THE

SPEECHES

IN

PARLIAMENT

OF

SAMUEL HORSLEY,

LL. D. F. R. S. F. A. S.

LATE

LORD BISHOP OF ST ASAPH.

DUNDEE:

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1813.

TO THE

LORD GRENVILLE.

MY LORD,

As the political leader to whom, with the exception of my late much-lamented friend Mr WINDHAM, my father was most strongly attached, I inscribe to your Lordship the following volume of his Parliamentary Speeches. I believe, on all the great national questions but one to which these speeches relate, your Lordship and the Bishop were speakers

on the same side; and on that one, my father writes thus to me, only four weeks before his death.

"I at present intend being up at the meeting of Parliament; but shall leave * * * * * * behind me here, as I foresee nothing likely to occur in the House that should detain me above a fortnight in London. The Roman Catholics will be before us again this session. My mind was never so long unsettled upon any great question before. Something must be done; but what, I am not prepared to say. I shall see WINDHAM as soon as I get to town, and probably my

friends Lords SPENCER and GRENVILLE; for I suspect there is really no great difference of opinion between us."

What might have been the result of such a conference, it is not for me, my Lord, to determine: But of this I am certain, that even had the differences of opinion turned out great, yet your Lordship's continuing to advocate the cause of the Roman Catholics would not in the smallest degree have lessened the perfect confidence my father placed in you as the faithful friend and sincere supporter of the *Established Church.*

With the highest admiration of your public principles, and the utmost personal respect, I remain, my Lord, your Lordship's most obedient humble servant,

H. Horsley.

Dundee, 23d January 1813.

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UPON EARL STANHOPE'S BILL FOR THE REPEAL OF CERTAIN PENAL LAWS;

JUNE 9, 1789.

ON the 18th of May 1789, Earl STANHOPE moved for leave to bring in a bill "for relieving members of the church of England from sundry penalties and disabilities to which by the laws now in force they may be liable, and for extending freedom in matters of religion to all persons (Papists, on account of their persecuting and dangerous principles, only excepted), and for other purposes therein mentioned." As the foundation of this bill, Earl Stanhope laid before their Lordships an account of all the penal

laws, whether existing, obsolete, or repealed, which had been enacted from the earliest times upon matters of religion, sorcery, and various other subjects; and urged the injustice as well as disgrace of suffering them to remain any longer amongst our statutes.

The bill was read a second time on the 9th of June; and opposed by the Archbishop of Canterbury, by the Bishops of Bangor and St Asaph, and by Dr Horsley, then Bishop of St David's, in the following words.

"MY LORDS,

"In a variety of laws framed in different periods of our history, either for the maintenance of religion in general, or for the particular security of the national church, that some may be yet standing upon the statute-book unrepealed, which do little

credit to the spirit of the times in which they were enacted, I shall not take upon me to deny. In the repeal, the *specific* repeal of laws of this description, I for my part, and I trust my brethren of the Episcopal bench, will never be unwilling to concur. My Lords, if laws be subsisting contrary to the principles of just government, infractive of the rights of private conscience, repugnant to the mild spirit of the religion we profess,—*if* such laws subsist, the fortunate circumstance of the times in which we live, that no persecution is stirring or likely to be stirred, is no reason, in my judgment, that such laws should be suffered to remain in force: It is a sufficient ground for the repeal of them, that they are weapons loosely lying about, which the Fiend of Persecution may at any time pick up and employ to her own fell purpose, if any unfortunate revolution in the temper of mankind should

set her free from the restraints which the tolerance of the times for the present lays upon her. My Lords, it is not enough that this dæmon be kept in order for the time by the prevalence of the contrary principle,—that she sit mopping, abashed, disheartened, under the conviction that the hand and heart of every man are against her: My Lords, she should be disarmed, and laid in chains until the judgment of the Great Day; my Lords, her armour should be broken and her chains rivetted.

"But, my Lords, if the peaceful state and temper of the times afford no reason for the continuance of laws which in worse times might be oppressive, your Lordships, I persuade myself, will think it a strong reason for taking time to proceed with due deliberation and caution in so important a business as the revisal and reform of so considerable a branch of our criminal law

as that which regards offences against religion. Your Lordships will think it becomes your wisdom to consider the contents of the writing before you apply the sponge; lest, meaning only to obliterate oppressive laws, you abolish the most beneficial and necessary restraints.

" My Lords, my objection to the bill upon the table is, that I can discover nothing in it of this discretion: It drives furiously and precipitately at its object, beating down every barrier which the wisdom of our ancestors had opposed against vice and irreligion, and tearing up the very foundations of our ecclesiastical constitution. My Lords, if this bill should pass into a law, no established religion will be left. My Lords, when I say that no established religion will be left, I desire to be understood in the utmost extent of my expressions: I mean, my Lords, not only

that the particular establishment which now subsists will be destroyed, but that no establishment will remain of the Christian religion in any shape,—nor indeed of natural religion. My Lords, this bill, should it unfortunately pass into a law, will leave our mutilated constitution a novelty in the annals of mankind, a prodigy, my Lords, in politics,—a civil polity without any public religion for its basis.

"My Lords, these are not rhetorical words, that go beyond the truth of the thing. To convince your Lordships that they are not, I shall beg your indulgence while I endeavour to show the operation of this bill both upon the statute law and the ecclesiastical jurisdiction.

"First, for the effect of the bill upon the statute law. My Lords, the first clause. —But, by the way, I must apprize your Lordships, that I mean to confine my re-

marks to so much of the bill as relates to the laws concerning religion; other matters are oddly enough intermixed, but I confine myself to what concerns religion, I have no objection to the noble earl's eating beef in preference to any other meat, on any day of the year or any hour of the day.—The first clause, my Lords, so far as it relates to the laws concerning religion, abrogates in a lump *all* the laws in the statute-book relating to the observation of the Lord's-day. My Lords, do your Lordships perceive any thing in the manners of the times that calls for the abolition or the relaxation of those laws? Are we guilty of any childish superstition in the observance of the day, that may interfere with duties of a higher obligation? My Lords, is not the contrary notorious? Is it not notorious, that the business and the pleasures of all ranks of the people are going on, on the

Lord's-day, with little interruption? Perhaps, my Lords, some extravagant severity in the penalties of these laws may call for mitigation. My Lords, I certainly shall not be the advocate for that law of Queen Elizabeth which imposes a fine of 20*l.* per month upon any person above the age of sixteen who neglects to go to church; much less shall I pretend to vindicate that law of James the First by which the King is authorized to refuse the 20*l.* per month, and take two thirds of all lands, tenements, and hereditaments. There might be reasons to justify these laws at the time when they were passed;—I shall not enter into that question: Those reasons subsist no longer, and those laws *now* are not to be defended. But, my Lords, the noble earl's bill equally abrogates the 1st Eliz. cap. 2. sect. 14.; to which no objection can be made on account of the severity of its penalties. My Lords,

this law only imposes upon every person who, without a lawful or reasonable excuse, shall absent himself from his parish church or chapel on Sundays or holidays, the very moderate fine of one shilling for every offence, over and above the censures of the church. My Lords, this fine is too small to be oppressive upon the poorest of the people. Suppose that the common day-labourer be absent from church every Sunday in the year, and that the fine be levied for every offence, my Lords, the amount of it in the whole year, even upon the supposition that it may be levied twice on each Sunday, is much less than the offender would probably squander in the same time in riotous pleasures, to the great injury of his family, if he were released from the restraint of this law. This penalty, my Lords, is just what the penalty of such a law should be; it is a light-

er evil to the individual than he will be apt to bring upon himself by the neglect of that which the law requires to be done: For, my Lords, it is a notorious fact, that the common people of this country, if they do not keep the Sunday religiously, keep it in another manner; if they do not go to church, they spend the day in houses of riotous pleasure. My Lords, the severity of the law (what little severity there is in it) is abated by the allowance that it gives to "*lawful and reasonable* excuses." Its penalties are to be levied only upon those who without "lawful and reasonable excuse" neglect to resort to their parish-church. "Lawful and reasonable excuse:" My Lords, these are large words, which leave much in the discretion of the magistrate who is to enforce the law. A *lawful* excuse, indeed, may seem to signify such excuses only as were allowed by the laws in

being at the time when *this* law was made; but a *reasonable* excuse, is every excuse which the reason of man, judging by its own laws and its own maxims, may approve. My Lords, in the present state of manners, great distance from the parish church or chapel must be deemed a reasonable excuse. The noble earl, in the speech with which he introduced the bill under consideration, mentioned a case which had lately happened in the country, in which this law had been enforced against a person whose dwelling-house was at an extravagant distance from any place of worship. My Lords, this case, if it really was as it was stated to the noble earl,—if the great distance was pleaded and given in proof, and the fine was notwithstanding levied,—this case, I say, bears very hard, in my judgment, upon the discretion of the magistrates who took the information: But,

my Lords, that's all; the blame was in the magistrates, not in the law; for your Lordships must be sensible that the mildest laws are liable to be abused by misapplication.

"But perhaps, my Lords, this law may be allowed to be reasonable enough as far as it regards the Sunday, but it may seem a circumstance of extravagant severity that the observance of holidays as well as Sundays is required under the same penalties. My Lords, I revert to my former observation;—that the law allows "lawful and reasonable excuses" on any day; and in the present state of manners, I conceive, my Lords, that the ordinary occupations of life form a reasonable excuse of absence from divine service upon holidays, with the exception of a very few,—namely, Christmas-day, Good Friday, the King's Accession, and occasional fasts and thanksgivings. Perhaps the noble earl may wish me to except

another day, which, if I guess aright, his Lordship means to add to the calendar. With the exception of these few days, the ordinary occupations of life are, as I conceive, a reasonable excuse of absence from church on any holiday. My Lords, they are much more; they are a *lawful* excuse, —they are such an excuse as the magistrates before whom an information may be laid are bound by law to take notice of. My Lords, the magistrate is bound to take notice of this excuse, by the very law which settles the holidays of our calendar, by the 5th and 6th Edward VI. cap. 3. My Lords, in that very statute your Lordships will find a proviso to this effect. (Here the Bishop read from his notes the sixth paragraph of the statute mentioned; which provides, that " it shall be lawful to every husbandman, labourer, fisherman, and to all and every other person and persons, of what

estate, degree, or condition, he or they be, upon the holidays aforesaid, in harvest, or at any other times in the year, when necessity shall require, to labour, ride, fish, or work any kind of work, at their free-wills and pleasure; any thing in this act to the contrary notwithstanding.")

"But in truth, my Lords, the noble earl, though he mentioned this as one of the laws which he particularly disapproved, complained not of the severity of its *penalties*: He objected to the *principle* of the law; he contended that it lays a restraint upon private conscience, exacting the payment of a fine for not doing that which to do might be contrary to conscience.

"My Lords, I think this a fair objection against the law as it stood originally, in the time of Queen Elizabeth; when the subject was not indulged in a freedom of choice between the established church and

other modes of worship: But, my Lords, it is no objection *now* against the law, as it is modified by the acts of toleration,—first by the 1st of William and Mary, and since by the 19th of the present King. By virtue of these statutes, any legal meeting-house to which a dissenter may choose to resort is to all intents and purposes of the 1st of Elizabeth, cap. 2. his parish-church. Whoever dislikes the rites of the church of England is secured from all penalties by a regular attendance on divine worship in a regular meeting-house of any denomination. My Lords, I can see no severity in the statute of Elizabeth thus modified and mitigated by the toleration-acts. But the noble earl put the case of a conscience that might scruple public worship in every shape: His Lordship quoted our Saviour's admonition to his disciples to avoid ostentation in their private devotions, as what might be under-

stood as a prohibition of the practice of worshipping at all in public; and he thought the statute of Queen Elizabeth a constraint upon the conscience of a man who should so interpret our Saviour's maxim. My Lords, I understand very well that men may think differently of particular modes of worship,—that the conscience of one man may scruple what another approves; but I had so little apprehension that conscience could doubt the propriety of public worship in every shape, that I really thought the noble earl was not in earnest in that part of his argument. My Lords, the noble earl *was* in earnest: His lordship has since mentioned an instance to me of a person, in the circle of his own connexions and of my acquaintance, who was afflicted with one of those strange consciences; a nobleman eminent for the probity of his character and the severity of his morals, who,

from conscientious scruples, never in his life mixed with any congregation of Christians in their public rites. My Lords, I am compelled by this instance to admit, that that sort of conscience, which I thought a mere fiction, may exist; and I must admit that the statute of Queen Elizabeth lays some degree of force upon such a conscience. I must therefore beg your Lordships' indulgence while I say a few words upon this great question of the right of private conscience; which I think is not generally understood.

"My Lords, the noble earl, in the second clause of his bill, lays down this maxim, that the right of conscience is and ever must be "the unalienable right of mankind; and as such, ought always to be held sacred and inviolable." My Lords, I agree entirely with the noble earl in that maxim. I am not certain that his lordship will a-

gree with me in what I am going to advance;—I think he will; for I really think no one can differ from me who allows that civil government is a thing consistent with the revealed will of God. My Lords, the right of conscience is unalienable; but it is not *infinite*, it is limited. The right of conscience is unalienable within the limits of a certain jurisdiction. Conscience and the magistrate have their separate jurisdictions; each is supreme, absolute, and independent, within the limits of their own. The jurisdiction of conscience is over the actions of the individual as they relate to God, without reference to society: Conscience judges of what is sinful or not sinful in our actions. The jurisdiction of the magistrate is over the actions of men as they respect society: He is the judge of what harm may or may not result to society from our actions; and this harm he has

a right to restrain and to punish, in whatever actions he descries it, in defiance, my Lords, of the plea of conscience. In the exercise of this right, my Lords, the civil magistrate is supreme and absolute, as conscience in the exercise of hers. Conscience, my Lords, cannot be conscientiously pleaded against the magistrate in the exercise of this right. My Lords, if the principle which I advance is rightly taken, I shall not be suspected of wishing to narrow the limits of toleration. My Lords, I advance a principle which carries toleration to the utmost effect to which it can be carried, consistently with the security of civil government. My Lords, according to my principle, the magistrate has no right to punish an action, be it ever so sinful, merely because it is sinful; he has no right to punish it, unless beside the sin it contain crime,—that is, harm to society.

Thus, in the instance of perjury: Perjury is an action sinful in so high a degree that the sin may justly be considered as by far the greater part of the whole guilt; and this action is punished by the magistrate: But the object of the magistrate's animadversion is not the sin of the action, enormous as it is; but the *crime* of it—the harm it brings to society: An oath is the very first and highest of all civil obligations and securities; and society must break up were perjury to go unpunished. My Lords, I think I have been fortunate in falling upon this instance for the illustration of my argument; because it will serve as a principle to determine the extent of the magistrate's authority over the religious conduct of the subject, notwithstanding any plea of conscience. My Lords, since the magistrate has a clear right to punish perjury on account of the ruin it would bring upon

society, he has, upon the same ground, a right to punish whatever tends to render perjury frequent—whatever tends to lessen the general veneration of an oath. My Lords, upon this principle, the magistrate has a right to restrain and punish open atheism, and the disavowal of God's providential government of the world. And, my Lords, we must go one step farther: Since the magistrate, in this country, believes that he is possessed of a written revelation of God's will, he must punish the open disbelief and denial of that revelation: He has no right to persecute particular opinions, however erroneous, of sects professing a general belief in the revelation; but he has a right to punish the general disbelief and total rejection of it. And since he has a right to punish atheism, a disavowal of God's providence, and a total rejection of the Christian revela-

tion, he has a right to restrain and punish actions, in which, as they are interpreted by the general sense of mankind, these pernicious opinions are implied: He has therefore a right to restrain and to punish the neglect of public worship, which is one of those actions: And any man whose conscience is of that singular construction as to disapprove all public worship, would deal but handsomely by his country in submitting cheerfully and silently to the very moderate penalty which our laws impose. My Lords, besides this statute of Queen Elizabeth, the bill upon the table, should it pass into a law, will repeal the act of Charles the Second for the better observation of the Lord's-day (29th Charles II. cap. 7.); and from this time forth, stage-coaches and waggons will travel the road —watermen will ply upon the Thames— hackney-coachmen in the streets, upon the

Lord's-day as on any other, under the express sanction of the law. The bill will also repeal the act of Henry the Sixth (27th Hen. VI. cap. 5.) against the keeping of fairs and markets on the Lord's-day; for the bill takes away all prosecution in any court for the neglect of any rite or ceremony of the church of England. The observation of the Lord's-day is enjoined by these laws only as a ceremony of the church; therefore all prosecutions are staid that might be founded upon these statutes, and the statutes are virtually repealed.

"My Lords, I should now consider the effect of this law upon the ecclesiastical jurisdiction; but I fear your Lordships are already tired with the length of this dry debate. I shall therefore confine myself to a few short remarks upon points which I think have not been touched by the right reverend lords who have gone before me.

"My Lords, the bill goes to the abolition of the ecclesiastical jurisdiction in all offences against religion. The noble earl, in his speech on the first reading, expressed great dislike of the ecclesiastical courts: His lordship thought it a great objection, that the mode of trial in them is not by jury. My Lords, will the noble earl extend this objection to every court in which he finds the same defect? Has the Court of Chancery a jury? has the Admiralty Court a jury? Would the noble earl abolish the jurisdiction of every court in which the mode of trial is not by jury? I do not remember whether his lordship made another objection to the ecclesiastical courts, which, in my opinion, is of much greater weight,—their way of taking the depositions of witnesses; not *vivâ voce*, by examination and cross-examination in the presence of the

parties and their counsel, but by answers given in private to written interrogatories. My Lords, in my judgment this practice in the ecclesiastical courts is a thing much more exceptionable than the want of a jury; and, to confess the truth, my Lords, I am one of those who think that the change was much for the worse which was made by our Norman kings, when they separated the ecclesiastical from the secular jurisdiction. My Lords, the change was much for the worse: But I beseech your Lordships to remember that it is now seven hundred years old. We are got to such a distance from the period when the change took place, that the present practice has acquired the authority of a venerable prescription; and the attempt to bring things back to their former state might not be very politic. My Lords, instead of troubling your Lordships with any arguments

of my own upon that point, I will beg your permission to give you the opinion of the great Judge Blackstone, in his own words. (Here the Bishop read from his notes a paragraph from Judge Blackstone's Commentaries, to this effect: "It must be acknowledged, to the honour of the spiritual courts, that though they continue to this day to decide many questions which are properly of temporal cognizance, yet justice in general is so ably and impartially administered in those tribunals, especially of the superior kind, and the boundaries of their power are now so well known and established, that no material inconvenience at present arises from this jurisdiction still continuing in the ancient channel; and, should an alteration be attempted, great confusion would probably arise, in overturning long-established forms, and new-modelling a course of proceedings that has

now prevailed for seven centuries."—*Commentaries*, book iii. cap. 7.)

"My Lords, these were the sentiments of Judge Blackstone: The noble earl's are different. My Lords, the noble earl spoke with high disapprobation of the canons by which our spiritual courts are directed: He told your Lordships they were an invention of the same age with the absurd childish statutes against witchcraft. My Lords, in that point of history the noble earl was not quite accurate; for though it be true that the canons which we now use were set forth in the reign of King James the First, not one of them, as far as my recollection goes, was an original fabrication of that age. My Lords, the canons of 1603 are a compilation from the canons of all former ages,—a selection of such rules as seemed suited to our civil government and to the constitution of a Protestant Episcopal church.

The noble earl, in disparagement of these canons, produced the third as a specimen of the folly and mischief which they contain: He told your Lordships that this third canon breathes such a spirit of ambition and priestly lust of power as is not to be borne. Now, my Lords, the truth is, that the scope of this canon is just the reverse of what the noble earl supposes it to be: The scope of this canon is not to support church power, but to moderate church power, by maintaining the supremacy of the secular magistrate. The canon says—"Whoever shall hereafter affirm that the church of England by law established under the King's Majesty is not a true apostolical church, teaching and maintaining the doctrine of the apostles, let him be excommunicated *ipso facto*," &c. Observe, my Lords, how the church of England is described,—"the church by law established

under the King's Majesty." When we separated from the church of Rome, the Papists were perpetually insulting us, as no church, because by making the King the head of the church we had given the supremacy to a layman. The canon meets this insult: It affirms that the church of England is a true apostolical church, notwithstanding that she have a layman for her head; and it pronounces every one excommunicate who shall dare to deny this. My Lords, the impugners of the King's Majesty's supremacy, not the enemies of extravagant church power, are the persons whom this canon anathematizes. My Lords, I mention this only as an instance how much the noble earl has seen things by a false light in this subject.

"My Lords, before I sit down, I must beg leave to take notice of one thing which fell from the noble earl, as it appears to me

of a most dangerous tendency. The noble earl took occasion to say that the canons are not binding even on the clergy. It has long been a maxim (to be understood however with many exceptions and restrictions), that they are not generally binding on the laity; but the noble earl is of opinion they are of no force even against the clergy. My Lords, the noble earl seemed to found this opinion upon some statute, which, as he interprets it, amounts to a repeal of all canons universally. My Lords, I guess that the statute that the noble earl had in contemplation was the 13th of Charles II. cap. 12. (Here the Bishop went into a minute discussion upon this statute; many parts of which he read at large from his written notes. He said that the design of this statute was to explain an act of the 17th of the former King, which had been passed to repeal an act of the 1st

of Elizabeth, concerning the commissioners for causes ecclesiastical: A doubt had arisen on the construction of this statute of repeal, whether it had not taken away all ordinary power of coercion and proceeding in causes ecclesiastical: This doubt gave occasion to the act of the 13th of Charles II. to explain: The explanation in brief was this, that nothing of the ordinary jurisdiction was taken away by Charles the First's statute of repeal: But, that a contrary doubt might not arise upon the construction of this act of explanation,—that it might not be understood to give new powers to the ecclesiastical judges, but simply to restore the old,—a proviso is added at the end, that nothing in this act contained shall be construed "to extend to give any archbishop, bishop, &c. any power or authority to exercise, execute, &c. which they might not by law have done

before the year of our Lord 1639; nor to abridge or diminish the King's Majesty's supremacy; nor to confirm the canons made in the year 1640; nor any other ecclesiastical laws or canons not formerly confirmed, allowed, or enacted by Parliament, or by the established laws of the land as they stood in the year 1639.")

"My Lords, I imagine that it is upon this proviso of the 13th Charles II. cap. 12. that his lordship builds his new doctrine that the canons of 1603 are totally repealed. But, my Lords, this proviso goes to no such effect: It repeals nothing; it only confirms nothing; its effect is merely negative: It is studiously so worded, as neither to give the ecclesiastical canons any authority which they had not, nor to deprive them of any which they had, by the statute or the common law as it stood in the year 1639. Yet this proviso is, as I guess,—his lordship will

correct me if I am wrong,—this proviso, as I guess, is the foundation of his lordship's singular opinion. (Here the Bishop paused, and Earl Stanhope shook his head.) My Lords, the noble earl seems to tell me I am wrong: Why then, my Lords, I am totally at a loss to conjecture on what foundation the noble earl's opinion can possibly stand. My Lords, if it has no foundation, it is unnecessary for me to go about to confute it; but, as I am apprehensive that the notion may be very mischievous, if it should go abroad into the world clothed with the authority of his Lordship's name, I must observe, that the obligation of an oath lies upon the conscience of every clergyman to submit to the canons whenever his diocesan may think proper to enforce them.

"My Lords, I have too long engaged your Lordships' attention. My objection

to the bill upon the table is—the generality of its operation; and, for that reason, I agree with the right reverend prelates who have gone before me, that the House ought to proceed no farther with it."

The bill was thrown out.

UPON THE SECOND READING OF THE BILL FOR THE RELIEF OF ROMAN CATHOLICS, UNDER CERTAIN CONDITIONS;

MAY 31, 1791.

ON the 21st of February 1791, Mr MITFORD moved, in the House of Commons, for a Committee of the whole House, to enable him to bring in a bill "to relieve, upon conditions and under certain restrictions, persons called Protesting Catholic Dissenters, from certain penalties and disabilities to which Papists or persons professing the Popish religion are by law subject." After the bill had been brought in, and passed the House of Commons, upon the second reading of it in the House of

Lords, on the 31st of May, a debate commenced on the propriety of several clauses, which were afterwards amended in a committee. The Bench of Bishops took a distinguished and honourable part in this debate: Among them, the Bishop of St David's rose, and spoke to the following effect.

"MY LORDS,

"With great charity for the Roman Catholics, with a perfect abhorrence of the penal laws, I have my doubts whether the bill for their relief that has been sent up to us from the Lower House comes in a shape fit to be sent to a committee. My Lords, it is not my intention to make any express motion to obstruct the commitment of it, if I should perceive that measure to be the sense and inclination of the

House; but I have my doubts, which I think it my duty to submit to your Lordships' consideration.

"Fixed, my Lords, as I am in the persuasion that religion is the only solid foundation of civil society, and by consequence that an establishment of religion is an essential branch of every well-constructed polity, I am equally fixed in another principle, that it is a duty which the great law of Christian charity imposes on the Christian magistrate, to tolerate Christians of every denomination separated from the established church by conscientious scruples; with the exception of such sects only, if any such there be, which hold principles so subversive of civil government in general, or so hostile to the particular constitution under which they live, as to render the extermination of such sects an object of just policy. My Lords, I have no scruple to

say, that the opinions which separate the Roman Catholics of the present day from the communion of the church of England are *not* of that dangerous complexion. Times, my Lords, it is too well known, have been, when the towering ambition of the Roman clergy, and the tame superstition of the people, rendered the hierarchy the rival of the civil government—the triple mitre the terror of the crown, in every state in Christendom. The Reformation in this country (as it took its rise not in any controversies upon speculative doctrines, but in a high-spirited monarch's manly renunciation of the Pope's usurped authority—in the claim of the original absolute exemption of the church, no less than of the state of this kingdom, from all subordination to the See of Rome) excited a spirit of intrigue among the adherents of the Papacy against the internal government, which rendered

every Roman Catholic, in proportion as he was conscientiously attached to the interests of his church, a disaffected or at the best a suspected subject. The Revolution widened the breach, by the natural attachment of the sect to the abdicated family, which had always favoured it. Happily for this country, and for the peace of mankind, those times are past. My Lords, it is now universally understood, that the extravagant claims of the church to a paramount authority over the state, in secular matters, stand confuted by the very first principle of the original charter of her institution—by the early edict of her divine and holy founder, "that his kingdom is not of this world." The ambition of the Roman Pontiff, by the reduction of his power and his fortunes, is become contemptible and ridiculous in the eyes of his own party; and the extinction of the Stuart family leaves

the Roman Catholics of this country no choice but the alternative of continuing in the condition of aliens in their native land, or of bringing themselves under the protection of her laws, by peaceable submission and loyal attachment to the existing Government. My Lords, in these circumstances,—in this state of opinions, in this reduced condition of the Pope's importance in the political world, in the actual state of the interests of the Roman Catholics of this country,—I persuade myself that the long-wished-for season for the abolition of the penal laws is come. Emancipated from the prejudices which once carried them away, the Roman Catholics are led by the genuine principles of their religion to inoffensive conduct, to dutiful submission and cordial loyalty. My Lords, the Roman Catholics better understand than the thing seems to be under-

stood by many of those who call themselves our Protestant brethren, in what plain characters the injunction of the unreserved submission of the individual to the government under which he is born is written in the divine law of the gospel.

"My Lords, with all this charity for Roman Catholics, with these sentiments of the inexpediency of the penal laws, I must still disapprove of the bill which is now offered for a second reading. Your Lordships must perceive, that, consistently with the sentiments which I avow, I cannot quarrel with the bill for the relief it gives: No, my Lords,—the noble lord* who moved the second reading has himself opened the grounds of my objections. My Lords, I object to the bill that it is insufficient to its own purpose; my Lords, I

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* Lord Rawdon, now Lord Moira.

quarrel with the bill for the partiality of its operation.

"With the indulgence of your Lordships, I will endeavour to explain from what circumstances in the fabric of the bill this defect arises; I will set forth the importance of the objection; and then I will trouble your Lordships with the reasons of my apprehension that this objection is not likely to be done away by any amendments which we can give the bill in the committee.

"My Lords, this bill is to relieve Roman Catholics from the penal laws, under the condition that they take an oath of allegiance, abjuration, and declaration; the terms of which oath the bill prescribes. The bill therefore will relieve such Roman Catholics as take this oath, and none else. Now, my Lords, it is, I believe, a well-known fact, that a very great number—I believe I should be correct if I were to say a very

great majority of the Roman Catholics scruple the terms in which this oath is unfortunately drawn, and declare they cannot bring themselves to take it. With the permission of the House, I will enter a little into the detail of their objections. Not that I mean to go at present into a discussion upon all the imperfections of the oath: I concur in every one of the objections made by the most reverend Metropolitan *; but I shall not touch upon these objections, because they have been ably stated, and because they are not to the purpose of my argument: It is my point to state the objections of scrupulous Roman Catholics.

"My Lords, the majority of the Roman Catholics who scruple this oath are not Papists in the opprobrious sense of the word, —they are not the Pope's courtiers, more

* Archbishop Moore.

than the gentlemen of the Roman Catholic Committee, who are ready to accept the oath. My Lords, the more scrupulous Roman Catholics, who object to the terms of this oath, are ready to swear allegiance to the King,—they are ready to abjure the Pretender,—to renounce the Pope's authority in civil and temporal matters,—they are ready to renounce the doctrine that faith is not to be kept with heretics, and that persons may be murdered under the pretence that they are heretics, as impious and unchristian,—they are ready to renounce, as impious and unchristian, the doctrine that princes excommunicated by the See of Rome may be murdered by their subjects,—they are ready to renounce the doctrine that princes excommunicated by the See of Rome may be deposed by their subjects; but to this deposing doctrine they scruple to apply the epithets of

impious, unchristian, and damnable: My Lords, they think that this doctrine is rather to be called false than impious—traitorous than unchristian; they say that the language of an oath should not be adorned, figured, and amplified,—but plain, simple, and precise. But in truth, my Lords, this scruple is founded on a tender regard for the memory of their progenitors. Some two centuries since, this error, however absurd and malignant, was, like other absurd and malignant errors, universal. Yet, my Lords, there lived in those times many men of distinguished piety and virtue, who acquiesced in this error as a speculative doctrine, though they never acted upon it. My Lords, the more scrupulous of the Roman Catholics think it hard that men of probity and virtue, entertaining a speculative error sanctioned by its universality, upon which they never acted, should, for that error in

mere speculation, be stigmatized as devoid of piety, as no Christians, and as persons that died under a sentence of eternal damnation. And certainly, my Lords, the reprobation of this doctrine, under the qualifications of impious, unchristian, and damnable, goes to this effect. My Lords, I beseech you to give a candid attention to this scruple, as I am confident your Lordships will to every scruple. My Lords, I enter into this detail from a desire of impressing on your Lordships' minds what is very strongly impressed on mine,—that the objections of these men are not cavils, but fair, honest, conscientious scruples. My Lords, this scruple is analagous to that which every liberal enlightened man would feel if he were called upon to decide upon that which has sometimes been decided upon with little ceremony,—upon the final doom of virtuous heathens—of men who,

with a sense of moral obligation, and with sentiments of piety towards the Creator of the universe, which might have done no discredit to the professors of Christianity, nevertheless, from the force of example and education, acquiesced in the popular idolatry of their times. My Lords, I believe your Lordships all believe that there is no name under heaven by which men may be saved but the name of Jesus Christ: Nevertheless, my Lords, I should be very unwilling to assert—my Lords, I would refuse to swear, that it is matter of my belief that such men as Socrates, Plato, Tully, Seneca, and Marcus Antoninus, who were every one of them idolaters, are now suffering in the place of torment, and are doomed to suffer there to all eternity. My Lords, upon this point I concur in the sentiments of a great ornament of the Roman church, who might have been an ornament

to the purest church in the most enlightened times. "Ubi nunc animâ Marci Tullii agat, fortasse non est humani judicii pronuntiare; me certe, non admodum aversum habituri sint in ferendis calculis, qui sperant illum apud Superos summâ pace frui." My Lords, will not your Lordships permit the Roman Catholics to have the same tenderness for the memory of Bellarmine and Erasmus which your Lordships would feel for that of virtuous heathens?

"My Lords, the terms in which the Pope's civil authority is renounced are matter of scruple to that division of the Roman Catholics which I consider as the majority. My Lords, they are ready to renounce the civil authority of the Pope; but they think that the words used in the oath go to the denial of the Pope's spiritual authority, which they cannot conscientiously abjure. The terms of the oath, my Lords,

are these: "I do also, in my conscience, declare and solemnly swear,—that no foreign church, prelate, or priest, or assembly of priests, or ecclesiastical power whatsoever, hath, or ought to have, any jurisdiction or authority whatsoever within this realm, that can directly or indirectly affect or interfere with the independence, sovereignty, laws, constitution, or government thereof, or the rights, liberties, persons, or properties of the people of the said realm, or any of them." The power therefore abjured, is all ecclesiastical power which can directly or indirectly interfere with the sovereignty, constitution, or government—with public or with private rights. My Lords, these scrupulous Catholics think that this description comprehends the Pope's spiritual authority; for they say, that they must admit that the Pope's spiritual authority does, indirectly,

by inference and implication, interfere with civil government and with civil rights. My Lords, is it not manifest that the Pope's supremacy, indirectly and in speculation, interferes with the sovereignty—with the King's supremacy as head of the church? My Lords, with the constitution the Pope's supremacy indirectly interferes, in a part which I believe your Lordships hold in some regard. My Lords, it is a consequence from the doctrine of the Pope's supremacy, that no consecrations and ordinations are valid but what emanate from the authority of the See of Rome. If this be the case, my Lords, the bishops of the church of England are no bishops: If we are no bishops, we have no right to sit in this assembly with your Lordships; I have no right to be now holding this argument before your Lordships. My Lords, is not this an interference—indirectly, I grant—

but indirectly is it not an interference with the constitution? My Lords, if we are no bishops, it is a farther consequence, that no man is made a priest by virtue of our ordinations: No priest of ours, therefore, has any just right to any temporalities that he may hold of such a nature as to attach exclusively to the priestly character. My Lords, is not this an interference with the rights of the subject? My Lords, these are striking instances that occur at the moment; many other instances might be found, in which the Pope's spiritual supremacy unquestionably interferes, indirectly, with civil authority and civil rights: And the most that can be expected of conscientious Roman Catholics is, not that they should renounce all authority carrying this interference, for that were to renounce the Pope as their spiritual head; but that they should bind themselves to Government,

that they will never *act* upon these principles, which in theory they cannot renounce,—that whatever they may think, as a matter of opinion, about the Pope's supremacy, they will never in fact make an attack, or commit any act of hostility, against the constitution and the government in either branch; but on the contrary, will defend it. And these engagements, my Lords, those Roman Catholics who scruple this oath are ready and desirous to give in the most explicit and unequivocal terms. They say, that they think themselves "bound by an oath which they have already taken, and that they are ready to strengthen the obligation by a new oath, to defend to the utmost of their power the civil and ecclesiastical establishment of the country, even though all the Catholic powers in Europe, with the Pope himself at their head, were to levy war against the King for the ex-

press purpose of establishing the Roman Catholic religion." My Lords, there are other points in this oath, which Roman Catholics, I think, must scruple: I believe the gentlemen of the Catholic Committee, who declare themselves ready to take this oath, will see some difficulty in particular parts of it, when they consider the full import of certain terms. But, my Lords, I shall go no farther at present in this detail; I will only say, in general, that there are parts of the oath which I myself would refuse to take.

"My Lords, I must observe, that the gentlemen of the Catholic Committee, and the party that acts with them, who scruple no part of this oath, declare that they, equally with the scrupulous party, maintain the Pope's spiritual supremacy;—they are shocked that the denial of it should be imputed to them. Your Lordships there-

fore perceive, that the two parties are perfectly equal, in the degree of affection, or disaffection, take it which way you will, that they bear to the government of the country: Therefore I cannot see upon what principle a relief which is granted to the one should be denied to the other.

"It may be said, this relief is a matter not of right, but of mere grace and favour; and that the person who confers a favour may at his own will and pleasure prescribe the conditions on which he will bestow it: But, my Lords, the favours of a government are surely to be dispensed by some rule of distribution; and that rule ought to be an equal one; my Lords, it ought not to be a rule of arbitrary election and reprobation, making a distinction of persons where there is no difference of character in the degree of civil merit.

" My Lords, I have heard it said, not in this House, but out of doors it is a maxim in common circulation, that the Legislature has nothing to do with the disputes of these people among themselves,—that it may be rather an object of good policy to promote and increase their divisions, as it may be a means of weakening the strength of the party.

" My Lords, the maxim *Divide et impera*, if it be ever wise, is wise only in despotical governments. My Lords, if it be wise in such governments, it is because such governments are radically unjust,—the relation of the governor and the governed to each other being that of enemies; but, in governments such as this under which we have the happiness to live, it is a wicked maxim. In our constitution, the promoting of the happiness of the governed is not only the duty but it is the

actual object of government, and the aim of all its operations and of all its measures. In such a government, union and harmony among citizens of all descriptions is to be desired; and it should be the endeavour of the government to promote it, as the means of binding the love and affections of all to the constitution.

"But, my Lords, admitting for a moment that we have nothing to do with the disputes of these people among themselves, yet your Lordships surely have to do with the justice and equity of your own proceedings. Now, consider my Lords, upon what principle were the penal laws against the Roman Catholics first introduced?—Certainly upon this principle, that the Roman Catholics in general were disaffected subjects. Upon what principle would the Legislature now relieve any Roman Catholics from those laws?—Certainly,

my Lords, upon this principle, that the Legislature acquits those to whom it extends the relief of the crime and suspicion of disaffection. Upon what principle is the relief which is extended to some withheld from others?—Certainly upon no just principle but this, that those others still lie, in the eye of the Legislature, under a suspicion of disaffection. Thus, my Lords, by passing a law which will give only a partial relief, you will impress a stigma of disaffection upon the party not relieved; which, in my judgment, if there be no ground for suspecting them, would be the height of cruelty and injustice.

"But, my Lords, give me leave to say, that though your Lordships would indeed have nothing to do with any disputes among the Roman Catholics upon controverted points of their own divinity, the matter and the state of the present dispute

are such, that your Lordships have much to do with it in forming a judgment upon the present bill. The matter in dispute is the propriety of the oath as it stands in this bill; which oath the one party is ready to accept,—the other reprobates. The dispute began in terms of mutual respect and great moderation; but as the dispute went on, both sides, as is the case in all disputes, grew warmer: Both sides have now lost all temper; and the quarrel, a religious quarrel, my Lords, is raging. The scrupulous Catholics speak of the writings on the other side as schismatical, scandalous, and inflammatory: The Catholic Committee charge the former with inculcating principles hostile to society and government, and to the constitution and laws of the British. My Lords, these reproaches are, I think, unmerited on either side; but they are for that reason the stronger symptoms

of intemperate heat on both sides. My Lords, this bill, should it pass into a law, will not mitigate the quarrel, but inflame it; and as it reënacts the penal laws against all those who from their scruples about the oath cannot bring themselves within the benefit of it, the Roman Catholics who will be relieved by this bill will be impowered to inforce those laws against their more scrupulous brethren, with whom they are quarrelling. My Lords, the history of the church too clearly proves, that men whose minds are inflamed with religious controversy are not to be trusted with such weapons. My Lords, when I look at the names of the gentlemen who compose the Catholic Committee,—men of high birth, of distinguished probity and honour,—I cannot for a moment suppose that any of them would pursue the quarrel with their adversaries in that base manner: But, my Lords,

the leaders of a party cannot always command the passions of their followers; and your Lordships will have no security that this may not be done, but the liberality and honour of the individuals: And is it wise or just, my Lords, to put any innocent man in the power of his enemy, relying only on the good disposition of that enemy to restrain him from the abuse of that power which you put into his hands? My Lords, if the party relieved by this bill should take the advantage which the law will give them against the other party, a horrible persecution will arise. My Lords, I shudder at the scene of terror and confusion which my imagination sets before me, when, under the operation of this partial law, should it unfortunately receive your Lordships' sanction, miscreants of base informers may be enriched with the fortunes, our gaols may be crowded with the persons,

and our streets may stream with the blood, of conscientious men and of good subjects! And of all this cruelty, my Lords, if it should take place, the laws of the country will get the credit.

"My Lords, I am aware that it may seem to your Lordships that there is an easy answer to all this,—Send the bill to a committee, and amend the oath. My Lords, there is the difficulty; I fear that we are not competent to make such amendments in the oath as may obviate the mischief. My Lords, look at the state of the controversy among the Roman Catholics. Three of the four Roman Catholic bishops who call themselves the apostolical vicars for the four districts of this country—three out of these four have promulgated an encyclical letter, in which they reprobate the oath as it stands in the present bill; and they go farther,—they advance this principle, that a

conscientious Catholic ought not to take any oath declaratory of any opinion upon doctrinal points till it has received the approbation of the ecclesiastical superiors. The gentlemen of the Catholic Committee exclaim against this as an extravagant stretch of authority;—I confess, my Lords, I see no extravagance in it; I believe, were I a Roman Catholic, I should think it my duty to submit to it;—but the Catholic Committee are indignant under this usurpation of authority, as they think it, of the apostolical vicars; and a paper has appeared, signed by the gentlemen of the Committee, which I know not very well what to call: My Lords, it looks something like an appeal to the Pope; and yet I can hardly suppose that an appeal to him has been actually made, or that this is a copy of a paper sent as a formal appeal to Rome. But the Committee say—" We appeal to all the Catholic

churches in the universe, and especially to the first of all Catholic churches, the Apostolical See, rightly informed." My Lords, if this is an appeal to the See of Rome, or if it be a notice of an intended appeal,—and, my Lords, it must be something,—it should seem that the Legislature cannot stir a step farther: For it would be perfectly nugatory to pass a law to give relief upon the condition of an oath, when the persons to whom the relief is offered are divided into two parties, one of which say "We cannot take this oath,"—the other say, "We must go to Rome, and ask the Pope, whether, under the circumstance of the interdict of the ecclesiastical superiors, we may take the oath or no." And, my Lords, suppose you amend the oath, what assurance can your Lordships have that the apostolical vicars will approve the oath as amended by your Lordships? If they

should not approve it, the more scrupulous Roman Catholics will not take it.

" My Lords, the remedy for this seems to me to be unique: The remedy would be, to find an oath which may be sufficient for the security of Government, and which the majority of the Roman Catholics have already taken, and the apostolical vicars, having themselves taken it, must approve. Such, my Lords, is the oath which was required of the Roman Catholics by the law of 1778; and I am very sorry that that oath was not adopted in this bill: But, from what I have heard, I have much doubt whether, if we go into committee, we shall be unanimous upon a motion for substituting that oath instead of the oath that now stands in the bill; and for this reason, my Lords, I fear the bill is incurable.*

* In this apprehension the Bishop had the pleasure to find himself mistaken. In the committee of the whole

"My Lords, I have detained you much longer than I thought to have done. It only remains that I thank your Lordships for the patient attention with which I have been honoured; and that I make it my request, that any expressions that may have escaped me, in the course of a speech in point of language in many parts quite unpremeditated, may be candidly interpreted. My Lords, what most of all I deprecate, is that I may not be suspected of insincerity in my professions of an abhorrence of the penal laws,—that my objecting to the commitment of this bill may not be deemed a stratagem of mine to get rid of the busi-

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House upon the bill (4th June), the oath, as it stood, was upon the Bishop's own motion expunged, and the oath taken by the Roman Catholics in Ireland in the year 1774, with some very slight alterations, substituted. The Irish oath is in effect the same with the oath of 1778; and of the two, is drawn with the greater accuracy.

ness altogether, and disappoint the petitioners at your Lordships' bar in their just expectations of relief. My Lords, I call the Great Searcher of hearts to witness, that there is no such duplicity, no such malice, in my intention. My Lords, if your Lordships should be moved, by what has been said by me, or what may be said with more ability by others to the same effect, to reject this bill,—rather than that the Roman Catholics should be finally unrelieved, I would pledge myself to your Lordships, to the Roman Catholics, and to my country, to bring in a bill, early in the next session, which should not be pregnant with the mischiefs which seem to me the certain consequences of this bill. But I should hope, that your Lordships would not leave a matter of such moment to the discretion and abilities of any individual lord; but that your Lordships will think proper to

name a committee, to revise all the subsisting laws against the Roman Catholics, and to frame a bill for the repeal of such as may with safety be repealed. The only objection that I can see to such a measure is the delay,—for it is much too late in the session to begin such a business: But, my Lords, in a matter of this magnitude and importance, the Legislature should think little of the delay of a few months; nor ought the Roman Catholics themselves to murmur at a delay which may conduce to put the relief they solicit upon a broad and permanent basis."

IN REPLY TO THE LORD CHANCELLOR, UPON THE SECOND READING OF THE BILL FOR THE RELIEF OF THE SCOTTISH EPISCOPALIANS;

MAY 2, 1792.

EARLY in the session of 1792, a bill was brought into Parliament, to remove certain disabilities, forfeitures, and penalties, under which persons frequenting or officiating in certain Episcopal chapels and meeting-houses in Scotland then laboured. The bill was read a second time, in the House of Lords, on the 2d of May; when the LORD CHANCELLOR (Thurlow) stated several objections against it. To these objections the Bishop of ST DAVID'S replied.

" MY LORDS,

" I am happy to perceive, that in the sentiments which I have to deliver to your Lordships upon the present subject of discussion, I shall not have the misfortune to differ very widely, in any thing that essentially regards the principle of the bill, from the noble and learned lord upon the woolsack. My Lords, a wide difference from him I should call a *misfortune*; because it would necessarily produce in me a degree of mistrust of my own judgment, which would considerably abate the satisfaction which otherwise I might feel in following what still might be the firm and full conviction of my own mind. Nevertheless, my Lords, in any question like this, in which the interest of religion, the public weal, and the credit of the Legislature, might be concerned—a question of justice and mercy towards a suffering part of the

family of Christ,—it would ill become me to be influenced, in the vote that I should give, upon any authority but that of my own conviction; and it might not less misbecome me to oppose a high authority by a silent vote, without stating to your Lordships the grounds on which my contrary conviction stood. My Lords, the principle of this bill has been so clearly stated by the noble earl * who moved the second reading, and so well illustrated by the noble viscount † who spoke last, that it is unnecessary to dwell upon it. The object of the bill is to relieve certain dissenters from the established church of Scotland, well-affected to his present Majesty and the Protestant succession, from the penalties of disaffection imposed by former laws. My Lords, the hardship under which they

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* Lord Elgin. † Lord Stormont.

labour consists not in the severity of these penalties. Disaffection, in former times, was generally among persons of their religious persuasion, though not necessarily connected with their religion ; and of the measures of severity that might be necessary for those times, the Legislatures of those times were the judges. But, my Lords, the hardship is, that the present generation, being converted from the disaffection of their ancestors, and retaining only their religious principles, cannot, by any thing they can do, by any security that they can give for their good conduct and submission to Government, secure themselves against the penalties of disaffection. As cordially attached as any of us to the existing government,—praying in their religious assemblies for his Majesty King George and the Royal Family by name, in the terms in which we of the church of England in

our own liturgy pray for them, and taking the oaths that we all take,—still they are liable, clergy and laity, to all the penalties of the 19th George II.

"My Lords, the good policy of this bill of relief is not at all connected with any question about the antiquity of the practice of praying for sovereigns. From what fell from the noble and learned lord, I think there must be some mistake upon that point; his lordship must have received some misinformation. My Lords, I cannot believe that these Episcopalians ever alleged the example of the ages before Constantine in justification of their omission in former times of praying for the King by name. Prayers for sovereigns is one of the very oldest parts of Christian worship. These Episcopalians must very well know, that the precept of praying for kings and all that are in authority is three hundred years

older than Constantine; and that it was the constant practice of the earliest Christians to pray even for the princes that persecuted them. My Lords, their omission of praying for the King by name was owing to their notions about indefeasible hereditary right, which would not suffer them to renounce the family to which their allegiance had once been sworn, nor to adopt the principles of the Revolution. The omission was not defended by any pretended example of antiquity: It stood upon no better ground than that of gross and avowed disaffection. But, my Lords, the example of the ages before Constantine must have been alleged to a very different purpose: It has been alleged by these Episcopalians to justify their claims to an episcopacy, and to explain what sort of episcopacy that is which they claim. My Lords, it is not my wish to lead the

House into the perplexities of that theological discussion: I shall comprise what I find necessary to say upon it in very few words.

"My Lords, these Episcopalians make a distinction, and it is a just distinction, between a purely spiritual and a political episcopacy. A political episcopacy belongs to an established church, and has no existence out of an establishment. This sort of episcopacy was necessarily unknown in the world before the time of Constantine. But in all the preceding ages, there was a pure spiritual episcopacy,—an order of men set apart to inspect and manage the spiritual affairs of the church, as a society in itself, totally unconnected with civil government. Now, my Lords, these Scottish Episcopalians think, that when their church was cast off by the state at the Revolution, their church, in this discarded

divided state, reverted to that which had been the condition of every church in Christendom before the establishment of Christianity in the Roman empire by Constantine the Great,—that, losing all their political capacity, they retained however the authority of the pure spiritual episcopacy within the church itself; and that is the sort of episcopacy to which they now pretend. I, my Lords, as a churchman, have some respect for that pretension; but I have no wish to lead the House into a discussion about it. The merits of the bill rest not on the validity of that episcopacy in any sense. In what sense the bishops of this church of Scottish Episcopalians may be bishops,—whether they are bishops in any sense,—is not the question: What the validity of their ordinations may be, is not the question: The single question is—Are these Scottish Epis-

copalians good subjects? and do they hold religious principles, in the emphatic language of the noble and learned lord on the woolsack, "fit to be tolerated?"—that is to say, are they good subjects? and do they agree with us in the fundamentals of Christianity?—for these are the religious principles "fit to be tolerated." If they can satisfy us upon these points, the Legislature is not at all concerned in the question of the spiritual validity of their orders. My Lords, consider only how we deal with Protestant dissenters here in England; for all that I would wish for our Scottish brethren is, that they, as dissenters from the established church of Scotland, should be put upon the same footing with the Protestant dissenters from the church of England. My Lords, by the toleration-act of the 1st of William and Mary, a pastor of a congregation of Protestant dis-

senters must enter the place and situation of his meeting-house; he must give in his own name and place of abode; he must take the oaths to Government; and he must show that he agrees with us in the fundamentals of the Christian religion; and by the terms of that statute, which is the narrowest of all the present schemes of toleration, he must also testify his agreement with us in the general principles of Protestantism. This he does by subscribing a great many of the Thirty-nine Articles. My Lords, when the dissenting minister has complied with these conditions, he is never asked,—no one has authority to ask him,—Sir, how comes it that you call yourself a clergyman? what are your orders? by whom were you ordained? by what ritual? He has given the security which all good subjects give for his loyalty to Government,—he professes religious

principles "fit to be tolerated;" that's enough: He is admitted, without farther inquiry, to all the benefits of toleration. Now, my Lords, here are a set of dissenters from the established church of Scotland, good subjects, and holding religious principles very "fit to be tolerated;" for the cause of their dissent from the established church of Scotland is their very near agreement with the established church of England; and they approach your Lordships with this modest request, that they may not be more hardly dealt with than Protestants of various denominations differing more widely from both establishments. My Lords, one thing that fell from the noble and learned lord on the woolsack struck upon my mind very forcibly,—as deserving, I mean, a serious consideration. His lordship gave it as his opinion, that it would be for the credit of Episcopacy in

Scotland, that their congregations should be supplied with ministers (according to the intention of the 19th of the late King) ordained by bishops of the English or Irish church. The noble and learned lord, if I took his argument aright, supposed that the statute passed in favour of the Scottish Episcopalians in the 10th of Queen Anne would bear him out in that opinion. That statute made it "free and lawful for all those of the Episcopal communion in that part of Great Britain called Scotland, to meet and assemble for the exercise of divine worship, to be performed after their own manner, by *pastors ordained by a Protestant bishop.*" The noble and learned lord conceives, that under the latitude of this expression, a "*Protestant bishop*," the statute meant indeed to tolerate the ejected bishops, and the clergy immediately ordained by them, but not to extend the to-

leration to the succession. My Lords, I must take the liberty to differ from the noble and learned lord upon the construction of this statute of Queen Anne. I think it was the intention of the statute to extend its toleration beyond the ejected bishops themselves to the whole succession; for I find, my Lords, that of the thirteen bishops of Scotland ejected at the Revolution (the dioceses were in all fourteen, but it happened that one see was vacant when the Revolution took place; thirteen bishops therefore were ejected; now of these thirteen), seven certainly, probably eight, were dead before the 10th of Queen Anne; and a ninth was out of the kingdom, for he fled with the abdicated King. At the time therefore when this act was passed, no more than four of the ejected bishops were alive, and within the kingdom; and four new consecrations had taken place,

two in the 4th of Queen Anne, and two more in the 8th. At the time therefore when this act was passed, the Scottish Episcopacy consisted of an equal number of the original bishops and the succession,—four of each; and if it was the intention of the act, as the noble and learned lord has argued, to confine the toleration to the ejected bishops, and exclude the succession, I can only say, my Lords, that the framers of that statute did their business not quite so well as business of that sort was used to be done in those times.

"My Lords, with respect to the interests of Episcopacy in Scotland, my opinion is unfortunately the *very reverse* of that of the noble and learned lord. The credit of Episcopacy will never be advanced by the scheme of supplying the Episcopalian congregations in Scotland with pastors of our ordination;—and for this reason, my

Lords, that it would be an imperfect crippled episcopacy that would be thus upheld in Scotland. When a clergyman ordained by one of us settles as a pastor of a congregation in Scotland, he is out of the reach of our authority. We have *no authority* there; we *can have no authority* there; the Legislature *can give us no authority* there. The attempt to introduce any thing of an authorized political episcopacy in Scotland would be a direct infringement of the Union. My Lords, as to the notion that clergymen should be originally ordained by us to the ministry in Scotland, I agree with the noble viscount, that the thing would be contrary to all rule and order. No bishop who knows what he does ordains without a title; and a title must be a nomination to something certain in the diocese of the bishop that ordains. My Lords, an appointment to an Episcopal

congregation in Scotland, is no more a title to me, to any bishop of the English bench, or any bishop of the Irish bench, than an appointment to a church in Mesopotamia.

"My Lords, with respect to marriages, I agree with the noble and learned lord on the woolsack, that if this bill should pass, the Episcopalians will be authorized to marry in their meeting-houses, by the 10th of Queen Anne. But, my Lords, I see no inconvenience that can arise from this. It will open no door to clandestine marriages; for though they will be authorized to marry, they will not be authorized to marry otherwise than in conformity to the regulations of the 10th of Queen Anne, —that is to say, they can marry those only whose bans have been regularly published, not only in the meeting-houses where the marriage is to be solemnized, but in the kirks of the parishes where the parties

are resident. But, my Lords, I go farther; I say that this bill will give them no authority with respect to marriages, but what they do already enjoy and exercise. My Lords, the fact is, that these Episcopalians do now solemnize marriages every day; they solemnize marriages legally; they solemnize marriages under the express covert and sanction of the persecuting statutes; and these marriages so solemnized by them,—my Lords, in what I am going to assert, I stand in the judgment of noble lords to whom the laws of Scotland are more accurately known than they may be supposed to be to me,—but, my Lords, I say these marriages solemnized by these Episcopalians are good and valid by the laws of Scotland. (Here the Scots lords all gave a nod of assent.) And, my Lords, the ground of my assertion is this: Our marriage-act extends not to Scotland; there-

fore, by the law and usage of Scotland, it is not necessary that any should be present at a wedding except the parties themselves —that's two, the man who is to act as father and give the bride away—that's three, and the clergyman or pretended clergyman who is to perform the ceremony—that's four. Now, my Lords, by the express permission of the 19th of the late King, which I call the persecuting statute, *four* persons may assemble for the celebration of any religious rite; for the meeting is not illegal, unless *five* be present, over and above the members of the family, if the place of assembly be a house inhabited by a family, or *five*, if the place of assembly be a house not inhabited by a family.

"My Lords, these are my notions upon the points that have been agitated. I shall not go into points that have not been brought forward in objection; though

I am prepared to meet any other objections that might be moved: But I am sensible that I have already taken up too much of your Lordships' time; and I fear rather irregularly, when in fact no express question is before the House. I am aware that the bill must receive amendments in the committee, and perhaps additions; but the principle of the bill has my entire approbation."

The question was then put, and carried without a division, that the bill should be read a second time, and go into a committee of the whole House on Wednesday next.

UPON THE WELDON ENCLOSURE BILL, IN COMMITTEE;

MAY 22, 1792.

THE Duke of NORFOLK opened the debate, opposing the clauses of the bill which enacted a commutation for the tithes, on the ground of the want of the rector's consent, which he considered as a *sine qua non* in all bills of this kind; but without entering into the merits of this particular case in any other part.

The Bishop of ST DAVID'S rose when the Duke of Norfolk sat down. He declared his concurrence with the Duke of Norfolk in the sentiments expressed by

his Grace, of the necessity of a clergyman's explicit consent to the commutation of his tithes, before a bill could be passed enacting any such commutation. He affirmed, that, in the instance of the present bill, that principle clearly applied as an insurmountable objection, the rector's consent having never been given. He declared, that, should the bill in its present shape be passed by the Committee, he would, upon the ground he had mentioned, most strenuously concur with the noble duke in an opposition to the bill, upon the report or upon the third reading. For that reason, he said that he should neither enter into argument upon the general principle, nor into a discussion of the pretended proof, produced by the counsel against the petition, of what they called the rector's *implied consent*; that he should reserve himself upon both those points for the open

debate in the House, of which he was fearful a necessity would arise; and there he pledged himself to show, that, in all the evidence produced before the Committee, not a shadow of a proof was to be found, of an explicit, direct, unconditional consent; that, on the contrary, that very evidence afforded the strongest proof of a steady firm refusal of any such consent, from the first meeting of proprietors in July 1791 to the present moment. The Bishop then went on nearly in the following words.

"Noble lords who differ from the noble duke and me with respect to the general principle, that a clergyman shall in no case be compelled to accept an allotment of land in lieu of tithes without his own free consent, will, I am confident, agree with me in this,—that where the consent of the clergyman has not been given, Parliament

ought not to give its sanction to the proposed commutation without the most satisfactory proof of the adequacy of the allotment. Now, my Lords, in this instance I must contend that we have no such proof: On the contrary, I am persuaded that the value of the land alloted is far inferior to the value of the tithes in kind. I am sensible that all that has been given in evidence as a ground of comparison, seems, in the first general view of it, very little; being little more than an account of the produce of the rectorial tithes in a single year, the year 1790, deposed to by the rector's daughter.

"To this two objections are taken: The first, a very material one, if it can be supported,—that it is untrue; that the total of that account greatly exceeds the actual produce of the tithes, even in that year: The second,—that, admitting the account

to be true—admitting that it states no more than the real produce of the rectorial tithes of that year, yet the produce of a single year cannot be taken to be the average value of the living; and it is assumed that the average value, deduced from the produce of many successive years, is the thing to be compared with the value of the allotment, in order to form a judgment of its adequacy or inadequacy.

"My Lords, I shall trouble your Lordships with my sentiments upon both these objections. I shall contend, my Lords, that the account given in upon the oath of the rector's daughter is a true one,—that it is a true statement of the produce of the rectorial tithes of Weldon in the year 1790. Many objections have been made to different items of the account. I trust that I shall be able to set it upon its legs; and, when I have done this, I shall trouble your

Lordships with my judgment upon the famous doctrine of average of which your Lordships have heard so much from the learned counsel against the petition. It is indeed my opinion, that the produce of this single year differs little, if at all, from the average value. But whether this be so or no, I shall venture to maintain a principle which I know will at first seem paradoxical,—that in making a comparison between the value of the tithes in kind and the intended allotment, your Lordships ought to take the value of the tithes upon the produce of the year 1790, rather than upon the average of that and several preceding years: I shall maintain, that the doctrine of average does not apply to the question of adequacy in this instance.

"My Lords, upon the first point—the truth of Miss Raye's account of the produce of 1790, I shall trouble your Lord-

ships in very minute detail: Upon the question of average I shall be very short indeed; for if the principles which I shall advance speak not for themselves when they are clearly propounded, I shall not think it worth while to spend words in support of them.

"My Lords, the truth of the account given in by Miss Raye rests chiefly on her own evidence. Witnesses have been produced to contradict her evidence in many particulars. My Lords, I pledge myself to vindicate the truth of her evidence in every article in which it has been impeached. My Lords, this is a point upon which I think myself competent to speak with some degree of confidence: I have attended the Committee, from the first opening of it to the present moment, with the assiduity of a committee-clerk; I have heard, not only heard, but I have minuted the

whole evidence; I have not only minuted the evidence, but I have studied it;—I speak from a distinct connected view of the whole, and from an accurate knowledge and recollection of every particle of the evidence; and, my Lords, I undertake to defend, not only the veracity of the rector's daughter, most unwarrantably impeached by the learned and honourable counsel who summed up, but I defend the *matter* of her evidence. My Lords, I distinguish, and I am sure your Lordships will admit the distinction, between the veracity of a witness and the truth of particular facts averred: A particular fact may be false, without any want of veracity in the witness. But, my Lords, I assert not only the veracity of the witness, but the truth of the facts to which she deposed; and I undertake to show, that in every particular in which the witnesses called on

the other side have been said to contradict her, there has either been in reality no contradiction, or the great preponderance of credibility is on her side. I shall speak to the several particulars of her evidence that have been called in question, in the order in which they occur in this paper (the printed account which the Bishop held in his hand).

" My Lords, the first exception that was taken to Miss Raye's evidence, was upon the article of the tithe-wheat. She deposes, that the rector's tithe-wheat, in the year 1790, amounted to sixty-nine quarters; and, at fifty shillings per quarter, was worth 172*l.* She told your Lordships that it was not all sold; she said ten quarters were consumed in the family, and five more were used upon the land for seed: The rest was sold at fifty shillings per quarter upon the average; and the wheat being

all nearly of equal quality, she reckoned the whole at fifty shillings per quarter; and it was by this reckoning that she made the value of the sixty-nine quarters in money 172*l.* All this she stated with great distinctness, perfect recollection, and with great appearance of openness and candour. Your Lordships see, that by this account, fifteen quarters of the sixty-nine having been applied to the rector's own use, either in his family or for seed, fifty-four quarters must have been sold; and Miss Raye deposed, that all that was sold was purchased by two persons, Johnson and Sharman. Johnson was called, and a servant of Sharman's, who was said to be the keeper of his accounts. Sharman himself, I know not why, appeared not: But these two men, Johnson and Sharman's servant, were produced by the counsel against the petition, to prove that the quantity of wheat

bought by those two persons, who bought all that was sold, was less than Miss Raye's account made it. Now, my Lords, let us see how much less these witnesses made it. Johnson deposed, that he bought of Mr Raye, of wheat of the year 1790, either one quarter and a half, or two quarters; he could not positively say which was the true quantity, but he was sure what he bought did not exceed two quarters. Sharman's servant deposed, that his master bought forty-nine quarters and three bushels. Now, my Lords, to the forty-nine quarters and three bushels bought by Sharman, add the two quarters bought by Johnson (for since Johnson was called to confront Miss Raye, I, in defending her testimony, have a right to take the largest quantity that his testimony admits), the sum of what was bought by Johnson and Sharman was fifty-one quarters three bushels. Of the fifty-four quar-

ters therefore which Miss Raye by her own account must have sold, it is proved that fifty-one quarters three bushels were bought by those very persons to whom she says she sold all that was sold. This is proved by the evidence of those very witnesses who were called to contradict her in this part of her story. There remains only a difference of two quarters and five bushels; much too inconsiderable, in my judgment, to bring suspicion upon her evidence. But let me call an important circumstance to the recollection of your Lordships,—that Sharman's servant spoke not from any distinct memory that he now professes to retain of the quantity of wheat actually bought of Mr Raye by his master in the year 1790; he spoke from something that he called a book of accounts: But such a book of accounts, I believe, was never before produced in evidence!—an old, ragged, dirty,

mutilated thing,—leaves evidently torn out, and what remained hanging in tatters, that the wind was afraid to blow upon it! My Lords, though in the existing remains of this book we find only forty-nine quarters three bushels of wheat bought of Mr Raye by Sharman, is it not probable that the parts now lost, had the book been entire, would have given an account of so much more as would have made up the deficiency? My Lords, I cannot allow that such evidence as this affords any ground to tax the deposition of the rector's daughter.

"But, my Lords, it was argued by the learned counsel who summed up the evidence, that sixty-nine quarters of wheat was a much larger quantity than the wheat-field of Weldon could yield in tithe to the rector in the year 1790, the rector's tithe being only a moiety of the whole. This conclusion the learned counsel drew from

the number of acres cropped with wheat in that year, and the average crop per acre, as stated by his own witnesses,—who made the average crop so little as twenty bushels per acre, or certainly not more than three quarters. The number of acres cropped with wheat were put at three hundred and twenty-two; which I suppose might be nearly the number; but for the average crop, my Lords, we have nothing but the evidence of a Mr Arnsby,—a coal-merchant, my Lords, a woolstapler, a maltster, every thing but a farmer. This man presumed to depose to the average crop of the wheat-field from the crop upon his own part of it; and his own part of it, by his own confession, was but a very few acres. From the produce of very few acres, perhaps not more than five or six, he takes upon him to swear to the average crop of three hundred and twenty-two acres. My Lords,

does such evidence deserve attention? My Lords, I am myself no farmer, but I have conversed with noble lords who have much knowledge of such subjects; and they assure me that the average crop of the wheat-field of Weldon might, in a good year,* be fairly supposed to amount to four and a half quarters per acre: † And in that case, sixty-nine quarters is no such prodigious quantity for the moiety of the tithe.

"My Lords, the learned and honourable counsel who raised this objection from the

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* Even Arnsby allowed that the year 1790 was a good year: For, being asked whether the average produce of the wheat-field had been increasing since the year 1780, he answered "Not till the last two years;" and being asked again, to what that increase of the last two years was owing, he answered "To the season."

† James Walker deposed, that in the year 1791, the average crop of the wheat-field of Weldon was four and a half quarters upon the statute acre.

quantity, took the objection at first, as I thought, with great fairness and candour. I was sorry that this fairness and candour were lost sight of in the progress of his argument. My Lords, he said that he did not tax Miss Raye with any intention to impose upon the Committee; but he believed she had made this mistake,—that she had not distinguished between the tithe-wheat and the wheat which grew upon the rector's own glebe; and that the sixty-nine quarters to which she had deposed was really the sum total of the two parcels —the tithe-wheat and the wheat from the glebe. And having got an answer from one of his own witnesses about the acres of wheat in the rector's glebe, he amused your Lordships with a very pretty calculation, assuming the number of acres in the wheat-field to have been exactly three hundred and twenty-two,—assuming the

average crop to have been exactly three quarters per acre,—assuming the acres in the glebe to have been precisely what one of his own witnesses made them,—and assuming farther, that the crop of wheat upon these acres in the glebe was neither more nor less than three quarters per acre. From a calculation formed upon all these assumptions, the learned and honourable counsel brought out this conclusion,—namely, that the glebe-wheat and the tithe-wheat, taken together, made exactly, to a single grain, my Lords, the quantity of sixty-nine quarters, which Miss Raye had stated as the amount of the tithe-wheat alone. My Lords, I have been myself too much conversant with calculation not to know the extreme futility of such calculations as these. The only circumstance that gives them effect upon the mind, is the precise agreement of the result with

the conclusion that the computer beforehand desired to bring out; and this precision is itself a circumstance to be mistrusted: It has no weight, unless you suppose an accuracy in the data of calculation which in the nature of things cannot belong to them: In short, it is a mere trick which the computer puts upon himself; he assumes data fitted to the conclusion which he means to bring out, and then he triumphs in the agreement of the result with his own wishes. My Lords, give me leave to make such alterations in the data of this calculation as shall suit my purpose, and shall by no means seem improbable, and I will presently bring out a conclusion as much in favour of Miss Raye's evidence as the learned counsel's was against it. But in good truth, my Lords, such calculations may pass very well as specimens of a young lawyer's scientific accomplishments,

but considered as arguments, they are contemptible.

" But, my Lords, Miss Raye disclaims all benefit from the very fair hypothesis that the learned counsel set up to save her veracity while he impeached her fact. My Lords, she has said most positively, and upon the most distinct and perfect recollection, that the tithe-wheat and the glebe-wheat were not mixed; they were carefully kept separate. She allows that they were put together (some of the tithe-wheat at least was put with the glebe-wheat) in the same rick or stack; but a separation was made between them by a bed of rushes, damaged hay, and damaged oats. And now, my Lords, it is that I feel myself plunged in solicitude and anxiety; for now, my Lords, we are come to the great question of character, upon which I shall not be ashamed to confess that my feelings

are indeed acute. My Lords, this story of the rushes either is true, or it is an invention: Of the distinction between veracity and fact, we can in this instance take no advantage: Either this story is true, or this poor young woman, at the hazard of her reputation, at the peril of her soul, has committed a crime of which I who believe her innocent will not pronounce the name!

"My Lords, I take courage when I look at the evidence which was brought to contradict her. It consists of the depositions of three witnesses. The first was Thomas Pendilow, a labourer, who worked as a harvest-man with Mr Raye in the year 1790, and was one of three labourers who made the wheat-stack. Observe, my Lords, he was, by his own confession, only *one of three;* and the other two (James Marlow, and a third, whose name this wit-

ness could not recollect) were *not* called. My Lords, this man had no recollection of making any separation in the stack by a bed of rushes, damaged hay, or damaged oats: But your Lordships, I am sure, will recollect that he could not say positively that he did *not* make or assist in making such a separation: He had no recollection of the thing; he had no recollection of the negative; his evidence was perfectly neutral and indifferent; he could not positively remember that he did,—he could not positively remember that he did not: My Lords, he was the very Ignaro of the "Fairy Queen,"—

"He could not tell,—ne ever other answer made."*

And yet, my Lords, I was very much struck with the style of this man's evidence. My

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* *Fairy Queen*, canto viii. stanza 32.

Lords, I cannot suppose—I do not mean to insinuate—that he had been instructed; but I own I *was* surprised to find a man in his appearance such an arrant clown so great a master of the *style of deposition.* He never wandered in his answers beyond the precise limits of the question; he never laid himself open to cross-examination, by answering to more than was asked of him: It was—it was not,—this was his style of answering; except that whenever we touched upon the rushes, he either affected perfect ignorance, or if he ventured to give any thing like any answer, he took care to make it wholly insignificant, by guarding it with some saving-clause about the best of his knowledge or the best of his recollection. I disliked and I suspected these reservations, conceiving that memory *must* serve him one way or other upon a fact of this kind: And the question

being put to him in various ways, he was at last reduced to the necessity of these answers.

" *Question*, In making the stack, do you remember using any rushes, or damaged oats, or damaged hay?—*Answer*, None, to the best of my knowledge.

" *Question*, Do you recollect seeing any or not?—*Answer*, I do not recollect.

" *Question*, Can you swear, that in making of the stack you did not use rushes, damaged oats, or bad hay?—*Answer*, I am *not* positive that I did *not*.

" And again,

" *Question*, Can you speak positively whether there was no rushes, damaged oats, or bad hay, made use of in the stack?—*Answer*, I do not remember there was any.

" *Question* (by myself), Can you swear there was *not* any?—*Answer*, I am *not* positive there was *not* any.

" My Lords, I must confess, that it appeared to me very extraordinary, that of three men who worked together all day upon the stack (for so this very Thomas Pendilow deposed), who must have been all equally competent to depose to the fact of the rushes, one only should be called, whose memory upon it was made up of negations. He was brought to contradict Miss Raye; and the amount of the contradiction that he gave her was this, that he could say nothing positively one way or the other upon the fact in question. My Lords, this testimony is not a feather in the scale; it is a mere nothing.

" Another witness was John Ballard, a labourer, who had taken down the stack, and moved the wheat into the barn. This business he said he did by himself, without the help of any other. He indeed confessed no want of memory; he spoke without hesita-

tion or reserve: He swore pretty roundly, that in taking down the stack, he met with no rushes, damaged hay, or damaged oats, —nothing but pure wheat. Those were his words. But your Lordships will remember, that, in the cross-examination of this witness, circumstances were brought to light, which amounted to a very strong presumption indeed, if not to full proof, of *malice* in the witness against the rector and his family: And yet he let out one circumstance in favour of Miss Raye's testimony; a little circumstance, my Lords,—which however I thought of great weight, coming from such a witness. It had certainly been to no purpose to keep the tithe-wheat and glebe-wheat separate in the stack, which Miss Raye said was done, and which I believe was done, if they had been afterwards mingled in the barn: On the other hand, if a separation was made of the wheat (with-

out necessity) into two parcels in the barn, it is a strong presumption that these parcels had been previously separated in the stack; unless better proof than we have heard be adduced of the contrary. Questions were put to this John Ballard, to sift this circumstance of separation or no-separation in the barn. He was asked "Was the wheat of the stack all put into one end of the barn?" He said "No; some of it was mowed in one end, and some in the other." He was asked "Was one end full before you began to mow, or before you had orders to mow, in the other?" He said "He could not tell; he had not noticed that circumstance." I entreat your Lordships to remember that this fell from a witness suspected of malice.

"The third witness called to prove the pretended confusion of tithe-wheat and glebe-wheat was Thomas Langham, a la-

bourer, who swore that he was one of two men who thrashed out the wheat in the barn, in the autumn 1790. In harvest-time he had helped to pitch both glebe and tithe wheat in the field into the waggons. He said, that whither the glebe-wheat was carried after he had pitched it, he knew not: He knew nothing therefore of the formation of the stack: Nor could he know any thing about the taking of it down; for John Ballard, if he spoke the truth in that point, did all that business by himself. Langham indeed was asked whether the wheat of the stack was brought entirely into the barn before it was thrashed; and he answered that it was: But what means he had of knowing that circumstance appears not. He swears however, that he, with another man, thrashed out the wheat in the barn,—whether it was the whole stack, or only a part of it; for I cannot admit, my Lords,

that his testimony in the very face of it carries any weight with respect to that circumstance: Neither does it appear that he could know whether the wheat he helped to thrash was tithe-wheat and glebe-wheat mixed together, or tithe-wheat alone. He swears, that he, with another man, thrashed out wheat in the barn; and that, in thrashing out, *he* did not make any separation: But that *no* separation of the grain thrashed out was made at all, is more than he said. He deposed indeed to another circumstance, that he himself moved the wheat from the barn's-end to the thrashing-floor; and that there did not appear to be any separation of the wheat in straw in the barn. This he said in the course of his examination in chief: But, my Lords, upon the cross-examination, he affirmed what Ballard (the malicious man) also confessed,—that some of the wheat was in one end of the

barn, and some in the other. This, I think, is the sum of Langham's evidence in what relates to the wheat. And what does it amount to, but this,—that he, Thomas Langham, did not perform with his own hand that which Miss Raye says was done, but never said Thomas Langham did it. But, my Lords, this Thomas Langham was one only of two thrashers; why was not the second thrasher produced? My Lords, I thought it strange at the time—much more do I think so now, having discovered that the same person who thrashed with Thomas Langham was one of the two who assisted Thomas Pendilow in making the stack, and consequently was competent to depose to the rushes, as well as to the separation or no-separation of the grain thrashed in the barn,—my Lords, I think it very strange indeed, that the counsel against the petition, being so frugal of evidence

as to produce to one point one witness out of three, to another one out of two, should choose to keep away that one of the two who was competent to depose to two important facts, and to bring forward the other only, who could speak but to one of those facts, that one being of the two by far the most irrelevant.

"My Lords, when the learned counsel for the petition represented to your Lordships that those other witnesses, James Marlow and the third stacker, who was also the second thrasher, were in town, and earnestly entreated your Lordships to call them before you, though they had no right to call them because they had closed their evidence, it was a great disappointment to me that the request was not granted. I felt the force of the objections made by noble lords in my eye, a noble earl and a noble viscount: I felt it so strongly, that I did

not insist upon taking the sense of the Committee; yet I lamented that these witnesses were not called. My Lords, I must say, that, had we called them, we should not have sacrificed *substantial justice* to a point of form. My Lords, it consists with my personal knowledge to aver, that such persons as James Marlow and Simon Ferrer (for that is the name which Pendilow had forgotten) do exist; that they were in London at the time when the learned counsel for the petition said they were in London. And, my Lords, it is my firm belief and persuasion, that had your Lordships called these men before you, James Marlow would have told your Lordships that a separation was actually made in the stack by a bed of rushes, damaged hay, and damaged oats. He would have told your Lordships that he did himself assist Thomas Pendilow in

forming this bed of separation,—that he himself mowed the rushes for this purpose, by the rector's orders, and for the express purpose of keeping the glebe-wheat and the tithe-wheat separate. It is my belief and persuasion, that he would have told your Lordships that the rector said to him "James, I must have my tithe-wheat and my glebe-wheat kept apart: Go you and mow such and such rushes." He would have told your Lordships (as I believe), that the glebe-wheat was all laid below the rushes,—that the tithe-wheat was all laid above them: He would have told your Lordships, that such care was taken to keep the glebe-wheat and the tithe-wheat distinct, that the last waggon that came from the glebe-field brought only half a load. All this James Marlow would have told your Lordships, in the most precise peremptory terms, upon clear distinct recollection,—not like one

of the Ignaro family, my Lords. My Lords, it is my belief and persuasion, that Simon Ferrer would have confirmed Marlow's evidence about the separation by a bed of rushes,—that he would have told your Lordships that he saw that separation formed; and it is my belief that he would have told your Lordships that he assisted Langham in thrashing wheat in the barn, and that the grain, when thrashed, was laid in separate parcels. My Lords, I have no more doubt of the veracity of this innocent young woman, in this important article of her evidence,—I have no more doubt of her veracity (which in this point is inseparable from the truth of her fact), than I doubt the fact that I am now standing here asserting her veracity before your Lordships: And, my Lords, I am persuaded, that had these men been called before the Committee and examined, the same convic-

tion would have been impressed with equal force upon the mind of every noble lord.

"My Lords, upon the subject of the wheat, Miss Raye was contradicted in another circumstance,—in the number of acres of glebe cropped with wheat in the year 1790: She made them not more than three or four acres. Thomas Pendilow said there were seven acres of the glebe in wheat. He had helped to reap the wheat: But observe, my Lords, he had not taken it to reap by the acre; he worked by the day. What knowledge then had he of the number of acres? Did he speak by a rough guess?—No, my Lords,—by no guess or judgment of his own at all: The rector, he said, had told him that he had seven acres of wheat in the glebe. My Lords, in these common fields, it is well known that a great proportion of the ground lies in the shape of balks and lands-ends, which

are never ploughed, but produce grass: It was easy to suppose, that the balks and lands-ends were included in the seven acres mentioned by Thomas Pendilow and excluded from Miss Raye's account,—that she spoke strictly of the land bearing wheat. Thomas Pendilow was asked whether the land in wheat would amount to seven acres, besides balks and lands-ends: His answer was, that he understood the rector to speak of seven acres of wheat, not including balks and lands-ends. Your Lordships see, that this man swears at last to nothing more than his own construction of the rector's conversation,—which might be right or might be wrong: If it was right, the rector to be sure confessed to him seven acres of wheat; and it will be for us to consider, how far the rector's confession, in loose unguarded conversation, ought to countervail his daughter's solemn oath; but if

Thomas Pendilow put a wrong construction on the rector's words, then the quantity confessed by him, according to the true meaning of his words, might be greatly less than seven acres. But taking the deposition just as it was given, and making the most of it, your Lordships will remember that it is nothing more than the deposition of *Thomas Pendilow*,—the worthy representative of the Ignaro family, my Lords.

" My Lords, I have done with the wheat: The next exception to Miss Raye's evidence was taken upon the barley. My Lords, the circumstance in question is of no other consequence than as it may affect the general credit of the witness; for it relates to the barley that grew upon the glebe; and since it has not been pretended that the account of the tithe-barley has been swelled with the addition of the glebe-barley to it, the circumstance I am about

to mention cannot otherwise affect the tithe-account than as it may affect the credit of the witness, if it should turn out to be an instance of wilful deviation from the truth. My Lords, Thomas Pendilow deposed, that the glebe-barley of the year 1790 was inned and stacked in the rector's yards: Thomas Langham deposed, that Arnsby bought the barley of the glebe in grain after it was thrashed out. Here the counsel against the petition triumphed. Here are two witnesses, who clearly, explicitly (for even the Ignaro man upon this point used no reserve or hesitation)—two witnesses clearly, explicitly, deny the fact that the glebe-barley was sold standing upon the ground; a fact deposed to by Miss Raye. Deposed to by Miss Raye! Good God! my Lords, I was struck with astonishment when this assertion fell from the learned and honourable counsel: Your

Lordships will be struck, when I assure your Lordships that the fact has not been explicitly deposed to by Miss Raye. My Lords, I speak not from an obscure distant recollection of the evidence which we heard Miss Raye give three weeks ago: My Lords, with a most anxious attention to this circumstance, have I read Miss Raye's evidence over and over again, the whole of it—the examination in chief and the cross-examination, yesterday, this morning. My Lords, I affirm distinctly, that in her whole evidence there is no mention of barley growing on the glebe, expressly and by name; it appears not by Miss Raye's evidence whether a single blade of barley grew in the glebe in the year 1790, or no. My Lords, she exposed herself to the danger of this vile imputation, by that which is in truth a great argument of her candour and integrity—by a neglect of that

discretion which was so remarkable in the Ignaro man's manner of giving evidence: From a desire of informing your Lordships, she often in her answers went beyond the precise limits of the question: And this base imputation has no foundation in the express matter of her deposition; it is founded only on an inference drawn from one of those answers, without any distinct mention of the glebe-barley in the immediate question which produced the answer, or in any previous part (or any following part) of the examination: Speaking of the crop of the glebe in general, she said that "the crop of the glebe, except the wheat, was sold standing." * The crop of the glebe, except the wheat. Now, my Lords,

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* The question put to Miss Raye was this,—"Was the glebe in the rector's own occupation that year?" she answered "Generally it was not, except some few acres; the crop of which, except the wheat, was sold standing."

if you will assume, what you cannot find in Miss Raye's evidence, that the glebe was in part cropped with barley, it will follow indeed, by inference from her words, that the barley was sold standing: And if your Lordships will assume farther, that the barley was distinctly in Miss Raye's recollection at the time when she gave this answer, as a part of all that crop which with the exception of the wheat only she said was sold standing,—and if your Lordships believe this fact disproved, as far as the barley is concerned, by the depositions of Pendilow and Langham,—then, to be sure, with the help of this inference and these assumptions, a cruel imputation will be brought upon the young woman. But I am confident your Lordships will not suffer the credit of a witness to be impeached in your Lordships' judgment by inference, and implication, and precarious assump-

tions. My Lords, I will not retaliate upon the witnesses against the petition,—though Thomas Pendilow was one of them, —I will not retaliate on them the injury and insult offered to the rector's daughter; for, my Lords, I never will impute wilful falsehood where I can with any colour of probability suppose a mistake. My Lords, I do suppose that Thomas Pendilow saw a stack of barley in the rector's yard: Is he sure that it was the barley of the glebe? He called it glebe-barley, but might it not be tithe? It did not appear that he helped to bring home either the glebe-barley or the tithe-barley, or that he knew whence the barley which he saw in stack was brought. I suppose that Thomas Langham knew that Arnsby bought barley of the rector in grain thrashed out; but is he sure that it was not tithe-barley? My Lords, upon this easy supposition, that

Pendilow and Langham have mistaken tithe-barley for glebe-barley (a mistake which they might very easily commit), the credit of all the witnesses is saved; it is saved, even if the inference from Miss Raye's testimony be taken as a part of her explicit deposition: I never will admit that it ought to be so taken; but so taking it, I say that it is unfair and uncandid to impute fraud or prevarication on either side, when contradictory testimonies may be so easily reconciled.

"My Lords, I have now done with wheat and barley: I come next to the turnips; an article upon which we have been loudly charged. *We* * have been charged,—yes, my Lords, I feel that I have fallen into the language of an advocate;—

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* The Bishop observed a noble lord to laugh, and minute the expression.

let it pass; my argument, I trust, will be impartial. Miss Raye, my Lords, has deposed that she received 7*l.* 12s. for seventy-one and a half acres of turnips. She is taken up upon the number of acres: A man is produced (a Thomas Pywell), a tenant at will of Mr Hatton's, and one of his gamekeepers: He deposes to the acres of turnip in the common fields of Weldon in the year 1790; and he makes it, I forget the exact quantity, but certainly a third or a fourth less than the quantity mentioned by Miss Raye. By what knowledge of the fact does he speak?—By the most exact of all knowledge, my Lords,—by measurement of the turnip-land, made by himself. Measurement! how was it made?—With a chain. When?—The Thursday or Friday was sennight before he was examined. His examination was taken on Monday the 14th of this very month;

the Thursday or Friday sennight before, he was sent down from London, he told your Lordships, to make this measurement: Down he went, with his measuring-chain in his hand, in the beginning of May 1792, to measure the land that was cropped with turnips in the parish of Weldon in the year 1790: He performs this task with great expedition, and with wonderful accuracy: He posts back again, and reports the quantity of land to an inch, my Lords; he swears to acres, roods, and perches. Had the crop of turnips been all in one field, Mr Pywell?—O no! it grew in different patches in different fields. And how did you, now, in May 1792, distinguish exactly, so as to give evidence upon your oath, all these scattered patches that were in turnip in 1790?—My Lords, the man is blessed with a strong retentive memory of his own; and his recollection was

helped by the occupiers of the lands to whom he went round for that assistance!

"Now, my Lords, let us consider in what way the poor young woman might come by her knowledge of the number of acres. But first, my Lords, let me observe, that she has not sworn to the number of acres as a distinct fact by itself; she swears only to this complex proposition,—"I received so much money for so many acres of turnip." My Lords, this young woman is no surveyor, to measure land with a chain,—she is no gamekeeper, my Lords, to have a ready guess at the acres in a field by repeatedly walking over it: My Lords, the thing speaks for itself, when it is fairly considered;—the tithe of turnips is paid for in Weldon, as it is almost everywhere, at so much by the acre; and the number of acres mentioned by Miss Raye is the sum of the acres confessed by the

several tenants, at the time when they reckoned with her for the tithe of turnip: One man paid for so many—another for so many; and when the account of the year's produce is made up, the acres of the several tenants are collected into one sum, their payments are collected into one sum, and the witness deposes, that for so many acres of turnips (seventy-one and a half) she received so much money (7*l.* 12s.): The fact to which she must be understood to swear, of her own original knowledge, is the sum of money she received. And let me observe by the way, my Lords, that with respect to the sum of money received for every article, which is the material point, her testimony, under all the attacks that have been made upon it in other points, stands unquestioned. She swears to the acres only as the acres accounted and paid for by the tenants: And can your Lord-

ships believe that the tenants acknowledged and paid for many more acres than were cropped with turnip? Is it usual with your Lordships' tenants, when they settle with the parson, to magnify the account of what is due to him? My Lords, upon this fact of the quantity of land cropped with turnip in the year 1790, *which* is more worthy of credit, the confession of the tenants at the time reckoning with the parson, or Mr Pywell's measurement, made now in May 1792, of the scattered patches of land, which his recollection, assisted by the recollection of the farmers, tells him was cropped with turnip in 1790? Which is most deserving of credit, my Lords?—when it is remembered, that when the parishioners settled with the rector, or rather with the rector's daughter, it was *not* their interest to magnify, it *is* now their interest to abate. My Lords, this matter is so very

clear, that I should be ashamed to consume the time of the Committee by saying another word upon the subject.

"My Lords, I now come to the last article in the account of the year 1790 in which the truth of it has been arraigned,—I mean the article of the wood of the purlieus. It is stated that the tithe of the wood produced 43*l.* 3s. My Lords, this is the only point upon which I feared I should be incompetent to speak with any confidence; for the depositions relating to this wood are the only part of the evidence which I did not receive by my own ear. My Lords, the day the witnesses were examined who were called to contradict the account in this article, I had been sitting in the committee-room, at the table, listening to and minuting every syllable of the evidence, from eleven o'clock till three: Business of some magnitude, I forget what,

was to come on in the House that evening: I expected long debates and a midnight division: My Lords, I confess with shame, I had the meanness—I have repented of it ever since—to shrink from the fatigue of my Parliamentary duty; and not at all foreseeing the important matter that was immediately coming on, I retired for refreshment: I was absent from the committee-room a little more than an hour; and during my absence, the depositions of the stewards of the woods were taken: When I returned, some noble lords, whose sentiments I knew had much accorded with my own upon the whole business, so far as we had yet gone, told me "Here *is* a mistake about the woods." After the whole evidence was closed, when I mentioned it to some noble lords, as my clear opinion, that all the contradiction given to Miss Raye amounted to nothing at all, and de-

clared my intention of going in detail into the discussion of the evidence, article by article, they said "Remember, however, there was a mistake about the wood." This was suggested to me by noble lords whose sentiments I knew to be in general the same with mine upon every part of this business, as the single mistake, but as a mistake which must be admitted. My Lords, it gave me great satisfaction to perceive, by casting my eye over Miss Raye's account, that the mistake, whatever it might be, was an innocent mistake,—that it must be mere mistake, not design, my Lords; for this reason, that this wood was charged on both sides of the account, and made no difference at all in striking the balance. The wood was reckoned in the account of the produce of 1790; but it was also reckoned as a distinct article of the future produce of the living, under the enclosure, if the

bill should pass: It swelled the account of the amount of tithes; but it equally swells the account of the produce of the living, if the commutation should take place. The allotment of land is not to cover the tithe of wood; and the tithe of wood is very fairly charged as a distinct article of future produce. If the charge of this tithe-wood is a mistake on one side, it is equally a mistake on the other: If you strike it out here, you must strike it out there; and the difference between the amount of the year 1790 and the future produce of the living under the commutation, will, in spite of this supposed mistake, remain what the account makes it. I confess, I was much satisfied to find the supposed mistake so innocent; still I wished to discover upon what ground of evidence a mistake had been so generally admitted. Yesterday morning, my Lords,

at an early hour, I came down to this House; I applied to the Clerk for his minutes of our proceedings; and in his room, I sat me down to study the depositions of the stewards of the woods in his minutes. I presently perceived that the only woods which fell in 1790 were a part of Lord Sondes's and a part of Mr Hatton's; so that the 43*l.* 3s., if there was no mistake, must all be accounted for from the tithes of those woods. Now, John Walker, the steward of Lord Sondes's woods, confessed in his evidence that he paid Mr Raye in money, for the tithe of Lord Sondes's fall in 1790, the sum of 26*l.* 14s. 3d.: He deposed, that the money was paid in January 1791. Is *this* the mistake? was the receipt of 1791 charged to the account of 1790?—No such thing, my Lords; the witness was distinct and candid: He said the money was paid in January 1791; but

he had said before that the fall was made in 1790. Indeed the thing speaks for itself: If the money was paid so early in the year 1791 as the month of January, the fall must have been in the preceding year. The money therefore, though not paid till 1791, is justly put to the account of the year 1790, in which the tithe accrued. Now for the tithe of Mr Hatton's fall in the year 1790. The steward of Mr Hatton's woods, Mr Pywell (not the famous measurer of turnip-grounds, but another Mr Pywell), deposes that the tithe of Mr Hatton's wood was not sold to Mr Hatton, but taken in kind by the rector, and carried off. Mr Pywell therefore could give no account of what the rector might make of this tithe, otherwise than by informing your Lordships of the value of Mr Hatton's nine tenths, by which the value of the rector's single tenth might be

estimated. He deposed, that the value of Mr Hatton's nine tenths was 127*l.* The ninth part of this is 14*l.* 2s. 2d.; which must have been the value of the rector's tenth, according to Pywell's estimate. Now, will some noble lord assist me; it is difficult to compute and speak at the same time. (Lord Spencer and the Bishop of Bangor each took up a pen.) My Lords, to 26*l.* 14s. 3d., the price paid to the rector for Lord Sondes's fall, add 14*l.* 2s. 2d., the value of the tithe of Mr Hatton's fall, what is the sum? (Lord Spencer and the Bishop of Bangor both answered 40*l.* 16s. 5d.) Very well, my Lords, of Miss Raye's 43*l.* 3s. we have actually accounted for 40*l.* 16s. 5d.; the difference is 2*l.* 6s. 7d.,—which is the utmost amount of her mistake, if any mistake has been committed. My Lords, I find by the deposition of Daniel York, that there was a small fall of Lord Upper Os-

sory's wood in the year 1791; and that the tithe of that fall amounted to 2*l.* 4s. My Lords, was this the mistake? has she to the 40*l.* 16s. 5d. of the year 1790 added this little sum of the succeeding year? To be sure this will make up all that remains to be accounted for, within two or three shillings. My Lords, if this was the mistake, the smallness of the error (not to repeat what I have said about the insignificance of it, as it stands in the account, had it been ever so great) proves that it must have been mere inadvertence; for it could never be by design that she advanced the account from 40*l.* 16s. 5d. to 43*l.* 3s., in order to make an addition of so small a sum as forty-six shillings to the whole receipt of the year, which exceeded 640*l.* But, my Lords, I feel myself under no necessity of admitting even this small mistake: It is a probable supposition, that

the tithe of wood, which the rector took in kind of Mr Hatton, might be sold at as much more than Pywell's valuation of it, as would do away all the mighty difference between 40*l.* 16s. 5d., already accounted for, and Miss Raye's sum of 43*l.* 3s.

"But it was hinted to me one day in the committee-room, by a noble lord, that as the fall of these woods was not made every year, the tithe of wood received in any one year ought not to be taken for the yearly average of that species of tithe. Certainly not, my Lords: Nor was the sum of 43*l.* 3s. deposed to by Miss Raye as the yearly average of the tithe of wood, but as the produce of that tithe in the year 1790; for the title of her account is this, "The value of the rectorial dues of Weldon in the year 1790." She was indeed asked a question about average; and I shall have occasion hereafter to recall to your Lord-

ships' attention the fair ingenuous answer which she gave to it; which will entirely clear her of any design of representing this article as the yearly average of the tithe-wood.

"My Lords, I have now spoken to every article of Miss Raye's evidence that has been called in question.* I hope I have

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* One point of little moment the Bishop passed by unnoticed. A weak attempt had been made to confute Miss Raye about the price of barley. She deposed to twenty-six shillings as the average price at which she had sold sixty quarters. Arnsby swore that he bought of the rector, in the year 1790, thirty-seven quarters one bushel, at twenty-five shillings per quarter. Now, as this was not much more than half the quantity which the rector had to sell, the average price of the whole might be what Miss Raye stated, though the truth of Arnsby's assertion should be admitted. But his assertion was not true. In an account between himself and the rector, running from 15th March 1790 to 2d May 1791, Arnsby makes Mr Raye his creditor for barley bought by him of Mr Raye in October, November, and December, 1790, at the various prices of twenty-five shillings, twenty-five shillings and sixpence, and twenty-seven shillings, per quarter. The Bishop went down to the debate with this

missed none;—I am sure I have missed none of any importance: And I hope I have convinced your Lordships, that Miss Raye's depositions have not been confuted, or even in the least degree discredited, in any one of the points which I have considered; and that in many they

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curious document in his pocket: But considering that the paper had not been given in evidence (for it was sent for from the country after Arnsby was examined, and it came too late), and that he had no means of proving the handwriting, the witnesses being all gone out of town except Miss Raye herself and the Reverend Mr Graham, he thought it better to leave the truth of Miss Raye's assertion about the price of the barley to stand upon the general credit of her evidence, established, as he conceived it to be, by his own argument upon more material points, and upon the general incoherence of Arnsby's; which, had not the debate been unexpectedly cut short by the proposal of a compromise on the part of Mr Hatton, would have been well set forth by a noble lord who had declared his intention to the Bishop of going into a minute discussion of Arnsby's evidence, and of tearing it all to pieces. The Bishop, in the most confident expectation of his noble friend's success in that undertaking, was well pleased to leave Mr Arnsby in his lordship's hands, where he would have found no quarter.

have been confirmed by the testimony of the witnesses that were called to contradict her.

"My Lords, it was advanced in argument by the learned and honourable counsel against the petition, that, setting out of the question all the objections to the items of the produce of the year, the net income is fallaciously stated, because Miss Raye has allowed for no other outgoings than the expenses of the collection: The learned and honourable gentleman observed that she had deducted nothing from the gross produce for rates and taxes. My Lords, I shall readily confess that this is (or rather that it might be, for I am not sure that it is) an omission; a very pardonable omission, my Lords, and of very little consequence,—such as in no degree reflects upon the integrity of this young woman; of which I trust I have produced

abundant proof. Depend upon it, my Lords, she reasoned thus: The living will still be subject to rates and taxes, if the enclosure should take effect; the deduction therefore will be the same then as now; and it is needless to take notice of an equal deduction on both sides of an account, which leaves the balance unaltered. My Lords, if there was any inaccuracy in this reasoning, it was only this,—that for the tithes in kind the rector is liable to the taxes both of landlord and occupier; for the allotment of land, if he lets it, which the account supposed, he will be subject to those of landlord only. The taxes under the enclosure therefore may possibly be diminished; and I will grant that this ought to have been stated: But the omission seems to have been mere inadvertency; and, I apprehend, is of very little consequence: For though I believe in my con-

science, that the produce of the living, under its present good management, is as much as Miss Raye's account makes it to be, yet it must be taxed and rated according to the last letting; and after the unfair advantage that was taken of that circumstance in argument, your Lordships will hardly forget that the last letting was very low; insomuch that, upon the whole, I do very much question whether the rates and taxes upon the commutation will fall much short of the present rates and taxes. Had the whole present rates and taxes been deducted, I suppose the net income from the tithes in kind would not have been lowered above 20*l.* *per annum*, if so much. Upon the whole, I am not sure that this was an omission,—certainly not a concealment; but I am in doubt whether it ought to be admitted as an omission, even of inadvertence.

" But the learned and honourable counsel charged Miss Raye with an omission of much greater magnitude: He said that she ought to have reckoned, as an article of the outgoings, the wages of that service (as he called it) which she performs for her father. He said, that if an event which may naturally enough be expected should remove this excellent daughter from her father's family, a *servant* must be retained to do the business which she at present takes upon herself; and the wages of that service he put very high. My Lords, I am not inclined to say that he overrated them; but I do deny that the wages of such service, if such service were to be procured for pay, are to be placed to the account of the outgoings from the living;—for this reason, my Lords,—the service is of that sort which every man who has his health and his senses, *mens sana in corpore*

sano, is supposed to perform for himself; and it must be owing to some peculiarity in the man, if he wants another to do it for him. The want of such assistance must be peculiar to Mr Raye, as Mr Raye; not common to him with all that ever were or will be rectors of Weldon. The necessity must arise from some particular circumstance in his health or his disposition: He may be a sickly man, a vapoured man, an indolent man, a careless man, or, my Lords, he may be a very studious man. My Lords, I speak upon this subject with something of a fellow-feeling: My own family accounts would be ill kept were they in my own keeping: My Lords, should *I* have the misfortune to be deprived of *my* assistant, and find myself obliged to retain at a considerable salary some discreet trusty gentlewoman to keep the accounts of my family expenses, my Lords, could I

fairly reckon that salary among the outgoings of the bishopric of St. David's? Would the Minister allow me so to reckon it, were I to give in an account of my bishopric to him, to show him the deficiencies of it, and enforce my claim to some profitable commendam?—My Lords, he would treat such an item of outgoings with ridicule and contempt; and he ought so to treat it. And the case is the very same in the present instance.

"For another reason, my Lords, the value of Miss Raye's services are not to be reckoned as outgoings from the living; because they are services not necessary to the collection of the living,—they are services that arise out of no particular species of property, but are necessary in all families, for in all families accounts must be kept. My Lords, when the learned and honourable counsel mentioned this as an

article of the outgoings, it struck me that he might as well have insisted that the annual amount of the rector's butcher's bill should be put to the charge of the outgoings of the living. (The Bishop observed a general look of surprise in the Committee; from which he concluded that this remark was either not understood at all, or that it struck forcibly: He therefore thought proper to dwell upon it.) Noble lords seem to receive this remark with surprise: Will noble lords explain to me why the butcher's bill is not an outgoing? The money goes out of the man's purse, there is no doubt of that; in that sense therefore it is an outgoing,—but it is not an outgoing from the living. Why?—If any noble lord will do me the favour to put that question to me, I think I can answer it. The butcher's bill is not an outgoing from the living, because the meat

which is bought with the money raised by the sale of the tithe is still the produce of the living, converted out of the substance of money into the substance of meat; the meat is the rector's property; and that property is as much the produce of the living in the shape of beef, as it was in the shape of wheat and other grain in the barn before the grain was converted into gold and silver coin. My Lords, the very same thing is to be said of the labour of servants: The labour of servants is property; and being acquired by the money raised from the living, is still the produce of it in another shape. The wages that pay for the service are not an outgoing from the living, unless the service be of that sort which is immediately employed in the collection of the profits of the living: In that case, but in no other, the expense of the service is an outgoing from the living. Miss Raye's

service to her father is not of that sort; her service is the exact and faithful keeping of accounts. The profits of the living might be collected though such accounts were not kept: The rector might still enjoy the fruits of the rectory, though he would not so exactly know what he enjoyed. And, my Lords, these accounts have no analogy to a tradesman's books, which the tradesman must hire a clerk to keep; they are merely a gentleman's private accounts.

"My Lords, I have now considered every mistake or omission with which Miss Raye has been charged. One omission only can I find,—that of the rates and taxes; an omission of which I cannot exactly rate the effect, but I am confident it must be very small: I suspect it is nothing; and, if it be any thing, I have shown how easily the omission is to be traced to honest inad-

vertency. But, my Lords, had errors been found in Miss Raye's account which have not been found in it, I should still have protested against the fallacy and iniquity of a maxim advanced in argument by the learned and honourable counsel, in summing up, "that an error proved in a single article of the account must be allowed to discredit the whole and every part of it." My Lords, the thing implied in this maxim is too plain: This uncandid principle assumes the guilt it would conclude. Show me a fraudulent statement of any one article of an account, and I will be open to the suspicion of a fraud in the whole, or in any other article: But upon no other principle but the supposition of a fraudulent design can it be allowed, that, in an account composed of a variety of articles, having no necessary connexion with each other, an error in one or more concludes

error in all the rest. This argument of the learned counsel's ran in a circle, and tacitly assumed as its foundation the horrible conclusion it was meant to establish. The learned counsel afterwards spoke out more plainly: My Lords, I was astonished and amazed, when, upon no better grounds than the evidence of such witnesses as he had called, and the flimsy texture of his own arguments, he hurled the vile charge of perjury at a trembling woman's head.

"My Lords, a general exception was taken, by this learned and honourable counsel, to Miss Raye's evidence, as the evidence of an interested witness: He said, that a daughter is more an interested witness for the father than a tenant at will or a gamekeeper for the lord. My Lords, it was very well answered, but I think not sufficiently, by the very learned coun-

sel in reply, that Miss Raye was not what any jury would have deemed an interested witness. My Lords, the remark was certainly just; Miss Raye has no such immediate interest in the revenues of the living of Weldon as would make her what our courts of justice call an interested witness: But, my Lords, I apprehend that the learned and honourable gentleman who so called her did not really mean that she was interested in the strict forensic meaning of the word;—he meant that she was subject to an influence; and he meant to say that the influence of a parent over his child is stronger than that of lord over tenant at will or gamekeeper. This, I believe, was his meaning; but, my Lords, I deny it—flatly I deny it, speaking of *corruptive* influence. My Lords, I maintain that the relation of lord to tenant at will or servant is productive of a far more cor-

ruptive influence than that of parent to child. My Lords, I have detained your Lordships so long (*Hear, hear!—Go on, go on!*), that I will not argue this question generally, as I thought to have done. I will only trouble your Lordships with a remark upon this particular case,—that in this instance the influence must be all on the daughter's side; she is evidently so necessary to her father, that she must have influence over him,—he can have no undue influence over this daughter.

"My Lords, I have now done with my defence of Miss Raye's evidence: I must now trouble your Lordships, as I proposed, with very few words about average.

"Miss Raye was asked whether she believed that the amount of the year 1790 was nearly the average value of the living. She said she thought it was; and, without speaking to the average of each species of

tithe, she gave a reason for that opinion, which I confess made a stronger impression upon my mind than any calculation could have made upon it: She said she believed the amount of the year 1790 to be nearly the average, because she had managed her father's accounts since the year 1786; and (though the tithes since that time have been taken in kind) she had found little variation in his income from one year to another. My Lords, the answer was fair and ingenuous; and I give credit to it. I am confirmed in the belief that the receipt of this year was very nearly the average of the living, from a calculation of my own of the probable yearly value; which I shall submit to the consideration of your Lordships. (The Bishop gives in his calculation.) My Lords, it is formed upon principles generally received and followed; and is independent of

every thing given in evidence on the side of the petition, except the acknowledged quantity of land in the parish, of the different sorts—of arable, meadow, ley, enclosure, and forest. My Lords, I make the gross annual amount of the rectorial tithes 640*l.*; the expense of collecting I put at 65*l.*; and having supplied Miss Raye's omissions,—not her perjuries, my Lords; never shall my tongue brand them, never shall it be silent if I hear them branded, with that odious name,—but having supplied her supposed omissions by a moderate allowance for taxes, and by taking into the account the trifling payments for tenths and procurations, I raise the annual outgoings to 82*l.* 7d., which subducted from 640*l.* leaves 557*l.* 19s. 5d. (say 558*l.*) for the net annual income. In this valuation, your Lordships will observe, neither the rent of the glebe nor the tithe of wood is

included. Thus, my Lords, the net income, according to my valuation, is but *23l.* short of the actual net produce of the tithes in the year 1790, as stated by Miss Raye. Of this difference of *23l.*, so much as 17*l.* 7d. is owing to the charge I have made against the living for taxes, tenths, and procurations: The remaining difference of *5l.* 19s. 5d. (say *6l.*) would be more than made up by adding to my valuation of the gross produce the annual average of tithe-wood; which ought to be added, since the account given in evidence of the year 1790 takes in that species of tithe. Now surely, my Lords, from this near agreement of my calculation with the actual receipt of the year 1790, I have some reason to conclude that the receipt of the year 1790 was very nearly the average of the living; for my calculation, if it be any thing, is a calculation of average.

" But, my Lords, I said at the beginning that this inquiry into the average, a point upon which the learned counsel against the petition said so much, and, as I thought I perceived, with strong impression upon your Lordships' minds, is really, in my judgment, of no importance; because, in comparing the present value of the living with the value of it under the circumstances of the proposed allotment, the produce of the year 1790 ought rather to be made the basis of calculation than the average value, if the average could be proved to have been greatly short of the amount of that year. My Lords, I shall in very few words show upon what ground I advance what may seem so singular a notion. My Lords, the acknowledged expected effect of the enclosure will be a rapid improvement of the cultivation of the whole parish, consequently a rapid improvement of the

living, were the lands to continue subject to the payment of tithes in kind. And in another way, the enclosure will greatly advance the value of the rector's tithes; because, as your Lordships well know, more land will come under that cultivation which yields its whole tithe to the rector, and less will continue in that cultivation which yields a moiety of its tithes to the impropriator. For both these reasons, my Lords, the value of the living is from this moment in a state of rapid growth; and whatever the average may have been of former years, I think it never could again (except in seasons of extraordinary scarcity) produce so little, were the tithes to be taken in kind, as it produced in the year 1790. I consider the value of that year as the minimum of all years from that time forward, though it should exceed the average of years past; and the rector takes no undue advantage,—

he gives all the advantage that he ought to give—more than might in justice be demanded of him,—when he takes that year for the basis of his calculation. Will it be asked, why is no account taken of the later year, of the year 1791? My Lords, it has appeared in evidence that 1791 was an excessive year; it was rendered excessive by the expectation of immediate enclosure: And it is an argument of fair dealing on the rector's side, that he has not attempted to avail himself of the vast profit of that year to enhance his claim.

"My Lords, I have gone through every point of my argument: Before I sit down" ——(Here the Mace entered the room, and required the attendance of the Peers in Westminster Hall. What the Bishop was going to say was of no great consequence. The Committee adjourned to the next day, Wednesday May 23d.)

The Bishop was heard through the whole of this long speech with the greatest marks of favour and attention. Whenever he attempted to apologize for the length of it, or for the delay that he often made by referring to the minutes of the evidence, he was always encouraged by the general and eager cry of "Hear, hear!" The Bishop observed, while he was speaking, that his argument was carefully minuted by a noble viscount, whose family connexions might be supposed not to incline him to favour the petition. The Bishop observed that every unguarded expression that fell from him, such as fall from every speaker in the fever of debate, was marked and minuted by the noble viscount. In short, it was evident to the Bishop himself, and, as he thought, to the whole Committee, that it was from that noble viscount, if from any noble lord, that the Bishop was to expect a reply; and, considering the great abilities and the habits of that noble viscount in Parliamentary debate, upon all subjects, the Bishop did expect the strongest reply that an argument so impugnable as he conceived his own to be in all its points could receive. The appearance of the Mace in the committee-room, as has been mentioned, stopped the Bishop abruptly, and of consequence prevented the opportunity of a reply on that day. The next day, Wednesday the 23d, when the Committee met according to adjournment, after some short speeches upon the question of consent, from the Bishops of Bangor, Peterborough, and St David's, the noble viscount from whom the Bishop of St David's expected an answer to his argument upon the evidence, rose in his place, and said—"My Lords, I do not rise to speak; I rise to make a proposal." His Lordship then made a proposal of compromise in the name of Mr Hatton, and sat down. The Committee approved of the

proposal; and the Bishop of St David's was asked if he would recommend the terms to Miss Raye, who was understood to be intrusted by her father with the entire management of the business. The Bishop of St David's, seeing little hope of success in any farther opposition to the bill, after a proposal had been made which received the approbation of so numerous a Committee that it might seem almost equivalent to the approbation of the whole House, (the Bishop of the diocese himself being in that Committee, and concurring warmly in that approbation), took it upon him to recommend the proposed accommodation; though his own opinion remained then (and remained to the last) unchanged with respect to the value of the living; and the terms offered, though very liberal as referring to the allotment, were far short of an equivalent for the tithes in kind. One great motive with the Bishop to close with the proposal was, that it left him in possession of an undisputed victory upon the interesting question of a most deserving young woman's character, most unjustly and injuriously impeached. Not a syllable had been said in reply to the Bishop's defence of her evidence; not a syllable could be said if the compromise took place,—the noble viscount who proposed it having by this very measure (if it took effect) deprived himself of any future opportunity of the reply that was expected from him. Under these circumstances, the Bishop of St David's strongly recommended the acceptance of the offered terms. It was not without difficulty that Miss Raye was persuaded; she insisted to the last, and with great reason, that the terms of the proposal were far short of the value of the tithes in kind. She yielded however to the advice and entreaties of her two friends the Bishop of St David's and the Reverend Mr Graham; who both urged,

that the acceptance of the proposal was, in the actual posture of affairs, the best thing to be done for her father's interests, and for the living; and that her character was secured against all malicious insinuations, by the manner and the moment in which the proposal came from Mr Hatton's friends. The manner, the moment, and the substance of the proposal, made it indeed equivalent to a confession, that the Bishop's defence of her evidence was unanswerable, and that the bare value of the allotment would be an inadequate compensation for the tithes in kind.

ON THE THIRD READING OF THE TREASON BILL;

NOVEMBER 30, 1795.

ON Friday the 6th of November 1795, Lord GRENVILLE brought in a bill entitled "a bill to prevent seditious and treasonable practices." The bill originated in a daring attack which had been made on the King, in his way to the Parliament-House, on Thursday the 29th of October. During the time the clauses of the bill were agitated in a committee, some very warm and personal debates took place. In one of these, Dr Horsley (now Bishop of ROCHESTER) supported the measure; and insisted, in the course of his argument,

that "all that the people had to do with the laws of the country was to obey them." This was very warmly taken up by Lord LAUDERDALE; who said, he should not have been surprised at such an expression from an Eastern mufti,—but that it should fall from an English bishop, astonished him beyond measure. In reply to this, the Bishop, on the third reading of the bill, 13th November 1795, rose and said,

"MY LORDS,

The sentiment which fell from me, in a former night's debate, which has excited such a fever in the mind of the noble earl, and has drawn forth such a torrent of his eloquence, I uttered upon the gravest deliberation, and with the steadiest conviction of my mind; and I never shall retract it. My Lords, I am sensible that it is perfectly disorderly to allude to

any thing that passed in a former debate; and I should not have done it, had not the noble earl compelled me to this irregularity: But when any of your Lordships is thus attacked, he generally meets with the indulgence of the House, if, in his own defence, he transgresses the strict rule of order. My Lords, a turn was given to my expressions, at the time, as if I had delivered that maxim professing at the same time to be little acquainted with the laws of my country. My Lords, I made no such profession: I never meant to impute that ignorance to myself, whatever other noble lords may impute to me. I avowed only an ignorance of those *technical* parts of the law in which none but lawyers by profession can be learned, and in which it is no disgrace to any man that is not a lawyer by profession to be unlearned. This avowal of my ignorance was made in sta-

ting to your Lordships, as I thought it my duty to state, the wide difference of my opinion, concerning the second clause of this bill, from the opinions that were advanced by a noble and a learned lord * whom I am proud to call my friend. My Lords, it was painful to me at the time to express my dissent from his opinions, because he was absent; and I thank the noble earl who has given me the opportunity, now that my noble friend is in his place, to repeat my objections to his argument. My Lords, I said that the only point of argument I could perceive in my noble and learned friend's objections to the provisions of the bill was this,—that the bill applies the punishment of felony to crimes not felonious. I said, my Lords, that this seemed to me a *technical* objec-

* Lord THURLOW.

tion, of which perhaps "I was not lawyer enough to perceive the force." I observed, that those punishments were not applied by the bill to crimes of simple misdemeanour, except upon the accumulation of the crime by a repetition of it: That it satisfied my mind concerning the justice of the bill, that the punishments were no more than were proportioned to the natural turpitude and malignity of the crimes,—which seemed to me the true measure of punishment; whereas the noble and learned lord had argued as if punishment were rather to be adjusted to the technical denominations of crime. The force of that argument, I said, I was perhaps not enough of a lawyer to perceive. This, my Lords, was all the ignorance I took to myself.

"My Lords, the noble earl, who took fire at my assertion that "individuals have nothing to do with the laws but to obey

them," said, that "individuals ought not only to obey the laws, but to study them." My Lords, the noble earl said well: It is the duty of individuals to study the laws, that they may shape their conduct by them: It is the duty of every one who holds a place in this legislative assembly, to study them more particularly; that he may have a full comprehension of the whole system of our laws, a knowledge of the relation of one part to another, and of the general spirit of the whole; that he may be competent to judge of the legality of public measures—of the consistency or the inconsistency of new laws proposed with the laws already subsisting. My Lords, *this* study of the laws of my country I have not neglected. I should be unworthy of the place I hold in this assembly, I should be ashamed to rise before your Lordships, with a con-

sciousness upon my mind of an ignorance upon this subject. *Not* affecting any such ignorance,—not putting myself in this branch of knowledge below the level of any noble lord who has not studied law as a lawyer by profession,—certainly not putting myself below the level of the *noble duke** who thought fit to impute this ignorance to me,—affecting no such ignorance, but *assuming* and *arrogating* to myself all that knowledge of the laws which becomes the station I have the honour to hold,—I repeat, under the restrictions with which at the first I qualified the assertion, With the exception of such laws as may have a bearing upon the particular interests of certain persons or bodies of men, who have undoubtedly a right to discuss such laws—to meet for the purpose of consider-

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* Duke of Bedford.

ing such laws pending or existing—to use all decent freedom of speech in such discussions—to petition to stop the progress of any such law pending, or to obtain the repeal of any such law existing, which may be to them a grievance (and, my Lords, I take the word "grievance" in a large sense to signify even inconvenience),—my Lords, with this restriction, and with the exception of such laws, I repeat the assertion, that "individuals have nothing to do with the laws but to obey them."

"My Lords, the noble earl said, that this was a maxim better calculated for the meridian of Constantinople than of London. My Lords, those were not the noble earl's expressions: He delivered the sentiment in other words,—in that vein of pleasantry in which the noble earl so much excels; and I heard it with a high relish of the wit, though it fell upon myself. He

said it was a doctrine that would have come with better grace from the lips of the Mufti than from the mouth of an English prelate. My Lords, the noble earl is mistaken; the maxim is not calculated for the meridian of Constantinople: The miserable inhabitants under that dismal sky have *no law*, my Lords, to study or to obey; they have only to obey the changeable will, caprice, or whim, of their tyrant. My Lords, it is a maxim not calculated for the meridian of Geneva, or of any other turbulent democracy: In such governments, the people have only to obey the uncertain veering humour of popular assemblies. But in *this* country, my Lords, where the rule of conduct lies certain and defined in the letter of the statute-book, and in recorded customs and adjudged cases, an equal rule to all, liable to no sudden change or perversion—to no par-

tial application from the passion or the humour of the moment,—in a country thus blessed, the individual subject, with the restrictions that I have stated, " has nothing to do with the laws but to obey them." My Lords, it is a maxim which I ever will maintain,—I will maintain it to the *death*, —I will maintain it under the *axe of the guillotine*, if, through any insufficiency of the measures which may now be taken, the time should ever come when the prelates and nobles of this land must stoop their necks to that engine of democratic tyranny.

" My Lords, I have heard nothing this night to alter my opinion concerning the expediency and justice of the bill before us. I have heard that it creates new crimes: But, my Lords, when this is said, the distinction seems not to be taken between creating *new crimes* and applying *new pu-*

nishments to old ones. My Lords, this is the effect of this bill,—it applies new punishments to such things only as by the existing laws are highly criminal. But it is said, and it has been said upon an authority which I ever must revere—upon the authority of my noble and learned friend, from whom I never differ upon such subjects without fear and trembling for the frailty of my own judgment (I differ from him with the more reluctance upon this occasion, because I know his zeal for the general good order of society: I know that neither I nor any of your Lordships can go beyond him in the warmth of his attachment to his King and to the constitution of his country),—it has been said, my Lords, upon his great authority, that the penalties of the laws, as they already stand, are sufficient for the coercion of such crimes. My Lords, how stands the fact? Has not

the experiment been made? Have not the existing laws, in many recent instances, been put in execution? What has been the effect?—A publisher of a seditious pamphlet is imprisoned; and he lives at ease in his prison, amassing wealth from the profits of the publication for which he was imprisoned—from the sale of it increased by the very circumstance of his imprisonment. "Set him in the pillory." The pillory! The pillory, my Lords, applied as a punishment for such crimes, is the stepping-stone to glory: Ever since Williams mounted it, the printer of the "North Briton," it has been the post of honour.

"My Lords, it is with astonishment I have heard it said, that the various seditious and blasphemous publications of the present day are not likely to produce mischief. My Lords, what are the springs of

human actions? Have the opinions of men no influence upon their actions?—not their speculative opinions upon mere abstract subjects, but their opinions in morals, religion, and politics,—have these no influence on their actions? Have these publications no tendency to spread opinions? Are they not circulated for that purpose, with great industry, and with too sensible an effect? Have not the minds of the common people been turned by such publications to subjects to which it had been better if their minds never had been turned? Have they not been poisoned with false and pernicious notions? And has not a great change in the demeanour of the lower orders actually been produced?

"My Lords, in the length of this argument, I had almost forgotten to take notice of what dropped from the noble earl,

relating to some supposed transaction of my former life. He has told your Lordships that I was once present at a meeting for reform in the borough of Southwark. My Lords, I cannot conceive to what the noble earl alludes: I hope he will have the candour to assist my recollection, by specifying occasion, time, and place. I cannot recollect that I was ever in my life present at a meeting for reform in the borough of Southwark, or anywhere else. I have never been a great frequenter of public meetings of any kind; except that lately I have attended, and taken an active part, at meetings in my own county, to consider of measures for alleviating the distresses of the poor. I well recollect, that some years since, when I was a private clergyman, and rector of Newington, I attended an election-meeting in Southwark. The noble earl will probably think that one of the

best actions of my life, when I inform him, that it was a meeting of freeholders of Surry, who wished to promote an opposition, at a general election, to a candidate who was supposed to have at that time the favour of the Court. But that was no meeting for reform, but an election-meeting; and I cannot recollect that I was ever present at any other public meeting, of any sort, in the borough of Southwark. If the noble earl can by any circumstances bring it to my recollection that I ever was, I will not attempt to dissemble the fact: There have been few actions of my life that I wish to be concealed."

The Duke of Bedford rose, and said, that he was reconciled to the Bishop's doctrine, that "individuals had nothing to do with the laws but to obey them," as he had now qualified it: That, had the Bishop stated it in the same unqualified manner as

before, he should have moved to have the words taken down; and would have taken the sense of the House upon them: He should have thought, in that case, the reverend prelate had deserved the "stepping-stone to glory."

The Bishop of Rochester rose again, and said, that the noble duke was mistaken if he apprehended that the Bishop now retracted any part of what he had before advanced: That he had not in the former debate gone so much at large into the subject,—perhaps he had not expressed himself so clearly, and the noble duke might not have honoured him with an equal attention; but that in the former debate he had advanced the assertion under the same express reservations: That he would be the last man to deny the subject's right of petitioning for the redress of grievances; that he knew that right to be a part of the

constitution, and would maintain it with his latest breath."

The Duke of Bedford again rose, and said, that *he now recollected the fact to be as the Bishop stated it*: That the Bishop had made the like reservations of the general maxim when he first asserted it; and had even alleged the particular instances of the opposition given by the West India merchants to the abolition of the slave-trade, and that of the manufacturers of snuff to the extension of the excise-laws to their trade, as instances of a legal opposition of subjects to pending laws."

ON THE ENGLISH MILITIA GOING TO IRELAND;

JUNE 19, 1798.

ON the 19th of June 1798, Lord GRENVILLE laid before the House a message from his Majesty, stating, that several regiments of militia had made a voluntary tender of their services, in aid of the regular forces of the kingdom, for suppressing the rebellion existing in Ireland; and the message recommended to the two Houses of Parliament to consider the most effectual means to enable his Majesty to accept, for a time and to an extent to be limited, the services of such militia regiments. After presenting the message, his

Lordship moved an address to the King, signifying the readiness of the House to adopt the measure recommended therein. The Earl of CAERNARVON moved an amendment, avoiding any mention of that particular measure. Upon this the debate was taken; and the Bishop of ROCHESTER spoke as follows.

" MY LORDS,

" I never came to this House with my mind so much embarrassed with doubt and difficulty as upon the present question; for none has arisen, since I have had the honour to sit in this assembly, in which the collision has been, to my apprehension, so stout and difficult, between the reasons for a measure on the one hand, and the objections against it on the other. And the thing proposed still appears to me

so extraordinary, and the crisis so important, that, unwilling as I am to obtrude myself on your Lordships upon a question of mere secular politics, I cannot persuade myself to give my vote without stating to your Lordships upon what principles my mind, after much doubt and hesitation, is at last resolutely made up to the support of the measure.

"My Lords, it cannot be denied that the measure, abstractedly considered—considered, I mean, in itself, not as connected with the particular circumstances of the times—is in a high degree unconstitutional: It cannot be denied, that it is diametrically opposite to the spirit and to the express provisions of the militia-laws. These, my Lords, are objections certainly of very great weight. My Lords, the measure proposed must be confessed to be contrary to the very sense and meaning of a militia. A

noble marquis, whom I do not now see in his place, whose opinions upon this subject are entitled to the highest attention, told your Lordships, that the militia is the standing garrison of the island of Great Britain. My Lords, it cannot be more accurately described; and the measure intended is to permit a part of this garrison to go out upon a very different service. But then, my Lords, what is the occasion? It is not a question, I believe, with any one of your Lordships, that a dangerous Jacobinical rebellion is at this moment raging in Ireland. Noble lords have said that the information has not come to us in the proper way, and through the proper channel. Some noble lords would have been better pleased if the information had been brought to the House in such a way as to open more matter of debate—to furnish more topics of invective against his Majes-

ty's Ministers. But, my Lords, however the information may have come, the fact is undisputed; and the mode of information is a matter of no sort of importance in our deliberations upon the measures to be taken upon the ground of the *admitted* fact. The fact, the fact disputed by no man, is, that a Jacobinical rebellion rages in Ireland; and it is proposed to send away a part of our garrison of internal defence to assist in the suppression of the rebellion in that kingdom. Now, my Lords, I cannot in idea separate the safety and preservation of the kingdom of Ireland, in these circumstances, from the safety and preservation of Great Britain itself: To protect Ireland, is to protect Great Britain. My Lords, if this Irish rebellion should be successful, there will be no sitting for our Sovereign, or not long, upon the throne of Great Britain; there will be no sitting for

your Lordships to deliberate in this House; there will be no rights, no liberties of the people, to maintain—no property of any man to defend: This militia will be kept at home for the defence of nothing; for nothing at home will there be to be defended. It has been said that the English farmer enrols himself in the militia, or pays his money for a substitute, conceiving that he is contributing his personal service or his money for the immediate defence and security of his own family, his own granaries, his own stock, his own farm-house: My Lords, I say that if this Irish rebellion is not quashed, the English farmer will have no farm-house, no granaries, no stock, no family, to be defended; his family will be butchered, his stock carried off, his granaries burnt, his comfortable mansion will be made a dunghill: The militia, embodied, as it is said, for the

single purpose of his defence, will be able to give him no defence at all. This is my notion of the times. We are under the dominion of that imperious necessity which for the time cancels all consideration of the laws provided for ordinary times—leaves no law subsisting, but that sovereign law of the *salus populi.* My Lords, this necessity of quelling the Irish rebellion at any rate, I connect with another circumstance clearly proved; and the two together leave no doubt in my mind of the expediency of the measure proposed. The other circumstance is, that the militia is the only force his Majesty can permit to go upon this service, consistently with our internal security. This appears from the statement that has been made to the House by the noble Secretary of State; and his statement I regard as the best evidence to be had to that fact. Some noble lords,

I know, will not agree with me in this. But, my Lords, the noble Secretary of State, by his official situation, possesses the best information upon that point. He has entered, I think, as much into the detail as the responsibility of his situation would permit. If he has misled me by a false statement, he must have wilfully misstated. If I conceived him capable of a wilful misstatement, I should think him unfit for his situation, and should join the band of his opponents: But as long as I think otherwise of him—as long as I think him fit for the station that he holds, I must credit his evidence upon this fact, as the best to be had. And, connecting the two facts, that a dangerous rebellion subsists in Ireland, and that a part of the militia is the force that can best be spared for the assistance of Ireland, I must support the present measure. My Lords, were noble

lords *in earnest*, when they said that by this measure Parliament would break its faith with the people? My Lords, I do not deny, that such acts of Parliament as the militia-laws, are, in a certain sense and to a certain degree, contracts between the government and the subject: But, my Lords, I do maintain that the first of all contracts between any government and the subject is the preservation of the constitution, of the independence of the state, and the liberties of the people: This is that to which first and most of all the faith of government is pledged: This is the first paramount contract; all other contracts are subordinate to this, and must give way to it; all the ordinary operations of the laws must be suspended, when that great article of public faith the conservation of the public safety cannot be kept without the infringement of them.

My Lords, we are at this moment under that necessity,—a necessity which from time to time has arisen in all governments; and under it all governments resort to some extraordinary means of preservation. All the different ways that may be taken may be reduced, I think, to two general divisions. The one is that method which a coarse policy, as I think it, suggested in the ancient democracies; which was to erect a temporary despotism,—to set up a chief magistrate who should be released from all the ordinary restrictions of the laws, and have authority to do whatever his own discretion might advise for averting the danger of the moment. This was what the Roman republic did when it created a dictator, or invested the consuls with dictatorial powers; whenever the Senate came to the awful vote "Caveant consules ne quid detrimenti respublica ca-

piat." The other, the gentler and the better way, is that which we now take,—that the Legislature itself should by its own act, in times of great danger, suspend those particular restrictions of the laws which fetter the executive government in the exertions which the crisis may demand. Upon these principles, my Lords, I shall agree to the original motion of the noble Secretary of State, and vote against the amendment offered by the noble earl."

UPON THE BILL TO REGULATE THE SLAVE-TRADE, WITHIN CERTAIN LIMITS;

JULY 5, 1799.

A BILL having been brought into Parliament to prohibit the trading in slaves on the coast of Africa within certain limits, the same was debated in a committee on the 5th July 1799; when the Bishop of ROCHESTER supported the bill by the following arguments.

"MY LORDS,

"I hope I shall not trespass too long upon your time; as I mean to confine myself, as far as the course the de-

bate has taken will permit, to the narrow limits of the question which is immediately before the House—the bill upon the table; a subject quite distinct from the general question of abolition. Not, my Lords, that my mind shrinks from the difficulty and magnitude of that general question: The time, I trust, is at no great distance, when I shall rise before your Lordships to arraign the injustice and impolicy of that nefarious traffick;—injustice, my Lords, which no considerations of policy can extenuate; impolicy, equal in degree to the injustice. And, my Lords, I shall not be deterred from going openly into this discussion, from the danger supposed to attend the measure, and the very agitation of the question, at this season, arising from the particular complexion of the times. I know well, my Lords, that the advocates for the slave-trade have long

endeavoured to represent the project of abolition as a branch of Jacobinism; with which, my Lords, it is no more connected than it is with the religion of the Persees. My Lords, we who contend for the abolition proceed upon no visionary notions of equality and imprescriptible rights of men; we strenuously uphold the gradations of civil society: But we do indeed, my Lords, affirm, that those gradations both ways, both ascending and descending, are limited. There is an exorbitance of power to which no good king will aspire; and there is an extreme condition of subjection to which man cannot without injustice be degraded; and this, we say, is the condition of the African carried away into slavery. But, my Lords, as to any danger attending the measure of abolition at this particular season, I shall contend, when that question comes before

you, that the danger is all on the other side; that the present times imperiously demand the abolition; that the continuance of the slave-trade threatens new and increased dangers to civil society; and that the continuance of it, rather than the abolition, is to be dreaded, as a probable means of setting a new edge upon the reeking knife of St Domingo.

"But, my Lords, this is not to the present purpose; the question of abolition is not before you: The present bill is only to abolish the trade upon a certain portion of that coast on the whole of which it is at present exercised; in order to remove certain obstacles which the slave-trade carried on upon that part of the coast throws in the way of the colony of Sierra Leone. My Lords, the part of the coast upon which the bill prohibits the trade is described to be that which lies west of a line

drawn due north from the southernmost part of Cape Palmas. Cape Palmas, your Lordships know, is a point upon the coast of Africa, where the Grain Coast on the west and the Tooth Coast on the east meet in an angle. It lies in the latitude of five degrees, at least above four and a half degrees, north; and, as the coast is laid down by D'Anville, as nearly as may be under the meridian of Gibraltar; but, according to the new map made by Major Rennell from Mr Park's Travels, it lies about two and a half degrees west of the meridian of Gibraltar; and of course, the line drawn due north from this Cape strikes into the ocean again a very little to the north of Cape Blanco.* This bill therefore, my

* Not that Cape Blanco which is generally considered as the northernmost limit of the British slave-trade; but another, much farther to the north, upon the coast of Fez, and nearly upon the parallel of the island of Porto Santo.

Lords, goes to prohibit the trade completely upon the whole of what is called the Windward Coast. I believe that the extent of the coast which the bill will cut off was fairly enough stated, by the witnesses against the bill, to be three hundred leagues or more, and to make about one third of the whole coast on which British ships exercise the trade.

" But, my Lords, we are not to conclude that this bill, interdicting the trade on one third of the whole extent of coast, goes to extinguish one third part of the trade; it is no such thing, my Lords: The proportion of the trade that will be abolished by this bill will be very inconsiderable indeed, —I believe, indeed, nothing; for, my Lords, though the prohibited district is one third part of the whole, the proportion of slaves from this part of the coast is very small indeed.

"Mr Olderman told your Lordships, that before the war it was one third part of the whole; Mr Branker said that it was about one fourth part: But now, my Lords, at the present, it is so reduced as to be not more than one twentieth part. Mr Branker says, the whole number of slaves now exported in a year from the coast of Africa is fifty-six or fifty-seven thousand; and that of these, not more than four thousand are taken from the Windward Coast: Afterwards, I think, he came down to three thousand as the number from the Windward Coast; and by putting together all the evidence,—I shall not argue over again in detail what has been so clearly stated by the noble Secretary of State; but putting all the evidence together, there is no reason to think that the number now taken from the Windward Coast in the year is more than two thousand: However, my

Lords, I will take it at three thousand, the mean between Mr Branker's greatest number and my least; and then your Lordships see, the total being by Mr Branker's evidence fifty-six or fifty-seven thousand, the share of the Windward Coast will be very nearly one twentieth. One twentieth therefore, my Lords, is the utmost proportion of the trade which this bill will abolish. But, my Lords, I say it will not do so much as that; it will not abolish an atom of the general trade.

"The witnesses have said that the reduction of the trade upon the Windward Coast has been owing to the war. I do not believe it: There are many facts, in the comparison of the slave-trade of this country with that of other nations, which prove that the war can have had no such operation. But, my Lords, from some cause or other, and I care not from what,

the trade upon the Windward Coast has been reduced almost to nothing. But, my Lords, it appears from the evidence (from the evidence against the bill; for upon that I build my whole argument), that, whilst the trade has been thus sinking upon the Windward Coast, it has been growing upon the Leeward; for the whole annual number of fifty-six or fifty-seven thousand very greatly exceeds the total of the annual export before the reduction on the Windward Coast. Now, my Lords, since I find in fact, that the reduction upon the Windward Coast, from whatever cause it has proceeded, has been accompanied with such an increase of the trade in the other part as has vastly overbalanced the deficit from that reduction,—have I not a right to conclude, that any farther diminution which may be produced to windward by this bill will be more than overpaid by an increase upon the un-

prohibited parts; and so the total of the trade will remain at least undiminished? My Lords, if this be a just conclusion,—and I am sure it is the just and necessary conclusion from the evidence,—if any policy—the contrary is my opinion; but if any policy persuade the continuance of the trade, there is nothing in this bill contrary to such policy; for this bill leaves the trade, in its generality, such as it finds it.

"My Lords, if any humanity calls for the continuance of the trade (for such an argument has been attempted), this bill cramps not the generous efforts of that humanity; for not a slave less, upon the whole, will be taken in the year from one part or another of Africa.

"My Lords, I heard with joy and satisfaction the statement, made by great authority, of the prosperity of the West India Islands: I rejoice that the empire posses-

ses such a fund of wealth in that quarter. But, my Lords, if the prosperity of the West India Islands is at all connected with the slave-trade,—if it depends upon the numbers annually exported from Africa,—it will not be in the smallest degree endangered by this bill; by which the slave-trade will not be affected, the numbers will not be abridged. And so the West India planters themselves seem to think, by the perfect indifference they have shown about this bill. Do your Lordships imagine you have had the great body of West India planters at your bar, petitioning against the bill?—No such thing, my Lords. We had something like a petition from the single island of Jamaica: The gentleman residing here in the character of agent for that island presented a petition against the bill. A learned counsel appeared for that petition at the bar, and he produced wit-

nesses: And much was I astonished at the sort of witnesses he produced,—I was quite puzzled with it. Three witnesses were called. The first was a gentleman who told your Lordships he had resided in Jamaica twenty years: He had an estate of his own; and he managed some other estates: For his own estate, he had purchased, in the twenty years, two hundred slaves in all; and of these two hundred, eleven were purchased as slaves from the Windward Coast; but he was cheated in two of them, for two of the eleven turned out not to be from the Windward Coast: He had therefore purchased in all, in the space of twenty years, nine slaves from the Windward Coast, and no more. This seemed to me an extraordinary evidence to prove the importance of the import from the Windward Coast to the island of Jamaica. The second of the three witnesses

had resided some time in Jamaica, not as a planter, but as a merchant: He had resided in that part of the island where he had the least opportunity of acquiring any knowledge of the import; for he resided in the north part of the island: He had been concerned in the sale of three cargoes, and no more; and from what part of the coast of Africa the slaves sent to Jamaica might come, or what proportion might come from the Windward Coast, he told your Lordships plainly he knew nothing. The last witness of the three was called only to prove the present average price of a prime slave in the island of Jamaica; and he was not asked a single question about the import.

"My Lords, I was very much astonished at this sort of evidence. One witness proved that the proportion of Windward slaves purchased by him was next to no-

thing; and a second could give your Lordships no information at all upon the subject of the import; and the third was not called to that point. I very much suspected some mystery lay at the bottom of this. My Lords, the mystery was soon cleared up, when the log-books were exhibited; for by them it appears that the slaves from the Windward Coast in general are not carried to Jamaica, but to other islands; and one of the slave-captains, when he spoke of the preference given to the Windward Coast slaves, excepted the island of Jamaica,—where, he said, the slaves from Bonney are preferred. My Lords, they are so much preferred, that the Jamaica planters refuse the Windward Coast cargoes; they will not take slaves from the Windward, if they can procure those of another part. The island of Jamaica, therefore, is not at all interested in the event of this

bill, since the trade which it will cut off makes no part of the supply of that island; and yet this island of Jamaica, which cannot in any way be affected by the bill, is the only one of the West India Islands that has petitioned against it. My Lords, I have a right to conclude, that the great body of the West India planters are not adverse to this bill; and if they are not adverse to it, it must be because they are sensible that their supply will not be diminished by it.

"Then, my Lords, for the good town of Liverpool,—if the prosperity of Liverpool depends upon the slave-trade, it will not be affected by this bill; which will leave the slave-trade, in its total amount, just as it found it.

"But your Lordships have been told that this bill, professing only to abolish the trade within certain limits, in effect

will destroy the whole trade, by the difficulties which will be laid upon it; for it is pretended, that ships cannot trade even to the Leeward Coast without taking in provisions upon the Windward Coast. My Lords, the answer is very short and very plain: I shall state it very briefly; for it has been well stated in detail by the noble Secretary of State. The answer is, my Lords, first, that if the allegation were true, that provisions must be taken in upon the Windward Coast, this bill forbids not but that any ship may stop upon the Windward Coast for the purpose of taking in provisions; but, secondly, my Lords, the allegation, though made by witnesses upon oath, is false—absolutely false, my Lords: The oaths of these witnesses are falsified by the deposition of the log-books. A ship's log-book, your Lordships know, is the authentic record of the occurrences

of her voyage, which must bear down all other evidence; and by the log-books upon the table, or rather by an extract from the log-books, given in by consent by the counsel on both sides, it appears, that out of one hundred ships which sailed from the port of Liverpool to the Leeward Coast in the years 1791 and 1797, one ship only —yes, my Lords—one ship only out of one hundred took in provisions upon the Windward Coast.

"So much for that part of the case. Again, it is pretended, that the bill prohibits the trade in that part where it may be prosecuted with the greatest advantage; that the time of the voyage from the Windward Coast to the west is shorter in a very great proportion than the time of the passage from the Leeward Coast; and that, in consequence of the brevity of the voyage,

the mortality is less and the slaves arrive in better health. This, my Lords, would be a consideration of great importance, were it true; but it is all pretence and fiction. My Lords, in exposing the falsehood, I shall not avail myself in argument of the vile deception which these witnesses upon oath audaciously attempted to practise upon this House, by smuggling the time of the tedious delay upon the Windward Coast to collect the cargoes. The cargoes are not collected but in a long time upon the Windward,—upon the Leeward Coast they are completed presently; and when the time of detention upon the coast is added to the time of the Middle Passage, the voyage from the Windward turns out to be the longest of the two; and if the quickest voyages are the most healthy, the voyages from the Leeward, as the

noble Secretary of State most justly argued, ought to be the healthiest. But, my Lords, I wave this: I will take the comparative length of the voyage (I mean the length in time) as they themselves have stated it; and I will show your Lordships, that this pretended healthiness of the passage from the Windward Coast is all a fallacy. My Lords, I assert,—confidently and hardily I make the assertion, and I challenge confutation; let any one who will take the trouble to follow me in the calculations upon which I am about to enter confute me if he can,—I do assert, my Lords, that the very healthiest of their ships are nothing better than PESTILENTIAL GAOLS! I assert, that in the healthiest of their ships, upon their shortest passages, the rate of mortality is enormous—the waste of human life prodigious, monstrous, shocking to the

imagination! This, my Lords, I assert; and I will prove my assertion by their own statements.

"My Lords, Mr Robert Hume made several voyages from different parts of the coast of Africa to the West Indies; and he has given his account, upon his oath, of the time of each voyage, the total of his cargo, and the number of the deaths in each. My Lords, in the year 1792, Mr Robert Hume made a voyage from the Windward Coast to Jamaica. He made it in thirty-three days; he shipped upon the coast of Africa two hundred and sixty-five slaves; and twenty-three died in the Middle Passage. Twenty-three, my Lords, out of two hundred and sixty-five, in thirty-three days. Thirty-three days are, as nearly as may be, one eleventh of a year; and eleven times twenty-three is two hundred

and fifty-three; and this would have been his loss by death, had the passage lasted a whole year,—two hundred and fifty-three out of two hundred and sixty-five: The man would have lost within a very few of his whole cargo.

"Now, my Lords, your Lordships know, that the importation of slaves above the age of twenty-five is prohibited, in the West Indies, by the colonial laws. I must therefore assume, that this cargo of Mr Robert Hume's, and other cargoes which I shall have occasion to mention, was composed of persons not above the age of twenty-five years. My Lords, in this town of London, the rate of mortality, by the most approved tables which all calculators use, is not, at the age of twenty-five, more than seventeen in one thousand in the year: Out of one thousand persons living, of the age of twenty-five, seventeen and no more

die in the town of London in a year ;—in Mr Hume's ship, two hundred and fifty-three, my Lords, out of two hundred and sixty-five.*

"My Lords, in the year 1795, Mr Robert Hume made a voyage from the Gold Coast to St Vincent's. The mortality was nothing like that of the former voyage: And this is one curious instance, in confirmation of what was argued by the noble Secretary of State, that, when the depositions of these gentlemen are properly corrected, by supplying material circumstances which they, witnesses upon oath, concealed, the voyages from the Leeward Coast turn out to be the healthiest. So it was, my Lords, upon the comparison of these

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* Which would be nine hundred and fifty-five out of one thousand. The mortality therefore of this ship was to the mortality of London as nine hundred and fifty-five to seventeen,—that is, rather more than as fifty-six to one.

two voyages of Mr Hume,—his voyage to Jamaica in 1792, and this voyage to St Vincent's in 1795: The latter, though from the Leeward Coast, was far the healthiest. And yet, even in this healthier voyage, the rate of mortality was enormous. The cargo consisted of two hundred and fifteen slaves; the vessel was seven weeks and four days in her passage; and the deaths in that time, Mr Hume said, were three or four. Three or four died, out of two hundred and fifteen, in seven weeks and four days. Seven weeks and four days make about one seventh of the whole year; and seven times three or four is twenty-one or twenty-eight; the mean, in round numbers, is twenty-four: Twenty-four therefore would have died out of the two hundred and fifteen, if the ship had been the whole year upon the Middle Passage:

Twenty-four therefore out of two hundred and fifteen* was the rate of mortality in this ship; the rate at London, for persons of the like age, being only seventeen in one thousand.

"In the year 1796, Mr Hume made a voyage from Cape Mount to Jamaica, in thirty-one days. His whole cargo was two hundred and thirty; of which one only died in the Middle Passage. One out of two hundred and thirty in thirty-one days; again, my Lords, an enormous rate of mortality. Take the thirty-one days as a month: Then twelve out of two hundred and thirty in the year was the rate

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* Twenty-four out of two hundred and fifteen is at the rate of one hundred and eleven out of one thousand: Therefore the mortality of this ship was to that of London (at the assumed age of twenty-five) as one hundred and eleven to seventeen,—or as six and a half to one nearly.

of mortality in this ship; instead of seventeen out of one thousand, the London rate.*

"I shall trouble your Lordships with but one instance more; and that shall be the instance of the ship Plumper of Liverpool. Your Lordships are already well acquainted with the story of the Plumper. Your Lordships will recollect,—it is in evidence,—that there is a great peculiarity in the negro constitution; that it is particularly conducive to the health of the negro to be close shut up in foul air. This is death to us white men, as we know by the experiment of the Black-Hole, and other tragical instances; but for your ne-

* Twelve out of two hundred and thirty is at the rate of fifty-two nearly out of one thousand: Therefore the mortality of this ship was to that of London as fifty-two to seventeen,—that is, rather more than three to one.

gro, it is the reverse: Keep him but hot enough, he will always do well; and the better, the more you try to stifle him. Now, my Lords, the good ship Plumper was built upon this very principle; and the extraordinary healthiness of her voyage was alleged as a fact, to evince the folly of the regulations we have made to prevent the negro from being poisoned in the Middle Passage, as we idly fear, in the steams of his own person. In the Plumper, care was taken that the slaves should have no room to stir or breathe: She was a single-decked ship; and the height in the hold was no more than two feet seven inches: In this vessel, one hundred and forty slaves were stowed; and of these there died in the passage only two. Two out of one hundred and forty. The time of the passage is not stated in Mr Coxe's ac-

count:* But it appears that the vessel was small,—I think not exceeding eighty-four tons burden, but I am sure under ninety ton:† These small vessels, your Lordships know, are not employed in the Leeward Coast trade; they are sent only to the Windward Coast: I have a right, therefore, to assume, that this small vessel slaved upon the Windward Coast; and I shall deal very fairly by her, if I allow for the time of her Middle Passage what has been stated by the witnesses to be the average time of the Middle Passage from the Windward Coast to the West Indies. Now, my Lords, one of the witnesses, Mr John Olderman, an experienced slave-captain, has told you, that the passage from the Isle de Los to

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* This is a paper given in at the bar, as part of the evidence for the petitions against the slave-carrying bill; and is to be found in the printed minutes of that evidence.

† Eighty-four was the tonnage.

Barbadoes is made in twenty-one or eighteen days,—from the river Gambia to Barbadoes, in fifteen days; but the average of the passage from the Windward Coast to the West Indies, he states at thirty days. Allowing therefore this average time, thirty days, to the ship Plumper for her Middle Passage, it was in thirty days that two of her slaves died out of one hundred and forty. Two in thirty days, or one month, is twenty-four in the whole year: Twenty-four, therefore, out of one hundred and forty in the year, was the rate of mortality in this ship; instead of seventeen out of one thousand, the London rate.* Part of this excessive mortality is, I doubt not, to be

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* Twenty-four out of one hundred and forty is rather more than one hundred and seventy-one out of a thousand. The mortality of this ship, therefore, was to that of London as one hundred and seventy-one to seventeen,—that is, more than as ten to one.

ascribed to the provision that was made, in the construction of the vessel, to secure to the negroes the full advantage of the want of air: But upon this circumstance I lay no stress;—I maintain, that when the rate of mortality is examined upon true principles, it is so enormous, in the very best of their vessels, that when we talk of a healthy slave-ship, we talk of a nonentity; there is no such thing. And no certain proportion can be found between the comparative healthiness of one voyage and another; but making the best comparison we can, and taking into the account the numbers that die in the Windward trade before they quit the coast, the result would be in favour of the Leeward.

"My Lords, with respect to the reduction that has taken place in the export from the Windward Coast, the witnesses pronounce that the war is the cause of it;

and they say, that some time or other, though in what future year of our Lord they cannot tell, a peace will come; and when the peace comes, the trade upon the Windward Coast, if this bill should not pass into a law, will revive. My Lords, I say, that at best this is but prophecy; and we have had abundant experience, that when these gentlemen pretend to prophecy, their predictions are generally falsified by the event: But I say, that without any revival of the trade upon the Windward, which I hope and trust will never be, we have the highest reason to believe that the deficit apprehended from the prohibitions of this bill will be more than made up by the growth of the trade on the remaining part of the coast. Now, my Lords, since the diminution of the trade upon the whole, by the operation of this bill, will be nothing,—since neither the interests of the

slave-trade itself, nor the supply of the West India Islands, nor the trade of Liverpool, can possibly be affected by this no-diminution,—since the inconveniences apprehended from the proposed limitation, by reason of the necessity of touching at the Windward Coast for provisions,—since the greater length of the Middle Passage from the Leeward Coast—the greater unhealthiness of the voyage,—since all this is mere pretence, falsehood, fiction, and delusion,—I ask your Lordships, whether the objects of the Sierra Leone Company are not such as in some degree merit your attention?

"The grand object of the Sierra Leone Company is to establish a fair and friendly commerce with the Africans; and, by that means, to spread the light of knowledge, divine and human, in that country, and gradually to forward its civilization. That

these objects cannot be obtained while the slave-trade is carried on in the neighbourhood of the colony, is manifest. By excluding the slave-trade from that neighbourhood, the trade itself will suffer nothing; the benevolent designs of the Sierra Leone Company will be forwarded. Much pains have been used, my Lords, to make this colony contemptible; from the low state of their finances, the narrow extent of their trade, and the little progress they have hitherto made in their great project of instructing and civilizing Africa: But, my Lords, when I consider the difficulties the Sierra Leone colony has had to struggle with, my wonder is, not that it is not more flourishing, but that it exists at this moment,—not that its progress is so small, but that it should be any thing. All infant colonies have difficulties; but the difficulties of this colony have been unusually

great,—the dreadful sickness which in the first year swept off so many of the first settlers; the destruction and pillage of their town by the French; but most of all, my Lords, the untoward materials they had to work upon, in the formation of the colony itself. The first colonists were the blacks from Nova Scotia: These were a set of people of the very worst dispositions,—averse to labour, debauched, refractory, untractable: My Lords, it is no small argument of the good effects that may be expected from this colony, that these are now, by the good management of the Company, quite an altered race,—sober, industrious, orderly. But, my Lords, we have still a stronger argument of what this colony may do, in the change for the better which in some small degree has taken place in the manners of the slave-traders in their neighbourhood. My Lords,

it is easy to understand, that your slave-trader must be an animal more difficult to tame than the mere savage: The slave-trader is something very different from the savage man; he is the man barbarized,—not untaught, like the savage; but, acquainted with civil life, and with powers of intellect considerably improved, he uses his improved intellect only to be the slave of his avarice, and to overpower all those generous sympathies of our nature which might be obstacles to its pursuits; he has eradicated in his own bosom all the virtuous feelings of the savage; he has imbibed all that is evil in the policy of civil life. Yet the Sierra Leone Company has succeeded in somewhat softening the loathsome asperity of the manners of these barbarians.

"But, my Lords, there remains one principal argument brought against the

bill, of which I have not yet taken notice. However inconsiderable the number of the slaves may be of which it will deprive the trade, it is said the bill will deprive it of its best slaves; and in this respect, the loss, however it may be made up in point of number, in value cannot be compensated by the supply from other parts; for, with the exception of some taken from the Gold Coast, the slaves procured upon the Windward Coast, the witnesses say, are the very best of all. And why are they the best, my Lords?—They are the best, not only because they are the healthiest and the strongest, but because they are the fittest for field-labour; they are the most tractable, docile, and submissive; they are easily trained to many parts of the business of a ship; they easily learn the use of small-arms, and to wŏrk the great-guns with so much dexterity, that two of the

slave-captains have told your Lordships they have fought their ships with cargoes of these slaves. One of the two, in 1796, commander of the Jemmy of Liverpool, with only eight white men aboard, but with two hundred and nineteen slaves from Cape Mount, engaged a French privateer, and beat her off. The other, in 1779, his ship's company being forty-two whites, with one hundred and fifty Windward Coast slaves in arms, chased a large French privateer into Aux Cayes, in St Domingo; when another ship of the enemy, of equal force, lay a few miles to leeward. My Lords, while these Africans were upon military duty, they were permitted to assume the appearance of men and of soldiers; they were armed and dressed like the other men: What became of them, my Lords, when the service was performed?—My Lords, they were divested of the

arms which they had so bravely used in the defence of the ships of this country against the King's enemies; they were divested of their clothing; they were stripped stark naked, my Lords,—these men, who had saved our vessels from the enemy! they were exposed to sale, naked slaves, in the slave-markets of the West Indies! My Lords, what were your feelings when this shameful tale was told? I will tell your Lordships what my feelings were—what they are at this moment: I would rather have been one of the Africans which were so sold, than either of the British slave-captains (I lament, my Lords, that I must call them Britons) who sold their valiant comrades in arms!

"But, my Lords, the circumstance to which I would principally direct your attention is this,—this fitness for field-labour, this tractability, this docility of disposition,

these, wherever they are found, are certain marks of at least incipient civilization; and the Windward Coast slaves, in whom these marks of incipient civizilation, by the testimony of these witnesses, appear, are for that reason the very persons whom the slave-trade, upon its own principles, ought to spare. My Lords, when the slave-trade attempts to defend itself, as it does, upon the ground of humanity, it is upon this pretence,—that the natives of Africa are in that state of barbarism from which it is impossible they should ever spontaneously emerge: They pretend, therefore, that it is charity to these people to tear them from their native soil, and transport them to those Hesperides of the blacks, where their condition, though bad enough, will yet be something better, in some small degree nearer to that of civil life, than it ever could be if they remained in their own

country. My Lords, if the assumption were true, I know not that the conclusion would be just. My Lords, a learned counsel at the bar took upon him to argue the policy of public measures; he took upon him to instruct your Lordships in your legislative duty; he admonished your Lordships to beware how you would attempt to alter by force the moral and political state of man. My Lords, I agree with the learned counsel in the general maxim;—the moral and political state of man is ordered by Providence; and any attempt of man forcibly to alter and amend it is a presumptuous interference in a matter that belongs to Providence: But, my Lords, upon the slave-trade I charge the guilt of that presumption. If the natives of Africa are in that abject state of barbarism which the slave-merchants allege, I say that Providence has placed them in it; and what

has the slave-trade to do with His dispensations? Whatever the present condition of these Africans may be, I am confident that the merciful God, who has cast their present lot so low, will, in his own good time, without the interference of the slave-trade, raise them to the full state and dignity of man. Let the slave-trade leave the work to Him; it is no concern of theirs. But if the plea that they set up were better than it is as applied to Africa in general, their argument fails them on the Windward Coast: The slaves procured there are not in the state of hopeless barbarism they describe; by their own showing, among these people the work of civilization is begun. And think, my Lords, how far, over what a length of country, this incipient civilization must extend. The slaves procured upon this Windward Coast are not the natives of the coast itself; they are

brought down from remote parts of the interior country. The witnesses have told your Lordships, that these people reckon their time by moons; and describe the time that they are travelling to the coast as five, six, seven, and sometimes eight moons; and the witnesses guess that their rate of travelling may be fifteen miles per day. I will take six moons as the time of the journey; and I will suppose they travel only twelve miles per day: Twelve miles per day, for six months together, makes a journey of two thousand one hundred and twenty-four British miles; and so many British miles, upon the parallel of the middle latitude of the Windward Coast, make thirty-one and a half degrees longitude; and thirty-one degrees of longitude eastward from the middle of the Windward Coast carry us into the very heart of Africa, in the broadest part. And

throughout this long tract of country, the natives, by the evidence of the witnesses themselves, bear the marks of incipient civilization. But, my Lords, by the relation of Mr Park, on which I rely more than on the united testimony of all these witnesses, through the whole extent of this country, civilization is much more than incipient. Through this very country the line of Mr Park's journey lay; and, my Lords, you cannot travel half a day with Mr Park, in the whole route from Pisania to the very extremity of that line, but you find all the way the pleasing vestiges of a civilization that has already made some progress, and is heightening every step you go the farther you get inland from the coast,—that is, the farther you recede from the stage on which the slave-trade perpetrates its horrors. My Lords, Mr Park not only speaks in general terms of the growing civilization of these

people, but he mentions many particulars, from which your Lordships may form your own judgment. My Lords, he thus describes the dress of the Mandingoes: "Both sexes dress in cotton cloth of their own manufacture: The men wear a loose frock with drawers half-way down the leg, sandals on their feet, white cotton caps on their heads; the women, a petticoat of the same material, with a sort of mantle cast over the shoulders." My Lords, is this the dress of savages?—is there not evidently a degree of elegance and neatness in it? Speaking of their manners, he says "They are industrious in agriculture and pasturage: They manufacture cotton cloths, and coloured leathers; they smelt iron; they smelt gold; they draw gold wire, of which they form various ornaments." My Lords, are these the occupations of barbarians? My Lords, they are not desti-

tute of moral principle: The first lesson, says Mr Park, a Mandingo woman teaches her child, is the practice of truth: The lamentation of a miserable mother over her son, murdered by a Moorish banditti, was, that in the course of his blameless life, " her boy had never told a lie, no never!" Towards strangers, he says, they are of a mild and obliging disposition. Having mentioned their habit of pilfering (which although a mark of imperfect civilization, your Lordships are too well read in history not to know is no mark of barbarism), he adds—" To counterbalance this depravity in their nation, it is impossible for me to forget the disinterested charity and tender solicitude with which these poor heathen sympathized with me in my sufferings, relieved my distresses, and contributed to my safety. In so free and kind a manner (speaking of the women in parti-

cular)"——My Lords, there is nothing in this to provoke the laugh of levity: Mr Park's is a simple, but a serious, sober narrative; the freedom of which he speaks was not the freedom of wantonness, as those who laugh must be supposed to understand it——" In so free and kind a manner did they (the women) contribute to my relief, that if I was dry, I drank the sweetest draught, if hungry, I ate the coarsest morsel, with a double relish." Then, my Lords, of their domestic attachments and affections among themselves, he gives many striking instances. Your Lordships, I am sure, must recollect the affecting story of the return of the blacksmith of Kasson to his native village.—By the way, my Lords, I must ask, is this a character of savage manners,—that a young man goes from his home to a distant country, to find profitable employment in a trade?—But the

story of the return, my Lords, after an absence of some years! His brother meets him on the road, and brings out a singing-man to sing him into the village; he brings a horse to mount him upon, that he may enter the town in a respectable manner: At the entrance of the village, his arrival is welcomed by a concourse of the people; his mother, blind with age, supporting her tottering steps upon her staff, is led out to meet him; the crowd respectfully make way for her; she shows the strongest emotions of joy and maternal affection, when she is satisfied, by feeling his person with her hands, that he is indeed her very son. Mr Park concludes the interesting narrative with this remark, that "from this interview he was fully convinced, that whatever difference there is between the negro and European in the formation of the nose and the colour of the

skin, there is none in the genuine sympathies and characteristic feeling of our common nature." These, my Lords, are the people which the slave-trade, in defiance of its own principles, makes its victims on the Windward Coast,—because, forsooth, they are the best of slaves! Their civilization is already in its progress, and needs not the assistance of the slave-trade.

"My Lords, shall I be told "Imagine what civility you please, slavery is the birth-right of the African; and we remove him only from slavery in one place to slavery in another?"—My Lords, slavery is a word of very large indefinite meaning, comprehending a variety of conditions, in fact very different from one another, under a common name. My Lords, I believe it really is the case,—the thing is so represented by two travellers of great credit; by Mr Watt, who not long since made his

way from Sierra Leone into the Foolah Country; and just now by Mr Park, who has penetrated much farther,—I admit that it is the case, that in that part of Africa of which I have been speaking, not more than one fourth part of the inhabitants are of free condition; the other three fourths are slaves. But, my Lords, of what sort is the African slavery in Africa?—My Lords, it seems at this moment perfectly analogous to the slavery of the heroic and the patriarchal ages; when the slave and the freeborn lived so much upon a footing that you could hardly distinguish the one from the other,—when the Princess Nausicaa took a part in the labour of her female slaves—and the slave-girls, when the common task was finished, were the playmates of the Princess,—when Abraham's confidential slave, sent to choose a wife for his master's eldest son, found the lady de-

signed by Providence to be joined in marriage to so great a man as Isaac, in the laborious office of drawing water for her father's cattle—and the slave of Abraham that came upon this happy errand was received by the parents of the bride with all the respect and hospitality with which they could have received his master. My Lords, the indigenous slavery of Africa is of this kind. The witnesses have told you, that persons not well acquainted with the country would mistake the domestic slaves for free persons: There is no external distinction; they are dressed alike, they are fed alike, they are lodged alike, and they are all employed alike; the slave is not treated with rigour nor punished with severity; the master cannot legally sell his domestic slave, unless for crime, and with the consent and approbation of the family. This is the description which your Lordships

have received of the African slavery from the witnesses examined at your bar upon the present occasion: It is the same in substance as was given some years since by different persons examined before the House of Commons; and it is confirmed by the relations of Mr Watt and Mr Park. My Lords, it is absurd to compare this sort of slavery with that to which the slave-trade consigns the African: No two things can be more unlike; they agree in nothing but the name.

"My Lords, I have trespassed much longer than I thought to do upon the indulgence of the House; and I could wish to abstain entirely, as I at first proposed, from every thing relating to the subject of general abolition, without any immediate bearing upon the particular question of this bill. But, my Lords, an argument was set up at the bar, and applied to the

present bill,—though, in my judgment, it more belonged to the general question,—of such a sort, that it might not become the holy robe I wear were I to let it pass unnoticed.

"My Lords, the learned counsel who replied to the summing up of the learned counsel for the Sierra Leone Company said, that if the slave-trade were the wicked sinful thing which those who would abolish it conceive it to be, it is very strange there should be no prohibition, no reprobation of slavery, in the Holy Scriptures either of the Old or New Testament. The learned counsel evidently wished your Lordships to conclude, that the slave-trade is at least not condemned, if not sanctioned, by religion. My Lords, that learned counsel has studied his law-books with more critical accuracy than his Bible, or he never would have been the great and able lawyer

that he is; he would have been no better lawyer than he is divine,—that is to say, he would have been a very bad one.

"My Lords, the sentiments of a right reverend prelate, while he lived a dear and valued friend of mine,* have been cited in this night's debate, as if they had in some degree coincided with those of the learned counsel upon the subject. True it is, that about the time when the question of abolition first began to be agitated, the right reverend prelate let fall something in a sermon, about a danger which he apprehended might arise from exciting the public mind upon the subject of the slave-trade, while it was protected by the laws, and while the matter was under the examination of the Privy Council. I confess

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* Dr Samuel Hallifax, Lord Bishop of Gloucester, afterwards of St Asaph.

that I never saw that danger; and I am confident, were the right reverend prelate among us now, his sentiments upon the scriptural part of the argument would not be very different from mine. Be that as it may, I am confident, that in what I am about to deliver upon that subject, I shall have the concurrence of my right reverend brethren near me.

"My Lords, I do certainly admit, that there is no prohibition of slavery in the Bible, in explicit terms,—such as these would be, "Thou shalt not have a slave," or "Thou shalt not hold any one in slavery;" there is no explicit reprobation of slavery by name. My Lords, if I were to say that there was no occasion for any such prohibition or reprobation, because slavery is condemned by something anterior either to the Christian or the Mosaic dispensation, I could support the assertion

by grave authorities,—not the authorities of the new-fashioned advocates of the rights of men,—not such authorities as Vattel or Tom Payne. My Lords, what is the definition of slavery in the Imperial Institutes?—" Servitus est constitutio juris gentium, quâ quis dominio alieno *contra naturam* subjicitur." And they are called slaves, *servi*, because commanders were accustomed to sell prisoners of war, and to save, *servare*, those who otherwise would have been slain. And what is the comment of Vinius upon these paragraphs? —That among Christians this institution of the law of nations is not in use, because " The law of charity has taught Christians, that captives are not to become the slaves of the captors; that they ought not to be sold,—ought not to be compelled to hard labour, nor to submit to many other things in the servile condition."

"But, my Lords, in truth it would be very extraordinary if the Bible contained any such prohibition or reprobation of slavery, in terms, as the learned counsel seems to have searched for in it, and has searched for in vain. My Lords, the Christian religion is an institution not adapted to any particular nation, to any one age, or to any particular form of government; it is universal, for all nations, for all ages, for all forms of government without exception: It therefore enjoins nothing and prohibits nothing but what is universally practicable or universally omissible. Now, my Lords, slavery, though certainly contrary to the nature of man in its perfection, yet is one of those things, which, in the present depraved state of human nature, will in point of fact,—slavery, though not in its worst forms, but in some form or another, will in fact always exist among the sons of

men; it will perhaps always be a part, though a bad part, of the actual condition of the human race. Now, my Lords, the Christian religion, and revealed religion generally, is very cautious how it disturbs the peace of the world by sudden and violent emendations of the political and moral state of man: It gives out general principles, which will work an amendment by degrees; and trusts for the eradication of moral evil, to the slow and silent operation of those general principles. But, my Lords, if you will conclude, that whatever is not expressly prohibited or reprobated in the Holy Scriptures is sanctioned by them, the inference will be extravagant and dangerous. My Lords, the sacred history records, without any expression of disapprobation, the severities exercised by King David upon the vanquished Ammonites, when he put them under

axes, and saws of iron, and harrows of iron, and made them pass through the brick-kilns: Would your Lordships allow it to be a just inference, that religion sanctions generally such treatment of conquered enemies? Because the Christian religion positively enjoins, as it does enjoin most positively, the submission of the individual to the existing government, be it what it may, or in what hands it may,—would your Lordships infer, that the Christian religion gives its sanction to the injustice and oppressions of Nero and Caligula? Yet, my Lords, to all this the argument goes, if from the no-condemnation of any thing in holy writ, we are to conclude the approbation of it, and by consequence the innocency of the practice.

"But, my Lords, in truth I may wave all this: I might concede, if the thing were

true, without prejudice to the cause of abolition, that religion even approves the condition of slavery. My Lords, the question of abolition has nothing to do with the question whether the condition of slavery be allowed or forbidden by religion—whether it be consistent with natural justice or contrary to it: Upon the question of abolition, those who take contrary sides are not at issue about the right or wrong of the condition of slavery; but we are at issue about the right or the wrong of certain modes or means that are used of reducing men to that condition: Are the means which the slave-trade employs for that purpose right or wrong?—Now, my Lords, I do affirm, that although the learned counsel knew not where to find it,—positively I affirm, that the New Testament contains an express reprobation

in terms, an express prohibition of the slave-trade by name, as sinful in a very high degree.

" The apostle St Paul, my Lords, in the First of his Epistles to St Timothy——My Lords, the Bible is to be treated in this House with reverence. If I find occasion, in argument upon a subject like the present, to quote particular texts, any noble lord who may think proper to receive such quotations with a laugh must expect that I call him to order.——I was saying, my Lords, that St Paul, in the First of his Epistles to St Timothy, having spoken of persons that were " lawless and disobedient, ungodly and sinners, unholy and profane," proceeds to specify and distinguish the several characters and descriptions of men to which he applies those very general epithets ; and they are these,—" murderers of fathers, murderers of mothers,

man-slayers, they that defile themselves with mankind, *men-stealers.*" Man-stealing, your Lordships see, is placed by the apostle in the scale of crime next after parricide, homicide, and sodomy. Now what is man-stealing, my Lords?—is it not kidnapping and panyaring? Your Lordships then cannot doubt that this text condemns and prohibits the slave-trade, in one at least of its most productive modes. But, my Lords, I go farther: I maintain that this text, rightly interpreted, condemns and prohibits the slave-trade generally, in all its modes; it ranks the slave-trade, in the descending scale of crime, next after parricide, homicide, and sodomy.

" The original word for which the English Bible gives " men-stealers" is ἀνδραποδιστὴς. Our translators have taken the word in the restricted sense which it bears in the Attic law; in which the δίκη ἀνδρα-

ποδισμοῦ was a criminal prosecution for the specific crime of kidnapping, the penalty of which was death. But your Lordships know, that the phraseology of the Holy Scriptures, especially in the preceptive part, is a popular phraseology; and my noble and learned friend* opposite to me very well knows, that ἀνδραποδιστὴς, in its popular sense, is a person who "deals in men," literally a *slave-trader*: That is the English word, literally and exactly corresponding to the Greek.† That noble and learn-

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* Lord THURLOW.

† "Who will there be to sell you slaves," says Poverty to Chremulus, in the "Plutus," Act Second, Scene Fifth, "when the other will have money in plenty as well as you?" —"Some merchant," replies Chremulus, "desirous of gain, coming from Thessaly, παρὰ πλείστων ἀνδραποδιστῶν, where *slave-traders* are most numerous."—See the Scholiast on the passage.

Much has been said in defence of the slave-trade from the example of antiquity. The fact however is, that the persons who carried it on were universally infamous; for

ed lord knows very well, that the Greek word is so explained by the learned grammarian Eustathius, and by other grammarians of the first authority.* I repeat it therefore, my Lords, once more,—it cannot too often be repeated,—that in this text of Scripture the slave-trade is condemned and prohibited by name, as a thing abominable in the sight of God, and wicked in the next degree to sodomy.

"My Lords, the learned counsel with whose argument I have been dealing closed his eloquent oration with an admonition to your Lordships to beware how you are persuaded to adopt the visionary pro-

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ἀνδραποδιστὴς, "a slave-trader," in the Greek language was an appellation of the highest infamy and reproach: You could not call a man a worse name.—*Vide Schol. Aristoph. Thesmoph.* lin. 825.

* *Eustath. ad Il.* H. 475.
Schol. Aristoph. ad Plut. lin. 521.

jects of fanaticism. My Lords, I know not in what direction that shaft was shot ; and I care not : It concerns not me ; proudly conscious as I am, that with the highest reverence for our holy religion—with the firmest conviction of its truth—with a deep sense, I trust, of the importance of its doctrines and its precepts—the general shape and fashion of my life bears nothing of the stamp of fanaticism. But, my Lords, give me leave, in my turn, to address a word of serious exhortation to your Lordships. Beware, my Lords, how you are persuaded to bury under the opprobrious name of fanaticism the regard which you owe to the great duties of justice and mercy ; for the neglect of which, if you should neglect them, you will be answerable at that tribunal where no prevarication of witnesses can misinform the judge, —where no subtilty of an advocate, miscall-

ing the names of things, " putting evil for good and good for evil, bitter for sweet and sweet for bitter," can mislead his judgment.

The bill was thrown out, by a majority of seven.

UPON THE ADULTERY BILL;

MAY 23, 1800.

ON the 2d of April 1800, Lord AUCKLAND, after expatiating very forcibly and eloquently upon the enormous increase of the vice of adultery, and the perversion as well as abuse of many divorce-bills which had passed the Legislature of this country, moved to bring in a bill to prevent any person divorced for adultery from intermarrying with the guilty person. The bill was accordingly brought in; and upon the third reading, on the 23d of May, a very animated debate arose; in which the Bishop of ROCHESTER thus delivered his sentiments.

"MY LORDS,

"It may seem that I ought to rise with great diffidence before your Lordships, after the admonition I have received, from a noble earl* who spoke early in this night's debate, of my utter incapacity to form any judgment in a matter of the sort now before the House. But, my Lords, I am encouraged, by the example of the noble and learned lord upon the woolsack, and by the example of a right reverend prelate near me; who, notwithstanding they were equally with myself included in the incapacity imputed in common to recluses of the law and to recluses of the church—to legal and ecclesiastical monks, have nevertheless adventured to give their opinion upon the present occasion. But, my Lords, much more than by the ex-

* The Earl of CARLISLE.

ample of the noble and learned lord upon the woolsack, much more than by the example of the right reverend prelate near me, I feel myself emboldened by the public judgment of my country—by repeated and express declarations in the statute-book. My Lords, at a time when there was little partiality for the authority of the church, in the reign of Henry the Eighth, it is repeatedly asserted in the statutes—asserted as the ground of many particular enactments, that the proper judges in causes matrimonial are divines and canonists; that divines and canonists are the persons best qualified to judge of the crime of adultery—what is to be deemed adultery—what punishments should be applied to it. And the temporal judges in those times gave the same opinion: When prohibition was prayed to stop proceedings in the ecclesiastical courts in causes of adul-

tery, it was constantly refused; and refused upon this avowed principle, by the Justices in the Court of King's Bench, —that the ecclesiastical courts were the proper courts to have cognizance of adultery, because it is a matter in which divines and canonists are the most competent judges. That branch therefore of the law with which the present question is most immediately connected, the wisdom of our ancestors has placed in the hands of those whom the noble earl pronounces incapable of forming any sound judgment in such matters.

" My Lords, I was perfectly astonished at the reflections which the noble earl thought proper to cast upon the ecclesiastical courts. One of his lordship's great objections to the present bill is, that, introducing a new punishment of adultery, it nevertheless reserves the jurisdiction of

these courts. The noble earl talks of this jurisdiction as a perfect nuisance in the country: The ecclesiastical courts, in the noble earl's conceptions, are an Augæan stable, which want a Hercules to cleanse them. My Lords, I must tell the noble earl, what I need not tell your Lordships, that the proceedings in the ecclesiastical courts are as regular, and go with as much certainty to serve the purposes of substantial justice, as those in the temporal courts. It is true, my Lords, they have, in those matters that are subject to their cognizance, a system of law and jurisprudence of their own, and their own forms of proceeding: But their system is a wise, well-digested system, founded on the general principles of justice; and their forms are regular, known, and certain: And, in the hands in which the administration of that part of the law of the country is at present

placed, and has been placed for a long time backward, no one will presume to say that justice is not distributed with as much ability and as much integrity in those courts as in any other court of law or equity in Great Britain.

" My Lords, I derive farther encouragement to offer my opinion upon the present occasion, from the example of my noble friend the original mover of this bill: For, my Lords, the incapacity imputed to me and the recluses of the law is not confined to us; it extends over various descriptions of persons in this assembly, and my noble friend is included under the same disability. My Lords, it seems his grave and weighty occupations as a public minister at foreign courts have kept him retired like us from scenes of gayety and dissipation; and he is destitute of all that ability for the present discussion which is

not to be acquired without much experience in the arts of practical gallantry! My Lords, these men of public business—these foreign ministers, are all of them, like myself, like my brethren on this bench, like the noble and learned lord upon the woolsack, like his brethren in Westminster Hall,—they are all very drivellers in these subjects; monks, recluses, mere old women, my Lords: It is a shame you should mind any thing they say!

"However, my Lords, I shall take courage to offer my opinion, such as it may be, perhaps at some length, upon the present subject. My Lords, the objections to the bill have been taken upon so many different grounds,—what they want singly in weight, they so abundantly make up in number,—that although I am not at a loss what to reply to any one, I am indeed much at loss with which to begin. There

is so little coherence in the different objections among themselves, that they lead to no particular order; and to give perspicuity, and what I can of brevity, to my argument, I must endeavour to reduce them to some general heads.

" One ground of objection has been, that the bill is an alteration of the laws of the land.

" Another, that it gives a double punishment for one crime; not taking away the action of damages when it makes the adulterer liable to indictment.

" The divine law has been much brought in question. It is contended on our side, that the marriage of a divorced adulteress with the adulterer is itself adultery, by the law of God: The opposers of the bill not only deny this, but they allege the law of God in justification of such marriages.

" Another objection is,—and a great one it would be, if it could be made out,—that the effect of the clause prohibiting such marriages will be the very reverse of that which the promoters of the bill expect; that it will promote adultery, instead of restraining it.

" Now, my Lords, with respect to the first objection—that the bill will change the law of the land, your Lordships may remember, that in a former debate I ventured to meet this objection, so far as it regards that part of the bill which makes adultery a misdemeanour punishable by the temporal courts, with a flat denial. I said that this did not amount to a change of the law; and I was doubtful whether in this I should have the concurrence of the noble and learned lord upon the woolsack: But, my Lords, I have the satisfaction to find, from what I have heard this night, that

there is no difference of opinion between the noble and learned lord and me upon this more than upon any other part of the subject; the noble lord having stated, with more precision and accuracy, the very same distinctions which were in my mind when I made the assertion, and are indeed the ground of it. My Lords, if the bill created any new crime,—if it made that criminal which the law never considered or treated as a crime before,—that I should allow to be a very material alteration of the laws of England: But no new crime is created; adultery always was a crime by the laws of England; a new punishment is applied, and a new mode of prosecution is established. But when the penalties hitherto applied have been found insufficient to the prevention of the crime, and the mode of prosecution ineffectual, I cannot admit, that the enactment of strong-

er penalties, and the introduction of a more vigorous mode of prosecution, are an essential alteration of the law. These measures seem to me to be only an affirmance of the old law,—means of enforcing obedience —of preventing those offences which it always was an object of the law to prevent, by adequate punishments. I cannot see that the making of adultery a misdemeanour is any dangerous innovation in the law; it is only a strengthening of it.

"Noble lords contend, that even this reasoning (the justice of which, I know, they admit not) is not applicable to what they call the abominable clause: This, they say, is an alteration of the law upon my own principles; since it makes that henceforth unlawful which at present is lawful, inasmuch as the marriage of the divorced adulteress with her seducer is not

forbidden by the law of England as it stands at present.

"But, my Lords, here again I must dissent: I maintain, that the bill, in this particular clause, is the very reverse of innovation. I say, my Lords, that the present practice is a departure from the true principles of the law, and from the ancient practice; and that this bill, in the abominable clause, reverting to the old principle and restoring the old practice, instead of innovating abolishes innovation. My Lords, inasmuch as causes matrimonial belong to the ecclesiastical jurisdiction, the canon law, so far as it has not been altered by statute, and so far as it has been uniformly adopted as the rule of our ecclesiastical courts, is upon this subject a branch of the common law of England. By the common law of England therefore

(for by the old canon law, the law of this subject), parties separated *a mensâ et thoro* by the sentence of the court are not allowed to contract a new marriage, the one during the life of the other; and any new marriage so contracted is illegal; and the cohabitation of parties under colour of such illegal marriage is adultery. "In all sentences for divorce and separation *a thoro et mensâ*, there shall be a caution and restraint inserted in the act of the said sentence, that the parties so separated shall live chastely and continently; neither shall they during each other's life contract matrimony with other person." This is the 107th of our canons of 1603: But this is only the general rule of the old canon law transferred into the domestic canons of our reformed church; for what says the old canon law?—"Nec illi nubere conceditur, vivo viro a quo re-

cessit,—neque huic alteram ducere, vivâ uxore quam dimisit," And of the same tenor were our own ancient constitutions. " Secundum evangelicam disciplinam, nec uxor a viro dimissa alium accipiat virum, vivente viro suo,—nec vir aliam accipiat uxorem, vivente uxore priore; sed ita maneant, aut sibimet reconcilientur." This was the condition of separated parties,—both absolutely restrained from contracting any new marriage during their joint lives; till it was first proposed, in the *Reformatio Legum*, in the case of separation for cause of adultery, to give the injured party liberty of marrying again, but with express restriction of the indulgence to the innocent party. " Cum alter conjux adulterii damnatus est, alteri licebit *innocenti* novum ad matrimonium si volet progredi; nec enim asque adeo debet *integra persona* crimine alieno premi, cœlibatus ut invitæ possit

obtrudi. Quapropter, *integra persona* non habebitur adultera, si novo se matrimonio devinxerit." But as the *Reformatio Legum* never passed into a law, the practice came in by degrees of giving this liberty to the husband separated from an adulterous wife, by those private bills of divorce which are now become so common; but it never was in the imagination of the Legislature, when such bills were first introduced, that they were to go to the effect of setting the adulteress at liberty,—that an act of the Legislature, relieving the injured husband from the difficulties his wife's guilt had brought upon him, was to enable the guilty wife to carry her wicked purpose to its ultimate effect. This extravagant notion, I believe, took its rise from the strange principle set up by Archbishop Cranmer and his associates in the case of Lord Northampton; which was recited by a noble lord, I be-

lieve with accuracy, in a former debate. Archbishop Cranmer, and those who sat with him upon that question, upon his suggestion said, that a marriage once dissolved was as though it never had been had, and that both parties were set at liberty. With a great reverence for the memory of that illustrious reformer, I have no hesitation in saying, that upon this occasion the venerable Archbishop reasoned more like a monk than a senator: He came to a conclusion upon a great question of law and justice upon a mere logical subtilty; applying abstract principles to a practical question, without due accommodation of them to the particular circumstances of the case; in which way of application abstract principles are apt to be fallacious.*

* It is to be observed, however, that the intended application of the principle was only to the relief of the injured husband: For the question before the Committee of

The conclusion to which he came I maintain to be contrary to one of the most universal rules of jurisprudence,—that no law is to be so interpreted as to make any one the better for his own wrong. But is not the adulteress the better for her own wrong, if, when separated from her husband for her crime, she is, by virtue of that very separation—that is in effect by virtue of her crime, set at liberty to go on to the full satisfaction of her criminal desires, under the sanction of a legal marriage with her seducer?—I maintain, that every such marriage is contrary to the true principles of the law of England, and contrary to the

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Bishops was only this,—whether the Lord Northampton, separated from his wife for her adultery, might lawfully and conscientiously contract a new marriage, the divorced wife living. Their decision, with respect to him, was just; but the principle, in the extent in which it was laid down, was absurd, and has been the source of much mischief and confusion.

original intention of the Legislature in granting bills of divorce. And this bill recalls, as I have said, the true principles and the old practice.

"But, my Lords, I must explicitly disclaim an inference that has been fastened upon this assertion of mine,—an inference which I not only disclaim, but abominate. It has been said, that if these principles of mine are true, the marriages (which are very numerous) that have of late years taken place between divorced wives and their seducers must be absolutely null and void, and the offspring of all such marriages must be illegitimate. My Lords, that the validity of all these marriages stands upon no better ground than a practice swerving from principle, I ever will maintain; but that they are not to be deemed valid, after the continuance of the practice for so many years, with the con-

nivance of the courts of law and of the Legislature,—that the children of all such marriages are illegitimate,—these would be mischievous wicked inferences. This is not the only instance in which wise laws have suffered a sort of tacit repeal, by a general consent in the neglect of them, and have passed into desuetude; and in such cases the old law cannot safely be restored but by new enactments: And to every thing previous to those new enactments the rule applies, "Quod fieri non debet, factum valet."* But, my Lords, if the case of these marriages were as the objec-

* And this rule must be applied, even in cases in which a law of the country, founded on the divine law, has through inadvertence and a misconstruction of the law been infringed for a long course of time, and in numerous instances. The error must be corrected for the future without retrospect. The Mosaic law went even farther than this; when, for political reasons, it tolerated the continuance of practices very inconsistent with the original institution of marriage.

tion to my argument supposes, it would be an additional argument for this bill. This bill puts out of doubt the validity of all these marriages already had, and the legitimacy of the offspring: If the one or the other could be called in question as they now stand, when once this bill shall be passed into a law they never can be called in question. For what says the bill?—That "after the passing of this act, it shall not be lawful, &c." My Lords, the very passing of a bill to make a thing unlawful for all time to come, implies, of necessity implies, that in time past, previous to the passing of the bill, the thing was deemed lawful; so that this bill, making such marriages in future, but in future only, unlawful, legalizes all that have been already had, and lays asleep all doubts about the civil condition of the offspring.

"But, my Lords, by the letter of the divine law, I persist in my assertion, that all these intermarriages of the adulteress with her seducer, after a bill of divorce from her former husband, are adulteries. A noble earl has gone so far in the contrary opinion, as to maintain that such marriages, so far from being forbidden, are commanded by the divine law. In proof of this, the noble earl produced a paragraph of the Mosaic law, in which it is commanded, that if a man lie with a damsel that is not betrothed, "she shall be his wife; he may not put her away all his days."* But this relates only to virgins; "a damsel that is a virgin" are the very words of the text. There is no sort of doubt, that by the Mosaic law, a man having deflowered a virgin, was obliged to

* Deuteronomy, xxii. 28, 29.

marry her; but let the noble earl look again, and find me, if he can, any law of Moses, or any passage in the whole Bible, which commands or even permits the divorced adulteress to marry the partaker of her guilt.

"But, my Lords, when I speak of the divine law, I mean the divine law as it stands under the gospel: By that law, I contend, these marriages are adulteries. By the laws of Moses, the punishment of adultery was death; and a large power of repudiation was given to the husband for inferior offences. In the later periods of the Jewish history, when the morals of the people were exceedingly relaxed and depraved, capital punishment in the case of adultery was rarely inflicted; but the power of repudiation was used in an extent beyond any thing the letter of the law could justify; and this the more sober

part of the nation seem to have understood. Our Lord was consulted concerning the propriety of such divorces: His answer was, that by the original institution of marriage, the contract was indissoluble,—that the liberty of divorce under the Mosaic law was an accommodation to a certain hardness of heart among the Jewish people,—that from the beginning it was not so. He adds—" And I say unto you (I, in conformity to the spirit of the institution, thus lay down *my* law), whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and whoso marrieth her which is put away committeth adultery."* In the First Epistle to the

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* Matthew, xix. 3—9. In this 9th verse, " I say unto you, &c." our Lord lays down his own law, without regard to the law of Moses, which he abrogates. By Christ's law, the man who puts away his wife, except for adultery, and

Corinthians, St Paul lays down the same rule as a positive command of our Lord, with respect to married persons both Christians. Where one of the parties was a heathen or a Jew, and the other a Christian, the case admitted some exceptions: But in the case of husband and wife both Christian, the apostle says—" Unto the married I command (not I, but the Lord), let not the wife be separated from her husband; but if she be separated, let her remain unmarried, or be reconciled to her husband."* The apostle enjoins this, not

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marries another, commits adultery; and he who marries her thus put away by Christ's law, for adultery, the only cause of putting away under Christ's law, committeth adultery. This is the only exposition which our Lord's words can bear: For, by the law of Moses, it was not adultery for a man to put away his wife for another cause than adultery, and marry another; neither was it adultery by the Mosaic law for another man to marry a woman put away. See Deuteronomy, xxiv. 1, 2.

* 1 Corinthians, vii. 10, 11.

as from himself, but as a positive command of Christ. The apostle therefore agrees in my interpretation of our Lord's words, when I say, that, as the divine law is laid down by our Lord himself in his answer to the Pharisees, the cohabitation of a divorced adulteress with her seducer under colour of a marriage, notwithstanding the connivance of human laws, is gross adultery.

" My Lords, in a former night's debate (to which I may be permitted to allude, though not strictly in order; because it was agreed on both sides, to postpone the discussion of points of argument then generally opened till the bill should reach its present stage),—I say, my Lords, when what I have just now said of the marriages of these divorced women under the law of the gospel fell from me in a former night's debate, a noble earl quarrelled with the pre-

sumption, as it seemed to him, of the assertion; reminding me that the cause of those whom I ventured to call adulteresses was not to be judged before the Last Great Day; and the noble earl added, that on that day he knew it would be judged mercifully. My Lords, I really believe there is less difference between the noble earl's sentiments upon that point and mine than the noble earl himself imagines. The noble earl seems to confound two things which are totally distinct,—the general enactments of the divine law; and the application of those general enactments to fix the final doom of every individual. My Lords, if I say that the crime of adultery is generally forbidden by the Ten Commandments, the noble earl will not contradict me or tax me with presumption: If I say that adultery is generally forbidden by the Christian religion, under pain

of eternal damnation, the noble earl will not contradict me, nor tax me with presumption. What is to be deemed adultery, the noble earl and I shall not agree. If I say that the marriage of the wife divorced for adultery with her seducer is itself adultery of the most heinous kind, the noble earl will contradict me, because he holds the contrary opinion: Still he has no right to tax me with presumption; since, in my judgment, the case has been so ruled by what I suppose I may be allowed to call the very highest ecclesiastical authority. But, my Lords, if I were to assert of any individual adulteress, she is lost for ever, she has been guilty of that which never can be pardoned,—much more, were I to assert of all the women who have wantonly contracted marriage with the seducers of their affections from their former husbands,—if I were to pro-

nounce of all these adulteresses, or of any one of them, that their irreversible doom is to endless punishment,—my Lords, I should be guilty of most impious horrible presumption, and I should justly incur the noble earl's reprehension. My Lords, it is my duty to teach and to maintain, that there is no crime which, upon a true repentance, God will not pardon: And God forbid that I should think otherwise of these unfortunate women, than that many of them will be brought to sincere repentance; and when once they are brought to repentance, their pardon is certain. If the noble earl, therefore, when he says their case will be mercifully judged at the Last Day, means only that the merciful provision of the gospel for the pardon of penitent sinners extends to this species of sin as much as to any other, I entirely concur with the noble earl in that opinion: Still

I must assert, that the cohabitation of a wife divorced for adultery with a new husband, the former husband living, is adultery by the divine law; since I have for that opinion the decision of our Lord himself, and the apostle's exposition agreeing with my own upon that decision.

"My Lords, I believe I have taken this discussion upon the divine law somewhat out of the order of general heads which I laid down; and I must now go back to another ground of objection, which, to say the truth, in the variety of matter that presses upon me in this argument, I had almost forgotten,—namely, that this bill, not taking away the husband's action of damages when it makes the adulterer liable to indictment, in effect gives a double punishment for the same crime. My Lords, is this any novelty in the law of this country? Are there not many cases in which

a party, injured by such act of another as is at the same time a public crime and a private wrong, is at liberty to pursue the offender either by indictment or action of damages? But in such cases, the guilty party is not liable to both punishments; he is not to suffer for misdemeanour and to pay damages too. I believe, in all these cases there is a particular process by which his Majesty's Attorney-General calls upon the party complaining to make his election whether he will proceed by indictment or by action of damages: He is at liberty to take his remedy in either way, but not in both. And this, my Lords, I apprehend, will be the case under this bill. This, however, is a point upon which I speak with diffidence, because it belongs to the learning of monks of another order: But if I have described the practice of the courts erroneously, I hope the Superior of

that other order, the noble and learned lord upon the woolsack, will contradict me.

"But, my Lords, we are told that the action of damages tends to promote adultery; and that, for this reason, a bill brought in for the prevention of adultery ought to abolish that action. It is supposed to promote adultery in this way: Many a base sordid husband contrives to offer his wife to the arts of a seducer, in order to enrich himself by the damages which he hopes to recover. My Lords, I agree with the noble and learned lord upon the woolsack, in the opinion he delivered the other night, that the injured husband, in certain situations in life, may fairly and honourably seek the benefit of the action of damages; and that he ought not to be deprived of it: But in cases of connivance and collusion, it is my belief that the damages given by the jury never are received. And this is a strong

argument for another mode of punishment, not liable to be evaded by the collusion and secret good understanding of the parties.

" I come now, my Lords, to consider the last article of objection, taken from the supposed effect of what is called the abominable clause; as if that were likely to be the reverse of what the promoters of the bill expect from it.

" Upon this head, it has been argued, that the experience of the thing is positively against us. This inference from experience is not very clearly made out; but it is founded on a comparison of the manners of the women in this country, where the practice of divorce for cause of adultery obtains, with the manners of married women in foreign countries professing the Roman Catholic religion, which allows not of divorce for any cause. It is said that

in those countries adultery is far more frequent; and this greater frequency of the crime is ascribed to the absolute disuse and prohibition of divorce in those countries. My Lords, I am very ready to believe the fact, and very ready to admit that the true cause is assigned for it; because I can easily imagine, that the women will be less strict, where they know, that be their conduct ever so bad, their husbands cannot cast them off, but are still under the necessity of supporting them as their wives, and must father the offspring. This seems indeed to be a very strong argument in favour of our practice of divorce for adultery. I have sometimes had doubts upon that point; I have sometimes thought, that it had been a happy thing for the public if no bill of divorce had ever passed: But I confess, that the notorious prevalence of adultery in countries where divorce is by

no means to be had seems to prove the contrary. But, my Lords, there is no farther inference; I can find nothing, in the statement of the case between this and foreign countries, that offers any thing like experiment to decide the present question, in this country, where divorce is admitted, of the policy or impolicy of the restraint proposed to be laid upon divorced women: Nor do I see how it is possible that foreign countries should furnish any such experiment; because divorce must take place before you can have experience of the good or ill of any thing that is to follow it.

"I conceive therefore, that we have no way of judging of the utility or inutility of the restraint proposed by this bill, but by a probable estimation of the different manner in which the minds of parties in adultery are likely to be affected before the actual commission of the crime, by the

law as it now stands, and by the law as it will stand if this bill should pass into a law. This is the only way to judge of the expedience of the clause of restraint as a preventive; in which light I consider it.

"Now, my Lords, I imagine that in most cases of adultery that come before your Lordships, the first incitement to the crime on either side has not been the mere animal appetite—not gross brutal sensuality; that sentiments of mutual friendship and affection have mixed themselves with appetite; that these sentiments of affection have had somewhat of a just foundation, in the amiable qualities and elegant accomplishments of either party: I suppose that this mixed passion, a compound of desires highly criminal and of certain sympathies of the mind in themselves innocent, is in most instances the incentive to the crime on both sides: I may sup-

pose too, that in many cases the husband's treatment of the wife is not such as to recall her wandering affections,—that he cares little about her,—that, from his indifference and her levity, they are become objects of mutual disgust and aversion,—and that the husband perhaps, no less than the wife, has set his heart upon a new connexion. Now, what says the law, according to the present practice, to these three parties?—It says this: "Nothing so easy as for all of you to have your several wishes. Nothing is wanting, but a little money on the part of the husband, who must set the whole scheme a-going, to answer the expense of the law proceedings; and that want the proceedings themselves may perhaps supply. Let the husband give the lady and the lover opportunity; then let him bring his action of damages: His damages, if he takes them, will defray his

charges in the spiritual courts and in both Houses of Parliament. The lady must make no defence; she must kindly supply the husband with the proofs of her own shame: The lover must not defend the action of damages; he may find his account in suffering judgment to go by default. Great damages may be given; but if the husband is opulent, every shilling may be remitted. However that may be, if you can amongst you defray the charges, a divorce will be obtained, and you will all be at liberty." My Lords, is it fit that the laws of a civilized country, of a Christian country, should hold this language to three such parties as I have set before your Lordships,—the indifferent husband, the gay wife, the amorous seducer?

"But now, my Lords, let us see how the matter will stand if the laws are altered in the manner we propose. The lady, I

should think, will have some consideration of the situation to which the indulgence of a criminal passion would reduce her. I shall not dwell upon the miseries of that situation: They have been set forth with so much eloquence and feeling by noble lords who oppose this bill, that no words of mine could heighten the description. But, I ask, can noble lords imagine that the forecast of these sufferings, which they contemplate with such pangs of commiseration in a third person, will have no effect upon the mind of the woman herself, to deter her from those criminal indulgences by which she would be involved in them? Then, my Lords, for the seducer; who probably, as the law is understood, palliates his guilty project to his own mind with the intention of making the lady his own wife if they should be detected and a divorce should take place,—will it be no restraint

upon him, when the law tells him "You shall not be at liberty to give her this protection—to make even this imperfect reparation of her honour?" That a divorced wife, by marriage with her seducer, is reinstated in the character and rank which she held in society as a virtuous woman, is certainly not the case: However, she is brought into a situation of tolerable ease; in which she finds it not difficult to forego the enjoyment of that cast of society from which she is excluded. Will it be no restraint upon her lover, when the law tells him "It shall not be in your power to raise her even this step above the condition of absolute scorn and infamy: You shall not be allowed to confer upon her the name of wife?"

"Noble lords say "No; this will be no restraint upon his passions: It will be an incentive." Noble lords say, that it never

is in the contemplation of a seducer to marry the woman upon whom his arts succeed: That no man, of his own good-liking and free-will, marries the woman he has corrupted: That the marriage is a matter of dire necessity, which the imperious laws of gallantry, it seems, impose upon him; and, extricated from the shackles of those laws by the operation of our bill, he will pursue his base purposes with less scruple and hesitation.

"My Lords, I really think this man of gallantry is very ill treated by his noble friends. My Lords, I gave him, under the impulse of a criminal passion, some portion, however, of the feelings of a man —some share of the sentiments of a gentleman. His noble friends turn him into a downright hog; for, my Lords, there remains nothing but bare unqualified sensuality to be the incitement to the conduct

which they impute to him. My Lords, I really believe that neither this bill nor any other you can frame will restrain the passions of this swinish seducer. But frequent as the crime of adultery is, I hope, my Lords, that these swinish seducers are very few in number. My Lords, when we have spoken of connivance and collusion on the part of the husband, which we believe to be very common, noble lords on the other side have exclaimed "What! do you think husbands are so base? Your supposition is a libel on the character of the English gentleman!" My Lords, I tell those noble lords, *their* supposition is the libel on the character of the English gentleman: Though I cannot consent to couple the epithet of honourable with the appellation of adulterer, yet I am confident the swinish adulterer is a very rare character

indeed among my countrymen. And on any but that character, this bill will be a powerful restraint.

" And now, my Lords, with respect to the situation of the divorced adulteress under the operation of this bill,—it will unquestionably be a situation of extreme degradation and affliction; yet it is not a hardship brought upon her by this bill: She brings herself to it by her crime; and the bill only says, that she shall not be allowed to extricate herself from it by the very completion of a guilty project. And if this restriction be a punishment for one that will actually incur the punishment, numbers will be saved by the terror of the example.

" But noble lords say the situation of the fallen woman will be such as must drive her to absolute desperation, render

repentance and the reformation of her life impossible, and exclude her from all hopes of future mercy.

" My Lords, that she cannot in the present world recover her situation in society, I admit; but I conceive that very circumstance, the mortified and solitary state to which she will be condemned, will be the surest means of bringing her to deep reflection—through reflection to repentance—through repentance to pardon. If she has any sense of religion remaining in her mind,—and God forbid I should suppose it totally extinguished,—the less she has of comfort and countenance in the world, with the more earnestness will she turn herself to God. She is surely more likely to repent in a state of retirement and solitude, than clasped in the arms of her seducer, and sharing with him in gayety and pleasure. Do noble lords conceive that the

repentance of a sinner is impeded by the punishments applied to his crimes by the secular magistrate?—My Lords, my opinion is far otherwise: I have not the least doubt, that severe laws, and a severe execution of the laws, have often been the beginning at least of a complete radical reform in minds too depraved and hardened to be wrought upon by any other means: I have no doubt, that many of the worst criminals that die by the hand of the executioner, are brought, by the sentence which they suffer here, to a deep sense of their crimes, and to that repentance which will avail them in the Last Day. My Lords, this is the presumption of our forms of law,—this is the opinion of the church. According to the received forms of law, the judge never pronounces sentence of death upon a criminal, but he adds "The Lord have mercy on your soul!" which

would be a wicked mockery of the man's dreadful situation if his soul were utterly without hope of mercy. The church appoints a clergyman to attend the condemned malefactor in the interval between sentence and execution, to prepare him for death, and to assist him in making his peace with God; and if he gives signs of genuine repentance, the church so much relies on the acceptance of that repentance, that she permits him to be admitted to the sacrament. Thus dying by the stroke of vindictive justice, he dies in the peace and communion of the church; he dies a reconciled penitent, in the hope of final pardon. My Lords, were the case otherwise, I know not upon what principle capital punishments could be justified in a Christian country; for a sentence of death would be a sentence of much more than death,—an anticipation of the dreadful sen-

tence to everlasting torment. Now, my Lords, God forbid that I should deny to these unfortunate women the comfort of that hope which I extend to the very worst of malefactors; I doubt not, but that numbers of them will be brought to repentance and to mercy: But I contend, that the restraints laid upon them by this bill will be the most likely means to awaken them to repentance; so that this very severity in its effect is mercy.

"My Lords, you have been addressed as fathers,—you have been entreated not to be severe against those infirmities of our common nature from which your own daughters, with all the advantages of high breeding, cannot be exempt. My Lords, I too call upon you as *fathers*; I demand of you, not connivance at the shame, but protection of the innocence and honour of your daughters! A father may have many

daughters; if one of these is betrayed by those infirmities of our common nature, how is the father to protect the honour of the rest? Will he think its security too dearly bought by the sufferings of the guilty? How is it to be secured at all, if this guilt is generally to escape with impunity?—But, my Lords, I address you not as fathers individually: I say, that the innocence of daughters is a matter in which fathers ought to make a common cause; and the feelings of the individual must be sacrificed, when the occasion requires it, to the common interest.

"My Lords, once more I conjure you to remember, that justice, not compassion for the guilty, is the great principle of legislation. Yet, my Lords, your compassion may find worthy objects: Turn, my Lords, your merciful regards to the illustrious suppliants prostrate at this moment

at your bar,—Conjugal Fidelity, Domestic Happiness, Public Manners, the Virtue of the Sex! *These*, my Lords, are the suppliants now kneeling before you, and imploring the protection of your wisdom and your justice."

The bill was carried, by a majority of eight; seventy-seven peers voting for it, sixty-nine against it.

UPON THE BILL TO PREVENT THE INCREASE OF PAPISTS, AND TO REGULATE THE EXISTING MONASTIC INSTITUTIONS;

JULY 10, 1800.

A BILL having passed the House of Commons, entitled "an act to prevent any addition to the number of persons belonging to certain foreign religious orders or communities lately settled in this kingdom, and to regulate the education of youth by such persons," the same was moved for commitment in the Upper House on the 10th of July 1800. The framers of this bill contended, that the growth of Popery had come to such an excess by the toleration granted to the emigrant clergy and the exiled monks and nuns of France, that

strong measures were required to stop it. The bill therefore provided, that the temporary residents in the several monasteries in the kingdom be subject to the provisions of the alien act; that the names and numbers of all such persons be returned to the magistrates in their respective districts; that the farther extension of such institutions should be prohibited; that the heads of all such monasteries return their names, &c. together with that of their pupils, at every quarter-sessions; and that magistrates should in their districts inspect the same. The bill was strongly opposed by the Bishop of Rochester, in the following words.

"MY LORDS,

"If I have not opposed the second reading of this bill, it is because I

conceive that your Lordships are seldom clearly informed of the principle of a bill till it has been read a second time. The first reading is little more than a notification that a bill for such or such a purpose is in the House; and, at this period of the session, we are so little in the habit of a close attendance upon our Parliamentary duty, that it happens to many of your Lordships not to see the prints that are laid upon the table till within a few minutes of the second reading. But the bill having now received its second reading, I must suppose your Lordships to be in complete possession of its principle; and I rise without the least hesitation to oppose its farther progress. In this, my Lords, I shall labour under this particular disadvantage,—that none of the friends of the bill having taken the trouble to open what they take to be its merits, I can only guess

what they will find to say in support of it: I can therefore only state my own objections; and reply to the supposed arguments of the other side, by guess and divination.

"My Lords, the object of the bill is to provide a security against certain dangers which it is supposed may arise from the great influx of persons of the Roman Catholic religion into this country, in consequence of the French Revolution,—to provide a security against these dangers by a new power to be placed in the hands of the Crown. My Lords, my objection is,—that in one respect the bill is unnecessary, and in another completely unconstitutional: It is unnecessary as a means of security against the dangers it foresees,—not because the apprehension is altogether groundless, but because the security is already provided by the existing laws; and

in regard to the new power which it would give to the Crown, it is perfectly unconstitutional.

"My Lords, the storm of antichristian persecution, which has raged in France since her Revolution, has driven numbers both of the secular clergy, and persons of both sexes of the religious orders, to take shelter in this hospitable land, by the natural generosity of Britons, and the influence of the benevolent principles of the Protestant religion, the universal asylum of the persecuted and distressed. My Lords, the protection we have given to these miserable fugitives reflects the highest honour upon the country, and upon the Protestant religion, which we profess. At the same time, my Lords, while we extend this kindness to persons of a different religious persuasion, it certainly becomes the wisdom of the Legislature, to

look to the consequences that may arise to our own civil constitution and our own ecclesiastical establishment, and to provide for the security of both: But, my Lords, I contend that the security of both is sufficiently provided for by the existing laws, —better provided for by them than by this bill; and that any new law for the purpose is altogether unnecessary: And I am always an enemy to the multiplication of statutes without urgent necessity.

"My Lords, before I enter upon the particular dangers which the bill would prevent, and the means of prevention afforded by the existing laws, I believe it will be proper to premise some general observations upon the statutes which relate to persons professing the Roman Catholic religion, as they stand at present. This may somewhat shorten the sequel of my argument; and I feel, that in spite of all

I can do to abbreviate, the detail into which I shall be obliged to enter will detain your Lordships much longer than I could wish: But somewhat I hope of brevity, and much of perspicuity, will be gained by the preliminary observations I am about to make.

"First, my Lords, I would observe, that all laws respecting Roman Catholics apply equally, without any difference or discrimination, to the natural-born subjects of his Majesty and to aliens. This is the case both of the old penal statutes and of the late statutes of relief: The penalty attaches upon any overt act of Popery, whether he who commits it be a natural-born subject or an alien, without any regard to that difference of condition. On the other hand, the late statutes for the relief of Roman Catholics from some penalties, upon certain conditions,—the be-

nefit, I say, of these extends equally to the alien and natural-born subject: These statutes of relief relieve equally, and under the same conditions, all persons on whom the penalties would otherwise attach; the alien is equally with the natural-born subject entitled to the relief, if he perform the condition under which the relief is held out.

"My Lords, another observation I have to make upon these laws is this: It is very important; and I believe the thing is not generally understood,—it certainly was not understood by the framers of this bill. My Lords, by the late statutes for the relief of Roman Catholics, not one of the old penal statutes is repealed,—except indeed certain clauses in a statute of the 11th and 12th of William the Third, subjecting any Popish bishop, priest, or Jesuit, who should say mass, or exercise any part

of the function of a Popish bishop or priest, and any person professing the Popish religion who should keep a school or take youth to board, to perpetual imprisonment; entitling any person who should apprehend and prosecute to conviction any Popish bishop, priest, or Jesuit, to a reward of 100*l.*; and creating certain disabilities of taking lands by descent, devise, or limitation. These odious clauses in the statute of King William are indeed repealed by an act of the 18th of the King: But, with the exception of these clauses, my Lords, not one of the old penal statutes is repealed. My Lords, I speak in the presence of those who are well acquainted with this subject: I am therefore in no apprehension that I shall mislead your Lordships; I hope I shall be myself set right, if I am in error. But, my Lords, I repeat my assertion, desiring to be contradicted if

I am wrong,—with the exception of so much as I have mentioned of the statute of King William, not an atom of the old penal law is repealed.*

"It is true, my Lords, a statute was passed, in the 31st of the King, to relieve persons professing the Roman Catholic religion from certain penalties, under certain conditions. But, my Lords, this statute, without repealing any one of the old penal laws, gives its relief in this manner, and in no other: It requires that the Roman Catholic shall take and subscribe a certain oath and declaration; which, with respect to him, is an oath of allegiance, supremacy, and abjuration: Then it enacts, that no person who has taken and subscribed this oath and declaration shall

* This was said to provoke a noble duke to speak out, who made signs, as they were understood, of dissent.

henceforth be prosecuted, by virtue of any of the penal statutes, for certain overt acts of Popery, which it names,—such as not going to church, going to mass, or keeping a Popish servant. But as it only stays the prosecution or conviction, without repealing the statute,—if any Roman Catholic refuses or neglects to take and subscribe the oath and declaration, the unrepealed statute is in full force against him; or if, having taken the oath, he does any thing forbidden by the old statutes, which is not mentioned in the statute of relief as one of the things for which he is not to be prosecuted, the old statute is in force, and the penalty for such offence still attaches.

"Having made these general observations upon the laws respecting Roman Catholics, as they now stand, I shall now state to your Lordships the very sufficient security which I conceive they afford against

any danger that may be thought likely to arise from the fugitives from France, the objects of her antichristian persecution.

"My Lords, it is supposed that these ecclesiastics of the church of Rome may have some zeal to propagate the religion to which they are attached, and may take advantage of every opportunity they can find of disseminating the principles of their church among our common people. My Lords, it is very likely: I should expect that the ecclesiastic of the church of Rome would be animated with this zeal; because, my Lords, I conceive that every man that *has* a religion has some zeal for propagating that religion,—meaning, by a religion, some particular shape and form of the Christian religion—a religion affecting the future interests of men, and furnishing means for the securing of those interests. My Lords, I say that every man that has

such a religion has a zeal for the propagation of it: If he has not the zeal, he is not in earnest in his professions. If indeed a man's religion consists merely in negatives, —which is the case with many now-a-days, who would be thought good Christians and the best of Protestants, though they seem to have no acknowledged creed, but a sort of confession of disbelief, without an avowed assent to any thing definite; persons who, not adhering to the original principles of the Reformation, as laid down in the Confession of Faith of the churches of Saxony, and the Thirty-nine Articles of the church of England, think to reform the Reformation, by expunging, one after another, every article of our belief—the Trinity—the incarnation—the atonement—grace—the virtue of the sacraments as means and instruments of the gifts and graces of which they

are signs,—I can easily suppose that such persons will have little zeal about the *caput mortuum* of religion which remains after this dissipation of the substance. The man who puts the Son of Mary upon a level only with the son of Sophronisca,—who acknowledges in our Lord Jesus Christ nothing more than the Socrates of Jerusalem, —will feel, I suppose, no more zeal for the propagation of the moral of the gospel (which is the whole of such a man's Christianity) than I feel to propagate the dry moral of Socrates or of Marcus Antoninus. But every man that has a religion that deserves the name cannot but have something of a zeal for the propagation of it. I suppose, therefore, that the Roman Catholic priest has this zeal; and, my Lords, I bear him no ill-will for it,—conscious that I have it too for our common Christianity,

and for that form of Christianity to which I am attached—the doctrine and rites of the reformed church of England.

" But, my Lords, a man that knows any thing of the world, and of the present state of the Christian religion in the world, will understand, that this zeal, however laudable in itself, is a principle that must be laid under considerable restraint, otherwise it may do much mischief,—mischief to that which it is its object to serve—to religion. In the present state of things, a prudent man, who considers how the interests of churches and of states are connected and blended, will be sensible, that his zeal for the propagation of the particular tenets of his own sect upon many occasions must be repressed,—that it is a part of his religious duty to restrain it. But the public safety must not be trusted to the discretion of individuals: It is fit, therefore, and ne-

cessary, that the laws should lay due restraint upon the irregular sallies of an indiscreet zeal; and, my Lords, this interference of the laws is the more necessary, because the thing to be restrained is in itself not criminal. But, my Lords, I say, that the zeal of the Roman Catholic is very sufficiently restrained by our subsisting statutes. My Lords, the statute of the 3d Jac. cap. 4. is at this day in full force against any person who shall attempt to draw away any one within his Majesty's dominions to the communion of the church of Rome. My Lords, by the 22d and 23d clauses of that statute, and by an older statute, the 23d of Eliz. cap. 1. which also is still in force, "it is *high treason* for any person, either upon the seas, or beyond the seas, or in any other place within the King's dominions, to reconcile or be reconciled to the Pope or See of Rome." To be reconciled indeed

is no longer an offence to be prosecuted under these or any other statutes; because the statute of the 31st of the King says, "that no one complying with the conditions of that statute shall be liable to impeachment or prosecution simply for being a Papist or reputed Papist; or for professing or being educated in the Popish religion; or for hearing or saying mass; or for being a priest or deacon; or entering or belonging to any ecclesiastical order or community of the church of Rome; or for being present at, or performing, or observing, any rite, ceremony, practice, or observation, of the Popish religion; or maintaining or assisting others therein;" provided, &c. But, my Lords, will any one point out to me the clause in the statute of the 31st of the King, or in any other statute now subsisting, which says that a person having reconciled or attempting to reconcile any other person

within the King's dominions to the Pope or See of Rome, shall not be impeached or prosecuted under these statutes of Elizabeth and James as for the offence of high treason; and, if convicted, shall not suffer as a traitor? And, my Lords, I ask, are not the penalties of high treason a sufficient restraint, are they not all the restraint you can lay, upon the zeal of Roman Catholics?

"My Lords, I ought to ask pardon of the House for taking up so much of your time upon this subject of the danger of conversions; because, in truth, it has little connexion with the bill; for the bill takes no notice of this danger, and pretends not to provide any security against it. But, my Lords, I know that the apprehension of this danger is without doors one of the most popular arguments for the bill, and has procured it any favour that it has with the public. People in general have given

themselves no trouble to know more about this bill than that somehow or other it is against Popery, and particularly against the propagation of Popery by the emigrants from France: And you hear it said every day, in commendation of this bill, "Oh! God forbid we should persecute them! but the laws should take care that they do not pervert our own people." So say I, my Lords; but then I say the care is already taken; and I think it right to take this opportunity of setting the public right upon this point—of showing that the supposed merit of the bill, in this particular, rests upon a misconception of the bill itself, and a misunderstanding of the law upon the subject as it actually stands.

"But now, my Lords, I proceed to consider that apprehended danger which is one express and principal object of the bill; a danger apprehended from the impunity

given by the statute of the 31st of the King, under conditions, to Roman Catholic tutors and schoolmasters; of which these fugitives from France, it is supposed, may avail themselves.

"My Lords, the fact must be admitted, that among the fugitives from France are many regulars of both sexes. The monks, however, are very few; and the far greater proportion both of monks and nuns are the natural-born subjects of his Majesty,—English monks and English nuns, who were settled in convents of their own in France and Flanders, because they could make no such settlement in their own country. Their houses have been demolished, their property plundered, their persons harassed; and they have fled into the arms of their mother-country in the hope of finding a shelter here from the fury of Antichrist in a foreign land. With these, some French

monastics of both sexes have made their escape; and they are now all settled in different parts of the country, in houses in which the remaining members of each convent live in common. The monks, as I have said, are few,—English Benedictines settled at Acton Barnell, near Shrewsbury; English Benedictines at Vernon Hall, near Liverpool; English Franciscans, near North Allerton; and English Dominicans at Carshalton, in Surry. The persons of these four different orders amount to no more than twenty-six; and these, with the addition of five miserable Cistercians of the order of La Trappe settled near Wareham, and five Carthusians near Wardour Castle, make the sum-total of monks, English and French, settled in England. The nuns, my Lords, are more numerous; consisting of the surviving members of twenty-two convents in all, of which eighteen were

English, and four only French,—the Bernardine Dames, from Abbey Desprez at Douay, settled at Pentonville, near Islington; the ladies of the order of St Francis de Sales, settled near Little Chelsea; the Benedictine Dames of Montargis, at Bodney Hall, in Norfolk; and the Hospitalieres of Cambray, at or near Ilford, in Essex. The whole number of these four French convents is, I believe, very small. Of the eighteen English, I could state distinctly the different orders, the settlements, and the numbers of each; for I believe I am possessed of pretty accurate and authentic information: But I shall not trouble your Lordships with this detail; I shall only say that the gross number certainly exceeds not three hundred and sixty persons.

"My Lords, all these persons (with the exception of the ten French monks) have qualified themselves to be teachers of youth,

according to the statute of the 31st of the King; and they have opened schools at their respective habitations,—the monks for boys, and the nuns for young ladies.

"My Lords, I, for my part, am well pleased that the Roman Catholics of this country are at last furnished with the means of education for their sons and daughters within the kingdom. My Lords, it was a cruel and a weak policy to compel the Roman Catholics to send their children abroad for that liberal education which they could not receive at home; and I believe your Lordships will agree with me, that a Roman Catholic education at home is a much better thing than a Roman Catholic education in a foreign country. My Lords, for this reason I rejoice at the institution of respectable Roman Catholic schools in different parts of the kingdom. But the friends of the bill, I suppose, will say "It

is very fit that the Roman Catholics should have the liberty and the means of educating their own children in their own principles; but let us take care that they pervert not our children; let them be restrained from taking the children of Protestants to board or educate." Agreed, my Lords; this restriction should certainly be laid upon them. Will your Lordships give me leave to recite the 13th, 14th, 15th, and 16th clauses of the 31st of the King. "No ecclesiastic or other person of the Roman Catholic religion, who shall take and subscribe the oath, &c. shall be prosecuted in any court for teaching or instructing youth as a tutor or schoolmaster: Provided, that no person professing the Roman Catholic religion shall obtain or hold the mastership of any endowed college or school for education of youth, or keep a school in either of the Universities: And provided,

that no schoolmaster professing the Roman Catholic religion shall receive into his school *the child of any Protestant father:* And provided, that no person professing the Roman Catholic religion shall keep a school till his or her name and description shall have been recorded at the quarter-sessions, by the clerk of the peace, &c. And no person offending in the premises (*i. e.* the premises of these three provisos) shall receive any benefit of this act." No schoolmaster, therefore, professing the Roman Catholic religion, who shall receive into his school the child of any Protestant father, is to have any benefit of this act. My Lords, if he has no benefit of this act, he is liable to the penalties of all the subsisting statutes against Popish schoolmasters. And what are those penalties, my Lords?—By the 23d Eliz. (cap. 1. sect. 6.) "Any person who shall keep or maintain

a schoolmaster which shall not repair to church, or be allowed by the bishop or ordinary of the diocese, shall forfeit 10*l.* for every month; and such schoolmaster or teacher presuming to teach contrary to this act, shall be disabled from teaching, and shall be imprisoned for one year." Such, my Lords, are the penalties by the statute of Elizabeth,—upon the person retaining a Popish schoolmaster, a forfeit of 10*l.* per month; upon the schoolmaster, disability, and imprisonment for one whole year. But, my Lords, these being not enough, by the 1st Jac. cap. 4. " No person shall keep any school, or be a schoolmaster, out of any of the universities or colleges of this realm, except it be in some public or free grammar-school, or in some such nobleman's or gentleman's house as are not recusants, or where the same schoolmaster shall be specially licensed thereunto by the

archbishop, bishop, or guardian of the spiritualities of that diocese." And the penalty, my Lords, for offence against this statute, as well upon the schoolmaster as the party that shall retain or maintain him, is a forfeit upon each of them separately of 40s. a day. Forty shillings a day, my Lords, seems a sufficient forfeit to keep any Popish schoolmaster or schoolmistress in pretty good order. But it is said these old laws are a mere dead letter, they are so difficult to be enforced. Difficult to be enforced, my Lords! I maintain that no law is more easy to be enforced than these penal statutes against Popish schoolmasters. My Lords, the statute of King James is a business of *qui tam;* for the forfeit is half to the King and half to the person that sues: And will any man of common information say, that a prosecution by indictment for a misdemeanour under this new bill will be

an easier proceeding than a *qui tam* action? What! my Lords, is a pettifogging attorney nowhere to be found, who would lend his services in this righteous business of bringing Popish schoolmasters and schoolmistresses to condign punishment? But then, it is said, it would be odious to enforce these penal laws. Would it so, my Lords? —then I say it is infinitely more odious to be framing new ones.

"My Lords, I now come to the greatest danger of all, in the apprehension of the framers of this bill; which it is the principal object of the bill to prevent,—the danger that, in consequence of the numerous settlements of nuns and monks, but chiefly of nuns, for the monks are so few that they may be very properly overlooked,—that in consequence of these settlements, monastic institutions may gain a permanent establishment in this country.

"I have stated to your Lordships, that English nuns of eighteen different orders, besides four sets of French nuns, are settled in different parts of the country,—each order in a house of its own; where the persons of the same order live together (but apart from those of other orders), and, otherwise than in the business of education, mix not with the world. Now, my Lords, if any ten or twenty or a larger number of these ladies should choose to take a great house, where they may live together as they have been used to do all their lives, and lead their lives according to their old habits; getting up in the morning and retiring at night at stated hours; dining upon fish on some days of the week, upon eggs on others,—I profess I can discover no crime, no harm, no danger, in all this; and I cannot imagine why we should be anxious to prevent it. My Lords, I say it

would be great cruelty to attempt to prevent it; for, my Lords, these women could find no comfort in any society but their own, nor in any other way of life. My Lords, they cannot mix with the lower order of the people: They are ladies, well-born (many of them indeed of high extraction), and of cultivated minds. And yet, my Lords, they are not prepared to mix in the politer circles. Enamoured, by long habit, of the quiet and solitude of their cells,—absorbed in the pleasures of what *they* call the interior life,—these women would have no relish for the *exterior* life of fashionable ladies. My Lords, it would be martyrdom to these retired, sober women, to be compelled to lay aside the cowl and simple habit of their order, to besmear their cheeks with vermillion, and plaster their throats with litharge, —to clap upon their heads an ugly lump of

manufactured hair, in shape and colour as different as possible from the natural covering,—and then, with elbows bared to the shoulder, to sally forth to the pleasures of the midnight rout, to distribute the cards at loo, or, soaring to sublimer joys, to rattle the dice-box at the games of hazard! Exquisite, ravishing, as these delights must be confessed to be to those who have a well-formed taste, these stupid women, my Lords, have not that taste; and if you will not permit them to live in their own dull way, you should have strangled them when they first landed. "Who ever thought of strangling them?" say the friends of the bill; "or who would hinder them from living quietly among themselves in their own habitations? But what we fear is, that they will inveigle our own young women,—that they will profess new nuns in this country, —that so a succession will be provided, and

monastic institutions established, not only for a time, but rendered perpetual; and that is the danger which this bill is intended to prevent." My Lords, I confess my mind is not much alarmed with apprehensions of this danger. My Lords, I think we have a pretty good security against it for the present, in the general inclination of the minds of my fair countrywomen; which, I am persuaded, is not bent towards retirement and seclusion: But the fancies, to be sure, as well as the fashions of English ladies are liable to change; and therefore I agree, that small as the danger seems to be at present, the laws ought to provide against it. But, my Lords, I ask, upon this point as upon the former, have not the laws provided? Will your Lordships take the trouble once more to turn to the 31st of the King: How do your Lordships read the 17th section?—" Pro-

vided also, and be it farther enacted, that nothing in this act contained shall make it lawful to found, endow, or establish (lawful to found, to endow if founded, or if founded and endowed, to establish—domicile in this country) any religious order or society of persons bound by monastic or religious vows; or to found, endow, or establish any school, academy, or college, by persons professing the Roman Catholic religion, within these realms or the dominions thereunto belonging: And that all uses, trusts, and dispositions, whether of real or personal property, which immediately before the said 24th day of June 1791 might be deemed to be superstitious or unlawful, shall continue to be so deemed and taken; anything in this act contained notwithstanding." Nothing, your Lordships see, in this act contained, is to make it lawful to found, endow, or establish any monastic society

in this country. If nothing in this act of the 31st of the King makes it lawful, I am sure it is not made lawful by any other act: It is completely unlawful; and if any of the religious ladies settled here attempt to establish and perpetuate their order in this country by professing new sisters here, they are guilty in every such instance of a gross overt act of Popery; and the whole park of the artillery of the penal code points at them its dreadful thunders. And not only so, my Lords, but no monastic society can take any property, real or personal: Property of any kind, or granted in any way, "devised, bequeathed, or settled upon trust, so that the profits may be applied to any abbey, priory, convent, nunnery, college of Jesuits, seminary or school of Popish education," is forfeited to the King, for the use of the public, by the 1st Geo. sect. 2. cap. 50. And I think,

my Lords, there is little danger that any monastic society without funds of any sort for its subsistence will be of long duration.

"But, my Lords, I know reports are confidently circulated that these laws are disregarded, and that new professions have taken place in great numbers among the nuns of the different orders since their arrival here. My Lords, as to the great numbers, I disbelieve it: That some have taken place, I believe; but they have been very few; and when the particular cases are examined, there will be found to be very little ground of complaint.

(The Bishop then related two cases: Upon which the Lord Chancellor rose, and observed, that it might be very improper to proceed in this particular detail; since, whatever might be said in extenuation, the thing was certainly a high offence against

the laws; and the discovery of particular instances might subject the persons concerned to severe prosecutions.)

"My Lords, I thank the noble and learned lord for stopping me: I am sensible of the indiscretion of entering upon this detail, and shall proceed no farther in it. But the necessity of abstaining from it, which the noble and learned lord has suggested, greatly strengthens my argument. To profess a new sister, even in the most excusable cases, is now stated by great authority to be a high offence against the existing laws; exposing the persons concerned to the danger of very severe penalties: The noble and learned lord therefore agrees with me that the thing is forbidden, under the highest penalties, by the laws we already have: I hope, therefore, he will agree with me in the conclusion that no new law is necessary upon

this subject. My Lords, with respect to the fact of the professions that have taken place, I shall only say in general, that it is my full belief and persuasion, that not one has taken place among our English nuns but in cases similar to the two I have described; in which the professed were young ladies that were upon their probation in the convent abroad, before the storm fell upon the convents. Such, and such only, as I believe, have been professed in this country since the arrival of the convents here. And, my Lords, I must say more for them: I have the greatest reason to believe, that even in such cases the offence will not be repeated amongst the English nuns: I have the greatest reason to believe, and could almost venture to assure the House, that the vicars apostolic, well aware of the illegality of the practice, have cautioned their people against it, and

will use their utmost influence to prevent it in the future. My Lords, in saying this with respect only to the English nuns, I would not be understood to admit that any worse cases have happened among the French sisterhoods, or that the thing is likely to be repeated among them: But with respect to them, my Lords, I speak with less confidence, because I have not means of information equally accurate; and I conceive that the vicars apostolic may not have the same command over them as they have over the English. But I must observe, my Lords, with respect to them, that although the penal laws and the statutes of relief from penalties apply equally, as I remarked long since, to natural-born subjects and to aliens, yet if these alien nuns should be so ill-advised as to take advantage of the indulgence which our statutes extend to them, to do any thing that may justly offend

or alarm the public, the summary operation of the alien bill, my Lords, hangs over them. So that, with the laws respecting Popery, equally applying to subjects and to aliens, with the addition of the alien bill to keep aliens in order in all points, I conceive our security against the dangers which this bill would obviate to be most complete.

"But now, my Lords, let us look at the means of security which this bill would provide; which I affirm to be most unconstitutional.

"My Lords, the preamble of the bill states, that "numbers of persons belonging to certain religious orders or communities have lately come into this kingdom." —Agreed, my Lords; the fact is as stated. Then the preamble assumes, "that it is expedient to permit, under certain restrictions, their residence here."—Agreed again,

my Lords: It is very convenient to permit their residence; for, with respect to the far greater part of them, their residence, upon the condition of their taking the oaths required by law, cannot but be permitted. The nuns in the proportion of nine to two, and the monks in the proportion of twenty-six to ten, are natural-born subjects; and having taken the oaths, have a right to reside here, in their own country, without any restrictions. Well, my Lords, since here they are, and since they cannot be sent away, the bill wisely proceeds to enact, that " from the passing of this act, it shall be lawful for his Majesty, his heirs and successors, when they shall think fit, to grant to such religious orders or communities professing the Roman Catholic faith, his royal licence and authority to continue to reside in these realms during the continuance of the present war, and one year

after."—To continue to reside? My Lords, for the continued residence of the individuals no licence is wanted; it is a matter of right with respect to most of them: The continued residence therefore which is to be licensed, must be understood of their residence as orders or communities—their residence as monastic corporations, in that form and shape; and so the words that follow explain it: The King is impowered to grant them his licence to reside, "and to perform and observe, within their respective houses, the rites and ordinances of their respective institutions; any law or statute to the contrary notwithstanding." This, my Lords, is what I maintain to be perfectly unconstitutional. Observe, my Lords,—they are licensed to perform the rites and ordinances—of what, my Lords? —Not simply of the Roman Catholic religion, but of their respective institutions.

My Lords, did the framers of this bill know what will be allowed, or rather did they know what will not be allowed, under such a licence? Penance, your Lordships know, is a rite of the Roman Catholic religion: But penance in religious houses is administered by the order and direction of the superior; and as there administered, it often consists in imprisonment for any length of time, and in other corporal severities. Good God! my Lords, and are the superiors of these Parliamentary monasteries to be impowered, by his Majesty's royal licence, to imprison and otherwise maltreat the persons of his Majesty's subjects? But, my Lords, this is not all: Did the framers of this bill know how, according to the notions of Roman Catholics, a new monastery may be founded?—My Lords, it cannot be done by act of Parliament: The Roman Catholics will not consider it

as a monastery, without some considerable interposition of the authority of the ecclesiastical superiors,—of the bishop of the diocese, in any country where the church of Rome is the established church; except, indeed, in the case of an order of nuns specially exempted from the jurisdiction of the bishop, and subject to some order of monks; which is the case of many: But in this country, where the church of Rome is only tolerated, I apprehend the vicars apostolic stand in the place of the bishop of the diocese, or other ecclesiastical superior. But, however that may be, my Lords, the ecclesiastical authority, in whatever hands it may be lodged, must be interposed for the regular constitution of a monastery or a convent. And so, by this licence, my Lords, the King is to give not barely a religious but a civil political effect to these acts of the hierarchy of the Roman

church. Still, my Lords, this is not all: The Roman Catholic bishop cannot act in such a business of himself; he must be specially impowered by a bull of the Pope. Your Lordships know that the importation or putting in ure of any faculty, dispensation, bull, or instrument whatever, of the See of Rome, is prohibited by a multitude of statutes, under the highest penalties: But with all these prohibitions of the law, the King by this bill will be impowered, in the instance of settling a monastery or convent here, to dispense. My Lords, have we forgotten what it was that lost James the Second his crown?—was it not his attempting to dispense with the laws in that very branch in which this bill would place a dispensing power in the hands of the Sovereign? My Lords, I see but few of my brethren upon that bench; but among the few that are present, I have the satisfaction

to see a successor of one of the seven who had the honour to be committed to the Tower for the opposition they gave to the arbitrary measures of James the Second: My Lords, I trust that right reverend prelate will think it his duty, for the honour of his see, to give me his most strenuous support in the resistance I am now making to this dangerous, alarming, unconstitutional project.

"But now, my Lords, I will suppose that your Lordships find these objections of no weight,—which I hope will not be the case: But suppose the bill passed; suppose the licences granted; they are to be only for a term (the probable term perhaps a pretty good one), till the end of the war and one year after;—my Lords, what is to become of these women when that period shall arrive? Are we then, when they are comfortably settled, attached to their habi-

tations, advanced in years,—are we then to say to helpless inoffensive women "Come, ladies, turn out! your term is expired; you can stay no longer here?" My Lords, this can never happen; they are in no danger: I again repeat, they are natural-born subjects of the King—born to the rights and franchises of subjects: They have bound their allegiance to the Sovereign in the terms which the law prescribes; and it never can be said to them "Turn out." But I hold up this circumstance to your Lordships' notice as a manifest indication of the spirit in which this bill has been framed.

"My Lords, being put to my shifts, as I mentioned at the beginning, to discover what the friends of this bill could say for it, I have hearkened out very much to the *pro* and *con* about it in company. One thing I have heard urged in favour of the

bill is this,—that the Roman Catholics very much dislike it: They dislike it; *ergo*, it must be a most delectable bill! A very pleasant argument, my Lords! Only consider how far this will go. If a bill were brought in to repeal the 31st of the King, the Roman Catholics, I will answer for them, would very much dislike that. Would your Lordships, for that reason, pass it? Will your Lordships apply this principle to other bills now pending? There is a certain bill before the House, which the millers exceedingly dislike: Will your Lordships therefore pass it at once, without any farther investigation of its merits, or any hearing of their objections? Such a proceeding would save your Lordships much time and trouble; and the final conclusion might, in that instance, for aught I know, be very right: But, my Lords, this way of

coming to it would not be very consistent with the wisdom and justice of Parliament.

"My Lords, there is one part of this bill, and one part only, which I cannot say I wholly disapprove: It is that clause which requires Roman Catholic schoolmasters and schoolmistresses of a certain description to make an annual return of their schools to the clerk of the peace. My Lords, I think it would be very proper that Government should be informed from time to time of the actual state of all Roman Catholic schools: But I would rather that this should make a part of a general bill for the regulation of all schools; a matter that loudly calls for the attention of the Legislature. Time was, my Lords, when schools were under some control; but since the statute of the 19th of the King for the farther relief of Protestant dissenting ministers, they

have been under none. A schoolmaster has only to declare that he is a Christian and a Protestant dissenting from the established church of England, and to profess his general belief in the Holy Scriptures in the terms required of dissenting ministers, —and no one has a right to ask him "Why have you opened school here? whom do you teach? or what do you teach them?" My Lords, the consequence is, that schools of much worse things than Popery abound in all parts of the kingdom,—schools of Jacobinical religion, and of Jacobinical politics; that is to say, schools of atheism and disloyalty,—schools in the shape and disguise of charity-schools and Sunday-schools, in which the minds of the children of the very lowest orders are enlightened; that is, taught to despise religion and the laws, and all subordination. Books have been composed for the use of such schools, of the

most dangerous tendency. My Lords, I know that this is going on in various parts of the kingdom, and particularly in the neighbourhood of the metropolis. I hope that in another session the attention of the Legislature will be turned to this most important business: But it is much too late in this to take up any general plan of regulation; and there is nothing that presses for any immediate regulation beyond what we already have of Roman Catholic schools in particular. My Lords, it is my persuasion, that the Roman Catholics of this country are in general good subjects, loyally attached to his Majesty's person and to the constitution. I must say more, my Lords, though not more than I have said upon former occasions in this place: I am persuaded, that of all sects dissenting from the established church, there is not one in the present times from which either church

or state has less to fear than from the Roman Catholics. My Lords, in this state of things, the danger is not to the church of England from Popery: The danger to be more dreaded is that which threatens us all from the common enemy of the Christian name. Nothing could be more opposite to the general interests of Christianity —nothing more opposite to the interests of the state—nothing more opposite to the interests of the Protestant religion—than any measure that might conduce, as the passing of this act would conduce, to a revival of the rancour between Protestants and Roman Catholics; which, I flatter myself is dying away, if we can but persuade ourselves to let what is well alone.

"My Lords, I could say much more against this bill; but I have taken up too much of your time: What I have said is more than sufficient to warrant the motion

I now make. I humbly move your Lordships, that this bill be committed for this day three months."

The motion was opposed by the Bishop of WINCHESTER; warmly supported by Lord GRENVILLE; and carried, without a division. Of course, the original bill was lost.

ON THE PRELIMINARIES OF PEACE BETWEEN ENGLAND AND THE FRENCH REPUBLIC;

NOVEMBER 3, 1801.

IN the end of the year 1801, preliminary articles of peace were concluded between Great Britain and the French Republic. Perhaps no peace was ever made on which rejoicings were more general, or satisfaction more universally and loudly expressed. There were however some statesmen, formidable from their character and their talents rather than their numbers, who professed an early and unequivocal dissatisfaction at the peace. Their opposition could not be ascribed to antipatriotic motives; for during the whole course of the

war, they had been conspicuous in their endeavours to animate the country, and indeed all Europe, against the common enemy: To represent them as men who preferred war to peace, was an effort of gross and malignant injustice, which their characters, as exhibited on every occasion, evidently refuted. They did however prefer the late war to the present peace; and their reasons, ably and amply detailed by themselves in the two Houses of Parliament, are the materials from which a judgment must be formed of the correctness of their views and the justness of their inferences. Among this little band was Dr Horsley, Bishop of Rochester; who, when the address to the Throne expressive of approbation of the peace was moved by Lord Romney in the House of Lords, on the 3d of November 1801, made the following speech.

"MY LORDS,

"After what I have heard in this House this night from the gravest authority,—in perfect agreement with what I before had heard elsewhere from authority not less respectable,—I ought perhaps to be diffident of my own judgment, when it stands in opposition to the sentiments of those whose opinions I have long been in the habit of looking up to with respect and deference; who may be supposed, from the situations which they have held in public life, to be more competent than I can be to form an accurate judgment upon questions like that which is now before us. Nevertheless, when a resolution has been moved, that this House should approach the Throne with an address expressive of approbation of the preliminaries of peace with the French Republic which have been laid upon the table, I cannot consistently with

my Parliamentary duty give my vote of assent to the motion, unless a conviction were wrought upon my mind by argument, that these preliminary articles are, at least in the leading points, such as any one who pays regard to the interests and honour of the country may conscientiously approve. My Lords, I shall not attempt at this late hour * to go into the detail into which I thought to go when I came down to the House this night. The attempt indeed is rendered unnecessary, by the great ability with which the subject has already been discussed, by the noble earl who first rose in opposition to the motion, and the noble lord who followed on the same side. I shall therefore compress my argument as much as possible, and state my reasons generally for dissenting from the motion.

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* Three in the morning.

But I think myself obliged to declare my reasons, in a brief and general way; because, having the misfortune to disapprove in this instance of a measure of the Executive Government, which, as I guess, is likely to receive the approbation of a great majority of this House, it would not be respectful either to the House or the Minister to give a silent vote of opposition; and I am the more anxious upon this occasion to explain the reasons of the vote which I shall give, because I am aware that it may seem strange that any one should rise from the bench on which I have the honour to sit to disapprove of peace.

"My Lords, I hope my mind is not insensible to the miseries of war: I am well aware how much it is the duty of the ministers of the gospel to promote what they can the tranquillity and concord of mankind, and to stop the effusion of human blood.

God forbid, my Lords, I should ever be wanting in that duty: God forbid I should not be the advocate of peace. My Lords, I now rise the advocate of peace; for, because I would be the advocate of the substance and reality, I must and will be upon all occasions the open and decided enemy of the mere name, the pretence, and the counterfeit of peace. And what is any peace, but a mere name, a pretence, and a counterfeit, which contains in it the seed and germ of everlasting wars? And such, in my judgment is the peace which, according to the preliminaries upon the table, his Majesty's present Ministers are concluding with the French Republic. My Lords, I shall not go into the detail of the arguments which this topic opens: The subject might at any time be too much for my abilities; it certainly at present is too much for my strength. In mercy to your Lordships and

myself, I will be very general and brief. The general view of this wide subject, I can comprise, I think, in few words.

"What is the present situation of France, my Lords?—Her present situation is, that she is possessed of a continental territory which comprehends nothing less than the whole body of the ancient western empire. I call all this the territory of France, my Lords, not forgetting that much of it belongs to other kingdoms and states which she calls her allies: But this makes no difference; for such is the French power, that those whom she honours with the name of allies are in truth her subjects, or, to speak more properly, her slaves. This vast tract of territory is covered with a population far exceeding any thing that was spread over the same surface when it was subject to the Romans; and this immense population is at the command and disposal of a govern-

ment more energetic, more united, more prompt in execution, than the government of Rome was under any of her best emperors. This vast empire is fenced on the one side by a barrier of rivers, mountains, lakes, rocks, forts, which render it inaccessible to any of the neighbouring states that would be the most likely to assail it: On the other side, the termination is the whole length of sea-coast from the mouth of the Texel to the harbour of Brest; a coast which will be particularly formidable to this country when France shall have got up a navy; and that in no long time she will have a navy, your Lordships cannot doubt, if you recollect what vast forests of timber clothe the sides of the mountains which crown the banks of the Rhine in a great part of its course. Now, my Lords, I am very well aware, that our naval strength, and the successes of our navy, had the war

been continued, could never have deprived France of any part of these vast continental dominions: But, my Lords, I contend, that for this very reason this country ought to have retained the acquisitions of her naval victories; which were ours by the very same right of conquest by which France holds the greater part of her continental empire; and would have been in our hands a great drawback, as it were, from her general strength. My Lords, this has been so fully argued by the two noble lords to whom I alluded before, that it is needless for me to dwell upon it: I shall only say, that no answer has yet been given to the arguments of these noble lords,—no answer I mean, which takes hold of my mind. Noble lords indeed have entered into minute calculations of the value of each article of our cessions taken singly: Minorca is worth only so much,—Malta only so

much,—and so on. But, my Lords, this is not at all the question, What might be the value and importance of each separately?—the question is, What is the value and importance of the aggregate? My Lords, what I ask of Ministers is this: Why have they voluntarily ceded to France, without any compensation, in addition to their continental empire,—of which, by the continuance of the war, I grant, we could not hope to dispossess them,—but why have they ceded to them, in addition to that, the absolute sovereignty of the Mediterranean Sea?—for that, your Lordships must perceive, is the effect of the cession of every island and every port in the Mediterranean and the Adriatic. Then for our conquests in the West Indies. But here I am stopped: Noble lords say, that the cession of these same West Indian islands was a part of the project of negotiation in 1797; that

in effect that project received the sanction of Parliament, by the address which upon that occasion we carried to the Throne; and that Parliament cannot now disapprove the cessions to which it consented upon that former occasion. My Lords, I very well remember that the cession of those islands entered into the *projet* of 1797; and I admit that the cession at that time was sanctioned by the address of Parliament: But, my Lords, I must deny that the sanction given to that cession then binds us to an approbation of the same cession now; for although the islands ceded are in name the same, in value to the French they are very different. My Lords, ask the French themselves: Their own writers say "We receive back the islands of St Lucie, Martinique, and Tobago, improved and enriched by the culture, the industry, and with the capital of British

subjects." My Lords, they say more; they say that these islands have no value but what they derive from having been some time in the possession of the English. Now, my Lords, this being the case, the value of these islands must be infinitely greater now than it was in the year 1797; because they have been four years longer in our possession; and the cession of them might be a measure of sound policy in the year 1797, and a measure of very weak policy in the year 1801. Then, my Lords, I ask again, Why have we given the French the key of readmission to their Asiatic possessions, by the cession of Pondicherry?—which in a few years, I fear, will render our boasted conquest of the Mysore useless, if not detrimental, to this country: We shall have made the conquest not for ourselves, but for the French. Indeed I fear, that by the effect of this peace, it is not

for Britain, but for France, that in every quarter of the globe our brave sailors and soldiers have bled and conquered.

"My Lords, what I dread as the worst consequence of this peace, is the revival of the spirit of Jacobinism in this country. My Lords, in this country the spirit of Jacobinism *is* revived: We have already seen unequivocal symptoms of it. I allude not in this to the tumultuous joy of the rabble of this metropolis, when they dragged the two Frenchmen about the streets: I found my opinion of the resuscitation of Jacobinism on the sentiments publicly avowed by persons who move in a much higher sphere; who have dared to say, that "The terms of this peace are not bad enough for Great Britain—not good enough for France: That the interests of mankind demand that France should be exalted and Great Britain humbled." My

Lords, I still have hope that this daring spirit will be overpowered and kept down by the energies of internal government. I should think it a great calamity indeed if that should take place which some noble lords seem to wish,—if the two bills should be repealed which I deem the essential barriers of the constitution; not, as some affect to think them, infringements of it.

"My Lords, I have freely spoken my sentiments. I hope my warmth has not betrayed me into expressions personally disrespectful to any of his Majesty's Ministers from whom I have the misfortune to differ upon this question. In this very measure, which I disapprove, I give them entire credit, not only for great integrity, but I suppose they have been influenced by considerations which might in some degree deserve the attention of great and able statesmen, as no doubt they are;

and were I single in the disapprobation of what they have done, I should be very willing to suppose that it was owing to the inferiority of my own talents that I saw things in another light than they. Nevertheless, my own vote must be determined by my own judgment.

"Before I sit down, I must say one thing more. The sentiments which I have now delivered to your Lordships, I have never given to the public in any other manner nor in any other place. I think it necessary to make this declaration; because I find a report is got abroad, and has obtained credit among my friends, that I have been the author of certain letters addressed to the noble Secretary of State for Foreign Affairs, which have lately appeared in the public prints. * My Lords, I declare, that

* Of the letters alluded to, Mr Cobbett was the author.

however I may agree in the opinions contained in those letters (as I agree indeed entirely),—whatever I may think of the information and abilities of the writer (of which I think very highly),—yet I declare, upon my honour, I am not the author of them, nor have I any knowledge of the author. My Lords, I hold my situation as a lord of Parliament much too high, to condescend to attack a noble Secretary of State in a newspaper, or in any other manner than as I now do, upon my legs in this place."

Minority.

Marquis of Buckingham.
Earl of Pembroke.
Earl of Warwick.
Earl Fitzwilliam.
Earl of Radnor.
Earl Spencer.
Earl of Caernarvon.
Bishop of Rochester.
Lord Grenville.
Lord Gwydir.

ON LAWS RELATING TO SPIRITUAL PERSONS;

JUNE 10, 1803.

ON a motion for the Peers resolving themselves into a Committee of the whole House upon the bill entitled "an act to amend and render more effectual the laws relating to spiritual persons, &c." the Bishop of ST ASAPH * spoke as follows.

"MY LORDS,

"Upon the second reading of this bill, I took the liberty to declare, that,

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* Dr Horsley was translated from the see of Rochester to that of St Asaph in 1802.

with an entire approbation of the principle, I was dissatisfied with the fabric of it in many parts: And I craved the permission of the House,—which I understood that I obtained,—when the motion should be made which is now made for the House to resolve itself into a committee upon the bill, to trouble your Lordships with a general review of the fabric of it; which I thought would be the best way to explain the grounds of the numerous amendments which I should feel it my duty to propose; and would much shorten the discussion in the committee, which must otherwise go to a great length upon particular points.

"My Lords, in the general review which I propose to take of the fabric of the bill, I cannot avoid, though it may not be perfectly in order in the present stage of the bill,—but I cannot avoid saying something

upon the principle of it; for which I must crave your Lordships' indulgence: For, in considering the fabric of the bill, I must not only consider the connexion of the different clauses with one another, but the relation of them all to the principle of the bill. But whatever I shall say upon the principle, will not be in impeachment, but in defence and support of it.

"My Lords, the residence of the beneficed clergy upon their benefices, and the abstraction of the clergy from all secular occupations, are two points of principal importance in ecclesiastical discipline. It is impossible (generally speaking) that the parish-priest should discharge himself of the duty which he owes to the flock committed to him, without his personal residence among them. My Lords, the public instruction of the people from the pulpit, the public celebration of the offices of

the church, are but a part—I had almost said they are but a small part—of the duty which the parish-priest owes to his parishioners. My Lords, he owes it to them besides, to live among them,—to exhibit in his own deportment, and in the good order of his family, the example of a godly and religious life: He owes it to them, to be present to relieve the distresses of the poor by alms proportioned to his means; and he owes it to them, to be ready, at the call of the sick and the dying, to administer those consolations which, to persons in those circumstances, can only be afforded by the word of reconciliation in the gospel, and by the means of reconciliation offered in the sacraments of the church,—to assist the penitent in making his peace with God. And how are these great duties to be performed by a clergyman not resident in his parish? My Lords, this is not all; the

resident clergyman is to maintain the pure dignified character of a clergyman, unembarrassed and unsullied with the low occupations of the world.

"My Lords, before the statute of King Henry the Eighth, the enforcement of these two points of ecclesiastical discipline was entirely in the hands of the ecclesiastical superiors: They were enforced by the canons, and by ecclesiastical censures and penalties; and the temporal laws and the temporal courts had nothing to do with either. My Lords, I mention this, because upon the second reading, a noble duke, whom I do not now see in his place, opposing the principle of the bill, said that it went to take the clergy in these points out of the hands of judges and juries, and to put them entirely under the bishops. My Lords, if it were so, this would only be a restoration of things to the old foot-

ing; for judges and juries had no concern with these matters before the statute of Henry the Eighth. But, my Lords, I have no wish that the clergy should be taken out of the hands of judges and juries: I think, that whoever looks to the state of the church, with respect to the residence of the clergy, will find that it has been much improved since the secular authority has been impowered to interpose in it; and that the statute of Henry the Eighth, with all its vices on its back, has been upon the whole productive of more good than harm; and if a motion were made to repeal that statute, without putting something more equitable and at the same time more efficient in its stead, I would oppose it: So little am I inclined to take the clergy out of the hands of judges and juries. But, my Lords, this bill goes to no such effect; it only remedies the iniquity of the bill of

Henry the Eighth with respect to the penalties of non-residence, and the intolerable rigour of it in the restrictions upon taking in ferm. The statute of Henry the Eighth punished non-residence by pecuniary penalties; which were the same, without any discrimination, whatever the means might be of the delinquent to sustain them: And it was therefore unjust; for it is very evident, that a penalty of 50*l.* is a much heavier penalty upon a clergyman whose whole income perhaps is not more than 30*l.* *per annum*, than upon another whose income may be 500*l.* And though, in the present state of the church, many allowable causes of non-residence exist, it gave no discretion to judge or jury to mitigate the penalty: Nor indeed can such discretion be placed with them, according to the mode of recovering the penalty which that statute prescribes. Now the present bill re-

medies this iniquity of the old bill, by establishing a scale of penalty justly proportioned to the degree of the delinquency and the means of the delinquent; and it gives a discretional power to the bishops, of dispensing with residence, and relieving from the penalties of the statute, in cases in which non-residence ought to be indulged.

"My Lords, the present bill, like the original statute of Henry the Eighth, being intended to enforce residence in all cases in which there is no reasonable cause of exemption, though it places the clergy under the coercion of the secular courts, withdraws them not from the authority of the bishops: On the contrary, it is a farther object of this bill to strengthen the ecclesiastical authority with regard to residence. My Lords, in theory the ecclesiastical authority in this point is complete:

The power of the bishop goes even to deprive a contumacious non-resident of his benefice. Nevertheless, the exercise of this power is so difficult, as to render the power itself almost useless. It is exercised only in the bishops' courts; where the process is so tedious, and may run to such an expense, that few bishops are willing, or indeed able, if they have many opulent non-residents to deal with, to engage in it. This bill therefore wisely puts the exercise of this power into the bishop's own hands, without any interference of his court. And, my Lords, the length and expensiveness of the proceedings in our courts are not the only considerations which make it expedient that the power should be placed in ourselves personally. My Lords, in the courts of the Archbishop, of the Bishops of London, Winchester, Rochester, and all the dioceses which have their courts here in

town, justice, I am persuaded, is as regularly administered as in any of his Majesty's courts in Westminster Hall: But, my Lords, in the provincial courts, I fear the case is not quite the same, especially in matters in which clergymen are interested; because the judges of those provincial courts are themselves clergymen. My Lords, when I was Bishop of St David's, I gave one of the best livings in the patronage of that see, a rectory in Cardiganshire with a good house upon it, to a clergyman, under the most explicit and solemn promises of residence. When he was in possession of the living, he represented to me, that he had a curacy in Glamorganshire (which indeed I knew to be the case); and he hoped I would not so insist upon his promise, but that I would give him some time to detach himself from his engagements there. The request seemed reasonable; and I told him I

would give him half a year. The half year passed away; and my clerk was still upon his curacy in Glamorganshire, and seemed to have made no preparations for fixing himself upon his rectory. I began to suspect that he meant to elude his promise. Another half year was consumed in remonstrances on my part, and shuffling excuses on his; and when I was preparing to come to town for the winter season, I sent for him, and after some warm expostulations with him, I said to him "Sir, take notice, that if I do not find you in residence upon your living when I return into the country next summer, I shall take measures that may be very disagreeable to you." Upon my return to my diocese the ensuing summer, I found my clerk was not yet in residence; and I caused a process to be instituted against him, in order to his deprivation, in my consistory court. He was up to the

business: He took advantage of all the causes of delay which the nature of the proceedings admit; and after a whole twelve-month's litigation and some expense incurred, this unprincipled clergyman, through the connivance of my own court, slipped through my fingers; the judge of my court being a clergyman, my Lords—a non-resident clergyman. My Lords, this instance shows the expediency of placing the offence of non-residence under the coercion of the bishop himself, in a summary way; as is wisely proposed to be done by this bill.

"My Lords, another part of the bill goes to release the immoderate rigour of the statute of Henry the Eighth in the prohibition upon the clergy of taking in ferm. The whole principle of the bill therefore consists of three parts: It goes to do away the injustice of the statute of Henry the Eighth in the part relating to the re-

sidence of the clergy, at the same time that it enhances the penalties upon culpable non-residence; it goes to invigorate the episcopal authority; and to give relief in the matter of taking in ferm.

"My Lords, the restraints of the statute of Henry the Eighth in that matter are most unquestionably extravagant and intolerable. Nevertheless, it is a matter of the very first importance to abstract the clergyman from those occupations which would degrade his character in the eye of the laity: It is certainly the spirit of all the ancient constitutions, that a clergyman should be a clergyman, and nothing else. My Lords, far be it from me to join my voice to the despicable cant of Puritanism; as if it were the duty of a clergyman to withdraw himself entirely from the commerce and society of the world, and that every moment of his time is sinfully em-

ployed which is not given up to meditation and prayer, and studies strictly theological. My Lords, there is no branch of learning that misbecomes a clergyman: He that would understand the Bible, in such a manner as he ought to understand it who is to expound it, should be deeply skilled, as the writer of a great part of it was, in "all the learning of the Egyptians." I have not scrupled to tell the clergy, *ex cathedra*, that a clergyman's time is not always mispent when he is studying the proportions of architecture and the divisions of the monochord: For I assert, in contempt and defiance of all the whining cant of Puritans, that there is no branch of abstruse science or polite literature which may not be useful, which may not be even necessary, for the illustration of some part or another of the book which it is our duty to expound. And as to intercourse with the world, I

hold that none can be qualified to instruct the world without it: He who is to teach men their duty practically, must know human nature generally, and the particular manners of his country and his times. But, my Lords, the clergy should be kept apart from those occupations which would degrade them from the rank which they ought to hold in society, and mix them in familiar habits with the inferior orders—from every thing indeed which would give them a lay character. My Lords, I know that it becomes me to speak tenderly of farming, the fondled bantling of the present times. Agriculture is an occupation for the gods: Can the character of a country curate be degraded by his addicting himself to those pursuits which procured divine honours to Ceres and Triptolemus? —But, my Lords, I beseech you to remember that this godlike occupation of farming

will not be taken up by the inferior clergy, if they are allowed to engage in it, in the manner in which some of your Lordships apply to it, for your own amusement, for the public benefit, and to your own great loss; —they will apply to it as a business, and for gain: The country curate, if he turns farmer, will take part in the labours of husbandry; he will wield the sithe and the sickle; he will fodder the kine, and help to throw out the dung upon his land; and thus he will be associated with the labouring peasantry: Even the business of the markets, which he will attend to show his own samples and make his own bargains, will mix him too much in familiar habits with the lower farmers; and thus the whole dignity and sanctity of his character will be obliterated. The restrictions of the old statute are certainly rigorous in the extreme, and require relaxation: But when

we come to the consideration of these clauses, I beseech your Lordships to take care that the relaxation is not carried beyond the proper limit,—that the new bill does not exceed in indulgence as much as the old one in severity. I do not say positively that this is the case. It is a very difficult subject, and I have not made up my mind; but it is a matter to be well looked to. And this is all that I shall at present say upon that part of the bill.

" With respect to the clause which enacts the penalties of non-residence, I have already expressed my approbation of it. I fear indeed that the time of allowed non-residence is longer than it ought to be: I think, with a little ingenuity, the three months will often be turned into six.

" My Lords, this penal clause is followed by another, containing a very long list of cases of exemption—of absolute exemp-

tion, without any interposition of that discretional power of exemption which is given to the bishops in a subsequent part of the bill. Some such exemptions were given by the old bill; and it is certainly proper that they should stand: But many cases are specified, which are either already exempted by the general reservation of the exemptions of the old bill,—and then the enumeration of them *nominatim* only serves to swell the list of exemptions to the public eye, and to give the country a suspicion that we are inventing all sorts of loopholes for the clergy to creep out at; or, if they are not so exempted, they are in my judgment not entitled to this absolute exemption: And many others are added, which are certainly improper. I shall point out these when we come to the consideration of this clause in the committee: I shall mention only one at present, as an example.

My Lords, the situation of a minor canon in any cathedral or collegiate church is made one of the grounds of absolute exemption from the penalties of non-residence upon a benefice. It is true, the exemption is only given for the time during which the statutes of the cathedral or collegiate church require the minor canon's attendance, and during which he shall accordingly be in attendance and performing his duty there: But, my Lords, I am informed, that the statutes of the Church of St Paul (and the case may be the same in some other cathedrals, though not in all) require the attendance of every minor canon for the whole year; and yet very considerable livings often fall to the share of these minor canons. Now, my Lords, if a minor canon of St Paul's were to obtain a living of twelve or thirteen hundred pounds a year in the diocese of London,

and the Bishop were to say to him that he ought to be resident upon his great living, though it should oblige him to relinquish his situation in the Church of St Paul's and to give up the petty emolument of his office there,—is it fit that this minor canon should have it to say to the Bishop of London "No, my Lord: Here I am, a minor canon in your Lordship's cathedral: I cling to my stall; and, without your Lordship's permission to be absent from my living, I defy the penal statute." My Lords, in this situation is the Bishop of London placed by this clause with respect to a minor canon of his own cathedral.

"My Lords, this clause is followed by another, which gives the bishop of every diocese a discretional power of granting a licence of non-residence for a certain time in certain enumerated cases, but in certain enumerated cases only. Then follows the

clause of enumeration; which is very full: I mean not to say that it is too full;—perhaps it may not be complete;—enumeration seldom is complete: But certainly this is not too full; it contains no case which may not be a fair ground of exemption. But, my Lords, I do strongly object to this principle of enumeration. I apprehend, that the enumeration will have the effect of an advertisement to the clergy of all the pretences upon which they may come to the bishop and tease him for a licence. My Lords, I will illustrate this by an example. One of the cases in which a licence of non-residence may be granted is illness or infirmity of body of the incumbent himself, his wife or child;—certainly a most reasonable case. If his own health require the assistance of the air or water of some particular place, it would be very hard that he should not be allowed to re-

move to that place for a time; and if the ill health of wife or child require such assistance, it would be cruel not to give the husband or father liberty of accompanying them. My Lords, highly as I think of the duty of residence, it never should have divided me from a sick wife or a sick child; and a restraint to which I would not submit myself, I would not have imposed on others. But see, my Lords, what may be the consequence of advertising this as one of the cases entitled to indulgence; see what pretences may be set up on the ground of this advertisement. I suppose a clergyman in affluent circumstances, with a sprightly wife and child, has long been resident on a country living: The lady is grown perfectly sick of this relegation from elegant society in a dull sequestered situation: She says to her husband "My dear, we have been a long time in this dismal

place; surely you might get a licence of non-residence for some time: I am dreadfully nervous, you know; you are overloaded with bile; and the poor child is rickety: Bath would set us all up: Ask the Bishop for a licence." The husband, perhaps, is a little bashful: He has taken, to be sure, a great deal of rhubarb; the lady never goes through the day without ether; and the child is perpetually swallowing something to strengthen its limbs: But yet he is conscious that there is no such degree of disease among them as would justify him in a request to be non-resident, especially as his situation is a very healthy one; he is unwilling therefore to make the application. "Pho!" says the lady; "you are so conscientious! Leave it to me to manage: I will speak to the Bishop's lady; she is as nervous as I am, and will take my part from fellow-feeling: I warrant you we shall pre-

vail upon the Bishop, who is himself a good-natured man, if you will but get over your foolish scruples, and sign the petition." The man is prevailed upon; the petition is signed: The apothecary of the village can, with a very safe conscience, make affidavit of the ill health of the family; knowing that he has supplied them with medicines in a quantity sufficient to make them all sick if they were not so beforehand: The bishop is besieged with the solicitations of the lady and all her friends, among whom his own lady is one of the warmest; and he must muster up a great deal of resolution to stand the siege. And all this inconvenience arises from what I call the advertisement; for, without that, the indulgence might be granted to real ill health; but these solicitations upon the pretence of ill health would not have been invited.

"My Lords, I would propose that the bishop should have this power of licensing, without any enumeration of cases, in every case which in his judgment should be entitled to the indulgence.

"But, my Lords, much more than to the clause itself, I object to the proviso annexed to it. It is provided, my Lords, that if, in any of the enumerated cases, the bishop shall refuse to grant a licence to the clergyman petitioning for it, the clergyman may appeal to the archbishop of the province; who is impowered to grant the licence which the bishop (who probably is better acquainted with the real merits of a case in his own diocese than the metropolitan can be) has thought proper to refuse. An appeal, my Lords! from what? The licence of non-residence is no matter of right; it is a favour. My Lords, I understand the propriety of an appeal from a ju-

dicial sentence, where rights are in question; but I do not understand the propriety of an appeal when a favour only is denied. The clergyman is to go to the archbishop, and say "My bishop has refused me a favour which I asked: Make him grant it." My Lords, the appeal given in this case to the archbishop, I assert to be unconstitutional in the highest degree: It invests the archbishop with the ordinary government of every diocese in his province, in matters merely spiritual; in which he has no right to interfere beyond the limits of his own proper diocese. In any other diocese, the archbishop's authority is merely visitatorial; he possesses not an atom of ordinary jurisdiction; and ought not to be introduced to it. My Lords, I desire to know, in what instance the archbishop is authorized to interfere in the administration of any other diocese than his own, in

spirituals. If I refuse to ordain a candidate for holy orders, he has no remedy by appeal to the archbishop. It is true, it is my duty, in such a case, to acquaint the archbishop with my refusal of the candidate, and my reason for refusing him; and to transmit to the archbishop all the testimonials of character and papers of form that were produced to me: Not that the archbishop has any power to revise what I have done; but for this purpose,—that the archbishop may send a circular letter to all the other bishops of the province, informing them that such a person has been refused by such a bishop, and requesting that no one of them would ordain him without consulting himself the archbishop or the bishop who first refused. The very terms in which these circular letters are conceived imply the independence of the bishops in the matter; for

the archbishop neither commands me to ordain nor forbids any other to ordain, but advises every other not to proceed to ordination without a consultation. My Lords, if a clergyman comes to me with a presentation to a living in my diocese, and I refuse him institution, he has no appeal to the archbishop. The patron has his writ of *quare impedit* in the secular courts,—and very properly: The clerk has no appeal to the archbishop, because institution is a branch of the voluntary jurisdiction in spirituals in which the archbishop has no share; but the patron has his remedy in the King's courts, because his temporal rights are affected. In short, my Lords, there is no instance in which the archbishop can meddle with the voluntary jurisdiction. In the contentious jurisdiction in causes between parties agitated in the bishop's court, an appeal certainly lies

to the archbishop; and in all such cases, an ulterior appeal lies to the King in Chancery,—and very properly; because all this jurisdiction arises out of the civil establishment, and antecedent to establishments was not inherent in the spiritual society as such: But in the voluntary jurisdiction—in matters purely spiritual, there is no authority in any diocese beyond the bishop's; and the attempt to introduce a superior authority, in this instance, is a most outrageous violation of the ecclesiastical constitution,—not merely the particular constitution of the church of this kingdom, but the constitution of the church catholic, by which every bishop in his own diocese is supreme. And, my Lords, this is a matter of no light consideration. The attempted innovation is most dangerous; for ecclesiastical history, as your Lordships well know, bears me out in the assertion

which I now make, that the whole superstructure of the Papal tyranny arose out of encroachments and usurpations, small as they seemed in their beginnings, of metropolitans and patriarchs, upon the independent authority of bishops.

"My Lords, I am aware that upon this point some of my reverend brethren have an opinion different from mine. I know that one very learned prelate, whose deep erudition and great talents are far above any praise of mine, to whom I bear the greatest personal regard, and whose opinions are entitled to your Lordships' gravest consideration,—I know, or have reason at least to believe, that this reverend prelate will tell your Lordships, that an archbishop, in his opinion, stands related to the bishops of his province just as a bishop stands related to his parish-priests; and that the bishop is bound by his oath of canonical

obedience to the archbishop, just as the parish-priest is bound by his oath of canonical obedience to the bishop. My Lords, if the analogy were perfect,—which in my judgment it is not,—but if it were perfect, it would make for my opinion rather than for his. My Lords, the bishop, when once he has instituted a rector or vicar, or licensed a perpetual curate to a parish-church, has nothing more to do with the cure of souls in that parish: He commits that cure to the priest, and it is entirely gone from himself; and he has no right to interfere with it, otherwise than by his visitatorial authority, to see that the priest in the exercise of it conforms to the laws of the church and the realm. If the priest does any thing contrary to either, the bishop, as visitor, has a right to admonish him; and if admonition is ineffectual, to punish him by ecclesiastical censures

and penalties: But no otherwise can he interfere in the cure of souls with which he has invested the priest. To him he commits the care and government of the souls of the parishioners; saving, indeed, to himself and his successors his episcopal rights. Now, what are the episcopal rights which are so reserved?—I say, the whole of the visitatorial power; and besides, the right of making use of the church for the performance of some rites which a bishop only can perform; but these make no part of the parochial cure of souls. The bishop has a right to go to the parish-church when he thinks proper, to confirm the parishioners, and persons of other parishes, whom he may think proper to call to that church to receive confirmation: He has a right to interfere in some matters without expressly holding a visitation: If the priest takes upon him to repel any person from

the holy communion, without consulting the bishop upon the case,—if he takes upon him to reconcile a convert from the church of Rome, and to receive his public recantation, without the permission of the bishop, —if he introduces a curate to take a share with him in the cure of souls, without the bishop's licence,—these are offences which the bishop may correct: But these are extraordinary cases; making no part of the general parochial cure of souls,—which the bishop is to control and direct so that every thing may be done in order, but he cannot take the exercise of it upon himself: And just so, I say, an archbishop has a visitatorial authority over the bishops of his province, but no right to interfere with them in the exercise of the voluntary jurisdiction over their clergy. And I apprehend that the mistake arises from confounding the voluntary and the contentious

jurisdiction. In the contentious jurisdiction which is exercised in the bishop's court, in causes between party and party, an appeal is always open to the archbishop's court, and an ulterior appeal to the King in Chancery; and this extends to the bishop's government of his clergy, so far as it is exercised in his court. If a clergyman, upon any offence committed, be libelled in the bishop's court, *pro salute animæ*, an appeal lies from the sentence; because the whole power of the court arises out of the civil establishment of the church, and the very court itself is a creature of the secular authority. But the case is quite otherwise with respect to that voluntary jurisdiction which is exercised by the bishop personally without his court; which is inherent in the episcopal office and character, by the constitution of the church catholic, antecedent to all alliances between church and state.

" With respect to the oath, the bishop is certainly bound by it to the archbishop as much as the priest to the bishop ; as much, I say, my Lords, but not more. And what is the obedience to which the oath binds either?—Not to an indefinite, unlimited, but to canonical obedience,—to no obedience beyond canonical. And I say, that a submission to the archbishop, in the exercise of my voluntary jurisdiction in my own diocese, is no part of the obedience which I owe the archbishop by virtue of my oath.

" But, my Lords, I must observe, that the relation between the archbishop and bishop, and the relation between bishop and parish-priest, are materially different. The parish-priest derives his whole power of cure of souls from the bishop: The bishop confers it on him by institution, or, in the case of a perpetual curate, by li-

cence; but in either case it comes from the bishop solely. But a bishop owes not a particle of his diocesan authority to the archbishop: The archbishop neither confers nor can he withhold it, although he has a limited control over it. In England, the diocesan authority is conferred by the election of the clergy of the cathedral church: It is that election which makes the bishop of the diocese. It is true, that election is so controlled and directed by the King, as supreme head of the national church, that it seems to be little more than a mere form; for when the clergy of the cathedral are impowered to proceed to election, by the *congé d'elire*, their choice is directed to a particular person recommended by the King. In effect, therefore, it is from the King that the bishop receives his diocesan authority; the election of the clergy of the cathedral being only the form

by which the King gives it: But the archbishop has no share in the giving of it. It is true, the election is followed by a proceeding in the archbishop's court, which is called the confirmation of the bishop elect: But this is not a proceeding by which the archbishop confers the diocesan authority; it is merely a revision of the proceedings in the business of the election, to see that all has been done in due form and order, without any such irregularity as would render the election *ab initio* a nullity. Inquiry is also made into the character of the bishop elect; to see that he is a person in public reputation, and, in the tenor of his life, fit to be advanced to so high a station in the church. And when it is found that all has been regularly done, and that the life and character of the bishop elect are unimpeachable, the judge of the archbishop's court pronounces that he is

duly elected,—that is, duly invested with the diocesan authority. But that sentence does not invest him; it declares only that he is invested.

"In another part of the United Kingdom (I speak in the presence of two metropolitans of that part of the kingdom, who will correct me if I am wrong in what I am going to assert), the bishop is invested with his diocesan authority immediately by the King's letter patent, without any previous election of the clergy of the cathedral, or any subsequent confirmation of the archbishop.

"In both parts of the kingdom, therefore, the bishop derives the whole of his diocesan authority—in the one both in form and effect, in the other in effect though not in form—solely from the King; not an atom of it from the archbishop. Then for our temporalities, and all our secular

authorities and prerogatives, in both parts of the kingdom, we hold them solely of the Crown.

" Then, my Lords, what part of our diocesan authority do we derive from the archbishop?—Certainly not an atom of it. We derive only from him the power of order; which is given by consecration, and can be given in no other way; no secular power can give it. But the power of order is the spiritual capacity of exercising those sacred functions which none without that power can perform. And this power of order is always described by the canonists as a distinct thing from the diocesan authority: And it is distinct, and indeed in its nature is a higher thing: Christ first gave it to the apostles; the apostles conveyed it to others; and those only who have derived it from the apostles in perpetual succession have power still to convey it.

But it is so distinct from diocesan authority, that the power of order may be possessed (and in some instances is possessed) without a particle of diocesan authority; and diocesan authority might be conferred on a person not having the power of order; though such a person, without the power of order, could not perform any one of the sacred functions of a bishop. The bishop, therefore,—which is the great point that I am anxious to prove,—derives no part of his diocesan authority from the archbishop. The contentious jurisdiction in every diocese arises out of the civil establishment, and is properly subject to appeal: But the bishop of every diocese has a power, which is called the voluntary jurisdiction, which is of higher origin and earlier date than any civil establishment; which the archbishop, beyond the limits of his own proper diocese, has no right to take into his

own hands; except in extraordinary cases, —namely, vacancy of a see, when it devolves to him for the time, as guardian of the spiritualities; and when, for the purpose of visiting his province, he inhibits the bishops for a short time. And I contend, that the power of appeal proposed to be given by this bill would mix the archbishop, in the ordinary jurisdiction of every diocese in his province, in the voluntary branch, in a manner in which he ought not to mix in it; and would be a violent infringement of the independence of the bishops.

"But, my Lords, dismissing this ground of objection, I might argue against this appeal simply from the impolicy of it; and perhaps some of your Lordships may allow more weight to this argument than to the other. My Lords, I say, that this appeal

lays the ground of much ill-humour between the bishops and their clergy, and the archbishops and the bishops; and is likely either to defeat the purposes of the bill, or will be nugatory. My Lords, if the archbishop, in the exercise of the power given to him, should pin his faith upon the bishop (which is the course most likely to be taken), and say "I will not grant what the bishop has refused; I will confirm his refusals," then the appeal is nugatory. If, on the other hand, the archbishop should be very alert in the exercise of this new unconstitutional authority with which the bill improperly invests him, I think any bishop that finds himself interfered with will be apt to say to his clergy "I will have nothing more to do with this business: I will license none of you: Go to the archbishop, and he may license you all,

if it so please him;" and then the purpose of the bill will be pretty much defeated.

"But noble lords may say "What then is your plan? Would you give every bishop a power within his diocese of licensing at his pleasure, without any check upon him in the exercise of that large discretion?"—My Lords, my plan would be this: I would propose to your Lordships, that every bishop should be impowered to grant licences within his own diocese, in every case which should seem in his judgment entitled to the indulgence: But then he should be required to set forth in every licence the cause of granting it; and, besides, he should be obliged to transmit to the archbishop, on or before a day to be fixed by the act in every year, a report of all the licences granted by him in the year preceding; specifying not only the names of the clergy, and the names of the bene-

fices in respect of which they shall have been granted, but the time for which each has been granted, and the causes of granting: And this report, with the addition of his own proper diocese, the archbishop should be required to transmit to the King in Chancery. And, my Lords, this, I maintain, would be a severer check upon the bishops, in the exercise of their discretional power of dispensation, than any the bill imposes in its present shape; because it makes the acts of the bishop public and notorious. My Lords, what is the security for the proper conduct of any public men in the exercise of any discretional powers with which they may be invested? What is the security for a judge's just exercise of his discretional powers?—My Lords, the security is this, and nothing else,—that the judge is a public man, in a great conspicuous station, and that nothing that he does

is done in a corner: My Lords, this is the security you have for the discretion of a judge. The very same you have for the discretion of a bishop: A bishop is a person holding a conspicuous situation in the country, high in rank, and invested with great authority; and the jealous eye of the public is upon him and upon all his actions.

"But, my Lords, it may be said, that cases may occur when the cause of granting cannot with propriety be set forth in the licence,—cases in which it may be fit that a licence should be granted, and yet the cause of granting may be unfit to be told. A clergyman may be disqualified for duty; or even his absence may be made a matter of necessity, by reason of some disorder which it would be cruel to divulge. Other cases may occur, hardly fit to be mentioned here. But for these cases the bill has in

my judgment very wisely and properly provided. Here I consent that the archbishop should be called in,—not by way of appeal; but, as this bill calls him in, to confirm any licence granted by the bishop when the cause of granting cannot be set forth; without which confirmation, such licence should be void.

"My Lords, in that part of the bill which gives the bishops a summary exercise of the ecclesiastical authority, I shall request your Lordships to attend carefully to the structure of the clauses, to see that they are so drawn as really to go to the effect intended. And this is all I shall say at present upon that part of the bill.

"The case of the cathedral clergy, which seems not sufficiently provided for, will require your particular attention.

"I have nothing more to say, till the House shall be in committee."

UPON THE BILL TO REGULATE THE AGES OF PERSONS TO BE ADMITTED INTO HOLY ORDERS;

April 13, 1804.

On Friday the 13th April 1804, the House, agreeably to the order of the day, having resolved itself into a committee of the whole House upon the bill respecting the ages of persons to be admitted into holy orders, the business proceeded without any observation, till the clause was read which enacts, that in case any person shall, from and after the passing of this act, be admitted a deacon before he has attained the age of three-and-twenty years complete, or a priest before he has attained the age of four-and-twenty years complete,

such admission shall be *merely void in law, as if it never had been made;* and the person so admitted shall be incapable of holding and disabled from taking any ecclesiastical promotion or preferment whatsoever in virtue of such his admission.

Upon this, the Bishop of St Asaph rose, and observed, that this clause contained the only part of the bill upon which any doubt or difficulty could arise. As to the incapacity of holding and taking ecclesiastical preferment, there was nothing new in that: It attached upon priests, at least, ordained before the canonical and legal age of twenty-four years, by former statutes. But it was not equally clear that any existing statute went the length of annulling the ordination itself; which would be the effect of the words "Such admission shall be merely void in law, as if it never had been made;" and it might be doubted, though

he himself, upon a full consideration of the subject, had no doubt, whether this was consistent with the great principle of the indelebility of the sacred character; " a principle, my Lords, which I for one" said the Bishop " never will abandon." My Lords, upon a late occasion, when this question of the indelebility of the sacred character came to be much agitated in this House, it was argued (learnedly and soundly, in my judgment) by a noble and learned lord who now sits near me, that the process against criminal clergymen in our courts, which is called degradation, which is commonly supposed to be a deposition of a clergyman from his order, goes however no farther than to a deprivation of a clergyman who incurs that sentence, of all the secular emoluments, privileges, and immunities of his order, and to a suspension of his legal exercise of the functions of the

ministry; but does not extinguish the sacred character itself. This is more than the sentence of any earthly tribunal can operate; comprehending under the general name of earthly tribunal, the tribunal of the church itself on earth. My Lords, I hold with the noble and learned lord in that opinion. And I go farther: I maintain, that the limit which that opinion assigns to the effect of degradation circumscribes in this case even the omnipotence of Parliament itself. Boldly I assert, that to extinguish the sacred character, is more than any act of the Legislature can effect. What the secular authority gave, the secular authority may take away: It may take away all the property, all the rights and privileges, which the clergy hold by virtue of the civil establishment of the church; for these things it gave: But the spiritual capacity itself, conferred by ordination, this

no earthly power gave, and no earthly power is competent to the abrogation of it: No act of Parliament can take away the sacerdotal character, once ritely, canonically, and validly conferred.

"But, my Lords, there may be, in certain cases, a radical nullity in the act of ordination itself,—such an irregularity in the performance of it, or such incapacity in the recipient, as may render the act from the beginning null and void. My Lords, the canons of the primitive church mention many such incapacities. If any person before his ordination had been twice married, or had contracted marriage with a widow, or with a woman divorced, or with a slave, or with an actress,—the ordination was null: Notwithstanding that the outward ceremony of ordination had passed upon him, no character was allowed to be conveyed; he remained a mere layman. There was no-

thing which, in ancient times, the church was so anxious to prevent and disallow as an admission to holy orders at too early an age. By the Neocæsarean canons, by the decrees of Siricius, by the canons of the African Code, and those of the Trullan Synod, it appears that the earliest age allowed in ancient times, either in the Greek or in the Latin church, was twenty-five for the order of deacons, and thirty for that of priests.

"Now, my Lords, though I never will allow to Parliament an authority to unmake a well-made priest or deacon—an authority to extinguish the spiritual character once validly conferred, yet if there has been any such irregularity in the collation of the character as to make the act from the very beginning null, it is certainly competent to an act of Parliament to declare that original nullity. The case is

somewhat analogous to that of marriage. No court in this country has authority to dissolve the marriage-contract between parties who were in all respects capable of the contract at the time when it was made: But if impediments existed at the time of marriage, such as to render the parties incapable, and the contract by consequence originally null, of such original nullity the ecclesiastical court has cognizance, and may declare it; and, by that judgment, separate parties illegally united. So, in the case of ordination, I maintain that even an act of Parliament cannot abrogate what was at first well done: But, on the other hand, I equally maintain, that it may declare and point out an original nullity in the act. My Lords, it is understood that it is necessary to the validity of any religious ordinance, conferring any special grace or spiritual capacity, that the intention of the

person who administers should go with the external act. My Lords, it cannot be supposed that any bishop, in conferring orders, means to do a thing disallowed by the canons of the church. If he lays his hands on the head of a young man under the canonical age, and says "Receive the Holy Ghost for the office and work of a priest," the bishop must be in error, deceived with respect to the age: Though his hand and his lips are employed, his mind is abhorrent from the action: He does not mean to ordain a person priest under twenty-four years of age: The church has told him in her canons, that such a person is incapable of the priesthood: Such a person, therefore, is not within the intention of the ordainer; and is not ordained by him. The same reasoning applies in the case of deacons. My Lords, in this view of it, as declaring (in affirmance of the canons of the church)

an original nullity, in particular cases, in the act of conferring orders, arising from a canonical incapacity in the recipient, not as annulling orders ritely and validly conferred, I approve of the enactment of this clause: I think it a wise one."

The Duke of Norfolk knew, that the indelebility of the sacred character was a principle in the church of Rome; but he did not know that it was equally a principle in the church of England. It was not his intention to move any amendment, if the bill, as it stood, had the approbation of the Reverend Bench. He thought, that through the imperfections of registers, and defect of evidence of the time of birth, it might sometimes happen that the act might be unintentionally transgressed; and that for that reason the penal incapacities were too severe. His grace thought, that if persons receiving orders prematurely were to

be liable to such penalties, the bishop conferring them ought to be made subject to penalties; and that the Bishop of Sodor and Man ought to be included in the bill.

The Bishop of St Asaph replied, that he agreed with the noble duke, that it might sometimes happen that the act might be unintentionally transgressed: But for that very reason, he was desirous that the nullity of the ordination should be declared by the bill; because this opened means of relief for persons unintentionally transgressing, from disabilities which would otherwise attach upon them for their whole lives. That the noble duke could not imagine that any bishop would not be liable to penalties who should dare to disobey the positive enactments of an act of Parliament. That the Bishop of Sodor and Man, though not particularly named in the bill, is included in it; for although he is

no lord of Parliament, as not holding of the Crown, he is an English bishop within the province of the metropolitical see of York.

The clause was then agreed to unanimously.

UPON THE BILL RELATING TO THE STIPENDS OF LONDON INCUMBENTS;

JULY 23, 1804.

A BILL brought into the Upper House for making farther provision for the clergy within the city of London was moved for a third reading on the 19th of July 1804.

The Duke of NORFOLK, allowing the object of the bill to be desirable, objected to the mode in which it was proposed to effect that object, as wholly inconsistent with the principles upon which the House had hitherto legislated in whatever affected the rights of private property. He would call upon their Lordships to say, whether they could in honour and conscience pass the

bill, except the previous consent of every person on whom it would operate as a tax had been obtained. The clergy of London, from the time of the Reformation to the reign of Charles the Second, was maintained by a certain poundage upon the rental of houses: After the great fire, by a statute of Charles the Second, that poundage was commuted for a sum certain; and at that proportion it had continued until that moment. He would freely admit that the salary was by no means adequate to the proper maintenance of the clergy; and much as he was inclined to concur in any measure that should enable them to support their due rank, yet he could not bring himself to consent to this bill. He moved therefore that the third reading should be postponed until that day three months.

The Lord Chancellor (Eldon) was not willing that the bill should be read a

third time *now*, nor postponed for three months: He would propose that it be deferred a few days only; that he might satisfy his mind, if possible, that the objects of the bill and the rights of private property were reconcilable in the mode taken by the bill.

The third reading was accordingly postponed till the 23d of the month. On the day fixed by adjournment, the Bishop of St Asaph defended the bill.

"MY LORDS,

"The bill upon which we are to debate whether it shall be read a third time now or on this day three months is entitled "an act for the relief of certain incumbents of livings in the city of London." My Lords, before I go into the bill, I must desire your Lordships to remark, that these *certain* incumbents, to whose relief

this bill applies, are a great majority of the beneficed clergy of the city of London,—a great majority, my Lords. I repeat and insist upon this circumstance, because great misrepresentation has gone abroad. It was lately asserted in a very respectable assembly,—and what was asserted in that assembly has found its way into the public prints, —that the incumbents to be relieved by this bill are a minority only of the London clergy. It has been said, that the parishes to which what is called the fire-act applies, and to which of consequence this act, which is an amendment of the fire-act, applies, are in number only forty-eight; while the parishes within the city, not affected by the fire-act, nor by this bill, are fifty-one. My Lords, this is a most outrageous falsehood. The parishes which fall under the fire-act and under this bill are not fewer than eighty-six; though the livings, it is

true, are no more than fifty-one: For after the fire of London, it was thought proper to rebuild only fifty-one of the eighty-six churches destroyed by that calamity, and, by uniting, to reduce sixty-nine of the benefices to thirty-four; and thus the eighty-six parishes made only fifty-one livings. Still they are eighty-six parishes. But the parishes which escaped the fire and are not affected by the fire-act are nineteen, and no more. The incumbents, therefore, for whose relief this bill is introduced, are a very great majority of the London clergy.

"My Lords, your Lordships have heard much, I believe, of the opulence of those nineteen livings in which the rights of the clergy were not curtailed by the fire-act: Your Lordships have heard, that the revenues of those nineteen livings are immense, enormous—far beyond the proportion of the wants of any private clergymen—too

much for churchmen to be permitted to enjoy! My Lords, this is another falsehood. One of those livings is said to produce 700*l.* *per annum*, another 800*l.*: I speak of reputed values, which are generally beyond the truth; but the average of the nineteen is no more than 290*l.* *per annum.*

"My Lords, it may seem strange, that at this time of day we should have to provide for the better maintenance of the London clergy; especially as you will perceive, by the very preamble of this bill, that their maintenance has in former times been the object of Parliamentary provision. Your Lordships have heard that their appointments are very inadequate; but you are perhaps not informed how they came to be so poor, nor what claim the London clergy have to a better maintenance. I shall therefore endeavour to state to your

Lordships what their situation originally was, and how they were reduced to their present impoverished condition. This will throw much light upon the argument I am about to hold upon the justice and expediency of the present bill.

"The maintenance of the clergy, your Lordships know, derives from two principal sources—tithes and oblations. The streets of London, my Lords, or of any great town, produce no tithes,—certainly no predial tithes, nor any mixed: London can produce no species of tithes but the personal. Of personal tithes we hear much indeed in the old canonists, and something we hear of them in the statute-book; yet I am persuaded the claim never was generally enforced, and nowhere less than in the city of London: The oblations therefore have been in all times the principal maintenance of the London clergy. It is true,

we have acts of Parliament which purport to be for regulating the payment of tithes in London: But that is only that the word is very inaccurately used as a general name for the legal dues of the clergy of whatever description; or that tithes, if any there were, are meant to be included under the general provisions of those acts. The certain matter of fact is, that the oblations made almost if not altogether the whole property of the London clergy.

"The oblation, your Lordships know, was a small payment due of right to the minister upon Sundays and other great festivals of the church; regulated in its quantum by custom and usage, but everywhere bearing some proportion to the rent of the parishioner who was to pay it. The earliest authentic information that I find about the oblations in London, is in an ordinance of Roger Niger, who was Bishop of Lon-

don in an early part of the thirteenth century.* Niger requires, that the good citizens of London pay to the minister one farthing for every ten shillings of rent, "Diebus Dominicis, et solennibus, et festis duplicibus, præsertim apostolorum quorum vigiliæ jejunantur." † And these payments Bishop Niger orders as due, in his time, of ancient usage and immemorial custom. In the beginning of the thirteenth century, therefore, the oblations, upon these days and in this proportion to the rents, were due by a usage then ancient, and by a custom then

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* See a pamphlet entitled "Case respecting the Maintenance of the London Clergy, briefly stated, and supported by reference to authentic documents. By John Moore, LL.B. Rector of St Michael's, Bassishaw, and Minor Canon of St Paul's, London." It is much to be lamented, that this learned gentleman was not encouraged to execute his proposal of reëditing Bishop Walton's treatise of the Tithes of London.

† *i. e.* "On Sundays, holidays, and the double festivals, especially of the apostles whose vigils are fasted."

become immemorial. There was however some want perhaps of precision in the language of Bishop Niger's ordinance, which opened a door to much litigation between the clergy of London and their parishioners. Bishop Niger states the quantum of oblation upon every day of offering at one farthing for an annual rent of ten shillings, one halfpenny for a rent of twenty shillings, and one penny for a rent of forty shillings. But he goes no farther in describing the ascending scale; he mentions no higher rent than forty shillings, nor any higher payment than one penny; from which the citizens of London had the ingenuity to draw this curious conclusion,—that one penny was the utmost that could be claimed, let the rent be what it might. One penny, they allowed, was demandable every offering-day for a rent of forty shillings; but they contended, no more was

demandable if the rent should be forty times forty shillings. Archbishop Arundel put out a constitution, in which he interpreted Bishop Niger's ordinance more favourably for the clergy. He declared the true sense of it to be, that an additional farthing was to be paid for every additional ten shillings of rent, to whatever the rent might amount. The Archbishop's constitution was approved and confirmed by the Pope; and the good citizens of London submitted: For your Lordships will observe, that we are got back to times when an ordinance of the diocesan and a metropolitan constitution, confirmed by the papal bull, was law, and the only law upon such questions.

"But, upon this, the citizens of London had recourse to another expedient to lower the claims of oblations. They raised a question upon the number of days in the

whole year on which the oblations were to be paid. It was their point to make them as few as possible; and it was the interest of the clergy to make them as many. Bishop Niger's ordinance said the oblations were to be made "Diebus Dominicis, et solennibus, et festis duplicibus, præsertim apostolorum quorum vigiliæ jejunantur."* About the Sundays there never was any difficulty: But for the other festivals, the citizens contended, that the words "præsertim apostolorum quorum vigiliæ jejunantur" were meant to circumscribe the apparent latitude of the preceding words, "solennibus et festis duplicibus;" and to specify what solemn days and what double festivals were to be days of offering; and that these were only the festivals of those

* "On Sundays, holidays, and the double festivals, especially of the apostles whose vigils are fasted."

apostles whose vigils were fasted. Those in our calendar were never more than they are now; that is, they were no more than eight: And those eight days, added to the fifty-two Sundays, made sixty days of offering in the whole year, if none of the eight days fell upon a Sunday; which would sometimes happen, and reduce the number. Sixty days, at one farthing for each day, upon a rent of ten shillings, was equivalent to a rate of two shillings and sixpence in the pound; which seems, I confess, to be considerable for the time; and the diminution, by the coincidence of festivals and Sundays, amounted to no more than fourpence upon the twenty shillings rent in seven years.* The clergy, however, natu-

* When the dominical letter is either A, B, or D, throughout the year, no one of these eight festivals can fall upon a Sunday: When it is F throughout the year, one of them, and only one, will fall upon a Sunday: When in the months

rally wished to make more days of offering; and to more they certainly were entitled by Bishop Niger's ordinance, or ra-

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after February the dominical letter is C or G, one, and only one, will fall upon a Sunday: When in those months it is E, five of the eight days in question will fall upon Sundays: In bissextile years, when the double letter is GF, no one of the eight days will fall upon a Sunday: When the double letter is FE, six of them will fall upon Sundays; one for F, and five for E: When the double letter is ED, no one will fall upon a Sunday: When the double letter is DC, one and no more will fall upon a Sunday: When the double letter is CB or BA, no one of the eight will fall upon a Sunday: When the double letter is AG, one and no more. Hence it will be found, that in the whole cycle of the dominical letter (making it begin with G), the clergy would lose in the first four years of the cycle, eight days; in the second quaternion, they would loose seven; in the third, only two; in the fourth, six; in the fifth, two; in the sixth, one; in the seventh, six. They would lose therefore in the twenty-eight years of the whole cycle thirty-two days; that is, they would receive for no more than one hundred and ninety-two days in addition to the Sundays, instead of two hundred and twenty-four, for which they would have received in the course of an entire cycle if none of these eight festivals had ever fallen upon a Sunday: Their loss therefore would be one shilling and fourpence in the twenty-eight years upon every annual rent of twenty shillings.

ther by that ancient usage and immemorial custom upon which that ordinance was founded.

" Your Lordships have heard it said, that upon this occasion, a sly old pope created twenty new saints to bring grist to the mill of the London clergy. My Lords, I know that this assertion is to be found in authors of considerable name, who might have been expected to write with more caution or with more veracity upon this subject: But I was surprised to find, the other day, that their authority had imposed upon my noble and learned friend upon the woolsack. My Lords, I should be obliged to any noble lord that would give me the names of those twenty worthies that were canonized upon that occasion, or the name of the pope who performed the operation. My Lords, they are nowhere to be found,—the names of those illustrious

saints, or the name of the pope who sainted them. The plain matter of fact is this. Besides the festivals of those eight apostles whose vigils are fasted, there are certain days which have always been observed in the church,—not in the church of Rome particularly, but in every church in Christendom,—with as much and some of them even with more reverence than the festivals of any of the apostles; days not introduced by any pope, but anterior to all Popery; days which have no reference to any saint, ancient or modern, but to our Lord himself; being the anniversaries, or days observed as the anniversaries, of the most interesting occurrences of our Lord's own life: Such are the feast of our Lord's nativity, the feast of his circumcision, his epiphany. These days, in the whole year, were eighteen in number. To these we must add the feast of the apostles St Phi-

lip and St James, and the feast of the nativity of St John the Baptist; which were always observed as great feasts, although the vigil of the former was not fasted. These, with the other eighteen, make twenty days,—just as many as the Pope is said to have added new saints to the calendar: To which, however, two more are still to be added, being observed in those times in every parish, though not in all parishes on the same day. These two are the anniversary of the dedication of the parish-church and the feast of the patron saint to whom the church was dedicated. We have therefore twenty-two days in the year to be added to the eight days of the apostles and to the fifty-two Sundays, making in all eighty-two days in the year; for which the clergy claimed. And it is remarkable, that in the reign of Henry the Eighth, upon an attempt to adjust the differences which

then subsisted between the clergy of London and their parishioners, the number of eighty-two days of offering in the year was admitted by a Court of Common Council.* It is said, that in the interval between the time I am speaking of and the reign of Henry the Eighth, the claims of the clergy had been carried much higher. About the middle of the fifteenth century, an incumbent of one of the city livings sued one of his parishioners, in the ecclesiastical court, for recovery of oblations withholden: Sentence was given in favour of the clergyman: The suit made a great noise, and the cause was carried by appeal to Rome; where the sentence was confirmed: But the City taking the matter up, and disputes running very high, King Henry the Sixth thought proper to call in the Pope's autho-

* See Moore's Case of the London Clergy, page 18.

rity: Nicholas the Fifth, after inquiring into the merits of the case, issued his bull ratifying the ordinance of Bishop Niger as interpreted by Archbishop Arundel and Innocent the Seventh, and confirming the sentence given in the case between the clergyman and his parishioner. In this the number of offering-days, it is said, was carried up to one hundred.* And I can easily believe it; for I can easily believe that the clergy at this time would think they had a right to claim all the days specified as solemn festivals, "festa solemniter celebranda," in the provincial constitution of Archbishop Islep: The number of days in that constitution is forty-two; which, added to the fifty-two Sundays, make ninety-four (little short of one hundred) in the year. Nor can I think the claim of

* See Moore's Case, page 11—17.

one hundred days fastens on the clergy of those times any imputation of rapacity: For the number is much short of what they might have claimed under the letter of Bishop Niger's ordinance; which seems to give them all the *festa duplicia*; and the *festa duplicia* of the Roman calendar are very numerous indeed. However, my Lords, in the time of Henry the Eighth, the Common Council of London could not reduce the offering-days to a number less than eighty-two: They admitted the claim of the clergy to eighty-two days of offering in the year; and eighty-two, at the old rate of one farthing for each day upon every ten shillings of rent, is equivalent to a rate of three shillings and fivepence in the pound.

"The citizens of London having admitted the claim of the clergy to this extent, I cannot understand upon what principle

the claim was reduced by the 37th of Henry the Eighth to two shillings and ninepence in the pound. That statute has reference to a decree to be made by commissioners appointed by the King, " for the appeasing of divers variances, contentions, and strifes, which had arisen between the parsons, vicars, and curates of the city of London, and the citizens and inhabitants of the same, for and concerning the payment of tithes, oblations, and other duties, within the said city and liberties." The preamble of the act sets forth, that " as well the said parsons, vicars, and curates, as the said citizens and inhabitants, had compromitted and put themselves to stand to such order and decree, touching the premises, as the King's commissioners should make :" And the statute enacts, that such decree as should be made by the King's commissioners, or any six of them,

before the 1st day of March then next ensuing, should "stand, remain, and be as an act of Parliament, and bind as well all citizens and inhabitants of the said city and liberties for the time being, as the said parsons, vicars, curates, and their successors, for ever." And in pursuance of this act, the commissioners issue their decree, "that the citizens and inhabitants of the said city and liberties shall yearly pay their tithes"—so the decree says; but tithes, as I have stated to your Lordships, in London mean oblations—"to the parsons, vicars, and curates of the said city, and their successors, for the time being, after the rate hereafter following; viz. of every x shill. rent by the year, of all and every house and houses, warehouses, &c. within the said city and liberties, xvi pence and a halfpenny, and of every xx shill. of rent by the year, of all and every such house

and houses, &c. II shill. and IX pence, and so above the rent of XX shill. by the year, ascending from X to X shill. according to the rate aforesaid."

"Thus, two shillings and ninepence in the pound, according to the rents, was fixed as a composition for the oblations due to every incumbent of a living in the city of London: And this continues to this day to be the legal claim of every city clergyman; except any particular place can show a custom of payment at a lower rate, or where another mode of payment has been established by later statutes.

"But in no period of time, I believe, have the London clergy actually received to the amount of this rate of two shillings and ninepence in the pound, short as it falls of what the Court of Common Council in the 20th of Henry the Eighth admitted to be their just demand,—viz. three shil-

lings and fivepence in the pound. But even this lowered demand,—upon what principle lowered I cannot say,—this lowered demand of two shillings and ninepence has never been received. By concealment of the rents, and various subterfuges, the payments were so much reduced, that in the reigns of James the First and Charles the First, the clergy applied to Parliament for redress; and in the latter reign, the King ordered, that the incumbent of every living should send in an account of his actual receipt at that time from his living: The citizens were also required to send in their estimate of the actual receipt of each living, accompanied with a statement of what the annual value of each would amount to at the rate of two shillings and ninepence.* These estimates were made;

* See Moore's Case, page 35, 36.

and both parties, the clergy and the citizens, appear to have acted with great good faith; for the difference is little or nothing, —nothing certainly in the general result, but very little in the detail between the two statements of actual receipt, that of the clergy themselves and that of the citizens; though it was the interest of the clergy to put it as low as they could, and of the citizens to put it as high as they could: But they agreed in their separate statements, and by that agreement are entitled to the highest credit. And by comparing either statement of actual receipt with the statement of real value according to the two shillings and ninepence in the pound, it appears, that what the clergy received was less than one third of the full value.*

* See a document annexed to Moore's Case, which is said to be preserved among the records of the city, in the Town-Clerk's Office.

The troubles coming on, no measures were taken for their relief; and they remained in *statu quo* till the fire of London; which gave occasion to a change in the manner of providing for the clergy of those parishes which were destroyed by the fire, which eventually has been very detrimental to them.

"I have stated to your Lordships, that after the fire of London, fifty-one livings were formed out of the eighty-six parishes which had suffered by that calamity. And by an act of the 23d of King Charles the Second, commonly called the fire-act, a certain annual income is appointed for the maintenance of the incumbent of every one of these livings, to be raised,—or so much of it as shall exceed the small stipend paid in some parishes by the impropriator,—to be raised by equal assessment upon the inhabitants. My Lords, I do not believe

that the Legislature at that time meant to deal illiberally by the clergy, or that the citizens of that time wished their clergy to be illiberally dealt by. It is true, the settled incomes fell far short of what the amount of the legal demand would have been just before the fire; and I find that they fall short, upon the whole, just in the same proportion in which the actual receipt fell short a few years before the fire. I imagine, that the intention of the Legislature was to secure to the clergy what their actual receipt had been just before the fire; and perhaps it might have been unreasonable to lay upon the citizens, under the recent and heavy pressure of that calamity, a greater burden than they had been for some years in the habit of sustaining. The provision might be competent for the clergy of that time; and what is more, I believe the clergy of that time were better off

with the incomes the fire-act gave them than they would have been had they been left in possession of their claim to two shillings and ninepence in the pound; and for this reason: Your Lordships will find a proviso at the end of the statute 37th of Henry the Eighth, "that if any person take a tenement for less than the accustomed rent, by reason of great ruin or decay, brenning, or such like occasions or mischiefs, that then such persons shall pay tithes only after the rate of the rent reserved in the lease, as long as the same lease shall endure;" and by a clause in the act for the rebuilding of London passed in the 20th year of Charles the Second, tenants in fee-tail were impowered to grant the sites of their demolished houses, upon building or repairing leases, as we should now call them, for fifty years: The consequence therefore would have been, that,

where such leases were granted, the clergy, left to their demand of two shillings and ninepence in the pound, for fifty years to come would have received it only upon the ground-rents. The condition in which the fire-act put them was, I believe, much better for the clergy of that time: But the evil was in making the annual income certain; for certain annual income is unimproveable income. If the income was only a competence then, it is very evident it must be downright beggary now; and in the same proportion and at the same pace at which their parishioners have been growing rich, the clergy, with this unimproveable income, have been growing poor. If the clergyman by his income was upon a level with the merchant at the time of the Restoration, he is now, with the same income, hardly upon a level with the junior clerk in the merchant's counting-house:

If he is to be raised to his true level, his income must be enlarged. I agree therefore with noble lords who think the real fault of the present bill is that the relief it will afford will be inadequate. Your Lordships will recollect, that it was observed by a right reverend prelate the other day, that of the fifty-one livings which are the object of the fire-act, six only amount to 200*l.* *per annum*: These six will be raised by the present bill to 333*l.* 6s. 8d.;—another indeed will be advanced to the amazing sum of 366*l.* 13s. 4d.;—this is the great prize, which turns up from a late union of two parishes, which, by the old act, produce by their separate incomes put together 220*l.*: But of the fifty-one livings, the far greater part will still be under 300*l.* *per annum*, and nineteen of them will not exceed 200*l.* And what is even 300*l.* *per annum* for the

maintenance of an incumbent of a London living in the present times?

"My Lords, it may seem that I might have spared this part of the argument; for, with great satisfaction I mention it, the principle of the bill is not opposed. No one of your Lordships entertains a doubt that the provision for the London clergy is shamefully insufficient; and no one of your Lordships but wishes it were very considerably improved. The objection to the bill which weighs with some of your Lordships is, that it is contrary to the established usage of this House,—a usage founded in the just attention of the House to private property,—to entertain a private bill, unless the petitioners for it can show that they have the consent of all those whose interests may be affected by what they desire to be done for their own advantage. My

Lords, I acknowledge the wisdom and justice of this proceeding in all cases of private bills—of bills in which private interests only are concerned; for one private interest is not to be advanced at the expense of another: But although this bill was brought into Parliament by petition, and so far carries the shape and appearance of a private bill, yet I cannot admit that it is really of the nature of a private bill. My Lords, it is not a bill for the promotion of private interests: In its object it is a public bill; it is a bill for an object of the greatest national importance that can be brought before Parliament. My Lords, a bill for the better maintenance of the London clergy is a bill for the support of the established religion in the metropolis; and with the condition of religion in the metropolis, its condition in the whole nation is nearly and intimately connected. What

greater national object can your Lordships have before you?—My Lords, when I first rose, I was anxious to impress your Lordships with a persuasion of the fact, that the petitioners for this bill are a very great majority of the whole body of the London clergy. I am apprehensive, that my earnestness upon that point may lead to a misconception of my present argument,—that your Lordships may imagine that I would put this out of the class of private bills because it is for the general interest of the London clergy. My Lords, that is not my meaning;—the general interests of the London clergy, as a body by themselves, are still but private interests: But, my Lords, my argument goes to identify those general interests of the London clergy with the general interests of the whole nation. It is upon this ground that I maintain that this is no private bill; be-

cause it is not for a private but for a public object of the first magnitude: And in the case of such a bill, it would be a sacrifice of substance to form indeed (which I am confident your Lordships will never make), if your Lordships were to say "Because this bill has been introduced by petition, we will not entertain it, unless we have before us every individual whose private interests may be in any way affected, to give his consent." My Lords, I do deny, that upon a measure of great national importance, the consent of individuals whose interests may be incidentally affected is to be sought. Private interests are to give way to public advantage; and for this very plain reason, that the individual whose interest is in any way deteriorated by a measure of public expediency has his compensation in the share that will come to

him of the public good which the measure is to produce.

"Still, my Lords, I know it is apprehended, that the passing of this bill will be a dangerous precedent, and open a door to many applications which it would be very improper to grant and yet difficult to refuse when once this is granted. Upon what ground, it is said, will you refuse after this a legislative relief to any clergyman who can show that his provision is inadequate? —And, God knows, this is what many deserving clergymen can too easily demonstrate. One is reduced to a miserable pittance by a modus which he is compelled to receive in satisfaction for the tithes of many productive acres and the increase of numerous flocks and herds: Another performs the laborious duty of a populous parish, for no better remuneration in this world than

a scanty stipend paid by the impropriator. "Therefore," says the noble and learned lord upon the woolsack, "the passing of this bill will be a dangerous precedent, unless you can distinguish the case of the London clergy from the case of any other clergyman who is insufficiently provided." My Lords, I say that the case of the London clergy *is* distinguished: It is distinguished from every other by this very circumstance, that they are the London clergy —the clergy of the metropolis. My Lords, this distinction is not of my invention: It is obtruded upon your Lordships' notice by the authority of the statute-book; in which, not a single statute, from the earliest times to the latest, is to be found relating to tithes in general, in which an express exception is not made of the case of the London clergy,—and for no other reason than because they are London clergy: They are clergy

of the metropolis, and their competent maintenance is essential to the maintenance of the religion of the country; which is not equally to be said in the solitary case of any rural clergyman.

"My Lords, I really can perceive no analogy at all between the case of a country clergyman beggared by a modus (which however is a very deplorable case) and the case of the body of the London clergy beggared by the fire-act. I apprehend that every modus (which the courts, if it were litigated, would confirm) must have originated, or must be supposed in law to have originated, in composition real; and that, in every such case, the incumbent, at the time when the composition took place, received for himself a valuable consideration over and above the small payment reserved, to the detriment of his successors. There was nothing unlawful in the practice, how-

ever prejudicial it was to the church and to religion, till it was restrained by statute: But here was a valuable consideration to a person entitled and having at the time a right to sell; and it would be contrary to all justice to pretend at this time of day to set aside a lawful contract of so long standing. But can it be imagined, that the incumbents of the city livings at the time received any valuable consideration for what was subtracted from their legal claims by the fire-act?

"With respect to impropriations, my Lords, it has been argued, that this bill is inconsistent with its own principle; inasmuch as, proposing to augment the burden of the assessment upon the inhabitants, it proposes to make no augmentation of the burden upon the impropriators: If the assessment upon the inhabitants is to be augmented, why are not the stipends paid

by the impropriators to their vicars and perpetual curates augmented in the same proportion? It would be only a just imposition upon them, and would in some degree ease the inhabitants.—Equitable, my Lords, as on the first face of the proposal this may seem, it will, I believe, upon a closer inspection, appear, that it would neither be generally practicable to raise the stipend paid by the impropriator, nor, were it practicable, would it be just. Many of the impropriations are in the hands of ecclesiastical bodies, and make the principal part of their maintenance; and these appropriators could but ill afford to expend the sources of their own maintenance upon the support of their inferior brethren, however they may wish their brethren were better provided. Then the far greater part of these appropriations are under lease; and the proportion in which the revenue of the

estate is shared between the lessor and the lessee is for the most part such that the lessee has seldom so little as two thirds, and the lessor, in his reserved rents and the fines put together, seldom so much as one third. And for this reason, the burden of the stipend to the vicar or the perpetual curate is usually thrown by the lease upon the lessee: He pays it as reserved annual rent. One of the most valuable appropriations in the city, I believe, is the rectory of St Bridget, commonly called St Brides, in Fleet Street: This is appropriate in the Church of Westminster: It is under lease: In the beginning of the last century, there were endless disputes between the lessee of the Church of Westminster and the inhabitants of the parish: After teasing one another with vexatious law-suits till both sides were tired out, they united, the Dean and Chapter, their lessee, and the pa-

rishioners, in a petition to Parliament for a bill to adjust their differences: A bill was accordingly passed, assigning a certain annual income of 400*l.* to the appropriator, to be raised by assessment upon the inhabitants of the parish; and this seemed so much below the full value, that many burdens which properly belonged to the appropriator were thrown upon the inhabitants: This annual income of 400*l.* is under lease: The Church of Westminster receive only their reserved rent, and their very moderate septennial fine:—Now, my Lords, in this case, would your Lordships say "The Church of Westminster should be compelled to increase the stipend to the Vicar of St Brides?" The Dean and Chapter would say "We cannot afford it; we have not the means: Our reserved rent goes, with all our reserved rents, to the sustentation of our collegiate church and of our

famous grammar-school,—to the payment of the stipends of minor canons, lay-clerks, organists, sacrists, vergers, and to the education of the choristers; and our reserved rents are barely sufficient to this expenditure: The septennial fines are our own maintenance,—liable, however, in a certain proportion, and occasionally liable without limit, to the repairs of the fabric: From what sources are we to draw the increase of the Vicar's stipend?" If you say "Throw the burden upon your lessee, who, it is very well known, pays the present stipend,"—"The lessee" they will reply "will not consent; and what means have we of compulsion? We renewed the lease but last year, for the accustomed rent and with the old covenants; and the lessee will submit to no increase for twenty years to come,—he will hold us to our bargain." Under such circumstances, my Lords, I cannot see either

that the increase of stipend could be practicable or that it would be just.

" Again, in the city, the impropriation in many instances is in the parish: The parish has bought the impropriation; and in all these cases, to increase the stipend would be no ease to the parishioners: It would only augment their payments in another shape.

" Some noble lords may perhaps be apprehensive, that, if this bill pass, we may soon be desired to do the same thing for the incumbents of those new parishes which have been created under the act of Queen Anne for building fifty new churches. Those incumbents may be supposed to be in the same situation as the incumbents of the city livings which this act concerns; in so far as their maintenance depends upon certain annual income raised by assessment on their parishioners. My Lords, the an-

swer is, that the situations are widely different. The incumbents of those new parishes depend in part only upon fixed annual income; it is in part only that their incomes are certain and unimproveable: Their maintenance, in great part, depends upon shares assigned to each of them of a sum of money raised by a duty upon coals; and in aid of what that might produce, an additional certain annual income is assigned them, to be raised by assessment. But the commissioners for carrying the acts of Queen Anne and King George the First into execution were directed to lay out the shares of the money raised by the coal-duty either in real security or in the public funds. Laid out in real security, it is improveable income; and I believe the fact is, that it was for the most part so laid out. This I know to have been the case in two instances,—in the parishes of St Anne's, Limehouse, and

St Luke's, Old Street: The incumbent of the former is possessed, in right of his living, of a very productive estate in Essex; of the latter, of a very good estate in Middlesex, purchased with the money I mentioned. The incumbents therefore of these new parishes will have no pretence to solicit the interference of Parliament to augment the unimproveable part of their income: They are all already, upon the whole, well provided.

"My Lords, the case which comes the nearest to that of the London clergy, so far as the individual only is considered, is that of the incumbents of livings where the tithes have been commuted by act of Parliament for a fixed money-rent. I know one remarkable instance of this; and I doubt not but that many more are to be found. The tithes of a rectory in Oxfordshire, which is in the patronage of the see

of Rochester, by a bill of enclosure which passed before the middle of the last century, when such matters were not so well understood as now, were commuted for a certain annual payment of 100*l.* clear of all taxes and deductions. It happened that I presented to the living not long before I was removed from the bishopric of Rochester; and by the account I have had of the living since, I understand that the tithes which were exchanged for 100*l.* *per annum* now produce 1000*l.* or 1200*l.* But, my Lords, if the Rector of Mixbury should apply to Parliament,—if he should say "My case is as hard as that of the London clergy: Do for me what has been done for them,"—I should think it a proper answer to him if he were told "Your case is indeed very hard; but what has been done for the London clergy was not done on the consideration of the hardship upon individuals,

but in contemplation of the importance of maintaining the state and dignity of the established religion in the metropolis; which would be ill supported if the great body of its clergy were suffered to remain in a depressed state: Your case is very hard; but the public is not materially affected by the inadequate provision of the clergyman of an obscure country village; and a legislative arrangement of property of long standing must not be disturbed for the sake of an individual."

"In short, my Lords, I can see no danger in the precedent, which, it is apprehended, the passing of this bill will establish. The case of the clergy of the metropolis is so different from any case that can be imagined of any private country clergyman, or of the clergy of Westminster, or of the suburbs, that what is now done cannot easily be drawn into prece-

dent: And since the present bill is for a public object, I cannot admit that it is to be dealt with as a private bill in this House, merely because it was brought into the House of Commons by petition; and that the petitioners are to be called upon to show, that, requesting that to be done for them which the public good requires should be done, insomuch that if it is not done great public mischief must ensue,—I say, my Lords, such petitioners, in my judgment, are not to be called upon to show that they have the express consent of every individual whose interests may be in some degree affected by measures of such public importance; for surely, my Lords, public advantage must to a certain extent overpower private interests. But, my Lords, let me not be misunderstood: Far be it from me to say, that upon a measure of the greatest public importance, if an

individual has an apprehension of injury in his private property he has not a right to petition your Lordships,—that it is not your Lordships' duty, if he sets forth his case, to hear him at the bar upon his petition, and to take measures to prevent the injury to private property, if injury is likely to arise; for although the interests of individuals may be, without injustice, in some degree deteriorated for the sake of a public end, which cannot otherwise be attained, yet injury is not to be done to private rights, even for the sake of public good, unless the consideration of the public good involve considerations of justice which may justify what might otherwise be unjust. But, my Lords, in the case of the present bill, has any individual discovered any apprehension of detriment to his property? Have we had any petitions against the measure? My Lords, this thing has not been

done in a corner: There has been no concealment: The introduction of the bill into Parliament was a matter of the greatest public notoriety. The draught of the bill was communicated to the Court of Common Council: The Court referred it to the consideration of a committee, and that committee to a sub-committee; which, I am told, is the usual way in which such business is conducted in the city. The principal committee report to the Court of Common Council, that the sub-committee had reported to them, " that having taken the said bill into their consideration, and having held several conferences with the committee of the clergy thereon (who agreed to some alterations upon their suggestion), they, after duly considering every circumstance in favour of the said incumbents, as also of their respective parishioners, were of opinion that the said bill, as

it now stands, will not be an unreasonable charge on the inhabitants of this city; and therefore may with propriety be acceded to by the Corporation: And we (viz. the principal committee), agreeing in opinion with the said sub-committee, humbly submit the same," &c.

"But, my Lords, this is not all: A public meeting of the inhabitants of the city of London was called,—not by any authority, but by those who, delighting in public meetings, volunteered their services. One meeting at least was held, and came to some wise resolutions in reference to this application of the clergy to Parliament; which, by order of the meeting, were to be communicated to the Lord Mayor, the Aldermen, Deputies, and Common Council of the several wards, and the Churchwardens of the several parishes, to be by them communicated to the inhabitants at large, with the very evident though not avowed design

of exciting an opposition to this bill. But, my Lords, what did all this advertising, and meeting, and resolving, and communicating, produce?—Nothing at all, my Lords: It certainly tended to turn the attention of the inhabitants of the whole city to the bill; but no petition was produced, not a mouth was opened, till in the very last stage of the bill; and when the present session of Parliament was supposed to be within a few days or rather a few hours of its close, a paper was presented purporting to be a petition of the City of London against this bill. My Lords, if a petition against any private bill had come, in such a stage of the bill and at such a period of the session, before a committee above stairs, I know what the impression would have been upon the mind of a noble friend of mine opposite to me, who deserves highly of the country for the vigilance with which

he watches the iniquity of private bills; I know what the impression would have been upon my noble friend's mind, and upon my own: The mode of opposition would have prepossessed us strongly in favour of the bill so opposed: We should have said "This smells too strong of trick: A petition against a bill that has been the whole session pending!—in this stage of the bill, and in these expiring moments of the session!—The opponents feel they have nothing to say against the bill, and they would kill it by stratagem." My Lords, I am too little acquainted with city politics to pretend to guess in what way this same petition against the bill before your Lordships might be procured,—after the bill had received its second reading—after the report of the committee above stairs upon the bill—when it was before a committee of the whole House previous to its third reading.

My Lords, when first I heard of this famous petition, I thought it might be a step taken only for the good of the common sergeant,—that this bill might not be carried through without his deriving some emolument. My Lords, I mean no disrespect to that learned gentleman; far from it: When he appeared at your Lordships' bar, he felt, I suppose, that he had little to say in support of the petition; and he had the good sense to say very little.

"My Lords, under all these circumstances,—considering the bill as in substance a public bill—considering the want of opposition as a tacit consent, if consent were wanted, of all persons affected by it—considering the importance of the object,—I cannot agree to the amendment moved by the noble duke; and I shall certainly say "content" upon the question that the word "now" stand part of this motion."

ON THE PETITION FROM THE ROMAN CATHOLICS OF IRELAND;

MAY 13, 1805.

ON the 10th of May 1805, Lord GRENVILLE moved that a petition from his Majesty's Roman Catholic subjects of Ireland, praying to be released from certain civil penalties and disabilities in force against them, be taken into consideration: Whereupon an animated debate arose; which lasting to a late hour, was resumed on the 13th of the same month; when the Bishop of ST ASAPH rose and said

" MY LORDS,

" In delivering my sentiments upon this subject, I hope I shall be able to maintain that temper of cool discussion which a question affecting so numerous and so respectable a description of his Majesty's subjects—a question so important and momentous in its bearings and consequences —demands.

" My Lords, if I should feel it to be my duty to resist the prayer of this petition, my vote will not be founded upon any uncharitable sentiments entertained by me, of that branch of the Christian family which holds communion with the church of Rome. My Lords, I shall easily find credit with your Lordships for this assertion; I shall easily find credit for it with the country; I shall easily find credit for it with the Roman Catholics themselves: For of every measure that has been brought forward,

during the time that I have had a seat in this House, for the relief of the Roman Catholics from the old penal laws, it is well known I have been a strenuous supporter;—some measures of a contrary tendency I have strenuously and successfully resisted.

"My Lords, I do not hold that there is any thing in the Roman Catholic religion at variance with the principles of loyalty: I impute not actual disloyalty, far from it, to the Roman Catholics of this kingdom at the present day. I do not believe that any Roman Catholic of this country, at the present day, thinks himself at liberty not to keep faith with heretics—not bound by his oaths to a Protestant government, or that the Pope can release him from the obligation of his oath of allegiance to his sovereign. The questions upon these points which were some years since proposed to

foreign universities, and to the faculties of divinity abroad, and the answers that were returned, which a noble earl* this evening read in his place, were no news to me: I had a perfect knowledge of the questions proposed and the answers returned; in which these abominable principles were most explicitly and unanimously reprobated by the learned bodies to which the questions were propounded; and I am persuaded, that the Roman Catholics of this country are sincere in their disavowal and abjuration of those pernicious maxims. I hold, that the Roman Catholics of this country are dutiful and loyal subjects of his Majesty; and I think them as well entitled to every thing that can be properly called toleration, and to every indulgence which can be extended to them with safety

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* Earl ALBEMARLE.

to the principles of our constitution, as many of those who do us the honour to call themselves our Protestant brethren; the Roman Catholics indeed differing less from us in essential points of doctrine, and in church discipline, than many of them. But, my Lords, my mind is so unfashionably constructed, that it cannot quit hold of the distinction between toleration and admission to political power and authority in the state. The object of toleration, my Lords, is conscientious scruples. My Lords, I conceive that the Roman Catholics already enjoy a perfect toleration: The statutes which exclude them from offices of high trust and authority in the state are not penal; such exclusions are not penalties; and the relaxation of those statutes would not be toleration; it would be an indulgence of a very different kind: And although I wish the Roman Catholics should

enjoy toleration in its full extent,—that they should be subject to no penalties for any religious opinions which may be peculiar to them—to no restraint in the use of their own forms of worship among themselves,—yet I could not without anxiety and apprehension see a Roman Catholic upon that woolsack where my noble and learned friend now sits, or on the bench of justice so worthily occupied by a noble and learned lord at my right hand. My Lords, this petition goes this length: It prays, that a Roman Catholic may be invested with the capacity of being any thing in the state but king. Now, my Lords, if there would be no danger to the constitution to admit a Roman Catholic to be any thing but king,—if this would be a safe thing to do, I confess it is beyond the powers of my mind to imagine upon what principle the act of settlement can be defended.

"My Lords, my mind is not yet brought to that modern liberality of sentiment which holds it to be a matter of indifference to the state of what religion the persons may be who fill its highest offices: I hold, that there is danger to the state, when persons are admitted to high offices who are not of the religion of the state, be it what it may. And, my Lords, I am ready to argue this very fairly: I think in my conscience, that I myself, being a Protestant, should have been a very unfit person to have held any high office under the old French Government. My Lords, the noble Secretary of State, in the former night's debate, argued this point of the inexpediency of admitting persons differing in religious persuasion from the state,—he argued it from the practice of antiquity; and he argued justly. It certainly was the policy of all the states of antiquity to re-

quire that persons in office in the state should be of the established religion of the country. My Lords, I shall argue from the sad experience which modern times afford of the mischief of giving way to the contrary principle. My Lords, having said that I will argue from modern times, I may seem to be going somewhat back, if I mention the French Hugonots; but, my Lords, they are an instance in point. I will say, that the Hugonots were very bad subjects of Roman Catholic France: They became bad subjects in consequence of the extravagant indulgences which for a long series of years they were permitted to enjoy: They became at last so bad, that the French Government was provoked to revoke those indulgences; and the cruel persecution took place which drove them from their country. The persecution was cruel, but it was the natural

effect of impolitic indulgence; and such indulgence may always be expected to terminate in such cruelty. But, my Lords, I rely chiefly on the events of much later times—of our own times. My Lords, I ask, what was the real beginning and radical cause of that dreadful convulsion which at this moment shakes all Europe? What was the real beginning and first cause of the subversion of the ancient French Government, and of the overthrow of the venerable Gallican church?—Was it not the placing of Neckar, that Protestant republican, at the head of the counsels of monarchical Roman Catholic France?

"Now, my Lords, if there be danger in admitting a Protestant to any high part in a Roman Catholic government, the danger certainly must be rather greater of admitting a Roman Catholic to any high part in a Protestant government; and for this

reason,—that the Roman Catholic pledges his obedience, within a certain limit, to a foreign power; which is not the case of the Protestant. I say, my Lords, within a certain limit; for I am aware of the distinction between the spiritual supremacy of the Pope, which is all which our Roman Catholics acknowledge, and his authority in civil matters, which they renounce; and I believe them to be perfectly sincere in that renunciation. But, my Lords, there is such a connexion between authority in spiritual matters and in civil, that I apprehend some degree of civil authority may indirectly arise out of the spiritual supremacy; insomuch that the conscientious Roman Catholic may sometimes find himself hampered between his acknowledgment and his renunciation. It is true, however, that the Roman Catholics of this part of the United Kingdom explicitly renounce even that in-

direct authority of the Pope in civil matters: For the English Roman Catholic swears, that "he does not believe that the Pope of Rome, or any other foreign prince, prelate, state, or potentate, hath, or ought to have, any temporal or civil jurisdiction, power, superiority, or preëminence, directly or indirectly, within this realm." I very well remember, my Lords (and I have reason to remember it, for I had a great share in that business), that when the oath to be imposed upon the Roman Catholics was under consideration in this House, there was some hesitation about the word "indirectly." Some of us thought, that it would be pressing too hard upon the conscience of the Roman Catholic to make him abjure that which might seem to be an appendage only of what he was permitted to acknowledge. The word, however, was after some debate inserted: It stands

in the oath; and the English Roman Catholic abjures even that indirect authority of the Pope in temporal and civil matters. Still, I fear, the line of demarcation between spiritual and temporal it may not always be easy to define; and I must observe, that the Irish oath is not drawn with the same precision: The word "indirectly" is omitted; and there is another important omission; the Irish Roman Catholic does not, so explicitly as the English, bind himself to maintain the Protestant succession.

"My Lords, having mentioned these oaths, I must take occasion, in justice to the Roman Catholic clergy of England, to set right a matter which I think was inaccurately stated by a noble and learned lord in the former night's debate. That noble and learned lord seemed to think that the Roman Catholic clergy of this country

scrupled to make those abjurations which their laity have made; and he told your Lordships, that when the bill for the relief of the Roman Catholics was brought into Parliament, the apostolical vicars put forth an encyclical letter forbidding the people of their communion to take the oath prepared for them. Now, my Lords, it is very true that the apostolical vicars forbade the taking of that oath which stood in the bill originally brought into the House of Commons and which actually passed that House: But their objection to the oath was not, that they were unwilling that their people should swear to the maintenance of the Protestant succession, or to the renunciation of the Pope's indirect as well as direct authority in temporals; but the oath, as it was framed in the Lower House, contained some theological dogmata, which they deemed, and in my judgment rightly

deemed, impious and heretical. The dogmata to which I allude amounted to an abjuration of the legitimate authority of the priesthood in the administration of what we churchmen call the power of the keys; abjurations, my Lords, which I, a Protestant bishop, would not make; and I should impute great blame to any priest of mine who should condescend to make them. It was on account of these abjurations that the apostolical vicars reprobated the oath as it stood in the first bill; and when the oath was amended in that part, as it was in this House, the vicars apostolic made no farther objection. On the contrary, when the bill had passed, they exhorted their people, clergy as well as laity, to take the oath as it now stands; and they have, I believe, themselves taken it.

" My Lords, at the beginning of this debate, although I never thought of consent-

ing to the prayer of the petition in the extent to which it goes, yet, I confess, the inclination of my mind was not to oppose the motion of going into a committee. I thought it might best become the gravity of your Lordships' proceedings, to consider the subject in detail—to examine the petition article by article; for, my Lords, I hold not with those who think, that because the whole or any thing like the whole cannot be granted, nothing might be conceded: And it was not till the debate had made a considerable progress that my mind was changed. But I must declare, that it is now completely changed, by the representation that has been made to us, by very high authority, of the actual state of the Roman Catholic hierarchy in Ireland. My Lords, I have long understood, that the Roman Catholic clergy in Ireland were upon a different footing from

their brethren here. Here, the Roman Catholic clergy appear in the unassuming character of mere missionaries: There are no diocesan bishops, no parish priests: England is divided into four districts, which are superintended in spirituals by four bishops *in partibus*,—a Bishop of Centuriæ, a Bishop of Acanthos, &c.; who take the title of vicars apostolic, and exercise their spiritual authority with great modesty and decorum, and in a manner perfectly inoffensive to the established church and to the state. I knew that in Ireland, each province has its titular archbishop, each diocese its titular bishop, and each parish its titular priest; but I had no conception, till a noble and learned lord informed us of it, that these titular prelates and priests claim to be the rightful possessors of the respective sees and parishes, and treat the prelates and priests of the established church

as usurpers and intruders. I had no conception that the titular Archbishop of Armagh would publicly take to himself the style of Armachens, and designate the Lord Primate by the simple appellation of Dr Stuart. The withholding from the Lord Primate the title which belongs to him, in itself is no great matter; but the claim to jurisdiction, in exclusion of the established prelacy and priesthood, is another thing. A noble duke on the opposite bench has said, in exculpation of them, that these Roman Catholic prelates are really bishops. Most undoubtedly, my Lords, they are bishops as truly as any here: They are of the episcopal order; and men, I dare say, in their individual character, highly worthy of that preëminence in the church. But, my Lords, I am sure the noble duke knows enough of our ecclesiastical matters, to be apprized of the distinction between the

"power of order" and the "power of jurisdiction." The "power of order" these Roman Catholic prelates possess; but the "power of jurisdiction" does not of necessity attach upon the "power of order." A man may be a bishop, and yet it follows not of necessity that he is bishop of a diocese. The two powers, that of order and that of jurisdiction, are quite distinct, and of distinct origin: The power of order is properly a capacity of exercising the power of jurisdiction conferred by a competent authority; and this power of order is conveyed through the hierarchy itself, and no other authority but that of the hierarchy can give it. The only competent authority to give the power of episcopal jurisdiction in this kingdom is the Crown. It is true, that in this part of the United Kingdom, that power may seem in some degree to flow from the hierarchy;

because we have the form of an election of a person to be bishop of a vacant see, by the clergy of the cathedral: But this is a mere form; the Chapter cannot proceed to elect without the King's licence: The King's licence to elect is always accompanied with his Majesty's letter missive, recommending a fit person to their choice; and it always so falls out, that the Chapter agree with the King in their opinion of the fitness of the person. In substance, therefore, the collation of the diocesan jurisdiction is from the Crown. In Ireland, the collation of the power of jurisdiction is, both in form and in substance, from the Crown solely; for the prelates of that part of the kingdom are appointed to their respective sees without any *congé d'elire*, or any form of an election by letters patent under the great seal. In neither part therefore of this kingdom can there be any

legitimate power of jurisdiction but what is conferred by the Crown; and the claim of such a power independent of the Crown is a most outrageous violation of the very first principles of our ancient constitution.

"But, my Lords, unwarrantable as this claim of the Roman Catholic prelates in Ireland appears to be, I am still more alarmed by the manner in which, as we have been informed by the noble and learned lord,* they exercise their spiritual authority. My Lords, when the noble and learned lord entered upon this topic with a remark that we here in England have no idea what excommunication is in Ireland —that it is really a dreadful thing; and seemed to make this the ground of some charge he had to bring against the Roman Catholic clergy of Ireland,—my mind, I

* Lord Redesdale.

confess, was all puzzle and amazement: I could not imagine what this might be; and surmises arose of the very contrary of that which I now understand to be the case. Excommunication in Ireland a dreadful thing?—Why, I said to myself, to a Christian, to one who really believes, how should excommunication, in the true meaning of the word, in Ireland or anywhere else, *not* be a dreadful thing? Excommunication, in the true meaning of the word, is the separation of a Christian, leading a disorderly life disgracing his profession, from the Christian congregation—a banishment of him from the church: And this separation every Christian must consider as a state of great danger and peril; for, as the promises of the gospel are all made to the church in its corporate capacity, and extend to the individual only as a member of that elect society (none but fanatics hold

the contrary), to be severed from that society is to be excluded from all share in the blessings and promises of Christianity. This is excommunication; and this is certainly a dreadful thing. Excommunication, as it is practised here in England, I know very well, in itself is no dreadful thing; it carries no terror with it but in its secular consequences: But this is because what we call excommunication is not really what the word means; and I have always considered the manner in which it is used among us as little better than a profanation of a most sacred rite of discipline. It is used with us merely as an engine to support the authority of the ecclesiastical courts. If a man disobeys a citation, and persists in his neglect of it, excommunication is denounced, though the object of the citation should lie in some of these secular matters which by our laws are submitted

to the cognizance of these courts. The sentence is pronounced by a layman, without any thing striking in the manner of it; and, if the offender still persists, at the expiration of certain days, comes indeed a dreadful thing; he is committed to prison, by virtue of the writ *de excommunicato capiendo*—a writ issuing from a secular court; and there he must remain, till, in the language of Doctors Commons, he has made "his peace with the church," *i. e.* till he has made his submission to the court. The person on whom the sentence falls all the while finds not the burden of any thing properly to be called a sin upon his conscience: He is not aware that he has offended the church; for his imagination cannot identify the ecclesiastical court, in which a layman sits as judge, taking cognizance perhaps of matters of a secular nature, with the church; and he perceives

not that religion has any thing to do in the business. Such excommunication has certainly nothing dreadful in itself, but in the imprisonment only which follows. Such was not the primitive excommunication. The objects of that dreadful sentence were none but notorious sinners,—fornicators, usurers, idolaters, railers, drunkards, extortioners:* It was pronounced with awful solemnity, in the full assembly of the church, by the bishop himself, or some person specially delegated by him: It produced the greatest consternation in the conscience of the sinner; and generally brought him to a sense of his guilt, and produced a reformation, which nothing short of this severity could have effected. When the noble and learned lord said that excommunication in Ireland was a dreadful

* 1 Corinthians, v. 11.

thing, the surmise that naturally rose in my mind was, that the excommunications of the Irish prelates were something more resembling the primitive excommunications than that is which our courts call excommunication; and I wondered how this was to be turned to the reproach of the Roman Catholic bishops. But when the noble and learned lord went on, he soon made me understand, that their excommunication is no less a profanation, though in a different way, but no less, if not more a profanation of the rite, than our practice. It is indeed a dreadful thing; but not dreadful simply by the alarm of the excommunicated person's conscience, but by the worldly distress it brings upon him: It is not simply a separation from the body of the faithful, but it is, to all intents and purposes, an interdiction *ab aqua et igne.* No Roman Catholic dares

to administer a crust of dry bread or a cup of cold water to the person under this interdiction; and the offence which draws down this horrible sentence is any friendly intercourse which a Roman Catholic may be found to hold with Protestants. My Lords, this is an abominable abuse of the power which Christ has placed in the hands of the governors of his church,—not to destroy the worldly comforts of men, but for the salvation of their souls. No precedent is to be found for such tyranny in the conduct of the apostles. The first instance of an excommunication upon record took place, in a very early period, in the church of Corinth: A member of that church was leading a most flagitious life; and the process of the excommunication was this. The apostle St Paul, not being able to attend in person, issues his peremptory mandate to the church of Corinth to assemble,

and, in full congregation, " in the name of our Lord Jesus Christ, and with the power of our Lord Jesus Christ, to *deliver* the offender *unto Satan*,"—that is, to expel him from the church; by which he would be deprived of those assistances which the church affords to resist Satan,—"for the destruction of the flesh,"—not that the man was to be starved—driven from civil society, and reduced to perish with cold and hunger and thirst; but for the mortification of the carnal appetites; for the flesh here evidently signifies the appetites of the flesh: And this flesh was to be thus destroyed to this intent and purpose, " that the spirit might be saved in the day of the Lord Jesus:" And the spirit in that day will be saved; for the man was brought to repentance; and upon his repentance, the apostle writes to the church again, to receive the penitent again into their commu-

nion, and to "confirm their love to him." And it appears that offenders under this dreadful sentence were still treated with great charity and commiseration; for thus the same apostle writes to the church of Thessalonica: "We command you, brethren, in the name of our Lord Jesus Christ, that ye withdraw yourselves from every brother that walketh disorderly; and if any man obey not our word by this epistle, note that man, and have no company with him, that he may be ashamed: *Yet count him not as an enemy, but admonish him as a brother.*" Very different this from the despotism which we are told is exercised by the titular bishops in Ireland over persons of their own communion.

"My Lords, in this state of the Roman Catholic hierarchy in Ireland, it would be in vain to go into a committee to take this petition into consideration; for certainly

nothing of political power and influence can be conceded to the Roman Catholics in Ireland beyond what they already enjoy, unless their hierarchy can be reduced to a less offensive form, and checked in the monstrous abuse of their spiritual authority. I should hope that neither of these things is impracticable,—that both may be effected, by the influence of persons of rank of that persuasion with their pastors, concurring with Government in mild measures for the attainment of these ends. But if these ends cannot be attained by the concurrence of the Roman Catholics themselves with Government, I confess we seem to be reduced to this dilemma,—either this hierarchy must be crushed by the strong arm of power (God forbid the dreadful necessity should arise), or the Roman Catholic church must be the established church of Ireland. My Lords,

if the thing were *res integra*,—if we had now to form a constitution for Ireland *ab initio*,—I have no hesitation in saying, that it might be matter of grave deliberation which of the two measures should be adopted. But this is not the case. The Irish constitution is settled—settled long since, upon the basis of Protestantism; and that constitution so settled has been recently confirmed by the *pacta conventa* of the Union. When I speak, however, of crushing the Roman Catholic hierarchy in Ireland, I mean not that the Roman Catholics of that country should be deprived of the superintendence of bishops; but their bishops should not be allowed to assume diocesan jurisdiction in exclusion of our own prelacy, or even coördinate with it; nor should they be suffered to domineer in the manner we are told they do.

"My Lords, if these difficulties stood not in the way, I should be ready to go into a committee. Still I should oppose the prayer of the petition, in the extent to which it goes; for this among other reasons,—that I think a compliance with it would be the worst thing that could befall the Roman Catholics as well as ourselves: The immediate effect of it, I think, would be, to revive that detestable rancour between Protestants and Roman Catholics which has for so many years been the disgrace of the Western church, but is dying away if we only let alone what is well."

ON THE SLAVE-TRADE;

JUNE 24, 1806.

THE House of Commons having resolved, on the 18th of June 1806, on the abolition of the slave-trade,—after the division on the original question, a motion was made and carried by Mr Fox, that a conference should be desired with the Lords, on a subject particularly connected with the honour and humanity of the nation; and that the CHANCELLOR of the EXCHEQUER (Lord Henry Petty) should be ordered to attend their Lordships for that purpose. After the conference, Lord GRENVILLE moved in the House of Lords, on the 24th of the same month, the order of

the day for taking into consideration the resolution which had been sent up from the Commons; and concluded with moving that their Lordships should concur in the said resolution. This was opposed by Lord HAWKESBURY; who moved the previous question. Upon this a debate arose; in which the Bishop of ST ASAPH supported the original motion.

"MY LORDS,

"Consistently with the sentiments which for years I have been avowing in this House, I cannot but declare my entire approbation of the motion of the noble lord, to agree in the resolutions of the House of Commons, communicated to us in a late conference, respecting the slave-trade. And, my Lords, this approbation I for my part shall be ready to de-

clare in any month of the year, any day of the month, and any hour of the day.*

"My Lords, in the discussion of this subject, I could wish that the two questions of slavery and the slave-trade had been kept as distinct as they are in their own nature, and as they were represented to be by the noble lord who brought this business forward. But in the arguments of the two noble lords who have spoken on the other side, they have been perpetually confounded: Nay, indeed, one of those noble lords, the noble earl opposite to me in the blue riband, has gone so far as to say, that the two things, slavery and the slave-trade, are one and the same; at least, that they are so far the same, that we who contend for the total abolition of the slave-trade ought upon *our own principles*, the noble

* The Earl of WESTMORELAND objected to the agitation of the question at this late period of the session.

earl has been pleased to say, to propose the immediate emancipation of the slaves already on the islands. My Lords, I can easily suppose that the noble earl imagines that he understands upon what principles my opinion is founded better than I myself understand: I dare say he thinks so. But, my Lords, I can perceive no connexion, and there is no connexion, between the emancipation of the persons actually in slavery and the abolition of the slave-trade. I might think, as I do think, the immediate emancipation of the slaves a measure to be strenuously resisted, and yet not think myself, for that reason, obliged to vote that the means which are used by us to keep up the supply of slaves are fit to be put in practice. However, my Lords, I agree, that in discussing the merits of the slave-trade, it is fit previously to take a view of slavery itself: And, my Lords, I

agree with the noble lord near me, the mover of the question, that slavery is itself an evil of the very first magnitude—a calamity to those on whom it falls—a calamity the heaviest, the most dreadful, of all which are incident to mortal man. My Lords, the evil of the thing is this,—that it is a degradation of man from the condition of man. The moment that any one becomes a slave, he is in the state and condition of man no longer: He is no longer master of his own body or his own mind; he has no longer any property in himself, or in the exertions of his own industry. And, my Lords, this is an answer to all those arguments in favour of the slave-trade which are drawn from the humane treatment the negroes meet with in the West Indies from the planters. My Lords, I do not call in question the humanity of the planters: I doubt not that their hu-

manity generally administers to their slaves all the consolations the condition is capable of receiving. But what can the utmost humanity of the master do for the slave? —He may feed him well, clothe him well, work him moderately; but, my Lords, nothing that the master can do for his slave, short of manumission, can reinstate him in the condition of man, from which man ought not to be detruded. My Lords, with concern and indignation I have often heard it argued in this House, that under the kind treatment of the planters, the negroes in the West Indies live as comfortably as our own peasantry. My Lords, with respect to mere animal enjoyment, it may be true; but mere animal enjoyment is not the great consolation of man's existence. Our British peasant, sustaining himself and his family upon his homely meal of coarse barley bread and skimmed milk, and stretch-

ing his weary limbs at night upon his pallet bed, is independent—the master of himself, and the father of his own family: The bread he eats, and distributes to his children, is his own: He sleeps upon his own bed: All the fatigue he endures is for himself; he toils for himself and his own family—not for a master: His comforts depend not upon the precarious kindness of a master: He is a *man*; he holds the rank and dignity of man in civil society. But the negro slave in the West Indies!—my Lords, you may pamper him every day with the choicest viands,—you may lay him to repose at night on one of your "beds of roses,"*—but with all this,

* These words allude to what had passed in debate a few nights before in the Lower House. One of the members of the new Ministry complained of the disordered state in which their predecessors, upon their retirement from office, had left the affairs of Government. In reply, it was said, that so far from this being the case, the very reverse was the

he is not in the condition of *man*; he is nothing better than a well-kept horse.

"My Lords, this is my notion of slavery. But whether this evil ought to be abolished by legislative measures, is not the question before us: The question before us is, Whether the means which we employ to reduce every year thousands and myriads of the human race with whom we have no ground of quarrel to this deplorable state, few of whom would otherwise ever have been reduced to it, are such as ought to be employed by a great nation like this, pretending to conduct itself by the eternal laws of justice, and professing the Christian religion.

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truth; that the business of the public offices had never been left by any administration in a more regular train than by the last; that the new Cabinet would find every thing ready prepared to their hands; and would have nothing to do but pocket the emoluments of office, and "repose on beds of roses."

" My Lords, with respect to the humanity and the justice of the slave-trade,—that it is inhumane, that it is unjust, is a matter so manifest to my mind, that I declare I know not how to argue it: The proposition is so very clear, that I know not where to find media of proof to make the truth of it more evident.

" My Lords, what is humanity?—Is it not a desire to promote the happiness of all of the human species with whom we come in contact? Is our slave-trade consistent with this humanity?

" What is justice, my Lords?—Is it not to do to others as we wish they should do to us?—to do as we would be done by? Is the slave-trade consistent with this justice?

" My Lords, if the slave-trade be inhumane and unjust, I need not at present argue its impolicy. The noble lord opposite

has admitted, that if it can once be proved to be inhumane and unjust, it must be impolitic. My Lords, I rejoiced in the admission: I knew the noble lord was sincere in what he said; he spoke the generous sentiments of his heart: And I rejoice to find, that he thinks, as I do, that in public measures as well as in private life, honesty is the best policy, and that nothing can be politic which is inhumane or unjust. The slave-trade is inhumane, is unjust; therefore it is impolitic. Upon the point of policy, therefore, I shall say no more at present.

"I pass now to another topic,—the religion of the question. I thought, indeed, a reverend prelate near me had left me little to say on the scriptural part of the subject: And little, indeed, I should have had to say,—nothing, but to declare my entire concurrence in the sentiments of that reve-

rend prelate,—had not his argument been answered in so masterly a manner by the noble earl in the blue riband, learned in the Hebrew law!

"My reverend brother told your Lordships, that perpetual slavery was not permitted by the Jewish law;—that a native Jew could be held in slavery for seven years only at the longest; for he had a right to his freedom upon the first return of the sabbatical year;—and that a foreign slave, purchased in the market, or captivated in war, could be held in slavery for fifty years only at the longest; for the foreign slave had a right to his freedom upon the first return of the year of jubilee: And from these premises, my reverend brother concluded, that perpetual slavery was unknown among the Jews.

"I confess I was carried away by the fair appearance of my reverend brother's

arguments, till, to my great surprise and his utter confusion, the noble earl rose, with his Bible in his hand, and quoted chapter and verse against him!

"My Lords, with respect to the native Hebrew slave, we have this law, which was quoted by my reverend brother: "If thy brother, an Hebrew man or an Hebrew woman, be sold unto thee, and serve thee six years, then in the seventh thou shalt let him go free from thee: And when then thou sendest him out free from thee, thou shalt not let him go away empty; thou shalt furnish him liberally out of thy flock, and out of thy floor, and out of thy wine-press; of that wherewith the Lord thy God hath blessed thee, thou shalt give unto him."—*Deut.* xv. 12—14. And with respect to the foreign slave, we have this law, quoted likewise by my reverend brother: "Thou shalt number unto thee seven

sabbaths of years—forty and nine years: Then shalt thou cause the trumpet of the jubilee to sound throughout all the land: And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land, to *all* the inhabitants thereof."—*Lev.* xxv. 8—10. The manumission of the Hebrew slave on the seventh year was provided for by the other law: Under the expression, therefore, of *all* the inhabitants, foreign slaves must be comprehended; for none but foreign slaves could remain to be manumitted in the fiftieth year.

"My Lords, there is a circumstance, not touched upon by my reverend brother,—but there is a passage in the law, which I have always considered as a strong argument of the lenity with which slaves were treated among the Jews, and of the efficacy of the provisions the law had made to obviate the

wrongs and injuries to which the condition is obnoxious. My Lords, I am afraid I cannot, by memory, refer exactly to the place; but the noble earl there, with his Bible, I am sure will have the goodness to help me out, and turn up the passage for me. My Lords, it is a passage in which the law provides for the case of a slave who should be so attached to his master, that when the term of manumission fixed by the law should arrive, the slave should be disinclined to take advantage of it, and wish to remain with his master; and the law prescribes the form in such case to be used, by which the master and the slave should reciprocally bind themselves, the slave to remain with his master for life, and the master to maintain him. This I have always considered as a strong indication of the kindness with which slaves were treat-

ed among the Jews; else whence should arise that attachment which this law supposes?

"But we are all in the wrong, it seems, my reverend brother and I; we reason from specious premises, but to false conclusions. The noble earl has produced to your Lordships a passage in the Levitical law, which enacts, that the foreign slave should be the property of his master *for ever*; whence the noble earl concludes, that the perpetual servitude of foreign slaves was actually sanctioned by the law. But, my Lords, I must tell the noble earl, and I must tell your Lordships, that the noble earl has no understanding at all of the technical terms of the Jewish law. In all the laws relating to the transfer of property, the words "for ever" signify only "to the next jubilee:" That is the longest "*for ever*" which the Jewish law knows with respect to proper-

ty; and this law, which makes the foreign slave the property of his master *for ever*, makes him no longer the master's property than to the next jubilee. And, with the great attention the noble earl has given to the laws and history of the Jews, he must know, that when they were carried into captivity, they were told by their prophets, that one of the crimes which drew down that judgment upon them, was their gross neglect and violation of these merciful laws respecting manumission; and that, in contempt and defiance of the law, it had been their practice to hold their foreign slaves in servitude beyond the year of jubilee.

"My Lords, much has been said, especially by the noble earl, about the antiquity of slavery. Certainly the condition of slavery has subsisted in the world from the earliest times; but the slavery of the early ages,—though slavery, in its mildest form, I

ever will maintain to be a dreadful evil,—but it was a very different thing from the negro slavery in the West Indies. But, my Lords, slavery is not the thing in question: The only thing in question is the slave-trade. We have heard indeed much of the antiquity of that trade. My Lords, be its antiquity what it may, I cannot admit that any prescription of time can give a sanction to inhumanity and injustice: But let us look a little into this plea of antiquity.

"Now, my Lords, I know very well, that from the highest antiquity, slaves have been an article of commerce,—that they were in all times to be bought in the marts upon the coasts of the Red Sea and the Mediterranean. But, my Lords, I ask the noble earl in the blue riband, who has so much insisted upon this topic of antiquity, has he, in the whole compass of his

reading, found in all antiquity any thing analogous to our slave-trade? Can he tell me of any ancient nation which was in the practice of fitting out fleets of ships annually, to transport the inhabitants of any particular country, against their will, torn violently from their native soil, their habitations, and their families, to hard cruel slavery in a foreign clime? Was there any thing in ancient times bearing the least resemblance to the modern slave-trade?—My Lords, I deny it; there was no such thing. Does the noble earl, who with so much force of eloquence has described the flourishing state of slave-trade in ancient times, in Persia, in Greece, in Egypt, among the Romans, all over the world,—does the noble earl seriously believe, that there was to be found in the fleets of any ancient nation—that there was to be found upon the Mediterranean, the Red Sea, or

the Euxine, in the Euphrates, or the Tiber, a single vessel constructed upon the model of a British *Guinea-ship*?—a vessel formed to stow the greatest possible number of persons in the smallest space, with every contrivance for the profit of the trader, and without the least attention to the comforts or consideration of the sufferings of the miserable victims of that infamous traffick.—My Lords, again I say, there was no such thing. Slaves may have always been an article of trade; but the slave-trade carried on in vessels fitted for the transport of no other commodity but the persons of men in chains—of men and women, boys and girls, unjustly captivated, is of modern date. My Lords, that in ancient times there was no such trade, it is not incumbent on me to prove; I call upon the other side to prove that there *was*. They cannot prove it; I defy them; they

cannot produce a particle of proof. But, my Lords, I will go farther than the rules of argumentation oblige me to go: Not content with the total defect and absence of proof on the other side, I will argue for the negative, from a notorious fact in the history of the Romans. My Lords, the Romans had in their best times some negro slaves; but they had very few of them,—their negroes bore a very inconsiderable proportion to the working slaves upon their farms; whereas, had there been any thing of a slave-trade in the world in those times, their negro slaves must have greatly outnumbered all the rest.

"My Lords, having disposed of the antiquity of the trade, I come again to the religious part of the subject. We find no prohibition, it is said, of the slavery in the Bible. Certainly not, my Lords; the patriarchal religion, and most remarkably

the Christian religion, avoid as much as possible all interference with civil institutions. Our Lord delivered general maxims of conduct to lay hold of the consciences of men; and by the silent effect of those general maxims, and not by more violent means, he aimed at the gradual reformation of the manners both of individuals and bodies politic. It is not therefore to be concluded of every thing not expressly forbidden in Scripture, that it is therefore not contrary to the spirit of revealed religion; and not being forbidden, is approved.

"But, my Lords, I must again remind your Lordships, that we are not to talk about slavery, but about the slave-trade; and about slave-trade in its modern shape —the Guinea-trade. The noble earl then will ask me "What prohibition have we in Scripture of the slave-trade?"—None, my

Lords. It would indeed have been strange, if this modern practice had been prohibited to the sons of Noah, or to the children of Israel, who never practised it, had no conception of it, and could only have wondered what it was they were forbidden to do. It would have been strange indeed, if any prohibition of the slave-trade had been to be found in the Scriptures of the Old Testament.

"But have we any prohibition of it in the New Testament?—None, my Lords, absolutely none; and for the same reason,—the crime, in its modern shape, was unknown in the times of the promulgation of the gospel. But, my Lords, although we have no explicit *prohibition* of the slave-trade in the New Testament, we have a most express *reprobation* of the trade in slaves, even in that milder form in which it subsisted in ancient times,—such a re-

probation of it as leaves no believer at liberty to say that the slave-trade is not condemned by the gospel. The reverend prelate near me has cited the passage* in which St Paul mentions "men-stealers" among the greatest miscreants. "Men-stealers," so we read in our English Bible; but the word in the original is ἀνδραποδισταῖς. Ανδραποδιστὴς is literally a "slave-trader;" and no other word in the English language but "slave-trader" precisely renders it. It was indeed the technical name for a slave-trader in the Attic law; and although the Athenians scrupled not to possess themselves of slaves, yet the trade in slaves among them was infamous. But whatever they might think of it, we have reason to conclude, from the mention made of "slave-traders" by St Paul, that if any of

* 1 Timothy, i. 9. 10.

them should ever find their way to heaven, they must go thither in company with murderers, parricides, and sodomites!

"My Lords, it is with reluctance that I come to touch upon the impolicy of this trade,—its inherent impolicy, I mean, exclusive of that which consequentially attaches upon it as inhumane and unjust. I come to this with reluctance, because I am very unwilling to tire your Lordships with saying the same thing over and over again; and, upon this part of the subject, I have nothing to say but what I have been repeatedly saying upon many former occasions for the last eighteen years. But, my Lords, whenever this subject is brought before the House, I cannot acquit myself to my own conscience without declaring my opinion upon every part of it. My Lords, it is the firm persuasion of my mind, —a persuasion not rashly conceived, not

conceived without an anxious and laborious study of the reports of the Privy Council, the evidence given at the bar of the House of Commons, and the evidence at our own bar,—it is my firm persuasion, that sound policy no less forbids the continuance of this trade than humanity and justice. My Lords, I am persuaded, that when the slave-trade shall be abolished, the cultivation of the West India Islands will rapidly improve: The number of the negroes will not only be kept up, but it will increase by their natural propagation: By the kind treatment of the planters, insured to them by stopping the sources of a new supply, they will be gradually approximated to the condition of freemen; and as they approximate that condition, their labour will be more productive; for it is agreed on all sides, that the labour of a freeman infinitely surpasses that of the best slave: The conse-

quence therefore must be, that West India property, instead of being injured by the abolition, will in a short time greatly increase in value. But then, it is said, what are we to do with the new lands? how are they to be brought into cultivation without new supplies by importation?—My Lords, I say, the proprietors of those lands must be content to wait till they are furnished with the means of cultivating that property without crime; which means, time, and no great length of time, will afford, by the natural increase of the blacks upon the islands. But to contend that the present condition of the uncultivated lands justifies the continuance of the trade for their speedier cultivation, is in effect to say, that the possession of a certain quantity of land in a barren state gives the owner a right to manure his soil with the carcasses of murdered Africans.

"My Lords, we have heard much of St Domingo: The example of that island, it is said, should deter us from the agitation of all these questions: The horrid scenes that have been passing there have all been occasioned, it has been said, by the dissemination of speculative notions about liberty and the rights of man among the negroes of that island. My Lords, the dreadful example of St Domingo makes a contrary impression upon my mind. Whatever speculative notions might be disseminated among the negroes of St Domingo,—I give little credit to the assertion of such dissemination; but whatever it might have been, I maintain it could have done no mischief at all; it never could have taken effect without a superabundance of the black population. That is the thing to be dreaded: The annual importation from Africa increases the black population in the West

Indies in an exorbitant degree, and in the most dangerous manner. It is the continuance, therefore, of the slave-trade, not the abolition of it, which it is to be feared may whet the knife of St Domingo in our island of Jamaica.

"My Lords, being decidedly for the original motion, I cannot agree to the previous question; and I hope your Lordships will not agree to it: For it would ill become your Lordships to delay for a moment to vote inhumanity to be inhumanity, injustice to be injustice, and bad policy to be bad policy."

THE END.

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