensibly change their principles and imperceptibly take the place of each other. All in their turns have employed force to support their sentiments, when they have found their reasonings and intrigues unsuccessful. Hence the various insurrections, whether denominated rebellion or resistance, which have disturbed the repose of the state, from the Revolution to the present day, have been uniformly directed against the constitutional authority of the legislature before-mentioned, against the principles of the whigs of 1680. Meanwhile, a new set of men have arisen, who, adopting the sentiments of the tories, though with very different views, have inferred: That, though a king of England may be bound, though the descent of the crown may be limited by parliament, yet, that English subjects, living within the boundaries of the empire, claiming rights from English laws, are exempted from the authority of the English legislature.

Such then was the power of parliament, and so extensive its jurisdiction at the æra of American colonization, during the reign of James I.  
Nothing



Nothing could be more perceptible than the policy which directed the colonies of the ancients : Nothing can be more obscure than that which governed those of the English. England did not require a vent for her supernumeraries like the Grecian states; like the Carthaginians, she could not expect to promote her commercial interests by trading with savages, miserably poor, because they deemed all labour dishonourable; no military barrier was formed, no donations were made, similar to those of the Romans. It was rather the example of the Spaniards than the practice of those renowned nations which was copied, because similar success and wealth were expected. Prompted by his ambition, perhaps more by his vanity, the primary design of that monarch was, to share in the gold and silver which were expected from mines, to rule the colonies in the same manner as he had proposed to govern Ireland,<sup>10</sup> as territories belonging to his person, and therefore subject to his will; though his ultimate views are not so easily discerned. The great corporations, which have acquired the honour of planting the first permanent settlements, had no other object, probably, than the expectation of sudden gain from the working of mines, a project, of all others, the most delusive, the most to be discountenanced by nations which regard their own good. The most early emigrants seem to have been carried blindfold across the ocean, who probably hoped to make sudden fortunes and to return : They who succeeded them were animated by desire of melioration, by ambition, by religion. The colonies could acquire no other rank within the pale of the English empire than was then enjoyed by the other subordinate territories of the crown; the colonists could partake of no other privileges than were then possessed by the other provincials, whose rights had been precisely ascertained, and were perfectly known. Subjects of James, prior to their emigration, as he stood related to the nation in his political capacity, change of residence from one part of the empire to another made no alteration in the nature of their connexion. For from the moment of their birth they had received protection; in return, as a debt of gratitude, they owed fidelity; which, we are assured, can neither be cancelled nor altered except by an act of the legislature, that includes the assent of the whole : They had derived a benefit from the state, and

without its consent they could not cease to be members of it. Nor can the allegiance of the subject be circumscribed within any bounds, because it is co-extensive with the protection of the king, which is universal during peace by the exercise of government, in war by the sword. And it is neither the climate nor the soil which form a citizen, because the common law regards all as natural subjects who are born under the authority of the same king; nor would the children of enemies, who forcibly entered the realm and possessed a town, be otherwise considered than as aliens." These salutary principles, not of the law of England only, but of every nation, were expressly enforced by the colonial charters, which gave the colonists leave to emigrate, which declared, that change of habitation shall make no alteration in their allegiance: And requiring the oath of fidelity to be administered to them added the sacred tie of religion to the obligation of natural duty. Like the Roman colonists, they remained as much citizens in their new habitations, as they had been in the old.

The American emigrants settled in a region which was regarded by them as a territory of the English empire, because it had been first discovered and first occupied by virtue of commissions under the great seal of England. The validity of this title had been recognized by the approbation and practice of the European world. And it had been confirmed by the law of nations, which sternly disregarded the possession of the aborigines, because they had not been admitted into the society of nations. When we throw our eyes over the globe, it must appear that it is not the perceptible boundaries of nature, a mountain or desert, a river or an ocean, which form a state. For it is an incorporeal thing, a body politic, composed of aggregates of men; who, uniting for mutual advantage, are fellow-subjects of the same sovereign, who are subjected to the same legislature, who owe obedience to the same laws. And our country, therefore, is the nation of which we are members, and not the town, the county, or the province, where we first saw the light. When a wilderness is consequently peopled, and a colony is planted, however separated and however distant from the principal establishment, it becomes a part of the ancient dominions, and equally composes the common country of the same people.<sup>12</sup> Unlike the ancient Grecian colonies, the

the English American plantations formed, therefore, no distinct communities. And they instantly became territories of the English nation. Such were they recognized by the various charters, which the anxiety of the emigrants procured, which uniformly declared; "that the colonies were established with a view to extend and to enlarge the boundaries of the empire." It instantly became a fundamental principle of colonial jurisprudence, that, in order to form a valid title to any portion of the general dominion, it was necessary to shew a grant either mediately or directly from English monarchs. And this suggests the principal cause of the general solicitude to procure patents from the sovereigns of England at every period, because in them the whole was supposed to be invested.

Continuing as much subjects in the new establishments, where they had freely placed themselves, as they had been in the old, the colonists carried with them their birth-right, the laws of their country; because *the customs of a free people are a part of their liberty*. The jurisprudence of England became that of the colonies, as far as it was applicable to the situation at which they had newly arrived; because they were Englishmen, residing within a distant territory of the empire. And we have beheld the wisest of the emigrants, who had been born within the realm, whose affections were yet warm, enforcing, by positive acts, this salutary principle of the common-law. When the legislative energy of these declarations had ceased, even colonial lawyers were often perplexed to decide what part of the laws of England extended to the colonies, what remained a dead letter, what judicatories they should apply to for a solution of their difficulties. But have not English lawyers often differed in opinion with regard to a precept of the common-law; have they not constantly appealed to the courts of justice, because these form the great depositary of the laws? In the same manner the provincial tribunals decided, in the first instance, which of the laws of England were suitable to their circumstances; which were, therefore, to be considered as a rule of action: And their former decisions and daily practice are *authoritative evidence* by which all are concluded. Hence we may infer that, in different provinces, a different rule may prevail, because their situation

tion may be extremely diffimilar. In these provincial judicatories wrongs were redressed, and right was distributed, because the easy acquisition of justice is an essential privilege of every free subject. But an appeal lay from all these to the supreme tribunal in England, because every Englishman enjoys it, as a part of his liberty, to apply to the fountain of justice; because the nation was interested that judgements should not be given which might affect the relation between the territories and the state. Though this is a fundamental principle of the common-law, it was not easily submitted to by the colonists, because they thought it unsuitable, and it mortified their pride. But it was steadily enforced by England, because it was essential to her jurisdiction. And we may thence infer the nature and the use of the general rule.

As members of the same state, the colonists are assuredly entitled to the same liberties which are enjoyed by those whom they had left within the realm: They had a right to possess every immunity which Englishmen, within a distant and subordinate territory of the empire, can possibly enjoy. They were entitled to *personal security*, to *private property*, and, what is of most importance of all, to *personal liberty*; though the foregoing Annals demonstrate that the two first they enjoyed previously, the last they possessed not at all, since the effectual remedy, the writ of habeas-corpus, they did not happily know. For they forfeited nothing by their emigration, because it was made with the consent of the state: And this essential principle of the common-law their charters declared and enforced. Nevertheless, an Englishman born within the realm, however distinguished for his birth, his talents, or his wealth, who, from motives of ambition, or pleasure, or interest, chooses to reside in Minorca, in Man, or the Plantations; becomes in every respect a Minorkin, a Manks, or a Planter, and can enjoy no right distinct from the other inhabitants. For the law and legislative government of every dominion equally affect all persons and property within its boundaries, since voluntary residence supposes implicit consent. The proudest peer of the realm, who emigrates to a colony, cannot exercise the important rights of the peerage. The most eloquent member of the house of commons, who follows his  
example,

example, would no longer enjoy his privilege. And the freeholder of Middlesex, who wishes to enjoy colonial freedom, could no more vote for his favourite candidate. Yet their various rights are merely suspended by their own choice; because, to enjoy them completely, personal presence is necessary. And, being under no one disability, but what distant habitation imposes, the colonists retain a most important right, which aliens do not possess: They may, at any time, return to England, and become electors of a borough or county, sheriffs or aldermen, members of parliament or ministers of state. For the liberality of the law of England makes no difference between persons born in Europe or Asia, Africa or America, provided they draw their first breath within the pale of the English empire, under the obedience of the English government; provided they are subjects. Yet colonial jurisprudence has not been equally liberal: And it lays Englishmen under considerable disabilities, though nothing can be more contrary to principles. During a limited time they are excluded from offices, from the provincial legislature; they are taxed without their consent; their trade is restrained; and they are not admitted into courts of justice, as suitors, on equal terms. They have submitted to disadvantages in quiet: The colonists have not suffered the inconveniences of their situation without complaint, though they have generally enjoyed all the advantages of it.<sup>45</sup>

We may therefore conclude that the English colonists are extremely different from the provincials of the ancient or modern *democracies*: The former are fellow-subjects of the same king, fellow-members of the same state; the latter were subjects of the *people*, and could partake consequently of none of their privileges: And it was to little purpose for these to reside at Carthage or Rome, since they were not deemed citizens who could enjoy their rights. We may illustrate these principles by the fate of the Corsicans, an unfortunate people, whose vicissitudes have been always lamentable; who have, at length, found freedom in their recent subjection. In former times they were the subjects of the Carthaginians, who "forbad their planting, sowing, or doing any thing of the like kind, under pain of death:" The Genoese granted them an act of indemnity, in 1738, which, to the astonishment of mankind, ordained,  
that

that they should no longer be condemned to bodily punishment, in consequence of the private knowledge of the governor: Men, who were thus deprived of the common rights of human nature, could not enjoy the privileges of the citizens of Carthage or Genoa.<sup>14</sup> The Corsican and the Parisian are now equally subjects of the same monarch, and, consequently, are equally entitled to the same immunities; both are in the same manner Frenchmen, and therefore must be governed in a similar mode. As preservation is what ought to be chiefly regarded in conquests, a king of France can find no interest in oppression: And the conquered provinces of this nation are, accordingly, the most gently governed of any, enjoying privileges which the others do not possess. When Augustus erected a throne upon the follies and vices of the citizens of Rome, the Roman provincials, in the same manner, acquired freedom; because they were now ranked as the fellow-subjects of the same prince, who were entitled to the same rights, who enjoyed the felicities, and shared the adversities, of that mighty people.<sup>15</sup> Such is the infallible course of things, and nature will be obeyed!

When a conquest is achieved or a colony is settled by a monarchy, it naturally extends its own form of government to them. It is easy to appoint a governor and to erect tribunals; and the policy of France and of Spain is completed. But what should we say of the governor of a French or Spanish colony, who declared: I will be no longer the substitute of my prince; I will no more govern his people in his name; I will be a king. When plantations are formed or conquests are made by a democracy, it will, perhaps, associate them with itself, admit them to a share of the government, to equal privileges, according to the practice of the Romans, before distant conquests had corrupted their minds: They form, consequently, a part of the state itself, and are no longer considered as a province or a colony. But how seldom this wise policy has been pursued by republican governments, because distance, perhaps the selfishness of the people, forbid it, all history demonstrates. The conduct of the ancient republics has been already noticed. What immense regions has Holland acquired by conquest or colonisation, yet she has not yet added an eighth province to the states. When *ancient* Massachusetts,

Massachusetts, which was really a republic, purchased Main of its proprietor, she immediately reduced it to the form of a province, excluding it from any participation in her own government or privileges. Democracies have at all times ruled their dependencies, under a monarchical form, by governors, who have but too often exerted the rigour of conquerors, because the provincials were deemed slaves rather than fellow-citizens, because, by means of bribery and intrigue, the governor may easily procure impunity from the factions of his country. Though the form is plainly monarchical, yet the inhabitants enjoy none of the benefits of monarchy, because, the power of such a magistrate being regarded with jealousy, the duration of his commission is limited, and he is always rapacious in proportion to its extent. The miserable provincials, enjoying the advantages neither of a republic nor a monarchy, always think with detestation of the government of their superiors: They look up with envy to their happier lot, and therefore feel the more sensibly their own degradation. And history accordingly demonstrates, that the provincial government of democracies has at all times been odious to the subjects of it. For, the tyranny of one man must always be less severe than that of a million; the former may be naturally mild, humane, and wise, the last must ever partake of the passions of the multitude.

When the English colonies were planted, the principles before-mentioned were applied to them, because they are founded in the nature of things, and must be therefore always permanent. Adopting the maxims of their immediate predecessors, James I. and Charles deemed the monarchy of England as unlimited in its extent as either France or Spain; disregarding the rights of the different estates of the realm, the privileges of the people, they could not easily admit, because it seemed to degrade themselves, that the lords and commons, when assembled in parliament, formed essential parts of the supreme power; they did not consider, that English subjects could not be subjected to any rule of action, or to any burden that had not been commanded or imposed by the legislature, whose acts contained their consent. These princes, therefore, mistakingly inferred, that they might govern the dependencies of England in the form of conquered countries by their prerogative alone.

And they acted as legislators for the colonies; erecting either corporations within the realm for their administration, or establishing provincial systems, equally unfuitable. The most ancient government of Virginia, we have seen, was aristocratic, which was soon changed to monarchical; and to both these forms was added a democracy by the Virginian company: And this province now acquired a mixed constitution, resembling that of England in its appearance, though not in its nature, because the one was subordinate, the other was sovereign. Yet Virginia enjoyed neither prosperity nor happiness, because she was placed in a singular situation; she was really subjected to the regulations of a commercial company, to a republic within the realm, and at the same time to the edicts of a monarch. When this singularity was removed by the dissolution of the charters, the Virginians acquired freedom in the same manner as the Roman provincials, upon the accession of Augustus, because they were now ruled by a form purely monarchical. Disregarding equally her charter, and the laws of England, Massachusetts established for herself an independent government, extremely similar to those of the Grecian colonies. But, that may well be regarded as usurpation, which is founded in no right. Maryland was erected into a province of the English empire; her proprietary was declared a feudary of the English nation. And, owing partly to the prudent sagacity of Sir George Calvert, who procured the charter, but more to the good sense of his son, who carried it into effect, a mixed form of government was established, perfectly similar to that of England, and perfectly agreeable to the maxims of her jurisprudence. However inconsiderable, the history of few nations offers better lessons of instruction to rulers and people than do the annals of this province.

But it was not till the civil wars, and the Restoration had decided the nature of the English constitution, had marked out and fixed the various powers of each component part of it, that the nation gave to her provinces permanent systems, analogous to her own. It is, however, most apparent, that a colony might have been governed agreeably to the principles of English law, without a colonial legislature or colonial courts of justice. Every town, or every county, does not enjoy either. Had an  
act



act of parliament, similar to that of Henry VIII. with regard to Wales, been passed, so extensive in its powers, so comprehensive in its provisions, as to establish a complete system of jurisprudence, to preclude the necessity of future laws : Had the colonists been directed to apply for justice to the judicatories within the realm ; nothing more had been wanting than a governor to execute the whole ; the provincials had enjoyed the privileges of Englishmen : They might have experienced inconvenience, but they could have felt no grievance, which always arises from the invasion of rights. Had the supreme legislature continued to make laws for the colonies, as new situations demanded new regulations, no territorial legislature had been wanted. But, as it would have amounted to a denial of justice, which is a grievance of the greatest magnitude ; as the supreme power could not yearly provide for the annual wants of a little people ; colonial tribunals, and colonial legislatures, became necessary. The parliament might have established a legislative senate, composed of a governor and a few colonists of the greatest wealth and experience, because the parliament might have made laws for the people. As it was, however, the charters, the commissions, the instructions of the king, which created the provincial constitutions, it became necessary to admit the colonists to a participation in the legislative power. For, a king of England could not confer powers, which he did not himself possess : And he could not impose a rule, or a duty, without the consent of those, who were to feel the influence of both. We here discover the principles, upon which their systems were founded : They must have been necessarily limited in power by the use and necessity which gave them existence.

Vain is it to search ancient or modern annals for examples of provincial constitutions so liberal or salutary as those which England gave to her colonies. She conferred on them a counterpart of that mixed form, which she herself enjoyed, which had engaged the attention and procured the panegyric of nations. The governor represented the king, and performed his functions ; the council acted as the aristocratic branch, and answered its uses ; the delegates formed the democratic part of the system, and gave a kind of energy to the acts of the whole, because they declared the assent of the governed. But what would the world have pronounced of a gover-

nor, who had insisted: I will no longer obey the instructions of my superior; because I will be a king? What ought we to say of a council, which should decide: That no appeals shall be carried from our judgements; since we claim all the rights of the peerage? Is it not equally contrary to principles, for the delegates to contend: That we are entitled to all the rights of the commons; because we represent the inhabitants of a district of the empire; because the whole may exert all the powers of every part? With regard to the authority of the two former, little controversy has ever arisen. The governor was necessarily bound by his instructions, because he acted merely as a substitute, though even these could not empower him to do what the law had prohibited, what a king of England could not himself perform: And he exercised the legal prerogative of the supreme magistrate, by superintending the general government, by appointing officers and magistrates, by causing to be executed whatsoever the legislature had commanded. The counsellors were extremely analogous to the peers, though their office was not descendible, since it was defeasible. As privy-counsellors of the governor, they were bound by instructions, by the laws: As the court of *local* appeals, they were governed in their decisions by the principles of the common law, by territorial regulations, by their own customs; but an appeal lay from their judgements, because they were not supreme: As a constituent part of the legislature, their power was only limited by the good of their country, by the maxims of their connexion with the state, with the parent country. The principal difficulty has arisen, with regard to the powers and pretensions of the delegates, though during the foregoing period both were extremely limited when compared with those they afterwards acquired. For they claimed, though they did not always exercise, all the privileges of the commons. As an essential branch of the provincial legislature, they possessed fully all the authority of the counsellors, but they could rightfully claim no more. Nothing can be more incongruous in reasoning, than to apply principles of analogy to two bodies in no manner analogous. The commons, when assembled in parliament, possess an essential portion of the sovereignty of the English empire: The delegates form a component part of the legislative power within a dependent province.

province. The powers of the former cannot be circumscribed, because they are supreme: The authority of the latter may be defined, because it is subordinate: The essence of the first is derived from the constitution itself: The origin of the last is to be found in the royal charters, commissions, and instructions, in the principles of the common law, in their own *legal* usages. In the various disputes between the two houses of assembly, with regard to their mutual privileges, nothing is more striking than the general imbecillity and indecisiveness of the reasonings of the counsellors, because they were afraid to avow the truth, they were ashamed to use arguments which degraded themselves. They might have insisted: Why do you pretend to an origin more sacred than ours, since both are perfectly known, and both are derived from the same source; from royal charters and commissions? Any more than us, you can claim little power from the freeholders, who chose you, because, being themselves only inconsiderable members of a great people, their voice must be feeble, in opposition to the voice of the whole, their rights must be circumscribed by the interests of millions: Wherein is the pertinency of your claiming privileges, for no other reason, but that they are exercised by the commons of England, a sovereign power, and you are only a subordinate body, the delegates of an inconsiderable district? Demonstrate your supremacy, and we shall freely admit the validity of your pretensions: With the superaddition of the governor, what do we all form but a local legislature, whose laws reach not beyond our boundaries, whose powers must be limited, since they are not supreme, whose authority is circumscribed by the nature of our inferiority, by the principles of our relation to a great empire, by the common laws of the state? It is easy to perceive, that the delegates, in order to have answered these reasonings with tolerable accuracy and candour, must have used topics, which necessarily lead to independence. As, however, the counsellors enjoyed a judicial authority, the delegates properly exercised the power of complaining of grievances, because their constituents possessed the same right, and might transfer their immunities to their representatives: But they could not impeach, because there existed no authority that could properly decide; they could not punish, because they could

not

not regularly enforce their judgements, should they be opposed. And as they were the general protectors of the privileges of the people, they could easily remove officers, and even the governor himself, by those arts, which popular assemblies so well know how to use, to promote the interests of freedom, or to answer the purposes of faction.

The rights of the governor, the council, and delegates, when convened in assembly as one legislature, were founded in similar principles; the legislative power must have been necessarily directed by its nature and use. If it was merely local, its jurisdiction could extend no farther than the limits of the soil: If it was subordinate, its powers could not be supreme. The foregoing Annals have shewn how the colonies were successively formed, in what manner they were established independent of each other. And there was, consequently, no confederacy between them, any more than there was an alliance with the colonies of France or Spain; nor was there any other connexion than as they were equally members of the same state. The assembly of one province could not therefore make laws for another; could not confer privileges which were to be enjoyed or exercised without its boundaries: And we have seen acts of naturalisation passed without giving the alien any other than local rights. We may thence infer that the colonial legislature could make no laws for the parent country, because it had derived its being from a king of England; who could himself make none, because the inferior never prescribes rules of action for the superior. As each colony established regulations only for itself, as it was excluded from all connexion with foreign territories or foreign states, the provincials never were admitted into the community of nations, and could derive consequently no privileges from the law of nations. The various plantations formed therefore no more than the dependencies of a great kingdom, which directed their affairs. And they enjoyed no portion of sovereignty; because, to enable a society to make an immediate figure in the grand community of the world, it must govern itself by its own authority, by its own laws, in the same manner as the most ancient colonies of Greece. The various tribes which had once passed under the yoke of the Romans no more formed independent states, though they were often flattered with the appellation

pellation of allies and friends: They were generally, indeed, permitted to rule themselves *within* by their own magistrates and jurisprudence, but *without* they could form no alliance with other nations, because they were in all things obliged to follow the orders of Rome.<sup>15</sup>

Such was the political condition of the English colonies, with this favourable exception, that the colonists enjoyed perfect freedom, while their legislatures alone were restrained; or, in the language of Montesquieu, "the people were free; the states were enslaved." And the provincials could, in no respect, be inferior to Englishmen, because both were equally subjects of the same king, fellow-members of the same state; and, when Englishmen emigrated, they equally became provincials: The colonial legislatures were only subordinate, because they were neither coordinate nor supreme. These salutary principles of common sense and of common law were expressly enforced by the various royal charters, commissions, and instructions, which gave the colonies power to legislate, which uniformly declared: That, while you establish regulations for internal government, let them be agreeable to reason and to the jurisprudence of England. Notwithstanding this cautious limitation, the assemblies might abrogate every part of the common law, except only those maxims which united the territories to the state; every part of the statute law, except those acts of the supreme legislature which expressly prescribed rules for the colonists: When the common law declared; that appeals may be carried from provincial courts to the tribunals of England, an assembly could not declare they should not: When an act of parliament directed; that you shall carry no tobacco to France nor import manufactures from Holland, an assembly could not give permission to do either. With the just limitation before-mentioned, a provincial legislature seems to have been sovereign within its colony, otherwise it would not have been legislative: And all persons and all property within its boundaries must therefore have been subject to its power. For even an alien, who possesses no will, must obey the laws of the country where he enjoys protection, since residence carries with it consent. The power of the assembly to enact laws necessarily flowed from its being the legislature: But what empowered it to impose taxes for local purposes, to transfer

transfer property? The Virginian assembly, which first exerted this extraordinary authority, had not been enabled by any grant from the company or the king. Subsequent charters and commissions supplied a deficiency which was rather imaginary than real. A provincial legislature must necessarily have possessed the power, as the body politic of the colony, since it was invested with the authority of every colonist, and pronounced the will of the whole, or not at all. For a king of England could not authorise others to do that which he could not himself perform: He could not impose burdens on Englishmen, and he could not empower others to tax them. Not only the first assembly of Virginia, the first general court of Massachusetts, which had not been *specifically authorised*, but all others have constantly established duties, because they possessed legislative authority. The power of taxation therefore is invested in the legislature; and every exertion of it is a mere act of legislation: It may be traced up to *implied*, but not to *express*, consent. If an assembly justly exercises this important jurisdiction for local uses, because it is the legislature of a colony, may not the parliament exert the same power for general purposes, because they form the legislature of the empire?

Nothing can be more striking than the prodigious difference there has always been between the parliamentary and colonial mode of taxation. With regard to subjects the parliament has never made any distinction, because all in similar circumstances paid exactly alike: The assemblies have universally distinguished between those who were actually represented and those who were not; exempting the former, and imposing the duty on the last, though nothing could be more contrary to principles, to that equality which ought ever to prevail in the imposition of the general revenue for common uses. We ought naturally to expect what has been at all times experienced, that it was deemed no valid reason for an exemption, that the object of the tax resided at the distance of three thousand miles: And the residents of England constantly paid, without complaint, the taxes annually imposed either on their servants or lands. If consent or representation be necessary to legalize the duty, the practice of the assemblies has been at all times faulty, the impositions always illegal, and the grievances resulting from both consequently extreme. That  
property

property ought to be sacred, and ought to be changed even by the legislature with the greatest caution, is a principle in all free governments. Yet, by the various acts of insolvency which have been so often passed by the assemblies, the debts of the British merchant were transferred to the colonial debtor. That this delicate transaction was effected without the consent of the creditor, even contrary to his inclination, is most apparent. The legality of the practice must therefore be sought for in some other principle. The assemblies did not act as representatives, but as the legislative power of a subordinate territory, having competent jurisdiction; and, if this did not give them sufficient authority, they had none. When property is placed in a country, or a commerce is carried on by which debts are contracted, a benefit is supposed to accrue, which always carries with it an obligation to submit to the inconvenience: And this necessarily infers the implied consent of the owner. Such are the just maxims upon which the assemblies have invariably acted, upon which their jurisdictions can alone be supported: It is either recent pretensions, or the declamations of zealots, that have thrown a ridicule on their conduct or reasonings, since both cannot be defended. From the epoch of the Restoration to the present times the parliament have constantly imposed taxes on every dominion of the crown, and even on subjects without the boundaries of the empire: "But they have never copied the narrow example of provincial legislatures, in exempting those who were represented at the expence of those who were not. The local legislature exerted a more extensive authority than even the supreme legislative power: Both, however, acted as legislatures; the one of a province, the other of an empire. If the topics before-mentioned justified the former, why should they not be equally applied to support the just authority of the latter. . .

Without entering into a detail of the various constitutions of the colonies, which would be foreign to the design of the present inquiry, which, at a future period, will demand discussion, we may easily infer, from the reasonings before-mentioned, what were the principles, not only of the law of nations, but of the common law, on which the plantations were originally established, from which the colonists and their judicatories derived their rights. The American region, we have seen, was a territory of

the English empire, and formed a part of the whole, a parcel of the original establishment. The emigrants departed with the consent of the state, and settled within the dominions of the state. Though they incurred disabilities from situation they forfeited nothing by emigration; and they continued Englishmen, who carried with them English laws, and were entitled to English liberties. They claimed speedy justice, and local judicatories were erected; they could not be ruled by the edicts of the royal prerogative, and provincial legislatures were established: And the powers of both were limited by the utility that gave them existence. The persons of the colonists remained free; their corporate bodies alone were restrained: And their judicatories, legislative and judicial, were subordinate, since they could not be co-ordinate or supreme without changing the nature of their connexion. Totally unconnected with foreign nations, the colonies formed no sovereign nations, because they did not govern themselves in all things by their own authority and laws: And they were thence said to be dependent, since they “did not enjoy “an equal and separate station among the powers of the earth.” The dependence, however, did not consist in the inferiority of fellow-citizen to fellow-citizen, but in the subordination of the provinces of the nation to the *state*, to the supreme body politic, of every individual to the general aggregate, of every part of the empire to herself. When the supremacy of the parliament and the dependence of the colonies were once formed and admitted, it necessarily followed that there could be no limitation to the authority of the one or to the obedience of the other. For the moment that they partake of any part of the supreme power they proportionally cease to be dependent: The respective duties of superior and inferior, must for ever remain separate and distinct. We may thence infer: “That a legislative authority, not actually limited by the express “terms of its foundation, or by its own subsequent acts, cannot have “its powers parcelled out by argumentative distinctions; so as to enable “us to affirm, that here it can, and there it cannot, bind.”

Such were the rights which the colonists, as Englishmen, were entitled to possess from English laws. It seems unnecessary to review the preceding annals, in order to discover how far they actually enjoyed them, during



during the foregoing period ; because, one truth seems apparent : That the same mode of government, whether salutary or baneful, which prevailed in England, constantly extended its influence, either good or evil, to them. The revolution of 1688, and the happy establishment which resulted from it, will be found to have been of no less importance in the colonies than in the parent country, because they were equally necessary on both sides the Atlantic.

#### AUTHORITIES AND NOTES.

<sup>1</sup> Dr. Smith's *Wealth of Nations*, 2 v. p. 146-7 ; *Hist. of the Colonies of the free States of Antiquity*, p. 47-134. — <sup>2</sup> *Ib.* p. 10 ; *Mont. Spirit of Laws*, b. 21. ch. 11. — <sup>3</sup> *Hist. free State of Ant.* p. 78-84-106 ; *Whitaker's Hist. of Manchester*, 1 v. p. 325-6. — <sup>4</sup> *Coke's 4th Institute*, p. 282-7 ; *Coke's 5th Report*, p. 22-6. — <sup>5</sup> *Ib.* 18 ; *Vaughan's Rep.* p. 292-300-402 ; see *Williams's Rep.* 1 v. 329. — <sup>6</sup> *Coke's 4th Institute*, p. 36 ; *Hale's Power of Parliaments*, p. 46-9 — <sup>7</sup> *Vattel's Law of Nations*, p. 9 ; *Compact*, p. 45.

<sup>8</sup> *Hume's Hist. Eng.* 4to. 3 v. p. 317-23-4. — <sup>9</sup> *Foster's Crown Law*, 8vo. p. 403-4. — It ought to be remembered, that “ the declaration of “ rights” asserts : That the convention of lords and commons “ lawfully, “ freely, and fully, represented all the estates of the people of this “ realm.” — 1st Wm. and Mary, 2d sess. ch. 2.

<sup>10</sup> James I. with his usual imprudence, adopted the design of governing Ireland as a country held of his person, similar to his Scottish dominions, and not of the crown of England. And, with this view, he consulted Selden, that prodigy of law-learning, who probably gave him very sound advice ; because we hear no more of a project, equally unconstitutional and pernicious. — *Vaughan's Reports*, p. 432. — But the wisdom of that monarch's policy, with regard to that island, fully compensates for the erroneousness of his opinion. And he informed the commons, with his accustomed vanity, though in prophetic language : “ That he

“ considered the settlement of Ireland as one of his master-pieces, which  
 “ would be an honour to him hereafter.” — Com. Jour. 1 v. p. 593-7.

“Coke’s 7th Rep. p. 7; Hale’s Pleas of the Crown, 1 v. p. 68. —  
 “Vattel’s Law of Nations, p. 90-1.

“It may, perhaps, startle an Englishman to be told, that he was not entitled to the same privileges within a colony as he enjoyed within the realm: Yet it is a truth which seems to have been hitherto but little known. The capacity to exercise offices of profit and of trust is deemed in every country of the greatest importance and essential to freedom. The law of England, at the same time that it very properly excludes every alien, makes no distinction between subjects; and, as hath been observed, colonists may return to England, and instantly fill the first offices of the state; and during recent times they have been deemed most worthy of trust: Yet an Englishman, emigrating to the colonies, is incapable of enjoying colonial offices, till, by residence a term of years, he has become completely a colonist. — Laws of Maryland, 1704, ch. 93; 1721, ch. 9. — Acts of the other assemblies were animated by a similar spirit. Under the ancient republican government of Massachusetts, none but freemen of the corporation could in any manner participate in the government. The laws of England have declared the vessels of the colonists, as hath already been shewn, to be in every respect English: But the acts of assembly, formerly cited, have established a considerable diversity in favour of provincial owners. — Vid. Ant. p. 354-5. — The system of English taxation makes no other difference than between subjects and aliens; the colonists and Englishmen paying the same duties: But the acts of assembly, before quoted, demonstrate, that it has been a colonial practice, long, universal, and invariable, to tax every subject of the crown, while the residents, who only enjoyed the privilege of representation, were totally exempted. By the laws of England, subjects are permitted to carry on commerce on the same footing of benefit: But the same acts of assembly prove, that the British merchant cannot traffic in the colonies to equal advantage as the residents, because they are subjected to peculiar burdens. — Vid. Ant. p. 354-5. — By the bankrupt laws of England, every one is paid his debt in equal proportion: But colonial jurisprudence  
 hath

hath provided, that debts due to English bankrupts in the colonies, shall not be collected till security shall be first given, that the claims of the colonists shall be first wholly discharged.—L. Maryl. 1704, ch. 29; 1753, ch. 36.— And “country debts have the preference in payments made by executors before those due to non-residents, having regard to the nature of the security.”—Ib. 1715, ch. 39.— Even the Pennsylvanians, who, in this respect, have been the most liberal of any, have insisted on “priority of payment to inhabitants.”—Laws, p. 19.— The law of England has always enforced the payment of debts; the law of the colonies has, at all times, *obstructed* the recovery of debts. In the conduct of England we see the liberality of a legislature, which admitted no superior; in the practice of the colonies, we behold the narrow spirit, which never fails to pervade subordinate powers, because they are always jealous. Whether the colonists or Englishmen enjoyed the greater advantage is apparent.

“Montesq. Spirit of Laws, 1 v. p. 160; 2 v. p. 63.— Tacitus remarks: That the Roman yoke became easier upon the provinces after the dissolution of the common-wealth.—An. lib. 1. ch. 2.— In Hume’s Eff. 1 v. p. 18–19.— Such was the fact: The reason is apparent; the emperors could find no interest in oppressing the provincials: And, accordingly, even Domitian, the worst of them, was careful to prevent the oppression of the provinces.—Ib. 19.— After the conquest of Macedonia, by the commonwealth, the Romans paid no taxes.— Montesq. Spirit Laws, 1 v. p. 208.

“Vattel’s Law of Nations, p. 10–11.— “By the statute of 8th Geo. I. ch. 17. certain small duties were imposed on merchandises imported into Portugal, to be collected by the consul, in any of the ports of that kingdom. Similar taxes were granted by the 9th Geo. II. ch. 25. to be levied at Cadiz, in Spain. This was extended to Leghorn by 10th Geo. II. ch. 14.— These are singular instances of parliamentary power, by which a revenue was established for special purposes, even without the dominions of the empire. The authority of parliament arose from its being considered as the supreme legislature of the empire. If these taxes were rightfully imposed, what principle of the constitution can be assigned,

assigned, to preclude the the same authority from extending the same power to every part of the globe?

“Mr. Burke’s letter to the sheriffs of Bristol: A learned lawyer of Pennsylvania, Wilson, who was bred in the school of Dickenfon, who wrote “*Considerations on the Nature and Extent of the legislative Authority of the British Parliament,*” affirms: “That he entered on his disquisitions with an expectation of being able to trace some constitutional line between those cases, in which the Americans ought, and those in which they ought not, to acknowledge the power of parliament over them: but that, in the prosecution of his inquiries, he became fully convinced, that such a line doth not exist, and that there can be no medium between acknowledging and denying that power in all cases.” He is certainly so far right, that there exists no known principle of law, which bounds the authority of the supreme power: And this is equally true, as hath been already observed, of subordinate legislatures, whether corporations within the realm or territorial assemblies without, which are only restrained by the nature of their inferiority. His views led him “to deny the legislative authority of the parliament over the colonies in every instance,” as an infallible inference from what he deemed just premises. In what manner, however, or by what law, the emigrants, who were once subjects to the crown, and owed obedience to the English legislature, changed the nature of their allegiance, and became subjects of the person of the prince, similar to the Scots of former times, or to the Hanoverians of the present, we have not been told, nor is it easy to discover. Is it answered, “that emigration broke asunder the bonds of ancient connexion,” it must, indeed, be admitted, that his conclusion was perfectly just; because, change of habitation must have transformed Englishmen into aliens, who, having no longer any relation to the state, owed no submission to her laws: And, the settlements which they formed, must have become, therefore, independent nations. Whether the conclusion before-mentioned be consonant to the uniform declarations of the colonial charters, to the unvaried assertions of acknowledged facts, to the continual recognitions of assemblies, to the experience of ages, the foregoing annals will enable the reader to decide.

Nevertheless,

Nevertheless, it must be admitted, that several very ingenious writers, disregarding the law of England as a dead letter, have endeavoured to establish the rights of the colonies upon very different principles from those of the present inquiry; upon "immutable truths," the "fitnesses of things," the "indefeasible immunities of nature;" in order to draw the inference before-mentioned, that they were in no case bound to obey the rules of action prescribed by the supreme legislature. But, of these authors, and their writings, however respectable, may be observed, what Montesquieu remarked of Harrington, and his *Oceana*; "that, for want of knowing the nature of real liberty, he busied himself in pursuit of an imaginary one; that he built a Chalcedon, though he had a Byzantium before his eyes." It ought to be permitted, to the friends of the constitution, to insist with equal confidence in the forcible language of the excellent Burlamaqui: "That it is an incontestible maxim, that an opinion, which saps the foundation of all authority, which destroys all power, and consequently all society, cannot be admitted as a principle of reasoning, or of conduct, in politics." — Prin. of Pol. Law. 2 v. 124.

#### THE END OF THE FIRST BOOK.

\* \* \* Owing to the distant residence of the author from the press, a few typographical errors have slipped in, which, as they affect propriety rather than injure the sense, were deemed more worthy of apology than correction.

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