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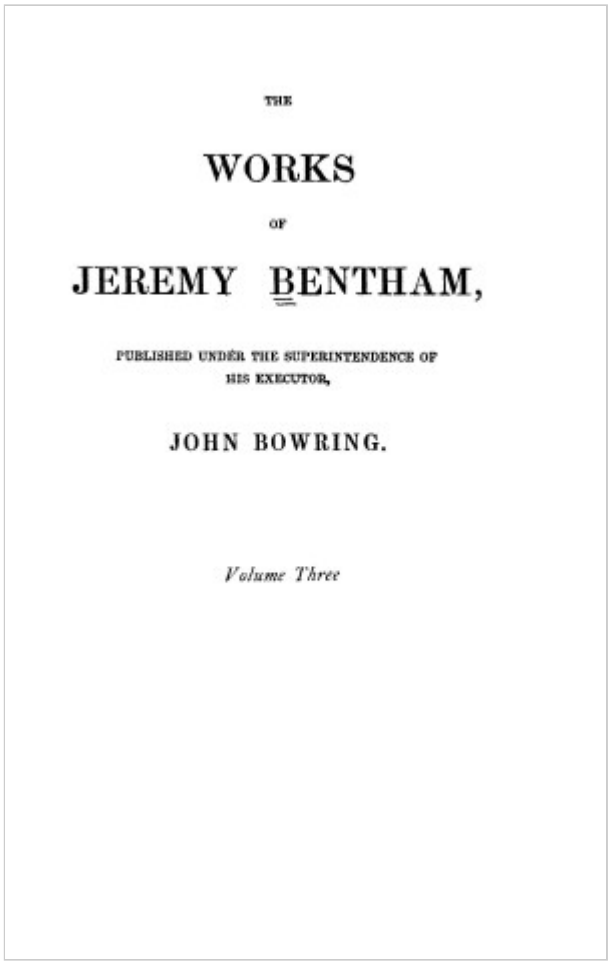
THE

WORKS

OF

JEREMY BENTHAM,

PUBLISHED UNDER THE SUPERINTENDENCE OF
HIS EXECUTOR,

JOHN BOWRING.

Volume Three

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About This Title:

An 11 volume collection of the works of Jeremy Bentham edited by the philosophic radical and political reformer John Bowring. Vol. 3 contains Defence of Usury, A Manual of Political Economy, various works on equity and parliamentary reform.

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DEFENCE OF USURY;

SHOWING THE IMPOLICY OF THE PRESENT LEGAL RESTRAINTS ON THE TERMS OF PECUNIARY BARGAINS; IN LETTERS TO A FRIEND.

to which is added

A LETTER TO ADAM SMITH ESQ LL.D.

on the

DISCOURAGEMENTS OPPOSED BY THE ABOVE RESTRAINTS TO THE PROGRESS OF INVENTIVE INDUSTRY.

by JEREMY BENTHAM.

(originally printed in 1816.)

DEFENCE OF USURY.

LETTER I.

INTRODUCTION.

Crichoff, in White Russia,
January 1787.

Among the various species or modifications of liberty, of which, on different occasions, we have heard so much in England, I do not recollect ever seeing anything yet offered in behalf of the *liberty of making one's own terms in money-bargains.* From so general and universal a neglect, it is an old notion of mine, as you well know, that this meek and unassuming species of liberty has been suffering much injustice.

A fancy has taken me, just now, to trouble you with my reasons: which, if you think them capable of answering any good purpose, you may forward to the press: or in the other case, what will give you less trouble, to the fire.

In a word, the proposition I have been accustomed to lay down to myself on this subject is the following one, viz. that *no man of ripe years and of sound mind, acting freely, and with his eyes open, ought to be hindered, with a view to his advantage, from making such bargain, in the way of obtaining money, as he thinks fit: nor* (what is a necessary consequence) *anybody hindered from supplying him, upon any terms he thinks proper to accede to.*

This proposition, were it to be received, would level, you see, at one stroke, all the barriers which law, either statute or common, have in their united wisdom set up, either against the crying sin of Usury, or against the hard-named and little-heard-of practice of Champerty; to which we must also add a portion of the multifarious, and as little-heard-of offence, of Maintenance.

On this occasion, were it any individual antagonist I had to deal with, my part would be a smooth and easy one. "You, who fetter contracts—you, who lay restrains on the liberty of man, it is for you," I should say, "to assign a reason for your doing so." That contracts in general ought to be observed, is a rule, the propriety of which, no man was ever yet found wrong-headed enough to deny: if this case is one of the exceptions (for some doubtless there are) which the safety and welfare of every society require should be taken out of that general rule, in this case, as in all those others, it lies upon him, who alleges the necessity of the exception, to produce a reason for it.

This, I say, would be a short and very easy method with an individual: but, as the world has no mouth of its own to plead by, no certain attorney by which it can "come and defend this force and injury," I must even find arguments for it at a venture, and ransack my own imagination for such phantoms as I can find to fight with.

In favour of the restraints opposed to the species of liberty I contend for, I can imagine but five arguments:—

1. Prevention of usury.

2. Prevention of prodigality.

3. Protection of indigence against extortion.

4. Repression of the temerity of projectors.

5. Protection of simplicity against imposition.—

Of all these in their order.

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LETTER II.

REASONS FOR RESTRAINT—PREVENTION OF USURY.

I will begin with the *prevention* of *usury:* because in the sound of the word *usury* lies, I take it, the main strength of the argument: or, to speak strictly, of what is of more importance than all argument, of the hold which the opinion I am combating has obtained on the imaginations and passions of mankind.

Usury is a bad thing, and as such ought to be prevented: usurers are a bad sort of men, a very bad sort of men, and as such ought to be punished and suppressed. These are among the string of propositions which every man finds handed down to him from his progenitors—which most men are disposed to accede to without examination; and indeed not unnaturally nor even unreasonably disposed, for it is impossible that the bulk of mankind should find leisure, had they the ability, to examine into the grounds of an hundredth part of the rules and maxims which they find themselves obliged to act upon. Very good apology this for John Trot: but a little more inquisitiveness may be required of legislators.

You, my friend, by whom the true force of words is so well understood, have, I am sure, gone before me in perceiving, that to say usury is a thing to be prevented, is neither more nor less than begging the matter in question. I know of but two definitions that can possibly be given of usury. One is, the taking of a greater interest than the law allows of: this may be styled the *political* or *legal* definition. The other is, the taking of a greater interest than it is usual for men to give and take: this may be styled the *moral* one: and this, where the law has not interfered, is plainly enough the only one. It is plain, that in order for usury to be prohibited by law, a positive description must have been found for it by law, fixing, or rather superseding, the moral one. To say, then, that usury is a thing that ought to be prevented, is saying neither more nor less than that the utmost rate of interest which shall be taken ought to be fixed, and that fixation enforced by penalties, or such other means, if any, as may answer the purpose of preventing the breach of it. A law punishing usury supposes, therefore, a law fixing the allowed legal rate of interest: and the propriety of the penal law must depend upon the propriety of the simply-prohibitive, or, if you please, declaratory one.

One thing, then, is plain: that, antecedently to custom growing from convention, there can be no such thing as usury; for what rate of interest is there that can naturally be more proper than another? what natural fixed price can there be for the use of money, more than for the use of any other thing? Were it not, then, for custom, usury, considered in a moral view, would not so much as admit of a definition: so far from having existence, it would not so much as be conceivable; nor, therefore, could the law, in the definition it took upon itself to give of such offence, have so much as a guide to steer by. Custom, therefore, is the sole basis, which either the moralist in his rules and precepts, or the legislator in his injunctions, can have to build upon. But

what basis can be more weak or unwarrantable, as a ground for coercive measures, than custom resulting from free choice? My neighbours, being at liberty, have happened to concur among themselves in dealing at a certain rate of interest. I, who have money to lend, and Titius, who wants to borrow it of me, would be glad, the one of us to accept, the other to give, an interest somewhat higher than theirs: why is the liberty they exercise to be made a pretence for depriving me and Titius of ours?

Nor has blind custom, thus made the sole and arbitrary guide, anything of steadiness or uniformity in its decisions: it has varied, from age to age, in the same country—it varies, from country to country, in the same age, and the legal rate has varied along with it; indeed, with regard to times past, it is from the legal rate, more readily than from any other source, that we collect the customary. Among the Romans, till the time of Justinian, we find it as high as 12 per cent.: in England, so late as the time of Henry VIII., we find it at 10 per cent.: succeeding statutes reduced it to 8, then to 6, and lastly to 5, where it stands at present. Even at present, in Ireland it is at 6 per cent., and in the West Indies at 8 per cent.; and in Hindostan, where there is no rate limited by law, the lowest customary rate is 10 or 12. At Constantinople, in certain cases, as I have been well informed, 30 per cent. is a common rate. Now, of all these widely different rates, what one is there, that is intrinsically more proper than another? What is it that evidences this propriety in each instance?—what but the mutual convenience of the parties, as manifested by their consent? It is convenience, then, that has produced whatever there has been of custom in the matter: what can there, then, be in custom, to make it a better guide than the convenience which gave it birth? and what is there in convenience, that should make it a worse guide in one case than in another? It would be convenient to me to give six per cent. for money: I wish to do so. “No,” says the law—“you shan’t.” Why so? “Because it is not convenient to your neighbour to give above five for it.” Can anything be more absurd than such a reason?

Much has not been done, I think, by legislators as yet, in the way of fixing the price of other commodities: and, in what little has been done, the probity of the intention has, I believe, in general, been rather more unquestionable than the rectitude of the principle, or the felicity of the result. Putting money out at interest, is exchanging present money for future: but why a policy, which as applied to exchanges in general would be generally deemed absurd and mischievous, should be deemed necessary in the instance of this particular kind of exchange, mankind are as yet to learn. For him who takes as much as he can get for the use of any other sort of thing, a house for instance, there is no particular appellation, nor any mark of disrepute: nobody is ashamed of doing so, nor is it usual so much as to profess to do otherwise. Why a man who takes as much as he can get, be it six, or seven, or eight, or ten per cent. for the use of a sum of money, should be called usurer, should be loaded with an opprobrious name, any more than if he had bought a house with it, and made a proportionable profit by the house, is more than I can see.

Another thing I would also wish to learn, is, why the legislator should be more anxious to limit the rate of interest one way, than the other? why he should set his face against the owners of that species of property more than of any other? why he should make it his business to prevent their getting *more* than a certain price for the use of it,

rather than to prevent their getting *less?* why, in short, he should not take means for making it penal to offer less, for example, than five per cent., as well as to accept more? Let any one that can, find an answer to these questions: it is more than I can do: I except always the distant and imperceptible advantage, of sinking the price of goods of all kinds, and in that remote way multiplying the future enjoyments of individuals. But this was a consideration by far too distant and refined, to have been the original ground for confining the limitation to this side.

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LETTER III.

REASONS FOR RESTRAINT—PREVENTION OF PRODIGALITY.

Having done with sounds, I come gladly to propositions; which, as far as they are true in point of fact, may deserve the name of reasons. And first, as to the efficacy of such restrictive laws with regard to the *prevention of prodigality*.

That prodigality is a bad thing, and that the prevention of it is a proper object for the legislator to propose to himself, so long as he confines himself to (what I look upon as) proper measures, I have no objection to allow, at least for the purpose of the argument; though, were this the principal question, I should look upon it as incumbent on me to place in a fair light the reasons there may be for doubting how far, with regard to a person arrived at the age of discretion, third persons may be competent judges which of two pains may be of greater force and value to him—the present pain of restraining his present desires, or the future contingent pain he may be exposed to suffer from the want to which the expense of gratifying these desires may hereafter have reduced him. To prevent our doing mischief to one another, it is but too necessary to put bridles into all our mouths—it is necessary to the tranquillity and very being of society: but that the tacking of leading-strings upon the backs of grown persons, in order to prevent their doing themselves a mischief, is not necessary either to the being or tranquillity of society, however conducive to its well-being, I think cannot be disputed. Such paternal, or, if you please, maternal, care, may be a good work, but it certainly is but a work of supererogation.

For my own part, I must confess, that so long as such methods only are employed as to me appear proper ones, and such there are, I should not feel myself disinclined to see some measures taken for the restraining of prodigality: but this I cannot look upon as being of the number. My reasons I will now endeavour to lay before you.

In the first place, I take it, that it is neither natural nor usual for prodigals, as such, to betake themselves to this method: I mean, that of giving a rate of interest above the ordinary one, to supply their wants.

In the first place, no man, I hope you will allow, prodigal or not prodigal, ever thinks of borrowing money to spend, so long as he has *ready money* of his own, or effects which he can turn into ready money without loss. And this deduction strikes off what, I suppose, you will look upon as the greatest proportion of the persons subject, at any given time, to the imputation of prodigality.

In the next place, no man, in such a country as Great Britain at least, has occasion, or is at all likely, to take up money at an extraordinary rate of interest, who has *security* to give, equal to that upon which money is commonly to be had at the highest ordinary rate. While so many advertise, as are to be seen every day advertising,

money to be lent at five per cent., what should possess a man, who has anything to offer that can be called a security, to give, for example, six per cent., is more than I can conceive.

You may say, perhaps, that a man who wishes to lend his money out upon security, wishes to have his interest punctually, and that without the expense, and hazard, and trouble, and odium of going to law; and that on this account it is better to have a sober man to deal with than a prodigal. So far I allow you; but were you to add, that on this account it would be necessary for a prodigal to offer more than another man, there I should disagree with you. In the first place, it is not so easy a thing, nor, I take it, a common thing, for the lender upon security to be able to judge, or even to form any attempt to judge, whether the conduct of one who offers to borrow his money is or is not of such a cast as to bring him under this description. The question, prodigal or not prodigal, depends upon two pieces of information, neither of which, in general, is very easy to come at: on the one hand, the amount of his means and reasonable expectations; on the other hand, the amount of his expenditure. The goodness or badness of the security is a question of a very different nature: upon this head, every man has a known and ready means of obtaining that sort of information which is the most satisfactory the nature of things affords, by going to his lawyer. It is accordingly, I take it, on their lawyer's opinion, that lenders in general found their determination in these cases, and not upon any calculations they may have formed concerning the receipt and expenditure of the borrower. But even supposing a man's disposition to prodigality to be ever so well known, there are always enough to be found, to whom such a disposition would be rather an inducement than an objection, so long as they were satisfied with the security. Everybody knows the advantage to be made in case of mortgage, by foreclosing or forcing a sale: and that this advantage is not uncommonly looked out for, will, I believe, hardly be doubted by any one who has had occasion to observe the course of business in the court of Chancery.

In short, so long as a prodigal has anything to pledge, or to dispose of—whether in possession, or even in reversion—whether of a certain, or even of a contingent nature, I see not how he can receive the smallest benefit from any laws that are or can be made to fix the rate of interest. For, suppose the law to be efficacious as far as it goes, and that the prodigal can find none of those monsters called usurers to deal with him, does he lie quiet? No such thing: he goes on and gets the money he wants, by selling his interest, instead of borrowing. He goes on, I say; for if he has prudence enough to stop him anywhere, he is not that sort of man whom it can be worth while for the law to attempt stopping by such means. It is plain enough, then, that to a prodigal thus circumstanced, the law cannot be of any service; on the contrary, it may, and in many cases must, be of disservice to him, by denying him the option of a resource, which, how disadvantageous soever, could not well have proved more so, but would naturally have proved less so, than those which it leaves still open to him. But of this hereafter.

I now come to the only remaining class of prodigals, viz. those who have nothing that can be called a security to offer. These, I should think, are not more likely to get money upon an extraordinary rate of interest, than an ordinary one. Persons who either feel, or find reasons for pretending to feel, a friendship for the borrower, cannot take of him more than the ordinary rate of interest: persons who have no such motive

for lending him, will not lend him at all. If they know him for what he is, that will prevent them, of course; and even though they should know nothing of him by any other circumstance, the very circumstance of his not being able to find a friend to trust him at the highest ordinary rate, will be sufficient reason to a stranger for looking upon him as a man who, in the judgment of his friends, is not likely to pay.

The way that prodigals run into debt, after they have spent their substance, is, I take it, by borrowing of their friends and acquaintance, at ordinary interest, or more commonly at no interest, small sums, such as each man may be content to lose, or be ashamed to ask real security for; and as prodigals have generally an extensive acquaintance (extensive acquaintance being at once the cause and effect of prodigality,) the sum-total of the money a man may thus find means to squander may be considerable, though each sum borrowed may, relatively to the circumstances of the lender, have been inconsiderable. This I take to be the race which prodigals, who have spent their all, run at present, under the present system of restraining laws; and this and no other, I take it, would be the race they would run, were those laws out of the way.

Another consideration there is, I think, which will complete your conviction, if it was not complete before, of the inefficacy of these laws, as to the putting any sort of restraint upon prodigality. This is, that there is another set of people from whom prodigals get what they want, and always will get it so long as credit lasts, in spite of all laws against high interest; and, should they find it necessary, at an expense more than equal to any excess of interest they might otherwise have to give: I mean, the tradesmen who deal in the goods they want. Everybody knows it is much easier to get goods than money. People trust goods upon much slenderer security than they do money: it is very natural they should do so. Ordinary profit of trade upon the whole capital employed in a man's trade,—even after the expense of warehouse-rent, journeymen's wages, and other such general charges, are taken into the account, and set against it,—is at least equal to double interest; say 10 per cent. Ordinary profit upon any particular parcel of goods must therefore be a great deal more, say at least triple interest, 15 per cent. In the way of trading, then, a man can afford to be at least three times as adventurous as he can in the way of lending, and with equal prudence. So long, then, as a man is looked upon as one who will pay, he can much easier get the goods he wants than he could get the money to buy them with, though he were content to give for it twice, or even thrice, the ordinary rate of interest.

Supposing anybody, for the sake of extraordinary gain, to be willing to run the risk of supplying him, although they did not look upon his personal security to be equal to that of another man, and for the sake of the extraordinary profit, to run the extraordinary risk,—in the trader—in short, in every sort of trader whom he was accustomed to deal with in his solvent days, he sees a person who may accept of any rate of profit, without the smallest danger from any laws that are or can be made against usury. How idle, then, to think of stopping a man from making six, or seven, or eight per cent. interest, when, if he chooses to run a risk proportionable, he may in this way make 30 or 40 per cent., or any rate you please. And as to the prodigal, if he cannot get what he wants upon these terms, what chance is there of his getting it upon any terms, supposing the laws against usury to be away? This, then, is another way in

which, instead of serving, it injures him, by narrowing his option, and driving him from a market which might have proved less disadvantageous, to a more disadvantageous one.

As far as prodigality, then, is concerned, I must confess I cannot see the use of stopping the current of expenditure in this way at the fosset, when there are so many unpreventable ways of letting it run out at the bung-hole.

Whether any harm is done to society, upon the whole, by letting so much money drop at once out of the pockets of the prodigal, who would have gone on wasting it, into the till of the frugal tradesman, who will lay it up, is not worth the inquiry for the present purpose: what is plain is, that, so far as the saving the prodigal from paying at an extraordinary rate for what he gets to spend, is the object of the law, that object is not at all promoted by fixing the rate of interest upon money borrowed. On the contrary, if the law has any effect, it runs counter to that object; since, were he to borrow, it would only be in as far as he could borrow at a rate inferior to that at which otherwise he would be obliged to buy. Preventing his borrowing at an extra rate may have the effect of increasing his distress, but cannot have the effect of lessening it: allowing his borrowing at such a rate might have the effect of lessening his distress, but could not have the effect of increasing it.

To put a stop to prodigality, if indeed it be worth while, I know but of one effectual course that can be taken, in addition to the incomplete and insufficient courses at present practicable; and that is, to put the convicted prodigal under an *interdict,* as was practised formerly among the Romans, and is still practised among the French, and other nations who have taken the Roman law for the ground-work of their own. But to discuss the expediency, or sketch out the details of such an institution, belongs not to the present purpose.

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LETTER IV.

REASONS FOR RESTRAINT—PROTECTION OF INDIGENCE.

Besides prodigals, there are three other classes of persons, and but three, for whose security I can conceive these restrictive laws to have been designed: I mean the indigent, the rashly enterprising, and the simple; those whose pecuniary necessities may dispose them to give an interest above the ordinary rate, rather than not have it; and those who, from rashness, may be disposed to venture upon giving such a rate, or from carelessness, combined with ignorance, may be disposed to acquiesce in it.

In speaking of these three different classes of persons, I must beg leave to consider one of them at a time; and accordingly, in speaking of the indigent, I must consider indigence in the first place as untinctured with simplicity. On this occasion I may suppose, and ought to suppose, no particular defect in a man's judgment, or his temper, that should mislead him, more than the ordinary run of men. He knows what is his interest as well as they do, and is as well disposed and able to pursue it as they are.

I have already intimated what I think is undeniable, that there are no one, or two, or other limited number of rates of interest, that can be equally suited to the unlimited number of situations, in respect of the degree of *exigency* in which a man is liable to find himself: insomuch that, to the situation of a man who, by the use of money, can make for example 11 per cent., 6 per cent. is as well adapted as 5 per cent. is to the situation of him who can make but 10,—to that of him who can make 12 per cent., 7, and so on. So, in the case of his wanting it to save himself from a loss (which is that which is most likely to be in view under the name of *exigency,*) if that loss would amount to 11 per cent., 6 per cent. is as well adapted to his situation as 5 per cent. would be to the situation of him who had but a loss amounting to 10 per cent. to save himself from by the like means. And in any case, though, in proportion to the amount of the loss, the rate of interest were even so great as that the clear saving should not amount to more than 1 per cent. or any fraction per cent., yet so long as it amounted to anything, he would be just so much the better for borrowing, even on such comparatively disadvantageous terms. If, instead of gain, we put any other kind of benefit or advantage—if, instead of loss, we put any other kind of mischief or inconvenience of equal value, the result will be the same.

A man is in one of these situations, suppose, in which it would be for his advantage to borrow. But his circumstances are such, that it would not be worth anybody's while to lend him, at the highest rate which it is proposed the law should allow—in short, he cannot get it at that rate. If he thought he *could* get it at that rate, most surely he would not give a higher: he may be trusted for that, for by the supposition he has nothing defective in his understanding. But the fact is, he cannot get it at that lower rate. At a higher rate, however, he could get it: and at that rate, though higher, it would be worth

his while to get it: so he judges, who has nothing to hinder him from judging right—who has every motive and every means for forming a right judgment—who has every motive and every means for informing himself of the circumstances upon which rectitude of judgment, in the case in question, depends. The legislator, who knows nothing, nor can know anything, of any one of all these circumstances—who knows nothing at all about the matter, comes and says to him—"It signifies nothing; you shall not have the money: for it would be doing you a mischief to let you borrow it upon such terms." And this out of prudence and loving-kindness! There may be worse cruelty, but can there be greater folly?

The folly of those who persist, as is supposed without reason, in not taking advice, has been much expatiated upon. But the folly of those who persist, without reason, in forcing their advice upon others, has been but little dwelt upon, though it is, perhaps, the more frequent, and the more flagrant of the two. It is not often that one man is a better judge for another, than that other is for himself, even in cases where the adviser will take the trouble to make himself master of as many of the materials for judging, as are within the reach of the person to be advised. But the legislator is not, cannot be, in the possession of any one of these materials. What private can be equal to such public folly?

I should now speak of the *enterprising* class of borrowers: those who, when characterized by a single term, are distinguished by the unfavourable appellation of *projectors;* but in what I shall have to say of them, Dr. Smith, I begin to foresee, will bear so material a part, that when I come to enter upon that subject, I think to take my leave of you, and address myself to him.

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LETTER V.

REASONS FOR RESTRAINT—PROTECTION OF SIMPLICITY.

I come, lastly, to the case of the simple. Here, in the first place, I think I am by this time entitled to observe, that no simplicity, short of absolute idiotism, can cause the individual to make a more groundless judgment, than the legislator, who, in the circumstances above stated, should pretend to confine him to any given rate of interest, would have made for him.

Another consideration, equally conclusive, is, that were the legislator's judgment ever so much superior to the individual's, how weak soever that may be, the exertion of it on this occasion can never be any otherwise than useless, so long as there are so many similar occasions, as there ever must be, where the simplicity of the individual is equally likely to make him a sufferer, and on which the legislator cannot interpose with effect, nor has ever so much as thought of interposing.

Buying goods with money, or upon credit, is the business of every day; borrowing money is the business only of some particular exigency, which, in comparison, can occur but seldom. Regulating the prices of goods in general would be an endless task, and no legislator has ever been weak enough to think of attempting it. And supposing he were to regulate the prices, what would that signify for the protection of simplicity, unless he were to regulate also the quantum of what each man should buy? Such quantum is indeed regulated, or rather means are taken to prevent buying altogether: but in what cases? In those only where the weakness is adjudged to have arrived at such a pitch as to render a man utterly unqualified for the management of his affairs; in short, when it has arrived at the length of idiocy.

But in what degree soever a man's weakness may expose him to imposition, he stands much more exposed to it in the way of buying goods, than in the way of borrowing money. To be informed, beforehand, of the ordinary prices of all the sorts of things a man may have occasion to buy, may be a task of considerable variety and extent. To be informed of the ordinary rate of interest, is to be informed of one single fact, too interesting not to have attracted attention, and too simple to have escaped the memory. A few per cent. enhancement upon the price of goods, is a matter that may easily enough pass unheeded; but a single per cent. beyond the ordinary interest of money, is a stride more conspicuous and startling, than many per cent. upon the price of any kind of goods.

Even in regard to subjects, which by their importance would, if any, justify a regulation of their price, such as for instance land, I question whether there ever was an instance where, without some such ground as, on the one side fraud, or suppression of facts necessary to form a judgment of the value, or at least ignorance of such facts, on the other, a bargain was rescinded, merely because a man had sold too cheap, or

bought too dear. Were I to take a fancy to give a hundred years purchase instead of thirty, for a piece of land, rather than not have it, I don't think there is any court in England, or indeed anywhere else, that would interpose to hinder me, much less to punish the seller with the loss of three times the purchase money, as in the case of usury. Yet when I had got my piece of land, and paid my money, repentance, were the law ever so well disposed to assist me, might be unavailing: for the seller might have spent the money, or gone off with it. But, in the case of borrowing money, it is the borrower always, who, according to the indefinite or short term for which money is lent, is on the safe side: any imprudence he may have committed with regard to the rate of interest may be corrected at any time: if I find I have given too high an interest to one man, I have no more to do than to borrow of another at a lower rate, and pay off the first: if I cannot find anybody to lend me at a lower, there cannot be a more certain proof that the first was not in reality too high. But of this hereafter.

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LETTER VI.

MISCHIEFS OF THE ANTI-USURIOUS LAWS.

In the preceding Letters, I have examined all the modes I can think of, in which the restraints imposed by the laws against usury can have been fancied to be of service.

I hope it appears by this time, that there are no ways in which those laws can do any good. But there are several, in which they cannot but do mischief.

The first I shall mention, is that of precluding so many people altogether from the getting the money they stand in need of, to answer their respective exigencies. Think what a distress it would produce, were the liberty of borrowing denied to everybody: denied to those who have such security to offer, as renders the rate of interest they have to offer a sufficient inducement, for a man who has money, to trust them with it. Just that same sort of distress is produced, by denying that liberty to so many people whose security, though if they were permitted to add something to that rate it would be sufficient, is rendered insufficient by their being denied that liberty. Why the misfortune of not being possessed of that arbitrarily exacted degree of security should be made a ground for subjecting a man to a hardship which is not imposed on those who are free from that misfortune, is more than I can see. To discriminate the former class from the latter, I can see but this one circumstance, viz. that their necessity is greater. This it is by the very supposition: for were it not, they could not be, what they are supposed to be, willing to give more to be relieved from it. In this point of view, then, the sole tendency of the law is, to heap distress upon distress.

A second mischief is that of rendering the terms so much the worse, to a multitude of those whose circumstances exempt them from being precluded altogether from getting the money they have occasion for. In this case, the mischief, though necessarily less intense than in the other, is much more palpable and conspicuous. Those who cannot borrow may get what they want, so long as they have anything to sell. But while, out of loving-kindness or whatsoever other motive, the law precludes a man from *borrowing* upon-terms which it deems too disadvantageous, it does not preclude him from *selling,* upon any terms, howsoever disadvantageous. Everybody knows that forced sales are attended with a loss: and to this loss, what would be deemed a most extravagant interest bears in general no proportion. When a man's moveables are taken in execution, they are, I believe, pretty well sold, if, after all expenses paid, the produce amounts to two-thirds of what it would cost to replace them. In this way, the providence and loving-kindness of the law costs him 33 per cent. and no more, supposing, what is seldom the case, that no more of the effects are taken than what is barely necessary to make up the money due. If, in her negligence and weakness, she were to suffer him to offer 11 per cent. per annum for forbearance, it would be three years before he paid what he is charged with, in the first instance, by her wisdom.

Such being the kindness done by the law to the owner of moveables, let us see how it fares with him who has an interest in immoveables. Before the late war, thirty years' purchase for land might be reckoned, I think it is pretty well agreed, a medium price. During the distress produced by the war, lands which it was necessary should be sold, were sold at twenty, eighteen, nay, I believe, in some instances, even so low as fifteen years' purchase. If I do not misrecollect, I remember instances of lands put up to public auction, for which nobody bid so high as fifteen. In many instances, villas which had been bought before the war, or at the beginning of it, and in the interval had been improved rather than impaired, sold for less than half, or even the quarter, of what they had been bought for. I dare not here for my part pretend to be exact: but on this passage, were it worth their notice, Mr. Skinner, or Mr. Christie, could furnish very instructive notes. Twenty years' purchase, instead of thirty, I may be allowed to take, at least for illustration. An estate, then, of £100 a-year, clear of taxes, was devised to a man, charged, suppose, with £1500, with interest till the money should be paid. Five per cent. interest, the utmost which could be accepted from the owner, did not answer the incumbrancer's purpose: he chose to have the money. But 6 per cent., perhaps, would have answered his purpose; if not, most certainly it would have answered the purpose of somebody else: for multitudes there all along were, whose purposes were answered by five per cent. The war lasted, I think, seven years; the depreciation of the value of land did not take place immediately; but as, on the other hand, neither did it immediately recover its former price upon the peace, if indeed it has even yet recovered it, we may put seven years for the time during which it would be more advantageous to pay this extraordinary rate of interest than sell the land, and during which, accordingly, this extraordinary rate of interest would have had to run. One per cent. for seven years, is not quite of equal worth to seven per cent. the first year; say, however, that it is. The estate, which before the war was worth thirty years' purchase, that is, £3000, and which the devisor had given to the devisee for that value, being put up to sale, fetched but twenty years' purchase, £2000. At the end of that period it would have fetched its original value, £3000. Compare, then, the situation of the devisee at the seven years' end, under the law, with what it would have been without the law. In the former case, the land selling for twenty years' purchase, *i. e.* £2000, what he would have, after paying the £1500, is £500; which, with the interest of that sum at five per cent. for seven years, viz. £175, makes, at the end of that seven years, £675. In the other case, paying six per cent. on the £1500, that is, £90 a-year, and receiving all that time the rent of the land, viz. £100, he would have had, at the seven years' end, the amount of the remaining £10 during that period, that is, £70, in addition to his £1000; £675 subtracted from £1070 leaves £395. This £395, then, is what he loses out of £1070, almost thirty-seven per cent. of his capital, by the loving-kindness of the law. Make the calculations, and you will find, that by preventing him from borrowing the money at six per cent. interest, it makes him nearly as much a sufferer as if he had borrowed it at ten.

What I have said hitherto is confined to the case of those who have present value to give for the money they stand in need of. If they have no such value, then, if they succeed in purchasing assistance upon any terms, it must be in breach of the law; their lenders exposing themselves to its vengeance; for I speak not here of the accidental case of its being so constructed as to be liable to evasion. But, even in this case, the mischievous influence of the law still pursues them—aggravating the very mischief it

pretends to remedy. Though it be inefficacious in the way in which the legislator wishes to see it efficacious, it is efficacious in the way opposite to that in which he would wish to see it so. The effect of it is, to raise the rate of interest higher than it would be otherwise, and that in two ways. In the first place, a man must, in common prudence, as Dr. Smith observes, make a point of being indemnified, not only for whatsoever extraordinary risk it is that he runs, independently of the law, but for the very risk occasioned by the law: he must be *insured,* as it were, against the law. This cause would operate, were there even as many persons ready to lend upon the illegal rate, as upon the legal. But this is not the case: a great number of persons are, of course, driven out of this competition by the danger of the business, and another great number by the disrepute which, under cover of these prohibitory laws or otherwise, has fastened itself upon the name of usurer. So many persons, therefore, being driven out of the trade, it happens in this branch, as it must necessarily in every other, that those who remain have the less to withhold them from advancing their terms; and without confederating (for it must be allowed that confederacy in such a case is plainly impossible) each one will find it easier to push his advantage up to any given degree of exorbitancy, than he would, if there were a greater number of persons of the same stamp to resort to.

As to the case where the law is so worded as to be liable to be evaded, in this case it is partly inefficacious and nugatory, and partly mischievous. It is nugatory as to all such whose confidence of its being so is perfect: it is mischievous, as before, in regard to all such who fail of possessing that perfect confidence. If the borrower can find nobody at all who has confidence enough to take advantage of the flaw, he stands precluded from all assistance, as before: and though he should, yet the lender's terms must necessarily run the higher, in proportion to what his confidence wants of being perfect. It is not likely that it should be perfect: it is still less likely that he should acknowledge it so to be: it is not likely, at least as matters stand in England, that the worst-penned law made for this purpose should be altogether destitute of effect: and while it has any, that effect, we see, must be in one way or other mischievous.

I have already hinted at the disrepute, the ignominy, the reproach, which prejudice, the cause and the effect of these restrictive laws, has heaped upon that perfectly innocent and even meritorious class of men, who, not more for their own advantage than to the relief of the distresses of their neighbour, may have ventured to break through these restraints. It is certainly not a matter of indifference, that a class of persons, who, in every point of view in which their conduct can be placed, whether in relation to their own interest or in relation to that of the persons whom they have to deal with, as well on the score of prudence as on that of beneficence (and of what use is even benevolence, but in as far as it is productive of beneficence?) deserve praise rather than censure, should be classed with the abandoned and profligate, and loaded with a degree of infamy which is due to those only whose conduct is in its tendency the most opposite to their own.

"This suffering," it may be said, "having already been taken account of, is not to be brought to account a second time: they are aware, as you yourself observe, of this inconvenience, and have taken care to get such amends for it, as they themselves look upon as sufficient." True: but is it sure that the compensation, such as it is, will

always, in the event, have proved a sufficient one? Is there no room here for miscalculation? May there not be unexpected, unlooked-for incidents, sufficient to turn into bitterness the utmost satisfaction which the difference of pecuniary emolument could afford? For who can see to the end of that inexhaustible train of consequences that are liable to ensue from the loss of reputation?—who can fathom the abyss of infamy? At any rate, this article of mischief, if not an addition in its quantity to the others above noticed, is at least distinct from them in its nature, and as such ought not to be overlooked.

Nor is the event of the execution of the law by any means an unexampled one: several such, at different times, have fallen within my notice. Then comes absolute perdition: loss of character, and forfeiture, not of three times the extra-interest, which formed the profit of the offence, but of three times the principal, which gave occasion to it.*

The last article I have to mention in the account of mischief, is, the corruptive influence exercised by these laws on the morals of the people, by the pains they take, and cannot but take, to give birth to treachery and ingratitude. To purchase a possibility of being enforced, the law neither has found, nor, what is very material, must it ever hope to find, in this case, any other expedient, than that of hiring a man to break his engagement, and to crush the hand that has been reached out to help him. In the case of informers in general, there has been no troth plighted, nor benefit received. In the case of real criminals invited by rewards to inform against accomplices, it is by such *breach* of faith that society is held together, as in other cases by the *observance* of it. In the case of real crimes, in proportion as their mischievousness is apparent, what cannot but be manifest even to the criminal, is, that it is by the adherence to his engagement that he would do an injury to society, and that, by the breach of such engagement, instead of doing mischief he is doing good: in the case of usury, this is what no man can know, and what one can scarcely think it possible for any man, who in the character of the borrower has been concerned in such a transaction, to imagine. He knew that, even in his own judgment, the engagement was a beneficial one to himself, or he would not have entered into it: and nobody else but the lender is affected by it.

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LETTER VII.

EFFICACY OF ANTI-USURIOUS LAWS.

Before I quit altogether the consideration of the case in which a law, made for the purpose of limiting the rate of interest, may be inefficacious with regard to that end, I cannot forbear taking some further notice of a passage already alluded to of Dr. Smith's: because, to my apprehension, that passage seems to throw upon the subject a degree of obscurity, which I could wish to see cleared up in a future edition of that valuable work.

"No law," says he,† "can reduce the common rate of interest below the lowest ordinary market rate at the time when that law was made. Notwithstanding the edict of 1766, by which the French king attempted to reduce the rate of interest from five to four per cent., money continued to be lent in France at five per cent., the law being evaded in several different ways."

As to the general position, if so it be, so much, according to me, the better: but I must confess I do not see why this should be the case. It is for the purpose of proving the truth of this general position, that the fact of the inefficacy of this attempt seems to be adduced: for no other proof is adduced but this. But, taking the fact for granted, I do not see how it can be sufficient to support the inference. The lw, we are told at the same time, was evaded: but we are not told how it came to be open to evasion. It might be owing to a particular defect in the penning of that particular law; or, what comes to the same thing, in the provisions made for carrying it into execution. In either case, it affords no support to the general position: nor can that position be a just one, unless it were so in the case where every provision had been made that could be made, for giving efficacy to the law. For the position to be true, the case must be, that the law would still be broken, even after every means of what can properly be called *evasion* had been removed. True or untrue, the position is certainly not self-evident enough to be received without proof: yet nothing is adduced in proof of it but the fact above noticed, which we see amounts to no such thing. What is more, I should not expect to find it capable of proof. I do not see what it is that should render the law incapable of "reducing the common rate of interest below the lowest ordinary market rate," but such a state of things, such a combination of circumstances, as should afford obstacles equally powerful, or nearly so, to the efficacy of the law against all higher rates. For destroying the law's efficacy altogether, I know of nothing that could serve, but a resolution on the part of all persons anyway privy not to inform: but by such a resolution, any higher rate is just as effectually protected as any lower one. Suppose the resolution, strictly speaking, universal, and the law must in all instances be equally inefficacious—all rates of interest equally free; and the state of men's dealings in this way just what it would be, were there no law at all upon the subject. But in this case, the position, in as far as it limits the inefficacy of the law to those rates which are below the "lowest ordinary market rate," is not true. For my part, I cannot conceive how any such universal resolution could have been maintained, or could ever be

maintained, without an open concert, and as open a rebellion against government; nothing of which sort appears to have taken place: and, as to any particular confederacies, they are as capable of protecting any higher rates against the prohibition as any lower ones.

Thus much, indeed, must be admitted, that the low rate in question, viz. that which was the lowest ordinary market rate immediately before the making of the law, is likely to come in for the protection of the public against the law, more frequently than any other rate. That must be the case on two accounts: first, because, by being of the number of the ordinary rates, it was, by the supposition, more frequent than any extraordinary ones: secondly, because the disrepute annexed to the idea of usury, a force which might have more or less efficacy in excluding from the protection above spoken of such extraordinary rates, cannot well be supposed to apply itself, or at least not in equal degree, to this low and ordinary rate. A lender has certainly less to stop him from taking a rate which may be taken without disrepute, than from taking one which a man could not take without subjecting himself to that inconvenience: nor is it likely that men's imaginations and sentiments should testify so sudden an obsequiousness to the law, as to stamp disrepute to-day, upon a rate of interest to which no such accompaniment had stood annexed the day before.

Were I to be asked how I imagined the case stood in the particular instance referred to by Dr. Smith,—judging from his account of it, assisted by general probabilities, I should answer thus:—The law, I should suppose, was not so penned as to be altogether proof against evasion. In many instances, of which it is impossible any account should have been taken, it was indeed conformed to: in some of those instances, people who would have lent otherwise, abstained from lending altogether; in others of those instances, people lent their money at the reduced legal rate. In other instances, again, the law was broken: the lenders trusting, partly to expedients recurred to for evading it, partly to the good faith and honour of those whom they had to deal with: in this class of instances it was natural, for the two reasons above suggested, that those where the old legal rate was adhered to, should have been the most numerous. From the circumstance, not only of their number, but of their more direct repugnancy to the particular recent law in question, they would naturally be the most taken notice of. And this, I should suppose, was the foundation in point of fact for the Doctor's general position above mentioned, that "no law *can* reduce the common rate of interest below the lowest ordinary market rate at the time when that law was made."

In England, as far as I can trust my judgment and imperfect general recollection of the purport of the laws relative to this matter, I should not suppose that the above position would prove true. That there is no such thing as any palpable and universally notorious, as well as universally practicable receipt for that purpose, is manifest from the examples which, as I have already mentioned, every now and then occur, of convictions upon these statutes. Two such receipts, indeed, I shall have occasion to touch upon presently: but they are either not obvious enough in their nature, or too troublesome or not extensive enough in their application, to have despoiled the law altogether of its terrors or of its preventive efficacy.

In the country in which I am writing, the whole system of laws on this subject is perfectly, and very happily, inefficacious. The rate fixed by law is 5 per cent.: many people lend money; and nobody at that rate: the lowest ordinary rate, upon the very best real security, is 8 per cent.: 9, and even 10, upon such security, are common. Six or seven may have place, now and then, between relations or other particular friends: because, now and then, a man may choose to make a present of one or two per cent. to a person whom he means to favour. The contract is renewed from year to year: for a thousand roubles, the borrower, in his written contract, obliges himself to pay at the end of the year one thousand and fifty. Before witnesses, he receives his thousand roubles; and, without witnesses, he immediately pays back his thirty roubles, or his forty roubles, or whatever the sum may be, that is necessary to bring the real rate of interest to the rate verbally agreed on.

This contrivance, I take it, would not do in England: but why it would not, is a question which it would be in vain for me to pretend, at this distance from all authorities, to discuss.

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LETTER VIII.

VIRTUAL USURY ALLOWED.

Having proved, as I hope, by this time, the utter impropriety of the law's limiting the rate of interest in every case that can be conceived, it may be rather matter of curiosity than anything else, to inquire how far the law on this head is consistent with itself, and with any principles upon which it can have built.

1. *Drawing and re-drawing* is a practice which it will be sufficient here to hint at. It is perfectly well known to all merchants, and may be so to all who are not merchants, by consulting Dr. Smith. In this way, he has shown how money may be, and has been, taken up at so high a rate as 13 or 14 per cent.; a rate nearly three times as high as the utmost which the law professes to allow. The extra interest is in this case masked under the names of *commission,* and price of *exchange.* The commission is but small upon each loan—not more, I think, than one half per cent.: custom having stretched so far but no farther, it might be thought dangerous perhaps, to venture upon any higher allowance under that name. The charge being repeated a number of times in the course of the year, makes up in frequency what it wants in weight. The transaction is by this shift rendered more troublesome indeed, but not less practicable, to such parties as are agreed about it. But if usury is good for merchants, I do not very well see what should make it bad for everybody else.

2. At this distance from all the fountains of legal knowledge, I will not pretend to say whether the practice of *selling accepted bills* at an under-value would hold good against all attacks. It strikes my recollection as a pretty common one, and I think it could not be brought under any of the penal statutes against usury. The adequateness of the consideration might, for aught I know, be attacked with success, in a court of equity—or perhaps, if there were sufficient evidence (which the agreement of the parties might easily prevent,) by an action at common law, for money had and received. If the practice be really proof against all attacks, it seems to afford an effectual and pretty commodious method of evading the restrictive laws. The only restraint is, that it requires the assistance of a third person, a friend of the borrower's: as for instance, *B,* the real borrower, wants £100, and finds *U,* a usurer, who is willing to lend it to him at 10 per cent. *B* has *F,* a friend, who has not the money himself to lend him, but is willing to stand security for him to that amount. *B* therefore draws upon *F,* and *F* accepts a bill of £100, at 5 per cent. interest, payable at the end of a twelvemonth from the date. *F* draws a like bill upon *B:* each sells his bill to *U* for £50; and it is endorsed to *U* accordingly. The £50 that *F* receives, he delivers over without any consideration to *B.* This transaction, if it be a valid one, and if a man can find such a friend, is evidently much less troublesome than the practice of drawing and re-drawing. And this, if it be practicable at all, may be practised by persons of any description, concerned or not in trade. Should the effect of this page be to suggest an expedient, and that a safe and commodious one, for evading the laws against usury, to some, to whom such an expedient might not otherwise have occurred, it will not lie

very heavy upon my conscience. The prayers of usurers, whatever efficacy they may have in lightening the burthen, I hope I may lay some claim to. And I think you will not now wonder at my saying, that in the efficacy of such prayers I have not a whit less confidence, than in that of the prayers of any other class of men.

One apology I shall have to plead at any rate—that in pointing out these flaws to the individual who may be disposed to creep out at them, I point them out at the same time to the legislator, in whose power it is to stop them up, if in his opinion they require it. If, notwithstanding such opinion, he should omit to do so, the blame will lie, not on my industry, but on his negligence.

These, it may be said, should they even be secure and effectual evasions, are still but evasions, and, if chargeable upon the law at all, are chargeable not as inconsistencies but as oversights. Be it so. Setting these aside, then, as expedients practised or practicable only behind its back, I will beg leave to remind you of two others, practised from the day of its birth, under its protection, and before its face.

The first I shall mention is *pawn-broking.* In this case there is the less pretence for more than ordinary interest, inasmuch as the security is in this case not only equal to, but better than, what it can be in any other; to wit, the present possession of a moveable thing, of easy sale, on which the creditor has the power, and certainly does not want the inclination, to set such price as is most for his advantage. If there be a case in which the allowing of such extraordinary interest is attended with more danger than another, it must be this: which is so particularly adapted to the situation of the lowest poor, that is, of those who on the score of indigence or simplicity, or both, are most open to imposition. This trade, however, the law, by regulating, avowedly protects. What the rate of interest is, which it allows to be taken in this way, I cannot take upon me to remember; but I am much deceived if it amounts to less than 12 per cent. in the year, and I believe it amounts to a good deal more.* Whether it were 12 per cent. or 1200, I believe would make in practice but little difference. What *commission* is in the business of drawing and re-drawing, *warehouse-room* is in that of pawnbroking. Whatever limits, then, are set to the profits of this trade, are set, I take it, not by the vigilancy of the law, but, as in the case of other trades, by the competition amongst the traders. Of the other regulations contained in the acts relative to this subject, I recollect no reason to doubt the use.

The other instance is that of *bottomry* and *respondentia:* for the two transactions, being so nearly related, may be spoken of together. Bottomry is the usury of pawnbroking: respondentia is usury at large, but combined in a manner with insurance, and employed in the assistance of a trade carried on by sea. If any species of usury is to be condemned, I see not on what grounds this particular species can be screened from the condemnation. “Oh, but,” says Sir William Blackstone, or anybody else who takes upon himself the task of finding a reason for the law, “this is a maritime country, and the trade which it carries on by sea is the great bulwark of its defence.” It is not necessary I should here inquire, whether that branch, which, as Dr. Smith has shown, is, in every view but the mere one of defence, less beneficial to a nation than two others out of the four branches which comprehend all trade, has any claim to be preferred to them in this or any other way. I admit, that the liberty which

this branch of trade enjoys, is no more than what it is perfectly right it should enjoy. What I want to know is, what there is in the class of men embarked in this trade, that should render beneficial to them, a liberty which would be ruinous to everybody else? Is it that sea adventures have less hazard on them than land adventures? or that the sea teaches those who have to deal with it, a degree of forecast and reflection which has been denied to landmen?

It were easy enough to give farther and farther extension to this charge of inconsistency, by bringing under it the liberty given to insurance in all its branches, to the purchase and sale of annuities and of *post-obits;* in a word, to all cases where a man is permitted to take upon himself an unlimited degree of risk, receiving for so doing an unlimited compensation. Indeed, I know not where the want of instances would stop me: for in what part of the magazine of events, about which human transactions are conversant, is certainty to be found? But to this head of argument, this argument *ad hominem,* as it may be called, the use of which is but subsidiary, and which has more of confutation in it than of persuasion or instruction, I willingly put an end.

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LETTER IX.

BLACKSTONE CONSIDERED.

I hope you are, by this time, at least, pretty much of my opinion, that there is just the same sort of harm, and no other, in making the best terms one can for one's self in a money loan, as there is in any other sort of bargain. If you are not, Blackstone however is, whose opinion I hope you will allow to be worth something. In speaking of the rate of interest,* he starts a parallel between a bargain for the loan of money, and a bargain about a horse, and pronounces, without hesitation, that the harm of making too good a bargain is just as great in the one case as in the other. As money-lending, and not horse-dealing, was what you lawyers call the *principal case,* he drops the horse-business as soon as it has answered the purpose of illustration which it was brought to serve. But as, in my conception, as well the reasoning by which he supports the decision, as that by which anybody else could have supported it, is just as applicable to the one sort of bargain as to the other, I will carry on the parallel a little farther, and give the same extent to the reasoning, as to the position which it is made use of to support. This extension will not be without its use: for if the position, when thus extended, should be found just, a practical inference will arise; which is, that the benefits of these restraints ought to be extended from the money-trade to the horse-trade. That my own opinion is not favourable to such restraints in either case, has been sufficiently declared; but if more respectable opinions than mine are still to prevail, they will not be the less respectable for being consistent.

The sort of bargain which the learned commentator has happened to pitch upon for the illustration, is indeed, in the case illustrating, as in the case illustrated, a loan: but as, to my apprehension, loan or sale makes in point of reasoning no sort of difference, and as the utility of the conclusion will in the latter case be more extensive, I shall adapt the reasoning to the more important business of selling horses, instead of the less important one of lending them.

A circumstance, that would render the extension of these restraints to the horse-trade more smooth and easy, is, that in the one track as well as in the other, the public has already got the length of calling names. *Jockeyship*—a term of reproach not less frequently applied to the arts of those who sell horses than to the arts of those who ride them—sounds, I take it, to the ear of many a worthy gentleman, nearly as bad as *usury:* and it is well known to all those who put their trust in proverbs, and not less to those who put their trust in party, that when we have got a dog to hang, who is troublesome and keeps us at bay, whoever can contrive to fasten a bad name to his tail, has gained more than half the battle. I now proceed with my application. The words in *italics* are my own: all the rest are Sir William Blackstone's: and I restore, at bottom, the words I was obliged to discard in order to make room for mine.

"To demand an exorbitant price is equally contrary to conscience, for the loan of a horse, or for the loan of a sum of money: but a reasonable equivalent for the

temporary inconvenience which the owner may feel by the want of it, and for the hazard of his losing it entirely, is not more immoral in one case than in the other. . . . .

"*As to selling horses,* a capital distinction must be made between a moderate and an exorbitant profit: to the former of which we give the name of *horse-dealing,*[a] to the latter the truly odious appellation of *jockeyship:*[b] the former is necessary in every civil state, if it were but to exclude the latter. For, as the whole of this matter is well summed up by Grotius, "if the compensation allowed by law does not exceed the proportion of the *inconvenience which it is to the seller of the horse to part with it,*[c] or the want *which the buyer has of it,*[d] its allowance is neither repugnant to the revealed law, nor to the natural law: but if it exceeds these bounds, it is then an oppressive *jockeyship:*[e] and though the municipal laws may give it impunity, they never can make it just."

"We see that the exorbitance or moderation of *the price given for a horse*[f] depends upon two circumstances,—upon the inconvenience of parting with *the horse one has,*[g] and the hazard of *not being able to meet with such another.*[h] The inconvenience to individual *sellers of horses*[i] can never be estimated by laws; the *general price for horses*[k] must depend therefore upon the usual or general inconvenience. This results entirely from the quantity of *horses*[l] in the kingdom: for the more *horses*[m] there are *running about*[n] in any nation, the greater superfluity there will be beyond what is necessary to carry on the business of the *mail-coaches*[o] and the common concerns of life. In every nation or public community there is a certain quantity of *horses,*[p] thus, necessary, which a person well skilled in political arithmetic might perhaps calculate as exactly as a private *horses dealer*[q] can the demand for running *horses* in his own *stables:*[r] all above this necessary quantity may be spared, or lent, *or sold,* without much inconvenience to the respective lenders *or sellers;* and the greater the national superfluity is, the more numerous will be the *sellers,*[s] and the lower ought the *national price of horse-flesh*[t] to be: but where there are not enough, or barely enough *spare horses*[u] to answer the ordinary uses of the public, *horse-flesh*[x] will be proportionably high; for *sellers*[y] will be but few, as few can submit to the inconvenience of *selling.*"[z] So far the learned commentator.

I hope by this time you are worked up to a proper pitch of indignation at the neglect and inconsistency betrayed by the law, in not suppressing this species of jockeyship, which it would be so easy to do, only by fixing the price of horses. Nobody is less disposed than I am to be uncharitable: but when one thinks of the £1500 taken for Eclipse, and £2000 for Rockingham, and so on, who can avoid being shocked to think how little regard those who took such enormous prices must have had for "the law of revelation and the law of nature?" Whoever it is that is to move for the municipal law, not long ago talked of, for reducing the rate of interest,—whenever that motion is made, then would be the time for one of the Yorkshire members to get up, and move, by way of addition, for a clause for fixing and reducing the price of horses. I need not expatiate on the usefulness of that valuable species of cattle, which might have been as cheap as asses before now, if our lawgivers had been as mindful of their duty in the suppression of *jockeyship,* as they have been in the suppression of *usury.*

It may be said, against fixing the price of horse-flesh, that different horses may be of different values. I answer—and I think I shall show you as much, when I come to touch upon the subject of champerty—not more different than the values which the use of the same sum of money may be of to different persons, on different occasions.

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LETTER X.

GROUNDS OF THE PREJUDICES AGAINST USURY.

It is one thing to find reasons why it is *fit* a law *should* have been made—it is another to find the reasons why it *was* made: in other words, it is one thing to justify a law—it is another thing to account for its existence. In the present instance, the former task, if the observations I have been troubling you with are just, is an impossible one. The other, though not necessary for conviction, may contribute something, perhaps, in the way of satisfaction. To trace an error to its fountain-head, says Lord Coke, is to refute it; and many men there are, who till they have received this satisfaction, be the error what it may, cannot prevail upon themselves to part with it. "If our ancestors have been all along under a mistake, how came they to have fallen into it?" is a question that naturally presents itself upon all such occasions. The case is, that, in matters of law more especially, such is the dominion of authority over our minds, and such the prejudice it creates in favour of whatever institution it has taken under its wing, that, after all manner of reasons that can be thought of in favour of the institution have been shown to be insufficient, we still cannot forbear looking to some unassignable and latent reason for its efficient cause. But if, instead of any such reason, we can find a cause for it in some notion, of the erroneousness of which we are already satisfied, then at last we are content to give it up without further struggle; and then, and not till then, our satisfaction is complete.

In the conceptions of the more considerable part of those through whom our religion has been handed down to us, virtue, or rather godliness, which was an improved substitute for virtue, consisted in self-denial,—not in self-denial for the sake of society, but in self-denial for its own sake. One pretty general rule served for most occasions: not to do what you had a mind to do; or, in other words, not to do what would be for your advantage. By this, of course, was meant temporal advantage; to which spiritual advantage was understood to be in constant and diametrical opposition. For the proof of a resolution on the part of a being of perfect power and benevolence, to make his few favourites happy in a state in which they *were to be,* was his determined pleasure that they should keep themselves as much strangers to happiness as possible in the state in which they *were.* Now, to get money is what most men have a mind to do; because he who has money gets, as far as it goes, most other things that he has a mind for. Of course, nobody was to get money; indeed, why should he, when he was not so much as to keep what he had got already? To lend money at interest, is to get money, or at least to try to get it; of course, it was a bad thing to lend money upon such terms. The better the terms, the worse it was to lend upon them; but it was bad to lend upon any terms by which anything could be got. What made it much the worse was, that it was acting like a Jew; for though all Christians at first were Jews, and continued to do as Jews did, after they had become Christians, yet, in process of time, it came to be discovered, that the distance between the mother and the daughter church could not be too wide.

By degrees, as old conceits gave place to new, nature so far prevailed, that the objections to getting money in general were pretty well over-ruled: but still this Jewish way of getting it was too odious to be endured. Christians were too intent upon plaguing Jews, to listen to the suggestion of doing as Jews did, even though money were to be got by it. Indeed, the easier method, and a method pretty much in vogue, was, to let the Jews get the money any how they could, and then squeeze it out of them as it was wanted.

In process of time, as questions of all sorts came under discussion, and this not the least interesting among the rest, the anti-Jewish side of it found no unopportune support in a passage of Aristotle, that celebrated heathen, who, in all matters wherein heathenism did not destroy his competence, had established a despotic empire over the Christian world. As fate would have it, that great philosopher, with all his industry and all his penetration, notwithstanding the great number of pieces of money that had passed through his hands (more perhaps than ever passed through the hands of philosopher before or since,) and notwithstanding the uncommon pains he had bestowed on the subject of generation, had never been able to discover, in any one piece of money, any organs for generating any other such piece. Emboldened by so strong a body of negative proof, he ventured at last to usher into the world the result of his observations, in the form of an universal proposition, *that all money is in its nature barren.* You, my friend, to whose cast of mind sound reason is much more congenial than ancient philosophy,—you have, I dare to say, gone before me in remarking that the practical inference from this shrewd observation, if it afforded any, should have been, that it would be to no purpose for a man to try to get five per cent. out of money—not that, if he could contrive to get so much, there would be any harm in it. But the sages of those days did not view the matter in that light.

A consideration that did not happen to present itself to that great philosopher, but which, had it happened to present itself, might not have been altogether unworthy of his notice, is, that though a *daric* would not beget another daric, any more than it would a ram, or an ewe, yet for a daric which a man borrowed, he might get a ram and a couple of ewes; and that the ewes, were the ram left with them a certain time, would probably not be barren. That then, at the end of the year, he would find himself master of his three sheep, together with two, if not three, lambs; and that, if he sold his sheep again to pay back his daric, and gave one of his lambs for the use of it in the meantime, he would be two lambs, or at least one lamb, richer than if he had made no such bargain.

These theological and philosophical conceits, the offspring of the day, were not ill seconded by principles of a more permanent complexion.

The business of a money-lender, though only among Christians and in Christian times a proscribed profession, has nowhere, nor at any time, been a popular one. Those who have the resolution to sacrifice the present to future, are natural objects of envy to those who have sacrificed the future to the present. The children who have eaten their cake, are the natural enemies of the children who have theirs. While the money is hoped for, and for a short time after it has been received, he who lends it is a friend and benefactor: by the time the money is spent, and the evil hour of reckoning is

come, the benefactor is found to have changed his nature, and to have put on the tyrant and the oppressor. It is an oppression for a man to reclaim his own money; it is none to keep it from him. Among the inconsiderate, that is, among the great mass of mankind, selfish affections conspire with the social in treasuring up all favour for the man of dissipation, and in refusing justice to the man of thrift who has supplied him. In some shape or other, that favour attends the chosen object of it through every stage of his career. But in no stage of *his* career can the man of thrift come in for any share of it. It is the general interest of those with whom a man lives, that his expense should be at least as great as his circumstances will bear; because there are few expenses which a man can launch into, but what the benefit of them is shared, in some proportion or other, by those with whom he lives. In that circle originates a standing law, forbidding every man, on pain of infamy, to confine his expenses within what is adjudged to be the measure of his means, saving always the power of exceeding that limit as much as he thinks proper; and the means assigned him by that law may be ever so much beyond his real means, but are sure never to fall short of them. So close is the combination thus formed between the idea of merit and the idea of expenditure, that a disposition to spend finds favour in the eyes even of those who know that a man's circumstances do not entitle him to the means: and an upstart, whose chief recommendation is this disposition, shall find himself to have purchased a permanent fund of respect, to the prejudice of the very persons at whose expense he has been gratifying his appetites and his pride. The lustre which the display of borrowed wealth has diffused over his character, awes men during the season of his prosperity into a submission to his insolence, and when the hand of adversity has overtaken him at last, the recollection of the height from which he has fallen, throws the veil of compassion over his injustice.

The condition of the man of thrift is the reverse. His lasting opulence procures him a share, at least, of the same envy that attends the prodigal's transient display: but the use he makes of it procures him no part of the favour which attends the prodigal. In the satisfactions he derives from that use—the pleasure of possession, and the idea of enjoying at some distant period, which may never arrive—nobody comes in for any share. In the midst of his opulence he is regarded as a kind of insolvent, who refuses to honour the bills which their rapacity would draw upon him, and who is by so much the more criminal than other insolvents, as not having the plea of inability for an excuse.

Could there be any doubt of the disfavour which attends the cause of the money-lender in his competition with the borrower, and of the disposition of the public judgment to sacrifice the interest of the former to that of the latter, the stage would afford a compendious, but a pretty conclusive proof of it. It is the business of the dramatist to study, and to conform to, the humours and passions of those on the pleasing of whom he depends for his success; it is the course which reflection must suggest to every man, and which a man would naturally fall into, though he were not to think about it. He may, and very frequently does, make magnificent pretences of giving the law to them: but woe be to him that attempts to give them any other law than what they are disposed already to receive! If he would attempt to lead them one inch, it must be with great caution, and not without suffering himself to be led by them at least a dozen. Now I question whether, among all the instances in which a

borrower and a lender of money have been brought together upon the stage, from the days of Thespis to the present, there ever was one, in which the former was not recommended to favour in some shape or other—either to admiration, or to love, or to pity, or to all three;—and the other, the man of thrift, consigned to infamy.

Hence it is, that in reviewing and adjusting the interests of these apparently rival parties, the advantage made by the borrower is so apt to slip out of sight, and that made by the lender to appear in so exaggerated a point of view. Hence it is, that though prejudice is so far softened as to acquiesce in the lender's making some advantage, lest the borrower should lose altogether the benefit of his assistance, yet still the borrower is to have all the favour, and the lender's advantage is forever to be clipped, and pared down, as low as it will bear. First it was to be confined to ten per cent. then to eight, then to six, then to five, and now lately there was a report of its being to be brought down to four; with constant liberty to sink as much lower as it would. The burthen of these restraints, of course, has been intended exclusively for the lender: in reality, as I think you have seen, it presses much more heavily upon the borrower: I mean him who either becomes, or in vain wishes to become so. But the presents directed by prejudice, Dr. Smith will tell us, are not always delivered according to their address. It was thus that the mill-stone designed for the necks of those vermin, as they have been called, the dealers in corn, was found to fall upon the heads of the consumers. It is thus—but further examples would lead me further from the purpose.

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LETTER XI.

COMPOUND INTEREST.

A word or two I must trouble you with, concerning *compound interest;* for compound interest is discountenanced by the law—I suppose, as a sort of usury. That, without an express stipulation, the law never gives it, I well remember: whether, in case of an express stipulation, the law allows it to be taken, I am not absolutely certain. I should suppose it might: remembering covenants in mortgages that interest should become principal. At any rate, I think the law cannot well punish it under the name of usury.

If the discountenance shown to this arrangement be grounded on the horror of the sin of usury, the impropriety of such discountenance follows of course from the arguments which show the un-"*sinfulness of* that *sin.*"

Other argument against it, I believe, was never attempted, unless it were the giving to such an arrangement the epithet of a *hard* one: in doing which, something more like a reason is given, than one gets in ordinary from the common law.

If that consistency were to be found in the common law, which has never yet been found in man's conduct, and which perhaps is hardly in man's nature, compound interest never could have been denied.

The views which suggested this denial, were, I dare to say, very good: the effects of it are, I am certain, very pernicious.

If the borrower pays the interest at the day—if he performs his engagement, that very engagement to which the law pretends to oblige him to conform,—the lender, who receives that interest, makes compound interest of course, by lending it out again, unless he chooses rather to expend it: he expects to receive it at the day, or what meant the engagement?—if he fails of receiving it, he is by so much a loser. The borrower, by paying it at the day, is no loser—if he does not pay it at the day, he is by so much a gainer: a pain of disappointment takes place in the case of the one, while no such pain takes place in the case of the other. The cause of him whose contention is to *catch a gain,* is thus preferred to that of him whose contention is to avoid a loss—contrary to the reasonable and useful maxim of that branch of the common law which has acquired the name of equity. The gain, which the law in its tenderness thus bestows on the defaulter, is an encouragement, a reward, which it holds out for breach of faith, for iniquity, for indolence, for negligence.

The loss which it thus throws upon the forbearing lender, is a punishment which it inflicts on him for his forbearance: the power which it gives him of avoiding that loss, by prosecuting the borrower upon the instant of failure, is thus converted into a reward which it holds out to him for his hard-heartedness and rigour. Man is not quite so good as it were to be wished he were; but he would be bad indeed, were he bad on

all the occasions where the law, as far as depends on her, has made it his interest so to be.

It may be impossible, say you—it often is impossible, for the borrower to pay the interest at the day;—and you say truly. What is the inference? That the creditor should *not* have it in his power to ruin the debtor for not paying at the day, and that he *should* receive a compensation for the loss occasioned by such *failure.* He *has* it in his power to ruin him, and he has it *not* in his power to obtain such compensation. The judge, were it possible for an arrested debtor to find his way into a judge's chamber instead of a spunging-house, might award a proper respite, suited to the circumstances of the parties. It is not possible: but a respite is purchased, proper or not proper, perhaps at ten times, perhaps at a hundred times, the expense of compound interest, by putting in bail, and fighting the creditor through all the windings of mischievous and unnecessary delay. Of the satisfaction due either for the original failure, or for the subsequent vexation by which it has been aggravated, no part is ever received by the injured creditor; but the instruments of the law receive, perhaps at his expense, perhaps at the debtor's, perhaps ten times, perhaps a hundred times, the amount of that satisfaction. Such is the result of this tenderness of the law.

It is in consequence of such tenderness, that on so many occasions a man, though ever so able, would find himself a loser by paying his just debts—those very debts of which the law has recognized the justice. The man who obeys the dictates of common honesty—the man who does what the law pretends to bid him, is wanting to himself. Hence your regular and securely profitable writs of error in the House of Lords—hence your random and vindictive costs, of one hundred pounds, and two hundred pounds, now and then given in that House. It is natural, and it is something, to find in a company of lords a zeal for justice: it is not natural to find, in such a company, a disposition to bend down to the toil of calculation.

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LETTER XII.

MAINTENANCE AND CHAMPERTY.

Having in the preceding letters had occasion to lay down, and, as I flatter myself, to make good the general principle, that *no man of ripe years and of sound mind, ought, out of loving-kindness to him, to be hindered from making such bargain in the way of obtaining money, as, acting with his eyes open, he deems conducive to his interest,* I will take your leave for pushing it a little farther, and extending the application of it to another class of regulations still less defensible. I mean the antique laws against what are called Maintenance and Champerty.

To the head of *Maintenance,* I think you refer, besides other offences which are not to the present purpose, that of purchasing, upon any terms, any claim, which it requires a suit at law, or in equity, to enforce.

Champerty, which is but a particular modification of this sin of Maintenance, is, I think, the furnishing a man who has such a claim with regard to a real estate, such money as he may have occasion for to carry on such claim, upon the terms of receiving a part of the estate in case of success.

What the penalties are for these offences I do not recollect, nor do I think it worth while hunting for them, though I have Blackstone at my elbow. They are at any rate sufficiently severe to answer the purpose, the rather as the bargain is made void.

To illustrate the mischievousness of the laws by which they have been created, give me leave to tell you a story, which is but too true a one, and which happened to fall within my own observation.

A gentleman of my acquaintance had succeeded, during his minority, to an estate of about £3000 a-year; I won't say where. His guardian, concealing from him the value of the estate, which circumstances rendered it easy for him to do, got a conveyance of it from him during his non-age, for a trifle. Immediately upon the ward's coming of age, the guardian, keeping him still in darkness, found means to get the conveyance confirmed.—Some years afterwards, the ward discovered the value of the inheritance he had been throwing away. Private representations proving, as it may be imagined, ineffectual, he applied to a court of equity. The suit was in some forwardness: the opinion of the ablest counsel highly encouraging, but money there remained none. We all know but too well, that in spite of the unimpeachable integrity of the bench, that branch of justice which is particularly dignified with the name of equity is only for those who can afford to throw away one fortune for the chance of recovering another. Two persons, however, were found, who, between them, were content to defray the expense of the ticket for this lottery, on condition of receiving half the prize. The prospect now became encouraging;—when unfortunately one of the adventurers, in exploring the recesses of the bottomless pit, happened to dig up one of the old statutes

against Champerty. This blew up the whole project: however, the defendant, understanding that somehow or other his antagonist had found support, had thought fit in the meantime to propose terms, which the plaintiff, after his support had thus dropped from under him, was very glad to close with. Hereceived, I think it was £3000; and for that he gave up the estate, which was worth about as much yearly, together with the arrears, which were worth about as much as the estate.

Whether, in the barbarous age which gave birth to these barbarous precautions—whether, even under the zenith of feudal anarchy, such fettering regulations could have had reason on their side, is a question of curiosity rather than use. My notion is, that there never was a time—that there never could have been or can be a time—when the pushing of suitors away from court with one hand, while they are beckoned into it with another, would not be a policy equally faithless, inconsistent, and absurd. But what everybody must acknowledge is, that to the times which called forth these laws, and in which alone they could have started up, the present are as opposite as light to darkness. A mischief, in those times it seems but too common, though a mischief not to be cured by such laws, was, that a man would buy a weak claim, in hopes that power might convert it into a strong one, and that the sword of a baron, stalking into court with a rabble of retainers at his heels, might strike terror into the eyes of a judge upon the bench. At present, what cares an English judge for the swords of a hundred barons? Neither fearing nor hoping, hating nor loving, the judge of our days is ready with equal phlegm to administer, upon all occasions, that system, whatever it be, of justice or injustice, which the law has put into his hands. A disposition so consonant to duty could not have then been hoped for: one more consonant is hardly to be wished. Wealth has indeed the monopoly of justice against poverty; and such monopoly it is the direct tendency and necessary effect of regulations like these to strengthen and confirm. But with this monopoly no judge that lives now is at all chargeable. The law created this monopoly: the law, whenever it pleases, may dissolve it.

I will not, however, so far wander from my subject, as to inquire what measure might have been necessary to afford a full relief to the case of that unfortunate gentleman, any more than to the cases of so many other gentlemen who might be found as unfortunate as he: I will not insist upon so strange and so inconceivable an arrangement, as that of the judge's seeing both parties face to face in the first instance, observing what the facts are in dispute, and declaring, that as the facts should turn out this way or that way, such or such would be his decree. At present, I confine myself to the removal of such part of the mischief as may arise from the general conceit of keeping men out of difficulties, by cutting them off from such means of relief as each man's situation may afford. A spunge in this, as in so many other cases, is the only needful, and only availing remedy: one stroke of it for the musty laws against Maintenance and Champerty: another for the more recent ones against usury. Consider, for example, what would have respectively been the effect of two such strokes, in the case of the unfortunate gentleman I have been speaking of. By the first, if what is called equity has any claim to confidence, he would have got, even after paying off his champerty-usurers, £1500 a-year in land, and about as much in money, instead of getting, and that only by an accident, £3000 once told. By the other, there is no saying to what a degree he might have been benefited. May I be allowed to stretch

so far in favour of the law as to suppose, that so small a sum as £500 would have carried him through his suit in the course of about three years? I am sensible that may be thought but a short sum, and this but a short term, for a suit in equity: but, for the purpose of illustration, it may serve as well as a longer. Suppose he had sought this necessary sum in the way of borrowing; and had been so fortunate, or, as the laws against the sin of usury would style it, so unfortunate, as to get it at 200 per cent. He would then have purchased his £6000 a-year at the price of half as much once paid, viz. £3000; instead of selling it at that price. Whether, if no such laws against usury had been in being, he could have got the money, even at that rate, I will not pretend to say: perhaps he might not have got it under ten times that rate, perhaps he might have got it at the tenth part of that rate. Thus far I think we may say, that he might, and probably would, have been the better for the repeal of those laws: but thus far we must say, that it is impossible he should have been the worse. The terms upon which he met with adventurers willing to relieve him, though they come not within that scanty field which the law in the narrowness of its views calls usury, do in the present case, at twenty years' purchase of the £3000 a-year he was content to have sacrificed for such assistance, amount, in effect, to 4000 per cent. Whether it was likely that any man, who was disposed to venture his money at all upon such a chance, would have thought of insisting upon such a rate of interest, I will leave you to imagine: but thus much may be said with confidence, because the fact demonstrates it, that, at a rate not exceeding this, the sum would actually have been supplied. Whatever becomes, then, of the laws against Maintenance and Champerty, the example in question, when applied to the laws against usury, ought, I think, to be sufficient to convince us, that so long as the expense of seeking relief at law stands on its present footing, the purpose of seeking that relief will of itself, independently of every other, afford a sufficient ground for allowing any man, or every man, to borrow money on any terms on which he can obtain it.

Crichoff, in White Russia,
March 1787.

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LETTER XIII.

TO DR. SMITH, ON PROJECTS IN ARTS, &C.

Sir,—I forget what son of controversy it was among the Greeks, who having put himself to school to a professor of eminence, to learn what, in those days, went by the name of wisdom, chose an attack upon his master for the first public specimen of his proficiency. This specimen, whatever entertainment it might have afforded to the audience, afforded, it may be supposed, no great satisfaction to the master: for the thesis was, that the pupil owed him nothing for his pains. For my part, being about to show myself in one respect as ungrateful as the Greek, it may be a matter of prudence for me to look out for something like candour, by way of covering to my ingratitude: instead, therefore, of pretending to owe you nothing, I shall begin with acknowledging that, as far as your track coincides with mine, I should come much nearer the truth were I to say I owed you everything. Should it be my fortune to gain any advantage over you, it must be with weapons which you have taught me to wield, and with which you yourself have furnished me; for, as all the great standards of truth which can be appealed to in this line, owe, as far as I can understand, their establishment to you, I can see scarce any other way of convicting you of any error or oversight, than by judging you out of your own mouth.

In the series of Letters to which this will form a sequel, I had travelled nearly thus far in my researches into the policy of the laws fixing the rate of interest, combating such arguments as fancy rather than observation had suggested to my view, when, on a sudden, recollection presented me with your formidable image, bestriding the ground over which I was travelling pretty much at my ease, and opposing the shield of your authority to any arguments I could produce.

It was a reflection mentioned by Cicero as affording him some comfort, that the employment his talents till that time had met with, had been chiefly on the defending side. How little soever blest on any occasion with any portion of his eloquence, I may on the present occasion, however, indulge myself with a portion of what constituted his comfort: for if I presume to contend with you, it is only in defence of what I look upon as not only an innocent, but a most meritorious race of men, who are so unfortunate as to have fallen under the rod of your displeasure. I mean *projectors:* under which invidious name I understand you to comprehend, in particular, all such persons as, in the pursuit of wealth, strike out into any new channel, and more especially into any channel of invention.

It is with the professed view of checking, or rather of crushing these adventurous spirits, whom you rank with “prodigals,” that you approve of the laws which limit the rate of interest, grounding yourself on the tendency they appear to you to have to keep the capital of the country out of two such different sets of hands.

The passage I am speaking of is in the fourth chapter of your second book, volume the second of the 8vo edition of 1784. “The legal rate,” you say, “it is to be observed, though it ought to be somewhat above, ought not to be much above, the lowest market rate. If the legal rate of interest in Great Britain, for example, was fixed so high as eight or ten per cent., the greater part of the money which was to be lent, would be lent to prodigals and projectors, who alone would be willing to give the high interest. Sober people, who will give for the use of money no more than a part of what they are likely to make by the use of it, would not venture into the competition. A great part of the capital of the country would thus be kept out of the hands which were most likely to make a profitable and advantageous use of it, and thrown into those which were most likely to waste and destroy it. Where the legal interest, on the contrary, is fixed but a very little above the lowest market rate, sober people are universally preferred as borrowers, to prodigals and projectors. The person who lends money, gets nearly as much interest from the former, as he dares to take from the latter, and his money is much safer in the hands of the one set of people, than in those of the other. A great part of the capital of the country is thus thrown into the hands in which it is most likely to be employed with advantage.”

It happens, fortunately for the side you appear to have taken, and as unfortunately for mine, that the appellative which the custom of the language has authorized you, and which the poverty and perversity of the language has in a manner forced you, to make use of, is one which, along with the idea of the sort of persons in question, conveys the idea of reprobation as indiscriminately and deservedly applied to them. With what justice or consistency, or by the influence of what causes, this stamp of indiscriminate reprobation has been thus affixed, it is not immediately necessary to inquire; but that it does stand thus affixed, you and everybody else, I imagine, will be ready enough to allow. This being the case, the question stands already decided, in the first instance at least, if not irrevocably, in the judgments of all those who, unable or unwilling to be at the pains of analyzing their ideas, suffer their minds to be led captive by the tyranny of sounds; that is, I doubt, of by far the greater proportion of those whom we are likely to have to judge us. In the conceptions of all such persons, to ask whether it be fit to restrain projects and projectors, will be as much as to ask whether it be fit to restrain rashness, and folly, and absurdity, and knavery, and waste.

Of prodigals I shall say no more at present. I have already stated my reasons for thinking that it is not among them that we are to look for the natural customers for money at high rates of interest. As far as those reasons are conclusive, it will follow, that of the two sorts of men you mention as proper objects of the burthen of these restraints—prodigals and projectors—that burthen falls exclusively on the latter. As to these, what your definition is of projectors, and what description of persons you meant to include under the censure conveyed by that name, might be material for the purpose of judging of the propriety of that censure, but makes no difference in judging of the propriety of the law which that censure is employed to justify. Whether you yourself, were the several classes of persons made to pass before you in review, would be disposed to pick out this or that class, or this and that individual, in order to exempt them from such censure, is what for that purpose we have no need to inquire. The law, it is certain, makes no such distinctions; it falls with equal weight, and with all its weight, upon all those persons, without distinction, to whom the term

projectors, in the most unpartial and extensive signification of which it is capable, can be applied. It falls, at any rate (to repeat some of the words of my former definition,) upon all such persons as, in the pursuit of wealth, or even of any other object, endeavour by the assistance of wealth to strike into any channel of invention. It falls upon all such persons as, in the cultivation of any of those arts which have been by way of eminence termed *useful,* direct their endeavours to any of those departments in which their utility shines most conspicuous and indubitable: upon all such persons as, in the line of any of their pursuits, aim at anything that can be called *improvement,* whether it consist in the production of any new article adapted to man's use, or in the meliorating the quality, or diminishing the expense, of any of those which are already known to us. It falls, in short, upon every application of the human powers in which ingenuity stands in need of wealth for its assistant.

High and extraordinary rates of interest, how little soever adapted to the situation of the prodigal, are certainly, as you very justly observe, particularly adapted to the situation of the projector;—not, however, to that of the imprudent projector only, nor-even of his case more than another's, but to that of the prudent and well-grounded projector, if the existence of such a being were to be supposed. Whatever be the prudence or other qualities of the project—in whatever circumstance the novelty of it may lie—it has this circumstance against it, viz. that it is new. But the rates of interest, the highest rates allowed, are, as you expressly say they are, and as you would have them to be, adjusted to the situation which the sort of trader is in whose trade runs in the old channels, and to the best security which such channels can afford. But in the nature of things, no new trade—no trade carried on in any new channel, can afford a security equal to that which may be afforded by a trade carried on in any of the old ones: in whatever light the matter might appear to perfect intelligence,—in the eye of every prudent person, exerting the best powers of judging which the fallible condition of the human faculties affords, the novelty of any commercial adventure will oppose a chance of ill success, superadded to every one which could attend the same or any other adventure, already tried, and proved to be profitable by experience.

The limitation of the profit that is to be made by lending money to persons embarked in trade, will render the moneyed man more anxious, you may say, about the goodness of his security, and accordingly more anxious to satisfy himself respecting the prudence of a project, in the carrying on of which the money is to be employed, than he would be otherwise: and in this way it may be thought that these laws *have* a tendency to pick out the good projects from the bad, and favour the former at the expense of the latter. The first of these positions I admit; but I can never admit the consequence to follow. A prudent man—(I mean nothing more than a man of ordinary prudence)—a prudent man, acting under the sole governance of prudential motives, I still say, will not, in these circumstances, pick out the good projects from the bad; for he will not meddle with projects at all. He will pick out old established trades from all sorts of projects, good and bad; for with a new project, be it ever so promising, he never will have anything to do. By every man that has money, five per cent., or whatever be the highest legal rate, is at all times, and always will be, to be had upon the very best security that the best and most prosperous old-established trade can afford. Traders in general, I believe it is commonly understood, are well enough inclined to enlarge their capital, as far as all the money they can borrow at the highest

legal rate, while that rate is so low as five per cent., will enlarge it. How it is possible, therefore, for a project, be it ever so promising, to afford to a lender at any such rate of interest, terms equally advantageous upon the whole with those he might be sure of obtaining from an old-established business, is more than I can conceive. Loans of money may certainly chance, now and then, to find their way into the pockets of projectors as well as of other men; but when this happens, it must be through incautiousness, or friendship, or the expectation of some collateral benefit, and not through any idea of the advantageousness of the transaction in the light of a pecuniary bargain.

I should not expect to see it alleged that there is anything that should render the number of well-grounded projects, in comparison of the ill-grounded, less in time future, than it has been in time past. I am sure, at least, that I know of no reasons why it should be so, though I know of some reasons, which I shall beg leave to submit to you by and by, which appear to me pretty good ones, why the advantage should be on the side of futurity. But unless the stock of well-grounded projects is already spent, and the whole stock of ill-grounded projects that ever were possible are to be looked for exclusively in the time to come, the censure you have passed on projectors, measuring still the extent of it by that of the operation of the laws in the defence of which it is employed, looks as far backward as forward: it condemns as rash and ill-grounded, all those projects by which our species have been successively advanced from that state in which acorns were their food, and raw hides their clothing, to the state in which it stands at present: for think, Sir, let me beg of you, whether whatever is now the *routine* of trade was not, at its commencement, *project?*—whether whatever is now *establishment* was not, at one time, innovation?

How it is that the tribe of well-grounded projects, and of prudent projectors (if by this time I may have your leave for applying this epithet to some at least among the projectors of time past,) have managed to struggle through the obstacles which the laws in question have been holding in their way, it is neither easy to know, nor necessary to inquire. Manifest enough, I think, it must be by this time, that difficulties, and those not inconsiderable ones, those laws must have been holding up in the way of projects of all sorts, of improvement (if I may say so) in every line, so long as they have had existence: reasonable, therefore, it must be to conclude, that had it not been for these discouragements, projects of all sorts—well-grounded and successful ones, as well as others, would have been more numerous than they have been: and that accordingly, on the other hand, as soon, if ever, as these discouragements shall be removed, projects of all sorts, and among the rest well-grounded and successful ones, will be more numerous than they would otherwise have been: in short, that as, without these discouragements, the progress of mankind in the career of prosperity would have been greater than it has been under them in time past; so, were they to be removed, it would be at least proportionably greater in time future.

That I had done you no injustice in assigning to your idea of projectors so great a latitude, and that the unfavourable opinion you have professed to entertain of them is not confined to the above passage, might be made, I think, pretty apparent, if it be material, by another passage in the tenth chapter of your first book:* “The

establishment of any new manufacture, of any new branch of commerce, or of any new practice in agriculture," all these you comprehend by name under the list of "*projects:*" of every one of them you observe, that "it is a speculation from which the *projector* promises himself extraordinary profits. These profits (you add) are sometimes *very great,* and sometimes, *more frequently perhaps,* they are *quite otherwise:* but in general they bear no regular proportion to those of other old trades in the neighbourhood. If the project succeeds, they are commonly at first very high. When the trade or practice becomes thoroughly established and well known, the competition reduces them to the level of other trades." But on this head I forbear to insist: nor should I have taken this liberty of giving you back your own words, but in the hope of seeing some alteration made in them in your next edition, should I be fortunate enough to find my sentiments confirmed by yours. In other respects, what is essential to the public is, what the error is in the sentiments entertained, not who it is that entertains them.

I know not whether the observations which I have been troubling you with will be thought to need, or whether they will be thought to receive, any additional support from those comfortable positions, of which you have made such good and such frequent use concerning the constant tendency of mankind to get forward in the career of prosperity—the prevalence of prudence over imprudence, in the sum of private conduct at least—and the superior fitness of individuals for managing their own pecuniary concerns, of which they know the particulars and the circumstances, in comparison of the legislator, who can have no such knowledge. I will make the experiment, for so long as I have the mortification to see you on the opposite side, I can never think the ground I have taken strong enough, while anything remains that appears capable of rendering it still stronger.

"With regard to misconduct, the number of prudent and successful undertakings," you observe,† "is everywhere much greater than that of injudicious and unsuccessful ones. After all our complaints of the frequency of bankruptcies, the unhappy men who fall into this misfortune make but a very small part of the whole number engaged in trade and all other sorts of business; not much more, perhaps, than one in a thousand."

'Tis in support of this position that you appeal to history for the constant and uninterrupted progress of mankind, in our island at least, in the career of prosperity: calling upon any one who should entertain a doubt of the fact, to divide the history into any number of periods, from the time of Cæsar's visit down to the present: proposing, for instance, the respective eras of the Restoration, the accession of Elizabeth, that of Henry VII., the Norman Conquest, and the Heptarchy; and putting it to the sceptic to find out, if he can, among all these periods, any one at which the condition of the country was not more prosperous than at the period immediately preceding it: spite of so many wars, and fires, and plagues, and all other public calamities, with which it has been at different times afflicted, whether by the hand of God, or by the misconduct of the sovereign. No very easy task, I believe: the fact is too manifest for the most jaundiced eye to escape seeing it. But what, and whom, are we to thank for it, but projects and projectors?

"No," I think I hear you saying, "I will not thank projectors for it; I will rather thank the laws, which, by fixing the rates of interest, have been exercising their vigilance in repressing the temerity of projectors, and preventing their imprudence from making those defalcations from the sum of national prosperity, which it would not have failed to make had it been left free. If, during all these periods, that adventurous race of men had been left at liberty by the laws to give full scope to their rash enterprises, the increase of national prosperity during these periods might have afforded some ground for regarding them in a more favourable point of view. But the fact is, that their activity has had these laws to check it; without which checks you must give me leave to suppose that the current of prosperity, if not totally stopped or turned the other way, would at any rate have been more or less retarded. Here, then," you conclude, "lies the difference between us. What you look upon as the cause of the increase about which we are both agreed, I look upon as an obstacle to it; and what you look upon as the obstacle, I look upon as the cause."

Instead of starting this as a sort of plea that might be urged by you, I ought, perhaps, rather to have mentioned it as what might be urged by some people in your place; for as I do not imagine your penetration would suffer you to rest satisfied with it, still less can I suppose that, if you were not, your candour would allow you to make use of it as if you were.

To prevent your resting satisfied with it, the following considerations would, I think, be sufficient.

In the first place, of the seven periods which you have pitched upon, as so many stages for the eye to rest at in viewing the progress of prosperity, it is only during the three last that the country has had the benefit, if such we are to call it, of these laws; for it is to the reign of Henry VIII. that we owe the first of them.

Here a multitude of questions might be started:—whether the curbing of projectors formed any part of the design of that first statute, or whether the views of it were not wholly confined to the reducing the gains of that obnoxious and envied class of men, the money-lenders?—whether projectors have been most abundant before that statute, or since that statute?—and whether the nation has suffered, as you might say—benefited, as I should say—most by them, upon the whole, during the former period or the latter? All these discussions, and many more that might be started, I decline engaging in, as more likely to retard than to forward our coming to any agreement concerning the main question.

In the next place, I must here take the liberty of referring you to the proof which I think I have already given, of the proposition that the restraints in question could never have had the effect, in any degree, of lessening the proportion of bad projects to good ones, but only of diminishing, as far as their influence may have extended, the total number of projects, good and bad together. Whatever, therefore, was the general tendency of the projecting spirit previously to the first of these laws, such it must have remained ever since, for any effect which they could have had in purifying and correcting it.

But what may appear more satisfactory, perhaps, than both the above considerations, and may afford us the best help towards extricating ourselves from the perplexity which the plea I have been combating (and which I thought it necessary to bring to view as the best that could be urged) seems much better calculated to plunge us into than bring us out of, is, the consideration of the small effect which the greatest waste that can be conceived to have been made within any compass of time by injudicious projects, can have had on the sum of prosperity, even in the estimation of those whose opinion is most unfavourable to projectors, in comparison of the effect which, within the same compass of time, must have been produced by *prodigality.*

Of the two causes, and only two causes which you mention, as contributing to retard the accumulation of national wealth, as far as the conduct of individuals is concerned, projecting, as I observed before, is the one, and prodigality is the other: but the detriment which society can receive even from the concurrent efficacy of both these causes, you represent on several occasions as inconsiderable, and, if I do not misapprehend you, too inconsiderable, either to need, or to warrant, the interposition of government to oppose it. Be this as it may, with regard to projecting and prodigality taken together—with regard to prodigality at least, I am certain I do not misapprehend you. On this subject you ride triumphant, and chastise the "impertinence and presumption of kings and ministers," with a tone of authority which it required a courage like yours to venture upon, and a genius like yours to warrant a man to assume.* After drawing the parallel between private thrift and public profusion—"It is," you conclude, "the highest impertinence and presumption, therefore, in kings and ministers *to pretend to watch over the economy of private people,* and to restrain their expense, either by sumptuary laws, or by prohibiting the importation of foreign luxuries. They are themselves always, and without exception, the greatest spendthrifts in the society. Let them look well after their own expense, and they may safely trust private people with theirs. If their own extravagance does not ruin the state, that of their subjects never will."

That the employing the expedients you mention for restraining prodigality, is indeed generally, perhaps even without exception, improper, and in many cases even ridiculous, I agree with you: nor will I here step aside from my subject to defend from that imputation another mode suggested in a former part of these papers. But however presumptuous and impertinent it may be for the sovereign to attempt in any way to check by legal restraints the *prodigality* of individuals, to attempt to check their *bad management* by such restraints, seems abundantly more so. To err in the way of prodigality is the lot—though, as you well observe, not of *many* men, in comparison of the whole mass of mankind—yet at least of *any* man: the stuff fit to make a prodigal of is to be found in every alehouse, and under every hedge. But even to *err* in the way of projecting, is the lot only of the privileged few. Prodigality, though not so common as to make any very material drain from the general mass of wealth, is however too common to be regarded as a mark of distinction or as a singularity. But the stepping aside from any of the beaten paths of traffic, *is* regarded as a singularity—as serving to distinguish a man from other men. Even where it requires no genius, no peculiarity of talent—as where it consists in nothing more than the finding out a new market to buy or sell in, it requires, however, at least a degree of courage, which is not to be found in the common herd of men. What shall we say of

it, where, in addition to the vulgar quality of courage, it requires the rare endowment of genius, as in the instance of all those successive enterprises by which arts and manufactures have been brought from their original nothing to their present splendour? Think how small a part of the community these must make, in comparison of the race of prodigals—of that very race which, were it only on account of the smallness of its number, would appear too inconsiderable to you to deserve attention. Yet prodigality is essentially and necessarily hurtful, as far as it goes, to the opulence of the state: projecting is so only by accident. Every prodigal, without exception, impairs—by the very supposition impairs, if he does not annihilate—his fortune. But it certainly is not every projector that impairs his: it is not every projector that would have done so, had there been none of those wise laws to hinder him: for the fabric of national opulence—that fabric of which you proclaim, with so generous an exultation, the continual increase—that fabric, in every apartment of which, innumerable as they are, it required the reprobated hand of a projector to lay the first stone, has required some hands at least to be employed, and successfully employed. When, in comparison of the number of prodigals, which is too inconsiderable to deserve notice, the number of projectors of all kinds is so much more inconsiderable—and when, from this inconsiderable number, must be deducted the not inconsiderable proportion of successful projectors—and from this remainder again, all those who can carry on their projects without need of borrowing,—think whether it be possible that this last remainder could afford a multitude, the reducing of which would be an object deserving the interposition of government by its magnitude, even taking for granted that it were an object proper in its nature?

If it be still a question whether it be worth while for government, by its *reason,* to attempt to controul the conduct of men visibly and undeniably under the dominion of *passion,* and acting under that dominion, contrary to the dictates of their own reason,—in short, to effect what is acknowledged to be their better judgment, against what everybody, even themselves, would acknowledge to be their worse,—is it endurable that the legislator should by violence substitute his own pretended reason, the result of a momentary and scornful glance, the offspring of wantonness and arrogance, much rather than of social anxiety and study, in the place of the humble reason of individuals, binding itself down with all its force to that very object which he pretends to have in view? Nor let it be forgotten, that, on the side of the individual in this strange competition, there is the most perfect and minute know ledge and information which interest—the whole interest of a man's reputation and fortune, can insure: on the side of the legislator, the most perfect ignorance. All that he knows all that he can know, is, that the enterprise is a *project,* which, merely because it is susceptible of that obnoxious name, he looks upon as a sort of cock, for him, in childish wantonness, to shie at. Shall the blind lead the blind? is a question that has been put of old to indicate the height of folly: but what then shall we say of him who, being necessarily blind, insists on leading, in paths he never trode in, those who can see?

It must be by some distinction too fine for my conception, if you clear yourself from the having taken, on another occasion, but on the very point in question, the side, on which it would be my ambition to see you fix:—

"What is the species of domestic industry which his capital can employ, and of which the produce is likely to be of the greatest value, every individual," you say,* "it is evident, can, in his local situation, judge much better than any statesman or lawgiver can do for him. The statesman, who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted, not only to no single person, but to no council or senate whatsoever, and which would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.

"To give the monopoly of the home market to the produce of domestic industry in any particular art or manufacture, is in some measure to direct private people in what manner they ought to employ their capitals, and must in almost all cases be either a useless or a hurtful regulation."—Thus far you: and I add,—to limit the legal interest to a rate at which the carriers on of the oldest and best-established and least hazardous trades are always glad to borrow, is to give the monopoly of the money-market to those traders, as against the projectors of new-imagined trades, not one of which but, were it only from the circumstance of its novelty, must, as I have already observed, appear more hazardous than the old.

These, in comparison, are but inconclusive topics. I touched upon them merely as affording what appeared to me the only shadow of a plea that could be brought in defence of the policy I am contending against. I come back, therefore, to my first ground, and beg you once more to consider, whether, of all that host of manufactures, which we both exult in as the causes and ingredients of national prosperity, there be a single one that could have existed at first but in the shape of a project. But if a regulation, the tendency and effect of which is merely to check projects in as far as they are projects, without any sort of tendency, as I have shown, to weed out the bad ones, is defensible in its present state of imperfect efficacy, it should not only have been defensible, but much more worthy of our approbation, could the efficacy of it have been so far strengthened and completed as to have opposed from the beginning an unsurmountable bar to all sorts of projects whatsoever;—that is to say, if, stretching forth its hand over the first rudiments of society, it had confined us, from the beginning, to mud for our habitations, to skins for our clothing, and to acorns for our food.

I hope you may by this time be disposed to allow me, that we have not been ill served by the projects of time past. I have already intimated, that I could not see any reason why we should apprehend our being worse served by the projects of time future. I will now venture to add, that I think I do see reason why we should expect to be still better and better served by these projects, than by those: I mean, better upon the whole, in virtue of the reduction which experience, if experience be worth anything, should make in the proportion of the number of the ill-grounded and unsuccessful, to that of the well-grounded and successful ones.

The career of art, the great road which receives the footsteps of projectors, may be considered as a vast, and perhaps unbounded plain, bestrewed with gulphs such as Curtius was swallowed up in. Each requires a human victim to fall into it ere it can

close; but when it once closes, it closes to open no more, and so much of the path is safe to those who follow. If the want of perfect information of former miscarriages renders the reality of human life less happy than this picture, still the similitude must be acknowledged: and we see at once the only plain and effectual method for bringing that similitude still nearer and nearer to perfection: I mean, the framing the history of the projects of time past, and (what may be executed in much greater perfection, were but a finger held up by the hand of government) the making provision for recording, and collecting, and publishing as they are brought forth, the race of those with which the womb of futurity is still pregnant. But to pursue this idea, the execution of which is not within my competence, would lead me too far from the purpose.

Comfortable it is to reflect, that this state of continually-improving security is the natural state, not only of the road to opulence, but of every other track of human life. In the war which industry and ingenuity maintain with fortune, past ages of ignorance and barbarism form the forlorn hope, which has been detached in advance, and made a sacrifice of for the sake of future. The golden age, it is but too true, is not the lot of the generation in which we live: but if it is to be found in any part of the track marked out for human existence, it will be found, I trust, not in any part which is past, but in some part which is to come.

But to return to the laws against usury, and their restraining influence on projectors. I have made it, I hope, pretty apparent, that these restraints have no power or tendency to pick out bad projects from the good. Is it worth while to add, which I think I may do with some truth, that the tendency of them is rather to pick the good out from the bad? Thus much at least may be said, and it comes to the same thing, that there is one case in which, be the project what it may, they may have the effect of checking it, and another in which they can have no such effect; and that the first has for its accompaniment, and that a necessary one, a circumstance which has a strong tendency to separate and discard every project of the injudicious stamp, but which is wanting in the other case: I mean, in a word, the *benefit of discussion.*

It is evident enough, that upon all such projects, whatever be their nature, as find funds sufficient to carry them on, in the hands of him whose invention gave them birth, these laws are perfectly, and if by this time you will allow me to say so, very happily, without power. But for these there has not necessarily been any other judge, prior to experience, than the inventor's own partial affection. It is not only not necessary that they should have had, but it is natural enough that they should not have had, any such judge; since in most cases the advantage to be expected from the project depends upon the exclusive property in it, and consequently upon the concealment of the principle. Think, on the other hand, how different is the lot of that enterprise which depends upon the good opinion of another man; that other, a man possessed of the wealth which the projector wants, and before whom necessity forces him to appear in the character of a suppliant at least: happy if, in the imagination of his judge, he adds not to that degrading character, that of a visionary enthusiast or an impostor! At any rate, there are in this case, two wits set to sift into the merits of the project, for one which was employed upon that same task in the other case: and of these two, there is one whose prejudices are certainly not most likely to be on the favourable side. True it is, that in the jumble of occurrences, an over-sanguine projector may

stumble upon a patron as over-sanguine as himself; and the wishes may bribe the judgment of the one, as they did of the other. The opposite case, however, you will allow, I think, to be by much the more natural. Whatever a man's wishes may be for the success of an enterprise not yet his own, his fears are likely to be still stronger. That same pretty generally implanted principle of vanity and self-conceit, which disposes most of us to overvalue each of us his own conceptions, disposes us, in a proportionable degree, to undervalue those of other men.

Is it worth adding, though it be undeniably true, that could it even be proved by ever so uncontrovertible evidence, that from the beginning of time to the present day, there never was a project that did not terminate in the ruin of its author; not even from such a fact as this, could the legislator derive any sufficient warrant, so much as for wishing to see the spirit of projects in any degree repressed? The discouraging motto, *Sic vos non vobis,* may be matter of serious consideration to the individual, but what is it to the legislator? What general, let him attack with ever so superior an army, but knows that hundreds, or perhaps thousands, must perish at the first onset? Shall he, for that consideration alone, lie inactive in his lines? "Every man for himself—but God" adds the proverb (and it might have added the general, and the legislator, and all other public servants) "for us all." Those sacrifices of individual to general welfare, which on so many occasions are made by third persons against men's wills, shall the parties themselves be restrained from making, when they do it of their own choice? To tie men neck and heels, and throw them into the gulphs I have been speaking of, is altogether out of the question: but if at every gulph a Curtius stands mounted and caparisoned, ready to take the leap, is it for the legislator, in a fit of old-womanish tenderness, to pull him away? Laying even public interest out of the question, and considering nothing but the feelings of the individuals immediately concerned, a legislator would scarcely do so, who knew the value of hope, "the most precious gift of heaven."

Consider, Sir, that it is not with the invention-lottery (that great branch of the project-lottery, for the sake of which I am defending the whole, and must continue so to do until you or somebody else can show me how to defend it on better terms,) it is not, I say, with the invention-lottery, as with the mine-lottery, the privateering-lottery, and so many other lotteries which you speak of, and in no instance, I think, very much to their advantage. In these lines, success does not, as in this, arise out of the embers of ill-success, and thence propagate itself, by a happy contagion, perhaps to all eternity. Let Titius have found a mine, it is not the more easy, but by so much the less easy, for Sempronius to find one too: let Titius have made a capture, it is not the more easy, but by so much the less easy, for Sempronius to do the like. But let Titius have found out a new dye, more brilliant or more durable than those in use—let him have invented a new and more convenient machine, or a new and more profitable mode of husbandry,—a thousand dyers, ten thousand mechanics, a hundred thousand husbandmen, may repeat and multiply his success: and then, what is it to the public though the fortune of Titius, or of his usurer, should have sunk under the experiment?

Birmingham and Sheffield are pitched upon by you as examples, the one of a projecting town, the other of an unprojecting one.* Can you forgive my saying, I rather wonder that this comparison of your own choosing did not suggest some

suspicions of the justice of the conceptions you had taken up to the disadvantage of projectors. Sheffield is an old oak: Birmingham but a mushroom. What if we should find the mushroom still vaster and more vigorous than the oak? Not but the one as well as the other, at what time soever planted, must equally have been planted by projectors: for though Tubal Cain himself were to be brought post from Armenia to plant Sheffield, Tubal Cain himself was as arrant a projector in his day, as ever Sir Thomas Lombe was, or Bishop Blaise. But Birmingham, it seems, claims, in common parlance, the title of a projecting town, to the exclusion of the other, because, being but of yesterday, the spirit of project smells fresher and stronger there than elsewhere.

When the odious sound of the word *projector* no longer tingles in your ears, the race of men thus stigmatized do not always find you their enemy. Projects, even under the name of "dangerous and expensive experiments," are represented as not unfit to be encouraged, even though monopoly be the means: and the monopoly is defended in that instance, by its similarity to other instances in which the like means are employed to the like purpose.

"When a company of merchants undertake at their own risk and expense to establish a new trade with some remote and barbarous nation, it may not be unreasonable," you observe, "to incorporate them into a jointstock company, and to grant them, in case of their success, a monopoly of the trade for a certain number of years. It is the easiest and most natural way in which the state can recompense them, for hazarding a dangerous and expensive experiment, of which the public is afterwards to reap the benefit. A temporary monopoly of this kind may be vindicated upon the same principles upon which a like monopoly of a new machine is granted to its inventor, and that of a new book to its author."

Private respect must not stop me from embracing this occasion of giving a warning which is so much needed by mankind. If so original and independent a spirit has not been always able to save itself from being drawn aside by the fascination of sounds into the paths of vulgar prejudice, how strict a watch ought not men of common mould to set over their judgments, to save themselves from being led astray by similar delusions!

I have sometimes been tempted to think, that were it in the power of laws to put *words* under proscription, as it is to put *men,* the cause of inventive industry might perhaps derive scarcely less assistance from a bill of attainder against the words *project* and *projectors,* than it has derived from the act authorizing the grant of patents. I should add, however, for a time: for even then the envy, and vanity, and wounded pride, of the uningenious herd, would sooner or later infuse their venom into some other word, and set it up as a new tyrant, to hover, like its predecessor, over the birth of infant genius, and crush it in its cradle.

Will not you accuse me of pushing malice beyond all bounds, if I bring down against you so numerous and respectable a body of men as the members of the *Society for the Encouragement of Arts?* I do not, must not, care: for you command too much respect to have any claim to mercy. At least you will not accuse me of spiriting up against

you barbarian enemies, and devoting you to the vengeance of Cherokees and Chicasaws.

Of that popular institution, the very professed and capital object is the encouragement of projects, and the propagating of that obnoxious breed, the crushing of which you commend as a fit exercise for the arm of power. But if it be right to crush the acting malefactors, it would be downright inconsistency not to crush at the same time, or rather not to begin with crushing, these their hirers and abettors. Thank, then, their inadvertence, or their generosity, or their prudence, if their beadle has not yet received orders to burn in ceremony, as a libel on the Society, a book that does honour to the age.

After having had the boldness to accuse so great a master of having fallen unawares into an error, may I take the still farther liberty of setting conjecture to work to account for it? Scarce any man, perhaps no man, can push the work of creation, in any line, to such a pitch of completeness as to have gone through the task of examining with his own eyes into the grounds of every position without exception, which he has had occasion to employ. You heard the public voice, strengthened by that of law, proclaiming all round you, that usury was a sad thing, and usurers a wicked and pernicious set of men: you heard from one at least of those quarters, that projectors were either a foolish and contemptible race, or a knavish and destructive one. Hurried away by the throng, and taking, very naturally, for granted, that what everybody said must have some ground for it, you have joined the cry, and added your suffrage to the rest. Possibly, too, among the crowd of projectors which the lottery of occurrences happened to present to your observation, the prejudicial sort may have borne such a proportion to the beneficial, or shown themselves in so much stronger colours, as to have given the popular notion a firmer hold in your judgment, than it would have had, had the contrary proportion happened to present itself to your notice. To allow no more weight to examples that fall close under our eyes, than to those which have fallen at ever so great a distance—to suffer the judgment on no occasion to indulge itself in the licence of a too hasty and extensive generalization—not to give any proposition footing there, till after all such defalcations have been made as are necessary to reduce it within the limits of rigid truth,—these are laws, the complete observance whereof forms the ultimate, and hitherto, perhaps for ever, ideal term of human wisdom.

You have defended against unmerited obloquy two classes of men—the one innocent at least, the other highly useful: the spreaders of English arts in foreign climes, and those whose industry exerts itself in distributing that necessary commodity which is called by the way of eminence the staff of life.* May I flatter myself with having succeeded at last in my endeavours to recommend to the same powerful protection, two other highly useful and equally persecuted sets of men—usurers and projectors? Yes: I will, for the moment at least, indulge so flattering an idea; and in pursuance of it, leaving usurers, for whom I have said enough already, I will consider myself as joined now with you in the same commission, and thinking with you of the best means of relieving the projector from the load of discouragement laid on him by these laws, in so far as the pressure of them falls particularly upon him. In my own view of the matter, indeed, no temperament, no middle course, is either necessary or proper:

the only perfectly effectual, is the only perfectly proper remedy—a spunge. But as nothing is more common with mankind than to give opposite receptions to conclusions flowing with equal necessity from the same principle, let us accommodate our views to that contingency.

According to this idea, the object, as far as confined to the present case, should be, to provide, in favour of projectors only, a dispensation from the rigour of the anti-usurious laws;—such, for instance, as is enjoyed by persons engaged in the carrying trade, in virtue of the indulgence given to loans made on the footing of *respondentia* or bottomry. As to abuse, I see not why the danger of it should be greater in this case than in those. Whether a sum of money be embarked, or not embarked, in such or such a new manufacture on land, should not, in its own nature, be a fact much more difficult to ascertain, than whether it be embarked, or not embarked, in such or such a trading adventure by sea: and in the one case as in the other, the payment of the interest, as well as the repayment of the principal, might be made to depend upon the success of the adventure. To confine the indulgence to new undertakings, the having obtained a patent for some invention, and the continuance of the term of the patent, might be made conditions of the allowance given to the bargain: to this might be added affidavits expressive of the intended application, and bonds, with sureties, conditioned for the performance of the intention so declared; to be registered in one of the patent-offices, or elsewhere. After this, affidavits once a-year, or oftener, during the subsistence of the contract, declaring what has been done in execution of it.

If the leading-string is not yet thought tight enough, boards of controul might be instituted to draw it tighter. Then opens a scene of vexation and intrigue: waste of time consumed in courting the favour of the members of the board: waste of time in opening their understandings, clenched perhaps by ignorance, at any rate by disdain and self-sufficiency, and vanity, and pride: the favour (for pride will make it a favour) granted to skill in the arts of self-recommendation and cabal, devoid of inventive merit, and refused to naked merit unadorned by practice in those arts: waste of time on the part of the persons themselves engaged in this impertinent inquiry: waste of somebody's money in paying them for this waste of time. All these may be necessary evils, where the money to be bestowed is public money: how idle where it is the party's own! I will not plague you, nor myself, with inquiring of whom shall be composed this board of nurses to grown gentlemen: were it only to cut the matter short, one might name at once the committees of the Society of Arts. There you have a body of men ready trained in the conduct of inquiries, which resemble that in question in every circumstance but that which renders it ridiculous: the members or representatives of this democratic body would be as likely, I take it, to discharge such a trust with fidelity and skill, as any aristocracy that could be substituted in their room.

Crichoff, in White Russia,
March 1787.

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A MANUAL OF POLITICAL ECONOMY:

NOW FIRST EDITED FROM THE MSS. OF JEREMY BENTHAM.

MANUAL OF POLITICAL ECONOMY.

CHAPTER I.

INTRODUCTION.*

Political Economy is at once a *science* and an *art.* The value of the science has for its efficient cause and measure, its subserviency to the art.†

According to the principle of utility in every branch of the art of legislation, the object or end in view should be the production of the maximum of happiness in a given time in the community in question.

In the instance of this branch of the art, the object or end in view should be the production of that maximum of happiness, in so far as this more general end is promoted by the production of the maximum of wealth and the maximum of population.

The practical questions, therefore, are—How far the measures respectively suggested by these two branches of the common end agree?—how far they differ, and which requires the preference?—how far the end in view is best promoted by individuals acting for themselves? and in what cases these ends may be best promoted by the hands of government?

Those cases in which, and those measures or operations by which, the end is promoted by individuals acting for themselves, and without any special interference exercised with this special view on the part of government, beyond the distribution made and maintained, and the protection afforded by the civil and penal branches of the law, may be said to arise *sponte acta.*

What the legislator and the minister of the interior have it in their power to do towards increase either of wealth or population, is as nothing in comparison with what is done of course, and without thinking of it, by the judge, and his assistant the minister of police.

The cases in which, and the measures by which, the common end may be promoted by the hands of government, may be termed *agenda.*

With the view of causing an increase to take place in the mass of national wealth, or with a view to increase of the means either of subsistence or enjoyment, without some special reason, the general rule is, that nothing ought to be done or attempted by government. The motto, or watchword of government, on these occasions, ought to be—*Be quiet.*

For this quietism there are two main reasons:—1. Generally speaking, any interference for this purpose on the part of government is *needless.* The wealth of the whole community is composed of the wealth of the several individuals belonging to it taken together. But to increase his particular portion is, generally speaking, among the constant objects of each individual's exertions and care. Generally speaking, there is no one who knows what is for your interest, so well as yourself—no one who is disposed with so much ardour and constancy to pursue it.

2. Generally speaking, it is moreover likely to be pernicious, viz. by being unconducive, or even obstructive, with reference to the attainment of the end in view. Each individual bestowing more time and attention upon the means of preserving and increasing his portion of wealth, than is or can be bestowed by government, is likely to take a more effectual course than what, in his instance and on his behalf, would be taken by government.

It is, moreover, universally and constantly pernicious in another way, by the restraint or constraint imposed on the free agency of the individual. Pain is the general concomitant of the sense of such restraint, wherever it is experienced.

Without being productive of such coercion, and thereby of such pain—in a way more or less direct—more or less perceptible, with this or any other view, the interposition of government can hardly take place. If the coercion be not applied to the very individual whose conduct is endeavoured to be made immediately subservient to this purpose, it is at any rate applied to others—indeed, to the whole community taken together.

In coercive measures, so called, it is only to the individual that the coercion is applied. In the case of measures of encouragement, the field of coercion is vastly more extensive. Encouragements are grants of money or money's worth, applied in some shape or other to this purpose. But for this, any more than any other purpose, money is not raised but by taxes, and taxes are the produce of coercive laws applied to the most coercive purpose.

This would not be the less true, though the individual pieces of money thus applied happened to come from a source which had not been fed by any such means. In all communities, by far the greatest share of the money disposed of by government being supplied by taxes, whether this or that particular portion of money so applied, be supplied from that particular source, makes no sort of difference.

To estimate the good expected from the application of any particular mass of government money, compare it always with the mischief produced by the extraction of an equal sum of money by the most burthensome species of tax; since, by

forbearing to make application of that sum of money, you might forbear levying the amount of that same sum of money by that tax, and thereby forbear imposing the mass of burthen that results from it.

It would, however, be a gross error, and an extremely mischievous one, to refer to the defalcation thus resulting from the mass of liberty or free agency, as affording a conclusive objection against the interposition of the law for this or any other purpose. Every law which does not consist in the repeal, total or partial, of a coercive law, is itself a coercive law. To reprobate as a mischief resulting from this or that law, a property which is of the very essence of all law, is to betray a degree of blindness and ignorance one should think hardly possible on the part of a mind accustomed to the contemplation of any branch of the system of laws—a total unacquaintance with what may be called the logic of the laws.

Yet so imperfect is the state of legal knowledge,—marks of this perfectly surprising, as it will one day be, as well as much to be lamented ignorance, are to be found among the most experienced pens, not to mention the most loquacious tongues.

Power, knowledge* or intelligence, and inclination: where these requisites concur on the part of him on whom the production of the desirable effect in question depends, it is produced; when any one of them is wanting, it is not produced.

When these requisites exist already in perfection with reference to the production of any effect operating in addition to the mass of wealth on the part of the members of the community taken respectively in their individual capacities, it will be produced without the interference of the government; and as this interference is never a matter of pure indifference,—never otherwise than hurtful when it is not beneficial, these cases are among the cases in which that interference is not desirable.

In the cases where any one of these requisites is deficient, insomuch that for want of it the effect cannot be produced,—in such case the interposition of government may be desirable or not, according to the state of the account—according as the inconveniences attached to the measures in which the interposition of government consists, preponderate or fail of preponderating over the advantage attached to the effect which it is proposed should be produced.

If the effect fail of being produced without the interposition of government for want of any one or more of these requisites, it is by the supply of the requisite or requisites so wanting that the action of government may display itself. Thence, on every such occasion, these questions present themselves for consideration:—

1. Whether the effect in question fail of being produced in the degree in which it might be produced?

2. To the want of what requisite or requisites such failure is to be ascribed?

3. What are the means by which such failure may be supplied by government at the least expense?

4. When reduced to its least dimensions, is the expense necessary for the purpose in question such that the advantage will preponderate over the expense?

In a general view of the three requisites, inclination appears least apt to be deficient on the part of individuals. The general mass of national wealth is composed of the particular masses appertaining to individuals. On the part of the individual there is seldom any deficiency in respect of inclination to make addition to the amount of that particular mass of wealth which has fallen to his share.

It is in respect to the two other requisites, power and intelligence, that deficiency is much more apt to take place.

To these deficiencies the abilities of government are happily adapted. Inclination it could not give—it has not power to give it in the great mass of cases:—not by punishments, on account of the expensiveness, and in such cases the comparative inefficacy of such means;—not by reward, for want of a sufficient stock of that scarce and valuable matter which is not to be extracted but by taxes—that is, by punishments.

Intelligence and power may be administered by government at a much cheaper rate. A mite of reward, skilfully applied, is often sufficient to produce an immensity of intelligence. In many instances, it frequently requires nothing more than the removal of coercion from one hand to another, or even the repeal of it altogether, in order to confer the sort and degree of requisite power;* the operation, in either case, not being attended, in the shape of pain, with any perceptible effect.

The two most extensive descriptions of the cases in which it is necessary or expedient to interfere for the purpose of regulating the exertions of individuals in respect to the increase of wealth, are those in which it is necessary to regulate the pursuit of the several objects in view, according to the order of their importance:—in giving to the matter of wealth that modification which adapts it to the several purposes of subsistence and defence—security in respect of subsistence, and security in respect of defence—in preference to that which adapts it to the mere purpose of enjoyment.

With few exceptions, and those not very considerable ones, the attainment of the maximum of enjoyment will be most effectually secured by leaving each individual to pursue his own maximum of enjoyment, in proportion as he is in possession of the means. Inclination in this respect will not be wanting on the part of any one. Power, the species of power applicable to this case—viz. wealth, pecuniary power—could not be given by the hand of government to one, without being taken from another; so that by such interference there would not be any gain of power upon the whole.

The gain to be produced in this article by the interposition of government, respects principally the head of knowledge. There are cases in which, for the benefit of the public at large, it may be in the power of government to cause this or that portion of knowledge to be produced and diffused, which, without the demand for it produced by government, would either not have been produced, or would not have been diffused.

We have seen above the grounds on which the general rule in this behalf—*Be quiet*—rests. Whatever measures, therefore, cannot be justified as exceptions to that rule, may be considered as *non agenda* on the part of government.† The art, therefore, is reduced within a small compass: *security* and *freedom* are all that industry requires. The request which agriculture, manufactures, and commerce present to governments, is modest and reasonable as that which Diogenes made to Alexander: "*Stand out of my sunshine.*" We have no need of favour—we require only a secure and open path.

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CHAPTER II.

ANALYTICAL SURVEY OF THE FIELD OF POLITICAL ECONOMY.

For the *genesis* of the matter of wealth—the causes and mode of its production under its several modifications—reference may for the present be made to Adam Smith, who has not left much to do, except in the way of method and precision.

The following are the first steps in an analytical survey of the field of political economy, showing how to draw a circle round the subject, and how to invent or discover what remains to be invented or discovered in this quarter of the field of human knowledge.

On the part of the individuals by whom increase of wealth is produced, the production of it is either purely *spontaneous,* or (with or without design directed to the increase of it) either promoted or obstructed by the operations of government. The correspondent practical division of acts and operations, the effect of which is to exert an influence on the quantity of the *national,* to which may be added the *mundane* stock of the matter of wealth, is—1. *Sponte acta;* 2. *Agenda;* 3. *Non-agenda.*

In the track of political economy as in any other, whatever is done towards the attainment of the object, must be by creating inclination, or by bestowing power.

Inclination can only be operated upon by inducements, as—

1. By applications of a coercive or obligatory nature,—which are either injunctions or prohibitions.

2. By applications of an invitative nature, or encouragements,—which are either direct or indirect.

Power may to this purpose be distinguished into—1. Legal; 2. Physical; 3. Intellectual, or knowledge.

1. Legal power may be conferred—1. By forbearing to impose on the party proposed to be assisted coercion of any kind: 2. By coercing others in such a manner as to prevent them from obstructing his making use of the power of the preceding kind; 3. By compelling them to afford him assistance. In the two first of these cases, *power* is no more than *liberty.*

2. Physical power is conferred by giving to a party the physical instruments requisite to the attainment of the end proposed;—viz. money, or something that is to be had for money. This can only be done by legal power of one or other of the three kinds above mentioned.

3. Intellectual power is either—1. Active power; or, 2. Knowledge. If active power be given by law, it can only be in some indirect way, through physical and thence through legal power.

Knowledge is either—1. Of the modes of operating towards the end proposed;—viz. which are good, which bad—which worst, and which best; or, 2. Of matters of fact;—which may be conducive to this end, either—1. By pointing out inducement; 2. By pointing out legal power; 3. By conducing to physical power or to intellectual power—either as leading to knowledge of the modes of operating, or to other matters of fact more immediately leading to such knowledge.

Encouragements may be distinguished into—1. Direct; and, 2. Indirect. Direct consist of rewards, commonly called in this instance *bounties,* given to him who shall exercise his industry in such or such a way. Indirect, consist in discouragements opposed in the way of others, in the view of restraining them from exercising their industry in such or such a way; *i. e.* in such a way as shall prevent his exercising his in the way desired. If discouragements thrown in the way of A, answer the purpose of encouragement to B, it is because A's acting in the track he is thus discouraged from would have tended to discourage B from acting in the track he is meant to be encouraged to act in, by diminishing the reward, natural or factitious, he would have got in some way by acting in it.

To the head of encouragements may also be added operations the tendency of which is to confer power, and in particular physical power; such as the giving or lending money or money's worth, to be employed in the shape of a capital towards the carrying on a branch of industry meant to be encouraged.

In whichever of the above ways aid is applied, it must be either—1. With a view of increasing the quantity of industry in general; or, 2. With a view of increasing the relative quantity of a particular branch of industry.

The causes of wealth, or say rather the matter of wealth,* are—

1. Final—well-being.

2. Material—matter considered in respect of its possessing, or being capable of possessing *value*—viz. subservency to *well-being,* the *final* cause.

3. Efficient—viz. motion.

The modifications of well-being, ranged in the order of their importance, are—

1. Subsistence, present.

2. Security in respect of defence—viz. against the evils to which human nature is exposed, particularly from the action of agents exterior to a man's body. Security in respect of future subsistence.

3. Enjoyment—viz. mere enjoyment, distinct from the maintenance of subsistence and the contemplation of security.

Matter, considered with reference to the final cause,—well-being, may be termed (such parts of it as by the use made of them become subservient to well-being, the final cause) matter of wealth.†

The term, matter of wealth, is applicable in common to—

1. Articles or instruments of subsistence;

2. Instruments of defence;

3. Instruments of enjoyment.

Articles of subsistence are either of constant or occasional use.

Articles of constant use are—

1. Articles of nourishment—viz. food and drink, *i. e.* liquid or solid; the distinction between which is at their point of nearest approach undeterminable.

2. Articles serving for the regulation of temperature and state of the air in respect of moisture. These are—either lodging or clothing.

3. Articles of occasional use, are articles of medicine.

The evils to which defence bears reference may be considered as having their source in the agency of irrational agents or rational agents.

Defence against evils apprehended from the agency of irrational agents, is defence against calamities.

Among rational agents, those from whose agency evil is apprehended, are either considered as members of the community in question, or not: in the first case, the defence is against delinquency; in the other case, against hostility.

A modification of the matter of wealth may be referred to that one of the above three heads to which it is conducive in the greatest degree;—for the same article which is principally subservient to one, may occasionally be subservient to either or both of the two others.*

Enjoyment being in a manner inseparable from the application of articles of subsistence to their use, all articles of subsistence are instruments of enjoyment likewise. The distinction is, therefore, not between articles of subsistence and instruments of enjoyment, but between articles of subsistence and instruments of *mere* enjoyment—viz. that by their application to use contribute nothing to *subsistence* any more than to defence.†

The practice of exchange being established, each modification of the matter of wealth, to whichsoever of the above-mentioned divisions it belongs, is in virtue of that practice convertible with more or less facility and certainty into every other.‡ The richer a community, the better secured it is thereby against hostility and famine.

A stock of instruments of mere enjoyment presupposes, on the part of each individual, a preassured stock of the articles of subsistence. The stock of articles of subsistence capable of being produced and kept up in a country, in any other view than that of exchange, has its limits: it can never extend much beyond the stock necessary for the subsistence of the inhabitants—the stock of instruments of mere enjoyment is without limit.

It is only in respect and in virtue of the quantity of the stock of instruments of mere enjoyment, that one country can exceed another country in wealth. The quantity of wealth is as the quantity of its instruments of enjoyment.

In cases where, two articles of subsistence contributing in an equal degree to that end, one contributes in a greater degree to enjoyment (as is testified by the greater price given for it,) it may be considered as possessed of a compound value, which by analysis may be resolved as it were into two values; one belonging to it in its capacity of an article of subsistence, the other in its capacity of an article of mere enjoyment.*

It is out of the fund for enjoyment that the portion of wealth allotted to *defence,* and the portion, if any, allotted to security in respect of subsistence, must be taken: for out of the portion allotted to subsistence none can be spared.

But though security increase in proportion as opulence increases, and inequality be an inseparable accompaniment of opulence, security does not increase in proportion as inequality increases. Take away all the ranks in respect of opulence, between the highest and the lowest—the inequality will be increased, but the degree of security will be diminished.

Luxury is not only an inseparable accompaniment to opulence, but increases in proportion to it. As men rise one above another in the scale of opulence, the upper one may, without excess, give into expenses which those below cannot give into without prodigality. It is therefore no more desirable that luxury should be repressed, than it is that opulence should be repressed—that is, that security should be diminished. If it were desirable that luxury should be repressed, it could be done no otherwise than either by depriving the more opulent classes of a part of their property in this view, or coercing them in the use of it. It would be less unreasonable to restrain prodigality wherever it is to be found, than to restrain the highest imaginable pitch of luxury on the part of those whose expense does not exceed their income.

The mass of that matter which is the material cause of wealth, has for its sources—

1. Land—*i. e.* dry land uncovered with water.

2. Water—*i. e.* land covered with water.

The matter of wealth considered in respect of its modifications, may be distinguished, in the first place, into matter in an unimproved state—in the state in which it comes out of the hands of nature; and matter in an improved state, *i. e.* modified by human labour, for the purpose of its being adapted to whatever uses it may be designed for.

Any distinguishable portion of the matter of wealth may be either an article of immediate or of subservient use.

It is an article of immediate use, when it is itself applicable to any one of the three above-mentioned ends, viz. subsistence, security, or enjoyment.

It is an article of subservient use, when, though it contribute to some one or more of those ends, it does so not by any immediate application of its powers to any one of the above three ends, but by the instrumentality of some other article which is of immediate use, and which it renders, or contributes or tends to render, subservient to that use.

The operations by which an increase of the matter of wealth is produced or promoted, may be enumerated under the following principal heads, viz.—

1. Discovery—viz. of the source of the raw material, or portion of matter of wealth in an unimproved state.

2. Discovery of this or that portion of land, considered as the source from which portions of matter in an unimproved state are extracted.

3. Extraction—viz. of the raw material from the portion of land which is its source.

When an increase of wealth to any given amount takes place, it is either by means of an increase of labour, or without any increase.

When it takes place without any increase in the quantity of labour, it takes place by means of an increase in the effect, or say, efficiency of the quantity of labour employed.

The degree of efficiency in the quantity of labour employed being given, the increase of wealth produced by the labour will be as the quantity of it.

If the quantity of wealth which, before the increase of efficiency, required a year's labour of two thousand men, be now produced by a year's labour of one thousand, there remains the year's labour of one of the sets of a thousand men, which, when employed in the same way, or with the same degree of efficiency as that of the first set, will produce a fresh mass of wealth equal to the original one.

Reducing by one-half the number of men employed about an individual mass of work, the quantity of the work done not being diminished by such reduction, is therefore the same thing in effect as doubling the number of men employed with the same degree of efficiency as before.

But this supposes that the number of hands thus rendered unnecessary with regard to the production of the given quantity of work, are employed with the same degree of efficiency, or at any rate are employed. If not employed at all, no increase in the quantity of wealth will be brought about by the increase in the efficiency of the mass of labour which continues to be employed:—if employed, but employed with a less degree of efficiency, then the fresh quantity of wealth thus produced by the expelled hands will fail of being equal to the quantity produced by the hands retained, in a degree proportioned to the difference in the degree of efficiency.

If by means of the introduction of machinery, or improvement in the machinery in use, a manufacturer be enabled with one thousand hands to perform the same quantity of work as that which before the improvement required two thousand hands, it might seem at first sight, from this statement, that the natural effect of the improvement would be the retaining the same quantity of hands employed in that branch of manufacture, and thence the doubling the quantity of goods manufactured in the time. But without an addition to the mass of pecuniary capital, which is a circumstance accidental and not belonging to the case, the retaining of the same number of hands so employed would in no instance be possible; for the production and keeping up of the machinery or other auxiliary means would always require a considerable quantity of labour, the payment of which would be attended with a proportionable mass of expense, by which a proportionable part of the capital would be absorbed.

If the hands employed on the machinery should be paid at a higher rate than the hands employed in the manufacture, the capital being the same after the improvement as before, the number of manufacturing hands would be still further decreased on this account.

Hence it follows, that increase of wealth by saving of labour is not so great as increase of wealth by increase of quantity of labour; and that, consequently, opposition to machinery is well grounded, if no care be taken to provide immediate employment for the discharged hands. At first, the temporary distress will outweigh the temporary enjoyment; but, so far as depends on increase of wealth, the increase of enjoyment is perpetual.

The quantity of wealth, or matter of wealth, existing in a community at the end of a given space of time (say forty years,) will be as the quantity of wealth existing therein at the commencement of the period—*plus* the quantity of wealth that has come into it, *minus* the quantity that has gone out of it.

Hence two modes of increasing the quantity of wealth:—1. The direct and positive mode, increasing the quantity that *comes in;* 2. The indirect and negative mode, diminishing the quantity that *goes out.*

Wealth has two sources, to which correspond two modes of coming into a community:—1. Home production; 2. Importation.

It has in like manner two correspondent modes of going out:—1. Consumption; 2. Exportation.

In the case of importation, the increase is only *relative,* relation being had to the community in question: importation alone being considered, by so much as the wealth of this community is increased, by so much is the wealth of some other community decreased.

In the like manner, in the case of exportation, the decrease is only relative: exportation alone being considered, by so much as the wealth of this community is decreased, that of some other is increased: in relation to the world at large, the quantity suffers not in either case any change.

In general, import, in respect of one portion of wealth, does not take place, but *export,* in respect to another and correspondent portion, a portion generally regarded as being of equal value takes place at nearly the same time; the transfer or self-deprivation having the acquisition, for what in the language of English law is called its consideration, and in the language of general logic, its final cause. But between community and community, as between individuals, from matters of fear, amity, or remote personal interest, it will sometimes happen that export from this community shall take place without a correspondent import into it from that—import into this country without export from it into that; though import into this cannot take place (unless it be from spots occupied in common by the two, such as the greater part of the sea, and some unappropriated parts of the land) without export from that.

Consumption, again, takes place in either of two ways:—1. Purposely, in the way of use; or, 2. Undesignedly, in the way of deperition without use.

Deperition is either total or partial: partial, is deterioration.

Deperition is in strictness no otherwise true of any portion of matter than in as far as it respects *form,* and *value* as resulting from that form—*value, i. e.* subserviency to use.

An act whereby deperition is produced, is called *destruction.* An act whereby deterioration is produced, may be termed *deterioration* (the word being used in the active sense) or endamagement.

Acts whereby destruction or deterioration is produced, and thereby loss without preponderant benefit, it is the province of the non-penal branch of the law to define, and of the penal to prevent.

Preservation may be either *total* or *partial:* it can only be partial in cases where decrease to a greater or less amount is indispensable, as in case of *taxes.*

Taxes may be imposed either to furnish means for *future* expenditure, or to afford compensation to those who in times past have furnished the means for expenditure which *then* was future: in other words, for growing expenses, or for discharge of debts.

The amount of taxes imposed for growing expenses, takes from the amount of national wealth in certain ways, and adds to it in other ways, more or less, according as it is employed. It takes from the means or instruments of enjoyment, present or

future, immediate or more or less remote, according as it would have been spent, lent out, or hoarded, had it not been for the tax. It adds to the security of the whole, in proportion as it is employed for the purpose of national *security,* in the way of national defence and otherwise. It adds to the subsistence and enjoyment of a part, in proportion as it is applied to those purposes, by those among whom it is distributed in consideration of the services by which they have respectively contributed to that end.

The amount of taxes imposed in discharge of debt, of itself neither adds to nor takes from the mass of national wealth, but is the necessary result of measures of expense, necessary or unnecessary, avoidable or unavoidable, beneficial or pernicious, by which in former times a decrease in the mass of national wealth was produced. But when, and in so far as, the money produced by these taxes is actually employed in discharge of debt, it adds to capital, and thereby to growing wealth.

Finance is an appendix and inseparable accompaniment to political economy. Taxes are sacrifices made of wealth and opulence at the expense of enjoyment, to security, in respect of defence, and security in respect of subsistence.

Taxes and other means of supply for the expenses of government,—wars with their taxes and their devastations, are means by which, of necessity, in a certain degree, and too often beyond the extent of the necessity, decrease in the amount of wealth and population is produced. In this way the field of *political economy* includes within it the field of *finance.*

A tax, in as far as the thing taxed is abstained from, operates as a prohibition—as a discouragement to that branch of trade or production to which the thing belongs, and as an encouragement to rival branches; that is, more or less to all other branches. Hence another head of connexion between finance and political economy in its narrower sense. The same illusion which has recommended the encouragement of particular branches of wealth as a means of increase to the whole, has led to the exaggeration of the bad effect of taxes in this point of view.

Hence the care taken by governments to throw the weight of taxes upon *imports* and *home productions,* rather than upon exports; that is, upon their own subjects, rather than upon foreigners.

Under the above heads may be reduced, without violence, everything that can be said on the subject of political economy, including finance.

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CHAPTER III.

OF WEALTH.

§ 1.

Sponte Acta.

The national wealth is the sum of the particular masses of the matter of wealth belonging respectively to the several individuals of whom the political community—the nation—is composed. Every atom of that matter, added by any one such individual to his own stock, without being taken from that of any other individual, is so much added to the stock of national wealth.

To add to his own particular stock, and to add in each portion of time more than by use or otherwise is taken from it in that same portion of time, is, with a very few exceptions, the constant aim and occupation of every individual in every civilized nation. Enjoyment is the offspring of wealth,—wealth of labour. What men want from government is, not incitement to labour, but security against disturbance—security to each for his portion of the matter of wealth, while labouring to acquire it, or occupied in enjoying it.

For the purpose of increasing wealth, individuals require neither to be forced to labour, nor allured. The want of that which is not to be had without labour is sufficient force: the assurance of being able to enjoy it, is sufficient allurement. Leave men to themselves: each man is occupied either in the acquisition of wealth (the instrument of enjoyment,) or in some actual enjoyment, which, in the eyes of the only competent judge, is of more value. If idleness be to be discouraged, it is not because it is the non-acquisition of wealth, but because it is the source of crimes.

Whoever takes upon him to add to national wealth by coercive, and thence vexatious measures, stands engaged to make out two propositions:—1. That more wealth will be produced by the coercion than would have been produced without it; 2. That the *comfort* flowing from the extra wealth thus produced, is more than equivalent to whatever *vexation* may be found attached to the measure by which it was produced.

§ 2.

Agenda.

The *application* of the matter of wealth to its several purposes, in the character of an instrument of general *security,* is evidently of anterior and superior importance to the *increase* of it. But this class of operations belongs to other heads—to legislation and administration in general—to the establishment of laws distributive and laws penal;

and the institution, collation, and exercise of powers military, fiscal, judicial; and of police.

The operations coming under the head of *Agenda*—viz. on the part of government,—may be described as those which are conducive either to the increase of the national stock of the matter of wealth, or to the application of it in the most efficient mode, to any of its three uses, viz. subsistence, security, and enjoyment; and which not being attended with preponderant vexation, are not to be expected to be performed by the spontaneous exertions of individuals: of the three conditions requisite for the production of this or any other effect, viz. *inclination, power,* and *knowledge,* some one or more being wanting on the part of individuals.*

A particular case for the interference of government in this view, is where *inclination* and *knowledge,* both adequate to the purpose, and even *power* (so far as depends on the possession of the matter of wealth,) being pre-existent on the part of individuals, nothing but an allotment of *political* power of an *appropriate* kind, requires to be supplied on the part of government. Such is the case where *corporate* powers are requisite for the management of a *common stock;* and thereby for enabling individuals spontaneously associated for the purpose, to give a more effectual *combination* to their exertions in the pursuit of a common end.

Whenever *non-agenda* have been *acta,* the doing away of these *male acta* may form so many additions to the catalogue of *agenda.*

To this head belong those operations which consist in the removal of obstructions to *sponte acta.*†

From the catalogue of *agenda,* having for their object the increase of the national stock of the matter of wealth in all its three shapes together, must be distinguished any such measures, the aim of which is confined to the increasing of it in any one of those shapes, at the expense of either of the two others. Measures of this tendency will, so far as they are justifiable, find their justification in the same considerations which prescribe the application of the matter of wealth to its several *uses.*

In this way, if a sacrifice be made of the matter of wealth in the most agreeable of its shapes, to the same matter in one or other of the two necessary ones—of the matter of *enjoyment* to the matter of *subsistence,* or the matter of *defence;*—if the assumed necessity be real, the transformation belongs, by the supposition, to the catalogue of *agenda.*

If in any nation, for the use of the whole or any part of such nation, government were to establish, in the character of *security funds,* magazines of the matter of subsistence, not to be drawn upon but in times of extraordinary scarcity,—an institution of this sort would hardly be thought of, much less be regarded as beneficial and desirable, under the notion of its producing a clear addition to the aggregate mass of the national stock of the matter of wealth, in all its shapes taken together. In the catalogue of *agenda* it could not be placed in any other character than as a sacrifice of enjoyment to *subsistence.*

If the nature of the case be such, that the aggregate of the security-funds laid up in the country in question by dealers, may at all times be safely depended upon as sufficient, the establishment of such funds by government, on its own account, will be plainly indefensible: being pregnant with loss instead of gain (as, in the business of buying and selling, trust-management will naturally be, when compared with interested management,) it would disturb the operations of individual dealers, and be prejudicial rather than conducive to the end aimed at;—viz. national security in respect of subsistence.

If, on the other hand, in that same country, seasons are continually liable to recur in which the aggregate of these private security-funds cannot with safety be depended upon, the proposition is reversed: government need not scruple to insure its subjects in this way, against loss and distress by scarcity.

In each country the establishment of such security-funds is an affair of calculation. For the meridian of England, a very considerable stock of data have already been furnished by experience. But what is shorter than calculation, is the reflection that the world is wide, and should the country ever receive another visit from famine (a visit too unpleasant to be thought of,) what is not to be had *here,* may *perhaps* be to be got elsewhere.

In a similar manner, sacrifices may be made of enjoyment to national defence. An example of this kind was found in the English navigation act. It operated in diminution, rather than in augmentation, of the aggregate mass of the matter of wealth. It made England pay more for freight than she would otherwise; and *pro tanto* drove the foreign nations in question from this line of industry into some less profitable one. This loss, whatever was the amount of it, was the price paid by England for whatever addition it thus made to its stock of the matter of defence; viz. for a sort of *navy of reserve,* for an extra portion of *possible* marine force—convertible into *actual* at pleasure. The measure could only be deemed eligible by assuming the necessity for the maintenance of the sort of security-fund thus kept up; *i. e.* for that part of the national stock of maritime skill which owed its production and maintenance to this measure.*

Another example may be found in the allowances in money given for the encouragement of certain fisheries. The object was the same as in the former case; the mode of encouragement being, not as in that case *indirect,* but *direct,*—the money being given at the expense of national wealth, and thence of national enjoyment. If without this encouragement the trade would not have been beneficial enough to be carried on, the quantity of the matter of wealth thus bestowed upon it was so much taken from enjoyment and given to defence,—and thence, if not necessary to defence, thrown away. If the trade would have been beneficial, the result of the measure is, besides the transfer of so much of the matter of wealth from the account of enjoyment to the account of defence, a net addition to the quantity of the whole. But it is only in the supposed necessity of it for the purpose of *defence,* that such sacrifice of national *enjoyment* can receive its justification. Take away the necessity, there remains wealth, purchased at the expense of justice—enjoyment given to one man, at the expense of enjoyment taken from another. A case conceivable, and perhaps realized, is—that as

to part, the allowance may fall under one of the above suppositions; as to another part, under the other.

§ 3.

Non-Agenda.

Whatever is not *sponte actum* on the part of individuals, falls thereby into the class of *non-agenda* on the part of government. Coercion, the inseparable accompaniment, precedent, concomitant, or subsequent of every act of government, is in itself an *evil:* to be anything better than a pure evil, it requires to be followed by some more than equivalent good. Spontaneous action excludes it: action on the part of government, and by impulse from government, supposes it.

Among *non-agenda,* therefore, must be reckoned the attempting to give birth or increase to this or that particular branch of industry productive of wealth, under the notion of giving an increase thereby to the aggregate of the national mass of wealth.

No kind of productive labour of any importance can be carried on without capital. Hence it follows, that the quantity of labour applicable to any object is limited by the quantity of capital which can be employed on it.

If I possess a capital of £10,000, and two species of trade, each yielding twenty per cent. profit, but each requiring a capital of £10,000 for carrying them on, are proposed to me, it is clear that I may carry on the one or the other with this profit, so long as I confine myself to one; but that, in carrying on the one, it is not in my power to carry on the other; and that if I seek to divide my capital between them both, I shall not make more than twenty per cent.; but I may make less, and even convert my profit into a loss. But if this proposition be true in the case of one individual, it is true for all the individuals in a whole nation. Production is therefore limited by capital.

There is one circumstance which demonstrates that men are not sensible of this truth, apparently so obvious. When they recommend the encouragement of particular branches of trade, they do not pretend that they are more profitable than others;—but that they are branches of trade, and they cannot possess too many. In a word, they would encourage trade in general,—as if all trade did not yield its own reward—as if an unprofitable trade deserved to be encouraged—and as if a profitable trade stood in need of encouragement; as if, indeed, by these capricious operations, it were possible to do any other thing than transfer capital from one branch of trade to another.

The quantity of capital being given, the increase of wealth will, in a certain period, be in proportion to the good employment of this capital—that is to say, of the more or less advantageous direction which shall have been given to it.

The advantageous direction of capital depends upon two things:—1. The choice of the undertaking; 2. The choice of the means for carrying it on.

The probability of the best choice in both these respects will be in proportion to the degree of interest which the undertaker has in its being well made, in connexion with the means he has of acquiring the information relative to his undertaking.

But knowledge itself depends in a great measure upon the degree of interest which the individual has in obtaining it: he who possesses the greatest interest will apply himself with the greatest attention and constancy to obtain it.

The interest which a man takes in the concerns of another, is never so great as he feels in his own.

If we consider everything necessary for the most advantageous choice of an undertaking, or the means of carrying it on, we shall see that the official person, so fond of intermeddling in the detail of production and trade, is in no respect superior to the individuals he desires to govern, and that in most points he is their inferior.

A prime minister has not so many *occasions* for acquiring information respecting farming as a farmer—respecting distillation as a distiller—respecting the construction of vessels as a shipbuilder—respecting the sale of commodities, as those who have been engaged in it all their lives.

It is not probable that he should either have directed his *attention* to these objects for so long a time, or with the same degree of energy, as those who have been urged on by such powerful motives. It is therefore probable, that in point of information relative to these professions, he is inferior to those who follow them.

If by chance a minister should become informed of any circumstance which proves the superior advantage of a certain branch of trade, or of a certain process, it would not be a reason for employing authority in causing its adoption. Publicity alone would produce this effect: the more real the advantage, the more superfluous the exercise of authority.

To justify the regulatory interference of government in the affairs of trade, one or other of these two opinions must be maintained:—that the public functionary understands the interests of individuals better than they do themselves; or that the quantity of capital in every nation being infinite, or that the new branches of trade not requiring any capital, all the wealth produced by a new and favourite commerce is so much clear gain, over and above what would have been produced, if these advantages had not been conferred on this trade.

These two opinions being contrary to the truth, it follows that the interference of government is altogether erroneous—that it operates rather as an obstacle than a means of advancement.

It is hurtful in another manner. By imposing restraints upon the actions of individuals, it produces a feeling of uneasiness: so much liberty lost—so much happiness destroyed.

Divide the aggregate mass of profit-seeking industry into any number of branches: each calls, or at least has an equal right to call upon government for encouragement—for encouragement at the expense of the public purse; that is, of all the other branches. Gratify all alike,—there is, as between them at least, no injustice on the one hand, no profit on the other. Gratify any number short of the whole—injustice is certain—profit questionable.

The measures which present themselves in the character of *non-agenda,* may be distinguished into *broad measures* and *narrow measures:*—broad measures having for their effect, or their object, the augmentation of wealth in all its shapes without distinction: narrow measures having for their object the augmentation of wealth by the increase of profit-seeking industry in this or that particular branch in preference to others, under the notion of its producing more wealth in that than in others. We shall proceed more particularly to consider some of the measures which have been so employed.

§ 4.

Non-agenda—Broad Measures.

Example 1. Forced frugality.

By raising money as other money is raised, by taxes (the amount of which is taken by individuals out of their expenditure on the score of maintenance,) government has it in its power to accelerate to an unexampled degree the augmentation of the mass of real wealth.

By a proportionable sacrifice of present comfort, it may make any addition that it pleases to the mass of future wealth; that is, to the increase of comfort and security. But though it has it in its power to do this, it follows not that it ought to exercise this power—to compel the community to make this sacrifice.

To a certain degree—to a degree which in the ordinary course of things is quite sufficient for the purpose, the community makes this sacrifice of itself. This voluntary sacrifice is, at least in the ordinary state of things, amply sufficient for the purpose—for every purpose; and as the impulse is spontaneous, so far all is right.

On the other hand, the application of money raised by taxes in the shape of capital to the endeavour to promote national opulence, can only be carried into effect at the expense of justice. In the first place, it operates unjustly by forcing a man to *labour,* though it were for his own benefit, when he wishes to *enjoy.* It operates unjustly in the second place, by forcing one man to labour for the sake of increasing the enjoyments of another man—increasing his enjoyments, or rather the stock of the instruments of enjoyment in his hands; for all that government can do in behalf of enjoyment, otherwise than by *security,* is to increase the quantity of the mass of instruments of enjoyment:—application of these instruments in such manner as to produce actual

enjoyment, depending altogether upon the individual, and being an effect altogether out of the reach of government.*

The effect of forced frugality is produced by paying off national debts. In this case, the production of the effect is not only unexceptionable, but necessary: it is a collateral result, and that a very advantageous one, from a necessary act of justice.

On the *buying-in* or *paying-off* of the *government annuities* in which the debt in Great Britain consists, the money raised by taxes—of which the whole mass, with a trifling exception or two, bears not upon *capital* but upon income, passes into the hands of the *expelled annuitants;* who to make it afford them an *income,* as before, must employ it *themselves* in the shape of *capital,* or lend it to *others,* who will employ it in that shape.

If the sum of money paid by government to such annuitants on the redemption of their annuities be greater than the sum received by government on the creation of those same annuities, the quantity of the sum thus raised by forced frugality, and poured into the money market, receives a proportionable increase.

The effect of forced fruganty is also produced by the creating of paper money by government, or the suffering the creation of paper money on the part of individuals.

In this case, the effect is produced by a species of indirect taxation, which has hitherto passed almost unnoticed.

§ 5.

Non-agenda—Broad Measures.

Example 2. Increasing money.

Labour, and not money, is the real source of wealth. All hands being employed, and employed in the most advantageous manner, wealth, real wealth, could admit of no further increase:—but money would be increasable *ad infinitum.**

The effect of every increase of money (understand, of the ratio of the quantity of money employed in the purchase of things vendible, to the quantity of things vendible for money,) is to impose an unprofitable *income tax* upon the incomes of fixed incomists.†

If on the introduction of the additional money into the circulation, it pass in the first instance into hands which employ it in the way of unproductive expenditure,‡ the suffering from this tax remains altogether uncompensated:—if before it come into any hands of that description, it have come into hands by which it has been employed in the shape of capital,? the suffering by the income tax is partly reduced and partly compensated. It is reduced, by the mass of things vendible produced by means of it:—a mass, by the amount of which, were it not for the correspondent increase in the mass of money, the value of the mass of money would *pro tanto* have been increased,

and the prices of things vendible decreased. It is in a certain degree, though in a very inadequate degree, compensated for§ by the same means;—viz. by the amount of the addition made to the quantity of sensible wealth—of wealth possessing a value in the way of use.¶ Here, as in the above case of forced frugality, national wealth is increased at the expense of national comfort and national justice.

On those who receive no share of the fresh addition to money—on those whose sole income consists in an unincreasing sum of money, the income tax bears with all its pressure; whilst those who receive a share of the fresh money equal to the amount of the depreciation, receive beforehand a compensation adequate (in money at least, howsoever it may be in regard to feelings) to their loss by the indirect tax.

In this case, the measure coincides with the one already reprobated,—the increasing the mass of real capital by money raised by taxes. The difference is, that the mode in which the money is raised is disadvantageous to a degree of usuriousness much beyond anything ever exemplified under that name;—the money being raised at an interest of 300 per cent., payable for ever by the possessors of fixed incomes—subject to a small deduction as an equivalent for the goods produced in each year by the addition made to the mass of real capital.

No sooner, however, does such additional sum of money pass on from the hands by which it is employed in the shape of capital, into those hands by which it is employed in adding to unproductive expenditure, than its operation in the way of making an addition to real wealth is at an end. No sooner does it go in addition to money employed in the purchase of articles for consumption, than its power of producing an addition to the mass of the matter of real wealth is at an end:—thenceforward and for ever it keeps on contributing by its whole amount to the increase of prices, in the same manner as if from the mines it had come in the first instance into an unproductive hand, without passing through any productive one.

In all cases where the addition thus made to wealth is not illusory *in toto,* it is so as to part, and that by far the greater part. Of the proportion between the illusory and the real part of the supposed addition to real wealth, the rise of prices in a country where no fresh money has been poured into unproductive hands, without first passing through a productive hand, is at once a demonstration and a *measure.* So much of the added wealth as *hath not* been accompanied by a counter-vailing addition to wealth, whether it have contributed anything to that addition or no, is over and above that portion which has been solely employed in producing the rise of prices.

Supposing that within the last half century, in the whole commercial world together, wealth has received an increase to the amount of one-fourth, and at the same time prices have doubled,—it follows, that of the money now existing in that world, nearly half has to a certainty been worse than thrown away, having been employed in the imposition of the unproductive income tax above described:—and as to the addition to wealth, it is a matter of uncertainty what part, and even whether any part, has been produced by the addition to money, since without any such addition it might have been produced as well as by it.

In respect of the *ratio* of money to things vendible—of the aggregate of the one, to the aggregate of the other,—the state of things most desirable is—that it should continue the same at all times—no increase at any one time, no decrease at any other.

The tendency of a decrease, if sudden, and to a certain degree considerable, is to produce general bankruptcy: the mass of pecuniary engagements entered into within any given period of time, being grounded of course on the existing ratio of money to things vendible at that time, and not on the supposed suddenly supervening, or any inferior *ratio.* If at any time, the mass of things vendible not being in the same proportion decreased, out of the quantity of money of all kinds habitually in circulation, a portion of any sort, in the supposed degree considerable, be suddenly defalcated, the deficiency must be supplied by some portion of another sort, or something that will be accepted as equivalent, or the supposed general bankruptcy follows of course.*

The tendency of the like decrease, in so far as it is permanent, but too gradual to be productive of general bankruptcy, is—to impose an unproductive income tax, parallel to that above mentioned, but upon a different set of parties—upon all parties charged with annuities, or other fixed payments, on the ground of contracts to which it is not in their power to put an end.

As to an increase in the ratio of money to things vendible, the tendency of it in respect of the unprofitable income tax, by increase of prices of things vendible—by depreciation of money—has been shown above.

So far as addition to money is made in the shape of metallic money, the mischief producible by it is confined to that of the depreciation, as above. So far as it is made in the shape of paper money—consisting in promises of metallic money—the amount of which promises is accordingly exigible in the shape of metallic money,—to the actual mischief of depreciation, is superadded the contingent mischief of general bankruptcy.

When governments add to money by paper money, it is commonly in a non-commercial way: when individuals, singly, or in association, make the like addition, it is most commonly in a commercial way;—though, in a non-commercial way, it is natural that these coiners of money at the public expense—these uncommissioned sovereigns, or unpunishable and irreproachable robbers (for they may be called both or either,) should put off as much of it as they can get anybody to take.

Whether by governments or individuals, it may now be seen at what expense the profit is acquired, and at how much cheaper a rate the end, whatever it be, would be accomplished without any such addition by money drawn out of the old stock.

§ 6.

Non-agenda—Broad Measures.

Example 3. Forced reduction of the rate of interest.

Of reducing the rate of interest allowed to be given by individuals for money borrowed of individuals, the principal mischief consists in another sort of unproductive income tax, imposed upon all such individuals whose income arises out of a mass of money lent out at interest to individuals;—the produce of which tax, instead of being paid in to the public treasury for the service of the public, and in lieu of the burthen which would otherwise be to be imposed to the same amount in some other shape, is made over gratis to those whose circumstances oblige them to borrow money, or enable them to borrow it with a profit.

It imposes not, as in the former case, an indirect unproductive income tax, but a direct one. It is not, as in the case of the increase of money, gradual, and in its amount in some measure uncertain and questionable, but sudden and determinate. Reduction from 5 to 4 per cent. would be a tax of exactly 4s. in the pound.

As to the effect in the way intended, it would be purely illusory. To the proportion of money employed in the shape of capital it would make no addition: if by impoverishment it forced some who, by anterior opulence, had been either withholden from trade or withdrawn from it, to embark in trade so much capital as they thus embarked in a trade of their own, so much would they withdraw from the trade of those other traders, to whom otherwise it would have been lent.

Instead of adding to, it would defalcate from the aggregate mass of wealth. Being a tax on money, lent in the shape of capital within the country, it would in effect be a prohibition—prohibiting the keeping it there, and under a penalty equal to the amount of the tax. It would have the effect of a bounty on the exportation of it—on the exportation of it to any country where any rate of interest higher than the reduced rate would be to be had.

The expectation that the reduction of interest would produce an addition to the aggregate mass of wealth, is an illusion which has its source in another illusion. Increase of wealth, though not the effect, is apt to be an accompaniment of a reduction in the rate of interest. As capital increases, wealth increases;—and as capital increases, if the effectual demand for capital (for money in the shape of capital) do not increase in so great a proportion, men will not give so high a price for the use of it as they did before. The reduction in this case is the result of *freedom;* and though it do not itself increase wealth, it cannot take place any further than as wealth is increased by other causes. The reduction here contended against is the product of *coercion:* and whenever the illusion prevails, it may be carried into effect at any time, in the poorest country as well as the richest, in the most declining as well as the most prosperous, accelerating and aggravating the decline.*

The mischief that would be produced by a *reduction* in the rate of lawful interest, is over and above the constant mischief produced by the fixation of that rate.

§ 7.

Rates Of Interest—Evils Of Fixation.

If it be reasonable for legislators to encourage inventive industry by fictitious rewards, it is much more reasonable that they should not oppose obstacles to the productiveness of natural rewards.

The natural reward of inventions, when carried into effect, is the profit to be derived from them in the way of trade. But all trade requires capital. If the inventor have it of his own, it is well; if not, he must seek it from others. Many circumstances, however, conspire to hinder his obtaining it.

Does he endeavour to borrow it, upon what conditions can he hope to find a lender? Upon the ordinary conditions, it is naturally impossible that he should find one. A new undertaking cannot fail of being hazardous, if it were only because it is new. It is therefore necessary to grant to the lender an advantage proportionate to the apparent degree of risk. There are two methods of granting this advantage: the English laws proscribe them both. One method consists in granting interest at a rate superior to the ordinary rate: but this is prohibited by the laws fixing the rate of interest. This prohibition is partly inefficacious, and partly pernicious; that it was altogether useless, would be its greatest elogium.†

The second method consists in granting a variable interest, proportioned to the profits of the undertaking.‡

In France, there is one branch of commerce at least, in which it is possible to limit the portion of property that one is willing to risk. It is in the business of banking. The sum employed in this manner is said to be *en commandite.* If this liberty be useful in this branch of commerce, why should it not be equally so in every other, and especially in newly-discovered branches, which have so many natural obstacles to overcome, which it is needless to increase by legal interference? This liberty, under certain restrictions for the prevention of monopolies from the unrestrained accumulation of capital, has been established in Ireland. When will England have the wisdom to imitate this example?*

An inventor, therefore, in want of funds can only apply to a tradesman or merchant to enter into partnership with him; but persons engaged in business are those who have the least portion of disposable capital; and as they are enabled to make their own terms, inventive industry is often stifled or oppressed.

Were it lawful for every one to engage in commercial undertakings for a limited amount, how many facilities would be afforded to men of genius! All classes of society would furnish assistance to inventive industry: those who wished to risk only a small sum—those who could annually dispose of a certain sum, would be enabled to engage in this species of lottery, which promised to yield them an interest above the ordinary rate. The most elevated classes might find an amusement in descending into the territories of industry, and there staking a small part of that wealth which they risk

upon games of chance. The spirit of gaming, diverted from its pernicious direction, might serve to increase the productive energy of commerce and art.

There are some who are natural enemies to merit of every kind: every conquest achieved by industry in the career of invention, is a loss to them—every discovery an injury. Common-place men have a common interest, which they understand but too well: it is, that all should be common-place like themselves. It is to be regretted that Adam Smith, in his "Wealth of Nations,"—a work which will rise in public estimation in proportion as genius shall be held in honour—should have furnished arms which the adversaries of genius may direct against that work itself. It is to be regretted that, under the odious name of projects, a name applied to the most useful enterprises, even to the moment when they receive the sanction of success, they may there be seen indiscriminately stamped with the seal of opprobrium, and indiscriminately enveloped with contempt.

It is not only that he may prevent prodigals from obtaining money, but that he may prevent its reaching the hands of projectors, whom he places with them upon the same level, that he approves of the fixing of the rate of interest upon the footing upon which he found it. "If the legal rate of interest in Great Britain, for example, were fixed so high as 8 or 10 per cent., the greater part of the money which was to be lent, would be lent to prodigals and projectors, who alone would be willing to give this high interest. Sober people, who will give for the use of money no more than a part of what they are likely to make by the use of it, would not venture into the competition. A great part of the capital of the country would thus be kept out of the hands which were most likely to make a profitable and advantageous use of it, and thrown into those which were most likely to waste and destroy it. Where the legal rate of interest, on the contrary, is fixed but a very little above the lowest market rate, sober people are universally preferred as borrowers, to prodigals and projectors. The person who lends money gets nearly as much interest from the former as he dares to take from the latter, and his money is much safer in the hands of the one set of people, than in those of the other."†

This is not the only passage in which this author attacks projectors (see b. i. ch. iv.;) but it is here that he attack them more directly; whilst as to *prodigals,* it has been elsewhere shown that it is not to them that money is lent, or that any are willing to lend at extraordinary interest. Friends will either not lend at all, or will lend at the ordinary rate. Strangers will only lend, to those who are without industry, upon security. But he who has security to offer, has no need to give a halfpenny more, because he is a prodigal: it is upon his security that the money will be lent, and not upon his character. Whether the security offered be present or future, certain or contingent, produces no difference: a future or contingent security, by means of a valuation, becomes as good a pledge as if it were present or certain. In a word, if money be lent upon the industry of the borrower, it is lent not to a prodigal, but to a projector. It is therefore upon the latter class alone, that the burthen of these prohibitory laws presses.

An opinion which derives all its force from the authority of the individual who publishes it, cannot be better combated than by that authority itself.

1. The prosperity of England has been progressive, ever since the number of projectors has been not only in an uninterrupted, but in an accelerated state of increase;—2. The aggregate of the good economy has always been greater than the aggregate of the bad;—3. With respect to commerce, each individual is a better judge of his own interests than government can be for him;—and 4. General laws must be much more defective with respect to commercial regulations. The members of a government may take notice of particular cases, but general laws can never regard them.

These are the general propositions of the work of Adam Smith;—truths precious and irrefragable, which no one has more successfully laboured to unfold than this illustrious politician. But if these principles are followed out, no laws ought to exist for the restraint of projectors, and for preventing them from obtaining loans of the capital of which they stand in need.

The censure which condemns projectors, falls upon every species of new industry. It is a general attack upon the improvement of the arts and sciences. Everything which is *routine* to-day was originally a *project;** every manufacture, how *old* soever it may be, was once *new;* and when new, it was the production of that *mischievous* and bold race who ought to be destroyed—the race of projectors!

I know not what can be replied to this, unless it be said that the past projects have been useful, but that all future projects will not be so. Such an assertion would, however, require proof, strong in proportion to its opposition to general opinion. In every career, experience is considered as worth something. The warning to be derived from past failures may contribute to future security, if not to success.

Were it even proved that no projector ever engaged in a new branch of industry without being ruined, it would not be proper to conclude that the spirit of invention and of projects ought to be discouraged. Each projector, in ruining himself, may have opened a new path, by which others may have attained to wealth. So soon as a new die, more brilliant or more economical than the old ones, a new machine, or a new practice in agriculture,—has been discovered, a thousand dyers, ten thousand mechanicians, a hundred thousand agriculturists, may reap the benefit: and then—though the original author of the invention have been ruined in the bringing the discovery to perfection—as it respects the national wealth, of what consequence is this, when considered as the price of so much gain?

That restrictions of this nature are inefficacious, has been successfully shown by Adam Smith himself.* But if inefficacious, this is sufficient reason for their condemnation: unless they effect the purpose designed, they are positively mischievous.

They tend, in the first place, to drive away useful projectors. I do not say that they drive away all: had that been the case, we should not have attained our present degree of prosperity. But they drive away a part: unhappily, we cannot know what part, nor how great a part of their number. The talent required for operating upon matter, or directing the powers of nature, is extremely different from that required for operating

upon the mind—the talent of meditating in a study, and thereby making discoveries, from that requisite for making known those discoveries to the world. The chance of success in the career of invention is in proportion to the talent of the individual; the chance of obtaining a loan of capital from another to make an invention productive, is in proportion to his reputation. But this latter, far from being in direct, is naturally in inverse proportion with the former. The more unaccustomed an individual is to society, the greater his dread of mingling in it, the less is he at his ease—the less is he master of his faculties, when he is obliged to mingle with it. The effect produced upon the mind of the individual who has, or who supposes that he has, made a great discovery, is a mixture of pride and timidity, both which feelings concur in alienating the minds of men, and diminishing the probability of success in every enterprise, inasmuch as it may depend upon the degree in which such individual succeeds in rendering himself and his projects estimable in the eyes of others. This pride has for its cause the superiority which he believes himself to possess above them; this timidity is caused by the faint hope he possesses of making them sensible of this superiority. But though pride united with courage is one of the most powerful means of subjugating men, pride united with timidity is one of the most certain causes of exposure to their aversion and contempt. That disposition, which under the name of modesty is so much praised as a companion well adapted to the introduction of true merit, and which is so necessary when inferiority of situation will not allow the employment of boldness in the service, is not true timidity, but skill which has learnt to assume this appearance; it is skill, which to strength, and consciousness of that strength, unites the knowledge of when, and how, and in what sense, and in what proportion, this strength ought to be displayed, for the most favourable exhibition of its pretensions; and when, and how, and in what sense, it ought to be hidden, that the protector whose assistance is desired, may enjoy the feeling of his own superiority. If ever timidity has effected anything at the expense of that assurance which assumes its appearance, it has been when allied with beauty, which causes everything to be forgiven, and which nothing can resist. Separated from this powerful protectrix, it labours in grief, in darkness, in awkwardness, embarrassment, and false shame—the bugbears of love and of esteem, but the frequent and afflictive companions, and most cruel enemies, of merit and solitary genius.

Not to speak of the obstacles which oppose the progress of an inventor incumbered with his projects and his wants, before he reaches the anti-chamber of the rich, or the noble, whom it may be necessary to persuade—suppose these obstacles overcome, and that he is admitted to their presence; how will the poor inventor, the necessitous man of genius, behave when he has arrived there? Oftentimes he will lose his presence of mind, forget what he was about to say, stammer out some unconnected propositions; and finding himself despised, indignant that his merit should be thus treated, he will retire, resolving never again to expose himself to such an adventure. And even when he is not devoid of courage, there is nothing more different, though in certain points the connexion may appear most intimate, than the talent of conceiving new ideas of certain kinds, and the talent of developing these same ideas. Altogether occupied with the idea itself, the inventor is most frequently incapable of directing his attention to all the accessories which must be re-united before his invention can be understood and approved: his attention being entirely occupied with what is passing in his own mind, he is incapable of attending to what passes in the minds of

others—incapable of arranging and directing his operations, so that he may make the most favourable impression upon them.

Thus the ingenious philosopher, who has delivered the most excellent instructions respecting the art of developing the thoughts of others, and who possessed in so perfect a degree the talent of developing his own, well knew how necessary it was, that in every career of invention except that of eloquence, minds should be attended by an accoucheur. How many difficulties did not Diderot experience in effecting this development—he who possessed this talent in so excellent a degree—where the two parties were agreed, had a common interest, and were equally well disposed! How numerous were the difficulties experienced by the ingenious artists of every description to whom he applied, in making him comprehend the fruits of their studies, when they had for their interpreter the man the most capable and the best disposed to understand them! How much more difficult would they have found it, had they been applicants for the assistance necessary to render their projects available to a rich ignoramus, filled with the idea of the necessity which existed for his assistance, and puffed up with that pride which commonly accompanies wealth, when unattended by that politeness which education teaches, and full of that distrust which a poor projector cannot fail to inspire in the mind of an individual favoured with the gifts of fortune!

Should the inventor succeed in making his plan understood, he will still find it difficult to make the interest of the capitalist accord with his desires: it is in this respect that the prohibition displays its mischievous qualities. How shall the poor inventor dare to propose a loan at the ordinary rate of interest? This rate may at all times be obtained without risk: where, then, would be the advantage to the capitalist in such a bargain? Is it possible that it could be otherwise than disadvantageous to him? A loan at the ordinary rate of interest cannot be hoped for; it is only to a most intimate friend that such a loan would be granted. Deprived of this resource, how shall he dare to propose to the individual whose assistance he seeks, to expose himself to the rigour of the laws? Scarcely daring to ask for the assistance he needs, upon the most secure and unexceptionable conditions, how shall he propose conditions which the laws consider criminal? Whilst there are laws against usury, it may be said, there will still be usury. Yes, and whilst there are laws against theft, there will still be thieves: does it follow that the laws which forbid theft are without effect, and that theft is as common as if these laws did not exist?

In the same proportion as the tendency of these prohibitory laws is unfavourable to true merit in the career of invention, is it favourable to the cheat which assumes the appearance of merit, were it only by the advantage given to imposture, by preventing merit from entering into the competition. The essential requisite is not merit, but the gift of persuasion: this gift most naturally belongs to the superficial man, who knows the world, half enthusiast and half rogue; and not to the studious and laborious individual, who is only acquainted with the abstract subjects of his studies. It is true, that at all times truth possesses powerful advantages; but these advantages are less in proportion as the career to which it relates is more removed from the ordinary routine, respecting which ordinary minds are capable of forming a judgment upon what is presented to them. It has therefore happened, that of all projectors, those have been

treated with the greatest confidence, whose projects are now known to have been founded upon no basis of truth. Were it possible to ascertain the amount furnished under the existing laws against usury by capitalists, to the authors of useful and practicable projects, it would most probably be found less than the amount which in the same space of time has been drawn by the professors of alchemy from the avaricious credulity of the ignorant or half learned.

Truth possesses, however, this advantage over error of every kind: it will ultimately prevail, how frequent or how deplorable soever may have been the disgraces it has undergone. This error respecting prohibitory laws is nearly discredited—this source of delusion is nearly closed for ever. As the world advances, the snares, the traps, the pitfalls, which inexperience has found in the path of inventive industry, will be filled up by the fortunes and the minds of those who have fallen into them and been ruined. In this, as in every other career, the ages gone by have been the forlorn hope, which has received for those who follow them the blows of fortune. There is not one reason for hoping less well of future projects than of those which are passed; but here *is one* for hoping better.

The more closely the reasons, on account of which Adam Smith would have desired to discourage projectors, are examined, the more astonishing it appears that he should have so widely deviated from the principles he had himself laid down. It is probable that his imagination had been pre-occupied with the idea of certain incautious or dishonest projectors, the history of whose proceedings had fallen under his own observation, and that he had a little too promptly taken these few individuals as exact models of the whole race. To preserve himself from the error of too hasty and indiscriminate generalizations, never to allow any proposition to escape without having made all the reservations necessary to confine it within the limits of the exact truth, is the last boundary, and even now the ideal boundary, of human wisdom.*

Nothing would more contribute to the preliminary separation of useless from useful projects, and to secure the labourers in the hazardous routes of invention from failure, than a good treatise upon projects in general. It would form a suitable appendix to the judicious and philosophical work of the Abbé Condillac upon Systems. What this is in matters of theory, the other would be in matters of practice. The execution of such a work might be promoted by the proposal of a liberal reward for the most instructive work of this kind.

A survey might be made of the different branches of human knowledge; and what each presents as most remarkable in this respect might be brought to view. Chemistry has its philosopher's stone; medicine its universal panacea; mechanics its perpetual motion; politics, and particularly that part which regards finance, its method of liquidating, without funds and without injustice, national debts. Under each head of error, the insuperable obstacles presented by the nature of things to the success of any such scheme, and the illusions which may operate upon the human mind to hide the obstacles, or to nourish the expectation of seeing them surmounted, might be pointed out.

Above all, dishonest projectors, impostors of every kind, ought to be depicted;—the qualities of mind and character which they possess in common should be described; their volubility, their rapidity; that lightness, natural or affected, with which they treat the arguments opposed to them; that manner which they have, and which for the accomplishment of their ends it is necessary they should have, of declaiming, instead of analyzing and reasoning—of flying off in tangents when they are pressed—of giving birth to incidents—of pretending to be tired with the species of opposition they experience—of attaching themselves to the manner in which questions and doubts, or arguments, are proposed to them, instead of to the foundations of things themselves—of complaining of the prejudices which they pretend are experienced against them—and in quitting the ground under those circumstances, in which, if they were sincere, it would be most proper for them to maintain themselves there.

But throughout the whole work, that tone of malignity which seems to triumph in the disgraces of genius, and which seeks to envelope wise, useful, and successful projects, in the contempt and ridicule with which useless and rash projects are justly covered, should be guarded against. Such is the character, for example, of the works of the splenetic Swift. Under the pretence of ridiculing projectors, he seeks to deliver up to the contempt of the ignorant, the sciences themselves. They were hateful in his eyes on two accounts: the one, because he was unacquainted with them; the other, because they were the work, and the glorious work, of that race which he hated ever since he had lost the hope of governing part of it.

The projectors who seek to deceive ought to be unmasked—those who are deceived, to be instructed: the interests of science and justice equally demand that they should be distinguished. I cannot discern what purpose ridicule can serve, if it be not to confound the distinction between useless and useful projectors.

In conclusion, some general counsels might be added for the use of those who, little versed in the fundamental sciences in which the respective projects take their rise, may find themselves in a situation to be addressed by the author of a project, with the design of obtaining their assistance. In effect, it is true that the whole work would be a collection of more or less approved counsels; but in making the recapitulation, some general remarks might be added, which would not have been suitable elsewhere, but which might be particularly useful here. They might, for example, be advised to apply to those learned individuals who would be able to supply their ignorance; the class of learned men who ought to be found competent judges in each department might be pointed out; instructions might be furnished, to enable them to judge of the counsels of the judges themselves, by warning them of the interests and prejudices, to the seduction of which these judges may themselves be exposed.

§ 8.

Non-agenda—Broad Measures.

Example 4. Increasing land—viz. by colonization.

Land is worth nothing, but in proportion as labour is applied to it. Land at a distance is worth less than land at home, by the amount of all the distance. Of the mass of labour which is employed in adding to real wealth, no inconsiderable portion is employed in lessening the expense of carriage—in reducing the expense of carriage from a great distance, to a level with the expense of carriage from a less distance. If it could be done without destruction to existing capital, and above all without vexation, and destruction of security of property, wealth might be increased by taking the existing population, and transplanting it from greater distances with reference to the metropolis, to lesser distances.

Land newly acquired, especially in the way of colonization, is acquired at a greater distance. The foundation of a colony is an introductory expense,—the government of it a continual standing expense,—war for the defence of it an occasional one. All this requires money: and money is not to be had for these expenses but from taxes. To the mother-country, the positive profit from a colony is equal to 0; the negative profit, the loss—the defalcation from national wealth—is equal to the amount of such taxes.*

When an excess of population in relation to territory exists or is foreseen, colonization is a very proper measure. As a means of increasing the general wealth of a country, or of increasing the revenue of the mother-country, it is a very improper measure. All the common ideas upon this subject are founded in illusions.

That colonies add to the general wealth of the world, is what cannot be doubted; for if labour be necessary to production, land is no less so. The soil also of many colonies, independently of what it annually produces, is rich in raw materials, which only require that they should be extracted and carried away, to give them value. But this wealth belongs to the colonists—to those who occupy the land, and not to the mother country.

When first established, colonies are not in a condition to pay taxes: in the end, they will not pay them. In order to establish them—to protect them—to keep them in dependence, expense is required;—and all these expenses must be discharged by taxes levied upon the mother-country.

Colonization requires an immediate expense—an actual loss of wealth, for a future profit—for a contingent gain. The capital which is carried away for the improvement of the land in the colonies, had it been employed in the mother-country, would have added to its increasing wealth, as well as to its population, and to the means of its defence; whilst, as to the produce of the colonies, only a small part ever reaches the mother-country.

If colonization be a folly when employed as a means of enrichment, it is at least an agreeable folly. New enjoyments, insomuch as enjoyments depend upon the novelty and variety of objects, result from it. The substitution of sugar for honey—of tea, coffee, and chocolate, for the beer and meat which composed the breakfast of maids of honour in the reign of Elizabeth—the indigo which varies our dyes—the cochineal which furnishes the most brilliant scarlet—the mahogany which ornaments our apartments—the vessels of gold and silver which decorate our tables,—are all sources

of enjoyment, and the pleasure which results from these objects of luxury is in part the profit of colonization; whilst the medicinal and nutritive plants which have been received from the colonies, in particular bark and potatoes, are possessed of much superior utility.

Novelty and variety, in respect of means of enjoyment, add nothing to the quantity of wealth, which remains as it was, if the old productions are supplanted by the new ones. It is thus also with new fruits, new flowers, new colours, new clothes, new furniture, if the new supplant the old. But as novelty and variety are sources of pleasure, in proportion as they are increased, wealth increases also, if not in quantity, at least in value. And if these new wants are incentives to new labour, a positive increase of real wealth results from them.

These advantages, such as they are, can only be derived from a colony situated in a climate whose productions cannot be naturalized in the mother-country; whilst, as to the mines of Mexico and Potosi, their effect has been to add to the quantity of vessels composed of the precious metals, and to the quantity of coin. The addition to the vessels increases the amount of real wealth—the addition to the coin has all been lost: the new mass of gold and silver has had no other effect than to depreciate the old, and to diminish, in the same proportion, the value of all pecuniary revenues, without adding to the amount of real capital or future wealth.

However, in taking all interests into the calculation, it is certain that the welfare of mankind has been increased by the establishment of colonies. There can be no doubt on this subject, in respect to the nations who by degrees have become established there, and who owe their existence to colonization. The mother-countries also have themselves gained in happiness in another point of view. Let us take England, for example. According to the progress which population has made during the last century, it may be supposed that it would soon have attained its extreme limits—that is to say, that it would have exceeded the ordinary means of subsistence, if the superabundance had not found means of discharging itself in these new countries. But a long time before population has reached these limits, there will be a great diminution of relative opulence, a painful feeling of general poverty and distress, a superabundance of men in all the laborious classes, and a mischievous rivalry in offering their labour at the lowest price.

For the benefit of mankind at large, it is desirable that the offsets which are to be employed as new plants should be taken from the most healthy stocks and the most flourishing roots; that the people who go forth to colonize unoccupied lands, should go forth from the nation whose political constitution is most favourable to the security of individuals; that the new colonies should be swarms from the most industrious hive; and that their education should have formed them to those habits of frugality and labour which are necessary to make transplanted families succeed.

It may often be advantageous for colonies to remain a long time under the government of the mother-country, provided always that such government be what it ought to be.

It would, without doubt, have been advantageous to Egypt to have remained under the government of Great Britain—a government which would have bestowed upon it peace, security, the fine arts, and the enjoyment of the magnificent gifts which nature has lavished upon it. But in respect to wealth, the possession of Egypt, far from being advantageous to England, would have proved only a burthen.

I hear a universal cry raised against this paradox. So many profound politicians, divided upon every other point, are unanimous upon the importance of colonies,—are they only agreed that they may fall into an error? So many merchants,—have they deceived themselves in so simple a calculation as that of the profit or loss of colonial commerce? The experience of two or three centuries,—has it not opened the eyes of governments? would it not be extraordinary that they should still obstinately sustain the enormous weight of these distant establishments, if their advantages were not clear and manifest?

I might reply, that a long train of alchymists, after all the misfortunes of their predecessors, long continued obstinately to seek after the philosopher's stone, and that this great work yet has its partisans;—I might reply, that many nations in the East have, during many ages, been governed by astrology;—I might enumerate a long list of errors which have misled both governments and people. But a question of this nature ought not to be obscured by declamation. He who alleges the number of partisans by which a system is supported, instead of supporting it by proofs, desires to intimidate, and not to convince his adversery. Let us examine all the arguments by which the advantages of colonies, in respect of wealth, have been endeavoured to be proved: we shall not find a single one which is not in opposition to the most firmly established principles of political economy.

I. *The wealth of the colonies is poured into the mother-country: it is brought thither by commerce; it consequently animates manufactures, and they support the large towns: the prosperity of Bordeaux, for example, is one proof; its wealth depends upon its trade with the West Indies.*

This reasoning proves nothing in favour of a system of colonies: there is no necessity for governing or possessing any island, in order that we may sell merchandise there. The inhabitants of the Antilles stand in need of the productions of England and France: were they independent states, it would still be necessary that they should buy them: during their state of dependence, what can they do more? They will not give their sugars to the mother-country; they exchange them for corn and cloth. Those who supply these commodities, if they had not sold them to these parties, would have sold them to others. Suppose that the inhabitants of St. Domingo, in place of buying their corn in France, were to buy it in England; France would lose nothing, because, on the whole, the consumption of corn would not be less: England having supplied St. Domingo, would not be able to supply other countries, which would be obliged to supply themselves from France.

Trade is in proportion to capital. This is the principle: the total amount of trade in each country is always in proportion to the capital which each country possesses. I am a merchant;—I have a capital of £10,000 employed in commerce. Suppose Spanish

America were opened to me, could I, with my £10,000, carry on a greater trade than I do at present? Suppose the West Indies were shut against me, would my £10,000 become useless in my hands? should I not be able to apply them to some other foreign trade, or to make them useful in the interior of the country, or to employ them in some enterprise of domestic agriculture? It is thus that capital always preserves its value: the trade to which it gives birth may change its form or its direction, may flow in different channels, may be directed upon one manufacture or another, upon foreign or domestic undertakings; but the final result is, that these productive capitals always produce; and they produce the same quantity, the same value, or at least the difference does not deserve attention.

It is therefore the *quantity of capital* which determines the quantity of trade, and not *the extent of the market,* as has been generally believed. Open a new market,—the quantity of trade will not, unless by some accidental circumstance, be increased: shut up an old market,—the quantity of trade will not be diminished, unless by accident, and only for a moment.

Should the new market be more advantageous than the old ones, in this case the profit will be greater—the trade may become more extended; but the existence of this extra profit is always supposed but never proved.*

The mistake consists in representing all the profit of a new trade as so much added to the amount of national profit, without considering that the same capital employed in any other branch of trade would not have been unproductive. People suppose themselves to have *created,* when they have only *transferred.* A minister pompously boasts of certain new acquisitions, certain establishments upon far distant shores; and if the adventures which have been made have yielded a million of profit, for example, he does not fail to believe that he has opened a new source of national wealth; he supposes that this million of profit would not have existed without him, whilst he may have occasioned a loss: he will have done so, if the capital employed in this new trade have only yielded ten per cent., and that employed in the ordinary trade have yielded twelve.

The answer to this first objection may be reduced to two points:—1. That the possession of colonies is not necessary to the carrying on of trade with them; 2. That even when trade is not carried on with the colonies, the capital which such trade would have required, will be applied as productively to other undertakings.

II. The advocates of the colonial system would consider the above answer extremely weak: they see in this commerce two circumstances which render it more advantageous than that which is carried on with free nations.

“We established,” say they, “a double monopoly against the colonist: first, the monopoly of their productions, which we permit them to sell to us alone, and which we thus obtain from them at the lowest price;—secondly, the monopoly of their purchases, which we oblige them to make among ourselves, so that we are able to sell our produce and manufactures to them at a dearer rate than we could to a free people, among whom, other nations would enter into competition with us.”

Let us examine the effect of these two monopolies separately.

1. You prevent your colonies from selling their productions to any but yourselves; but you cannot oblige them to cultivate their lands, or to manufacture at a loss. There is a natural price for every commodity, determined by the average rate of profit in commerce in general. If the cultivator cannot obtain this natural price, he will not continue to cultivate; he will apply his capital to other undertakings. The monopoly may produce a *forced reduction* of price *for a time;* but the colonist will not continue to cultivate sugar, if he lose by its cultivation instead of gaining. It is therefore impossible for this monopoly to produce a *constant reduction* of the price of commodities below their natural price; whilst free competition is sufficient to reduce them and keep them at this natural price. The high price which you wish to remedy by the monopoly is an evil which will cure itself. Large profits in any one branch of trade will draw thither a large number of competitors: all merchants are rivals, and their rivalry naturally produces a reduction of price, till the rate of profit in each particular branch of trade be upon a level with all others.

2. You may oblige your colonist to buy everything of you; but the advantage you expect to derive from this exclusive commerce is deceptive.

If it respect commodities and manufactures, which, owing to a natural superiority, you are enabled to furnish of better quality and at a lower price than foreigners, it is clear that, without monopoly, your colonists would rather buy them of you than of others. The monopoly will not enable you to sell them at a higher price; your merchants, being all in a state of competition with each other, naturally seek to supplant each other by offering their goods at the lowest price possible.

While as to the productions and other articles which you are not able to furnish them upon terms equally favourable with foreigners, it is certain that, without the monopoly, your colonists will not buy them of you. Ought we to conclude, that the monopoly will be advantageous to you? Not in the least: the nation in general will gain nothing. It will only follow, that a species of industry will be cultivated among you, which does not naturally suit you; that bad commodities will be produced, and bad manufactures carried on.

The monopoly is similar to a reward bestowed by government for the maintenance of manufactures inferior to those of other nations. If this monopoly did not exist, the same capital would be applied to other species of industry in which you have a decided advantage. Instead of losing by this arrangement, you will gain a more stable prosperity; since the manufactures which cannot be maintained but by forced means are exposed to a thousand vicissitudes. Observe further, that this monopoly is burthened with a *counter-monopoly.* It is not permitted to you to purchase productions similar to those of your colonies, when you find them elsewhere at a lower price: in compensation for the restraint you impose upon your colonies, you impose one upon yourselves. If they can buy only of you, you can buy only of them. How many inconveniences result from this! When the harvest has been deficient in your colonies, you are not able to supply yourselves from those places where the season has been more favourable; in the midst of abundance, you are suffering from dearth. The

monopoly has no effect in lowering the price of commodities; but the counter-monopoly is certain occasionally to produce extraordinarily high prices.

III. The partisans of the colonial system consider colonies under another point of view—the advantage they produce to the revenue. *The taxes levied upon the commerce of the colonies, whether upon importation or upon exportation, produce a revenue which would cease, or be much diminished, if they were independent.*

The taxes levied upon the commerce with the colonies may produce a considerable amount. But if they were free, would they carry on no commerce? Could not this commerce be taxed?—could it not be taxed as heavily as smuggling would permit? England levies taxes upon its commerce with France; France levies taxes upon its commerce with England. The possession of colonies is not necessary to the levying of taxes upon the commerce carried on with them.

I do not repeat here, that your taxes upon the articles of their production, and upon those of your importation from the colonies, are taxes of which you pay every farthing yourself: this has already been demonstrated. What you make the colonies to pay, are only the taxes upon your exportation to them.

I allow that you may thus gain more from your colonies than you would be able to gain from foreign nations; since the foreigners can quit your market when they please, if they cannot obtain among you certain articles so cheap as from others: you are therefore obliged to humour them. But your own subjects, obliged to supply themselves from you, are obliged to submit: you keep them in a prison, and you can put what price you please upon their existence.

An advantage, however, of this nature can only be deceptive. When you have made a prison of your colonies, it is necessary to keep all the doors carefully shut: you have to strive against the Proteus of smuggling; fleets are necessary to blockade their ports, armies to restrain a discontented people, courts of justice to punish the refractory. How enormous are the expenses to be deducted, before this forced commerce will yield a net revenue!

To the amount of the expenses of peace, add that of a single armament—of a single war, and you will perceive, that dependent colonies cost much to the mother-country, and never yield an equal return; that, far from contributing to the strength of a state, they are always its weak and vulnerable points; that they keep up among maritime nations continual jealousy; and that thus the people in France, and in England, are subjected to heavy taxes, which have no other effect than to render the productions of the colonies dearer than if they were free.

To these considerations opposed to the colonial system, drawn from political economy, many others may be added, derived from justice and humanity. This system is often mischievous to the people submitted to it; government is almost always, as it respects them, in a state either of jealousy or indifference: they are either neglected or pillaged—they are made places of banishment for the reception of the vilest part of society, or places to be pillaged by minions and favourites, whom it is considered

desirable suddenly to enrich. The sovereign, at two thousand leagues distance from his subjects, can be acquainted neither with their wants, their interests, their manners, nor their character. Their most legitimate and weighty complaints, weakened by reason of distance, stripped of everything which might excite sensibility—of everything which might soften or subdue the pride of power, are delivered without defence into the cabinet of the prince, to the most insidious interpretations, to the most unfaithful representations: the colonists are still too happy, if their demand of justice be not construed into a crime, and if their most moderate remonstrances are not punished as acts of rebellion. In a word, little is cared for their affection—nothing is feared for their resentment—and their despair is contemned. The most violent procedures are easily disguised under an appearance of necessity, and the best intentions will not always suffice to prevent the sacrifice of the public to private interests.

If we proceed to consider the situation of colonies in detail, we shall not fail to be struck with its disadvantages. Have the colonists any lawsuits in their mother-country? Their witnesses must cross the seas; they are at the mercy of their agents; years glide away, and the expenses of justice continually accumulate. Is there danger of a revolt? are they threatened by an enemy? Succours arrive when the mischief is done: the remedy oftentimes proves an additional calamity. Do they want food? Famine has laid waste the country before the mother-country has been apprised of their necessities.

These are not mere assertions: they are borne out by a faithful summary of the history of every colony. It is tragical, even to horror! The evils suffered in these establishments, from the ignorance, the weakness, or the insensibility of European governments, exceed everything which can be imagined. When we consider the multitude of men destroyed, the fleets lost, the treasures swallowed up, the establishments pillaged—we are astonished to hear colonies spoken of as a means of enrichment. The natural development of their fruitfulness, and of their industry, has been retarded for ages; they have been covered a thousand times with ruins; nations have impoverished themselves, that they might hold them in servitude, when they might have been sharers in their wealth by leaving to them the enjoyment of the benefits of liberty.

There are many arguments which prove the inutility of their dependence. North America presents a striking fact which ought to enlighten Europe. Has the trade of England diminished, since her former subjects became free? Since she lost these immense possessions, has she exhibited any symptoms of decay?—has she had fewer sailors?—has her maritime power been weakened? She has found a new source of wealth in the independence of the United States. The emancipation of this great country has carried thither a greater number of men, more capital, and more industry. Great Britain, relieved from the expense of defence and government, has carried on a more advantageous commerce with a more numerous and wealthy people; and it is thus that everything concurs in proving, that the prosperity of a nation is a benefit in which all others participate, every one in proportion to his means; and that the colonial system is hurtful to Europeans, only because it is hurtful to the colonies.

Let us, however, see the consequences which we ought to draw from these data.

1. Ought we not to form any colonial establishment? Certainly not with the intention of enriching the mother-country: it is always a certain expense, for a contingent and far distant profit. But we have seen that, as a means of relieving the population—of preventing its excess, by providing a vent for those who find themselves overburthened upon their native soil, colonization offers an advantageous resource; and when it is well conducted, and free from any regulations which may hinder its prosperity, there may result from it a new people, with whom we shall possess all the connexions of language, of social habits, of natural and political ties.

2. Ought colonies already possessed to be emancipated? Yes, certainly; if we only consider the saving of the expenses of their government, and the superior advantages of a free commerce. But it is necessary to examine what is due to colonial establishments—to a family which has been created, and which ought not to be abandoned. Can they maintain themselves? Will not their internal tranquillity be interrupted? Will not one class of the inhabitants be sacrificed to another? for example, the free men to the slaves, or the slaves to the free men? Is it not necessary that they should be protected and directed, in their condition of comparative weakness and ignorance? Is not their present state of dependence their safeguard against anarchy, murder, and pillage? Such are the points of view under which this question ought to be considered.

When we shall have ceased to consider colonies with the greedy eyes of fiscality, the greater number of these inconveniences will cease of themselves. Let governments lay aside all false mercantile notions, and all jealousy of their subjects, and everything which renders their yoke burthensome will fall at once: there will no longer be any reason to fear hostile dispositions and wars for independence. If wisdom alone were listened to, the ordinary object of contention would be reversed—the mother-country would desire to see her children powerful, that they might become free, and the colonies would fear the loss of that tutelary authority which gave them internal tranquillity and security against external foes.

§ 9.

Non-agenda—Narrow Measures.

General Observations.—Given in the shape of money, encouragements (so called,) special encouragements, though they miss the good they aim at in the shape of special encouragement, produce, in the shape of general encouragement, another good which they do not aim at—the addition made, as above, by forced frugality at the expense of justice.

Given otherwise than in the shape of money—given by discouragements applied to rival branches—they make no addition to wealth by forced frugality, and therefore make no addition at all to wealth. Discouragements to the import, and thence to the production of foreign goods, are discouragements to the export, and thence to the

production, of the home goods that would have been taken by the foreigners in exchange for their goods.

Of the favour shown to home goods in comparison with foreign goods, what is the result? That, in each country, men get their commodities either not so good, or not so cheap, and thence not in such plenty as they would otherwise. Such not only is the result of all these conflicting operations, on the part of all nations taken together, but, to the extent of the operation, would be so in each, even if there were no such retaliation anywhere else.

Giving birth or increase to this or that particular branch of productive industry, under the notion of giving an increase thereby to the aggregate of the national mass of wealth, is either useless or mischievous.

The aggregate mass of money employed in the shape of productive capital, will, in all branches of industry taken together, be productive of so much per cent. upon the amount of it—say 15 per cent., or more or less, according to the average rate of profit upon stock in the country in question, which is in the inverse ratio of that portion of the mass of money in circulation, which is employed within the year in the shape of productive capital, to that portion of it which is employed, as money is employed, by a man who is said to spend his income.*

If in one of these branches the rate of profit be greater than in others—in the one 16 per cent. for example, in the others but 15—the greater the portion of capital employed in this most productive branch, in preference to the other less productive ones, the greater the annual addition to the aggregate mass of national wealth. But so long as they do but know which of all the branches open to them is most productive, individuals that have unengaged pecuniary capital to employ, are already as completely disposed to employ it in this most profitable branch, as all the exertions that can be employed by government can make them be.†

When, by the exertions of government, a mass of capital, which otherwise would have gone into a branch of productive industry producing but 15 per cent., is directed into a branch producing 16 per cent., the profit by these exertions is not the 16 per cent., but the difference between that and the 15 per cent., viz. the one per cent. It is for the 16 per cent., however, and not the 1 per cent., that credit is commonly taken by those statesmen who go to market for glory with the merit of affording encouragement to trade: and if 10 per cent. be the profit upon stock in the new branch, the whole 10 per cent. is taken credit for as profit by the measure, though 5 per cent. less have been the real fruit of it.

It is for the encouragement or creation of particular branches of trade or industry that statesmen have founded and defended, and conquered or attempted to conquer colonies. It is for the sake of colonies, more than for anything else, that governments have been at the expense of a marine: and reciprocally for the sake of a marine that they have established or defended colonies. In Europe, those who are governed pay for the expense: in America, it is become a principle that those who govern should pay the expense. It is in Hindostan alone, that men pay in wealth for that security

which before they never knew: a better bargain on both sides was never made. Ambition, always blind, stumbles sometimes upon profit—sometimes upon a loss, at the command of chance. Man is always ready to govern, no matter what the terms.

Divide productive industry into any number of branches,—for instance four, as with Adam Smith:—husbandry, including mines and fishing; manufactures for home consumption; manufactures for foreign consumption; and carrying trade. Every encouragement afforded to any one of the four branches operates to the amount in discouragement of all the others. If, however, the encouragement be given in the shape of capital granted or lent, it will make an addition, to the amount of it, to the aggregate of real capital, and thence, to the amount of a per centage upon that capital, to the annual aggregate of growing wealth. But the addition thus made to wealth will depend for its magnitude, not on the choice made of the branch of industry, unless as to an extremely minute part of it, but on the addition made to the productive capital of the community at the expense of its income. A mode that would bid as fair for disposing of the money to the best advantage, would be to let a certain number of commercial men draw lots for the money, with liberty to apply it each in his own way. But what, again, would contribute in an equal degree to the same end is, if the nation has a debt, to employ the same sum in the buying in or paying off a portion of the debt; for in that case the receivers of the money, in lieu of annuities, would employ each of them his money in some branch of industry, in his own way of course, under his own management, or that of somebody to whom he lends the money.

The first course is attended with expense, the other not. In the first way, the money being levied by taxes, which whether direct or indirect bear principally upon income, is so much added to national capital at the expense of national income—in the other way, the money is so much taken from income on the same score; but by the redemption of so much capital, it extinguishes or transfers into the hands of government so much income: in the latter case, the community is exonerated from a charge upon its income—a charge to which it continues subject in the other case.

Such are the general grounds, from which it appears, that these narrow measures deserve to be reckoned among the non-agenda;—we shall proceed to examine a variety of examples of measures of these kinds more in detail.

§ 10.

Non-agenda—Narrow Measures.

Example 1. False encouragements—loans.

Of all the means whereby a government may give a particular direction to production, the *loan* of pecuniary capital to individuals, to be employed in any particular branch of trade, is the least open to objection.

It ought, however, at all times, to be free from objection with respect to justice and prudence. All the treasure of the government, whence does it arise but from taxes, and

these taxes levied by constraint?* To take from one portion of its subjects to lend to another, to diminish their actual enjoyments, or the amount which they would have laid up in reserve, is to do a certain evil for an uncertain good—is to sacrifice security for the hope of increasing wealth.

If loans of this nature were always faithfully repaid, their injustice would be limited to a certain period. Let us suppose that the capital thus employed is £100,000, and that the whole sum has been levied in one year—the injustice of the measure will have begun and ended in a year; and if the money thus lent has produced an increase of industry, it is an advantage to be set in opposition to the evil arising from the tax.

But these loans have a natural tendency to be ill employed, wasted, or stolen. Monarchs, and their ministers, are as liable to be deceived in the choice of individuals as in the selection of particular branches of commerce. Those who succeed with them prove only that they possess the talent of persuasion, or understand the practices of courts; but these are not the things which produce success in trade. It may be seen in the work of Mirabeau upon the Prussian Monarchy, that Frederick II., with all his vigilance and severity, was often deceived by the ignorance or dishonesty of those who obtained from his avaricious credulity loans of this nature. Thus, in the train of the first unjust tax for the formation of the capital lent, follow other taxes, rendered necessary to replace the thefts and dilapidations to which the first has been exposed.

It is also most probable, that the capital thus employed will only be applied upon branches of industry less productive than those towards which it would naturally have directed itself. What is the argument of the borrower? That the trade he wishes to establish is new, or that it is necessary to support an established trade. But why should the government intermeddle with it, if not because individuals who consider their own interests are not willing to meddle with it? The presumption is therefore against the enterprise.

Suppose even, that, by chance, this loan should take the most advantageous direction possible, the loan is not justified by this profit: it was unnecessary. For employing capital in the most advantageous manner, it is only necessary that the most advantageous employment should be known. If it be not well employed, it is because a better employment is not known. It is knowledge which is wanted: it is proper to teach, and not to lend. If the government cannot tell which is the most advantageous employment of capital, it is still less able to employ it well; if it can tell which is the best employment, that is all it need do. If the money of government had not taken this direction, that of individuals would, had they been instructed and left free.

There are circumstances in which loans of this nature are always justifiable: when they are not employed for the encouragement of new enterprises, but only to afford support to particular branches of commerce, labouring under temporary difficulties, and which need only to be sustained for a short time till the crisis of peril or suspension is past. This is not a speculation on the part of government, but rather an assurance against a calamity, which it seeks to prevent or to lighten. In such cases of distress, individuals will not of themselves assist the merchants whose affairs are thus

in danger: it is necessary, therefore, that assistance be supplied; and, when supplied, it is not in the way of regulation, but of remedy.

§ 11.

Non-agenda—Narrow Measures.

Example 2. Gift, or gratuitous loan.

Were we to judge from the number of instances in which it has been adopted, we should conclude that gratuitous grants of capital for the encouragement of commerce were most excellent measures.

Their inconveniences are of the same kinds as those of loans, but they greatly exceed them in degree. In case of a loan, if it be repaid, the same sum may serve the same purpose a second time; and so of the rest: the oppressive act by which the government obtained the capital need not be repeated. But if, in place of being lent, it be given,—so often as this favour is repeated, so often must the amount be levied by taxes: and upon every occasion it may be said, that the produce of the tax is lost, if we consider the use which might have been made of it in lightening the public burthens.

Sometimes capital has been lent with this view without interest—sometimes at an interest below the ordinary rate. In the first case, if it be repaid, it is not the capital which is lost, but only the interest; in the second case, it is not all the interest, but only the difference between the lower and the ordinary rate. It is still the same false policy as to its kind: all the difference is in the degree.

It may be observed, that gratuitous grants are more likely to be wasted than loans: it may be, because in the latter case responsibility is always incurred: it may be, because money received as a gift tends to produce prodigality: as it has been obtained without labour, it seems to have the less value.

In some cases, capital has been given, not in the shape of money, but in that of goods; by advancing to a manufacturer, for example, those articles which he wants for the completion of his work.

This plan may have the good effect of insuring the employment of the articles furnished upon the intended object. Those articles, however, with which the government interferes, are ordinarily dearer, and worse in quality, than those which the individual, with the same sum of money, could have obtained at his own choice. It is not the best method of treating men worthy of confidence; and it will not succeed with those who are unworthy of trust, since, after they are put in possession of them, they can convert the articles into money, and spend the amount. There may be measures which would obviate this danger:—inspection, suretyship, &c.; but, when it regards a plan radically bad, the discussion of the comparative inconveniences of any particular scheme, whereby the risk may be diminished, is not worth the labour it would cost.

§ 12.

Non-agenda—Narrow Measures.

Example 3. Bounties upon production.

This mode of encouragement much exceeds the two former in the career of absurdity. In the two former cases, it was an expense, a risk, without sufficient reason for supposing it would prove successful, and even without sufficient reason in case of success. But a bounty is an expense incurred with the certainty of not obtaining the object sought, and even because it is certain that it cannot be obtained.

In the case of a bounty upon production, it is not only the end which is absurd, but the means also, which possess this particular character of contributing nothing towards the end.

It is uniformly because the trade in question is disadvantageous, that it is necessary to bestow money upon its maintenance: if it were advantageous, it would maintain itself. It is because the workman is not able to obtain from the buyer a price for his merchandise which will yield an ordinary profit, that it is necessary that he should receive from the government a bounty which shall make up the difference.

Whether the kind of product upon which it operates be advantageous or not, the bounty has no efficacy in increasing the ability of the producer to augment it. Since it follows the production—since he receives it when the thing is done, and not before, it is clear that he has possessed other means of producing it. The bounty may have operated upon his *inclination,* but it cannot have contributed to his ability.

Bounties have been bestowed upon particular branches of trade for all sorts of reasons:—on account of their antiquity, on account of their novelty—because they were flourishing, because they were decaying—because they were advantageous, because they were burthensome—because there were hopes of improving them, and because it was feared they would grow worse;—so that there is no species of commerce in the world which could not, by one or other of these contrary reasons, claim this kind of favour during every moment of its existence.

It is in the case of an old branch of trade that the evil of such measures is most enormous, and in that of a new one that its inefficacy is most striking. A long-established branch of trade is in general widely extended: this extent furnishes the best reason for those who solicit these favours for its support; and, to give it effect, it ought at the same time to be represented as *gaining* and *losing,*—gaining, that there may be a disposition to preserve it—losing, that there may be a disposition to assist it.*

In the case of a new branch of trade or industry, the futility of the measure is its principal feature. Here, there is no reason which carries the mask of an apparent necessity—no pompous descriptions of its extent. All which can be alleged is, that, once established, it will become great and lucrative, but what it wants is to be

established. What, then, is done for its establishment? Measures are taken, which can only operate after it is established. When the trade is established, it will have such great success that it will yield, for example, fifty per cent. profit; but, to establish it, is requires such large advances, that it is doubtful if those who possess capital will make them, on account of the risks which are almost always inseparable from every new undertaking. What course does the government pursue? Does it give capital? No, this would be foolish. Does it lend capital? No, this would be to run too great risk; it will give a bounty upon the article when it shall have been made: till then, it says, we shall give no money. Thus, to the fifty per cent. you will gain by your merchandize, we will add a bounty of ten per cent. Very well: and, according to this reasoning, at what time will you refuse assistance? You refuse so long as the bestowment of it will be useful—you grant it in order that something may be done, and you do not give it till it is already done by means independent of you.

Mistrust, short-sightedness, a suspicious disposition, and a confused head, are very susceptible of union. Why are bounties preferred to advance of capital? They are afraid of being deceived in the latter case. If £10,000 are given at once, nothing may perhaps be done: to avoid this risk, they give, when the thing is done, £10,000 per annum, which they will never receive again.

Instead of being beneficial, the expense to the state becomes more burthensome in proportion as the trade becomes extended. The bounty instituted for one reason, is continued on an opposite account: at first it was given in order to obtain—in the end it is continued for fear of losing, the particular branch of trade. What would have been necessary for its establishment was a trifle—what must be paid for its continuance knows no bounds.

The capital bestowed upon a new branch of industry for an experiment, is always comparatively a small sum; but what is given as a bounty is always, or at least it is always hoped that it will be, a large one; for unless a large quantity of the merchandize be manufactured and sold, and consequently, unless a large bounty be paid for its production and sale, the object is considered as unaccomplished—it is considered that the bounty has not answered its end.

When the article is one which would not have been manufactured without the bounty, all that is paid is lost; but if it be one of those which, even without the bounty, the manufacturers would have found it their interest to produce, only a portion of the bounty is lost. As it makes an addition, and that a very sensible addition to the ordinary profit of the trade, it attracts a great number of individuals towards this particular enterprise: by their competition, the article is sold at the lowest rate, and the diminution of price is in proportion to the bounty itself (allowance being made for the necessary expenses of soliciting and receiving it.) In this state of things, it would appear, at first sight, that the bounty does neither good nor harm: the public gains by the reduction of price as much as it loses by the tax, which is the effective cause of this reduction.

This would be true, if the individuals who paid the tax in the one case were the same who profited by the bounty in the other—if the measure of this profit were exactly the

measure of their contribution—if they received the one at the same time that they paid the other, and if all the labour lost in these operations had not cost anything. But all these suppositions are contrary to fact. There are not two taxes which affect all the members of the state—there is not one which affects them all equally. The tax is paid a long time before the indemnification by the reduction of price is received, and the expenses of this useless circulation are always considerable.

After all that can be said, it is clear that a bounty upon production cannot, in the long run, produce an increased abundance of the article in question, whatsoever may be the diminution of price which may result from it. The profit which the producer will obtain is not greater than before—the only difference is, that it comes to him from another hand. It is not individuals who give it him in a direct manner—it is the government. Without the bounty, those who pay for the article are those who enjoy it: with the bounty, they only pay directly a part of the price—the rest is paid by the public in general; that is to say, more or less, by those who derive no advantages from it.*

Although a bounty upon production adds nothing to the abundance of any article of general consumption, it diminishes the price to the buyer. Suppose that, in Scotland, there were a bounty upon the production of oats, and that the bounty were paid by a tax upon beer brewed from this grain, oats would not be more abundant than before; but they would be sold at a less price to the buyer, (though the merchant would make the same profit) whilst the beer brewed with this grain would be proportionally dearer: the consumer of oats would not find himself richer than before, but for the same price he would have a greater quantity of this grain in the form of food, and less in the shape of drink.

I speak here of relative abundance, in proportion to the ordinary consumption: I speak of superfluity, compared with habitual wants. The lower this commodity is in price, compared with others, the greater will be the demand for it: more will be produced in consequence of the increased demand, but more will not be produced than is demanded; the commodity, as it respects abundance, will remain upon the same footing as before. If a superfluity be required—if a quantity be required exceeding what is commonly produced, other measures must be resorted to than a bounty on production.

If a bounty upon production could be justified, it would seem that it ought to be so in the case where the article thus favoured was an article of general consumption—as corn in England, oats in Scotland, potatoes in Ireland, and rice in India; but it would only appear so as a means of producing equality, and not under *any other* point of view. In fact, this measure does not tend to produce abundance: what it does, is to take the money out of the pockets of the rich, to put it into the pockets of the poor. A commodity of general consumption is always the most necessary of all the articles of life—it is always that of which the poor make the greatest use. The richer a man is, the more he consumes of other commodities besides this universal commodity. Suppose, then, a bounty upon the production of oats in Scotland: if nothing be consumed there but oats, or if there be only a tax upon oats, the persons who reap the advantage of the bounty would be those who bear the burthen of the tax, and that in

the same proportion, inasmuch as the expense of levying the tax would be the only result of this measure. But commodities of all kinds are consumed in Scotland, and taxes are there levied upon a great variety of commodities. Oats, the commodity of the poor, being the object not of a tax but of a bounty, and the articles consumed by the rich being the object not of a bounty but of a tax, from the produce of which the bounty upon the production of oats is paid, the result will be, that the poor will obtain the commodity of which they make the greatest use at a lower price.

I agree to this: but does it follow that their condition will be bettered? Not at all. Oats will be sold to the poor at a lower price, but they will have less money wherewith to buy them. All the means of subsistence in this class resolve themselves into the wages of labour; but the wages of labour necessarily depend upon the degree of opulence which a country possesses; that is, upon the quantity of capital applicable to the purchase of labour, in connexion with the number of those whose labour is for sale. The low price resulting from the bounty will produce no advantage to the labourers whilst the wealth of the country remains the same: if the commodity be lowered in price, they will be less paid; or, what comes to the same thing, as they work for a ration of oats, they will be obliged to give more labour for this ration if oats are at a lower price.

All that relates to this mode of encouragement may be summed up in a few words:—

The natural course of things gives a bounty upon the application of industry to the most advantageous branches—a bounty of which the division will always be made in the most equitable manner. If artificial bounties take the same course as the natural, they are superfluous—if they take a different course, they are injurious.

§ 13.

Non-agenda—Narrow Measures.

Example 4. Exemptions from taxes on production.

An exemption from a tax capable of being imposed upon any article in the hands of the maker or seller, is a modification of a bounty upon production: it is a disguised bounty.

This kind of negative favour may be extended to every species of tax upon trade. The methods of encouragement in this way are as numerous as those of discouragement. If, of two rival manufactures, the one be weighed down by a tax, and the other free, that which is taxed is, in respect of that which is not, in the same situation as if both were free from taxes, and a bounty were bestowed upon one.

But each manufacture is a rival to every other. If this rivalry be not *special,* it is at least *general* and indirect. For what reason? Because the power of purchasing is limited, as to every individual, by his fortune and his credit. Every article which is for sale, and which he can desire, is in a state of competition with every other; the more he expends for the one, the less can he spend for the others.

Exemption from taxes upon production cannot be blamed absolutely; for it is to be wished, if the thing were possible, that there were no taxes. But, relatively, any particular exemption may be blamed, when the article exempted has nothing which justifies this particular exemption. If it were equally fit for taxation, the favour granted to it is an injury to other productions.

That an object fit for taxation be exempt, is an evil: it renders necessary some other tax, which by the supposition is less proper, or it allows some injurious tax to remain.

Whilst, as to advantage, there is none. If more of this untaxed merchandise be produced, less is produced of that which is taxed.

The evil of an unjust tax is all the difference between a more or less eligible tax, and the worst of those which exist.

§ 14.

Non-agenda—Narrow Measures.

Example 5. Bounties on Exportation.

In the case of *bounties upon exportation,* the error is not so palpable as in that of *bounties upon production,* but the evil is greater. In both cases, the money is equally lost: the difference is in the persons who receive it. What you pay for production, is received by your countrymen—what you pay for exportation, you bestow upon strangers. It is an ingenious scheme for inducing a foreign nation to receive tribute from you without being aware of it; a little like that of the Irishman who passed his light guinea, by cleverly alipping it between two halfpence.

As a bounty upon production may sustain a disadvantageous trade, which would cease without it, by forming its sole profit, it is also possible that it may for a short time increase the profit of an advantageous trade, which would support itself without this aid.

Does the bounty support a disadvantageous trade? It does not produce a farthing of profit more than would have existed without it. Left to itself, this trade would have ceased and made way for a better; and the community loses the profits of a capital better employed in lucrative undertakings.

Does the bounty support an advantageous trade? The evil, in the end, will be greater, because the extra profit drawing more rivals into this career, their competition will reduce the price so low, that the bounty will constitute at last the whole profit of this trade.

However, till the price be thus reduced, the bounty is a net gain for the first undertakers; and the consumers being our fellow-countrymen, a part of this ill-employed money turns to their advantage by the low price of the commodity.

But in the case of a bounty upon exportation, the nation which pays it never receives any advantage: everything is lost, as if it were thrown into the sea, or at least as if it had been given to foreigners.

Without this bounty, the article would have been exported, or it would not: it would have been exported, if foreigners were willing to pay a price which would cover the expense of the manufacturing, of exporting, and the ordinary profit of trade; it would not have been exported, if they did not offer a sufficient price. In the first case, they would have obtained the article by paying its worth; in the second case, this disadvantageous commerce would not have been carried on.

Suppose a bounty upon exportation: what are its effects? The foreigners who heretofore had found the article too dear, become disposed to purchase it. Why? Because you pay them to induce them to do so. The more government gives to the exporter, the less need the foreigner give. But it is clear that he will not pay more than the lowest price which will satisfy the exporter: he need not give more; since, if one merchant refuse to supply him at this price, another will be quite ready to do it.

Suppose an article of our manufacture, already purchased by foreign nations without a bounty upon its exportation; what will happen if a bounty be given? Solely the lowering of its price to the foreigners. A bounty of one penny for every pound in weight is given upon an article which sold for fivepence per pound; the manufacturer would not have found it worth while to have sold it for less than fivepence per pound; he will now, however, find the same profit in selling it for fourpence, because his own government makes up the difference. He will sell at fourpence, because, if he do not, some other will; and because, in this case, instead of selling for fivepence, it may happen that he will not sell at all. Thus the whole which government gives is a net saving to the foreigners: the effect in the way of encouragement is nothing. The whole which is exported with the bounty is neither more nor less than would be without it.*

Though a bounty do not render such a branch of trade *more* flourishing than it would otherwise have been, it will not render it *less* flourishing; but the more flourishing it becomes, the greater will be the loss to the nation.

Disadvantageous branches of trade are often spoken of. People are uneasy—they fear that certain manufactures, left to themselves, will be unprofitable. It arises from error. It is not possible that any branch of trade, left to itself, can be disadvantageous to a nation: it may become so by the interference of government, by bounties, and other favours of the same nature. It is not to the merchant himself that it can become disadvantageous; for the moment he perceives there is nothing to be gained, he will not persevere in it: but to the nation in general it may become so—to the nation, in its quality of contributor; and the amount of the bounty is the exact amount of the loss.

The Irishman who passed his light guinea was very cunning; but there have been French and English more cunning than he, who have taken care not to be imposed upon by his trick. When a cunning individual perceives you have gained some point with him, his imagination mechanically begins to endeavour to get the advantage of you, without examining whether he would not do better were he to leave you alone.

Do you appear to believe that the matter in question is advantageous to you? He is convinced by this circumstance that it is proportionally disadvantageous to him, and that the safest line of conduct for him to adopt, is to be guided by your judgment. Well acquainted with this disposition of the human mind, an Englishman laid a wager, and placed himself upon the Pontneuf, the most public thoroughfare in Paris, offering to the passengers a crown of six francs for a piece of twelve sous. During half a day he only sold two or three.

Since individuals in general are such dupes to their self-mistrust, is it strange that governments, having to manage interests which they so little understand, and of which they are so jealous, should have fallen into the same errors? A government, believing itself clever, has given a bounty upon the exportation of an article, in order to force the sale of it among a foreign nation: what does this other nation in consequence? Alarmed at the sight of this danger, it takes all possible methods for its prevention. When it has ventured to prohibit the article, everything is done. It has refused the six-franc pieces for twelve sous. When it has not dared to prohibit it, it has balanced this bounty by a counter-bounty upon some article that it exports. Not daring to refuse the crowns of six francs for twelve sous, it has cleverly slipped some little diamond between the two pieces of money—and thus the cheat is cheated.

A strife of this nature, painted in its true colours, and stripped of the eclât which dazzles by the magnitude of the object and the dignity of the agents, appears too absurd to be possible; but for one example among a thousand, we may refer to what has happened between England and Ireland respecting the trade in linens.

§ 15.

Non-agenda—Narrow Measures.

Example 6. Prohibition of rival productions.

This pretended mode of encouragement can never be productive of good; but it may produce evil:—*hurtful* or *useless,* such is the alternative.

1. I say *useless.* It is a particular privilege of this exercise of power, to be employed in certain cases without doing any harm; and these cases occur when the branch of production or trade which is prohibited would not have been introduced, even had there been no prohibition. In former times, it was declared felony in England to import *pollards* and *crocards,* a kind of base coin at that time. This prohibition is yet in existence, without producing any inconvenience. If, with the intention of encouraging the increase of poultry, or with any other similarly patriotic view, the importation and increase of phœnixes were prohibited, it is clear that the trade in poultry would neither gain nor lose much.

Among all the species of manufacture which England, with so much anxiety, has prohibited to her colonies, there are many which, in comparison with agriculture, are

no more suitable to the Americans than the breeding of phœnixes, the cultivation of pine-apples in their fields, or the manufacture of stuffs from spiders' webs.

Were the articles of foreign manufacture, loaded with the expenses of importation, neither better in quality nor lower in price than the articles of home manufacture, they would not be imported: the prohibition exists in the nature of things.

2. *Hurtful.* By the prohibition of a rival manufacture, you wish to insure the success of a favoured manufacture, and you at once create all the mischiefs of a monopoly. You enable the monopolists to sell at a higher rate, and you diminish the number of enjoyments; you grant them the singular privilege of manufacturing inferior articles, or of ceasing to improve them; you weaken the principle of emulation, which exists only when there is competition; in short, you favour the enriching of a small number of individuals, at the expense of all those who would have enjoyed the benefit; you give to a few bad manufacturers an excessive degree of wealth, instead of supplying the wants of ten thousand good ones; you also wound the feelings of the people, by the idea of injustice and violence attached to the partiality of this measure.

Prohibitions of foreign manufactures are most frequently applied to those objects which foreigners can supply less expensively, on account of some peculiar advantage arising from their soil or their industry. By such prohibitions, you refuse to participate in this natural advantage which they enjoy; you prefer what costs you more capital and labour; you employ your workmen and your capital at a loss, rather than receive from the hands of a rival what he offers you of a better quality or at a lower price. If you hope by this means to support a trade which would otherwise cease, it may be supported, it is true; but, left to itself, capital would only leave this channel where its disadvantages are unavoidable, to enter upon others where it would be employed with greater advantage. The greatest of all errors is to suppose, that by prohibitions, whether of foreign or domestic manufactures, more trade can be obtained. The quantity of capital, the efficient cause of all increase, remaining the same, all the increase thus given to a favoured commerce is so much taken from other branches.

The collateral evils of this prohibitory system ought not to be forgotten. It is a source of expense, of vexation, and of crimes.

The expense most evidently lost, is that of the custom-house officers, the inspectors, and other individuals employed; but the greatest loss is that of labour—both of the unproductive labour of the smuggler, and of those who are, or who appear to be, employed in the prevention of smuggling.

To destroy foreign commerce, it is only necessary to sell everything, and to purchase nothing:—such is the folly which has been passed off as the depth of political wisdom among statesmen.

Among the transactions between nation and nation, men have consented, at great expense, to support disadvantageous manufactures, that they may not buy of their rivals. We do not see such monstrous extravagance on the part of individuals. If a merchant were to act thus, we should say he was hastening to ruin. But his interest

guides him much better: it is only public functionaries who are capable of this mistake, and they only when they are acting on account of others.

Covetousness desires to possess more than it can hold: malevolence likes better to punish itself than to allow a benefit to an adversary.

To have its eyes greater than its belly, is a proverb which nurses apply to children, and which always applies to nations. An individual corrects this fault by experience: the politician, when once affected by it, never corrects himself.

When a child refuses physic, mothers and nurses sometimes induce it to take it by threatening to give it to the dog or the cat. How many statesmen—children badly educated—persist in supporting a commerce by which they lose, that they may avoid the morfication of allowing a rival nation to carry it on!

The statesman who believes he can infinitely extend commerce, without perceiving that it is limited by the amount of capital, is the child whose eyes are larger than his belly.

The statesman who strives to retain a disadvantageous commerce, because he fears another nation will gain it, is the child who swallows the bitter pill, for fear it should be given to the cat or the dog.

These are not noble comparisons, but they are just ones:—when errors cover themselves with an imposing mask, one is tempted to set them in a light which will show them to be ridiculous.

§ 16.

Non-agenda—Narrow Measures.

Example 7. Prohibition of rival imports.

In regard to the prohibition of rival imports, simply inefficacious or mischievous is here the alternative.

If the foreign article cannot when imported, after payment of the expense of importation, be had as cheap in comparison of its quality as the home article meant to be favoured, it will not be imported;—so long as that is the case, a prohibition is put upon it by nature. If, had it not been for the prohibition, it could have been sold here cheaper, the prohibition is in point of burthen a tax upon us to the amount of the difference in price. I say, in point of burthen: for as to that benefit which it is the property of a real tax to produce, viz. a supply for expenditure, or a relief to an equal amount from the burthen of other taxes, it has no existence. It is upon the same footing with a tax the produce of which, as soon as collected, should be thrown into the sea.

As to the increase of wealth in general, the particular encouragement in question is, for the general reason so often given, of no avail. The quantity of capital, the efficient cause of wealth, remaining the same, whatever is added in consequence to the favoured trade, is so much taken from the rest.

§ 17.

Non Agenda—Narrow Measures.

Example 8. Taxation of rival branches of home manufactures.

The natural and only original object of taxation is revenue: but, considered merely as confined to that object, it does not belong to our present purpose. Measures are however to be considered with regard to their eventual effects of all kinds—as well those which were not designed (if there be any) as those which were.

A tax upon one of two rival branches of trade can have no effect in favour of the other, but in so far as it operates as a prohibition. If the same quantity of the commodity meant to be discouraged, be sold notwithstanding the tax, as would have been sold without the tax, the advantage gained by the commodity meant to be favoured, amounts to nothing.

So far as it operates as a prohibition, we have seen that good it can do none—it only transfers capital from one employment to another, without producing any increase of wealth: harm it may do, and is likely enough to do—though we have seen that it may also happen not to do any.

As a tax, it may do good or harm according to its particular nature:* good, if it stand instead of a worse—harm, if it stand instead of one less burthensome.

§ 18.

Non-agenda—Narrow Measures.

Example 9. Taxation of rival imports.

Whether the article thus taxed in the view of favouring another, be an article of home production or an article of import, makes in point of advantage no sort of difference. As far as it prevents the import, it has the effect of a prohibition: in which capacity we have seen, that with regard to the general increase of wealth, it is of no use. As far as it fails of preventing the import, it gives no encouragement to the particular trade in question; nor consequently to the particular portion of wealth employed in that trade: its effect is to levy money on the subject, in quality of a tax; but the persons on whom the money is levied are our own people, as much as if it were among the articles produced at home. As such, it may either be a good or a bad tax as it may happen;—though in regard to its temporary consequences, it cannot be productive of all the mischief of which a tax on a home manufacture is capable of being productive.

§ 19.

Non-agenda—Narrow Measures.

Example 10. Drawbacks on exportation.

What is called giving a drawback on exportation, is the restitution of a tax already levied;—from the amount already levied in way of a tax, a man is permitted to *draw back* so much of what he has disbursed.

What a bounty on exportation is to a bounty on production, a drawback is to a simple exemption from a tax levied on produce. In the first case of each pair, foreigners come in for their share of the boon indiscriminately with our own people; in the other case, they get the whole of it. In all cases, the expected advantage is equally imaginary.

In one point of view, however, the drawback is a more expensive way of throwing away money than the bounty. In the case of drawback, the money is received with one hand in order to be given back again with the other; and each operation is attended with a separate expense. To this public expense is to be added the private expense, which the individual must be at to pay the money, and get it back again—an expense of which the trouble and loss of time (which in the account of the financier go for nothing) always form a very considerable part, often the most considerable: instances† have not been wanting, in which the value of the supposed favour has been reduced literally to nothing by the trouble of obtaining it.

§ 20.

Non-agenda—Narrow Measures.

Example 11. Non-importation agreements.

Non-importation agreements, as far as they extend, have the effect of prohibitions:—happily they are not so extensive in their action, so frequent, so steady, so well executed.

Good they do none: happily, wanting the force of prohibitory laws, the mischief they do is seldom so extensive.

§ 21.

Non-agenda—Narrow Measures.

Example 12. Premiums for the importation of foreign arts and hands.

That there are cases in which it would be extremely well worth the while of individuals to pay extraordinary prices to get workmen from abroad, is not to be

doubted. Meaning to employ my money to the best account in the way of trade or manufacture, and looking round as far as my reach of thought, and faculties and opportunities, will carry me, if I observe a branch of manufacture, for instance, new as yet to my country, and which, if imported from some country abroad, would pay me, for example, five per cent. interest for my capital, more than any other branch I have been able to find,—this five per cent. would be so much more gained to me, and through me to the nation I belong to, than if I had embarked my capital in that one of the old-established trades, which, of all that have fallen under my cognizance, would be the most advantageous. Extra expenses there doubtless are, and difficulties, incident to the business of getting workmen from a foreign country, even if there are no laws in that country or our own to add to the amount; but all difficulties and expenses of this nature I suppose provided for and surmounted, as in many instances they actually have been.

Still, then, the same argument, and still with undiminished force: the more evidently advantageous for the individual the employment of his money in this way, the more evidently unnecessary is it for government to employ that of the nation in this way.

In the first case, the burthen is borne by him who receives the benefit—in the other case, by those who receive no part of it: in the first case, the probability of success in the project, and the security against unnecessary expense, are at their highest pitch—in the other, at their lowest.

On the part of governments in general, the passion for getting arts and hands from abroad does not appear so conspicuous as the dread of losing their own.

§ 22.

Non-agenda—Narrow Measures.

Example 13. Fixation of prices.

The limitation of the price of commodities may have two opposite objects—1. The rendering them dearer; 2. The rendering them cheaper.

The first of these objects is least natural: so many commodities, so many means of enjoyment; to put them within the reach of the largest number, is to contribute to the general happiness. This motive, however, is not unexampled; and intoxicating liquors are an instance of its exercise. Legislators have often endeavoured, and not without reason, to increase their price, with the design of limiting their consumption on account of their dearness. But imposing a tax upon them suffices to increase their price; there is no necessity for resorting to the method of direct limitation.

Is the design of these limitations the obtaining of the article at a low rate,—the method will scarcely answer its end. Before the existence of the law, the article was sold at what may be called its average or *natural price,* that is to say, it was confined within certain limits—1. By the competition between the buyers and the sellers; 2. By

a competition between the branch of trade in question, and that of other branches to which the merchant might find it to his advantage to transfer his capital.

Does the law endeavour to fix the price at a lower rate than this *average* or *natural price*—it may obtain a transient success, but by little and little this branch of trade will be abandoned. If the constraint be increased, the evil will grow worse; the constraint, in fact, can only act upon the existing stock: this being sold at a forced price, the merchant will take care not to replace it. What can the law effect? Can it oblige him to replenish his storehouse with the same commodities? No legislator has ever attempted it, or at least no one has ever attempted it with success. This would be to convert the officers of justice into commercial agents; it would be to give them a right to dispose of the capitals of the merchants, and to employ the merchants themselves as their clerks.

The most common fixation has been that of the rate of interest. It has already been discussed. (See Ch. III. §§ 6 & 7.)

The fixation of the price of wages (especially with regard to agriculture) has often been proposed, and even carried into effect, for the most opposite reasons: to prevent what is considered as an *excess*—to remedy what has been regarded as a *deficiency.*

In this latter point of view, this measure is liable to great objection. To fix the *minimum* of wages, is to exclude from labour many workmen who would otherwise have been employed; it is to aggravate the distress you wish to relieve. In fact, all that can be done is limited to determining, that if they are employed they shall not receive less than the price fixed; it is useless to enact that they shall be employed. Where is the farmer, where is the manufacturer, who will submit to employ labourers who cost them more than they yield? In a word, a regulation which fixes the *minimum* of wages, is a regulation of a prohibitory nature, which excludes from the competition all whose labour is not worth the price fixed.

The fixation of the rate of wages, in order to prevent their *excess,* is a favour conferred on the rich at the expense of the poor—on the master at the expense of the workman. It is a violation, with regard to the weakest class, of the principles of security and property.

§ 23.

Wealth—Means Of Increase.

If we trace the progress of wealth in its natural channel, we shall clearly perceive that the interposition of government is only beneficial and necessary when employed in the maintenance of security, in the removal of obstacles, or the dissemination of knowledge.

Wealth may be increased—

I. By increasing the efficacy of labour.

II. By increasing the number of labourers.

III. By the more advantageous employment of capital.

IV. By increasing the mass of capital.

V. By means of trade.

I. *By increasing the efficacy of labour.*

This subject might furnish most interesting and instructive historic details: we shall confine ourselves to a simple enumeration of the means whereby it may be accomplished.

The efficacy of labour may be augmented—

1. By increase of skill and dexterity.

2. By saving the time occupied by superfluous movements.

3. By the invention of machines.

4. By employing, instead of human labour, more powerful and less costly prime movers,—as water, air, fire, explosive powders, and beasts of burthen.

The two first advantages are obtained by the division of labour; the third necessarily results from it. Adam Smith has developed this grand means of attaining perfection with great diligence, and, so to speak, particular affection. He relates, that the process of converting a morsel of brass wire into a pin requires eighteen operations, and employs as many different workmen, of whom the greater part borrow the assistance of machines;—whereby, although ten workmen would not separately have been able to make more than 240 pins a-day, they are enabled to make 4800. It is hence that this little branch of national wealth, which affords a more commodious adjustment than the buckles of the Romans and the skewers employed by Queen Elizabeth, has increased in proportion. What our country people throw away, would have been luxuries in the court of Darius.

5. By the simplification of intermediate processes.

6. By the saving of materials. The extension given to the quantity of gold employed in gilding silver wire, is an example equally suited to astonish the natural philosopher, and to charm the political economist.

Chemistry has introduced a multitude of economical processes into all the arts: it has taught the means of economically applying fuel—of producing great effect with little expense; it has substituted less costly for more expensive materials; it has imitated, and even rivalled, the productions of nature.

7. By the improvement of the products, that is to say, in proportion to the price. It is thus that porcelain has supplanted the coarse pottery of former times:—the potteries of Wedgwood and Bentley have excelled the porcelain of China.

8. By the diminution of the expense of carriage, by the multiplication of roads, canals, and iron railways. The advantage which the Low Countries have derived from their canals is incalculable. Governments may often usefully interfere in respect to these objects, either by advancing the capitals and sharing in the benefit, or by granting to the individuals interested the powers necessary for making arrangements among themselves, and defraying the expense. When, however, it is necessary for a government to take charge of these works, it is a proof that confidence does not exist; I mean confidence in the stability of the actual order of things, and in the protection of the laws. No other circumstance speaks so highly in praise of the British government, as the disposition of individuals to unite in carrying on great undertakings in canals, docks, ports, &c. A disposition to undertake such works denotes the prevalence of a feeling of security, which unites the future to the present, and embraces an horizon of large extent.

The advantage of machines consists in the increased efficacy of labour. To reduce the number of men employed upon any species of labour by half, without diminishing the quantity of the product, is in fact the same thing as doubling the number of men employed, with the same degree of efficacy as before. That which required two thousand men for its performance, being performed by one thousand, there remains one thousand men who may be employed either upon similar or other works.

But this supposes that the workmen, no longer required in the production of a given quantity of labour, are otherwise employed; for if they were without employment, the quantity of wealth produced would remain the same after the invention as before.

If a manufacturer found himself thus in a condition to execute, with one thousand workmen, what had heretofore required two thousand, it appears, at first sight, that the natural result would be, that he would employ the two thousand workmen to produce a double quantity of work. But unless his pecuniary capital be augmented, it will be impossible for him to employ the same number. The new machines, the new warehouses required for this increase of produce, require a proportionate increase of capital. The most ordinary case, therefore, will be the reduction of the number of workmen; and, as it respects them, the consequence is a temporary distress.

It is upon this circumstance that the popular opposition to the improvement of machines depends. It is a very reasonable opposition on the part of the handicraftsmen. It is they who suffer, whilst the benefit is, in the first instance, for the manufacturer, and in perpetuity for the public, who obtain a better article at a less price.

There are two kinds of countries where this objection has no force—countries badly peopled, and countries where the people are slaves. Do you desire an increase of population—do you desire children who may become workmen in future,—I give you fullgrown men—workmen actually prepared: you would charge yourself with the

expense of their education,—I relieve you of it: you are willing to receive foreigners, and I give you natives. Such is the language an inventor may address to a sovereign; whilst to the individual proprietor he may say,—With one hundred slaves you are now able to raise a certain quantity from your mines; with fifty you will in future be able to raise the same quantity. If it were necessary to support the others in idleness, where would be the evil?

In stationary or retrograde countries, where the dismissed workman cannot easily find a new employment to which to apply himself, where there exists no capital ready to furnish him employment that suits him, this objection would not be without force. It is, however, a transient evil, to which transient remedies ought to be applied.

II. *By the increase of the number of labourers.*

I have nothing further to add upon this subject to what is said in the chapter on population (Ch. IV.;) but I shall point out those things which, in an indirect manner, tend to produce this effect.

1. By the banishment of all prejudices unfavourable to labour. Honour has tied the hands of some—religion of others. Some have been kept in a state of perpetual idleness—others in a state of periodical idleness. In some Catholic countries, the saints' days occupy more than one hundred working days. The loss of these days alone ought not only to be considered, but also the bad habits which this idleness encourages. They have not worked upon the saint's day; they do not work on the day following, because they were intoxicated the day past.

2. The amount of labour may be increased by giving productive employments to those classes of men who, owing to their station in life, produce nothing—to prisoners, beggars, monks, and soldiers. It has been pretended that, to make a good soldier, an individual ought to follow no other trade: an exception ought at least to be made in favour of those kinds of labour which may be useful in war, as the digging of ditches, the construction of bridges, the throwing up of embankments, and the formation and repair of roads.* These employments afford an inexhaustible means of increasing the most permanent part of the capital of a nation.

3. Substitute alluring for coercive motives—reward for punishment; with suitable precautions, abolish all services in kind, all forced labour and slavery. A country peopled with serfs will be always poor. Pay for labour in money, and the reward, mingling drop after drop with the labour, will sweeten its bitterness: every free labourer is worth two slaves. This reflection is often presented in this work, but it is so just and favourable to humanity, that it cannot be too often repeated; we ought not to be afraid to repeat it.

III. *The more advantageous employment of capital.*

We have already seen, that under the guidance of individual interest, capital of itself takes the most advantageous direction—at least certainly more advantageous than when under the guidance of government.

Of all employments of capital, the most advantageous for the state is the cultivation of the earth. It is, at the same time, as has been demonstrated by Adam Smith, the most beneficial in itself, and the most attached to the state. Most advantageous: the capitalist must find it nearly as advantageous as any other, since, unless this be the case, he will not engage in it; and this after he has deducted the rent he pays to the landlord, and which often amounts to a third of the produce. It is thus that the state gains by this employment more than it can possibly gain by any other. More attached to the state: the workman may carry away his industry, the money-lender his capital, the merchant may change his warehouses, but the farmer cannot carry away the land.

For the encouragement of this most advantageous employment of capital, what ought government to do? Nothing: that is to say, nothing in the way of positive encouragement; for it cannot too completely remove the clogs and obstacles to the free alienation of landed property,† or too greatly favour the conversion of goods held in common, into individual property.‡

The condition most favourable to the prosperity of agriculture exists when there are no entails, no unalienable endowments, no common lands, no right of redemption, no tithes, or taxes or dues which punish industry, and levy a contribution upon agriculture, increasing in proportion to the expenses incurred, and the greater care paid to cultivation.

Generally speaking, the great landed proprietors give themselves little care about the improvement of their domains. Some leave large tracts of country, sufficient for the maintenance of hundreds of families, in a state of nature, that they may enjoy the pleasures of the chase; others, prodigal in proportion to their wealth, expend everything in present enjoyments, and trouble themselves but little with the future. Where the system of leases and farms is upon a good footing, the evil is not great; but it is altogether otherwise when the administration is in the hands of a superintendent, still less interested than his masters in the increase of the rent. Were large properties divided into three or four parts, the proprietors would be animated with an entirely different spirit. The spur of necessity would render them intelligent and industrious. Where a nobleman employs twenty gardeners in raising pine apples and taking care of bowling greens. Five manufacturers would employ twenty husbandmen in producing corn for themselves and a hundred workmen. But let it not be supposed that I recommend agrarian laws and forced divisions: this would be to cut off an arm, in order to avoid a scratch.

In the scale of public utility, so far as it depends upon the general wealth, after agriculture come those manufactures whose products are sold within the country; after these, the manufactures whose products are exported; and in the last place, the carrying trade. Adam Smith has demonstrated this. Thus much for theory: it does not follow that in practice it would be proper to favour a branch of industry higher in the scale, at the expense of one which is placed below it. They all exercise a reciprocal influence upon one another, and benefits are divided among them with sufficient equality. If for a moment one branch become more advantageous than the others, a greater number of adventurers are soon drawn towards this side, and the equilibrium is not long in re-establishing itself. If any species of industry be more constantly

useful to a nation, it is because the benefit more certainly remains—because the wealth which it produces is more secure.

IV. *By increasing the mass of capital.*

The mass of capital is increased when the products of labour exceed the amount of products consumed.

The addition made to the wealth of a nation in one year, is the total amount of the savings of all the individuals composing that nation in that year: it is the difference between the values produced or imported, and the values destroyed or exported in the course of the same year.

The addition made to the pecuniary wealth of a community is, in the same manner, the difference between the sum produced or imported, and the sum destroyed or exported in the period in question.

In the case of an individual, increase of money is increase of wealth. If his fortune consist to-day of one thousand guineas, and he has two thousand to-morrow, he will be twice as rich as he was the day before: he can command twice the quantity of the products of all kinds of labour.

The case is not the same with a nation. If its coin be to-day £1,000,000 sterling, and to-morrow it were to be £2,000,000, its wealth would not be doubled as was that of the individual. As it respects its internal condition, the nation would not be richer than before: instead of having at its command a double quantity of productions, it would only have the same.

It is true, that in exporting to other nations this suddenly acquired mass, the community in question would obtain an addition to the mass of its non-pecuniary wealth: but in proportion as this exchange is made, the case which we have supposed does not continue the same; it ceases to possess the additional million of coin.

This apparent contradiction between the two cases is easily removed. When an individual finds the quantity of coin which he possesses suddenly doubled, the value of the coin is not diminished by this addition: the community to which he belongs does not possess more than before, supposing that the amount has not been received from abroad. The proportion between the amount of coin and the things to be sold remains exactly the same.

The value of all the things sold in the course of a year is equal in value to the sum of the coin given in exchange for them; that is, to the value of the actual quantity of the coin, multiplied by the number of times it has been exchanged. Each of these masses is equal in value to the other; since, by the supposition, the one has been exchanged for the other.

This equality exists, whatever may be the difference in quantity between these two masses. When the million of coin, circulating three times during the year, has purchased the whole mass of goods which were to be sold, it has given to all its

successive possessors the enjoyment of this mass. When, taking the same course, the two millions of coin have produced the same effects, they have only performed what the single million had performed before; since, by the supposition, the mass of goods has not been increased. In other terms, that is to say, the new mass of coin is swallowed up in the general mass of coin, and as much as it has increased its quantity, so much has it diminished its value.

The addition made to the coin of the community produces a proportional increase in the price of all vendible commodities—in the pecuniary price of all commodities not pecuniary; and consequently, it may be, in the price of every article—it may be, in that of the greater number of articles.

If an addition made to the coin of a community be employed in creating a portion of wealth not pecuniary, which would not have been created without it—if it produced by labour or exchange an increase of real wealth, the result is no longer the same. In proportion as the real wealth is increased, the addition made to the coin ceases to produce a diminution of relative value.

In order to simplify the case, and render it more striking, I have supposed a large and sudden addition. It is very seldom that an addition of this nature takes place with respect to the precious metals; but it has often happened with respect to paper money.

Thus the increase of the price of commodities, all other things remaining the same, is a proof of an addition to the coin, and a measure of its quantity.

This defalcation of value is equivalent to an indirect tax upon pecuniary revenues—a tax which may continually increase in amount—a tax which benefits those who issue the paper money, and of which the weight presses entirely upon the possessors of fixed revenues. There is a compensation for this tax to producers and merchants, who may raise the price of their commodities to all those who have part of this new money; but those whose fortune consists in a pecuniary revenue which cannot be increased, bear all the burthen.*

When this diminution of revenue takes place gradually, although it be an evil, this evil may result from the general prosperity, and may be compensated by a greater benefit. Losses which occur in the ordinary course of affairs, are experienced and hardly felt; they may be provided against. But when the government itself interferes, by operations whose effects are as great as they are sudden, in order to give a sudden increase to the mass of pecuniary capital, whether metallic or otherwise, it confounds all the calculations of prudence; it ruins one part of its subjects, and its imaginary wealth becomes the instrument of its destruction. This is what was experienced in France under the system of Law, and again under the reign of the assignâts.

V. *By means of trade.*

Some advantage results from every exchange, provided it be made intentionally and without fraud: otherwise such exchange would not be made; there would be no reason for making it. Under this point of view, the two contracting parties receive an equal

benefit: each one of them surrenders what suits him less, that he may acquire what suits him more. In each transaction of this kind there are two masses of new enjoyments.

But though all trade be advantageous, a particular branch may be more advantageous to one of the parties than to the other. It is more advantageous to you than it is to me, if for an article which only costs you one day's labour, you obtain from me an article which has cost me two. The *real balance* of trade is the quantity of labour received, exceeding the quantity of labour given in exchange.

It is not necessary in this place to examine to what degree soil, climate, situation, natural circumstances, &c. may give this advantage to one state over another; since this knowledge can have scarcely any influence upon practice. It is of greater importance to observe, that it may in a certain degree be acquired by art, and that the superiority of workmanship or of instruments is a species of monopoly established by fortune in favour of genius. Time is saved by ingenuity. The greater the number of new inventions in a country whose productions are carried into foreign lands, the more favourable will the real balance of commerce be to that country. The advantages belonging to dexterity are more permanent than those resulting from knowledge. The discoveries of chemistry are speedily disseminated: the skill of the Bengalese workmen will remain peculiar to them for ages.

The great politicians who so much value foreign commerce, consider it as a means of obtaining a balance in gold, and they hasten to interfere to prevent those exchanges which require an expenditure of the precious metals. If a merchant wish to send coin from London to Paris, it is to make a payment which will cost him less in this manner than any other, or that he may obtain some kind of merchandise which he values more than the coin. The politician is more clever than this. He is not willing that this gain should be made, because, he thinks, thus to gain would be to lose. Preventing the profits of every one, is the method he has discovered of preventing loss to all. He has therefore been employed in heaping one law upon another, that he may prevent the exportation of the precious metals: success would be a great misfortune, but it has never been obtained. Want of success in diminishing the evil has only increased the folly: I say in diminishing the evil, for it never entirely disappears. There will, for example, always be a greater or less expense on the part of the government in endeavouring to execute the law; more or less vexation, more or less restraint, a larger or smaller number of individuals punished for having rendered service to the country (by the breach of the law.) People will be accustomed to elude the prohibitions, and to escape the vigilance of government. Money being more or less lowered in value, the price of manufactures will be raised in proportion, and the exportation of manufactures diminished. Such has been the folly exhibited in Spain and Portugal; yet are they too happy only to have half succeeded. Grant to Midas his wish, he will die of hunger upon a heap of gold.

In recommending freedom of trade, I suppose the minds of merchants in their sound, that is, their ordinary state. But there have been times when they have acted as though they were delirious: such were the periods of the Mississippi scheme in France, and the South Sea scheme in England. The other classes of people would have had ground

for seeking to divert their fellow-citizens from the purchase of the smoke sold by *Law,* or of the *bubbles* of the South Sea. What is here said, may be compared with the observations in § 8 of the present chapter, upon emigration. In laying down general rules, fortuitous and transient cases ought not to be forgotten.

What has been said respecting the precious metals is true respecting every article of trade and commerce, considered as general wealth. There cannot be any incompatibility between the wealth of each and the wealth of all. But the same rule does not apply to *subsistence* and *defence.* Individuals may find their individual profit, in commercial operations which may be opposed to the subsistence of all, or the defence of all. This particularly may happen to a small community in the neighbourhood of a large one. Establish an unlimited freedom of trade in the small community, the great one may ruin it by means of gold. In case of famine, it might purchase all its provisions; at the approach of war, it might purchase all its arms.

The conduct to be pursued, to insure the possession of the means of subsistence and defence, are infinitely diversified by the situation, the soil, the climate, and the extent of the country to which it may refer.

The great difficulty to be overcome as it respects subsistence, is the difference between good and bad harvests. If the produce be less than the consumption, the evil is evident: if it be greater, the abundance lessens the price, the farmer is ruined or discouraged, and the year of plenty may be followed by one of dearth. For the production of equality, some have established public granaries for storing up the superabundance of years of plenty; others have encouraged cultivation as much as possible, depending upon foreigners for drawing off the excess. Were we to judge from abstract reasoning alone, the first plan would appear best calculated to prevent accidents; but, forming our judgments from facts, the second appears least subject to abuse. It is from the adoption of this plan that England has enjoyed an abundance sufficiently regular. Freedom of trade, therefore, appears the best method for insuring an abundance of the means of subsistence.

In respect to subsistence and defence, there is no better security than that which results from the general prosperity. A superabundance is the best security against want.*

After the examination we have given to the different methods by which real wealth may be increased, we see that government may rely upon the *intelligence* and *inclination* of individuals for putting them in operation, and that nothing is necessary to be done on its part but to leave them in possession of *the power,* to insure to them *the right* of enjoyment, and to hasten the development of general knowledge. All that it can do with success may be ranged under this small number of heads:—

1. To encourage the study of different branches of natural philosophy. The difficulties of science form a barrier between practice and theory, between the artisan and the philosopher.

2. To institute prizes for discoveries and experiments.

3. To cause the processes employed in every branch of trade to be published. The French government, rising above little jealousies, has distinguished itself in this manner, and has rendered itself a benefactor to the human race.

4. To cause everything of the same nature in foreign countries to be observed with attention, and to give the knowledge they obtain the same publicity.

5. To cause the price of different articles of trade to be published. The price of an article is an extra reward for whoever can manufacture or furnish it at a cheaper rate.

6. To grant patents for a limited number of years.

With respect to a great number of inventions in the arts, an exclusive privilege is absolutely necessary, in order that what is sown may be reaped. In new inventions, protection against imitators is not less necessary than in established manufactures protection against thieves. He who has no hope that he shall reap, will not take the trouble to sow. But that which one man has invented, all the world can imitate. Without the assistance of the laws, the inventor would almost always be driven out of the market by his rival, who finding himself, without any expense, in possession of a discovery which has cost the inventor much time and expense, would be able to deprive him of all his *deserved* advantages, by selling at a lower price. An exclusive privilege is of all rewards the best proportioned, the most natural, and the least burthensome. It produces an infinite effect, and it costs nothing. “Grant me fifteen years,” says the inventor, “that I may reap the fruit of my labours; after this term, it shall be enjoyed by all the world.” Does the sovereign say, “No, you shall not have it,” what will happen? It will be enjoyed by no one, neither for fifteen years nor afterwards: everybody will be disappointed—inventors, workmen consumers—everything will be stifled, both benefit and enjoyment.

Exclusive patents in favour of inventions have been long established in England. An abuse, however, has crept into the system of granting them, which tends to destroy the advantage derivable from them. This privilege, which ought to be gratuitous, has afforded an opportunity for plundering inventors, which the duration of the custom has converted into a right. It is a real conspiracy against the increase of national wealth.

We may picture to ourselves a poor and timid inventor, after years consumed in labour and uncertainty, presenting himself at the Patent Office to receive the privilege which he has heard that the law bestows upon him. Immediately the great officers of the crown pounce upon him together, as vultures upon their prey:—a solicitor-general, who levies four guineas upon him; a keeper of the privy seal, four guineas and a half; a keeper of another seal, four guineas; a secretary of state, sixteen guineas; the lord chancellor, who closes the procession, as the first in dignity, so also the first in rapacity,—he cannot take less than twenty-six guineas.* Need it be added, that in carrying on this process of extortion, recourse is had to fraud—that the individual applying for a patent is referred from office, to office, that different pretexts may be afforded for pillage—that not one of these officers, great or small, takes the trouble to

read a single word of the farago of nonsense which they sign, and therefore that the whole parade of consultation is only a farce.†

Suppose a law, granting the patent as at present, without condition;—suppose another law, prohibiting the obtaining of a patent under a penalty of fifty guineas: what exclamations should we not hear against such contradictory laws and such folly! And yet this supposed folly is only half as great as the folly actually displayed. People always allow themselves to be duped by words. The law, or rather the customary abuse which has the force of law, instead of a permission, is, as it respects the greater number of inventors, a real, although masked prohibition. If you wish to strip off this mask, translate the language of each into the language of the other.

These insults and oppressions have sometimes been approved as tending to repress the *temerity* of projectors; in the same manner, taxes upon law proceedings have been applauded as tending to repress the *temerity* of suitors: as if *poverty* were synonymous with *temerity*—as if the rich only had need of the assistance of the laws, or that they only were worthy of it—as if, indeed, this reason for only half opening the doors of the temple of justice were not equally conclusive for closing them altogether!

7. To class with the crime of forgery the injustice done by the artisan who puts upon his own productions the mark of another.—In order to prevent the commission of this crime through ignorance, it would be necessary to establish a register, in which every artisan might make an entry of his mark. This would tend to secure the privilege which nature has established in favour of skill, and which the legislator ought to maintain. It can never be obtained without labour, and it can never be abused.

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CHAPTER IV.

OF POPULATION.

§ 1.

Sponte Acta.

With regard to increase of population by births,‡ everything may be left to the spontaneous action of individuals.

§ 2.

Agenda.

With regard to increase of population, next to nothing is required to be done by government: all that governments need do is to prevent decrease by deperition.

To prevent deperition is to afford security—security against the extremity of all mischief, the destruction of man's life. The sources of danger are—external hostility, internal hostility, and calamity. With regard to the two first, the interference of government is required for the purposes of defence and police. The following are examples of institutions for preventing deperition from calamity:—

1. Hospitals for the use of curable sick and hurt among the poor.

2. Hospitals for the incurable sick and helpless.

3. Establishments for the occasional maintenance and employment of the able-bodied among the poor, viz. of such by whom either the one or the other is unobtainable from the ordinary sources. By their maintenance, population is preserved; by their employment, wealth may be increased or not: crimes of idleness are prevented.

4. Establishments for the prevention or mitigation of contagious diseases—establishments in former times for inoculation, now for vaccination. Much *may* be done on the part of government under this head, as well as so many others, by *instruction:* more or less requires to be done, in proportion as by the ignorance of the people, operations of this class are excluded from the class of *sponte acta,* and thence placed among the *agenda.*

§ 3.

Non-agenda.

Institutions on the part of government, having for their end in view the causation of an increase of population by births, may best be characterized by a parallel example: institutions punishing men for not eating, or for eating food not sufficiently nourishing; institutions paying all mankind for eating, with premiums for those who eat most and oftenest.

Many volumes have been written upon the subject of population, because the means of promoting its increase have generally been the subject of examination. I shall be very short upon this subject, because I shall confine myself to showing that all these means are useless.

If anything could prevent men from marrying, it would be the trouble which is pretended to be taken to induce them to marry. So much uneasiness upon the part of the legislator can only inspire doubts respecting the happiness of this state. Pleasures are made objects of dread when converted into obligations.

Would you encourage population,—render men happy, and trust to nature. But that you may render men happy, do not govern them too much; do not constrain them even in their domestic arrangements, and above all, in that which can please only under the auspices of liberty: in a word, leave them to live as they like, under the single condition of not injuring one another.

Population is in proportion to the means of subsistence and wants. Montesquieu, Condillac, Sir James Stewart, Adam Smith, the economists, have only one opinion upon this subject.* According to this principle, there is also a means of increasing population, but there is only one: it consists in increasing the national wealth, or, to speak more correctly, in allowing it to increase.

Young women, says Montesquieu, *are sufficiently ready to marry.* How should they not be? The pleasures, the avowed sentiments of love, are only permitted in this condition: it is thus only that they are emancipated from a double subjection, and that they are placed at the head of a little empire. *It is the young men,* he adds, *who need to be encouraged.*

But why? Do the motives which lead men to marry want force? It is only by marriage that a man can obtain the favours of the woman who, in his eyes, is worth all others. It is only by marriage that he can live freely and publicly with an honest and respectable woman, and who will live only for him. There is nothing more delightful than the hope of a family, where proofs of the tenderest affections may be given and received—where power blended with kindness may be exercised—where confidence and security are found—where the consolations of old age may be treasured up—where we may behold ourselves replaced by other selves—where we may say, I shall not entirely die. A man wants an associate, a confidant, a counsellor, a steward, a

mistress, a nurse, a companion for all seasons: all these may be found united in a wife. What substitute can be provided?

It is not among the poor that there is any aversion to marriage; that is to say, it is not among the labourers—that class, in the increase of which alone the public is interested—that class which constitutes the strength and creates the wealth of a nation—that class which is the last in the senseless vocabulary of pride, but which the enlightened politician regards as the first.

It is in the country especially that men seek to marry. A bachelor does not there possess the resources he can find in a town. A husbandman, a farmer, require the assistance of a wife, to attend to their concerns at all the hours of the day.

The population of the productive classes is limited only by their real wants; that of the unproductive classes is limited by their conventional wants.

With regard to these, instead of inducing them to marry by invitations, rewards, and menaces, as did Augustus, we ought to be well pleased when they live in celibacy. The increase of the purely consumptive classes is neither an advantage to the state nor to themselves: their welfare is exactly in the inverse ratio of their numbers. If they should insensibly become extinct, as in Holland, where there is scarcely one citizen who does not exercise some occupation, where would be the evil? A workman may in a moment be converted into an idle consumer. A good workman is not so soon made: he needs skill and practice. Habits of industry are slowly acquired, if, indeed, after a certain age they can ever be acquired. On the other hand, when a consumer passes into the class of labourers, it is generally owing to a reverse in fortune, and he is in a state of suffering. When a labourer is transported into the class of consumers, he is exalted in his own eyes and in the eyes of others, and his happiness is increased. On all these accounts, it is desirable that the class of idlers be not increased: their own interest requires it, and it is also a great good when their number is diminished, whether by celibacy or their conversion into labourers.* Convents have been constantly accused of hurting population. Poor convents, and the mendicant orders, injure it, without doubt, since they add to the number of idle consumers. It is not so with rich convents; they add nothing to this number. He who possesses the rent of land can command labour without working himself; but what matters it whether a fund, destined to the support of idlers, be transmitted from father to son, or from stranger to stranger?

Large cities are decried: they are the gulphs, it is said, in which the population of the country is lost. That which is furnished to the towns is visible to all the world: what is received from them, is less apparent. It is the ancient quarrel of the belly and the members. Cultivation increases in proportion to the consumers. People live longer in the country; but that a greater number of persons may be born there, it is necessary that the capital of the towns, which animates labour, should be sent thither.

This imaginary evil, the increase of towns, has excited the most extravagant fears. Absurdity has been carried so far, as to make rules for limiting their bounds: they should rather have been made for extending them. Contagious disorders would thus

have been prevented; the air would have been rendered more salubrious. The opposite regulations do not diminish the number of inhabitants, but oblige them to heap themselves up within close habitations, and to build one city upon another.

Are emigrations disadvantageous to a state? Yes, if the emigrants could have found employment at home;—no, if they could not. But it is not natural that labourers should exile themselves, if they could live at home. However, if they desire so to do, ought they to be prevented? Cases must be distinguished. It is possible that this desire may have been produced by some momentary distaste, by some false idea, some whim, which may mislead a multitude of men before they have leisure to undeceive themselves. I will not therefore affirm, that circumstances may not happen in which emigration may not be forbidden by a law of short duration: but to convert this prohibition into a perpetual law, is to change the country into a prison—is to publish, in the name even of the government itself, that it is not good to live there. It would be proper that such a law should commence thus—"We, &c., ignorant of the art of rendering our subjects happy, and well assured that, if we give them an opportunity to escape, they will go in search of countries less oppressed, hereby prohibit," &c.

Would not this be to aggravate the evil? Could all the frontiers of a great country be guarded? Louis XIV. with all his authority, could he accomplish it? As many persons as were thus enchained, so many discontented and unhappy persons, who would be looked upon with distrust—whom it would be necessary perhaps to repress by violence, and who would become enemies when they found themselves treated as such. Others, who had never thought of quitting their country, would become uneasy when they found themselves obliged to remain; whilst others, who might have thought of establishing themselves there, would take care not to do it. For those individuals retained against their will, you lose those who would have come among you voluntarily.

England has sustained temporary losses of men and capital, by emigrations to America. But what has happened? She has received from that country, a mass of productions which have more than compensated the loss. The men and capitals carried away, employed upon new lands, have produced a benefit more considerable for England itself, than if they had been employed upon her own. To exhibit this clearly, would require a multitude of facts and calculations; but it may be presumed to be the case, from the vast extent of this new commerce.

On the subject of emigration, the wisest part, then, is to do nothing. Under the guidance of liberty, the benefit is certain; under the guidance of constraint, it is uncertain.

After this, the advantages of immigration are easily estimated. In order to people a country as yet untilled, it will be advisable to invite thither strangers who depend upon their labour alone. It may even be advantageous to make them advances for their support, in order to establish them.

In respect to methods of preventing the destruction of the species, they belong to that branch of police which is employed about the means of subsistence and the public

health. We may be tranquil, therefore, upon the subject of population. There will be everywhere an abundance of men, provided they are not deprived, by a hard and tyrannical government, of what is necessary for subsistence and enjoyment, of which contentment constitutes a part.*

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CHAPTER V.

OF FINANCE.

§ 1.

General Observations.

Under the head of *sponte acta,* there is nothing except by accident: there remain, therefore, *agenda* and *non-agenda.* Finance operates *in toto* in diminution of wealth: the object or end in view, should be to render the diminution as small as possible, and as pure as possible from collateral vexation and inconvenience in every shape.

The operations of finance are reducible to receipt and disbursement, or say expenditure.

Receipt may be—1. Without condition of return; 2. On condition of return; *i. e.* on the footing of a loan.

Disbursement is accordingly—1. Disbursement at large; 2. Disbursement in discharge of loans. Expenditure supposes; in all cases, previous receipt; and in cases of loans, necessitates future receipt for the purpose of replacing the money borrowed.

Receipt and expenditure are either—1. Of money; 2. Of particular articles for service.

Every sum expended supposes therefore a correspondent amount already raised, or to be raised, by taxes.

The practical rule which ought to be observed in judging of the expendiency of any branch of expenditure is,—compare the benefit of it with the burthen of a correspondent portion of the produce of the most burthensome tax. By striking off so much expenditure, you may save so much tax.

Taxes take from present enjoyment: they diminish comfort in proportion as they are paid by each contributor out of that portion of his wealth, which, had it not been for the tax, would all of it have been spent within the year in the way of maintenance, as money is spent by a man who is said to spend his income.

Taxes diminish future wealth in proportion as they take from capital; viz. by being taken from that portion of a man’s money, the whole of which, had it not been for the tax, would have been spent on articles by the production of which real capital is increased; or even by being taken from that portion of his money which is expended in the way of maintenance, in so far as the money, had it not been taken from him by the taxes, would have been employed in the shape of pecuniary capital, by which real capital is increased.

Taxes, therefore, take from growing wealth—1. In as far as they are levied on capital; viz. on money destined for employment in the shape of capital, or on goods or labour, of which real capital is composed;—2. In as far as they are levied on income, or expenditure in the way of income, of men who lay up money to be employed as capital, or would have laid it up, had it not been for the tax.

Borrowing money to defray war expenses, takes from pecuniary capital, thence from growing wealth, in the amount of the sum so raised—minus the amount of mercantile profit upon such part of the expense as consists of purchased articles.

Repaying money formerly borrowed for war or other expenses, adds to pecuniary capital—thence to real capital—thence to growing wealth, to the amount of the money so employed in such repayment or discharge; deducting such part, if any, as is exported without return to foreign countries; which is the case with such part as is exported by the proprietor, to be employed abroad by him or on his account without being reimported,—that or the profit made by it.

By the mere discharge of a million worth of debt, as much, or more, is therefore done towards the increase of wealth, as by a million given in the way of bounties for the encouragement of this or that particular branch of trade.

Those who in the one case receive the amount of the debts respectively due to them, give up the future interest, and the rest of the community is exonerated from the payment of it: those who in the other case receive the million on the score of *bounty,* give up nothing in return for it.

When money is to be borrowed, borrowing it, in part at least of foreigners, is attended with two advantages. At the time of *borrowing,* it diminishes the consumption of home capital, the consequent check to production, and the loss to private borrowers as well as to government by the sudden *rise* in the rate of interest. At the time of paying off, it diminishes the loss produced to moneyed men at home, by the sudden pouring in of capital into the market (money which must be laid out in the shape of capital,) and by the sudden *fall* in the rate of interest which is the consequence. By *moneyed men,* understand here—not the opulent only, but *all,* to the very poorest, whose incomes arise out of the interest of money, and that interest reducible.

Some men grieve on this occasion, at the thoughts of the money that goes out of the nation to pay foreigners. A housekeeper might as well grieve at the thoughts of the money that goes out of the house to pay the baker. If to-day the money goes out of the house, it is because the other day the bread came into it. Do without bread, or bilk the baker, the money will be saved.

Taxes are either on property, or on presumption of property. In both cases, they are either on income or on capital.

Taxes on property in the shape of income, are either direct, or on consumption,—called of late years, from the French, indirect taxes.

Taxes on capital diminish present capital, and thence future and growing wealth, by the whole of their amount: taxes on income by the amount of the savings that would have been made out of income, and added to capital, instead of being spent in maintenance, had it not been for the tax.

The fault of direct taxes on presumption of property is inequality—that of direct taxes on property is vexation. Indirect taxes have no fault beyond the mere privation, which must be undergone at any rate: the vexation which in the case of direct taxes on property extends to everybody, is confined in the case of indirect taxes to the fabricators and venders of the article taxed, who make themselves amends for it in the price.

§ 2.

Of Direct And Indirect Taxation.

When a tax is imposed upon any commodity, a proportionable discouragement—intended or not intended—is applied to the corresponding branch of profit-seeking-industry, and thence a proportionable encouragement to the most immediately rival branches. In this way the branch of political economy which belongs to finance is unavoidably, though often perhaps undesignedly, entangled in practice and effect with the other branches.

To an *indirect* tax, each man pays no more than he pleases;* and the *vexation* attendant on the collection of it is confined to the makers and venders of the commodity taxed.

To a *direct* tax, each man pays what the imposer of the tax pleases; and the vexation attendant upon its collection embraces every man who pays it.

Indirect taxation, as far as it will go, is therefore preferable to direct; but the length to which it can be made to go depends, in the instance of each nation, upon its degree of relative opulence.

Of France, England, and Holland, in the scale of absolute wealth, France is at the top, Holland at the bottom. In the scale of relative opulence, France is at the bottom, Holland at the top.*

Comparatively speaking, England, till of late, made little use of direct taxes: France, little use of any other. Her abstinence from indirect taxes has been chiefly the result of necessity,† though in some degree of choice.

A tax on *imports* is borne by our own people—a tax upon exports to foreign countries, is borne by the inhabitants of foreign countries. Whatever imposition of this kind foreigners can be made to bear, is so much gain to *us*. If, indeed, when a fresh tax is imposed upon an article of export, the quantity of it produced is considerably diminished by the tax, a temporary distress is thereby produced; and the suffering may be less or greater than the suffering saved by the saving in the amount of taxes borne

by ourselves. But if the quantity produced be *merely prevented from increasing,* no such suffering is produced, and the benefit by the saving in home-paid taxes is pure. The addition which, had it not been for the tax, would have been made to the quantity of the commodity thus taxed, spreads itself among other commodities of all sorts.

The *direct* effect of the sort of tax called *indirect,* is to make a man pay for the use of the article taxed, and go on using it as before:—an *indirect* effect is—to make him cease to use it, to avoid the paying of the tax. This indirect effect is the same as that of a *prohibitive* law,—prohibiting the use of the article,—viz. under a penalty equal to the amount of the tax. So far as the one effect takes place, the other does not. Commonly they take place together, in proportions infinitely diversifiable.

In the way of prohibition, a tax seldom falls on the article taxed, so exclusively as might be supposed. The prohibition falls—not merely upon the article taxed, but upon whatever article each man can best spare. When a fresh tax is imposed upon wine, a man who, having been used to buy wine and books, is fonder of wine than of books, reduces the quantity, not so much of his wine, as of his books. By a tax upon gin, many a man, instead of being sobered, has been starved.

The *best* sort of indirect tax is that which, by its effect in the character of a prohibition, diminishes the consumption of an article the use of which is pregnant with future misery,—the dregs of the cup of present pleasure. Such, above all, are the *pabula* of drunkenness. The fiscal, is in this case crowned by a moral use.

The *worst* sort of indirect tax is that which, in the character of a prohibition, lessens the use of an article to which a man's attachment is apt not to be so great as it were to be wished it were, considering what is the produce of it in the shape of permanent good, over and above the evanescent pleasure. The fiscal use is in this case clogged with an antimoral tendency. Books, especially of the instructive kind, music, instruments of pastime of all sorts, not to speak of public entertainments—everything—morality is served by everything of this nature that calls a man off from drunkenness.

The mischief done in the way of prohibition by that species of *direct* tax which is imposed upon produce, is frequently but too real, but is apt to be exaggerated. Though my profit would be greater if I had nobody to share it with me, my having somebody to share it with me, does not make me deny myself all profit. Few men are so spiteful as to hate others more than they love themselves:—especially, the government, which is nobody, quarrels with nobody, and protects everybody. A man without a partner has the whole profit to himself;—yet many men submit to saddle themselves with partners. The government which imposes proportional taxes on produce, is a partner who furnishes protection, though nothing else.

I have elsewhere spoken of the *best* of all financial *resources,* and the *worst.*‡ The best (supposing public opinion to admit of it,) as well as the most copious, seems to be that which gives to the public a share in property become vacant by death, on failure of near relations. The formation of counter-expectations being prevented by

pre-established law, receipts from this source need not be attended with that vexatious sense of *privation* which is the inseparable accompaniment of a tax.

The *worst* is that tax called direct or indirect, which, as often as it acts as a *prohibition,* deprives a man of *everything,* by depriving him of *justice*—the tax, I mean, upon *law proceedings,* by which the poor, that is, the bulk of the community—especially the oppressed and afflicted part of it—are put out of the protection of the law.

Abstractedly considered, the tax upon *medicine* might be stated as still worse:—the prohibition in this case bearing more immediately and exclusively, as well as extensively, upon health and life. But the tax is not apt to be so heavy upon medicine as upon *justice.* There are, moreover, hospitals and dispensaries for the relief of the poor who want medicine; but there are none for the relief of poor and helpless suitors who want justice.

Indirect and direct taxation are limited by the patience of the people. The *ne plus ultra* is variable and unascertainable, depending upon events and the temper of the times. Not knowing how soon it may arrive, governments are anxious to pay off debt—because, in proportion as debt is paid off, taxes, by which the interest is paid, may be taken off; and being taken off, may in case of need be laid on again. A tried tax will always be a more secure dependence than an untried one.

In the case of indirect taxes, a common notion considers the *ratio* of the tax to the price of the article as limited to a *maximum;*—limited, viz. by the effect of smuggling. If the ratio be increased, it is supposed that more will be lost by the quantity that escapes the tax, than will be gained by the addition to the amount of the tax on the quantity that pays it. This notion, supposing it just, as applied to the aggregate of taxable articles, will be apt to be illusive, as applied to this or that sort of article, considered by itself. In respect of difficulty of evasion and facility of collection, the scale of variation is stretched to a great latitude by the bulkiness of the article, by the local circumstances of the place at which the tax is collected, and by a variety of circumstances. But other causes of variation, and these very powerful ones, are,—the organization of that part of the financial system which concerns the mode of collection;—and thence the vigilance or remissness—the sufficiency or insufficiency in number, and the probity or improbity of the functionaries employed;—the good or bad contrivance of the taxation laws, in respect of the obligations imposed on the contributors for the prevention of evasion; the amplitude or scantiness, the good or bad choice made,—of the powers given to the collectors for the prevention of evasion;—and the apposite or inapposite construction of the system of judicial *procedure* on this subject, including the rules of *evidence.*

The limits thus set to *indirect* taxation, are set—not by the nature of things, but by the imperfection of the laws. It is to this imperfection that men are indebted for the inequality and vexation attendant on direct taxes, in comparison with indirect ones.

§ 3.

Taxes—Effects On Production.

Taxes ought to have no other end than the production of revenue, with as light a burthen as possible.* When it is attempted to employ them as indirect means of encouragement or discouragement for any particular species of industry, government, as we have already seen, only succeeds in deranging the natural course of trade, and in giving it a less advantageous direction.

The effects of particular taxes may appear very complicated and difficult to trace. By considering the subject in a general point of view, and distinguishing the *permanent* from the *temporary* effects of taxes, this complexity will be disentangled, and the difficulty disappear.

First question: *What are the effects of a tax imposed by a foreign nation upon the articles of our manufacture?*

Permanent consequences:—1. If the exportation be not diminished, the tax makes no difference with respect to us: it is only paid by the consumers in the state which imposes the tax.

2. If the exportation be diminished, the capital which was employed in this branch of manufacture withdraws itself and passes into others.

Temporary consequences:—This diminution of exportation occasions a proportional distress among the individuals interested in this species of industry. The workmen lose their occupations; they are obliged to undertake labours to which they are unaccustomed, and which yield them less. As to the master manufacturer, a part of his fixed capital is rendered useless; he loses his profits in proportion as the manufacture is reduced.

Second question: *What are the effects of a tax imposed by ourselves, upon the manufactures we ourselves consume?*

Permanent consequences:—1. If the consumption be not diminished, no other difference is produced than the disadvantage of the tax to the consumer, and a proportional advantage for the public.

2. If the consumption be diminished, individuals are deprived of that portion of happiness which consisted in the use of this particular article of enjoyment.

3. Capital, in this as in the preceding case, retires from this branch, and passes into others.

Temporary consequences:—If the consumption be not diminished, the tax makes no difference: if it be diminished, similar distress, in proportion, as in the case above.

Third question: *What are the consequences of a tax imposed by ourselves, upon the manufactures of our own country consumed by foreigners?*

Permanent consequences:—1. Whilst the consumption is not diminished, the operation produces so much clear gain for us. The burthen of the tax is borne by the foreigner, and the profit is reaped by ourselves.

If the consumption be diminished, the capital which loses this employment passes into others.

Temporary consequences:—Consumption not diminished, no difference to us: consumption diminished, similar distress in proportion, as in the former cases.

It results from hence, that the *permanent* effects of these taxes are always of little importance as to commerce in general; and that their temporary effects are evil in proportion to the diminution of the consumption. The evil is greater or less, according as it is more or less easy to transfer capital and labour from one branch of industry to another.

The least hurtful of these taxes are those which bear upon our own productions consumed by foreigners. If the same quantity be exported after the tax as before, so far from being prejudicial, it yields us a clear benefit: it is a tribute levied upon them precisely as if it were raised out of the bowels of the earth.

The tax imposed by us upon foreign importations is paid by ourselves, and burthensome as any other tax would be to the same amount. If the consumption be not diminished, it would be better that the tax upon this article should be imposed by us, that we might profit by it, rather than by the country which produced it, and which would then enjoy the benefit.

A nation which has a natural monopoly of an article necessary to foreigners, has a natural means of taxing them for its own profit. Let us take *tin* for an example: England is the only country which has mines of this metal—at least, all others are too inconsiderable to satisfy the demand. England might therefore lay a considerable tax upon the exportation of tin, without danger of smuggling, because it might be levied at the mine, or at the foundry. France could not impose an equal tax, because it would give too great an allurement to the smugglers.

These principles are easy of application to commercial treaties. Everything which is permanent, whether it be called encouragement or discouragement, has but little effect upon trade and commerce in general; since trade and commerce are always governed by the capital which can be employed on them. But international precautions may be taken for the prevention of rapid changes, from which temporary distresses result. Let every nation make a sacrifice by refusing to impose taxes, or to augment them, upon articles of its own exportation: every nation would then receive indemnification by a reciprocal sacrifice. Commerce would thus acquire stability; and that petty fiscal warfare would no longer be carried on, which produces a dangerous irritation among the people, always greatly disproportioned to the importance of the object.

The object of the first chapter of the commercial code ought to be to show the reciprocity of international interests, to prove that there is no impropriety, during the continuance of peace, in favouring the opulence of foreigners—no merit in opposing it.

It may happen to be a misfortune that our neighbour is rich: it is certainly one that he be poor. If he be rich, we may have reason to fear him; if he be poor, he has little or nothing to sell to, or to buy of, us.

But that he should become an object of dread by reason of an increase in riches, it is necessary that this prosperity should be his alone. He will have no advantage, if our wealth has made the same progress as his own, or if this progress has taken place in other nations equally well disposed with ourselves to repress him.

Jealousies against rich nations are only founded upon mistakes and misunderstandings: it is with these nations that the most profitable commerce is carried on; it is from these that the returns are the most abundant, the most rapid, and the most certain.

Great capitals produce the greatest division of labour, the most perfect machines, the most active competition among the merchants, the most extended credits, and consequently the lowest prices. Each nation, in receiving from the richest everything which it furnishes, at the lowest rate and of the best quality, would be able to devote its capital exclusively to the most advantageous branches of industry.

Wherefore do governments give so marked a preference to export trade?

1. It is this branch which exhibits itself with the greatest show and eclat: it is this which is most under the eyes of the governors, and which therefore most strongly excites their attention.

2. This commerce more particularly appears to them as their work: they imagine they are creators; and inaction appears to them a species of impotence.

All these pretensions fall before the principle, that *production is subordinate to capital.* These new branches of trade, these remote establishments, these costly encouragements, produce no new creations; it is only a new employment of a part of one and the same capital which was not idle before. It is a new service, which is performed at the expense of the old. The sap which by this operation is strained through a new branch being diverted from another, gives a different product, but not an increase of produce.

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CHAPTER VI.

OPERATION OF A SINKING FUND ON THE PRODUCTION OF WEALTH.

The establishment of an effective and undivertible sinking fund, has been productive of effects in respect of increase of wealth, such as (to judge from any indications I have met with) had not presented themselves to those by whom the plan was adopted, or by any of those by whom it had been proposed.

Money borrowed for and applied to war expenses, is so much taken from productive capital and growing wealth. Money employed in discharge of such debt (whether by paying it off at *par,* or by buying it in, at an under price,) is so much given to productive capital and growing wealth.

If in a season of reimbursement, viz. peace, the space of time employed in the discharge of the debt were no longer than the space of time employed in the contracting of it, and the money employed in the reimbursement were no greater than the money borrowed, the quantity added to wealth would be equal to the quantity taken from it, bating only the loss of the interest at compound interest upon the several years' instalments during the expenditure of it: as, if ten millions were borrowed every year for four years of war, and ten millions were paid off every year for the four succeeding years, being years of peace, there would be forty millions taken from wealth, forty millions added to wealth: but to put the nation into the same plight in respect of wealth, as if there had been no money raised for the war, it would require the interest of the first years' ten millions for the four years, plus that of the second for the three years, plus that of the third for the two years, plus that of the fourth for one year, supposing the whole debt to be paid off at once on the first day of the year of peace; and as by the supposition it would be paid off not so, but by instalments as above, this would require a further addition on the score of the correspondent retardations.

On this supposition, it is evident that a nation could never be put by reimbursement in a plight exactly as good as what it would have been in had there been no borrowing for unproductive purposes.

But, in point of fact, a circumstance attending the borrowing system is, that the money paid and given to productive capital at the period of reimbursement, is upon the whole considerably greater than the money borrowed and spent, and taken from productive capital at the period of expenditure. When money is borrowed in three per cents. at six per cent., that is, when for every £100 borrowed of the individual, government gives him a nominal capital of £200 stock, each £100 carrying an annuity of three per cent., to discharge this annuity of £6 in the way of paying off (buying in under par being supposed out of the question,) £200 must at the time of reimbursement be put into his hands.

In the course of the late wars, greater interest than this has actually been given by the British government. If, then, the circumstance of time were laid out of the account, the consequence would be, that in so far as mere wealth were concerned, a nation with a fixed sinking fund might be—and, in a word, that Britain would be, a gainer by a war to a very considerable degree. If, for example, in the first year of a war, ten millions were borrowed on these terms, and on the first day of the second year, being a year of peace, the money borrowed were repaid at par, for which, on the above terms, twenty millions would be necessary, the gain to wealth would be ten millions, minus a year's interest upon ten millions.

The above supposition is given only for illustration; for, as everybody knows, neither is money on the first year of a war borrowed on terms of such disadvantage, nor is it so soon repaid.

It may, however, serve to show thus much, viz. that the more disadvantageous the terms are on which money is borrowed, the greater is the restitution made to wealth.

This would not, in my view of the matter, be any recommendation of war, or borrowing for that or other purposes upon disadvantageous terms; because comfort, including security, is the immediate and only direct object in any estimate with me—and wealth only in so far as it contributes to comfort, which, without due provision made for security, it cannot do.

But in a view of the matter, which to me appears much more common than my own, this consideration should be a very important one, and should go a great way towards reconciling men to war and bad bargains.

The answer to it is, that if it be wealth—future wealth, you want, and you are willing to pay the price for it in present comfort, you have no reason to seek for it through any such disadvantageous measure as that of war: raise the money, and instead of spending it in war, spend it in any other way,—you will have still more wealth.

If this be just, it will enable us the more clearly to appreciate two opinions which have been advanced on the subject of national debts.

One is, that a national debt is, to the whole amount of it, or at any rate to a certain part of it, not a defalcation, but an addition to the mass of wealth.

The other is, that admitting the debt to be a defalcation from the mass of national wealth, yet the discharge of it would be, not an addition to that mass, but a defalcation from it.

Both these opinions have had their partisans; for in the whole field of national economy, there is not a proposition, how clear soever, the contrary of which has not had its partisans.

As to the first opinion, one way in which it is maintained is, by looking exclusively to one side of the account—by looking at the income coming in to the annuitants, and

not looking at the income going out of the hands of those by whose contributions the money for the payment of these annuities is supplied.

Another way is, by imagining the existence of a capital equal to the capital borrowed and received by government in exchange for the annuities granted—borrowed, and spent as fast as it is borrowed, not to say faster still. This being a new capital created, goes, according to the reckoning of these politicians, in addition to whatever may have been the amount of the old one.

This notion appears to have had for its ground and efficient cause, the language used by the man of finance and the man of law, in describing transactions of this nature. Can a thing have been created, and yet never have existed? Fiction is the parent of confusion and error in all its shapes. False conception generates false language: false language fixes false conceptions, and renders them prolific and immortal. Such as opinions have been, such is language: such as language is, will opinions be.

Would not the nation be the poorer, if a sponge were passed over the national debt? Would not there be so much property destroyed? Not an atom more than would be produced at the same instant. Would not the nation be less wealthy? No: not, at least at the instant of the change. Would it be less happy? Yes: wretched in the extreme. Soon after, would it be less wealthy? Yes: to a frightful degree, by reason of the shock given to security in respect to property, and the confusion that would ensue. Thirty millions a-year that used to be received by annuitants, no longer received—thirty millions a-year that used to be paid in taxes by all classes, and all individuals together, for the payment of those annuitants, no longer paid. National wealth would no more be diminished by the sponge, than it is when a handkerchief is transferred from the pocket of a passenger to the pocket of a thief. Sum for sum, however, the enjoyment produced by gain is not equal to the suffering produced by loss. In this difference, traced through all its consequences, lies the mischief, and the sole mischief, of bankruptcy or of theft.

Annuities paid by government are paid with a degree of regularity (not to speak of certainty) which would in vain be looked for to any extent in annuities paid out of particular funds by individual hands. In the loss of this species and degree of convenience, consists the whole of the loss that would be incurred by the complete discharge of the national debt. This convenience is certainly worth something in the scale of wealth; but it can scarcely be considered as any real tangible addition to the mass of those tangible things, of the mass of which the matter of wealth is composed. There is also inconvenience attending the payment of taxes—(those taxes by the produce of which the matter of these annuities is supplied)—an inconvenience superadded to that which consists merely in the privation attendant on the parting with the money paid in taxes.

On this convenience attending the receipt of the annuity, is grounded another convenience in respect of the facility attending the purchase and the sale of it—attending the process of converting capital into income, and reconverting income into capital, when capital happens again to be the thing wanted.

As to the ground of the other opinion—it appears to be, that if the money taken in taxes, to be applied in discharge of the debt, had not been so taken, but had been left in the pockets of those to whom it belonged, it would have been spent by them, each in his own way, and by that expenditure an addition would have been made to the mass of national wealth—but not so if applied in discharge of debt. But the fact is, that whatever is so applied is given, received, and employed;—the whole of it in the shape of capital;—whereas, had it been left with the parties by whom it is paid in taxes, it would have been employed, more or less of it, as income is employed, when it is said to be spent, without return or hope of return. What the proportion may amount to between the part spent as income, and the part employed as capital, and thereby employed in making a growing addition to the mass of national wealth, will be considered presently. For the present, it is something, not to say sufficient, that in the one case it is only a part that is employed in making an addition to the mass of wealth, and in the other case the whole.

The support given to this opinion is given in two ways. One is, by thinking nothing of what becomes of the money taken in taxes, and made over to the annuitants in discharge *pro tanto* of the national debt, but considering it as annihilated or thrown away.

The other is, by considering the labour paid for by the money when spent by the proprietor, instead of being taken from him in taxes, as being employed, all of it, in the shape of pecuniary capital, in making a correspondent addition to real capital—just as would have really been the case with the labour paid for by that money, had it been been made over to annuitants in discharge of so much debt.

That a part of it would really have been so employed, does not admit of doubt:—the error consists in considering what is true only of this part, as if it were true of the whole. Let us observe the difference between this part and the whole.

Admitting an increase of wealth, and that a gradual and regular one, the productive capital of the country, taken together with the growing mass of consumed and reproduced wealth continually produced by it, must be considered as increasing at compound interest. The rate of interest can scarcely be taken as so high as 2 per cent.; for at 2 per cent. compound upon the capital, whatever it may amount to in any year, the quantity of it would be rather more than doubled in thirty-five and a half years. The most sanguine estimator will not, I imagine, regard the increase of national wealth to have been, even for the last thirty-five years, increasing at nearly so rapid a rate. If the quantity and value of productive capital have gone on increasing at this rate, the quantity of growing income must have gone on increasing at the same rate; since it is only from the income of that or the preceding year, that the addition made to the capital of any year can be made. If the quantity of growing income have gone on increasing at this rate, the mass of population must have gone on increasing at the same rate, save and except in so far as an increase has taken place in the degree of relative opulence, *i. e.* so far as an average individual of the posterior period has been richer than an average individual at an anterior period—so far as wealth has gone on increasing faster than population. That wealth has gone on increasing faster than population, is what I should expect to find to be the case; but that the increase should

be anything like as much as double, *i. e.* half as much again, seems too much to believe. The half, or thereabouts, of the aggregate wealth, will be that which is shared among individuals of the poorest class:—and in the case of that class, the wealth of an average individual appears, within the period in question, to have rather diminished than increased.

I take therefore two per cent. for the rate of accumulation—not as the true rate, but for a rate which, though considerably too high, is near enough to the true rate to answer the purpose of illustration. Taking, then, 20 per cent. as the gross ratio of the real income produced by that real capital, to the real capital by the employment of which it is produced,—this two per cent. would constitute one-tenth part of the gross income:—and the part out of income added to capital every year is one-tenth part of the whole mass, of which the other nine parts are partly consumed for maintenance, partly employed in keeping up the real capital *in statu quo:* that is, in a condition to give birth to the same quantity of real income in each subsequent as in each preceding year.

The whole income, then, of an average individual, may for this purpose be considered as divided into ten parts:—of which nine parts go for present maintenance, added to the expense of providing for reproduction without decrease or increase, and the other tenth to positive increase.

This being the case with the whole income of the average individual, the same division in idea may be made of any part of that income; and, for instance, of that part which he is made to pay in taxes: if he had had none of it to pay in taxes, one-tenth is the part which would have been employed by him in making a net addition to the capital, and thence to the growing wealth of the country, as above.

On this supposition, the addition made to wealth by a million taken from national income by taxes, and employed in the discharge of the national debt, is to the addition that would be made to it by the same million if left in the pockets of those to whom it comes in the shape of income, and left to be employed by them, each in his own way, as ten to one. I say, for illustration, as ten to one; but twenty to one is the proportion I should expect to find come nearest to the truth.

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CHAPTER VII.

NOSCENDA.

*Noscenda:** by this term I understand those matters of fact, forming the subject of the science, termed statistics;—including *data** and *danda,* between which the field of noscenda is divided, in portions which of course would be found different as yet in each community, and in each portion of time.

Statistical matter being food for curiosity, many derive amusement from the perusal of it—some, consequently, a profit from the furnishing of it. On this account, so far as depends upon *inclination,* the operation of furnishing it belongs constantly, and, so far as depends upon *knowledge* and *power,* occasionally, to the head of *sponte acta:—agendum,* therefore, on the part of government, the completion of the requisite stock of *knowledge* and *power,* by furnishing the data to individuals, or even collecting them itself, whensoever that operation can be performed without preponderant vexation and expense. In every walk of life, public and private,—public more especially,—publicity—publicity—is the best guardian of virtue.

The collection and publication of statistical facts being attended with *expense,* no institution should be set on foot for the furnishing any such articles, without a previous indication of the benefit derivable from such knowledge, and a conviction that it will pay for the expense. The expense necessary for one purpose, may however be sufficient for the accomplishment of many purposes.

The following are among the subjects on which the aid of government appears desirable in collecting the facts:—

I. Forensic steps, documents and costs, *i. e.* the steps taken—the documents exhibited, in each cause, with the expenses regularly attendant upon each.

Uses to the administrator, the judge:—1. Showing the ground afforded for each successive step and document by the several preceding ones; 2. Costs to be stated,—that in each instance, so far as justice requires, and ability extends, the burthen may be thrown upon the party in the wrong.

Uses to the legislator:—1. By the operation of publicity, check upon injustice, as well collateral as direct, on the part of the judge;—2. In the way of instruction,—view of the price paid for direct justice, in the shape of *collateral,* and in some degree *unavoidable injustice;* viz. in the triple shape of vexation pecuniary expense, and delay,—paid in each case individually, and thence in each class of causes collectively,—the causes being for this purpose divided into classes;—3. Ultimate use to the legislator—and the public, *reducing* continually, and finally keeping to its minimum, by successive improvements, the quantity of injustice in both shapes, collateral as well as direct.†

The expense of registration will be amply paid for, by the first of the uses to the legislator, added to the two uses to the judge. The expense of *publication* might be much reduced, as well as the utility in the way of instruction increased, by throwing the matter into a *tabular form,* abridged in bulk, and digested under heads.

II. Births, marriages, and deaths.‡

Use to the judge:—Use of the several documents in the character of *evidences* constituting the basis of the most important, because most extensive, class of rights and obligations—rights of property derived from succession—rights and obligations of various sorts derived from condition in life.

Use to the legislator:—Indications of the state of population,—increasing, stationary, or declining;—thence, in case of check or decline, general or local, indication of the extent of the causes and the remedies; indications of the amount of profit and loss by war,—loss real in every case—net profit, seldom more than ideal (wealth taken into the account,) from the most successful war.

In every line of management, private or public, a necessary guardian to good economy is good book-keeping.

Mode of publication abridged, digested, and tabular, as above.

To the ecclesiastical function, wherever established, the business of registering and transmitting *noscenda* of this class (not to speak of others) seems a natural appendage. How can the shepherd feed his flock, if he know them not?—how know them, if he cannot number them?

III. Contracts of all sorts; viz. such as by their importance are worth registering. Mode of registration, in some cases, transcription;—in others, abbreviation—in others, simple mention of existence.

Use to the administrator, the judge:—Uses of these documents in the character of evidences, as above.

Uses to another sort of administrator—the collector of the revenue—in the case where documents of this sort have been taken for the subject of taxation:—1. Check to fraud on the part of the intended contributor; 2. Check to pecculation and negligence on the part of the *sub-collectors.*

Uses to individuals at large:—1. Prevention of fraud by forgery—whether in the way of fabrication or alteration; 2. In the case of contracts of conveyance, viz. of specific articles of immoveable property *inter vivos,* prevention of fraud, viz. of fraud commissible by the repeated sale of the same article to different purchasers.

Uses to the legislator:—Various, according to the nature of the contract. Examples:—1. For the purpose of finance, see above, uses to the collector of the revenue;—2. In the case of contracts circulating as money, and constituting a species of paper money,—view of the quantity of it, in comparison with the quantity of

metallic money; thence of its influence on the aggregate prices of goods, and on public, or say rather general, credit; *i. e.* view of the actual depreciation of money, and the danger of general bankruptcy;—3. View of the state of the nation in respect of improvement—progressive, stationary, or declining—in the several lines of action which constitute the subject of the several classes of contracts, and the number of contracts of each sort entered into within a given period of time, compared with the several preceding periods of the same length.

Mode of publication,—abridged, digested, and tabular, as above. In the case of such contracts as are considered as proper to be kept *secret,* the publication may extend to all points but the particular ones in respect of which the secrecy is required; and aggregate quantities may be given at any rate.

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OBSERVATIONS ON THE RESTRICTIVE AND PROHIBITORY COMMERCIAL SYSTEM;

ESPECIALLY WITH A REFERENCE TO THE DECREE OF THE SPANISH CORTES OF JULY 1820.

"*Leave us alone.*"

FROM THE MSS. of JEREMY BENTHAM. EDITED BY JOHN BOWRING.

(originally printed in 1821.)

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PREFACE.

Correct views of the changes which it is desirable to introduce into our present plan of commercial policy, do not appear to the writer to have been in all respects well condensed, or satisfactorily developed; and he was not a little gratified, when the ill-judged decree of the Spanish Cortes, dated in July last, induced his venerable friend Mr. Bentham, whose profound and discerning mind had been for some time directed to the interesting events of the Peninsula, to record his opinions of that baneful anti-commercial system which has too long blinded the eyes and contracted the habits and feelings of so large a portion of society.

It will not be the least, though it has been one of the latest, practical lessons which has been taught us,—and taught us, too, by that best of instructors, suffering experience,—that no system of commercial policy can be ultimately beneficial, which is reared upon the selfish principle alone. To sacrifice the interests of the dependent many to the ambition or the avarice of the privileged few—to build a theory of successful scheming on the mere usurpations of fraud or violence—to make the pursuits and the profits of commerce depend on the intolerant dictation of military or of naval power, without any reference to the wants or wishes or interests of those concerned,—would seem, if now for the first time projected, as idle in the conception, as impracticable in the execution. Yet such a system has been but too long in vogue. Flattering to our but too prevalent feeling of national pride, this system (in defiance of the benign counsel of the moralist) has made us deem it excellent, because we have the strength of a giant, "to use it like a giant." Almost necessary, perhaps, to a constantly drained treasury, it has ever refused to sacrifice a penny in possession to obtain a pound in reversion. It has retained the salt-duties, by which *millions* are *lost,* because through them *thousands* are *gained;*[*] it has, for the miserable produce of a tax on wool (miserable even in calculation, and how much more so in the result!) driven us from some of the most important sources of commercial profit, and abandoned large classes of industrious hands to hopelessness and the poor-laws. We have too long and lamentably been pursuing our path of error. Retract, return we must, sooner or later; and to-morrow we shall retract with a worse grace, and with a greater bulk of suffering, than to-day.

Spain is a country which possesses immense mines of agricultural wealth, and offers in consequence the strongest motives for the direction of her capital to agricultural improvement; since it might be so employed in the perfect security of a profitable and a prompt return: while, on the other hand, this new commercial system will as certainly prove calamitous as a better system might be beneficial. To Spain, it must be confessed, having little of that fictitious influence which has too often succeeded in *compelling* nations to unwarrantable self-sacrifices, that system will be more fatal than it has been to England. But the system is radically bad: it is bad everywhere. It is a poison that may act differently upon different subjects: its progress may be concealed, may be delayed; it is poison still,—and it is deadly.

The writer had originally intended the reorganization of the following pages, by keeping the case of Spain entirely out of view: but he found every attempt to increase, by any arrangement of his own, the effect he seeks to produce, frustrated by the constantly recurring conviction, that that effect would be most assuredly produced by allowing the Spanish decree still to occupy a prominent place. That decree is a fair specimen of the anti-commercial spirit. It does not go quite so far as some of our *sweeping* prohibitions—prohibitions made in all the wantonness of uncalculating arrogance: but it goes far enough for our arguments; and for anything beyond it, fewer arguments would of course suffice.

The writer cannot, however, in this place forbear expressing his astonishment at the reproaches and indignation with which, he is given to understand, the decree of the Cortes, which prohibits so many British manufactures, has been received in different parts of this country. Spain will punish herself—is punishing herself but too severely—by her erroneous policy; and interested as is the writer in the well-being of that country—the witness as he has been of so much of her suffering, and so much of her glory—bound by strong ties of personal affection to many of the illustrious actors in the late momentous and exhilarating changes,—he feels, and powerfully feels, disappointment and regret that her legislators should have committed an error so fatal: but he may be allowed to ask, on what plea of honesty or consistency can England object, who so inexorably shuts her ports to the manufactured produce of foreign hands? aye, even of those of her own subjects—of her own colonies! Is it for us, forsooth, to complain that high duties or severe interdictions prohibit the circulation of our fabrics, while the cheap linens of Russia, the fine ones of Germany, the cambrics of France, the carpets of Turkey, the cottons of India, and the silks of China, implore an admission to our markets, with all the claims of superior cheapness and superior excellence, and are met with a stern unyielding No?* We imagine—complacent souls!—that other countries will give a welcome to the works of our looms, because we offer them so honest an equivalent—the prohibition of everything produced by theirs. Their wool and their fruit, their oil and wine, their drugs and dyewoods, we will receive from them in our abundant generosity, as we are not able to produce them. But what right have we to complain, if they copy the example we have given them, and sullenly turn our manufactures away? They show how they value, and how well they can apply, the good lessons we have given them. We would persuade them, perhaps, that it is for their interest to take our goods: they are cheaper, better—nothing more reasonable. But, in common justice, if they have a word to say to us on that score in favour of their own, let us, pray let us listen to them. Shall our answer be—No, never?

It would tend greatly to facilitate the fair consideration of this most important question, if, in reckoning up the sources of national wealth, we were more accustomed to generalize, and less prone to draw a broad line of demarcation between commercial and agricultural interest. The prosperity of a nation is to be judged of from its aggregate productions; and in our general relations, if the commercial and the agricultural representatives of wealth be as two to two, and if by any changes they should fluctuate in the proportions of three and one on either side, the sum total of benefit remains the same. Such great fluctuations are no doubt calamitous in their progress, and can only take place where an excessive momentum is given by the

application or removal of restrictive or impelling measures, from that ever-eager disposition to patch up temporary evils by permanent legislatorial enactments: but the habit of looking at different sources of riches and strength with an exclusive and narrow vision, has impelled men to the most fatal conclusions, and led in a thousand instances to the most mischievous of all attempts; to apply apparent remedies to the necessities of separate interests, without any reference to their connexion with or proportion to the common, the universal interest.

Satisfactory it is, however, to observe the rapid progress which sound notions of commercial policy have made in the world; and it is peculiarly satisfactory to notice their prevalence in those high quarters from whence (if at all) relief must ultimately come. The generally correct views which have been developed in the recorded opinions of the President of the Board of Trade; the acknowledgment from the lips of Ministers, that many and grievous evils have resulted from the present system; the reports of the Select Committee of the House of Commons; the representations of the merchants of the metropolis, which have been re-echoed by the intelligent merchants of the outports, and which have found a concordant voice even on the other side of the Atlantic; everything gives room to hope that most important changes must soon and certainly be introduced.

It has generally been the fate of those who have pointed out the errors, defects, and dangers, of any long-established institutions, to be met with the taunting defiance—"Give us something better;" and though there has been generally more art than honesty in such an evasion, it has too often produced the intended effect, by turning men away from the honest effort at melioration which would be necessarily called into action by a conviction of the mistakes of the existing system. On this question, however, that which nations have most earnestly to entreat from governments is, that the latter would cease to honour them with any officious interference: "Their tender mercies," however well intended, "are cruel." The best boon they can give is to let the stream of commerce flow as it will: its tide is strong enough to bear away all impediments; and governments are but too much the victims of self-deception, when they imagine that their decrees of prohibition or of encouragement do really produce the effects they contemplate. Those decrees are erected against and opposed to the natural tendency of things, and are in the end as absurd and as ineffective as it would be to direct the winds by an order in council, or to manage the tides by act of parliament. The evils of such interference are produced, uncontroulably produced,—they attach necessarily and invariably to it; but the good intended is not of such a character that it can be condensed into a cornucopia, whose tangible riches are to be distributed or withheld at the caprice of those who fancy themselves privileged to grant or to deny them.

In making these observations, let it not be imagined that the writer deems it practicable or desirable, by any one measure, violently and suddenly to shake and overthrow the now established commercial fabric. He would have the great principle of the freedom of commerce recognised by some public act, and by degrees, but as soon as may be, everything brought into that great principle. In many branches of commerce, the transit would be easy: with these we might begin, and step by step trace back the mistaken road.

And finally, let it not be forgotten, as a motive for reverting to a better system, that England no longer possesses the physical power of enforcing submission to her desires, when those decrees are friendly to nations whose local circumstances formerly made them so much dependent on the protection or forbearance of our government. Our ships cannot now blockade their ports, nor assume the exclusive right of conveying to them the foreign commodities they need. They are no longer compelled to receive their supplies from our warehouses; nor is that state of things likely to return. Franklin spoke like a practical philosopher, when he said that the best plan of policy would be to make England one free port. With her immense resources, of mind, of wealth, of industry—with everything, indeed, which can contribute to her commercial superiority—could she be spared the interference of those who, intending perhaps to protect, manage constantly to wound and injure her, what might she not become?

Of the following tract, everything that is emphatic in its style, or irresistible in its reasonings, belongs to its distinguished author. He has seized on, and applied with singular felicity and energy, all the great bearings of this interesting and important subject; and the writer has only ventured to blend with the original matter a few practical and local observations which have come under his personal cognizance.

OBSERVATIONS, &C.

SECTION I.

NATURE OF THE PROHIBITORY SYSTEM.

Just as the period was expiring, beyond which, according to the Spanish constitution, the Cortes had no power to continue their sittings—at a moment when affairs the most urgent, and interests the most important, necessarily distracted and divided their attention—the outline of a law was precipitated through its several stages, prohibiting manufactured woollens, cottons, linens, and silks, and attaching heavy duties to the introduction of many other manufactured articles.* So hurried was this measure, that its details were obliged to be referred to the finance minister; and so unexpected, that all the correspondence which communicated to this country the first news of the decree, breathed nothing but surprise or disappointment, regret or anger. Yet there can be no doubt the real, as the averred object was, to give encouragement and increase to the manufacturing branch of national industry, by compelling the employment of home productions, in lieu of those which Spain had been accustomed to receive from other manufacturing countries. It was certainly not *intended* to do mischief to those countries, either by interfering with their trade, by lessening their wealth, or by exciting their feelings of hostility. It was, indeed, neither more nor less than an application of the system of factitious encouragement of the domestic production in the indirect mode; that is, by discouragement applied to the same articles when produced by foreign countries.

The expediency of such a measure may be conveniently considered in two points of view:—the general, in its application to all countries; the particular, as especially affecting Spain.

It may be laid down as a universal maxim, that the system of commercial restriction is always either useless or mischievous; or rather mischievous in every case, in a less degree, or in a greater degree. In the judgment of the purchaser, or the consumer, the goods discouraged must be either better than those which are protected, or not: if not better (of course better for a fixed equivalent,) they will not be bought, even though no prohibition exist: here then is usefulness, or mischief in the lesser degree. But the case, and the only probable case, in which the fictitious encouragement will be applied, is that where the goods excluded are better, or in other words cheaper, than those sought to be protected: here is unqualified mischief, mischief in the greater degree.

It may be desirable here to explain that the word *better,* when used, means better at the same price—*i. e.* cheaper. Price is, in truth, a more convenient standard, because an unfluctuating and determinate standard; quality not. Better, means, then, that in the opinions of the purchasers or the consumers, the article is more advantageous, or more agreeable; and it is better in the proportion in which it is more advantageous or agreeable.

This premised, we proceed more satisfactorily to consider the results of a prohibitory law of this sort in all the points of view of which it is susceptible.

When, in the view of favouring home commodities, a prohibition inhibiting the introduction of foreign rival commodities is obtained, that prohibition is either obeyed or disobeyed: obeyed, if the home article be purchased instead of the foreign one, or if neither the one nor the other be purchased; disobeyed, if instead of the home article, the foreign one be purchased. In the case of such prohibition, obedience takes place in some instances; disobedience in other instances.

Case I. The prohibition obeyed, and the purpose answered, by the purchase and use of the home article instead of the rival foreign article.—The price paid for the home article is greater than would have been paid for the rival foreign article, had the prohibition not existed; if not, the prohibition would be without an object. What, then, is the result to the consumer? The difference between the one price and the other; the injury or loss which he sustains, is equivalent to the imposition of a tax of the same amount.

But the pocket into which the produce of this sort of tax goes, whose is it? that of the public? No! but that of the individual producer of the article thus taxed. To the people at large, without diminishing the amount of other taxes, the effect is no other—the benefit no greater, than that of a tax to the same amount would be, if, instead of being conveyed into the national treasury, it were pocketed by the individual collectors.

If, instead of the prohibition in question, a tax to the same amount had been imposed on the rival foreign article, the produce, instead of being thus given to the collectors,

would have been conveyed into the public purse, and by the whole amount have operated as a saving to the people, in diminution of the contribution that would otherwise have been exacted through other channels. Not to the whole amount, it may be said; for in case of the tax, the expense of collection would have been to be deducted. Yes, to the whole amount; for the expense of enforcing the prohibition would assuredly be as much as, probably more than, the expense of collecting the tax.

Case II. The prohibition obeyed; the rival foreign article not purchased, but the home article not purchased.—Here, though the law is obeyed, the purpose of it is not answered.

This will be the effect, insomuch as the advance of price caused by the prohibition deprives the consumer of the power of purchasing it: the home article too bad in quality; the foreign too dear, from the excess of price produced by the risk of evading the prohibition. The home article is then neglected, in consequence of the disgust produced by its comparative bad quality—the foreign is not purchased, on account of its dearness; which dearness is the result of the prohibiting law.

In this case, though no loss in a *pecuniary* form is produced to those who, antecedently to the prohibition, were accustomed to purchase and to enjoy the article in question—though no loss in a tangible and measurable form is suffered,—yet in the form of comfort—in the form of that wonted enjoyment on which the article depends for the whole of its value, the loss is not less real, and the loss is incalculable.

True it is, that whatsoever the consumers in question would have expended, but for the prohibition, on the articles in question, is left in their hands unexpended, to be employed in other articles; and therefore the loss is not total. True; but there is a loss: a loss is implied in their being compelled to purchase articles which they would not otherwise have chosen. The amount of loss is not within the reach of calculation; but where it is possible to erect a comparative standard of price or quality between the goods which would be purchased but for the prohibition, and those which are purchased on account of the prohibition, the loss presents itself in a tangible and measurable shape.

Case III. The prohibition disobeyed: the purpose not answered; the home article not purchased for consumption; the rival and foreign article purchased and consumed, notwithstanding the prohibition.—Then not only is the law disobeyed, but its purpose is more manifestly frustrated than in either of the foregoing cases.

Under our present supposition, the price of the foreign article to the purchaser and consumer cannot but be raised above the current price it held before the prohibition; for the prohibition cannot be evaded without extra labour employed, and risk incurred, by those engaged in the conveyance of it from the hands by which it is exported from the foreign country to the hands of the consumer;—and fraudulent labour is of all labour the most costly. Here, too, in respect of the loss and burthen to the consuming purchaser, the difference between the price of the foreign article when allowed, and the foreign article when prohibited, has, by the whole amount of it, the effect—the bad effect—of a tax: and by every increase given to the severity, or in any other way

to the efficiency of the law, a correspondent increase is given to the amount and burthensomeness of this unproductive substitute to a government tax.

And into whose pockets is the produce of this worse than useless, this baneful substitute to a tax, conveyed? Into the pockets of the public? No! Into the pockets of the home-producers, whom, at the expense of all their fellow-countrymen, its endeavours are thus employed to serve? No! but into the pockets of those whose labours are employed, whose lives and liberty hazarded, in effectually causing the prohibitory law to be disobeyed, and the design of it frustrated.

The persons for whom this favour is intended,—what title have they, what title can they ever have, to such a preference—to a benefit to which a correspondent injury, not to say injustice, to others,—an injury, an injustice to such an extent,—is unavoidably linked?

And in point of numbers, what are the favoured when compared with the disfavoured? Answer: The few; the few always served, or meant to be served, at the expense of the many.

This one observation attaches inevitable and unanswerable condemnation to the measure, unless it can be shown that the sum of profit to the few is more than equivalent to the sum of loss to the many.

But in favour of such a supposition no reason whatever presents itself. If any one believes he can discover such a reason—if any one imagines it falls within the possibilities of the case, to him it belongs to produce it.

The loss sustained by those on whom the burthen of the measure most immediately presses—who are, as it were, in actual contact with the measure, is not the only loss. Antecedently to the prohibition, the articles now prohibited were furnished by foreign producers, to whom home articles to an amount regarded as a fair equivalent were supplied in return, and were in fact the means of purchasing. Deprived now of the means of paying for the goods of the country which issues the prohibition, the foreign producer is driven from the market. And here, on the very face of the transaction, is another set of men on whom a burthen is imposed—or, which is the same thing, to whom a profit is denied—equivalent at least to the expected benefit, supposing it received, and at whatever calculation it may be taken.

Here, then, in addition to the injury done to the universal interest, is an injury done to a particular interest, equal to the benefit contemplated to the other particular interest for whom the prohibition was made.

Not so, it may be objected—not so; for what they before purchased with the prohibited goods, they will continue to purchase with other not-prohibited goods, or with money, which is still better.

Vain, however, is this objection. In money perhaps they would have paid for these our goods, rather than have gone for the like to some other country; in money they would have paid for them, could they have got it. But they could not have got it except by

selling their goods. If they have sold their goods and realized their profit, why should they bring the money they have produced to you?

But they will pay in other goods. If we want those goods, and can pay for them, and will allow them to be brought to us, we shall have them in any case, whether the others be prohibited or not: so that the question remains as it was before.

This is the point at which any person who, being determined to justify the prohibitory system at all events, though at the same time conscious of its unjustifiability, would be apt to attempt a diversion by leading the debate into the subject of the balance of trade. But, without going into the details of that controversy, a demonstration of the reality of the loss, founded on universal experience, may satisfy even the *malâ fide* adversary.

After having been accustomed to sell the whole or a part of his produce to this or that particular customer, no man who knows that that customer is prevented from sending the only goods he was used to send in return, but would understand himself, feel himself, to have sustained a loss. A loss he would necessarily sustain, and by the whole value of the goods, supposing him not to find another customer—and if a less advantageous customer than before, the loss, though less in amount, not less real in fact: and if in the case in question it be alleged, that in the room of every person so prevented by the prohibition from giving for the goods the usual equivalent, another customer comes of course—he who makes the allegation that such a second customer comes of course, is bound to produce him—to provide him—for his argument at least.

The general result would be more clearly perceived from an individual case in point:—Spain sells to England wine, wool, oil, fruits, &c.; she takes in return a great variety of manufactured and other articles. On a sudden, a prohibitory degree is passed;—Spain is no longer allowed to buy the foreign manufactured articles. Of the surplus of Spanish produce not sold and consumed at home, a great proportion was bought for England in return for the English articles sent to Spain. Where are the Spaniards now to find customers for that produce? Not from England; for they have deprived England of the means of buying: not from other countries, at least from those to whom the same prohibitions apply.

Add to these necessary ill consequences the probable ill consequences produced by counter restrictions and prohibitions against *your* goods, in countries the introduction of whose goods you restrict or prohibit, and the quantum of loss or suffering will be greatly increased.

Thus, then, must the question be finally put:—The burthen to those who are injured,—what is its amount? The benefit to those who are meant to be favoured,—what is its amount?

Persons, human feelings, pounds, shillings, and pence, in English, in Spanish reals of Vellon—to all these subjects must the arithmetical calculation be applied, before we can come to any just and well-grounded conclusion:—and when there are two parties to the question—two contending parties—the arithmetical operation must be applied

with equal correctness to both sides of the account; otherwise it will be no more an honest account, than if, in a statement of account between A and B, all the items on one side were omitted.

Yet, in the account kept of the pretended or supposed encouragements in question, the unreciprocal operation is the sort of operation that is performed—that has been commonly performed.

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SECTION II.

MISCHIEFS OF THE PROHIBITORY SYSTEM.

The prohibitory measure is introduced, then, into the country in question, in order to compel the sale within itself of its own productions, in opposition to foreign productions, under the notion of their being rival productions. Reader, whoever you may be, to avoid difficulties in the expression, we will call that country *your country*.

Mischief I. Dearer commodities are forced upon your countrymen, instead of cheaper; and all are sufferers by whom the cheaper article was, anterior to the prohibition, bought or consumed: in many cases, the whole population of the country, excepting such as were disabled by poverty from becoming purchasers. The gross sum of injury will be the difference of price between the home-produced and the foreign-prohibited article, calculated on the whole amount of consumption.

The loss in Spain immeasurably great;—probably not less than a fourth on all the manufactures consumed. Amount of imports of manufactured articles is about £500,000 yearly, from England only. (See Table A.)

Mischief II. Mischief, by commodities of inferior quality being forcibly substituted to commodities of superior quality. Sufferers, as before, all those who, antecedently to the prohibition, employed or consumed the good article, and who now are compelled to employ the bad one, or who employ none.—Amount of loss unsusceptible of calculation—incalculable.

In Spain, as before, peculiarly great. With the exception of a few silk manufactures, and some of fine woollens, which have lately been brought to a state of great excellence without the prohibitory system, and which, for their continued improvement and ultimate perfection, require no prohibitory system to protect them—with the exception of a few manufactured articles of silk and wool—the manufactures of Spain are in a state of wretched imperfection. Many excluded fabrics cannot be produced there. Bombazines, for instance, an article of very general consumption—an article so peculiar and beautiful in its perfect form, that it has not yet been manufactured even in France, where the silk-fabrics are in such an advanced state. So, again, the articles produced by the coarse long wool of this country; this wool being peculiar to England. Inferiority applies necessarily more or less to all home-encouraged articles compared with foreign prohibited articles. Manufactures become cheap and good in proportion to the advantages possessed in their creation; and the state of the mechanical arts in Spain being exceedingly backward, the production of articles moderate in price and excellent in quality cannot be contemplated. Another contingent mischief then follows the prohibition—an evil even to the few producers. The strongest motives to emulation being removed, the home-goods will not be improved as they would be when impelled by the rivalry of the superior foreign goods. Permanent inferiority is therefore likely to be entailed on a

nation by the prohibitory system, and misdirection of capital from objects leaving certain and larger profit, to objects promising only uncertain and lesser profit.

Mischief III. Mischief, by the cessation or diminution of the demand for the home-produced commodities; such as before the prohibition were taken by the foreigners in exchange for the commodities now prohibited. Sufferers, those who antecedently to the prohibition were engaged in the production of the commodities so taken in exchange. Amount of this suffering uncertain. It will have place in so far as the prohibition takes effect: so also when it is evaded, for it cannot be evaded without a rise of price proportioned to the risk regarded as attached to the endeavour to evade. Suppose, then, the price to the customer in your country doubled, the quantity of commodities that can be employed in the purchase of your home-produced commodities is reduced one-half.

In Spain, again, this third mischief singularly great. Of some of her exporting produce, the greater part is bought for foreign markets by foreigners. Distress produced by the prohibition proportionably great. In 1819 an instance in point occurred, when in the interior provinces (particularly La Mancha and Castille) great distress was occasioned among the agricultural producers, by the excess of produce remaining unsold on their hands: in some districts the harvest was left to perish on the ground. But this was under the reign of the restrictive system only: how much would the evil have been augmented under the prohibitory system? It appears by Table C, that the amount of produce yearly imported into England from Spain varies between £1,500,000 and £2,000,000 sterling.

Mischief IV. Mischief by the loss of the tax, which antecedently to the prohibition was paid by the commodities now prohibited; *i. e.* of the correspondent supply received from that source by the government for the use of the people. Sufferers, all payers of taxes; *i. e.* all the population. Amount of the suffering, the annual amount of the supply received from this source.

In Spain, again, the mischief eminently great; the duties on imported goods being one of the most important sources—nearly a fourth of the whole revenue. The net amount of custom-house revenue from June 1820 to June 1821, is calculated 80,000,000 reals de Vellon. The expense of collecting the custom-house revenne is nearly 25 per cent.; its gross amount is about 100,000,000 reals, or one million sterling.*

Mischief V. Increase given to the number of smugglers, in consequence of the prohibition, and the increase of price which the persons habituated to consume or otherwise use the now prohibited commodities, will determine to give, rather than forego the use of them.

This mischief is of a very complicated nature, and branches out into a variety of evil consequences pernicious to the moral feeling—pernicious to pecuniary interests.

Of the government functionaries, whose labour, previously to the prohibition, was employed in the collection of the tax paid on the introduction of the commodities in question, the labour will now be employed in securing the exclusion of them from the

hands of the intruded purchasers—or in depriving such purchasers of them, should they have reached their hands.

Suppose them to be thus seized, what is to become of them? Are they to be destroyed? Here is dead and absolute loss to everybody. Are they to be sold for government account? The benefit intended for the home producers of the rival commodity is prevented from coming into their hands. If sold with permission to be employed at home (as has been usually the case in Spain,) then is suffering created to the amount of their value to the holder, and not an atom of benefit obtained for the home producer. If sold with an obligation to export (as is the practice in England,) the loss is diminished, but not less certain:—loss of the extra value given by the labour of smuggling—loss consequent on non-adaptation to other markets—and other contingent loss, unsusceptible of calculation. At all events, all loss attaches to your own people. The commodities having passed from the hands of the foreigner whose profits have been secured, into yours,—with you the risk of the adventure now lies.

Of a part of the people, whose labour antecedently to the prohibition may have been, and, until reason appear to the contrary, ought to be presumed to have been, employed in some profit-seeking and productive operation, that labour is now, under the temptation afforded by the expected increase of price obtainable for the prohibited commodities, employed in the endeavour to introduce them and convey them to the hands of the venders, in spite of the counter-exertions of the functionaries of government;—there too is the additional loss of the amount of that labour.

We have thus, under the prohibitory decree, two contending bodies, not to say armies, engaged in constant conflict;—the customhouse officers, having for the object of their exertions to give effect to the decree, and to prevent the introduction of the prohibited articles,—and the smugglers, having for their object to evade the decree, by promoting and effecting the introduction of those articles. The government functionaries are paid voluntarily by the government rulers, out of the contributions paid involuntarily by the people: the smugglers are paid voluntarily by the people.

In the course of this conflict, lives will be lost, and other bodily harm will be sustained on both sides. Destruction of property will also have place; particularly of such articles as are the subject of the contest thus set on foot.

Nor can the calculations under this head of mischief be closed, without reverting to another mischief procured by the giving execution—the enforcing submission to the prohibition-ordinance, as against those by whom that ordinance is disregarded;—*i. e.* by the execution of the law against, or upon, such delinquents.

Under this head must be considered two perfectly distinguishable masses of evil:—1. The evil of *expense,* attached to the officer created and paid, and to the other arrangements of all sorts, having for their objects the punishment of offenders, the prevention of the offence; 2. Evil of punishment, composed of the suffering of those in whom, whether justly or unjustly, under the supposition of delinquency on their parts, the punishment is caused to be inflicted.

And when—(it is a supposition due to all who have in any instance benefited by the lessons of experience, and from whom we have reason to hope that there will be no obstinate persisting in a system fraught with evil)—when erroneous views shall be succeeded by correct ones, and these prohibitory decrees be repealed accordingly,—these smugglers, what becomes of them? A return to honest labour is neither so agreeable nor so easy as, but for the improvident law, continuance in it would have been. Some by choice, some by necessity, the smugglers are transformed into free-booters. Corruption is thus spread over the morals of the people, and those who should have been the guardians are the corruptors.

Universally applicable as are the objections ranged under this head, to Spain they apply with a cogency little imagined by those who are unacquainted with the localities of the peninsula, and the long-established habits of its people. The immense extent of coast, the badness of the cross roads, the mountainous character of the country, are likely to be permanent auxiliaries to those immense bodies of organized smugglers, who from time immemorial have carried on a large proportion of the commerce of Spain. The adventurous and danger-defying character of the Spanish mountaineer, seems to have peculiarly fitted him for enterprises of this sort. Little reproach attaches to the profession of the smuggler; and the frequent representation of his bold feats on the stage, is witnessed generally with great interest, often with admiration, sometimes with envy. The popular song, "*Yo soy un contrabandista,*" which recounts some of his deeds of heroism, has been long a favourite at the court of Madrid, and especially a favourite of the monarch himself.

The impracticability of carrying the prohibitory decrees of Spain into effect, is already pretty generally recognised there. As if nature had provided for its certain evasion, Gibraltar becomes the great depôt for the south, Lisbon and Oporto for the west, and the hundred passages of the Pyrenees will supply the northern and eastern provinces. Every merchant knows, that at the principal commercial ports of Spain a great part of the duties has been habitually evaded, and large portions of goods constantly introduced without the payment of any duty at all. Except on articles of considerable bulk, of peculiarly difficult transport, or of trifling value, the advance of price in consequence of the prohibition has been scarcely perceptible in any of the principal markets of Spain; and the idea is treated with ridicule, that, in case the system of prohibition should be persisted in, the enforcement of it to any considerable extent can be practicable. The amount of restrictive duties, in some cases not very high ones, was always deemed more than a sufficient price for the labour and risk of the smuggler: the harvest will now be extended, and the labourers will be abundant—the profits greater. The disbanded Guerillas will furnish recruits enough for the army of smugglers—recruits, too, who will require but little training. Even in the province (Catalonia) which it is intended particularly to favour by the interdicting system, there is scarcely a village without its *contrabandista*—scarcely a creek which does not daily witness the exploits of its smuggling adventurers—scarcely an animal which has not borne the unlawful merchandise—and scarcely an individual who does not wear part of it.

The frequent and bloody frays between the armed custom-house officers or the military, and the armed and desperate bodies of smugglers, in Spain, are notorious to

every individual who has had the desire and the opportunity to obtain information on the subject. Every year numerous lives are lost; and the sympathy of the public is, where it ought not to be,—with the criminals, and not with the agents of public justice.

As to loss of liberty and comfort, the prisons under the old regime were always full even to overflowing. Of the poor mendicant abandoned children who solicited charity in the streets, the short tale of nine-tenths of them was, "I have no father." "What! is your father dead?" "No: in prison; in prison for life!" "And why?" "*Por el tabaco*"—"For smuggling tobacco,"—was the constant answer.

Mischief VI. National discord: discord between the provinces for which the benefit is designed on the one part; and on the other, the provinces by which, while the burthen is sustained in its full weight, no share in the benefit will be received or can be looked for. Sufferers, the whole people, on the one part and on the other.

This mischief, too, bears most heavily on Spain. In the provinces of no country is the rivalry so strong—it might even be said, the enmity so active—as among the Spanish provinces. Different languages, different habits, different forms of local government, different provincial privileges; here, total exemption from taxation—there, excessive burthen of taxation; in some, feudality—in others, the proudest and most universal individual independence;—everything, in fact, seemed to demand from the Spanish legislator plans for general conciliation,—especially where the Constitution professed to level all the inhabitants of all the provinces to universal equality. But these prohibitions are introduced, it is avowed, solely or mainly for the benefit of Catalonia; a small part of Valencia may be perhaps included. The whole population of the former is 850,000; of the latter, 800,000; that of Spain, 10,500,000. But of the population of the two provinces referred to, a very small proportion is engaged in manufactures: the number engaged in the fabrication of piece goods, which the prohibition is principally meant to encourage, is probably not greater than a hundredth part of the whole population of the peninsula. And even though it be shown—but this cannot be shown—that the interest of every *labouring* manufacturer is encouraged or advanced by the prohibitory laws, we have a fearful account against the legislator;—for every individual's interest protected, the interests of more than a hundred are sacrificed. And this is a government professing to have for its object "to preserve and protect, by wise and just laws, civil liberty, property, and *all* other legitimate rights, of *all* the individuals who compose it."*

Mischief VII. Ill-will produced and directed towards you by foreign rulers and people, from the suffering or loss produced by the prohibition of their commodities, and the consequent deprivation of the sale for them.

The danger may not perhaps be great, that, by a measure which does not appear to have had for its cause any hostile affection, nor anything but a mistaken calculation of self-regarding interest, any affection decidedly unfriendly—any positive act of hostility—should be necessarily produced. Mischiefs short of positive hostility may still, with but too much probability, in every case be apprehended, from wounds inflicted in the course of the contest between self-regard on the one side, and self-

regard on the other—wounds inflicted by the hands of mere self-regard though unattended with ill-will, especially where no reasonable cause for ill-will can be found. But if ill-will be kept off from a sense that no injury was intended, contempt will probably occupy its place in proportion as the impolicy of the system is manifest.

In most cases, however, the prohibitory system produces a retaliatory operation; and the power of retaliation possessed against Spain is unfortunately very great. What if other countries, whose wares are excluded from Spain, load with excessive taxation, or exclude by total prohibition, the surplus of her produce, for which she has no consumption at home? for this plan of retorting injury has been too long current. To Spain it would be a great calamity, whatever the result of the struggle might be, if the question of commercial policy should resolve itself into the question of politically weaker or stronger.

Mischief VIII. Ill-will on the part of your own people, exerted towards the ruling and influential few, by whom the burthens thus imposed have had their existence. Antecedently to the prohibition, in whom, as to the matter in question, did your people in general behold their friends? In the people of that nation, in those people—foreigners as they were and are—by whom, though not without reciprocal and equivalent benefits, such additions were made to their comfort: if not in point of affection their friends, at the least and at the worst their actual benefactors;—whether in intention or not, at any rate in effect.

Subsequently to the prohibitory system, in whom, in consequence of it, will they behold, though not their intended, yet not the less their real adversaries—the authors of their sufferings—of all the sources of suffering above enumerated?—in whom but in their rulers, these—for so it is hoped it may by this time be allowable to call them—these their misguided rulers?

At the same time, still looking at home, in whom will the people behold, in addition to their foreign friends as above, a set of domestic ones? Even in the smugglers—in those men by whose industry and intrepidity they will have been preserved (in so far as they will have been preserved) in the enjoyment of those comforts, of which, had the endeavours of their rulers been effectual, they would have been deprived.

Thus, while on the one side they will be beholding in the character of adversaries and injurers a comparatively small portion of their fellow-subjects in confederacy with their rulers; on the other side they will see in the character of friends a nation of foreigners and a body of malefactors—friends linked to them by community of interest—friends, in whose good offices they behold their only resource against the ill offices done to them by those who should have been their friends.

Upon Spain the eyes of the world have been fixed full of hope: already they begin to turn away, full of disappointment. Not new authorities for error, not fresh instances of the reckless abandonment of the interests of the greater number to the usurpations of the lesser number, did we anticipate from that land of promise. Alas! we have been deceived.

A circumstance from which the evil connected with the encouragement of smugglers is liable to receive peculiar aggravation, is the state of the system of judicial procedures. Decision being always tardy and often unobtainable, and, from the want of publicity on the part of the evidence, the grounds of it never known, and therefore never satisfactory, the connexion between delinquency and punishment is wholly broken. For the benefit of the lawyers, official and professional together, persons suspected of being malefactors—justly and unjustly suspected—are apprehended and mingled together in jail: jails are filled with them; when they can hold no more, they are emptied of necessity. In this state of things, what is done is done not by the hand of justice outstretched from her elevated station to give execution to the law upon offenders; not so much in the way of judicial procedure, by the exercise of authority by superiors over inferiors,—but in the way of warfare between contending armies; one army composed of revenue officers and their privates—the other composed of smugglers and their auxiliaries. If in the course of a battle smugglers are taken prisoners, it is only as prisoners that they suffer,—a sort of prisoners of war; not as malefactors. Infamy-attaching punishment at the bar of public opinion is not their portion; infamy is more generally attached to the function of the revenue officer than to the function of the defrauder of the revenue. In every country, the obtainment of good from the administration of the law depends on the excellence of the law itself. In Spain, nothing can be worse: to Spain, then, the foregoing observations specially apply.

Thus much as to the mischiefs attendant on such a state of things. Is there any percontra good?

The greater and more manifest the sum of mischief produced to all others, the less will be the benefit to those on whom it is sought to confer that benefit: the greater the mischief, the more surely manifest; and the more surely manifest, the greater the security for the removal of the mischief-producing ordinances; which if removed, the benefit for the sake of which the mischief was introduced will be removed with them. Thus on the part of the individuals for whom the favour was intended, prudence will interdict all expensive arrangements for taking the benefit of it: it will interdict the acceptance of a favour—a favour only to be obtained by perilous pecuniary adventure, whose continuance depends solely on the continuance of human blindness; the loss of which will accordingly be an assured consequence following the removal of the film of error.

But as great expectations may be excited by the promise of the exclusive benefits to be given to the home-producer as opposed to the rival-foreigner, it may be found that many will be so misguided as to stake their hopes and fortunes on the expected advantages. What wonder, then, if the influx of competition produce a further diminution of the promised benefit? If the legislating body, who are engaged by such powerful motives to take an accurate view of the situation in which they stand—if the legislating body deceive themselves, and err under the influence of their self-deception, what wonder that others less well-informed—less intellectually distinguished—fall into the same or similar errors?

Before the tribunal of public opinion, the prohibition-system in question having nothing but misrepresentation for its support,—misrepresentation in all imaginable shapes is accordingly sure to be employed.

The sort of misrepresentation most trusted to is that by which the whole question is stated to be altogether and merely a question between natives and foreigners—between national and anti-national interests: the notion sought to be conveyed being, that whatever suffering is produced, it is by foreigners, and only by foreigners, that it is sustained—that whatever benefit is produced, it is byy natives, and by natives alone, that it is reaped and enjoyed. Then comes the interrogation which is meant to impose silence:—Will you sacrifice your own interests to the interests of these foreigners? who therefore are represented to view in as unfavourable a light as can be found for them; and thereupon comes the parade of patriotism displayed, at a cheap rate,—at the expense of only a few pompous words.

But the truth has been already sufficiently unveiled—the truth, of universal application, and in an unanswerable form.

In the case of Spain, the benefit of it has been shown to be little—next to nothing: the mischief great—and greater, much greater, to Spaniards themselves, than to those whom they would call foreigners.

Thus, as towards foreigners in general—towards all the inhabitants of the globe with the few exceptions of those we call our fellow-countrymen, antipathy is excited and propagated; a foolish and degrading antipathy, not less adverse to the dictates of self-regarding prudence, than to those of benevolence and beneficence. And what is the result—the melancholy result? Every effort which a man makes to excite his countrymen to hate foreigners, is an effort made, whether designedly or not, to excite foreigners to hate them: by every attempt in which he thus labours to bring down upon his countrymen the fruits of the enmity of these foreigners, he more effectually and certainly labours to deprive his countrymen of those fruits of good-will which they might otherwise have enjoyed.

The enmity which cannot but be produced on the part of those foreigners, even by the calm pursuit of their own interests—the enmity necessarily produced by the frequent and unavoidable competition of interests—is surely quite enough, without making any new and needless addition; without exerting and letting loose the angry passions in any other direction, and giving to ill-will—already too active and too prevalent—auxiliaries at once so unnecessary and so dangerous.

When, for the purpose of encouraging home-industry, a prohibition is imposed on the produce of foreign industry when directed to the same object, the branch thus meant to be encouraged is either a new one or an old-established one.

It is in the former case that the impolicy and absurdity of the measure is at its maximum: it is as if, a tax being imposed, the produce of it—the whole produce of it—should be thrown into the deep. If left to itself, personal interest would direct both labour and capital to their most profitable occupation: if the new favoured occupation

be the most profitable, it needs not this artificial support—if it be *not* the most favourable, the effect, if any, of the prohibition, is to call capital and labour from a more profitable to a less profitable employment. At all events, the consequence of the prohibition is this: it leads to nothing, or it leads to detriment; if not useless, it is calamitous.

In vain would it be said; Aye, but it is only intended to apply this extra-encouragement to the new occupation while in its infancy; it is only in its infancy that it will stand in need of it: the time of probation past, and its time of maturity arrived, the wealth that will then be added to the wealth of the nation will, and for ever, be greater than the wealth which for a time it is proposed to subtract from it.

By no such statement can the prohibitory measure be justified. In the infancy of any such employment, it is only by actual wealth, in the shape of additional capital, that any effectual assistance can be given to a new branch of industry. By removal of competition, increase may indeed be given to the rate of profit, if profit be the result of the newly directed labour: but it is only by the employment of capital, which must necessarily be taken from other sources, that this result can be obtained; the prohibition of existing rival establishments will not create that capital.

The case in which the impolicy is less glaring, and the intervention most excusable and plausible, is that of an old-established branch of industry; the object being, not to bestow on it factitious encouragement, and on those concerned in it factitious prosperity,—but only to preserve it from decline, and those connected with it from being destitute of the means of subsistence.

But still the former objections irresistibly apply. If the establishment be prosperous, factitious encouragement is needless: if it be unprosperous, encouragement is baneful, serving only to give misdirection to capital and labour—to give permanent misdirection; since without that factitious encouragement, interest and common sense would correct the mistakes of miscalculation as soon as discovered.

In the next place comes the objection, that if in this shape encouragement be given to any particular occupation, it must, if impartial justice be done, be in like circumstances afforded to every other. In whatsoever instance, therefore, a branch of industry should be going on in a prosperous state, any rival branch of industry, that found itself in a declining or less prosperous state, would have right to claim the interposition of the prohibitory principle—the diminution or destruction of that rival's prosperity. On this supposition, a great part of the business of government would be to watch over the whole field of productive labour, for the purpose—not the ultimate purpose, but still the purpose—of lessening the value of the produce; diminishing prosperousness, for the relief of unprosperousness; preventing *A* from selling cheap goods, in order that *B* may be enabled to sell dear ones; prohibiting *A* from producing superior articles, for the purpose of helping *B* to get rid of his inferior articles.

Here, then, is a vast proportion of the time and labour of the constituted authorities employed to no better purpose, in no higher aim, than to check prosperity as it

proceeds—to sacrifice success to the want of success—to diminish the mass of habitual wealth, instead of increasing it.

Whatever be the effect of accident in this or that particular instance, operating against the general principle, the general principle may be safely assumed and laid down, that the prosperity of every branch of industry will increase and decrease in the ratio of the degree of aptitude—of moral, intellectual, and active aptitude—on the part of the persons engaged in it; on the degree, absolute and comparative, of prudence, vigilance, exertion, appropriate information, and industrious talent, possessed by them. Among the effects of the mode of supposed encouragement in question, will be its operating in the character of a prohibition on superior appropriate aptitude, and giving to inferior appropriate aptitude the advantage over it.

It is, in a word, a contrivance for causing everything to be done as badly as possible—for giving to evil the encouragements due to good.

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SECTION III.

CAUSES OF THE PROHIBITORY SYSTEM.

The system of injustice and impolicy thus extensively pursued,—to what causes shall its existence and its domination be ascribed? In this case, as in others, the cause will be found in the comparative strength of the producing influence, concurring with the comparative weakness of the opposing and restraining influence.

The efficient causes—the causes of the prohibition—are—

I. Combined public exertions.

II. Secret or corrupt influence.

III. Non-existence of counter-efficient influence.

IV. Legislative blindness.

I. In proportion as an individual, engaged in any one branch of industry, sees or fears to see his performances outdone by any competitor, whether foreign or domestic, he is interested in putting a stop to such rival labour, if possible—or to lessen its produce as far as he is able. The individual feeling is necessarily communicated to any body of individuals in the same situation: their common bond of union against those who are prejudiced by the employment of these productions, is much stronger than the motives to rivalry against one another. Hence, to obtain benefit for themselves and each other, individually and collectively considered, at the expense of all but themselves, is of course at all times the wish, and, as far as any prospect of success presents itself, at all times the endeavour, of all persons so connected and so situated.

By combined public exertion, what is meant to be designated is neither more nor less than the aggregate of the exertions made by all such individuals as deem themselves likely to receive benefit in any shape from the prohibitory measure in question. The following are the principal circumstances on which the success of such exertion will naturally depend:—

1. The apparent, and thence the real number of the persons thus confederating, of whose individual interests the particular interest in question is composed.

2. The aggregate quantity of capital engaged in the particular interest in question.

3. The apparent, and thence the real magnitude of the loss that would be produced to that particular interest, for want of the prohibitory measure in question.

4. The facility which, by local neighbourhood or otherwise, they possess for combining their efforts, and for concerting measures for employing them with the greatest possible effect.

5. The ability with which such representations are framed, as are intended to convey their case to the cognizance of the constituted authorities, or others on whom they depend for the ultimate success of their exertions: ability accompanied by energy and clearness, in so far as correct conception would be favourable to their cause—with obscurity and confusion, in so far as correct conception would be unfavourable to their cause.

6. The useful extent given to the circulation of such their communications; which extent will have for its measure the difference between the whole number of the persons on whose cognizance of the matter the success of their exertions will have to depend, and the number of those by whom, in consequence of their receipt of these communications or otherwise, cognizance of the matter comes to be actually taken.

II. By secret influence, the idea intended to be conveyed is, that influence which on the occasion in question is applied to the one or the few on whose will the success of the exertion depends, by the one or the few who, by habitual intercourse, possess in relation to them more or less facility of access in private.

On the part of the individual in question, be he who he may, the quantity of time it is possible for him to apply to the business in question, be it what it may, is a limited quantity—a quantity which, with reference to that necessary for the reception of the whole body of information, is most commonly and most probably insufficient even when the faculties of the person in question are, in the highest degree possible, well adapted to the prompt and correct reception of it.

If in any instance it happens that a person who, by any consideration, be it what it may, stands engaged to give support to the measure, is in habits of adequate familiarity with those on whom the adoption of it depends, the consequent advantage possessed by the measure is great and manifest. An additional and extra quantity of the arbiter's time is thus applied to the subject, and applied on that side. The only portion of time habitually applied to the business of the office in question, taken in the aggregate, will be the only portion of time, a part of which can in general be allotted to the particular business in question, in the regular and established way. If, then, so it be, that amongst those who have habitual access to the official person, amongst his ordinary companions and intimates, should happen to be a person thus interested in the measure, a portion of the time allotted even for refreshment will in this particular instance be added to the time allotted to official business; and thus the force of that sympathy which is produced by social enjoyment of this sort is added to whatsoever force the case may afford on that side, in the shape of appropriate and substantial argument.

Thus it is, that whatsoever of just representative fact and argument together is afforded by the measure in question, is capable of receiving, in one way or other, from secret influence, an incalculable degree of force.

The influence, let it be supposed, is in the case in question no other than that which may be deemed legitimate influence—influence of understanding on understanding—influence operating no otherwise than by the direct force of such facts and arguments as the case may furnish.

But by the same private opportunities through which, in conjunction with and addition to those of a public nature, facility is given to the application of this legitimate influence—by these same private opportunities, and by these alone, facility is also given to the application of sinister and corruptive influence: influence of will on will, applied in a pecuniary or other inviting shape to the official person's private interest.

III. In every such case of prohibition of one branch of industry for the encouragement of another—of prohibition, for example, of foreign produce for the encouragement of domestic analogous produce,—there are, as above, two distinct interests—interests opposed to each other: the interest of producers, the particular interest—the interest of consumers, the universal interest. Of these opposite interests, it is the lesser interest that always operates, as above, with peculiar force—with a force which is peculiar to every particular interest, as contra-distinguished from and opposed to the greater, the universal interest. The individuals who compose the particular interest always are, or at least may be—and have to thank themselves and one another if they are not—a compact harmonizing body—a chain of iron: the individuals making the universal interest are on every such occasion an unorganized, uncombined body—a rope of sand. Of the partakers in the universal interest, the proportion of interest centred in one individual is too small to afford sufficient inducement to apply his exertions to the support of his trifling share in the common interest. Add to which the difficulty, the impossibility, of confederacy to any such extent as should enable the exertions of the confederates fairly to represent the amount of the general interest—that general interest embracing, with few exceptions, the whole mass of society. In a less degree, the same observations apply to the case of the producers of the commodities with which, antecedently to the prohibition, the now prohibited goods were purchased.

Much greater, however, is the advantage which the lesser sinister interest possesses over the greater common interest, as far as secret influence is concerned.

Of the two modes of secret influence, that which is exercised by understanding on understanding, comes in only in aid of the legitimate influence of appropriate facts and arguments: the demand for it is, therefore, not altogether exclusive. But in so far as that influence is exercised only on one side—in so much as that influence is misdirected, by the combined means of persuasion employed by the confederated few who compose the particular interest, against the diffused means of persuasion possessed by the unrepresented or imperfectly represented many, who compose the general interest,—in so far it is clearly pernicious.

But it is the exclusively-possessed attribute of a particular interest, at once to require and to create facilities for the supply of sinister and corruptive influence. The universal interest—the people at large—the subject many—never see, never can see, engaged in support of their interest—of that universal interest—a friend and advocate established in habits of intimacy with the official person, at the table of the official

person; an intimate whom, by any favour in their power to bestow, they can induce to engage that same official person to support, by his individual exertions, that general interest against which the particular interest is waging war. For any purpose of corrupt influence, the official person himself and his table-companion are equally inaccessible to the general interest: the particular interest can come at both.

The consequence is, that whenever the general interest is sacrificed to the particular interest, a probability has place that the sacrifice has been obtained, not from the sincerity of honest delusion, but from the perversity of corrupt intention. This probability will be more or less, according to the more or less obvious impolicy of the measure, and to the facilities afforded, under the circumstances of the case, for the introduction of corruptive influence among those who occupy the high places of authority.

These causes, in fact, apply to the whole field of government; they account for the universal domination of the interests of the few over the interests of the many; they account for the largest portion of the aggregate mass of misrule.

But it may be retorted, this prevalence of particular over universal interest being, according to yourself, so general, the necessary consequence is, that no ultimate mischief ensues—everything is as it should be; for what is the universal interest but the aggregate of all particular interests?

This is evading, not meeting the argument. The desire indeed exists universally to give prevalence each man to his own particular interest; but not the faculty. The wish is everywhere—the power not so.

Even of the manufacturing interests, it is not every class that has the power to associate and combine in support of the common interest of the class: that power only exists where similar manufactures are concentrated in small districts—where means of intercourse are frequent and easy—or where large numbers are employed by large capital lodged in the hand of a single individual, or of a single partnership. What facilities of general association or combination are possessed by individuals employed as general shopkeepers, bakers, butchers, tailors, shoemakers, farmers, carpenters, bricklayers, masons, &c.? None whatsoever.

Had every one individual in every one of these classes his vote in the business, all would indeed be as it should be: the sum of all the several distinguishable interests being thus framed and ascertained, would constitute the universal interest; in a word, the principle of universal suffrage would be applied.

Very different, however, is the state of things. Separate and particular interests start up, solicit and obtain protection, by the exercise of the influence referred to, to the danger and the detriment of the common prosperity. Of these the aggregate body of the influential interest is mainly composed. The concentration of immense capital in single hands, great facilities for combination, and sometimes an union of both, furnish a power of evil which is but too commonly allowed to immolate the general good. Against its gigantic influence, appeal would seem in vain. A number of small

fraternities exist, who, if they were able to unite, might maintain themselves against one large one equal to them all; but as it is, standing up separately, separately they are opposed and crushed by the overwhelming influence, one by one.

Of the baneful effects produced by the concentrated efforts of a coalition of those individual interests which form the particular interest, as opposed to the general national interest, the Spanish prohibitory decree is a remarkable illustration. In this case, a few clamorous manufacturers and a few short-sighted self-named patriots united their forces, and besieged the Cortes with their representations. Compared to the amount of counter-interest, they were, as we have shown, as one to a hundred; but their forces were organized—their strength was consolidated. Where, then, were the representatives of the thousand, when the representatives of the ten were drawn out in battle array? Nowhere! So the law was passed: it was declared to be eminently popular; for the people who had petitioned, had petitioned in its favour: the truth being that the people, the immense majority of the people, had not petitioned at all; nobody was sufficiently interested. The law was passed; and now it is that the *public* injury begins to be felt, and now it is that the *public* voice begins to be heard. Spain has had but too long and too calamitous an experience of the injury done by that ever-busy meddling with the freedom of commerce which has for ages distinguished her short-sighted legislators, and which, in spite of natural advantages almost peculiar to herself, has eternally involved her in financial difficulties, distress, and poverty.

In England, all other particular interests are overborne and crushed by one great particular interest, named in the aggregate the agricultural interest. By a system of prohibition, foreign grain is excluded, with the avowed intent of making home-produced grain dearer than it would be otherwise—dearer to the whole population in the character of consumers and customers; and for the avowed purpose of securing to a particular class of persons a pecuniary advantage, at the expense of the whole population of the country.*

But the class of persons meant to be favoured, and actually favoured, by this undue advantage, are not any class of persons employed in any beneficial operation; but a class of persons who, without any labour of their own, derive from the labours of others a share of the means of enjoyment much greater than is possessed by any who employ their labour in the purchase of it. They are land proprietors, deriving their means of enjoyment or of luxury from the rent of land cultivated by the industrious: they are, in a word, not labourers, but idlers—not the many, but the few. While, for the support of war, paper-money was issued in excess, they let their lands at rates which, if neither too high nor too low at that time, taking into account the then value of money, would necessarily be too high when, by the diminution of the issue of that money, the difficulty of obtaining it was increased, and its value increased from the same cause: and this evil is accumulating, if the amount of taxes paid by the occupier of the land, on account of the land, or on any other account, increases also.

In this case—the case as it now exists—the difficulty of coming to a right judgment, of feeling that we have come to a right judgment, is great indeed; so great, that in the determination of many an individual, in whose breast particular interest is in operation, regard for the universal interest might and would have been productive of

the very line of conduct which has been determined by the more potent force of individual interest.

But of this difficulty, wherever it exists, what should be the consequence? Not that prohibition should be resorted to, but that it should be abstained from. So long as nothing is done in relation to the object by government, whatever happens amiss is the result of the nation's will, and government is not chargeable with it. But when, and if, and where, government takes upon itself to interfere and apply to the subject its coercive power, whatever mischief results from the exercise of that coercive power, is the result of the agency of government, and the rulers stand chargeable with it.

Whichever course is taken,—action or inaction—interference or non-interference—liberty, or coercion in the shape of prohibition,—distress to a vast extent—distress verging on ruin—distress on one side or the other—must be the inevitable consequence. If the importation of foreign grain be left free, ruin is entailed on the farmer, distress on the landlords: prohibit foreign grain, and ruin falls not only upon the manufacturer, but upon the labouring class; that is, the great majority even of agriculturists. Such is our miserable situation. Its cause is excessive taxation—excessive taxation, the consequence of unjust war;—unjust war, the fruits of the determination formed by the ruling few to keep the subject many in a state of ignorance and error—in a state of dependence something beneath the maximum of degradation and oppression. In England, the primal and all-sufficient cause of misgovernment, and consequent misery, the corruption of the system of national representation; in every other country, the want of a system of adequate national representation, or rather the want of a representative democracy, in place of a more or less mitigated despotism: the want of the only form of government in which the greatest happiness of the greatest number is the end in view.

The mischiefs, then, of this system of partial encouragement being in all its shapes so vast, so incalculable, and their sum so plainly predominant over the sum of good, to whom or to what shall we attribute the existence, the prevalence of such a system?

To the general causes of misrule—to the want of the necessary elements of good government—to a deficiency of appropriate probity, or intellectual aptitude, or active talent: in other words, to a want of honesty, or ability, or industry.

One cause bearing upon the question of appropriate intellectual aptitude or ability, and likely to mislead it, is this:—The good which constitutes the ground of the prohibitory measure, the reason that operates in favour of it, is comparatively prominent—the evil not equally so; its place is comparatively in the back ground. Hence it is, as in too many other instances,—a good, however small, is by its vicinity to the eye enabled to eclipse and conceal the evil, however large.

When, reckoning from the day on which a measure has received the force of law, a certain period of time has elapsed, custom covers it with its mantle; and, regarding it as an unauthorized act of daring to look into the nature of the measure, men inquire no further than into the existence of the law; habit gives it a fixed authority: and thus it is

that, in every country, worship is bestowed on laws and institutions vying in absurdity with any scheme of extravagance which the imagination of man could produce.

Thus things go on—evil is piled upon evil—till at length the burthen of evil is absolutely intolerable. Then it is that men's eyes are opened, and a desire to retrace their erroneous steps is conceived. But no sooner has the legislator turned round, than he finds the way barred against him by a host of difficulties. And thus, when nothing would have been easier at first than to prevent the disease—that is, to forbear creating it—the cure becomes ineligible, insufferable, not to say impossible; and error and folly become immoveable and immortal.

TABLE A. VALUE of BRITISH PRODUCE and MANUFACTURES exported from Great Britain to Spain in the years 1817, 1818, and 1819.

	1817.	1818.	1819.
Brass and Copper Manufactures,	£10,170	£7,642	£9,077
Cotton Manufactures,	42,292	25,718	65,056
Glass and Earthenware,	14,843	15,125	12,200
Iron, Steel, and Hardwares,	52,893	58,925	61,618
Linen Manufactures,	116,267	100,622	95,623
Silk Manufactures,	74,813	68,790	62,926
Tin and Pewter Wares,	20,059	12,489	13,992
Woollen Goods,	186,849	164,479	124,517
Sundries, consisting principally of Fish and other Provisions, Apparel, Plate, Jewellery, and Household Furniture; Musical and Mathematical Instruments, Lead, Copperas, and Painters' Colours,	70,635	65,055	64,269
Total,	£588,821	£518,845	£509,278

TABLE B. An ACCOUNT of the QUANTITY of the principal Articles imported into Great Britain from Spain in the years 1817, 1818, and 1819.

		1817.	1818.	1819.
Almonds of all sorts,	cwts. qrs. lbs.	1,534 : 3 : 6	3,086 : 3 : 25	2,384 : 2 : 10
Barilla,	cwts. qrs. lbs.	6,437 : 0 : 22	16,027 : 2 : 21	14,505 : 3 : 21
Cochineal,	lbs.	118,105	50,104	37,217
Cork, cwts. qrs.	lbs.	9,973 : 2 : 10	13,896 : 2 : 4	16,725 : 2 : 22
Cortex Peruvianus,	lbs.	32,338	30,282	4,544
Jalap,	lbs.	54,607	29,946	98,863
Indigo,	lbs.	82,189	85,265	3
Lead Black,	cwts. qrs. lbs.	2,019 : 2 : 16	4,221 : 0 : 23	1,611 : 2 : 7
Lemons and Oranges,	number	6,902,775	7,443,475	12,066,880
Nuts, small,	bushels,	66,360½	87,922	50,743¼
Quicksilver,	lbs.	698,830	1,156,783	449,965
Raisins,	cwts. qrs. lbs.	42,536 : 1 : 21	69,232 : 1 : 3	61,815 : 0 : 25
Shumac,	cwts. qrs. lbs.	5,310 : 3 : 10	7,816 : 2 : 26	2,894 : 0 : 27
Wine,	tuns, hhds. gals.	4,246 : 0 : 11	6,805 ; 2 : 13	4,115 : 3 : 36
Wool, sheeps',	lbs.	6,282,033	8,760,627	5,528,966

TABLE C. An approximative ESTIMATE of the VALUE of the principal Articles of Merchandise imported into Great Britain from Spain in the years 1817, 1818, and 1819.

	1817.	1818.	1819.
Almonds of all sorts,	£6,140	£12,348	£9,538
Barilla,	8,046	20,035	21,881
Cochineal,	147,631	62,630	46,522
Cork,	24,932	34,736	41,815
Cortex Peruvianus,	3,235	3,028	755
Jalap,	2,785	1,498	4,944
Indigo,	24,657	25,579	1
Black Lead,	3,026	10,865	2,416
Lemons and Oranges,	8,054	8,685	14,079
Nuts, small,	53,300	73,265	42,285
Quicksilver,	52,412	86,759	58,497
*Shumac,	5,315	7,816	2,898
Wine,	582,100	544,450	569,238
Wool, Sheeps',	785,254	1,095,078	691,120
*Raisins,	108,804	103,848	92,723
Total,	£1,815,691	£2,090,620	£1,598,712

* The above Table is not official, and the value probably not very accurately calculated.

TABLE D. ACCOUNT of FOREIGN GRAIN, &c. imported into Great Britain from 1792 to 1812

Years.	*Barley.*	*Barley Meal.*	*Beans.*	*Indian Corn.*	*Indian Meal.*	*Malt.*	*Oats.*	*Oatmeal.*	*Pease.*	*Rye.*	*Rye Meal.*
	Quarters.	Cwts.	Quarters.	Quarters.	Cwts.	Quarters.	Quarters.	Cwts.	Quarters.	Quarters.	Cwts.
1792	113,080		36,605	5,677			450,976		4,793	12,536	
1793	142,884		26,408	2			429,994		18,553	55,564	
1794	111,370		88,396	1,600			484,370		40,368	24,058	3,705
1795	18,070		13,823	20,586			105,168	8	20,263	11,507	37,595
1796	40,033		34,327	22,410	20,651		459,932	15	32,711	160,583	11,611
1797	51,930		16,807	107	14		274,490	2	17,818	8,258	
1798	66,705		8,540	21			411,456		21,632	6,925	
1799	19,387		3,237	2			170,233		8,750	22,051	2,650
1800	130,898		15,796	8,436	9,471		542,603	7	26,796	138,713	22,025
1801	113,966		16,246	44,472	113,141		582,628	63	44,218	99,847	177,49
1802	8,136		4,138	737	15,513		241,848		10,558	14,889	1,162
1803	1,148		85	669	146		254,799	14	23,381	3,347	
1804	9,074	2	8,868	242	8		500,369	2	18,570	2,438	
1805	27,645		8,727	16	27		275,105		8,583	24,032	
1806	2,058		1,045	108	18		183,428		171	683	2
1807	3,043		9,997	1,062	4		420,032		4,680	7,309	
1808	4,601	216	8,674	4,307	5	1,228	34,630	73	12,807	4,724	3
1809	13,341	31	27,297	1,262		533	296,911	861	33,071	13,047	541
1810	17,953	153	11,685	36	3	893	115,916	3	12,053	90,116	3,206
1811	39,900	778	357	13	12	1,493	11,446	410	4,994	27,765	166
1812	40,375	103	16	17		356	14,826	445	661	71,771	3,296

TABLE E. An ACCOUNT of the Quantity of CORN and GRAIN of all sorts, MEAL, FLOUR, and RICE, e
inclusive: distinguishing the Quantity of each Year; the Price of the Year being the real Value, an

Years.	*Barley.*		*Barley Meal.*	*Beans.*	*Indian Corn.*		*Indian Meal.*	*Malt.*	*Oats.*	*Oatmeal.*		*Pease.*	*Rye*	*Rye Meal.*	*Wheat.*
	Quarters.	Cwts.		Quarters.	Qrs.		Cwts.	Quarters.	Quarters.	Cwts.		Qrs.	Quarters.	Cwts.	Quarter
1792	29,110			11,636				20,021	23,940	2,195		5,629	16,151		250,982
1793	1,529			9,771				1,993	16,237	3,728		4,582	512		44,866
1794	2,964			7,520	1,448			6,473	13,388	4,196		3,280	1,919		116,273
1795	1,789			3,235	465			4,627	5,420	2,274		1,315	115	603	677
1796	7,204			8,613	3,289			5,929	10,072	3,093		2,112	122		677
1797	5,253			8,486	6,419		5,711	7,870	18,869	4,502		2,835	108	1,436	23,076
1798	2,856			16,092	580		23	12,220	23,600	5,748		3,415	680		22,138
1799	24,901			9,508	500			16,485	17,633	6,590		2,311	40	396	16,960
1800	3,393			7,146				2,415	9,505	3,951		1,822	37	1,448	7,866
1801	1,614			5,476	378		1,988	2,111	12,278	4,774		1,508	25	6,926	5,227
1802	4,727			6,792	1,328		400	3,148	15,482	3,300		2,370	6,484		104,414
1803	32,756			4,885				11,032	14,047	3,907		2,626	1,030		47,630
1804	115,102		2,125	5,918	58			12,747	17,168	3,098		2,999	3,798		30,229
1805	6,555			5,490				6,902	14,000	3,720		3,886	3,808		54,243
1806	16,820			6,734				6,805	27,764	12,938		4,682	4,020		4,716
1807	6,360			7,374				7,202	22,702	13,619		2,325	956		2,634
1808	2,936		1,207	6,519	210			7,493	21,620	9,480		3,556	3,907	300	8,495
1809	5,061		30	2,827				5,830	16,085	7,576		2,610	708	13	4,866
1810	11,348		83	2,804				8,218	19,199	9,651		3,059	8,154	2,944	61,488
1811	53,246		156	2,175				10,982	40,047	7,260		3,603	35,235	1,091	73,249
1812	53,205		100	1,956				9,562	21,398	14,229		2,918	21,400	1,548	27,091

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A PLAN FOR SAVING ALL TROUBLE AND EXPENSE IN THE TRANSFER OF STOCK,

AND FOR ENABLING THE PROPRIETORS TO RECEIVE THEIR DIVIDENDS WITHOUT POWERS OF ATTORNEY, OR ATTENDANCE AT THE BANK OF ENGLAND, BY THE CONVERSION OF STOCK INTO NOTE ANNUITIES.

CIRCULATING ANNUITIES, &C.*

INTRODUCTION.

The*main principle* of the proposed measure consists in the opening the market for government annuities, on terms of profit to government—viz. at a *reduced rate of interest* to a mass of money, which, by existing circumstances, is either excluded from the faculty of yielding interest to the owners altogether, or, in the hands of bankers or otherwise, they are obliged to accept, on inferior security, a rate of interest inferior, all things considered, to that which, with a very considerable degree of profit, might be allowed by government. The annuities, thus created, to be charged upon the existing fund; and the money thus raised to be employed, as it comes in, in the redemption of debt, and thence in exoneration of that fund. The result and benefit of the measure, taking it on the *smallest* scale, will, besides the above profit to government, consist in the affording to the least opulent and most numerous class of individuals (friendly societies included)—in a word, to the great bulk of the community—the means of placing out *small hoards,* however minute, with a degree of advantage unattainable by any other means,† and this, too, even at *compound interest*—a mode of accumulation which, familiar as it is in *name,* is not in *effect* capable of being realized by any other means in favour of individuals, though so happily brought to bear in favour of the *public* in the instance of the *sinking funds;*‡ —not to speak of the collateral advantage obtained, by creating on the part of the *lower* orders, in respect of the proposed new species of property, a fresh and more palpable interest in the support of that government, on the tranquillity of which the existence of such their property will depend.*

On the *larger* scale upon which it may be expected to expand itself, the measure, after accelerating the *otherwise* rapid ascent of government annuities to the par price,† and clearing away the 4 and 5 per cents.,‡ would afford the means of bringing the further reduction of the rate of interest on those annuities to its *maximum* in point of effect, *rate* of reduction, and *rapidity,* taken together;?*reduction* of *interest* accelerating, too, in this way, *redemption* of *principal,* instead of taking place of it and retarding it, as on the plan pursued in Mr. *Pelham's* days.§

Other paper currencies have been either (like the French *assignats* and *mandats,* &c.) engagements for money in *unlimited quantity,* and without *funds* for performance; or promises of *minute* portions of a species of property (for example *lands* and *houses*) incapable of being reduced into such portions; or, like some of the American currencies, promises of metallic money, payable at a period altogether *indefinite,* dating, for instance, from a fixed day posterior to the conclusion of a war.

By the *proposed* currency, nothing is engaged for but to pay such *monies* as there are already funds for paying, and at such *times* at which there are funds for paying them; and this in a *quantity* which, by the terms of the engagement, has its *ne plus ultra,* and can in no case add to the existing amount of the engagements it finds charged upon those funds: reimbursing immediately, and with profit, the fund on which it draws, it stands distinguished by this prominent feature, from all currencies as yet exemplified.¶

The losses, experienced or apprehended, from rash or penniless issuers of promissory notes, gave birth to the restrictions imposed on issues of sums below a certain magnitude. But this reason has no application to notes expressive of engagements, of the sort proposed, on the part of government. Issuing from such a *source,* the sums of the notes cannot be too minute: incapable of increasing, certain even of diminishing, the amount of the engagements they find existing, the influx of them cannot be too great. The *smallness* of the *notes* adds to the *multitude* of the *customers;* the *multitude* of the notes *divides* the mass of the engagements, and does not *add* to it. Confined within those bounds, the magnitude of the emission adds not only to the *profit* of the measure, but to the *security* of the fund.

A species of notes was *not long ago* proposed, whereby government annuities were to stand mortgaged, and *yet* (it was supposed) without diminution of their value:—and which were expected to pass, and be paid for *as if* they had engaged for the payment of so much money, though without binding any assignable individual to the payment of it. But the *now* proposed plan engages for no payment for which adequate funds are not *already* in existence; nor without imposing on a determinate individual the obligation of making the payment out of those funds; nor yet *burthens* those funds, without immediately *disburthening* them to a *superior* amount.

By taking from the load of government annuities which is found pressing on the market, the *sale of the land tax* for stock has bettered the terms of all succeeding loans. On the measure now proposed, hangs a profit the same in kind, superior in degree.*

Reducing the mass of the national debt, the operation on the land tax *takes nothing* from the mass of national capital;—the proposed measure *adds* to it. The former borrows from capital, but refunds immediately, with 10 per cent. to boot; the latter adds still more to capital, and that as speedily, without having borrowed anything.†

Every penny of the national debt redeemed, if redeemed with money not borrowed from capital, is so much added (it will be shown) to that part of the national capital which does not consist of money. The addition made by the sinking fund to the mass

of national capital, is little inferior to the defalcation it makes from the mass of national debt. So many years as, by the aid of the proposed measure, may come to be struck off from the period which would otherwise have been occupied in the redemption of the debt, so many years' interest, upon the sum equal to the greatest amount of that debt, will therefore have been added, and that at *compound interest,* to the amount of national capital, by the operation of the proposed measure.

A sort of discovery in political economy has been made of late (for such it seems to be,) that commercial security is not less liable to suffer by *deficiency* than by *excess,* in respect of the customary quantity of paper in circulation. Among the advantages attendant on the proposed paper, will be found that of affording a remedy, and that of the preventive kind, against the shocks which commercial security might otherwise have to sustain from such deficiency or excess.‡

Shocks of that kind are not, however, the only mischief to which the community stands exposed, not only by the *abuse,* but even by the *use,* of every species of circulating paper as yet known. *Rise of prices* is another mischief, less heeded, but not less real. By gold and silver money to the same amount, the same mischief would (it is true) be produced, and in the same degree; but the magnitude of the mischief is in proportion to the *suddenness* of the addition, not to the *absolute quantum* of it; and, in the shape of cash, the influx is not susceptible of any such suddenness as in the shape of paper. To be capable of opposing an effectual barrier to a torrent of this sort, will be found to be among the properties of the proposed paper. To point out measures adequate to that end, is among the tasks undertaken in the plan of the proposed measure.?

The extent of the proposed emission being given, neither the *efficiency* nor the *utility* of the measure will be found open to dispute: the only room for *uncertainty* regards the *extent.* As to that point, cases are collected, presumptions offered: but nothing short of experience can determine.

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CHAPTER I.

PLAN FOR THE CREATION, EMISSION, PAYMENT, AND EVENTUAL EXTENSION, OF A PROPOSED NEW SPECIES OF GOVERNMENT PAPER, UNDER THE NAME OF ANNUITY NOTES.

§ 1.

Creation, Emission, And Payment.

Art. 1. That there be issued from his Majesty's *exchequer,* in whatever *quantity*[1.] it shall be applied for by purchasers, on the *conditions* hereinafter mentioned, through the medium of such *local* or *sub-offices* as are hereinafter mentioned, and the *interest* or *dividends* paid in such manner as is also hereinafter mentioned, a competent number of *transferable promissory notes,* to be termed annuity notes; importing, each of them, the grant of a *perpetual redeemable* annuity, payable to the purchaser or other *holder* of the note, in consideration of the *principal* sum, on the repayment of which such annuity is made redeemable, and which accordingly constitutes the denominative *value* or *principal* of such note; such interest to be paid half-yearly,[2.] immediately after the expiration of each half-year.

TABLE I.

TABLE OF A PROPOSED ANNUITY-NOTE CURRENCY;

Exhibiting divers particulars relative to a proposed series of Notes, carrying the same rate of Interest, and having for their values sums rising one above another in a series of terms, 19 in number with 2 for their *common measure;* of which magnitudes more or fewer may be employed as may be found convenient. Also another corresponding series of *principal sums,* which (they being raised in their amounts, while the corresponding amounts of *interest* continue unchanged) give an inferior or *reduced* rate of Interest, with reference to the series first mentioned. The sums proposed are in columns V. VI. VII. VIII. IX. X. XIII.;—those used for illustration, in columns I. II. III. IV. XI. and XII.

I.	II.	III.	IV. [b]	V.	VI.	VII.	VIII.	IX.	X. [i]
No. in the series	Ratio to the Unit or Standard Note.	Daily Interests, answering to a Farthing per Day on the Standard Note.	Principal Sums corresponding to those Daily Interests, at £3 per cent. precisely.	Principal Sums as proposed at £3 per cent. nearly for the sake of even Money.	Amounts of Interest, proposed to be allowed on the proposed Principal Sums for				
					One Day.	One week nearly; viz.—Eight days	One month nearly; viz.—32 days. [h]	One half-year nearly; viz.—182 days. [i]	One ye nearly; viz.—3 days. [i]
		s. d. f.	£ *s. d. f.*	£ *s. d. s. d. f.*	£ *s. d. f.*	£ *s. d. f.*	£ *s. d. f.*	£ *s. d. f.*	£ *s.*
1	512	10 8 0	6,488 17 9 1 [d]	6,553 12 0 10 8 0	4 5	4 0	17 1	4 0 97 1	4 0	194 2
2	256	5 4 0	3,244 8 10 2 [d]	3,276 16 0 5 4 0	2 2	8 0	8 10	8 0 48 10	8 0	97 1
3	128	2 8 0	1,622 4 5 1 [d]	1,638 8 0 2 8 0	1 1	4 0	4 5	4 0 24 5	4 0	48 10
4	64	1 4 0	811 2 2 2 [f]	819 4 0 1 4 0	0 10	8 0	2 2	8 0 12 2	8 0	24 5
5	32	0 8 0	405 11 1 1 [d]	409 12 0 0 8 0	0 5	4 0	1 1	4 0 6 1	4 0	12 2
6	16	0 4 0	202 15 6 2 [d]	204 16 0 0 4 0	0 2	8 0	0 10	8 0 3 0	8 0	6 1
7	8	0 2 0	101 7 9 1 [f]	102 8 0 0 2 0	0 1	4 0	0 5	4 0 1 10	4 0	3 0
8	4	0 1 0	50 13 10 2 [fe]	51 4 0 0 1 0	0 0	8 0	0 2	8 0 0 15	2 0	1 10
9	2	0 0 2	25 6 11 1 [fc]	25 12 0 0 0 2	0 0	4 0	0 1	4 0 0 7	7 0	0 15
[a] 10	1	0 0 1	12 13 5 2 [e]	12 16 0 0 0 1	0 0	2 0	0 0	8 0 0 3	9 2	0 7
11	½	0 0 0½	6 6 8 3 [e]	6 8 0 0 0½	0 0	1 0	0 0	4 0 0 1	10 3	0 3
12	¼	0 0 0¼	3 3 4 1 [e]	3 4 0 0 0¼	0 0	0 2	0 0	2 0 0 0	11 1 = ½	0 1
13	⅛	0 0 0⅛	1 11 8 0 [f]	1 12 0 0 0 0⅛	0 0	0 1	0 0	1 0 0 0	5 2 = ¾	0 0
14		0 0 0	0 15 10 0 [e]	0 16 0 0 0 0	- -	- -	0 0	0 2 0 0	2 3 = ⅜	0 0
15		0 0 0	0 7 11 0 [g]	0 8 0 0 0 0	- -	- -	0 0	0 1 0 0	1 1 =	0 0
16		0 0 0	0 3 11 2 [g]	0 4 0 0 0 0	- -	- -	- -	0 0 0 0	2 =	0 0
17		0 0 0	0 1 11 3 [g]	0 2 0 0 0 0	- -	- -	- -	0 0 0 0	1 =	0 0
18		0 0 0	0 0 11 3 [g]	0 1 0 0 0 0	- -	- -	- -	0 0 0 0	0 =	0 0
19		0 0 0	0 0 5 3 [g]	0 0 6 0 0 0	- -	- -	- -	0 0 0 0	0 =	0 0

[b] In the series marked thus the fractional parts of a farthing are omitted, as not capable of being paid, nor into account.

[i] In this series the fractional parts of a farthing are inserted, as being requisite to be taken into account in or allowance of interest, as between individual and individual in the way of circulation. For though on the will not amount to so much as a farthing by the end either of the first or second half-year, yet by the end farthing with a fraction over, and consequently, on *three* such notes taken together it will amount to a far two by the end of the second half-year.

[k] The reduction being from £2 : 19 : 4¾ *per cent.* to £2 : 7 : 6¼ (fractions of a farthing neglected,) viz. a

[d] Magnitudes, inserted in the series for uniformity, but supposed to be superfluous.

[f] By putting together the *five* sizes marked thus, the sum of £1,000 exactly may be made up; likewise by

[e] By putting together the *six* sizes marked thus, the sum of £100 exactly may be made up.

[l] By putting together the *three* sizes marked thus, the sum of £100 exactly may be made up.

[c] Rate of interest reduced thereby to £2 : 19 : 4¾ per cent., fractional parts of a farthing being neglected.

[a] STANDARD NOTE, or UNIT, to which the other Notes bear reference; those above it in the scale being *m* *submultiples*. Common measure, 2.

g The notes marked thus may be termed SILVER NOTES; all above them being styled GOLD NOTES. It is p
shall, for distinction sake, be *yellow.*

m The two series or scales here given, with their respective *halves* and *doubles,* &c. will be found to be th
which *daily* interest is to be computed. The series which has the £12 : 16*s.* note for its standard note, givi
being a trifle *less* than £3 per cent.; the series which has the £16 note for its standard note, giving for the
trifle *more* than 2⅜ per cent.

By each of these series or scales *even* sums (sums having a certain number of pieces of existing coin exac
amount of the several notes respectively exhibited by them; in any other series that could be interposed *fi*
of existing coins exactly corresponding to them) would present themselves in several places.

By altering the principal sum (or purchase money for the *standard* amount of interest, viz. a farthing a da
viz. £8, the rate of interest would be *doubled;* that is, raised from a trifle more than 2⅜ per cent. to a trifle
allowed at the present period (viz. anno 1800,) instead of *profit* there would be loss. The rate given by the
more than £4 : 14 : 2¼ per cent., instead of £4 : 15 : 0½, which would be the rate allowed, if no more tha
amount of interest.

By altering the *principal* (or *purchase money* of the said standard amount of interest) from £12 : 16*s.* to a
interest corresponding to that amount would be reduced by one-half; *i. e.* reduced from almost £3 per cen
per cent.

If, instead of being *reduced* by one-half as above, the *purchase money* of the said standard amount of inte
to £32, the rate of *interest* corresponding to that amount would be reduced by one-half—*reduced* from a
than 1 per cent.

For all these rates of interest, as well as for any number of *multiples* or *aliquot parts* of them, this same ta
by conceiving the series of *principal sums* to be *shifted* so many degrees higher or lower, the correspondi
unmoved; or, *vice versâ,* by conceiving the series of *amounts of interest* to be *shifted* so many degrees hig
principal sums remaining *unmoved*—the number of series or scales which differ in such a manner from o
several sums comprised in them *throughout,* and which in both instances give none but *even* sums, being
which has £12 : 16*s.,* and that which has £16 for the price of the *standard note.*

h In the DAILY AUGMENTATION TABLE on the back of each note, the periods will vary in number accord
Standard Note it is proposed they should be periods of *eight* days; and so in the double, quadruple, octup
end of such period in the standard note, 8 farthings (=2d.) On any intermediate day the exact sum will be
farthings, half-pence, twopences, or half-farthings, according to the distance of the day in question from t
table.) In the higher notes the periods might be more numerous; in the lower notes they would of course b
increase under a farthing would be of no use. Among the silver notes, in the 4*s.* note the year could conta
two; in the 1*s.* note but *one;* and in the sixpenny note but a part. To give a whole farthing will *here* requi
there will be no *Daily Augmentation* Table; and in the other silver notes the *daily* and *yearly* table will be
notes between the silver notes and the half of the standard note, periods of 32 days will suffice.

Art. 2. That the interest be in such sums as to be capable of being computed *daily,* as in the case of *exchequer bills.* That the daily interest allowed upon the *standard note* (so termed with reference to any smaller or larger notes that may come eventually to be added to the circulation upon the same principle) be a *farthing;*[3] —and that the principal or denominative value of such standard note be £12 : 16s; and that the interest, in order to afford a profit to government, be inferior to the current rate borne by government annuities at the opening of the issue, say £3 per cent. *nearly*[4] —a small sum being added to the principal sum, corresponding precisely to that rate, for the sake of making the sums the more *even,* especially at the bottom of the scale.[5]

Art. 3. That each note contain, on the face or back of it, a *table,* whereby the value of it, as *increased* by daily interest, may be seen for every day in the year, by inspection,

without calculation; also a table, whereby in case of forbearance[6] to receive the interest, the value of a note of that magnitude, as increased by daily interest, added to yearly interest so forborne to be received, may be seen, for any number of years, by a single addition; together with an indication, by means of which it may be seen (also by simple inspection) for what number of years, if any, the interest on the particular note in question continues unreceived.

Art. 4. That the interest on each note, whenever issued, commence on the first day of each year of our Lord; and that, on notes issued on the several days after such first day, the interest to the day of issue be *added* to the purchase money.[7]

Art. 5. That no such annuities be ever issued at a less price,[8] (*i. e.* so as to bear a greater rate of *interest*) than the *first* issue, and accordingly, that as often as any money comes to be raised at a higher rate of interest by *perpetual* annuities, it shall be by the creation of *stock annuities,* &c. as at present; and that a clause to this effect be a *fundamental* article in the contract made with the purchasers on the part of government, and be *inserted* accordingly in the tenor of the note.

Art. 6. That, at that price, the issue be kept open, so long as any of the redeemable stock annuities existing at the commencement of the issue, continue unredeemed, and no longer; and that this be *another* such fundamental article. (See Art. 20.)

Art. 7. That no such *note* annuity be paid off till the whole mass of *stock* annuities existing at the commencement of the issue, or created subsequently, shall have been paid off,[9] and that this be another such article.

Art. 8. That for every £3 a-year annuity thus created, an equal portion of stock annuities be forthwith bought in and extinguished within a time to be limited; and that this be another such article.

Art. 9. That the *profit* resulting from the difference between the price at which each such annuity shall have been sold, and the price at which an equal mass of annuity shall have been bought in, be carried to the sinking fund, subject to such other dispositions, if any, as from time to time may be thought fit to be made by parliament with respect to a predetermined portion or portions of it.

Art. 10. That, at the outset, no other note be issued than the *standard* note (£12 : 16s.) with the *half,* or with the half and quarter of it.

Art. 11. That, by degrees, the series of notes be extended *downwards,* each successive note being the half of the one immediately preceding it (with or without the *omission* of any term or terms in such descending series) until it has descended to the lowest piece of silver coin in common currency, viz. a sixpence; and that it be then considered whether to give it a further extension downwards, viz. to the level of the copper coinage.[10]

Art. 12. That the notes having for their respective values, sums not exceeding the largest silver coin in use (viz. 5s.) be distinguished by the appellation of *silver notes,*

all above being for the same purpose termed *gold notes;* and that to facilitate the discrimination, a corresponding peculiarity of colour be given to the *gold notes.*

Art. 13. That, moreover, as convenience may suggest, the series be extended to a correspondent length, or otherwise *upwards;*[11] in which case the series will, if complete, consist of *nine terms below* the standard note, and as many *above* it—total, nineteen; having *two* for their common difference: values as by the annexed table.

Art. 14. That when the credit of this paper has been established, or even from the first, notes already taken out by individuals be received (as bank-notes are at present) at the several government offices[12] in the country as well as in the town, and re-issued from thence in the way of circulation, as they would be between individual and individual, charged with the intervening interest, to as many as may think proper to receive them at that value.

Art. 15. That the offices from whence the proposed paper is issued to the purchasers, be, *in the first instance,* the several *local post-offices*[13] in town and country, with the eventual addition of any of the other local government offices (such as the stamp and excise offices,) or in case of need, other offices to be established for the purpose, in such situations and numbers as may be found necessary.

Art. 16. That to save trouble in the issue of the smaller notes, especially the *silver notes,* government reserves to itself the power of fixing the *least* quantity[14] of annuity-note money, which an individual shall be allowed to take out at once; as also to *prescribe* the *composition* of that quantity, taking care to leave to the customer the choice of the composition, as far as it may be a matter of indifference to government.

Art. 17. That powers be given to the king in *council,* or to the *treasury,* from time to time to declare, whether any and what *fee,* not exceeding a certain amount, shall be paid by the *purchaser,* on the emission of each note or parcel of notes constitutive of such or such a sum; as also on the *exchange* of an old note for a fresh note, at the instance of the holder—regard being had in both cases to the magnitude of the sum constituting the value of the note or mass of notes; as also to *call in* at any time any such note or notes, so it be without expense to the holder, for the purpose of their being *examined* or *exchanged;* and, by suspension of interest, or other penalties, to enforce obedience to such calls; as also to declare whether any and what *fee* shall be paid by the holder on the *receipt* of the *interest* due on each note or parcel of notes.[15]

Art. 18. That periodical accounts be *published* of the progress of the issue,[16] as regularly, and circulated as extensively, as the prices of stocks are at present, under heads expressive of the day, the *place,* the number of notes of each *magnitude,* and the *total amount* issued on each day at each place; together with the *increase* or *decrease* of the amount, as compared with former periods; and any such other particulars as may be of use.

§ 2.

Eventual Extension.

Art. 19. That if, by this and other means, three per cent. stock annuities should ever have risen to par, the produce of the issue of note annuities be thereupon applied to the *paying off,* instead of *buying in* stock annuities; and so *toties quoties,* buying in whenever they are *under* par, paying off whenever they are *at* or *above* par.

Art. 20. That inasmuch as the paying off stock annuities, the greatest part thereof carrying three per cent., will lead to a rapid and almost simultaneous *conversion*[17] of the whole amount thereof into note annuities, bearing nearly the same rate of interest;—and inasmuch as, upon the redemption of the last parcel of redeemable stock annuities, the emission of note annuities at this rate of interest must (according to article 6) immediately cease;—and inasmuch as the mass of government annuities will in the meantime *have* already been much reduced, and by the continued operation of the continually increasing powers of the existing sinking funds, the scarcity *will* be growing greater and greater every day (notwithstanding that, being continually exposed to be paid off at par, they will be incapable of bearing any considerable *premium*) the offices be opened thereupon for the emission of a *second* issue, at a *reduced* rate of interest, say £2 : 7 : 5—*i. e.* 2⅜ per cent. nearly—(viz. by raising the price of the standard note from £12 : 16s. to £16;)—the produce of such *second* issue to be applied to the paying off the notes of the *first* issue, and the second issue to *close* as soon as the redemption of the notes of the first issue shall have been completed.

Art. 21. That the amount of all interest saved, as well by the redemption of stock annuities redeemed by the produce of the existing or other future funds (and, therefore, without the preparatory emission of a mass of annuity-note paper to the corresponding value) as by the progress made in the reduction of the rate of interest in the way just mentioned (viz. by the preparatory emission of a mass of annuity-note paper, at a lower rate of interest, followed by the redemption of a correspondent mass of stock annuities, or note annuities, at the higher rate,) be carried (immediately) to the sinking funds—on the principle of the provision made, in the like behalf, in and by the existing act (viz. the New Sinking Fund Act, 32 Geo. III. c. 32, § 2.)

Art. 22. That, *immediately* upon the redemption of the last parcel of note annuities of the *first* issue, the offices he *again* opened for the emission of a third issue at the next lowest rate of interest suitable to the nature of note annuities on which interest is computed daily, say £1 : 9 : 6—*i. e.* 1½ *per cent.* nearly[18] ;—viz. by raising the price of the standard note from £16 to £25 : 4s.;—the produce of such *third* issue to be appropriated to the redemption of the note annuities of the *second* issue as above: with like provision as above in favour of the *sinking funds:* and so *toties quoties,* in so far as any such farther reduction may be deemed eligible.

Art. 23. That inasmuch as, so long as any portion of the redeemable annuities remain unextinguished, there may remain two parcels of annuity-note paper, bearing two different rates of interest—the higher *closed,* the other *open*—provision be made, that

in case of the creation of any portion of capital in stock annuities, at any time thereafter, by reason of money borrowed for the support of a war or otherwise, powers be given for extending the issue of note annuities to the extent of the capital so created, and at the rate of interest the then last or open issue of note annuities shall receive.

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CHAPTER II.

FORM OF AN ANNUITY NOTE.

(See Table II.)

CHAPTER III.

COMPARISON OF THE PROPOSED, WITH THE EXISTING GOVERNMENT SECURITIES, &C.

§ 1.

Features Possessed In Common With Other Securities.

1. Rate of interest low, inferior to that afforded by money laid out in the purchase of stock annuities. Exemplified in the notes of *country bankers.*

TABLE II.

FORM OF A PROPOSED ANNUITY NOTE,[1] ON THE SEVERAL PLANS OF HALF-YEARLY AND YEARLY INTEREST.

BACK OF THE NOTE ON THE YEARLY PLAN.

By Statute NA Geo. III. c. NA, counterfeiting the Portrait of any Public Officer on an Annuity Note is Forgery. The having in one's possession, without special licence, any Drawing or Plate, &c. designed to represent such Head, is presumptive evidence of such Forgery: Punishment Death.[23] Like provision in respect of the counterfeiting this type.[24]

PORTRAIT from an engraving on wood: THE AUDITOR OF THE EXCHEQUER, WITH THE EPIGRAPH.[22]

I.

Daily Interest, Or Augmentation Table:[25]

Showing the Value of this Note for every Day in the Year, as the same is increased by the addition of daily Interest. No Interest for the last day of any Year:[26] Nor for the 29th of February in a Leap Year:[27] Nor for the day on which the Note is passed.[28]

DAY.	VALUE.
Jan. 8	£12 16 2
16	12 16 4
24	12 16 6
Feb. 1	12 16 8
9	12 16 10
17	12 17 0
25	12 17 2
Mar. 5	12 17 4
13	12 17 6
21	12 17 8
29	12 17 10
April 6	12 18 0
14	12 18 2
22	12 18 4
30	12 18 6
May 8	12 18 8
16	12 18 10
24	12 19 0
June 1	12 19 2
9	12 19 4
17	12 19 6
25	12 19 8
July 3	12 19 10
11	13 0 0
19	13 0 2
27	13 0 4
Aug. 4	13 0 6
12	13 0 8
20	13 0 10
28	13 1 0
Sept. 5	13 1 2
13	13 1 4
21	13 1 6
29	13 1 8
Oct. 7	13 1 10
15	13 2 0
23	13 2 2
31	13 2 4
Nov. 8	13 2 6
16	13 2 8
24	13 2 10
Dec. 2	13 3 0

10	13	3	2
18	13	3	4
26	13	3	6
30	13	3	7

II.

Underneath Is The ***Register Of Yearly Payments Of Interest:***[29]

In which are set down the several Years of our Lord (if any) for which Interest upon this Note has been paid by the Government:—

If upon the face of the above Register, the Interest on this Note, for any number of Years, appears to remain unpaid, to find the total value of it, add to its value for the Day, according to the above Table, the amount of the Interest for the aforesaid number of unpaid years, according to the following

III.

Yearly Interest, Or Augmentation Table.[30]

YEARS.	INTEREST TO ADD.		
1801	£0	7	7
—02	0	15	2
—03	1	2	9
—04	1	10	4
—05	1	17	11
—06	2	5	6
—07	2	13	1
—08	3	0	8
—09	3	8	3
—10	3	15	10
—11	4	3	5
—12	4	11	0
—13	4	18	7
—14	5	6	2
—15	5	13	9
—16	6	1	4
—17	6	8	11
—18	6	16	6
—19	7	4	1
—20	7	11	8
—21	7	19	3
—22	8	6	10
—23	8	14	5
—24	9	2	0
—25	9	9	7
—26	9	17	2
—27	10	4	9
—28	10	12	4
—29	10	19	11
—30	11	7	6
—31	11	15	1
—32	12	2	8
—33	12	10	3
—34	12	17	10

FACE OF THE NOTE, NEARLY THE SAME ON BOTH PLANS.

N^{o} _____[2] Price and Value, besides Interest, £12 : 16 : 0.	Daily Interest, One Farthing.	Yearly Interest, £0 : 7 : 7.	Rate of Interest, 3 per Cent. nearly.	Interest commences from 1st January 18	Issued to the Purchaser, 18

This Note, price and value *Twelve pounds sixteen shillings,* besides interest, entitles the Bearer[3] to a Farthing per day, from the first of January last for ever, out of the Consolidated Fund; but subject to redemption, on payment of the above sum, with interest.

The above interest is paid half-yearly;[4] and the interest of each half-year may be received any time not earlier than[5] [NA] days after the last day of such half year, through the medium of any Local Annuity-Note Office[6] in town or country; previous application having been made at the same office not less than[7] [NA] days, nor more than[8] [NA] days before such last day, and such *conditions* being observed as may be seen at every such office.

The Fee to be paid at the office on the purchase of this Note, is [NA],[9] and no more; on exchanging the same for a fresh Note, [NA].[10]

Issued at the General Annuity-Note Office in St. Margaret's Street, Westminster, this _____ day of _____ 18 by order of me _____ Auditor[11] of his Majesty's Exchequer; and by[12] the hands of me _____ Issuing Clerk.[13]

PORTRAIT from an engraving on wood: THE KING CROWNED, WITH AN EPIGRAPH ON THE SCEPTRE, "FOR SECURITY AGAINST FORGERY."[14]

N^{o} _____

Issued at my Local Annuity-Note Office in _____ this _____ day of _____ One thousand eight hundred and _____ by me _____ Office-Keeper,[18]

By Statute NA Geo. III. c. NA the faith of Parliament is pledged, that no Annuity Note, conveying a perpetual redeemable Annuity payable to Bearer, shall ever be issued at such price as to give a *higher* rate of *interest* than is given by this Note;[19] and that no such Annuity Note shall ever be *paid off* without the consent of the holder, while any redeemable Stock Annuities continue unredeemed.

For security, in cases of *Trust, Conveyance by Post,* &c., the *Head-piece* of this Note may be separated from the body[20] by cutting it across through the *waved line.* An

account of the uses and purposes of such division[21] may be seen at the said several offices.

By Statute NA Geo. III. c. NA*counterfeiting,* &c., the Portrait of any Public Officer on an Annuity Note is Forgery; the having in one's possession, without special licence, any drawing or plate, &c. designed to represent such head, is presumptive evidence of such Forgery, — punishment Death.[23] Like provision in respect of the counterfeiting this Type.[24]

BACK OF THE NOTE, ON THE HALF-YEARLY PLAN.

I.

Daily Interest, Or ***Augmentation Table:***[25]

Showing the Value of this Note for every Day in the Year, as the same is increased by the addition of Daily Interest.

No Interest for the last Day of any Year:[26] nor for the 29th of February in a Leap Year:[27] nor for the Day on which the Note is passed.[28]

II.

Register Of Half-Yearly Payments Of Interest:[29]

In which are set down the several Years and Half-Years of our Lord (if any) for which Interest upon this Note has been paid by Government.

N.B.—The Figures 1 and 2 distinguish the First and Second Half-Years of each year.

FIRST HALF YEAR.

Day.	Value.		
Jan. 8	£12	16	2
16	12	16	4
24	12	16	6
Feb. 1	12	16	8
9	12	16	10
17	12	17	0
25	12	17	2
Mar. 5	12	17	4
13	12	17	6
21	12	17	8
29	12	17	10
Apr. 6	12	18	0
14	12	18	2
22	12	18	4
30	12	18	6
May 8	12	18	8
16	12	18	10
24	12	19	0
June 1	12	19	2
9	12	19	4
17	12	19	6
25	12	19	8
July 1	12	19	9½

SECOND HALF YEAR.

IF THE FIRST BE UNPAID.				IF FIRST BE PAID		
Day.	Value.			Value.		
July 3	£12	19	10	£12	16	0½
11	13	0	0	12	16	2½
19	13	0	2	12	16	4½
27	13	0	4	12	16	6½
Aug. 4	13	0	6	12	16	8½
12	13	0	8	12	16	10½
20	13	0	10	12	17	0½
28	13	1	0	12	17	2½
Sep. 5	13	1	2	12	17	4½
13	13	1	4	12	17	6½
21	13	1	6	12	17	8½
29	13	1	8	12	17	10½
Oct. 7	13	1	10	12	18	0½
15	13	2	0	12	18	2½
23	13	2	2	12	18	4½
31	13	2	4	12	18	6½
Nov. 8	13	2	6	12	18	8½
16	13	2	8	12	18	10½
24	13	2	10	12	19	0½
Dec. 2	13	3	0	12	19	2½
10	13	3	2	12	19	4½
18	13	3	4	12	19	6½
26	13	3	6	12	19	8½
30	13	3	7	12	19	9½

1 2 1 2
2 1 2 1
1 2 1 2
2 1 2 1
1 2 1 2
2 1 2 1
1 2 1 2
2 1 2 1
1 2 1 2
2 1 2 1
1 2 1 2
2 1 2 1
1 2 1 2
2 1 2 1
1 2 1 2

III.

If, Upon The Face Of The Above Register, The Interest On This Note, For Any Number Of Half-years, Appears To Remain Unpaid, To Find The Total Value Of It, Add To Its Value For The Day, According To The Above Table, The Amount Of The Interest For The Aforesaid Number Of Unpaid Half-years, According To The Following

Half-Yearly Interest or Augmentation Table:[30]

YEARS.		INTEREST TO ADD.		
1801	1	£0	3	9½
	2	0	7	7
1802	1	0	11	4½
	2	0	15	2
1803	1	0	18	11½
	2	1	2	9
1804	1	1	6	6½
	2	1	10	4
1805	1	1	14	1½
	2	1	17	11
1806	1	2	1	8½
	2	2	5	6
1807	1	2	9	3½
	2	2	13	1
1808	1	2	16	10½
	2	3	0	8
1809	1	3	4	5½
	2	3	8	3
1810	1	3	12	0½
	2	3	15	10
1811	1	3	19	7½
	2	4	3	5
1812	1	4	7	2½
	2	4	11	0
1813	1	4	14	9½
	2	4	18	7
1814	1	5	2	4½
	2	5	6	2
1815	1	5	9	11½
	2	5	13	9
1816	1	5	17	6½
	2	6	1	4
1817	1	6	5	1½
	2	6	8	11
1818	1	6	12	8½
	2	6	16	6
1819	1	7	0	3½
	2	7	4	1
1820	1	7	7	10½
	2	7	11	8

1821	{ 1	7	15	5½
	{ 2	7	19	3
1822	{ 1	8	3	0½
	{ 2	8	6	10
1823	{ 1	8	10	7½
	{ 2	8	14	5
1824	{ 1	8	18	2½
	{ 2	9	2	0
1825	{ 1	9	5	9½
	{ 2	9	9	7
1826	{ 1	9	13	4½
	{ 2	9	17	2
1827	{ 1	10	1	11½
	{ 2	10	4	9
1828	{ 1	10	8	6½
	{ 2	10	12	4
1829	{ 1	10	16	1½
	{ 2	10	19	11
1830	{ 1	11	3	8½
	{ 2	11	7	6
1831	{ 1	11	11	3½
	{ 2	11	15	1
1832	{ 1	11	18	10½
	{ 2	12	2	8
1833	{ 1	12	6	5½
	{ 2	12	10	3
1834	{ 1	12	14	0½
	{ 2	12	17	10

2. *Perpetuity,* of the mass of interest granted, subject to redemption.—Taken from stock annuities;—agrees with Irish debentures and India bonds;—differs from Exchequer bills.

3. *The principal not demandable.*—Taken from stock annuities;—agrees with Irish debentures and India bonds: also with navy, victualling, transport bills, and ordnance debentures;—differs from bank, bankers, and private notes and bills.

4. Interest *without special fund,* over and above the general consolidated fund.—Taken from Exchequer bills;—differs from the former practice in the creation of stock annuities;—agrees with all the other above-mentioned government engagements.

5. The quantity issued, *incapable of exceeding the quantity demanded at the original price.*—Agrees with bank paper, and in practice with bankers' paper;—differs from stock annuities, Irish debentures, exchequer bills, and navy, &c. bills.

6. The evidence of the engagement consigned to a portable instrument instead of a *fixed book.*—Taken from exchequer bills;—differs from stock annuities;—agrees with Irish debentures, and the now disused navy, victualling, transport, and ordnance bills or debentures:—also with India bonds, bank notes, bankers' promissory notes, and private promissory notes, and bills of exchange.

7. The *paper,* by its *size, shape, texture,* and *thinness,* particularly fitted for circulation.—Taken from bank paper;—agrees more or less with bankers' paper, and with the French assignats—differs from all the other above-mentioned engagements, except from some late issues of exchequer bills, in respect of *size.*

8. Application of the *profit* of the measure *towards the reduction of the national debt.*—Taken from the sale of the land tax—*i. e.* the exchange of so many portions of the annual produce of that tax for portions of stock annuities;—differs from all the other engagements above mentioned.

§ 2.

Features Altogether New.

9. Secure provision for the *instant* extinction of the debt created by it.

10. The amount of it incapable of exceeding the amount of the existing debt.

11. Funds, no other than those already provided for the existing debt; but the security better, in respect of the appropriation of the profit to the exoneration of the fund, by the continual redemption of a greater mass of the debt than the mass continually created.

12. Interest receivable, with scarcely any trouble or expense, wherever *letters* are receivable.

13. The note or instrument serving as security for the interest, purchasable of government with *scarcely any* trouble or expense wherever *letters* are receivable.

14. Ditto, receivable in the course of circulation, and with the interest, *without any* trouble or expense. *N.B.* Exchequer bills, India bonds, &c., are not obtainable in the course of circulation, without the expense of brokerage; to which is added, out of London, the expense of postage, and the expense of professional, or obligation of gratuitous agency.

15. Quantity obtainable, adapted to every purse, from the largest to the smallest.—Bankers' notes, limited as they are, on the side of diminution by law, and in point of variety of magnitude by the narrowness of the market, &c., in the instance of each banking-house, share this advantage in an imperfect and inadequate degree.

16. Facility afforded for ascertaining by inspection, without calculation, the amount of interest due, &c.

17. Securities against forgery.—See Ch. II. Table II. *Form of a note.* [Notes 14, 22, and 24.]

18. Facility thence afforded for *ascertaining the value in respect of genuineness*—an advantage it has over gold and silver coin, and which is shared with it in but an imperfect degree by bank and bankers' papers, &c., for want of the securities against forgery.

19. Means afforded of making *compound interest,* without hazard, trouble, or expense. Shared in an imperfect degree (being attended with hazard, trouble, and expense) by stock annuities—completely impracticable by any other means.

20. *Security against depreciation.*—The price can never rise, because any quantity may be had at the original price, so long as any portion of stock annuities remains unredeemed. In the *ordinary state of things,* no man need take an inferior price in the way of circulation, when men are giving the full price for it in the way of issue. As to the probability of any state of things so extraordinary as to produce a discount, see Ch. IV. *Grounds,* &c. Bank and bankers' paper are incapable of rise; but, in several instances, the one has experienced a partial, and the other a total loss of value.*

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CHAPTER IV.

GROUNDS OF EXPECTATION, IN REGARD TO THE PROPOSED MEASURE.

What is expected of the proposed currency is:—

1. That it will be taken out in the way of issue,
2. - - at the fixed price put upon it;
3. - - be received in circulation
4. - - at the same price;
5. - - with the addition of the interest,
6. - - and without undergoing any subsequent depreciation;
7. - - and will thus continue to circulate among individuals of all classes.

That it will be taken out in the way of issue, and pass in the way of circulation, at 3 per cent. nearly (the rate of interest put upon it,) notwithstanding the higher interest yielded by stock annuities, Irish debentures, exchequer bills, and India bonds, is proved by the example of bankers' paper, the interest on which runs from 2 to a nominal 3 per cent.; but really not so much, by reason of divers conditions, which reduce the value of it; besides that, in these instances, the engagement is not perpetual, nor the security so good.

That the *interest* due will be allowed for in circulation, is put out of doubt by the usage in the course of exchequer bills, navy bills, and India bonds; though none of these papers are provided with the *tables,* which do away the trouble of computation altogether, however small the sum, and however short the time.

The following may serve as a view of the masses of money (cash or bank paper,) *capable* of being employed in the purchase of this paper, whether in the way of issue, or in the course of the circulation—the time when the paper is capable of being taken in hand, being the time when the several masses of money respectively come in hand; and the time for parting with the paper, being the time when the money must or would have been parted with.

I. Monies capable of being employed in the purchase of the proposed paper, for the purpose of *perpetual* or *permanent* income, *without* any view to circulation; and that would thereby afford to the note-holder, so long as the paper were kept in hand, a mass of perpetual annuities on a small scale.

1. Money actually kept up in the form of a *petty hoard,* or hoard upon a small scale, with or without accumulation, to serve as a fund for demands, more or less remote and certain, but *determinate;* such as marriage, apprenticing out, or portioning children—provision for widowhood or superannuation—purchase of articles of stock

in agriculture or manufactures, building, or furniture of such a price as to require a persevering course of frugality to raise the amount.

2. Money, the amount of which *would be* kept up in the shape of the proposed interest-bearing paper, if the proposed encouragement were to be held out.

3. Money actually kept in reserve for contingent and *indeterminate* expenses.

4. Money that *would* be kept in reserve for such purposes.*

II. Monies that could not, or would not, have been employed in the purchase of the proposed paper, *but with a view to circulation;* the amount being destined to be otherwise employed or spent within a smaller or larger compass of time, in masses or in driblets, as the money (cash or bank paper) would have been employed or expended.

5. Money coming in the shape of *fixed* income, *i. e.* to an amount certain, and destined for current expenditure.

6. Money coming in the shape of *casual* income, *i. e.* to an amount uncertain, and whether in driblets or large masses, and destined (as above) for current expenditure.

7. Money received in the shape of income in *trust* on private account: *ex. gr.* by land stewards, army and navy agents, guardians, receivers of the estates of corporations, of estates thrown into Chancery, &c. See Ch. XI.

8. Money received in trust on *public* account, in its passage to or from the exchequer: *ex. gr.* by collectors and receivers of the land tax, customs, excise, stamps, assessed taxes, boards and individuals receiving impress money for various services. See Ch. V.

9. Money already in capital sums (whether received on the score of debt, or by sale of lands, houses, government annuities, shares in a joint stock company, succession, testament, or gradual accumulation) *under engagement* to be laid out, on a day certain or uncertain, in a mode of *permanent investment: ex. gr.* purchase of land, houses, or government annuities; shares in a joint-stock company, loan on mortgage or bond, stocking of a farm, or establishment of a manufactory.

10. Money already in capital sums *not under engagement,* but waiting for opportunities of being laid out, as above.

11. Money already in capital sums, not under engagement, but waiting for opportunities of temporary employment—such as loan by discount of bills, purchases in the above ways on speculation, purchases in the way of trade, &c.

12. Money, as yet in small sums (whether saved from fixed or casual income,) kept in hand for accumulation.

13. Money *received* in the shape of *capital,* in trust on private account: *ex. gr.* by assignees of bankrupts and insolvents, prize agents, executors, and administrators, turning effects into money, &c.

14. Money destined for the discharge of debts, and kept in hand while accumulating into the sum due, or waiting for the time when due, or for their being demanded.*

The ground of the expectation thus entertained on behalf of the proposed currency, will appear the stronger, the more closely the advantages conferred by the possession of it are compared with the advantages afforded by the several other sorts of securities, or modes of placing out money, considered as coming in competition with it;—viz. *stock* annuities, *exchequer bills,* and the market constituted by the demands of *individual borrowers, country banking-houses* included, as well as those afforded by *cash* itself, and by *Bank* of England *notes.*

I. Compared with the market afforded by *stock* annuities, we shall find it possessed of the following advantages:—

I. In regard to *purchase*—

1. No trouble or expense on the score of journeys to London, or attendance there; 2. No expense on the score of agency, 3. Brokerage, 4. Stamp duties, 5. Fees for powers of attorney, or, 6. Postage; 7. No danger of loss by buying to a disadvantage.

II. During *custody*—

1. Interest daily—not so much as a day's interest need ever be lost; 2. Interest receivable without trouble; 3. Compound interest capable of being made with certainty and facility; 4. Settlements of money in trust may be made by this means, without trouble or expense.

III. In regard to *transfer*—

1. No expense or trouble on the score of journeys or attendances; 2. No expense on the score of agency, 3. Brokerage, 4. Stamp duties, 5. Fees for powers of attorney, or, 6. Postage; 7. No danger of loss by selling to a disadvantage; 8. The capitals of the mass of notes, employable in the shape of circulating capital, in whatever portions may from time to time be requisite—just like so much cash—without trouble or expense.†

II. To money circumstanced as in the case last supposed—viz. to be laid out either in small parcels or parcels of any magnitude for a short time—the purchase of exchequer bills is in some measure free from the objections to which the purchase of stock annuities is exposed, but it is open to others:—

1. The period for which they are issued is limited in general to a time of war; besides which, their existence is at all times precarious.

2. The quantity of them is continually liable to increase, as well as the time of payment to retardation, and thence their marketable value to depreciation to an unknown amount.

3. Exchequer bills are never issued for sums less than £100; by which circumstance every mass of money less than that considerable amount is excluded from this branch of the market.

III. Circumstances of comparative disadvantage attending the private market may be reckoned as follows, viz.—

1. Trouble and expense and loss of time attending the inquiry necessary in many cases to the meeting with a fit opportunity of placing out money at interest.—N.B. *In the case of the proposed market, this circumstance of disadvantage is altogether wanting.*

2. Want of coincidence between the quantum of the sum wanted to be borrowed and that of the sum ready to be lent.—*Wanting altogether.*

3. Want of coincidence between the time for which money is wanted to be *borrowed,* and the time for which it can conveniently be *lent.—Wanting altogether.*

4. Difficulty of obtaining sufficient assurance respecting the competency of the security in its several points of view.—*Wanting altogether.*

5. Trouble, expense, loss of time and interest, attendant on the adjustment of the pecuniary part of the security.—*Wanting altogether.*

6. Trouble, sometimes expense, loss of time and interest, attendant on the process of demanding and obtaining payment of the interest alone, or of principle and interest together, as the case may be.—*Trouble and loss of time—reduced to next to nothing: Expense and loss of interest.—Wanting altogether.*

7. Danger of loss, and particular incidental inconvenience, by unexpected delay in regard to payment—*wanting altogether.*

8. Danger and fear of the necessity of litigation.—*Wanting altogether.*

9. Unwillingness to deal with a stranger, in consideration of the uncertainty respecting his trust-worthiness in respect of moral character and pecuniary sufficiency.—*Wanting altogether.*

10. Unwillingness to deal with the individual, if a stranger, in respect of the risk of being eventually obliged either to distress him by pressing for payment, or to submit to loss for want of such importunity in many cases. In the instance of a friend, in case of any apprehension of solvency, still more if on that of moral trustworthiness, unwillingness still greater.—*Wanting altogether.*

11. Unwillingness to accept of interest from a friend, especially if it be on a small sum, or for a short time.—*Wanting altogether.*

12. Unwillingness, through shame, to accept, and much more to demand, interest for sums and times separately trifling, how considerable soever in their collective amount.—*Wanting altogether.*

13. Embarrassment, disputes, and loss of time in the computation of interest on small or fractional sums, or for short and fractional periods.—*Wanting altogether.*

14. Danger of loss by death, marriage, or other change of condition on the part of the borrower, whereby, as far as mere personal security is concerned, a security originally sufficient may become bad or precarious.—*Wanting altogether.*

That it should continue to circulate without any depreciation, is not essential to the existence of a paper currency—witness the case of exchequer bills and other government paper. But though the property of circulating without depreciation may not be essential to the circulation of this annuity-note paper, it will at any rate be highly conducive to it.

Depreciation proof, it must be confessed, it cannot be, any further than the government, of whose promises it is the vehicle, is destruction proof: by any cause, therefore, that threatens immediate danger to the government—such as invasion, for example, or civil war—its value will be liable to be diminished. These cases can never be urged as an objection specially applicable to the proposed measure.

The measure would not impair, but rather add to the solvency of the government: by the profit it would afford, additional means would be afforded for the reduction of the debt of government.

To the security of government it would add by the multitude of hands it would engage by the tie of interest in the support of government. To create and maintain an interest of this sort is a most happy property common to all government securities: but all the government securities yet known in this country are confined in their circulation to the superior and least numerous classes. It is among the characteristic properties of the proposed new government security, to spread itself among the poorer and most numerous classes, and thus to engage them to give their support to government.

Against depreciation from any sudden demand for payment, the proposed paper is not only *as* secure as the existing government papers, but more so: those other papers engage to pay the principal and interest; the proposed paper, the interest only. In the one case, the fund drawn upon is the revenue of a single year, or some small number of years; in the other case, the fund drawn upon is the revenue of thirty-five successive years.

Setting aside the extreme cases here in question, there is but one cause of depreciation to which government paper stands exposed, and that is the forcing of the market. The proposed paper *alone* is not exposed to this cause of depreciation: it will be issued only in proportion to the demand, and is rendered for ever incapable of exceeding it. The produce also will be employed in strengthening the security and lightening the load of the same commodity at market.

It may, however, be urged, that though the proposed paper can never be sold under the par price, it may, in consequence of the demand for its correlative hard cash, cease to bear that price. That such would be the effect in the event of a civil war or serious invasion, will scarcely admit of doubt; and that an effect of the same nature, though to a less amount, should be liable to be produced by other causes, can hardly be regarded as improbable.

To this it may be answered—

1. That admitting (for argument's sake) that such a result would occasionally take place to a certain degree, still this would not operate as an argument against the institution of the proposed plan, unless such a result were to appear more likely to take place, or likely to take place in a greater degree with regard to it, than with regard to any other circulating government securities.

2. That though such a state of things as the objection supposes be conceivable, yet no ground can be stated, either in point of reason or experience, for regarding it as likely ever to be realized. To whatever extent the amount of the proposed paper may have arrived at the time of the supposed extra demand for cash, it cannot have attained to it but in consequence of a proportionable preference given to it in comparison with hard cash. And the cause of that preference is a circumstance not exposed to change. It consists in this, viz. that principal with interest amounts to more than principal alone: £103 is more than £100, and the ratio is not less at one time than another.

For the purposes of expenditure within the limits of the British empire, the proposed paper could never lose its superiority; and as to so extraordinary a demand for the precious metals for exportation to foreign countries, no such case appears ever yet to have been realized;—the scarcity of bullion in 1796, in the opinion of the most competent judges, being referable not to the extent of the foreign demands, but to the constitution of the existing private paper, payable on demand; to the experienced brittleness of some of the country paper; to the occasional scantiness of the paper of the great chartered company, coupled with its preceding copiousness, and the excess of the advances made by the company to government,—causes which after all would not have been adequate to the production of the effect, had it not been for those alarms of invasion which were prevalent at the time.

3. That no such extra demand for cash, supposing it to exist, could produce any depreciation in the price of the proposed paper till after it had put an entire stop to the purchase of it in the way of issue; since the progress of the issue, being matter of universal notoriety, it could never (in virtue of Art. 18) happen, that in any one part of the country (the expense of postage being out of the question) a man should give £100 for such a quantity of this paper as might in any other part of the country be had for £99. 19s. But in the nature of things, setting aside the influence of the supposed extraordinary and temporary causes, the amount of the demand for this paper cannot but be regularly receiving a regular and very rapid increase.

4. But if, in a case thus void of probability, it were worth while to look out for a remedy, a remedy, and that of the preservative kind, might easily be provided for it: I

mean that of a cash fund (not to exceed, suppose a million) formed by a reserve made of a part of the profits of the operation (as per Art. 9,) to be employed in case of need in the support of the price of the proposed paper, by either buying it in with cash, or taking it in pawn for cash, from the time that the discount upon it had risen to an amount worth regarding.

In consideration of this steadiness of price, the proposed paper would become *everybody's paper;* all persons possessing any of the masses of money above enumerated—that is, all classes of the community—are likely to be included among the holders of the proposed paper, either as customers for permanent or temporary annuities upon large or small scales; and as it would possess a *value in use* superior to that of gold and silver, inasmuch as it would yield a profit whilst it was retained; and inasmuch as it would possess a solidity of value far exceeding the paper of any private banker, or even the paper of the bank of England—a solidity only to be destroyed by destroying the power of the government, to pay the interest promised to be paid—a solidity increasing with the amount issued—it would be secure of constant circulation from hand to hand.

Being the holder of an annuity note, there is not a person living on whom I have any right to call upon to give me value for it:—but had it not been for the advantage accruing from the holding of the note, I should not have become the holder of it: and as the advantage thus accruing to me from the holding of this note is no greater to me than it will be to thousands of other people—in a word, to every man without exception, to whom it can be in my way to offer it—in the event of his becoming the holder of it in my stead, the certainty of my obtaining value for it at any time wants nothing of being entire.

No one living is bound to give me silver for the guinea I have in my pocket; yet who is there that ever hesitated to receive a guinea, under the apprehension of not being able to get change for it? Not only the self-regarding advantage of making profit by goods sold for part of the value, engages my neighbour, the shopkeeper, to change it for me, on my laying out to the value of a few halfpence with him, but the social consideration of amity and neighbourhood is sufficient to procure for me the same accommodation at his hands, without any such personal advantage. In the case of the annuity note, the social consideration not only operates with equal force, but has the personal consideration of the advantage to be gained by the holding of the note to back and strengthen it.

The material question is,—Will it be received? This being answered, and answered satisfactorily, the other question,—Why will it be received? how comes it that it will be received?—is matter only of curiosity and speculation.

It may further be observed, that no man will ever have obtained any such note *in the way of issue* (I mean at the office,) who would not have preferred obtaining it in the course of circulation, and in that way would have obtained it, if he could have got it; because the trouble and expense of taking it out in the way of issue, reduced as it is to the lowest term, will always be something; and in the way of circulation he obtains it without either that trouble or expense. The necessary consequence is, that in the

ordinary state of the market, there must exist at all times a disposition to receive a greater quantity of this article than is ever found in it.

The practice of taking out annuity notes can never have become *general,* without the practice of *receiving* them in the course of circulation having become *universal,* and the disposition so to receive them have grown into a confirmed habit—a habit as determinate as that which engages a man without reflection, without thought or deliberation, to receive bank paper, as he would gold.

The value of these notes would be depreciated or destroyed, if the taxable powers of the nation were to such a degree exhausted as not to suffice for the payment of the whole of the annuities with which it stands chargeable, and consequently not for the whole of this proposed branch of annuities. If the whole island became a province of France, or were swallowed up by the sea,—if the globe of which it forms a part were carried off by a comet, were frozen, drowned, or burnt.—But we have no need on the present occasion to take any account of any of these calamities, and *that* not so much on account of their improbability, for there is not one of them that can be pronounced impossible, as because, bank paper being the assumed standard of comparison, any one of them would be equally fatal to the credit of such paper.

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CHAPTER V.

FINANCIAL ADVANTAGES.

The advantages of a financial kind that may be expected from the proposed measure, will require to be distinguished according to the *periods* or stages above marked out, in regard to the progress of it.

§ 1.

Period First,

From the opening of the first issue of annuity notes, to the arrival of the 3 per cent. stock annuities at par.

The branches of profit or advantage that may be looked for in the course, or at the conclusion of this first period, may be stated as follows:—

1. Profit on sale by the difference between the price for which a 3 per cent. annuity, as secured by an annuity note, is sold, and the price at which an annuity to the same amount, as secured by an entry in the books of the stock annuities, is bought in with cash raised by the above sale; in a word, profit by difference between the selling price of note annuities and the buying price of stock.—*N.B.* This branch of profit ceases altogether on the termination of Period I.*

2. Profit by interest forborne to be received on annuity notes.

3. Profit by notes in hand;—profit by interest on annuity notes received by government in the course of circulation, while kept in the hands of government.

4. Profit by notes lost under circumstances which either do not admit of, or do not call for compensation.

5. Profit by reduction of the rate of interest paid by government for such money as it is in the habit of borrowing by annual anticipation, by the issue of exchequer bills.

Profits Peculiar To Periods II. And III.

6. Profit by saving upon the expense of management.

7. Profit by fractional interest; *i. e.* by the 7d. per £100, the difference between the £3 per cent. yielded by stock annuities, and the £2 : 19 : 5 yielded by £100 worth of note annuities.

8. Profit by the redemption of all stock annuities yielding more than 3 per cent., and thereupon by extinction of the masses of extra interest.

Profit Peculiar To Period III.

9. Profit by reduction of the rate and quantum of interest upon the mass of the national debt.

10. Profit peculiar to a state of war; *i. e.* to those years in which money is to be raised by the creation of fresh masses of government annuities;—profit on loans: profit or saving by lessening the loss by those transactions, by raising the price of government annuities as compared with money, and thereby lessening the loss by the difference between money on the creation and sale of government annuities, and money paid on redemption of the same.

11. Profit by yearly interest instead of halfyearly—a profit mentioned as being obvious, and capable of being realized, but not (it is supposed) to advantage.

If to prove the proposed measure to be an advantageous one, and advantageous to a sufficient degree to give it a claim to be carried into practice, it were necessary to prove the quantum of the advantage, or even to give a calculation that had pretension to exactness, its chance for adoption would be weak indeed. Happily for the plan, no such proof can reasonably be required:—whether the profit be £10,000,000, or no more than £10,000, still, although that advantage stood alone, yet supposing it to stand clear and not to be attended with any degree of disadvantage capable of counterbalancing it, the conduct indicated would be just the same: it would be worth adopting, though the advantage were worth no more than £10,000; and it could but be adopted, though the advantage were equal to 100 millions.

Profit I. Profit by the difference between the selling price of a £3 a-year annuity note, and the buying price of a do. stock annuity.

This profit will depend upon the average price of 3 per cent. stock taken out of the market upon the buying-in plan, before the commencement of the period during which, these annuities being at or above par, the paying-off plan will have taken place of the buying-in plan, and the quantum of annuity-note paper issued, and thence the quantity of stock bought in with the produce of such annuity-note paper.

Profit II. The expectation of profit by interest forborne to be received, is grounded on the following proposition, viz.—That in general a man will not bestow either trouble or expense, much less both, how inconsiderable soever the quantity, in compassing an end which he has it in his power to compass to equal perfection without any such trouble or expense.

The trouble (not to speak of the expense) attendant on the receipt of the interest on these annuities, has been reduced to the smallest amount possible; because, the greater it is, the greater the danger lest, by the contemplation of it, individuals should at the outset be repelled from the purchase of these annuities. But be the reduction ever so

great, still the remainder will be something; and this remainder, it may reasonably be expected, would, in the ordinary state of things, be sufficient to turn the scale. On the other hand, suppose the circulation of the paper to be once established, upon the terms on which government paper is in the habit of being received—(I speak of exchequer bills, navy victualling, transport and ordnance debentures, not to mention India bonds)—viz. the allowing for it, in addition to the amount of the principal, the amount of the interest that has become due upon it. A man, by simply paying away an annuity note upon that footing, will receive, from the individual who takes it of him, the amount of such interest, without the trouble of applying for it elsewhere.

The smaller the amount of interest or other money to be received, the greater the *ratio* which the trouble of receiving, whatever it be, will bear to it; accordingly, if there be any difference, it is in the instance of the smaller notes; and the more certainly, the smaller the note, may the dependence on this forbearance be assured.

But the disposition to forbearance will be the more steady, the more perfect and unbroken the facility of receiving the money, in the event of its being thought fit to receive it, appears to be. It is on the strength of the persuasion entertained by a man, that the amount of a banker's note which he has taken in payment would, if demanded, be paid at any time, that his forbearance to demand it is grounded.

It is on this account, that whether or no the payment of the interest upon a fresh note be deferred till after the end of the year, or be divided into two payments, the first of them to take place at the end of the first half-year—at the end of the year it seems most advantageous, upon the whole, that the *even* amount of the year's interest should be made demandable at any time.

1. In regard to the proportion of interest that would be likely to be forborne, thus much may be to be observed:—in regard to whatever portion continued to be employed as currency, the forbearance would probably be general and continual.

2. In regard to whatever part was hoarded for the purpose of furnishing *compound* interest, it could not take place. To obtain an interest upon a year's interest due on any note, it would be necessary for a man to receive that interest, and with the money take out a fresh note or assemblage of notes: a second year's interest is a year's interest, and no more, in addition to its own amount; it does not give him the interest he might have made on the amount of the same year's interest, by receiving it in the shape of money, and employing that money in the purchase of a fresh note carrying its interest; or (what would come to the same thing) by receiving it at once from the office, if upon his application the office were to furnish him with it in that shape.

3. In the case of a mass of annuity-note paper kept in hand for the purpose of income, but without any determinate plan of accumulation in the way of compound interest, it seems difficult to say whether receipt or forbearance would be most apt to take place. The purpose of receipt might be equally answered by forbearance; viz. by paying away at each period a mass of paper of an amount equal to what the whole mass had gained in value on the score of interest by that time. But this would require provision to be made accordingly in the composition of the sums constituted by the notes: and

which of the two masses of trouble would be the greater,—that of making the provision in question, or that of receiving the interest at an office,—would depend upon circumstances.

In the meantime, this consideration operates as a reason for rendering the composition of the series of notes as favourable as possible to the purpose of affording interest in the way of simple circulation as above described, without the necessity of coming upon government for the payment of it; that is, to render the gradation of the series more regular, and the *terms* or degrees in it more numerous, than might otherwise be necessary or desireable. The more complete the series of notes, the greater the chance it has of meeting the demand of each individual with reference to this purpose.

As to the quantum of this branch of profit, the principal part—that which may be regarded as certain—will depend upon the quantity of the paper thus employed, and upon the time during which each parcel of that quantity remains in circulation. It will depend consequently on the duration of this first period.

Should this period prove a short one, the probable length of it (according to a supposition that will be stated a little further on) not exceeding two or three years, the branch of profit will be proportionably inconsiderable; but whenever it vanishes, it vanishes (as will be seen) only to make way for a branch of much superior importance. So long as stock annuities are to be purchased under par, none of those persons whose circumstances it suits to become customers for stock annuities, will, in respect of that portion of their money, become customers for note annuities, which will not be to be had but at par price. But no sooner are stock annuities arrived at par price, than these note annuities will be at least as well suited to the circumstances of the customers for stock annuities: and inasmuch as the mass of stock annuities will be lessened every day by the operation of the sinking fund, while the mass of note annuities cannot be increased without diminishing by at least an equal amount the mass of stock annuities, the owners of the continually increasing mass of money seeking to be employed in the purchase of government annuities, to serve as a source of permanent income, will have no other resource than to lie in wait for annuity notes as they pass from hand to hand, and so impound them and take them out of the circulation.

Profit III. The third head of advantage consists in the saving or profit that may be made to accrue on the score of interest upon annuity notes, which, after being received by government from individuals on the score of taxes or otherwise in the way of circulation, remain at the command of government till wanted to be re-issued.

This head of profit will again require to be distinguished into three branches:—

1. Profit by annuity-note paper lying in the exchequer.

2. Profit by do. lying in the hands of receivers of all classes in its way to the exchequer.

3. Do. by do. lying in the way of imprest in the several offices of expenditure, waiting till re-issued.

1. As to the first of these three branches of profit, what the probable annual amount of it may be, is completely out of the knowledge of the writer of these papers, but as completely within the knowledge of those to whom they are addressed: I mean in so far as the past is capable of serving as a guide to the future. Add together the 365 sums respectively existing in the exchequer on the 365 days of the year, and divide the sum by 365; the quotient will be the principal, the interest of which will thus in the course of the year be gained or saved to government, supposing the whole of the money to be in the shape of annuity notes. From this gross amount of principal will require to be deducted, the amount of that proportion of money which is upon an average in the shape of cash.

2. As to the second of the above three branches of profit, it will rest with government whether to take it into its own hands, or to leave it in the hands of the receiver.*

3. In regard to the last of the above three branches, little need be said. The money being already, in the shape of annuity-note paper, yielding an interest to government,—so long as it is in the hands of government, all difficulty in regard to the conversion of it into that shape is out of the question here.

Under the existing plan, much anxiety has every now and then been entertained to prevent this or that subordinate officer of expenditure from getting inordinate sums by way of imprest into his hands. Under the proposed plan, the money being in the shape of paper, that paper yielding its interest to government,—so long as it is in the hands of any office or officer keeping it on the account of government, though the quantity issued from the exchequer to this or that office, upon this or that occasion, should happen to be more than sufficient—in other words, to be excessive—it would be no matter, since not only the temptation to produce the excess, but even the mischief of the excess if produced, would, in the proposed state of things, be done away.

Profit IV. Profit by notes lost under circumstances which either do not admit of, or do not call for compensation.

As this source of profit will go on increasing as the quantity of annuity-note paper increases, and will consequently be inconsiderable in this first period, even at the close of it, in comparison with what it will be at the close of the second period, at which time the conversion of the whole mass of stock annuities into annuities secured by annuity notes will have been completed,—it is to the second period, that what there may be to say in regard to this source of profit, may with most propriety be referred.

Profit V. Profit by reduction of the rate of interest paid on other government paper.

With the fall in the rate of interest yielded by stock annuities, the fall in the rate of interest paid by government on exchequer bills will at least keep pace. As to the absolute quantum of profit on this head, that will of course depend on the amount of

exchequer-bill paper issued within the time: a quantity, in regard to which, any calculations or conjectures that could be given would be of little use.

Profit VI. Profit (if taken) by difference between yearly and half-yearly interest. This branch of profit would not attain its *maximum* until the close of the second period; but I have already stated that my leaning is not to assume this head of profit, and for what reasons. It may, however, be observed, that it would yield a rateable profit of £225 per million, whilst the interest upon the national debt remained at three per cent.

§ 2.

Period Second,

From the arrival of stock annuities at par, to the redemption of the last portion of stock annuities; whereupon follows immediately the opening of the second issue of annuity notes at the reduced rate of 2⅜ per cent.

1. Profit (in the shape of principal-money) *by sale of notes* ceases; but, in the event of the creation of a fresh parcel of stock annuities, revives and continues till the redemption of such stock annuities.

2. Profit *by interest undemanded* will continue, and with increase. The profit above mentioned as produced by the notes in circulating hands will increase as the quantity of paper taken out with a view to circulation increases. To this will now be added the profit produced by the notes in *hoarding hands;* viz. the expelled stockholders who take this paper with a view to permanent income, as they held their stock. This branch may be termed the casual branch: it will arise out of such casual forbearances only as take place at present in the case of dividends on stock. The probable rate of it might be estimated from the course of the payments on this score made at present at the bank.

The quantity of government annuities, stock and note annuities taken together, will, it is true, be growing less and less every day; while the quantity of money capable of being employed in the purchase of them will be growing greater and greater: so that the scarcity will be growing at both ends. But inasmuch as the issue being open all the while, everybody will be at liberty to supply himself with whatever quantity of this paper he chooses, whether for the purpose of hoarding or with a view to circulation, the diminution will fall exclusively upon the stock annuities, the quantity in circulation will not be absorbed in any degree by the demand for the purpose of hoarding; and the only effect of the increasing scarcity, even when the issue is at the point of closing, will be to make the demand, and consequent emission, the more rapid to the last.

3. Profit by *notes in hand.* This inconsiderable source of profit seems likely to continue from the first period without any variation worth inquiring into. It admits of no increase from the increased amount of annuity-note paper produced by the

conversion, that part only which is circulation, being capable of finding its way into government hands.

4. Profit by *notes lost.* During the whole of this second period, this source of profit will be on the increase; a quantity of annuity-note paper equal to the whole amount of stock annuities, being in the course of it added to the mass.

5. Profit by reduction of interest on exchequer bills. This source of profit will probably have begun to manifest itself in the course of the former period, but it is not till now that the amount could easily be submitted to calculation.* During the whole of this second period, the rate of interest will be that reduced rate towards which it will have been moving on during the first period.

This head of profit will be an enduring one. No plenitude on the part of the exchequer will warrant the disuse of exchequer bills: it would be bad economy to make and keep on foot a *perpetual* loan to a certain amount, in order to save *occasional* loans to the same amount, at the same or nearly the same rate of interest: and to keep in hand a sum in cash to the same amount, would come to the same thing. The maximum of advantage under this head is therefore what results from keeping the rate of interest on such loans from rising more than one step above the level of the rate paid on perpetual loans. Upon the adoption of the proposed measure, it would be requisite to examine whether the plan of the present exchequer bills would be the most advantageous plan for borrowing money on such temporary loans.

6. Profit by saving in the expense of *management—transfer* and *allowance of interest,* as between *individual* and individual, being performed *without* expense—and the expense attached to the issue, and to the payment of interest on *government* account, being defrayed in part, or in the whole by *fees.* See Ch. I. Plan, Art. 17. This profit, being a rateable profit on the amount of debt, will of course diminish in *amount,* as the amount of the debt diminishes.

7. Profit by reduction of interest from £3 to £2: 19s. This profit results from the conversion of stock annuities into note annuities at the par price of both, which will be the price throughout this second period. It amounts to exactly 1-60th part of the interest at 3 per cent. It comes in a manner without design, the difference being the unavoidable result of the defalcation of a few fractions, which it was necessary to get rid of, in order to leave even and commensurable sums.* The amount of annual profit on this score, on each million of capital in stock annuities converted—*i. e.* on each £30,000 of interest on the said capital—is £500.†

8. Profit by reduction of interest on stock annuities at higher rates than 3 per cent. The amount of this profit might easily be made the subject of calculation.

§ 3.

Period Third,

From the opening of the second issue at 2⅜ths nearly (viz. £2 : 7 : 5) per cent., to the redemption of the paper of that second issue;—whereupon follows immediately the opening of the third issue at £1 : 9 : 6, being a trifle less than 1½ per cent.

I. Profit by reduction from £2 : 19s. per cent. to £2 : 7 : 5 per cent.

Rate of interest on the closed issue during this period,	£2	19	0
Rate of the open issue,	2	7	5
Difference, constituting the rate of profit by the operation,	£ 0	11	7

This result constitutes the characteristic profit of this third period. The proportionable amount of it is nearly the fifth part of the interest on the mass of annuities remaining, at the commencement of this third period, viz. £5791 : 13 : 4 per annum for each million of capital of annuity notes.

II. Profit on sale, *i. e.* by difference between selling price of annuity-note paper, and buying price of stock annuities, remains as in Period II., extinct by the extinction of stock annuities;—subject to revival in the event of a fresh creation, as before.

III. & IV. Profits by interest undemanded, and by notes in hand, continue as in Period II. with little change.‡

V. & VI. Profits by notes lost, and by saving in respect of the expense of management, being rateable profits, their amount per million's worth of paper continues unchanged, but their total amount diminishes of course in some degree, as the amount of annuity notes (which, from the commencement of this third period, are the only redeemable government annuities remaining) is diminished by the operation of the sinking fund.

For some time at least, the paper of this second issue carrying but £2 : 7 : 5 a-year interest, the demand for it, with a view to *circulation,* will be more certain than the demand for the purpose of *permanent* income on the footing of stock annuities: because to the former set of customers, the whole amount of interest, reduced as it is, will be as so much *gain;* being a profit which, but for this species of paper, they would not have made—perhaps at all—certainly not in this commodious way, and by government annuities:—whereas the reduction will sit heavy on the customers for *permanent* income, who, if they continue their money upon government security, must submit to see their incomes reduced to this amount, and whose capitals to a considerable amount will accordingly, for the purpose of escaping such reduction, be withdrawn from this employment, and either laid out upon other *securities,* or embarked along with the owners in some branch of trade.

The progress of the operation may, notwithstanding, not be diminished upon the whole; for to the amount of the demand with a view to circulation, no assignable limits can be found.

Profit VII. Profit in respect of Exchequer bills. During this third period, in compariison with the second, the rate of profit will receive an increase.

For the money wanted for occasional purposes during the second period, it will (as has been seen) have been necessary to give a rate of interest one step higher than that which, by the continual emission of annuity notes at that rate to all customers, it was in the power of everybody to make. But the first issue being *now* closed, it is no longer in the power of everybody or anybody to obtain government annuities at that rate; since, though paper of the first issue will still be to be had of individuals, it will not be to be had but at an advanced price. The profit by the saving of this advanced price will be sufficient to engage customers to take exchequer bills, at the par price of the *closed* issue, to an amount adequate to any money that can be wanted on the footing of a temporary loan.

§ 4.

Period Fourth,

From the opening of the third issue at 1½ per cent. nearly (viz. £1:9:6 per cent.,) to the redemption of the last portion of paper of that issue;—whereupon follows immediately the opening of the fourth issue at £1 : 3 : 8½ per cent., being a trifle more than 1? per cent.

Rate of the closed issue during this period,	£2 7 5
Rate of the open issue,	1 9 6
Difference, constituting the profit of the operation,	£0 17 11

The annual amount of this head of profit, for this fourth period, is, for each million of capital remaining in the hands of individuals, *i. e.* for each £30,000 of interest at the original rate of 3 per cent., £8958 : 6 : 8;—the total amount of profit by reductions of interest up to this period inclusive, on each million of capital, £15,259.

Profits by notes lost, and by expense of management saved, will continue as before, with little change in regard to the rate, but in respect of the total amount, reduced in course as the quantity of the annuities in question is reduced.

So in regard to profit by *interest undemanded,* and profit *by notes in hand.*

Profit in respect of *exchequer bills,* will at this period, if not before, be so far fixed, as that the rate of interest upon these temporary loans will never be higher, but more likely lower, than that of the closed issue. For although the reduced rate of the open issue should not be accepted of by the expelled annuitants of the closed issue, nor even by any more of the customers for note paper with a view to circulation; yet, for

the reasons given with reference to Period III., the premium given for the paper of the closed issue will, notwithstanding, be considerable: the more so, as the drop from the rate given by the closed issue (the second issue) to the rate given by the third issue (being the issue that remains open till the very close of this fourth period) is so great. Between the two amounts in question, a profit sufficient to draw purchasers for exchequer bills cannot but find room to place itself; and the interest on exchequer bills during this period may be expected to be considerably less than £2 : 7 : 5.

§ 5.

Concluding Period.

The precise number of reductions which the rate of interest upon this paper might be destined to experience, is what it would be too much to attempt to fix. But a picture of the last moments of the expiring debt, at whatever stage the reduction of interest may then be, may be not without its use.

It will present the profit by *interest undemanded* in an enlarged and interesting point of view: it will strike off in effect the last 10, or 20, or 30 millions of the debt; and strike off perhaps the value of a year or two or more from the duration of that load.

After the exoneration thus effected in the course of the fourth period by the reduction of the rate of interest to the £1 : 9 : 6 which is the rate given by the paper of the third issue,—is it or is it not likely that the reduction of interest should have descended lower before the redemption of the last portion of the principal of the debt?

The reduction of the rate of interest on the money that had been thus lent to government will stop short of this mark, or stop at it, or go beyond it, according to the influence which the rate thus allowed by government turns out to exercise over the rate of interest in general. That the influence which the government rate of interest has in its rising state maintained over the general rate of interest, has been considerable, is matter of known experience—though the operation of the restrictive laws which stop the rise at the point of five per cent. even on the slenderest security, has rendered the amount of this influence scarcely capable of being measured. The influence of the rate of interest paid on the debt cannot but increase with the magnitude of the debt, to which the magnitude of the mass of capital poured into the market (as will be seen) by the redemption of that debt, will be proportioned. The effect of 200 millions thus poured in cannot but be double (it should seem) to that of 100 millions, at least if poured in within the same compass of time.

The influence of the capital poured in by the redemption of the national debt at the time the reduction of the interest on that debt is going on, will (it is true) not depend solely on the quantum of capital thus poured in, but also on the magnitude of the growing mass of national capital into which it flows. But the general mass of national capital is also of itself in a rapid state of increase; and to such a degree on the increase, as to be of itself in a way to effect a reduction in the rate of interest in general, without any aid from this or any other factitious source. Accordingly, the

factitious cause of reduction—the factitiously accumulated capital which is thus poured in by government, so far from finding any obstruction in the magnitude and *vis inertiæ* of the mass into which it flows, finds a powerful assistance in the operation of that mass, acting as it is already, in a direction tending to the same end.

If, then, while the two forces, the *natural* and the *factitious,* are thus acting in this direction, the influence of the factitious should be strong enough to bring the other to the same pace, things will continue on in the same state as already depicted in the account of the fourth period: paper of a *closed* issue, in a quantity which cannot be increased;—paper of an *open* issue, in a quantity which will be continually and rapidly on the increase, till, by the produce of it, the paper of the closed issue has been paid off, when a fresh issue will be opened, at a still lower rate, and the *now open* issue *closed,* and so on: always paper of two issues, at two rates of interest, till the last applied portion of redemption money comes and sweeps them both out of the market at once.

If, then, the reduction of the rate of interest go on to the *last* year of the debt without stopping, the state of the paper during that last year, in respect of its being divided into paper of two issues (viz. a closed issue, and an open one,) will be the same at that supposed last period of the existence of this paper, and of the redeemable part of the national debt, as is exhibited in speaking of the advantages belonging to the fourth period of its existence: the paper swept off by the last mass of redemption-money will be paper of two different issues.

On the other hand, if the emission and consequent reduction have stopped anywhere, there will, at that last stage, be but one rate of interest paid by government on the redeemable part of the debt: the annuity-note paper remaining at the time will be, all of it, of the same issue—viz. the then closed issue:—there being at that time another issue *opened,* but no paper of that proffered issue in existence,—nobody having purchased any *at* that price.

For illustration's sake, let the last issue which meets with customers be the above-mentioned third issue,—the issue at £1 : 9 : 6, with the opening of which the fourth period commences: let thirty millions, at this time, be the amount of the whole remainder of the debt, of which let ten millions be the amount of the paper of the second issue now closed, bearing interest at £2 : 7 : 5 per cent.: and let the other twenty millions be paper of the third, or open issue, bearing interest at £1 : 9 : 6 per cent.: and let the ten millions at £2 : 7 : 5 per cent. be all of it in the hands of persons who keep it in hand as a source of permanent income; while the 20 millions at £1 : 9 : 6, is all of it in a state of circulation more or less rapid, being all of it in hands that *took it out,* or received it with that view.

The sinking funds, taken altogether—the sinking funds present and future—being now in a condition to pay off (suppose) ten millions in the course of a year, let such payment be made accordingly. This extinction, falling of course upon those ten millions, strikes off the whole of the hoarded paper, and leaves only that part which, being in circulation, constitutes so much of the circulating capital of the country. Upon the redemption of the last parcel of these ten millions, the opening of the fourth

issue follows of course, by article 22. If any purchasers presented themselves at the rate of this fourth issue (£1 : 3 : 8½ per cent.) the reduction of the rate of interest would go on. But by the supposition, no such purchaser *does* present himself. The persons who had been keeping their capitals in the shape of annuity-note paper of the second issue at £2 : 7 : 5, are, by the redemption of the remaining paper of that issue, put to their option—either to cease letting their capital lie on that sort of security, or to accept of £1 : 3 : 8½ per cent. By the supposition, they all reject the paper bearing this new and lowest rate: they will not meddle with it, not even for a time, and with a view of putting it into circulation by employing it in the ways in which they determine to employ the capital thus thrown upon their hands.

When the *two* masses of paper that had till now been in the market, are thus reduced to *one,* that one will, all of it, be in the hands of noteholders who take it with a view to circulation. For, whatever rate of interest is accepted on the footing of permanent income, there will be always persons in abundance to whom it will be worth while to accept of the next lowest rate, with a view to circulation. If, by the growth of national opulence, a rate so low as £2 : 7 : 5 appears now, is raised to such a pitch of relative value as to be worth acceptance in the character of a source of permanent income, the *next* lowest rate, though so low as £1 : 9 : 6, will be raised along with it in the scale of importance, and will become not less worth acceptance in the character of a source of such temporary profit as could not with equal security and convenience be made by any other means. And if the £1 : 9 : 6 itself come to be thought worth acceptance in the character of a permanent provision and sole dependence, the next lowest rate, though now reduced to £1 : 3 : 8½, will no more be regarded with contempt in the character of a source of temporary profit, than the £1 : 9 : 6 was before. If, then, the demand for annuity-note paper should stop altogether at any period prior to that of the complete extinction of the debt, it is with the customers for *permanent* income that it will stop, and not with the customers for temporary income with a view to circulation.

Compared with cash, the interest afforded by the annuity-note paper to those who take it or keep it with a view to circulation, will, be it ever so small, be so much *profit.* Compared with the preceding higher rate of interest, the reduced rate afforded by the annuity-note paper will, to those who take it, and who, to the extent of their respective capitals so invested, have nothing else to depend upon for their respective incomes, present itself as a loss to the amount of the difference.

Under these circumstances (though, for illustration's sake, the supposition has been that the fresh issue would at some period remain open without customers) it seems not very easy to abide by it. At the time the sinking fund came with its ten millions, and swept off all the paper of the second issue—all the paper that was in the hands of customers for permanent income—the demand on the part of the customers for temporary income with a view to circulation, had got no farther than the remaining 20 millions. But, under the accumulation of wealth inseparable from the state of things thus supposed, it is scarcely possible that the demand, from that class of customers, should for any length of time be altogether at a stand. If, in a twelvemonth, but a single £100 worth more than could be met with without giving such a premium as would make it dearer than the paper of the open issue, were wanted by any person for a few weeks or months, he would betake himself to the open issue.

Even in the case of the last group of now expelled note-holders, by whom this paper had been held as a source of permanent income, the supposition of their rejecting the paper of the fresh issue *altogether* appears scarcely tenable. They would still, to a certain degree, be customers for annuity-note paper, though with different views: *before* their expulsion, for the purpose of *permanent* income—*after* their expulsion, for the purpose of *temporary* income, till a better income or better prospects could be obtained from some other source.

True it is, that by the paper taken out of their hands they made £2 : 9 : 6 a-year; while by the paper of the fresh issue they would make not half the money—£1 : 3 : 8½. But £1 : 3 : 8½, which they might begin making from the very instant of their expulsion, would be £1 : 3 : 8½ better than nothing—which is what the interest of a considerable part of their 10 millions of capital would be reduced to, for a time more or less considerable, if it rejected this accommodation. And though no more than a single £100 of the expelled 10 millions were to betake itself to this employment, though it were but for a day, from thence would be to be dated the birth of the paper of the fourth issue.

If, however, at the period in question, there remain no paper but of one issue, it is all of it (as we have seen) in the hands of the customers for temporary income with a view to circulation, who would, generally speaking, betake themselves to the *circulation* for the interest of it,—upon which, the *demand* for interest at *the office* would nearly cease. But the same cessation might take place although there were to be paper of two issues—and would take place, if the paper of both issues were to be in the hands of the customers for temporary income with a view to circulation. Nor is this any more than what might well enough take place; since the paper of the closed issue would bear a premium corresponding to the superior rate of interest it afforded;* and it would be seen by government to be the case, if the interest upon the paper of the closed issue were seen to remain undemanded.

In this state of things, many millions of government paper still in circulation, and little or no interest demanded on it, there seems nothing to be gained and something to be lost by carrying the redemption any further. As to so much interest as continues to be undemanded, the debt *ceases* to be a burthen;—the taxes, from which the redemption money would have to come, would be a burthen; and the paper taken out of the circulation by the redemption would be so much taken from the mass of circulating capital—as much so as if gold to that amount, after having been received by government on the score of taxes, were to be thrown into the sea. A defalcation made to any such amount as the supposed 20 millions in the course of two years, might, by its suddenness, be productive of inconveniences such as it would not be easy to estimate;† —similar, in a word, to those which have been attributed to the diminution in the quantity of Bank of England paper in circulation.

Were the redemption thus to cease, it might be of use to declare, at the time that such cessation were declared, that from thenceforward, as often as a note were sent in for payment of interest, interest and principal should be paid together,* as is the practice at present in the case of exchequer bills; and at the same time to declare a respite of the redemption for a certain time.

The advantages would be—

1. The continuance of the source of profit in question (profit by interest undemanded) would be more steady and assured. For in proportion to the length of the respite declared, the paper thus respited would come to bear in circulation a premium; the amount of which premium, though *limited* by the rate of interest yielded by the open issue (resorted to or not resorted to) would not be prevented by it from taking place. This premium a man would lose, by sending in his paper to be paid off at par: in general, then, paper would not be sent in for that purpose, nor consequently any interest be paid by government.

2. No payment could thenceforward be made upon the proposed paper, but that a payment to a far greater amount would go in redemption of principal; whereas, without such regulation, no part of the money paid could take that profitable course.

The undemanded interest (it might be thought) might in this way come to accumulate to such a mass as might be productive of inconvenience, if by a sudden turn of affairs it were to become a matter of advantage to the whole body of annuitants to claim payment of it at once. But on a second glance, the inconvenience would be seen to vanish altogether. Supposing, as before, the amount of the paper twenty millions—rate of interest £1 : 9 : 6;—the whole amount of a year's interest would thus be short of £300,000. Being *simple* interest, not *compound,* the whole amount of it in twenty years would be short of six millions, supposing the whole of it to remain undemanded, and the principal undiminished all that time. No issue can carry more than its own interest; because, as the open issue fills, the paper of the closed issue is paid off, interest and principal together. *Respite* is indeed proposed; but the term of respite need not be so long as to preclude government from providing such a course of redemption as should ward off any inconvenience that might ensue from a too sudden diminution of this part of the currency, and at the same time prevent the interest from swelling to any such amount as to become formidable. At the worst, at such a period, interest so low, money so abundant, £6,000,000 would be but a trifle to raise by an immediate and temporary loan, as now by exchequer bills.

§ 6.

War Loans.

By so many per cent. as the market price of old annuities is raised by any cause, by so many per cent. (it is well known) is the price of new annuities raised to those who give money for them to government (*i. e.* the terms of the loan bettered) by that same cause:—since, as between old and new the value is just the same, it would be in vain for any man, or set of men, to insist upon any considerably greater price in annuities for their money (allowance made for depreciation by increase of quantity and for dealer's profit) than people in general are disposed to take for theirs.

Whatever takes *stock* out of the market, without taking out or keeping back the equivalent in *money,* adds in proportion to the price of stocks. The proposed measure

takes stock out of the market without taking out or keeping back money: it therefore adds in proportion to the price of stocks.

True it is, that even previously to the absorption of stock annuities which it takes out of the market, it has created other annuities to a considerable part of the amount; for it is only with the money received for those *new* annuities, that the *old* are taken out. But of the money thus received for the new annuities, there is not any part that would have gone to market for old annuities; because, while stocks are under par, no money that can be employed with advantage in the purchase of stocks, can be employed otherwise than to a manifest disadvantage in the purchase of the inferior rate of interest afforded by the proposed note annuities.

Any melioration thus produced in the price of stocks, and thence in the terms of the loan for any given year, will operate (it should be remembered) not only on the loan of that year, but on all succeeding loans during the existence of the existing debt; since, whatever additions the debt may come to experience in the course of any number of succeeding years, it will always be the less by the amount of all the defalcations that have been ever made from it.†

Were it not for the operation of the *sinking fund,* the profit on this account would be so much clearer; but inasmuch as, to the extent of the stock purchased in the year by that fund, government loses exactly as much as it gains on the stock sold in that same year in and by the loan, the amount of the loss by the *purchase* will be always to be deducted from that of the *profit* by the *sale.*

To calculate the probable amount of profit on this score, for one, two, or more years, would require two sets of *data;*—viz. 1. Amount of the several other *causes* of *elevation,* together with those of *depression,* in each year;—2. The amount of *annuity-note paper sold* in each year. The former would scarcely yield to calculation; the latter bids defiance to it altogether.

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CHAPTER VI.

ADVANTAGE BY ADDITION TO NATIONAL CAPITAL.

Among the advantages promised by the proposed measure, may be reckoned the addition it promises to make to the mass of national productive capital, and thence to the mass of national wealth; viz. by the acceleration it will give to the operation of the existing funds, in respect of the redemption of the national debt.

That an addition to the mass of national capital—an addition to the value of £100—is the result of every £100 paid in discharge of the national debt, is a proposition which, though hitherto it seems to have engaged but little if any attention, will be assented to almost as soon as mentioned. That the putting of money into men's hands on this occasion in lieu of the income they are obliged to part with, has no tendency to increase the ratio of the amount of money expended in the way of *prodigality,* to that of the money expended and employed in the way of *thrift,* is evident enough. But if, employing the money put into his hands in lieu of a source of income of which he is deprived, a man employ it otherwise than in the view of making it productive of a mass of income to equal amount, he employs it in the way of prodigality; and if he employ it with the view of making it productive of income, it must be either by expending it *himself* in the production or improvement of such articles as constitute a mass of *capital* to the amount of such expenditure, or by lending it directly or ultimately to somebody else, by whom it will be applied to that same purpose.

If the money thus put into the hands of the expelled annuitant in lieu of his annuity were taken from the mass employed in the shape of *capital,* there would be neither loss nor gain by the operation, on the score of addition to the mass of national wealth.* But the money thus employed by the existing sinking fund is *not* taken from any such mass. It is the produce of *taxes*—of taxes levied on income, either directly or through the medium of expenditure, and is taken out of that fund, the whole of which (after a small deduction on account of savings) would otherwise have been expended within the year, in the way of *current expenditure:* that is, in the purchase partly of unproductive labour, such as that of servants, coaches, horses, players, musicians, and the like—partly in the purchase of articles consumed mostly within the year, or some other such short periods of time, without having produced any equivalent increase.

Of the money thus put in the shape of capital into the hands of the public creditors on the redemption of their respective portions of the public debt, that part which is received by *British subjects,* will *in general* be employed in adding to the mass of capital contained within the limits of the British empire: on the other hand, that part which is received by *foreigners,* will as naturally be employed in adding to the mass of capital contained within the dominion of the states to which they respectively belong—in adding to the quantity of *foreign,* not of British capital.

Deducting, then, from the whole amount of the money payable on the redemption of the redeemable, but unredeemed portion of the funded debt, that part of it which is in the hands of foreigners, the remainder will be the sum that, in the year in which the last portion of the debt comes to be redeemed, will have been added to the mass of national capital from this source, independently of any effect produced by the proposed measure.

Whatever amount of profit the proposed measure may be attended with, this profit being also applied in aid of the other sinking funds to the redemption of the debt, will act in acceleration of that effect. It will therefore, in proportion to the acceleration, be productive of a distinguishable addition to the mass of national capital in proportion to the acceleration thus produced by it. In a rough way, the amount of this addition may be stated as equal to the interest at compound interest, at the rate at which the national capital is accumulating, upon the amount of the debt redeemed for the term of years struck off by the acceleration.

From the amount of *restitution*[*] thus made to capital, in any accurate computation would come to be subtracted that proportion of the national income, which, had it not been taken by taxes, and thence in the shape of redemption money added to capital, as it were by force, would have been saved up, and, without changing hands, have gone to capital of its own accord, and from the amount of profit by acceleration of the redemption of the debt, a similar proportion of the amount of such profit.

To the account of the addition thus promised to the mass of national capital, in respect of freed capital, and such other parts of the mass as are of an *intrinsically productive* nature, it may naturally enough be expected that I should add the augmentation promised in the shape of *circulating* capital;—viz. to that branch of it which consists of money.

That in certain circumstances an augmentation of this sort would be among the natural consequences, and even, unless prevented by special care, among the necessary consequences of the measure, is a proposition, the truth of which will, I think, appear with sufficient evidence: but far from taking credit for any such result in the account of advantages, probity requires that I should give warning of it as a source of danger. To point out the means of obviating this danger, will be the business of an ensuing chapter.

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CHAPTER VII.

ADVANTAGE BY ADDITION TO COMMERCIAL SECURITY.

Another advantage expected from the proposed paper, is—the addition it promises to make to commercial security—the support it holds out to commercial solvency. It presents itself, not only as being itself exempt from those shocks to which the ordinary species of paper money are essentially exposed, but as affording to the community a remedy, and that of the preventive kind, against the disorders to which it stands at present exposed by the constitutional weaknesses of those papers.

For a property thus valuable, it is indebted to two features belonging to it. One is—the making no addition by its quantity to the quantity of cash engaged for. It is by this, that it is itself preserved from that brittleness which is of the essence of those other papers. The other is—the faculty of being employed in either of two capacities at pleasure:—1. As a permanent source of income—like so much stock—so long as it is kept in the same hand; 2. As a circulating medium—a species of money, as often as it is passed on from one hand to another. It is by this latter feature that it is enabled to fill up whatever gaps may come to be made in the quantity of money in circulation, by a deficiency in the quantity of those other papers.

That in point of *security,* commercial wealth is liable to suffer from an excess in the comparative quantity of paper money, is a truth but too often felt, and sufficiently understood. That in point of *quantity* it is liable to suffer a kind of negative loss from a deficiency in the quantity of paper money, is a truth rather understood than felt, but equally out of doubt; because, inasmuch as every fresh £100 worth of paper money is so much added to the mass of circulating capital, to the amount of the value at which it passes, the national capital is of course so much the less for every accession of this kind which *it might* have received consistently with commercial security, and fails to receive. That by a deficiency in the quantity of paper money, commercial wealth is liable to suffer—not in point of *quantity* only, but even in point of *security,* is a sort of discovery in political economy, seemingly of very recent date.† Till the pressure upon the Bank of England in 1797, it seems to have been generally understood, that in the article of paper money, *deficiency* was the *safe* side:—but on that occasion it became apparent, that in regard to paper money of the kind in view, there is *no safe side.*

While there is stock to sell, and in such abundance, how (it may be asked) can commercial wealth be liable to suffer in point of *security* by a defalcation (which can never be a very large one) from the quantity of paper money? When by selling stock, a man who has either stock enough, or credit to borrow stock, may at any time raise as much money as he pleases: he will be a loser, it is true, by the interest of the stock sold out, from the time when sold to the time when replaced, and so far wealth suffers in point of *quantity:* but there ends the damage: *security* remains entire. Yes,

doubtless;—so a man may:—but on what terms? On the terms of taking the precise amount from some one else: the deficiency is *shifted* only, not *lessened.*

Stock may be *sold for money,* and in that *figurative* sense it may be *converted* into money:—but in the literal sense, it cannot be converted into money: and it is in the literal sense that an article must be capable of being converted into money, to answer the purpose in question here. *Stock* convertible into money? Yes, in the same figurative *sense* in which *lands* and *houses* and *goods* are convertible into money—and no other. Annuity-note paper *is convertible* into money, paper-money, in the *literal* sense.

Stock is one thing—paper money (the sort at present in use) is another:—annuity-note paper, and that alone, is both in one. It has two natures, and is at all times either the one thing or the other, whichever is most wanted.*

The defalcation made from commercial security by the defalcation of a given mass of money (*cash* or *paper,* makes to this purpose no difference,) would upon examination be found greater than might have been supposed. The annual receipts of the country, on the score of income and capital taken together, may (without any error capable of affecting the argument) be stated as not much over or under three times the amount of the money of the country, cash and paper taken together.† Call, then, the *quantity* of Bank of England paper *habitually* issued and kept in circulation, £10,000,000: and of that habitual 10 millions, suppose, at a *particular time,* one million cancelled or kept back,—for instance, by a defalcation to that amount from the usual discounts. Here, then, is produced already, by the defalcation of this single million from the quantity of money in circulation, a defalcation to the amount of three millions from the mass of money that should have been received in the course of the year:—and this without any allowance made for the proportion of the money of both sorts (cash and paper) that will always be hoarded and kept out of the circulation in the shape of *capital waiting for employment,* or the *cash* that must always be kept up in the same way as a *fund of reserve* for answering the engagements contracted by that part of the currency which is in *paper.*

Call the amount of money kept up on both these accounts in the shape of capital, one-fourth part of the whole;—then will a defalcation, as above, from the mass of money by a defalcation to that amount from the quantity of bank paper issued and kept out, produce, instead of the above supposed defalcation of *three* millions, a defalcation of *four* millions from the mass of money receipts.

Suppose, again, that by reason of the alarm excited by this defalcation from bank paper, whatever was the cause of such defalcation, another million (cash and paper together) is hoarded up and kept out of circulation, out of the portion which otherwise would have continued in the circulation:—on this supposition, the defalcation from the mass of the year's money receipts swells, from the *four* millions above spoken of, to *eight* millions.

But it is on the quantity of money ready to be transferred to those to whom it is *due,* or by whom it is otherwise *expected,* whether out of the portion which is kept in

general circulation in small masses, and which serves as a vehicle for *income,* or out of the portion kept up in large masses, in the shape of *capital,* that the body of commercial men, in their capacity of *debtors,* depend for their ability to fulfil the aggregate mass of their engagements. If, then, the influx of money in the course of the year into commercial hands be thus diminished by the amount of eight millions on the score of income and capital taken together, eight millions, or some such large sum, will be the amount of engagements *broken* in the course of that year, by reason of the defalcation of a single million's worth of bank paper (unless in as far as the deficiency may have been made up from other sources;)—and to this amount will the commercial wealth of the country have suffered, not only in point of *quantity,* but in point of *security.*

I speak of *security,* in contradistinction to *quantity; i. e.* to actual wealth to a *liquidated* amount; for if to the above liquidated loss be added the loss by failure following failure in consequence of the shock given to *security,* the ultimate loss may rise above the supposed eight millions, to an indefinite amount.

The want of a circulating medium as such, that deficiency, of which so much was said in 1797, may recur at any time. By the united wisdom of all parties interested, it received a cure at that time from a number of concurrent measures, all of them well adapted to the production of the effect. From true wisdom it received, for the time, a perfect cure:* but, by any other means than the sort of remedy here proposed, to prevent the evil from recurring again and again at any time, is not within the reach of the most perfect wisdom:† and prevention is still better than the most perfect cure. To be liable at any time to become the instrument of mischief, and that in either of the two opposite ways, by being in too great quantity, or in too little, is of the essence of all such promissory paper: for its not being in *too small* a quantity, it depends upon the wisdom and even humour of a few individuals; for its not being in *too great* quantity, it depends not only upon the wisdom and humour of individuals, but upon contingencies of the day, and the humours and prejudices of the uninformed and ill-informed, and hasty and impetuous multitude: upon the former, as to their not exceeding in their issues the amount warranted by the rules of prudence—upon the latter, as to their not frustrating and setting at default all the rules of prudence, by crowding in to demand for their paper without need, such a quantity of cash as is not in existence.

The sort of promise given by bank and bankers' paper, is that sort of promise, the fulfilment of which, taken in the aggregate, is physically and constantly impossible: the promise given by the proposed annuity-note paper, is that sort of promise, the fulfilment of which, whether taken in the aggregate or in parcels, has never yet been found to fail—which possesses all the certainty that is to be found anywhere in human affairs; and which becomes less and less liable to fail, the greater the quantity of money of which it conveys the promise.

Were the proposed paper the *only* paper money, national wealth would not be liable to suffer either in point of *quantity* or in point of *security*—either from excess or from *deficiency* in the quantity of paper money in any degree; since, even without the exercise of human reason on the part of anybody (except on the part of each note-

holder, in so far as his own particular interest, and that the interest of the moment, were concerned:) it would adjust itself, as it were of itself, as to what concerns the demand for circulating money, to the exact quantum of the demand: it would be *stock* one moment, and *cash* the next, whichsoever were most wanted.

In the other case, were it but one ingredient amongst others in the composition of the currency of the country, it would, as far as it went, and to the extent of the quantity kept in hand, principally with a view to income,* act as an occasional supplement to other paper money, and as a remedy of the preventive kind to whatever inconveniences might otherwise have arisen from a deficiency of that article.

Against an *excess* in the quantity of other paper money, its operation would not be quite so efficient or so manifest. But by presenting to every eye a species of paper money unsusceptible either of excess or depreciation, it would at once and at all times take the pretence of necessity from the rashness that might otherwise be disposed to hazard an excessive issue; and it would render the public in general the less disposed to accept, in an excessive quantity, a paper essentially hazardous, seeing that a paper essentially exempt from hazard was at their command, to any amount, at any time.

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CHAPTER VIII.

PARTICULAR INTERESTS CONCERNED.

Of the four distinguishable effects looked for from the proposed measure, that which will probably be regarded as the principal, is the degree of acceleration and assurance promised by it to the redemption of the national debt. To the accomplishment of so desirable an object in a way consistent with existing engagements, no damage accruing to particular interests has ever been considered as opposing any bar that ought to be regarded as insurmountable. That a reduction, say from £4 to £3 per cent. is a tax, and that a proportional one, to the amount of 25 per cent. upon the income of a particular class of men, is a proposition too obvious to be overlooked. Yet the design of effecting a reduction of the same sort, and that to an undefined amount, is a design rooted in the mind of the legislature, evidenced by the practice of preceding parliaments,† and by the express declarations of others.‡

The nation at large, and the stockholder, are *borrower* and *lender.* When the money is to be raised, it is the lender's harvest; and he takes advantage of the borrower and his necessities to the utmost of his power. When debt comes to be paid off, it is the debtor's turn; and it is neither unnatural nor unjust, nor illaudable, nor ought it to be unexpected, that he, by his agents, should take the like advantage.

The stockholder of the *paying-off* season is not (it is true) in every instance the same individual as the stockholder of the *borrowing* season. He is, however, either the very same, or one who, with his eyes open, and for valuable consideration, has put himself in the other's place:—succeeding to all his rights, it would be in vain to repine at the thoughts of having succeeded to any of his obligations. From a *creditor* in some cases, and on the score of humanity, *mercy* may, with more or less reason, be expected—but from a *debtor,* what *mercy* was ever looked for? The words *merciless* and *debtor* are words scarcely to be coupled with a grave face.

Expressions, however, and the momentary effect they may have on the imagination, are not the proper standards of right and wrong in this case any more than in any other. *Human feelings,* and the effect of measures upon those feelings, *do* constitute that standard, in so far as they can be *ascertained.* A stockholder is as much a member of the community—as great a part of the community—as any other man. Such as his *expectations* have been, such will his feelings be, when the event takes place. But what have been his expectations? It is from his *situation,* and that only—from the terms of the contract by which his situation in that respect is constituted—that any judgment can be formed.

Thus stands it with regard to the public creditor—the stockholder, who, on the comparative return or increase of general prosperity and opulence, has in former instances seen that part of his income reduced by one half; and who, within a period

already in prospect, may be doomed, by the like cause, to a reduction to the like amount.

But in comparison with the interests of *this* vast branch of the community, what can be the amount of all the *other* particular interests put together! and in comparison with the degree of sufferance in *this* case, how trifling will be the degree of sufferance in any of those *other* cases!

The destiny of the stockholders is not hypothetical: it originates not in the proposed measure; it has been fixed and made known by the legislature, and built upon for years and years, by determinations several times repeated and brought to view, without a doubt from that or any other quarter on the head of perseverance. It is for want of means, and not of determination, that the redemption with all its consequences has not long ago been accomplished.

In comparison of *such* interests, whatever lighter interests may be found to stand in the way might therefore appear as scarcely worth a glance. But though all *particular* interests put together will not prevail for the rejection of a measure beneficial *in a superior degree* to the *whole,* yet a view of the particular ways and degrees in which they may respectively come to be affected by it, will not be without its use, were it only by way of warning of the probable *sources* and *grounds* of *opposition,* and of the nature of the obstacles which may be to be combated in the course of the exertions necessary to bring the measure into effect.

During Period I., while no part of the mass of government annuities is taken, but on terms on which the holder is *desirous* to part with it, benefit to particular interests will run along with, and probably preponderate over the damage. From the commencement of the period when the species of property in question is taken from unwilling hands, the damage, as far as particular interests are concerned, will be apt to outweigh the benefit.

The only interests that belong in strictness to the present inquiry, are those which are affected by the particular mode of operation employed by the proposed measure. The consideration of any such interests as would equally be affected, whatever other mode were employed, is foreign to the present case.

The particular interests on which it bears are of course the several interests concerned in the species of paper money already in circulation. The *parties* in question are, therefore—1. The Bank of England;—2. The country banking-houses; to which will be to be added (although not concerned in the emission of paper money, but on another account;)—3. The banking-houses of the metropolis.

1. If the paper of the Bank of England should be accepted by government in payment for annuity-note paper issued at the annuity-note offices, on the footing of cash, as it is at present at the other existing government offices, the circulation of bank-notes would not (it should seem) experience any diminution from the proposed measure. It might even receive assistance, since, in virtue of the same properties by which bank

paper is rendered preferable to cash for all other purposes, it will be no less so for this purpose.

Should the public in general testify the expected preference for annuity-note paper as compared with cash, the Bank, by keeping that paper as the stock in reserve to answer calls for change for their own notes, might keep so much the less cash, and derive £2: 19s. interest from a portion of their stock which at present yields them none. But the profit from the present state of things is simple and certain: the result of the proposed measure, as touching its effects upon the affairs of the company, would appear wrapped in clouds. The Bank, according to their intelligent censor, Mr. Allardyce,* have not been forward to step out of the beaten track, where the step has been ever so obvious, and increased emolument ever so certain a fruit of it: the probability, therefore, seems to be, that the plan of the proposed rival paper would not be viewed from that superb edifice but with a rival's eye.

Should damage eventually accrue to the corporation, and should the case be regarded as calling for compensation, the profit would afford an ample fund, and the situation of the party damnified is such as would render it easy to reserve compensation in a variety of shapes. But to put the public to any expense in rendering any such compensation, would be a departure from former practice. When by threats of forced redemption government has compelled the Bank to accept of a reduced rate of interest, and made a defalcation to the amount of 25 per cent. upon the greatest part of its income, compensation has neither been granted by one party, nor demanded by the other.*

To government, whose own manufactory of paper money† is of no less standing than that of the bank, it will be difficult to say why it should be forbidden to follow the example of the bank, and cut down its paper into as many smaller sizes as it found convenient. To government which for the benefit of the community at large has made no scruple of restricting the dealings of other manufacturers of paper money, it would be strange, if in the same view it were not allowable to take its own course in the manufacture of its own paper, in the management of its own affairs.

But the *resource* afforded by loans from the bank (it may be asked,) *shall government deprive itself of such a resource?* The answer is short and simple. The resource cannot be taken away by the measure, till profits have been produced to a greater amount than the fee-simple of it. Bank paper need not—would not begin to be withdrawn out of the circulation, till the paper of the country banks had been driven out of it altogether. But before this would have happened, a profit would have been made by the sale of annuity-note paper, more than equal to the usual advances made by the bank.

It is only in time of war that the resource is of any value. The quantity of money in the country will not be lessened at any rate by the proposed measure: the great and only danger is, lest it be increased too much. Upon any emergency, the same quantity of money would therefore be to be had, and always to be had only through a *channel* perhaps different, and at a rate of interest possibly, though not certainly, a little higher. At the worst, to set against the gain of the twenty, thirty, or forty millions, two

or three times in the course of ten or twenty years, an extra expense to the amount of £50,000 or £100,000, might be incurred. Upon these occasions, a quantity of money might come to be raised upon bills in the nature of exchequer bills, under powers previously and regularly obtained from parliament, instead of being raised by treasury bills without powers from parliament.

The resource, such as it is, might or might not be reduced; but at the worst, would be but reduced. Even now, profit by paper issued is but a part of the profit of the bank.

2. As to the country bankers, the effect of the measure upon their interests appears by no means clear. On the one hand, if the quantity of cash in the country be not lessened by the proposed government paper, the demand for banker's service in keeping that cash will not be lessened. Should the proposed government paper come to be universally received in preference to cash, the supply of cash kept by these banks for answering draughts may be made to assume that form, yielding £2 : 19s. per cent. while kept at home, while an equal amount in cash is sent abroad in the way of discount in exchange for bills. On the other hand, the money which is now attracted to a country bank by the *nominal* 3 *per cent.* or whatever interest it is that is paid for it at present will no longer find its way thither, being turned aside by the full £2 : 19s. a-year, with so many other advantages that attend the proposed paper in comparison with the paper of country bankers.

The loss, if there be any, to which this species of trader would be thus exposed, is at any rate among the slightest and least to be regretted of any to which man is exposed by the vicissitudes of trade. It is a mere cessation of gain, or rather of gain in this particular shape. A banker's capital is all in money. It is not with a banker as with a manufacturer: no loss by removal of stock, or by forced sale in the lump, and thereby to a disadvantage, to avoid another greater loss. A banker steps into his trade without trouble, and goes out of it without loss.

In November 1792 (according to Mr. Chalmers,‡) the number of country banks was upwards of 400 before the month of March 1793; according to the evidence given on the 1st April 1797, to the Committee of the House of Lords,? they had decreased to about 280: on that same 1st of April 1797, according to the same evidence, they did not exceed 230. If, in consequence of the proposed measure, the numbers of these banks should experience a further reduction, or were to be swept away altogether, the change is of a sort that threatens not to be either preceded or followed by *distress. Failure* cannot be among the consequences. The banks will have had ample warning, time for getting in their debts, and contracting their issues. Of the issue of the proposed paper, the progress, from the very opening of it, will be known day by day, the whole island over, to a penny.§ Months at any rate, not to speak of *years,* will have intervened between the first authentic mention of the measure, and the establishment of it.

From withdrawing without failure—from withdrawing, should it take place in consequence of the advancement of the proposed annuity-note paper—little damage would ensue to the few individuals particularly concerned, and none to anybody else. From failure, as often as it happens, ruin ensues to the individuals concerned, and

much mischief to the community at large. An entire substitution of the proposed government paper to the paper of country bankers, would prevent the recurrence of this mischief, and that ruin. It is no light matter—out of the four hundred and odd country banks above spoken of (according to an account taken by Mr. Chalmers,) a full fourth had failed:* of more recent failures I say nothing, having nobody to quote.

By expulsion from this branch of trade the whole body of the trade would thus be secured from failure. By the failure of a part, though it were but a tenth part, more distress would at any time be produced, reckoning that of the trade alone, than by the expulsion of the whole.

3. For the banking-houses of the metropolis, there seems less cause of apprehension than for the *country banks.* They have no paper for the government paper to annihilate. True it is, that on the one hand many persons who now keep their money at a banker's, because, by keeping it themselves, they could make no interest, would not keep their *annuity-note paper* at the banker's, if by keeping it there they could make no interest on it, while by keeping it at home they could make £2 : 19s. per cent. of it. But the inducement to keep money at the banker's does not consist solely in the consideration of *safe custody,* but in that and other advantages put together: in the saving in point of time and trouble in regard to the counting of money, and doubts and disputes about the goodness of money offered, together with the convenience of a man's having the account of his expenditure kept by other hands. For these remaining conveniences, some might be willing to waive their claims to the small and unusual gain of 2*d.* per £100 per day upon expenditure: others, though unwilling to give up the whole, may be willing to give up some part of it; and in this way a man might keep his annuity-note paper at his bankers, as he does his cash, but *upon terms;* and the profit by interest on the paper might thus come to be shared between the *owner* of the paper and the *keeper* of it. Capital sums, however, which now are in so many instances suffered, through indolence, and while waiting for a distant and undetermined employment, to lie dead to the owner at a banker's, would not be quite so apt to lie there, when in the shape of annuity notes they might be productive of interest to the owner, without prejudice to such their destination, and without any increase of trouble.

Here, then, we see two new sources of profit opened by the measure to the banking-houses of the metropolis:—1. Profit by interest of annuity-note paper kept in reserve, instead of cash to answer drafts; and 2. Profit by annuity-note paper kept for customers *upon terms.* Suppose the quantity of cash in the metropolis to be undiminished by the measure, the amount of the above profits will even be *neat. Will* it remain undiminished? The affirmative seems highly probable.

Among the effects of the measure is one, that to a certain degree cannot fail to increase that quantity. The cash which now remains, and would otherwise have remained in the hands of the frugal poor—in unproductive hands, being now poured into the hands of the commissioners for the redemption of the national debt in return for annuity-note paper, will be restored to the circulation, and add to the quantity put into the hands of bankers.

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CHAPTER IX.

RISE OF PRICES—HOW TO OBVIATE.

I have already stated an extra rise of prices as among the *conceivable* results of the proposed measure. Taken by itself, it is evidently an *undesirable* result: it is a tax on income to the amount—a tax which comes out of everybody's pocket, and goes into nobody's. Being, with reference to the proposed measure, an unfavourable result, I may be believed with the less difficulty when stating it as a probable one.

Supposing the *influx* of the proposed paper not to be followed, or rather kept pace with, by an *efflux* of other money to an equal amount; and supposing it too *sudden* to be productive of an influx of vendible commodities, to an amount worth regarding in this view, within the assumed space of time; the result presents itself as a demonstrable one. For the price of the whole mass of vendible articles taken together, sold within the year, is, in other words, the same thing as the quantity of money given or undertaken for in exchange for them within that time; so that the quantity of those articles remaining the same, the greater the quantity of the money is that has been given for them, the higher has been the price.

It has already been observed, that it seems impossible to say with any precision to how small or how great a length the emission of the proposed paper may eventually be found to extend previously to the arrival of stock 3 per cents. at par: That, at some part or other of that interval, a small quantity at least can, however, scarcely fail to find acceptance; and that a small quantity, a very few millions for example, issued previously to the conclusion of it, would be sufficient to operate the conversion indicated, and thereby give the form of the proposed paper to the whole of the remaining mass of annuities composing the national debt: That, although the quantity of that species of property will be continually and rapidly on the decrease, while the demand for it will be as continually and rapidly on the increase, it will nevertheless be difficult, if not impossible, to prescribe any determinate limit to that portion of it which in this way may come to have introduced itself into the circulation, on the footing of *current money;* for the open issue will remain equally open to the customers for *temporary* income (who, when they have kept it as long as they can afford, will throw it into the circulation) as to the customers for *permanent* income; and it seems impossible to say in what proportions, at any given time, the quantity of annuity-note paper remaining at that time, will find itself distributed between the two classes.

On these considerations, it will be matter of prudence to be prepared for the several possible cases and degrees in which it may happen to constitute a clear addition to the mass of money in circulation, to any such amount as to be in a sensible degree productive of the apprehended inconvenience.

Of such preparation, the practical result will be, to take such measures as shall be effectual for the prevention—not of the rise of prices, which is impossible—but of any addition to that degree of rise, or rate of increase, which would have taken place in the natural course of things, independently of the proposed measure.

If after having expelled of itself the whole amount of paper money of other sorts, it were to keep on increasing without expelling metallic money to an amount equal to its own, it would thence forward, if not restrained, make a proportionable addition to the quantity of money of all sorts in circulation, and thence to the prices of vendible commodities. In this case, it would be necessary to apply the check to the proposed paper itself, by limiting the quantity that should be suffered to enter into the composition of the mass of money in circulation: for example, by stopping the issue of all annuity notes below a certain magnitude; say, for instance, the £102 : 8s. notes. By an expedient thus simple (the requisite powers being given to the executive government *ab initio*) the end might be accomplished, in the possible event supposed, without any fresh interference on the part of the legislature. That the means thus proposed would be adequate to the end, will appear clear enough (it is supposed) from what has been said on this subject in a former Chapter.*

That in proportion as the proposed paper advanced in circulation, country bankers' paper and Bank of England paper would quietly withdraw themselves, is a result that appears more probable than the contrary, according to what has already been observed.†

Should it fail of taking place in the requisite degree of itself, it would require to be produced by means directed expressly to that end.

The first of the two species of paper attacked, would naturally be the paper of the *country banks*. Collectively modern, individually changeable, they have no such claims on government as those which plead in favour of the great incorporated bank.* Express *prohibition* would not be necessary: by *taxation* the same effect precisely might be produced—by a simple extension of a tax already imposed for other purposes. By this means, if necessary, about half the utmost possible amount of the supposed redundant mass of paper would be chased away.†

Secondly, and lastly, would come the paper of the *Bank of England.* In this case, as in the other, the same means would be sufficient to the same end. Perhaps, however, in this case, they would not be necessary. A simple refusal on the part of government, to receive at its own offices any other than its own paper, might be adequate to the effect.‡

It may be asked—to what end throw the whole burthen of the measure upon the two particular classes in question, instead of letting it spread over the community at large in the shape of a rise of prices?

My answer is—to reduce the amount and pressure of it to its minimum. At an estimate greater than any possible one, the former loss would not be to the latter in so high a proportion as that of interest to principal. To the banking class, it is not clear (as hath

already been shown) that the loss would in fact amount to anything. But put an extreme case, and take it, in the instance of each individual, at the utmost possible amount it could rise to in the instance of any one. Call the total amount of bank and bankers' paper 25 millions,? and upon the whole of this paper suppose a real profit of 5 per cent. annually made. Upon a supposition in a variety of points thus excessive, the total loss is but £1,250,000 a-year. Call, on the other hand, the total quantity of money of all kinds taken together 75 millions;§ —and suppose (according to the position brought to view at the commencement of this chapter) that the addition made to the prices of vendible commodities, taken together, is in the exact proportion of the supposed sudden addition to the mass of money; viz. as 25 to 75—as 1 to 3. On this supposition, the rise of prices being supposed equable, and therefore universal, every income which did not receive a rateable increase from the supposed sudden influx of 25 millions, would in effect be diminished by a fourth—the whole income of a man so circumstanced producing him no more than three-fourths of the quantity of vendible commodities it produced to him before. Call, with Dr. Becke, the annual income of the country (including income from day labour without stock) £217,000,000—or for round numbers £210,000,000; then will the annual burthen on the country, by rise of prices on the nonexpulsion of the paper money in question, be £70,000,000.* *Per contra,* the utmost possible annual loss to the bankers and bank proprietors by the expulsion, not so much as £1,250,000; the probable loss, scarcely so much as the odd £250,000.

The amount of the loss would, it is true, be made good in money, in a certain degree, to every person whose circumstances enabled him to make in money an addition to his income equal to the degradation thus sustained by it;—for although the real value of the total mass of money—its value in respect of the quantity of vendible commodities it purchases and conveys—is not greater after the supposed addition to the mass of money, yet on the other hand, neither is it less. The misfortune is, that although the pressure from the defalcation would be felt in all its force—and felt by all parties, indemnified as well as unindemnified—the indemnity would in comparison be scarcely perceived. The loss by the rise of prices would be felt as so much loss:—the gain by the share in that extra influx of money by which the loss had been produced—this gain not being coupled and set down *per contra* in the mind of the party, and confronted with the loss, would present itself in the shape of an independent gain, unconnected with any such effect:—and by an indisputable law of the sensible faculties of man, sums and circumstances equal, the enjoyment produced by gain is never equal to the suffering produced by loss: if it were, the main reason for affording protection to property would cease.

That an increase in the quantity of real wealth, *i. e.* of vendible commodities, has been produced by an increase in the quantity of nominal wealth—viz. current money, cash and paper together—seems by no means clear of doubt. But what seems not exposed to doubt is, that the quantum of such addition, if real, accruing in the compass of a year, cannot amount to more than the produce of the fresh quantity of unemployed capacity for labour brought into employment by the application of a proportionable quantity of the supposed fresh influx of money over and above that which would have been brought into employment:—so that if at the commencement of the year all hands capable of employment were full of employment, and so would have continued during

the whole course of it, no addition could in the course of that time be made to the quantity of real wealth or vendible commodities by the influx of the money in question, howsoever copious. But whatever quantity of money being introduced into the circulation has not the effect of producing a correspondent quantity of vendible commodities, cannot but have the effect of producing a correspondent degradation in the value of the existing mass of money into which it flows, thereby producing, what is in truth no more than the same effect expressed in other words, a correspondent *rise of prices*.†

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CHAPTER X.

REDUCTION OF INTEREST—PROPOSED MODE COMPARED WITH MR. PELHAM'S.

Reduction of Interest is a declared object with Parliament:—the only question is as to the *mode.*

To exhibit the comparative eligibility as between the two plans—(the one here proposed for the future, and the one pursued in time past by Mr. Pelham)—I shall consider them together under the several heads of *expense—celerity of operation—previous assurance of success*—and *gentleness of operation:*—not forgetting, with respect to Mr. Pelham's, the possibility of applying it at the *present time* to the immensely increased mass of debt.

I. As to *Expense*—viz. as compared with profit.—In Mr. Pelham's time, the profit consisted in reducing to 3 per cents. the whole amount of the then existing quantity of 4 per cents.; that is, reducing the quantum of interest paid on the nominal capital of £57,703,475, from about £2,308,136 to about £1,731,102.

When the operation was first mentioned by him in parliament, it was a sign that *then* at least the state of the money market was ripe for it; otherwise he could not have obtained the requisite assurance of the money for paying off in case of refractoriness:—how much longer it might have already been ripe, it would be in vain to attempt to calculate. This being assumed, whatever respite he allowed—whether as to the whole or as to a part of the interest proposed to be struck off—is to be considered as a price, or *bonus,* which under the plan proposed it was looked upon as advisable in point of prudence to allow to the stockholders, in order to purchase their acquiescence, and insure the plan against the hazard of failure. I say, to prudence; for as to sympathy for the sufferings of the individuals damnified, the professedly vindictive measures pursued afterwards against the *repugnants* are a sufficient proof that no such motive was consulted in the arrangements of the terms.

1. A year's interest was allowed in the first plan without reduction:—*i. e.* the amount of the one per cent. that was to be afterwards struck off by the reduction, £577,034, was allowed for the first year.*

2. Half of the one per cent. ultimately struck off was allowed for seven years more. This for one year was £288,517;—for the seven years £2,019,619. Adding the one per cent. for the first year, makes the total price paid for consent, £2,596,653;—deducting £426,980 discount for the several years to come, leaves the amount of the money paid for the £577,034 a-year thus saved, £2,169,673.

This £2,169,673 (thus paid for consent to the reduction) amounts to a little more than 1-27th of the amount of the capital of £57,703,475, upon which the reduction of the 4

per cent. to 3 per cent. was thus effected: a little less than £2,308,136, which would be the exact amount of four year's purchase of the perpetual annuity thus struck off. Such, then, was the price that on Mr. Pelham's plan was given for a consent, which upon the proposed plan would be obtained *gratis*.

On the proposed plan, the quantum of interest that would be struck off by the first reduction (meaning the reduction effected in the course of the two first periods, by conversion of 4 and 5 and 3 per cents. into capitals bearing £2 : 19s. per cent.) by means of the paper of the first issue, would be £1,212,608.

That, upon any proposed reduction to be effected at this time of day, the same terms precisely should be offered as were offered at *that* time of day, would, under the vast difference of circumstances, be a supposition altogether untenable; but as it would be a fruitless attempt to determine what *would be* the terms now offered, the only terms on which any argument can be grounded are the above.†

On that supposition, the price to be paid for a consent to the striking off a mass of permanent annuities to the above amount of £1,212,608 a-year, would be a little less than four times that sum: it would be £4,559,458: exactly four times would be £4,850,432.‡

3. A sacrifice which may be added to the expense attending the reduction of *interest,* as above, is—that of going on with the redemption of the principal of the debt. By Mr. Pelham's plan, this latter mode of liberation was given up: even in point of right, for eight years—and in intention, perhaps for ever. Since the establishment of the existing sinking funds, it could not *now* be given up upon *any* terms; and supposing it possible, and deemed eligible, to adopt the principle of Mr. Pelham's reduction plan to a certain extent, it could not be adopted without such modifications as would be necessary to render it compatible with the institution of those redemption funds.

On the proposed plan, reduction of interest and redemption of principal afford assistance to each other: reduction to redemption, by the supplies it pours into the fund;—redemption to reduction, by the sums which, by expelling them out of the old annuities, it drives into the new.

4. Another sacrifice that would be to be made upon Mr. Pelham's plan was—of the eventual advantage of ulterior reductions:—the very *right* given up for eight years as before—and for any subsequent period, no foundation laid, nor prospect opened, for anything that appears.

On the proposed plan, issue follows issue—reduction, reduction—as wave follows wave,—execution treading without respite upon the heels of possibility. What space of time each reduction would occupy, is scarcely open to conjecture:—thus much is certain, that there is not a moment's interval between the completion of one reduction and the commencement of the next.

II. *Celerity of Operation* constitutes a head of comparison different in name, but in effect carried to account already, under the head of *Expense.* A given sum is worth the

less, as the time for receiving it is more distant. *Acceleration* is *profit—retardation, loss.*

III. *Previous Assurance of Success.*

That Mr. Pelham's plan was practicable, was proved by the event. But for a long time it was likely to have failed: and had it failed, it would have failed *in toto;* since, if the reduction had not been submitted to in respect of nearly the *whole* mass, it could not have taken place as to any part. Had not the quantity of *uninscribed* stock (about 3¼ millions) been small enough to admit of its being paid off, the submission, testified in respect of the *subscribed* stock, could hardly have been accepted: nor could the plan have taken place in any degree, without a joint and simultaneous operation on the part of one or other of two numerous sets of parties—viz. the *stock* holders, who were called upon to submit to the reduction—or the monied men, from whom, as far as the expected submission failed of taking place, the money was to come for paying off the *repugnants.*

But though practicable then, in respect of the 57 or 58 millions in question then, it does not follow that it would be practicable now, in regard to the amount of debt now in question, not even although stocks should arrive at par.

In regard to reduction on the proposed plan, success is, as we have seen, independent of contingencies. In each *year*—month—day, the process will go on to the utmost extent consistent with the state of the money market at that time. By the proposed *subscription* plan—by the consequent competition for respite from further deductions—the first reduction might be rendered in a manner instantaneous; and a very short space of time would be sufficient for the accomplishment of it, even without any such aid. The 5 or 6 millions (which would by that time be the amount of a year's produce of the sinking fund,) call it 5 millions—this vibrating without ceasing between the stock market and the annuity-note market, would be sufficient to dispatch the reduction, and with prodigious rapidity, although the subscription plan were untried, or tried without effect. In the machinery thus put in motion, no part is liable to stop of itself for want of the assistance of any other—and as it is at the beginning, so is it at the end.

During the first issue, every note then issued pays off by the money it produces, and thus, converts into note annuities, a corresponding portion of stock annuities. During the *second* issue, every note then issued converts in the same way, into paper bearing the reduced rate of interest of that second issue, a correspondent portion of the paper of the first issue:—and a single note thus taken out in the way of issue, would bring about the reduction upon that *portion* of capital, and in a determinable time even upon the whole capital, although not another note were ever to be issued on the same terms.

Once put in motion, the machine keeps going of itself, without any fresh winding up, so long as there remains a particle of the debt for it to act upon and cut down:—nothing is left to depend on circumstances of the moment—nothing on the humours of individuals;—no interval between reduction and reduction—no pausing, deliberating, negotiating, debating, fumbling:—nor yet is the process exposed to the

charge of precipitation or excess,—government having it in its power to stop or retard the operation at any time, by stopping or retarding the influx of the *primum mobile* from the sinking fund.*

IV. Lastly, as to *Gentleness of Operation.* Of Mr. Pelham's plan, it is upon record that it experienced much opposition, and created much dissatisfaction. It was in the nature of it so to do. It brought forward the minister in an obnoxious attitude, calling upon men to submit to a loss to the amount of a perpetual tax of 25 per cent. upon income, subject only to an abatement to the amount of about four years' purchase, on the condition of their lending their hands to a sacrifice of which they were the sole victims.

Accordingly, though on the ground of justice nothing could be more unimpeachable, ill-humour on one side appears to have begot ill-humour on the other—on the part of the authors of the suffering, as well as on the part of the sufferers themselves. On those who stood out at first, harder terms were afterwards imposed; and, to judge from the debates, the professed motive was not merely economy but vengeance.*

By the proposed plan, no such invidious task is put into the hands of any one. Before anything of hardship shows itself (at least to the great class of individuals here in question—the stockholders,) the measure will have been known—known for years as a measure of universal accommodation. Every man's money will have been breeding money in his pocket—every man who has sold out, will have sold to an advantage. When hardship comes at last, it will be at the end of a long chain of causes and effects, the first link of which has been removed by time, almost out of the reach of observation. The immediate cause, being everybody's act, is nobody's. No new act—none at least that carries anything of compulsion on the face of it, is required at *this* (or indeed at *any* time) on the part of government.

On Mr. Pelham's plan, everything turning upon subscription, a man knew not but that he was subscribing to his own *loss.* On the proposed plan, the loss takes place at any rate, and the effect of a subscription is all *gain* to him. The quantity of this gain depends upon his own exertions; and the bustle of competition serves to call off his mind from the suffering which is to come.

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CHAPTER XI.

MORAL ADVANTAGES.

To the head of *moral* advantages may be referred two very distinct results:—*prevention of improbity,* and *promotion of frugality:* prevention of improbity, by furnishing (as we shall see) a new *means* or *instrument of prevention;* promotion of frugality, by the offer of a new species of property, which, by annexing an unprecedented *remuneration* to the exercise of that virtue, operates at once as an *incentive* and as a *means.*

I. As to *prevention of improbity.* The class of persons in whose instance it may operate to this effect, consists of *trustees* of every description, to whom it belongs to *receive money* on account of their principals—*executors* and *administrators, guardians, stewards* and *receivers, assignees of bankrupts, prize-agents, factors,* and the like.

To cause *trust-monies,* as often as a suitable case presents itself, to be laid out in the purchase of government annuities for the benefit of the principals, is, in the court of Chancery, matter of long-established practice—a practice which, by an act of very recent date, has received express support from parliament. The credit of the proposed new government annuities having been previously established by sufficient experience, let a similar investment of all trust-monies, as they come in, be rendered a matter of general obligation by an act of the legislature. A *trust-receipt* book to be kept with a trust-*till.* In the *book,* an entry to be made of each sum received, with the day on which it was received; the statement of the day to be indispensable. The money, if not received in the shape of annuity notes, to be sent to the office on that day or the next, to be changed into annuity notes; the notes received to be entered by their numbers; if the day be not entered, the first day of the year to be presumed, for the purpose of charging the trustee with the interest. The trust-paper, as received, to be deposited in the trust-*till,* to save it from being confounded with money of his own. This not to prevent the disposal of the amount to superior advantage (*i. e.* at a higher rate of interest than what is afforded by annuity notes) in as far as the nature of the trust admits of it.†

What is thus proposed to be rendered *obligatory* for the benefit of the principal, is no more than what a *careful* trustee would do *spontaneously,* either for the benefit of the principal or for his own, according to the texture of his conscience. Should a precaution thus simple and unexceptionable be neglected, the institution of annuity notes will be but too apt to operate as a premium for *vice* as well as *virtue*—a premium for *improbity* in the one situation, as well as for *frugality* in the other.

II. Lastly, as to *promotion of frugality.* We have seen the peculiar advantages which the proposed new species of property holds out to the acquirer. Within a trifling and unavoidable fraction, 2d. a-day: £3 for every £100 by the year—not for *risk* of

lending, but for mere *self-denial* in not spending. Income, receivable without *expense,* and without *stirring* from his home. No *attendance,* no *agency* fees, no *brokerage* fees, no *stamp*-duty, either on *purchase* or on *sale.* No loss, on either occasion, by fluctuation of price. Not a day without its profit—profit by keeping, for the *minutest* as well as for the *largest* portions of time: conveyance obtainable for it by the *post* in the *minutest portions* as well as to the most *distant parts* of the island. Security afforded by division against misadventures of all sorts—against accidents and against crimes—in the *house* or on the *road*—by fire, water, or forgetfulness—from theft, robbery, burglary, or breach of trust. *Compound interest* brought within the reach of *individuals* for the first time.

In proportion to the degree in which it presents these several accommodations, in that same proportion does it act as an incentive to *frugality:*—in *all* classes in a *certain degree,* and in as far as current expenditure is concerned; but in a more especial degree, in those humble, and at the same time most *numerous* walks of life, in which it is of most importance to prudence, probity, and happiness.*

In the existing state of the money-market, the hoards of the *opulent* are prolific and accumulating: the hoards of the *poor* alone are dead and unproductive. By the proposed measure, the condition of the *poor* in this respect would be raised to a level—in the first instance *not much below,* and in process of time (as the price of stock annuities rose, and the rate of interest obtainable by the purchase of them diminished) *altogether upon a par with,* the condition of the rich.

A result not to be viewed without regret is, that in every *period* after the *second,* and in proportion as the rate of interest afforded by government annuities comes to be reduced, the encouragement thus given to frugality will thus be reduced likewise: for though, after the reduction, the *remainder* will be *gain,* as compared with the *present* period, yet the difference will be *loss,* in comparison of the period then *last in experience.* But in the meantime, the condition of the poor in this respect will, at any rate, have been raised to a level with that of the rich, and will so continue. The habit of frugality will have taken root, and having so done, may derive strength, rather than weakness, from the increased exertions it will be called upon to make.

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CHAPTER XII.

CONSTITUTIONAL ADVANTAGES.

Among the effects resulting from the national debt in the *early* stages of its existence, was the security it afforded to the old established constitution, by engaging the *purses* and *affections* of the *monied interest* in the service and support of the new-established government. *That* was the *great-monied* interest. In *other* points of view, the institution of that debt has found *many* disapprovers: in this it has found *none*—among those, at least, by whom the existing constitution is regarded as fit to be preserved. The advantage resulting from the transmutation of that debt into the proposed form would be—the security to the constitution and government now grown into one, arising from its engaging the support of what may be called the *little-monied* interest by the same powerful tie.

The body *politic,* not less than the body *natural,* is subject to its constitutional diseases. *Tyranny* was the grand disease in prospect *then: anarchy now.* The danger *then was,* from a single person in respect of the sentiments of submission pointed to that person, and carried to excess: the danger *now is* from the great multitude—in respect of the disposition to unruliness which has been, and continues to be propagated with but too much success among the lower orders—among those (let it never be out of mind) of whom is composed the vast majority of the people.

If the name of *great-monied interest,* employed above for distinction's sake, be well applied, it is with reference to *money,* and by reason of the greatness of the *shares,* but with reference to *men,* meaning multitude of men—and even with reference to money, if the magnitude of the total be the object of consideration—it is the *little-monied* interest that should be termed *great.*

As the disease changes its form, so should the remedy. *Stock,* in its large doses, served for the disorder of *that* time: *paper,* in its small doses, is the specific for the *present.*[*]

Admirable are the remedies that have already been applied: admirable, not more for their efficiency than for their gentleness. There remains this one—and perhaps another that might be named—remedies, not less efficient, and still more gentle.

Turning to Ireland, the demand for the remedy will be found the same in kind, but much more urgent in degree: the proportion of petty to great money-holders much greater: the bias to turbulence and anarchy (not to speak of idleness and drunkenness) beyond comparison more prone.[†]

Turn, lastly, to British India:—What a sheet-anchor to British dominion—to the mildest, the most upright, the steadiest of all governments—if by insensible and voluntary steps the population of that remote, most expanded, and most expansive branch of the British empire, should be led to repose the bulk of their fortunes and

their hopes on a paper bearing the image and superscription of a British governor! What a reduction in the rate of *interest* paid *there* by government!—what a remedy to the risks and embarrassments attendant on the interchange of so many debaseable and incommensurable modifications of metallic currency!—what an augmentation to the general mass of currency, capital, and wealth!

But all these are trifles in comparison with the additional pledge of popular attachment, and the increased assurance of internal peace. From the Zemindar to the Ryot, every Hindoo, every Mussulman, who possessed this money—every individual, in a word, who possessed money—might thus, by his own money, and to a great part of the amount of his own money—might thus, and without impeachment of probity—be converted into a pensioner of the British government.‡ For a premium equal to the interest the paper yields, he would be underwriting—perpetually underwriting his allegiance to the amount of the principal.

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CHAPTER XIII.

RECAPITULATION AND CONCLUSION.

Upon the whole, the proposed measure, it is believed, will be found to promise, with some degree of assurance, the following connected, but perfectly distinct advantages:—

1. Advantage of financial profit, by contributing in so many various, and to such considerable amounts, to the redemption of the principal of the national debt, as well as to the reduction of the rate of interest—and by affording an instrument more advantageous than any other for the application to that end of such means as are or may be provided from other sources.

2. Moral advantages, by the encouragement of frugality, and thence of temperance, among the inferior and most numerous ranks of the community.

3. Constitutional advantages, by constituting an additional bond of connexion with the government, and thence affording an additional safeguard to internal tranquillity.

4. Politico-economical advantage, by addition made to the mass of national productive capital, and thence to the mass of growing wealth.

Each of the above four masses of advantage appears sufficient to warrant an experiment, even should it be attended with some risk. Shall they not all of them together be deemed sufficient to give birth to an experiment altogether free from risk?

Few measures have ever been brought to view pregnant with such high advantages—none in which, in case of success, the degree of success has been beforehand so precisely ascertainable—none in which the deviation from the path of safety, as marked out by experience, is so slight and imperceptible.

Were the proposal expressed in these words—"Make your exchequer bills for small sums,"* —this, though not completely nor correctly expressive of the measure, would express all the *innovation* of it.

The only feature in the proposed plan, which, separately taken, can be called new, is, the bringing into the market portions of government currency less than heretofore—portions less than have been issued by government in this country, but not less than than what have been issued by governments in other countries, and in this country by individuals.

The other leading features are collected altogether from established institutions. The annuity engaged for is perpetual, but redeemable—the paper containing the evidence of its sale by government, light and transferable—the produce of the sale appropriated to the extinction of the national debt.

If the experiment be tried, the earlier the success the greater;—but sooner or later, and to a certain extent, success is infallible, and even failure would be unattended with loss.

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APPENDIX A.

Government Ought To Have The Monopoly *Of* Paper Money, *As Well As Of* Metallic Money.

Bank Notes, though bearing no interest, circulate at par. Even private notes—the notes of country bankers, do the same:—Government paper not without interest, and even when carrying interest, not at a corresponding premium.

To what causes are we to attribute a contrast thus striking, and so much to the disadvantage of government? Is the disadvantage remediable, or irremediable? If remediable, are there any efficient reasons against employing a remedy? If a remedy can be found, is it not an event to be wished for upon the whole? Instead of bearing a share comparatively so minute as that which government bears in the business of issuing paper currency, and that upon terms comparatively so disadvantageous, ought it not rather to possess the whole?—is it not to be wished that it did possess the whole? How stand these questions with reference to general constitutional principles?—how stand they upon the footing of particular expediency—of expediency with reference to the circumstances of the particular case in question, independently of the general expediency of adhering to constitutional principles? If obtainable and desirable, by what means can such an extension of the government currency be attempted with the greatest prospect of advantage and success? Of what nature are the advantages to be derived from it, and to what length are they capable of being carried?

The advantage is the first object in the order of importance. Whatever may be the present amount of paper circulating without interest,—upon the supposition that government possessed the monopoly of the issue of such paper, the saving of the interest upon such amount, whatever be the current rate of interest, would be the advantage accruing from such monopoly.

If, then, the whole of this advantage, or any part of it, could be gained, would there be any harm in gaining it? Let us open, in the first place, the great book of the constitution. To be the same in principle at all times, constitutional laws must vary as the times, and adapt themselves to the times.

Among the most unquestioned, innocent, and unobjectionable prerogatives of the crown, acting in this as in all other instances under the controul of parliament, is the monopoly of the coinage.* When there was no currency but metal, the crown had the sole issuing of that currency. To metal currency is now added paper currency: the crown, therefore, to preserve the prerogative *in statu quo,* ought to have the sole issuing of that currency; at any rate, unless the extension of the monopoly to this modern branch be attended with greater inconveniences than what accompany its application to the old one.

Nor let it be thought that the expediency of this extension rests upon the mere general ground of adherence to established principles, sanctioned by general acquiescence—upon the propriety of keeping matters in respect of government as they are—in a word, of keeping up the *vis inertue* of government. If the prerogative had utility for its support in its original shape, it is recommended by equal utility in the proposed supplemental one. The use of the prerogative in respect of metal money, was to guard the people against loss by the suppression of counterfeits: in the instance of paper currency, the use and reed of it are the same.

The loss to which the subject was exposes by metal money coined by individuals, was that of the difference between genuine metal and of full weight, and the coin of light weight and base alloy, which it might be apprehended would be issued by individuals. The loss to which the subject is exposed from bad paper currency is of the same kind, but much heavier in degree. Loss by bad metal currency distributes itself in small parcels, and by the minuteness of the portions to which it adheres, falls with a gentle and almost imperceptible stroke. Loss by bad paper falls in much larger masses. Loss by bad copper is as nothing—loss by bad silver is no great matter—even loss by bad gold is light, in comparison of the average rate of loss upon bad bills.

The justification of the monopoly in the new case is stronger than in the old one, in every point of view. By the monopoly of the metal coinage, the government succeeds but very imperfectly in saving the subject from loss. Coiners were punished as traitors; and yet the country swarmed with coiners. A few years ago, and the copper was three-fourths bad:—the pretended silver, a great deal of it base, and scarcely a piece of genuine silver that was not either counterfeit or light. By the monopoly of the paper currency, government might most perfectly protect the subject from bad paper. Let it but supply the market with its own paper, and a simple prohibition will keep all other paper out of the market most effectually. Against the fabrication of bad coin, capital punishment has been expended in vain: against the fabrication of paper, which under the danger of its turning out so much worse than bad coin, it seems expedient to prohibit, a pecuniary penalty would be perfectly sufficient.

If, then, in the whole scheme of government, there be an instance in which it is expedient to bring back institutions to the standard of first principles, the present will, I believe, be found among the number. Compare the advantage resulting to the community from the monopoly in the respective instances of the two species of currencies, we shall find it in every point of view greatly superior in the instance of the paper currency of fictitious value, to what it is in the instance of the currency of natural value, the metallic currency. Will the prerogative be abused? No more when extended to paper, than it is now that it confines itself to coin. Good faith as towards subjects is a jewel so deeply set in the British crown, that it can as little be expected to shake in any one part, as to drop out altogether.

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APPENDIX B.

Paper Money—Causes Why Not Circulated By Government Without Interest, As Well As By Individuals.

The contrast between the terms on which bank paper is received, and those on which government paper is received, has been already brought to view. The inferiority of the latter cannot, however, be owing to any inferiority in point of credit. The credit of the Bank of England can never be greater than that of the government of Great Britain;* yet a man who would trust government with his whole fortune, to the amount of hundreds of thousands of pounds, will not give a premium of more than a few shillings per £100 for an exchequer bill bearing interest, though he will give £100 for a bank note to that amount, for which he will receive no interest. The same man, too, will not only take a promissory note from the great company, of whose opulence the opinion is so universal and so high, for its nominal value, but perhaps even the note of some country banker, of whom, except from such his note, he has no knowledge. The cause of this inferiority can never, therefore, consist in any inferiority in point of credit. It must be looked for, therefore, in some other circumstance.

There are several circumstances which cooperate towards giving to the bank paper the aptitude it possesses with respect to circulation. The want of any of these properties, or the possession of it in an inferior degree, will account *pro tanto* for the inferiority of the terms upon which the government paper obtains the degree of circulation it has obtained.

These properties are—1. The being payable to the bearer on demand; 2. The being transferable, like coin, from hand to hand, without indorsement or any other formality; 3. The being issued for such small sums as £20, £10, and £5; 4. The being impressed on paper which, in point of size, is neither so large as to take up much room, nor so small as to be liable by its minuteness to escape observation, and be lost; and in point of texture is thin enough to bear folding without cracking, and yet not so thin but that it will bear to be written upon, by which means any proprietor may put his mark upon it, to enable him to vindicate his right to it in case of loss; 5. The having been so long in possession of the national confidence, and that to such a degree as to be the only paper which individuals all over the kingdom are universally in the habit of accepting upon the same terms as the current coin.*

An exchequer bill bears a daily interest, and is made payable to bearer. Upon hearing this, one should suppose that it should bear a premium to the amount of the interest;—since a bank note for that sum, payable to bearer and carrying no interest, bears no discount, but is received at par. An exchequer bill does indeed bear a premium, but that premium is very far short of being equal to the interest.

The difference, we have seen, does not arise from difference in point of security and credit, but may perhaps be traced to the combined influence of several causes;

viz.—1. The want of bills for small sums of a size adapted to the general run of the demand; 2. The not being made payable to the bearer at any time, but only after the interval of about half a year after its issue; 3. The want of that simplicity, in respect of the terms and mode of payment, which is observable in the paper of the Bank of England;—to which may perhaps be added, something (of *which* presently) in the sensible properties of the instrument itself by which the engagement is conveyed.

That the want of sufficient division has a very considerable share in the production of the effect, can scarcely be a matter of doubt. Exchequer bills are not for a less amount than £100; they are never issued for a less sum. Bank notes are for various amounts less than £100, viz. £50, £40, £30, £20, £15, £10, and £5. In the instance of exchequer bills, the magnitude of the sum is itself sufficient to render this species of paper unfit for the ordinary course of circulation—it is of itself sufficient to throw it out of the ordinary current of private dealings. It is a commodity for which comparatively so few are qualified to bid, that those few cannot but enjoy considerable advantage in their biddings. It is the money of so few men, that that circumstance is of itself sufficient to prevent it from being generally known. Accordingly, the circulation of exchequer bills is confined in great measure, for aught I know, to the metropolis:—it is confined to the neighbourhood of the Alley—to bankers, stock-brokers, and the other classes of money dealers. A man may have enjoyed a large income—a man may have had very extensive dealings in the way of trade, and yet go out of the world without having ever set eyes on an exchequer bill.

The bank, it may be said, issues notes for sums as large as £100—indeed, for sums to a prodigious degree larger; and yet there is no more discount upon these large notes or the bank, than upon the very smallest ones. True: but then, along with these larger notes, the bank issues, and that in great plenty, the smaller notes above mentioned—and that in such plenty, as to be in readiness for change of the larger notes, wherever and by whomsoever such change is wanted: nor are such larger notes ever issued to any one who chooses rather to have the smaller notes.

The small notes of the bank, it may be observed in reply, afford no facility to the circulation of the large notes of the same company, that the exchequer bills of government do not equally possess: for, admitting that the value of an exchequer bill of £100 would not be quite so great, setting aside the article of interest, as that of a bank note to the same nominal amount, still the exchequer bill has a known value in the market, as experience shows, not much less than that of the bank note. It ought, therefore, to be as easy, were this all, to find change for a £100 exchequer bill in bank notes, as for a £100 bank note.

To this it may be rejoined, that the facility in the two cases is not in truth alike. Everybody being equally acquainted with bank notes, anybody who has £100 to keep for a little while before he will have to change it, will as readily take it in a single bank note for £100, as in ten notes for £10; for though he may never have seen such a thing as a bank note for £100 before in his life, yet the perfect resemblance it bears in every respect but the quantity of paper, engraving, and writing, to the ten £10 notes, makes it, so long as he does not want to change it, exactly the same thing to him:—the security is the same,—the conditions and time of payment are the same,—and what is

no small matter, the appearance of the instrument is exactly the same, the variation in respect of the sum excepted—a sort of variation which he is already accustomed to by the smaller notes. A man who has a £100 bank note, need not fear, therefore, the getting smaller bank notes to the same amount from any one who has them, and is in no immediate want of such lesser notes in the way of change:—whereas a man who has only a £100 exchequer bill, may see good grounds for doubting whether he shall be able with equal facility to get such change for such exchequer bill; since, among twenty people to whom he may offer it, every one may perhaps be altogether unacquainted with it, and if not absolutely decided in regarding it as a species of paper of less value, may still be unwilling to give himself the trouble of satisfying himself whether it be of equal value or not.

The want of efficient assurance of putting off this species of paper with as much facility as a bank note to the same amount, gives this species of paper a disadvantage, or at least it may be reckoned among the causes which contribute to give this paper a disadvantage in point of prompt circulation, in comparison with bank notes. But since, accordingly, the exchequer bill is not, like the bank note, everybody's money, the consequence is, that in order to find out a person whose money it is, it must be sent to the great market for money in different shapes,—the Alley: it must go into the hands of a broker; and the expense, but much more the time (for the expense is but per cent.) places it thus on a ground of considerable disadvantage in comparison with a bank note.

So far as this disadvantage goes, instead of operating as current cash, it has the effect only of so much capital in the funds, operating in the shape of principal money, as carrying interest, and serving as a source of income. In this quality, the price it bears will approach to that of stock—to that of a government annuity given in exchange for so much money rather than to the price of so much money receivable at any time. It will, however, have the advantage, in point of price, of such an annuity, and that on several accounts: it is transferable with so much less trouble and expense—the value of it rises by keeping, according to a visible and certain law, in a visible and certain proportion, day by day;—whereas the price of so much stock, though it may rise in much the same degree upon the whole as the period of payment approaches, yet as it can rise by no interval less than ⅛ per cent., amounting in three per cents. to 1/24 [Editor:?] of the whole, it can rise by no shorter steps than one step of at least fifteen days; and even then, the rise is so liable to be disturbed by fluctuations, as to be, in the character of a rise proportioned to lapse of time and the consequent accrual of interest, in a manner imperceptible.

It might be thought, that though the £100 exchequer bill is, for the reasons above pointed out, not everybody's money—not the money of so many people as the £100 bank note, still it might be worth so many people's money, as to bear the same price, or nearly the same price. It would, for example, be the money of bankers and money-dealers in general. It certainly is the money of bankers to a degree: yet still not in the same degree as the bank note. It is their money upon a footing more nearly approaching to that in which so much stock is their money, than that in which the bank note is their money. A banker may lay out his money in this way for the purpose of making it produce an interest; and thence he may lay out in this way such part of

his receipts as be allows himself to lay out for his own benefit: but he cannot lay out in this way, as he may in bank notes, any part, or at least any considerable part, of the money which he deems it necessary to keep by him in readiness to answer drafts; because, as has already been observed, he cannot be equally sure of the exchequer notes being accepted of by a person who comes with a draft, as he can of the bank notes being so accepted of. He can keep it, therefore, upon no other footing than that of an evidence of his being entitled to a principal sum bearing interest,—in a word, as a source of interest. But in the capacity of a source of interest, it must bear the interest it purports to give, or at least a very considerable part of it: if it did not, it would not answer the purpose; it therefore cannot bear, in this quality, a premium eating out that interest, or any considerable part of it. It may indeed be worth his while to take somewhat less interest upon such a security than he could make of the same money in the funds; because it will cost him rather less time, and at at any rate less money, to convert it into cash at any time, than to convert into cash so much stock. And this accordingly is the case:—a man makes almost one per cent. less in this way than by buying into the funds.

As to the circumstance of the exchequer bill not being payable on demand, till half a year after the time of its being issued, this circumstance is not sufficient of itself to account for the depreciation. Taken by itself, it seems in fact to have but little or no influence. If this were the sole cause of depreciation, this cause being removed, the effect would cease: before the time when principal and interest became payable, or at least at the time of issuing, an exchequer bill would indeed bear no premium; but no sooner were that period arrived, than it would bear a premium, and that equal to the interest. This, however, is so far from being true, that, as far as I can learn, the arrival of this period makes in this respect no perceptible change. At the time of issuing, the exchequer bill bears a small premium, thereby reducing the rate of interest that can be made of it; at the arrival of the time of payment, it continues to bear that premium, but does not bear any more. The truth is, that the inconvenience of its not being payable for half a year is foreseen, and so far as it is reckoned for anything, allowed for from the first; and the exchequer bill takes its station among the commodities of the Alley, as a paper better adapted for a source of income than for general circulation; and this station the change in its nature, operated by the arrival of the time for payment, is not able to raise it from.

The comparative want of simplicity in respect of the terms and mode of payment, in comparison with a bank note, cannot but have some share in the comparative depreciation of an exchequer bill. To be adapted to general circulation, an engagement of this sort, as to the contents of it, ought to be so simple, that, if possible, everybody of a condition high enough to have property to such an amount pass through his hands, may be able without effort to apprehend them. The engagement taken by the bank—a promise on the part of an individual to pay the sum in question on demand, and that to the bearer by whom the instrument of engagement shall be produced—possesses this property in the highest degree of perfection that can be conceived. In the instance of the exchequer bill, several circumstances concur in keeping down the terms of the engagement considerably below this point of perfection. It is to be paid indeed to the bearer—that is, if it be paid at all. But will it be paid at all? This appears to depend upon a variety of contingencies;—viz. 1. If aids

happen to be granted for the service of the next year, then out of the first of such aids. But will any such aids be granted? This is expressly stated to be a matter of uncertainty:—it is stated, that perhaps no such aids may be granted before a certain date in the next year,—and provision is made accordingly for that contingency, that if no such aids be granted, that the money is to be paid out of the consolidated fund. But if paid out of this consolidated fund, when is it to be paid?—and by whom? These are questions it leaves in utter darkness. Is it, too, in other respects, a good bill? Grounds of suspicion, and those of the strongest kind, present themselves upon the face of it. A period is expressed, during which it will not be accepted of as such by the very government that issues it. It is not to be current, or pass in any of the public revenues, aids, taxes, or supplies whatsoever, or at the receipt of the exchequer, before a certain day in the next year,—that is, for half a year and upwards. Before that period, then, it will not be treated as a good bill;—this it expressly says. Will it afterwards? and when? Of this nothing is said; it is left entirely to conjecture.

Nor is this all:—another ground of uncertainty and suspicion. It does not state how soon it is to be paid; but it does state that it is not to be paid till another sum, amounting perhaps to several millions, has been paid. “Registered and payable after 1,754,400,” says a bill, No. 17545, I have before me. When is it, then, that this £1,754,400 will be paid? This again is all in darkness.

To a person acquainted with the mechanism of government, all these points are in a state of perfect clearness: he knows, that with all these apparent difficulties and uncertainties, the bill that presents them is at least as good as a bank note. But among persons who are not unaccustomed to the simple language of a bank note, not one out of a hundred, or perhaps a thousand, has any such acquaintance with the mechanism of government.

Even the introductory words, inserted with the view of indicating the authority on which the bill is issued, are of a nature more likely to excite doubt and difficulty in an unlearned mind, that is, in the mind of the bulk of readers, than to command confidence. “By an act of Parliament, Tricesimo quarto Geo. III. Regis. For raising a certain sum of money by loans or Exchequer Bills for the service of the year 1794.” In this formidable mixture of English and Latin, interlarded with terms of art and the language of finance, a man is sent to an act of parliament, to know whether the bill will be paid or no, and if paid, when and how and by whom—the rather as in the bill itself no answer to any of these questions is to be found:—and upon his putting a right construction upon a revenue act of parliament—he who perhaps never read an act of parliament in his life, and almost certainly (if not a lawyer) is not in the habit of trusting himself to find out the sense of an act of parliament—depends his knowing whether the bill will or will not be paid, and so forth. It is a case for him to consult his lawyer upon, as he would think it necessary to do upon other acts of parliament, where property to much less amount than £100 (the amount of an exchequer bill) was at stake. But the occasion does not allow time for consulting a lawyer;—and if it did, the expense of consulting him would eat a good way into the profit to be made by the interest of which the bill holds out the prospect, in addition to the principal that would be promised by a bank note to the same amount.

The fourth and last of the causes that have been mentioned as appearing to concur in the production of the depreciation in question, is the character of the instrument in respect of its sensible qualities—the size and texture of the paper. A bank note is perhaps, in respect of these properties, as convenient for circulation as can be imagined. In point of size and thickness neither so large as to take up an inconvenient quantity of room in the pocket or pocket-book, not even when a considerable number are taken together;—nor yet, on the other hand, so small as to be liable to escape notice and be lost: while, by reason of its extraordinary thinness (besides being so much the better guarded against fraudulent alteration, which is the principal object,) it is better adapted to bear folding to reduce it to a size fit for the pocket and pocket-book, without cracking at the edges, and so coming to pieces.

In these particulars, the difference between the bank note and the exchequer bill is not great—though, as far as it goes, it is rather to the disadvantage of the exchequer bill. In point of size, the exchequer bill is much upon a par with the bank-note—not quite so long—a little broader: these differences are not at all material. But the paper is a great deal thicker—rather of a thick and brittle sort than otherwise—so much so as to be in appearance more exposed to crack than any of the papers commonly used as writing papers.

In the bank note, too, there is something in the meatness of the engraving, and the conspicuous and emphatic display of the sum, that cannot but be particularly attractive and fascinating to an ordinary eye. In the exchequer bill, there is no such display of the sum; and the style of the impression of the long-winded explanation of the conditions of payment has nothing particular to recommend it.

Upon these combined causes, then, it appears most probable that the depreciation of government paper depends; and not till they are removed, can it be expected that this comparative depreciation will disappear.

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GENERAL VIEW OF A COMPLETE CODE OF LAWS.

by JEREMY BENTHAM.

GENERAL VIEW, &C.

CHAPTER I.

GENERAL DIVISION.

A Code of Laws is like a vast forest; the more it is divided, the better it is known.

To render a code of laws complete, it is necessary to know all the parts which should be comprised in it. It is necessary to know what they are in themselves, and what they are in relation to one another. This is accomplished when, taking the body of the laws in their entirety, they may be divided into two parts, in such manner that everything which belongs to the integral body may be found comprised in the one or the other part, and yet nothing shall at the same time be found in both parts. This is the only case in which the division is complete.

§ 1.

Customary Divisions.

The customary divisions are—

First Division: 1. *Internal law;* 2. *Law of Nations.*—The first is *National law,* which takes its name from the country to which it refers; as English law, French law, &c. &c.

A detached part of this law which only concerns the inhabitants of a town, of a district, or of a parish, forms a subdivision which is called *municipal law.*

The second is that which regulates the mutual transactions between sovereigns and nations. This might be called exclusively *international law.* This division is complete, but its parts are unequal and slightly distinguished.

Second Division: 1. *Penal law;* 2. *Civil law.*—When this division is given as complete, *international law* has at least been forgotten.

Third Division: 1. *Penal law;* 2. *Civil law;* 3. *Political law.*—To distinguish this latter from *international law,* it would be better to call it *constitutional law.* If the second division is complete, what must be thought of this? Its third part must, in some shape or other, have been comprised in the other two.

Fourth Division: 1. *Civil or Temporal law;* 2. *Ecclesiastical or Spiritual law.*—A complete division, but unequal, and one of which the parts are much intermixed.

Fifth Division: 1. *Civil law;* 2. *Military law.*—Another division apparently limited to *internal law.*

This unfortunate epithet *civil,* opposed alternately to the words penal, ecclesiastical, political, military, has four different meanings, which are incessantly confounded with each other. It is one of the most unmeaning protean terms in all jurisprudence.

Sixth Division: 1. *Written law;* 2. *Unwritten, or Customary law.*

Laws may exist in the form of statutes or in the form of customs. The statute law is called written positive law; *custom* is a conjectural law which is drawn by induction from the former decisions given by the judges in similar cases.

Seventh Division: 1. *Natural laws;* 2. *Economical laws;* 3. *Political laws,* to which correspond,—the duties devolving upon an individual, family duties, and the duties of man in society. But where does man exist without society?—and if there be any such place, whence are its laws derived? What are these *natural* laws, which nobody has made, and which everybody supposes at his fancy? What are these *economic* laws, which are not political? The making of such divisions may be parodied by distributing zoology into the science of chimeras, of horses, and of animals! Such, nevertheless, is the nomenclature of legislation, according to the noblest spirits of the age, the D'Alemberts, the Diderots, and the principal of the economists. What, then, must be the condition of the science?

They also withdraw from the body of the law considerable portions which do not give rise to the idea of division, because the words which respectively express them have no correlative terms to express the residue of the mass of the laws. Maritime law—law relating to police, finance, political economy, procedure, &c.: these portions being extracted, what relation have they with the more formal divisions?—in which ought they to be placed?

Criminal law is a portion altogether undetermined of penal law. It is a law directed against an offence which has been called a crime. This distinction is the result of many indeterminate circumstances: odious procedure—enormous evil or reputation of enormity—evil intention—severe punishment.

Canon law. This is a sufficiently determinate portion of ecclesiastical law:—That portion of this law which is derived from a certain source.

§ 2.

New Divisions.

The divisions which follow are either altogether new—have only received a semidenomination—or have been but little considered at present. I announce them in

this place, because of the light they shed upon the theory of the laws, and because of their practical utility.

Eighth Division: 1. *Substantive laws;* 2. *Adjective laws.*—This last is the name which I give to the laws of procedure, for the purpose of designating them by a word correlative to the principal laws from which it will be so often necessary to distinguish them. The laws of procedure could neither exist nor even be conceived of, without these other laws, which they cause to be observed. Whoever understands the meaning of these two words, as applied to grammar, will understand the meaning which I would attach to them when applied to jurisprudence.

Ninth Division: 1. *Coercive and Punishing laws;* 2. *Attractive or Remuneratory laws.*—The former employ punishments—the second employ rewards as their sanctions.

Tenth Division: 1. *Direct laws;* 2. *Indirect laws.*—I call those *direct,* which reach their end in the most direct manner, by directing or prohibiting the act to which they would give birth, or which they would prevent. I call those *indirect,* which, for accomplishing a purpose, employ distant means, attaching themselves to other acts, which have a more or less immediate connexion with the first. Prohibition of murder under pain of death, is a *direct method* of preventing assassinations: prohibition against carrying offensive weapons an *indirect method*[*] of preventing them.

Eleventh Division: 1. *General laws;* 2. *Particular laws.*—In the first are included those in which everybody is interested—in the second those which are directly interesting only to certain classes. This division is of great practical utility in facilitating a knowledge of the laws.

Twelfth Division.: 1. *Permanent Laws;* 2. *Laws necessarily Transitory.*—There are some laws which die of themselves, when the circumstance which gave birth to them has ceased. A law which refers to the conduct of a certain individual must die with him. Among transitory laws, the greater number are called regulations. Such are particular orders, laws which must and which ought to be changed, and which only correspond with a certain state of things.

Thirteenth Division: 1. *Code of the Laws;* 2. *Code of Formularies.*—A formula constitutes a part of the laws when it is directed by the legislature: a patent of creation, a record, a certificate, a deed, a form of petition, may all become part of the law.

Of all these divisions, the third into *Penal Law, Civil Law, Constitutional Law,* is the most complete, the most usual, and the most convenient. It is therefore the centre from which I shall cause all the parts to diverge.

As to writers on matters of jurisprudence, they may be ranged into two classes. Some treat of the laws of one country, explaining, commenting upon, and reconciling them; as Heineccius on the Roman laws, and Blackstone with reference to the laws of England.

The others treat of the art of legislation itself, either by explaining its preliminary notions, the terms of universal jurisprudence, such as *powers, rights, titles, contracts, obligations, crimes,* &c.; or seeking out the general principles upon which they ought to be founded, or examining the legislation of a certain country, to show whether it be feeble or strong.

Few works of law are of a unique and distinct character. Grotius, Puffendorf, Burlamaqui, assume successively, and sometimes at one time, all these characters. Montesquieu, in his "*Esprit des Lois,*" at first proposed to make a treatise upon the art; but in his last books the legislator assumes the antiquarian and the historian; and he can only be compared to the river, which after having traversed and fertilized noble countries, never reaches the sea, but is lost in the sand.

Hobbes and Harrington, who have treated only of the principles of constitutional law, have so done in a general manner, but with a view to local application. Beccaria, in his Treatise on Crimes and Punishments, has attended exclusively to them as a branch of philosophy.

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CHAPTER II.

RELATIONS BETWEEN THE LAWS CONCERNING OFFENCES, RIGHTS, OBLIGATIONS, AND SERVICES.

In a code of laws, everything turns upon *offences, rights, obligations, services.* Clear ideas of the meaning of these abstract terms are therefore desirable, and on this account it is necessary to know how these different notions are formed, and what are their reciprocal relations. To show their mode of generation, is to show their nature.

A period may be easily imagined when men existed without laws, without obligations, without crimes, without rights. What would they then possess? Persons, things, actions; *persons* and *things,* the only real beings; *actions,* which exist only for a fleeting moment, which perish the instant that they are born, but which still leave a numerous posterity.

Among these actions, some will produce great evils, and the experience of these evils will give birth to the first moral and legislative ideas. The strongest will desire to stop the course of these mischievous actions—they will call them crimes. This declaration of will, when clothed with an exterior sign, will receive the title of *law.*

Hence, to declare by a law that a certain act is prohibited, is to erect such act into a *crime.* To assure to individuals the possession of a certain good, is to confer *a right* upon them. To direct men to abstain from all acts which may disturb the enjoyment of certain others, is to impose *an obligation* on them. To make them liable to contribute by a certain act to the enjoyment of their fellows, is to subject them to *a service.* The ideas of *law, offence, right, obligation, service,* are therefore ideas which are born together, which exist together, and which are inseparably connected.

These objects are so simultaneous that each of these words may be substituted the one for the other. The law directs me to support you—it imposes upon me the *obligation* of supporting you—it grants you the *right* of being supported by me—it converts into an *offence* the negative act by which I omit to support you—it obliges me to render you the *service* of supporting you. The law prohibits me from killing you—it imposes upon me the *obligation* not to kill you—it grants you the *right* not to be killed by me—it converts into an *offence* the positive act of killing you—it requires of me the negative *service* of abstaining from killing you.

It is only by creating *offences* (that is to say, by erecting certain actions into offences) that the law confers rights. If it confer a *right,* it is by giving the quality of offences to the different actions by which the enjoyment of this right might be interrupted or opposed. The division of rights ought therefore to correspond with the division of offences.

Offences, inasmuch as they concern a determinate individual, may be distributed into four classes, according to the four points in which he may be injured:—Offences against the person—offences against honour—offences against property—offences against condition. In the same manner, rights may be distributed into four classes:—Rights of security for the person—rights of security for honour—rights of security for property—rights of security for condition.

The distinction between rights and offences is therefore strictly verbal—there is no difference in the ideas. It is not possible to form the idea of a *right,* without forming the idea of an *offence.*

I imagine to myself the legislator contemplating human actions according to the best of his judgment: he prohibits some, he directs others: there are others which he equally abstains from commanding or prohibiting. By the prohibition of the first, he creates *positive offences:* by the injunction of the second, he creates *negative* offences. But to create a positive offence, is to create *an obligation not to act*—to create a negative offence is to create *an obligation to act.* To create a positive offence, is to create a negative *service* (the service which consists in abstaining from a hurtful action.) To create a negative offence is to create a *positive* service (the service which consists in the performance of a useful action.) To create offences, is therefore to create obligations or forced services: to create obligations or forced services, is therefore to confer *rights.*

With reference to actions, with respect to which the legislator neither pronounces a prohibition nor an injunction, he neither creates an offence, an obligation, nor a forced service. Still he creates a certain right, or leaves you a power you already possessed, that of *acting* or *not acting* as you like. If, with respect to these same actions, there had previously existed an injunction or a prohibition, and this injunction or prohibition had been revoked, it might be said without difficulty that the right which was restored to you, the law conferred or restored it. The only difference is, that in the one case you hold the right through the activity of the law; in the other case, you hold it through its inactivity. In the actual state, it appears as if you owed it to the law alone, whilst beforehand you appeared to be indebted partly to the law and partly to nature.

You owe it to nature, inasmuch as it is the exercise of a natural faculty;—you owe it to the law, inasmuch as it might extend the same prohibition to this as well as to other actions.

With respect to those actions which the law refrains from directing or prohibiting, it bestows a positive right,—the right of performing or not performing them without molestation from any one in the use of your liberty.

I may stand or sit down—I may go in or go out—I may eat or not eat, &c.: the law says nothing upon the matter. Still the right which I exercise in this respect I derive from the law, because it is the law which erects into an offence every species of violence by which any one may seek to prevent me from doing what I like.

This, then, is the connexion between these legal entities: they are only the law considered under different aspects; they exist as long as it exists; they are born and they die with it. There is nothing more simple, and mathematical propositions are not more certain. This is all that is necessary for obtaining clear ideas of the laws, and yet nothing of this is found in any book of jurisprudence; the contrary is, however, everywhere found. There have been so many errors of this kind, that it may be hoped that the sources of error are exhausted.

The words *rights* and *obligations,* have raised those thick vapours which have intercepted the light: their origin has been unknown; they have been lost in abstractions. These words have been the foundations of reasoning, as if they had been eternal entities which did not derive their birth from the law, but which, on the contrary, had given birth to it. They have never been considered as productions of the will of the legislator, but as the productions of a chimerical law—a law of nations—a law of nature.

I shall only add another word upon the importance of clear ideas respecting the origin of rights and obligations. They are the children of the law; they ought never, therefore, to be set in opposition to one another: they are the children of the law; they should, like the law itself, be subordinate to general utility.

The fundamental idea, the idea which serves to explain all the others, is that of an *offence.* It possesses clearness by itself; it presents an image; it addresses itself to the senses, it is intelligible to the most limited mind. An offence is an act from which evil results. To do a positive act, is to put one's self in motion; to do a negative act, is to remain still. Now, a body in motion, or a body at rest, presents an image; an individual wounded, an individual suffering, in consequence of any action, presents an equally familiar image. It is not the same with the fictitious entities called *rights* and *obligations.* They cannot be depicted under any form; they may, however, be connected with sensible images, but they then cease to be abstractions; they are united to real things, as in the expressions, the right to do a certain act—the obligation to perform it or not to perform it. The more nearly such expressions convey the idea of an offence, the more easily are they understood.

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CHAPTER III.

RELATION BETWEEN THE PENAL AND CIVIL CODE.

If the distinction between the civil and penal code be inquired for, the greater number of jurisconsults reply, that the civil code contains the descriptions of rights and obligations, and the penal code those of crimes and punishments.

If the meaning of the preceding chapter be clearly understood, it will be perceived that there is no foundation for this distinction. To create rights and obligations, is to create offences; to create an offence, is to create the right which corresponds therewith: it is one and the same law, one and the same operation.

If you say, that the right which you have to be supported by me belongs to a certain class of laws which ought to be called *civil,* and that the offence which I commit by neglecting to support you, belongs to a different class of laws which ought to be called penal, the distinction would be clear and intelligible.

There exists between these two branches of jurisprudence a most intimate connexion; they penetrate each other at all points. All these words—*rights, obligations, services, offences*—which necessarily enter into the civil laws, are equally to be found in the penal laws. But from considering the same objects in two points of view, they have come to be spoken of by two different sets of terms:—*obligations, rights, services,* such are the terms employed in the civil code: *injunction, prohibition, offence,* such are the terms of the penal code. To understand the relation between these codes, is to be able to translate the one set of terms into the other.

Such being the intimate connexion between these two codes, it seems extremely difficult to draw a distinction between them: I shall, however, attempt it.

A civil law is that which establishes a right: a penal law is that which, in consequence of the establishment of a right by the civil law, directs the punishment in a certain manner of him who violates it. Thus, a law which should confine itself to the interdiction of murder, would be a civil law; the law which should direct the punishment of death against the murderer would be a penal law.

The law which converts an act into an offence, and the law which directs the punishment of that offence, are, properly speaking, neither the same law nor parts of the same law. *Thou shalt not steal:* there is the law creating an offence. *The judge is directed to imprison those that steal:* there is the law which creates the punishment. These laws are so distinct, that they refer to different actions—they are addressed to different persons. The first does not include the second, but the second implicitly includes the first. Say to the judges, "*You shall punish thieves,*" and a prohibition of stealing is clearly intimated. In this point of view, the penal code would be sufficient for all purposes.

But the greater number of laws include complex terms, which can only be understood after many explanations and definitions. It is not only necessary to prohibit theft in general: it is necessary to define what is *property,* and what is *theft.* It is proper that the legislator should form two catalogues: the one containing the events which confer a right to the possession of each thing—the other containing the events which destroy this right.

These matters of explanation belong principally to the civil code: the *commanding* part, contained in penal laws, properly constitutes the penal code.

All laws which have no penal clauses, or which only prescribe the obligation of restitution when any one has become possessed of the property of another without evil intention, may be placed in the civil code. All laws which direct a punishment over and above simple restitution—for example, imprisonment, forced labour, fine, &c.—may be reserved for the penal code.

In the civil code, the attention is chiefly demanded by the description of the offence, or of the right. In the penal code, the prominent point is the punishment.

Each civil law forms a particular head, which ought to rest upon a penal law. Each penal law is the consequence, the continuation, the termination of a civil law.

In the two codes, there should be general heads. They should have for their object the explanation of everything which belongs to the particular titles:—definitions, amplifications, restrictions, enumeration of sorts and individuals;—in short, expositions of all sorts.

It ought, however, never to be forgotten, that these two codes are one as to their nature and their object; that they are divided only for the convenience of distribution, and that we might have arranged all the laws upon one plan, upon one map.

If a legislator have given a complete description of all the acts which he is desirous should be regarded as *offences,* he will have formed a complete collection of the laws: he has referred everything to the penal code. If he have established all the obligations of the citizens, all the rights created by those obligations, and the circumstances which shall cause those rights to begin and end, he will again have formed an entire code: but here he will have referred everything to the civil code.

A code of laws under this point of view ceases to be a bugbear by its immensity. We see that there are means of ascertaining its dimensions—of surveying the whole, and referring every part to a common centre.

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CHAPTER IV.

OF METHOD.

In what order should the different parts which compose a complete code of legislation be arranged?

There are some persons who have occasion to know the whole system of the laws; viz. those who are charged with their maintenance and application. Others have occasion only to know the part which concerns them, and of which it would be dangerous for them to be ignorant: these are the individuals who are bound to obey the laws.

In the arrangement of the laws, that which is best adapted for the generality of the people ought to be regarded. The multitude have not leisure for profoundly studying the laws: they do not possess the capacity for connecting together distant regulations—they do not understand the technical terms of arbitrary and artificial methods. The matter of a code ought therefore to be disposed in the order which will be most easily understood by the least skilful—in the order which is most interesting from the importance of the subjects—in a word, in the most natural order.

But what is the most natural order? It is the order according to which the law would be most easily consulted—in which the text which applies to a given case would be most easily found, and its true meaning understood. The best method is that which gives the greatest facility in finding what is sought.

Rules Concerning Method.

1. *That portion of the laws which most clearly bears the impression of the will of the legislator, ought to precede those portions in which his will is shown only indirectly.*

For this reason, the penal code ought to precede the civil code, and the constitutional code, &c. In the first, the legislator exhibits himself to every individual; he permits, he commands, he prohibits; he traces for every one the rules of his conduct; he uses the language of a father and a master. In the other codes, he has less to do with commandments than with regulations and explanations, which do not so clearly address themselves to everybody, and which are not equally interesting to those concerned at every period of their lives.

2. *Those laws which most directly promote the chief ends of society, ought to precede those, the utility of which, how great soever, is not so clearly evident.*

In obedience to this rule, the penal code ought still to precede the civil code, and the civil to precede the constitutional code. There is nothing that tends more directly to promote the great ends of society, than the laws which prescribe the manner in which

the citizens should behave towards each other, and which prevent them from doing mischief. Besides, since the idea of an offence is fundamental in legislation, and everything emanates from it, it is the first upon which the public attention should be fixed.

3. *The subjects which are most easily understood, should precede those of which the conception is less easy.*

In the penal part, the laws which protect the person, as the clearest of all, ought to precede those which protect property. After these may successively be placed those which concern reputation; those which relate to the legal condition of individuals; those which embrace a double object, as the person and property, the person and reputation, &c.

In the civil code, those titles which relate to *things,* objects material and palpable should be placed before those which relate to rights, objects immaterial and abstract. The titles which relate to the rights of property before those which relate to the condition of individuals, &c.

In the code of procedure, in virtue of this rule, the most summary courts would stand first.

4. *If, in speaking of two objects, the first may be spoken of without referring to the second—and on the contrary, the knowledge of the second supposes a knowledge of the first,—it is right on this account to give priority to the first.*

Thus, in the penal code, offences against individuals should be placed before offences against the public—and offences against the person before offences against the reputation.

In the civil code, notwithstanding another principle of arrangement, more apparent but less useful, it will be proper to place the condition of master and servant—the condition of guardian and ward, before that of father and child—husband and wife; because a father and husband are in certain respects the master, and in others the guardian, of the children and wife.

In virtue of this rule, the penal and civil code ought to precede the code of judicial organization and procedure.

To institute a process, is to demand satisfaction for an offence, or to require a service in consequence of a right. But the catalogue of offences, of services, of rights, will be found in the penal and civil codes; with these, therefore, we ought to begin.

Procedure is a means for attaining an end: it is the method of employing the instrument which is called *law.* To describe the means of using the instrument, before describing the instrument itself is an almost inconceivable reversal of order.

To establish a new system of procedure, and allow misshapen laws to subsist, is to build upon foundations which are crumbling, it is to rebuild a falling house by

beginning at the top. Everything should be consistent and harmonious between the different parts of the code. It is impossible to establish a good system of procedure without good laws.

5. *Those laws the organization of which is complete—that is to say, which possess everything necessary to give them effect, to put them in execution—ought to precede those of which the organization is necessarily defective.*

A certain part of the political code is necessarily in this latter condition. There must be a stop somewhere in the establishment of laws. *Quis custodiet ipsos custodes?*—The laws which govern the subjects ought to precede those by which it is attempted to restrain the sovereign power. The first—the laws for the people *in populum*—form a complete whole; they are accompanied by penalties, and a procedure which insures their execution. But the laws *in imperium* respecting the governors, unless they change their nature, cannot have for their assistance either the one or the other of these auxiliary laws. A punishment cannot be assigned for the offences of the sovereign, or of the body which exercises the sovereignty: no tribunal and no forms can be prepared for their trial;—all that human wisdom has been able to devise is reduced to a system of precautions and indirect means, rather than a system of legislation. The power of removal, for example, is employed to obviate the corruption of a representative body. The nature of the case does not admit of any judicial methods, any regular procedure.

International law is in the same condition. A treaty between two nations is an obligation which cannot possess the same force as a contract between two individuals. The customs which constitute what is called *the law of nations,* can only be called laws by extending the meaning of the term, and by metaphor. These are laws, the organization of which is still more defective and incomplete than that of political law. The happiness of the human race would be fixed, if it were possible to raise these two classes of laws to the rank of complete and organized laws.

The only point which is common to every existing body of laws, is, that they are all equally strangers to all these rules.

Justinian, in the Pandects and Institutes has followed two independent and incommensurable plans, which have determined the plans of all posterior jurists. Those who have been desirous of correcting Justinian, have only ventured to correct him by himself. Heineccius, the most sensible of the Romanists, has sought to refer everything to the order of the Pandects; and Beger has sought to bind up everything to that of the Institutes. Both methods are equally vicious.

Does not the idea of *an offence* govern everything in matters of law? Who would believe it? In the vast system of Roman law there is not a single entire chapter which treats of offences. The whole has been distributed under the three divisions—*rights of persons, rights of things, suits at law:* offences are incidentally mingled here and there. Those which are most connected by their nature, are often the farthest removed from one another, whilst those that are the greatest strangers touch each other.

Modern codes are not more methodical. The Danish code begins with civil procedure—the Swedish code begins with that part of the civil code which regards the condition of persons.

The code of Frederic, which bears the pompous title of universal, begins with the civil part, to which it confines itself and leaves it incomplete.

The Sardinian code presents at first certain penal regulations, but the first offences of which it treats refer to religion. Parts of the civil and constitutional codes follow, mingled with each other in continual disorder.

The code of Theresa is purely penal, but where does it commence?—first blasphemy, afterwards apostacy, afterwards magic. In the first part it treats of procedure.

Blackstone, who confined himself to making a picture of the laws of England, has only sought commodiously to arrange the technical terms most frequently used in English jurisprudence. His plan is arbitrary, but it is preferable to all those which have preceded him. It is a work of light, in comparison with the darkness which previously covered the whole face of the law.

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CHAPTER V.

PLAN OF THE PENAL CODE.

Penal laws, as we have already seen, are those alone which follow in a regular train, and form a complete whole. What are called civil laws, are only detached fragments belonging in common also to the penal laws. Laws deprived of all factitious sanction exercise so feeble an influence, that they ought not to be relied upon, if it be possible to do otherwise. Remuneratory laws, beside their weakness, are too costly, so that it is not possible ever to trust them with the rough work of legislation. There remains penal law, the only matter of which it is possible to construct the principal portion of the edifice of the laws. It is proper, therefore, to take the penal law, which alone embraces all, as the foundation of all the other divisions of the law.

To make a penal law, is to create *an offence.* The distribution of the penal laws will therefore be the same as that of offences. By determining, naming, arranging, numbering offences, we shall have determined, named, arranged, and numbered the penal laws. If this arrangement be well made, all the other kinds of laws will have been well arranged at the same time: order will have been fixed upon a manifest and unalterable foundation: the reign of Chaos will be at an end.

I shall begin with the arrangement itself. I shall afterwards show the considerations which suggested it, and the advantages to be derived from it. In order to understand the commentary, it is necessary to have seen the text.

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CHAPTER VI.

OF THE DIVISION OF OFFENCES.

Upon the principle of utility, such acts alone ought to be made offences, as may be detrimental to the community.

An act cannot be detrimental to a community but by being detrimental to some one or more of the individuals that compose it. These individuals may either be assignable* or unassignable.

When there is any assignable individual to whom an offence is detrimental, that person may be either the delinquent himself, or some other person.

When there are persons to whom the act in question may be detrimental, but such persons cannot be individually assigned, the circle within which they may be found is either of less extent than the whole state, or not. If of less, the persons comprised within this lesser circle may be considered for this purpose as composing a body of themselves, comprised within, but distinguishable from the greater body of the whole community.

From a consideration of these circumstances, offences may be divided into four classes:—

1. Acts detrimental in the first instance to assignable individuals other than the delinquent himself. These are private offences.

2. Acts detrimental in the first instance to the delinquent and not to others, except in consequence of the evil he has done to himself. These may be called, for the purpose of contrasting them with the other classes, *personal offences,* or *self-regarding offences.*

3. Acts which may be detrimental to certain unassignable individuals comprised within a particular circle less than that of the state—as a trading company, a corporation, a religious sect. These offences against a portion of the community may, for the purpose of contrasting them with the other classes, be called *semi-public offences.**

4. Acts which may be detrimental, or which threaten a danger more or less remote to an indeterminate number of unassignable individuals, without it being apparent that any one is more exposed than another. These may be called *offences against the state,* or *public offences.*

The four classes of offences are—

1. Private offences.

2. Self-regarding offences.
3. Semi-public offences.
4. Public offences.

SUBDIVISION OF OFFENCES.

1.

Subdivision Of Private Offences.

In the present period of his existence, the happiness of a man, and his security—in a word, his pleasures, and his immunity from pains—depend, primarily, upon the *condition of his person,* and secondly, upon the exterior objects which surround him. If, therefore, a man suffer in consequence of an offence, it must be either in an *immediate* manner in his person, or in a *relative* manner by reason of his relation with exterior objects. But these exterior objects are *things* or *persons: things,* which he employs for his own advantage, in virtue of what is called *property;* persons, from whom he derives advantages in virtue of services which they are disposed to render to him. This disposition to render those services may be founded simply upon the general connexion which binds all men together, or upon a connexion which unites certain individuals more particularly with others. These more close connexions form a kind of fictitious and incorporeal object of property which is called *condition:* domestic condition, connexion between a parent and child, a husband and wife; political condition, connexion between the citizens of the same place, &c.

When the general connexion among all men is alone considered, their disposition to render services to one another is called *good-will.* This good-will is a favour, and the chance of obtaining this favour is a fictitious property, which is called *honour* or *reputation.* Reputation is therefore a species of wealth, a security for the obtaining those free and gratuitous services which depend upon good-will.

It appears, therefore, that if by any offence an individual becomes a sufferer, it must be in one or other of these four points—person, reputation, property, or condition.

Hence simple private offences may be subdivided into—

Offences against the person.

Offences against the reputation.

Offences against the property.

Offences against the condition.

Offences are called simple, when the individual is affected only in one of these points; complex, when he is affected in more than one at one time, as—

Offences against the person and property.

Offences against the person and reputation.

Order I.

Offences Against The Person.

As a man is composed of two different parts—his body and his mind, acts which exert a pernicious influence upon him, may operate upon him either immediately without affecting his will, or mediately through the intervention of that faculty. The constraint which may be produced by such acts may be either positive, compelling him to do what is disagreeable to him—or negative, preventing him from doing what is agreeable to him:—the evil resulting from them mortal or not; if it be not mortal, it will either be reparable or temporary, or irreparable or perpetual.—Again, the pain which a man experiences in his mind will either be a pain of actual sufferance, or a pain of apprehension. Hence we have nine genera or kinds of personal injuries, which, when ranged in the order most commodious for examination, will stand as follows:—

1. Simple corporal injuries, producing uneasiness or temporary suffering.

2. Irreparable corporal injuries—*species,* disfiguration, mutilation, deterioration of an organ as to its essential functions.

3. Simple mental injuries; that is, directly affecting the mind without affecting the body—or vexation.

4. Wrongful restraint or hindrance.

5. Wrongful constraint.

6. Wrongful banishment.

7. Wrongful confinement.

8. Wrongful imprisonment.

9. Wrongful homicide.

Order II.

Offences Against Reputation Or Honour.

In point of reputation there is but one way of suffering, which is by losing a portion of the good-will of others. An individual may be a loser in this respect in either of two ways:—1. By the manner in which he behaves himself; and 2. By the manner in which others behave, or are thought to behave, towards him. To cause people to think

that a man has been guilty of those acts which cause a man to possess less than he did before of the good-will of the community, is what may be styled defamation. When this is done by words, or by such actions as have no other effect than inasmuch as they stand in the place of words, the offence may be styled vilification. But this is not all: as a man may be made to lose the good-will of others, he may also be prevented from acquiring it, either by the interception of the honour which was his due, or by depriving him of the means of obtaining it. Hence we have four species of offences, viz.:—

1. Defamation.

2. Insulting language, or insulting gestures.

3. Usurpation of the reputation of another.

4. Prevention of the acquisition of deserved reputation.

Order III.

Offences Against The Person And Reputation.

Attacks upon the person and reputation may spring from different motives, and may have for their object either the immediate pleasure to be derived from sensual gratification, or that sort of reflected pleasure which in certain circumstances may be reaped from the suffering of another.

If the pleasure to be derived from sensual gratification be obtained by consent freely given, if not fairly obtained, the offence may be called seduction; if not freely, it may be called forcible seduction; if consent be altogether wanting, it is called rape. If neither of these offences have been consummated, the offence may be included under the denomination of simple lascivious injury.

When the person and reputation are attacked for the sake of that sort of pleasure which will sometimes result from the contemplation of another's pain, the offence may consist either of actual corporal injury, and may be styled corporal insult, or it may come under the name of insulting menacement. Hence we have six generator kinds of offences under this head:—

1. Corporal insults.

2. Insulting menacement.

3. Seduction.

4. Forcible seduction.

5. Rape.

6. Simple lascivious injuries.

Order IV.

Offences Against Property.

Offences against property are so various, that it is extremely difficult to make an analytical table of them, which shall not itself form a large work. Besides, these offences have received in common use denominations which are so little determinate and uniform, that any definition given of them by a private individual can never be exact. It requires the aid of the legislature to fix their meaning.

Offences of this kind may affect either the right to property, or the enjoyment or exercise of that right.

Offences which affect the possession of property may relate either to an actual possession or to a future possession.

A contingent or future possession may be taken away by two kind of offences:—1. By the omission of an act necessary to be done before the party enters upon his right: this may be called *non-investment,* or *non-collation of property.* 2. By the commission of some act for the interception of your right—for taking it away, for example, in its transition from the actual possessor, to you the intended possessor; this may be called *interception of property.*

If the possession of an object of which the party is actually in possession be disturbed by the offence, the object of the offence may be his exclusion from the enjoyment of his property without substituting any other person. In this case, it is simply *wrongful divestment* or *spoliation of property.* It may be, that the object of the offence is, that the delinquent may obtain possession of the property himself: it is then *usurpation of property.* It may be, that he intends that it should pass to a third party: it is then *wrongful attribution,* or *collation of property.*

With respect to offences against property which only affect the enjoyment of the object in question; this object must be either a service, or a set of services, which should have been rendered by some person, or else an article belonging to the class of things. In the former case, the offence may be styled *wrongful withholdment* of services. In the latter case, when any object of which any individual has had the enjoyment, ceases so to be enjoyed, it may be either from a change in the intrinsic condition of the thing itself, or in its exterior situation with respect to such individual, which has removed it out of his reach. If the change in the nature of the object be such that no further use can be made of it, it is destroyed; if the change have only diminished its value, it is damaged. If it be simply removed beyond his reach without alteration, it is wrongfully detained.

The object detained may have been obtained from the proprietor, with or without his consent. In the first case, its detention is the non-payment of a debt. In the second case, if the detaining party, knowing that he has no right, intend to detain it always,

and, at the same time, not to be amenable to the law, such detention is commonly called theft. If he have employed force or threats against the proprietor or other persons who would have prevented his wrongful occupation of the property, in this case the offence takes the name of robbery. If the consent of the proprietor have been obtained, but if he have been deceived by false appearances, it is an act of *sharping* or fraud. If such consent be obtained by the fear of evil resulting from an abuse of power, it is what is commonly called *extortion.*

The foregoing analysis, though imperfect, will suffice to explain the principal genera of offences contained in the fourth and fifth order.

Offences Affecting The Right Of Property.

1. Wrongful non-investment of property.
2. Wrongful interception of property.
3. Wrongful divestment of property.
4. Usurpation.
5. Wrongful investment of property.
6. Wrongful withholding of services.

Offences Affecting The Use Of Property.

7. Wrongful destruction or endamagement.
8. Wrongful occupation.
9. Wrongful detention.
10. Wrongful imposition of expense.
11. Wrongful hindrance of occupation.
12. Theft.
13. Fraudulent acquisition, under false pretences. Sharping.
14. Embezzlement.
15. Extortion.
16. Non-payment of debts.

Order V.

Offences Against The Person And Property.

If constraint be applied to the person of the proprietor in the commission of one of the foregoing offences against property, there results from it the following complex offences:—

1. Forcible interception of property.
2. Forcible divestment of property.
3. Forcible usurpation.
4. Forcible investment.
5. Forcible destruction or endamagement.
6. Forcible occupation of moveables.

7. Forcible entry.
8. Forcible detainment of moveables.
9. Forcible detainment of immoveables.
10. Robbery.

Order VI.

Offences Against Condition.

A man's condition in life is constituted by the legal relation he bears to the persons who are about him; that is, by *duties,* which by being imposed on the one side, give birth to *rights* or *powers* on the other. These relations, it is evident, may be almost infinitely diversified. Some means, however, may be found of circumscribing the field within which the varieties of them are displayed. In the first place, they must either be such as are capable of displaying themselves within the circle of a private family, or such as require a larger space. The conditions constituted by the former sort of relations may be styled *domestic;* those constituted by the latter, *civil.*

Domestic conditions are founded upon *natural* relations, or upon relations purely *legal.*

In the institution of purely legal conditions, the party favoured may be styled a *superior;* and as both parties are members of the same family, a *domestic superior,* with reference to the party obliged; who in the same case may be styled a *domestic inferior,* with reference to the party favoured. These domestic conditions have generally been constituted by powers rather than rights.

If the power thus vested in the superior be a beneficial one, and for his own advantage, such superior is called a *master,* and the inferior is called a *servant.* If it be for the sake of the inferior, the superior is termed a *guardian,* and the inferior his *ward.*

The natural relations founded upon the cohabitation of men and women, and upon the fruits of their union, have served for a basis upon which to fix their legal relations; that is to say, the rights and obligations of the husband and wife, of the parent and child.

These rights and obligations are the same as in the preceding cases. The husband is in certain respects the guardian, and in other respects the master of his wife: the parent is in some respects the guardian, and in others the master of his children.

We come now to *civil* conditions. These it may well be imagined, may be infinitely various: to make a complete enumeration of them, would be to enumerate every possible mode by which powers and rights may be established; for to be subject to a certain power, or to possess a certain right, is what constitutes a *civil* condition.

This variety, or rather this infinity of conditions, may however be reduced to three classes:—1. Fiduciary charge; 2. Rank; 3. Profession.

A fiduciary charge takes place between two or more interested parties, when, one of the parties being invested with a power or a right, is bound, in the exercise of this power and this right, by certain rules, for the advantage of the other party. This relation constitutes two conditions—the *trustee,* and the *trustor,* called in lawyers' language *cestui que trust.*

Rank is often combined with the circumstance of a fiducial trust, but there are certain cases in which it can be considered as altogether distinct. The rank of knighthood is constituted—how? By prohibiting all other persons from performing certain acts, the performance of which is the symbol of the order, at the same time that the knight in question and his companions are permitted to perform them;—for instance, to wear a ribbon of a certain colour, or in a certain manner—to call himself by a certain title—to use an armorial seal with a certain mark upon it. The law creates a benefit for these individuals, by subjecting all others to the negative duty of abstaining from these acts.

The condition of a professional man stands upon a narrower footing. To constitute this condition there needs nothing more than a permission given him on the part of the legislator to perform those acts, in the performance of which consists the exercise of his profession: to give or sell his advice or assistance in matters of law or of physic—to give or sell his services as employed in the executing or overseeing of a manufacture or piece of work of such or such a sort. The permission in the greater number of cases is not even expressly granted—the law merely does not prohibit, &c.; but there are cases in which the law, whilst it permits certain persons to follow certain trades, prohibits those who have not received the same permission. This is called in certain circumstances *monopoly*—in others, *privileged profession.*

By forbearing to subject you to certain disadvantages to which it subjects an alien, the law confers upon you the condition of *natural subject*—by subjecting him to them, it imposes upon him the condition of an alien. By conferring on you certain privileges or rights which it denies to a *roturier,* the law confers on you the condition of a *gentilhomme*—by forbearing to confer on him these privileges, it imposes on him the condition of a *roturier*.*

This analysis, which is only a sketch of the subject, may serve to explain what is a *condition,* and what offences may be committed against a condition. In order fully to analyze all these offences, it would be necessary to take each condition separately, to enumerate all its *benefits,* or all the *charges* of which it is composed, and to show every method by which it is possible to avoid those *charges,* or to be deprived of those *benefits.* But this process would lead to a great number of repetitions, for the avoidance of which it will be more advisable to exhibit the different kinds of offences which are common to all conditions, and afterwards the incidental offences peculiar to certain conditions.

Species of Offences against Condition.

1. Wrongful non-investment of condition.
2. Wrongful interception of condition.
3. Wrongful usurpation of condition.
4. Wrongful investment of condition.
5. Wrongful divestment of condition.
6. Wrongful abdication of condition.
7. Wrongful refusal of condition.
8. Wrongful imposition of condition.
9. Wrongful disturbance of rights.

Offences Incident To Conditions Which Imply Powers.

10. Abuse of powers.
11. Non-rendering of due service.
12. Misbehaviour.
13. Passive corruption.
14. Active corruption.
15. Peculation.

Offences Incident To Conditions Which Imply Subordination.

16. Flight.
17. Disobedience.
18. Non-rendering of required services.

Offences Incident To The Married Condition.

19. Adultery.
20. Polygamy.

SECOND CLASS.

Subdivision Of Self-regarding Offences.

Self-regarding offences are, properly speaking, errors, or acts of imprudence. We have already seen, in examining the limits which separate morals and legislation, that there are strong reasons for not treating these offences in the same manner as offences of the other classes. To subject them to punishment, would be for the laws themselves to cause a greater evil than those which they would pretend to prevent.

It is, however, useful to class these offences:—1. To show in general what are the offences which ought not to be subject to the severity of the laws; 2. That those

offences may be discovered with respect to which exception should be made for particular reasons.

The subdivision of these offences is exactly the same with that of private offences. The evil which we may experience from others, we may produce for ourselves.

Genera Of Personal Or Self-regarding Offences.

Order I.

Offences Against The Person.

1. Simple corporal injuries—*Ex.* Fasting, extreme continence, self-mortification, intemperance.
2. Irreparable corporal injuries—*Ex.* Mutilations, loss of members by negligence or temerity, or in consequence of excess.
3. Simple mental injuries—*Ex.* Religious fears arising from other causes than acts hurtful to society; ennui from indolence; weakness of the intellectual faculties from excess or inaction.
4. Restriction. {
5. Constraint. { *Ex.* Privations or ascetic practices in consequence of religious vows.
6. Banishment. {
7. Imprisonment. { *Ex.* Constrained abode in a religious house in consequence of monastic vows—forced pilgrimage in consequence of religious vows.
8. Confinement. {
9. Suicide.—Death in consequence of a challenge given or accepted.

Order II.

Offences Against Reputation.

1. Indiscreet imprudent confessions.

2. Invectives against one’s self.

3. Neglect of reputation.

Order III.

Offences Against Reputation And Person.

1. Loss of virginity before marriage.

2. Indecent practices in sight of another.

Order IV.

Offences Against Property.

1. Waste of his own property.

2. Neglect of the means of acquisition.

3. Prodigality, *Ex.* gaming.

4. Burthensome acquisition.

5. Imprudent agreement.

Order V.

Offences Against Person And Property.

1. Mutilation which prevents the exercise of a profitable trade.

2. Diseases brought on by intemperance or excess, and which are productive of expense and loss.

Order VI.

Offences Against Condition.

1. Investment with a condition injurious to one's self;—improvident marriage.

2. Divestment of a condition beneficial to one's self;—rash divorce.

THIRD CLASS.

Subdivision Of Semi-public Offences.

It is neither an evil which is past, nor one which is present, which can constitute a semi-public offence. If the evil were present or past, the individuals who had suffered, or were suffering from it, would be *assignable:* it would become a private offence. What, then, is the evil which constitutes a semi-public offence? It is a future evil; that is to say, an evil not yet realized, but which is probable, and takes the name of danger.

This danger may threaten all the points in which an individual can suffer. Hence the subdivision of offences of this class must be the same with that of private offences.

Order I.

Semi-public Offences Against The Person.

1. Simple corporal injuries, { *Ex.* 1. Manufactures injurious to the health. 2. Sale of unwholesome food. 3. Artificial famine.
2. Irreparable corporal injuries, {
3. Simple mental injuries.—*Ex.* Exposure of ulcers or disgusting diseases; obscene exhibitions; false reports of disasters in time of war, or other public misfortunes; publication of frightful tales of sorceries, ghosts, vampires, &c.
4. Menaces.—Placards, writings; letters containing threats against a certain class, profession, party, sect, &c. &c.
5. Restriction. { *Ex.* Speeches, hand-bills, placards designed to constrain or restrict
6. Constraint. { individuals with regard to actions in themselves left free, as illuminations, processions, assemblies, &c.
7. Banishment. { *Ex.* Communication interrupted by the destruction of roads, bridges,
8. Confinement. { inns, &c.
9. Imprisonment.—There is no offence corresponding with this in the third class.
10. Homicide.—*Ex.* Murder committed in a party quarrel (a private offence with regard to the individual, a semi-public offence with regard to the party.)

Order II.

Offences Against Reputation.

1. Defamation.—*Ex.* Criminal or dishonest proceedings attributed to certain classes, as protestants, catholics, monks, &c.
2. Invectives.—*Ex.* Speeches, writings, prints tending to express hatred or contempt against a certain class of individuals without real and clearly ascertained cause.

Order III.

Offences Against Person And Reputation.

There are no offences corresponding with this order in this class.

Order IV.

Offences Against Property.

The same denominations as for private offences. An offence is semi-public—1. When the thing, or the service which it affects, belongs in common to societies of individuals, or to the officers of an entire class; 2. When the number of persons hurt, or exposed so to be, is too great for the individual to be held liable to render a separate account to each one; as in the case of a fraudulent lottery, false reports affecting the public funds, &c.

Order V.

Offences Against Person And Property.

List of physical calamities—

1. Collapsion or fall of large masses of solid matter, such as decayed buildings, rocks, masses of snow, and mines.

2. Inundation.

3. Drought.

4. Tempest.

5. Conflagration.

6. Explosion.

7. Earthquake.

8. Pestilential winds.

9. Contagious maladies.

10. Famine and other species of dearth.

11. Evils produced by destructive animals, beasts of prey, locusts, ants, insects, &c.

12. Evils produced by children, maniacs, idiots, &c.

An individual may be guilty of an offence of this kind—1. In as far as any imprudent act of his may contribute to give birth to any of these calamities, as by breaking quarantine, by importing merchandise from infected places, &c. 2. In as far as he may fail to do what he ought to do towards preventing them, such failure may be an offence.

N.B. These calamities do not always fall upon the *person and property,* so that these offences do not exactly correspond with those of the fifth order; but this is most frequently the case.

Order VI.

Offences Against Condition.

Offences against the matrimonial condition: *Ex.* Attacking the validity of marriage among persons of a certain class or religious sect, as Protestants, &c.

Offences against the parental or filial condition: *Ex.* Attacking the legitimacy of children born in a certain class, as Protestants, &c.

Offences against civil conditions are all in one sense semi-public, inasmuch as the possession of a certain condition belongs to a certain class.

FOURTH CLASS.

Subdivision Of Public Offences.

The offences by which the public interest may be affected, are of very various and complex kinds. The following subdivision is incomplete, but an attempt to make it complete, by following out the exhaustive method, would have been too wearisome. Upon the present occasion, one of the great difficulties presented by the subject arises from the fact, that many offences of this class have not yet received names, and that a recurrence to long and obscure periphrases would therefore be rendered necessary.

The science of legislation being extremely imperfect, the nomenclature cannot be good; and with a bad nomenclature, it is not possible to make a good distribution.

Order I.

Offences Against External Security.

Such offences as have a tendency to expose the nation to the attacks of a foreign enemy:

1. Treason, either negative or positive, in favour of foreign enemies.

2. Espionage in favour of foreign rivals, not yet enemies.

3. Injuries to foreigners at large, including piracy.

4. Injuries to privileged foreigners, such as ambassadors.

Order II.

Offences Against Justice.

The direct object of the tribunals ought to be to maintain the laws, that is to say to punish those offences which violate them.

Offences against justice are of two sorts—

I. Those which may be committed by the officers of justice in opposition to their duties.

II. Those which may be committed by other persons, in opposition to, or to mislead the tribunals.

1. Improper exercise of judicial office.

2. Abuse of judicial power.

3. Usurpation of judicial power.

4. Collusion, *syn.* corruption on the part of judicial officers.

5. Peculation by judicial officers.

6. Exaction, *syn.* extortion on the part of judicial officers.

7. Non-rendering of services due to judicial officers.

8. Non-denouncing of offences to judicial officers.

9. Disobedience to judicial orders.

10. Contumacy.

11. Breach of banishment.

12. Prison breach.

13. False oaths, *syn.* perjury.

14. Rebellion against justice.

15. Disturbance of judicial powers.

16. Judicial vexation.

Order III.

Offences Against Police.

Police is in general a system of precaution, either for the *prevention of crimes* or of *calamities*. It is destined to prevent evils and provide benefits.

The acts which oppose the police, or which oppose the precautions which it institutes, form as many offences as there are kinds of precautions; but as their nature is varied according to times and circumstances, so must the particular enumeration of them be.

The business of police may be distributed into eight distinct branches:—

1. Police for the prevention of offences.

2. Police for the prevention of calamities.

3. Police for the prevention of endemic diseases.

4. Police of charity.

5. Police of interior communications.

6. Police of public amusements.

7. Police for recent intelligence and information.

8. Police for registration, for preserving the memory of different facts interesting to the public, such as births, marriages, deaths, population, number of houses, situation and qualities of different properties, contracts, offences, procedure, &c.

Order IV.

Offences Against The Public Force.

Such offences as have a tendency to oppose or mislead the operations of the military force destined for the protection of the state either against its enemies from without or from within, which the government could not overcome without an armed force.

1. Offences affecting the titles and functions of military officers.

2. Desertion.

3. Offences affecting the several sorts of things appropriated to the purposes of war: such as arsenals, ammunition, military magazines, fortifications, dock-yards, ships of war, and so forth.

Order V.

Offences Against The National Wealth.

The national wealth is the total of the wealth of all the nation. Those acts which tend to diminish the wealth of individuals, tend to diminish the national wealth. But what are the specific offences—what are the actions of this kind, which ought to be prohibited? The science of political economy leads to the conclusion, that government ought only to interfere for the protection of individuals in the acquisition and enjoyment of property, and seldom to direct as to the manner of acquiring and enjoying; the greatest obstacles to the increase of national wealth having almost always been found in those laws which have sought to increase it.

The most conspicuous offences of this order are—

1. Idleness.

2. Prodigality.

Order VI.

Offences Against The Public Treasure.

Such acts as have a tendency to diminish the public revenue, by opposing its collection, or misdirecting the employment of the funds destined to the service of the state:—

1. Non-rendering of services.

2. Non-payment of taxes—smuggling.

3. Destruction of the goods of the community, roads, public buildings, &c.

The state, considered collectively, may have possessions, and consequently suffer in these possessions, in the same manner as an individual.

Order VII.

Offences Against Population.

Such offences as tend to diminish the number of members in the community:—

1. Emigration.

2. Suicide.

3. Prevention of births.

The influence of these things upon population has at all times been nearly imperceptible; the amount of population having, in nearly all circumstances, been found to correspond with the means of subsistence.

Order VIII.

Offences Against The Sovereignty.

It is hardly possible to describe these offences, unless the constitution to which they refer have been previously laid down. There are many constitutions in which it is difficult to resolve the question, Where does sovereign power reside?

The following is the simplest idea which can be formed of it. The collective name of the government is commonly given to the total assemblage of persons charged with the different political functions. There is commonly in the state one person, or a body of persons, which assigns and distributes to the members of the government their departments, their functions, and their prerogatives—which exercises the legislative power—which directs and superintends the administrative power. The person or the body which exercises this supreme power, is called the *sovereign.* Offences against the sovereignty are those which tend to oppose or mislead the operations of the sovereign, those things which cannot be done without opposing or misleading the operations of the different parts of the government.

1. Rebellion, offensive or defensive.

2. Political defamation—political libels.

3. Conspiracy against the person of the sovereign, or the form of government.

Order IX.

Offences Against Religion.

For combating every species of crime which can be committed by man, the state has only two great instruments—rewards and punishments:—punishments applicable everywhere, and on all ordinary occasions—rewards necessarily reserved to a small number of extraordinary occasions. The distribution of rewards and punishments is often opposed or misdirected, or rendered useless, because the state has neither eyes which can see everything, nor hands which can attend to everything. Religion is calculated to supply this deficiency of human power, by inculcating upon the minds of men the belief that there is a power engaged in supporting the same ends, which is not subject to the same imperfections. It represents the Supreme Invisible Being as disposed to maintain the laws of society, and to reward and punish according to infallible rules, those actions which man has not the means of rewarding and punishing. Everything which serves to preserve and strengthen in the minds of men

this fear of the Supreme Judge, may be comprehended under the general name of Religion; and for the purpose of clearness of discourse, we may often speak of religion as if it were a distinct being, an allegorical personage, to whom certain functions are attributed. Hence, to diminish or pervert the influence of Religion, is to diminish or pervert, in the same proportion, the services which the state might derive from it, for the repression of crime or the encouragement of virtue. Everything which tends to weaken or mislead the operations of this power, is an offence against Religion.*

Offences which tend to weaken the force of the religious sanction are—

1. Atheism.

2. Blasphemy.

3. Profanations—*syn.* actions directed against any object of religious worship.

Offences which tend to pervert the employment of the religious sanction, may be comprehended under the name of caco-theism, and are divisible into three branches:—

1. *Pernicious dogmas:* dogmas attributing to the divinity dispositions opposed to the public welfare; for example, that he has created sources of suffering in greater abundance than sources of pleasure: dogmas imposing misseated, excessive, or useless punishments: suborning dogmas, which grant pardon where punishment has been deserved, and which offer rewards for actions which deserve none, &c.

2. *Frivolous dogmas:* dogmas which respect belief alone, and from which no moral good is derivable, and from which many ill effects result between those who admit and those who reject them.

3. *Absurd dogmas:* another means of attributing malevolence to the divinity, making him the author of an obscure and unintelligible system of religion.

Caco-theism has been productive of atrocious crimes. It has degraded the populace, persecuted the wise, and filled the minds of men with vain terrors; has forbidden the most innocent pleasures, and is the most dangerous enemy of correct morals and legislation. Punishments directed against the propagators of these errors would be well deserved, for the evil which results from these errors is real: but such punishments would be inefficacious, superfluous, and ill-adapted. There is but one antidote to these poisons—that is, truth. These dogmas, once exposed as false, cease to be pernicious, and are only ridiculous. The opinion which supports them ought to be attacked like every other opinion. It is not the sword which destroys errors, but the liberty of examining them. Persecution for opinion's sake exhibits the monstrous union of folly and tyranny.

The same things must be admitted with respect to atheism, though atheism may be an evil in comparison with a system of religion conformable to the principle of utility, consoling the unhappy, and propitious to virtue. Yet it is not necessary to punish

atheism: the moral sanction is sufficient for its condemnation. An opinion only is here stated, but the proofs of that opinion will be produced elsewhere.

CHAPTER VII.

ADVANTAGES OF THIS CLASSIFICATION.

Omitting others of minor importance, the following appear to be the principal advantages of this classification:—

1. It is the most natural, that is to say, the most easy to be understood and remembered. In what does a natural classification consist? In reference to a given individual, it is that which first presents itself to his mind, and which he comprehends with the greatest facility. Hence, when an individual invents a classification for himself, it appears, and is, in respect to himself, the most natural one. But with reference to men in general, the most natural classification is that which presents objects to them according to their most striking and interesting qualities. Now there is nothing more interesting or striking to a sensible being, than human actions considered in reference to the mischief which may result from them to himself or others.

2. This classification is simple and uniform, notwithstanding the multiplicity of its parts, because they are all analogous, one following the other, allowing the bonds which connect them, and their points of contact and resemblance, to be perceived at the first glance.

To know the first class, is to know the second and the third. The fourth rests upon the same foundation, though the points of connexion are less apparent than in the others. If the offences of the first three classes were not mischievous, those of the last would not be so either.

3. This classification is best adapted for discourse; best adapted for announcing the truths connected with the subject.

In every species of knowledge, disorder in language is at once the effect and the cause of ignorance and error. Nomenclature can only be perfected in proportion as truth is discovered. It is impossible to speak correctly, unless we think correctly; and it is impossible to think correctly, whilst words are employed for registering our ideas, which words are so constituted that it is not possible to form them into propositions which shall not be false.*

4. This classification is complete. There is no imaginable law to which it is not possible by its means to assign its proper place. If this law be directed against an action mischievous in any kind of manner whatsoever: if it be a capricious law—a mischievous law, it will also have its place, but it will be among acts which are mischievous—it will be itself classed among offences.

5. It displays intention. It is so contrived that the very place which any offence is made to occupy, suggests the reason of its being put there. It serves to indicate not only that such and such acts *are* made offences, but *why* they *ought* to be so. By this means, while it addresses itself to the understanding, it recommends itself in some measure to the affections. By the intimation it gives of the nature and tendency of each obnoxious act, it accounts for, and in some measure vindicates the treatment which it may be thought proper to bestow upon that act in a way of punishment. To the subject, then, it is a kind of perpetual apology, showing the necessity of every defalcation, which, for the security and prosperity of each individual, it is requisite to make from the liberty of every other. To the legislator, it is a kind of perpetual lesson, serving at once as a corrective of his prejudices, and as a check upon his passions. Is there a mischief which has escaped him?—in a natural arrangement, if at the sametime an exhaustive one, he cannot fail to find it. Is he ever tempted to force innocence within the pale of guilt?—the difficulty of finding a place for it, advertises him of his error. An imaginary crime cannot escape among a crowd—it cannot be classed under such a methodical arrangement. Such are the uses of a map of universal delinquency laid down upon the principle of utility;—such the advantages which the legislator as well as the subject may derive from it. Abide by it, and everything which is arbitrary in legislation vanishes. An evil-intentioned or prejudiced legislator durst not look it in the face. He would proscribe it, and with reason: it would be a satire upon his laws.

6. This classification is universal. Governed as it is by a principle which is recognised by all men, it will serve alike for the jurisprudence of all nations. In a system of law framed in pursuance of such a method, the language would serve as a glossary, by which all systems of positive law might be explained, while the matter would serve as a standard by which they might be tried. Thus illustrated, the practice of every nation might be a lesson to every other, and mankind might carry on a mutual intercourse of experiences and improvements as easily in this, as in every other walk of science.

It might thus possess a utility independent of the use which might be made of it by the governments of the world. If the different penal laws in the world were arranged according to this method, all their imperfections would become visible: without argument respecting them, they would be discovered by inspection. Here would be offences omitted, there imaginary offences; here redundant laws containing numerous descriptions of different kinds of theft, or personal offences, &c. instead of one general law. *This* classification would therefore prove, in legislative science, what instruments of comparison, such as the barometer and thermometer, have been found in physical science.

I must, however, recur to the principal advantage of this classification. Under it all offences of the same class are ranged under the same head, in virtue of some common quality which unites and characterizes them. Offences which compose one class have therefore among them like properties; and they have, at the same time, properties differing from those of offences of a different class. It hence results, that it is possible to apply general propositions to each of such classes, which may serve as the characteristics of such classes.

A collection of these characters it may here be proper to exhibit. The greater number of them we can bring together, the more clearly and fully will the nature of the several classes, and of the offences of which they are composed, be understood.

Characters of Class 1—composed of *private* offences, or offences against assignable individuals:—

1. When arrived at their last stage (the stage of consummation) they produce, all of them, a mischief of the first as well as of the second order.

2. The individuals whom they affect in the first instance,* are constantly *assignable.* This extends to all—to *attempts* and *preparations,* as well as to such offences as have arrived at the stage of consummation.

3. They will admit of *compensation.*

4. They admit† also of *retaliation.*

5. There is always some person who has a natural and peculiar interest to prosecute them.

6. The mischief they produce is *obvious.*

7. They are everywhere, and must ever be obnoxious to the censure of the world.

8. They are less apt than semi-public and public offences, to require different descriptions in different states and countries.

9. By certain circumstances of aggravation, they are liable to be transformed into semi-public, and by certain others, into public offences.

10. In slight cases *compensation* given to the individual affected by them, may be a sufficient ground for remitting punishment; for if the primary mischief has not been sufficient to produce any alarm, the whole of the mischief may be cured by compensation.

Characters of Class 2—consisting of self-regarding offences—offences against *one's self:*—

1. In individual instances, it will often be questionable whether they are productive of any primary* mischief at all; secondary, they produce none.

2. They do not affect any other individuals assignable, or not assignable, except in as far as they affect the offender himself, unless by possibility in particular cases; and in a very slight and distant manner they affect the whole state.

3. They admit not, therefore, of compensation.

4. Nor of retaliation.

5. No person has naturally any peculiar interest to prosecute them, except in as far as, in virtue of some *connexion* he may have with the offender, either in point of sympathy or interest, a mischief of the derivative kind may happen to devolve upon him.

6. The mischief they produce is apt to be unobvious, and in general more questionable than that of any of the other classes.

7. They are, however, apt many of them to be more obnoxious to the censure of the world than public offences, owing to the influence of the two false principles of ascetism and antipathy.

8. They are less apt than offences of any other class, to require different descriptions in different states and countries.

9. Among the inducements to punish them, antipathy against the offender is apt to have a greater share than sympathy for the public.

10. The best plea for punishing them is founded on a faint probability there may be, of their being productive of a mischief, which, if real, will place them in the class of public offences, chiefly in those divisions which are composed of offences against population, and offences against the national wealth.

Characters of Class 3—composed of semi-public offences, or offences affecting a whole subordinate *class* of persons:—

1. As such, they produce no primary mischief. The mischief they produce, consists of one or other or both branches of the secondary mischief produced by offences against individuals, without the primary.

2. The persons whom they affect in the first instance, are not individually assignable.

3. Offences of this class are apt, however, to involve or terminate in some primary mischief of the first order, which, when they do, they advance into the first class, and become private offences.

4. They admit not of compensation.

5. Nor of retaliation.

6. There is never any one particular individual whose exclusive interest it is to prosecute them. A circle of persons may however always be marked out, within which may be found some who have greater interest to prosecute, than any who are out of that circle have.

7. The mischief they produce is in general pretty obvious, but less so than that of private offences.

8. They are rather less obnoxious to the censure of the world than private offences.

9. They are more apt than private and self-regarding offences, to require different descriptions in different countries, but less so than public ones.

10. There may be ground for punishing them before they have been proved to have occasioned, or to be about to occasion mischief to any particular individual. The extent of the evil makes up for the uncertainty of it.

11. In no cases can satisfaction given to any particular individual affected by them, be a sufficient ground for remitting punishment; for by such satisfaction, it is but a part of the mischief of them that is cured.

Characters of Class 4—consisting of public offences, or offences against the *state* in general:—

1. As such, they produce not any primary mischief; and the secondary mischief they produce, which consists frequently of danger without alarm, though great in *value,* is in specie very indeterminate.

2. The individuals whom they affect in the first instance are constantly unassignable, except in so far as by accident they happen to involve or terminate in offences against individuals.

3. They admit not of compensation.

4. Nor of retaliation.

5. Nor is there any person who has naturally any particular interest to prosecute them, except in as far as they appear to affect the power, or in some other manner the private interest of some person in authority.

6. The mischief they produce is comparatively unobvious.

7. They are comparatively little obnoxious to the censure of the world.

8. They are more apt than any of the other classes to admit of different descriptions in different states and countries.

9. They are constituted in many cases by some circumstances of aggravation, superadded to a private offence. They are, however, even in such cases, properly ranked as public offences, inasmuch as the mischief they produce, in virtue of the properties which aggregate them to that class, eclipses and swallows up those which they produce in virtue of those properties which aggregate them to the first class.

10 and 11. These characters are the same as in the case of semi-public offences.

CHAPTER VIII.

TITLES OF THE PENAL CODE.

These may be distinguished into particular and general titles.

Each head of offence constitutes a particular title.

Those are called General titles, under which matters which belong in common to a great part of the particular titles are contained. The first advantage is—repetitions avoided; the second advantage—views extended and confirmed.

The following is the catalogue of the general titles which ought to be treated of in the penal code:—

1. Of persons subject to the law.

2. Of negative and positive offences.

3. Of principal and accessory offences.

4. Of co-delinquents—that is, associates in committing crimes.

5. Of grounds of justification.*

6. Of grounds of aggravation.

7. Of grounds of extenuation.

8. Of grounds of exemption.

9. Of punishments.

10. Of indemnification, and other satisfactions to the party injured.

With respect to the particular titles, they are all formed upon the same model: if the first is known, all the others are known also.

Here follows an example:—

Title I.

Of Simple Corporal Injuries.

SECTION I.

PRINCIPAL TEXT.

There is simple corporal injury, when, without lawful cause([a]) an individual has caused([b]) or contributed to cause to another,([c]) suffering or corporal uneasiness,([d]) which is not followed by any ulterior([e]) corporal evil.

SECTION II.

MEANS OF PUTTING AN END TO THE OFFENCE.

It is here that the following matters should be placed, that reference may be made to them:—

1. Right or power of resistance against an unjust attack.

2. Right, or power and obligation, to lend assistance to another against an unjust attack.

3. Right, power, and obligation to the officers of police to lend assistance.

4. Right and obligation for individuals to call for the assistance of the officers of police to cause an unjust attack to cease.

Punishments.—1. Fine ([h]) at option ([i]) and discretion ([k]), which shall not exceed the—th ([l]) part ([m]) of the property of the delinquent.

2. Imprisonment ([n]) at option and discretion, which shall not exceed the term (for example) of one year. ([o])

3. Security for good conduct ([p]) at option and discretion.

4. In serious cases ([q]), banishment from the presence ([r]) of the injured party for a time or for ever.

5. Costs of suit at option and discretion.

As many letters, so many references to different sections of the general title of punishments. There, for example, would be explained the expressions *at option* and *discretion. At option* is a concise phrase for expressing that it is lawful for the judge to employ or not to employ this punishment. *At discretion,* signifies that the judge ought

to employ a certain quantity of this punishment, but that he may employ so much or so little as he may judge proper, provided that he keep within the limits prescribed by the general rules under the title of punishments.

Indemnifications.—As to what regards indemnifications, reference may be made to the general title which treats of them; reserving the details of those particular dispositions which may be judged convenient, for this place.

It is here that reference may be made to procedure. Procedure *ad compescendum,* which consists in putting an end to an offence, can have no place here, unless the crime be complicated with one of those which attack the liberty of the person.

Procedure *ad puniendum et ad satisfaciendum,* are the two branches of which the application is the most universal, especially the first.

Whilst as to procedure *ad præveniendum,* reference should be made to the general title of punishments, which treats of security to be required for good conduct.

Reference to the title Grounds of Exemption.

Reference to the title Grounds of Aggravation.

I place—1. The grounds of aggravation, which do not cause the offence to be referred to another name; 2. Those which add to it the qualities designated by some appellation of the same class; 3. Those which transfer it to the class of semi-public offences; 4. Those which transfer it to the class of public offences.

Reference to the Grounds of Extenuation.

If there be in an offence any circumstance of aggravation, the quantity of the ordinary punishment may be in consequence increased, or an ulterior punishment of a different kind may be permitted. This new punishment may be called by the technical name of extra punishment. In the same manner, in the case of extenuation, there might be established an *infra punishment.*

Another Example:—In order to continue to give an idea of the plan, let us take an example from among offences which relate to property. Here a new order of things presents itself. That which has been considered, appeared only to relate to what is penal—the following article will recal the idea of the civil code. We must not, however, forget that an offence is still under consideration.

I choose *waste,* as presenting the most simple case.

PRINCIPAL TEXT.

There is injurious waste, when, without lawful cause[a] , an individual destroys, or contributes[c] to destroy or injure[d] a thing[e] of some value.[f]

In order to simplify the case, I leave out that part which concerns evil intention:—hence, in the supposition, the hurtful act only draws the quality which renders it punishable from some inadvertency, or some error in what respects the right.

It is of no consequence whether the value be constant or occasional, provided, at the time of its destruction, it possessed an actual value, or would have had it in future: as, if it were a fence which preserved a plantation, or a bank of earth raised for a momentary service.

In following out the plan, the meaning of the word *value* would be explained in such manner that it will not be doubtful whether it extends to a value which does not exist, except by reference to a certain place as a boundary; to that which arises only from agreement, as a paper which contains a contract; to that which is only representative, that is to say, which is nothing except as a means of procuring a thing, whose value is intrinsic; to that which is nothing except in relation to the public—as a writing proving that a certain individual is subjected for the public good to a certain obligation.

Of some value.] The value of a thing may be reputed as nothing, when it is such that it may be presumed that a person of any humanity or politeness would voluntarily give it up to whosoever would take the trouble to ask for it, and to take it; for example, the gleaning after the harvest, the wild fruits, the hedge nuts, &c.

But to destroy this presumption, any act on the part of the proprietor, which shows that he intends to refuse this permission, either to the public at large, or to any individual in particular, is sufficient.

Such is the plan: the other sections should correspond with these.

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CHAPTER IX.

FIRST GENERAL TITLE OF THE CIVIL CODE,*

Of Things.

We begin with *things.* Robinson Crusoe is represented as living many years, without exercising his power over persons. He could not have been so long without exercising his power over things.

The species into which things may be divided are innumerable, and there is not one of them which may not fall under the cognizance of the law; since all the productions of art, all the objects in nature, are comprised within its domain. If it were necessary to mention each separately, the Encyclopædia itself would only form one chapter of legislation. But in this immensity, we have occasion only to notice those things respecting which the law has established differences in the manner of acting with regard to them—those things which have served it as a foundation upon which to build obligations and rights. By means of certain general divisions, we shall be able easily to govern this vast subject. We shall arrange them according to their source, their employment, and their nature.

Division I. Things are either *natural* or *artificial.*—To the first head may be referred those things to which their respective names may be applied when in the condition in which they come from the hands of nature, before they have been modified by the labour of man; that is to say, the earth, its different parts, and the productions to which it gives birth. Under the name of *artificial* or *factitious,* those may be comprehended which only acquire their respective names in virtue of qualities given them by human labour. Hence, a field, though cultivated—a vine, though planted—even a live hedge, would be natural things. A house, a wine-press, a dead hedge, would be artificial things. These two classes will meet in an infinity of points, and there is no fixed line of demarcation by which to separate them. Still, a line of demarcation will be absolutely necessary in a code of laws. It is necessary to have one among those objects with which the law intermeddles for the sake of peace; without it, disputes would be interminable. The line will be more or less arbitrary, but this is of no consequence, provided that it exist.

Division II. *Things moveable* and *things immoveable.*—Another positive line of demarcation. Houses are generally immoveable. But they have been made of wood, and of iron, and have traversed along the roads.† Like the Scythians of old, the Tartars of our days are only lodged in this manner. Ships are houses. Some ships are little floating towns. Mountains and hills sometimes slip down. Large tracts of land have changed their sites. Such events are common in volcanic countries. To these ravages of nature the scourge of chicanery too often succeeds, and sits down among the ruins to dispute their possession.

Division III. *Things employable* and *things consumable.*—The first may be used without changing their form;—the second cannot be used without being destroyed. To the first head may be referred houses, vessels, &c.;—to the second, eatables and drinkables, &c. The latter are the things *fungible* of the Roman law. Take another step, and we shall find ourselves stopt short for want of a line of demarcation. This wood, which may serve either for building a house, or warming an oven; this ox, which may draw a plough, or which may be driven to the butchers: are these things, or are they not things *fungible?* All nature is one continual round of revolutions: everything which she employs, she consumes; everything which she destroys under one form, she reproduces under another. The distinction between these two conditions, though sufficiently clear in certain objects, is too slight in the general system of things to be of great utility.

Division IV. *Things which are individually valuable* and *things which are valuable in mass.*—To the first head may without difficulty be referred houses, furniture, clothes; to the latter, metal in the rough state, seeds, &c. This distinction is still very uncertain, and does not proceed far before it produces confusion. Useful in some cases, it would be useless in a multitude of others. Many things may be valued indifferently in both manners. The legislator, in tracing these divisions, would require a logician at his side; but surveyors are required for land, the surveying of ideas is an operation not less necessary, and more difficult.

Division V. This is one which the Roman lawyers have not dreamed of, and which is worth all the others. Since they have classed animals among things, they ought to have distinguished things into two classes,—*sensible* and *insensible.* The brazen cow of Myron was, in their eyes, of the same class as the living cow which he employed as his model. But how should they have distinguished the inferior animals from things—they among whom man himself, when he had the misfortune to fall into a state of slavery, was no more than a thing? And who shall say how much the condition of animals and slaves was aggravated by this cold and cruel classification? The law which ought to have protected them, began by giving an idea of them which degraded them. It spoke of them as if it would extinguish in every heart every feeling of tenderness for them—as if it would make us forget that there was any point of community between us. Error for error,—I would rather love the folly which adored the brutes, than the cruelty which ill treated them. Yes, I would rather pardon the hideous caprices which fable paints of Pasiphae, than those frightful bull fights of which the art consists in carrying the suffering and the rage of the expiring animal to the highest point, for the amusement of the barbarous spectators.

Division VI. *Simple things* or *individuals—complex things* or *collections of things.*—Among complex things, those should be distinguished which are naturally complex, from those which are so from institution.

A complex thing may either be a collection of simple things equally principals, or a thing which is regarded as *principal,* united to others which are regarded as *accessaries.*

A heap of corn is a collection of things equally principal. A field with certain plants and buildings is a collection of things, where some are principals and some accessaries. The bond which unites them is natural. But an inheritance, of which the objects are scattered—a stock in trade—the respective fortunes of two persons who intermarry,—these are examples of complex things, which are connected only by a bond of institution, such as the identity of the proprietor, and the disposition of the law.

Questions to be decided:—In case of dispute, which is the principal thing?—which are the accessaries? In what cases ought the disposition made with respect to the one, to comprehend the others? This depends upon contracts. It would therefore require a reference to this title.

What shall we say of the famous division among the Romanists, of things *corporeal* and things *incorporeal;* that is to say, of things which do not exist, which are not things? It is a fiction which only serves to hide and to augment the confusion of ideas. All these incorporeal things are only rights either to the services of men, or of real things: this will be shown in treating of rights.

If a thing interest sufficiently to become the object of a law, it is only as it possesses a certain value. Now this value is susceptible of many modifications, which require to be marked out. Ought these modifications to be treated of under a general title, or should they be reserved for the particular titles of the offences which affect them—as, for example, for that of waste? This is a question which can scarcely be resolved until all parts of the code have been considered.

Everything which exists, exists in a certain *quantity;* and the quality being given, the value of the thing will be in proportion to that quantity. To express these quantities, *measures* are required. These measures express either the quantity of the matter, or the space which it occupies: they are *weights,* or *measures of extent.* Hence we see that definitions of the measures of every kind, and the regulation of their proportions, ought to form a general title, and is necessary to complete a code of laws.

There is difficulty not only in distinguishing species: there is sometimes much difficulty in distinguishing individuals.

Individuation—(if we may coin this term.) This is one of the first cases which should occupy a legislator under each particular title which demands it. A house is let: but what ought to be comprehended under this term? does it comprehend the tapestry, the locks, the brewing tubs, the cisterns? What is to be understood by a square acre? does it extend without limits into the interior of the earth, and above the surface? &c.

The Roman lawyers, who have talked so much about things, have never arrived at clear ideas upon this subject.

Things, says Justinian, are either out of the patrimony of individuals, or belonging to this patrimony. They are either by divine law, or by human law. Things by divine law are also either sacred, or religious, or holy. Things by human law are either belonging

to individuals separately, or belonging to all the community indistinctly; that is to say, private or common.* Here there are distinctions in form. But there is a great show, and little accomplished.

It might be imagined that the legislator was about to give specific names to all the things which composed these classes, but we should be deceived. He has carefully avoided this labour; he has abandoned it to the disputes of the lawyers:—"I, the legislator, know not how to explain my will to you; it is your duty, who must obey me, to divine my meaning!"

What would be said to a master who should explain his orders in so confused and vague a manner to his inferiors; who should speak to them of *things* in general, without speaking to them of *things* specific and individual; and who should punish them for not having known how to comprehend what he has not known how to express?

The history of Nebuchadnezzar is a noble apologue for legislators: he ordered the wise men to be slain because they did not divine his dreams. How many makers of laws have done the same, without, like him, being turned out among the beasts.

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CHAPTER X.

SECOND GENERAL TITLE OF THE CIVIL CODE.

Of Places.

Both men and things only exist in a certain place: the circumstance of place will therefore be often necessary in the law for determining both men and things—sometimes for fixing the species, and sometimes the individual. There is no method more exact or more universal for determining an individual, for defining him, than saying that at a certain time he occupied a certain portion of space.

What is the situation, what the extent of the territory which the law comprises within its empire—what are its physical divisions? By what points do the lines pass which separate the land and the sea? The same questions with regard to mountains, lakes, forests, canals. What limits do the atmospheric and subterranean regions oppose to the power of the sovereign and the right of the proprietor?

What are the political divisions and subdivisions? It would be proper to place under this title the map and the catalogue of all these divisions, according to all the sources from which they are derived, if there are differences, as establishments, judicial, military, fiscal, religious, &c.*

As many particular catalogues would be required for marking all the privileged places, as market-towns, fairs, seats of justice, colleges, universities, &c.

In conclusion, it is under this title that the system of divisions which the law adopts for the large geographical measures should be arranged—leagues, miles, &c.

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CHAPTER XI.

THIRD GENERAL TITLE OF THE CIVIL CODE.

Of Times.

To the fixation of place, it is necessary to add the fixation of times. In the last resort, it is only by the combined consideration of place and time—of the place in which he is found at a certain time—that one individual can be distinguished from every other.

Under this general title, the law ought to expound what it intends should be understood by the names which express the different portions of time—second, minute, hour, day, month, year, &c.

The *months,* after a certain number of which, reckoned from the death or absence of the presumptive father, a child shall not be deemed to be legitimate,—are they those of the sun or the moon, or the fantastical months of the calendar, which are neither the one nor the other? The particular cases would be found under the particular titles of Bastards, or of Fathers. But it would be requisite that the explanation of the times should be found under a general title, to which reference might be made when necessary.

In cases in which months might cause doubts, it would be better to employ days.

Feasts—Fasts—Lent—inasmuch as these things were the subjects of legislation, would find a place under this title. Thus the calendar was inserted in an act of Parliament, when the new style was adopted in England.

These two titles, designed to establish fixed points to which individuals might be moored in the two oceans of time and space, ought to be found in every code, and will most probably be found in none. Hence the multitude of disputes, of uncertainties, of opportunities for chicane arising from the fluctuations of usage among the different systems which different customs have introduced.

Uniformity in the measurement of time, as well as in the measures of weight and quantity, is still the wish of philosophy, but it has not yet been accomplished.

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CHAPTER XII.

FOURTH GENERAL TITLE OF THE CIVIL CODE.

Of Services.

From things, we pass to man, considered as the subject of property. He may be regarded under two aspects: as capable of receiving the favours of the law—and as capable of being subjected to its obligations.

The idea of services is anterior to that of obligations. Services may be rendered without being obligatory: they existed before the establishment of laws—they were the only bond of society among men, before they had any form of government: parents nourished their children before the laws had made it their duty. There are still many services of benevolence, politeness, and mutual interest, which are rendered freely. The law may extend its domain further, and create new obligations; but there will also be a multitude of cases beyond the reach of the law, which voluntary services alone can supply—and happily, the principle of sociality which preceded the law continues to supply its deficiencies.

1. The first division of services may be referred to that of the faculties which give birth to them. So many faculties, so many classes of services.

We may distinguish in man two sorts of faculties—active and passive. It is in virtue of the former that he can act, or not act—that he can perform a certain act, or abstain from performing it. The passive faculty may be distinguished into two branches—the one purely *physical,* the other *sensible.* As, however, man may be sensible either of good or evil—may experience agreeable or painful sensations—the sensible faculty may be again subdivided into the sensible faculties of *suffering* and *enjoyment.*

From hence arise four classes of services:—

1. Services *agendi:** positive services of the active faculty. For example,—to succour a man who is drowning—to bear arms for one's country—to arrest a criminal, &c. As many negative offences, so many examples of this class. To create a negative offence, is to impose the obligation of rendering the positive service which corresponds with it.

2. Services *non-agendi:* negative services of the active faculty. For example, not to commit theft, not to commit assassination, &c.: as many positive offences, so many examples of this species of service. To create a positive offence, is to impose the obligation of rendering the negative service which corresponds with it.

3. Services *patiendi physicè:* services of the purely passive faculty. In this respect, the inert human body is not worth much. As an example of this might be mentioned, conjugal condescendence on the part of the wife, and cases might be cited in which

dead soldiers have served to fill up ditches that their comrades wished to cross. Dead bodies made use of for the purposes of anatomy, form a more important example. The English law makes this service an addition to the punishment of murderers:† their bodies were delivered to the surgeons to be dissected. This service might be termed, medical experience derived from the bodies of men condemned to death.

4. Services *patiendi sensibiliter:* services of the passive, but sensible faculty, whether for good or evil.

Legal punishments are services imposed upon those who undergo them for the good of society: thus the punishment of a criminal is spoken of as a debt which he has paid.

Legal rewards are services granted to those who receive them for their own advantage;—and for that of society, when there results from them a general satisfaction, and an encouragement to useful actions.

As man possesses a sensibility in common with those whom he loves, he may receive in their persons either good or evil services. The good which is done to him, is a service done to his friends also; the evil which is done to him, is a service done to his enemies. Has he injured any one? to punish him, is to serve the party injured.

II. Another source of division, according to the object to which the service applies—*persons,* or *things:*—

Services respecting the person.
Services respecting the reputation.
Services respecting the property.
Services respecting the condition.

One branch of service *in personam,* is service *in animam:* for example, the service of the Protestant priest, who teaches me to avoid damnation—of the Catholic priest, who would draw me out of purgatory by his masses. Whatever may be their power in the other world, they serve to tranquillize my mind in this. This is a service of which an athiest himself cannot deny the reality. If I am troubled with an imaginary malady which torments me, the physician who should calm its agonies would render me a service.

III. Another source of division, according to the acting part in the person who renders the service:—

Corporal services: the man who labours in my field.

Mental services: the man who instructs me in the abstract sciences, &c.

It may be said that this distinction was not familiar to our ancestors, who saw only the same person in the barber who shaved them, and the surgeon who delivered them from the stone.

IV. Another source of division: The party employed,—another individual—one's self—a limited class of persons—the whole state. This division corresponds with that of private, self-regarding, semi-public, and public offences: as many classes of offences, so many classes of services.

V. Another division: Services which arise out of established rights. We have said that services must have existed before the establishment of rights: but rights, once established, give rise to new services, consisting in the exercise, in favour of some one, of these same rights. I transfer to a farmer the right to occupy my land for his profit: he pays me what he owes me for the rent of my land. Here are two kinds of services which could only exist subsequent to the birth of rights.

This theory of services is new. The idea of it is familiar to all the world, but it is such a stranger to jurisprudence, that jurists have no nomenclature for it: they have considered it as a consequence of obligation, instead of which, it is anterior to obligation itself. It is true, that for the purpose of acquiring all the force and all the extent which it ought to have, the service must rest upon obligation. It is too feeble a plant to support itself: to produce its fruits, it must be supported. It is like the vine which clings around the elm. But I have thought proper, so much the rather to adopt this title of service into the law, as it has, so to speak, a more natural and apparent affinity with the principle of utility than the others. From whatever side service is regarded, its end is at once seen: it seems to say, *Respice finem.* This word by itself is a continual lesson to the legislator. It is logic wearing the livery of morality;—it is law by its language recalling the idea that every obligation ought to bear the character of a benefit.

TABLE OF THE DIVISION OF SERVICES.

First Division—according to the faculties which give birth to them:—

1. Services *agendi,* consisting in doing.

2. Services *non-agendi,* consisting in abstaining from doing.

3. Services *patiendi physicè,* passive and not *sensible.*

4. Services *patiendi sensibiliter,* passive and sensible.

Second Division—according to the object to which the service applies:—

Services relative to	{the person	{for the body.
		{for the mind.
	{the reputation.	
	{the property.	
	{the condition.	

Third Division—according to the part which acts in the person who serves:—

Services {*ex corpore,* rendered by the body.
{*ex mente,* rendered by the mind.

Fourth Division—according to the party served:—

Services {private.
{self-regarding.
{semi-public.
{public.

Fifth Division—according to the period of their birth:—

Services {anterior to rights—free and gratuitous service.
{posterior to rights—obligatory service.
{collative in addition to rights; that is to say, consisting in establishing an individual in his rights.

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CHAPTER XIII.

FIFTH GENERAL TITLE OF THE CIVIL CODE.

Of Obligations.

In the textual systems of legislation, and the treatises of jurisprudence, the idea of obligation is too often independent of the idea of service. Jurists in general, have not known what foundation to give to obligation. If you inquire what is its principle, you will find the clouds thicken around you. They will talk to you of the divine will—of the law of nature, of conscience, of *quasi contract.* They will talk of everything except service—the only clear, the only reasonable notion—the only notion which can serve as a limit and a guide in the establishment of obligations.

The most correct definition which can be given of a bad law is this: "A bad law is that which imposes an obligation without rendering any service."

Examine all religious and civil codes by this rule, and you will at once detect all those laws which, according to the principle of utility, ought to be placed in the *index expurgatorius.*

In all bad religions—in those which have done more evil as bugbears, than they have done good as restraints—to what purpose have their sacrifices, their privations, their penances, their restraints served? Has there resulted from them happiness to God or to man?

In a good system of religion, it is always on account of the service which results, that obligation is established. There will always be an innumerable multitude of free and gratuitous services; but there ought never to exist any obligation which is not founded upon a service received or to be received.

As many faculties as man possesses, so many species of service may he render—so many species of obligation may therefore be established.*

As to what regards the active faculty, where service is spoken of, say serviceable acts: to render a service, is to exercise a serviceable act. The idea of an obligation, then, supposes such an act: obligation of rendering such a service is the obligation of exercising such a serviceable act. It is therefore clear that the notion of obligations is posterior to the notion of services.

To be subject to a certain obligation, is to be the individual, or one of those whom the law directs to perform a certain act. There is no longer any mystery. The word obligation may be employed in an abstract sense: it may, for the convenience of discourse, be spoken of as a fictitious entity; but it ought to be possible to decipher such language into the language of pure and simple truth—into that of fact. To

understand abstract terms, is to know how to translate figurative language into language without figure.

For whom ought an obligation to be profitable? It may either be for the person obliged or for another; but in every case the principle of utility requires that the evil of the obligation, whatever it be, should be compensated by the good of the service.

The evil of an obligation seems carried to its highest point in the case of an individual condemned to an ignominious painful death, in virtue of a penal law. I do not examine here if this terrible obligation be indispensable. But in supposing it so, for example, when directed against atrocious murderers, it is evident that society believes that it purchases by the loss of a dangerous individual, the security of many innocent persons.

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CHAPTER XIV.

SIXTH GENERAL TITLE OF THE CIVIL CODE.

Of Rights.

It is by imposing obligations, or by abstaining from imposing them, that rights are established or granted. Obligations may be imposed from which no rights shall result;—for example, ascetic obligations which are useful neither to the party bound, nor to others;—but it is not possible to create rights which are not founded upon obligations. How can a *right* of property in land be conferred on me? It is by imposing upon everybody else the obligation of not touching its productions, &c. &c. How can I possess the *right* of going into all the streets of a city? It is because there exists no obligation which hinders me, and because everybody is bound by an obligation not to hinder me. When we have examined all rights separately, some will be found to owe their existence to the existence of obligations—the others to the non-existence of the same obligations. All rights rest therefore upon the idea of obligation as their necessary foundation.

In order to speak clearly of rights, it is necessary, in the first place, to distinguish them according to their kinds. The following are the principal divisions:—First division, drawn from the diversity of their *source.*—1. Rights existing from the absence of obligation; 2. Rights established by obligation. This is a fundamental distinction. Rights resulting from obligations imposed by the laws, have for their base *coercive* laws: rights resulting from the absence of obligation, have for their base *permissive* laws.

Second division, drawn from the diversity of their *objects.* Rights may be established—1. For the maintenance of property; 2. For general safety; 3. For personal liberty; 4. For general tranquillity (the union of safety with security.) So many distinct ends, so many classes of rights.

Third division, drawn from the *subjects* upon which they are exercised:—1. Rights over things; 2. Rights over persons—over the services of persons.

Rights over persons may either refer solely to the person, or to things and persons.

Under this last head would be found the *right of interdiction* with respect to things—the right of interdicting to one or all, the occupation of anything, or a certain use of it. This is a right to a negative service—it constitutes exclusive property.

Right solely referring to the person has two branches:—1. Immediate right over the person, *in corpus;* as conjugal right—the right of parental correction—the right of an officer of justice to seize an individual, to execute a legal sentence, &c.; 2. Immediate right over the person, *in animam,* consisting of the means of influencing the will; as

the right of locating in an advantageous place—the right of dislocation—right of rewarding—right of making a will—right of directing public or private instruction, &c. &c.†

Fourth division, drawn from the *extent* of the right, that is to say, of the number of persons who are subject to it:—1. *Private* rights; 2. *Political* rights.

Fifth division, drawn from the persons in favour of whom the right is established:—1. *Personal* rights—those which are exercised for the benefit of him who possesses them; 2. *Fiduciary* rights—those which are possessed to be exercised for the advantage of another only, such as those of factor, attorney, guardian, father, or husband in quality of guardian. All political power is fiduciary; fiduciary rights are the same in nature as personal rights, combined with certain obligations.

Sixth division, drawn from the *divisibility* of rights:—1. *Integral* rights; 2. *Fractional* rights; 3. *Concatenated* rights.

What I call *integral* right is the most unlimited—the entire right of property: it includes four particulars—

1. Right of occupation.

2. Right of excluding others.

3. Right of disposition; or the right of transferring the integral right to other persons.

4. Right of transmission, in virtue of which the integral right is often transmitted after the death of the proprietor, without any disposition on his part to those in whose possession he would have wished to place it.

There is not one of these rights which, in a system founded upon the principle of utility, ought not to have its limits.

The first would be limited by the obligation of using without injury to another.

The second, by the obligation of permitting its use, upon urgent occasion, for the benefit of another.

All these rights may also receive different restrictions, for special reasons of utility. Hence, the proprietor of a distillery may be subject to regulations which shall have for their object the collection of the revenue, &c.

These exceptions deducted, what remains is the quantity of integral right.*

Rights of less extent than the *integral* right may be considered as fractions, and called fractional.

When the whole right is possessed, one is said to have *the property of the thing.* Is less than this possessed, one is said to have *a right,*—a *right* to be exercised over the material thing; for example, a right of chase, a right of way, a right to services.

Concatenated rights are those which are not founded on absolute, but on conditional laws. The law which prohibits, permits, or commands, may add conditions, in such manner that the accomplishment of the one shall be necessary to the accomplishment of the other.

The legislature by itself does all that is possible for the establishment of the right, with the exception only of the act by which the individual puts his seal to it. At that period the obligation arises.

Conditional laws are in an intermediate condition between existence and non-existence; they wait for the operation of some individual to give them the breath of life.

Fractional and concatenated rights may, in certain cases, be called *common* rights.

Let us now return to the second division,—Rights concerning things. The only right which purely relates to things is that of occupation.

In order to know the kinds, the modifications of this right, it is necessary to know the modifications of which it is susceptible. So many limitations as may exist, so many distinct rights may there exist, each of which may have a separate proprietor.

Under a legislation but little advanced, the right of occupation could not exist in an unlimited form: no person could possess in this manner—scarcely anything could be thus possessed.

The right of occupation may be limited in seven respects:—

1. With regard to the *substance* of the thing. Thus, from the general right of occupation which I possess over the land which is considered mine, there may be detached in your favour the right of carrying an aqueduct above it, or a sewer underneath it—the right of making a roof project over it, the right to allow a tree to project, the right of exploring mines, &c.

The right of occupation with respect to a house, may either comprehend the whole house, or be limited to a certain chamber; and so of the rest.

It will be seen that this measure of limitation supposes that each thing may be distinguished from every other, and that each part of a thing may be distinguished from every other part: it supposes a complete system of individuation for things.

2. The right of occupation may be limited *as to the use;* that is to say, as to the manner of occupying. I may gather the fruits of my land, but I may not surround it with a hedge, still less, close all entrance against you. I may perform divine service in the church of which I am the clergyman, but I may not keep shop there.

The right of collecting a product which renews itself, such as water, fish, wood, turf,—does this respect the substance or the use? Again, another species of individuation;—again, other lines of positive demarcation.

3. The right of occupation may be limited as to *time.* If it be not perpetual, it may be present or future; in the last case, it may be certain or contingent. Present or future, its end may be dated from a determinate or indeterminate period. We may remark here, that when we suppose rights to be certain which are not present, it is only in conformity with custom; for in strictness there is no certainty with respect to anything which is future. In order to possess a certain right, it is necessary that one shall be certain to be alive. With this restriction, a right which ought to commence after the lapse of ten years, for example, is a certain right. A right which ought to vest in me after your decease,—is this certain or contingent? It is certain that you will die, but it is not certain when you will die, nor even that you will die before me. Here there are still required lines of demarcation.

4. The right of occupation may be limited by *place.* Such a swarm of bees is yours whilst it remains upon your ground. It is mine when it has quitted your land for *mine,* or it belongs to nobody. Under the ordinary law, men are, in relation to different sovereigns, what bees are to different proprietors.

It will be perceived that this distinction only respects moveable things: also that this species of limitation brings us back to that which has reference to time; since to have a right to a certain thing whilst it continues in a certain place, is to have such right during a certain time. The place serves as an index to the time.

5. The right of occupation may be also limited by a right of *interdiction* possessed by another; that is to say, when another has the right of interdicting your occupation of the thing. It might seem at first that these two rights would destroy one another; but if the right of interdiction only exist at intervals—if it only exist in connexion with certain customs, the one and the other right may exist, and the one serve to limit the other. It is thus that the poor have the right of gleaning in the fields of the rich, provided that they have not been interdicted.

It may happen that this right of occupation is of no value. It may be, that it may be annihilated by the right of interdiction which limits it. Has, therefore, the right of gleaning any force? When I have collected corn worth many shillings, if you have not previously forbidden me, you could not have me condemned to make even simple restitution. But had I clandestinely taken only a single farthing of your money from your room, you could have had me punished for theft.

6. The right of occupation may be limited by the addition of other persons whose concurrence is necessary for the lawful exercise of the right. Three co-heirs have between them a strong box. No one of them has the right to open it, except in the presence and with the consent of the other two. The right of each is limited by that of his two associates. A right, the exercise of which, in order to be lawful, requires the concurrence of many wills, may be called fractional.

This kind of limitation may also be connected with the right of interdiction. One of the co-heirs refuses his consent to the opening of the strong box; he forbids this act to the others.

7. The right of occupation may further be limited by *another right of occupation* granted to another proprietor. I have a right to dwell in a certain room: if you have also a right to dwell in the same room, it is evident that I cannot use my right exactly in the same manner as if you had no such right.

It will be seen that this kind of limitation may also be connected with the first and second.

When many persons find themselves possessed of these rights of occupation, limited the one by the others, they are commonly called *co-proprietors;* and it may be said of the thing, that is possessed by these persons *in common.*

The right of alienation has also its limitations—its modifications. They correspond with those of the right of occupation. He who is acquainted with these, will not be ignorant of the others.

I must observe that the right of alienation includes a particular kind of right respecting services; for what do I do when I alienate anything in your favour? Among other acts, it is necessary that I dispose of certain services on the part of the officers of the government whose assistance would be necessary to guarantee to you the occupation of this thing. The rights which you acquire over such services, form part of the numerous band of rights which are transferred upon every alienation of property:—with respect to the principal right, they may be called *corrobarative rights.*

The acts to which it extends, form the measure of a right;—it is to these acts that the view must be directed, in order to obtain those clear ideas which can only be obtained by the contemplation of material objects. The measure of a right of occupation which I possess, is the physical acts which I may exercise towards the thing to be occupied. The measure of the right of exclusion which I have, is the acts that you cannot exercise upon the same thing. The measure of the right of disposition, is the acts which have reference to the two kinds of rights of which I can dispose. But when we have arrived at the idea of a physical act, we have under our eyes a definite image: we have reached the source, we have reached the highest degree of clearness. He who at the name of a right can picture to himself a sensible image, understands the nature of this right; he who is not able thus to represent it, does not yet understand it.

Every right *agendi* has, then, an act to which it has reference. This act may either be *transitive* or *intransitive:* intransitive, if the act only affect the agent himself,—transitive when the act affects a thing or person other than the agent.

Even when the act appears only to affect things, it affects persons—that is to say, the persons to whom the things might be useful—inasmuch as there is nothing to be considered in things, but the services which persons may draw from them.

Hence, when the right appears nominally to be conferred on a thing, it is really conferred on a person, inasmuch as it is always a person who enjoys the advantage resulting from such right.

This is what the compilers of the Roman code never comprehended. According to them, all rights are divided into two masses,—of which the one regards *persons,* the other *things.* They have set out with a false unintelligible division into two parts, which are not exclusive with regard to each other. *Jura personarum—Jura rerum.*

It may be said that they were led to take this division by a species of correspondence or grammatical symmetry; for there is no correspondence between the two appellations except as to the form,—there is none as to the sense. *Rights of persons*—what does it mean? Rights belonging to persons—rights conferred by the law on persons—rights which persons may enjoy:—everything is clear. Transfer this explanation to *rights of things,* what is the result? Things which have rights belonging to them—things on which the law has conferred rights—things which the law has wished to favour—things for whose happiness the law has provided:—it is the height of absurdity.

Instead of *rights of things,* it is proper to say *rights over things.* The change appears very slight: it, however, overthrows this nomenclature, this division of rights, all this pretended arrangement of the Romanists—since adopted by Blackstone, and according to which he has so badly classed the objects of the law.

If we err in the first step, the further we proceed in the same direction, the further we shall be from the end. How shall he who employs for the explanation of everything an expression which has no meaning,—how shall he communicate a knowledge of all the parts?

This unfortunate double signification has thrown the Romanists into a perpetual confusion. Under the heads of rights of persons, there are nearly as many questions concerning rights over things, as concerning rights over persons. For example, right of the husband over the goods of the wife acquired by his marriage;—right of the father over the property acquired by his son;—right of the members of a political society over the things belonging to that society; and so of the rest.

What a system is that, in which the fundamental terms change their signification every moment!

For expressing in an expeditious manner these rights over things, would it be possible to employ the word so frequently used by the Romanists—servitude? I fear it would be put out of employ by the abusive use they have made of it. It has taken a false acceptance; it is difficult to regenerate it.

If it could be employed, this is the use I would make of it. The partial right of occupation, whether as to the substance of a thing, or as to its use, I would call *positive servitude.* The right of exclusion with respect to such or such a part of the substance, or such or such a use on the part of the original proprietor, I would call

negative servitude. The right over the positive services of the principal proprietor, to be exercised on his part for the improvement of the thing for the profit of the other subordinate proprietors, I should call *compulsory servitude.*

Other errors of the Romanists upon this matter:—If they are to be believed, there are cases in which rights only subsist by means of the laws, and other cases in which they have subsisted, or still subsist, independent of the laws. Those rights which they represent to us as only subsisting by the law of nature, or the law of nations, or some such other phrase, have no existence at all, or only exist in consequence of civil laws, and by them alone exactly as those whose existence they attribute to these same laws.

They have ill understood legal organization; they have fallen into strange mistakes respecting the manner in which the functions of this vast body are performed. These errors have been anything but matters of indifference. I should never have done, if I were to cite all the false reasonings resting upon these false ideas. Certain rights, it has been said, are not founded upon the civil law; they therefore ought not to be altered by the civil law. Certain laws have only been made at the expense of natural liberty; therefore they are violations of natural liberty; they are therefore unjust.

To say that a law is contrary to natural liberty, is simply to say that it is a law; for every law is established at the expense of liberty—the liberty of Peter at the expense of the liberty of Paul.

When a law is reproached as hurtful to liberty, the inconvenience is not a particular ground of complaint against that law—it is shared by all laws.* The evil which it causes in this manner—is it greater than the good which it does in other ways? This is the only question to be examined.

It is unfortunate that individual and political liberty have received the same name. By means of this double signification, a syllogism may be formed in favour of perpetual revolt. An established law is a restraint upon liberty: a restraint upon liberty is tyranny: tyranny is a legitimate reason for revolt.

This digression is not foreign to the present subject: it shows the importance of just ideas of the origin and nature of *rights.*

The preparation of a table of rights is a sufficiently dry and ungrateful task; but such labours are required of those who would be of use to the science. It is necessary to distinguish one part of a subject from another, in order to be in a condition to establish true propositions respecting them. Nothing can be asserted, nothing can be denied, respecting them, whilst objects are mixed *pell mell,* and form only heterogeneous masses. In order to make it understood that one plant is food, and another poison, the characters which distinguish them must be pointed out, and proper names must be assigned to them. So long as there are no names for expressing many rights, or that there is only one and the same name for expressing many dissimilar ones: so long as generic names are employed, without distinguishing the species included under them, it is impossible to avoid confusion—it is impossible to form general propositions

which will be true. This observation has already been made, but it often presents itself in a science in which the greatest difficulties arise from a vicious nomenclature.

TABLE OF THE DIVISIONS OF RIGHTS.

I. *Sources.*—Rights existing from the absence of obligation; rights established by obligations.

II. *Ends.*—Connexion of the right with the interest of the party.

1. Property.
2. General safety.
3. Personal liberty; branch of general safety.
4. Tranquillity; union of safety with security.

III. *Subject* over which they are exercised.

1. Rights over things.
2. Rights over persons.

IV. *Extent,* with respect to the number of persons subject to them.

1.*Private* rights.
2.*Political* rights.

V. *Person* whose interest has been the reason for granting them.

1.*Personal* rights.
2.*Fiduciary* rights.

VI. *Divisibility* among persons.

1.*Integral* rights.
2.*Fractional* rights.

VII. *Transmissibility.*

1. Transmissible rights.
2. Intransmissible rights.

PRINCIPAL HEADS.

1. Rights of property.

2. Rights of general safety.

3. Rights of general tranquillity.

4. Rights of personal liberty, that is, individual.

5. Integral rights.

6. Fractional rights.

7. Concatenated rights.

8. Personal rights.

9. Fiduciary rights.

10. Private rights.

11. Political rights.

12. Principal rights.

13. Corroborative; or accessory, or subsidiary, or sanctionative rights.

14. Transmissible rights.

15. Intransmissible rights.

RIGHTS OVER THINGS.

1. Right of occupation of the thing.

2. Right by exclusion of another, or by interdiction of occupation by another.

3. Right of interdicting occupation.

4. Right of alienation.

5. Right of occasional disposition.

RIGHTS OVER PERSONS.

1. Right of immediate physical contrectation.

2. Right of immediate moral or pathological contrectation.

3. Right of physical contrectation through the intervention of another.

4. Right of moral or pathological contrectation through the intervention of another.

5. Right of individually commanding pesons.

6. Right of collectively commanding persons.

N.B.—The table of political powers, or the rights exercised by government, is not given here.

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CHAPTER XV.

SEVENTH GENERAL TITLE OF THE CIVIL CODE.

Of Collative And Ablative Events.

All the rights which I possess have had a commencement—all will have an end. To give to a certain event the quality of *epoch* from which to date the commencement of a right, is to render that event *collative* with respect to that right: to give to a certain event the quality of *epoch* from which to date the cessation of a right, is to render this event *ablative* with respect to this right.*

Has the sovereign established a code of laws? He has, then, given to certain events the quality of *collative* events, and to others the quality of *ablative* events. These are two important catalogues. Do you at the present moment possess a certain right? It is because with reference to this right there has happened in your favour an event which belongs to the first catalogue, and none has happened which belongs to the second. How many assertions are comprised in that assertion apparently so simple—"*You possess a certain right!*"

To establish what events shall belong to these catalogues, is to establish the laws.

To have formed complete catalogues of them is to have completed the code of laws. To distinguish all these events—to give them their specific denominations, is a labour of the first necessity, and yet it is altogether a new task.

I shall here confine myself to a sketch of an analytical table of the principal events, in order to show what they resemble, and from what they are distinguished. These events are very nearly the same as the usual catalogue of *titles;* for common wants have given a certain uniformity, a certain correspondence to the laws of all people, at least in their essential features.

1. A right begins to belong to me—this right previously belonged to some other person, or it belonged to no person. Have I found a desert island? have I gathered fruits, cut down wood, collected minerals, caught animals upon this land? If the laws of my country permit it, I shall have become a proprietor without any person having ceased to be so.

Original discovery,—first collative event with regard to things newly subjected to the dominion of man. In this manner everything was originally acquired, but in our days such acquisitions are more rare: in proportion as the world is peopled, fortunes of this kind, as well as of every other, are obtained with greater difficulty.

2. The seeds which I have gathered and sown, have produced others: the birds, the animals that I have taken, have multiplied. Here is new wealth. Second collative event,—*possession of productive things.*

3. Uprooted trees, large fishes driven out of their course, have been thrown upon my island. Third collative event,—*possession of a receiving thing, or thing serving as a receptacle.*

4. Have I employed my labour upon my own things?—have I cut the wood or the stone?—have I polished the metal or spun the flax?—have I improved the inert matter by my industry? these are new sources of enjoyment. Fourth collative event,—*amelioration of one's own things.*

Let us go on to things which are already under the hands of a master. Before a new possessor can be invested with them, it is necessary that an ablative event in relation to the ancient possessor should take place. This event may be either physical or moral: physical, if it happen without human intervention, moral, if it take place through the will of an individual, or the legislature. First physical ablative event, *death of the proprietor;* second, *fortuitous obliteration of the distinctive character of the thing,* as in the cases spoken of by the Romanists under the heads *confusion, commixtion,* &c.† In these two cases the loss is of necessity: the individual can no longer possess the thing, or the thing can no longer be possessed by him, without his possessing at the same time other things to which he has no right.

4 and 5. These two ablative events may be both expressed by a collative event. Instead of speaking of the death of the proprietor, we may say, succession in consequence of death; instead of saying, *fortuitous obliteration of the distinctive character of the thing,* we may say, as above, *possession of the receiving thing.*

Does the intervention of man enter into the ablative act,—it is then the law alone which operates to give this effect to the event, or it is some individual who acts in concert with it; this individual can only be the original proprietor, or the new proprietor, or a third party acting for them.

6. Sixth collative event,—*private disposition.*

7. Seventh,—*disposition* on the part of the magistrate, or *adjudication.*

8. Other collative events,—*occupation* by way of seizure made at the charge of a delinquent, or judicial seizure—occupation by way of capture by a foreign enemy, or *hostile seizure* (booty in war.)

In governments as civilized as are those of Europe, the quality of collative events has not been accorded to these two acts without the concurrence of *adjudication.*

9. *Occupation of a thing abandoned.*—To abandon anything is one method of disposing of it. It is to divest one's self of it, without investing any particular person with it. This amounts to giving it to the first comer.

10. Is the disposition so regulated as only to take effect when the disposer is dead, and upon condition that he has not made any contrary disposition? There is here, on the one part, *donation by testament;*—on the other, *testamentary succession.*

11. Has the disposition had for its object the fictitious thing called *charge, office, right of office?* it is called *nomination* or *election.* The last word is most commonly used when the right of disposition is found divided between many proprietors. The collation by which I assume an office of my own accord for my own profit, may be called *assumption* of office; the act by which I am divested by another, *dismission;* the act by which I divest myself, *demission.*

12. Has the disposition for its object, a right over services to be rendered by the dispositor himself? it is what is sometimes understood by the words convention, treaty, contract, &c. I wish that we could exclusively employ to this effect some new appellation, such as obligatory promise.*

Adjudication, an act of the magistrate, naturally leads to the search for some other event which has served as a motive for this act. To what purpose does the law intend that the judge shall exercise his rights? It is not for his own advantage: it is only to accomplish other legal dispositions—to give effect to other events, collative and ablative.

To make a disposition, is to apply to such an effect the power of the laws,—is to command the services of the sovereign, or the magistrates. Is the disposition a lawful one? it possesses the qualities of those to which the sovereign is ready to lend his assistance. Is it unlawful? it is of the number of those to which he refuses it.

Thus explained, a disposition may be considered under two aspects, either as serving to modify a general law, or as making by itself, under the authority of the sovereign, a particular law. In the first point of view, the sovereign is represented as making a general law, and leaving certain words blank, that they may be supplied by the individual to whom he grants the right so to do. In the second point of view, the individual makes the law, and causes it to be sanctioned by the public force. The prince becomes literally the servant of the humblest of his subjects. To make a contract, is not to implore the services of the magistrate; it is to command these same services.

For marking the commencement of a right, I have hitherto only assigned a single event; but many may concur in it. It is therefore necessary to distinguish dispositive events into simple and complex. Among the elements of a complex event we may distinguish some by the title of principals, the others by that of accessaries. With regard to a testamentary succession, for example: To give it effect, at least two different events must happen: 1. The death of the first proprietor; 2. The birth of the new proprietor: add to these the steps that the heir must take in order to furnish proofs of his character as such, and those which are necessary on the part of the magistrate, to put him into possession; you may, in this complex event, give to the two first the name of principal events, and to the acts required from the heir and the magistrate, that of accessory events.

If any of those acts, to which the quality of collative or accessory events has been given, are omitted, there are so many grounds of nullity. To grant to an act a certain collative quality, is to prescribe a formality to be attended to, under the penalty of making void the disposition to which it refers, if it be omitted.

Analyze the kind of disposition, called *election,* with regard to a place either in the House of Commons in England, or in the Council of State at Venice, where aristocratic jealousy has exhausted all the art of combination. How many accessory collative events!—how many grounds of nullity to be avoided!—how many formalities to be regarded!—what a series of steps to be passed over before arriving at the last term, the establishment of the right!

13. Adjudication, as we have seen, is a collative event which supposes others, without which this would not take place. It is the same with regard to possession, an event which serves to prove the anterior existence of these other collative events, and to render them useless.

Possession may be actual or ancient. That possession may be called simply actual, when the party has only provisional security, so long as no collative event is found which operates in favour of his adversary, or, what amounts to the same thing, so long as no ablative event is found which operates to his prejudice.

That may be called ancient possession, which, in consideration of its duration, it is determined shall have not only the effect of provisional investment, but also the effect of destroying every collative event which might operate to the prejudice of the party, and in favour of his adversary; such is the case which has been characterized by the word *prescription.*

But what is it to possess? This appears a very simple question:—there is none more difficult of resolution, and it is in vain that its solution is sought for in books of law: the difficulty has not even been perceived. It is not, however, a vain speculation of metaphysics. Everything which is most precious to a man may depend upon this question;—his property, his liberty, his honour, and even his life. Indeed, in defence of my possession, I may lawfully strike, wound, and even kill, if necessary. But was the thing in my possession? If the law trace no line of demarcation, if it decide not what is possession, and what is not, I may, whilst acting with the best intentions, find myself guilty of the greatest crime, and what I thought was legitimate defence, may in the opinion of the judge be robbery and murder.

This, then, is a matter which ought to be investigated in every code, but it has not been done in any.

To prevent perpetual equivocation, it is necessary carefully to distinguish between *physical* and *legal* possession. We here refer to the former: it does not suppose any law, it existed before there were laws; it is the possession of the subject itself, whether a thing or the service of man. Legal possession is altogether the work of the law; it is the possession of the right over a thing, or over the services of man. To have physical possession of a thing, is to have a certain relation with that thing, of which, if it please

the legislator, the existence may hold the place of an investive event, for the purpose of giving commencement to certain rights over that thing. To have legal possession of a thing, is already to have certain rights over that thing, whether by reason of physical possession, or otherwise.

I have said, that to have physical possession of a thing, is to have a certain relation with that thing. This was all that I have said—this is all that I could say at first. What is that relation? It is here that the difficulty begins.

To define possession, is to recall the image which presents itself to the mind when it is necessary to decide between two parties, which is in possession of a thing, and which is not. But if this image be different with different men—if many do not form any such image, or if they form a different one on different occasions, how shall a definition be found to fix an image so uncertain and variable.

The idea of possession will be different, according to the nature of the subject—according as it respects things, or the services of man, or fictitious entities—as parentage, privilege, exemption from services, &c.

The idea will be different, according as it refers to things moveable, or immoveable. How many questions are necessary for determining what constitutes a building a lodging! Must it be factitious? But a natural cavern may serve for a dwelling,—must it be immoveable? But a coach, in which one dwells in journeying, a ship, are not immoveables. But this land, this building,—what is to be done that it may be possessed? Is it actual occupation?—is it the habit of possessing it?—is it facility of possessing without opposition, and in spite of opposition itself?

Other difficulties: In reference to exclusive possession, or possession in common—in reference to possession by an individual, or by everybody.

Ulterior difficulties: In reference to possession by one's self, or possession by another. You are in the habit of occupying this manufactory, you alone occupy it at this hour. I say you are only my manager—you pretend to be my lessee. A creditor contends that you are my partner. This being the case, are you, or I, or are both, in possession of the manufactory?

A street porter enters an inn, puts down his bundle upon the table, and goes out. One person puts his hand upon the bundle to examine it; another puts his to carry it away, saying it is mine. The innkeeper runs to claim it, in opposition to them both; the porter returns or does not return. Of these four men, which is in possession of the bundle?

In the house in which I dwell with my family is an escritoire, usually occupied by my clerk and by what belongs to him. In this escritoire there is placed a locked box belonging to my son; in this box he has deposited a purse entrusted to him by a friend. In whose possession is the bag—in mine, in my clerk's, in my son's, or his friend's? It is possible to double or triple the number of these degrees; the question may be complicated at pleasure.

How shall these difficulties be resolved? Consult first primitive utility, and if it be found neuter, indifferent, then follow the popular ideas; collect them when they have decided—fix them when they are wavering—supply them when they are wanting; but by one method or another resolve these subtilties; or, what is better, prevent the necessity of recurring to them. Instead of the thorny question of possession, substitute that of honest intention, which is more simple. In the last case which I have supposed, the Roman lawyers would have recognised only one of the four as being in possession, yet all may be honest; and the possessor may have been dishonest as well as any one of the others. In this last case, make the decision depend upon possession,—you would have a culpable person unpunished, and three persons punished unjustly;—make it depend upon honest intention,—there will neither be impunity nor unjust punishment.

Observations Upon Nomenclature.

What I call a *dispositive event* is what is called, in the writings of jurisprudence, *title.* I have been fully sensible that the terms *collative* and *ablative events* have the double inconvenience of length and novelty; and I have tried to make use of the word *title.* I have found it equivocal, obscure, defective—spreading a mist over the whole field of jurisprudence; whilst the two other terms are clear, sufficient, and yielding instruction in themselves.

In order to exhibit every point in which the word *title* is defective, it would be necessary to examine a great number of phrases in which it very imperfectly expresses the idea which the term *collative* or *ablative* expresses clearly. To say to a man, *you have a title,* is to assert with sufficient clearness that a *collative* event has happened in his favour; but if I say to him, *you have no longer a title,* this method of speaking is very little satisfactory: it does not express why, or how, this title no longer exists; it is necessary to understand that after a *collative* event had occurred, it has been succeeded by another of an opposite nature.

The word *title* is especially defective when *obligations* are spoken of. Using this word, how shall it be made to appear that a collative event has happened which has subjected you to a certain obligation, or that a certain ablative event has happened which has freed you from it? The result is, that in these four cases in which it would be necessary to use the word title, it would only express the meaning in one. In the three other cases it is improper or inapplicable. It is only necessary to try it in order to discover its insufficiency.

By employing the proper word *event,* it is possible to form a regular class of appellations.

In reference to the individual on whom it confers a right, an event may be called collative: in reference to him upon whom it imposes an obligation, it may be called *onerative.*

An ablative event, with respect to him from whom it takes away a right, may be called *destitutive;* with reference to him from whom it takes away an obligation, it may be called *exonerative.*

Is it wished to give to the two epithets ablative and collative a generic name, they may be called dispositive.

There is here a series of names which have a reference to each other; here is a generic name, and subordinate specific names. Take the word title, the logical ramification is stopped at the first step: there are no species of titles; it is an absolutely barren trunk.

The radical objection against the word *title* is, that it is obscure—it does not exhibit things as they are. To say that an event has happened, is to speak the language of simple truth—is to announce a fact which presents an image to the mind—it is to present a picture which could be painted. To say you have a *title,* is to speak the language of fiction: it is to utter sounds which do not present any image, unless they are translated into other words, as we shall shortly see. To *possess,* to *have,* in a physical sense,—here there is a real fact announced in a real manner; for it is to occupy the thing, or to be able to occupy it *(posse, potes,* to have power over it.) To *possess* a thing in the legal sense, *to possess rights* over a thing—there is an equally real fact, but announced in a fictitious manner. *To have a title, to possess a title,* in relation to these rights,—there is still a real fact, but announced in a manner still more fictitious—still more removed from presenting a real image.

I would not, therefore, employ the word *title* as a fundamental term, but once translated from the language of fiction into the language of reality, I hesitate not to employ it. It is not luminous in itself, but when it has received light, if it be properly placed, it may serve either to reflect or to transmit it.

In making a catalogue of dispositive events, care should be taken of three things:—1. To give every one of them names formed upon the same plan; 2. To give them only such names as are *species* formed from the genus designated by the word *event;* 3. Not to place, without notice, specific names in the same rank with the generic names of which they express the species.

The names of titles ought only to be names of events. Such are *occupatio, accessio, traditio.* But *prescription* is not so any more than the species into which it has pleased the lawyers to divide prescription. The same disorder may be seen amongst *contracts.* A contract is an assemblage of acts; the making of a contract is therefore an event: thus certain contracts have the names of acts—*stipulatio, fide-jussio.* But the names to the four real contracts are not the names of events; *mutuum, commodatum, depositum, pignus* (they have quitted the act to fix upon the thing which has been its subject.) It would have been as easy to have said *mutuatio, commodatio, depositio, pignoratio:* but the Romanists have not even suspected the characters of a good nomenclature. For the designation of the contracts which they call *consensual* (as if the others were not so,) five of the terms employed are the names of acts—*emptio, venditio, locatio, conductio, emphyteusis;* two are not—*societas, mandatum,*—they ought rather to have said *societatis initio, mandatio.*

With a nomenclature which at every step confounds things which it is most necessary to distinguish, how is it possible to be understood? With the Roman nomenclature, the noblest minds have not been able to escape from chaos.

Naturalists have never so far misunderstood the rules of logic. Linnæus has reformed the system of botany, but he did not find it in such a state of confusion as is jurisprudence. Before him, no botanist had been so unskilful as to arrange in the same line germination and the tulip—ramification and corn, &c.

I have no wish to enter into infinite details to show what has been among lawyers, both the classification of titles and the principles upon which they have been founded. The Romanists, Coccejius, Blackstone, only present us with the image of chaos. Those who do not know how much nonsense is found in the books of lawyers, must often imagine that I insist too much upon these clear and common things. I can fancy my readers saying to themselves, "But all this has been repeated a thousand times."—Oh my readers, who thus reproach me, you know but little of the profound works of jurisprudence, which you esteem from their bulk as the depositories of the science of ages! When I analyze the most simple ideas, that which appears trivial to men of sense, is a paradox to the lawyers. Truth, utility, novelty,—hitherto these three objects travel together.

Table of Collative Events.

1. Liberty of hunting in unappropriated lands	Original discovery, or right of the first occupant to whom one can refer.}	Liberty of fishing in great waters.
2.	Possession of productive thing.	
3.	Possession of receiving thing.	
4.	Possession of neighbouring lands.	
5.	Amelioration of the thing by one's own labour.	
6.	Possession of receiving thing, by reason of the obliteration of the distinctive characters of the accessory thing.	
7.	Succession on account of death.	
8.	Occupation.—1. By judicial seizure; 2. By hostile seizure; 3. By seizure of things abandoned or lost.	
9.	Private disposition, which comprehends—1. Alienation or abdication; 2. Assumption or acceptation.	
10.	Adjudication by means of justice.	
11.	Formalities, collative accessory events.	
12.	Actual possession: provisional ablative event.	
13.	Ancient possession: definitive collative event.	
14.	Nomination to office, which comprehends—1. Assumption of office; 2. Election.*	

**N. B.* I have not found among the manuscripts a table corresponding with this of ablative events.—*Dumont.*

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CHAPTER XVI.

EIGHTH GENERAL TITLE OF THE CIVIL CODE.

Of Contracts.

Section 1.

Contracts are acts of collation or investment—conventions—laws more or less ephemeral, proposed by individuals, and adopted by the sovereign, provided they are valid. To what ought he to grant the seal of his authority? I answer, to all. For no private contracts would be made, except with a view to reciprocal advantage, and they cannot be restrained, without in the same proportion injuring the happiness of individuals. Entire liberty for contracts,—such would be the general rule. If there be any to which this sanction should be refused, it will always be for some particular reason. The reasons for declaring certain contracts invalid or unlawful, ought to be drawn from the nature of the contracts themselves, inasmuch as they are contrary to the public interest;—or to the interest of a third party, or to that of the contracting parties.

The exceptions should be indicated under a separate head. It would be proper that a catalogue of the contracts to which the law either absolutely or conditionally refuses its sanction, should be found in the code itself.

The law ought to act with openness: when it grants its sanction to a contract, it ought not to withdraw it secretly on account of conditions not avowed as such.

To enhance the cost of procedure, is to violate the promise it has made to sanction contracts. It is to render justice inaccessible to the poor, that is, to those who have most need of it. This is a truth none can deny, but which few have had the courage to avow.

I have employed the word contract or transaction, to express indistinctly an act of investment—an agreement or a collection—a mixture of agreements founded upon a single occasion.

This being understood, obligations may be distinguished into original and adjective. I call those original, of which express mention is made in the contract itself: I call those adjective, which the law thinks proper to add to the first. The first turn upon events which the contracting parties have foreseen; the others upon events which they could not foresee.*

It is thus that in every country the law has supplied the short-sightedness of individuals, by doing for them what they would have done for themselves, if their imagination had anticipated the march of nature.

The enlightened legislator, recognising these factitious obligations as being the work of his hands, will give them his support upon true and simple reasons, drawn from the principle of utility. Lawyers have founded these obligations upon fictions; that is to say, upon facts which never existed. Where there has been no convention, there they suppose that there have been one, two, a thousand; they have the effrontery or the folly to ascribe wishes to you which they avow you never had: and this what is called *reasoning* among them.

To decompose a certain contract—to show one by one all the pieces of which it is formed—to exhibit the collection of obligations included in this contract,—this is a species of mechanism hitherto unknown.

It is not only upon the author of the fundamental convention that the law imposes these adjective obligations; it imposes them also upon other persons, in consequence of certain connexions which they have with the principal person. It is thus that obligations pass to heirs, and sometimes to creditors. Why? Because their respective rights only extend to the net value of the goods of their principal.

An article which is in my custody is lost: ought I to be responsible? It is a case which divides itself into an infinity of others. It may have been of an abstract value, a sum of money, a wild animal. Ought it to be considered or not as in my custody? Did it possess the character of a loan, a deposit, or a pledge? And so on of the rest. Observe, that though in these cases mention is made of contract, there are many cases in which I may have a thing without convention, without promise, without any act of will in reference to it.

The legislator has two shoals to avoid, that of restraining services, and that of favouring negligence. If you give too great an extent to responsibility, you incur the first of these dangers—if you give too little, you incur the second.

I am not about to enter here into a critical examination of the Roman contracts: it would be a work of deadly *ennui.* If we were to imagine all possible defects—in their division, in their nomenclature—it would be difficult to exaggerate them. The idea of *reciprocal promises, of mutual dispositions,* so familiar to all the world, finds itself so obscured in this mischievous and absurd system of jurisprudence, that the lawyers, who have not ceased to explain it, always feel the necessity of new explanations. In vain they heap volumes upon volumes, light never breaks in upon the chaos.

Everything here must be done over again: a language which pretends to be learned has to be forgotten—a simple and familiar language to be taught; and those who know nothing, possess more than half an advantage over those who have to forget what the lawyers call among themselves by the name of science.

Section 2.

Division Of Contracts.

A contract subsists between two parties when there exists between them a disposition either of goods or services, or a legal promise made by the one for the profit of the other.

A disposition or a transfer of goods is an act, in virtue of which a change is made in the legal right of two or more persons with regard to a certain object.

Contracts may be either momentary or permanent.

They may be divided into three classes:—

1. Promises.

2. Disposition or transfer of goods from one party to another.

3. Mixed contracts, containing both dispositions and promises.

Dispositions and promises may be either unilateral or bilateral, according to whether there is reciprocity in the engagement or not.

I.

UNILATERAL PROMISES.

1. Bail.

2. Simple deed of donation, &c.

3. Unilateral promise of marriage.

II.

UNILATERAL DISPOSITION.

1. Gratuitous donation.

2. Legacy.

3. Gratuitous loan.

4. Deposit to be gratuitously kept.

5. Hypothecation *in futurum.*

III.

BILATERAL PROMISES.

1. Agreement for sale, purchase.

2. Agreement for exchange.

3. Wager.†

4. Agreement carrying an obligation to enter into a certain contract.

5. Bilateral promises of marriage.

IV.

BILATERAL DISPOSITIONS.

1. Exchange.

2. Sale and purchase.

3. Exchange of money.

4. Purchase of bills of exchange.

5. Purchase of rent without mortgage.

6. Purchase of rent with mortgage.

V.

MIXED CONTRACTS, CONTAINING DISPOSITIONS AND PROMISES.

1. Loan of money, gratuitous or at interest.

2. Assurance, gratuitous or for a premium.

3. Renting a house, &c.

4. Letting a house, &c.

5. Pledging.

6. Marriage contract.

7. Contract of apprenticeship.

8. Hiring of a servant, of a workman, in a manufactory, or in agriculture or other productive labours; of a clerk, of a shopman.

9. Voluntary enrolment.

10. Donation in trust.

11. Legacy in trust.

12. Articles of partnership in commerce.

13. Deposit under an order of court.

14. Articles of partnership in manufactures.

15. Deposit in respect to a price to be paid *in futurum* by the depositor.

16. Loan of goods for a price *in futurum.*

17. Adoption.

SPECIES OF DEPOSITS.

These species are constituted by the different ends for which the contract is established.

(1.) *On account of the depositor:—*

1. Simply to keep the thing—housekeeper, innkeeper.

2. Simply to transfer from one place to another—carrier, captain of a vessel, for transport.

3. To improve—farrier, dyer, miller, tailor.

4. To employ without amelioration, but without consumption, that is to say, entire destruction—as tools, fixed capital of a manufacture, servants.

5. To be consumed—as wood for firing, drugs for dying, ink for writing.

(2.) *On account of the depositary:—*

6. Deposit of a thing gratuitously lent.

7. Deposit of a thing hired.

(3.) On account of the depositor and depositary:—

8. Association with regard to things acquired by a co-associate, for the profit of the society.

(4.) On account of the one or the other, according to the event:—

9. The pledger, and receiver in pledge.

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CHAPTER XVII.

NINTH GENERAL TITLE OF THE CIVIL CODE.

Of The Domestic And Civil States.

This general title is established, that it may serve as a general depot for the laws which regard the different offences against these respective states. Here ought to be found the catalogue of the classes of persons who possess rights or duties due to them:—masters, servants, guardians, wards, parents, children, proxies, &c.; whilst with respect to political conditions—that is, those which are founded upon some political power, or some duty subordinate to it—reference should be made to the constitutional code.

The domestic or civil state is only an ideal base about which are ranged rights and duties, and sometimes incapacities. It is proper in all conditions to distinguish the work of nature, or of the free man, from the work of the law. The natural state is the foundation, the base; the legal state is formed by the rights, the obligations, which the law adds thereto. To know a state, is therefore to know separately the rights and the obligations which the law has added to it: but what is the principle of union which binds them together, to make the factitious thing which is called a *state,* a *condition?* It is the identity of the investive event with respect to the possession of that state.

Under this head, the most striking examples will be found of the variety and extent of adjective obligations. A boy and a girl marry—they do not see at first in their union anything more than the accomplishment of the wish which had been the motive of it. At the same moment the law interposes and imposes upon them a multitude of reciprocal obligations, of which the idea had never been presented to their minds.

It is true that this distinction of fundamental and adjective obligations depends only upon the negligence of the legislator. If he had taken pains to facilitate the knowledge of the laws, the citizen would have known all the obligations which attached to him upon assuming a certain condition, and all, whether principal or accessory, would have been equally voluntary.

In the notice of civil conditions, all trades should be comprehended. All professions which have particular rights, or duties, or which are subjected to certain incapacities.

In the article appropriated to each condition, the following should be the order of the matter:—1. Methods of acquisition; 2. Methods of losing; 3. Rights; 4. Duties; 5. Incapacities; if there be any. Rights ought to precede duties, because in many cases they are the source of duties. If there be a chronological order in the events from which rights and duties take their date, such order should be followed. The effects which result from each event ought to be distinct from those which result from any other.

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CHAPTER XVIII.

TENTH GENERAL TITLE OF THE CIVIL CODE.

Of Persons Capable Of Acquiring And Of Contracting.

From the word person, and others which are employed to represent it (such an one, he who, &c.) is derived a collection of titles which should have their common centre in this one.

To whom shall the law attribute the capacity of acquiring and of contracting? To all, says the general rule. If there be persons to whom it is refused, this ought to be in consequence of some particular reason. Thus without the exceptions, there would be no necessity for the general rule. It is only required that the exceptions may be placed under it.

Thus the law will not allow the right of investiture to a benefice in the church to a Jew, lest he should abuse it to the prejudice of the church. It does not allow a like right with regard to real property to a minor, lest he should abuse it to his own prejudice. It does not allow this right, nor even that of its occupation, to a madman, lest he should abuse it, either to his own prejudice or to that of another.

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CHAPTER XIX.

OF THE PARTICULAR TITLES OF THE CIVIL CODE.

In the Penal Code, the titles are easily arranged: they correspond with the catalogue of offences. It is not the same with the Civil Code: the particular titles may equally be placed under any of the general titles, as we shall soon see.

It is not possible to complete a penal code without having determined the plan of the civil code; for to have a complete penal code, it is necessary that the whole body of the law should be found included there—at least by reference. Thus true is it that the idea of a complete penal code includes in itself the complete idea of all the subjects of the other codes. But when all the materials are collected, it remains still to assign them their places.

What is the clue to guide us in this distribution? It is still the principle of utility.

The laws being given, why has the legislator prepared them? The answer is simple, as it is incontestable: "With the intention that each disposition should be present to the minds of all those who are interested in the knowledge of it, at the moment in which this knowledge may furnish them with motives for regulating their conduct." For this purpose it is necessary—1. That the code be prepared altogether in a style intelligible to the commonest understanding. 2. That every one may consult and find the law of which he stands in need, in the least possible time. 3. That for this purpose the subjects be detached from one another, in such manner that each condition may find that which belongs to itself, separated from that which belongs to another.

"Citizen," says the legislator, "what is your condition? Are you a father?" Open the chapter "*Of Fathers.*" "Are you an agriculturist?" Consult the chapter "Of Agriculturists."

This rule is both simple and satisfying. Once announced, it is comprehended: it cannot be forgotten. All legislators ought to follow so natural a method, says Philosophy—Not one of them has ever dreamt of it, replies the lawyer.

The catalogue of all these conditions may be found in the body of the laws, under two different orders. Under the general title of States or Conditions, it may be placed in an analytical and systematic form, for the instruction of lawyers. In the index it ought to be found in alphabetical order, for the convenience of the subjects.

There are many subjects which might be sought for indifferently, under more than one title: but in all cases in which either a *concrete* or an *abstract* name may be given to a title, the concrete name ought uniformly to be employed in the text, and the abstract name referred to the index. Thus in the text ought to be found the titles *of Husbands, of Wives,* and not that of Marriage; the title of Heirs, and not that of Successions.

But all these titles rejected from the text, ought to be carefully collected in the index; for it is with respect to this appendix to the book, altogether different from what it is with respect to the book itself—the more voluminous it is, the more easily it is consulted.

After the titles drawn from persons, come those drawn from material beings—from *things.* These are preferred to abstract titles for two reasons:—1. Because they must naturally present themselves to the least instructed minds; 2. Because the catalogue is more ample and uniform.

At last we reach the titles drawn from the different kinds of *contracts.* It is true that the names of contracts are abstract terms: but contracts are the acts of persons, and there is no kind of contract which does not give a particular name to the persons who engage in it. It is not necessary, therefore, to employ concrete titles, but reference may be made to the persons themselves. Thus, instead of saying *purchase, sale, borrowing, lending,* we may say, *purchaser, seller, borrower, lender.* This method will better preserve the uniformity of the plan, and the great end of the arrangement, which is to present to every one that which belongs to him, separate from what does not belong to him. Besides, all contracts have not two correlative names which correspond with those of the two contracting parties. The greater number have but one—for example, *deposit, assurance.* Also with regard to each contract, there may be others beside the mutual obligations—there may be particular obligations on particular parties: instead, therefore, of heaping them all under the head of assurance or deposit, it would be better to make two separate articles,—*assurer, assured—depositor, depositary.*

Under this point of view, the titles of things contracted for would only be a consequence—a subdivision of the *personal titles.*

A question to be cleared up:—There are few contracts which do not in some manner or other refer to things. Such a contract being supposed, ought the text of the laws regarding it to be found under the title of contracts, or under that of things?

If it refer to things in general, and dispositions in general, it should be placed under the title of contracts. If it refer to a particular kind of thing, and a disposition which only applies to this kind, and not to another, it should be placed under the title of things. Example, sale of a horse;—the seller bound to warrant it free from certain diseases, unless he stipulates to the contrary;—the warranty does not apply to other kinds of animals. It would be better that this obligation should be found under the title of *horses,* than under that of *sellers,* since it does not attach to any other kind of seller beside the seller of horses.

The following is an idea of the subordinate titles which would find place under a real title. I take for example, that of horses:—

It is to be observed, that regard is solely paid to the arrangement, and not the matter. The laws which are or have been cited, are cited without deciding whether they are

good or bad: they are counters which I use in reckoning—it would be misapplied labour to examine their defects in this place.

1. Persons incapable of acquiring property in horses, or to whom the acquisition is interdicted. *Ex.* Catholics in England, with respect to horses of a certain value. Written law of England. (Offence against the sovereignty.)

2. Particular means of acquiring them: capture of a highway robber on horseback, and conviction of the delinquent. (Written law of England—remuneratory law.)

3. Limitations of the right of occupation. Cruelty prohibited. Prohibition as respects the using of them for riding by Christians. (Law in certain provinces of Turkey.) Prohibition of the exportation of war horses Offence against the public force.

4. Acts commanded connected with their use. Marks to be imprinted upon hired horses, that thieves who use them may be recognised, or that the individuality of the animal may be proved, for the purpose of levying a tax upon it. Reference to the personal titles of post-horse keepers, carriers, innkeepers, &c.

5. Limitations of exclusive property;—rights granted to public officers to employ them on certain conditions—to seize them for the military service—to destroy them for the purpose of stopping an epidemic, &c.

6. Limitation of the right of disposal—Example, prohibition to export, &c.

7. Adjective obligations attached to the rights of occupation. *Ex.* Taxes to be paid periodically. Taxes to be paid occasionally at turnpikes. Obligations imposed in consequence of borrowing, hiring, pledging, forced labour,—as of feeding, physicking, &c. Reference to the titles of contracts, borrowers, lenders, hirers, travellers, &c.

8. Adjective obligations attached to the right of disposal. Example: Presumed warranty against disease and other defects.

9. Adjective rights over services attached to the right of occupation. Right to cause the horses to be received and taken care of by innkeepers, farriers, &c. Reference to the personal title of people in trade, in which is exhibited the obligations under which they exercise their respective trades, of serving whoever requires them. (Offence, non-reddition of service.)

10. Adjective rights over services attached to the right of disposal. Example, Right of having a place assigned for one's horse in a horse market, by the person employed in keeping the market. (Offence, non-reddition of service.)

It may be remarked, that the particular titles of the civil code are not constructed in the same manner as those of the penal code. In the latter, the point of re-union is the identity of the kind of act which is referred to: everything is referred, for example, to theft, homicide, adultery, &c. In the titles of the civil code, the point of re-union is the identity of the person or the condition:—everything is referred to fathers, husbands,

masters, guardians, &c. There is, however, a more distant point of view, in which all distinctions disappear. If the distinctive principle of the personal codes are completely followed out, it will be found that the particular titles of the penal code belong to them; for to commit an offence is to become a delinquent—a thief, a seducer, an assassin, a forger, &c. The agent might receive his denomination from the act.

Doubt to be cleared up:—In most cases the same law necessarily bears upon two persons at least at one time;—he upon whom an obligation is imposed—he upon whom a right is in consequence conferred. Under each of these two titles the law ought to be mentioned; but under which of them ought it to be stated at full length? This depends upon circumstances, and the choice is not of much consequence.

The most natural procedure appears to be this. Present the entire law to that one of the parties who has most need to be instructed. Which, then, is this party? It is commonly him upon whom the duty is imposed, because of the penalties which accompany the infraction of this duty,—because the punishments which the law is forced to employ are generally stronger than the rewards or advantages which it confers.

There are also other reasons for preferring this arrangement:—

1. There are many cases in which the favoured party is the whole public, and not an individual; for example, taxes. All that it is necessary to address to the public in the general penal code, is the definition of the offence—*non-payment of taxes,* with suitable references. Those things which serve to indicate the different taxes imposed, and the accessary obligations added for insuring the collection of these same taxes, should be referred to the particular titles of the different classes taxed, and of the persons charged with the collection of the taxes.

2. The party upon whom it is wished to impose an obligation, is necessarily easily pointed out and distinguished. The legislator, without doubt, ought not to be ignorant what classes he intends to favour; but there may be many classes favoured by the same right, and it may be more difficult to particularize them.

3. It may also happen, that certain classes may find themselves favoured, of whom the legislator did not think. When a tax, for example, is laid upon a certain species of linen,—the object of the tax, as such, may only have been the general good of the state in respect of its wants, which have rendered contributions necessary. The public in general will have been the party intended to be favoured, without thinking of any other. There may, however, be a class of men who will derive from it a more immediate advantage: such would be found in persons engaged in a rival manufactory, manufacturing a species of cloth more or less suitable for the same purposes.

This detail would have been unnecessary, except for the light it throws upon the plan of distribution; for otherwise, it is of little consequence whether the law be placed under one title or another, provided the references are sufficiently numerous and well chosen, and that the mass be divided in such manner that each class be only charged with such matters as particularly interest it.

Such is the plan of distribution which I would propose for matters of civil law. It appears to me the clearest—that in which the atoms of the law would most easily arrange themselves around their centre, by an attraction which appears natural in proportion as it is simple. The sketch of this plan may not be in sufficient detail for those who have not attained a certain degree of legal knowledge; but those who have studied what has been honoured with the name of *system*—those who have penetrated into the labyrinth of the civil laws, will at once be sensible how new this plan of distribution is, and that if it have any merit, it is that of introducing a uniform principle, which presides over the whole arrangement.

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CHAPTER XX.

OF ELEMENTARY POLITICAL POWERS.

The Constitutional Code is principally employed in conferring powers on particular classes of society, or on individuals, and in prescribing their duties.

Powers are constituted by exceptions to imperative laws. Let me explain myself.

Every complete law is in its own nature *coercive* or *discoercive.* The coercive law demands, or prohibits: it creates an offence, or in other terms, it converts an act into an offence:—"Thou shalt not kill,"—"Thou shalt not steal." The discoercive law creates an exception: it takes away the offence; it authorises a certain person to do a thing contrary to the first law: "The judge shall cause such an individual to be put to death,"—"The collector of taxes shall exact such a sum."

Duties are created by imperative laws addressed to those who possess powers: "The judge shall impose a certain punishment, according to certain prescribed forms."

The constitutional code will include an explanatory part, serving to indicate those events by which certain individuals are invested with certain powers:—succession, nomination, presentation, concession, institution, election, purchase of place, &c. &c.; and the events by which such individuals are divested of such powers:—dismission, amotion, deposition, abdication, dereliction, resignation, &c.

To analyze, to enumerate all the possible political powers, is a metaphysical labour of the highest difficulty, but of the greatest importance. In general, these rights, these powers, will not much differ from domestic rights and powers. If they were placed in a single hand, they would only differ in extent; that is to say, in the multitude of persons and things over which they would be exercised. But their importance has ordinarily led to their being divided among many hands, in such manner, that for the exercise of a single kind of power, the concurrence of many wills is required.

Hitherto the political powers of one government have been, with regard to the political powers of another government, objects which have had no common measure. There has been no correspondency. There are only local names for expressing them: sometimes the names themselves differ—sometimes the same names are expressive of objects altogether different. There is no court-guide which would serve for every court—there is no universal political grammar.

The titles of offices are mixtures, dissimilar aggregates, which cannot be compared together, because no one has ever tried to decompose them—because no one has ever known their primordial elements. These elements, if any one shall ever discover them, will be the hitherto unknown key of every given political system; and the common measure of all actual and possible systems. But how shall I frame a uniform plan for the distribution of the political powers in any state?—from what language shall I

borrow the vocabulary of offices? If I employ the French, it will only serve to express the distribution of powers in the French government. What relation is there between the consuls of France and the consuls of Rome, or the consuls of commerce?—between the king of England, the king of Sweden, the king of Prussia?—between the emperor of Germany and the emperor of Russia—between the ancient French peer and duke—the English duke and peer—the grand-duke of Russia and the grand-duke of Tuscany—between the mayor of Bordeaux and the mayor of London? &c. &c. A volume would not suffice to point out all these disproportions.

Such is the first difficulty. It has been the torment of those who have had to give an account of a foreign constitution. It is almost impossible to employ any denomination to which the readers shall not attach ideas different from those which it is intended to convey.

This confusion will cease, if it be possible to employ a new nomenclature, which shall not be composed of official names, but which shall express the elementary political powers exercised by those different offices.

Two methods may be employed for this decomposition:—1. By considering the end towards which they are directed:—end of interior or exterior security—end of security against crimes, or against calamities, &c.;—2. By considering the different methods by which these ends may be attained: the method of operating may have for its object persons or things. This method of analyzing political powers presents the following results:—

1. *Immediate power over persons.*—This is what is exercised over the passive faculties: it is the power of doing with one's own hand acts whose effects terminate upon the person of another, whether upon his body or his mind. It is the power of doing acts which would be offences against the person, on the part of an individual who was not authorized. Directed to a certain end, it is the power of punishing: directed towards another end, it is the power of restraining and constraining. This power is the foundation of all others.

2. *Immediate power over the property of others.*—This is the power of making use for the public, of things the principal property in which belongs to individuals. For example, the power of a minister of justice to break open the house of a person not accused, that he may seek for an accused person there—the power of a public courier, in case of need, to make use of the horse of an individual.

3. *Immediate power over public things;*—that is, of those which have only government for their proprietor.

4. *Power of command over persons, taken individually.*—This operates upon the active qualities. It has commonly for its foundation immediate power over the person, without which he who commands would not be sure of finding motives for making himself obeyed. In the beginning of political societies, these two powers must have been united in the same hands, as they still are in domestic society. The habit of obedience being once established, we have almost lost sight of the dependence in

which the more elevated power is found, in respect of that from which it springs. The first is only exercised by kings and their ministers; they have left the second to a baser sort of men. Ulysses chastised with his own hand the petulant Thersites. Peter I. was also the executor of his own decrees: he proudly struck off with his imperial hands, the head of the wretch whom he had condemned. The office of executioner does not degrade the emperors of Morocco; and their dexterity in these punishments is one of the pomps of their crown. In civilized states, the nobler power depends no less upon the ignoble power, than in barbarous countries;—but the disposition to obedience being once established, everything operates without our thinking of the constraint which is its first foundation.

5. *Power of command over persons taken collectively.*—A state must be very small, in which individuals could be governed one by one: this can only take place in a family. A company of soldiers can only be manœuvred when a head is given to the whole together. It is in the power of making men act by *class,* that the strength of government consists.

6. *Power of specification.*—I thus denominate the power of determining of what individuals particular classes shall be composed, over whom command may be exercised. This very extensive power is only, in respect to persons, the power of investment or divestment with regard to a certain class—class of nobles, class of judges, class of military, class of sailors, class of citizens, class of foreigners, class of offenders, class of allies, class of enemies.

The power of specification subdivides itself into two principal branches: specification of persons—specification of things.

Power *over persons* subdivides itself into the power of *locating* in a class, and the power of *dislocating.*

Power *over things* consists in setting them apart for a certain use, and making it a crime to employ them for any other.

To specify *a time, a day* as set apart for a religious festival, on which it is unlawful to work.

To specify *a place* as consecrated; for example, a church, an asylum.*

To specify *a metal* as the legal coin of the country.

To specify *a dress* as appropriated to a certain condition, &c. The right of specification over things embraces the totality of things.

It ought to be remembered, that each of these powers may be indefinitely subdivided, according to the number of hands in which it is placed, and the number of wills which may be required for its legitimate exercise. Hence the right of initiation, or right of proposing; right of negation or right of rejecting. The co-possessors may form only a single body, or many separate bodies. The concurrence of many bodies may be

necessary to the validity of an act of command, as well as the concurrence of many individuals in a single body.

All these powers may be possessed in chief, or in a rank more or less subordinate.

The subordination of a political power to another, is established—1. By the cassability of its acts, or their liability to be abrogated; 2. By its subjection to the orders it receives.

7. *Attractive power.*—I thus call the power of rewarding or not rewarding.—Power of influence, which is partly remuneratory and partly penal. Influence is one source of motives. In Government, it is constituted—

1. By the power of locating in regard to desirable offices—Reward.

2. By the power of *dis*locating in regard to desirable offices—Punishment.

3. By the power of locating in regard to undesirable offices—Punishment.

4. By the power of *dis*locating in regard to undesirable offices—Reward.

There are three other sources of influence less direct:—

1. Free employment of wealth.

2. The power of rendering or not rendering all sorts of free services.

3. Influence founded upon the reputation of wisdom.

The attractive power which is exercised by means of reward, is more dangerous than the coercive power, because it is liable to be more arbitrary. Every rich man possesses a a portion of it in consequence of his wealth, without possessing any political power by name. It is only in a small number of cases that it has been possible to subject the exercise of this power to fixed rules. The laws against bribery and corruption are examples, and every one knows how difficult it is to execute the laws against the purchase of suffrages at an election, or against the venality of persons in official stations. Success is most easily attained by indirect rather than direct means:—by rendering the offence difficult of commission; by diminishing temptation, by taking away the means of its concealment; by the cultivation of sentiments of honour, &c.

Recapitulation—Analysis Of Abstract Elementary Political Powers.

1. Immediate power over persons.

2. Immediate power over the things of another.

3. Immediate power over public things.

4. Power of command over persons taken individually.

5. Power of command over persons taken collectively, or over classes.

6. Power of specification or classification—

    1. With regard to persons.
    2. With regard to things.
    3. With regard to places.
    4. With regard to times.

7. Attractive power. Power of granting or not granting rewards.

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CHAPTER XXI.

OF ELEMENTARY POLITICAL POWERS—

Subject Continued.

The foregoing enumeration of political powers presents a new nomenclature, which requires justification, and can only be justified by showing that the divisions most generally adopted at present, leave all these powers in a state of confusion and disorder.

By some, these elementary powers are divided into two classes: 1. *Legislative power;* 2. *Executive power.* Others add to these a third class—*power of imposing taxes;* others again add a fourth class—*judicial power.*

When one of these plans has been adopted, it has been chosen without much regard to their differences; everything has been then considered as sufficiently defined, and reasons have then been sought out to support it. I shall endeavour to show how vague and obscure these terms are.

By each one of them, sometimes one thing and sometimes another, is understood. Of each power no one knows to which class to refer it—no two persons entertain the same ideas as to what is called *legislative* or *executive* power.

Between the condition of a science, and the condition of its nomenclature, there is a natural connexion. With the best arranged nomenclature, we may still reason badly; but with a badly arranged nomenclature, it is not possible to reason correctly.

Legislative Power.—Everybody agrees to understand by this, the power of commanding. Little scruple is made of employing this expression when this power is only exercised over classes, especially when the extent of these classes is considerable.

This title is more willingly yielded to a power, whose orders are capable of perpetual duration, than to a power whose orders are in their own nature perishable. It is agreed to consider that the exercise of this power is free from the restraints which characterize judicial power. Sometimes it is supposed that it is exercised in chief; sometimes the same word is employed to express cases in which it has only a subordinate exercise. We are much inclined to call that legislative power, which is exercised by a political body: executive power, that which is exercised by a single individual.

Judicial Power.—Among the authors who have considered this power as distinct from legislative power, I have not found one who has appeared to understand the difference.

The orders of the legislator bear at the same time upon a numerous class of citizens. But do not those of the judge the same? does he not judge communities, provinces?

Those of the legislator are capable of perpetual duration: those of the judge are the same also.

Those of the judge bear upon individuals: but among the acts which emanate from the power called legislative, are there none which do the same?

Before a judge can issue his orders as a judge, a concurrence of circumstances is requisite, which is not requisite for legalizing the acts of the legislature:—

1. It is necessary that an interested party should come and require the judge to issue the order in question. Here there is an individual to whom belongs the initiative, the right of putting into activity the judicial power.*

2. It is necessary that the parties to whom the orders of the judge may prove prejudicial should have the power of opposing them. Here there are other individuals who have a species of negative power—power of stopping the acts of the judicial power.

3. It is necessary that it should have proof produced of some particular fact upon which the complaint is founded, and that the adverse party be permitted to furnish proof to the contrary. Here, then, is the person accused whose concurrence is required.

4. Where there is a written law, it is necessary that the order of the judge should be conformable to what such law prescribes:—order to the effect of punishing, if it respects a penal case—order to the effect of investing the party with a certain right, or of divesting him, if it respect a civil case.†

Executive Power.—At least twelve branches of this power may be distinguished:—

1. Subordinate power of legislation over particular districts—over certain classes of citizens—even over all, when it refers to a particular function of government. The smaller the district—the shorter the duration of the order—the more inconsiderable the object, the more one is led to subtract this power from the *legislative* species, in order to carry it to what is called the *executive.* When the supreme power does not oppose these subordinate rules, it is the same as if it adopted them: these particular orders are, so to speak, in execution of its general will. But whatever it is, it is the power of command.

2. Power granted to classes of men—to a fraternity—to a corporation: powers of legislation, the power of making bye-laws: it is still the power of command. To say, I will maintain the laws made by a certain body, is the same as making them one's self.

3. Power of granting privileges to individuals, titles of honour, &c. It is the power of specification *in individuos.*

4. Power of pardoning. If it be exercised after inquiry into the facts, it is a negation of the judicial power: if it be exercised arbitrarily, it is the legislative power. Power of command exercised in opposition to judicial orders.

5. Power of locating or dislocating subordinate officers. It is a branch of the power of specification.

6. Power of coining money, of legalizing it, of fixing its value—specification *in res.*

7. Military power. That of enrolment and disbanding, is a branch of the power of specification *in personas.* That of employing, is a branch of the power of command. The circumstance which has caused it to be considered as a separate power, is the use for which it is established.

8. Fiscal power. This power in itself does not differ from that possessed by the cashier of an individual, with regard to the money which is entrusted to him. It is constituted a public power, in consideration of the source from which the money is derived, and the end for which it is designed.

9. Power of administration over the magazines, munitions of war, and other public things. This is the same as the management of a house: the object alone makes it a political power.

10. Power of police—specification—command. We may observe, that for the exercise of military power, the power of police, and even of management, a certain quantity of immediate power is requisite, both with regard to the persons and the goods of the citizens in general. In order to make use of any power whatever, it is necessary that the superior officer should possess immediate power over his inferiors, either by being able to dislocate them, or by some other means.

11. Power of declaring war and making peace. This is a branch of the power of specification. To declare war, is to transfer a class of foreign friends into the class of foreign enemies.

12. Power of making treaties with foreign powers. The obligation of treaties extends to the mass of the citizens: the magistrate who makes a treaty, exercises therefore a power of legislation; when he promises to another sovereign, that his subjects shall not navigate a certain part of the sea, he prohibits his subjects from navigating there. It is thus that *conventions* between nations become *internal* laws.*

I do not know to what length this subdivision of the executive power may be carried: the relation which each individual branch bears to each of the others is altogether undetermined. They are always supposed to have determinate limits, but these limits have never been assigned to them.

The term *executive power* presents only one clear idea: it is that of one power subordinate to another, which is designated by the correlative appellation of *legislative power.*

Need we then be astonished that there is so much opposition among political writers, when all their works have been composed of terms so vague, so ill-defined, and to which each has attached the ideas to which he was accustomed!

It is not necessary absolutely to exclude these terms adopted into the vocabulary of all the nations of Europe; but it was necessary to show how far they were from representing the true elements of political powers.

The new analysis which has been attempted has many weak points: it is a subject nearly the whole of which remains to be created. The work has been begun, but it will require much labour and patience to finish it.

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CHAPTER XXII.

PLAN OF THE POLITICAL CODE.

If we detach from the code of laws a part which should be called the *constitutional code,* the following subjects might be referred to it:—

1. The methods of acquiring the different offices established in the state, and also the methods of losing them. The greater share the people have in the government, the greater the space which this part will occupy.

2. An exposition of the powers annexed to these offices. This part would be assimilated in form to the civil code.

3. An exposition of the duties attached to these same offices. This part would be assimilated in form to the penal code.

4. An exposition of the formalities which ought to accompany the exercise of the powers attached to these offices, in those cases in which they are exercised by political bodies. This part would sometimes appear under a penal, sometimes a civil face: under the first, when punishments are pronounced against individuals; under the second, when there is no other punishment than that of nullity as to the acts of the body.*

5. To this code would be consigned the laws which directly bear upon the office of the sovereign. Laws of this kind clearly exhibit certain acts as directed or prohibited. From this quality they bear the aspect of penal laws. On the other hand, it is natural that they should not express any punishment to be inflicted in case of contravention. Who could inflict such punishment? In this respect they would be contrasted with the penal law.

Among these laws, the following species may be distinguished:—

1. Privilege granted or reserved to the original mass of the nation—as liberty of worship—right of carrying arms—right of confederation.

2. Privileges granted to provinces acquired, whether their union to the body of the state arise from succession, or from voluntary union; as that of not being taxed but by themselves.

3. Privileges granted to conquered districts at the time of capitulation, and confirmed by treaties of peace.

4. Privileges granted to districts ceded by treaty without having been conquered.

Although it may not be easy to apply positive punishment to a delinquent sovereign, such laws ought not to be regarded as of no value. They are of great importance, though positive punishments would be of no force: they are attended by the immediate punishment of dishonour to the sovereign, and discontent on the part of his subjects:—by ulterior punishment in revolt, and loss of sovereignty. Hence we see in many European countries, sovereigns scrupulously respecting the privileges of subjects and of provinces.

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CHAPTER XXIII.

PLAN OF THE INTERNATIONAL CODE.

The international code would be a collection of the duties and the rights existing between the sovereign and every other sovereign.

It may be divided into the universal code, and particular codes.

The first would embrace all the duties that the sovereign was subject to—all the rights with which he was invested with regard to all other nations without distinction. There would be a particular code for every nation, with which, either in virtue of express treaties, or from reasons of reciprocal utility, he had recognised duties and rights which did not exist with regard to other states.

The universal code would contain concessions on the one part, demands on the other: ordinarily, reprocity would have place.

These rights and these duties between sovereigns, are properly only the rights and duties of morality. For it can scarcely be hoped that all the nations of the world will enter into universal treaties, and establish tribunals of national justice.

Division of the laws which compose a particular code:—

1. Laws executed—Laws to be executed. The first are those which regard the two sovereignties in their character of legislators—when in virtue of their treaties they make conformable engagements in their collections of internal law. A certain sovereign engages to prevent his subjects from navigating a certain part of the sea; he ought then to make a change in his internal laws prohibiting this navigation.

Laws to be executed are—1. Those which are fulfilled simply by abstaining from the establishment of certain internal laws. 2. Those which are fulfilled by exercising or abstaining from the exercise of a certain branch of sovereign power; by sending, or abstaining from sending, assistance by troops or money to another foreign power. 3. Those whose fulfilment only regards the personal conduct of the sovereign; for example, those by which he is obliged to employ or not to employ a certain formula in addressing a foreign sovereign.

Second Division—Laws of peace—laws of war.—Those which regulate the conduct of the sovereign and his subjects in time of peace or war, towards a foreign sovereign and his subjects.

The same distribution which has been followed with regard to internal laws, whether civil or penal, should guide the arrangement of the international laws.

In the civil code, for example, the demarcations of the rights of property with respect to immoveables, may be the same. There are some properties which belong in common to the subjects of a given sovereign. There may be some which belong to a given sovereign, and a certain foreign sovereign, as seas, rivers, &c. Thus, in former times, the republic of Holland had acquired a species of negative service at the expense of Austria in the port of Antwerp. Thus, by the treaty of Utrecht, the English had acquired another with regard to the port of Dunkirk. The right of marching troops across a foreign country is a species of positive servitude.

War may be considered as a species of procedure, whereby it is sought on the one part or the other, to obtain or keep possession of advantages, to which each thinks himself entitled. It is a writ by which execution is made upon a whole people. The attacking sovereign is the plaintiff; the sovereign attacked is the defendant. Those who sustain an offensive and defensive war, resemble an individual who has filed a *cross-bill,* and sustain two characters at the same time. This parallel is of no assistance as to the form or arrangement of the laws, but use may be made of it by the introduction of the principles of humanity, which would soften the evils of war.

When two sovereigns are at war, the condition of their subjects is respectively changed; from foreign friends they become foreign enemies. This part of international law brings us back to the plan of particular codes, in which sovereigns might stipulate for clauses relative to these changes.

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CHAPTER XXIV.

PLAN OF THE MARITIME CODE.

The Maritime Code has many parts related to the penal code, the civil, the military, and the international codes.

1. *Penal.*—When robbery is committed upon the sea, or by persons who come by sea to commit it, in certain cases a particular name is given to it—it is piracy. But what is the difference whether these offences have for their theatre the dry land, or land covered with water? And wherefore give them different names?

2. *Civil.*—The changes which the sea experiences, and which it occasions, give rise to many methods of acquiring and losing. Lands are abandoned by it—islands are discovered in it—shipwrecked goods are thrown up by it: from these result a great number of particular arrangements.

Ships are at once houses and carriages. Large vessels are floating castles. The sea, if we may use an expression so contradictory in appearance, is a species of immoveable always in motion, whose value is in certain situations very considerable, in others null: here it is fruitful, there barren; here it becomes dry, and there it again covers the dry land. Everywhere it is a highway, and a highway that repairs itself. In its furthest distances, it is as a heath which leads to nothing, and brings back nothing.

This is not all: it is too often a field of battle, and by this the maritime code has a part in common with the military code.

We see in an instant the subjects which it offers for the international code. The right of chase—the right of harvest, or, as it is called when speaking of the sea, the right of fishing—cannot belong everywhere to all the world. It follows, then, that upon the sea, as well as upon the dry land, certain properties can be established. But as to the right of passage, it may be common to everybody, without injury to any. It remains to be examined how all these points may be regulated for the common utility.

The maritime code touches the political code, in consequence of the powers granted to naval officers, admirals, captains, &c.

A ship is a little wandering province, like the island of Laputa. Some vessels of war contain more citizens than there are in the republic of Saint Martin.

Hitherto the distinction between maritime and terrestrial law, if we may use the term, has not appeared to rest upon solid foundations. Still it is desirable, because of the particular circumstances in which sailors are placed, that they should have a separate code, distinct laws, for themselves. It is a means of simplifying the general code.

Vessels are liable to injure one another. This is only a particular case of damage, in which there may be, as in every other evil intention, a smaller or greater degree of fault, or pure accident. Particular regulations may be made upon these points, and placed in the maritime code; or in treating of damage in the general penal code, the most common events with reference to ships may be included there.

The police of ports would find its most natural place in this code.

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CHAPTER XXV.

PLAN OF THE MILITARY CODE.

The functions of the military are like those of justice and police. Sometimes they are employed in the prevention of evil—sometimes in punishing it; sometimes the two objects are united.

In former times, military law had greater connexion with the civil, than it has at present. It was thus under the feudal system. Landed property was given instead of salary: engagements to perform military service were the principal means of acquiring land; the non-rendering of these services was the principal means of losing it. Every baron exercised almost unlimited power over his unhappy vassals: all rights floated in uncertainty. In these times of anarchy, what ought we to call each powerful chief? Was he a sovereign, or a subject?—a robber, or a soldier?—a magistrate, or a tyrant? As to the multitude, their condition was too clearly decided: it was a condition of the harshest slavery.

How free soever may be the constitution of a state, powers over the people, to be exercised upon certain occasions, must necessarily be given to the defenders of such country, that they may be able to protect it. These powers, always objects of suspicion, are much more so when undefined. The first object should be to shut them up into the narrowest limits; the next, to mark out these limits with the greatest clearness; and if on certain occasions they must necessarily be unlimited, it is better to announce this in the law, than to preserve a timid silence:—the occasion itself, which gives rise to this power, may then serve as its limits, if there be no other. The dictatorship of the Romans is an instance of this kind. The same procedures, which when authorised by the laws produce no sensation, would appear the height of tyranny if they were arbitrary. In the first case they would have a limit, and the honour of the laws would remain untouched: in the second, no one would be able to see where they would end, and the authority of the laws would be trampled under foot; since in a complete system, every power which was not derived from the laws, would be an infraction of the laws. *Those that are not with me, are against me.*

Take an example:—Care has been taken to provide for the maintenance of the troops by general arrangements, in such manner as not to hurt individuals. But it may happen, from a thousand unforeseen accidents, that a certain body of troops, large or small, is in want of necessaries, especially in time of war. But what would the law say to them? They would not allow themselves to die of hunger, with arms in their hands, if it were possible to procure food. It is better courageously to provide for this emergency, and to give to the lowest serjeant the right of making suitable requisitions, than to be silent from fear, and to leave everything to chance and to violence. Let there be no refined formalities; freely concede a power that may be seized in despite of the laws, reserving to yourself the power of ascertaining the facts, for the purpose of punishing its abuse, and indemnifying the parties injured.

Act in the same manner with regard to the extraordinary powers which it may be necessary to grant to commanders for the defence either of towns or countries. To carry off provisions—to break down bridges—to cut down trees—to burn houses—to inundate the country,—all these extremities may become necessary, and they will be neither more nor less so from having been authentically provided for. If there be not a clear and precise permission—sometimes, out of vexation, the strict line of necessity will be surpassed, to the detriment of individuals; sometimes, from fear, only half measures will be taken, to the peril of the public welfare.

Such are the points by which the military code is connected with the penal and civil code. It will be clearly perceived, that it has a continual connexion with the international code. It would be proper to place these relations in the clearest light by a train of reciprocal references.

With reference to military operations, they may be considered as the execution of a law,—as a species of process against the foreign disturbers of the state. As ordinary procedure has its principal and accessory ends, so military procedure has its own:—the principal end is to overcome the enemy; the accessory end is not to oppress the citizen. In relation to the first, to indicate the means to be employed would be to make a treatise upon the art of war, a labour not required here. Still, however, if on the side of ideas it belongs to soldiers by profession, on the side of method and style it belongs to the ordinary legislature; whilst as to the means of attaining the accessory end, the most efficacious are, to grant a great latitude of powers, upon verifying all the facts, and rendering the chiefs responsible.

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CHAPTER XXVI.

PLAN OF THE ECCLESIASTICAL CODE.

The subjects of the ecclesiastical code may have reference, partly to the penal and partly to the civil codes—partly to the constitutional, and partly to the international codes.

We have seen, in the catalogue of offences, an order composed of those offences whose tendency is to abuse the motive of religion, or to weaken its power in the cases in which it is employed in the service of the state.—Thus far it is penal.

In the greater number of religions there is established a class of men whose condition consists in cultivating and directing the influence of this motive in the minds of the other citizens. The persons clothed with this condition sometimes hold, instead of salaries, certain lands, which for the accomplishment of the designs of the donors are subjected to other rules than those affecting the lands of other citizens. It is by such circumstances that the ecclesiastical code is connected with the civil code.

Almost everywhere there is annexed to this condition certain political powers, either over the body of the people, or over the members of the same fraternity. Here is a connexion with constitutional law.

The principles which ought to regulate their salaries are the same as those which ought to regulate those of all other services in the state. This belongs to remuneratory law.

In granting to this class certain rights and powers—in subjecting them to certain obligations, they have also been subjected to certain incapacities. These incapacities are sometimes civil, as interdiction of marriage; sometimes political, as exclusion from certain military, public, or judicial employments.

It may happen that the ecclesiastical class in a country has a foreign head, and that the political sovereign allows this foreign chief to exercise his powers in matters of religion. It may be, that these powers exercised by foreigners may be in the hand of a pope, or of an assembly, as of councils, &c. &c. Here there is a connexion with the code of international law.

In this code, the principles which ought to guide the legislator are few in number; and are—as respects penal law, *toleration* in respect of political rights—*submission* in regard to the sovereign—*equality* in regard to their fellow-citizens, and if it be possible, among themselves—as respects their salaries, *economy*.

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CHAPTER XXVII.

PLAN OF REMUNERATORY LAWS.

The system of these laws could not have any plan which should belong to itself alone. Remuneratory laws will be found dispersed here and there throughout the penal code, without having any regular correspondence with offences; since it is not possible to apply a reward to every law, as one applies a punishment. Pleasure, in as far as it is at the disposal of the legislator, is a motive whose force is too precarious, and the quantity of it too small to allow of its being depended upon, in reference to objects of the first necessity. It is a useful auxiliary; but the service of the laws requires a regular and permanent force, such as can only be found in punishments. Reward can scarcely be employed except for the production of extraordinary services—works of supererogation.

Sometimes a principal law has for its support two subsidiary laws of opposite natures: the one penal, in case of disobedience; the other remuneratory, in case of obedience. Thus a wise law, by directing every individual who becomes acquainted with a crime to denounce it to the magistrate, threatens a punishment against him who conceals it, and proposes a reward for him who denounces it. Sometimes the reward is placed in front, and the punishment is, so to speak, placed behind to support it. Thus when it is desired that certain burthensome offices should be discharged, a salary is attached to them, to induce persons to undertake them with good will; but if this method fail, it is necessary to use constraint. In enlisting soldiers and sailors, it is usual to begin by offering bounties, and to finish by ballot and impressment.

The laws which adopt, which guarantee contracts and dispositions of goods between individuals, are a species of remuneratory laws, in the cases in which these contracts, these dispositions, have for their objects, services rendered, or to be rendered. Remuneratory laws belong under this aspect to the civil code.

The most extended field for the remuneratory system is political economy—public instruction might also make great use of it. Those methods which elevate the soul, and give to the mind the elasticity of pleasure, are preferable in the treatment of youth to those which sudden it, and accustom it only to act from fear.

Rewards are sometimes distributed in virtue of general and permanent laws, sometimes according to the good pleasure of those who direct the public funds. A reward granted without having been promised, exactly resembles in form the penal law which would be called *ex post facto*—I say as to the form, for all the world sees at once that a penal law passed after the act is a revolting injustice. A reward in the same case is precisely the opposite. Is it well applied? It is so much rather an act of wisdom on the part of the government, that it resembles a general invitation addressed to all persons to direct their services to all objects of utility, without fear that in case of success they will lose their labour.

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CHAPTER XXVIII.

OF POLITICAL ECONOMY.

The distinction marked by the word economy is applicable rather to a branch of the science of legislation, than to a division in a code of laws. It is much easier to say what branch of this science should be called political economy, than to say what laws are economical.

The most powerful means of augmenting national wealth are those which maintain the security of properties, and which gently favour their equalization. Such are the objects of civil and penal law. Those arrangements which tend to increase the national wealth by other means than security and equality (if there be any such,) may be considered as belonging to the class of economical laws.

It may be said, there is a science distinct from every other, which is called *political* economy: the mind can abstractly consider everything which concerns the wealth of nations, and form a general theory concerning it: but I do not see that there can exist a code of laws concerning political economy, distinct and separate from all the other codes. The collection of laws upon this subject would only be a mass of imperfect shreds, drawn without distinction from the whole body of laws.

Political economy, for example, has reference to the penal laws, which create the species of offences which have been called *offences against population,* and *offences against the national wealth.*

Political economy would be found connected with the international code by treaties of commerce, and with the financial code by the taxes, and their effects upon the public wealth.

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CHAPTER XXIX.

PLAN OF THE FINANCIAL CODE.

The matter of this code will coincide partly with the civil, partly with the penal, partly with the constitutional, and partly with the international codes.

The regulations to which property and trade are subjected on account of taxes, belong to the civil code. In as far as regards the duties of the contributors, the financial coincides with the penal code, and with that species of offence which is called non-payment of taxes. In relation to the rights and duties of the officers set apart for this branch of administration, the financial is connected with the constitutional code, and sometimes with the international code.

The receipt of taxes bears the same relation to their assessment as procedure bears to substantive law. The one answers to *why*—the other to how much. Finance has its indirect, as well as its direct laws. These consist in simply saying, "Pay such a tax on such an occasion." The indirect consist of those precautions which are taken to prevent individuals from withdrawing themselves from the payment of taxes. If fiscal laws are generally very complicated, it is because they are generally directed against accessory offences.

With respect to the principles which ought to regulate taxes, they form part of the science of political economy. A treatise upon finance ought to begin with two tables:—A table of all the inconveniences which can possibly result from every kind of tax; 2. A table of all the taxes, arranged in the most convenient order for facilitating the comparison and showing the particular qualities of each one.

First object of finance—to find the money without constraint—without making any person experience the pain of loss and of privation.*

Second object—to take care that this pain of constraint and privation be reduced to the lowest term.

Third object—to avoid giving rise to evils accessory to the obligation of paying the tax.

One essential object in a treatise of finance would be to simplify the language—to banish false metaphorical and obscure expressions—to restore everything to clearness and truth. Few persons know how much technical terms have contributed to conceal errors, to mask quackery, to confine the science to a small number of adepts who have made of it a species of monopoly. The knowledge of this jargon has become a cabalistic sign, by which the initiated recognise each other; and the obscurities of the language have enabled financiers to deceive the simple up to a certain point, with regard to transactions which would otherwise have been at once recognised as nefarious;—a *theft,* for example, is called a *retaining.* These artifices of style have

their place in other matters: it is thought better to say of a minister, that he has been thanked than dismissed. But in a treatise upon the principles of legislation, the right word ought to be employed—the word which correctly expresses the real fact without concealment.

How numerous are the questions which appear difficult to be resolved, and even insolvable, because terms are employed which have no meaning, or which only present incorrect ideas!

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CHAPTER XXX.

PLAN OF PROCEDURE CODE.

In arranging matters of procedure, it is necessary to regard four principles:—1. The order of the *offences* which it is intended to combat, or of rights not enjoyed, which it is intended to cause to be enjoyed. 2. The order of *the ends* which can be proposed in combating the ill effects of each offence. 3. The chronological order of the steps which may be taken on the one side or on the other, in the pursuit of these ends. 4. The power to be exercised provisionally for securing the *justiciability* of the accused.

We commence, then, by the system of procedure which is suitable to every offence.

To arrest, to indemnify, to prevent;—these three objects of the legislator give rise to three distinct branches:—procedure *ad compescendum,*†*ad compensandum, ad præveniendum.* These three branches are not required with regard to every offence, because they may all be secured by seeking them together.

With respect to precautions for submitting the party to justice, there are two things to be done—to secure the person of the accused, or his goods—or to admit him to give bail. The necessity of these precautions is determined by the intensity of the punishment. The punishment attached to the offence of which an individual is accused, may be such, that he would choose rather to indemnify his sureties, or to leave them to suffer in his stead, than to expose himself to it. In this case, we can possess no other security than that of his person. But if it can be presumed, either from his property or from other motives determining his residence, that he would submit to the judgment which may be pronounced against him, rather than escape it by flight, imprisonment would be a useless rigour. It is not so much the nature of the offence, as the responsibility of the accused, which ought to determine these precautions. A poor man, and especially a stranger, ought to be arrested, when there would be no necessity for arresting a rich man or a housekeeper. Not that the stranger ought to be more ill treated than the resident inhabitant, or the poor than the rich; but because the circumstances of the one offer a guarantee which the circumstances of the other do not yield. Necessity alone can authorize the slightest degree of constraint.

The distinction between *criminal procedure, slightly criminal,* and *civil,* may be preserved, or they may be exchanged for other terms:—procedure of rigour—procedure of less rigour—procedure without rigour.

The code of procedure will be much shortened, by distributing it into general and particular titles.

All offences with regard to which the same procedure may be pursued, ought to be placed together, and designated by a common title.

Penal suits have direct reference to offences. Suits of *demand,* commonly called *civil* suits, have direct reference to rights, and indirect reference to offences.

Care should also be taken to prepare formulas for all cases which are susceptible of them; that is to say, for everything which in the course of the trial may be done by a general rule.

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CHAPTER XXXI.

OF THE INTEGRALITY OF THE CODE OF LAWS.

It is not sufficient that a code of laws has been well digested withregard to its extent; it ought also to be complete. For the attainment of this object, it is necessary at once to embrace the whole of legislation—and this principal object has never yet been attempted. I have ventured to undertake it, and I have, so to speak, *projected the sphere of the laws,* that all its parts may be seen at one view.

The collection of the laws made upon this plan would be vast, but this is no reason for omitting anything. Whether a law be written or unwritten, it is not less necessary that it should be known. To shut one's eyes to the mass of the burthen we are obliged to bear, is not a means of lightening its weight. Besides, what part ought to be excluded? To what obligation ought the citizens to be subjected without their knowledge? The laws are a snare for those who are ignorant of them. This ignorance would be one of the greatest crimes of governments, if it were not the effect of their incapacity and unfitness. Caligula suspended the table of his laws upon lofty columns, that he might render the knowledge of them difficult. How numerous are the countries in which these matters are still worse! The laws are not even upon tables;—they are not even written. That is done from indolence, which the Roman emperor did from tyranny.

A complete digest: such is the first rule. Whatever is not in the code of laws, ought not to be law. Nothing ought to be referred either to custom, or to foreign law, or to pretended natural law, or to pretended laws of nations. Does the legislator who adopts, for example, the Roman law, know what he does? Can he know it? Is it not a field of eternal disputes? Is it not, in one word, to render arbitrary everything which he pretends to take from it? Is not this amalgamation sufficient to corrupt the whole code? When we add together two quantities, the one finite and the other infinite, that the sum will be infinite is a mathematical axiom.

I do not say, that if among the states of a sovereign he find a province, a town, which has its customs, its unwritten laws, to the preservation of which he finds himself bound either by convention or custom, he ought to abolish them. No, without doubt: but taking the necessary precautions, he may confirm them, fix them by writing. It was thus that Charles V. acted with regard to Hainault.

It is objected to the forming a code of laws, that it is not possible to foresee every case which can happen. I acknowledge that it is not possible to foresee them individually, but they may be foreseen in their species; for example, a person may be assured that every species of offence are comprised in the tables which this work includes, although he may not be assured that every possible individual offence has been foreseen.

With a good method, we go before events, instead of following them; we govern them, instead of being their sport. A narrow-minded and timid legislature waits till particular evils have arisen, before it prepares a remedy; an enlightened legislature foresees and prevents them by general precautions. Civil and penal laws were necessarily at first made by groping about, according as circumstances required them. In this manner the breaches were filled up with the body of their victims. But this procedure of the ages of barbarism ought not to be followed in the age of civilization.

Of all the codes which legislators have considered as complete, there is not one which is so. The Danish is the most ancient code; it is dated 1683: the Swedish code is dated 1734; the code Frédéric, 1751; the Sardiman, 1770.

In the preface to the Danish code, it is expressly stated to be complete. However, it contains nothing about taxes, no regulations relating to professions, nothing about the succession to the crown, nothing about the powers of any subaltern officers, except those of justice; nothing respecting international law; no formularies, either for contracts, or the disposal of goods, or for different stages of procedure. It is, however, the least incomplete of all the codes.

In the Swedish code, all those parts are wanting which are wanting in the Danish code; it also wants the section on political or constitutional law.

The code Frédéric, stated in its title-page to be universal, is absolutely limited to civil law. It acknowledges that it is far from complete, for it speaks of feudal law, that it proposes afterwards to digest—of a part of the canon law, on which it does not touch—of many statutes of towns and provinces, which it reserves for examination, &c.

The Sardinian code recognises the Roman law as its foundation, and frequently refers to it under the name of common law. It could not more effectually have plunged everything into uncertainty.

I say nothing of the methods followed in these codes. Legislative science was too little advanced to furnish them with models of arrangement and distribution.

The object of these observations is not to depreciate the presents that these sovereigns made to their people. He who has been least successful in the composition of a code, has conferred an immense benefit. In digesting the body of laws, they have, at least in a great measure, caused the repetitions and contradictions of the laws to disappear. They have delivered their people from unwritten law—law which is uncertain in its essence—law without beginning and without end—law by which animals are governed, and which is disgraceful to men.

Written law is alone deserving of the name of law: unwritten law is, properly speaking, conjectural law. Written law has a certain manifest foundation. There is a legislator—there is a will—there is an expression of that will, a known period of its birth. Unwritten law possesses none of those qualities; its origin is unknown; it goes on continually increasing—it can never be finished; it is continually altering, without

observation. If there be a lawgiver, it is the judge himself—a legislator, each one of whose laws is only applicable to a particular case, and always necessarily *ex post facto*—a legislator, the promulgation of whose laws is only made by the ruin of the individuals to whom they refer.

The grand utility of the law is certainty: unwritten law does not—it cannot—possess this quality; the citizen can find no part of it, cannot take it for his guide; he is reduced to consultations—he assembles the lawyers—he collects as many opinions as his fortune will permit; and all this ruinous procedure often serves only to create new doubts.

Nothing but the greatest integrity in a tribunal can prevent the judges from making an unwritten law a continual instrument of favour and corruption.

But wherever it exists, lawyers will be its defenders, and, perhaps innocently, its admirers. They love the source of their power, of their reputation, of their fortune: they love unwritten law for the same reason that the Egyptian priest loved hieroglyphics, for the same reason that the priests of all religions have loved their peculiar dogmas and mysteries.

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CHAPTER XXXII.

OF PURITY IN THE COMPOSITION OF A CODE OF LAWS.

By purity in a composition of a code of laws, I mean the absence of all heterogenous matter, of all foreign mixture of everything which is not law—of everything which is not the pure and simple expression of the will of the legislator. Laws made for all times ought to be above all little passions: they ought to command and instruct—they ought not to descend from their elevation to dispute with individuals. *Leges non decet esse disputantes,* says Bacon: *sed jubentes,* he ought to have added, *et docentes.*

I see with regret the compiler* of the code of a great nation incessantly occupied in triumphing over the lawyers: the royal sceptre committed to his hands is used as an instrument of combat. Such formulas as the following are continually found:—"It has been questioned"—"Some lawyers have pretended"—"Some have denied"—"Others have affirmed, but we will and direct"—"We abolish by these presents, these distinctions altogether destitute of foundation," &c. &c.

Men, things, opinions, ought all to be considered on the great scale. Conciliation should be the object of the legislator, and not triumph. He should rise above all ephemeral strife.

Another form not less vicious, is that of enveloping the will of the legislator in a foreign will. In the same code, such expressions as these are frequently found:—"The civil laws declare"—"The laws exclude"—"The laws have granted." What laws are referred to? Who made them? Besides, is not this anterior law—this natural law to which we are referred, and which is made the foundation of the law—is it not a source of obscurity?—is it not a veil which intercepts the will of the real legislator?

The compilers of the Justinian code have given examples of these faults. Instead of making the legislator say *I will,* they make him every moment say, *It appears to me.* The emperor so completely forgets his dignity as to say, "*It is thus that Titius or Sempronius* think." He forgets it still more, when he remains in suspense between two opposite authorities: "It is thus that Titius thinks, but Sempronius thinks otherwise."

Historical disquisitions ought not to have place in the general collection of the laws. It is not necessary to cite what the Romans did. If what they did was good, do like them, but do not talk of them.

The great utility of a code of laws is to cause both the debates of lawyers and the bad laws of former times to be forgotten.

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CHAPTER XXXIII.

OF THE STYLE OF THE LAWS.

The perfections of which the style of the laws are capable, may be distinguished into those which are essential, and those which are secondary.

The first consist in avoiding the different faults of which this style is susceptible; the second in employing those beauties which are suitable to the subject.

The desirable object of the laws in regard to style is, that it may be such that at every moment in which they ought to influence the conduct of a citizen, he may have presented to his mind an exact idea of the will of the legislator in this respect.

For the accomplishment of this object two things are requisite:—1. That at the moment in question, the idea should already have been placed in his mind; 2. That it shall not have escaped from it.

This idea will not have been correctly placed in the mind—1. When the words employed do not convey any idea; 2. When they present only part of the idea intended to be conveyed; 3. When instead of this idea they present another altogether different; 4. When they include other propositions in conjunction with that intended by the legislator.

Hence we discover that clearness, precision, is one of the essential qualities of this style.

As it is also to be wished that the idea, once correctly placed in the mind, should remain there always ready for use, and as men differ in regard to the strength of their memories, and the more any one endeavours to load his memory, the more he is likely to forget, we have learned that another important quality in this style is *brevity*.

> Quicquid præcipies esto brevis: ut cito dicta
> Percipiant animi dociles, teneantque fideles.
>
> *De Arte Poet.* 334-5.

Such was the precept of Horace eighteen centuries ago: but hitherto in respect to England, his precept has been delivered in vain.

Defects of style may be referred to four heads:—unintelligibility—equivocality—too great extent—too great limitation.

As an example, I may employ a law cited by Puffendorf, promulgated in a country in which assassination had become common:—"Whosoever draws blood in the streets shall be put to death." A surgeon found a man faint, and bled him in the street. This

circumstance showed the necessity of interpretation; that is, it displayed one of the defects of the law.

This enactment was defective by excess, and by defect:—by excess, in that it admitted of no exception with regard to those cases in which the drawing of blood in the streets might be either useful or innocent; by defect, in that it did not extend to murder, and other methods of wounding not less dangerous than those by which blood is spilled.

If it were the intention of the legislator to comprehend in his prohibition all kinds of grievous injuries which could be committed in public places, he did not know how to express himself clearly.

A judge confining himself to the text of the law, would punish with death slight accidents, and even acts of mercy.

Another judge equally faithful to the text, would leave unpunished more hurtful acts of violence, than those which shed blood.

The law which presents different significations to a judge, cannot fail to be wanting in precision and clearness to individuals.

One will find a man struck by apoplexy, and will prudently leave him to die.

Another, listening to the voice of humanity, will violate the law, and succour the sick man, and thus expose himself to be condemned by the inflexible judge.

Another, trusting in the literal sense of the law, will leave his adversary half dead with his blows; in the manner of that archbishop, who that he might not shed blood, made use of a mace.

It is to be wished, that those minds which consider it beneath the dignity of genius, scrupulously to attend to the care of words, would reflect upon this example. As are the words, such is the law. Laws can only be made with words. Life, liberty, property, honour—everything which is dear to us, depends upon the choice of words.

In all cases of want of precision, the fault arises either from the choice made of the words, or from the manner in which they are put together; that is to say, either from the terminology or from the syntax. In either case it is an affair of grammar, and we may remark, that besides being enlightened, it behoves the legislator either to be or to employ a consummate grammarian.

With regard to brevity, a distinction is necessary. A code of laws prepared upon the best plan, and reduced to the smallest dimensions, will always be too large to be committed to the memory entire; hence the necessity of separating into distinct codes, those parts which are intended for the use of particular classes, who have need to be more particularly acquainted with one part of the laws than another.

Brevity of style may regard sentences and paragraphs, as well as the whole body of the laws.

Lengthiness is particularly vicious when it is found in connexion with the expression of the will of the legislator.

The faults opposed to brevity which may be found in a paragraph are—

1. Repetition in terms.

2. Virtual repetition or tautology: as for example, when the king of France is made to say, "*We will, we direct, and it pleases us.*"

3. Repetition of specific words instead of the generic term.

4. Repetition of the definition, instead of the proper term, which ought to be defined once for all.

5. The development of phrases, instead of employing the usual ellipses: for example, when mention is made of the two sexes, in cases in which the masculine would have marked them both; cases in which the singular and plural are both used, when one of the two numbers would have been sufficient.

6. Useless details: for example, in regard to time, when instead of confining one's self to the event which would serve for this effect, it has been made dependent on some anterior event or train of events.

It is by the collection of all these defects that the English statutes have acquired their unbearable prolixity, and that the English law is smothered amidst a redundancy of words.

It is not enough that the whole of a paragraph is concise in regard to the number of ideas that it presents: the sentences in which they are presented should have this same quality. This circumstance is equally of importance whether it concerns the understanding or the retaining the sense of a paragraph: the shorter the distance between the beginning and the ending of each sentence, the more numerous the points of repose for the mind. In the English statutes, sentences may be found which would make a small volume. Pitching blocks are erected in certain places in the streets of London, for porters with their loads: when will English legislators take equal care for the relief of the minds of those who study their labours.

It is not only desirable that the paragraphs be short: they ought to be numbered. Some means is necessary for separating and distinguishing them: that of numbering is the most simple, the least liable to mistake, the most easy for citation and reference.

The British Acts of Parliament are still defective in this respect. The division into sections, and the numbers which designate them in the current editions, are not authentic. In the original parliamentary roll, the text of the law is one single piece, without distinction of paragraph, without punctuation, without a figure. By what means is the commencement and the termination of an article shown? It is only by the repetition of the introductory clauses:—"And further be it enacted." "And it is further enacted by the authority aforesaid," or some other phrase of the same kind. These are,

so to speak, a species of algebraic notation, but of an opposite character. In algebra, one LETTER supplies the place of a multitude of words and figures; here, a line of words very imperfectly supplies the place of a single figure. I say imperfectly, for though these words may serve for the purpose of division, they do not serve for the purpose of reference. Is it wished to amend or revoke one article in an act? As it is impossible to designate this article by a numerical reference, it is necessary to employ periphrasis and repetitions, always long, and always obscure. Hence English acts of parliament are compositions unintelligible to those who have not by long use acquired facility in consulting them.

This evil has arisen from a superstitious attachment to ancient customs. The first acts of Parliament were passed at a time when punctuation was not in use—when the Arabic figures were unknown. Besides, the statutes, in their state of original simplicity and imperfection, were so short and so few, that the want of division did not produce sensible inconvenience, Things have remained upon the same footing from negligence, from habit, or from secret and interested opposition to all reform. We have lived for ages without using stops and figures: why adopt them today? This argument is above all reply.

With regard to perfections of the second order, they may be reduced to three—*force, harmony,* and *nobleness.* Force and harmony depend in part upon the mechanical qualities of the words employed—in part upon the manner in which they are arranged. Nobleness depends principally upon the accessory ideas which they are calculated to excite or to avoid.

Barren though the subjects of the laws may be, they are susceptible of a species of eloquence which belongs to them, and of which the utility ought not to be despised, as it tends to conciliate the popular sanction. With this view, the legislator might sprinkle here and there moral sentences, provided they were very short, and in accordance with the subject; and he would not do ill if he were to allow marks of his paternal tenderness to flow down upon his paper, as proofs of the benevolence which guides his pen. Why should the legislator be ashamed to appear as a father? Why should he not show that even his severities themselves are benefits? This species of beauty has been remarked with pleasure in the political code, as well as in the instructions of Catherine II. It was also exhibited in the preambles to certain edicts of Louis XVI., under the ministry of two men who did honour to France and to humanity.

Having made these general observations, the following rules may be given as practical directions:—

1. It is proper, as much as possible, not to put into a code of laws any other legal terms than such as are familiar to the people.

2. If it be necessary to employ technical terms, care ought to be taken to define them in the body of the laws themselves.

3. The terms of such definitions ought to be common and known words; or at least, the chain of definitions, more or less known, ought always to finish by a link formed of such words.

4. The same ideas, the same words. Never employ other than a single and the same word, for expressing a single and the same idea. It is, in the first place, a means of abridgment, because the explanation of the term once given, will serve for all times: and the identity of the words contributes still more to clearness than to brevity; for if they vary, it is always a problem to be solved, whether it have been intended to express the same ideas, whereas, when the same words are employed, there can be no doubt but that the meaning is the same. Those who are Iavish of their words, know little of the danger of mistakes, and that, in matters of legislation, they cannot be too scrupulous. The words of the laws ought to be weighed like diamonds.

The composition of a code of laws will have required so much the more knowledge, in proportion as it shall demand less knowledge to comprehend it. In works of art, the perfection of art consists in its concealment: in a code of laws addressed to the people, and to the least intelligent portion of the people, the perfection of science will be attained, when its efforts are not perceived, and its results are characterized by noble simplicity.

If in the foregoing work science have been found, and even theory and abstract science, it ought to be remembered that it has been necessary to combat a multitude of errors created by false science—to establish principles so ancient and so new, that to some eyes they will not appear to be discoveries, whilst to others they will appear altogether paradoxical. It has been necessary to introduce order into the chaos of nomenclature with respect to rights, offences, contracts, obligations—to substitute in the place of an incoherent and confused jargon, a language very imperfect, but still more clear, more correct, and more conformable to analogy: in a word, as respects the scientific part of the law, it has been necessary to unlearn and to reconstruct the whole. No one can be more disgusted than myself at the abuse of science—no one can be more sensible of the ill effects it produces. If I have not attained my object, I believe that I have shown the way to it.

If comparison should be made between my labours and the books of actual law, these will be found bristling with a certain science as repulsive as it is inexact and useless, and which owes its obscurity to its own absurdity—whilst by how much the more this project has abounded in science, by so much the less will it be necessary that any should appear in the text of the laws. I have endeavoured to throw the burthen upon the legislator, that the yoke may be lightened for the people. I have given the labour to the strong, that the repose of the weak may be better secured.

A code formed upon these principles would not require schools for its explanation, would not require casuists to unravel its subtilties. It would speak a language familiar to everybody: each one might consult it at his need. It would be distinguished from all other books by its greater simplicity and clearness. The father of a family, without assistance, might take it in his hand and teach it to his children, and give to the precepts of private morality the force and dignity of public morals.

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CHAPTER XXXIV.

OF THE INTERPRETATION, CONSERVATION, AND IMPROVEMENT OF A CODE.

The code of laws having been thus prepared, it will be desirable to preserve it from the injuries to which it is liable, both as to its matter and as to its form.

For this purpose it will be necessary to forbid the introduction of all unwritten law. It will not be sufficient to cut off the head of the hydra: the wound must be cauterized, that new heads may not be produced. If a new case occur, not provided for by the code, the judge may point it out, and indicate the remedy: but no decision of any judge, much less the opinion of any individual, should be allowed to be cited as law, until such decision or opinion have been embodied by the legislator in the code.

It should be directed that the text of the law should be the standard of the law. In judging whether a given case fall within the law, the text ought to be kept principally in view; the examples which may be given being designed only to *explain,* not to *restrain,* the purport of the law.

If any commentary should be written on this code, with a view of pointing out what is the sense thereof, all men should be required to pay no regard to such comment: neither should it be allowed to be cited in any court of justice in any manner whatsoever, neither by express words, nor by any circuitous designation.

But if any judge or advocate should, in the course of his practice, see occasion to remark anything in it that appears to him erroneous in point of matter, or in point of style defective, redundant, or obscure, let him certify such observation to the legislature, with the reasons of his opinion, and the correction he would propose.

If there should be any particular provision that appears at first sight to be repugnant to one more general, they should, if possible, be reconciled: if not, let the particular provision prevail over the general. For this reason,—the particular provision is established upon a nearer and more exact view of the subject than the general, of which it may be regarded as a correction. But if such a case should ever happen, it is a blemish in the law itself, and ought to be corrected; and when observed by a judge, should be represented to the legislature.

Whatsoever the legislator had in view and intended to express, but failed to express, either through haste or inaccuracy of language, so much it belongs to the judges in the way of interpretation to supply.

When, however, a passage appears to be obscure, let it be cleared up rather by alteration than by comment. Retrench, add, substitute as much as you will—but never explain: by the latter, certainty will generally,—perspicuity and brevity will always,

suffer. The more words there are, the more words are there about which doubts may be entertained.

Finally, once in a hundred years, let the laws be revised for the sake of changing such terms and expressions as by that time may have become obsolete—remembering that this will be more needful in regard to the language of the legal formularies in use, than that of the text of the laws themselves.

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PANNOMIAL FRAGMENTS.

CHAPTER I.

GENERAL OBSERVATIONS.

By a Pannomion, understand on this occasion an all-comprehensive collection of law,—that is to say, of *rules* expressive of the will or wills of some person or persons belonging to the community, or say society in question, with whose will in so far as known, or guessed at, all other members of that same community in question, whether from habit or otherwise, are regarded as disposed to act in compliance.

In the formation of such a work, the sole proper all-comprehensive end should be the greatest happiness of the whole community, governors and governed together,—the *greatest-happiness principle* should be the fundamental principle.

The next specific principle is the *happiness-numeration principle.*

Rule: In case of collision and contest, happiness of each party being equal, prefer the happiness of the greater to that of the lesser number.

Maximizing universal security;—securing the existence of, and sufficiency of, the matter of subsistence for all the members of the community;—maximizing the quantity of the matter of abundance in all its shapes;—securing the nearest approximation to absolute equality in the distribution of the matter of abundance, and the other modifications of the matter of property; that is to say, the nearest approximation consistent with universal security, as above, for subsistence and maximization of the matter of abundance:—by these denominations, or for shortness, by the several words *security, subsistence, abundance,* and *equality,* may be characterized the several specific ends, which in the character of means stand next in subordination to the all embracing end—the greatest happiness of the greatest number of the individuals belonging to the community in question.

The following are the branches of the pannomion, to which the ends immediately subordinate to the greatest-happiness principle respectively correspond:—

To constitutional law, the axioms and principles applying to equality.

To penal law, the axioms and principles applying to security; viz. as to—1. Person; 2. Reputation; 3. Property; 4. Condition in life.

The principle presiding over that branch of the *penal code,* which is employed in the endeavour to arrest, or apply remedy to offences considered as being and being intended to be productive of suffering to one party, without producing enjoyment,

otherwise than from the contemplation of such suffering, to the other, is *the positive-pain-preventing principle.*

Rule: Let not any one produce pain on the part of any other, for no other purpose than the pleasure derived from the contemplation of that same pain.

The persons for the regulation of whose conduct the *positive-pain-preventing principle* applies are—

1. The subject citizens, taken at large.

2. The sovereign, in respect of the quantity, and thence the quality of the subsequentially preventive, or say punitive, remedy applied by him against any offence.

To civil law, more particularly, apply the axioms relating to security as to property. Sole principle—*the disappointment-preventing principle.*

Rule applying to the aggregate, composed of the several sources of positive good or happiness, elements of prosperity, objects as they thus are of general desire: Among a number of persons, competitors actually or eventually possible, for the benefit or source of happiness in question, exceptions excepted, give it to that one in whose breast the greatest quantity of pain of disappointment will have place, in the event of his not having the thing thenceforward in his possession, or say, at his command.

The exception is when, by any different disposition, happiness in greater quantity, probability taken into account, will be produced.

Of any such exception the existence ought not to be assumed: if it exist, the proof of its existence lies upon him by whom its existence is asserted.

To political economy apply the axioms and principles relating to subsistence and abundance. To political economy—that is to say, to those portions of the penal and civil codes in the rationale of which considerations suggested by the art and science of political economy are applicable and have place: considerations over and above and independent of the sensations produced by loss and gain.

By axioms of moral and political pathology, understand so many general propositions, by each of which statement is made of the pleasure or pain (chiefly of the pain) produced by the several sorts of evils, which are the result of human agency on the part of the several individuals respectively affected by them; to wit, by means of the influence exercised by them on the quantity or degree in which the benefits expressed by the fore-mentioned all important words, are by the respective parties, agents and patients, enjoyed, or the opposite burthens constituted by the absence of them endured.

Of these propositions, it will be observed that they divide themselves into *groups;*—one group being relative to security, another to subsistence, a third to abundance, the fourth and last to equality: the first bringing to view the enjoyment

derived from the undisturbed possession of security at large—security in the most comprehensive application made of the word, contrasted with the enjoyment producible by the breach of it,—the second group bringing to view the subject of subsistence;—the third group bringing to view the subject of abundance,—and the fourth group bringing to view the subject of equality, and stating the evil consequence of any legislative arrangement by which a defalcation from the maximum of practicable equality is effected.

In each of the axioms, the antagonizing, or say competing, interests of two parties are conjointly brought to view:—in those which relate to security, these parties are, the maleficent agent, or say wrongdoer, and the patient wronged:—in those which relate to subsistence, abundance, and equality, they are the parties whose interests stand in competition, no blame being supposed to have place on either side. By the legislator, preference should be given to that interest by preference to which the happiness of the greatest number will be most augmented.

To the first of the three stages of the progress made in society by the good or evil flowing from a human act, belong the effects of which indication is given in and announced by these same four groups of axioms.

The principles which form the groundwork of the here proposed system, correspond to the above-mentioned *specific* ends, immediately *subordinate* to the all-comprehensive *end,* expressed for shortness by the *greatest-happiness principle,*—and have their foundation in *observations* on the pathology of the human mind as expressed in the above-mentioned *propositions,* to which, in consideration of their supposed incontrovertibility and extensive applicability, have been given, for distinction sake, the name of axioms.

As to these principles, the names by which expression is given to them have for their object and purpose *conciseness*—the conveying, by means of these several compound substantives, a conception of the several groups of pathological effects in a manner more concise, and thence more commodious, than by a repetition made each time of the several groups of axioms to which they correspond, and which they are employed to recal to mind.

Correspondent to the axioms having reference to security, will be found the principles following:—

1. Principle correspondent to security, and the axioms thereto belonging, is the *security-providing principle.*

Of the security-providing principle, the following modifications may be brought to view, corresponding to the several *objects* respecting which security requires to be afforded:—

I. The objects for, or say in respect of which, security is endeavoured, are these—

1. Person: the person of individuals on the occasion of which body and mind require to be distinguished.

2. Reputation: the reputation of individuals or classes, or say the degree of estimation in which they are respectively held.

3. Property: the masses of the matter of wealth respectively belonging to them, and possessed by them in the shape of capital, or in the shape of income.

4. Power: the portions of power respectively belonging to them, for whose sake soever, or say to whose benefit soever exerciseable, whether for the sake and benefit of the individual power-holder himself—or for the sake of other persons, one or more, in any number; in which case the power is styled a *trust,* and the power-holder a *trustee,* and the person or persons for whose benefit it is exercised, or designed to be exercised, entitled *benefitee,* and the person or persons by whom the trust was created a *trustor.*

5. Rank: or say factitious reputation or estimation,—the source of factitious reputation or estimation put into the possession of the individual by a series of delusions operating on the imagination.

6. Condition in life, in so far as beneficial: the aggregate benefits included in it will be found composed of the above objects, two or more of them.

N. B. The four last-mentioned objects may, for conciseness sake, be spoken of as so many modifications of the matter of prosperity.

7. Miscellaneous rights: including exemptions from burthensome obligations.

2. The maleficent acts, or say offences, against which the endeavour is used to apply the appropriate punitive and other remedies.

3. The contingently maleficent agents, against whose maleficent acts the endeavour will be used to employ the several remedial applications. These may be—

1. External, or say foreign governments and subjects, considered as liable to become adversaries. Code in which provision is made against evil from that source, the Constitutional. Ch. &c. Defensive Force—sub-departments of the administration department, those of the army and the navy ministers.

2. Internal; viz. fellow-citizens; as distinguished into—1. Fellow-citizens at large, or say non-functionaries; 2. Functionaries considered in respect of the evil producible by them in such their several capacities.

4. The several classes of persons *to whom,* by the several arrangements employed, the security is endeavoured to be afforded. These may be distinguished into—(1.) Citizens of the state in question; distinguished into—1. Persons considered in their individual capacities: correspondent offences—private offences. 2. Persons considered in classes: correspondent offences—semi-public offences. 3. Functionaries as such considered in the aggregate: correspondent offences—public offences, such as are purely public in contradistinction to such as are private-public; offences affecting their individual capacity, but constituted public offences by the indefinable multitude

of the individuals liable to be affected. (2.) Foreigners with reference to the state in question;—governments and subjects as above included.

A modification of the security-providing principle, applying to security in respect of all modifications of the matter of property, is the disappointment-preventing principle. The use of it is to convey intimation of the reason for whatever arrangements come to be made for affording security in respect of property and the other modifications of the matter of prosperity, considered with a view to the interest of the individual possessor. In the aggregate of these are contained all the security-requiring objects, as above, with the exception of *person.*

II. Subsistence-securing principle: correspondent subordinate end in view—subsistence. The use of it is to convey intimation of the reason for whatever arrangements come to be made for the purpose of securing, for the use of the community in question, a sufficient quantity of the matter of subsistence.

III. Abundance-maximizing principle: the use of it is to convey intimation of the reasons for whatever arrangements may come to be made in contemplation of their conduciveness to the accomplishment of that end.

IV. Equality-maximizing, or say, more properly, inequality-minimizing principle: the use of it is to convey intimation of the reasons for whatever arrangements come to be made, in contemplation of their conduciveness to this end.

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CHAPTER II.

CONSIDERANDA.

Subjects of consideration on the present occasion are the following:—Pleasures and pains—happiness and unhappiness—good and evil—ends and means—rules and principles—axioms of pathology, physical, and mental—or say psychological—observation and experiment. Of these, many are mutually correlative,—all are intimately connected with, and give and receive explanation to and from each other.

Happiness is a word employed to denote the sum of the pleasures experienced during that quantity of time which is under consideration, deduction made or not made of the quantity of pain experienced during that same quantity of time.

Unhappiness is a word employed to denote the sum of pains experienced during the quantity of time which is under consideration, deduction made or not made of the quantity of pleasure experienced during that same quantity of time.

Good is a word employed to denote either pleasure, or exemption from pain—and the cause efficient, and more or less effective, of either.

Evil is a word employed to denote either pain or loss of pleasure, or a cause efficient, and more or less effective, of either.

In regard to good and evil, consider—

I. Their *condition* or import as to existence and non-existence.

Their *existential character,* or say character or mode of designation in regard to existence, or say logical character:—this is either *positive* or *negative.*

Positive good, is that which assumes not the existence of evil, and which accordingly might have place if there were no such thing as evil.

Negative good, is that which is constituted by the non-existence of evil on the occasion in question.

Positive evil, is that which assumes not the existence of good, and which accordingly might have place, if there were no such thing as good.

II. In regard to each, their *quality.*

By good, understand either pleasure, or the absence—or say, on the occasion in question, the non-existence—of *pain.* Pleasure is positive good; absence of pain—negative good.

By evil, understand either pain, or the absence—or say, on the occasion in question, the non-existence—of pleasure. Pain is positive evil; absence of pleasure—if arising from loss—negative evil.

III. Their relation in respect of causality.

Understand by *good,* either actual pleasure, or absence of pain, or anything considered as the cause of pleasure, or the absence of pain.

Understand by *evil,* either actual pain, or absence of pleasure, or anything considered as the cause of pain or of the absence of pleasure.

IV. Their quantity, in respect of—1. Intensity; 2. Deration; 3. Extent.

V. Their productiveness—or say fecundity—1. Direct; 2. Inverse.

VI. Part taken by human action in the production of them.

1. Wish, or say desire; 2. Direction to action in consequence—or say, in pursuance of such wish.

End is a word employed to denote a good, the prospect of eventually experiencing which, operates as a motive tending to produce at the hands of any sensitive being, some good which is an object of human desire and hope.

Means is a word employed to denote any substance, state of things, or matter, considered as contributing to the attainment of the good, which on that same occasion is regarded as an end.

Pleasures and exemptions from pains, with their respective correlatives, happiness and exemption from unhappiness, are the ultimate ends of action.

As between *good* and *evil,* good alone is an ultimate end of the action of a sensitive being.

Good and *evil,* both are means in their nature capable of being made conducive to the attainment of the ultimate end—the net maximum of happiness; and accordingly by men in general, and by men in the situation of legislators in particular, are employed in that view, and for that purpose.

Of good or evil, one and the same portion is capable of acting, on one and the same occasion, in the character of an *end,* and in that of a *means:*—of a means in relation to some antecedent end or state of things—of an end in relation to some eventually subsequent state of things.

Remedy, in all its shapes, is an instrument having for its use the exclusion of wrong in all its several shapes—or say, the exclusion of maleficence in all its several shapes.

Of remedy in every shape, the application made is attended with and productive of burthen.

The application of remedy, instead of excluding wrong, is productive of wrong, if and in so far as it is productive of burthen outweighing the benefit.

In this way may effects and causes be seen linked together, as it were, in a chain composed of links in indefinite number, and, taken in the aggregate, of correspondent length.

So much for the matter of good, being that the production of which is, or at least ought to be the object, or say end in view, of everything which passes under the denomination of law—or a law:—and so much for good and evil,—both of them employed as means, and the only means employable, for the attainment of that end.

But what is a law, and what are laws themselves? Before this is explained, must be brought to view that species of matter which on each occasion is occupied in passing judgment on the aptitude of the law in question, considered as a *means* employed in and for the attainment of that end. To this purpose comes the need of the ideas, expression to which is given by the two mutually and intimately connected words *rule* and *principle.*

Correspondent to every rule you may have a principle: correspondent to every principle you may have a rule.

Of these two, a rule is the object which requires first to be taken into consideration and presented to view. Why? Because it is only by means of a rule that any moving force can be applied to the active faculty, or any guide to the intellectual—any mandate can be issued—any instruction given.

A *rule* is a *proposition*—an entire proposition: a *principle* is but a *term:* True it is, that by a principle instruction may be conveyed. Conveyed? Yes: but how? No otherwise than through the medium of a proposition—the corresponding proposition—the proposition which it has the effect of presenting to the mind. Of presenting? Yes: and we may add, and of bringing back; for only in so far as the rule has been at the time in question, or some anterior time present to the mind, can any instruction, any clear idea be presented to the mind by a principle.

A principle, therefore, is as it were an abridgment of the corresponding rule;—in the compass of a single term, it serves to convey for some particular present use, to a mind already in possession of the rule, the essence of it: it is to the rule, what the essential oil is to the plant from which it is distilled.

So it does but answer this purpose, its uses are great and indisputable.

1. It saves words, and thereby time.

2. By consisting of nothing more than a single term, and that term a noun-substantive, it presents an object which, by an apt assortment of other words, is upon occasion capable of being made up into another proposition.

So, it is true, may a rule—but only in a form comparatively embarrassing and inconvenient. This will appear by taking in hand any sentence in which a principle has place, and instead of the principle employing the corresponding rule.

Upon occasion, into any one sentence principles in any number may be inserted: and the greater the number, the stronger will be the impression of the embarrassment saved by the substitution of the principles to the rules.

A principle, as above, is no more than a single term; but that term may as well be composite, a compound of two or more words, as single. Of these words one must be a noun-substantive; the other may be either a noun-adjective or a participle; including under the appellation of a noun-adjective, a noun-substantive employed in that character, in the mode which is so happily in use in the English language, and which gives it, in comparison with every language in which this mode is not in use, a most eminently and incontestably useful advantage.

By an *axiom* is meant a sort of rule, of which by certain properties, the combination of which is peculiar to it, the usefulness is pre-eminent in comparison with other rules. These properties are—

1. Incontestableness.
2. Comprehensiveness.
3. Clearness.

As to axioms, the axioms that belong to this subject are axioms of mental pathology. The facts they are enunciative of, are facts enunciative of certain sensations, as being produced by certain events or states of things operating as their efficient causes.

By a *reason* for any act, is conveyed the idea of its supposed addition, actual or probable, to the greatest happiness. This effect may be produced either—1. Immediately; 2. Through an intervening chain of any number of links.

A *law* is a word employed in three different senses, which require to be distinguished: but in each of them it imports that the *will* to which it gives expression either emanates from the supreme authority in the state, or has that same authority for its support.

In one sense it denotes an entire command,—the whole matter of a command. Call this the *integral* sense, and the sort of law a *complete law.*

In the second sense it contains no more than a portion of a command; and the matter of the command may be to an indefinite extent voluminous, containing laws of the first-mentioned sort in any number: in this sense it has for its synonym the word enactment: call the law in this sense a *fractional* or *incomplete* law.

In the third sense it designates the aggregate body of the enactive paragraphs to which it happens to have received the token of their being expressive of the will of the person or persons invested with the supreme authority in the political state, or of some person who acts in this behalf, under, and by virtue of that same authority.

By *power of classification* a species of legislative power is exercised. Thus when an enactment to any effect has been framed, if by any proposition bearing the form of a command or a rule, enlargement or retrenchment is applied to the genus, or say class of objects which contribute to constitute the subject-matter of the command;—by this means, in a sort of indirect way, by and with the help of the other words which enter into the composition of the enactment, is produced the effect of a different enactment: one of the classes of which that same subject-matter is composed receives thereby *contraction* or enlargement, and a fresh classification is made thereby.

Note here—in the giving existence to an enactment, three distinguishable parts are capable of being taken—or say, functions are capable of being performed; viz. the *institutive,* the *constitutive,* and the *consummative;* and this whether by one and the same authority, or by so many different authorities: by exercise given to the power of classification in any instance, a different consummation as it were is given to the several enactments, in the matter of which, the generic words in question are any of them contained.

Of this same function—of this same power, exercise is made by any functionary, or set of functionaries, belonging to a department other than, and thence inferior to, the *legislative;* for in no other way can classes be filled up by individuals, and reality given to general ideas. Call this power, power of location, or say *locative* power. But what difference there is between this case and the preceding consists in this: in the former case, by no other authority than the legislative can the power be exercised—the effect produced: in the latter case it is produced in virtue of a general authorization given by the legislative authority, and by that authority is never produced, unless it be in consequence of some extraordinary occurrence.

So much for particular laws, and small masses of particular laws. Now for the divisions of the all-comprehensive aggregate in which they are all of them at all times comprised.

The Pannomion may be considered as composed of two branches—the effective and the constitutive.*

In the effective branch may be considered as contained the portion of the matter which is more immediately occupied in giving direction to the conduct of the members of the community of all classes.

The constitutive is occupied in determining who those persons in particular are, by whom the powers belonging to the effective branch shall be exercised.

Considered with relation to its connexion with good and evil employed in the character of punishment and reward for the purpose of giving direction to human

conduct, the Pannomion is distinguished and divided into two branches—the directive and the sanctionative.

By the directive part, indication is given of the course which it is the desire of the law-giver that upon the occasion in question the subject-citizens should pursue.

By the sanctionative part, information is given to them of the inducement which they will find for the pursuing of those same courses.

The matter of which this inducement is composed, is either the matter of good as above, or the matter of evil. Where and in so far as it is of the matter of good, *remunerative* is the name that may be given to the law: where and in so far as it is the matter of *evil,* penal is the name commonly given to the law—*punitive,* a name that may be given to it.

These two branches of a law are addressed to different descriptions of persons;—the *directive* to persons at large—the *sanctionative* to the members of the official establishment.

By the sanctionative, provision is made of the inducement, to which the legislator trusts for the compliance he seeks and expects to find on the part of those to whom the directive branch of the law is addressed. This inducement is the eventual expectation of either good or evil in the mind of those to whom the directive branch of the law is addressed:—if it be *good,* the law in that branch of it is syled a *remunerative* law: if *evil* a penal law.

The persons to whom a remunerative law is addressed are those functionaries belonging to the administrative department, by whom disposal is made of the money, or whatever else the matter of good employed consists of, directing them eventually to bestow the article in question on the person in question in the event of his having complied with the directive law in question, and thereby rendered the service desired at his hands.

The persons to whom a penal law is addressed, are the official persons belonging to the judiciary department, presided over and directed by the judges.

Of the matter to which it may be convenient to give insertion in the civil code, and to which accordingly insertion is given in it, there are two different sorts: one of which may be styled the *directive* as above—the other the expositive.

To the directive belongs that sort of matter, of which, under that name, mention has been already made—the directive, without the addition of the sanctionative, and in particular the punitive.

Not that, without the addition of the sanctionative, the directive could in general without absurdity be trusted to. Of a correspondent eventual punishment, including, where applicable, satisfaction, to be administered in case of non compliance, the existence must all along thereby be assumed. But in relation to punishment, this is the whole of that which naturally here finds its place:—in the penal code will be inserted

all denunciation of extra punishment, together with what belongs to the mode in which the application made of the matter of punishment is brought about;—leaving to the civil code, the direction of the mode in which satisfaction, and in particular that branch of it which consists in the allotment of compensation for wrong, shall be administered.

The expositive matter belongs in common to, constitutes and forms part and parcel of, the directive part of the matter of the civil code, and the penal code.

Among the words and locutions, of which exposition is given in it, may be seen this or that word, in the exposition of which a prodigious quantity of matter is employed.

Take, for instance, the word *title* or the word *right,* when employed as synonymous with and equivalent to it. Exposition of it is alike necessary to the completion of any enactment belonging either to the civil or the penal code.

Take, in the first place, the *civil.* The principal part of it is occupied in the declaration of to what person or persons each subject-matter of property, each object of general desire, shall belong, in such sort as to be styled his or their own—who he is or they are, to whom it belongs—or say, who have title to it. Now, then, be the subject-matter what it may—who is it that has *title* to it? Who but he in whose favour some one in the list of completely collative events or states of things has place; no event or state of things having, with relation to that same title, an ablative effect, having at the same time place in the disfavour of that same individual.

So much for the portion in question—the portion of the matter of the civil code.

But not less necessary is reference made in the penal code to that same matter.

Take, for instance, in offences severally considered, offences affecting property,—the offence of *theft.* To the conveying of an accurate conception of the nature of this offence, mention of title is indispensable. Why? Answer: Because, when it is under the persuasion of his having a title to the thing in question, where it is under this persuasion that the man took it,—by no one will he be regarded as having committed the offence thus denominated: thence so it is, that in any well-adapted definition of this offence, averment of the non-existence of any such persuasion must be contained.

Not that in the idea of the offence it is necessary that the idea of any portion of that same matter in particular—the idea, for example, of any one collative event more than another—should have place.

Merely expositive, and mixed: of the one sort or the other will be found to be every particle of the matter which will with most convenience be aggregated to the matter of the civil code.

Constitutive of the mixed matter will be—1. Matter of general concernment; 2. Matter of particular concernment.

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CHAPTER III.

EXPOSITIONS.

Only with reference to language can the attribute denoted by the word universal be with propriety attributed to the subject of *law.*

In each country, at each point of time, it is matter of accident whether a law to a given effect is in force; though, consideration had of the general effect, and not of the particular tenor, in no inconsiderable quantity, masses of the matter of law might be found, such as are not likely to be wanting in any country that has the use of letters. A mass of the matter of language expressive of law might be found, of which the equivalent cannot be wanting, in any country, among any assemblage of human beings, in the presence of each other, for any considerable length of time. This may be styled the language of universal law.

Follows the exposition of some of these terms, the use of which exposition upon this occasion is not so much to teach as to fix their import:—

1. *Obligation.*—Obligations may exist without rights;—rights cannot exist without obligations.

Obligation—a fictitious entity, is the product of a law—a real entity.

A law, when entire, is a command; but a command supposes eventual punishment; for without eventual punishment, or the apprehension of it, obedience would be an effect without a cause.

Reward—eventual reward, is not capable of securing obedience to will signified,—is not capable of giving to will the effect of a command:—apprehension of the abstraction of reward already in possession or expectancy may do it. Yes: but though *reward* alone be the word employed in the description of the case, the operation signified is of the nature of punishment;—the effect of it not enjoyment, but suffering.

Obligation has place, when the desire on the part of the superior, the obliger, being signified to the obligee, he understands at the same time, that in the event of his failing to comply with such desire, evil will befal him, and that to an amount greater than that of any evil which he could sustain in compliance with that desire.

2. *Right.*—Otherwise than from the idea of obligation, no clear idea can be attached to the word *right.*

The efficient causes of right are two:—

1. Absence of correspondent obligation. You have a *right* to perform whatever you are not under obligation to abstain from the performance of. Such is the right which every human being has in a state of nature.

2. The second efficient cause of right is, presence of correspondent obligation. This obligation is the obligation imposed upon other persons at large, to abstain from disturbing you in the exercise of the first-mentioned sort of right. The first-mentioned right may be termed a naked kind of right;—this second-mentioned right, a vested or established right.

The word right, is the name of a fictitious entity: one of those objects, the existence of which is feigned for the purpose of discourse, by a fiction so necessary, that without it human discourse could not be carried on.*

A man is said to have it, to hold it, to possess it, to acquire it, to lose it. It is thus spoken of as if it were a portion of matter such as a man may take into his hand, keep it for a time and let it go again. According to a phrase more common in law language than in ordinary language, a man is even spoken of as being invested with it. Vestment is clothing: invested with it makes it an article of clothing, and is as much as to say is clothed with it.

To the substantive word are frequently prefixed, as adjuncts and attributives, not only the word political, but the word natural and the word moral: and thus rights are distinguished into natural, moral, and political.

From this mode of speech, much confusion of ideas has been the result.

The only one of the three cases in which the word right has any determinate and intelligible meaning is that in which it has the adjunct political attached to it: in this case, when a man is said to have a right (mentioning it), the existence of a certain matter of fact is asserted; namely, of a disposition on the part of those by whom the powers of government are exercised, to cause him, to possess and so far as depends upon them to have the faculty of enjoying, the benefit to which he has a right. If, then, the fact thus asserted be true, the case is, that amongst them they are prepared on occasion to render him this service: and to this service on the part of the subordinate functionaries to whose province the matter belongs, he has, if so it be, a right; the supreme functionaries being always prepared to do what depends upon them to cause this same service to be rendered by those same subordinate functionaries.

Now, in the case of alleged natural rights, no such matter of fact has place—nor any matter of fact other than what would have place supposing no such natural right to have place. In this case, no functionaries have place—or if they have, no such disposition on their part, as above, has place; for if it have, it is the case of a political right, and not of a merely natural right. A man is never the better for having such natural right: admit that he has it, his condition is not in any respect different from what it would be if he had it not.

If I say a man has a right to this coat or to this piece of land, meaning a right in the political sense of the word,—what I assert is a matter of fact; namely, the existence of the disposition in question as above.

If I say a man has a natural right to the coat or the land—all that it can mean, if it mean any thing and mean true, is, that I am of opinion he ought to have a political right to it; that by the appropriate services rendered upon occasion to him by the appropriate functionaries of government, he ought to be protected and secured in the use of it: he ought to be so—that is to say, the idea of his being so is pleasing to me—the idea of the opposite result displeasing.

In the English language, an imperfection, perhaps peculiar to that language, contributes to the keeping up of this confusion. In English, in speaking of a certain man and a certain coat, or a certain piece of land, I may say it is right he should have this coat or this piece of land. But in this case, beyond doubt, nothing more do I express than my satisfaction at the idea of his having this same coat or land.

This imperfection does not extend itself to other languages. Take the French, for instance. A Frenchman will not say, *Il est droit que cet homme ait cet habit:* what he will say is, *Il est juste que cet homme ait cet habit. Cet appartient de droit a cet homme.*

If the coat I have on is mine, I have a *right* by law to knock down, if I can, any man who by force should attempt to take it from me; and this right is what in any case it can scarcely be but that a man looks to when he says, *I have a right* to a constitution, to such or such an effect—or a right to have the powers of government arranged in such manner as to place me in such or such a condition in respect of actual right, actually established rights, political rights.

To engage others to join with him in applying force for the purpose of putting things into a state in which he would actually be in possession of the right, of which he thus pretends to be in possession, is at bottom the real object and purpose of the confusion thus endeavoured to be introduced into men's ideas, by employing a word in a sense different from what it had been wont to be employed, and from thus causing men to accede in words to positions from which they dissent in judgment.

This confusion has for its source the heat of argument. In the case of a political right, when the existence of it is admitted on all sides, all dispute ceases. But when so it is that a man has been contending for a political right which he either never has possessed, or having in his possession, is fearful of losing, he will not quietly be beaten out of his claim; but in default of the political right, or as a support to the political right, he asserts he has a natural right. This imaginary natural right is a sort of thread he clings by:—in the case in question, his having any efficient political right is a supposed matter of fact, the existence of the contrary of which is but too notorious; and being so, is but too capable of being proved. Beaten out of this ground, he says he has a natural right—a right given him by that kind goddess and governess Nature, whose legitimacy who shall dispute? And if he can manage so as to get you to admit the existence of this natural right, he has, under favour of this confusion, the hope of

getting you to acknowledge the existence of the correspondent political right, and your assistance in enabling him to possess it.

It may, however, be said, to deny the existence of these rights which you call imaginary, is to give a *carte blanche* to the most outrageous tyranny. The rights of man anterior to all government, and superior as to their authority to every act of government, these are the rampart, and the only rampart, against the tyrannical enterprises of government. Not at all—the shadow of a rampart is not a rampart;—a fiction proves nothing—from that which is false you can only go on to that which is false. When the governed have no right, the government has no more. The rights of the governed and the rights of the government spring up together;—the same cause which creates the one creates the other.

It is not the rights of man which causes government to be established:—on the contrary, it is the non-existence of those rights. What is true is, that from the beginning of things it has always been desirable that rights should exist—and *that* because they do not exist; since, so long as there are no rights, there can only be misery upon the earth—no sources of political happiness, no security for person, for abundance, for subsistence, for equality:—for where is the equality between the famished savage who has caught some game, and the still more famishing savage who is dying because he has not caught any?

Law supposes government: to establish a law, is to exercise an act of government. A law is a declaration of will—of a will conceived and manifested by an individual, or individuals, to whom the other individuals in the society to which such will has respect are generally disposed to obey.

Now government supposes the disposition to obedience:—the faculty of governing on the one part has for its sole efficient cause, and for its sole measure, the disposition to obey on the other part.

This disposition may have had for its cause either *habit* or *convention:* a convention announces the will of one moment, which the will of any other moment may revoke;—habit is the result of a system of conduct of which the commencement is lost in the abyss of time. A convention, whether it have ever yet been realized or not, is at least a conceivable and possible cause of this disposition to obedience, from which government, and what is called political society, and the only real laws, result. Habit of obedience is the cause, a little less sure—the foundation, a little less solid, of this useful, social, disposition, and happily the most common.

The true rampart, the only rampart, against a tyrannical government has always been, and still is, the faculty of allowing this disposition to obedience—without which there is no government—either to subsist or to cease. The existence of this faculty is as notorious as its power is efficacious.

Shall this habit of obedience be continued unbroken, or shall it be discontinued upon a certain occasion? Is there more to be gained than to be lost in point of happiness, by its discontinuance? Of the two masses of evil,—intensity, duration, certainty, all

included—which appears to be the greatest, that to which one believes one's self exposed from continued obedience, or that to which one believes one's self exposed by its discontinuance?

On which side is the greatest probability of success? On the side of the satellites of the tyrant, who will endeavour to punish me in case of disobedience? or on the side of the friends of liberty, who will rally around me to defend me against oppression?

It is an affair of calculation: and this calculation each one must make for himself according to circumstances. It is also a calculation that no one can fail to make, either ill or well, whatever may be the language he employs, or whosoever he may be.

But this calculation is not sufficiently rapid for those who choose for their amusement the destruction and reconstruction of governments. Rights of men strongly asserted, but ill-defined, never proved; rights of men, of which every violation is an act of oppression—rights ready to be violated at every moment—rights which the government violates every time it does anything which displeases you—right of insurrection ready to be exercised the first moment that oppression occurs;—this is the only remedy which suits those who would make equality to flourish at any rate, by taking the power of governing for themselves, and leaving obedience for all others.

It is the weakness of the understanding which has given birth to these pretended natural rights; it is the force of the passions which has led to their adoption, when, desirous of leading men to pursue a certain line of conduct which general utility does not furnish sufficient motives to induce them to pursue, or when, having such motives, a man knows not how to produce and develope them, yet wishes that there were laws to constrain men to pursue this conduct, or what comes to the same thing, that they would believe that there were such laws,—it has been found the shortest and easiest method to imagine laws to this effect.

Behold the professors of natural law, of which they have dreamed—the legislating Grotii—the legislators of the human race: that which the Alexanders and the Tamerlanes endeavoured to accomplish by traversing a part of the globe, the Grotii and the Puffendorffs would accomplish, each one sitting in his arm chair: that which the conqueror would effect with violence by his sword, the jurisconsult would effect without effort by his pen. Behold the goddess Nature!—the jurisconsult is her priest; his idlest trash is an oracle, and this oracle is a law.

The jurisconsult in his arm-chair is an individual sufficiently peaceable: he lies,—he fabricates false laws in the simplicity of his heart;—desirous of doing something, ignorant how to do better, hoping to do well, he would not willingly injure any one. From his hands the instruments he employs have passed into hands of a far different temper.

The invention was fortunate: it spared discussion—it saved research and reflection—it did not require even common sense—it spared all forbearance and toleration:—what the oath is on the part of the footpad who demands your purse, the rights of man have been in the mouth of the terrorist.

Those who govern allege legal rights—the rights of the citizen—real rights: those who wish to govern allege natural rights—the rights of man—counterfeit rights—rights which are sanctioned by the knife of the assassin, as well as the gibbet and the guillotine.

Those to whom the faculty of making these imaginary laws, instead of real laws, has been transferred, have not much trouble in making them. Constitutions are made as easily as songs: they succeed each other as rapidly, and are as speedily forgotten.

For the making of real laws, talent and knowledge are requisite: for making real laws good or bad, labour and patience are requisite: but for the making of forgeries sources of the rights of man, nothing more is required than ignorance, hardihood, and impudence.

Rights of men, when placed by the side of legal rights, resemble assignats, whether false or genuine, placed by the side of guineas or Louis dor.

Two passions have laid claim to the giving birth to the declarations of rights—to the substitution, of the declaration of particular rights to the preparation of real laws—vanity and tyranny: vanity, which believes it can lull the world asleep, by being the first to do what all the world has always had before its eyes—tyranny, glad of finding a pretext for punishing all opposition, by directing against it the force of public hatred. Rights, there you have them always before your eyes: to deny their existence, is either to exhibit the most notorious bad faith or the most stupid blindness; the first a vice which renders you deserving of the indignation of all men—the other a weakness which consigns you to their contempt.

It is because without rights there can be no happiness, that it is at any rate determined to have rights: but rights cannot be created without creating obligations: it is that we may have rights, that we submit to obligations; and in respect to obligations, not to those alone which are strictly necessary for the establishment of the rights of which we feel the want, but also obligations such as those which may result from all the acts of authority exercised by government, which the general habit of obedience allows it to exercise.

The end of all these acts of authority should be to produce the greatest possible happiness to the community in question.

This is the true, and the only true end of the laws. Still, of the operations by which it is possible to conduct men towards this end, the effect—the constant, necessary, and most extensive effect, is to produce evil as well as good; to produce evil, that good may be produced, since upon no other conditions can it be produced.

The mystic tree of good and evil, already so interesting, is not the only one of its kind: life, society, the law, resemble it, and yield fruits equally mixed. Upon the same bough are two sorts of fruits, of which the flavour is opposite—the one sweet and the other bitter.

The sweet fruits are *benefits* of all kinds—the bitter and thorny fruits are burthens. The benefits are *rights,* which under certain circumstances are called *powers*—the burthens are *obligations—duties*.

These products, so opposed in their nature, are simultaneous in their production, and inseparable in their existence. The law cannot confer a benefit, without at the same time imposing a burthen somewhere;—it cannot create a right, without at the same time creating an obligation—and if that right be of any value, even a numerous train of obligations.

But if among these moral as well as among physical products, the sweet cannot exist without the bitter,—the bitter can exist—it exists too often—without the sweet. Such is the case with those obligations which may be called pure or barren, which are not accompanied by rights, those benefits, those advantages, which sweeten and conceal the bitterness:—obligations which are fulfilled by useless efforts or sufferings, the fruit of every law produced by tyranny, neglecting or despising the counsels of utility, and yield-to the suggestions of caprice—unless the gratification of this caprice can be considered as a benefit.

Benefits being in themselves good, the well-instructed legislator (I mean, directed by utility) would create and confer them freely with pleasure. If it depended upon himself, he would produce no other fruits: if he could produce them in infinite quantity—he would accumulate them in the bosom of society; but as the inexorable law of nature is opposed to this course, and he cannot confer benefits without imposing burthens, all that he can do is to take care that the advantage of the benefit exceed the disadvantage of the burthen, and that this advantage be as great, and the disadvantage as small, as possible.

When, in order that a burthen may produce its effect—that the advantage expected from it may be produced, it is necessary that its weight be felt, it is called punishment.

It is thus that the non-penal branch of the law and the penal are both of them occupied in the establishing and securing every man in possession of his rights of all sorts. These rights are so many instruments of felicity—they are the instruments of whatsoever felicity a man can derive from government.

A man's political rights are either his private rights, or his constitutional rights. Under every form of government, every man has his private rights;—but there are forms of government, in which no man but one, or some other comparatively small number, have any constitutional rights.

Of private rights these five sorts have been distinguished:—1. Rights as to person; 2. Rights as to property; 3. Rights as to power; 4. Rights as to reputation; 5. Rights as to condition in life.

All these rights have for their efficient cause certain services, which by a general and standing disposition on the part of the functionaries of government in the supreme grade are understood to have been rendered to every man, and which, in consequence,

on each particular occasion the functionaries of judicature, and upon occasion the functionaries belonging to the army, hold themselves in readiness to render to him. These services consist in the giving execution and effect to all such ordinances of the government as have been made in favour and for the benefit of every individual situated in the individual situation in which in all respects he is situated.

In virtue and by means of that same standing and all-comprehensive service, the supreme rulers have given the name of *wrong,* and the name, quality, and consequence of an *offence,* to every act by which any such right is understood to have been broken, infringed, violated, invaded. In giving it the name of an offence, they have made provision of pain under the name of punishment, together with other means of repression, for the purpose of preventing the doing of it, or lessening as far as may be the number of instances in which it shall be done.

Rights are, then, the fruits of the law, and of the law alone. There are no rights without law—no rights contrary to the law—no rights anterior to the law. Before the existence of laws there may be reasons for wishing that there were laws—and doubtless such reasons cannot be wanting, and those of the strongest kind;—but a reason for wishing that we possessed a right, does not constitute a right. To confound the existence of a reason for wishing that we possessed a right, with the existence of the right itself, is to confound the existence of a want with the means of relieving it. It is the same as if one should say, *everybody is subject to hunger, therefore everybody has something to eat.*

There are no other than legal rights;—no natural rights—no rights of man, anterior or superior to those created by the laws. The assertion of such rights, absurd in logic, is pernicious in morals. A right without a law is an effect without a cause. We may feign a law, in order to speak of this fiction—in order to feign a right as having been created; but fiction is not truth.

We may feign laws of nature—rights of nature, in order to show the nullity of real laws, as contrary to these imaginary rights; and it is with this view that recourse is had to this fiction:—but the effect of these nullities can only be null.

3. *Possession.*—"Better," says a maxim of the old Roman, called civil law—"better (meaning in comparison with that of any other person,) is the condition of the possessor"—better his condition, that is to say, better the ground and reason which a person in his situation is able to make for the enjoyment of the thing, than any that can be made by any one else.

Of the propriety and reasonableness of this notion, scarcely by any one who hears of it, how far soever from being learned, can a sort of feeling fail of being entertained—by no one, even of the most learned, has expression, it is believed, been ever given to it. This omission the greatest-happiness principle, and that alone, can supply. In the case of loss of the possession, he who has the possession would feel a pain of privation—or say, regret, more acute—than a man of the same turn of mind, whose expectation of obtaining it was no stronger than the possessor's expectation of keeping it, would, in the event of his failing to obtain possession of it.

Of so many hundred millions of persons, each of whom, in case of his having had possession of the thing and then lost it, would upon the losing of it have felt pain in a certain shape proportioned to the value of the thing, not one feels pain in any shape at the thoughts of not having it: not one of them but might, in the shape in question, feel pain in any quantity more or less considerable, if after having the thing in possession, he were, without receiving or expecting any equivalent for it, to cease to have it.

The horse you have bred, and still keep in your stable, is yours. How is it constituted such—constituted by law? Answer: The naked right—the right of making use of it, the law has left you in possession of;—to wit, by the negative act of forbearing to inhibit you from using it: the established right, the law has conferred upon you by the order given to the judge to punish every person who shall disturb or have disturbed you in the use of it.

The horse which was yours, but by the gift you have made of it is become the horse of a friend of yours,—how has it been constituted such—constituted by law? Answer: By a *blank* left as it were in the command to the judge,—that blank being left to be filled up by you in favour of this friend of yours, or any other person to whom it may happen to be your wish to transfer the horse, either gratuitously or for a price.

So long as the law in question has this blank in it, it is an incompleted, an imperfect law—it waits an act on your part to render it a perfect one. The law in its completed state is the result of two functions, into which the legislative function in this case is divided—the initiative to it, and the consummative. By the legislator, the initiative is exercised—by you, the consumative.

In the same way in which, according to this example, rights and powers are given to individual persons, they may be and are given to classes of persons. On classes of persons, the correspondent obligations not only may, but must be imposed: in short, exceptions excepted, they must be imposed on all persons of all classes;—for supposing but a single person excepted from the obligation, your right is not entire,—it is shared by you with the person so excepted. If, for example, in transferring the horse to your friend, you kept yourself from being included in the obligation to abstain from the use of the horse—if, in a word, you kept yourself excepted from the obligation imposed on other persons in general, the horse is not your friend's alone, any more than yours; but, in the language of English law, you and he are joint tenants of the horse.

4. *Power.*—In common speech, the word power is used in two senses;—to wit, the above sense, which may be-called the proper and legal sense—and another sense more ample, which may be styled the popular sense.

In the strictly legal sense, which is used in the penal and civil branches of law—in the popular sense, which is used in the constitutional branch.

In both cases, the fruit of the exercise of the power is looked to, and that fruit is compliance: on the part of the person subject to power, compliance with the wishes

expressed, or presumed to be entertained, by the person by whom the power is possessed. For convenience of discourse, say in one word the *power-holder.*

The force of the remunerative sanction, it has above been observed, is not sufficient to constitute an obligation; it is, however, in a certain sense, sufficient, as everybody knows, to constitute power: the effect of power is produced, in so far as, by the will declared or presumed of him who in this sense is the power-holder, compliance is produced.

Power may be defined to be the faculty* of giving determination either to the state of the passive faculties, or to that of the active faculties, of the subject in relation to and over which it is exercised;—say the correlative subject.

Power is either coercive or allocative.

Coercive power is either restrictive or compulsive.

Of the correlative subject, the passive faculties are either insensitive or sensitive.

If merely insensitive, it belongs to the class of inanimate beings, and is referred to the still more general denomination of things.

If sensitive, to the class of animals.

If the animals of the class in question are considered as belonging to the class of reasonable beings, the correlative subject is a person—including human beings of both sexes and all ages.

If considered as irrational, it has hitherto by lawyers been confounded with inanimate beings, and comprehended under the denomination of things.

In so far as the power is exercised with effect, the possessor of the power—say the power-holder—may, relation had to the correlative subject, be termed the *director*—the correlative subject the *directee.*

5. *Command.*—An instrument which as above has been mentioned as necessary to the generation of the fictitious entities, called a right and a power, is, as has been seen, a command. But a command is a discourse, expressive of the wish of a certain person, who, supposing his power independent of that of any other person, and to a certain extent sufficiently ample in respect of the subject-matters—to wit, persons, things moveable and immoveable, and acts of persons, and times—is a legislator;—say a legislator in the singular: for simplicity sake, the case of a division of the legislative power among divers persons or classes of persons, may on this occasion be put aside.

6. *Quasi Commands.*—Now then comes a doubt, and with it a question:—in the state of things you have hitherto been supposing, the law in question is of that sort called statute law: and in the case of statute law the print of a command is sufficiently visible. But obligations are created—rights established, not only by statute law, but by another species of law called common law: Where in this case is the

command?—where is the person by whom it has been issued?—where, in a word, is the legislator? The judge is not a legislator. Far from claiming so to be, he would not so much as admit himself to be so: he puts aside, if not the function, at any rate the name.

Hitherto we have been in the region of realities: we are now of necessity transported into the region of fictions. In the domain of common law, everything is fiction but the power exercised by the judge.

On each occasion the judge does, it is true, issue a command:—this command is his decree; but this decree he on every occasion confesses he would not on any occasion have the power of issuing with effect, were it not for a command, general in its extent, and in such sort general as to include and give authority to this individual decree of his.

To be what it is, a command, general or individual, must be the command of some person. Who in this case is this person? Answer: Not any legislator; for if it were, the law would be a statute law. A person being necessary, and no real one to be found, hence comes the necessity of a fictitious one. The fictitious one, this fictitious person, is called the common law—or more generally, that he may be confounded with the real person in whose image he is made, *the law.*

To warrant the individual decree which he is about to pronounce, the judge comes out with some general proposition, saying, in words or in effect, *thus saith*The Law. On the occasion of the issuing of this sham law, the pretext always is, that it is but a copy of a proposition, equally general, delivered on some former occasion by some other judge or train of successive judges.

In this proposition there may be or may not be a grain of truth, but whether there be or be not, the individual decree has in both cases alike the effect of a law—of a real law—issued by a legislator avowing himself such, and acknowledged as such.

A command being the generic name of the really existing instrument of power called *a law,* let *a quasi command* be the name of that counterfeit instrument feigned to answer the purpose of it, to produce the effects of it, for the purpose of enabling the judge to produce, in the way of exacting compliance, the effect of a law.

Of this appellation the use and need will be seen in the procedure code, on the occasion of the formula called the demand paper, provided for the purpose of giving commencement to a suit in that same code.*

Supposing the connexion between a command in the mandatory form, and a proposition in the assertive form, made out and explained: whatsoever proposition would, if emanating from the legislator, have constituted an apposite ground for the *demand*—to wit, the demand made in the *demand paper,* elsewhere spoken of—a proposition to that same effect might equally well serve, if stated as being a proposition conformable to the doctrine of the common law. In the one case, the proposition would be a reality, in the other case a fiction: in the one case, what were

the proper words of it could not be a subject-matter of dispute; in the other case it might, and would frequently be the subject-matter of dispute: still, however, in the character of a ground of inference, it would in both cases be equally intelligible.

Be this as it may—not to the plan here proposed would the imperfections of this part of the instrument of demand with propriety be ascribable. The root of the imperfection is in the very nature of the common law. To its supreme inaptitude, by the proposed instrument, such remedy as the nature of the case admitted is applied, and the use thus made of the common law is the result—not of choice, but of unresistible necessity. How sadly inadequate a portion of this fictitious law is, in the character of a succedaneum, to a correspondent and equivalent portion of real law, would on each occasion be visible to every eye; and as often as it came under the eye, so often would the urgency of the demand for the substitution of real to sham law be forced upon the attention. What would be in the power of the legislature to do at any time, and in the compass of a day, is to substitute this plain speaking form of demand to the existing absurd and deceptious one: what it is not in his power to do in the compass of a day, nor perhaps till at the end of some years, is the complete substitution of real to sham and impostor's law,—substitute, and audacious rival of the only genuine law.

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CHAPTER IV.

AXIOMS.

§ 1.

Axioms Of Mental Pathology—A Necessary Ground For All Legislative Arrangements.

By an axiom of mental pathology, considered as a ground for a legislative arrangement, understand a proposition expressive of the consequences in respect of pleasure or pain, or both, found by experience to result from certain sorts of occurrences, and in particular from such in which human agency bears a part: in other words, expressive of the connexion between such occurrences as are continually taking place, or liable to take place, and the pleasures and pains which are respectively the results of them.

Practical uses of these observations, two:—1. With regard to pleasures, the learning how to leave them undisturbed, and protected against disturbance—(for as to the giving increase to them by the power of the legislator to anything beyond a very inconsiderable amount, it is neither needful nor possible;) 2. With regard to pains, the learning how on each occasion to minimize the amount of them in respect of magnitude and number—number of the individuals suffering under them—magnitude of the suffering in the case of each individual.

Arithmetic and medicine—these are the branches of art and science to which, in so far as the maximum of happiness is the object of his endeavours, the legislator must look for his means of operation:—the pains or losses of pleasure produced by a maleficent act correspond to the symptoms produced by a disease.

Experience, observation, and experiment—these are the foundations of all well-grounded medical practice: experience, observation, and experiment—such are the foundations of all well-grounded legislative practice.

In the case of both functionaries, the subject-matter of operation and the plan of operation is accordingly the same—the points of difference these:—In the case of the medical curator, the only individual who is the subject-matter of the operations performed by him, is the individual whose sufferings are in question, to whom relief is to be administered. In the case of the legislator, there are no limits to the description of the persons to whom it may happen to be the subject-matter of the operations performed by him.

By the medical curator, no power is possessed other than that which is given either by the patient himself, or in case of his inability, by those to whose management it

happens to him to be subject:—by the legislatorial curator, power is possessed applicable to all persons, without exception, within his field of service; each person being considered in his opposite capacities—namely, that of a person *by whom* pleasure or pain, or both, may be experienced, and that of a person *at whose hands* pleasure or pain, or both, may be experienced.

Axioms of *corporal* pathology may be styled those most extensively applicable positions, or say propositions, by which statement is made of the several sorts of occurrences by which pleasure or pain are or have place in the human body:—as also, the results observed to follow from the performance of such operations as have been performed, and the application made of such subject-matters as have been applied for the purpose of giving increase to the aggregate of pleasure, or causing termination, alleviation, or prevention, to have place in regard to pain.

Axioms of *mental* pathology may be styled those most commonly applicable propositions by which statement is made of the several occurrences by which pleasure or pain is made to have place in the human mind:—as also, the results observed to follow from the performance of such operations as have been performed, and the application of such subject-matters as have been applied for the purpose of effecting the augmentation of the aggregate of the pleasures, or the diminution of the aggregate of the pains, by the termination, alleviation, or prevention of them respectively, when individually considered.

Security—subsistence—abundance—equality—*i. e.* minimization of inequality:—by these appellatives, denomination has been given to the particular ends which stand next in order to the universal, and the greatest happiness of the greatest number. This being admitted, these are the objects which will be in view in the formation of the several axioms of pathology which present themselves as suitable to the purpose of serving as guides to the practice of the legislatorial curator.

Unfortunately, on this occasion, the imperfection of language has produced an embarrassment, which it does not seem to be in the power of language altogether to remove: all that can be done, is to lessen and alleviate it.
Subsistence—abundance—equality,—these three immediately subordinate ends are conversant about the same matter; to wit, the matter of wealth. But security, besides a matter of its own, is conversant with that same matter, with which, as above, they are conversant; to wit, the matter of wealth: security for the matter of wealth—or say, to each individual, security for that portion of the matter of wealth which at the time in question belongs to him, and is called his. Security is accordingly security against all such maleficent acts by which any portion of the matter of wealth which ought to be at the disposal of the individual in question, is prevented from being at his disposal at the time in question. Now, the not having at his disposal at the time in question a certain portion of the matter of wealth, is indeed one efficient cause of pain to the individual in question, be he who he may, but it is but one out of several. In addition to the matter of wealth, sources of pleasure, and of exemption from pain, are certain others which have been found reducible under the following denomitions; to wit, power, reputation, and condition in life:—condition in life, to wit, in so far as, reference had to the individual whose it is, the effect is considered as beneficial—this

complex subject-matter including in it the three subject-matters above mentioned—that is to say, the matter of wealth, or in two words, power and reputation.

Correspondent to these several subject-matters of security are so many classes of offences—of maleficent acts, by the performance of which such security is disturbed. Offences affecting property—offences affecting power—offences affecting reputation—offences affecting condition in life.

But all these subject-matters are, with reference to the individual in question, distinct from him, and exterior to him;—and in a more immediate way—and otherwise than through the medium of any of these outworks, he stands exposed to be made to suffer pain, as well of mind as of body, by the agency of every other individual, in whose instance a motive adequate to the purpose of producing an act by which it will be inflicted, has place. Thus, then, in addition to offences affecting property—offences affecting power—offences affecting reputation—offences affecting condition in life,—we have offences affecting person, considered with reference to its two distinguishable parts, body and mind.

So many of these classes of maleficent acts, so many branches of security: in which list, as being the most obviously and highly important, and most simple in the conception presented by it, security *against* maleficent acts affecting *person*—more shortly, security for person, presents itself as claiming to occupy the first place; after which, security for property, and so forth, as above.

§ 2.

Axioms Applicable To Security For Person.

Axioms forming the grounds for such legislative arrangements as have for their object and their justification, the affording security for person against such maleficent acts, to which it stands exposed.

1. The pleasure derivable by any person from the contemplation of pain suffered by another, is in no instance so great as the pain so suffered.

2. Not even when the pain so suffered has been the result of an act done by the person in question, for no other purpose than that of producing it.

Hence, one reason for endeavouring to give security against pain of body or mind, resulting from human agency, whether from design or inattention.

Now, suppose the pain to be the result of purely natural agency,—no human agency having any part in the production of it—no human being deriving any satisfaction from the contemplation of it,—the result is still the same.

Hence one reason for endeavouring to give security against pain of body or mind resulting from casualty, or as the word is, when the evil is considered as having place upon a large scale,—*calamity.*

Axiom indicative of the reasons which form the grounds of the enactments prohibitive of maleficent acts, productive of evil, affecting persons—that is to say, either in body or mind—in any mode not comprised in one or other of the modes of maleficence from which the acts constituted offences in and by the penal code receive their denomination, viz. Offences produced by the irascible appetite:—

When by one person, without gratification sought other than that derived from the contemplation of suffering in this or that shape, as about to be produced on the part of that other gratification in a certain shape, is accordingly produced in the breast of such evil doer,—call the gratification the pleasure of *antipathy satisfied*—or of *ill-will satisfied.*

If this antipathy has had its rise in the conception that by the party in question (say the victim), evil in any shape has been done to the evil doer,—the pleasure of antipathy gratified takes the name of the pleasure of *vengeance*—or say *revenge.*

Axiom. In no case is there any reason for believing that the pleasure of antipathy gratified is so great as the pain suffered by him at whose expense, as above, the pleasure is reaped.

Offences to which the axiom applies are—1. Offences affecting body; 2. Offences affecting the mind other than those belonging to the other classes; 3. Offences affecting reputation—the reputation of the sufferer—other than those by which the reputation of the evil doer is increased; 4. Offences affecting the condition in life of the sufferer, other than those by which the reputation of the evil doer is increased or expected to be increased.

For justification of the legislative arrangements necessary to afford security against maleficent acts affecting the person, what it is necessary to show is, that by them pain will not be produced in such quantity as will cause it to outweigh the pleasure that would have been produced by the maleficent acts so prevented.

For this purpose, in order to complete the demonstration and render it objection-proof, in certain cases, it will be necessary to take into account not only the evil of the first order, but the evil of the second order likewise.

First, then, considering the matter on the footing of the effects of the first order on both sides,—Axioms bearing reference to the effects of the first order on both sides, are the following:—

Axioms serving as grounds and reasons for the provision made by the legislator for general security;—to wit, against the evils respectively produced by the several classes and genera of offences.

Case 1. An offence affecting person, or say corporal vexation, in any one of its several shapes—offender's motive, ill-will or spite—the enjoyment of the offender will not be so great as the evil of the first order, consisting in the suffering experienced by the party vexed.

Case 2. So if the offence be an offence productive of mental vexation—and the motive the same.

Case 3. So if the offence be an offence affecting reputation.

Case 4. So, exceptions excepted, in the case of every other class or genus of offences, the motive being ill-will or spite, as above.

Case 5. Exceptions are among offences affecting person and reputation jointly, the offences having for their motive sexual desire; to wit—1. Sexual seduction, allurative, or say enticitive; 2. Sexual seduction compulsory; 3. Rape; 4. Vexatious lascivious contrectation.

In any of these cases, what may happen is—that the enjoyment of the offender may be equal or more than equal to the suffering of the party wronged; in either of which cases the evil of the first order has no place. But to all other persons, the suffering of the one part will present itself as being to an indefinite degree greater than the enjoyment of the offender and proportioned to the apparent excess will be the actual alarm on the part and on behalf of persons exposed to the like wrong from the same cause: and thence, so far as regards alarm, will be the evil of the second order.

Addendum to security axioms:—

Be the modification of the matter of prosperity what it may, by losing it without an equivalent, a man suffers according to, and in proportion to, the value of it in his estimation—the value by him put upon it.

Value may be distinguished into—1. General, or say value in the way of *exchange;* and 2. Special, or say idiosyncratical—value in the way of *use* in his own individual instance.

Note, that the value of a thing in the way of exchange arises out of, and depends altogether upon, and is proportioned to, its value in the way of use:—for no man would give anything that had a value in the way of use in exchange for anything that had no such value.

But value in the way of use may be distinguished into *general,* which has place so far as, and no further than, the thing is of use to persons in general—and *special* or idiosyncratical, which has place in so far as, in the case of this or that person in particular, the thing has a value in the way of use over and above the value which it has in the case of persons in general: of which use, that of the *pretium affectionis,* the *value of affection,* is an example.

Definition: When from any cause—human agency or any other—a mass of the matter of wealth, or of the matter of prosperity in any other shape, is made to go out of an individual's possession or expectancy without his consent, the pain produced in his breast by contemplation of its non-existence, or say by the loss of it, call *the pain of disappointment:* he being disappointed at the thought of the good which, it having been in his possession or expectancy, he has thus lost.

Among the objects of law in every community, is the affording security against this pain in this shape.

Axiom: The pleasure of antipathy or revenge produced in the breast of the evil-doer by the contemplation of a pain of disappointment produced in the breast of the sufferer, is not in any case so great in magnitude as that same pain.

To this axiom corresponds, as being thereon grounded, a fundamental principle entitled the *disappointment-preventing principle.*

Operation necessary for the establishment and continuance of security,—Fixation of the text of the laws.

For leading expectation, the law need only be exhibited, provided that it be clear, and not too vast for comprehension. But that it may be exhibited, it is necessary that it exist. The greatest and most extensive cause of regret respecting English law, is,—that as respects a large portion, it has no existence. Instead of laws, it cannot even be said that we possess shadows of law:—shadows imply substances by which they are formed;—all that we possess is a *phantom,* conjured up by each one at his pleasure, to fill the place of the law. It is of these phantoms that *common law, unwritten, judge-made* law, is composed.

A discussion upon a point of unwritten or common law has been defined *a competition of opposite analogies.* In giving this definition, the most severe and well-deserved censure was passed both upon this species of law, and upon the carelessness of the legislators who have tolerated its pernicious existence—who have allowed the security of their fellow-citizens to remain without foundation, tossed about by the interminable and always shifting competition of opposite analogies,—who have left it upon a quicksand, when they might have placed it upon a rock.

§ 3.

Axioms Pathological, Applicable To Subsistence.

Axiom 1. Though to each individual his own subsistence be, by the nature of man, rendered the chief object of his care, and during his infancy an object of care to the author of his existence, yet a considerable portion of the aggregate number of the members of the community there will always be, in whose instance a subsistence cannot have place (without the legislator's care) without provision made by the legislator to that effect.

2. For the subsistence of all, and accordingly of these, provision will to a certain degree have been made by the provision for security in all its shapes, and for security of property in particular: as also for abundance; for abundance, because of the abundance possessed by some is composed a stock, a fund, out of which matter is capable of being taken applicable to the purpose of affording, whether immediate or through exchange, subsistence to others. But for the subordinate end to the purpose here in question, the utmost of what can be done for these two other subordinate ends, taken together, will not of itself be sufficient.

Of the nonpossession of the matter of subsistence in such quantity as is necessary to the support of life, death is the consequence: and such natural death is preceded by a course of suffering much greater than what is attendant on the most afflictive violent deaths employed for the purpose of punishment.

Rather than continue to labour under this affliction, individuals who are experiencing it will naturally and necessarily, in proportion as they find opportunity, do what depends upon them towards obtaining, at the charge of others, the means of rescuing themselves from it: and in proportion as endeavours to this purpose are employed, or believed to be intended to be employed, security for property is certainly diminished—security for person probably diminished on the part of all others.

By the coercive authority of the legislator provision cannot be made for the indigent, otherwise than by defalcation from the mass of the matter of abundance possessed by the relatively opulent, nor yet, without a correspondent defalcation more or less considerable, from security for property on their part.

In every habitable part of the earth, people, so soon as they behold themselves and their eventual offspring secured against death for want of the matter of subsistence, which security cannot be afforded otherwise than by correspondent defalcation from the matter of abundance in the hands of the relatively opulent, will continue to effect addition to the number of its inhabitants. But this augmentation thus produced will proceed with much greater rapidity than any addition that can be made to the quantity of the matter of subsistence possessed, as above, by the indigent, by defalcation made at the expense of security for property, as well as from the matter of abundance, by correspondent defalcation from the matter of abundance in the hands of the relatively opulent.

The consequence is, that sooner or later, on every habitable part of the earth's surface, the community will be composed of three classes of inhabitants:—1. Those by whom, with the addition of more or less of the matter of abundance, the matter of subsistence is possessed in a quantity sufficient for the preservation of life and health;—2. Those who, being in a state in which they are perishing for want of the matter of subsistence, are on their way to speedy death;—3. Those who to save themselves from impending death are occupied in waging war upon the rest, providing the means of subsistence for themselves at the expense of the security of all, and the matter of subsistence and abundance in the possession of all.

So long as by arrangements taken for the purpose by government, the thus redundant part of the population can be cleared off by being conveyed from the habitable part of the globe in question to some other part, these two classes of quickly perishing individuals may be prevented from receiving formation, or if formed, from receiving increase. But in no one part of the habitable globe can this be done by government without expense, nor the matter of expense be obtained without defalcation made from security, and suffering from loss, by forced contribution as above; and sooner or later, in proportion as property and security for property establishes itself, the whole surface of the habitable globe cannot but be fully peopled, in such sort, that from no one spot to any other could human creatures be transplanted in a living and about to live state.

Human benevolence can, therefore, hardly be better employed than in a quiet solution of these difficulties, and in the reconciliation of a provision for the otherwise perishing indigent, with this continual tendency to an increase in the demand for such provision.

§ 4.

Axioms Applying To Abundance.

1. Included in the mass of the matter of abundance, is the mass of the matter of subsistence. The matter of wealth is at once the matter of subsistence and the matter of abundance: the sole difference is the quantity;—it is less in the case of subsistence—greater in the case of abundance.

2. If of two persons, one has the minimum of subsistence without addition,—and the other, that same minimum with an addition,—the former has the matter of subsistence, the latter the matter of abundance:—understand, in comparison with him who has nothing beyond the minimum of the matter of subsistence,—the term abundance being a comparative, a relative term.

3. The matter of subsistence being, in the instance of each individual, necessary to existence, and existence necessary to happiness,—suppose a quantity of the matter of wealth sufficient for the subsistence of 10,000 persons, at the disposition of the legislator;—more happiness will be producible, by giving to each one of the 10,000 a particle of the matter of subsistence, than by giving to 5000 of them a portion of the matter of abundance composed of two particles of the matter of subsistence, and then giving none to the remaining 5000: since, on that supposition, the 5000 thus left destitute would soon die through a lingering death.

4. But suppose that, after giving existence to the 10,000, and to each of them a particle of the matter of subsistence, the legislator have at his disposal a quantity of the matter of wealth sufficient for the subsistence of other 10,000 persons, and that he have the option—of either giving existence to an additional number of persons to that same amount, with a minimum of the matter of subsistence to each,—or instead, without making any addition to the first 10,000, of giving an addition to the quantity of wealth

possessed by them,—a greater addition to the aggregate quantity of happiness would be made by dividing among the first 10,000 the whole additional quantity of wealth, than by making any addition to the number of persons brought into existence. For, supposing the whole 10,000 having each of them the minimum of the matter of subsistence on any given day,—the next day, in consequence of some accident, they might cease to have it, and in consequence cease to have existence: whereas, if of this same 10,000, some had, in addition to his minimum of the matter of subsistence, particles one or more of the matter of abundance, here would be a correspondent mass of the matter of wealth, capable of being by the legislator so disposed of as to be made to constitute the matter of subsistence to those who, otherwise being without subsistence, would soon be without existence.

5. Not that, as between the matter of subsistence, and the matter of abundance, the identity is other than virtual—identity with reference to the purpose here in question, to wit, the effect on happiness;—and this virtuality depends upon the facility of obtaining one of the sorts of matter necessary to subsistence, in exchange for matter neither necessary, nor so much as contributing to subsistence—potatoes, for example, in exchange for coin; but so far as is necessary to the guidance of the legislator's practice, this virtual identity always has had, and is likely always to have place.

6. Thus it is that the matter of abundance, as contradistinguished from the matter of subsistence, is contributory to happiness, in three distinguishable ways or capacities:—1. As contributing in a direct way to enjoyment, in a degree over and above what could be contributed by the mere matter of subsistence; 2. As contributing in an indirect way to security, to wit, by its capacity of serving, in the way of exchange, for the obtainment of the efficient instruments of security in any of these shapes; 3. As eventually contributing, in the same indirect way, to subsistence.

§ 5.

*Axioms Applying To Equality,*In Respect Of Wealth.*

I. Case or state of things the first.—The quantities of wealth in question, considered as being in a quiescent state, actually in the hands of the two parties in question: neither entering into, nor going out of the hands of either.

1. *Cæteris paribus,*—to every particle of the matter of wealth corresponds a particle of the matter of happiness. Accordingly, thence,

2. So far as depends upon wealth,—of two persons having unequal fortunes, he who has most wealth must by a legislator be regarded as having most happiness.

3. But the quantity of happiness will not go on increasing in anything near the same proportion as the quantity of wealth:—ten thousand times the quantity of wealth will not bring with it ten thousand times the quantity of happiness. It will even be matter of doubt, whether ten thousand times the wealth will in general bring with it twice the happiness.* Thus it is, that,

4. The effect of wealth in the production of happiness goes on diminishing, as the quantity by which the wealth of one man exceeds that of another goes on increasing: in other words, the quantity of happiness produced by a particle of wealth (each particle being of the same magnitude) will be less and less at every particle; the second will produce less than the first, the third than the second, and so on.

5. Minimum of wealth, say £10 per year;—greatest excess of happiness produced by excess in the quantity of wealth, as 2 to 1:—magnitude of a particle of wealth, £1 a year. On these data might be grounded a scale or table, exhibiting the quantities of happiness produced, by as many additions made to the quantity of wealth at the bottom of the scale, as there are pounds between £10 and £10,000.

II. Case, or state of things the second,—the particles of wealth about to enter into the hands of the parties in question.

1. Fortunes unequal:—by a particle of wealth, if added to the wealth of him who has least, more happiness will be produced, than if added to the wealth of him who has most.

2. Particles of wealth at the disposition of the legislator, say 10,000;—happiness of the most wealthy to that of the least wealthy, say (as per No. 5,) as 2 to 1:—by giving to each one of 10,000 a particle of wealth, the legislator will produce 5000 times the happiness he would produce by giving the 10,000 particles to one person.

3. On these data might be grounded a scale, exhibiting the quantities of happiness produced, by so many additions made as above to the minimum of wealth, to the respective happiness of any number of persons, whose respective quantities of wealth exceed one another, by the amount of a particle in each instance.

III. Case, or state of things the third,—the particles of wealth about to go out of the hands of the parties.

1. By the subtraction of a particle of the matter of wealth, a less subtraction from happiness will be produced, if made from the wealth of him who has the matter of abundance, than if from the wealth of him who has the matter of subsistence only.

2. So, if from the wealth of him who has a larger portion of the matter of abundance, than if from the wealth of him who has not so large a portion of the matter of abundance.

3. Fortunes equal, and the aggregate sum subtracted being given, the greater the number of the persons from whose wealth the subtraction is made, the less will be the subtraction thereby made from the aggregate of happiness.

4. Fortunes unequal, still less will be the subtraction of happiness, if it be in the ratio of their fortunes that the subtraction is made, the greatest quantity being subtracted from those whose fortunes are greatest.

5. A quantity of the matter of wealth may be assigned, so small, that if subtracted from the fortune of a person possessed of a certain quantity of the matter of abundance, no sensible subtraction of happiness would be the result.

6. The larger the fortune of the individual in question, the greater the probability that, by the subtraction of a given quantity of the matter of wealth, no subtraction at all will be made from the quantity of his happiness.

7. So likewise, if the ratio of the sum to be subtracted, to the aggregate mass from which it is to be subtracted, be so great, that by the subtraction of it, subtraction of a quantity, more or less considerable, cannot but be made from the aggregate of happiness,—still the larger, in the case of each individual, the aggregate of wealth is from which the subtraction is made, the less will be the quantity of happiness so subtracted, as above.

IV. Case, or state of things the fourth,—the particles of wealth about to go out of the hands of the one party into the hands of the other.

1. Fortunes equal:—take from the one party a portion of the matter of wealth and give it to the other,—the quantity of happiness gained to the gainer of the wealth will not be so great as the quantity of happiness lost to the loser of the wealth.

2. Fortunes unequal:—the poorer the loser, the richer the gainer: greater in this case is the diminution produced in the mass of happiness by the transfer, than in the last mentioned case.

3. Fortunes again unequal:—the richer the loser, the poorer the gainer: the effect produced on happiness by the transfer may in in this case be either loss or gain.

Whether it be the one or the other, will depend partly upon the degree of the inequality, partly upon the magnitude of the portion of wealth transferred. If the inequality be very small, and the wealth transferred also small, the effect produced on the sum of happiness may be loss. But if either be—much more if both be other than, very small, the effect on happiness will be gain.

4. Income of the richer, say £100,000 a-year—income of the less rich, say £99,999 a-year: wealth taken from the first, and transferred to the less rich, £1 a-year:—on the sum of happiness the effect will be on the side of loss;—more happiness will be lost by the richer than gained by the less rich.

Hence one cause of the preponderance produced on the side of evil by the practice called gaming.

5. Income of the richer loser, £100,000 a-year;—income of the less rich gainer, £10 a-year;—wealth lost to the richer, gained by the less rich, £1 a-year:—on the sum of happiness the effect will be on the side of gain. More happiness will be gained by the less rich gainer, than lost by the more rich loser.

Thus it is, that if the effects of the first order were alone taken into account, the consequence would be, that, on the supposition of a new constitution coming to be established, with the greatest happiness of the greatest number for its end in view, sufficient reason would have place for taking the matter of wealth from the richest and transferring it to the less rich, till the fortunes of all were reduced to an equality, or a system of inequality so little different from perfect equality, that the difference would not be worth calculating.

But call in now the effects of the second and those of the third order, and the effect is reversed: to maximization of happiness would be substituted universal annihilation in the first place of happiness—in the next place of existence. Evil of the second order,—annihilation of happiness by the universality of the alarm, and the swelling of danger into certainty:—Evil of the third order,—annihilation of existence by the certainty of the non-enjoyment of the fruit of labour, and thence the extinction of all inducement to labour.

Independently of the destruction which would thus be produced by carrying, or even by the known intention of carrying to its utmost possible length the equalization, or say levelling system, as above, diminution would be effected in the aggregate of happiness, by the extinction of the fund afforded by the matter of abundance for keeping undiminished the stock of the matter of wealth necessary for subsistence.

On consideration of what is stated above, it will be found that the plan of distribution applied to the matter of wealth, which is most favourable to universality of subsistence, and thence, in other words, to the maximization of happiness, is that in which, while the fortune of the richest—of him whose situation is at the top of the scale, is greatest, the degrees between the fortune of the least rich and that of the most rich are most numerous,—in other words, the gradation most regular and insensible.

The larger the fortunes of the richest are, the smaller will be the number of those whose fortunes approach near to that high level: the smaller, therefore, the number of those from whose masses of property the largest defalcation could by possibility be made:—and, moreover, the larger those masses, the greater would be the difficulty which the legislator would experience as to the obtaining at their charge such defalcation as the nature of the case would not exclude the possibility of making.

Thus, for example, it would, in case of over population, be easier in England, or even in Ireland, to ward off famine for a time, than it would be in British India.

Equality requires, that though it be at the expense of all the other members of the community, the income of those whose income is composed of the wages of labour be maximized. Reason: Of these are composed the vast majority of the whole number of the members of the community.

Exceptions excepted, equality requires that the profits of stock be minimized. Reason: Because the net profit of stock is composed of the mass, or say portion remaining to the employer of the stock, after deduction made of the wages of the labour applied to it.

Exception will be—if this supposed case be really exemplified—where the possessors of the wages of labour are so many, and the possessors of the profits of stock so few, that by a small addition to the one, no sensible defalcation will be made from the other.

§ 6.

Axioms Relating To Power, Rank, And Reputation.

By axioms relating to power, understand self-serving power, exempt from the obligation by which it is converted into trust.

As between individual and individual, the pleasure to the superior, to the power-holder, from the possession and exercise of the power, is not so great as the pain experienced by the party subjected.

Therefore, only when converted into extra-benefiting by appropriate obligation, can it be conducive to greatest happiness.

The same observations will equally apply to rank, and factitious estimation produced by rank.

So also to extra reputation, or say estimation, unless when acquired by service rendered to others.

The principle corresponding to these axioms, as to equality, is *the inequality-minimizing principle.*

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NOMOGRAPHY; OR THE ART OF INDITING LAWS:

NOW FIRST PUBLISHED FROM THE MSS. OF JEREMY BENTHAM.

OF NOMOGRAPHY.

CHAPTER I.

THE SUBJECT STATED.

Law being the denomination by which, in the English language, designation is made of a portion of discourse by which expression is given to an extensively applying and permanently enduring act, or state of the will, of a person or persons in relation to others,—in relation to whom he is, or they are, in a state of superiority,—and the Greek word *nomos* being the word which corresponds to the English word *law,* the appellation *Nomography* might be given to that branch of discourse which is employed by a *superior,* to the purpose of giving direction to the conduct of a corresponding inferior.

In the present work, the term nomography will be employed to distinguish that part of the art of legislation which has relation to the *form* given, or proper to be given, to the *matter* of which the body of the law and its several parts are composed:—the *form,* in contradistinction to the *matter,* and in so far as the one object is capable of being held in contemplation apart from the other.

We shall proceed to consider—1. The relations which nomography bears to the government of a private family—to logic, to a pannomion or universal code of laws, to proposal and petition, and to private deontology; 2. The ends in view in the case of nomography; 3. The imperfections to which it is exposed; 4. The remedies for those imperfections; 5. The subject of language; 6. The perfections of which the legislative style is susceptible; and lastly, The forms which enactments may assume.

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CHAPTER II.

RELATIONS.

§ 1.

Relation Of Nomography To The Government Of A Private Family.

By Nomography, as has just been observed, is understood the art and science by means of which, to the *matter* of law, expression may be given in such sort as to maximize its conduciveness to the *ends,* whatsoever they may be, which the legislator, whoever he may be, may have in view.

Of nomography, the subject-matter is matter of law—the matter of the laws which have place and are in force, or are destined to have place, in the political community in question.

Matter of law is the result of expression given to the will of a person, or set of persons, having power to produce pain on the part of the person or persons at whose hand compliance is thus called for with the will thus expressed.

On each occasion, the matter of law which is uttered, consists, and is composed of, either an entire law, or a portion of such matter, less or greater, than an entire law.

For understanding the nature of any portion of matter which is less or greater than that of an entire law, it will be necessary to understand what that portion of matter is, which is neither more nor less than the matter of an entire law.

An entire law may be defined, a command emaning immediately, or through the intervention of some subordinate authority, from the supreme authority of the state in the political community in question—the political community of which it is a law.

In the great and all-comprehensive family of a political state, a law is—that which a command is in a private family—a command directed by the head of that same family to the members of it, or any one or more of them.

But, to be productive of any of the effects intended by it, the law of the legislator requires an appendage, which, for the production of its effects, is never needed by the head of a private family. With reference to the law just mentioned, this appendage may be styled the subsidiary law: of this subsidiary law, the business and object consist in the presenting to the party or parties subject, inducement directed to the purpose of producing on their parts compliance with the principal law.

And here, then, we have existing on each occasion, in necessary connexion with one another, two distinct species of law; namely, 1. The principal, or say the direction-giving; 2. The subsidiary, or say the inducement-giving law.

These distinct species of laws are addressed to two different classes of persons:—the direction-giving law is addressed to the person or persons at whose hands compliance is constantly looked for in the first instance;—addressed always to a person, or set of persons other than the above, is the subsidiary, or say inducement-giving law.

This person, or set of persons, is different, according as the inducement employed by the lawgiver is of the nature of evil or of the nature of good.

If it be of the nature of evil, the inducement is styled punishment; and the sort of person to whom this subsidiary law is addressed is the judge: and the act which he is calculated to perform, in the event of non-compliance with the will expressed by the principal law, is an act of punishment—an act to which exercise is given by producing evil, or say pain, on the part of him by whom compliance with the will expressed by the principal law has failed to be made.

For giving effect to a command emaning from the head of a family, and addressed to the other members of it, one or more of them,—no subsidiary law, no inducement-giving law is necessary.* Why? Because in the bosom of a private family, no such functionary as a judge—no functionary distinct from the lawgiver, has place. Here in the head are necessarily connected the two, in themselves mutually distinguishable functions of the lawgiver and of the judge.

Of this difference another consequence is,—that in a private family no portion of the matter of law, no portion less than an entire law, no such thing as a *fragment* of a law, has place:—peculiar to the great family of the state is the existence of this *fragmentitious* matter, the conception of which will be seen to such a degree complex, and in so high a degree productive of difficulty and complexity.

§ 2.

Relation Of Nomography To Logic.

The intellectual—the volitional—and the active;—into these three branches the whole texture of the human mind has, for some purposes, on some occasions, been considered as divided:† the intellectual including perception, knowledge, and judgment;—the volitional, designated by the one word *will;*—and the active, by which execution and effect is given, as far as depends on the individual, to the choice formed, or, so to speak, the laws enacted by the will.

For these two thousand years and more,‡ the branch of art and science which undertakes to give direction to the operations of the understanding, has been in existence; and *logic,* a name derived from the Greek, is the appellation by which it has been denominated.

In nomography, as the branch of art and science is itself new, the name of it cannot, it is manifest, be otherwise than new,—new the thing signified, new of course would be any and every oral *sign* employed for the signification of it.

In the field of art and science a vast space has been discovered, and this of nomography is the branch of art and science which has been invented for the filling of it up.

If to the operations of the understanding, by appropriate rules direction is capable of being given to advantage, with no less advantage may it be given to the operations of the will, and the expression and method given to these same operations.

By the light of analogy, the instructions which have been given on the subject of the logic of the understanding, may be found applicable, with more or less fitness, to the logic of the will.

In common to both branches of logic belongs that portion of matter, which in a work on the logic of the understanding, may be termed the *tactical* part; peculiar to the logic of the will is that part of the logic of the understanding which may be termed the argumentative, or say, the polemic part.

§ 3.

Relation Of Nomography To The Pannomion, Matter And Form.

Matter and form—these two elements, or say elementary ingredients, enter into the composition of every law, and of every particle of matter that enters into the composition of a law, or of a portion of the matter of law.

Under the head of matter are comprehended the ideas to which expression is designed to be given,—the ideas, or say the things that require to be signified:—by the form, understand the signs by means of which these same things are signified—the words, and combinations of words, by which expression is given to those same ideas.

By a pannomion, understand the entire mass of the matter of law which in the country, or say, political state in question, has the force of law:—a mass by which, when that extent is given to it which it is capable of having, and ought to have, the whole field of law and legislation is comprehended, and the whole surface of it, as it were, covered.

To the head of nomography—a denomination by which title is given to the present work—belongs the consideration of what belongs to the *form of a law,* or of any portion of the matter of law, as above.

Expression and *method*—under one or other, or both together, of these denominations, may be ranked and included whatsoever consideration belongs to the *form* in which a portion of the matter of law is capable of being clothed.

By expression, understand the words and combinations of words, by the aggregate of the signs of which the matter of the law is signified.

By the method, understand the different groups, or say *assemblages,* in which these same signs are put together, and the order in which these same groups, and in each group the words of which it is composed, follow one another.

§ 4.

Relation Of Nomography To Proposal And Petition.

Superiority—equality—inferiority:—between man and man, in the scale of power, these three are the degrees which have place. Addressed to an inferior, a discourse expressive of the will of his superior, possesses the character and effect of a law: addressed to a superior, a discourse expressive of the will of an inferior, presents itself in the character of a *petition:* addressed to an equal, a discourse expressive of the will of his equal, presents itself in the character of a *proposal.*

A requisition agrees with a law, in trusting to power for compliance with the will expressed by it:—it differs from a law, in that it emanes not immediately from the superior power in the state, nor even necessarily from any one of the constituted authorities: for compliance with the will expressed by it, however, it places its ultimate reliance on the supreme power in the state; forasmuch as on this supreme power it is that all other power depends for its existence.

A *request* differs from a petition no otherwise than that, in the case of the request, the place of the superior in the scale of power is not so high—the place of the inferior not so low—as in the case of the petition.

Altogether free from that complication which has place in the case of a law, are a proposal and petition. Why? Answer—Because in neither of these cases is there any place for that subsidiary law, the need of which has been brought to view in the case of a law: there is no punishment in the case—no reward in the case;—no functionary by whom eventually, to wit, in the case of non-compliance, the *punishment*—no functionary by whom eventually, to wit, in the case of compliance, the *reward,* is to be applied.

To proposals and petitions, no small quantity of the machinery applied by nomography to the matter of law will, however, be found applicable—the matter of discourse being the matter employed in all three cases. In pursuing our course in the field of nomography, occasion will be seen for bringing to view the imperfections by which the matter of discourse, when applied to the purpose of law and nomography, is liable to be deteriorated—the imperfections by which the will of the supreme legislator is, in a greater or less degree, liable to be frustrated,—and of the remedies

which present themselves as applicable to these several imperfections. Of the same imperfections, the matter of discourse, when applied to the purpose of a proposal, will be found susceptible; and accordingly of the same remedies for these imperfections; and so in case of a petition.

But as, neither in the case of a proposal, nor in the case of a petition, either punishment or reward have any place; accordingly, in neither of these cases does any such importance attach, either to the imperfections, or to the remedies, as in the case of a law.

§ 5.

Relation Of Nomography To Private Deontology.

Strictly speaking, not nomology and deontology, but the pannomion on the one hand, and an all-comprehensive system of deontology on the other part, are the objects between which the relation has place; for, in this respect, the matter of a treatise on deontology stands upon the same footing as the matter of a proposal and the matter of a petition, as above.

But the contents of the pannomion have their form as well as their matter,—and so have those of a treatise on deontology: and now, after the relation of nomography to so many kindred objects has been brought to view, this last presented itself as being necessary to conclude the list.

A portion of the matter of law gives existence to the inducements, or say motives, on which it depends for the obtaining compliance with the will signified and expressed by it; a treatise on deontology gives not existence to any such inducements: what it does—all that it does, is in each case to give intimation of those inducements which actually have place in the nature of man and things, for compliance with the will to which it gives expression.

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CHAPTER III.

PROPER END IN VIEW.

§ 1.

General Observations.

In the case of nomography, that is to say, in the case of an all-comprehensive treatise on nomography, the proper end in view is the same as in the case of the pannomion;—it being no other than the giving to the entire pannomion, or to that part of it which is upon the carpet, the execution and effect intended by it.

The *form* being in itself an object entirely subservient to the *matter,* thus it is, that this end in view belongs to them both in common,—but always in subserviency to that common end. To nomography belongs another end, which is peculiar to itself:—this end is the contributing to the utmost, to that prime and leading object, whatever it be, which the matter of the work in question—namely in the present instance the pannomion—has in view.

Come now for consideration the means which in that character are conducive and subservient to that peculiar end.

A circumstance which gives no small increase to the usefulness of these means, and correspondent strength to their claim to notice, is the circumstance of their being in no small extent applicable to discourse in general—to discourse, to what subject soever applicable—and more particularly to all discourse of an *instructional,* or say *didactic* nature.

The immediate secondary end, or say, the immediately subservient means with relation to the primary end of nomography, may be thus expressed:—investing the pannomion, throughout the whole matter of it, in the highest degree possible, with the several qualities or properties conducive to that end,—or say, properties desirable in instructional discourse, thereby maximizing its appropriate aptitude.

Positive or negative—in either of these two opposite forms may these desirable properties be presented to view.

The *positive* is the form in which at a first view they will be apt to present themselves. But upon a closer examination, they will be found internally of a negative character, though clothed and disguised in a positive garb.

Blemishes, imperfections, detrimental qualities, or, figuratively speaking, *vices*—by one of these names, in one word, the several qualities opposite to the qualities desirable in this case may be designated:—qualities these, which in proportion as in

any portion of discourse they have place, obstruct and stand in the way of the attainment of that same end.

Beneficial, is the epithet by which denomination may be given to the qualities correspondent and opposite to those same detrimental qualities.

Perfections, is the name by which they might have been designated, and would have been designated, but that by this word intimation is given, that in the case of the quality in question, no degree which is beyond and above the degree in which the subject is thus spoken of as possessing it, has place:—and occasion will not be wanting, for bringing to view certain expedients of rather a novel complexion, by each of which more will be done towards investing the discourse with the qualities desirable, than by the bare removal of the detrimental qualities correspondent and opposite to the *beneficial* ones above alluded to.

Under the notion of form are included *expression* and *method:*—but the things themselves are not so plainly distinct from one another, as by these their appellatives they may be apt to appear to be.

Method is the result partly of the choice made of the most general and comprehensive of the terms which the nature of the subject calls into use—of the choice made of those comprehensive terms, and thence of the composition of the several bundles or packets of intellectual objects, which they respectively present bound up together, and of the *order,* the numerical order, in which they are so presented.

When the term *expression* is employed, the subject in question consists of a particular portion of the matter of law, which on the occasion in question, is considered in itself only, and without reference to any connexion it may have with the whole, or with this or that portion of the vast aggregate mass of which it forms a part.

In proportion as the plan or scheme of nomography pursued in any body of law stands clear of, or is sullied by the imperfections or vices incident to the form in which a quantity of legislative matter is capable of being presented, it will be *apt* or *inept.*

But although the form be the source to which the several vices or imperfections of which a body of law is susceptible, in respect of its *form,* may be referred, yet the matter also becomes the seat of them; inasmuch as in proportion as, considered in respect of its form, the rule of action is seen to be characterized by these imperfections, it is through their influence seen to be, in respect of its matter, less adapted to its ends than it would be if pure from them.

§ 2.

Nomography, Its General End—Relative Notoriety.

Legislation is a practical operation, having on each occasion a practical object,—viz. the attainment of a practical end. Be that end what it may,—whether matter or form be considered—the manner in which on any occasion the task is executed, will be

perfect in proportion as it is conducive—imperfect in proportion as it is unconducive or obstructive with relation to the attainment of that end.

Considered in relation to the matter of the law itself, the end of nomography admits of an infinity of diversifications and ramifications, none of which belong to the present purpose.

Considered in relation to *form*—in relation to the *form* given, or to be given, on each occasion to that portion of the matter of law which on that occasion is the subject of consideration,—on each and every occasion, one and the same object will be found to be that which on every occasion it will be incumbent on the legislator to set before him, and apply his endeavours to the attainment of; and that object,—notoriety—relative notoriety.

Whatsoever good effects the portion of law in question may, in virtue of its matter, be intended or calculated to produce, the production of those effects will depend, in the instance of each individual on whom the law calls for his obedience, on the hold which it has happened to it to take upon his mind: viz. in the first place, upon the circumstance of the fact of his being apprized of the existence of the law; of the general matter of fact, viz. that on the subject in question there exists such a thing as a portion of law: in the next place, upon the degree of correctness and completeness with which, as often as any occasion comes for acting in obedience to, or in any other way in pursuance or consequence of such portion of law, the matter of it is present to his mind.

To the production of any bad effects, no such notoriety is, in the instance of any portion of law, in any degree necessary.

For a man to be put to death in due course of law, for non-compliance with this or that portion of law, it is not by any means, in any case necessary, that either the matter of it, or the fact of its existence, should ever have reached his mind. On the contrary, whosoever they be to whom it is matter of satisfaction that men should be put to death in due course of law (and these, more especially among English judges and other English lawyers, are many,) the greater the extent to which they can keep from each man's mind the knowledge of such portions of law to which, on pain of being put to death for disobedience, they are called upon to pay obedience, the greater the extent to which they can administer this satisfaction to their minds; and if the portions of legal matter to which this result is attached, had for their object the administering of this satisfaction to those from whose pens they issued, they could scarcely have been rendered in a more effectual degree subservient and conducive to that end, than they have been rendered by the form into which the matter of that, and all other parts of the English law have been cast.

True it is, that before any man can be put to death, or otherwise vexed for non-obedience to any portion of law, what is necessary is, that some person—nay, that divers and sundry persons, should be apprized, not only of its existence, but its contents; forasmuch as a man of ordinary prudence, such as are all those who are in the habit of taking each of them a part in an operation of this sort, will not engage in

any such operation except in the persuasion, well or ill grounded, of his being warranted in so doing, if not by the tenor of any real law, at any rate by the feigned tenor or purport of some imaginary law or rule of law, which for his justification and protection will be attended with this same effect.

But when the bearing a part in the putting of men thus to death, is of the number of those acts by the performance of which men are called upon to manifest their obedience, the production of an effect of this sort is not among those results which generally, openly, and avowedly, at least by the legislator, are held up to view in the character of the objects or ends in view ultimately aimed at: ultimately and absolutely good a result of this sort is not generally (for even here there are some exceptions) declared to be; relative, and that alone, is the term employed in giving expression to the point of view in which any such appellative as *good* is spoken of as applicable to such a subject:—that A should be put to death is good, is maintained Why? That B and C may, without being put to death, abstain from the commission of acts of the sort of that, for the performance of which A is thus ordered to be dealt with.

These things well considered, it will be manifest, that whatsoever bad effects are capable of being produced by a portion of law, without its being *known* to those on whom, in the first instance, it calls upon for their obedience, yet as to any effects which, with relation to the community in general, can upon the whole bear with propriety any such appellative as that of good effects, its efficiency in relation to these good effects will depend upon the degree of efficiency and perfection with which, on the occasion in question, it has happened to it, or to the purport, and thence to the tenor of it, to have presented and fixed itself in that person's mind.

§ 3.

Nomography—Its Particular Ends;—Correspondent To The Avoidance Of The Obstructions To Notoriety.

Such being, in the business of nomography, the general end in view,—such being the object proper to be aimed at upon all occasions and in all cases, what are the means best adapted to the attainment of that end?

The answer is—the avoidance of the several modes of imperfection, of which, in point of expression and method, the style of legislative penmanship is susceptible.

For the attainment of this end, make your meaning known and understood by every person of whom you expect that he should act in consequence. Thus simple is the general rule, that in and by it, it should seem as if indication were given of everything applicable in the character of a means towards the attainment of this end.

On the sort of occasion here in question, is it really your wish that what you give as the character of the expression of your will—the real character and purport of such your will—should on each occasion on which action is called for on the part of those you have to deal with, be borne in mind? If so—if such be really your wish—you will

act on this occasion, as on every other occasion which presents itself in ordinary private life you are wont to act towards those with whom on those several occasions you have to deal.

In dealing with these your fellow-subjects, whose concerns upon a larger scale are committed to your management—these fellow-subjects, for whom, as well as over whom, in the character of their master, and agent, and trustee, you act—you will, in this particular at least, deal with them with the same simplicity and sincerity as that with which, when calling for obedience on the part of your own children, or your own servants, you address yourself to any of your own children or servants.

On each occasion, when addressing yourself to those who are subject to your power, for your own ends you call for obedience, you speak intelligibly,—you are understood accordingly, and you obtain what you desire. When, for ends of a public nature, for the use and benefit of the community in general, you call for obedience,—here too the language is equally open to you—the ordinary means of intercourse are equally open to you: apply the language with the same simplicity and sincerity to its purpose—apply those means of intercourse in like manner—speak intelligibly to those to whom you speak—you will be understood accordingly: convey into the hands of each person, that which, for his complying with your desire, it is necessary should reach them, and be found there,—do this, and here too, for the like causes, and with equal certainty, you will have your desire.

Such is the manner in which in all cases, if he would compass the ends of language, a man must act and speak,—this is the manner in which, as often as for his behoof a man seeks to obtain obedience, he does act and speak,—this is the manner in which, if he be a man of law employed by government, under the notion of his seeking to obtain obedience from this or that part of the community, for the use and behoof of the whole community, he never has yet spoken—he never does speak.

On the contrary, all the imperfections into which, on the occasion of the communication holden by him with any of those to whom, for the purpose of obtaining obedience for his own use and behoof, it can ever happen to his discourse, in consequence of this or that instance of accidental oversight or involuntary weakness, to exhibit here and there the marks of, in any the slightest degree, and at any the longest intervals,—all these on every occasion on which it happens to him to hold communication with any of those to whom, for the purpose, or professed purpose, of obtaining obedience, for the use and behoof of the whole community, to address himself, are with anxious care, study, and undeviating regularity, displayed and accumulated, each of them in a degree of plenitude and consummation of which on any other occasion never would the utmost industry of man be able to discover any example.

Hence it is, that for the purpose of showing in what manner, in respect of expression and method, portions of the matter of law ought to be penned—in what manner the attainment of the universal end of language and verbal intercourse ought on this occasion to be aimed at—all that can be done is to look out for, and collect together under heads, as faults to be avoided, the several vicious peculiarities—in a word, the

several imperfections, of which examples are to be found in the language habitually employed, and the course taken in other respects by the framers of English statute law—including in this catalogue as well those into the manifestation of which men are now and then seen on other occasions to be betrayed by casual oversight or involuntary weakness, and those which on this occasion are the result of strenuous attention and anxious imitation and observance.

In a word, to show in what manner aws and portions of laws ought to be penned, nothing less is requisite, nothing more is possible, than to show in what manner they have hitherto been penned; and this to the end that in future the manner in which they are penned may, when compared with the manner in which they have hitherto been penned, be seen to be as unlike as possible.

Proceed we now to exhibit such a catalogue of these imperfections as a diligent research made for this purpose has succeeded in bringing to view. So many different modes of imperfection as are to be found exemplified in the composition of English statute law, so many particular objects, which in the course of his travels over this field the legislative draughtsman ought to have constantly in view as so many stumbling blocks, to the avoidance of which his anxiety and industry ought on every occasion to be kept directed.

§ 4.

Imperfections Adverse To The End Of Nomography Classed.

Method and expression taken together, the imperfections of which a mass of law considered in respect of its *form* is susceptible, may be distinguished into those of the first order, and those of the second order.

To the first order may be referred such imperfections as are so in themselves, or rather with reference to those objects which may be seen to be the immediate ends of all discourse—of discourse considered in a general point of view—and consequently of discourse considered with reference to the particular objects or ends which are in view in the case of the particular sort of discourse—viz. legislative discourse—which is here in question.

Under the head of imperfections of the second order, may be placed such as are so, no otherwise than with reference—or at least such as are so with reference—to the imperfections of the first order—viz. in as much and in as far as each one of these imperfections of the second order is conducive to some one or more of the imperfections of the first order;—*i. e.* conducive to the investing the discourse into which they enter, in a degree more or less considerable, with some one or other of the vicious qualities designated by the denominations by which the imperfections of the first order stand respectively expressed.

§ 5.

Imperfections Of The First Order Enumerated.

The imperfections, vicious qualities, or vices of the first order, of which a mass of law considered in respect of its form is susceptible, seem reducible to three heads:—viz. 1. Ambiguity; 2. Obscurity; 3. Overbulkiness.

1. *Ambiguity* is where the effect of the expression employed is to present in conjunction divers imports, in such sort, that though to the individual mind in question it appear clear enough that in one or other of them is to be found the import which by the legislator was intended to be conveyed, yet which it is that was so intended to be conveyed, is matter of doubt.

2. *Obscurity* is where, of the expression employed, the effect is, for the present at least, not to present any one import, as that which by the author or authors of the portion or portions of law in question, was on the occasion in question intended to be conveyed.

In the case of ambiguity, the mind is left to float between two or some other determinate number of determinate imports:—in the case of obscurity, the mind is left to float amongst an indeterminate, and it may be an infinite number of imports. Obscurity is ambiguity taken at its maximum.

3. *Overbulkiness.* Ambiguity and obscurity are imperfections, capable each of them of finding its seat in any the minutest part of a mass of the matter of law: overbulkiness is an imperfection not capable of being brought into existence but by the accumulation of a large number of such points.

Supposing the bulk of the mass swollen to a certain pitch,—notoriety, the relative notoriety in question, finds in this quality of the mass, a bar of the physical kind absolutely insuperable. The powers of no human mind being adequate to the sustentation of the whole of such a burthen, portions of the mass, more or less considerable, must with relation to every individual without exception be, to any influence which it is possible for them to exercise on his conduct, as if they had no existence—be with reference to him completely non-notorious.

Whether this non-notoriety shall be, as at present, an enormous evil, or no evil at all, depends upon a very plain distinction—a distinction so obvious, that in the case of a man to whom the law had never presented itself in any other character than that of a source of opulence and power, to men of the profession,—some care, attention, and vigilance would, one should think, be necessary to enable a man to avoid seeing it.

Overbulkiness* may to this purpose be distinguished into absolute and relative. *Absolutely* speaking, the imperfection of overbulkiness may be ascribed to a body of legal matter, when, taken in its totality, the bulk of it is too great to admit of its being at all times effectually present to the minds of all persons, who in point of interest are concerned in shaping their conduct in conformity to it.

Relatively speaking, the imperfection of overbulkiness cannot justly be ascribed to it any further than as it is so put together, that in the instance of this or that individual, such portions of it, which he is concerned as above to bear in mind, fail, in the whole or in part, of having been presented to his mind, and lying within his reach in such manner as to be at all times completely within his grasp.

In this speculative distinction, the imperfection here in question will be seen to possess a specific remedy, the application of which will be exhibited in detail, when after a fill given of these imperfections, we come to consider of what remedies they may be susceptible. So as each individual have but the advantage and comfort of beholding effectually within his reach—within the reach of his purse, as well as of the mastery of his mind, whatsoever parts he is in any way concerned in point of interest to be acquainted with, the bulk of the whole, how vast soever, is with reference to him a matter of indifference: overbulkiness is not with relation to him among the properties that belong to it.

Defectiveness is a species of imperfection, under which a body of law is no less liable to labour, than under that of overbulkiness or ambiguity or obscurity:—accordingly, of the whole field of English law, all that part which, having in the shape of *real* law nothing at all to cover it, is by the all-embracing imposture of the licensed manufacturers of falsehood and deceit construed and taken to be filled up by the imaginary matter of *common* alias *unwritten* law—by so much as is thus considered as covered with *common* alias unwritten law, by so much is the whole mass of English law defective; and the English code no less preeminently conspicuous in this imperfection than in respect of any of those others.

But defectiveness, at least when thus fixed and explained, is an imperfection which belongs not to the *form,* but to the *matter* of law—and on that account belongs not to the present purpose.

§ 6.

Imperfections Of The Second Order Enumerated.

The imperfections of the second order, of which a mass of law considered in respect of its form is susceptible, may be thus enumerated:—

1. *Unsteadiness in respect of expression*—when for the designation of the same import, divers words or phrases are employed.

2. *Unsteadiness in respect of import*—when to the same word or phrase, divers imports are attached in different places.

3. *Redundancy*—when of any number of words employed in connexion with each other, the whole or any part might without prejudice to the sense—*i. e.* to correctness, completeness, and facility of intellection—be simply omitted, or others in less number be inserted in the room of them. Redundancy is either curable by simple *omission,* or not eurable but by *substitution.*

4. *Longwindedness*—when a portion of legislative matter, the elements of which are in such sort connected with each other, that to comprehend in a complete and correct manner any one part, the mind finds itself under the necessity of retaining within its grasp the whole, is drawn out to such length as to be liable to overpower the retentive faculty of the mind on which the obligation of taking cognizance of it is imposed.

5. *Entanglement*—when propositions distinct in themselves are forced together into one grammatical sentence, and in this state carried on together throughout the course of it.

6. *Nakedness in respect of helps to intellection*—especially if in respect of such as are in general use:—such as division into parts of moderate length,—designation of those parts by concise titles and figures of arithmetic expressive of numbers, for indication of such respective parts—and reference by titles and numbers as above, instead of by general description of their contents.

7. *Disorderliness*.—1. In respect of the arrangement given to the several matters,—whether by including under one and the same name, and thence under the same treatment, matters which, in respect of the diversity of their nature, require each a different treatment;—2. By placing at a distance from each other those which for facility, and clearness, and correctness of intellection, ought to stand contiguous to each other, or near at least to each other: or contiguous or near those which ought to be at a distance;—or, 3. By giving to this or that article the precedence over this or that other, which for clearness or facility of intellection, ought to have been placed before it.

The seats of these imperfections will be found to be either—1. Words taken singly; or 2. Words taken in combination.

§ 7.

Connexion Between The Imperfections Of The First And Of The Second Orders.

On the most cursory glance, a general idea of the manner in which these imperfections of the second order are respectively conducive to the superinducing on the mass the imperfections of the first order, is obtainable without difficulty.

1. Unsteadiness in respect of expression is conducive in the first place to *obscurity,*—because by a change in expression, for the moment a suspicion at least, howsoever removeable, of a difference in point of import, cannot but be produced:—difference of expression being the only means by which a difference of import could, if intended, be announced.

So likewise to overbulkiness,—unless when it happens that the several different locutions employed to designate the same import are all of them of exactly the same length.

2. Unsteadiness in point of import. Of such unsteadiness, ambiguity is the obvious and almost inseparable consequence.

3. Redundancy. How necessarily productive this imperfection is of overbulkiness, is self-evident; and that it is even generally productive of obscurity, and frequently of ambiguity, will be little less so.

4. Longwindedness. Of this imperfection, in proportion as it prevails, obscurity, it will readily be acknowledged, is the necessary, and ambiguity a natural and frequent consequence.

5. Entanglement. Of this imperfection, obscurity is the obvious, and to a certain degree the necessary—ambiguity, again, the not unfrequent, though but accidental, result.

6. Nakedness in respect of the helps, particularly the customary helps to intellection, ambiguity and obscurity are the imperfections of the first order, to the production of which this imperfection of the second order is most obviously subservient. In the production of overbulkiness its efficiency is still more constant and powerful, and little if at all less obvious. That which with these ordinary helps might be expressed by a figure or two, with or without a word or two, requires, when destitute of them, always a multitude of words, sometimes as many as would suffice to fill a moderate page. By the figure or two, with or without a word or two, the object would be effected in perfection, without of either ambiguity or obscurity any the slightest shade. By the page, if it be compassed at all, the object is never compassed without considerable danger of ambiguity and of obscurity, or constant and most troublesome abundance.

7. Disorderliness. To a general conception it can scarcely be otherwise than sufficiently obvious, that of all the several imperfections of the first order, viz. ambiguity, obscurity, and overbulkiness—disorderliness in all its various modifications, will in proportion to its intensity be a perennial source.

But the most productive form in which it can exist, is that which it assumes by confounding together into one immense chaos the several portions of the matter of law, each of which would on examination of its nature be seen to be, in respect of the demand it presents for cognition and notification, confined to a few classes of persons, of each of which the proportion would not amount to more than the two or three hundredth or thousandth per centage of the whole.

Of the species of nakedness here in question, the only example to be seen—the only example discoverable in the field of law—the only example to be found in the world of letters, in the civilized part of the world, is that which is afforded by English statute law.

It required the union of professional industry and ingenuity with supreme power, to create and preserve, in the country that claims in respect of psychological endowments of all sorts, intellectual and moral, the superiority over every other, a

mode and habit of literary intercourse between governors and governed, so peculiarly and manifestly adverse to every honest purpose.

As to the other modes of imperfection—including the three of the first order, and the seven of the second order—though in this same system of law these also are found signally prominent, yet it is only in degree, and not in specie, that they are peculiar to it.

§ 8.

General Depravity Of The Style Of English Statutes.

For bringing to view and summing up the imperfections of English statute law,—the language employed for the purpose of legislation by English lawyers, no more is requisite than to bring to view and sum up the points by which it is distinguished from the ordinary language of the multitude. Wheresoever it is seen to differ, it will be seen to differ to its disadvantage:—peculiar absurdity the immediate effect—peculiar mischief the result.

This distinction from the ordinary language of the multitude is peculiar to the language of English statute law: foreign laws are clear from it.

It has been among the devices of lawyers to connect with everything that is justly dear to English hearts, the absurdities and the vices in and by which they reap their profit. Fiction—the vice which they are not ashamed to avow and magnify under that name—fiction has never been either more or less than lying, for the purpose of extortion and usurpation:—yet men who ought to have known better, have not been ashamed to stand up and speak of fiction as the foundation and efficient cause, *causa sine quâ non* of everything that is most valuable in the fabric of the constitution, and the texture of the common law.*

Lying the foundation—the *causa sine quâ non,* of what is most excellent in law! In what sink of folly and wickedness shall we look for the root of so mischievous a paradox? As if wrong could be converted into right at pleasure by the mere telling of a lie!

Without lies in their mouths, lawyers would not have been suffered to do the mischief they have done:—without lies in their mouths, they would not concur in doing what little good their own particular interest suffered them to concur in doing. But is it to the vice, that the good which they were so forward in employing it about, is to be ascribed? When James was driven from his throne, English lawyers refused to set their hands to the work, unless Parliament would join in the notorious lie, that he was averse to sit on it any longer. This lie,—was it either necessary, or of any the smallest use? In Scotland, no such lie was told, and James was not less effectually expelled from the Scottish throne than from the English.

He had made a bargain with somebody—a bargain to govern well?—he had made no such bargain; he had made no bargain at all about the matter. A bargain necessary to

constitute a sufficient reason for good government! a sufficient reason for seeking security against mischief and abuse! What if he had made a bargain to govern badly? Would it then have been the duty of the king to afflict the people with bad government?—would it have been the duty of the people to submit to it?

As well when good, as when mischief is to be done, advantage is taken by them of the public weakness, to cram into the work, in as large a proportion as possible, that mixture of vice and sort of absurdity of which they are the compounders; and to this compound of mischief they ascribe the honour of whatever good is done.

With as much truth, and as much reason and sincerity, might a man slip in, along with the memorials usually buried with the first stone of an edifice, a bridge, or a court of justice,—a rotten egg and a rotten apple, and then set up proclaiming the virtue of rotten eggs and rotten apples. Oh rare rotten eggs! Oh rare rotten apples! No bridges without rotten eggs! No justice without rotten apples!

A rotten egg or a rotten apple is quite as necessary and conducive to the stability of a bridge for the convenience of passengers, or of the edifice in which justice, or what is called by that name, is to be administered, as fiction, legal fiction, ever can have been or ever can be to any good work that may be attempted with it.

But though it is useless to expect that these imperfections will be acknowledged by the long-robed penners of the English statutes, regard for *his* own *intellectual* reputation should suffice to prevent the man of law from professing himself not fully conscious of the repugnancy of his style and method to every useful and honest purpose and design of language. The English lawyer, more especially in his character of parliamentary composer, would, if he were not the most crafty, be the most inept and unintelligent, as well as unintelligible of scribblers. Yet no bellman's verses, no metrical effusion of an advertising oil-shop, were ever so much below the level of genuine poetry, as when, taken for all in all, are the productions of an official statute-drawer below the level of the plainest common sense.

§ 9.

Effects Of These Imperfections On The Faculties And Operations Of The Legislator Himself.

The mind of the subject is not the only mind on which these imperfections in the present established system of legislative penmanship exercise their baleful influence:—another mind, on which their influence is but too conspicuous, is that of the legislator himself. True it is, that at the upshot, it is on the subject that this branch of the mischief falls, and with no less weight than does the other.

"*Quidquid delirant reges plectuntur Achivi;*"

—but when on its way to the passible faculties of the mind, of which the station is in the lower place, it impinges upon the agible faculties of the mind, whose station is in

the higher place, the mischief assumes a different complexion, and requires altogether a different description to bring it to view.

Not that, in thus changing its place, the mischief, meaning always the ultimate mischief, undergoes any very considerable change either in its nature, or thence in its proper name. On the part of the law, non-cognoscibility, or that which comes to the same thing, unintelligibility on the part of the mind, for the cognizance of which the law is destined or pretended to be destined;—of these results the ultimate mischief is in both cases constituted. In the one case, the mind thus darkened is that of the individual, the subject-citizen:—in the other case, it is that of the legislator himself—the very author of the darkness.

By the same causes by which the mind of the individual is prevented from extracting anything like clear conception out of the confused mass of disorderly matter shot down before it, the mind of the legislator is operated upon in the same way and with the same effect. The legislator, and not the individual, is indeed the person by whose feet the dust is raised; but when it is once raised, and all the time it is raising, his own eyes are not less effectually prevented from enabling him to see his way through it, than the eyes of those upon whose back his commands and prohibitions, burthens and restraints and punishments, and all his snares and entanglements, are rained down.

Hence, not only is the individual prevented from knowing and understanding what on this and that occasion the meaning of the legislator is, or was when he wrote,—but in a certain sense the legislator is himself prevented from understanding what he himself is doing while he writes. What may or may not have happened to him is, to know what his own meaning, wish, and intention is at the time:—but that which is sure to happen to him is, not to know what his own wish and intention would have been, if throughout the whole field of action of which he has taken possession, his conception of his subject had been at the same time correct and complete to the degree in which it ought to have been so,—and might have been, and perhaps would have been, if the obstructions which the accustomed system of disorder raised up before him as he advanced had been removed, and his intellectual faculties had received the comfort of those helps, which, on every other part of the field of mental action, are framed, communicated, received, and employed in such salutary abundance.

Of the darkness and confusion of mind of which the effects are so generally conspicuous in the works of English legislators, abundance of examples might be produced. In the examination of one statute, I have found a multitude of such gross palpable grammatical errors, as scarcely any schoolboy, who had made his way to the upper form of any school in which no language was taught besides English, would see himself convicted of without shame.

The penman, whoever he was, did he not know better? No supposition could be more palpably untenable. In the works of Parliament, and nowhere else, are marks of ignorance, thus inconsistent with the most ordinary education, to be found. On any other subject, on any other occasion whatsoever, it may be affirmed with confidence, that not one of them would have been exhibited by this same hand. Scattering words and phrases blindfold, through a wild wilderness of words scattered in the same track

by preceding travellers, no wonder that at every other step he should have been losing his way. On no other ground would even these very feet have lost their way. Why? Because on no other ground has any such wild wilderness been raised up.

Innumerable are the oversights that will be seen exhibited in this fertile field—innumerable the instances in which the legislator will be seen to have either fallen short of, overshot the mark, or gone beside it—innumerable the instances in which, in case of non-compliance, execution of the law upon the disobedient would be found impracticable.

Numberless the blunders of all sorts and sizes:—and by what cause produced? By the system of discord which the legislative draughtsman found pre-established, that confusion had first been established in his own mind, which his effusions propagate, and thicken, and increase in other minds.

But the more troubled the waters, the more productive the fishery:—and since such is the effect of error and imperfection, that all the loss goes to the account of others, while all the profit, and that a boundless one, goes to his own account, to expect that by an official lawyer, or any one who hopes to become such, any proposition for the amendment of the legislative style should be regarded with the marks of any more favourable sensation, or any other reception than that of inward horror and outward contempt, would be an expectation about as reasonable as that an individual, who is paid by a per centage on the amount he expends, should be sincerely and unaffectedly desirous of keeping down the amount of such expenses.

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CHAPTER IV.

IMPERFECTIONS PRIMARY.

§ 1.

Uncognoscibility.

Of all the several vices spoken of under the head of imperfections of the first order, the cardinal vice is Uncognoscibility.

Dependent on and proportioned to the notoriety, and hence to the cognoscibility of the rule of action, are whatsoever good effects can have been expected from it:—*notoriety,* reference, viz. being had to the individual occasion on which, in order to be productive of the good effects looked for, it is necessary that an act of the sort of those which stand commanded by it should be performed:—and the converse, in the case of acts prohibited or permitted.

It is only in proportion as it is thus notorious, that a law can be productive of any the smallest particle of good effect. But of bad effect, without any such notoriety, it is capable of being productive in no inconsiderable degree. Such is the case with it, when in a case of penal law, non-observance has for its effect punishment—and when in the case of law non-penal, non-observance has for its effect burthen or inconvenience in some other shape.

On the part of the mass of law in question, *notoriety;*—on the part of him who in some way or other is concerned in point of interest to be apprized of it, *cognition;*—depends partly upon *external* circumstances, such as the operations, if any, that are performed for the purpose of giving it notoriety,—partly upon *internal* circumstances—circumstances constitutive of its internal or intrinsic aptitude for being notified.

Uncognoscibility on the part of a mass of legal matter is a quality which may be referable either to a state of things extrinsic and foreign to the law itself, or to the nature and constitution of the law itself.

In so far as it has its origin in a state of things extrinsic to the law itself, it may be termed uncognoscibility *ab extra;*—in so far as it has its origin in the nature and contexture, the *matter,* or the *form* of the law itself, it may be termed uncognoscibility *ab intra.*

In so far as the imperfection comes under the denomination of uncognoscibility *ab extra,* it is the result of want of promulgation:—deficiency or inappositeness in respect of the operations necessary to convey it to, and fix it in the minds of the

several persons, who on one account or another are in point of interest concerned to be acquainted with its existence and contents.

Uncognoscibility *ab intra* may have its origin either in the form of the mass of law in question, or in the matter. In so far as it has its origin in the form of the law, it has its origin in one or other of the imperfections of the first order,—viz. ambiguity, obscurity, or overbulkiness.

Overbulkiness may to this purpose be distinguished into absolute and relative,—relation being had to the persons concerned in point of interest in being acquainted with it.

Overbulkiness on the part of a mass of law is *absolute,* in so far as it cannot be reduced by the mere process of distribution, in which division is necessarily included.

When overbulkiness is relative only, it is capable of being reduced more or less by the mere process of distribution as above;—viz. by taking the whole mass and distributing it among the different persons (viz. individuals or sorts of persons) who are concerned in point of interest in different parts of it:—breaking it down into so many distinct portions as there are sorts of persons, each of whom is concerned with one part only.

Whatsoever portion of legal matter has no existence but in the form of unwritten law, has not, properly speaking, any existence. For it is only in virtue of certain determinate words to which it has been consigned, and of which the expression of it is composed, that a portion of law can be said, properly speaking, to have any existence. Without such words, without such *text* or *tenor,* as the phrase is, belonging to it, whatsoever is given as and for a portion of legal matter, exists only by fiction—is a mere figment of the imagination;—and whatsoever has no existence, is effectually and absolutely uncognoscible.

Though on the subject in question there exist not any portion of the real matter of law, a man may be punished, as day by day men are punished, as for disobedience to, or non-compliance with, such law:—but it is not by any such act of power or punishment that a real law can be brought into existence. Punishment is the act of a judge, or any other person who has power to do evil to the party said to be punished: a law is the work of none but a legislator.

In so far as it is in respect of its matter that a mass of law is uncognoscible, it is for want of *visible reason*—of reason either apparent on the face of it, or made known along with it,—or by apt expression annexed to the text or tenor of it.

In this case, so far as regards the matter as above, the intrinsic uncognoscibility on the part of the mass of law will not, it is evident, be absolute and entire;—it is not to every man, and at all times, that an acquaintance with the nature of its contents, and at the same time with the fact of its existence, will be impossible.

But by indication of the reason, if so it be that it have a reason, such an instrument of fixation will be provided, such an anchor for fastening it in the mind, as cannot by possibility be given to it by any other means.

§ 2.

Ambiguity And Obscurity.

Between ambiguity and obscurity the connexion is close, and almost undistinguishably intimate.

A locution is ambiguous when two significations are presented to view in such manner, that though it be clear to the reader that one of the two was meant by the author to be regarded as his,—yet which of the two it is remains a matter of doubt.

Its etymology considered, by the word ambiguity, if taken strictly, an intimation is conveyed, that of the rival significations in question the number is but two. In the nature of the case, however, as certified by experience, to the possible number of these candidates there are no certain limits. But forasmuch as, for the purpose of comparison, these rival significations may, be they ever so numerous, be taken up, and held in contemplation by pairs, and as the etymology of the word *comparison* imports, it is only when held up together in pairs, and not in any greater number, that of the points of agreement and difference amongst a number of objects—say accordingly between object and object—any such conception as shall be at once distinct, correct, and complete, can generally, if at all, be formed;—on these considerations, be the number of these rival significations ever so extensive, the terms ambiguous and ambiguity may still be employed in speaking of them.

Obscurity may be resolved into ambiguity, or at least the relation of the one imperfection to the other manifested, by considering the mind, as tossed about, as it were, in case of obscurity amongst a number of rival significations altogether indeterminate and even infinite. For, that in the mind of the author in question, be he who he may (he being in his right mind), no meaning whatsoever was at the time of penning the discourse in question present, cannot seriously be supposed. Some meaning or other, then, he cannot but be supposed to have had;—and therefore, till some determinate meanings in a limited number present themselves to the conception, it will remain wandering in infinite intellectual space, the field, abode, and station of an infinite host of meanings.

Sometimes one single determinate meaning will have presented itself—and still, whether that be the author's real meaning may remain matter of doubt. This case will be apt to present itself as belonging to the head of obscurity:—if considered as a case of ambiguity, the doubt must be considered as having place between the determinate signification on the one hand, and an infinite number of indeterminate ones on the other.

In a discourse of this sort, when an instance of ambiguity presents itself, the state of dubitation may be either merely temporary, or ultimate and definitive. And so in regard to the case of obscurity.

In the case when it is temporary, a distinction may be made between the case where, by a view of the context, it is corrected without examination, and the case where to the solution of it examination is necessary:—in the first case it may be distinguished by the appellation of momentary—in the other, of permanent.

Of any the slightest and most evanescent degree of ambiguity, even though incapable of being productive of any permanent doubt, the effect upon the mental feelings is unpleasant: it produces upon the mind of the reader a sort of sensation, attended with uneasiness to the mental faculty called *taste*—an uneasiness which seeks vent by stigmatizing the discourse with the imputation of clumsiness or inelegance.

This sort of inconvenience, such as it is, is one that accompanies the imperfection in question, whatsoever be the species and character of the discourse which is the seat of it.

If, though not definitive, the ambiguity be permanent,—to the slight and evanescent uneasiness produced by the inelegance of the discourse, considered in a general point of view as a discourse, is added the more serious uneasiness, the anxiety which depends upon the nature and character of the particular species of discourse here in question,—the anxiety produced by the consideration of the effects of which it may be productive,—which, in the character of a portion of law, it may have upon the interest of the reader, or of some individual, or aggregate of individuals, whose interest has been bound up with his own by the tie of sympathy.

If the imperfection be not only *permanent* but *definitive,* the consequence is, that he is thereby subjected, not merely to the apprehension, but to the danger of some operation more or less prejudicial to his interest (as above explained*) at the hands of the law: *in penale,* to some punishment, or else to some privation to which he considers himself as under a prudential obligation of submitting, lest he should subject himself to such punishment: and so *in civile, in non-penale,* in regard to burthen, an inconvenience in the shape of loss, or any other shape.

When the ambiguity is but of the momentary or evanescent kind, take any individual instance by itself,—the utmost evil—the utmost uneasiness producible by it, will in general be a quantity altogether impalpable, too minute to have any claim to regard. But when repeated and multiplied to the degree in which, in the composition of an entire statute, it is capable of being multiplied—of a statute of that figure and bulk which in the English statute-book is so frequently exemplified, even this slight species of imperfection is not incapable of being swollen into a serious inconvenience. Lay upon a man's shoulders a burthen of a certain weight,—it may be composed of an impalpable powder, yet the pressure of it will not be the less grievous.

In regard to ambiguity, distinctions productive of practical use may be derived from the consideration of the modifications of which the source or seat of the disease is susceptible.

1. This seat may be in a single term, in a single word,—say *in termino—in vocabulo.*

2. It may extend itself over a whole phrase, or collection, or series of words, more or less numerous, taken by itself,—say *in propositione,* or *in contextu.*

3. Its seat may be, not in any single word or phrase, but in any single word or phrase considered with reference to two others; in which case, the seat of the ambiguity is a compound seat—its elementary parts, the three words or phrases taken together,—*in situ,* or *ex malâ collocatione.*

Thus, in the case of a phrase capable of producing the effect of a limitative clause, placed between the other clauses, it may,—how clear soever in itself,—and, moreover, how clear soever each of those two other clauses may be,—be productive of ambiguity, in respect of the doubt to which of the two it was intended to apply itself: temporarily, permanently, or definitively at least, such will be the effect of any such interposed clause, if consistently with apparent common sense, it be in its nature applicable as well to the one of them as to the other.

Of the modes of ambiguity hitherto above brought to view, every discourse, whatsoever be the subject and object of it, is susceptible. To an ulterior mode of ambiguity, discourse, in so far as it possesses the force of law, is liable. This is that which is so apt to have place, when it has happened to the same subject to have been taken in hand by laws of different dates: the question in this case being, this portion of law, in the instrument of earlier date, is it, or is it not, to be considered as superseded by this other portion of law contained in the instrument of more recent date?

To a doubt of this nature, it is only by accident that any interpretation whatever can be afforded by the maxim, *Leges priores posterioribus abroguntur.* The justness of the maxim is above dispute if, on the part of the legislator of posterior time, there existed any such desire as that of abrogating the provision made by the legislator of anterior time, abrogated it is, and must be deemed to be. But any such desire,—had it really any existence in his mind? A desire to any such effect,—was it really his desire? In that part lies the difficulty. The legislator of earlier time prescribes such or such a mode of doing the thing in question; the legislator of later time prescribes another mode a little different. The option between the two modes,—is it to be considered as left or taken away? and if left, to whom left?

§ 3.

Overbulkiness.

As in the case of ambiguity and obscurity, so in the case of overbulkiness: the most serious part of the evil, the intensely afflictive, and at the same time all-grasping evil, is resolvable into, and coincides with that of uncognoscibility, viz. the chance which,

in the character of a cause, the property in question has, in the instance of this or that individual person, of being productive of that effect, with its disastrous consequences.

The condition in life of the individual in question is a circumstance by which the efficiency of this cause will, it is evident, be subjected to modification, and that upon a longextended scale.

The man of law is the sort of person on whose faculties, considering the case in the abstract, the species of burthen ought to be found pressing with the severest pressure: in the shape of law, the burthen that presses upon him being the aggregate of all the several burthens that are to be seen or felt pressing upon any other shoulders.

But this being a sort of burthen which, in that profession, presses not upon any man's shoulders any further than in consideration of a more than equal retribution it has been his desire and his pleasure to submit them to it; the consequence is, that when the burthen is the most bulky, the suffering produced by it is, in mathematical language, a negative quantity,—in plain language, real suffering there is none, but more or less enjoyment in its place.

It is to this simple circumstance that the body of the law, taken in its totality, is obviously indebted for its present bulkiness. Such as it is, it is the handiwork of the man of law. While to every other class of men it is, according to circumstances, an instrument of pressure, affliction, ruin, death,—to him, and in proportion as to other men it is productive of these evils, it is an instrument of aggrandisement, of opulence, and power.

No wonder if in every country, and in every age, down to the present moment, the whole force of his faculties have been bent, not to the alleviation of this burthen, but to the working it up to, and keeping it up in a state of the most mountainous bulk, and thence of the most consummate uncognoscibility that, under the spur of mighty interest, human ingenuity on the one part could devise, human nature and stupidity on the other part submit to and endure.

It is not merely by its immediate operation, and in the simple ratio of the magnitude of the mass, that bulkiness on the part of a mass of law tends to produce, and so unhappily does become productive of, uncognoscibility. The more there is of the mass, be it what it may, the more there is of that matter of which ambiguity and obscurity are capable of being found the attributes. Moreover, by the same causes by which his exertions have been engaged in endowing this his work with the most enormous degree of bulkiness possible, by the same causes have they been directed to the object of giving existence, perpetuity, and increase, always in the utmost possible degree, to those other vices.

Though of two bodies of law, each professing to be complete, what may easily enough happen is, that not the greater, but the lesser should, taken in its totality, be more ambiguous and obscure, yet nevertheless sure it is, that the greater the bulk of any such mass, the greater, more perfect, and exquisite, is the degree of ambiguity and obscurity which it will be in man's power to plant in it.

Accordingly, not only in the article of bulkiness, but, under favour of it, in the intimately connected articles of ambiguity and obscurity, there will in the field of law be occasion to witness, under favour of such causes as are not to be matched elsewhere, such effects as are alike incapable of being matched elsewhere.

Bulkiness on the part of the body of the laws may be distinguished into *absolute* and *relative.*

Absolutely considered, a body of laws may be said to be inconveniently bulky, when, taking the whole of it in the aggregate, it is considered as pressing in an inconvenient degree upon the faculties of the whole body of the members of the community taken in the aggregate.

Relatively considered, this or that part of the body of the laws may be said to be bulky in an inconvenient degree with relation to this or that part of the whole body of the members of the community considered as loaded with it, when, although if to each one were presented the whole portion with which on one account or other he is concerned,—and thence concerned to be acquainted with,—and no more, the case might be, that the pressure of such portion might not be so great as to be inconvenient to him; yet the case being, that in addition to that portion with which he is concerned, such person is burthened with a quantity of matter, and that to a vast amount, with which he is not concerned,—hence it is, that in a relative sense, the whole aggregate of the body of the laws is, with relation to the whole body, composed of all the members of the community taken together, in a highly inconvenient degree bulky and oppressive.

From this theoretical distinction between bulkiness in an *absolute,* and bulkiness in a *relative* sense, results a practical expedient, such as in the character of a corrective remedy will be found of sufficient efficacy to reduce, in the instance of each individual, the amount of the matter pressing upon his shoulders, so as to make it no longer, in the instance of any one individual, a source of considerable sensible inconvenience.

The principle or rule of division, or distribution, is the name by which this practical expedient may from henceforward be distinguished; and the method to be pursued in applying it throughout to the best advantage, will be the subject of consideration in a succeeding Chapter.*

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CHAPTER V.

EXPLANATIONS RELATIVE TO THE IMPERFECTIONS OF THE SECOND ORDER.

§ 1.

Unsteadiness In Respect Of Expression.

This imperfection has place when, and in the degree in which, for the conveyance of one and the same idea, or portion of an idea, different locutions, whether single or many-worded, have been employed.

The imperfections of the first order, to which this imperfection of the second order is indebted for its vicious quality, are ambiguity, or obscurity and bulkiness.

When so it really is, that it is a man's meaning to express two or more different things, difference in respect of the expression is the sole resource; therefore so it is that, for the moment at least, when two different sets of words are observed to be employed, the notion that not one and the same thing, but two different sets of things, are intended to be expressed in and by the use made of these different sets of words, cannot but present itself.

To the production of the inconvenience of overbulkiness, it is conducive rather by accident than of necessity. When so it is that to the expression of one and the same idea a number of different expressions are successively employed, they will naturally be of different lengths, and the difference between the length of the longest that happens to be employed, and that of the shortest of those by which the same sense would be expressed with equal aptitude, multiplied into the number of the times that, in the discourse in question, this bulkiest expression recurs, gives the maximum of the bulkiness which, by means of this imperfection of the second order, is produced by this same bulkiest of the several synonymous expressions.

Thus suppose, that for the designation of the idea in question, a locution composed of two words would suffice: instead of it, in ten places a locution composed of four words is employed; and in ten others, a locution composed of eight words: were the four-worded locution the only one employed in the twenty instances, the quantity of redundant matter would be equal to the quantity of useful matter: were the eight-worded locution alone employed, the quantity of redundant matter would be to the quantity of useful, as four to one.

§ 2.

Unsteadiness In Respect Of Import.

Opposite and correspondent to unsteadiness in respect of expression, is unsteadiness in respect of import.

Unsteadness in respect of expression is, where, for the expression of one and the same idea, or part of an idea, divers words or sets of words are employed; unsteadiness in respect of import is, where, in the compass of the same discourse, to the purpose of denoting divers ideas, or portions of ideas, one and the same word or set of words is employed.

Ambiguity is the primary imperfection, towards the production of which, the tendency which this imperfection of the second order possesses, is sufficiently manifest.

It is only by accident that the species of imperfection here in question has found its way into a mass of English statute law; the soil has no particular attraction for it. Instances of it may, however, occasionally be found.

The following are examples of this unsteadiness in the use of terms:—

1. *Common law,* employed to signify fictitious, judge-made law, as distinguished from real legislator-made law;—

Common law, as distinguished from equity, as employed to distinguish the mode of procedure pursued in the original set of courts, from the mode of procedure in the courts called Equity courts.

2. *Civil law,* employed as synonymous respectively to non-penal, Roman, non-canon, non-military, admiralty, non-ecclesiastical, non-common law. In the first case it denotes, on the part of the enactments in question (real, in the case of statute-made law—fictitious, in the case of judge-made law), the absence of suffering appointed for the purpose and under the name of punishment. In the case of Roman law, and canon law, it is employed to designate the source from which the rule of action, by the enactments (real or fictitious as above) of which it is composed were derived. In the case of military and admiralty law, the occasion on which, and the purpose to which, the rule of action constituted by it is applied.

Thus it is, that under the existing system on the part of the arrangements themselves, and on the part of the language employed, a correspondent inaptitude, all-pervading and most exemplary, has place.

§ 3.

Redundancy Of Matter, I. E. *Of Words.*

The imperfection of the first order, to which this imperfection of the second order presents itself at first sight as conducive, is bulkiness.

In the character of a cause of obscurity, and thence to a greater or lesser extent of uncognoscibility, bulkiness will, even when most indispensably necessary, be ever a matter of just regret.

In so far as it is necessary, and has appropriate utility for its justification, the inconveniences that result from it, be they what they may, find their proportionate compensation.

But where redundancy has place, the redundant matter not having by the supposition any part of it any use, it is by the whole of it a mass of mere mischief.

Another imperfection of the first order, to which on a nearer view this same imperfection of the second order will be seen to be naturally and frequently though not constantly conducive, is obscurity.

Be the subject what it may, the more redundant the scheme or plan of phraseology which it happens to an author to take up and set out upon, the greater the probability and danger is of deficiency—relation being had to the scale upon which he has undertaken thus to operate; for the more ample the task which he has set himself to do, the greater is the quantity by which, in his endeavours to execute the whole of it, he is likely to be deficient.

In the case of the English Act-of-Parliament style, the plan and scale of operation being, when compared with any ordinary discourse, by far more copious and more redundantly copious, the probable amount of deficiency receives a proportionable increase.

A little further on, occasion will be taken to give a sort of analytical view of the principal forms in which, in the contexture of an English act of parliament, this imperfection may be seen to exhibit itself.

But it is from the words, and from the words alone, that their import can be collected; and when, as between locution and locution, a difference—any the slightest difference—is observable in the words, a correspondent difference in the intended import can scarcely ever, for the moment at least, fail to present itself to the reader's view as a possible cause of such difference in respect of the words. In a word, in the character of an efficient cause of obscurity, unsteadiness in expression has been already brought to view,—and of unsteadiness in expression, the alternation between redundancy and deficiency is one mode.

§ 4.

Longwindedness.

Be the nature of the mass of literary matter in question what it may—matter of legislation, or any other portion of it,—it may be said to be longwinded in proportion as the line of words is long and protracted, through which the conception has to travel before it can find a resting place.

In the case of an English act of parliament, for example, the whole mass is to appearance cast into *sections,* in each of which the elementary parts, the words, are in such sort connected, that under pain of not comprehending any one part, the reader finds himself under the continual obligation of gathering up the matter as he advances, and retaining in his mind the whole at one grasp, before he can make himself, or feel as if he had made himself, master of every part of it.

One imperfection of the first order, to which this imperfection of the second order is conducive, is again obscurity.

To the physical eye, the deeper and more protracted any medium is, through which it happens to any object to present itself to view, the deeper the obscurity in which the object appears to be involved: to the mental eye, in like manner, the longer the paragraph, the greater the difficulty of perceiving its meaning, and on all occasions penetrating to the end of it and all through it: to shift the metaphor, the greater the number of the words, the greater the chance that, sinking under the task of picking up the import of them one by one, it may, ere the task is over, let idea after idea drop out of its grasp, and in its anxiety not to lose any, drop more and more, till at last it have lost all possession and command over them, and retain nothing but a dark and indistinct notion of the whole mass, or any part of it,

If mere simple redundancy be of itself a cause of obscurity, longwindedness is a much more powerful one.

As in the case of bodily, so in the case of mental labour—what oppresses a man is not so much the absolute magnitude of the quantity of the work he has to go through, as the shortness of the time he has to do it in,—or rather the quantity which it is necessary for him to go through, before it is in his power to take repose.

In an English act of parliament, in each section the connexion given to the matter is commonly such, that when once the mind has entered upon it, no repose is to be had till it has reached the end of it: no, nor then neither, unless such be the strength of its grasp as to give assurance of its retaining, in a full and distinct point of view, the whole mass of the matter which, parcel after parcel, it had in the course of its progress through the section been taking up.

So much worse than absolute redundancy is longwindedness, that if in any instance, under the oppression produced by longwindedness, it were deemed necessary to seek

relief,—relief would in many, and indeed in most instances, scarcely be to be found on any condition other than that of adding to the number of the words.

A bad and inconsiderate sort of economy is among the most productive of the causes by which longwindedness in masses of discourse, in sections and paragraphs and sentences, is produced. One predicate, it is conceived, may be made to serve for two or more subjects; and thus two or more substantives, with their respective complements of attributes, are forced under the governance of one verb. But the masses which the pen thus conjoins, the mind must sever, before it can embrace and make itself master of any one of them; nor of any one such fragment of a proposition can it acquire a steady view, on any other condition than that of making it up into a complete one, and accordingly making up within itself the complement of words necessary to that purpose.

Thus it is, that to dispel the obscurity produced by longwindedness, an addition must be made to the absolute number of words:—an addition by the amount of which, if it did not find the original number defective, it would render the mass of matter redundant.

In an ordinary discourse, it may be not easy perhaps to find an instance of a sentence which, labouring under the imperfection of longwindedness, can be cured of it upon any other terms than that of making additions, and those very considerable ones, to the lengthiness of it. Take up a longwinded sentence in which matter for ten sentences is discernible,—take it in hand and break it down into ten short ones,—scarcely will it happen, that for the composition of these short ones, twice the number of words contained in the original longwinded sentence will suffice.

It is perhaps only in lawyers' jargon—it is only in the language of an English act of parliament, that instances are to be found in which, upon the breaking down of a long-winded section into its component members, the aggregate of the words contained in the new-moulded parts shall not exceed the aggregate number of the words contained in the original article. The reason of this will be found in the circumstance, that in such a variety of forms, each section embraces so large a quantity of redundant and peccant matter that may be extirpated, not only without prejudice, but with signal benefit to the sense.*

§ 5.

Complexity Or Complicatedness;—Whence Entanglement.

Entanglement is a natural result, when in one and the same grammatical sentence divers logical propositions are involved and drawn out together.†

One imperfection of the first order, to which this imperfection of the second order is conducive, is obscurity.

Even when clear of entanglement, longwindedness, it has been seen,‡ has obscurity for its proportionate result;—but when to longwindedness, entanglement is added, the

obscurity, it is evident, will be apt to be increased in a ratio greater than that of the longwindedness.

In the case even of simple longwindedness, the task given to the apprehensive faculty may be greater than it can effectually comprehend and retain within its grasp: the labour of thus holding the matter it embraces, without letting drop any portion of it, may be more than the intellectual faculty of the individual in question is able to sustain;—and when to this labour is added that of unravelling and disentangling the interwoven threads, the mind cannot but be the more in danger of letting go its hold under such a task.

Another imperfection of the first order, to which this imperfection of the second order will, whether constantly or not, be naturally and frequently conducive, is *bulkiness.* As the entanglement runs on, the obscurity thickens—as the obscurity thickens, it attracts more and more the attention of the penman:—fearing lest the mass should grow too involved, and through much entanglement too obscure for use, he sets himself to disentangle it—to point out this or that distinction in the provision meant to be made respecting the subjects thus involved. But as by words it was that the matter was entangled, so it is only by words that the disentanglement can be effected, or so much as aimed at: and thus it is, that while increase is given to *obscurity,* so is it to bulkiness.

§ 6.

Nakedness In Respect Of Helps To Intellection.

The species of imperfection here meant to be brought to view, is that sort of blemish of which no species of discourse is in its nature unsusceptible, but which in England is in point of fact in a manner peculiar to the discourse of the legislator—to that species of discourse in the instance of which the consequences resulting from it are of the most inconvenient and pernicious cast.

To such a degree has been the success with which in this line of sinister industry the labour and ingenuity of the man of law has been attended, that he has kept in a state of depression below the condition of barbarism, not to say of savage life, that part of the means of communication between mind and mind which has been unfortunate enough to fall into his hands.

Of these helps, the most prominent and obviously necessary examples consist of two connected operations:—the one consisting in the making division of the whole mass of literary matter, be it what it may, into a number of parts of a moderate length,—of a length suited to the conceptive and retentive powers of the description of persons for whose eye it is destined; and the other, in giving to each of such parts a name by which it may be called.

Arithmetic—the humble but useful art and science of arithmetic—furnishes a set of names which possess the advantage of being with equal propriety and convenience

applicable to any mass whatsoever, physical or psychological, into whatsoever parts it may be found convenient to divide it;—and these denominations, besides being so universally apt, are at the sametime less bulky than any others that could be devised.

Religion has availed itself of these helps to intellection; and of the assemblage of works of which the sacred volume is composed, each one of any length has been divided into numbered chapters, and each chapter into numbered verses.

The interested and crafty bigotry of the man of law has refused to the people an accommodation which the scrupulous piety of the theologian could not refuse. An act of parliament repels the dividing line of the arithmetician with no less horror, than the accursed soil sown with salt rejects the plough of the husbandman, and yields no fruit. A mathematical point has no parts: so neither has the chaos of an act of parliament.

Many are the modern volumes, in each of which the quantity of matter exceeds not the quantity in a single statute. Yet this statute is no less sacredly indivisible than if *fine* or *præmunire* had declared it one and undivided.

The licentiousness of the press has indeed divided it into parts called sections; and to each of these sections this same licentiousness has gone so far as to affix a different number;—but in the manuscript on which alone has been imprinted the touch of the legislative sceptre, this conceit has no mark to give warrant or allowance to it. Number it has none—division it has none;—what token of separation is afforded, is afforded not by a black line—a blank instead of a whole line, or instead of the latter part of a line;—still less by any of those numbers by which in the authentic letter-press copy it is introduced. A lot of surplusage, and mostly a lot to the same effect, such as—"And be it further enacted,"—or, "And be it further enacted by the authority aforesaid," gives commencement to a sentence:—and it is on the reappearance of this useless string of words that the printer finds his only warrant for the arithmetical figure which, to the several successive masses thus distinguished, he has ventured to affix.

None are so deaf as those who will not hear—none so unintelligible as those whose aim and determination is not to be understood.

Obscurity and bulkiness are the closely-connected fruits of which this voluntary nakedness is productive; and they may be seen growing upon the same stalk.

As often as a reference comes to be made, the seat of the matter referred to is either in the act itself from which the reference is made, or in some other act.

1. If in the act itself, to that mode of designation which never fails to be employed, except when misdirection is an object either of study or indifference—viz. designation by the arithmetical name—to that only rational and honest mode of designation, is substituted an intimation that in some part or other of that same act, or at best somewhere or other in the preceding part, or somewhere or other in the succeeding part of that act, that which is meant to be designated—that which the legislator has in contemplation—the matter which the legislator has in his mind, will be to be found.

What is the consequence? That in the one case you have to search through and examine into the whole number of the sections, one excepted, contained in the act—in the other case, half that number upon an average.

One hundred and twenty-three is the number of sections in the act herein employed* for an example;—fifty, the number of the folio pages in which these one hundred and twenty-three sections are contained. Here, then, instead of a few arithmetical figures, not occupying all of them together a space greater than that which is occupied by a word of ordinary length, the reader has somewhat more than fifty pages to pore over, and in the other case somewhat more than four and twenty, containing each of them about half as many thousand words; and this double and single labour is imposed several times in the course of this act.

But the passages in which this same subject, be it what it may, is touched upon, are they one or many?—and where is it, or where are they?—and in either case, of each such passage how much is there to the purpose? These are among the questions to which, on any or each occasion, a man may have to find an answer, always at his peril: to the magnitude of which peril no assignable limits can be set but those which are set by death.

2. If it be in another such act that the matter in question is to be sought for, then to the designation of the game to be hunted for, is to be added the designation of the field in which the hunt is to be made. Figures and letters to the amount of the numbers of letters in a word—45 Geo. III. c. 72, for example—are the signs employed for this same purpose by each non-official hand. The title of the act is the only sign which the united power of King, Lords, and Commons, is ever suffered to employ for this same purpose. The title of an act!—and what is this same thing called the title of an act—meaning, of an act of parliament? It is a sentence varying in length, not unfrequently containing in itself the matter of an ordinary page—and this whole page is no more than a sort of compound substantive, forming no more than a part of a grammatical sentence, in the texture of which not unfrequently substantives of this same sort in numbers are combined.

And what is this occasion on which all helps to intellection, all supports to the weakness of the human mind, are so studiously and perseveringly refused? It is precisely that on which such helps to human weakness are at the same time of most importance and most needful;—in which the magnitude of the mischief producible by a false step, and that of the pressure against which the support is needed, are both at the very highest pitch.

To facilitate the communication of knowledge in any inferior department—in the department of school grammar and common arithmetic—no exertions that can be made are thought too great; while in the master science—the science upon which the fate of every other science, and of all to whom it can happen either to teach them or to learn them depends—whatever exertions are made, on the part of the head-master at least, have for their object, not the causing it to be understood, but the keeping it from being understood, or causing it to be misunderstood, and that to as high a degree of perfection in the arts of non-intellection and mis-intellection as possible.

So far, then, as concerns helps to intellection, that which ought to be done by the legislator—and will be done by the legislator as soon as the interests of the whole community at large obtain in his eyes the preference over the separate and sinister interest of a small portion of it,—is not only in the first place to give to the subject-matter in question the benefit of all such helps to intellection as can be found applied to any other subject; but in the next place to look out for all such additional helps, if any, as can be found applicable to the particular subject which stands so much in need of them.†

§ 7.

Unapt Arrangement And Disorderly Collocation.

The importance of apt arrangement—its necessity in the character of an instrument of operation, a support to the weakness of the intellectual part of the human frame, is such as, one should have supposed, would have never found so much as a single human being to contest it, if the pretence of being exempt from all need of this support had not found a stock of arrogance adequate to the advancement of it—with a correspondent disposition to regard as imbecile, those by whom their need of it is felt, and as trifling, useless, and thrown away, the toils of those laborious men who employ themselves in the endeavour to improve it.

The more bulky and obscure the subject-matter, the more urgent the need which, in its struggles with the difficulties of the subject, the mind has of this instrument of support.

It is easier to be convinced of the utility of good order in every case, than to give such a definition of good order, such an account of what good order is, as shall be applicable, and be at once seen to be applicable to every case.

Be the subject-matter what it may, its nature and properties will be the more correctly and completely, and thence the more clearly understood, the more correctly and completely the nature of the relation which it bears towards all such other objects as it can be seen to bear any assignable relation to, is understood:—and the more clearly the nature of it is understood, the more clear and pure from the imputation of obscurity will naturally any regulation of which it constitutes the subject-matter, be reasonably expected to be.

What objects ought to be brought into conjunction with each other—what ought to be kept separate from each, will depend upon the particular nature of the particular subject which is on the carpet.

But of bad order some general notion may be given, by descriptions which shall apply to good order, and thence to bad order, whatsoever be the subject.

Good order may be disturbed, bad order produced, either by joining together things that ought not to be joined, or by separating from each other things that ought not to

be separated: and in the case of things that ought not to be separated, the order is worse and worse, the greater the mutual distance is to which they are cast.

Nomenclature is classification:—to denominate, wherever the denomination is a general term—to denominate is to classify, to methodize, to put in order, to arrange. By denomination, all individuals, all species, are brought together, brought as it were into contact by being comprehended under the same name.

If in the case of a number of objects brought together by the same name, the dissimilitude be such that no property belonging to each of them be found, then so it is, that of the thing distinguished by that name, nothing can be said that is true.

The greater the number of propositions that can be found to belong to each one of them all without exception, the greater the number of truths that can be predicated of them, and the more serviceable the principle of arrangement of which they constitute the subject.*

Bad order is either that which is such in respect of *aggregation* or *disaggregation,* or that which is such in respect of *precedence.*

In the case of that which is said to be bad in respect of aggregation or disaggregation, the order of precedence between object and object, in the case of such objects as are cast into one group by being brought under the same name, is not considered.

When the scheme of order in question is spoken of as being bad in respect of precedence, the articles with reference to which the topic of precedence is brought to view are considered as being each of them distinguished and made known by a separate name:—and thereupon it is, that in relation to the several objects or articles upon the list, the question arises which shall be placed or spoken of first, which second, and so on through the rest.

In this case, bad order takes place when, relation being had to the purpose or design, whatever it be, which is in view, that object which ought to have stood first, is placed second, or in some lower rank; and so in regard to the rest.

In the case of the English acts of parliament, instances will be found in but too great abundance, in which, reference being had to the purpose or design which was, or at any rate ought to have been, in view, disorder in both its shapes as above distinguished, may be seen to manifest itself.

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CHAPTER VI.

OF REMEDIES.*

§ 1.

Of Remedies For Ambiguity.

1. When the ambiguity is *in terminis* or *in vocabulo,* the nature of the case admits not any remedy susceptible of universal application. The term must either be changed, or, by such explanation as the nature of the individual case requires, the import of it must be limited and fixed.

2. So where the ambiguity is *in propositione* or *in contextu.*

3. Where the ambiguity is *in situ,* i. e. *ex prava collocatione,* the case admits of a remedy susceptible of a general description applicable to all cases.

A proposition capable of being understood, for the moment at least, as meant to be applied in the character of a limitative proposition to either of two other propositions, but in reality meant to be applied to only one of them, is inserted between the two. In this situation lies the efficient cause of the ambiguity.

The remedy is simple and effectual. Insert it neither between them both, nor after them both, nor before them both, but in the bosom of one of them; viz. of that one of them to which, and to which alone, it is, in such its limitative character, intended to be understood as applying.

Thus it is when the object in view is to apply a limitative proposition to one single principal proposition, and to that alone, the operation is sure and easy.

But suppose the object to be, to apply one clause in the character of a limitative clause to two or more; say to *two* principal ones.

Here the rule is, *prefix it to both.*

1. Do not place it between both; for to do so would be to render it doubtful whether it were meant to apply to both, or to one only—and if to one only, to which?

2. Do not place it at the end of both;—to do so, would be to give occasion to regard as the preferable supposition that it was meant to apply to the last alone, not to the first.

Insert it *after* the last of the two,—the idea naturally suggested by this position will be, that it was by that last, and that alone, that it was suggested;—that it was the last, that for want of this limitation was too general, and accordingly, but for the limitation

so applied, the phrase employed for giving expression to it would have been incomplete;—that in presenting in the first instance the proposition, which by the supposition is too general, too comprehensive, a sort of false step was made, and it was to correct this false step, that in the way of after-thought, the limitative clause was added.

On this occasion, let the state of the author's mind have been what it may, such is the state of the reader's mind. The first conception he imbibes is incomplete and incorrect—incorrect by reason of its excess in point of extension, the result of the as yet unsupplied defect in the form of words employed for the expression of it—which defect consists in the absence of the limitative clause that was necessary to render the expression exactly commensurate with the import as it stood in the author's mind. At the next step, indeed, the mind of the reader imbibes the conception by which he is enabled to correct the momentary error—to retrace the false step which he had made. But as in the progress of the body, so in that of the mind, the sensation of a false step is, however expeditiously and easily retrievable, a sensation of an unpleasant kind, such as by repetition is capable of being rendered seriously disagreeable; and such as even, in any single instance, it would be better to a man to avoid than to experience.

Take now the case where the clause meant for a limitative clause is placed before the first of the clauses which it is meant to limit by it.

Here, in the first place, so far as regards the first of the two principal clauses, all such error as hath just been brought to view is effectually prevented. At the very outset, notice is given, that the proposition which is about to follow is not meant to be given as expressive of the author's meaning, till after the portion of extent, indicated by the antecedent, the limitative clause which is thus employed to introduce it, has been taken out of it.

Thus it is, that to the reader the unpleasant sensation, the sort of false step in question, is saved.

At the same time, on the part of the author, of that self-possession, that mastery of the subject, that state of complete preparation for the task he has set himself, that indication is given which has been above explained. At the very commencement of the sentence, the conception which it was his own endeavour to convey, was, it is manifest, already formed. Had the powers of the language sufficed for the conveying the conception in its perfect state in one single clause—such single clause, and no more, would have been employed for it. The language not being adequate to the purpose, he found himself under the necessity of employing two clauses—one of them to prune down and correct the other. But under, and notwithstanding, this imperfection in the language, he took care that in the mind of the reader no erroneous conception should be formed. For by giving notice, in the first instance, of the deduction that would come to be made, he took care that the conception should be already pared down to its proper scantling, before it presented itself for admission into the reader's mind.

Now as to its application to the second of the two clauses which it is designed to limit. Being placed before this second, as well as before the first,—and in placing it before the first, these marks of attention and self-possession which have just been mentioned, being exhibited as above,—the conception will naturally be, that it was to this second that it was meant to apply, as well as to the first.

Either (says the reader to himself) it was the author's meaning, that the one limitative clause should be applied to both the principal clauses that follow it—to the second, as well as to the first;—or if it had not been his meaning that it should apply to the second, he would have found some means of giving timely notice of the difference; or rather, had such not been his meaning, he would have, by giving the proper turn to the whole group of clauses, have taken sufficient care to prevent any such erroneous conception from being entertained.

Rule.—If you would avoid ambiguity arising from mis-collocation, or *ex situ,*—if there be but one clause to be limited, insert the limitative clause within it; if there be more than one, place it before them all.

In both these cases, besides obviating a logical disorder, the remedy exhibits a positive beauty. It is in the former point of view that it applies to the species of composition here in question,—viz. to the work of a legislator; in the other point of view, it is susceptible of universal application,—applicable to every discourse, whatsoever be the subject—though in a more particular degree to such as has persuasion for its object.

In the case of the single principal clause, ambiguity on the part of the discourse, probability of doubt on the part of the reader, uncertainty, more or less durable, being the constant result of the unapt collocation—and of the hesitation and uncertainty, a sensation of an unpleasant kind being as constant a concomitant, the not taking the requisite measure for saving him from this unpleasant sensation is a proof of a deficiency in that art—the art of pleasing—of which the very act of a man's taking upon himself the character of a writer, shows it his wish to be a proficient.

In proportion to the constancy with which that symptom of weakness is avoided, and observed to be so, strength and self-possession, qualities agreeable to be observed, will on the part of the mind of the author be manifested—and on the part of the work, the correspondent agreeable quality, viz. force.

In both cases, the expedient employed is indicative of a mind which has the whole subject under command, and by which it is embraced with a firm grasp.

With respect to ambiguity arising *ex vocabulo,* the two following rules may be laid down for the avoidance of ambiguity:—

Avoid the use of any locution exclusively legal.

Expound all words of doubtful or varying signification.

§ 2.

Of Remedies For Overbulkiness.

In bringing to view the imperfections incident to the language of legislation, when in the character of an imperfection incident to any mass of legislative matter the vice of overbulkiness came to be placed upon the stage, the distinction between *absolute* and *relative* was stated as a distinction which, with a view to practical arrangement, would in a proper place be shown to be an object of prime importance.

The time is now come for inquiring by what means it may be employed in that character to the best advantage.

On casting, in this view, a glance upon the whole mass of legislative matter existing in the political state in question, whatsoever it may be, two observations readily present themselves at first sight. One is, that there is scarcely an individual in the country, at any rate the number of individuals cannot but be comparatively small, by whom, taken in its totality, it is physically possible for so enormous a mass to be borne in mind.

The other is, that taking for this purpose any individual at random, there can be but a comparatively small part of that vast whole, with which, in respect of any private and personal interest of his own, there can be any use in his being acquainted.

Be the bulkiness of the whole ever so great, if there be not any assignable individual with reference to whom it can with propriety be said to be over-bulky, it cannot with propriety be charged with overbulkiness.

Hence, in the character of a remedy, and that the main remedy against overbulkiness, we have a rule with a corresponding principle.

The rule is: let the whole mass of legislative matter be broken down into parts, carved out in such sort, that in hand, and thence in mind, each man may receive that portion in which he has a personal and peculiar concern, apart from all matter in which he has no concern.

Rule—*the rule of distribution;*—corresponding principle—the *suum cuique* principle—to which for this purpose, and in concerns of the sort here in question, reference may henceforward be made.

In the application of this rule and this principle, two points will require to be attended to:—

The first, and the only one of the two which is in a direct way conducive to the object here in question, is to observe and take care that in the collection made for the use of each particular individual or class of individuals, no portion of legislative matter in which such individual or class have not any such personal concern as above, be admitted.

Rule—the rule of *purity;*—corresponding principle—the *nil alienum* principle.

The other point is, in making up, for the use of each individual or class of individuals having a separate mass of legislative matter appertaining to himself or themselves as above, let care be taken not to omit any the least part of the aggregate mass of the legislative matter so appertaining to him or them.

Rule—the rule of *completeness;*—corresponding principle—the *unicuique totum* principle.

Take any point of time,—if at that point of time, a portion of law to which, at some future point of time, it may happen, to bear upon the interest of the individual in question, does not as yet bear upon his interests, such portion of law is as yet foreign to him.

At the time at which it does begin to bear upon his interest, then it is, and not before, that it concerns him to have it in mind, and to be subjected to the charge, in whatsoever quarter it presses upon him, in purse and in memory, which will be found attached to it.

In this observation may be seen the ground for an ulterior rule of distribution:—in the case of each individual or class, separate from such part of the mass of law as is matter of immediate concernment to him, such part as is but matter of eventual concernment.

Rule—the rule of *ulterior purity;*—corresponding principle—the *nil prœmaturum* principle.

To take an example in the general and all-comprehensive field of law:—To him who takes upon him the condition of a husband, and thereby becomes concerned in point of interest to be apprized of and bear in mind the provisions contained in the married man's code, it may happen in the natural course of things to become a father. If, then, of the assumption of the condition of a husband, paternity were an immediate as well as a certain consequence, the reason for his bearing in mind the provisions relative to the condition of a father would take place at the same moment with the reason for his bearing in mind the provisions relative to the condition of a husband. But there being no such necessary and immediate connexion in the case, but so it is, that of those who become husbands, there are many to whom it never happens to become fathers,—here we see a sufficient reason for keeping the father's code separate from the husband's code.

So grievous is the charge imposed upon a man's faculties, pecuniary and mental together—so grievous, in many cases is it capable of being, and indeed apt to be in some cases, that the reducing of it to its minimum is a duty, the proper discharge of which demands at the hands of the legislator his constant and unremitted care.

On the one hand, the importance of the interest at stake upon the fulfilment or nonfulfilment of the law—on the other hand, the absence or presence, the comparative efficiency or non-efficiency of the forces, whatsoever they may be, which tend to

plant and fix the conception of the purport of the law in the mind of him on whom the fulfilment of it depends: upon these two circumstances depends, on the part of the legislator, the urgency of the demand which the nature of the case presents for the application of the legislator's powers to the effectuation of this object.

Let us now, then, take a view of the different aspects which one and the same law is capable of bearing towards different descriptions of persons—the different ways in which their interests are affected by it—the different accounts on which they are concerned to bear in mind the purport of it.

Mention of the head or denomination of persons under which the portion of law in question will be to be found, together with the number indicative of the subdivision—such as the chapter, or section, or article in which it will be to be found: this, together with a concise intimation of the nature of the contents—(and a very concise one is all that will in any case be found needful)—such is the mode that will be found to serve, and to suffice for securing to each person adequate notice of every portion of law, the contents of which are not inserted at large under the head taken for the denomination of the class of persons to which he belongs.

By means of this additament, the matter of every such personal code will be distinguished into two parcels of matter of very different qualities;—viz. 1. Matter of *direction;*—this is the sort of matter which in the personal code in question is inserted at large—delivered *in terminis.* 2. Matter of *information;*—this is the sort of matter by which information is given of the several other personal codes, in which is to be found whatsoever other matter of direction in one way or other the person in question has concern with

§ 3.

Of The Different Ways In Which The Interests Of Different Persons May Be Affected By One And The Same Portion Of Law.

A sort of law may be conceived, by which no more than one person or class of persons is affected in point of interest;—others are to be found, in which, by one and the same law, divers persons, in a number to which there are no determinate limits, are in point of interest affected in different ways.

On the present occasion, these variations will all of them require to be brought to view:—these being the considerations by which, with a view to the most effectual system of notification, whatsoever course is taken with respect to the composition and promulgation of the portion of law in question will require to be regulated.

If, in the case of an imperative, or say obligatory law, the well-being of the whole community or any part of it be the object aimed at, two parties, or at least one party, may be assigned, whose interests are affected by the portion of law in question. One

party there cannot but be—the law being of the imperative or obligatory cast—who being bound by the law, may on that consideration be termed the party charged.

In this case, if so it be as by the supposition it is, that this law has for its object the well-being of the community or of some part of it, there must also be in that case some party who in that respect may be termed the party favoured by the law.

A case not without example is, that the party favoured by the law, and the party charged by it, shall be the same party—the same person or class of persons. In domestic life, this is the case with every command addressed by a guardian as such, or by a parent in his quality of guardian, to a child—by a preceptor as such, to his pupil as such.

In public life, this is the case with that whole class of laws which have for their object the enforcing of what is considered as a man's duty to himself—the prevention of those acts by the commission of which a man is considered as doing an injury to himself, as in the case of drunkenness, prodigality, and so forth.

Even taking the whole mass of law together on the one hand, and the whole mass of the population together on the other hand,—if the principle of utility as above described, be the principle acted upon, the same coincidence between the party or parties charged, and the party or parties favoured, will in this case likewise be observable:—if all are charged by the law, it is to this end alone that they are charged,—viz. that they may all be favoured by it.

Suppose the whole population divided into two parts, of which one part alone is favoured, the other charged without being favoured: it is the case of complete and unrestricted slavery—such as in ancient Sparta seems to have had existence as between the Spartans and the Helotes; but in modern times does not seem to be exemplified in any country, even in those in which domestic slavery is to be seen in its harshest forms;—for in every slave-holding country protection more or less efficient is by law afforded to the slaves; and in so far as it is afforded, two parties may be seen whose interests are in opposite ways affected by such protecting laws,—viz. the slave, who is the party favoured—and the master, who is the party charged by it.

So again, in the case of those laws which have for their object the prevention of those pernicious acts from which, in so far as they are committed, men in general have cause to fear, at the same time that men in general are exposed to the temptation of committing them—such as in a large proportion are those laws by which security to person, and those by which security to property, is endeavoured to be afforded. Murder, theft, and robbery: these, for example, are among the acts which all men are interdicted from performing; why? Only that all men may be saved from suffering by them. Here, then, under laws of this description all men are parties charged, at the same time that all men are, and to the end that all men may be, parties favoured by those laws.

But if particular laws, or portions of law, be taken each by itself, a considerable class will be found, and the most numerous, and occupying in the Pannomion the largest space, in which the whole of the charge is laid upon one person or set of persons, while the whole favour is shown, and to the end that it may be shown, to another. Nor in this sort of partiality, as it may be called, is there any just cause for condemnation or complaint. Laws of that description are, it may be seen, and that in vast abundance, absolutely and indispensably necessary to the adaptation of the whole legal system to its general allcomprehensive and impartial end; and for whatsoever momentary partiality is exhibited by any one such law taken by itself, due and adequate compensation is, or at least ought to be, and may be, made by others.

Of the case last spoken of, the simplest modification is, where by one and the same disposition of law there are two parties concerned, of whom that the one may be charged and another party be favoured, the other is charged.

Thus in the 45th Geo. III. c. 72, certain officers therein named are charged with the duty of keeping hung up in a certain place, papers containing information to a certain effect. To what end? Answer: That certain persons, to whom for the purpose of prosecuting certain pecuniary claims of theirs, the information is useful, and may be necessary,—(viz. seamen, &c. having claim to prize money)—may have it at their command, and know where to meet with it.

Persons charged by the law, those official persons;—favoured by it,—seamen,—viz. such individuals of that class to whom it has happened to possess a claim of the sort there spoken of.

A party who under the provision of law in question is in the case of a party favoured, may be so either for his own sake, or for the sake of some other or others.

If for his own sake, and in so far as it is for his own sake that he is so—*i. e.* with a view to a benefit which it is intended he should reap—*principal* is the name given to the character in which he is thus favoured.

If it be for the sake of another, or others,—*trustee* or *agent* is the name given to the character in which he is thus favoured.

When for the sake of one set of persons (his principals) powers are given to a trustee to be exercised over another set of persons,—at the same time that in the exercise of those powers, a certain course of action is prescribed to him, and made matter of duty,—in such case, then, it is, that in that one person the characters of party favoured and party charged are combined;—it is, that for the benefit of the party in question, viz. the principal, he may be enabled to perform the service required at his hands, that the right or the power, by the possession of which he is favoured, is conferred as above. Favoured as he is, he is so to no other end than that he may be charged.

In so far as a party is placed in the situation of a party *charged,* unless the faculties upon which the charge bears are his passive faculties merely, the charge not being in any event liable to fall on his active faculties, the charge cannot be imposed upon him

without need of action, on his part;—if not of positive agency, of negative at least—of purposed forbearance, which when purposed is as truly the result of will, as positive agency is, and for its production stands altogether as much in need of appropriate information, viz. notice of the legal arrangements by which the motives for such forbearance are created.

In so far as a party is placed by the law in the situation of party favoured by it, the favour thus afforded to him is afforded to him in some instances not without need of action on his part—in others without need of action on his part, to enable him to reap the benefit of it.

Thus, in so far as for the preservation of men's dwellings from nocturnal invasion for the purpose of robbery, pains of law are appointed applicable for the punishment of persons guilty of such offences, thus far the favour thus shown to a householder and his inmates is afforded to him without need of action on his part;—and though the existence of the law were never to be known to him, the favour, the protection intended for him, would not be the less received.

But suppose, that for the rendering this protection the more effectual, power be given to this householder to arrest and detain the person of any and every such nocturnal invader—or even, rather than that he should escape, to have recourse to such operations, the result of which may be the depriving him of life,—in such case, the favour shown to him is not afforded to him without need of eventual action on his part;—nor can the favour thus shown to him, the protection thus afforded to him, be of any use to him any further than he has recourse to either, viz. by affording to himself the sort of protection which it thus empowers him to afford.

A portion of law, though to this effect, cannot be in any other case of any use to him any further than either by effectual notification from without he has been apprized, or by reasoning and inference has been led to believe in the existence of a portion of law to this effect.

Of these speculative distinctions the practical use is altogether obvious.

Whatsoever portion of law requires, on the part of a person to whom the favour shown by it is afforded, action, to enable either himself, or such other person for whom the benefit of it is intended, to reap such benefit of this portion of law, it is necessary that by whatsoever efficient measures are taken for planting and fixing the purport of it in his mind, the intimation conveyed to him should be of the correctest and completest kind:—and accordingly, that in the code denominated from the class of persons to which he belongs, the portion of the law here in question should be inserted *in terminis.*

On the other hand, whatsoever portion of law does not, for the purpose in question, stand in need of any such action on his part,—of the nature and existence of such portion of law, an intimation conveyed in general terms, together with reference to the head under which it may be found *in terminis,* suffices for every necessary purpose. To make known to him the care which the law in this particular has taken of his

interests and his welfare, is all the service which, by the information thus given to him, in this case will be rendered to him. But surely, were it only for the reputation of the law itself, not to speak of the assurance and comfort thus afforded to the individuals, the intimation is of the number of those which neither ought to be, nor are much in danger of being despised.

§ 4.

Case Where A Number Of Persons Are, In A Company Or In A String, Jointly Affected By And Concerned In One And The Same Portion Of Law.

Numerous and various are the cases in which, to the rendering of a single service to a single person in the character of *principal,* the services of a multitude of persons in the character of *agents* or *trustees* is necessary.

If to the rendering of these intermediate services, the case be such that in the instance of each of them action is called for at the same time, they may be said to act in a *group* or *circle:*—if the case be such, that to the production of the ultimate beneficial effect it be necessary that they should act separately and at successive times, they may be said to act in a *string* or *file.*

It is in a group or circle that men act, in every case in which they act together in the manner of a political assembly or body-corporate, or a board.

It is in a file or string that they act, when for the transmission of any article whatsoever, such as a sum of money, a letter, or any article of commerce, it is necessary that the operations they respectively perform in relation to it should be performed at several successive points or periods of time.

In so far as it is in *groups* that men act, one single denomination serves commonly for the whole group—*i. e.* for all the several persons or sorts of persons of which it is composed.

In the case where it is in strings or files that they act, there will always be two different denominations of persons concerned together—the one to deliver the thing in question, the other to receive it—the deliverer and receiver of the thing in question.

In this case one code would serve for both; and of that one code the denomination should be a compound one, composed of the denomination of these two sorts of persons.

Each having need of action on his part, whether to render or to receive the service, the favour in question,—the intermediate service,—which for the benefit of some person in the character of principal leads on to the final and ultimate service in which the whole string of services finds its termination,—each has need, each has the same need, to have the law planted and fixed in his mind.

But what will in most instances be found to be the case is, that to each of the two classes of persons whose duties are on this or that occasion rendered by both together acting in conjunction,—other duties have been assigned—duties to be performed on different occasions by each of them, in some instances singly, in other instances in conjunction with some other associate.

But to every person in whose instance need of action has place,—in order that the intention of the law may be fulfilled, and the service which it has undertaken to perform be rendered, it is necessary that the law be planted and fixed in his mind: it is therefore necessary, that in the code which receives its denomination from the class of persons to which he appertains, this portion of law should be inserted *in terminis.*

But—that in this case the burthen imposed by the law on the mind of him to whom, on whatsoever account, it is necessary to be apprized of the duties imposed upon both these classes, and to whose cognizance it is therefore necessary that both these codes be presented, may be reduced to its smallest dimension,—when the portion of law inserted in the code denominated from one of these persons, is also inserted *in terminis,* and in the same terms, in the code denominated from the other, notice of this identity should in each of these codes be given in a note.

§ 5.

Modes Of Notification.

In the case of any given individual or class of individuals, two different modes or degrees of notification must here be brought to view and distinguished.

One is *exposition at large*—or say, exposition *in terminis;* viz. where, under the head taken from the denomination of the individual or class in question, the portion of law in question (it being a portion in which, in one of the above-mentioned modes of concernment, he is concerned) is exhibited at length.

The other is by simple *indication* or *reference;* viz. when another head, under which the portion of law in question (this being also a portion of law in which, in some way or other, he is concerned) is set forth at length, is referred to.

Under the head taken from the denomination of the class in question, notification in this mode pre-supposes, it is evident, exposition at length, under the head taken from the denomination of some other individual or class. Be the portion of law what it may, under some head or other it is necessary that it should be delivered at length—delivered *in terminis;* but that it should be thus delivered under more such heads than one—that it should anywhere be repeated *in terminis*—is not necessary.

§ 6.

Necessity Of Attending To These Distinctions In Legislative Practice.

The distinctive characters suggested by the *suum cuique* principle, are such as no man who acts in the character of a legislative draughtsman can be warranted in treating with neglect.

1. The question, what, in the provision or clause in question, is the individual or class of persons concerned in the character of *party served,* to whose interests it would do service—viz. on his own account—is a question which he can never be warranted in omitting to look at and bear in mind. Why? Because in point of expediency, in this supposed service consists the indispensable warrant for the portion of law in question, including whatsoever charges of an obligatory nature it may, whether in a direct or an indirect way, have the effect of subjecting him to. If no such individual or class can be found, the portion of law in question, be it what it may, is purely mischievous, and completely indefensible.

In the service rendered to some party favoured on his own account, consists on each occasion the legislator's indispensable warrant:—which warrant will be sufficient or insufficient, according as the portion of law in question is upon the whole beneficial or otherwise—according as a balance on the side of good, or a balance on the side of evil, is the effect of it.

2. The question, what is the individual or class of persons concerned in the character of *party charged*—viz. in respect of his active faculties—is another question which he can never be warranted in not looking to and bearing in mind. Why? Because on the fact of the laws being actually taken up and borne in mind by each one of the individuals who in that character are concerned in it, depends whatsoever chance such law can have of proving efficient and productive of the service, of the good, in whatsoever shape good can be looked for as being about to be the fruit and consequence of it.

Be the command what it may, it is only in proportion to the degree of correctness with which, at the point of time which on each occasion calls for action on the part of him in whose instance obedience is looked for and meant to be produced, that obedience can be the fruit of it.

True it is, that without his having had it on that or any other occasion in mind, it may have the effect of causing him to suffer, in this or that way, pain in any shape and degree up to the pain of death. And such is the effect, intended or not intended, heeded or unheeded, which to a vast extent the mass of law, with which in mind and in pocket British subjects are actually burthened to so vast an extent, is actually productive.

Without his having had it on that or any other occasion in mind, it may have the effect of pouring money into the pockets of the retainers of the law in one or all their different forms and sizes. And such is the effect, intended or not intended.

§ 7.

Plea In Favour Of Redundancies—Necessary To Certainty Denied;—And Rules For Securing Steadiness And Certainty.

For this redundancy—for the accummulation of excrementitious matter in all its various shapes, in all that variety of forms that have been passing under review—for all the pestilential effects that cannot but be produced by this so enormous a load of literary garbage,—the plea commonly pleaded—at any rate, the only plea that would or could be pleaded, if men who are above law could be put upon their defence by any pressure from beneath, is, that it is necessary to *precision*—or, to use the word which on similar occasions they themselves are in the habit of using, *certainty*.

But a more absolutely sham plea never was countenanced, or so much as pleaded, in either King's Bench or Common Pleas.

That this redundancy is altogether without use—that it never is in any the smallest degree the effect—that it is too palpably not the effect, or so much as the object,—are propositions that have received not merely a full, but a double proof.

One proof is, that there is another and a very different mode by which such certainty is really attainable:—and that such other mode, so far from being employed, is as it were carefully avoided. But of this presently.

The other proof is afforded by that unsteadiness which is a no less congenial attribute than is the redundancy of this established style.

Say that for the subject-matter in question some established denomination which is not only the most proper but the only proper one: such, for example, as the name given to a company in its charter of corporation. Here would be a reason which, how far soever from being conclusive, would at any rate be a plausible one for the exclusive use of that denomination, how longwinded so ever, as often as the occasion occurred for making mention of it in the statute.

Well, then, this strictness in employing for the designation of the thing in question the only proper designation, is it really observed?—so far from it, that from this only proper standard the departures may be seen to be frequent in a degree of wantonness. By no schoolboy, amidst the distress produced by the obligation of hammering verses out of a refractory subject, is any such profusion of synonyms and equivalent phrases manufactured, as may be seen to grow under the hammer of the parliamentary draughtsman, especially of these times.

The longwinded appellative, or other form of words, to what purpose is it regarded as necessary?

1. To intellection? In no instance is it ever employed, but that some shorter one may always be chosen, which is at least as generally and fully understood, and if there be any difference, more so.

2. To validity? Validity is exemption from nullity—and nullity, the offspring of fraud and absurdity, is the creation of positive law.

Pregnant as it is with injustice as often as it is carried into effect, the habit of injustice is not so extensive but that, if applied to the case here in question, the apprehension of nullity would for the most part be found in vain.

But suppose the case of the number of those in which the apprehension would prove well founded. In the frequent use he makes of the longwinded appellative, the draughtsman would still be without excuse, since the instances of neglect are not less numerous than the instances of observance.

Such, then, is the dilemma on one or other horn of which he will be sure to be impaled. Your longwinded appellative, is it necessary to justice? Violation of justice is rendered frequent and unavoidable by your frequent violations of your own rule. The consumption of words is it unnecessary? The mischief of overbulkiness is without compensation—the sacrifice made of conciseness is without equivalent, the barbarism and deformity without excuse.

Where certainty is really the object, it may be secured, it will be seen, without any addition to bulkiness—without any sacrifice in the article of conciseness.

What is more, the nature of the case will be seen to afford principles and rules, by the adoption and observance of which, the perfections of steadiness and certainty may be combined together.

The principle which requires that throughout the whole body of the law, for the expression of any given import, one and the same word or form of words be, unless for special reason, undeviatingly employed—call it the principle of *steadiness.*

Correspondent rule, expressed for conciseness and impressiveness in a different language, and that the most concise of languages—the Latin,—*eadem natura, eadem nomenclatura.*

By proper management adapted to the nature of each case, the principle of steadiness may be rendered a principle of *conciseness;*—a preservative against *redundancy* and *overbulkiness.*

For the avoidance of uncognoscibility and overbulkiness, and for securing to the language of the law the beneficial properties of certainty and conciseness.

Rule: Throughout the whole field of law, look out for such subject-matters or objects as, either by their importance, or by reason of present deficiency of fixed denominations, stand particularly in need of fixed denominations, and form such for them.

The following are among the various modes of exposition adapted to various cases:—

1. When, of a class of persons for which there exists no separate or other authentic denomination, frequent mention is about to be made, instead of employing for the designation of such aggregate a loose and varying description, fix upon some short appellative, if any such appellative there be in common use, and after such exposition in the way of definition as is adapted to the nature of the object, if in its nature it be susceptible of what is commonly understood by the term definition,—the import of it being thus fixed, and certainty so far provided for—for the sake of conciseness, employ on every occasion the short appellative.

Take, for example, the class of persons commonly denominated prize-agents.

In the act 45 Geo. III. cap. 72, in some places mention is made of them simply under that name; but it is not that name that is given to them when mention is made of them in the first instance. The appellation which on that leading occasion is employed for the designation of them, is a longwinded string of words, after which, besides the one concise and popular appellative, and this diffuse technical appellative, they are in different places spoken of under a variety of different descriptions.

In this case, the following are the words that may serve for the expression of the rule:—*Definitio semel; definitum, toties quoties.*

1. This appellative, whether single-worded or compound, as soon as it has received a definition in form, let it thenceforth, as often as it occurs in the text of the law, of any part of the body of the laws, be distinguished by a peculiar type.

2. The several words thus distinguished, let them be collected together, and printed in the form of an index, each of them with references indicative of the several passages in which they are employed.

3. The peculiar type, its use and signification being universally known, will, in the instance of each word on which it is bestowed, serve as a sort of certificate or memento that the word has a place in this index—that it is, accordingly, of the number of those words to which the attention of the legislator has been in an especial manner directed, and of which, so far as depends upon his endeavours, the import has been fixed.

This type would in different ways be of use to persons in different situations,—to persons in the situation of subjects, and to persons in such situations as bestow upon them a share in the process of legislation:—

(1.) To the subject citizen it would be an advertisement informing him of the fixity that has by competent authority already been given to the word or combination of words in question.

(2.) To the legislator, by conveying to him the same information, it would be a memento and a warning not to loosen and set afloat the import of that same appellative by any fresh and different sense superadded to its precedent original sense, and without due warning of the difference.

2. Where a number of objects present themselves, so connected in such sort as that there is frequent occasion to comprehend them under one and the same provision,—in such case, to avoid the need of continual repetition, with the danger of incomplete repetition, find or frame, if any fit term can be framed, some term of more extensive import, capable of being applied in the character of a common *genus,* with relation to which they shall be so many species, so many congeners, or congenerical species. This done, employ thenceforward the one generic term, in lieu of the series or string composed of many specific ones.

Thus, in the act before referred to, 45 Geo. III. cap. 72, after some advance made in the act, the word *captors* comes to be employed. But, for distinguishing the genus or class of persons in question, and meant to be brought to view by and under that name, neither that nor any other generic appellative is employed in the first instance. Instead of that comes a list of congenerical terms, which list, being in different places different, is in some places incomplete.

In the same act occurs, in different places, mention of allowances of money made to persons of the description in question on various accounts, which allowances are in different places characterized by the denominations of prize-money, bounty-money, salvage-money, and seizure-money. Encouragement in the line of military service being the object declared to be aimed at on the occasion of each of these several allowances, *encouragement-money* is a term capable of being applied to all of them in the character of a generic term,—applied to all of them put together, with no less propriety than their respective abovementioned specific appellatives are in the instance of each.

Accordingly, *Nomen genericum cum specificis, semel: Genus per se, toties quoties.*

3. In the case where, for the designation of the object in question, there exists an authentic appellative, but that appeilative is many-worded and longwinded,—if a popular appellative can either be found or made for it, provide such concise appellative accordingly;—thereupon, having for the sake of certainty expounded it once for all by its authentic synonym, thenceforward for conciseness sake employ it.

Rule: *Nomen vulgare, cum synonymo authentico, semel; idem per se, toties quoties.*

Thus, in the act before referred to, 45 Geo. III. cap. 72, in some places the establishment commonly called Greenwich Hospital is designated by a longwinded and more formal name,—the Royal Hospital at Greenwich, &c. But in other places it

is designated by a still more longwinded denomination, which has the appearance of being the name by which the governing body is designated in the charter of incorporation, viz. "the Governors and Directors of the Royal Hospital at Greenwich," &c.

Greenwich Hospital: this name, as often as it occurs, might be understood as denoting the governors, or the establishment of which they are governors. By an intimation of which of these was intended, certainty would to the utmost be provided for, and the embarrassment in which a sentence is involved by a compound and longwinded appellative be avoided. And so in the case of Chelsea Hospital.

In like manner, by preliminary note, "Greenwich Treasurer," and "Chelsea Treasurer," are so many short names that may with advantage be substituted to the formal and more compound denomination appertaining respectively to those two official persons.

4. In some cases, the same office is liable to be filled at different times in different manners: for example, at one time by a single person, at other times by an assemblage of persons, as "*Lord High Treasurer,*" "*Commissioners of the Treasury,*" "*Lord High Admiral,*" "*Commissioners of the Admiralty;*" at one time by an officer called by one name, at another time by an officer called by another, as "*Treasurer of the Navy,*" "*Paymaster of the Navy.*"

In this case, instead of employing on each occasion both or all of these official names, take in the first instance the most simple, and having for certainty subjoined to it whatsoever synonymous or equivalent expressions are in use, for conciseness employ thenceforward the most simple—except it be in such places, if any such there be, in which, by the nature of the occasion or the composition of the context, this or that synonym is rendered more proper or more convenient.

Examples: 1. To Treasury, subjoin Treasury Board, Lord High Treasurer, Lords Commissioners of the Treasury, and so forth: and thenceforward, except as excepted, employ the single-worded appellative Treasury.

2. To Admiralty, subjoin Admiralty Board, and so forth: and thenceforward, except as excepted, employ the single-worded appellative Admiralty. But in this particular case, the word Board may sometimes be necessary to be subjoined; viz. for the purpose of distinguishing this the office of administration so denominated, from the judicatory styled the High Court of Admiralty.

5. It will sometimes happen that an appellative originally employed to designate a class of objects of a certain extent, and exactly fitted to that class, shall have been employed to designate that same class with the addition of another class, to the designation of which other class it is not with equal propriety adapted;—in which case, to save the imposition of a new and unaccustomed name, there may be a convenience in employing for the designation of this new enlarged class, the name which, though before the enlargement strictly *proper,* is since the enlargement become no longer so.

Rule: The import of an appellative may be ampliated—may be extended by *ampliation,* giving proper notice.

So again in regard to restriction.

Rule: The import of an appellative may be restricted—narrowed by *restriction,* giving proper notice.

In the index, after any definition or other exposition which in any other shape has been given of the appellative, add the number of all such ampliations or restrictions, if any, as it has received, making mention of the occasions on which, and referring to the *titles* under which, those respective operations have been performed.

Example of ampliation: Prize agent—extended to comprehend bounty-money agent, and to salvage and seizure-money agents.

*Rules having for their subject the directive*clause, or words of direction in the composition of a statute—and for their object or end in view, the prevention of ambiguity, obscurity, and overbulkiness, by prevention of unsteadiness and redundancies:—*

Rule 1.—Command includes permission. To mean to command any act to be done, and not to mean to permit it to be done, is impossible; wheresoever, therefore, there are words intimative of a command to do anything, words intimative of a permission to do the same thing are superfluous and nugatory.

To the evil of redundancy, is apt in this case to be added that of unsteadiness in respect of the useless variety in which this species of imperfection is apt to exhibit itself.

Rule 2.—Where an act is already lawful, no matter of the permissive cast—no words having the effect of a permission, ought to be inserted: for of matter of this cast, the effect is by implication to convey an intimation, that by the law as it stood before the statute with this permission in it was enacted, the act in question stood prohibited;—which by the supposition is not true.

It is a mark of deplorable awkwardness and imbecility on the part of a legislator when he knows not how to make a law of his own, without giving a false and deceptious account of such laws as before his time have already been made by others.

The following masses of literary matter have on this occasion been marked out for omission on the score of surplusage in the act 45 Geo. III. c. 72.

1. Formularies of enactment, all but one; saving upon the 123 sections, 122 out of the 123.

2. The words “provided always.”

3. All *non obstante* clauses: *ex. gr.* section 29, "any law, custom, or usage to the contrary thereto, in any wise notwithstanding."

4. After his Majesty, "his heirs and successors."

5. After the word *shall,* the word *may,* when applied to the same person.

6. After the word *required,* the word *authorized.*

7. After the word *shall,* both *authorized and required.*

8. Before the word *required,* both *empowered and directed.*

9. After *every person, all persons.*

10. After *any person, or persons.*[*]

11. After the word *forfeit,* the words *for every such offence.*

12. After the numerical title of a statute, the verbal title.[†]

13. For, *it shall and may be lawful,* and, *it shall be lawful to and for,*—substitute *may,* making the requisite change in the circumjacent words.

14. Whereas doubts*have arisen;*—inserted frequently when the imperfection calling for correction was too manifest ever to have left room for doubt.

15. *Whereas it is expedient to* enact, &c. as if a persuasion of such expediency on the part of the legislator were not necessarily implied in the operation of enactment. This is one of the many instances of nugation.

16. After shall not do so and so, for example, *extend nor be deemed or construed to extend.*

To the head of *errata* may be referred all those peculiarities in the phraseology customarily observed in an act of parliament, whereby the language thus put into the mouth of the legislator is distinguished from that employed by everybody else.

Of these vices the actual fruit is oppression and pillage: what in each instance was in the mind of the draughtsman the intended result, and to the attainment of which his exertions were directed, is a question of psychology never worth resolving, and in general incapable of being resolved.

It would be a great error to suppose that this excrementitious matter is simply useless. The pretended object, and the only object that for the purpose of apology can be assigned to it, is certainty. But of certainty it never is productive—it is, on the contrary, an abundant source of uncertainty.

If on every occasion redundantly copious and wordy forms were employed, yes: then voluminousness on the part of the composition—useless vexation and expense on the part of him whose fate is disposed of by it, would be the only evil. But promiscuously and interconvertibly with this most voluminous formulary, on occasions exactly corresponding, are employed other formularies less and less voluminous. Of the most voluminous what is then the effect? To breed doubts concerning the import or the validity of this or that other formulary which in this or that particular is less voluminous.

In the view, and for the purpose of causing to be made known to divers persons—in divers manners—divers sets of facts, to the end that these persons, objects of his care, may be secured in the receipt of what is respectively their due, great, and assuredly by no means unsuccessful, are the pains which by a correspondently voluminous and various mass of regulations have been taken by the right honourable legislator in the last-recited act.

In the chain of information, amidst and after all this care, one link was left wanting; and that was a means of conveying to their knowledge, and into their hands, in a concise, compact, and, in a word, in a comprehensible and intelligible form, adapted to the state and degree of such intellectual powers as they might on reasonable grounds be expected and presumed to be in possession of, an intimation of what had there been done for them, and what on their parts was necessary to be known and to be done, in order to their reaping the benefit of all this care.

In the elaborate chain in question, this link, I say, is wanting. And why is it wanting?—to what cause is so material a deficiency to be ascribed?

The answer is incontrovertible:—To the sinister interest of the profession of the law.

In this as in every other quarter of the field of legislation, it ever has been, and still continues to be their interest, that the rule of action should be as little known and as ill known as possible—that the conception formed of it may be as imperfect, confused, and erroneous as possible.

On this account it is, that on the part of those masses of discourse which have been occupied in giving expression to it, it has been their interest to nurse and cultivate to the highest degree of perfection those vices, the exemplification of which has on this occasion been in some degree brought to view.

§ 8.

Remedies For Longwindedness.

In the consolidation Prize Act, 45 Geo. III. c. 72, before referred to, an example may be found of longwindedness:—in five contiguous sections, Nos. 43, 44, 45, 46, and 47, and in one other, No. 108, which occurs at sixty sections distance, the general course of procedure in the high court of admiralty and the vice-admiralty courts, in the metropolitan and provincial prize courts, is prescribed.

Of these sections, the first, which is much more than equal to all the other five put together, was evidently, in the date of its formation, antecedent to most if not all the others.

In it the following are among the operations prescribed or brought to view, or spoken of as liable to have place:—

1. The preparatory examination—viz. the *usual* one; and by this one word usual, the certainty belonging to written law is drowned in the uncertainty inherent in the essence of unwritten law.

2. Monition, again the *usual*—and this usual monition must be the proper one; 3. Moreover it must be issued by the proper person, be he who he may; and 4. by another proper person executed; 5. but not till after request; 6. Claim; 7. Entry thereof in the usual form; 8. Attestation thereof on oath; 9. Giving of notice after the execution of such monition; 10. Security, giving thereof by the claimant for eventual costs, 11. Production of said preparatory examination; 12. Production of documentary evidence; 13. Eventual oath of non-existence of documentary evidence; 14. Sentence eventual of discharge or condemnation; 15. Giving further time for entering claim; 16. Giving further time for finding security, for something or other, if one could but tell for what; 17. Sentence, giving it once more; 18. Eventual examination of witnesses; 19. Giving in pleadings by the parties; 20. Admission thereof by the judge.

In this list we have twenty operations, but they are not above half the number of operations brought upon the carpet, neither will there be found in this enumeration above half the matter, including a quantity of surplusage, with the quantity of obscurity and ambiguity thereby generated, and thereunto appertaining, contained in this section.

It is an attempt to force together the contents of an entire system of procedure into one sentence. With as much reason, and with similar utility, might the whole of Coke-Littleton have been squeezed into one sentence, or the whole of a Serjeant's-Inn dinner have been mashed up together into one dish.

Supposing a man either unable or unwilling to make himself understood, but at the same time under an obligation of appearing desirous of making himself understood,—this is one of the ways he would take for effecting his purpose, and a more effectually conducive way it is not in the power of man to take.

The remedy for this longwindedness is to be found in breaking down such complicated enactments into separate parts; but in so doing, it will be found that the length of the whole composition will be increased—the brevity of the parts, and of the whole, antagonize. Perspicuity will, however, be gained by lessening the excess of the grammatical sentence over the logical proposition.

For putting into a rational and intelligible shape the contents of this single section, twenty sections would scarcely suffice, and each would require its full complement of words.

With respect to the structure and length of sentences, the following proposition and rule may be laid down:—

Proposition: The shorter the sentence the better.

Rule: Minimize the length of sentences.

Reasons:—1. The shorter the sentence, the clearer is it to the eyes of the reader:—the clearer, that is to say, the more free from obscurity—the more easily apprehended by the conception—the more easily retained in the memory. 2. The shorter the sentence, the clearer is it in the eyes of the legislator and the judge. For the purpose of eventual supervision and amendment, much clearer will it be to the eyes of the legislator, for the purpose of interpretation to those of the judge.

To be perfectly clear to the conception, the judgment, and the memory, every distinguishable proposition must be presented by itself, unconnected with every other. Exceptions excepted, objects more than one cannot be closely examined at one and the same moment. Exception is, when two objects are to be confronted and compared with one another: in that case, the mind vibrates from the one to the other with the rapidity of thought; and as in musical sounds, before the impression produced in the sensorium by the first has ceased, that produced by the second is commenced.

By the clearness and simplicity thus contended for, no bar is opposed to comprehensiveness; on the contrary, the more comprehensive the sentence or proposition is, the shorter it may be. Whatsoever be the extent to narrow it, addition to the number of words contained in it is necessary.

True it is, the shorter the several sentences, the longer will and must be the aggregate composed of them. Take any sentence or proposition whatsoever,—by the insertion of a single word in it, the effect of another sentence may be produced. Why? Because to compose a sentence, requires the conjunction of divers of the parts of speech; and when once expression has been given to a complete sentence, every word added to it receives as it were the benefit of all the several words which it finds entering into the composition of the sentence to which it is added.

But to the difficulty in respect of conception, judgment, and reminiscence with relation to the whole, no addition is made by the addition made in this way to the voluminousness of it. By an index, the eye is as promptly conveyed to the passage wanted in the largest folio, as in the smallest duodecimo. Just so is it in the case of a dictionary. If by the lettering at the back you are informed, without need of opening and searching the several volumes, in which volume the word, the explanation of which you stand in need of is contained—a dictionary of twenty volumes is not more difficult to consult, than a dictionary of one would be.

When the objects, whatsoever be their multitude, are presented to the mind one by one, the mind finds itself in a state of comparative repose;—there is nothing to hurry it in its course;—for any length of time it gives its undivided attention to each one. When, in the course of a lengthy paragraph or section in an act of parliament, objects,

propositions, are presented to view by dozens, scores, or hundreds, it is hurried off by each from every other:—amongst them it finds no rest—it is in a state of bewilderment;—in relation to no one of them can it obtain any clear conception, form any clear judgment, retain any clear reminiscence.

The following rules will further tend to prevent the evil of longwindedness:—

1. Avoid repetitions from habit of useless formulas; as in English practice.

2. Repeat not self-evident propositions:—Ex. "*Whereas it is expedient,*" &c.

3. Lists of species, once given, form a generic term, which afterwards substitute.

4. Exceptions excepted, let the masculine singular comprehend both genders and numbers.

5. Denominate, enumerate, and tabulate principles. It facilitates reference, and thereby contributes to conciseness.

6. Employ abbreviative words: any such word, explained once for all, if need be by definition, performs in legal language the functions of *x* and *y* in algebra. Examples: Maximize, minimize, demoralize, disintellectualize, eulogistic, dyslogistic, and the names of functions.

7. After the verb governing, interpose between it and the list of substantives governed, the words "*as follows,*" with a punctum;—then give to each item a separate line, preceded by a numerical figure.

§ 9.

Helps To Intellection.

BISECTION I.

1.

Of Making Divisions.

Among the devices employed by the legal tribe for the preservation and increase of uncertainty, and voluminousness, and uncognoscibility,—one is the forbearing to employ division and numeration, on the occasion and for the purpose of reference. Break a law down into parts, and affix a different number to each part,—whatsoever be the part you have occasion to speak of, naming the number by which it is distinguished accomplishes the purpose with the utmost brevity, and at the same time without danger of mistake. To this obvious and most universally practised mode, substitute, as is done in English statute law, an attempt to describe the part in question

by words expressive of the subject-matter, or the purport of it,—you send a man on each occasion to hunt over the whole statute for whatever he is in quest of, after which it remains matter of doubt with him, what are the parts that in case of litigation would be understood to be comprised under the necessarily loose description so employed.

The more numerous the statutes thus referred to, and the more voluminous the bulk of each statute, the greater is the uncertainty and the vexation—the greater the unnecessary consumption of time and labour in hunting over them—and the greater the probability that, of all this consumption of time and labour, nothing better than ultimate and irremediable uncertainty may be the fruit.

In the case of the statute 45 Geo. III. c. 72, there are no fewer than fifty of the small and closely printed pages of which the authentic edition of the statutes is composed.

In this statute, in the paragraph marked VIII., it is enacted, "That all regulations herein contained respecting prizes, shall apply to all cases of bounty-money granted by this act, and of salvage upon recaptures from his Majesty's enemies." Would you know what those regulations are? Here, instead of a few figures, are no fewer than fifty of these folio pages to pore over, and in these fifty pages, no fewer than 123 sections.*

The choice of the mode of remedying this evil, is not by any means a matter of indifference. Perspicuity and brevity are in no considerable a degree dependent upon it.

The objects which it is desirable should be kept in view in making such division are—1. Facility of reference; 2. Facility of amendment:—of reference by the individual reader, whatsoever may be his place in the community;—of amendment by the legislator.

The more numerous the successive acts of division and subdivision, the more numerous will be the general denominations of those aggregates which are respectively the results, and the more numerous those denominations, the more instructive will be the table of contents formed by the printing on the same surface, and thus presenting to the eye at the same time the aggregate number of them. The more numerous the points of agreement and difference between the several objects, the better will the subject be understood; since it is no otherwise than by means of these points of agreement and difference between its elementary parts, that a subject of this sort is understood.

The process of subdivision cannot be carried too far for use;—for let it be ever so dilated, nothing can be easier than to contract it:—for effecting the contraction, nothing but simple elimination is necessary.

The further it is carried—the narrower and more particular the mass of objects characterized by the denomination given to the aggregate,—the more particular, the nearer it is to individuality—the clearer and more complete is the conception which, to the understanding of the person in question, it will present.

Bonaparte, in his Code, has perhaps gone further in this track than any other legislator; but for understanding the more clearly what in this way has been done by him, it will be of use to wait till an explanation has been given under the next head.

BISECTION II.

Of Denominating The Results.

On the occasion of each glance there may be a convenience in seeing instantaneously, by means of the several denominations, to what degree the process of subdvision is advanced. For accomplishing this object, the numeration table affords an expedient, and it is the only one.

Rule: Indicate, by a numerical figure, the number of divisional operations by which the result in question is produced—the figure in a broad type struck through by a thin S.

Rule: To divisional denominations substitute the numerical only. The following names are already in use for the denomination of the results of such operations:—section, bisection, trisection, quadrisection, and so on. For the result of the last divisional operation, the word *article* may be employed, as being now in use.

Rule: When lists require to be given in an article, give each item a numerical denomination, and refer to them by such denomination.

The more numerous the acts of division, the greater the mass of literary matter necessary to the giving expression to the results. Suppose it to have extended to a certain length, so numerous will be the words, that if given at length, a whole line or more may be necessary in one part for referring the reader to this or that single word or matter. Hence comes the practice of substituting to the word at length the first syllable, or the first two or three letters of it. The syllable has the advantage of being capable of being pronounced,—the letters, if they do not form a syllable, fail of putting a reader in possession of this advantage.

§, 2 §, 3 §, 4 §. By this mode of reference, all, it is believed, will be done towards accomplishing the purpose, that the nature of things will allow to be done.

We are now prepared to recur to the consideration of Bonaparte's codes. The number of the codes is five, besides the code of costs for the judicatory called the Cour Royale de Paris. Of the results of the several acts of division in these codes, the denominations are as follows, in the following order:—1. *Livre;* 2. *Titre;* 3. *Chapitre;* 4. *Section;*—then comes the unit to which in the text no denomination is given, but which in the references is denominated, 5. *Article,* or for shortness, Art.

Article is the denomination of the result of the last act of division which has a name; but in some instances, within the article are found divers parts or clauses not denominated, but distinguished from one another by numbers;—and thus also in the Code Pénal, beginning with Art. 402, the article is divided into other parts, to which

no denomination is given in words at length, but prefixed to each division is the character usually employed in lieu of the word section, namely, the double S—§.

Applying the last proposed mode of denomination to the results of the several acts of division in this code, the denominations assigned to the several acts of division by the numeration table would be, instead of *livre,* section, §; instead of *titre,* bisection, 2 §; instead of *chapitre,* trisection, 3 §; instead of section, quadrisection, 4 §; instead of article, quinquisection, 5 §.

Instead of any such principle of division being followed in these codes, in each code the articles follow one another in a series, which commences from the first. The numbers of the articles in each code are as follows:—

1. Code Civile,	2281
2. Procedure Civile,	1042
3. Code de Commerce,	648
4. Code d'Instruction Criminelle,	643
5. Code Pénal,	484
Besides the "Tarif des fraix," &c.	175

In each code, only from the first article in the whole code are the ensuing articles numbered:—no fresh series is commenced in any of the subdivisions.

Such is the method, and now for the inconvenience of it.

In a new edition of any of these codes, between the first and second of the articles suppose matter meant to be inserted, and inserted accordingly; and in consequence the several other articles, 2280 in number, the numbers all changed: what would be the consequence? That of all the several references made in the new edition, not one would serve for any preceding edition; so that these editions, whatsoever were their number, would be rendered all of them nearly unfit for use:—nor can any limits be assigned to the practical mischief capable of being produced by the false reference if taken for true.

BISECTION III.

Of The Employment Of The Substantive-preferring Principle.

By the substantive-preferring principle understand that which recommends the employing, in works of the didactic kind, as far as may be, a substantive in preference to the corresponding verb—a substantive, or what comes to nearly the same thing, an adjective with the substantive *principle* attached to it.

On many occasions a verb of peculiar import, with or without the addition of tense or mood, or both, or a correspondent noun of the same root, accompanied with what may be called a word of common or subservient use, may be indiscriminately employed;—thus we may either say, to give extension to, or to extend—to give

denomination to, or to denominate—to straighten, or to make straight,—or give straightness to.

In these cases there is an advantage in employing the noun instead of the verb. Be it the name of what it may—a real entity or a fictitious entity, the noun will in every case be a denomination of something: that something, be it what it may, will on this or that occasion be an object or subject-matter of consideration, and attention, and examination. For this purpose it may be necessary, that by the mind, for a more or less considerable portion of time, it should be kept in view; in the form of a noun—to wit, a noun substantive, it may be kept constantly in view for any length of time that can be required.

Whilst thus in view, it is capable of being taken for the subject of what the logicians call predication:—any quality may be spoken of as existing in it, as belonging to it. Example: extension, fixidity, velocity, beauty, deformity.

In this state, any quality at pleasure, and at leisure, may be spoken of as existing in it, as being given to it or taken from it. In a word, it may be kept in contemplation, may be made an object of study; and if the nature of it be to admit of such an operation, of examination for any length of time.

Not so when the idea is presented in the form of a verb. In this case it is mixed up with other words in the form of a sentence or proposition, more or less complex. The import of it is in such sort covered, disguised, and drowned, that no separate nor continued view can be taken of it. Where a substantive is employed, the idea is stationed as it were upon a rock:—where no substantive is employed, but only a verb, the idea is as it were a twig or a leaf floating on a stream, and hurried down out of view along with it. When you have said, "I will give extension or elevation to an object in question," I can take up the quality of extension or that of elevation, and give to them respectively whatever consideration and examination the nature of the case admits of, and appears to require: but if what you have said be, "I will extend the object," there is no extension, no elevation, nothing I can take up or lay hold of.

As a companion to the noun, for the purpose of rendering it a fit substitute for the verb which the purpose of the sentence requires, a particular species of verb has been mentioned: it may be termed an auxiliary verb, by analogy to those fragments of verbs—will, shall, may, can, might, could, would, should,—that are in use to be employed for the like purpose. On the present occasion, the verb *to give* has been mentioned as one that is in use to be employed for the present purpose. It may be employed as auxiliary, for example, to any substantive expressive of any species of quality, as expressed by the terminations *ite, ants,* and others of like import.

The employment given to it will not however appear natural, unless the quality present itself as being either desirable, or at any rate an object of indifference. It is natural to speak of giving elevation to an object, or extension—it is not equally so to speak of giving depression to it, or limitation. In this case, you would rather employ the verb *to apply,* than the verb *to give.*

A catalogue of this species of auxiliary verbs, accompanied with a catalogue of the nouns substantive to which they are in use to be employed as auxiliaries, is an instrument of elucidation that remains to be constructed, and by its usefulness may perhaps be found to pay for the trouble.

A use somewhat similar may be made of the term *function.** Each proposition in which it is employed, is the equivalent of a multitude of propositions of unknown length and ever variable and varying tenor, any one of which might have been employed to the same purpose; but which, if employed, would have exhibited no feature of determinate and apprehensible resemblance one to another.

Of this word it will be seen elsewhere† how useful it is as an instrument of useful arrangement;—to no such use would its equivalents in the verbal form be found applicable. The desirable properties which these forms of expression contribute to discourse are—1. Clearness; 2. Conciseness; 3. Recollectedness—*i. e.* giving facility to the recollection of the idea designed to be conveyed. These forms of expression are subservient to distinctness, by placing in the clearest light the points of difference and separatedness, as well as the points of resemblance and coincidence between each object and every other.

The way in which the use of the word *principle,* with the appropriate adjective, is conducive to *conciseness,* is by substituting those two words to the correspondent rule or rules that may be laid down in explanation of the principle so denominated.

When once explained, these two words serve for the giving expression to one sentence or more. Not less subservient to the purpose of retention is this formula than to the purpose of conception, and expressive for the purpose of communication. You cannot anchor in your mind a sentence, as you can a single term.

The contribution thus made to *conciseness* is analogous to that made by algebra: *i. e.* the algebraical mode of expression, on the occasion of those discourses which have for their subject-matter quantity as expressed by number, abstraction made of figure.

§ 10.

Remedies For Miscollocation.

For the prevention of miscollocation, little can be done besides noticing such faults as have been observed, that they may serve as beacons for the avoidance of the like faults in future.

The following are among the cases of miscollocation which have been observed:—

Between a pronoun-relative and its antecedent, interposition of another word capable of bearing also the relation of an antecedent.

Placing a negative adverb in contiguity with a subject-matter other than that to which it is intended to be applied.

Placing a modificative clause so as to be applicable to an unintended principal.

Placing a pronoun-adjective-relative without a preceding substantive: the substantive being left to be imagined and allotted by the reader. Example: *This* is only, &c., when there is no preceding substantive with which *this* can combine. Evil resulting,—obscurity, the subject of predication being wanting.

Not presenting to the eye in writing, and to the ear in speaking,‡ in the first place the principal object or subject-matter of the proposition.

Rule: Whatever be the principal object which your sentence is designed to bring to view, bring forward, as early as you conveniently can, the word employed in the expression of it:—if you can make the sentence begin with that same word, so much the better.

If a word expressive of another idea come before it, the mind is in the first instance put upon a wrong scent; and a sort of correction and partial change of conception must have place, before the idea meant to be conveyed is apprehended.

By the first-mentioned mode of collocation, the idea of spiritedness in the discourse is suggested, and the reader, if not set against it by usage, is better satisfied; the idea meant to be conveyed being apprehended on the instant, and without further trouble. In the other case, the idea of insipidity and heaviness in the discourse presents itself: unable for sometime to conceive what it is that is meant to be conveyed to him, the reader finds himself under the necessity of crawling on, and poring on, in quest of it; and till he have arrived at it, either proceeding on a wrong ground in the course of his reflections, or continuing in a state of uncertainty and perplexity.

Rule: Sub-articles excepted, include not in one article two sentences so unconnected as to be understood one without the other.

Reasons: For the reader might consider the two as one proposition, and reference cannot be made to one without the other.

Rule: In a principal proposition, imbed not exceptive or otherwise modicative clauses more than one.

Rule: Of exceptions give notice at the commencement of an article; for this purpose, the formula *exceptions excepted* may be used.

Reasons: 1. It secures to the general proposition, whatsoever it may be, the most concise and clearly apprehensible expression which the nature of the case admits of.

2. Being placed at the very commencement of the sentence, it gives a sort of *warning* which has the effect of anticipating and keeping the door of the mind shut against all those false conceptions, which in the first instance, and for the time, would be among the effect of the proposition, if presented in the first instance, in a degree of extent which was not intended, and which as the sentence advanced would receive contradiction. In the way here proposed, the erroneous conceptions in question are

from the first excluded:—in the way ordinarily pursued, they are, in the first place, let in altogether; and then, one after another, ejected.

3. In this way the door is left open, a door of the most simple form, at which in any number successive amendments may be let in: and this without any disturbance offered to any other part of the ordinance. For the purpose of judging of its completeness—judging whether an article to this or that effect might not with advantage be added to it, the list of these exceptions, in conjunction with the general proposition out of which they are taken, may at any time and at all times be surveyed at leisure.

The following mementoes will further tend to secure a good collocation:—

Let the grammatical form of sentences in which *statements* are conceived be as simple as possible.

Avoid the hypothetical form in the operation of statement;—especially the complex hypothetical form, in which several *suppositions* are strung together, before the proposition makes its appearance.

Where hypothetical propositions occur, break them down into categorical ones: the following are forms for doing this:—

1. Before the proposition prefix the several suppositions, each by itself, under the head of *suppositions.* This is where the enumeration of the suppositions precedes the statement of the proposition.

2. Where the proposition comes first, then subjoin the suppositions, with the word case before them; as thus, Case 1, Case 2, &c.—*N.B.* In this latter mode of statement, the suppositions are put *disjunctively,*—in the former, *conjunctively.*

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CHAPTER VII.

OF LANGUAGE.

§ 1.

Of Technical Language.

The maximum of notoriety being the object, not only the matter but the form—not only the arrangements themselves, but the language employed in giving expression to them, will, if that object have been attained, have been such as is conducive to it. Considered in this point of view, language used in law is of two sorts—1. Natural; 2. Technical.

The word *technical*—the appellative by which the denominations employed in designating the names of instruments and operations in the language of English jurisprudence are commonly designated, tends to convey an erroneous conception, pregnant with an error from which there may be a use in keeping the mind upon its guard. It presents an ambiguity, under favour of which the mischievousness of the object will, till it has been exposed to view, in the minds of most, if not all readers, be but too likely to be screened from notice. Not only are the denominations in question *liable* to be productive of evil, but the evil they are actually productive of is so great as to be beyond calculation.

Of the non-notoriety of the law, the mischievous effects are all-comprehensive; for by it, and in proportion to the extent of it, the law is prevented from being productive of the good effects it is calculated to produce: it is prevented from hindering the bad effects which would not have had existence, had the law been known. The individual who, had he known of the existence, and formed a correct opinion of the purport of the law, would have availed himself of it, if it were a law that gave him a right—or would have abstained from the act, if it were a law by which the performance of such act is prohibited,—loses his right in the one case, and incurs the penalty of the law in the other case.

Now, for every person but the few to whom the import of these denominations styled technical, is made known by a more or less long course of attention, observation, and experience, the existence as well as the tenor of the instrument in question, is by means of this technical language, as it is called, but too effectively and generally concealed.

How then, it may be asked, how is it that the mischievousness of this class of denominations is concealed from ordinary eyes by means of this appellative? Answer—In this way: by confounding this class of words, which belongs exclusively not only to jurisprudence, but in a more especial manner to English jurisprudence,

with the corresponding words belonging to other branches of art and science—words from the use of which no effects but what are purely beneficial are produced,—a veil is thrown over the mischief produced by this legal class, and an imputation applicable with exclusive propriety to the words of this noxious class is but too apt to extend itself to the words belonging to those unnoxious and purely useful ones.

The case is, that in the language of every branch of art and science that can be named, a more or less extensive stock of words of a peculiar nature, in addition to all the words in familiar use, is an indispensable appendage: applied to these, what the appellation technical imports is nothing more than peculiar, as above, to some branch of art and science; to wit, in contradistinction to those which, being likewise employed in discourse relative to that same branch of art and science, have nothing to distinguish them from the words in universal use belonging to the common stock of the language;—or the import of them, from the import attributed to those same ordinary words. But the difference between these jurisprudential peculiar words, and the other peculiar words, is this: in the case of the other peculiar words, the deviation from ordinary words is matter of absolute necessity, and on the occasion of framing them the whole attention and skill possessed by the framers was commonly employed in the rendering them as expressive as possible; whereas in the other case, the deviation from ordinary language being as wide commonly as can be imagined,—no attention has been paid to render it expressive, by rendering it as near akin as possible to the words appertaining to that same common stock:—to that end no attention whatsoever was employed, the attention, if any, applied to the subject, having the direct opposite end, viz. that of rendering them as inexpressive as possible, as unlikely as possible to convey correct conception;—the only purposes to which they are applicable or designed to be applied, are either conveying to the persons in question no conception at all, or if any, such as shall have the effect of leading them into error, either productive of burden to the persons thus deceived, or benefit to the deceivers.

Terms of art, jurisprudence must have as well as every other branch of art and science. But in English practice, the terms of art are to what they ought to be, what the terms of astrology are to the terms of astronomy.

In a word, in the case of every other branch of art and science, with few exceptions, and those not belonging to the present purpose, to the words which are peculiar to it, as being known to those individuals alone who are more or less conversant with the matter of it, the appellative technical, which in the original Greek signifies neither more nor less than appertaining to art or science, may, not only with indisputable propriety, but without leading into error, be applied, were it not for the danger of inculcating the conception that these words partake of the noxious quality which belongs to those technical words which are peculiar to jurisprudence—words from which they are essentially different, as well in respect of the effects actually produced, the effects intended to be produced, and the motives by the operation of which the intention was produced: in their effect as expressive as they could possibly be made, and the explanation of them by means of an equivalent expression taken from the body of the language made as extensively notorious as it can be made, and so intended to be;—the motive to which they are indebted for their existence being a desire to render the matter of the art or science to which they belong as extensively

known as possible,—and this on account of the honour, or profit, or both, expected in return for the benefit so conferred.

Opposite in all these several particulars is the case of jurisprudential technical terms:—actual effects, everywhere relative ignorance, or what is worse than ignorance, error. Intended effects the same:—desire by which, in the character of motive, the endeavour was produced, the profit looked for, and but too copiously derived, from the ignorance and error so produced, and the reputation for wisdom which by this artifice the people have been led to ascribe to the inventors of this system, and the benevolence which they have at the same time been led to regard that same wisdom as having for its accompaniment. In a word, of the peculiar language in the case of physical science, the words are expressive, and so intended to be:—in the case of jurisprudential science, the words are either simply inexpressive, thus securing the continuance of ignorance, or what is worse, viz. for the people, but proportionably better for the inventors, productive of error, the effects of which, in so far as they have place, are mischievous.

§ 2.

Of The Importance Of Improvement In Legal Language.

We have already seen that the technical terms of jurisprudence are either inexpressive, or calculated to produce error: the necessity of improvement cannot therefore be denied, except by those who are blinded to its importance by interest, or interest-begotten prejudice.

Proportioned to the uncertainty attaching to the import of the words employed upon legal subjects, will be the uncertainty of possession and expectation in regard to *property* in every shape, and also the deficiency of political *security* against evil in every shape: proportioned, therefore, to the *fixity* given to the import of those same words, will be the degree of security for good in every shape, and against evil in every shape. Until, therefore, the nomenclature and language of law shall be improved, the great end of good government cannot be fully attained.

In medical art and science, improvement is rapid and extensive at all times and in all places: in legislation and jurisprudence, everything is either retrograde, or at best stationary.

The cause is no secret. In medicine it is the interest of every practitioner to promote improvement, and to promote it to the utmost, to make whatsoever addition to the stock his faculties admit of his making:—of no judicial practitioner is this the interest—his interest is directly opposite.

In medicine, not only the nosology of the subject is constantly receiving augmentation, but also the terminology:—in legislation and jurisprudence, everything, to make the best of it, is at a stand.

But he who will not be at the pains of making, nor so much as of adopting, new expressions, must go on with the old ones alone, and consequently with all the errors which, being associated with, are established by the old ones.

And, as amongst other things, all political abuses are thus established and kept on foot and in estimation by these old ones—by that part of the language which has been employed in the establishment of these same abuses; hence, on the part of persons so circumstanced, the horror of innovation in language forms a natural accompaniment to the horror of innovation in law: and hence, on the other hand, all persons desirous of the improvement of legal institutions must also be desirous of the improvement of legal language.

In so far as correct notions are substituted to incorrect ones, denominations in some respects new must of necessity be employed: denominations by which none but incorrect notions have ever been designated and suggested, never can, without alteration, be made to serve for the designation and conveyance of correct ones.

Language has, in the art of healing as applied to the body natural, advantageously received the form of a branch of art and science: it is high time, that by the like operation it should be, as applied to the disorders of the body politic, raised to that same elevation in the scale of dignity.

By an elevation in the scale of art and science, understand anything rather than elevation in the scale of difficulty. Not to maximize difficulty, but to minimize that obstacle to usefulness and human felicity, is the object with every true lover of art and science. But without *novelty* in language, neither in this nor in any other portion of the field does the nature of things admit of any such elevation, or of any considerable addition to the stock of matter thus elevated; and without closeness and continuity of attention in some proportion to the novelty, it is not possible that anything which is taught—anything, however well taught, as well as deserving to be taught, and held in everlasting remembrance, should be learned.

No new propositions, howsoever useful, can receive expression unless it be by new words, or new application of already established ones;—*i. e.* by using them on occasions on which they had not been at all, or had not been commonly employed.

Hence a sort of postulate necessary to be put forward in legislative art and science, in imitation, for the first time, of the practice in the posological branch of physical art and science.

Postulate: That all new words and phrases necessary to the substitution of truth to error—of clearness to obscurity or ambiguity—conciseness to verbosity,—be coined, uttered, and received.

Let the mint of the greatest happiness—the mint of reason and utility, be the mint in which they are coined.

What I am far from saying is, that all who are found to start and urge these objections are enemies to human happiness and improvement; but what I do say is, that all who

are enemies to human happiness and improvement will be found to start and urge them.

In so far as the conceptions hitherto entertained are inadequate or erroneous, necessary to the communication of correct and adequate ones is a correspondently appropriate and adequate, and therefore unavoidably a novel system of vocabulary.

To the words of which such vocabulary is composed, one condition is at once requisite and sufficient. This is, that without incorrectness, ambiguity, or obscurity, they carry to the conceptive faculty of the reader the idea meant to be conveyed, either at the first mention, antecedently to all definition, or other exposition, or at any rate, after such exposition has been heard or read.

For this purpose it will, generally speaking, be sufficient if, in the case of each word, other words derived from the same root are familiar to the reader in question—familiar, and at the same time expressive of clear conceptions, or if for the explanation other words in a sufficient degree synonymous to them are subjoined.

In what degree, for correct conception, or even for the possibility of obtaining any conception at all of the object in question, men are indebted to aptitude of nomenclature, persons in general are very little aware.

Throughout the whole field of that branch of the mathematics in which forms are put out of consideration, what is therein done, is done altogether by nomenclature—by abridgment given to the signs by which the idea is expressed. Thus, in common arithmetic, by means of the Arabic names of numbers, operations are performed, which, by words at length, without that instrument of abbreviation, could scarcely have been performed; whilst by those instruments of ulterior abbreviation which are afforded by algebra alone, operations are performed which could never have otherwise been performed—results obtained which could never have otherwise been obtained.

True it is, that of all these operations there is not one to the expression of which words and phrases at length are not completely adequate; but in many an instance, such is the quantity of literary matter that would be accumulated, that ere the result could be realized, confusion would ensue, the mind would be bewildered, and conception lost.

In branches of art and science comparatively frivolous, and for the accommodation of those who amuse themselves in the cultivation of these branches,—in a word, in the several branches of natural history,—no scruple is made, not only of introducing new denominations, but of composing a vast nomenclature altogether of such new denominations—fruits of the innovation principle.

For the purpose of morals and legislation united, the number of new denominations requisite is comparatively inconsiderable: these new denominations will mostly be taken from the Latin,—from that language from which most of the words of the languages of the most civilized nations are derived.

In the natural history branch, the language from which the new denominations are borrowed is the Greek—a language with which none except the extremely few have any sort of acquaintance, and which has no root in the language of the people. There ought, therefore, to be less objection to the introduction of new terms into the branches of legislation and morals, than into the branch of natural history: and there would be less, but for that horror of innovation by which the tyranny of the few over the subject-many may be repressed.

§ 3.

Prejudices Adverse To Improvement In Legal Language Obviated.

On this occasion we may remark how disadvantageous is the situation of him whose endeavour it is, in this line of service, to give increase to the greatest happiness of the greatest number, in comparison with that of those whose endeavours are exclusively directed to the giving increase to their own personal greatest happiness, and thence to that of the class to which they belong, at the expense of the greatest happiness of the greatest number; and thence and thereby to the maximizing the defalcation from the aggregate stock of happiness:—in other words, how difficult and disadvantageous the task of the friend of the people, in the character of the would-be improver of the law, is, in comparison with that of the enemy of the people, in the character of the fee-fed practitioner and fee-fed judge.

The nomenclature devised in a barbarous age, by a mixture of stupidity, ignorance, error, and lawyer-craft, has, by force of irresistible power, under favour of interest-begotten and authority-begotten prejudice, been interwoven in the language, and been rendered the subject-matter of instruction to the highest educated classes, and the object of admiration and veneration to all classes:—nay, even the more flagrant its inaptitude, the more intense the veneration: for the more flagrant the inaptitude, the greater the labour necessary to the attainment of that incorrect and incomplete conception of the ideas attached to it, which the nature of them admits of; and the greater the labour a man has bestowed upon any subject-matter, be it what it may, the greater the value which he of course attaches to the fruits of that labour, whatsoever they may happen to be.

Thus it is, that while on account of its antiquity the most unapt nomenclature which misplaced ingenuity could devise is an object of favour and veneration, the most apt that well-placed ingenuity can devise will as naturally be an object of aversion and disgust:—inexorably averted from the idea of the new appellatives, the attention of the reader will confine itself to the novelty, and in that novelty will find an adequate as well as an efficient cause for those sentiments in the prevalence of which, instead of reward, punishment will, from the same source, be found the lot and the retributive reward for his labours by the benefactor of mankind.

Necessary, indispensably necessary, to correct, complete, and clear conception, is a correspondently correct, complete, and apposite nomenclature. Never to the purpose

of conveying correct and complete ideas can any locution be adapted, by which no ideas but such as are incorrect, incomplete, and confused, have as yet ever been conveyed. To the acquisition of new instruction, necessary, indispensably necessary, to a correspondent extent is on the part of the instructor the framing—on the part of the learner the learning—of a new language.

In every other branch of art and science, universally and without exception is the necessity felt. Esteem and gratitude on the part of the learner is invariably the consequence—invariably part and parcel of the recompense of the teacher.

Take, for instance, the art and science of chemistry, and the improvement made in its nomenclature by Lavoisier. Not less extensive than just was the tribute of admiration and applause bestowed upon that illustrious man, and the no less illustrious partner of his bed, for that rich product of their conjoint labours in that branch of art and science.—Think of what chemistry was before that time—think of what it has become since!

Think of the plight that natural history and natural philosophy would have been in, had a law of the public-opinion tribunal been in force, interdicting the addition of any terms belonging to these branches of art and science, to the stock in use at the time of Lord Bacon. But the employment of the terms then in use in the field of natural history and natural philosophy, is not more incompatible with the attainment and communication of true and useful knowledge in that field, than the employment of the terms now in use in the field of jurisprudence is with the attainment and communication of the conceptions and opinions necessary to the attainment of the only legitimate and defensible ends of government and legislation.

The division of the qualities of plants into hot, cold, moist, and dry, each in a scale of degrees, was not more incompatible with correct, complete, and useful conception of the various properties of the subjects of the vegetable kingdom, than the still established division of offences into treasons, præmunires, unclergyable felonies, clergyable felonies, and misdemeanours.*

The corruption ascribed by the lawyer-branch of the flash-language, to the blood of those whom, on this or that occasion adverse fortune has placed on the losing side in a contest between two candidates for the faculty of sacrificing to the fancied felicity of a single individual the real happiness of twenty or a hundred and twenty millions—as a specimen of this nomenclature, with the atrocious tyranny involved in it, will afford to all posterity a melancholy proof of the state of corruption in the hearts of those who have given creation, preservation, and extension to that tyranny, and in the understandings of the deluded people who could remain unopposing victims of it.

Yes! within the memory of the author of these pages, the population of Great Britain, to the number of about twelve millions, was divided into two not very decidedly unequal halves: the one composed of those whose fondest wishes centred in the happiness of being slaves to a Scotchman of the name of Stuart;—the other of those whose wishes pointed in the same manner to a German of the name of Guelph. Of the twelve millions, six were devoted to extermination by the lawyers on one side;—the

other six by the lawyers on the other side. In the aggregate mass of the blood of the whole population, not a drop that was not in those days in a state of corruption, actual or eventual, according to the system of physiology established for the benefit of most religious kings, by learned lords and learned gentlemen.

Scarcely of the whole number of those in whom, according to Blackstone's language, the capacity of committing crimes had place, would a single one have escaped the having his or her bowels torn out of his or her body, and burnt before his or her face, supposing execution and effect capable of being given, and given accordingly, to the laws made, under pretence of being found ready-made, and declared for the more effectual preservation of loyalty and social order.

To whatsoever particular language the aggregate mass of discourse in question belongs, it will undeniably be in the greater degree apt with reference to the uses of human discourse taken in the aggregate, the more it abounds with words by which ambiguity and obscurity are excluded, or with words by means of which fresh and fresh degrees of conciseness are given to the body of the language.

Every language being the work of the human mind, at a stage of great immaturity, reference had to the present state of it, hence it is, that in every language, the most apt, or say the least unapt, not excepted, the demand for new words cannot but be great and urgent. In some of the departments of the field of language, including the field of thought and action, and the field of art and science, no reluctance at all as to this mode of enrichment has place:—on the other hand, in others such reluctance has place in a degree more or less considerable. Of this field, the portion in regard to which this reluctance seems to be most intense and extensive, is *that* which belongs to morals in general, and politics, including law and government, in particular;—of this reluctance, the inconsistency, and the evil effects that result from it to the uncontrovertible ends of human discourse, are apparent.

The opposite of that useful quality, the degree of which would be as the multitude of apt words associated with clear ideas—with ideas of unprecedented clearness, and introduced at a still maturer and maturer stage of the human mind, is a quality for the designation of which the word *purity* has commonly been employed. No sooner is the idea for the designation of which this word is employed brought clearly to view, than it is seen to be that which is aptly and correctly designated by the word *indigence.* This word *indigence,* wherefore then is it not employed—for what purpose is the word *purity* substituted to it? Answer: For this purpose, viz. the causing every endeavour to render the language more and more apt, with reference to the uncontrovertible ends of human discourse, to be regarded with an eye of disapprobation. *Purity* is of the number of those words to which an eulogistic sense has been attached—words under cover of which an ungrounded judgment is wont to be conveyed, and which are thence so many instruments in the hand of fallacy.

Of the use made of the word *purity,* the object, and to an unfortunate degree the effect, is—to express, and, as it were by contagion, to produce and propagate a sentiment of approbation towards the state of things, or the practice, in the designation

of which it is employed—a sentiment of disapprobation towards the state of things or practice opposite.

On each occasion on which the word *purity* is employed for the purpose of pointing a sentiment of disapprobation on the act of him by whom a new-coined word is introduced or employed, reference is explicitly or implicitly made to some period or point of time at which the stock of words belonging to that part of the language is regarded as being complete—insomuch that, of any additional word employed, the effect is, to render the aggregate stock—not the more apt, but by so much the less apt, with reference to the ends of language; to wit, not on the score of its individual inaptitude (for that is an altogether different consideration,) but on the mere ground of its being an additional word added to that stock of words which it found already complete—a word introduced at a time subsequent to that at which the language, it is assumed, had arrived at such a degree of perfection, that by any change produced by addition it could not but be deteriorated—rendered less apt than it was with reference to the ends of language.

That as often as conveyed and adopted, any such sentiment of disapprobation is not only ungrounded but groundless, and the effect of it, in so far as it has any, pernicious, seems already to have been, by this description of it, rendered as manifest as it is in the power of words to render it.

An assumption involved in it is, that, so far as regards that part of the language, the perfection of human reason had, at the point of time in question, been already attained. Another assumption that seems likewise involved in it is—either that experience had never, from the beginning of things to the time in question, been the mother of wisdom, or that exactly at that same point of time, her capacity of producing the like offspring had somehow or other been made to cease.

Now as to the causes—the moral, the inward, the secret causes, in which this error—this pernicious mode of thinking, appears to have had its source. Applied to the field of thought and action taken in the aggregate, they appear to be these:—1. Aversion to depart from accustomed habits; in particular, the habit of regarding the stock of the matter of language as applied to the stock of ideas in question as being complete.

2. Love of ease, or say aversion to labour—aversion to the labour of mind necessary to the forming therein, with the requisite degree of intimacy, an association between the idea in question, new or old, and the new word thus introduced, or proposed to be introduced.

3. Where the word is such as appears to convey with it a promise of being of use, more or less considerable, in that portion of the field into which it is thus proposed to be introduced, a sentiment of envy or jealousy, in relation to the individual, known or unknown, on whose part the endeavour thus to make a valuable addition to the stock of the language has been manifested.

4. Of the causes above mentioned, the application wants not much of being co-extensive with the whole field of human discourse: one cause yet remains, the influence of which will naturally be more powerful than that of all the others put together. This cause is confined in its operation to the field of morals and politics—taking, however, the field of opinion on the subject of religion as included in it.

It consists in the opposition made by every such new word,—in proportion to the tendency which it has to add to the stock of ideas conducive to the greatest happiness of the greatest number,—to the particular and sinister interests of those by whom the sentiment of disapprobation, as towards the supposed effect and tendency of the new word in question, stands expressed, and is endeavoured to be propagated.

§ 4.

Of The Modes Or Sources Of Improvement Of Language In Respect Of Copiousness.

Of single words, there are not many by which, in various ways, mischief to a greater amount has been done, than has been done by the word *purity,* with its conjugate pure:—done in the field of morals, in the field of legislation, and as here, in the field of taste.

In the fields of morals and legislation, purity has for another of its conjugates, a word significative of the opposite quality, impurity:—to the field of language the application of this negative quality does not appear to have extended itself.

The grand mischief here, is that which has been done by the inference that has been made of the existence of moral impurity from that of physical impurity—of impurity in a moral sense, from that of impurity in a physical sense.

In the field of taste, this word has been made the vehicle in and by which the notion is conveyed and endeavoured to be inculcated, that copiousness in language, instead of being a desirable, is an undesirable quality—instead of a merit, a blemish;—purity, being interpreted, is the opposite of copiousness: the less copious the language, the more pure. If ever there were a prejudice, this may assuredly be called one.

In the field of mechanics, when a workman has a new contrivance of any kind upon a pattern of his own to execute, a not uncommon preliminary is the having to contrive and execute accordingly a new tool or set of tools, likewise of his own contrivance, to assist him in the execution of the new work. Such, to no inconsiderable extent, has been the unavoidable task of the author with respect to legal language.*

The following are among the modes in which its improvement in the quality of copiousness may be sought:—

I. Augmentation, not to speak of completion, of the list of conjugates.

Rule 1: From whatsoever root any branch of conjugates already in the language has been derived,—from that branch deduce a root, and from that root deduce every other of the aggregate of the branches of which a complete logical cluster of conjugates is composed.

The operation is analogous to that of the gardener, who, stripping off a twig from a shrub, plants it in the ground, where it takes root, and having so done, forms itself into a perfect shrub, similar to that from which it was stripped off.

Rule 2: Give to every relative appellation its correlative.

Rule 3: Form new words with prefixes and suffixes matching one another.

Rule 4: Whatsoever group of conjugates any one of two opposites has, give also to the other,—to wit, in so far as it remains destitute of them.

II. Augmentation, not to speak of completion, of the list of compound words;—viz. of those in the formation of which the hyphen is employed as an instrument indicative of the junction; for as to compound words in which the junction is formed without the use of this instrument, the list of them will in a great degree coincide with the list of conjugates.

III. Augmentation (here completion is manifestly impossible) of the list of names;—univocal names of things and persons respectively.

In the manufacture of new words the following rules should be observed:—

Rule 1: No new word from any other than an English root, if any such is to be had.

Rule 2: Better from a Latin than a Greek root.

In either case, if there be any one branch already introduced into the English vocabulary, so much the better.

Rule 3: Introduce no species of conjugate of which there is no example as yet in the English language, so long as any one equivalent to it is to be had, of which there is an example in the English language.

When of a species which is familiar, an individual which is not familiar is introduced, for the joint purpose of authority and explanation, at the same time bring to view other individual instances.

§ 5.

English Language—Its Advantages For The Purposes Of Legislation.

Greek, Latin, and Teutonic, are the radical languages of the most civilized nations. Among these languages, the Latin is that which affords the richest set of conjugates, and consequently this language is the most apt for morals and legislation, in which the rule should be—*ideis iisdem, verba eadem.*

Among the Latin-sprung languages, the English is the most apt, as possessing in the highest degree the aggregate of these appropriate qualities, simplicity of texture, ductility, and augmentability.

Its aptitude for the purpose of legislation will appear—

1. As to words singly considered.

2. As to words aggregated into phrases.

It affords facility for the employment of new conjugates upon the pattern of the old. It allows of the employing any substantive as an adjective—viz. by simply prefixing it to another substantive, with relation to which it then becomes an adjective. In this way the names of parliamentary bills are formed. The extent of this facility will be clearly perceived, upon a comparison with the difficulties under which the French language labours in this particular.

It allows also of combining two words into one. When thus united, if one of them be a substantive employed as a substantive, it becomes the representative of an object capable of being made the subject of predication—a fictitious entity, to which, for the purpose of discourse, any action or quality may be ascribed.

It also contains a multitude of affixes—to wit, prefixes and suffixes—capable of being applied to any root for the formation of conjugates.

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CHAPTER VIII.

OF THE PERFECTIONS OF WHICH THE LEGISLATIVE STYLE IS SUSCEPTIBLE.

Imperfections! What?—nothing but imperfections? And are imperfections all the attributes of which nomography is susceptible? is the whole merit of the work of which the legislator in this point of view is susceptible, confined to so negative and weak a merit, as that of the mere avoidance of imperfections?

Perfections? Is there anything in the nature of legislative discourse which renders it unsusceptible of every quality that can with propriety be realized under that name?

Answer 1. Of the positive points of perfection, of which discourse at large is susceptible, there are none that apply to legislative discourse, in respect of its being legislative discourse,—none that apply to it otherwise than in respect of its being discourse.

2. Those points of perfection that apply to legislative discourse, inasmuch as it is discourse, are in point of importance, in comparison with the negative points of perfection, too inconsiderable to bear being mentioned in the same line. To please—to produce in the mind of the reader a sensation of the agreeable kind, but that a momentary one—such is the only desirable object they are capable of being rendered subservient to—the only good effect of which they are capable of being rendered productive.

3. Of those positive points of perfection of which discourse, inasmuch as it is discourse, is susceptible, will some, if not all, in the case of legislative discourse, be produced without any particular endeavour to give birth to them—produced of course by the remedial operations necessary to secure the existence of certain perfections of the negative kind.

Force and harmony:—to these two expressions all the perfections of the positive cast, applicable with propriety to this particular species of discourse, seem reducible. Force and harmony—two endowments, which if they are not the only perfections of which discourse taken at large is susceptible, are at any rate among those of which discourse at large is susceptible—the only ones which, in the case of the particular species of discourse here in question, can be either given to it, or be attempted to be given to it, without rendering it so much the less adapted to its own peculiar purposes.*

Harmony is a perfection which as such ought of course, in so far as may be, to be given to a legislative discourse, as well as to every other discourse. Harmony has for its object and effect, the affording a sensation of the agreeable kind to the ear; and be the organ or the occasion what it may, pleasure, in so far as it is pleasure, is a good, and the production of it a desirable result.

For this perfection, as for any other, a discourse of the kind in question will, when absolutely considered, be so much the better the greater the degree in which the perfection shall have been attained by it; and the advantage thus produced will be pure and clear, if in the form given to the discourse in question in this view, no imperfection of a more important character—none of those which have for their effects ambiguity, obscurity, or overbulkiness, are introduced into it. And in this pure and neat state, proper care being taken, the perfection in question may, it is supposed, be introduced into legislative as well as into any other species of discourse.

As to *force,* in so far as pleasure to the ear of the hearer or reader is the result of this quality in the discourse, this perfection may be considered as no more than a particular modification of the other—viz. harmony.

But besides that though in general harmony would perhaps be found an accompaniment of it, it may happen that the harmoniousness of a portion of discourse may be diminished rather than increased by a structure by which the force of it shall be increased: the service rendered to any species of discourse in general, and to this species in a particular degree, by force, is of a more important kind. This is of the number of those cases in which the effect is to suggest the idea of strength, intellectual strength, on the part of the workman. This idea, on all occasions, in so far as it finds place, an agreeable one, is in the present instance useful on a more important account. In a case of this kind, to excite in the mind of the hearer or reader the idea and opinion of the existence of intellectual strength on the part of the author, is to excite in his mind the idea and opinion of the existence of a quality, than which nothing can be more naturally and surely calculated to inspire confidence.

But among the operations which have for their object and effect the operating as remedies to imperfections of the second order, and thence, in other words, to endow the discourse in a proportionable degree with the opposite negative perfections, there are some which in general have also for their natural effect the giving to the composition the quality of vigour or force.

It is this which prevents ambiguity *ex situ,* ambiguity from bad collocation, by giving in each instance an apt location to every clause the effect of which is to operate in the character of a limitative clause, viz. of that to which it is intended to apply in the character of a principal clause, by inserting it in the bosom of that clause; if it be composed of two or more principal clauses, by placing it at the head of the whole series.†

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CHAPTER IX.

OF FORMS OF ENACTMENT.

The forms of which a law is susceptible are* —1. Integral, or say principal; 2. Fractional, or say modificative—that is to say, modificative of some antecedently enacted principal law: to which may be added a third, under the name of *composite,*† as being composed of one or more integral laws, with the addition of one or more parcels of modificative matter—modificative, with reference to one or more integral or modificative laws.

By an integral law, understand the entire matter of one command—of one sentence or proposition: sentence, in the sense given to the word in an institutional work on grammar; proposition, in the sense given to the word by logicians in a book on logic.

Example: Thou shalt not, or no person shall commit; or, Let no person commit theft.

By a fractional law, understand a law by the matter of which some modification is applied—that is to say, some interpretation or some variation—to the import of the matter of some law, considered as the correspondent integral, or say principal law.

Example: The act of theft is committed, or, theft has place, where, not believing himself to have a right so to do, a person converts to his own use a moveable subject-matter of property, to the use of which, in the manner in which he so converts it to his own use, he has not any sufficient right—he at the same time being conscious of his not having any such sufficient right, and by concealment or carrying off of the thing so dealt with, or by disguise or subtraction of his own person, using his endeavours to avoid being amenable to law in respect of such his act.

In this example may be seen an example of a fractional law, which is interpretative, or say exponing, with reference to the above-mentioned principal, or say integral law.

In consequence of its familiarity to every ear and every eye it is, that the law expressed by the words, Thou shalt not steal, is herein-above employed as an example; but the form thus exemplified is not the simplest form of which a law relative to this matter is susceptible.

A more simple form is this: Thou shalt not convert to thine own use any moveable thing, or any subject-matter of property, which thou hast not a right so to deal with, as thou hast done. A law expressed in these words belongs to that class of laws which are regularly denominated civil laws, or spoken of as being respectively part and parcel of the aggregate branch of law called the *civil* branch, or the *civil* law, or the mass of matter belonging to the *civil* code. Better, in consideration of the various *other* senses in which the adjective *civil,* when applied in conjunction with the substantive *law* is employed, say, *non-penal* law, or simply *distributive* law.

The law expressed in and by these words,—Thou shalt not steal, or, No person shall steal, is in effect, under the guise of a simple integral law, a composite law, as agreeing with the definition above given of a composite law. For in the import of the word *theft,* as also in that of the word *steal,*—which is an abridged equivalent, of the words commit an act of theft—is included, though tacitly and thus implicitly, the idea of punishment, as being in some shape or other appointed to be inflicted on the agent, who is so in respect of such act:—which appointment cannot be made without a correspondent law (really existing or fictitious, of which latter case presently) enacted for that purpose, and attached to the integral law first mentioned.

Evil consciousness is the name proposed to be employed for the designation of one of two states, in one or other of which unless a man's mind have place, punishment not being capable of producing any good effect—but on the contrary, being sure to be productive of bad effect—cannot but be worse than useless:—the other state thus alluded to being that which in Roman law and language has been termed temerity (*temeritas*), and may in English be rendered by the word *heedlessness;* that is, want of that strength of attention by which, if bestowed, the commission of the act, the maleficent quality of which is assumed, would have been prevented. For the designation of an act here expressed by the terms an act accompanied with evil consciousness, the words, a *malâ fide* act, or an act committed in *mala fides,* are employed in Roman law and language, and thence sometimes in the language employed by English lawyers.

An act accompanied with evil consciousness, as above, is also in Roman law and language said to be accompanied with *dolus;* or say, *dolus* is spoken of as being, in the mind of the agent, an accompaniment of the act. Inadequate, however, is this appellative thus used by Roman and Rome bred lawyers. For *dolus,* in the sense in which it is on any other ocasion employed in Roman language, means deceit, and implies that deception is produced or endeavoured to be produced in the mind of some person on the occasion of the act:—whereas it is as often employed in cases where no such deception is supposed to have been produced or endeavoured to be produced, as in cases in which it is supposed to have been produced,—as in case of a highway robbery or burglary committed by a man who knows that his person is well known to the party on whom and at whose expense the crime is committed.

Laws may further be considered as integral or principal, and subsidiary or say effectuative.

Effectuative being a term of reference,—by an effectuative law understand a law the object and function of which is to give effect to some principal law to which it is appended.

No otherwise than by applying to the mind of a person whose conduct it is designed to influence, an inducement of some kind or other, can any law of the effectuative class be productive of the effect intended.

Such inducement will be constituted by the eventual expectation either of the matter of good in some shape, or of the matter of evil in some shape:—of the matter of good

in case of compliance, or of the matter of evil in case of compliance; or of the matter of good in case of non-compliance, and the matter of evil in case of non-compliance, in which case, in any event, the one or other will, by the person whose active faculty it is endeavoured thus to influence, be receivable.

If it be of the matter of good that the expectation is thus held out, *remunerative* is the term by which the effectuative law in question may be designated:—if the matter of evil, *penal, punitional,* or say *punitive.*

Legislation has been distinguished into two modes—the direct and the indirect.

In the *direct* mode, the persons at whose hands obedience is desired, are different in the case of the subsidiary or effectuative law, and in the case of the fractional law. In the case of each of the two species, the remunerative and the punitive, they are, howsoever it may be in regard to the principal law, always the same.

1. In the case of the *remunerative* subsidiary law,—the persons, whoeoever they happen to be, by whose hands the matter of remuneration is eventually to be transferred into those in whose instance compliance with the desire which gave birth to the principal law has had place, are most commonly, persons belonging to the financial subdepartment of the administration department.

2. In the case of the punitive subsidiary law,—the judge to whom the cognizance of the case belongs.

3. In the case of the principal law, they are persons of any class whatsoever,—persons belonging to any one of the classes all-comprehensive, or short of all-comprehensive,—at whose hands compliance is called for by the general code, and the several particular, or say specific codes,—including the several still more particular, and, as they may be termed, subspecific classes, at whose hands compliance is called for in and by each one of the several particular codes.

In the indirect mode of legislation, separate subsidiary, or say effectuative law, for this particular purpose there is none.

Disguised forms of legislation may be employed, either undesignedly or designedly:—thus by means of a remunerative inducement, there may be created an indirect mandate—under the appearance of a prohibition, there may be an indirect licence.

Indirect mandate, with a remunerative inducement to compliance.

Example: Mass of the matter of wealth to an indefinite amount. Power given to P. (patron) to confer it;—to I. (incumbent) to receive it, retain it, enjoy it:—but on condition precedent, antecedently to be performed; to wit, a declaration of opinions, a declaration by the utterance of which the declarant asserts that he entertains, in relation to a certain subject-matter of opinion thereupon named, an opinion to a certain effect.

Of the utterance of every such mandate, the *effect* is the production of mendacity on the part of some part, or the whole of the number of those by whom the mass in question is received. How so? Answer: Because, in this case, by a man in whose instance the assertion is mendacious, accompanied with evil consciousness, the matter of good in question, the reward, may be obtained as surely and as safely as by any one in whose instance the assertion stands clear of any such accompaniment.

In the instance of no person can any other person have sufficient ground for regarding it as certain that a declaration of opinion made in the case in question is mendacious. But in the instance of any person, all others will have some ground for entertaining a suspicion to that effect;—that is to say, for regarding such mendacity as being more or less profitable.

The probability of the existence of mendacity in this case, is in the direct ratio of the improbability of the matter of fact, the existence of which is asserted by the declaration in question; and of the perspicacity of the person by whom the declaration is made.

For contributing to the propagation of mendacity on this occasion, in this mode, and by this means, inducements operating on the part of a contributor are the following:—

1. Averting from himself the imputation of mendacity. The persons in whose instance alone this inducement has place, are those by whom the like declaration is known to have been made.

2. Producing on the part of other persons in an indefinite number, a declaration of opinion clear of the imputation of mendacity on the subject in question,—that is, in other words, causing them really to entertain an opinion to the effect in question. How so? Answer: By the force of authority-begotten prejudice.

In relation to many points, not to say most, every man finds himself under the necessity of borrowing his opinions from others, grounding his conduct not on any direct opinions of his own relative to the matters of fact in question, but upon the opinions of this or that person, or class or assemblage of persons, whose opportunities of receiving information he regards as more conducive to the end in view, than any of which he himself is in possession.

In this way it is, that by a declaration of opinion made by a man in whose instance it is mendacious, that same opinion is caused to be really entertained, and consequently a declaration made of it clear of mendacity in the instance of other persons in any number.

3. By this means giving strength to the party to which he belongs—a party having for the symbol and evidence of mutual union and co-operation, the entertaining of the same opinion in relation to this or that subject-matter of opinion, no matter what.

Licence presupposes either prohibition or mandate, and has for its effect the removal of the one or the other, in the instance and for the benefit of the individual who is said to be licensed.

In the case of prohibition, the indirect mode is much more effective than the direct. Why? Because prohibition supposes delinquency on the part of him who fails to comply with it; that is to say, who exercises an act of the sort of those for the prevention of which the prohibition issued: prohibition supposes delinquency, and delinquency supposes eventual punishment and suit at law, in this case styled prosecution, for the purpose of inducing the judge to apply the punishment. But for this purpose, evidence is necessary, with time and means of adducing counter-evidence; none of which obstacles have place in the case of indirect prohibition.

The greater the delay, expense, and vexation attendant on prosecution, the greater the excess of efficacy on the part of the indirect in comparison with the direct mode.

In a word, the mode of prohibition is indirect when the portion of good or the portion of evil of which the inducement to abstain from the exercise of the prohibited act is composed, takes place without recourse had by any person to the services of the judge for the purpose of causing it to be received: the portion of good, that is to say, the enjoyment, or the efficient cause of enjoyment—the portion of evil, that is to say, the portion of suffering, or the efficient cause of suffering.

Prohibition, with a punitive inducement to compliance attached in the indirect mode.

Example: A tax imposed on law proceedings—the amount of it payable either to the public, or to a judge, or other member of the judiciary establishment.

Every tax imposed on an object of general desire has the effect of a prohibition; that is to say, a prohibition inhibiting the use of it to all those who have not wherewithal to pay the tax. Now mind the effect of a tax imposed on the faculty of obtaining the services of the judge.

The use of it to those to whom it is of use—the use of it in comparison with the direct mode of endeavouring to prevent that which it is desired to prevent, is the faculty of effecting the prevention without the odium which would attach upon any one who should be seen to join in the application of prohibition in the direct mode.

By a tax on law proceedings, the effect of a licence may be produced.

I. A tax imposed on the operations performed on the plaintiff's, or say demandant's side, operates as a licence to wrong in every possible shape, at the charge of every individual who, at the time in question, is unable to defray this factitious expense, in addition to expense in all other shapes, factitious and natural taken together: in this case, to wrong in all shapes through failure of justice, for want of the official services of the judge and his subordinates.

The efficient enactments by which in this case the effect, *i. e.* the licence, is produced, are these:—1. A mandate addressed to the judge, commanding him eventually to render to each demandant the particular services demanded by the demand, and thereby to impose on the defendant the burthen, whatever it be, the imposition of which is called for by the demand,—eventually, that is to say, if to the satisfaction of the judge it shall have been proved, that by rendering such service, execution and

effect will on that individual occasion have been given to some law applying to the case. 2. Applicable to a correspondent portion of the extent covered by that same mandatory enactment, a prohibitory enactment, inhibiting the judge from rendering such a service in every individual case in which the tax in question has not been paid.

II. A tax on judicial operations performed and judicial instruments employed on the defendant's side, operates not only as a simple licence given to the demandant to inflict wrong on the defendant in every shape in which punishment or other burthen is endeavoured to be imposed by the demand: in this case, not merely is a licence to commit the several enormities given, but by the legislator, at any rate, the judge is rendered an instrument in the hand of the wrongful demandant, in and for the commission of all these several wrongs—an accomplice of the wrongdoer, the wrongful demandant, by whom is reaped the chief profit from these wrongs.

The effective enactments by which in this case the effect of the licence, or more than the effect of the licence, is produced, are—

1. A mandate addressed to the judge, commanding him *eventually* to render to each demandant the services demanded by his demand, and thereby to impose on the defendant the burthen, whatever it be, the imposition of which is called for by the demand:—eventually, that is to say, if to the satisfaction of the judge it shall have been proved, that by rendering such service, execution and effect, will in this indivdual occasion have been given to some legislative-made law at that time in force and applying to the case, or some judge-made law, operating in default of such legislative-made law, and applying to that same case.

2. A correspondent prohibition addressed to the judge, inhibiting him from permitting the defendant to perform this or that operation, the performance of which is necessary,—or from exhibiting this or that written instrument,—exhibition of which is necessary, to his *defence:* that is to say, to the affording to the judge reasonable ground for being satisfied, that in case of his rendering to the demandant in question the service he demands, execution and effect would not be rendered to any law, but that, on the contrary, by his rendering that same service an offence against some law actually in force would be committed.

Of these two arrangements taken together, the effect is, to command the judge, on the individual occasion in question, to commit an act which in the eyes of the legislator himself is an act of injustice: to bestow upon every person by whom what in his eyes is regarded as an adequate assurance has been obtained, that another individual, on whom he is desirous of imposing a burthen in any shape in which the judge is either commanded or permitted eventually to impose it, that such individual will not be able to raise the money on the payment of which, and not otherwise, he will have purchased the permission to adduce the evidence, and arguments necessary to exempt and preserve him from suffering under the burthen thus wrongfully endeavoured to be imposed,—the effectual power of imposing that same burthen.

When by a law by which, for the declared purpose of preventing the exercise of a species of act regarded as being in a preponderant degree maleficent, a prohibition

with a punitive sanction, or say inducement, is established, in such sort, that—while the aggregate amount of the eventual burthen appointed to be borne by a person not complying with the inhibition is fixed, or confined on the side of increase within a certain limit, the nature of the inhibited act is such, that in individual cases more or less numerous, after the offending agent has been subjected to the burthen, a clear benefit, or say a *net profit,* to an amount more or less considerable, remains in his hands,—instead of the supposed and apparent prohibitory enactment or arrangement, a mandatory enactment and arrangement, with a remuneratory sanction and inducement, has place, to the amount of such clear benefit in each such individual case.

From this theoretical observation follows a practical conclusion of prime importance. Throughout the whole penal code, in the case of every offence, give to the judge the power of searching out and taking from the offender the whole profit of the offence:—this done, and not before that, it comes to be of the nature of any burthen imposed, to contribute in the character of a subsequentially privative remedy to the prevention of offences of the like nature in future.

To the present topic belong in strictness those cases, and those cases alone, in which, at the expense of prohibitive enactments with punitive inducements emanating from the legislative authority, an unannounced, and thence by persons in general unperceived, licence, is granted by that same authority.

But a place may here be found, in which, in the way of allusion, intimation may be given of a species of operation productive of the same effect though performed by other hands; since of the mass of evil thus produced, the intensity and extent are such as can scarcely fail to impress upon every reader's mind a correspondent sense of its importance.

These other hands are those of the judicial authority: and in the circumstances in which civilized society has everywhere as yet been placed, though in point of fact everywhere the judicial authority is by avowed acknowledgment subordinate to the legislative, and in the very nature of the case cannot but so be,—yet such, on the one hand, has been the cunning and audacity of the members of the judicial establishment, and such the blindness or supineness of the legislative authority, in whatsoever hands placed, that in every country, to a greater or less degree, but in England in a more particular degree and to a greater extent by far than in any other country, the judicial has found means, on various pretexts, to trench upon the authority of the legislative, to destroy the effect of its enactments, and thus, and in so far, usurp its authority.

In another place, the device by which this state of things has been brought about has been designated by the words, *decision on grounds avowedly foreign to the merits:*[*] and under this, the practice, or say operation, designated by the appellative of nullification or annulment, has been brought to view, and shown to be the principal instrument of the evil thus accomplished.

It has been seen how it is, that of the principal enactment, whether prohibitory or mandatory, with a punitive inducement, the effect depends upon a corresponding

enactment, styled a subsidiary, or say effectuative enactment, commonly, if not always, of the mandatory cast, addressed to the judge. Hence it is, that if in any instance, upon application in ordinary course made to him, the conduct maintained on that individual occasion be, instead of strict compliance as it ought to be, that of downright non-compliance, such act of non-compliance is an act of usurpation, an act of delinquency, in respect of which in every political community in which a degree of anarchy incompatible with general security is not preferred to a consistent mode of governance, without which no adequate degree of general security can have place, every judge thus acting in a state of disobedience to his universally acknowledged superordinate, will be considered as a criminal, and as such dealt with.

In this case, not only does the judge in every instance assume to himself, and exercise the power of frustrating, and *pro tanto* repealing the enactment of the legislature, but though in an indirect, not in a less efficacious way, with or without being conscious of the evil he is doing, does he impart that same power to other persons in a great variety of situations. For non-compliance with a certain supposed and imaginary enactment, although the act of delinquency of which he stands accused have been proved upon the defendant, and thereby the existence of the corresponding obligation on the part of the judge to make application of the appointed punishment, the judge refuses to make such application.

Now, then, if it were real, this imaginary regulation, what would it be? It would be for example, a regulation enacting that unless in the instrument of accusation (denominated for example an indictment, by which, in so far as regards general ideas, expression is given by a certain assemblage of general words, while for the giving expressions to the individual ideas belonging to the individual case blanks are left), such and such words shall be employed:—employed by whom? by the individual, whoever it is, by whom the words were written, subject to a review performed or not performed, as it may happen, by his employer, a person holding some subordinate situation under the judge,—the punishment enacted by the legislator shall not be inflicted.

Hence, then, by this regulation, a power is given at any rate to some subordinate functionary in an obscure situation, to frustrate any or all enactments of the legislator which come for execution and effect to the judge under whose authority he officiates;—at any rate, to some subordinate clerk of the arraigns or whatever he is called. But in contingency, and always in probability, another person to whom this same power is imparted, is any man whatsoever, who, in the capacity of a copying clerk, happens to be employed by that same subordinate officer.

Of this same maleficence-licence institution, the species of licence here and elsewhere mentioned under the name of the *mendacity licence,* is a species, or say modification.

In this case, a prohibition is enacted—a prohibition with a punitive sanction and inducement, inhibiting under certain penalties the commission of any act of mendacity—of any act by which expression is given to a false assertion, accompanied with the consciousness of its falsity. But the case to which the application of this prohibition is confined, is the case in which a special engagement to abstain from

mendacity has been taken and entered into, by bearing a part in the ceremony styled an oath,—in this case, an *affirmative oath.*

Thus stands the matter in the case of the mendacity-licence taken at large.

But in the case of the mendacity-licence which has been established, and has place on different occasions throughout the whole course of judicial procedure under the law of England, as also under the law of perhaps most other countries,—to this negative sort of encouragement given, and licence granted, by forbearance to apply prohibition, is added, under English law at any rate, an encouragement of the positive cast, afforded by a mandate with a sanction and inducement of the remunerative kind, addressed to all *malâ fide* suitors on both sides of the suit, and in particular at the outset to a *malâ fide* suitor on the demandant's side.

Utter—says the legislator to every man disposed to be a wrong-doer, to commit depredation or simple oppression at the charge of any individual marked out by him for his victim—utter in customary form and quantity a mass of mendacious assertion;—if the individual at whose charge it is your desire to inflict wrong in this shape, whatsoever it be, have after a certain length of time failed to give utterance in a written form to a correspondent mass of assertory matter, true or false, the wrong it is your desire to commit at his charge shall take effect; the mass of the matter of wealth, whatever it be, which being in his possession it is your wish to get into yours, shall accordingly, upon your carrying on the appropriate series of operations, be placed in your hands, or the oppression which in other shapes it may be your wish to see exercised on him, shall accordingly be exercised.

Thus pregnant with absurdity and mischief upon an all-comprehensive scale, would be this practice—this institution (if such it may be called), if the facts assumed by it really had place; namely, the existence of a standard of conformity set up by competent authority, and warning given of the practical consequence that would be grounded on want of conformity to such standard—namely, the frustration, and *pro tanto* the repeal of the punitive, subsidiary, or say effectuative law, attached by the legislative authority to the principal prohibitive law. So much for what in a certain supposed case would have been the state of things. But this same state of things, what is it in reality? Answer: Throughout the whole of the portion of the field of law over which this licence extends its baleful influence, the existence of any such standard, and consequently of the warning pointing to it, is a mere fiction. It is for not having done that which to the knowledge of these judges was impossible,—the impossibility being of their own creation, that the suffering inflicted by the frustration of the legislative-made law is inflicted by them.

Suffering thus inflicted by a judge, and that without so much as a pretence of maleficence or delinquency in any shape,—on his part in any shape?

Oh yes, so it is. For whatsoever may have been the expense, not to speak of vexation in other shapes, experienced by the prosecutor in the course of his endeavours to cause execution and effect to be given to the enactment of the legislature, the suffering produced by it is left to rest on his shoulders without compensation; while,

by the delinquent, be his maleficence ever so enormous, in no shape (in addition to the vexation) is suffering produced, other than by such expense as he is subjected to by the proceedings carried on by him on the occasion and for the purpose of his defence.

By the legislator orders are given to the judge to inflict punishment on the delinquent. This same judge,—what does he in consequence? In so far as depends upon him, the criminal he leaves unpunished, securing to him at the sametime whatsoever was the expected profit of his crime—the goods, for example, abstracted in the way of theft, highway robbery, or housebreaking: on the party in whose breast the suffering was produced by the crime—in spite of the legislator, in the very teeth of his ordinance—he heaps additional suffering.

Of insubordination thus exemplified, too much there is in the legal system of every civilized country on the face of the globe; into the mass of power belonging to the master legislator, to which, as in duty bound, he gives execution and effect, this cunning servant contriving everywhere to slip in a portion of power clandestinely, to add to his own use a portion of power, to which he gives most sure execution and effect, to his own use and to his own advantage, at the expense of the power of the sovereign and the comfort of the subject-citizens. After the pattern set by Rome-bred law, *à peine de nullité,* you see in Buonaparte's codes:—the like in the same language, or some other language, you may see in other codes. And the punishment thus inflicted by the utterance of the word *nullité,* or its equivalent, on whom is it inflicted? On the guilty author of the injury? No, not in any instance: but on him who, in respect of the injury, is not only innocent, but injured. Of the suffering produced in the case of the most mischievous crime, committed by a man who in common language is aggregated to the all-comprehensive and reproachful denomination of malefactors, what is the quantity compared with that produced by the judge with the word nullity, or this or that one of its kindred for a pretence?

Thus stands the matter hitherto, even in that code of that government, the practice of which, in this respect, is least exposed to reprobation. But it is in England and English law that injustice in this shape triumphs and reigns, with a degree of flagrancy which leaves the highest of that exemplified in any other country far behind.

A sportsman who, with or without a crown or a judge's wig upon his head, taking his station within shot of the entrance of a bridge, should amuse himself in shooting men and women instead of partridges and hares, might serve as the emblem of the judge with the words null and void, instead of shot; laying low at the command of his caprice the passengers as they presented themselves, aiming at them without any other care as to the selection, than that of bringing down the party robbed or hurt, instead of the malefactor by whom the robbery or the outrage had been committed.

Another exemplification of unauthorized legislation has elsewhere been brought to view; to wit, that practised by individuals in the situation of jurymen.* Throughout English law, if, on the part of any class of public functionaries, misconduct in any shape receives a palliation, it is by misconduct on the part of the same or some other class of public functionaries. Thus the *veto* put as above in individual cases by judges

on all laws, the most salutary and indispensable, receives a sort of palliative, and the mischief of it a sort of counteraction and correction, in the *veto,* which also, in individual cases, juries have the power of putting upon mischievous ones. Weak, indeed, would be the palliative, scanty the compensation, were the mischief, which an English juryman by his *veto* has it in his power to prevent, no greater than that which an English judge, with the words null and void in his mouth, has it in his power to propagate.

But the utmost mischief which the judge is likely to add to the will, the power to do, on any individual occasion, does not go beyond that which is the result of letting loose upon society a murderer or two: as when, not long ago, the man who had cut a child's head off, was saved by a judge from punishment, because some clerk or other had written in a paper a line or a word which the judge said was a wrong one. Whereas nothing can be more clear, that were it not for the power which juries possess of nullifying, amongst other portions of judge-made law, that by which all free discussion of the conduct of public functionaries is constituted a crime, and as such declared to be and endeavoured to be made punishable, the condition of the people of England would long ago have been rendered undistinguishable from that of the people of Spain and Portugal.

Instead of the child as above, suppose the person to whom the amputated head had belonged a king—and suppose, as would be the case, the name given to the crime to be,—not murder, as in that case,—but treason. As to the judge, there would be no great apprehension of his granting in this case the licence granted as in that case, to the crime. Not altogether so in the case of the juror: to him it might seem that the people would be better off without the king in question in particular, or without any king whatsoever, than with one; and in that persuasion, pronouncing the words *not guilty,* he might by perseverance force into the eleven other mouths those same words, with the perjury which English piety has added as if for a relish. And thus it is, that when the corruption of the English government has swelled to such a pitch as to render the whole amount of it a no longer endurable nuisance, a few jurors, with these two words on their lips, have it at their option to accomplish the dissolution of it; whereupon sooner or later a new government in some shape or other will take place, and be established: and as to any other equally bad with the present, it is what the most timid need not be apprehensive of; seeing that it is not in virtue of the form of government, but in spite of the form of government, that that measure of felicity, whatever it be, by which England stands distinguished to its advantage from any other nation, is produced.

In effect, the power thus exercised as above by judges, jurymen, and attorneys' clerks, has it not a name? Oh yes;—a name it has;—and that name is *pardon.* Everywhere, on the footing on which it stands at present, the power thus denominated is a relic of primeval barbarism: it is the power of frustrating the declared will of the legislator. The folly on which it stands in a monarchy styled limited, is different from that on which it stands in an avowedly absolute monarchy. In an absolute monarchy, in which it is in the single person of the monarch that the whole power of legislation is vested, neither in the possession nor in the exercise of the power of pardoning has contradiction in any shape or degree place: in the individual occasion in question—in

the individual instance in question, the will of the sovereign is different from that which has place in all cases without distinction. To take away the effect of the law in every future individual instance without exception, is altogether at all times in his power, and frequently in his practice: and in comparison with this, how small is the power of pardoning an individual, supposing the occasion on which it is exercised ever so improper, and the effect of it ever so mischievous?

Very different is the folly on which the case stands, when the monarch, having no more than a share in the exercise of the legislative power, so called, has in his own single hand the power of frustrating the effect of any enactment, howsoever salutary, howsoever necessary to public security.

How much greater the folly for any legislature to leave the power of frustrating its enactments in the hands of jurors, judges, and copying clerks.

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APPENDIX.

LOGICAL ARRANGEMENTS, OR INSTRUMENTS OF INVENTION AND DISCOVERY

employed by JEREMY BENTHAM.

Logical arrangements, which have served as so many *nova organa,* or instruments of invention or discovery to Jeremy Bentham, in the composition of his several works.

To enable himself to take a commanding view (says Bolingbroke) of the field of law and legislation, there are two principal vantage grounds, on which it is necessary for a man to mount, viz. *history* and *metaphysics*.

The observation is Lord Bolingbroke's, and it has been quoted from him by Hume, or some other author of the first eminence.

To that one of the two vantage grounds which is offered by history, the road is smooth and flowery;—and of those who have ascended to it, and taken post upon it, there has been no want.

To that which belongs to the region of metaphysics, the road is rugged, and full of thorns. Few are they who have attempted to gain this height; and of those few, still fewer who have succeeded in reaching it, and placing themselves in any such station as hath afforded them any clear and extensive view of the regions stretched out at their feet.

In the following sketch, an enumeration is given of the several monticules which, in the course of his travels on the vantage ground of metaphysics—to call it by the name given to it by Bolingbroke—or, as some would say, of logic—were descried by the mind of the author, and on which, from time to time, it has taken its station, for the purpose of the surveys it has, for different purposes, had occasion to take of that extensive field which is occupied below, in common by ethics or morals, law, and legislation.

If their position merely be regarded—the post they occupy in the intellectual regions—these objects may, according to the figure of speech employed by Bolingbroke, be considered merely as so many stations or resting-places in that more arduous one of his two vantage grounds.

If the purposes and uses to which they have been applied be the object of regard, there will be a convenience in changing the figure, and considering them, with Lord Bacon, as so many engines or instruments, by the aid of which the different works that have been undertaken have been either accomplished, or at least laboured at and attempted.

In most instances, the instrument thus employed by the author was constructed by himself alone,—no part having been borrowed from any other hand;—in other instances, the instrument was found by him, in part at least, ready made; but either enlarged by himself, or applied to uses to which it had not been observed by him to have been applied by any one else. As often as the hand from which he thus received it could be determined and recollected, mention has been made of it.

New Ideas Derived From Logic.

I. Division of entities into real and fictitious; or say, division of nouns-substantive into names of real entities, and names of fictitious entities:—

By the division and distinction thus brought to view, great is the light thrown upon the whole field of logic, and thereby over the whole field of art and science, more especially the psychical, and thence the ethical or moral branch of science.

It is for want of a clear conception of this distinction that many an empty name is considered as the representative of a correspondent reality:—in a word, that mere *fictions* are in abundance regarded as *realities.*

D'Alembert is the author in whose works* the notion of this distinction was first observed by me;—*être fictif* is the expression employed by him for the designation of the sort of object, for the designation of which the appellation *fictitious entity* has ever since been employed.

In speaking of the faculties of the mind, the same distinction will also be found occasionally brought to view in the philosophical works of Voltaire.

By attention to this distinction it is, that I was enabled to discover and bring to view, in the case of a numerous class of words, their incapacity of being expounded by a definition in the ordinary form, viz. the form *per genus et differentiam,* which form of definition it has, with how little success and benefit soever hitherto, perhaps universally been the practice to bestow upon them; and at the same time to bring to view the only instructive and useful exposition of which the words of this class are susceptible, viz. the exposition by *paraphrasis*—the only form of exposition by which the import attached to them is capable of being fixed, and at the same time placed in a clear and determinate point of view.

See, in particular, the class of political, including legal, fictitious entities,† in respect to which, by indication of the relation which the import of the word in question bears in common to the fundamental ideas of pain and pleasure, a distinct and fixed meaning is thus given to a numerous tribe of words, of which, till that time, the meaning had been floating in the clouds, and blown about by every blast of doctrine:—words to the which, in the mind of many a writer, no assignable ideas, no fixed, no real import, had been annexed.

II. Division of entities, real and fictitious together, into physical and psychical:—

By means of this arrangement, considerable has been the light thrown upon the field of psychical entities, and the origin and formation of language: the connexion between the nomenclature of psychical and that of physical entities has been clearly pointed out. There is no name of a psychical entity, which is not also the name of a physical entity, in which capacity alone it must have continued to have been employed, long before it was transferred to the field of psychical entities, and made to serve in the character of a name of a psychical, and that most commonly a fictitious entity.

III. Relations between the import of the word *happiness,* and that of the words *pleasure* and *pain:*—

Sole positive element of happiness, alias *felicity,* alias *well-being*—pleasures, and those determinate ones: sole negative element of happiness, exemption from pains, and those equally determinate ones.

Determinate import thereby given to the word *utility,* a word necessarily employed for conciseness sake, in lieu of a phrase more or less protracted, in which the presence of pleasures and the absence of pains would be brought to view.

An action may be considered and spoken of as *useful,* as conducive to general utility, in proportion to the *value* of any pleasures which it is its tendency to produce, or of any pains which it is its tendency to avert.

Whether there ever were a time at which the word happiness failed of presenting to my mind the character of an aggregate, or compound, of which pleasures, and the exemption from corresponding pains, were the sole elements, is more than at present I can recollect. The satisfaction I remember to have experienced at the observation of this interpretation, as given to it in the first place by Helvetius,‡ and afterward by Hartley,? affords some presumption of its being at the first of these times new to me. But perhaps the cause of that satisfaction was not the novelty of the notion in relation to my own conceptions, but the circumstance of seeing the confirmation given to them in these works.

IV. Elements or dimensions of value in regard to pleasures and pains:—

It was from Beccaria's little treatise on crimes and punishments that I drew, as I well remember, the first hint of this principle, by which the precision and clearness and incontestableness of mathematical calculation are introduced for the first time into the field of morals—a field to which in its own nature they are applicable with a propriety no less incontestable, and when once brought to view, manifest, than that of physics, including its most elevated quarter, the field of mathematics.

The elements or dimensions of value, in regard to pleasures and pains, are—1. Intensity; 2. Duration: these belong to it whether considered as past or as future; and of these two taken together, its magnitude is composed. To these come to be added, but in the case only in which it is considered as not yet past—3. The certainty or probability of its arrival; 4. Its proximity, propinquity, or remoteness.

Thus far it is considered as confined to the breast of a single individual: if considered as seated, or capable of being seated, in a number of different breasts, it is then considered as existing under a fifth dimension, viz. Extent,—which extent has for its measure the number of the individuals who are considered as being thus affected;—the greater that number, the more extensive it is; the less, the less extensive.

Two other conceivable elements of value remain still to be ascribed to it, viz. 6. Fecundity; 7. Purity. Of these elements, neither, it is true, can be considered as belonging to the value of a pleasure or a pain when considered by itself: in both instances, it is considered inasmuch as it is capable of being accompanied or followed by sensations of the same or a different kind. If by sensations of the same kind, *i. e.* if, being a pain, by a pain—or being a pleasure, by a pleasure, it be considered as accompanied or followed, it may, in proportion to the number of such concomitant or consequent sensations, be termed *fruitful* or *unfruitful,* prolific or unprolific:—if by sensations of an opposite kind, it may, in proportion to the number of such concomitant or consequent sensations, be termed *impure,* in proportion to the number of those which it escapes or fails being accompanied with, *pure.*

For bringing to view in a concise form these elements, seven in number, the following memoriter verses, awkward as verses of that class naturally are, may for the present serve:—

> Intense, long, sure, not distant, fruitful, pure,
> Such marks in pleasures and in pains endure.
> Such pleasures seek, if *private* be thy end;
> If it be *public,* wide let them *extend.*
> Such *pains* avoid, whichever be thy view;
> If pains *must* come, let them *extend* to few.*

Less awkward verses I cannot but suppose may one day be found, and substituted to these with advantage, by some person who is more in use to dress up language in the garb of poetry.

V. Extension of the use made of the word *matter,* from the field of physics to the whole field of *psychics,* or *psychology,* including *ethics* and *politics:*—

1. In the higher, or more general quarter of them; viz. in the phrases *matter of good, matter of evil.*

2. In the department of *law* in general, and of *penal* law in particular,—*matter of satisfaction* or *compensation, matter of punishment, matter of reward;* matter of punishment being neither more nor less than the matter of evil applied to a particular purpose;—matter of reward, the matter of *good* applied to *one* particular purpose;—matter of satisfaction, the matter of good applied to *another* particular purpose.

3. In political economy—matter of wealth and its modifications; viz. the matter of *subsistence,* and the matter of *opulence* or *abundance;* each of these being neither more nor less than so many modifications of the matter of *wealth;* and in so far as, through the medium of exchange, interconvertibility as between them has place, with no other difference than what corresponds to the difference in the purposes to which that common matter comes to be applied.

Correctness, completeness, and consistency of the views taken of these large portions of the field of thought and action,—conciseness in the sketches made or to be made of them:—such are the desirable effects which this locution presented itself as capable of contributing in large proportion to the production of.

By this means, for the first time, were brought to view several analogies, which have been found of great use in practice;—a clearer, as well as a more comprehensive view of all these objects, having thereby been given, than in the nature of the case could, or can have been given by any other means.

The matter of *good,* as to one-half of it—one of the two modifications of which it is composed—viz. the negative—being the same thing as the matter of *evil;* one and the same object—viz. pain—having by its presence the effect of evil, by its absence or removal the effect of good;—the matter of good being, in its positive modification, composed of pleasures, and their respective causes—in its negative modification, or form of exemptions, *i. e.* exemptions from pain, and their respective causes.

In like manner, the matter of *evil* being as to one-half of it—as to one of the two portions of which it is composed, viz. the negative—the same thing as the matter of good; one and the same object—viz. pleasure—having by its presence the effect of good, by its *absence,* when considered as the result of loss, the effect of *evil:* the matter of evil being, in its positive form, composed of pains, and their respective causes—in its negative form, of losses corresponding to the different species of pleasures capable of being acquired and possessed, or lost, and their respective causes.

From this correspondency and interconvertibility, a practical result—in the hands of whosoever is able and willing to turn the observation to advantage—is the prevention of excess and waste in the application of both these portions.

A position which by this means is placed in the clearest and strongest point of view, is—that by whatsoever is done in any shape, in and by the exercise of the powers of government, is so much certain evil done, that good may come.

Though the matter of reward, and the matter of satisfaction (viz. for injuries sustained) are in themselves so much of the matter of good, yet it is only by coercion, and that in a quantity proportioned to the extent to which that coercion is applied, that the matter of good thus applied can be extracted.

That when, on the score of and in compensation for injury sustained, the matter of good is, in the character of matter of satisfaction, extracted from the author of the

injury, it operates, in and by the whole amount of it, in the character of punishment, on the person from whom it is extracted: and whatsoever may be the quantity of punishment inflicted in this shape, in that same proportion is the demand for punishment satisfied; and whatsoever may be the amount of it in this shape, by so much less is the demand, if any, that remains for it in any other.

Operating in any such way as to produce, on the part of the party operated upon, an act or course of conduct adverse in any way upon the whole to the interest of the community in question—*ex gr.* a particular class or district or other division of the political state, the whole of the political state in question, or mankind at large—the matter of good and evil becomes the matter of corruption.

It may be either the matter of *good* or the matter of *evil:* but it is the matter of good that most frequently presents itself in that character.

The breast in which the matter of corruption is thus operating may be that of any individual at large; but the case which affords the most frequent occasion for speaking of the matter of good, as operating in this character, is that in which the person thus operated upon is regarded as occupying the situation of a trustee—of a trustee, whatsoever be the party regarded, as the correspondent principal, or, as the English lawyers say, using remnants of an obsolete jargon borrowed from France, *cestuy que trust;* whether another individual, or assemblage of determinate individuals, a subordinate community, composed of an assemblage of individuals, individually indeterminate, or the whole political state.

To operate in the character of matter of corruption, the matter of good and evil requires not to be actually applied by this or that hand in the character of a *corrupting hand.* Of itself, and without any such application, the matter of good and evil, especially in the form of *good,* keeps operating, in so far as, being at the disposal of any individual, or assemblage or division of individuals, the interest of such parties is adverse to the interest of a greater number of individuals.

In every political state, in the shape of the matter of wealth, a quantity, more or less considerable, of the matter of good and evil lies, and a still greater quantity is expected to be at the disposal of the several persons in whose hands the business of the administrative department is lodged. In every state, in so far as in these same hands the disposal of it is left free, it is in the power of these trustees of the public so to dispose of it in favour of other trustees of the public in the other departments of government—viz. the legislative and the judicial—as well as to those belonging to that same department, the administrative—as to cause them to be subservient to the particular interest of these depositaries of the public stock, at the expense of the public at large.

Accordingly, in proportion to the quantity of this matter being or expected to be at the disposal of these hands, and the facility with which it is capable of being applied to this sinister purpose, will be the force with which, in the character of the matter of corruption, the matter of good and evil will be operating—operating upon all persons,

according to the degree in which, partly by situation, partly by disposition, they stand exposed to its sinister influence.

VI. Good and evil of the first, second, and third orders, *i. e.* Effects similar or opposite, producible in society by the operation of one and the same act at different stages of its progress:—effects in some cases homogeneous with reference to each other, in other cases heterogeneous, are produced in the way of good and evil by the influence of one and the same act in the course of its progress in and through society.

1. In the case of delinquency,—effects in the way of good and evil producible by an offence.

In the first stage comes a portion of the matter of good; viz. the advantage, whether in the shape of pleasure or of exemption from pain, the prospect of which was, in the character of a motive or inducement, the cause of the commission of the pernicious act.

At the next stage comes, in some cases, an effect of an opposite nature—a portion of the matter of evil; viz. if the pernicious act be of the number of those by which a determinate suffering is produced in the breast of an assignable individual or individuals;—here we have one portion of the matter of evil—call this portion *the evil of the first order.*

An ulterior, and in every respect perfectly distinct lot of evil, produced in some cases from the same cause, has been termed *the evil of the second order.* It consists partly of the alarm produced in other breasts by the apprehension of finding themselves among the sufferers from other pernicious acts, that appear likely to be produced by the individual offence in question, in the event of its having been found in its issue favourable to the offender.

Of the mass of evil capable of being produced by an act of delinquency, or at any rate by a multitude of acts of delinquency of the same nature, that portion which comes in at the third and last stage of its progress, is of a sort which, under any tolerably well-established government, is rarely, to any considerable extent, exemplified. It is that which has place, in so far as such being the effects of the alarm produced by the apprehension of continually recurring repetitions of the species of injury in question, the mischief has, from the passive and sensitive faculties of the persons thus threatened, extended itself to their active faculties, compelling them, as it were, to render themselves, by their own inactivity, instruments of their own ruin.

In that modification of delinquency and injury which is composed of acts of the predatory class, may be seen the clearest and strongest exemplification of this case.

In Asia and Africa, many are the instances in which spots, which though situated within the demesne of regular governments, and at one time kept accordingly in regular cultivation, have successively been to such a degree infested by the predatory incursions of neighbouring tribes, as to have at length been abandoned by their inhabitants, and left in a state of perfect desolation.

Under any European government instances are scarcely to be met with where, in its progress over the community, the evil produced by private delinquency has made so great an advance as to have arrived at this third stage.

Unfortunately, of evil, which having been the result of the misconduct of the rulers themselves, has extended itself so far as to make its appearance in the character of an evil of the third order, examples are by no means rare.

2. In the case of public punishment, *i. e.* of evil purposely produced by the powers of government, to the end that it may operate in the way of punishment,—in the first place comes a portion of the matter of evil. But as among the last effects of an act of delinquency was the operating upon the active faculties of the persons in question, in such sort as to restrain and prevent them from doing that good to themselves and others which otherwise they would have done; so of a lot of evil produced for the purpose of punishment, the earliest effect is of the nature of good, consisting in this, viz. that they who otherwise would, in the shape in question, have done evil to others, are, by the experience or apprehension of the like evil to themselves, restrained, and so thus prevented from doing it.

3. In the case of public reward—*i. e.* of a portion of the matter of good administered at the expense of government, and thence at the expense of the community, to the end that, in the character of matter of reward, it may have the effect of giving birth to public service, which in some shape or other is regarded as more than equivalent in value to the expense in the shape of the matter of reward. In the first place comes the evil necessarily attendant on the coercive measures employed for the extraction of this precious matter. But in the next place comes the good—*i. e.* the pleasures—which whether the application made of the matter be well or ill contrived, is necessarily produced on the receipt of this precious matter;—in which good we see the good which is of the first order, and applies itself to the passive, and to no other than the passive, faculties of the persons to which it applies itself.

Effects of the first order, evil as above: effect of the second order, good,—and that of the first order as above, pleasure enjoyed by the individual by whom the matter of reward in question has actually been received. Effect of the third order, good, and good of the second order,—pleasure expectation, with the consequent proportionable alacrity in the breasts of all those to whom, from observation made of the cause for which, and manner in which, the matter of reward has been bestowed in this instance, it may happen to deduce an expectation of obtaining for themselves from the like service, similar reward in return for similar service. Effect of the fourth order, good, and that good of the third order, active service performed accordingly: and here, in the last stage, we see the application of the precious matter, invigorating and exciting the active faculty, as in the case of delinquency at the same stage we see the active faculty debilitated, and perhaps paralyzed and struck motionless.

Extensive and important are the practical inferences that present themselves as following from this theory.

In the case of evil, the evil of the first order is next to nothing in comparison with the evil of the second order—not to speak of a stage of evil so unfrequently exemplified as the evil of the third order.

Of the four classes into which the whole mass of delinquency may be divided,—viz. offences against persons individually assignable—offences against a man's own welfare—offences prejudicial to a particular class of persons—offences prejudicial to the whole community at large,—in the second of these classes, viz. offences against a man's self, the principal element of the evil of the second order, viz. the alarm, is altogether wanting.

VII. Springs of actions,—appetites—desires—motives—interests.

Explanation of these psychical fictitious entities of the pathematic class, by that connexion which is common to them with pleasures and pains in the several shapes of which they are susceptible.*

VIII. Sanctions or sources of obligation and inducement, five in number, viz.—

1. The physical sanction.

2. The moral or popular sanction.

3. The political, including the legal sanction.

4. The religious sanction.

5. The sanction of sympathy, limited in its application to a particular class of cases.

In so far as the word *sanction* is employed, what is thereby brought to view is, not the species of pleasure or pain by the prospect of which the influence on human will is exercised, and the effect produced, but only the *source* whence the pleasure and pain in question is expected to flow.

1. In the case of the physical sanction, the source or root of the pleasure or pain is in the pre-established nature of things, and not in human agency.

Thus, in respect of intoxicating liquors, in respect of the pain resulting from the drinking of them when pursued to excess, the tendency of the force of the physical sanction tends in a certain degree to restrain a man from giving into such excess.†

2. In the case of the moral or popular sanction, the source or root of the pleasure or pain regarded as eventually about to have place, is in the good or ill offices of mankind at large; that is, of such of its members to whom the knowledge of the incident or transaction in question may happen to come—viz. in the degree of estimation in which, on the occasion in question, the agent is regarded as likely to be held—or in other words, in the opinion, good or bad, favourable or unfavourable, likely to be entertained in relation to him: thence in the mental sensations, pleasant or unpleasant, of which the idea of the act is likely to be productive in his mind:—thence

in the good or ill *offices;*—in the case of good, commonly expressed likewise by the word *services*.

Popular.—For the employing of the word popular, as the designation of the sort of sanction here in question, what (it may be asked) is the ground or warrant? Answer: In this consideration, viz. that the people at large, without distinction of persons, are the persons at whose hands the good and evil in question are respectively expected: the good and evil,—viz. of the good, whatsoever may be the result of the good offices which the people at large, freely and without coercion, may on the consideration in question respectively feel themselves especially disposed to render:—of the evil, whatsoever may be the result of such *evil offices* as the same persons are under, and by this and the several other sanctions left free to render to the persons on whose conduct the force of the sanction here in question is considered as applying itself.

Moral.—For the employing of the word moral on this same occasion, and to this same purpose, what is the ground or warrant? Answer: In this consideration,—viz. that for the performance of such acts, positive and negative together, as though not sanctioned by the political sanction, nor on the occasion in question by all persons considered as sanctioned by the political sanction, and yet at the same time are considered as obligatory, the moral sanction, or the sanction of morality, is the term by which the source of the obligation seems commonly to have been designated.

3. In the case of the political, including the legal sanction, the source or root of the pleasure or pain regarded as eventually about to have place, is in the good or ill offices of that portion of mankind in whose hands, in the political state in question, the powers of government are lodged, and who in consequence have at their disposal an unlimited proportion of the matter of good and of the matter of evil, capable of being employed and applied at pleasure in the character of matter of reward and matter of punishment.

The case, and the only case, in which the adjunct *legal* is applicable to the sort of sanction here in question, is that in which, under the authority of the legislative department of government, the matter of good and evil is disposed of, and applied in the express and declared view of operating in the character or matter of reward, or matter of punishment, thereby giving or endeavouring to give direction to those to whom application is actually made of the matter itself, or the prospect and expectation of it.

In this department, it is principally to the avowed purpose of giving to men’s conduct in the character of subjects, that direction by which they are made to abstain from such acts, principally positive acts, as are treated on the footing of offences, principally in consideration of the mischief of which they are regarded as productive, or threatening to be productive, that the matter of good and evil is applied, and that accordingly principally in the shape of matter of punishment. But in so far as, in the shape of matter of wealth or any other shape, it is applied; although it be not declaredly in the character of reward or in that of punishment, that application is made of it by persons invested with the powers belonging to the administrative department of government, the matter of good and evil operates not less in this than in the other

case;—the matter of good and evil is capable of being made to operate in the character of a sanction, in such sort as to give to men's conduct, in the character of subjects, such direction as, whether in the pursuit of those public ends which in that department of government are avowedly the objects of pursuit, or in pursuit of the personal or other private ends of those in whose hands the public powers in question are reposed.

In this case, in so far as the ends in pursuit of which the matter of good and evil is administered are of the personal or other private and therefore sinister ends just mentioned, it is in the character of matter of corruption that it operates:—but how ill soever the design and effect is, with which it is thus made to operate towards the giving to men's conduct the direction so endeavoured to be given, the effect of which it is productive is not the less the same, as where, being in the character and under the name of a sanction, it is avowedly employed to the giving to men's conduct the sort of direction above mentioned as endeavoured to be given to it when employed in the name and character of matter of punishment or matter of reward.

By the Treasury Board, under the direction of the First Commissioner, suppose an office given or promised to be given to a Member of Parliament, for the purpose of engaging him on all occasions to give his vote according to the direction prescribed by that member of the administration department:—the sanction, by the force of which the direction in question is thus given to the conduct of the functionary in question, cannot with propriety be termed the legal sanction; but to its being termed the political sanction, no objection seems capable of being made.

4. In the case of the religious sanction, the source or root of the pleasure or pain regarded as eventually about to have place, is in the good or ill offices of an almighty, but to man an invisible being: in whichsoever state of existence, whether the present or the future, considered as about to be rendered.

5. *Lastly,* In the case of the sanction of sympathy, or sympathetic sanction, the occasion on which any pleasure or pain appertaining to this sanction is capable of being experienced is, when of some act which the person in question has it in contemplation to exercise, a consequence about to result is pleasure or pain, in any shape, as the case may be, in the breast of some other person in whose well-being the person in question experiences an interest, produced by the force of the sympathetic affection. In this case, in the joint proportion to the force with which this affection operates in his breast, added to the magnitude of the pleasure or pain which is regarded by him as about to result to the object of this his affection, in the event of his exercising the act in question, is the force with which, by this sanction, he is urged to exercise, or to forbear to exercise, such act—to exercise it in so far as it appears likely to be productive of pleasure, or an equivalent good; to forbear exercising it in so far as it appears likely to be productive of pain, or an equivalent evil, appears likely to be the result of it.

In this case, the pleasure or pain, by the idea and contemplation of which human conduct is operated upon and liable to be determined, being the immediate result of the conduct of the person in question, produced, and regarded as about to be

eventually produced, without the intervention of any exterior will—of any will exterior to his own—it follows that, when considered in this point of view, this sanction falls within the description of the physical sanction. But between these two cases the difference seemed considerable enough to indicate the propriety of representing the conduct in question as being in the two cases the result of two different sanctions:—so great is the difference between self-regarding and sympathetic affection—between the case where the pleasure or pain by the consideration of which a man's conduct is determined is his own purely and immediately, and the case when it is his own no otherwise than in consequence of a correspondent pleasure or pain being regarded as experienced or about to be experienced, by another person—between the case where the pleasure or the pain is his own purely and directly, and the case in which it comes to him no otherwise than as it were by reflection, and through the medium of a portion of pleasure or pain of a different nature, regarded as having place in another breast.

Taken in the aggregate, the four preceding sanctions may, with reference and in contradistinction to this sanction—to the sympathetic sanction—be termed purely self-regarding ones.

The influence of the sympathetic sanction—*i. e.* of the pleasures and pains belonging to this sanction—corresponds to, and is coextensive with, that of all the purely self-regarding ones. A person dear to me, presents himself to my conception as suffering or eventually about to be made to suffer pain: by the love I bear to him, I am impelled to do what may be in my power towards relieving or exempting him from it. That pain may be a pain inflicted by the power of any one of those four sanctions, or an evil composed of so many distinguishable pains inflicted by the powers of every one of them.

Take, for example, the habit of drunkenness. By that habit it may happen to the same man to be subjected to bodily suffering in a great variety of forms, all comprehended under the general denomination of ill health:—here we have the pain of the physical sanction. It may happen to him to be exposed to public shame, and by that means to sink in the esteem of his friends and his acquaintances:—here we have the pain of the popular or moral sanction. It may happen to him to lose some office, more or less lucrative or honourable, of which he is in possession or expectation:—here we have the pain of the political sanction. Either for the scandal of the exposure, or for some injuries done to individuals, or other excesses committed in some paroxysms produced by intoxication, it may happen to him to be subjected to punishment at the hands of the law:—here we have the pain of the legal branch of the political sanction. It may happen to him to be tormented with apprehension of punishment about to be administered to him by the hands of the Almighty in a life to come:—here we have the pain of the religious sanction.

That, in comparison with the several other moral forces to which the name of sanction has here been given, the force here termed the sympathetic sanction is in general very weak, is not to be denied: but, for the omitting it from the list of sanctions, this weakness, were it greater than it is, would not afford any sufficient warrant. Of itself, *i. e.* without assistance from any of the other sanctions, it is every now and then seen

productive of very considerable effects. It is to the force of this sanction that the principle of utility (understand of general utility) stands indebted for whatsoever reception it meets with, other than that which it may happen to any other articles in the list of sanctions to be instrumental in procuring for it. Under the guidance of the principle of utility it operates in alliance with the several other sanctions: under the same guidance it may not unfrequently be seen operating in opposition to them, and checking them in those sinister courses of maleficence into which, in opposition to the dictates of general utility, they are all of them more or less apt to be led by the political sanction, whether under its own guidance, or under the guidance of the religious sanction. Equally steady and efficient in its action with any of those self-regarding sanctions it cannot be said to be; but a force, howsoever weak and unsteady, is still not the less a force: and were it not for the operation of this sanction, no small portion of the good, physical and moral, which has place in human affairs, would be an effect without a cause.

In exact proportion to the efficiency of this principle would be the error committed by him who, on the occasion of any calculation made of the result of the moral forces on the sum or balance of which an effect depends, the production or prevention of which had become the object of human endeavour, should leave out of his calculation the operation of this cause.

Origin Of The Theory Of The Five Sanctions.

In speaking of law, viz. the internal law of any political state *(internal,* I say, in contradistinction to *international),* Blackstone, by whom it is, by an appellative not very appropriate, termed *municipal,* after Puffendorf and others, divides it into four parts, one of which he terms the sanction, or sanctionative part. The sanction or sanctions of law is accordingly an expression of not unfrequent occurrence. So likewise the sanction or sanctions of religion: and accordingly this or that portion is spoken of as being confirmed by, or having received, the sanction of law or the sanction of religion. But as to that which, as above, is here termed the popular or moral sanction, I have no recollection, general or particular, of ever having seen it employed. To the sanction termed *political,* and employed in contradistinction to the legal sanction, viz. in so far as the whole of anything stands distinguished from a part of it, the same observation may also be extended.

In fine, so may it to the physical and the sympathetic: for, in relation to all these several sources of action, two things have, as above, and it is hoped not unsatisfactorily, been shown,—viz. that they are each of them distinct from all the rest, and that they are all of them what they are here termed sources of action; viz. motives, or sets of motives, derived in each of these five instances from so many different sources: to which may be added, that each of them is, according to circumstances, susceptible of such a degree of force as may prove sufficient, perhaps even the weakest of them, to enable it to overpower any one or more of the rest, *i. e.* to give determination to human conduct, even while all those others are operating in opposition to it.*

IX. Conditions requisite for the accomplishment of any object, in so far as depends upon human means:—

Qualifications, both of them necessary, and together sufficient, on the part of the agent or agents in question, for the due accomplishment of any object whatsoever, and in particular for the due discharge of every political obligation, and thence for the due execution of every public trust,—appropriate *will,* and appropriate *power.*

Power is either power *ab extra,* or power *ab intra.* Power *ab extra* is correspondent to, and its efficiency proportionate to the extent and degree of compliance on the part of those over whom it is considered as being said to be exercised. Power *ab intra* will be in proportion to the degree of relative or appropriate knowledge, and the degree of appropriate active talent, on the part of him by whom the exercise of it comes to be made.

In so far as operation or co-operation towards the accomplishment of the object is considered as matter of duty or moral obligation, to possess the appropriate will or inclination is to possess the virtue of *probity*—relative probity: and when put in contrast and contradistinction with this requisite state of the will, appropriate knowledge has been termed intelligence.

Wisdom, probity, and power,—of these three, on attending Blackstone's lectures, and afterwards reading them when in print, under the name of Commentaries on the Laws of England, I observed the concurrent existence laid down by him as conditions necessary to, and at the same time sufficient to insure, in any given political community, the existence of good government.

With reference to government in the highest stations,—and in these alone, are these conditions and qualifications brought to view by Blackstone,—neither by him is anything done to show the relation borne to each other, as above, by these associated fictitious entities, or towards satisfying the reader that the division thus exhibited is of the *exhaustive* kind.

With the help of such amendments as seemed requisite, the enumeration and division appeared to me capable of being, with equal propriety and utility, applied in the political line to all subordinate stations; in the next place, to the accomplishment of any object whatsoever in the ascending or more comprehensive line.

X. Obligation and Right:—

Explanation of these moral, including political, fictitious entities, and of their relation to one another, by showing how they are constituted by the expectation of eventual good and evil, *i. e.* of pleasures and pains, or both, as the case may be, to be administered by the force of one or more of the five sanctions, as above; viz. the physical, the popular, or moral; the political, including the legal; the religious, and the sympathetic.

Of either the word obligation or the word right, if regarded as flowing from any other source, the sound is mere sound, without import or notion by which real existence in

any shape is attributed to the things thus signified, or no better than an effusion of *ipse dixitism.*

XI. Proper Ends of the distributive branch of law:—

Ends or purposes, the fulfilment or accomplishment of which this branch of law ought to have for its principal objects,—*security, subsistence, abundance,* and *equality.*

In the mention made of security, a tacit but necessary reference is made to the several classes of injuries against individuals other than the man himself, to which every individual stands exposed. Security is security against mischief—against evil from whatever quarter it may happen to it to come, and against whatsoever of a man's possessions, or vulnerable part of a man's frame, it may happen to it to be directed or to strike.

On this occasion the great difficulty consists in tracing the lines of distinction by which these several factitious entities are separated from each other. Subsistence and abundance have one and the same matter—the matter of wealth: of security, that same matter is itself a main instrument and means whereby all other instruments of security may be obtained.

In the case both of subsistence and abundance, over the relation they bear to security there is some obscurity. Security has several branches—as many branches as there are distinguishable objects exposed to deterioration or destruction; and in the list of these objects are comprised that matter, the matter of wealth, which is common to subsistence and abundance—security against mischief to human life, person, reputation, property (*i. e.* the matter of wealth, considered as lodged in the hands of the individuals, or assemblages of individuals in question) and condition in life. Security is again divisible into as many branches as there are different sorts of offences, or pernicious acts, by which, *pro tanto,* security is destroyed or endangered.

All these objects are, with relation to each other, so many antagonizing forces. In some instances, by the measure by which one is attained, so are one or more of the others: in other instances, one cannot be attained, or endeavoured to be attained, but by the relinquishment, or, *pro tanto,* the sacrifice of one or more of the others.

Equality, in particular, finds in each of the other three a rival and an antagonist—and in security and subsistence, rivals and antagonists, of which the claims are of a superior order, and to which, on pain of universal destruction, in which itself will be involved, it must be obliged to yield. In a word, it is not equality itself, but only a tendency towards equality, after all the others are provided for, that, on the part of the ruling and other members of the community, is the proper object of endeavour.

At the same time, in proportion as the subject is inquired into, it will be found that in all good systems of law, and even in all systems, the very worst not excepted, more or less regard is paid to equality; that in the aggregate of the body of laws in every state, all these others are constantly aimed at, are the objects of constant care, solicitude, and active operation; and that in fact the laws have no other objects or ends in view,

but which, short as it is, are comprehended in this list; and that in all bodies of law, the great and constant difficulty is on each occasion, in so far as the competition has place, to decide to which of them the greatest portion of favour is due,—for which, in preference to the rest, provision is to be made.

These things considered, of the ends or objects of the distributive branch of the law, how with propriety could any list, more or less ample, differently composed, have been given?

XII. Formation of an uniform and mutually correspondent set of terms, for the several modifications of which the creation, extinction, and transfer of subjects of possession, whether considered as sources of benefit or as sources of burthen, are susceptible:—and thence of a mutually connected and correspondent cluster of offences, consisting of the several possible modes of dealing as above with such subjects of possession, in the case in which they are considered as wrongful, and as such prohibited by statute law, or considered and treated as prohibited by judiciary *alias* judge-made law.

1. *Collation;* 2. *Ablation.* In the case, and at the point of time, at which the subject-matter is for the first time brought into existence, collation has place without ablation: if it be already in existence, then collation and ablation have place together, and of their union *translation* is the result: in so far as ablation has place without collation, then not translation, but *extinction,* is the result.

Performed in favour of the collator himself, collation is *self-collation:*—if regarded as wrongful, it is *wrongful* self-collation; or in one word, *usurpation* is the name by which it has been, and at any time may be, designated.

Performed by the ablator himself, ablation is *abdication:*—if by the laws regarded or treated as wrongful,—wrongful abdication is accordingly the name by which it may be designated.

XIII. *Division of offences,*—by which is meant all such acts as on the score of their reputed mischievousness are fit or have been or are likely to be regarded as fit to be,—viz. by the application of punishment—converted into offences,—from the consideration of the person or persons, with reference to whom, in the first instance, they are regarded as being or likely to be mischievous, into offences against others—*i. e.* regarded as prejudicial to others, and offences against a man's self—*i. e.* regarded as prejudicial to a man's self.

Division of offences regarded as prejudicial to others, into offences against assignable individuals, *alias* private offences—offences against the unassignable individuals belonging to this or that class, or this or that local district, *alias* semi-public offences—and offences against the unassignable individuals of whom is composed the population of the whole political state.

From the distinction thus brought to view have been deduced diverse conclusions of no inconsiderable importance with reference to practice:—offences so far as the

mischief, if any, which they have for their result is confined to the author of the offence, are no fit objects of controul by punishment and penal laws.

Of the offence which in this case is regarded as mischievous—the mischief, if any, being by the supposition confined to the offender himself—the consequence is, that no sooner is it felt,—viz. by him the offender,—than by the whole amount of it, it operates upon him in the character of so much punishment.

Division of offences into *positive* and *negative;* or rather observation made, that in the nature of the case, for every offence committed by a positive act, there is room for a correspondent offence committed by a negative act. The case of a positive offence, that where the mischief of the offence, as above, has for its cause a positive act—an act of *commission:* the case of a negative offence, that in which the mischief has for its cause a negative act—an act of *omission:* an act which consists in a man's omitting to do that which it was in his power to do towards the prevention of a mischief, which for want of such positive and preventive act on his part, either actually did take place, or at any rate would have taken place, but for some preventive obstacle, in the application of which he had not any share.

The principle of division here brought to view, extends itself over the whole field of delinquency—be the positive act what it may—the opposite negative act is alike conceivable—is alike capable of being exemplified. If in the case of the positive act any mischief seem to flow, the correspondent negative act can never be altogether unproductive of the like consequence.

As to the difference between the mischief of the one and of the other, it consists altogether of the mischief of the second order; for as to the mischief of the first order, if it have place in both cases, it is exactly the same in both cases. But in the case of the negative offence, the mischief of the second order—the alarm and the danger—is next to nothing. On the part of the offender, all endeavours to prevent the mischief, which in the instance in question was actually produced, were wanting. True; but it follows not that he will at any time employ any exertions in the endeavour to produce a similar mischief.

In respect of punishment, cases there are in which, under the laws perhaps of all civilized nations, the negative act is put exactly upon the same footing as the positive act. In these cases, for example, viz. when one person having another in his power, keeps him without sustenance till he dies—by a mother or nurse, a new-born child—a jailor, one or more of his prisoners. In respect of punishment, the negative course of conduct, of which in these cases loss of life is the result, is commonly put upon a footing little if any thing different from that which has place where the mischief has for its cause a positive act. So in case of a design hostile to the person or power of the sovereign, or this or that member of the sovereignty in a state, the negative offence, which in the case of a person by whom the existence of the design is known, is committed by omission to give information of it to the competent authorities, is commonly punished, not perhaps with exactly the same punishment as that which is appointed for him by whom an active part is taken in that same design, but yet with some other punishment which does not fall much short of it.

Wheresoever the obligation, considered as imposed by the law, is of a positive nature the only sort of offence which the nature of the case renders possible is of the *negative kind:* and in this whole class of cases, the concomitancy of the two forms of delinquency fails. The sort of offence commissible by non-payment of taxes may serve by way of example. But in every other case, little has been the notice as yet taken of it.

XIV. Ends of Political Economy:—

These are the same as those of the distributive branch of law. Wherein, then, lies the difference? Answer: In so far as political economy is the object, so it is, that to two of those objects, viz. subsistence and abundance, a more particular and direct attention is paid, than either to security or to equality.

By distributive law, is declared what on as many occasions as shall happen to have been taken into view, shall be each man's own. By political economy, is endeavoured to be ascertained how far, and for what particular purposes, chiefly for the general purposes of abundance and subsistence (*i. e.* security for subsistence), the use which otherwise under distributive law each man might make of his own, shall, for the more effectual fulfilment of these several ends, be directed and restricted.

XV. Limits applied to the quantity and productions of Industry, by the quantity of the necessary instruments of production which at the place in question—at the time in question, are in existence.

These instruments are—

1. The aggregate mass of existing capital.

2. The aggregate mass of capacity for labour.

That no end can be successfully pursued to any point beyond the productive power of the aggregate mass of *means* of all sorts necessary to the pursuit and attainment of it, is a self-evident, not to say an identical proposition: any proposition inconsistent with it would be a contradiction in terms.

Yet from this theoretical aphorism, follow divers practical inferences, which though they will scarcely be found to admit of denial, have found great difficulty in obtaining assent.*

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EQUITY DISPATCH COURT PROPOSAL;

CONTAINING A PLAN FOR THE SPEEDY AND UNEXPENSIVE TERMINATION OF THE SUITS NOW DEPENDING IN EQUITY COURTS. WITH THE FORM OF A PETITION, AND SOME ACCOUNT OF A PROPOSED BILL FOR THAT PURPOSE

by JEREMY BENTHAM, bencher of lincoln's inn.

(originally published in 1830.)

Question. By whom is it necessary, or may be of use, that cognizance should be taken of the proposed Law Reform system in general; and these pages in particular?

Answer. By the persons here following:—

1. Equity suitors, desirous of the relief promised by it.

2. Persons at large, desirous of seeing law reform at large.

3. In particular, persons at large, desirous of seeing established the system of *local judicatories,* with a view to which the institution of the Dispatch Court, with the system of procedure for the application of it, is proposed as a measure of experiment.

4. More particularly still, members of Parliament, desirous of seeing produced these same results, or any of them.

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SECTION I.

PURPOSE EXPLAINED.

Jeremy Bentham To The Honest And Afflicted Among Equity Suitors.

Fellow Countrymen and Fellow Countrywomen,

1. To convince you of your *affliction,* words would be thrown away: feelings afford but too sufficient proof. That which you have need of, is *relief,* and to put you in the way—the *only* way—of obtaining it, is the object and business of this Address.

2. You the *honest*—you the *afflicted*—to you alone is it made:—from you alone can that information and co-operation which are necessary, be looked for. By *honest* I mean, of course, those who are such in relation to the suits in which they are respectively embarked. To define the two classes, and at the same time to draw the line between them—a line, and that a clear one—a few words may suffice. *Honest,* and *afflicted,* those who, to the plan which you will see presently, give their consent: *dishonest,* and *afflicters,* those who refuse it. For, by the plan (as you will see,) minutes of continuance are substituted to many years: shillings of expense to hundreds or thousands of pounds: probability of right decision, not lessened but increased by the same system of simplicity by which existence is given to the saving in delay and expense.

3. Instrument of relief, what—course to be taken by you for the obtaining it, what:—these are the heads of the matter, which I have to submit to your consideration; accompanied by the *offer,* which you will see, of my gratuitous services such as they are, towards the accomplishment of this great purpose.

4. *First,* As to the *instrument of relief.* For presenting it to your view—a general idea of it—here too a *few* words may suffice.

5. *Mode of procedure,* the summary—substituted to the self-styled *regular:* with a *judicatory,* of a species correspondently simple substituted to that complicated, diversified, entangled, extortious and purposely dilatory system of judicature by which your affliction is produced.

6. *Regular* procedure, otherwise called *technical: technical,* from the Greek, meaning *artificial: originally* in a *good* sense, but in *this* case, from the employment given to it *now* in a *bad* sense; the distinctive character of it being the employment it gives to *artifice,* in substituting *expensiveness* to frugality, *delay* to dispatch, *misdecision,* or *non-decision* where decision is due, to right decision—all for the sake of the *profit* extractible from the *extra-expense.*

7. Judicatories in which the *regular* is in use, for example, the *Westminster-Hall Courts:* and, in particular, those which are the scenes of your torment, the so miscalled *Equity Courts,* as likewise the no less miscalled courts *Christian, alias Spiritual* Courts, *alias Ecclesiastical* Courts.

8. Judicatories in which *summary* procedure is in use—the small-debt judicatories called Courts of *Requests* and Courts of *Conscience,*—those held by *Justices of the Peace* when acting singly, or otherwise than in General Sessions,—those held by *Bankruptcy* Commissioners: add to these, Courts Martial, and Committees of either House of *Parliament,* when employed in the elicitation of *evidence.*

9. *Secondly,* As to the course to be taken by *you,* for the obtainment of this same instrument of relief. For this purpose I must begin with bringing to your view the authorities the co-operation of which will be necessary:—These are—1. Parliament; 2. King, acting separately; 3. House of Commons acting separately. Parliament, by the requisite enactments; King, by his *Commissions* given to *Judge*—say the *Dispatch Court Judge,* and his subordinates; House of Commons—eventually, by the elicitation, as you will see, of some eventually necessary evidence—over and above all which there can be any adequate assurance of your being able to give respectively, for the purpose of enabling the judge to determine, in relation to each one of your several suits, whether it be so circumstanced as that his authority is capable of being employed in it to advantage.

10.—I. *First,* As to the enactments and the *Bill* containing them. In the texture of a draught for that purpose, which will presently be brought to your view, you will see, besides the *enactments, examples* where they presented themselves as necessary or useful for the explanation of them; reasons, for the explanation as well as justification of them; and *instructions* to the *Judge,* where, in each individual case,—to enable him to do justice, by the adaptation of his decrees to each individual case,—the liberty allowed by such instructions may be necessary, instead of the obligation imposed by a set of general and *indiscriminating* enactments, applying alike to mutually different cases, such as require mutually different orders and decrees: for which cases accordingly one and the same enactment could not so well serve. A draught of this texture is one of the subject-matters of the *offer* which you will see.

II. Next, as to the distinct co-operation necessary on the part of the King. For the obtainment of it, as also for the obtainment of his concurrence in the act of Parliament, a petition from such of you as are repectively desirous of this relief, will, as you will see, be necessary. A draught composed of the proposed tenor of such petition, is another matter of the *offer* which you will see.

III. Now then, to enable the King and his advisers to judge, whether the change will be beneficial upon the whole, as well as whether you are respectively desirous of it; as also to enable the judge, in relation to the suits in which you are respectively engaged, to satisfy himself before-hand, whether it will be for your advantage that he should take cognizance of it,—information under various heads, from *yourselves,* and *(*for the reasons that you will see presently, generally speaking, *not* from your *lawyers,)* will be necessary. But, for this last-mentioned purpose, all the information you will be able

to give, as to the state of the suit, will not, in the instance of every suit, be sufficient: and, where it is not, to give completeness to it, the authority of the House of Commons, applied to the solicitors in the several suits, and employed in the elicitation of the particulars of them, may, for the information of the judge, be necessary. Of the heads of such information you will presently see a list. The receipt of as much as can be received by me of this body of information, and the making use of it for the purpose of the Bill, is another of the subject-matters of the offer which you will see.

Now, as to some further details respecting the proposed instrument of your deliverance, and the course to be taken by you for the obtainment of it, and the putting it to use. The plan I have formed for this, is as follows:—

1. That, if necessary, to calm the apprehension of those on whom it depends, the *duration* of the change so to be effected be but temporary: say, for example, for *three* years, unless at or before the expiration of that time, made perpetual or continued.

2. That instead of being chosen by the recommendation of some person or other, whose emoluments and power, might, by the administration of such relief, be more or less reduced,—the judge be chosen by *you*—the persons for whom it is intended.

3. That the mode, employed for the manifestation of this choice, be—the ordinary mode in use in *elections:*—by ballot, to exclude danger of offence.

4. That the *title* to vote be constituted by a written instrument, presented to the returning officer: that instrument being the duplicate of a petition to the King, which had been delivered in at the proper office, praying his Majesty's concurrence, as above, in relation to the several suits, in the event of the passing of the act: that is to say, by his commission given to the judge so elected: that petition being signed by parties, one or more, who are desirous of seeing such transference made: so signed, and thereupon exhibited by a party signing, or by some person employed by a party signing, as agent for that purpose.

5. That the petitions, so presented and exhibited, be composed all of them, of a printed paper, of the same tenor, each of them containing in manuscript a description of the circumstances of the individual person, and the individual suit in question, under the hereinafter-mentioned heads.

6. That for the purpose of enabling the judge to determine within himself, in relation to each suit, whether the advantage of the parties,—or of such of them, at the least, whose object is the attainment of the ends of justice, would upon the whole be promoted by the transference of the suit to his cognizance, as well as to perform, as per No. 7, the examination of the solicitors,—you do, each of you, annex to such his petition, information in relation to the suit, under those same heads, in so far as he is able.

7. That for the purpose of completing, as far as may be, relative to each suit, the body of information, under these same heads, for the use of the judge,—a committee, at the motion (for example) of the mover of the Bill, be appointed, with power to examine,

as per No. 8, the solicitor or solicitors, one or more, in each of the several suits then in pendency; and in particular, in the suits *here* in question: as likewise, in relation to any suit in which no party has preferred any such petition, to ascertain what the cause is, why no such petition has been presented.

8. That, in relation to each suit, of which he sees reason to take cognizance, the judge do proceed by calling before him, at the outset, the solicitor or solicitors, for the purpose of learning the state in which the suit is; and the *documents,* the inspection and possession of which is necessary to the giving due determination to it.

9. That, forasmuch as by every suit thus taken out of their hands, the interest of all the several lawyers, official as well as professional,—professional at least, inasmuch as no indemnity can be awarded to them,—cannot but suffer detriment, on which account opposition to the transference, and resentment towards the suitors, known or suspected to be sharers in the endeavour to obtain it, will, on the part of the generality of them, if they be as other men are, be a natural, not to say necessary consequence; which resentment their relative situation will afford them the means but too ample for carrying into effect, to the injury of the suitors, in all degrees up to that of utter ruin,—all requisite measures be taken, for keeping from all such and other adversaries, in relation to each such *petition,* all knowledge, and even suspicion, of the fact, that, on the occasion of that same suit, measures have, by the suitors, or any of them, been taken, for the obtainment of the relief contemplated.

10. That, of the saving of loss so severe to you the *many,* loss to any amount, to that portion of the comparatively few in question, should be an inseparable consequence, is a matter of undeniably just regret: but, such is the condition of human affairs: nor, from this consideration, can any defensible reason for omitting to administer the relief, be deduced.

11. True it is, that, if the obtainment of the relief were a certain consequence of the application for it, no such secrecy would be needful: but, too true it is, no such certainty has place.

12. “Not a man will give his name to such a petition.” This is what was said to me. Said to me, and by whom? By a man, who, to a sincere desire to see the measure take effect, adds as complete an acquaintance with all the circumstances requisite to the formation of a correct opinion on this subject, as the soundest judgment, applied to adequate opportunites, can give. But this was immediately upon the first mention of the proposed petition, and before the provision made for the requisite concealment had been mentioned to him: which mentioned, he joined with me in being satisfied with its adequacy: and the Bill, in the state it was in, had received not only the most cordial good wishes, but the most unreserved approbation.

13. If it were necessary, that the delivery of the petitions at the office should be performed before the passing of the act, your desire to be rescued from the gripe of your tormentors might be known to them, before you had such an assurance as you would be capable of receiving as to the being rescued from it. But, in such delivery there would be no use, unless and until the act were passed; in which case, as you

have seen, it would be necessary to the purpose of the election of the judge. In that event, and at that *time,* true it is, that it could not but be liable to be known to them. And, even in that event, to no one of you could it be matter of perfect certainty, that his case would be of the number of those, of which it would, in the eyes of the judge, be of advantage to justice that he should take cognizance. But, of these same precautions, you will hereafter see such a description, that no such apprehension will have place in more than a small proportion of your whole number: and, by declining to take part in the election, they will have it in their power to exempt themselves from it. Of that case a sufficient description will be seen in the hereinafter account given of the Bill.

14. In the event of the passing of the Act, in such strength will the protecting power of the eye of public opinion be bent upon the whole scene, that, by the most timid-minded suitor, scarcely could any apprehension be felt, capable of deterring him from taking his chance for so unexpected and consolatory a benefit.

15. A state of things that will probably he not unfrequently exemplified, is this:—Though all parties concur in interest and probable wishes, yet no more than *one* may have seen this address, or be so situated, as to be capable of being made to see it, with the degree of speed desirable and desired: for the concurrence of no person so circumstanced, it should seem, need any petition wait.

16. A state of things, calling indubitably for this result, and frequently exemplified, is this:—Persons there are, one or more, whose names must, in compliance with legal forms, have had place, in some of the proceedings of the suit,—but, in whose case, they having no *interest* in the event of it, the concern they have with it will not be known, to a party whose desire it is to see applied to it the here proposed change.

17. If, and when, such Dispatch Court shall have been established,—the *Judge,* instead of the *King,* will be the person to whom the petition for the cognizance to be taken by him, will be to be presented, by all persons desirous of seeing their suits thus transferred.

1. Now for the *offer* I have to make to you. Drawing the petition, drawing the bill, finding a member adequate to the task of *moving* for it, securing for it able supporters in the House—all this is done already.

2. Remains for the *secrecy* the security which I promise you, and the description of which will presently here follow. The *offer,* you will, each of you, consider as addressed to himself.

3. By a letter, addressed to me, inserting on the cover the words "*On the Dispatch Court,*" apply at the Westminster Review Office, No. 2, Wellington Street, for a copy of the petition which immediately follows. Whatsoever be the number of the parties, one and the same copy will suffice for all of them. Of the price, the regulations of the *Stamp Office* are said to inhibit the mention in this place.

4. This copy, or some other, each party, or set of parties, will return to the private office or shop, with the signature or signatures, of the party or parties, intending to present the petition to the Government Office:—this copy with the answers made to the *queries* or say heads, which you will see inserted in § 4 of this, for the purpose of eliciting the information hereinbefore spoken of as requisite.

5. Should the Bill pass,—in that case, and in that case only, you will apply again to the above-mentioned private office, and obtain another copy for the purpose of its being delivered at the Government Office, with the manuscript part, as above, transcribed from the first copy, in such manner as to render the second an exact duplicate of it.

6. A third copy, letter-press and manuscript together, will be requisite, for the purpose of serving at the above-mentioned election of the judge, as proof, to the returning officer, of your right to vote.

7. If and when the number of the suits so petitioned for, is, in the opinion of the proposed Mover of the Bill, sufficient to produce the requisite share of attention in the House,—in that case, and in that case alone, will the motion be made.

8. For this purpose, an account of the filled-up petitions received, will be kept at the private office as above; and, each day, will be put up and kept hanging, in a place in which it will be conspicuous to passengers. It will be composed of a paper, printed in *placard letters,* with manuscript characters, exhibiting the number of such copies received on the foregoing day, and the total number received *up to* that day. On that same paper, should any occurrence have taken place, of which it might be of use that you should be informed, indication will be made of it.

9. When your determination to take part in the business is taken, the sooner you give effect to it the better. For, the greater the number of you, the greater will be the probability that your wishes will be accomplished: and, the greater the number known to have concurred, the greater the encouragement afforded to all persons who are in the same sad case.

10. Moreover, in the *bill* will be found a clause, that among those who belong to the same class, in respect to degree of aptitude of their cases for the reception of the relief, the case of each person's suit shall come on for hearing, antecedently to the cases of all suits, the petitions for which were not received till a day posterior to that on which his was received: and that, in the case in which several petitions have been received on one and the same day, the order of preaudience shall be determined by *lot.*

11. To each one of the unhappy suitors, who, on the ground of a pretended *contempt,* are immured by *Equity* in the *Fleet prison,* all these copies will be delivered gratis.

12. On the same terms, copies would be delivered to every proposed petitioner, who would give me adequate assurance that his circumstances would not afford the expense,—were it not that I have been assured, by a competently-informed and

judicious friend, that in that case, demands would rain in upon me in intolerable number; that is to say—partly from dishonest persons, thus seeking to obtain copies, for the purpose of selling them; partly from dishonest suitors, for the purpose of exhausting the stock, obstructing the plans, and punishing the originator for having originated it.

13. However, if any Member of Parliament, whose name will, of course, as such, afford an adequate security against abuse, will, for this purpose, apply himself to me, as above, mentioning the name of the suit, and the name of the suitor, for whom, and at whose desire he applies, the three copies shall be delivered to him on the same gratuitous terms.

14. When your petition is delivering in at the *Government Office,* request, of the person to whom it is delivered, proof of the fact of such delivery, by his attestation, written on the copy so delivered in, as likewise on the copy reserved by you for the purpose of the *election,* as above. Should the making of these entries, or either of them, be declined at the office—(an event, against which, how improbable soever, the requisite provision must not be omitted,) you will do well to enter on both copies, in the same words, a memorandum of such refusal: but, before the making of such memorandum, you will do well to apply at the office, with some trust-worthy person, in quality of witness, to give his attestation to such your unavailing endeavours.

15. As to what depends on myself towards the preservation of the above-mentioned secrecy,—it is not without regret that I consider and acknowledge, that the nature of the case affords not as far as I can see any better assurance than my name promises: if to you any additional security presents itself, state it to me, and the requisite attention shall be paid to it. My way is—if on any occasion, I see reason to regard myself as being an object of suspicion,—if I am even expressly told as much,—no offence do I take, much less do I, as some on an occasion of this sort do, betake myself to blustering (such being the natural and ordinary resource of a person, in whose instance a suspicion is well grounded,) but join cheerfully in contributing what depends on me towards the removal of the suspicion, and quieting the anxiety of which I am the cause. Not but that, were it my desire to do injury, it would be in my power so to do, to individuals in number more or less considerable, without frustrating my plan in regard to the rest. But, being thought to be what I am thought to be, my hope and belief is, that there are not many persons, in whose eyes the danger, such as it is, will be formidable enough to prevent their taking their chance for the relief.

16. To a member of Parliament, as being prepared to move for the Bill, allusion has been made already. A man, of the first rate for talents and influence, stands pledged to me for the rendering you that service. No session, no day, will be wasted; no moving *resolutions,* or a preparatory committee or committees, for the elicitation of evidence to form a ground for it. A motion for a *committee* will follow, whether the leave be granted or refused: for the *resolutions,* if it be refused. No exertion, no effort, which affords, were it ever so slight, a chance for your relief, will be shrunk from, so long as life remains in the hand that moves this pen.

17. Some account of this same bill forms the matter of the third section of these pages.

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SECTION II.

EQUITY SUITORS' PETITION FOR DISPATCH COURT.

To The King'S Most Excellent Majesty,—

The Petition of the Undersigned Persons, all of them Suitors in one or other of your Majesty's Equity Courts;

Humbly Showeth,

1. That, in common with the rest of your Majesty's English subjects, but in a more especial degree, we feel ourselves sorely aggrieved by the delay, expense, and vexation, by which obstruction is opposed to applications for justice in the superior courts in general, and above all, in the courts called Equity Courts.

2. That this obstruction is the result, not of the natural state of things, nor yet of any misconduct, with which the functionaries of justice, in these our times, are especially chargeable, but of that mode of remuneration for judicial service, which the rude state of society in the early ages, perhaps, necessitated.

3. That this grievance, though at all times so constant in existence and operation, in judicial practice,—has at all times stood prohibited by an express law, and that, the law styled by pre-eminence *Magna Charta,*—the very law which stands first in the statute-book, and has at all times been regarded and spoken of as the corner-stone of that constitution, by which the government of your Majesty's kingdom has, at all times, been so highly distinguished, to its advantage, from all other monarchies.

4. That by the said statute, it is declared in express words as follows: *Nulli differemus, nulli vendemus, nulli negabimus justitiam*—we will not delay, we will not sell, we will not deny, justice to any one.

5. That in direct contravention of an ordinance and promise thus clear and express,—justice in your Majesty's Equity Courts, has, at all times, by artificial devices, been delayed to all, without exception; sold to the comparatively few, who have been able to pay the extortious price, at all times put upon it (to which unhappy number belong we, whose names are hereunto subscribed;) and utterly denied to all who have been unable to come up to that price; to which last class belong the vast majority of your Majesty's English subjects, not to speak of others.

6. That, for some generations, in and by your Majesty's courts of justice, two essentially different *forms,* modes, or courses, of judicial procedure have been carried on, and acted under: the one called the *regular,* the other the *summary:* the *regular* mode having been, almost the whole of it, the work of a set of judges, who, all the time, have acknowledged and declared themselves incompetent to make law; the

summary, the work of the only legislature of these your Majesty's realms—the King, Lords, and Commons, in Parliament assembled.

7. That this course of procedure—the only one which has its foundation in *acknowledged* law—not only in the *nature* of it, shuts an effectual door against all factitious delay, expense, and vexation, but is, in a superior degree, not to say exclusively, calculated to ensure rectitude of decision: and is, accordingly, not a mere makeshift, but the only course really adapted to the purpose of giving execution and effect to that main part of the body of the law to which it is intended to give execution and effect—in a word, to the attainment of the ends of justice.

8. That the giving to us, your Majesty's subjects, in all cases, the benefit of this *exclusively* apt course of procedure, would necessitate the revival of that all-comprehensive system of *local judicatories,* which had place in the days of our Saxon ancestors, and which (though traces of it still remain,) became virtually extinguished, by means of the Norman conquest: and, though ultimately, if administered as it ought to be, and might be, and substituted to the present so inadequate system of judicatories, the aggregate expense would even be reduced by it,—yet, in the first instance, a very considerable expense would be an indispensable preliminary to it.

9. That, antecedently to the disbursement of that extra expense,—an institution, which if practicable, would of course be highly desirable, is—one, by which the effects of the substitution of the *summary* system of procedure, when substituted to the *equity* mode, which is the most oppressive of all the modes of the *regular* system, might be rendered matter of experience: which experience obtained, either the supposed improvement will be shown to be impracticable, or a sufficient warrant will be given, for the expense necessary to the making a general application of it.

10. That we have seen a work, published under the title of *Justice and Codification Petitions,*[*] by Jeremy Bentham; in which, by the name of *The Dispatch Court,* a description is given of a judicatory, by means of which an effectual trial might be made of the proposed summary system, with very inconsiderable expense, and without any arrangement produced in the case of any suit, other than the several individual suits, in which application will have been expressly made of it.

11. That, under the existing system, the interest of men of law being, for the most part, so unhappily, and, to no small extent, irreconcileably adverse to that of the rest of your Majesty's subjects—the interest of men of law in general, but more especially of those *among whom* your Majesty would have to make *choice* of a judge for the proposed new court, and of those by whose *advice* and on whose recommendation such choice would, in *ordinary course,* have to be made,—we cannot, consistently with observation made of the universally-regulating principle of human action, entertain any the least hope of a successful issue to the proposed experiment, if the choice in this respect were made without some deviation from that same *ordinary course.*

12. That, a course, however, there is, by which—in a mode universally familiar and approved—a choice, satisfactory to us, and fully competent to the purpose, might be

made without prejudice to your Majesty's undisputed and indisputable royal prerogative—and without other sacrifice, than such of which precedents in abundance are already in existence.

13. That, accordingly, by the 9th and 10th of King William the Third, chapter the 15th, access to justice is provided, by means of judges, who, under the name of *arbitrators,* are chosen by the sole will of suitors, without any commission from, or cognizance of such choice taken by the sovereign of this realm: and, to the decrees of the occasional judges thus chosen, is the force of law accordingly given; though in a very inadequate manner, and to a very inadequate extent: owing to the adverse interest and irresistible power of the permanent judges of the superior courts.

14. That, in like manner, at divers times, and in divers places, originally under the name of *Courts of Requests,* and thereafter under the name of *Courts of Conscience,* courts officiating by the like summary course of procedure, have—each of them—by a statute made and enacted for the purpose, been established: and that, in the instance of none of them, in the choice or appointment of persons therein officiating as judges, has any part been given to be borne by your Majesty, or any of your Majesty's royal predecessors.

15. That, confiding in your Majesty's paternal goodness, and praying, as by these presents we humbly but earnestly do pray, that, in the appointment of a judge of the hereby-proposed Dispatch Court, the choice may, in the first instance, in *this* case, as in that of an *Arbitration Court,* as above, be made by suitors,—we desire not to exempt such choice from the controul of your Majesty's paternal hand: on the contrary, it is our humble request, that, as often as made, any such choice shall be made subject to disallowance, by your Majesty's royal negative.

16. That, accordingly, we further pray, that it may please your Majesty, to issue your Majesty's royal proclamation,—declaring—that if, and so soon as it shall have pleased your Majesty in Parliament to institute a Court of the description above mentioned, with powers necessary and requisite for the giving execution and effect to the institution thereby established, your Majesty will be graciously pleased to appoint a *place,* at which we the undersigned and such other persons as may have successively added their respective signatures, may assemble, and then and there, in the way of *ballot,* make choice of a person to be appointed to that office; and, under and by virtue of your Majesty's royal commission, to act under, and give execution and effect to, the powers thereof: subject, however, to your Majesty's undisputed and indisputable royal negative, upon any person at any time so elected.

17. That, in the humble hope of such your Majesty's gracious and compassionate compliances, we your Majesty's afflicted subjects have hereunto subscribed our respective names, residences, and conditions in life in respect of marriage; prefixing in each instance the names of the suits in which we are suitors, as likewise the names of all the several other suitors, in such suit, and on which side thereof respectively, as far as known to us. Witness our hands—

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SECTION III.

DISPATCH COURT BILL—SOME ACCOUNT OF IT.

1. The Bill may be considered as divisible into two parts. In part the first, is contained the matter belonging to the necessary new *Judicatory*. In the other part, the matter belonging to the so well known, but to suits of the description in question, so newly applied, course of *Procedure*.

2. Of part the first, heads under which the matter will be distributed are the following:—*

§ i. Judge located, how.
ii. Judge's Remuneration.
iii. Registrar.
iv. Eleemosynary Advocate.
v. Deputes to Judge and Registrar.
vi. Judge's Powers, exemptions, and checks.
vii. Prehensor and his Deputes.
viii. Consignees.
ix. Grounds of decision.
x. Suits, comparative suitableness.
xi. Auxiliary Judges, if needed.
xii. Sittings, times of.

3. Of part the second, the matter is distributed into sections, under the heads following:—

§ i. Examination of Solicitors.
ii. Pre-audience by Lot.
iii. Initiatory Examination of parties.
iv. Appropriate Intercourse, constant and universal, secured.
v. Mutual security for appropriate forthcomingness of things and persons secured.
vi. Non-Litigants' attendance secured.
vii. Subsequential Evidence elicited.
viii. Equity Court Costs disposed of.
ix. Dispatch Court Costs disposed of.
x. Execution, how performed.
xi. Suit, how terminated.
xii. Eventual retro-transference of Suits not terminable within time.
xiii. Expense of the Court, how provided for.

4. In the Bill itself,—as between Judicatory and Procedure, the formation of the instrument, by which the work was to be done, was the object which had the best

claim (it was thought) to precedence. But, in the account *here* to be given of it for the information of the proposed petitioners, conception (it is thought) will be assisted by bringing to view the work itself—the system—for the application of which the official hands are to be employed—before bringing to view those same hands, with the powers given to them for the purpose of the employment.

§ I.

Examination Of Solicitors.

5 or 1. Purpose of this examination, obtaining as to the nature of the several suits, such insight, as will enable the judge to see which of them afford the best promise of being dispatched, within the length of *time* provisionally allotted for the duration of this experimental system, and with subordinates in no greater number than that to which frugality appears to prescribe the limitation of it.

§ Ii.

Pre-audience By Lot.

6 or 1. Having, by the lights afforded by the information contained in the *answers* made to the *queries,* inserted in the several *Petitions* constitutive of the *titles* to the *votes* at the *election* by which he was seated—together with the result of the examination of the several solicitors—obtained such insight into the nature of the several suits, and the progress made in them, as may have enabled him to distribute them into classes with a view to pre-audience, what shall the judge do, in relation to this point, as between individual and individual in the same class? *Answer:* As to *days,* first come first served. All suitors, whose petitions were sent into the private office on a Monday, heard before all those whose petitions were not sent in till the Tuesday, and so on:—a premium this for promptitude. As to those which were sent in on the same day, let *chance* determine. *Reason:* Choice admits of undue partiality: chance does not.

Whenever choice presents no advantage, it is a rule with me, both in legislation and judicature, to employ chance, which possesses this advantage.

§ Iii.

Initiatory Examination Of Parties.

7 or 1. The suit, with the documents belonging to it, being taken out of the hands of the Judges of the Equity Courts by the Dispatch Court Judge, in consequence of the lights obtained by the examination of solicitors as above,—and notice being given to the parties, or such of them in the instance of whom such attendance is at once needful and practicable,—you will thereupon find yourselves in the presence of your

adversary or adversaries,—or, in the case of an amicable suit, of the parties jointly interested with you:—all of you, at the same time, in the presence, and under the orders, of the judge.

8 or 2. Instead of the five years and upwards,—which, at the commencement of the suit, it would have been in the power of a dishonest defendant to cause to elapse, before an effectual answer had been given by him to the demand made upon him for his evidence,—you will now have the advantage, if you are on the plaintiff's side, of receiving all the evidence at that same hearing extractible from him in support of your demand,—and either the evidence itself, or information of the evidence, which he looks to employ in his defence against such your demand: if the side you are on is the defendant's side, your advantage will be—that of furnishing the judge thus early with reasons why he ought to put an end to the expense and vexation under which you are suffering.

9 or 3. Whatever *answers* a party examined on your behalf gives, you may follow up your first question by further questions arising out of such his answers: and so on *toties quoties;* and thus you will obtain a much greater probability of eliciting all the evidence which it would be of use to elicit from him, than you could obtain from him at a distance, in the way of *epistolary* correspondence, as in the Equity Court practice.

10 or 4. On this occasion,—according to the *stage* at which the suit is arrived, you will possess the means of putting an end to, or anticipating, any measures which, in consequence of the opposition of the interest of your solicitors and your several other agents,—might otherwise have been taken for giving further increase to the expense and delay of the suit, for the sake of the profit extractible by them out of the expense; and, in this endeavour, the judge,—his interest having (as you will see in the judiciary part of the Bill,) been made the same as yours,—will not only *assist* you, but, if and so far as needful, *anticipate* you.

11 or 5. And now, as to probability of *rectitude of decision* on the part of the Judge, over and above the saving in respect of expense and delay,—you see already what advantage this natural and familiar mode of procedure will give you,—in comparison with the unnatural, technical, and lengthy mode, devised and supported under the existing system, for the sake of the profit extractible out of the expense.

§ Iv.

Appropriate Intercourse, Constant And Universal, Secured.

12 or 1. In no more than a comparatively small number of instances will it be possible to give termination to the suit at this first hearing. In the other instances, further hearings, one or more, will be necessary. By the Dispatch Court Bill, every person, whether party or witness, who comes upon the stage, is, before his departure, laid under the obligation of giving information of some mode of *addressing* letters to him, which, in the course of the *LETTER post,* may be sure to reach him at a foreknown time, so long as the suit lasts; changing the information upon any and every change of

residence. Thus is put the extinguisher upon all chicaneries about *notice.* Prodigious is the mass of expense, delay, and injustice, against which the door is shut by this arrangement. See, in the *Petition for Justice,*—title, *Blind fixation of times for Judicial Operations.* (Vol. V. p. 470.)

§ V.

Mutual Security For Appropriate Forthcomingness Of Things And Persons Secured.

13 or 1. Namely,—of *things,* whether in the characters of articles of *value,* and as such subjects of the contestation, or in that of sources of *evidence:* of *persons,* whether in the character of persons under guardianship,—as in the case of wives, children, and prisoners, for the benefit of those same persons,—or in the character of sources of evidence; or, as in the case of defendants, for the purpose of their being compelled to contribute, by disclosure, to the forthcomingness of things or persons for either of the just mentioned purposes.

14 or 2. For actual forthcomingness provision is made in Part I. *Judiciary,* under the head of *Prehensors and Deputes* [*Messengers.*]

15 or 3. Security for forthcomingness, whether of things or persons, for the purpose of eventual compensation or punishment in case of wrong—this security, if given to both sides, is serviceable to both sides, and conducive to justice: it is accordingly, under the proposed system, given to both sides. Of all possible *modes* of affording this security,—power is given to the Judge to employ, in each case, that or those by which, to all parties taken together, the least quantity of inconvenience will be produced.

16 or 4. Harshness and inefficiency—these opposite defects, with the addition of complexity, dilatoriness, and expensiveness, all in the extremes—such are the vices by which the practice of the Equity Courts has been shown to be polluted (see *Petition for Justice,*)—and from which the proposed practice of the Dispatch Court may be seen to be pure.

§ Vi.

Subsequential Evidence Elicitation.

17 or 1. The evidence, with the elicitation of which the suit commences, is elicited in the *justice-chamber,* by word of mouth, as above. Of ulterior evidence,—the source, whether it be a *person* or a *thing,* may be at any distance. Upon the *distance* it may depend—whether it will be for your advantage that the Dispatch Court judge should take cognizance of your suit. Where the evidence is at a distance, it will depend upon circumstances—whether to employ the *word of mouth* mode, or, to save the delay and expense of travelling, the mode by *letters,* or say the *epistolary* mode.

18 or 2. By the Dispatch Court, either the word of mouth mode, or the epistolary mode, will be employed, instead of the *secret* mode, which, under the existing equity system, now in use, is employed upon all persons but defendants:—and even upon them in some cases: that is to say, after they have been examined by the *bill* in the epistolary mode. In this same secret mode, the examination is performed by *interrogatories,* as the phrase is, by a *clerk* instead of the judge.

19 or 3. For the flagrant inaptitude of the examination by *interrogatories,* as it is called (as if it were not by interrogatories that all examination is performed) see the *Rationale of Evidence.*

§ Vii. & Viii.

Equity Costs And Dispatch Court Costs.

20 or 1. Trifling in comparison will have been the Dispatch Court Costs: grievous to the amount which you all feel those of the Equity Courts, under whose gripe you are suffering. Imperfect would be the provision made for doing you justice, if such provision as the circumstances of your adversaries admitted of were not made, for reimbursement of the whole loss to which by self-conscious injustice you have been subjected: for substituting humiliation to the triumph over you, which had been promised to itself, by premeditated injustice. By the Dispatch Court, such provision will be made accordingly, as to all such costs as it finds disbursed or incurred in the Equity Court.

21 or 2. As to the *Dispatch Court* Costs, the aggregate of them will, on this occasion, require to be distinguished into two branches. The first will be composed of all those, the burthen of which will be prevented from pressing on the shoulders of suitors—those children of affliction, on whom, after all possible alleviation made, the pressure will remain so deplorably heavy—by being laid upon the people at large, who, without being loaded with this burthen, enjoy all the benefits which law affords;—the other branch will be composed of those which are not susceptible of so desirable a distinction.

22 or 3. To the first branch belong those which are necessitated by the remuneration and equipment of the public functionaries: as to which, see in the part which relates to the judiciary, the seven first sections, and in particular, section 7, *Prehensor and Deputes* [*Messengers;*] and section 8, *Consignees.*

23 or 4. To the other branch belong those costs which are necessitated by the *elicitation of evidence.* For this purpose, the whole mass of evidence, which, on this occasion, can require to be elicited, may be distinguished into that part, the source of which is situated within the local field of the jurisdiction given to the Dispatch Court:—namely, the metropolis, and its vicinity,—and that part which is not thus fortunately situated.

24 or 5. In regard to this *home* part, as it may be called, the expense of elicitation will not be considerable enough to be on this occasion worth bringing to view: the *oral* being the mode in which of course, the elicitation will be performed.

25 or 6. Remains, that which may be called the *foreign* part. As to this, the *holder* of it—is he, is he not, to the purpose of securing the forthcomingness, the verity, and the sufficiency of it,—in any effectual way within the *power* of the Dispatch Court? within its power—that is to say, by the prehensibility of his person or his property: including not only things *corporeal,* moveable or immoveable, but things *incorporeal,* or as they are termed, *rights.*

26 or 7. If the evidence-holder is thus desirably situated, then will come to be considered whether the elicitation of it is capable of being performed with advantage to justice upon the whole: including probability of right information, and thence of right decision on the one hand, and saving of expense and delay on the other hand; if yes, it will be so performed accordingly; if not, there remains only the oral mode; in which way the elicitation can no otherwise be performed than by some person or persons, invested with judicial authority for this purpose. Such persons are under the existing system, styled *Commissioners:* their commission, a commission *for examining witnesses abroad.*

27 or 8. A recent case has just been stated to me—an Equity case—the particulars of which I could have to produce—in which the expense of this commission had amounted to about £9000. Let any one imagine—supposing the Judge to have sufficient hold upon the individual as above—to how trifling an amount, comparatively speaking, the expense in this case might have been reduced by substitution of the epistolary mode:—the mode of which, that by bill and answer in Equity Court practice, might afford an example, supposing it not poisoned by the irrelevant, mendacious, and other worse than useless matter, with the factitious delay, by that and other instruments manufactured.

28 or 9. But, in this case, by whom (asks an Equity lawyer) shall the *oath* be administered?—I answer—by nobody. For the uselessness and mischievousness of that ceremony see the *Petitions for Justice* (Vol. V. p. 454.) By the preliminary examination of the Solicitor, as per section i., will these particulars have been elicited: and from them will the judge determine whether it will or will not, upon the whole, be for the advantage of the parties, that he should take cognizance of the suit. As to the points on which this examination will be performed, see the concluding section of this Proposal.

§ Ix.

Execution How Performed.

29 or 1. Of those powers, in relation to things and persons, the exercise given to which is, antecedently to the termination of the suit, provisional, and but

temporary,—the exercise given at the termination of the suit, for the purpose of executing the judge's ultimate decrees in relation to it, will be made definitive.

Compare with this simplicity—you who are able—the infinite diversification—needlessly, uselessly, and so much worse than uselessly—employed, under the existing Equity system.

§ X.

Eventual Retrotransference Of Suits Not Terminable Within Time.

30 or 1. The Dispatch Court being but a measure of experiment,—the duration of the powers of the Judge and the other functionaries, must accordingly be limited. But, sad would be your case, if, after having been taken out of the hands of the Equity Court Judges, and being proceeded upon by the Dispatch Court judge,—the suits were sent back to those same tardy and rapacious hands:—a calamity, to which it might be doomed, for example, by nonforthcomingness, on the part of any necessary piece of evidence. Provision against this contingency is accordingly made.—See as to this matter, Part I. *Judicatory,* section 11, *Auxiliary Judges,* if needed—[*Auxiliary Judges* and *Accountants.*]

§ Xi.

Expense Of The Court How Provided For.

31 or 1. This being no concern of yours you need not, and accordingly will not, hers be troubled with it.

32. Now as to the constitution and powers of the judicatory, by which the application will be made of the procedure, the option of which is thus proposed to you.

§ I.

Judge Located, How.

33 or 1. Processes requisite, as you have seen already, two: 1. Election performed:—performed by the majority of you the petitioning Equity Suitors: 2. Allowance by the King. Precedents for the location of functionaries acting as Judges—for their location without the concurrence of his Majesty—have place in abundance:—Witness, i. Arbitrators; ii. Courts of Conscience;* iii. Recorder of the City of London, and his occasional substitute the Common Serjeant, besides the recorders and mayors of various cities and towns.

34 or 2. But, in the delusive language of the existing system, the *throne* is styled *the fountain of justice:* and of the power proposed to be given to the judge of the proposed new court, the importance will, in the eyes of the opulent, the ruling and the influential few, be so much greater than that of any one of the above-mentioned judicatories, or even of all of them put together—that, lest the prerogative should be regarded as trenched upon, and the constitution as being thus impaired and endangered, this security is added.

35 or 3. Persons by whom the choice of the judge is proposed to be made, those whose interest it is that the experiment should succeed: persons by whom it is *not* proposed to be made, those whose interest it is that it should prove abortive.

36 or 4. Mode of voting *ballot:* that, by the secrecy—to the declaration expressed by the vote, freedom and truth may be preserved: and relative weakness preserved from oppression by the hand of power: oppression—by punishment inflicted in secret, for the exercise of right professed to be created and conferred.

§ Ii.

Remuneration.

37 or 1. There are two modes of remuneration, by each of which, interest is placed in opposition to duty: consequence, duty regularly violated, and all the sufferings, resulting from the violations of the duty produced.

38 or 2. One is—where the quantity of the remuneration keeps pace with the number of the *operations* performed, or charged for as if performed, and the *number* or *length* of the *written instruments* manufactured, or charged for as if manufactured: say, where payment is made by the *job,* or, in one word, *job-work.* Such is the form in which, according to the general rule, under the existing system, remuneration is allowed to be exacted by lawyers, official and professional; by professional lawyers, by whom, in the nature of the case, it cannot be received in any other mode: by official lawyers, by whom it not only is capable of being, but actually is in addition, received in the mode of salary, of which presently.

39 or 3. The other mode in which interest is placed in opposition to duty, is—that in which the quantity of the remuneration keeps pace with the length of time, occupied, or presumed to be occupied in the performance of the duty: it being at the same time in the power of the functionary to give increase to this same length.

40 or 4. Instances in which, in the case of official lawyers, it has place, are afforded by the functionaries following:—i. Masters in Chancery, number of them 10; ii. Masters, by a recent institution, located in the Equity side of the Exchequer Court, 2; iii. Bankruptcy Commissioners; number of them 70:—permanent Judges, all the above; iv. Commissioners, for elicitation of evidence, under Equity Court procedure in country causes; v. Barristers, employed as arbitrators at sittings and assizes, in virtue of the necessity created by the flagrant impracticability of jury trial, in so large

a proportion of the cases in which employment is given to it, &c. &c.: not to speak of cases, in which, the business being in its nature but temporary—it cannot, under the existing system, be practicable to employ any other than this same temporary mode: such, for example, as that of the Commissioners for the settlement of the Nabob of Arcot's debts; and that of various sets of Commissioners for inquiring into the state of practice in various departments, for the purpose, real or pretended, of legislative reform or improvement.

41 or 5. On the other hand, two modes there are, in which alone remuneration is capable of being applied, in such sort as not to place in a state of opposition to duty.

42 or 6. One is—that, in which the whole of the functionary's applicable time being engaged for, is actually applied to the performance of the duty, such vacation time excepted as is allowed for private business and recreation. This is the mode exemplified, in so far as the form of salary is the form given to it with fixation, or limitation on the diminution side, of the number of the days in the year, and of the hours in the day, required to be occupied in the actual performance of the duty, or in readiness to make such performance in the event of its being called for.

43 or 7. The other is—where the duty consists in the making distribution of a mass of property among a number of co-litigants, or other co-applicants, with or without the previous formation of that same mass, by collection of the matter of which it is composed,—and the payment is allotted in the shape of a percentage upon the sums received by each demandant; adequate provision being at the same time made, against precipitation for the purpose of giving acceleration to the time of the receipt of such remuneration, by dispatch given to the business for which it is bestowed.

44 or 8. This accordingly is the form herein proposed to be given to it, in the cases in which the duty is that appointed to be performed by an Auxiliary Judge, located for the purpose, whether for a time certain or for the particular occasion, by the principal Dispatch Court Judge, in a case of the just-mentioned description. Examples are—1. Distribution of the matter of a mass of government annuities, or of shares in joint stock annuities; 2. Distribution of the matter of a mass of property, which is first to be formed by previous collection, for instance of a person deceased, among his creditors, genealogical representatives, and legatees; or of the property of a bankrupt, or other insolvent.

§ Iii.

Registrar.

45 or 1. Of the sort of functionary thus denominated, the function—the duty—consists in the making and keeping of the permanent signs of all sorts, the principal of which are *written instruments;* with accounts of every material *operation,* performed by functionaries and suitors, upon or in relation to others, in that branch to which he belongs, of the department to which he belongs.

46 or 2. Under the existing system,—of the produce of the most material operation performed, namely, the *elicitation* of the *evidence* in the Common-Law Courts, no such account, generally speaking, is kept. In the Equity Courts, generally speaking, the product of the operation is preserved: witness Bills and *Answers,* and *Depositions* elicited by interrogatories.

47 or 3. Under the existing system,—no authentic account is kept, or taken, of what is said by Judges: for, Judges are the hands by which the practice has been created: and, so long as man is man, to men in power it will be an object—not to maximize but to minimize their responsibility, in respect of the exercise given to their trust.

48 or 4. Under the here-proposed system, registration having among its objects the opposite result,—to the duty of this functionary the correspondent extent is accordingly allotted.

49 or 5. For a mode of producing, for so many various destinations, eight or more copies by the same hand, at one and the same time—a most ingenious and effective mode, styled the *manifold* mode—see the "*Petition for Justice,*" [and see Vol. V. p. 406.]

§ Iv.

Eleemosynary Advocate.

50 or 1. Some of you, my friends—alas! but too many of you—the here-proposed transfer will find in a state of indigence; of indigence absolute, or at least relative; some having by the Equity suit been *found* in that state, others *put* into it.

51 or 2. Under the existing system, the Judges, when they have found you in, or put you into, this unhappy state, punish you for the crime of having been so dealt with by them. Upon your failing to pay those fees which they require, and of which the payment is impossible to you, they inform you that you hold them *in contempt:* this is the justification they make for thus dealing by you.

Thus it is,—that, with the utmost *regularity,* under this *regular* system, the impoverished and the afflicted are among the chosen subjects, of the depredation and oppression which they exercise.

Accordingly, when a debtor has been incarcerated by them, for not being able to pay further fees to them, in addition to the debt, and to the former fees, by the exaction of which they have prevented him from so doing,—he is *kept* in jail by them for not having wherewithal to pay to the jailor a fee for being let out: a fee, from which a judge, by whom, for this purpose, the jailor was placed in such his situation, reaps accordingly the proportionate benefit. And, to procure this benefit to the judge, the public is eventually loaded with the further expense of keeping the victim for an indefinite multitude of ulterior years.

52 or 3. Of this statement, that which under the proposed system you will experience, is, as far as it can be made, the opposite. For assistance, in so far as needed by you, in support of your *demand* or *defence,* as the case may be,—it provides this functionary, whose remuneration is provided for at the expense of the whole community of which you are the afflicted members.

53. Thus much as to the *costs* of the Judiciary establishment. As to those of the course of Procedure, you have seen what is said in Part II., ix. *Dispatch Court Costs,* &c. [Part II. sect. 22.]

§ V.

Deputes; Namely Of ***Judge, Registrar,*** And ***Eleemosynary Advocate.***

54 or 1. Under the existing system, scarce any Judge has his occasional substitute.

55 or 2. Under the here-proposed system, the provision made is, as it were, *elastic:* according to the occasion, it stretches itself and contracts itself: it fits every state of things: like the fabled boots, which fitted themselves to every leg.

56 or 3. From Scottish practice, name and function of *Depute* are both borrowed: but the application made of the names is different. In Scottish practice, as the Sheriff never acts, the so styled Depute is in fact the Principal. By him are appointed Substitutes, one or more, who answer to the here-proposed Deputes.

57 or 4. In English practice—namely, in the administration department—a paid principal with an unpaid substitute, is not without an example.

By 56 Geo. III. c. 98, § 5, it is declared to be lawful for the Vice-Treasurer of Ireland "to appoint any person to be his deputy, to act during his absence or incapacity from sickness:" and that "all acts done by such deputy shall be as good and valid, to all intents and purposes, as if they were done by such vice-treasurer in his own proper person:" and moreover, "that such Vice-Treasurer shall be answerable and responsible for all acts done by such deputy in the execution of the duty of his office."

58 or 5. In the here-proposed judicatory, to the depute no actual emolument will accordingly be given; for, if it were, the judge principal, if he were a man, would, for the benefit of the patronage, add depute to depute without stint; as, in bankruptcy judicature, commissioner has been added to commissioner.

59 or 6. Nor yet will the measure of labour, and the number of labourers needful, be otherwise than full. For, by the prospect of the pecuniary part of the remuneration will be formed the eventual part of his inducement for acceptance; and, by the power and dignity inseparable from his office, the actual and constantly concomitant part of it:—all, without addition in any shape to the public burthen.

60 or 7. At the same time, like the Thames in the poet's picture of it, it is without overflowing that it will be thus full. For, as the number increases, the *probability* of succeeding to the pecuniary part of it will, in all eyes, decrease; and thus, in each one's eyes, the prospect of succeeding will, in that same proportion, decrease in *value:* the consequence is—that if deputes, more in number than work can be found for, are called for by the principal, the call will cease to find labourers to answer to it.

61 or 8. Nor is the provision thus made much less effectual for appropriate aptitude than for cheapness and sufficiency. For, of that qualification—as in every other service so in this—a strongly operative cause, and thence presumptive proof, is *relish;* and, of relish, length of continuance in practice.

62 or 9. For completing the security against deficiency without detriment to economy, one arrangement remains. If work, more than there are workmen for, remains undone, because deputes are in number so great as to stop the value of the office in the eyes of all duly qualified candidates,—then will be the time for an appointment, to be made by competent authority, of an additional principal. Thus—as in a watch the appropriate quantity of velocity—the appropriate quantity of *judge-power* is provided for, and regulated by antagonizing springs.

63 or 10. And so, in the case of the other functionaries—the Registrar, and the Eleemosynary Advocate; and the Prehensor, of whom in § vii.

§ Vi.

Judges' Powers—Exemptions—Checks.

64 or 1. Under the existing system may be seen—on the one hand, inadequate power; on the other hand, inadequate checks. In the here proposed system—on the one hand, adequate powers, with necessary exemptions; on the other hand, adequate checks: both in hitherto unexampled force.

65 or 2. By the powerful and influential among the existing fraternity of lawyers, with few and casual exceptions, both will of course be cried out against:—the strength and efficiency of the powers,—because, while, by the opposite deficiency, the power to do good to the public is lessened, the power to do good to themselves at the expense of the public is not lessened: the checks,—because to the so complete irresistibility, impunity, and irresponsibility, at present enjoyed by judges, liability to punishment in case of delinquency is *here* substituted: and thus an example, in their eyes evil, will be set, and held forth to public view.

66 or 3. As to those same powers and exemptions on the one hand, those same checks on the other—with the enumeration and delineation of them in detail I will not attempt to trouble you: in the bill they will come before you. In the meantime, you will probably, without much difficulty, give me credit for the adequate observation and enumeration of them.

67 or 4. One however there is—the importance and efficiency of which on the one hand, with the novelty and formidableness on the other, concur in calling for some mention of it thus early, for the purpose of obviating the objections which in any mind may be so apt to oppose themselves to it. This is the *self-extensive* power. Boundless, and accordingly dangerous in the extreme, as, if taken by itself, it would by this its very denomination be even acknowledged to be,—it will, on further view, be seen to be, by appropriate checks, bereft of all its natural dangerousness: the teeth of the viper drawn out, nothing but the salubrious flesh left remaining. Power of disallowance—instantaneous disallowance, at any time, is not only reserved to Parliament, but given to King, Lords, and Commons,—exercisable by each one of the three authorities, without need of concurrence on the part of any other.

68 or 5. Far indeed from faint was (you see) the call for this arrangement. Applied to the purpose of frustrating the proposed institution,—on the parts of the existing functionaries, always supposing them to be human beings, all that can be done by human ingenuity, strengthened by long practice, was of course to be looked for and provided against.

69 or 6. For the obtainment of power to sell the liberty of every man to every man who would pay for it the price set upon it by himself—the vender,—Hale—Lord Chief Justice Hale—President of the Gods of Lawyers' Idolatry—and really the very best of them—scrupled not to wage war with his brethren of the other bench, with wilful lies for weapons. Object of depredation, no more than a scrap of jurisdiction, employed in making arrest for debt. From any other man, in any correspondent situation, what is not the resistance to be provided against, when, as in this, so vast and undefined a proportion of the emolument is at stake?

§ Vii.

Prehensor And Deputes.

70 or 1. In the proposed Bill is shown the need there is of three different sorts of functionaries—Prehensors, Messengers, and Consignees, for carrying on the necessary intercourse between the judge, on the one part, and things and persons on the other.

71 or 2. Also,—that while, in the several cases of Judge, Registrar, and Eleemosynary Advocate, it is expedient that whatsoever deputes have place, should be located by the respective principals,—in the case of a Prehensor,—after one or two located by the *principal,*—for others, in whatsoever number they may come to be necessary, to no person can this function be intrusted, other than the judge.

§ Viii.

Consignees.

72 or 1. Under this head it is shown—how, by means of the summary procedure system,—by examination of the parties themselves at the outset of the suit, the nature of every part of a debtor's property, being—each distinguishable portion of it—brought to view,—the sort of hands best qualified for taking charge of it will thereby at that same time be brought to view: and, to these same fittest hands, it may—each portion of it—at a comparatively inconsiderable expense, be thus disposed of to the greatest possible advantage.

73 or 2. This course being pursued, done away will be the three abominations—the Bailing system, as carried on under the present practice; the Bankruptcy system; and the Insolvency system: and, by these means, the property of a person who is not able to pay the whole of his debts, will be divided in equal proportions among his creditors, instead of being, as at present, in the case of bankruptcy, shared among the lawyers in vast proportion, and in the case of insolvency, almost the whole of it, between the lawyers and the confidential friends of the insolvent; among these, for their use and his, as he and they can agree.

74 or 3. In the case of the business of holding to bail, as carried on under the regular system according the present practice, the benefit of the change is no less applicable to the case of *common law* suitors than to yours. But, as it is by your case that this application of it was suggested, it is for your information that it is thus for the first time brought and held up to view.

§ Ix.

Grounds Of Decision.

75 or 1. Prepare here for another outcry. Enter now (for, perforce, I must present it to you) the *Disappointment preventive,* or say *Non-disappointment principle.* Why thus present it to you? *Answer:* Because, of all the decisions which my Dispatch Court judge will have to pronounce, this will, in almost all cases, constitute, either the sole ground, or, if principles more than one have application to the case, the main ground. Because, of every part of the rule of action which has property for its subject-matter—civil branch and penal branch taken together—this, next to the *Greatest Happiness* principle, is the main foundation. Because, in the genealogy of human feelings, this is the immediate lineal descendant of that same parent principle.

76 or 2. Which is there of you all that does not know, that disappointment has for its inseparable accompaniment a pain? a pain—the intensity of which, where money or money's-worth is the subject-matter, is in the direct ratio of the *value* of it in his eyes, and in the inverse ratio of his *affluence.*

77 or 3. Reader! whoever you are—in relation to anything you look upon as being yours—a coat, for example, that you are in expectation of from the tailor's—put to yourself, and make answer to, two questions. Question the first—would it not be matter of more or less uneasiness to you to learn that it had been *stolen* from you, or *taken* from you by somebody under the notion of his having a *right* to it? Question the second—looking at any other man, does the thought that the coat which he has on his back will be kept by him and not given to you, occasion any such uneasiness? Assuredly not. Well then: here you have that which, on the ground of reason, is the main foundation of the law of property, in both its branches—civil branch and penal. Yes, on all great occasions, in all high places, and more particularly in the highest—in Houses Honourable and Right Honourable, this it is that men mean, if they mean anything—this is what they appeal to, though, till now, no name has there been to call it by, when they appeal to "*the first principles of justice,*" or to give to the ground its utmost strength "*every principle of justice.*"

78 or 4. This being the case, it is shown, that, for the dispatch of suits, in which it is your misfortune to be embarked,—no regard need be paid, or ought to be paid, to any *rules,* on which, in the Courts in which you are respectively undergoing plunderage, the proceedings have been grounded. For, that no decision can be more decidedly in contradiction to any one of those rules, than, in instances in vast abundance, those same rules are to one another; and that accordingly a much better chance for the prevention of disappointment will be obtained, by aiming at that object *immediately,* than by aiming at it through so unconducive, and in every respect unapt a *medium,* as that which is composed of those same rules.

79 or 5. That in the employment thus given to a new standard of reference, not so much as the weak and stale objection of *innovation* can with truth be applied: for—if, for the overruling the disposition made of property by the Equity Courts, a new rule of action, with a correspondent system of procedure, is employed, in and by the proposed Dispatch Court,—the Equity Courts will receive no other treatment, than they themselves, in their origin, gave, and thenceforward have always been giving, to the Common-Law Courts.

80 or 6. Were it even true, which it is not, that, of reference made to the non-disappointment principle, to the disregard of all the so-styled established rules, *decision relatively wrong* would in each case be the result—still, upon the whole, good not evil would be the result; for, by the system of procedure proposed to be employed, more evil will be done away with than by the *misdecision* would be produced; more evil, namely, the suffering produced by the delay, vexation, and expense.

81 or 7. That, to obviate a class of phrases, by which the relief proposed to be given to you would not fail to be opposed by your plunderers and oppressors, namely, that the consequence would be—the *shaking of foundation, violation of vested rights,* and so forth—still meaning, if anything, neither more nor less than the production of disappointment, with the suffering attached to it;—to obviate (I say) these objections,—an enactment that would certainly be effectual, and might perhaps be advisable, is—that, in all suits in which you are not parties, the complicated rules,

such as they are, shall continue to be observed; and that accordingly in no one of such suits shall reference be ever made to any rule of the Dispatch Court system, which is in opposition to any one, that at the day of the institution of this same Court, can be found established by the existing Equity Court system: established, that is to say, in so far as two rules that are the direct opposites of one another, can, with truth, be said—both of them—to be established. In the Bill, reference will be found made to some of those same sets of mutually conflicting rules.

§ X.

Suits—Their Respective Suitableness To This Purpose.

82 or 1. *Questions.* Of all the proposable suits—to which, if to any, is it inapplicable? Among those to which it is inapplicable, are there any, and what, to which, by any apt additament, it might be rendered applicable?

83 or 2. *Answers,* these:—Suits, to which it will not be applicable, are those in which the existence is perceived, of an indispensably necessary piece of evidence,—such, that by no means which the Dispatch Court is in possession of, can it be rendered likely to be forthcoming, within the time proposed to be allotted for the continuance of this judicatory. True. But, by the giving perpetuity to it in the first instance, this bar to its suitableness would be effectually removed.

84 or 3. Suits, to which, though otherwise inapplicable, it might be rendered applicable by an additament, are *complex* suits: additament, the institution of *auxiliary judges;* as to which, see the next section—section xi. *Auxiliary Judges for complex Suits.*

85 or 4. To all suits, not contained within one or other of these descriptions—it will be simply and completely applicable.

86 or 5. To suits of the above-mentioned descriptions respectively, present themselves as called for, the following explanations.

As to suits disqualified by non-forthcomingness of evidence, this circumstance depends not on the nature of the *demand:* it constitutes not any particular class of suits: it is what may have place in the case of any individual suit of any class.

87 or 6. In regard to *your* suit, proposed Petitioner, whoever you are,—antecedently to your having any trouble, other than that of making appropriate communication in answer to this invitation, it will be ascertained—whether or no it will be for your advantage to give ultimate acceptance to it; ascertained, that is to say, by the examination, to which your solicitor will have been subjected by the Dispatch Court Judge.

88 or 7. As to these same *complex* suits—the complexity has for its main cause—the multitude of the *suits,* or say *demands,* which have to be disposed of; and thence, the

multitude of the several simple suits, which, in virtue of, and in the course of this one, may *eventually* have to be disposed of.

89 or 8. This complexity may have had one or both of two principal causes:—1. Multitude of the individuals or bodies of men, *among* whom an already formed mass of property may have to be *distributed;* demandants, the several claimants: 2. Multitude of the individuals or bodies of men, *from* whom the several portions of the matter of the aggregate may have to be *collected,* and the aggregate thus to be formed: demandant or demandants, some one person, or set of persons, on whom this right has devolved.

90 or 9. Take for examples these. They may be seen rising one above another in the scale of complexity.

91 or 10. i. Suits, in the course of which a mass of government annuities may have to be disposed of, among claimants and other persons interested, in any number.

92 or 11. ii. Suits, in the course of which the shares in a joint-stock company may have to be disposed of.

93 or 12. iii. Suits, in the course of which an estate in land, or the price of it, may have to be partitioned out among a multitude of persons interested.

94 or 13. Follow now, examples of suits, in the course of which, antecedently to distribution or other mode of disposal, *collection* may have to be made.

95 or 14. i. Suits, having for their source, *decease;* for their subject-matter, property of the deceased:—assets to be collected from debtors:—the aggregate to be disposed of among creditors.

96 or 15. ii. Suits, having for their source insolvency on the part of *a non-trader;* subject-matter to be first collected and disposed of, what remains of the property of the insolvent.

97 or 16. iii. Suits, having for their source insolvency on the part of *a trader;*—insolvency, styled in this case, *bankruptcy:* subject-matter, property of the allegal bankrupt, as above. Machinery employed in this case of insolvency, altogether different from the mode employed in that other case: why should this be?

98 or 17. These complex suits,—together with those which are wire-drawn into length by non-forthcomingness of *evidence* or *sources* of evidence,—are the suits, of which, by the adversaries of reform, advantage is taken, in their endeavours to make men believe,—and in particular, make *you* children of affliction, believe—that it is in the cruelty of Dame Nature, not in the wickedness or weakness of the powerful among men, that your affliction has its cause.

99 or 18. These complex suits, in particular, are the suits, on the occasion of which it is, that advantage, to so great an amount, may be derived, from the *temporary* and instrumental distribution—of the whole number of those portions of a mass of

property which require distinct management,—among a multitude of trustees under the above-mentioned name of *consigness:* all operating at the same time and making a correspondent defalcation from the mass of delay; each of them specially apt for the management of the subject-matter committed to his charge: instead of their being—the whole number of these how differently soever circumstanced portions—committed indiscriminately to the mercy of the *hammer,* under the charge of a species of trustee, or set of trustees called *assignees,* who cannot be equally competent to the management of concerns, to which in any number, and in any degree, it may happen to be mutually dissimilar.

100 or 19. i. If the change—let men call it, if they please, the *innovation*—was beneficial when begun and continued blindfold in a dark age, is it the less likely to be so, by being effected in an enlightened age?

101 or 20. ii. If it was beneficial when carried on step by step at the command of accident, without any view ever taken, other than such as the individual case in hand necessitated,—is it the less likely to be beneficial for having been the result of all-comprehensive views?

102 or 21. iii. If it was beneficial—if it was constitutional,—when performed without a plan, by the nominee of the King alone, without the least cognizance taken of it by either House of Parliament,—is it the less so for having been subjected to the utmost copiousness of discussion in both Houses of Parliament?

103 or 22. iv. If it was beneficial, when the Judge by whom application was made of it, was a Judge appointed by the King alone,—is it the less likely to be so by being applied by a Judge elected by the votes of all persons whose interest it is that the Judge so appointed should be a man endowed with appropriate aptitude in all its shapes?—votes, not exposed to corruption?—votes given by persons whose interest—that of every one of them—is coincident with the ends of justice, to the exclusion of all whose interest is in opposition to the ends of justice?—the King, moreover, having a negative, in virtue of which no person disapproved by him can be seated in the office?

104 or 23. v. If decrees and preparatory orders are likely to be beneficial when made by a Judge, who, antecedently to his being charged with the branch of judicature carried on in this judicatory, had never had any the smallest experience in the business of it,—by a Judge, the choice of whom has been produced by considerations foreign to the ends of justice—considerations suggested by the interest of party,—are they the less likely to be so when made by a Judge, in the choice of whom experience, and reputation for the most consummate acquaintance with this very branch of business, will have operated of course as the first of recommendations, to the exclusion of all party interests?

105 or 24. Finally, as to the interest of the lawyers, and any hardship to them, that may be imagined to be, or even any that may really be, the result of the relief thus proffered to you.

106 or 25. i. This relief—shall it be in the power of these men to prevent your obtaining it? to prevent you on any such ground, any more than on any of their most groundless pretences?—No, surely.

107 or 26. ii. If, having had a dispute one with another, you had chosen to come to an agreement of yourselves, could they have prevented you?

108 or 27. iii. If you had chosen to have recourse to *arbitration,* could they have prevented you?

109 or 28. In the present case they have already had more or less of the plunderage: plunderage, to the amount of dozens, hundreds, thousands, or tens of thousands of pounds; through the vexation and oppression heaped upon you by the artificial delay, for days, or months, or years, or dozens of years.

110 or 29. Compared with your suffering by the plunderage, small will be their suffering by the stoppage of it: small, when the aggregate is compared on both sides: small, when the comparison is between individual and individual: small, when compared with yours the suffering of any one of your lawyers, or all of them put together. Refusal of summary procedure to you out of tenderness to lawyers—what would it be? It would be refusal of drainage to a pestilential marsh out of tenderness to apothecaries and undertakers.

111 or 30. Whether, at the expense of the whole community, compensation—any, and if any what—can be, and ought to be, given to them for such their loss—questions these, which, it must be confessed, present themselves as not unentitled to consideration: be this as it may, no just ground can they afford for any refusal of relief to you from your plague.

112 or 31. In the utmost possible hardship to them, can any reason be found why they should be permitted to go on plundering and tormenting you for any additional number of years, months, or so much as days? Will you lie motionless under all this load?—Forbid it, self-preservation!—Forbid it, common sense!—Forbid it, justice!

§ Xi.

Auxiliary Judges For Complex Suits.

113 or 1. In so far as *dispatch* is the object,—proportioned to the degree of complexity will naturally be the number of any judges among whom the matter of a suit of this sort may require to be distributed. Relation had to the Dispatch Court Judge, by whom the distribution will have to be made, are these same Judges styled *Auxiliary Judges.*

114 or 2. Whether or no the suit is of the number of those which stand in need of such machinery, for this purpose—and if yes, what shape it shall take,—these are among the things which, in the instance of each suit, antecedently to your appearing, if at all, before the Judge, will be ascertained by the examination of your respective solicitors.

115 or 3. As to the choice to be made of them, and the remuneration to be allotted to them, in so far as needed, these matters will be seen settled in the Bill.

116 or 4. As in the case of arbitration,—if, and in so far as, they are to be had gratis, so much the better: where they are *not,* matters must, if possible, be so ordered, that they shall not be gainers by delay; that accordingly their payment shall not be by the day:—a per centage upon each sum received by the party to whom it is due, payable at the charge of the party in the wrong, presents itself as the best adapted mode.

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SECTION IV.

INFORMATION REQUISITE FROM PETITIONING SUITORS.

1. Now as to the heads, under each of which, at your hands, if it be your wish to take the benefit of the proposed transference, information will be necessary or may be desirable.

2. Some there are, in relation to which it will be matter of necessity that information should be received:—received, if not by myself, at any rate by the Member by whom the Bill is moved; to the end that, if received by both, we may settle with one another, whether the number of the suits from which the communication has come, be sufficient to afford a sufficient ground for the hope that the measure will experience the requisite attention on the part of the Honourable House.

3. The information had best, all of it, be in the *handwriting* of the proposed Petitioner; it must be under his or her *signature.*

4. It may be attached to a printed copy of the proposed Petition to the King.

5. Each article of the information should be numbered with the same number as that by which the head it belongs to is distinguished.

6. Desirable it is, that the paper should receive this identification, as a security for correctness; and that the information conveyed by it may be always under the eyes of those to whom it belongs to have it under consideration, and without being exposed to the hazard of being mislaid after it has been received.

7. Of this *indispensable* part of the whole number of the particulars, the eventual purpose will be—the constituting your *title* to *vote* at the election of the Judge; but the election will not take place, nor, consequently, you or your agent be called upon to appear, unless and until the Act has passed: the petition will be your *title-deed.*

8. As to the other heads,—it may be, that you are not, of yourself, able to furnish the information, and that your solicitor is the only person through whom you are able to procure it. These are among the heads, in relation to which, in the event of the passing of the Act, and the institution of the Court in consequence,—the solicitor will have to be examined by the Judge, to enable the Judge to determine whether to take the suit under his cognizance.

9. But, the more there are of those heads, in relation to which the information is conveyed to myself and the Member in question, the better; our conception of the nature of the suit, and of the quality and quantity of the benefit to you that may be expected from the whole measure, will be the more particular and encouraging.

10. Of this information, any part which you yourself are not able to furnish, you will see how imprudent it would be for you to apply for at the hands of your solicitor, unless it be perfectly clear to you, that your learned adviser is so circumstanced, as to be really desirous of seeing the speediest termination put to the suit, and consequently to his profits from it.

HEADS UNDER WHICH THE INFORMATION IS TO BE WRITTEN.*

1. The proposed Petitioner—his or her *name* at full length.

2. Petitioner's *age;* so far as to show whether it is full age or under age.

3. Petitioner's condition in respect of *marriage:* whether bachelor, married man, or widower; spinster, married woman, or widow.

4. Petitioner's *occupation,* or other condition in respect of rank and situation in life: for example, in the male sex, Member of either Houses of Parliament;—Member of the Official Establishment, mentioning the office held by him;—person of either sex living upon his or her fortune. If a married woman, the like in regard to her husband.

5. Petitioner's *residence* at the time of transmitting the information; the description given of it being such, that a LETTER may be sure of reaching him or her.

6. Indication of any *change* contemplated at the time by him or her: with promise to give the like information, in case of any eventual change, up to the time when leave to bring in the Bill is refused, or the Bill thrown out.

7. Name of the *suit* in the *Equity* Court.

8. Name of the *Court* itself; whether Chancery or Exchequer; if Chancery, whether Chancellor's, Vice-Chancellor's, or Master's of the Rolls. If in the House of Lords on appeal, whether it is from the Chancery or the Exchequer.

9. *Names* of the several *parties* to the suit: mentioning whether they are so in their own right respectively, or in the right of some other person or persons: adding, in this latter case, information as to their respective *principals,* under the six first of the above heads.*

10. In the case of a person who is a party concerned in right of another,—state in what *capacity* he or she is thus concerned: for example, husband; guardian; executor; administrator; residuary legatee; agent whose principal (mentioning whom) is resident out of England, trustee of money in trust for payment of debts; principally acting member of a joint-stock company: in the case of a partnership, the like information in respect of each of the partners: in the case of a suit of which a ship is the subject-matter,—name of the ship, with the names of the several persons therein interested as owners, and information under the above six heads as to each.†

11. *Subject-matter* of the *demand* made by the suit.

12. Day of the *commencement* of the suit.

13. In case of any *bills subsequent* to that in which the suit took its commencement, mention thereof respectively: for example, whether supplemental bill, or bill of revivor.

14. If the bill be a bill for the examination of witnesses *in perpetuam rei memoriam,* mention accordingly.

15. *Stage* of the suit: to wit, as expressed by the written instruments that have been made or required to be made, with their respective dates: as answers, demurrers, pleas, &c.: giving a separate account, in relation to each of the several sorts of bills filed, if more than one, on the occasion of the same original bill, as per No. 13.

16. If *examination* of witnesses (including parties examined in the manner of witnesses) is going on, mention of the *day* on which it commenced.

17. If the suit is before a *Master,*—mention whom, and at what time it went before him, and for what purpose.

18. *Town Solicitor* or Solicitors, who: with direction to their office.

19. Aggregate *expense* of the suit to the *Petitioner,* down to the day of communication: distinguishing, if there be no objection, between expense *paid* by him and expense *incurred.*

20. Aggregate *expense,* as far as can be learnt, or computed, of the several *other parties* respectively, or of the aggregate of all, down to the day of the communication.

21. So any *estimate* that can be made, of *ulterior* expense.

22. Make mention of the aggregate of the expense of any branch of the proceedings which happen to be in a particular degree expensive; giving, in this case, the particulars of the expense: for example; *commission* to examine *witnesses,* at *home* or *abroad; costs* of the *sale* of an estate in land, or of making out the *title* to such an estate.‡

To conclude. You have now seen a short sketch of the species of procedure proposed, with the judicatory for the application of it.

From this, short and necessarily imperfect as it is, some judgment may be formed by you, whether the plan does not afford some promise of relief from the torment under which you are suffering. If, with this before you, you remain motionless,—be this your torment ever so severe, you have yourselves to thank for it. By sympathy for your sufferings have been produced the labours, of which the system you see before you is the fruit. Will you be any longer an object of sympathy, if, by silence instead of

answer to this address, after so much has been done for you by others, you grudge to perform so trifling a labour for yourself?

The greater the number in which you and your partners in affliction raise your cry for this relief, the greater will be the probability of your obtaining it. This truth being alike obvious and incontestable, not less so will be the service that may be done by you to your own and the common cause, by looking out for them, and calling for their co-operation.

And you, whom, as yet univisited by this scourge, these pages have chanced to reach,—sympathy,—if any such feeling belongs to you, and no particular interest restrains,—will elict from your hands, according to your means and opportunities, all assistant services. “Cry then aloud, and spare not!”

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EQUITY DISPATCH COURT BILL: BEING A BILL FOR THE INSTITUTION OF AN EXPERIMENTAL JUDICATORY UNDER THE NAME OF THE COURT OF DISPATCH,

FOR EXEMPLIFYING IN PRACTICE THE MANNER IN WHICH THE PROPOSED ***SUMMARY*** MAY BE SUBSTITUTED TO THE SO CALLED ***REGULAR*** SYSTEM OF PROCEDURE; AND FOR CLEARING AWAY BY THE EXPERIMENT, THE ARREAR OF BUSINESS IN THE EQUITY COURTS

NOW FIRST PUBLISHED FROM THE MSS. of JEREMY BENTHAM.

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EDITOR'S NOTE.

The ensuing Work was the last upon which its Author was engaged: his career was closed whilst he was employed upon it. The manuscript was left in a very unfinished state; and some imperfections will still be observed, which under other circumstances would have been removed. It is not deemed necessary to point these out more particularly; the subject is mentioned only that they may not be considered as having been overlooked.

The work was written at different periods in 1829, 1830, and 1831: and the Author's original plans appear to have undergone some modifications. Thus, in consequence of the expected Petitions for the institution of the Court not being presented, new arrangements were necessary: a note on this subject will be found at the commencement of the tenth section.

The eight first sections of the Bill were sent to press and prepared for publication by the Author himself: some additional matter has however since been found and inserted, and some minor alterations have been introduced from notes made by him at later periods.

In the Dispatch Court Proposal, Sect. III. (see p. 305), is a list of the Sections proposed to be comprised in the Bill. In some respects the Author deviated from this list: certain of the titles were subsequently altered by him: and two entirely new Sections were added; namely, Sect. XIII. *Definitions* (still imperfect,) and Sect. XVIII. *Evidence-procuring money, how provided.* The two Supplementary Sections—XXV. *Bankruptcy and Insolvency,* and XXVI. *Henceforward Dispatch Court*—are also new, not being included in that list.

The Dispatch Court was designed as an experiment, in the first instance, of temporary duration. The period of that duration, although alluded to (Sect. II. Art. 4, 5,) as intended to be limited, is nowhere fixed.

The work throughout bears reference to the Author's Procedure Code; and should be taken in connexion with that work.

London, 15*th March* 1839.

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PREFACE.

Summary Procedure, or Regular Procedure? that is the question. To regular, substitute summary procedure everywhere. Seldom has change so important been found expressible in so few words.

The regular mode being found loaded with the mass of factitious expense, delay, and vexation,—that everybody sees and feels,—the summary altogether clear of it,—why then not substitute to the regular, the summary mode at once? The good being so palpable and so undeniable, if any evil there be that would result from it, upon you the objector it lies to set it forth.

Is it, that by the substitution, ultimate justice would be rendered less likely to be the result? This, then, it lies upon you to show. But this is what you never can do. The contrary I am prepared to show, on any occasion whatsoever.

Take any one of the several operations by the performance of which, and instruments by the exhibition of which, it is, that the regular procedure is characterized and distinguished from the summary,—I am prepared to show the mischievousness of it: how it contributes to needless delay, expense, and vexation; how it obstructs, instead of contributes to, rectitude of decision, and the giving execution and effect to the provisions made by the main branch of the body of law.

Here then, and in the compass of a single page, the question is decided—decided in every mind which is not closed against the light of truth by sinister interest, interest-begotten prejudice, custom-begotten prejudice, or authority-begotten prejudice.

In the present state of the law, all those who are to a certain degree opulent, behold it in their power to divest of any part or the whole of their property, all those who are relatively indigent: the *instrument* which, in one sense of the word, offers itself for this purpose, is an equity suit; the instruments which, in another sense of the word, join in this offer, are the equity lawyers.

That this state of things should continue as long as the human race continues, is not in the nature of man and things;—so intolerable to human feelings will be sooner or later the mass of misery produced by it; so shocking and disgusting the demoralization in the eyes of all men of common honesty; becoming, as it will be, more and more so, in proportion as the form of government receives that improvement which, while these lines are writing, is so happily progressing. If by the constituted authorities, whatsoever at the time in question it may happen to them to be, an end be not put to such a scene of misery and vice, this grievance will of itself suffice to cause the then existing form of government to be changed to some other, in which the official situations shall be occupied by men, in relation to whom a general assurance has place of their determination to substitute to the system of procedure which has for its object the promotion of the prosperity of the lawyer tribe and their partners in iniquity, a

system which has for its object the promotion of the prosperity of all besides, by the fulfilment of the ends of justice.

To say that the change so expressed will be made, is to say, that amongst other things the existing Equity Courts will be abolished, and the suits at that time in their hands will be transferred to other judicatories, having for the ends of their procedure the ends of justice; in other words, proceeding in the natural—that is to say, the summary—mode, instead of the existing technical mode.

The present work is designed as an instrument for the purpose of effecting this change.

In the composition of whatsoever discourse has the effect of law, two operations are, in the very nature of the case, of necessity conjoined,—the initiative and the consummative: the consummative cannot be the work of any other hand than that of the supreme authority of the State; but for the initiative, no individual is there in the human race to whom the nature of the case does not lay open a chance for the performance of it—a chance, the probability of which will be in proportion to his aptitude.

For this chance the author of these pages is the first to put in: this comfort it is not in the power of sinister interest, clothed in authority, to take from him. In this assurance is contained the certainty, that sooner or later the present draft will be taken into consideration.

It consists of a system of arrangements by which an experiment will be made on a small scale of summary procedure; a system of *petitioning* being the machinery employed in the introduction of it. In two cases this machinery will not have to be employed:—I. If the rulers do the work without it willingly; 2. If unwillingly. In either case, what regards the machinery will be useless; but it will not render useless any other part.

An already-published work is the *Equity Dispatch Court Proposal:* its object, producing the requisite number of petitions by Equity suitors. Framed under the expectation of the accession of this number were the eight first sections inclusive, as well as some other subsequent portions. Before the rest was finished, such accession was become hopeless; but by this change no reason was afforded for losing the labour employed on the parts that remain applicable.

That which is believed to have been the cause of this non-accession, was on the part of the suitors dread of the Equity lawyers: but for that, it is not in the nature of the case that any relatively honest substitution of a system in which delay and expense are minimized, for one in which they are maximized, should have failed to be accepted.

For clearing off the arrears in the Equity Courts, a talk has every now and then had place at the Bar,—a talk of a set of commissioners:—number, precedent would of course say, three. Mode of procedure, what? Of course, the accustomed.

Simile, according to the French proverb, employing ink to bleach ebony.

Learned gentlemen in whose eyes this mode of decision finds favour, would they substitute minutes of delay to years, shillings of expense to scores or hundreds of pounds, decision none but on the merits, to decision sometimes on, sometimes off the merits? They know better things. Among Equity lawyers, procedure by affidavit-evidence goes by the name of *summary.* What a libel on the only honest mode! Call affidavit-evidence-elicitation *summary!*—as well might you call arsenic *sugar,*—yes, *sugar of lead.*

To the arrangement thus proposed, two propositions present themselves: one is, that it is not likely to be found capable of being carried into effect; the other is, that if carried into effect, its doing more harm than good is at least not less likely than its doing more good than harm.

As to its not being likely to be carried into effect.—On every occasion, the main consideration, if not the sole one, is, it need not be said, the convenience—that is, the interest—of the influential ones among the lawyers: as to that of the million, if it be in any degree an object of consideration, it is but a secondary one.

In regard to Judge-power—(a term the meaning of which, if not understood by itself, will be understood by all who understand that of *horse-power,*)—a notorious subject of complaint is, the deficiency of it already. Any such fresh commission would either be composed or not composed of judges. If composed of judges, the deficiency of that same judge-power would be enhanced, and the correspondent evil increased. If not of ready-made judges, then would there be to be made a new batch of judges, to be put over the heads of the existing ones,—a sort of scandal, in a high degree offensive to that dignity, in comparison with which the interest of suitors shrinks into insignificance.

The arrear extinguished, then would the so-anomalously-elevated judges fall back into the condition of barristers, were not pensions of retreat the panacea for all the pains that are felt by those whose feelings are of any importance: and in the case of these representatives of, and substitutes to the Lord High Chancellor, the weight of this panacea would not be a trifle.

Fearful of this descent, the probability is, that those the first located would continue in office all their lives long, and be followed by a never-ending train of successors. The cause remaining, so would the effect. As in a meadow, while the first crop was cleared off, another would be coming on. The Superior Common-Law Courts' Inquiry Commission has had two effects:—staving off the actual application of all remedy—of all, even inadequate—of all, so much as palliative, remedy:—and the giving increase to the quantity and value of the mass of patronage.

The ensuing proposed law, with its accompaniments, has two purposes: purposes intimately connected, but at the same time perfectly distinguishable.

One is,—and that the main and ultimate one,—assuming the inaptitude of the existing system of procedure with the judicial system occupied in the application of it, to demonstrate by an appropriate experiment the aptitude of a different one, the

arrangements for which are accordingly exhibited in the form of a Parliamentary Bill. The use of the experiment is to prove, at a small expense, the usefulness and adequacy of an institution which could not in its entirety be established but at an expense the magnitude of which might, without such a guarantee, oppose a pecuniary bar (how economical soever it might prove in the long run), to its adoption.

The other purpose is,—by means of this same Bill, if passed into an Act, to afford immediate relief to as many as choose out of the whole number of suitors, in that class of the existing judicatories whose inaptitude is most universally notorious, and the sufferings produced by it on the part of suitors most severely felt, and loudly complained of. This less extensive object of the two is the only one to which the provisions of the Bill have any immediate application.

Different species of matter all along in this Bill accompanying each other, and all bearing relation, and applied to the same subject:—namely,—1. Enactive; 2. Instructional; 3. Exemplificative; 4. Ratiocinative; 5. Commentative,—or say Illustrative, composed of Notes to the above: Office of these Notes bringing to view the dispositions made in relation to the same subject in and by the existing system.

Of the first four, and the use of them respectively, some account may be seen in the publication intituled "*Official Aptitude Maximized, Expense Minimized,*" (Vol. V.) Of the *Enactive,* no farther mention will here be requisite, other than that it is the same species of matter of which all codes as yet in existence and force have been mostly, if not exclusively, composed,—composed chiefly, if not wholly, to the exclusion of all other matter. In this or that one of those codes, here and there may perhaps be found a slight sprinkling of the exemplificative matter detached from the general matter of which the enactive portion is composed.

On the occasion of this Bill, the course that has been pursued is as follows:—On this, as on former occasions, under one or other of those four heads, alternating as occasion calls, the matter all along presents itself: enactive, exemplificative, ratiocinative, and instructional; to which is here added, the annotative, *i. e.* notes. Of the annotative, no part, it will be manifest, can have been intended to receive the touch of the sceptre; the other parts respectively may be employed or not, according as it may be the pleasure of the constituted authorities. That styled enactive is in substance every part of it regarded as indispensable: it may be employed in its present form, or, in case of necessity, it may be translated into the customary form; which, however, in the judgment of the draughtsman, it cannot be without detriment in large quantity and in a variety of shapes. That even in case of such translation, more or less use of the exemplificative matter may be made, seems not altogether improbable: that in that case any use should be made of the ratiocinative, seems altogether hopeless; and in much the same case seems to be that to which the word instructional has given the name.

In the English statutes, a practice hitherto prevailing has been to preface each one by a sort of attempt at a *rationale,* composed of a paragraph, or a string of paragraphs, strung together by so many repetitions of the conjunction "*whereas.*" In the judicial decrees of French procedure, the same function is performed by so many repetitions

of the participle "*considerant,*" followed by the adverb "*que.*" Of this arrangement, one consequence is the painful strain upon the mind while it is kept in suspense, panting under the conjecture what can be the end of this introduction, which in one instance has been observed to contain matter enough to give expression to a story capable of filling a volume. Eminently ill adapted to the purposes of language seemed the grammatical form thus given to the matter. To the more important reform in the matter this little alteration in the form presented itself as no inapt prelude.*

When into the texture of an Act of Parliament anything in the shape of a *reason* does find its way, the preamble is always one place, and most commonly the only place, in which it is inserted; though now and then to this or that particular section a particular preamble is prefixed. Generally speaking, the matter of the Act, be it ever so voluminous—for all this ratiocinative matter no more than one spot. It may hence be imagined how vague and loose the most instructive terms that the case admits of cannot but be. My practice, exemplifications of which have already been given, is—to give to each enactment, or intimately connected with it, its own set of reasons—its own ratiocinative matter, as I have found convenience in denominating it. But readers of Acts of Parliament being in use to begin with a preamble applying to the whole aggregate, it has seemed good to me for their accommodation to submit to their consideration the following one. Should it not be found to embrace every topic touched upon in the Bill, it will at any rate be found to touch upon the most considerable in number and value, as the phrase is in regard to creditors. The need of the whole of this introduction being, in my view of the matter, superseded by the specially applying, and constantly concomitant matter above mentioned, it seemed not worth while to expend more time, labour, matter, and space, in the endeavour to render it all-comprehensive. Thus much in deference to custom and authority I have done. But, to squeeze the whole of the matter into the compass of one sentence,—this is what I could not prevail upon myself to do.

Not only in the Statutes at large, but in the Bill there to preparatory, marginal abridgments are constantly inserted: in the present Bill no such additament has been made. In the cases in which this instrument of elucidation is employed, its indispensableness is indisputable. The matchless diffuseness and lengthiness of the plan constantly pursued is such, that but for these helps the difficulty of forming any tolerably clear and comprehensive conception of the matter for the current purposes would be extreme: proportional the number of those who would give up the attempt altogether, and of those in whose minds misconception would with more or less frequency have place. In the present instance, no such repulsive and pernicious lengthiness having place, insertion of the sort of notes in question has been regarded as a superfluity that might without inconvenience be omitted.

State of things in regard to the two systems—the here-proposed system, and the existing system:—reader, as you read, mark well whether it be not as follows:—

Under the here-proposed system, strong and adequate powers—strong and adequate securities, against abuse: under the existing system, weak and inadequate powers—weak and inadequate securities against abuse.

Of good, under the here-proposed system, *multum in parvo:* under the existing system, *parvum in multo*—of evil, *multum in multo.*

For and under the here-proposed system, preliminary and preparatory survey of the whole field of law, all-comprehensive: under the existing system, preliminary survey of the whole, or any considerable part of it, none.

For and in the here-proposed system, over the whole expense of the field, roads made straight and broad: under the existing system, paths erooked and narrow.

Wretchedly adapted as the existing system may all along be seen to be to its professed purpose, admirably adapted it has been found to be to the interests—the particular and sinister interests, and thence to the main purposes, of its contrivers and conductors.

In what proportion *moral,* and in what proportion *intellectual* causes have been contributory to the effect, it is not possible to determine: in what proportion the sinister interest, in what proportion the want of appropriate knowledge, judgment, and active aptitude: nor to the present purpose in any greater degree is it needful than practicable.

To the legislator belongs the task of doing away with the sinister interest, and thereby securing moral aptitude: to individuals, that of supplying appropriate knowledge and judgment, and thereby furnishing guidance to all such legislators and other rulers as are in possession of the appropriate active aptitude: and this service, happily for mankind, no sinister interest in the breasts of rulers has been able to prevent the performance of.

Moreover, in regard to laws, though in the giving birth to them the consummative, the obstetric part, is everywhere confined to rulers, yet is the initiative, the generative, everywhere by the very nature of things left open to individuals—to all individuals—to the best qualified, as well as to the worst qualified,—under the most absolute and maleficent government a man may write, and for publication convey the product of his labour to happier climes.

Reader, mark well the character of the arguments with which the proposed system will be combated. With the exception of such of them, by which imperfections and correspondent need of amendment are brought to view, observe whether there are any that come to close quarters: see whether they may not be found written, all of them, in the "*Book of Fallacies.*" (Vol. II. p. 379.)

Necessary to the accomplishment of the purpose of this Act—necessary, on pain of utter inefficiency—is perfect self-sufficiency on the part of the proposed Dispatch Court: namely, by the possession of powers sufficient for the accomplishment of this same purpose, not only without aid from any other judicatory, but even notwithstanding any resistance or obstruction capable of being opposed to it, whether by individuals taken at large, or by any other judicatory whatsoever.

Operations for the performance of which corresponding powers are hereby lodged in the hands of the Dispatch Court Judge, are accordingly the following:—

i. Stoppage of the proceedings in the several Courts in question, from the cognizance of which the suits are respectively meant to be transferred to that of the Dispatch Court Judge.

Taking into the custody or power of the the Dispatch Court Judge, all documents and written instruments at large, the inspection and possession of which may be necessary to the accomplishment of this same purpose.

iii. So, all subject-matters, corporeal or incorporeal, moveable or immoveable, the disposal of which by the said Judge may be necessary to this same purpose:—disposal, whether definitive at the conclusion of the suit in question, or provisional, or say instrumental or interlocutory in the course of it.

iv. Surmounting all resistance and obstruction capable of being opposed to the performance of any of the above-mentioned operations.

v. Elicitation of all such ulterior evidence, whether personal, real, or written, the possession or inspection of which may be necessary to the accomplishment of this same purpose.

vi. Applying, upon occasion, adequate punishment to all persons concerned—either in the carrying on any proceeding after such stoppage performed as above (par. i.)—or in the opposing resistance or obstruction to any of the operations of the Dispatch Court (ii. iii. iv. v.)

vii. In case of need of aid to the Dispatch Court Judge, or the ordinarily employed subordinate functionaries attached to the service of his Court, as such, in the performance of any of the above-mentioned operations,—power to them respectively to call in and cause to be rendered the appropriate aid of all persons whatsoever, appropriate exceptions excepted.

viii. Obviating all proceedings capable of being carried on by any other Court, tending designedly or undesignedly to the frustration of this same purpose.

Necessary on the other hand is the securing the application of adequate punishment in the event of any abusive application of any of the above powers on the part whether of any functionary or any other person acting in subordination to the Dispatch Court Judge, or on the part of the Judge himself.

So much as to the necessity of these powers to the institution of the proposed Dispatch Court. Other topics not to be lost sight of are these:—

i. Of these same powers, the efficiency to the purpose in question, and their undangerousness to the procedure of the Court out of whose hands the suits are proposed to be taken: undangerousness with respect to whatever suits are left in their hands.

ii. Of the powers proposed to be given to the Dispatch Court at the charge of the suitors on both sides, the efficiency and undangerousness.

iii. Of the means of responsibility proposed to be established for the purpose of securing the suitors against danger of the abuse of the Judge's powers, the efficiency and at the same time the undangerousness to him, and the unobjectionableness on his account.

But as to these qualities, the time for bringing them to view will not arrive till the arrangements themselves have been brought to view.

As to the necessity of the arrangements in question to the institution of the proposed Dispatch Court,—satisfaction on this head might not be satisfactory to every eye, if its undangerousness to the procedure of the existing Courts in respect of any preponderant evil were not clear. In their eyes, this necessity might oppose a peremptory exclusion upon the proposed institution altogether.

By all persons by whom dangerousness is alleged, let specific evils, not mere vague generalities, be adduced.

Be this as it may, their simplicity will not be questionable. Striking will be the contrast they will be seen to make with the existing system in every part of it. Egregious would be the misconception if the simplicity were, on account of its novelty, regarded as detracting from their efficiency: Simplicity and efficiency go hand in hand. So do, in the existing system, inefficiency, complexity, and entanglement.

With the here-proposed remedy, compare every other. In every as yet proposed change, behold either an exacerbation, or if a remedy, a wretchedly inadequate one, halting with tardy steps in the traces of a rapidly-advancing and wide-spreading disease.

Turn to an index of the Statute-book—Ruffhead's, for example. Look at the general title, *Amendment.* Look at any of the numerous particular titles professing to have for their object the amendment, in some way or other, of the immense chaos. Think, in each instance, of the malignity and flagrancy of the abuse—of the length of time it must have continued—of the quantity of the suffering it must have been producing all that time—of the impossibility of its having been, any part of that time, overlooked by those in whose power it was to remedy it. How incapable of being continued without being purposely kept up—kept up for the sake of the filthy lucre, of the extraction of which it was the instrument! Think of the hundreds of years during which it had continued—of the reluctance with which it was given up, and of the parade of examining and re-examining, with so many hundreds of appropriately learned eyes, into practices, the depravity of which would manifest itself to any the slightest glance of any single—and howsoever inexperienced—eye not fascinated or blinded by the delusions spread around for that purpose! Amendment and reform with snail's pace, abuse with racehorse pace.

You, who wish to do so, and think you can, find answer to these thoughts!

In the very nature of the case, among the effects of the here-proposed institution, one undesirable one, to a more or less considerable degree, cannot fail to have place, namely, detriment to the particular interests of individuals of various descriptions and classes, and in particular the class composed of professional men, the professors of the law. In relation to such detriment, justice requires that provision should be made; and it is hereby proposed, in mode and degree following.

Under and by virtue of the greatest-happiness principle, no such detriment to particular interests,—number of persons interested and value of their respective interests taken into account,—can afford a preponderant reason for putting a negative upon the proposed system of reform.

But under and by virtue of the non-disappointment principle, for all detriment thence resulting to particular interests, in every instance in which satisfactory evidence as to the existence and quantity, or say value, of the pecuniary loss, or detriment in any other shape, can be elicited, it ought to be elicited, and satisfaction in the shape of compensation in respect of it, to be administered.

Such compensation ought to be fully equivalent; and in case of doubt, it ought to be rather more than less than equivalent.

Reasons:—

i. The greater the benefit from the measure to the community at large, the better can the community at large afford to make the compensation required.

ii. Proportioned to the quantity of suffering by loss uncompensated, is the magnitude of the evil of the first order.

iii. So likewise that of the evil of the second order; that is to say, alarm produceable on the part of other individuals of other classes regarding themselves as exposed to be eventually detrimented by reform, real or supposed, set on foot by the same constituted authorities, or their successors. So likewise danger lest by the consideration of the individual operation in question in the character of a precedent, similar suffering should, under and by virtue of the imitative and the custom-following principles, be produced.

iv. Independently of all regard for the feelings of assignable individuals, *prudence* (that is to say, regard had to the probability of successful issue) suggests the propriety of doing whatsoever without preponderant evil can be done, for augmenting the probability of a successful issue by the removal of whatsoever opposition might otherwise be made.

v. With as little expense as possible to the community, should such compensation in this as in every other case be made.

vi. If accordingly, and in so far as such compensation can be made without expense incurred on purpose, as well as without preponderant evil in any other shape, it ought so to be made.

For example, if in lieu of the office the abolition of which is necessitated by the reforming measure in question, other offices require to be and are accordingly created, the quondam occupants of the abolished offices should, in so far as qualified to perform the duties of the newly created offices, be located therein, receiving at the same time adequate compensation for whatsoever, if anything, the remuneration attached to the new office falls short of being equal to that attached to the abolished office.

When everything has been done which the nature of men and things admits of being done towards making the aggregate of the enjoyment, derivable from the aggregate of the compensation, equal to the aggregate mass of suffering produced by the measure of reform, still there will be in most cases, and in this case in particular, an aggregate, nor that an inconsiderable one, of suffering, for which no compensation can by possibility be afforded.

To this head belongs the sort of humiliation, with the accompanying pain of mind, which a man cannot but feel when removed from pre-eminence in a certain branch of art and science, or from any situation in life by which in a greater or less degree the occupant is rendered in the eyes of the community an object of respect.

On the present occasion, the quantity of uncompensable pain produced from this source will unavoidably be pre-eminently great. A condition absolutely necessary to the establishment of the here-proposed new system is the extinction of the whole quantity of popular respect hitherto paid to the occupants of the abolished offices, in such sort that the quantity of respect possessed by each such dislocated functionary will thereupon be confined to that which will be paid to his individual character; and the objects of general desire which, when the measure in question has been carried into effect, will be found remaining to him.

The quantity of respect, then, attached to pre-eminence in the profession of the law, and more especially to official situations in the judiciary department, being of the first order, vying at least with the quantity attached to the other departments of government respectively,—proportioned to the enjoyment from the possession will be of course the suffering resulting from the loss.

From these considerations flow in every considerate breast two results:—1. The emotion and affection of sympathy called into existence by the consideration of the intensity and extent of the mass of mental suffering, above brought to view; 2. The anticipation of the force of the opposition with which the proposed measures of reform, how beneficial soever to the community at large, cannot fail to be encountered: the strenuousness of such opposition, and the extraordinary quantity of relative power possessed by the persons in question.

On the occasion of this opposition, the art of persuasion, including as a branch of it the art of deception in a degree of strength altogether incapable of being equalled in any other instance, common discernment will suffice for teaching a man to anticipate; weak indeed must be that discernment by which, in respect to the means used in an

opposition so composed, sincerity in any degree on the part of any opponent can really be expected.

When for a mass of property—a dwelling-house for example, or a multitude of contiguous dwelling-houses—taken into the hands of government for the benefit of a neighbourhood or the community at large, compensation comes to be provided,—who is it that ever expects on the part of an individual proprietor unknown, sincerity in respect of the value by him assigned to it? or by whom would he to any such degree be confided in, as that, without some controul applied to it his declaration would be received? What would be the opinion entertained in respect of the probity or wisdom of a Finance Minister, who, after pronouncing an euloguim on the general probity, and on that individual occasion on the assured sincerity of the proprietor in question, should leave it to him to fix the price?

But on the one hand, the proprietor of a house or a street is not as such in any peculiar degree prone to insincerity; on the other hand, every person engaged in the profession of the law is. Much less is every such proprietor, a self-declared professor of the art of insincerity, while every individual embarked in the profession of the law is.

A consequence that does not absolutely follow is, that in respect of everything which he will say in opposition to a measure of reform such as that in question, every man engaged in the profession of the law—every man without exception, will to a certainty be insincere: but a consequence that does absolutely follow is, that on the part of every other man—every man not engaged in the profession of the law—who in taking into consideration the opinion delivered by an individual so engaged, on the subject of a measure which, in what degree soever beneficial to the community at large, was unquestionably detrimental to the aggregate body of the individuals engaged in the profession of the law, should regard absolute sincerity as being either certain, or even so much as equally probable with the opposite state of mind, no small degree of mental blindness would have place.

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PREAMBLE.

Considerations on which this Act is grounded are the following:—

Art. 1. In the early times of this Monarchy, when money was scarce, and the revenues of the crown not yet established on any settled footing,—remuneration, in the shape of fixed salaries, for the functionaries of government employed in the several departments, not being capable of being provided in sufficient quantity, recourse was had of necessity to the expedient of suffering them to extract payment for themselves at the expense of such of the King's subjects as stood in need of their respective services. In which state of things, by giving increase to the number of the occasions on which the suitors to their respective offices have need of such their services, these same functionaries having it unavoidably in their power to give increase to the aggregate amount of the emoluments thus extracted, the interest of the possessor of each such power is placed in a state of opposition to such his duty, of which opposition the abuse of such power is to a considerable degree a necessary consequence.

Art. 2. Of this opposition of interest to duty in judicial hands, the result has been the undue increase of expense in the shape of fees, as also the undue increase of delay for the purpose of giving time for and bringing into existence incidents whereby the demand for fresh operations and legal instruments, and thereby addition made to the number of fees exacted, and thereby to the aggregate of expense.

Art. 3. Of these additions, again, sale, denial, and delay of justice, are the necessary consequences;—that is to say, sale of justice to all those who having wherewithal do accordingly thereby disburse the amount of the expense; denial of justice to all who by inability stand excluded from the capacity of purchasing it; delay of justice by the amount of all such retardation as had for its effect the augmentation of the expense.

Art. 4. In and by the statute entitled Magna Charta, which has in all times been regarded as the stock, root, or foundation of all those liberties whereby the condition of the subjects of this realm stands distinguished to its advantage from that of the subjects of other monarchies, is contained a declaration expressed in these memorable words: "*Nulli differemus, nulli vendemus, neque negabimus justitiam;*"—to no one will we delay, to no one will we make sale, to no one will we make denial of justice:—to none of which promises was it perhaps at that same time in the power of the monarch of this realm to give fulfilment by *constant,* or even at *any time* by *adequate,* performance.

Art. 5. By the operation of this cause, the grievances by which at all times the subjects of this realm have been afflicted, and which in the natural course of things have at all times been in a course of continual augmentation, have at length arrived at such a pitch as to threaten the dissolution of all government, and to cause men to look for security in powers and safeguards other than those provided by the law.

Art. 6. The system of procedure, which is styled the regular, has, by the causes hereinabove mentioned, been swollen to such a pitch of dilatoriness and expensiveness as to have been by the continually repeated recognition of Parliament itself acknowledged to be incapable of fulfilling its intended purposes: in consequence of which a mode of procedure, styled by comparison the *summary,* has on each such occasion been substituted to it.

Art. 7. If the course so pursued be well adapted to the elicitation of the truth in any one case, it can scarcely be otherwise in any other.

Art. 8. In the course so styled the *regular* in courts of various descriptions, but more especially in the courts called Equity Courts, the length of the proceedings in any the most simple case is not unfrequently spun out to as many years, as under the summary course of procedure it would occupy minutes.

Art. 9. It is accordingly greatly to be desired, that if not incompetent in other respects, the course styled *summary* should, with such improvements as the continually increasing stock of experience shall be found to have suggested, be throughout substituted to the regular.

Art. 10. The summary mode or course of procedure necessitates and supposes (special and unavoidable exceptions excepted,) the attendance of the parties in the presence of each other and of the Judge, and in particular that the mode of giving commencement to a suit be by the attendance of the individual who desires to be admitted plaintiff, or of some other person on his behalf.

Art. 11. To render the burthen of such attendance as light as may be, it is necessary that every individual so attending should have the faculty of doing so without passing the night elsewhere than at his own home.

Art. 12. The giving universal establishment to this faculty could no otherwise be affected than by the re-establishing, with improvements suited to the present state of society, the system of Local Judicatories, which having had place in the Saxon times, became gradually extinguished after, and by means of, the Norman Conquest.

Art. 13. By and in proportion to the narrowness of the bounds within which the local field of jurisdiction of each such judicatory would necessarily have to be confined; the necessary number of such judicatories would unavoidably be to be increased.

Art. 14. By the erection of edifices for this purpose, as well as by the all-comprehensive substitution of remuneration in the shape of salary, to remuneration in the shape of fees—remuneration at the expense of the public, to remuneration at the expense of the suitors—a proportionably large addition would unavoidably be made to the present amount of the regularly recurrent national expense. It is desirable that before the correspondent expenditure has been incurred, and the correspondent burthen imposed upon his Majesty's subjects, the aptitude of the here-proposed plan should be subjected to trial, previous to its being extended, in case of success

demonstrated by experiment and experience, to the proposed judicatories throughout the whole country.

Art. 15. Two modes of procedure, the regular and the summary, are both of them in use: the regular having had for its authors the members of the judiciary establishment acting under the influence of particular and sinister interests, as above; the summary, having Parliament itself as the sole authority by which law is acknowledged to be made. As often as cognizance of any case has been given to a Justice of the Peace acting singly, or to Justices in numbers acting otherwise than in general sessions, declaration has, impliedly indeed, but not the less decidedly, been made of the inaptitude of the regular mode, in each such case, and of the aptitude of the summary mode in that same case. The exclusive aptitude of the summary mode being so repeatedly and continually recognized in relation to all those cases, can there be any case in which it has not place? If there be no other case in which it has not place, insomuch that in such case the regular mode ought, as at present, to be employed, and the proposed summary mode not,—this considered, it is hereby declared, that it is in the contemplation of the Legislature to make application of the summary mode to all cases.

Art. 16. The appointing, on the occasion of a legal demand made, an arbitrator or arbitrators more than one chosen by mutual consent of his Majesty's subjects, to exercise, without any appointment from the Crown, the functions of Judge, is a practice which has received the sanction of Parliament;—that is to say, by a statute of the 10th year of King William the Third, chapter 15.

Art. 17. It continually happens that cases, which by their complexity are essentially incapable of being determined by jury-trial, are nevertheless entered in the Assizes Court, for the declared purpose of being so determined: on which occasion, such complexity being in open court declared by counsel on the one side, and assented to by counsel on the other side, the case is thereupon, under the authority of the Judge, consigned to arbitrators in some such form as is thereupon agreed: that is to say, subjected to the determination, either of one single person learned in the law, or not so learned, chosen on both sides at the suggestion or with the approbation of the Judge; or else to the determination, of two persons, under the name of arbitrators, chosen in like manner, the one by the one side, the other by the other side, with power to such arbitrators, in case of disagreement, to choose by their joint assent another referee, in the character of umpire, whose determination it is thereupon agreed shall be final.

Art. 18. For want, in all such cases, of powers adequate to the purpose of securing the forthcomingness of such evidence as it has happened to the individual case to afford, the provision thus made for right decision is but precarious, while the delay and expense is swelled to an indefinite extent, by reason of the opposition between interest and duty, created by the mode of payment appointed for the remuneration of the official service rendered on this occasion by the occasional Judge or Judges so appointed and officiating.

Art. 19. Notwithstanding the inconvenience attached to this mode of judicature, yet the practice of consigning the determination of suits to persons other than such as are

exclusively appointed by the Crown, has not only received the sanction of precedent, but is moreover thereby demonstrated to be in continual and all-comprehensive use.

Art. 20. For the purpose of the experience hereby endeavoured to be obtained, it is necessary that, according to the course hereby proposed, suits in large and indefinite number should in this same way be heard and determined by one and the same Judge.

Art. 21. That no reasonable ground of complaint might have place, if without consent of parties on either side, and without special and sufficient cause shown, a suit which had been commenced in one of the ordinary courts, and been there carried on according to the now established course of judicial procedure, were removed to the cognizance of the Dispatch Court Judge,—the Dispatch Court Judge should be located by the suitors, subject to the approbation of his Majesty.

Art. 22. In so far as everything is performed with consent of all parties interested, the good hereby done will be altogether pure, and all possible ground of objection to the departure thus made from the ordinary course of judicature will be obviated.

Be it, therefore, enacted as follows:—

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PART I.—

JUDICIARY.

SECTION I.

JUDGE LOCATED, HOW.

Enactive.—Ratiocinative.

Art. 1. For the better administration of justice, by experiment made, for the purpose of an all-comprehensive substitution of the *summary* to the so-called *regular* mode of procedure, antecedently to the disbursements necessary for the institution of the requisite all-comprehensive system of Local Judicatories,—power* is hereby given to his Majesty for the erection of a Judicatory,† under the name of the *Court of Dispatch,* or say the *Dispatch Court.*

Enactive.

Art. 2. Single-seated, as in the Court of the Lord High Chancellor, will be the Dispatch Court.

Art. 3. Instrument of location, a Commission, signed by his Majesty, and countersigned by the President of his Majesty's Privy Council, or by the Keeper of his Majesty's Privy Seal, or by one of his Majesty's Principal Secretaries of State, in pursuance of an election made as per articles 10, 11, and 12, by parties to the several suits‡ intended to be thus disposed of. Form of Commission as per schedule to this Act annexed, No. I.

Enactive.—Expositive.

Art. 4. Suits of which the Judge will take cognizance, these:? Of the suits depending in the Equity side of the Court of Chancery, and the suits depending in the Equity side of the Court of Exchequer,—every one, in respect of which, on the part of any party thereunto, the desire of such transference§ shall have been manifested by an appropriate petition, authenticated by his signature. Form of each, as per schedule No. II. Name thereof, a *Dispatch-Court-praying Petition.*

Enactive.—Instructional.

Art. 5. Of a printed copy of the matter of that same No. of the Schedule will such Petition be composed. But in addition to the letter-press will be inserted in manuscript the matters following:—

i. At the head of the letter-press—

1. Name of the suit, of which the removal and transference prayed for is desired.

2. Names of the several persons mentioned in the course of the documentary papers belonging to the suit, as parties in and to that same suit; or of such of them as are known by the petitioner or petitioners so to be.

ii. At the close of the letter-press—

3. Names of the party or parties whose desire is thus expressed: attested, and thus authenticated, by their respective signatures.

Art. 6. Of a Dispatch-Court-praying Petition thus delivered in, two copies at the least, both provided with the same signatuae or signatures, will be produced to the Clerk to whom the function of receiving them is committed.

On that one which is kept in the office, he will write, at the top of the first page, a numerical figure or figures, expressive of the rank occupied in the order of priority by that same Petition, in the list of the Dispatch-Court-praying Petitions, in that same office already received: and at the close of the form, immediately below the name or names of the petitioner or petitioners, his own names, personal and official, with the word *received;* and the year, month, and day of the month, when received.

To the individual by whom the two copies were brought, he will return the other, after having marked thereon the same number as that marked as above, on the copy retained; and, having moreover copied thereon his own acknowledgment, written as just mentioned.

Art. 7. Fee to the Clerk [1s.] On receipt of a fee to that same amount, he will moreover deliver a like copy to every other party to the suit, by whom, by word of mouth, or in writing, with his name in his own handwriting thereto added, demand thereof shall have been made.

Expositive.

Art. 8. *Unanimous* the Petition will be styled, if of all the persons of whom, as above, it is stated that they are parties to the suit, the names appear as expressed by their respective signatures:—an *ex-parte* Petition, if of the names so to be signed, any one be wanting.

Instructional.

Art. 9. In relation to any such *ex-parte* Petition, arrangements will, in manner hereinafter mentioned, be taken, for causing it to be known, whether the same is to be considered as unanimously *assented to,* or by any and what number of the parties *dissented from.* But, from the mere absence of the name of a party, no such conclusion can justly be drawn, as that of his being dissentient in relation to it. For putting a

negative on such conclusion, any one of a variety of accidents may suffice. The party in question absent, for example, in another hemisphere—or in a state of infancy—or his relation to the business that of a trustee, without any real interest in the event or matter of the suit.

Enactive.

Art. 10. So soon as *Dispatch-Court-praying Petitions,* in suits to the number of [100], have been delivered in, notice thereof, under the care of a Secretary of State, will be published in the *London Gazette,* appointing time and place for the meeting of the Petitioners, for the purpose of making election of a Dispatch-Court Judge.

Ratiocinative.

Art. 10.* The Judge of the Dispatch Court, why thus located? that is to say, not as are Judges at large, by commission from his Majesty directly, but by *election* first made by the parties interested, and then by his said Majesty approved and confirmed, (Art. 13.)?

Answer.—Reasons:—

i. As to election, by the parties interested, to a situation conferring the judicial function, in principle this course is already by statute law established: to wit, by the statute 9 and 10 W. III. c. 15, by which individuals, named by the parties to a dispute relative to a matter of right, are authorized, under the name of *arbitrators,* to hear and determine *demands,* and under the name of *awards* to pronounce *judgments,* to which force of law is commanded to be given by the Judges of the ordinary courts.

ii. As much as, in the way of judicature, is in that case authorized to be done, is authorized to be done without any special appointment made by the King for the time being. But, to the present purpose, what is moreover necessary is—that, by the Judge in question, various judicial powers, not given to the functionaries so elected by the parties, should be possessed, in the conferring of which no person other than the King is competent. In particular, powers for compelling evidence at the hands of third persons as well as parties.

iii. The ultimately-proposed new judicial establishment, and the here-proposed experimental institution taken together, being, in so far as favourable to the interests of the rest of the community, unavoidably more or less unfavourable to the particular interests of men of law, taken in a body; and the preposessions and inclinations of that body being by the universally-prevalent principle of human nature rendered necessarily adverse to any such change,—the consequence is, that, for a situation such as that in question, recommendation could not, consistently with an adequate sense of the irresistible force of that same principle of human action, be expected to be received through the ordinary channels, by any other person than one whose endeavour would be naturally to bring into discredit, and, by all other safely practicable means, frustrate both institutions, rather than to render them productive of the benefit intended by this Act.

iv. At any rate, whether, of an individual so recommended, this were or were not in fact the disposition,—such it could not fail to be suspected of being by all persons, by whom, by attentive reflection, an adequate conception of the springs by which human action is regulated has been obtained.

v. On the part of the proposed electors—that is to say, all suitors in the Equity Courts in question, those suitors excepted, whose interest, and thence their endeavour, is—to profit by the imperfections of the existing system,—and who accordingly stand designated by the appellation of *malâ fide* suitors,—the existence of a sincere and anxious desire to see invested with the powers in question whatsoever person would be most likely to give to these same powers that exercise, by which the benefit of this Act will in the highest degree be produced,—is by those same principles of human nature, in proportion as the tendency of these same powers is perceived by them, rendered altogether secure.

Enactive.

Art. 11. Mode of election, *ballot.* Returning Officer by whom the business will be conducted, the said Secretary of State, or an Under-Secretary belonging to his office. To him all persons desirous of being considered as candidates will have given in their names. Business other than that of ascertaining the individual on whom the choice has fallen, none: candidates excepted, spectators at large, as in a court of justice, will not be present: speeches will not be made. Between candidates, two or more, in case of equality in the number of the votes, *lot* will determine.

Ratiocinative.

Art. 11.* The election, why by ballot? that is to say, not in that customary mode, in which it is known to all persons interested in which way each person gives his vote, but in a mode in which, the suffrage being given in secret, no such knowledge can to a certainty be obtained by anybody?

Answer.—Reasons:—

i. Lest, by fear, the electors in any number might be induced to give their votes in favour of a candidate in any degree, by want of aptitude in whatever shape, moral or intellectual, rendered likely to frustrate, as above, the design of these institutions, rather than to promote it.

ii. Of the transfer hereby indented to be made, the effect would be, *pro tanto,* to take business out of the hands of the several high judicial functionaries here following:—1. The *three superior Judges* of the Chancery Equity Court; 2. The eleven subordinate Judges of that same court, the *Masters in Chancery;* 3. The four *superior Judges* of the Equity side of the *Exchequer* Court; 4. The *subordinate Judges* analogous to the Masters in the Chancery Court. Moreover, among the members of the Bar, all those whose practice has for its theatre any one or more of those several judicatories: and among these are always some, by whom influential situations are occupied in Parliament.

iii. On the part of all these so highly-influential persons, unless constituted in a manner different from that of the whole remainder of the human species—a sure object of endeavour, if supported by an adequate strength of hope, would be, as above, to cause to be elected of all the several candidates, the one in the lowest degree *apt,* or, if there be a difference, in the highest degree *unapt.* For this purpose, two sorts of characters would stand open to choice:—1. A strong-minded man, whose strength in all shapes would be employed in the endeavour to frustrate the design, preserving all the while, by plausible pretexts and appearances, such as the existing system would be found to furnish in abundance, his own repute from deterioriation; 2. A weak-minded man, by whose weakness, even though unaccompanied by sinister intention the arrangements furnished by this experimental institution might be prevented from being followed by those good effects, of which, in apt hands, it would be productive.

iv. In case of failure of the whole design, every suitor concurring in the business of petitioning would be lying, and would see himself to be lying, at the mercy of all these irresistible adversaries, and unpunishable natural and probable oppressors, whose vengeance, by the war thus made upon their personal interests and affections, he had thus provoked.

v. Note, that in different degrees formidable would be this resentment in the two cases of an *unanimously* signed and an *ex-parte* signed Petition. By an unanimously signed petition, it might happen that one party would not be more exposed than another: on which supposition, injustice to one, for the sake of undue favour to another—or *vice versâ,* undue favour to one for the sake of injustice to another,—would not perhaps be an object of apprehension. But, in a case in which the Petition having been concurred in by one or more, had, by non-concurrence, or in a more conspicuous way by active and open opposition, been opposed by parties one or more,—the situation of a petitioner could not but present itself to his view as truly perilous. Whatsoever candidate, known, or supposed, to possess in his favour the good wishes of these tremendous personages sitting in clouded majesty, might, how inapt soever, in the conception of the elector, or in reality, or in both, be the only one in whose favour it might seem to the elector consistent with prudence to bestow his vote.

vi. In the case of a suit, in which, for increase of delay, expense, and vexation, to a suitor or suitors on the opposite side, either the *demand* had been made, or the *defence* made,—the suit having, on the one side or the other, for its commencement or continuance, the dishonesty of a *malâ fide* suitor,—he, who of course could not, without acting in contrariety to his own designs, be of the number of the Petitioners,—he would of course be, and be seen to be, the object of favour to those influential personages, and the Petitioners objects of corresponding resentment, and accordingly exposed to corresponding danger.

vii. Even in the case of a Petition, which being signed by every party, wore thus, upon the face of it, the appearance of a unanimous one,—a state of things which, in instances in any number, might happen to be exemplified, is this: By apprehension of disrepute, or evil in some other shape, parties, one or more, may have been induced to give their signatures: at the same time, from the nature of the interest they have in the

suit, on their part nothing but unwillingness has had place; on the other side, all the willingness: and, in this state of secret unwillingness, supposing their signatures added to the rest, would be the minds of all *malâ fide* suitors.

Enactive.—Instructional.

Art. 12. Instrument, by the exhibition of which to the returning officer, the title to vote will be established, a Petition as per art. 5; attested as per art. 6. Entitled to give a vote will be—not each person by whom the Petition has been signed, but that person, Petitioner or Non-petitioner, to whom, for this purpose, the Petition has been entrusted.

Art. 13. The candidate on whom the choice has fallen having been ascertained, and a Record of the proceedings *as per schedule No. III.* drawn up, the Secretary of State will forthwith present the same to his Majesty for approbation. If the choice be approved, his Majesty will attach to the said record the word *approved,* followed by his sign-manual, and countersigned by the said Secretary of State: if not approved, his Majesty will, instead of the word *approved,* write the words *not approved:* in both cases, followed will be the signature by the mention of the year, month, and day of the month. And in case of disapproval, on that same day, in and by a London Gazette Extraordinary, notice of such disapproval being made public, notice for a fresh election to be made, as per art. 11 and 12, will be given, the day not being further distant than that se'nnight.

Art. 14. Should the candidate, on whom, on the occasion of such second election, the choice had fallen, fail of receiving approbation and confirmation as above, a *third* election will have place in the same manner as the *second:* and so, *toties quoties,* until some candidate shall have received approbation and confirmation from his Majesty, as above.

Art. 15. Should the time appointed, as per art. 13, for a fresh election, have elapsed, and neither approval nor disapproval, as above, been manifested, the Petitioners will reiterate their Petitions, until an election having taken place, shall have received confirmation as above.

Art. 16. At the same time and place at which his Majesty's approval of an elected candidate is, as per art. 13, signified, a Commission from his Majesty, as per schedule No. I., constituting the person so approved Judge of the Dispatch Court, will in like manner be signed by his Majesty, and countersigned by the said President of the Privy Council, Keeper of the Privy Seal, or Secretary of State, (art. 3.)

Enactive.

Art. 17. For falsehood—relevant and material falsehood—inserted in the matter of such Petition, every person knowingly concerned therein, will be punishable: punishable by fine and imprisonment, one or both, at option; and as to quality, at discretion: the imprisonment not to exceed [*three*] years.

Expositive.

Art. 18. *Criminal* the offence will be, if accompanied with *evil consciousness; culpable* if committed through *rashness, temerity,* or say *inattention:* want of that due attention, by which, if bestowed, the commission of the offence would have been prevented; and, which of the two cases the offence belongs to, declaration will, on the occasion of the sentence, be made by the Judge.

Exemplificative.

Art. 19. Follows here an example of a falsehood, for which, in case of impunity, an adequate and determining motive might be found. For causing a Petition to appear, and to be regarded, as unanimous, stating as complete an incomplete list of the parties to the suit.

Enactive.

Art. 20. For forgery wilfully committed in relation to any such Petition, every person, knowingly and wilfully concerned therein, will be punishable by fine, imprisonment, and transportation; any one, or two, or all three, of these same punishments, at option: the imprisonment for not more than [*three*] years; the transportation for not more than [*seven;*] the fine at discretion.

Ratiocinative.

Art. 20*. Supposing the acts prohibited in and by articles 17 and 20 to remain unpunishable, persons not entitled to vote in the election might, in any number, intrude themselves; the whole business be thus involved in confusion; and the design of the institution frustrated,—by persons whose particular and sinister interests stand opposed to it. As it is, small indeed seems the probability that these penal enactments will, any of the three, be ever called into action. But, as in other cases so in this; by the efficiency of a security when employed, no reason is afforded why it should be left unemployed.*

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SECTION II.

REMUNERATION.

Enactive.

Art. 1. Attached to this office will be a salary of [NA] a-year: payable at the same time, and in the same manner, as that of the Lord Chief Justice of the King's Bench.

Expositive.—Ratiocinative.

Art. 1*.—i. As to quantity of remuneration, note here a most material difference between the case of the experimental Dispatch Court and the ultimately-proposed Local Judicatories, with a view to which, and for the sake of which, the experiment is hereby intended to be made.

ii. In the Dispatch Court, the remuneration must be upon the present high scale; namely, for the purpose of engaging men, in whom, in consideration of the extent of their practice, and the height of their reputation, the electors may be supposed to repose their confidence.

iii. In the system of Local Judicatories, no such rate of payment could be afforded; no such rate of payment could be requisite. No need (it will be seen) would there be for buying off lawyers from the highest ranks of the professional class.

iv. So much for what, by the *friends* to reform, would be proposed to be done. Now, as to the course that would be taken, in opposition, by corruptionists in office and in power:—as such, *enemies* to reform.

v. By them would be stated, as altogether indispensable, for every one of these Local Judicatories, a salary upon the present principle and scale of excess; the amount of which would of course be maximized:—from the persuasion, that from the magnitude thus alleged to be necessary, one or other of two advantages would be expected to be reaped:—1. The institution might be rejected altogether, in consideration of the insupportability of the expense: or, 2. If it were carried, there would come the profit by the patronage—a profit rising in proportion to the excess.

vi. Of the inferences deducible from the present fundamental axiom; namely, *aptitude is as opulence*—a rule not only acted upon, but avowed—the utmost possible advantage would of course be made. Give no more than £2000 a-year to the Judge of each Local Judicatory; a very inadequate degree of aptitude you must be contented with: give £4000 a-year, so much the better. But, to make any tolerable approach to perfection, you must give the £10,000 given at present.

Enactive.

Art. 2. Of no person, on any account, will the Judge of the Dispatch Court receive, under the name of a *fee,* or under any other name, any money or money's worth, on the occasion or in consideration of any service rendered or expected to be rendered by him as such, by or in the execution of the power belonging to such his office. Acceptance of any such benefit by him, by his own or any other hand, to his use, will be deemed *extortion,* and as such punished. For endeavour and design respectively, punishment correspondent.

Ratiocinative.

Art. 2*. Receipt of fees, why inhibited to the Judge?

Answer.—Reasons:—

i. In the case of a Judge, as in that of every other functionary, and every human being, good behaviour depends on the conformity of interest with duty.

ii. By this mode of remuneration, his interest would be placed in a state of irreconcilable opposition to his duty: and (as will be seen) the very design of the institution frustrated.

iii. Of such opposition, in the situation in question, as well as every other, so long as man is man, sacrifice of public duty to personal and other particular interests, as far as may be with safety, is that which, at the hands of the vast majority of persons invested with political power, is, on each occasion, the most probable result, and that on the expectation of which all arrangements should accordingly be grounded.

iv. Under the name of a *fee,* or any other name, to authorize a Judge to receive money, money's worth, or benefit in any shape, on the occasion of any sort of operation performed by him, or written instrument authorized by him, is, in other words, to give him a premium, or say a bounty, on the production of expense:—a *bounty,* the amount of which increases with the number of those same operations performed, and those same instruments so produced by him.

v. So, to give him a *fee,* or other benefit proportioned to the *length* of any such written instrument, is—to give him a bounty on the length of every such written instrument so produced by him; and thus also a bounty upon the expense.

vi. By these arrangements, it is rendered his interest to swell to the utmost the expense of every suit to the suitor. By this interest is supplied the adequate *motive;* by his office, and by the power belonging to it, the adequate *means;* and be the effect what it may, wherever *motive* and *means,* both adequate, unite in the same person, the effect follows of course.

vii. The act of employing, in the exaction of money, or money's worth, to an undue amount, to the power-holder's own use, the power derived from an office, is professed

to be dealt with as a crime; it is termed *extortion;* and is taken for the subject-matter of an *inhibition,* or say *prohibition,* backed by punishment; authorizing a Judge thus to extract it—*and to permit is to authorize*—is therefore to authorize extortion; to authorize that which at the same time is professed to be constituted a crime. Here, then, against *inhibition* on the one hand, is *express permission,* and thereby *encouragement,* on the other. Unhappily, the inhibition is, in this case, but nominal, inoperative, ineffective, illusory, falsely pretended, hypocritical: the permission—the encouragement—the inducement—is efficient, effective, and effectual.

viii. A bounty on *extortion* operates as a penalty on *abstinence* from extortion; for, a bounty on any positive act operates as a penalty on the correspondent and opposite negative act. So much for the factitious expense.

ix. By the same means by which such needless *expense* is produced, needless *delay* is moreover produced. For, to the *number* of judicial operations increase cannot be given without increase given to the *time* allotted for the performance of them: and over and above the time necessary for the letting in the known and constantly accruing sources of delay, accident will, in proportion, add to the length of such time, by giving birth to incidental, and ulterior, efficient and effective causes of that same grievance.

x. Moreover, with the *length* of every such written instrument, increases the length of the delay producible and produced in respect of the *framing* it, *examining* it, and making *answer* to it.

xi. Here, then, in addition to the penalty on abstinence from extortion, is produced by these same fees, a penalty on dispatch.

xii. Be the article what it may, if a price be set upon it, and it be delivered to those alone who pay the price, it is *sold*—sold to all persons to whom on payment of that price it is delivered.

xiii. Moreover, it is *denied* to all persons to whom it is not thus *sold.*

xiv. How it is, that by this mode of remuneration, delivery of justice is *delayed,* has been shown above, and delay of justice is of itself *denial* of justice, so long as it lasts.

xv. Thus it is, that by every Judge, by whom, for acting as such, a fee is demanded, justice is, on the occasion of each demand, either *sold* or *denied:* sold, if the money be *received;* denied, if it be *not* received.

xvi. Between the number of those to whom justice is sold, and the number of those to whom it is denied, the *proportion* will of course in each suit be rendered greater or less by the amount of the aggregate of the fees so demanded on the occasion of that same suit.

xvii. The sort of suits which are here in question, are those of which the Equity Courts take cognizance. Of the proportion between the number of those persons to whom by the fees thus demanded it is *sold,* and the number of those to whom it is utterly denied, the stock of *data* as yet accessible, affords not any tolerably correct means of

forming an estimate; that the number of those to whom it is utterly denied, is several thousand times as great as the number of those to whom it is sold, may, however, be asserted without much fear of error.

xviii. Be the article what it may, if the possession of it would be more useful to a man than the money, the *denial* of it to him is productive of greater suffering to him, and a worse injury to him, than the *sale* would be: those, therefore, to whom what is called justice is sold, are, if it be justice, the favoured few.

xix. All this while, of the aggregate of the evil produced by fees allowed to be taken by a Judge *to his own use,* no more than a small part is it that is ever presented to view by the words which give expression to it in the law: for, by the Judge, no operation is performed without being accompanied with correspondent operations performed by other persons, in whose instance remuneration is no less necessary than in the instance of the Judge. Thus it is, that for the purpose, and with the effect of producing a comparatively small quantity of enjoyment to one man in the situation of Judge, suffering in vast and immeasurable quantity is produced on the part of a vast and immeasurable multitude of other persons in the condition of suitors.

xx. Of a law requiring fees to be paid to Judges, thus maleficent would be the effect, even if the aggregate amount of those fees could be and were fixed or limited—limited by the law itself, in such a manner as not to be capable of being by any act of the Judge, or any person other than those appointed by the legislature, made to receive increase beyond that limit.

xxi. But this is what never has been the state of things, nor ever can be. Of the *sorts* of *occasions* on which, in the *sorts* of suits in question, the fee is allowed to be taken, the number may be limited: so of the *sorts* of *operations* on those several occasions performed, and of the *sorts* of *written instruments*[*] on those several occasions issued. But in the instance of an *individual* suit of any sort individually taken, for the legislator to apply limitation to the number of the operations, or the instruments, or to the length of any instrument, unless where it is prescribed *in terminis,* is not possible. Do the legislator what he will, to quantities it will remain in the power of the Judge to make his own additions.

xxii. Fixation, limitation, regulation of fees allowed to be taken by Judges and their subordinates (not to speak of functionaries in other departments)—all these are but so many covert modes of giving maximization to the quantity of money exigible by them, and thereby to the quantity of extortion practised, and corruption kept infused, by force of law.

xxiii. What if a statute were passed, establishing a pecuniary qualification for enabling a man to apply for justice to an Equity Court, and the like for enabling him to defend himself against any application so made?—say a hundred a-year in a certain shape, as in the case of the qualification of a Justice of the Peace, or three hundred a-year, as in the case of a Member of Parliament? What an outcry would not such a law raise? This would be, in other words, establishing a *prohibition,* or say *inhibition,* inhibiting every man not so qualified from making any such application, or any such defence.

xxiv. Men govern others—men suffer others to govern them—by *signs,* without looking further—without looking to things signified. Many times the qualification sufficient to enable a man to act as Justice of Peace would not suffice to enable a man to make a well-grounded application to an Equity Court for what it deals out under the name of justice, or to defend himself against an utterly groundless and unjust one. Not it, indeed. Here then is prohibition put upon application for justice, and upon self-defence against injustice.

xxv. Thus would gnats be strained at by those by whom camels are swallowed. Much more effective is this virtual and *undeclared prohibition,* than would be even a prohibition operating by a *declared* penalty to the same amount: for by the virtual prohibition, the penal effect is made to take place, without the uncertainty of success, and the certainty of that expense, delay, and vexation, whatsoever it be, which have place as often as effect is endeavoured to be given to a declared *penalty.*

xxvi. So in the case of the correspondent *remuneration.* In the actual state of things, the manufacturer of the expense and delay, who pays *himself* for what he himself does, has nobody but himself to apply to, in order to obtain that which he so makes: in the case of a declaredly remunerating law, he would have to make application to others—that same application, loaded with the uncertainty as to success, and in case of contestation, the certainty as to delay, expense, and vexation, as in the case of the probibitory and penal law, as above.

xxvii. Taking money, or money's worth, in remuneration for operations performed by a Judge, on the occasion and by the means of exercise given by him to the powers of his office, is, for shortness, termed selling justice; it is the same thing in other words.

xxviii. Indefinitely numerous are the forms of words, by which, in the hands of the legislator, the effects of bounty and penalty—thence of production and prevention—are capable of being produced:—a form more effective than the above the language does not furnish. With as much reason might it be said, that when the legislator imposes a tax, he does not mean it should be paid, as that when he allows fees to be taken by a Judge, he does not intend that extortion, corruption, factitious expense, and factitious delay—all to a boundless amount, with the correspondent suffering, should have place.*

xxix. To authorize a Judge to exact, in this manner, to an amount thus unlimited, for his own remuneration, is to authorize him to impose taxes to the same unlimited amount, and put the proceeds into his own pocket.

xxx. Not less defensible would be a law authorizing the head of the army to pay himself what he pleased for so being, than is that state of the law, by which the head of the law is authorized so to do.

xxxi. The head of the army would not choose among those who are already in a state of impoverishment and affliction, those on whom he would levy his contributions; the head of the law does make this cruel choice.

xxxii. Were the head of the army to take, in that way, £10,000 a-year for himself, he would not take more than £10,000 from those on whom he levied the money. The head of the law, who takes £10,000 a-year for himself in the way of *fees,* does take (as above) a vast many times as much as £10,000 from those on whom he levies such his money.†

xxxiii. A tax so called is (generally speaking) a tax upon *prosperity:* a tax upon the injured suitor, or upon the injured man, who would have been suitor, but who for want of money cannot pay the tax, is a tax upon *adversity.*

xxxiv. The legislator who imposes taxes on litis-contestation, under the name of *taxes,* establishes a cruel grievance: the legislator who imposes taxes under the name of *fees,* establishes a still more cruel grievance. His parallel is only to be found in the surgeon who should drag a patient out of a sick-bed when suffering under gout, rheumatism, or stone, and flog him for the purpose of obtaining payment for dressing his sores.

xxxv. All this, notwithstanding the practice of employing this mode of remuneration in the case of Judges in general, and thereby in the case of an Equity Court Judge in particular, has been defended and recommended for continuance: sole ground of defence, the *exertion* of which this mode of remuneration is alleged to be productive. Answers to this allegation, these:—

xxxvi.—1. The alleged advantage, supposing it reaped, would be reaped by these persons alone, to whom by the judges so remunerated, what is administered under the name of *justice* is, as above, sold: it would not be reaped by any of those to whom that same boon is utterly denied; and these, it has been seen, are hundreds of times or thousands of times as numerous as those. Here, then, is the most favourite supposition; here, then, is an advantage which is not worth a hundredth or a thousandth part of the price paid for it. Lawyers, in all they say—in all they write—assume justice to be accessible—universally accessible: whereas inaccessibility is the rule, accessibility only the exception.

xxxvii.—2. But in no one instance can the extra-exertion in question be in any degree actually produced by any such fee; nor, consequently, the supposed advantage reaped. If the extra-exertion were made, the occasions on which it was made, would be those on which the Judge is occupied in hearing *vivâ voce* pleadings, or hearing or reading papers belonging to the suit; and on those same occasions, to be productive of that effect, it would be necessary that with the degree of the exertion, the amount of the fee, or the probability of the Judge receiving it, should receive increase. But on no such occasion has any such increase of remuneration in any instance been so received by him: nor can it be—the operations he receives his fee for, are operations performed by other persons. What is more—in no instance, by the alleged cause—namely, the receipt of the fee—can the alleged effect—namely, the extra-exertion—be produced; for, to be produced, it would be necessary that the exertion should increase with the fee, which is impossible.

xxxviii.—3. That which is thus impossible to be done by means of the instrument, the use of which is thus recommended, may be done to a certainty by other means: by

other means which require no extra cost. It is produced in so far as on his part assiduity is produced, and publicity, as to that which after hearing and seeing what is proper, he says or writes, has place. The greater the respectability and the number of the persons to whose minds he expects that what he thus utters will be applied, the stronger will be his exertion to save himself from that disapprobation which will attach itself to his conduct in proportion as it is blameworthy, and to obtain that approbation which will attach itself to his conduct in proportion as it is praise worthy.

xxxix. Conclusion, as above announced,—by the allowance of fees to the Judge, the design of the Dispatch Court would in a proportionable degree be frustrated.*

Enactive.

Art. 3. To every subordinate of the Judge applies art. 2, as well as to the Judge himself.

Ratiocinative.

Art. 3*. Receipt of fees, why interdicted to all subordinate judicial officers?

Answer.—Reasons:—

i. Because, were not this same extent given to the interdiction in this case, the interdiction to the Judge would be without effect.

ii. These several functionaries, in their several situations, being so many instruments in the hand of the Judge—instruments, without which it would not be in his power to produce the effects for the production of which he is located,—it is matter of necessity, that upon his will should depend their existence in their several situations. That by the Judge each such subordinate should, in case of inaptitude sufficiently proved, be dislocable, and accordingly dislocated, is therefore matter of necessity.

iii. And that on each vacancy, the new functionary should, by the Judge in being, be located, is desirable; he having an interest greater than any other individual has in the making of an apt choice.

iv. But, by every fee received by any such subordinate of his, the effect produced on the mind of the Judge is in kind the same as if received by himself to his own use. The relation which in this case has place between the situation of the Judge and that of the subordinate, is that which has place between *locator* and *locatee;* in ecclesiastical language, between *patron* and *incumbent;* in familiar language, between *patron* and *protegé:*—as the value of the subordinate situation increases and diminishes, so does that of the superordinate.

v. On the mind of the Judge, not only is the effect producible by the fee received by his subordinate the same in *kind* as if received by himself, but it may be so even in *degree:* and this, in the case of each one of a number of these subordinate offices and officers.

vi. Or even greater: as in the case in which the location is not in the way of *sale,* but in that of *gift*—and thus in outward show gratuitous, and to the locator unprofitable. For, suppose the Judge to have a son, to whom, out of his own money, he was about to make over an allowance of £500 a-year for his life: and a vacancy happening, in an office in the father's gift, to which is attached a mass of emolument to that same amount, the Judge gives to his son this office, and thereby saves to himself the expenditure of this same part of his own income. In this case the patronage is worth even more than the incumbency: for, in the money-market phrase, the life of the son is of course worth more than the life of the father: it may be worth several times as much.

vii. But what, under the fee-gathering system, may happen but too easily, is—that so great may be the number and value of the subordinate offices in the gift of one and the same patron, that, in comparison with the value of the patronage attached to it, the value of the remuneration attached to the superordinate office may be in any degree inferior.

viii. Be the business what it may, in so far as *relish* for it is a cause of aptitude for it, purchase by the locatee is presumptive proof of his aptitude; the greater the price, the stronger the presumption:—and so, on the other hand, of inaptitude,—comparative at least, in comparison with purchase,—is the presumption afforded by acceptance from *gift.* Be the purchaser's aversion to the business ever so strong, and his inaptitude ever so flagrant, if pay is attached to it, a man who has no other means of subsistence, office and pay together, will accept of it rather than starve. Rather than starve, the most arrant coward would accept gladly not only the commission of a military officer, but even the situation of a private; while, had he any other means of subsistence, not a penny for it would he give.*

Enactive.—Expositive.

Art. 4. Correspondent to the length of the Judge's *term of service,* will of course, in respect of *duration,* be the value of his remuneration. Whatever be the limit prescribed to the duration of this Act, the same will, in course, be prescribed to the continuance of the Judge in this his office, and thence to that of his salary. *For the duration given to this Act, see below.*

Ratiocinative.

Art. 4*. The institution—why thus made temporary?—*Answer:* That it may be seen that only in the event of its affording assurance of preponderant benefit, will the community be burthened with it, and the established course of regular procedure be subjected to that interruption and disturbance, which, after all endeavours used to minimize it, cannot but in some degree have place.

Enactive.—Instructional.

Art. 5. Should this act not receive continuation, it will be for the consideration of Parliament whether to grant to the Judge of the Dispatch Court and his subordinates, any and what *pensions of retreat.*

Ratiocinative.

Art. 5*. Of the office of the Judge, with the remuneration annexed, the duration, why thus made temporary, and no pension of retreat secured?

Answer.—Reasons:—

i. Because by this means the force of the motives to exertion and manifestation of appropriate aptitude in all its branches, in so far as depends upon the *will,* is maximized. Were a pension of retreat made secure to him, the exertion of the Judge might slacken, if in his natural disposition indolence, or a preference for other occupation, had place.

ii. True it is, that if, by the uncertainty thus attached to the continuance of the remuneration, an individual more apt than any other who could be found were deterred from the acceptance of the office, here would be a bad effect to set against the good produced by the saving in expense. But, no such undesirable consequence seems likely to have place. So manifest, and in case of success so vast, will be the service done to the community in respect of *justice,* that, on the supposition, though it were but a moderate degree of appropriate aptitude on the part of the benemeritant functionary (*moral* aptitude in the shape of *sincerity* included,) to any individual desirous of the situation, and feeling himself competent to it, the continuance and perpetuation of the institution could scarcely fail to present itself as indubitable. Families in such number rescued from absolute ruin! families so high in rank and opulence delivered from vexation and embarrassment! so quick the succession of the benefits thus conferred! scarce a day past without his beholding a fresh group of fortunate beings, beholding in him the author of their salvation! To crown the whole, the institution of the all-comprehensive and all-beneficent system of *Local Judicatories,* secured, and he the main instrument in the establishment of it! Considerations these, by which will naturally be inspired a degree of animation, much beyond any that could reasonably be looked for, in the situation of a Judge, serving with the same quantum of remuneration in the ordinary course of judicial service.

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SECTION III.

REGISTRAR, &C.

Enactive.

Art. 1. Officiating under the judge of the Dispatch Court, will be a Registrar thereof.

Enactive.—Instructional.

Art. 2. Functions of the Registrar these:—i. To enter, or cause to be entered, on record—in proportion as they have place—all the several proceedings carried on in the *Judicatory:* to wit, whether in the *Justice Chamber* in which the Judge holds his sittings, or in any office or offices thereto belonging: under the name of *proceedings* being included all judicial *operations* at large, and *operations,* consisting—1. In the *penning,* subject to the direction of the Judge, *written instruments* destined to remain in the office; 2. In the *issuing* all such as are destined to be issued therefrom; and, 3. In the *receiving* all such as are thereinto delivered: instruments of all sorts constitutive of *documentary evidence* included.

Art. 3.—ii. To enter, or cause to be entered—in the very words in which they have been expressed—*minutes* of all portions of the matter of discourse, which, being relevant and material with relation to the proceedings of the Judicatory, have been uttered during any sitting of the Judge, by any person, of any description whatsoever, therein present: whether functionary, party, party's assistant, extraneous witness, or individual at large.

Art. 4.—iii. To keep in his custody the originals of all such instruments and minutes, and all such copies thereof, as the nature of the service shall require to be kept.

Art. 5.—iv. To enter memorandums of all such material circumstances as have taken place, in, or in relation to, the Justice Chamber, during the sitting of the Judge; or in, or in relation to, any office or offices belonging to the Judicatory.

Art. 6.—v. Under the direction of the Judge, day by day, with all practicable regularity and dispatch, to cause to be printed and published, for the information of the public in general, the minutes of each day's proceedings.

Art. 7.—vi. Subject to the directions of the Judge, to frame, and by his signature authenticate, all instruments, whether stationary or missive, expressive of the mandates of the Judge.

Art. 8.—vii. To give execution and effect to all *mandates* of the Judge, uttered for the purpose of causing to be fitted for, and applied to, their respective uses, any of the several instruments, or other documents, issued from, written in, or delivered into, the

Registrar's official chamber, or say office; and to preserve and keep in order, all such as are designed to be therein preserved.

Ratiocinative.

Art. 8*. To all the several portions of discourse uttered, and material occurrences taking place, why give permanence and publicity as above?

Answer.—Reasons:—

i. That the portions of discourse, and minutes of occurrences, may at all times be forthcoming, and in readiness to be applied to their several and respective uses.

ii. That, considering the magnitude and importance of the powers unavoidably entrusted to the Judge, provision the more effectual may thereby be made, for his eventual responsibility, in respect of the exercise given to these same powers.

Enactive.

Art. 9. Salary of the Registrar, [£ NA] a-year: payable in the same manner as, per Section II, the salary of the Judge.

Art. 10. Officiating under the Judge of the Dispatch Court and the Registrar thereof, will be a *Short-hand Writer.* His function, the minuting down in *short-hand* all the several material discourses, in art. 2, 3, and 5, mentioned; in short-hand rather than in ordinary hand, for the purpose of the saving thus made in *time.*

Art. 11. Salary, [£ NA] a-year: payable in the same manner as the salary of the Judge.

Art. 12. Officiating under the Judge and the Registrar will be *Clerks,* in such number as, in and by the joint certificate of these their superordinate, shall have been certified to be necessary for the adequate dispatch of the business of the judicatory. Of this certificate, entry will be made in the books of the Registrar's office; and, an examplar thereof being transmitted to the office of his Majesty's Treasury, provision under the head of *Contingencies belonging to the Dispatch Court,* will accordingly be made, of the salaries respectively allotted to these same functionaries.

Art. 13. Located by the Judge,—and, by him, at all times, for reasons assigned, dislocable or suspendible,—will be the *Registrar* of the Dispatch Court.

Art. 14. Located by the Registrar,—and, by him, at all times, for reasons assigned, dislocable or suspendible,—will he the *Shorthand Writer* of the Dispatch Court.

Art. 15. Located by the Registrar,—and, by him, at all times, for reasons assigned, dislocable or suspensible,—will be the several *Clerks* of the Dispatch Court.

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SECTION IV.

ELEEMOSYNARY ADVOCATE.

Enactive.

Art. 1. Among the arrangements appertaining to the proposed system of *Local Judicatories,* an effectual one being the institution of an *Eleemosynary Advocate,*—provision for the securing of appropriate aptitude, on the part of functionaries eventually located in that office, will herein be made, in manner hereinafter following:—

Expositive.

Art. 2. By an *Eleemosynary Advocate,* understand—a functionary whose office consists in the rendering gratuitous assistance to a party on either side of the suit, who, by relative indigence, is rendered unable to afford the remuneration requisite to the obtainment of professional assistance.

Art. 3. Authorized hereby is every Barrister, whether of the English or the Irish Bar, to act as Eleemosynary Advocate, on either side of a suit, in the Dispatch Court.

Enactive.

Art. 4. Remuneration, in *possession,* in the shape of salary, or, in any other shape at the public expense, any more than at private expense, not any:—remuneration in *expectancy* will be the situation of Eleemosynary Advocate, with a salary, in one or other of the proposed Local Judicatories.

Ratiocinative.

Art. 4*. In the Dispatch Court, why no such situation as that of an Eleemosynary Advocate filled exclusively by a determinate individual, with or without a salary?

Answer.—Reasons:—

i. In the instance of this situation, no place has that demand for remuneration, which has been seen to have place, as per Section II, in the instance of that of the Judge. No sacrifice at all, by officiating in the character of Eleemosynary Advocate in the Dispatch Court, will a Barrister, who as yet has no considerable practice as such, have to make.

ii. If a salary were provided,—by no more than one person, or at most some other very small number of persons, could the situation be occupied—the functions

exercised. No salary being provided,—the exercise of the function may, without inconvenience, be left open to as many as shall feel disposed to undertake it.

iii. The greater the number of those by whom this function is exercised, the greater the number out of which those to whom it belongs will have to choose, if and when the time comes for the filling the situation of Eleemosynary Advocate in the several proposed Local Judicatories.

iv. Note, that, of these Local Judicatories, there will require to be, at the least, nearer three than two hundred.

v. As to fear of any deficiency, in the desirable number, whatever it be, of persons ready and willing to give this exemplification of their aptitude for the fulfilment of the duty attached to this office,—no ground assuredly can there be for any such apprehension. Whatever manifestation a man makes of his aptitude for the exercise of this function on gratuitous terms, the same will he make of his aptitude for the exercise of this same function on the ordinary terms; and, upon these gratuitous terms, the faculty of exercising it will thus lie open to men, by dozens and by scores, by whom the faculty of exercising it on the ordinary terms would not have been attained.

vi. Analogous to the gratuitous practice of *medical* men in *hospitals,* will be that of juridical assistants of parties in the Dispatch Court. Strenuous, on every occasion, is well known to be the competition for the situation of physician or surgeon to a public hospital. Yet, in the view of no person other than colleagues and patients, does a medical man practise in a hospital: whereas in the view of the whole public will a candidate, as above, for the situation of Eleemosynary Advocate, give exemplification of his appropriate aptitude in the Dispatch Court.

vii. By the universality of the liberty thus given to all Barristers to practice in the capacity of Eleemosynary Advocates, that demand which will be seen to have place for *Deputes,* in the case of the Judge, the Registrar, and other Dispatch Court functionaries, will be seen to stand excluded.

viii. The greater the number of Barristers practising in the Dispatch Court, as above, in the character of Eleemosynary Advocates,—each in expectation of the situation of Eleemosynary Advocate in one of the Local Judicatories,—the greater the number of those who, by personal interest as well as affection, will stand engaged—they and their respective connexions—to lend such support as may be in their power, to the proposed measures for the institution of the system of Local Judicatories.

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SECTION V.

JUDGES', &C. DEPUTES.

Enactive.

Art. 1. *To obviate delay and failure of justice,* the Judge will, within [NA] days after the day of his location, locate a *Depute.* By this substitute his seat will be occupied, at all times during which the Judge, his principal, is taking the benefit of the *vacation* days (as per Section XII. *Sittings, times of,*) or is by *sickness* rendered unfit for duty.

Art. 2. Power to his Majesty, at any time within [NA] days after such location, to dislocate such locatee: power, in that case, and with obligation, to the Judge, within [NA] days after such dislocation, to locate a fresh Depute, with like power of dislocation to his Majesty, as aforesaid; and so, *toties quoties,* until a Depute shall have been located, of whom it shall have pleased his Majesty to approve. So likewise, *toties quoties,* in case of *self-dislocation,* or say *resignation,* by such Depute.

Art. 3. *To the end that such substitution of the Depute to his principal may never have place without sufficient cause,*—of the non-attendance of the Judge by reason of sickness, the Registrar will on that same day give information; that is to say, by a bulletin, transmitted to each of the London daily newspapers, evening or morning, whichever shall be next published; on receipt of which, the Editor of each such newspaper shall, with all practicable dispatch, give insertion thereunto.

Art. 4. On the first day of his attendance, after non-attendance by reason of sickness,—the Judge will, at the commencement of the sitting, make open declaration thereof: and, of such declaration the Registrar will forthwith make entry on the minutes of the register-book.

Art. 5. If, at any part of the Judge's vacation time, as above, it should happen to the Judge Depute to be non-attendant by reason of sickness, as above,—like notice of such sickness, and publication thereof, shall have place, as per art. 3: and, in this case, the Judge will be in attendance instead of his Depute, unless by distance from London, such attendance is rendered impracticable.

Art. 6. Power to the Judge, at any time, to dislocate or suspend his Depute, for special cause assigned: entry thereof will thereupon be made in the minutes; and copy of the instrument of dislocation delivered to the dislocatee. Power to the Judge, in this case, and with obligation, to locate a fresh Depute: obligation on the Judge, at the same time, his vacation time notwithstanding, to attend during [NA] days after such location, for the instruction of such his new Depute.

Art. 7. Responsible in damages will be the Judge, for any wrong, to any individual or body politic, or to the public at large, by any act, positive or negative, done by his Depute.

Ratiocinative.

Art. 7*.—i. Let it not be thought, that, by this obligation, any apt and competent person will be deterred from subjecting himself to this eventual damage. To serve their respective friends or connexions,—without remuneration, received or expected,—men of all descriptions are continually seen exposing themselves to this same risk; and this—even after, and in consequence of, proof of misconduct, in some determinate shape, in some individual instance, on the part of him for whom this risk is incurred: witness all instances of *binding to good behaviour,* by recognizance with co-obligors.

ii. In the present instance, slight will be the risk, valuable the compensation given for it:—slight the risk; for, from among all his acquaintance will the functionary have to select the object of his choice. Valuable, on the other hand, as will be seen, the compensation attached to this risk: valuable, notwithstanding the terms on which the Depute will have to serve. See this topic further pursued, below, art. 12*.

Enactive.

Art. 8. To no pecuniary remuneration in any shape, and in particular in the shape of *fees,* will be entitled any Judge-Depute located under this Act.

Instructional.

Art. 9. In addition to the power and dignity naturally and inseparably attached to his office,—a remuneration he will have, in the prospect of succeeding to the office, on the death or dislocation of his principal; and, consideration had of the peculiar experience obtained by him, and the relative aptitude evidenced by him, in and by the fulfilment of his duty, in respect of such his office,—his succession thereto will, in a manner, take place of course: saving always to his Majesty, his negative, as per Sect. I. art. 13, 14, 16.

Ratiocinative.

Art. 9*. As to service without pecuniary remuneration, it has place in some thousands of instances on the part of Justices of the Peace. True it is, that, on the part of those functionaries, the service is not obligatcry; and, on the free will of each one of them depends the *time,* and in good measure the *place,* in which it is performed. On the other hand, not having, unless by corruption, any pecuniary remuneration (with the exception of the small value in the shape of patronage in respect of the *fees* received by a *Clerk,)*—they have not any pecuniary remuneration, comparable in value to that which, as above, is in expectancy in the case of the Judge-Depute: and as to the obligation of duty,—in his case it extends not, for a certainty, beyond the small

quantity of vacation time allowed to the principal. As to the casual addition by his sickness, it is what may never happen: for it is what, in experience, has in many instances never happened.

Art. 10. Power to the Registrar to locate a Depute, in like manner as to the Judge, as per art. 1.

Art. 11. Power to the Registrar to dislocate, and from time to time suspend, *his* Depute, in like manner as to the Judge, per art. 6.

Art. 12. Responsible will be the Registrar for any wrong done by *his* Depute; in the same manner as is the Judge by art. 7.

Ratiocinative.

Art. 12*. Of the *deputation system,* applied as it is in general, and, in particular, applied as it is to the offices here in question,—namely, that of the Judge, and *that of the Registrar,*—but more particularly that of the Judge,—beneficial effects, these:—

i. Operating as an efficient cause of the *existence* of appropriate aptitude in the functionary: appropriate aptitude, that is to say, in all its branches.

ii. Affording an experimental *demonstration* of that same existence.

iii. Affording an indication of the *degree* in which, in the instance of each candidate, it has place.

iv. In case of deficiency to any amount in respect of any of these requisites,—affording facility of dislocation, with the least possible commotion on the part of the public mind, and with the least possible hurt to the feelings of the individual.

v. Produced by the deputation system as here applied, may be seen to be these so desirable effects,—all of them in conjunction, each of them in a manner and degree as yet without example.

vi. As to appropriate aptitude on the part of the Depute:—appropriate aptitude in all points taken together, and more especially moral aptitude. At each period of his service, the state of his mind in respect of this quality will depend—partly on what it was on entrance into the situation, partly on subsequentially intervening circumstances: say partly on *initial,* or say *original,*—partly on *subsequential,* aptitude. But, as to initial aptitude, in a prodigious degree more effective is the security afforded in this case, than that which is afforded in the ordinary mode of patronage. In the present case, responsible in a pecuniary way is the principal for the good behaviour of his depute: not so, in the ordinary case, the patron for his *protegé.* Mark now in both cases the consequence. In the case of the Dispatch Court,—to the Judge thereof,—that is to say, to the Judge Principal,—the aptitude of this object of his choice—of this partner of his fortune—of this his occasional proxy, cannot

possibly fail to be an object of attentive examination and sincere solicitude: while, in the ordinary case of a patron, no motive whatever, capable of making any approach to the degree of force adequate to the production of any such attention, has place.

vii. The risk thus incurred, as above already alluded to (art. 7*)—is it in the nature of the case that it should have any such effect as that of preventing a fit person from giving his acceptance to the trust? Not it, indeed: for, so says continual experience. So many instances, in which, in existing practice, one man joins in *security for the good behaviour* of another,—so many instances in which the *demonstration* is afforded. But, in *this* case, beyond comparison stronger is the inducement than in *those.* In those cases, on the part of the object of the confidence reposed, delinquency already manifested is an essentially concomitant circumstance: in those same cases, to set against, and afford compensation for, the risk, no benefit in any self-regarding shape has place: frequently, nothing in addition to the simple pleasure of *sympathy,* or say *benevolence:* while, in the present case, in compensation for a so much inferior risk, comes the benefit of rich patronage—the patronage of so high an office. And thus it is, that in so far as, in consequence of the good behaviour of the Depute in such his situation, he becomes eventually elevated by the competent authority to the rank of *Principal,*—the patronage of this important office is virtually, and, as it were, insensibly, transferred from an essentially unapt, into an essentially apt, class of hands: from hands indiscriminately occupied in the promotion of justice and injustice, to hands exclusively occupied in the promotion of justice.

viii. So much for *initial* appropriate aptitude: now as to *subsequential.*

ix or i. As to the *moral* branch.* Here may be seen each functionary's interest brought into connexion and coincidence with his duty, by the closest ties. Neither by delay nor by expense, neither by being lavish of the time nor of the money of other men, will any one of these functionaries have profit to gain in any shape; while, by the care taken to expend of both those precious articles taken together no more than the smallest quantity that, consistently with rectitude of decision, can be expended, reputation will every one of them have to gain;—reputation, which in his situation is everything.

x. or ii. As to appropriate aptitude, *intellectual* and *active.* Here, by each one of these Dispatch Court Judge Deputes, with a degree of instructiveness proportioned to the number of the suits that have passed through his hands, will be a sort of *apprenticeship* served, preparatory to the subsequent *mastership.* An apprenticeship? and in what occupation?—not (as the unknown political satirist phrases it) "in the indiscriminate defence of *right* and *wrong,*" but in the pure and undeviating pursuit and support of *right.*

xi. or iii. As to *manifestation* of the existence of this aptitude and of the degree of it,—in the Dispatch Court, in full view of the assembled public, by every one of these Deputes, will *demonstration* be, each day, made: each such Dispatch Court Judge Depute will be a *probationer,* with reference to a permanent situation in one of the contemplated Local Judicatories.

xii. or iv. For the seeking, or the acceptance, of a situation thus circumstanced, what encouragement could present itself to any man, who is not inwardly conscious of a competent degree of appropriate aptitude, in all its several shapes, as above distinguished.

xiii. or v. On the other hand, suppose the Dispatch Court out of the question, and the Local Judicatories instituted, with what promise of appropriate aptitude would they be to be filled? What proof tolerably conclusive, what proof so much as faintly presumptive, would be to be found anywhere else?

xiv. or vi. The greater the number of these Deputes, whom, without lessening through want of experience the probability of rectitude of decision, means could be found for employing in the Dispatch Court,—the greater would be the benefit produced in both situations: in the Dispatch Court, and in the Local Judicatories likewise. In the Dispatch Court, by augmentation of the number of the suits to which the relief in respect of the delay and expense would be administered; in the Local Judicatories, by augmentation of the number of the Judicatories, for which Judges, endowed with the thus demonstrated degree of appropriate aptitude, would be help up to view and presented for choice.

vii. Nor is the name *Depute* an invention of the present day. Besides the kindred name of *Deputy,* employed in so many Government offices (and to an extent so much greater than could be wished)—the institution indicated by the name *Depute* is, in *Scotland,* exemplified in the case of divers judicial officers. Witness *Sheriff-Deputes*:* though, of the use made of it in the *present* instance, no more than a comparatively small part would be found exemplified in *that* instance.

Art. 13. In respect of the several offices of Judge, Registrar, and Short-hand Writer, with their respective Deputes,—for *forms of* location, dislocation, suspension and relocation, *see Schedules* No. IV. to VII.

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SECTION VI.

JUDGE'S POWERS—EXEMPTIONS—CHECKS.

Introductory Note.

Satisfactory it cannot but be, and that in no small degree, to any one who enters upon a subject of such importance and difficulty as that embraced in this section, to have before him a preliminary sketch of the whole of the ground on which he is about to tread, as marked out by the prime and immediate divisions of it. Uses throughout derivable from this exhibition:—Association of clear ideas with the terms employed; relations, as well of accordance as of difference, which have place between the several objects all along made distinctly visible.

1. On the present occasion, as on every other, to will the *end,* is to will the necessary *means.* By him by whom the end and the necessary means are thus willed—of those some of which are necessary, those which to him present themselves as most *desirable* will of course be willed and employed in *preference.* On the present occasion, those, whatsoever they may be, which to the community in question are deemed most beneficial and least burthensome, are those which will be endeavoured to be employed in preference to others.

2. End in view upon the present occasion: To the *existing mode,* or say *system* of judicial procedure, the utter and all-comprehensive inaptitude of which is regarded as demonstrated, namely the system styled the *regular,*—the substitution of the assumed completely apt *summary mode* or say system; that is to say, after application made to it of such ulterior powers and arrangements as the all-comprehensive extent hereby given to it will be seen to necessitate: the measure of aptitude being the degree of conduciveness to the aggregate of the ends of justice.

3. Among the *means* necessary will be seen to be the *powers, exemptions,* and *checks,* following: checks—that is to say, to those same powers, and to the power-conferring effect of those same exemptions.

4. In relation to the powers in question, subject-matters of consideration, with reference to that same *end* and those same *means,* the following:—

i.*Persons*—that is to say, *sort* of persons, to whom the powers in question are proposed to be given: say, *power-holders,*[*] who?

ii.*Exemption-holder*—that is to say, sort of persons to whom the exemptions in question are proposed to be given, who?

iii.*Checks* proposed to be applied to the exercise of those same powers and to the use made of those same exemptions: say, *checks applied,* what?[†]

iv.*Subject-matters* on, over, or in relation to which, the several powers are to be exercised: say, *subject-matters of operation,* what?

v. The *powers* requisite to be exercised, on, over, or say in relation to those same subject-matters: say, *powers exercisable,* what?

vi.*Operators* by whom, on the occasion of the exercise given to the several powers, the correspondent operations are performed: say, *operators,* who?

vii. Relative *time* of the *operations* by which such exercise is given to those same powers. This will be seen to be—1. in some instances, *actual;* 2. in other instances, *eventual.* Eventual only will of course be the punitive power, for whichsoever of three special purposes exercised:—namely, surmounting obstruction or resistance, or securing subsequent obedience.

viii.*Purposes* for which exercise will be to be given to these several powers: say, *purposes,* what?

ix.*Occasions* on which, for these several purposes respectively, exercise may come to be given or require to be given to those several powers: say, *occasion,* what?

5.—i. On the present occasion, sole *power-holder* the Dispatch Court Judge.

ii.*Exemption-holders,* he and the persons by whose hands he operates.

iii. Persons to whom the *checks* apply, those same *power-holders* and those same *exemption-holders.*

6.—iv.*Subject-matters* of operation:—1. *things;* 2. *persons.*

7.—i. The *things* in question are either—1. *intrinsically valuable;* or, 2. *relatively valuable.*

8. By things *relatively-valuable,* understand things which are such with relation to things infrinsically valuable. Such are all documents and other written instruments of which it may be of use to the Judge as such to have possession: principally for the purpose of determining the disposition to be made of things intrinsically valuable, and giving facility to the making of it. In the number of these same things relatively valuable, will be all those the possession of which may be necessary to the application of any of the powers here in question.

9. Things *intrinsically valuable* are either—1. *corporeal*—or 2. *incorporeal,* or say *fictitious.*

10. Things *corporeal* are—1. *immoveable;* for example, portions of land, with or without edifices thereon erected, or works therein made; 2. *moveable;* 3. *complex*—that is to say, composed of things immoveable, with or without *moveables* thereto belonging; and with or without things *incorporeal* spoken of as attached or otherwise belonging to things or persons.

11.—ii.*Persons* on or in relation to whom, in quality of subject-matters of operation, powers will have to be exercised, are either—1. *official* persons, or say *judicial functionaries;* or, 2. persons *at large.*

12. The *official* persons are *judicial subordinates.* These subordinates are either—1. those which are such with relation to the judge himself; or, 2. those which are such in relation to the judges of other courts; and in particular the Equity Courts here in question.

13.—v.*Powers* exercisable in relation to these same subject-matters. These are distinguishable into—1. Powers considered without reference to the *application* made of them; or say, *powers in* the abstract; 2. Powers considered with reference to and expressive of the application made of them; or say, the several *purposes* to which the exercise given to them applies itself;—say, *powers applied.*

14.—i. Powers in the abstract, are—1. the *prehensive;* followed of necessity by 2. the *dispositive;* 3. the *imperative.* Followed of course by, and correspondent to, power *prehensive,* is, in every instance, in relation to the same individual subject-matter, power *dispositive:* for whatsoever subject-matter is for any purpose of justice taken in hand, whether it be thing or person, must for that same purpose be in some ulterior way disposed of. For the several modifications of the disposition capable of being thus made, see below, *Power applied.*

15. Applicable as well to persons as to things, are—1. the *prehensive;* and 2. the *dispositive:* owing to the nature of the subject-matter, applicable to persons alone and not to things, is the *imperative.*

16. According to the nature of the act by which compliance is manifested towards the exercise given to it, power imperative is either—1. *jussive,* or 2. *inhibitive,* or say prohibitive: *jussive,* where it is by relative *motion* that the compliance is manifested; *inhibitive,* where it is by relative *rest* that the compliance is manifested. *Positive* is the name given to the act when it is by relative *motion* that it is to be performed, or say exercised; *negative,* when it is by relative *rest.* Synonymous to a *negative* act, is an act of forbearance, or say abstinence; corresponding verb, to *forbear,* to *abstain from.*

17. Reference made to the relative time of the ministerial negative act called for, an inhibitive power is distinguishable into—1. *perpetually inhibitive;* or, 2. *suspensive,* or say *sistitive.*

18. Considered as being productive of the effect sought by the exercise given to it, power *imperative* is termed coercive; the effect, coercion:—power *jussive,* compulsory, or say compulsive; the effect, compulsion:—power *inhibitive,* restrictive; the effect, restraint.

19.—ii. As to the *applied* powers, the names of which are taken from the consideration of the particular purposes to which they are applied, those which on the present occasion there will be need for the employment of, are the following. They constitute the result of the *first division* made of the great aggregate: some of them

will of course require to be subjected to *ulterior* division, as the objects requisite to be presented to view become more and more particular, and less and less extensive. Powers thus applied are these:—

20.—1. Power *sistitive.* Of the *imperative,* this will be seen to be the *inhibitive* branch, applied by the Dispatch Court Judge to the special purpose of stopping ulterior proceedings in the existing Courts, and in particular the Equity Courts, in which he finds the several suits carrying on, the cognizance of which requires, for the purpose of this system of dispatch, to be transferred to his hands. Operator magisterial, the Dispatch Court Judge: operators ministerial, the appropriate subordinate functionaries belonging to those same existing functionaries. See below, tit. *Operators.*

21.—2. Power *evocative.* Of that same *imperative* power, this will be seen to be the *jussive* branch applied to the special purpose of causing to be transferred into the possession of the Dispatch Court Judge the subject-matters requisite:—1. Operations; 2. Things; 3. Persons—are these same subject-matters:—1. Operations, or say acts, the several acts which may have to be performed in the course of the proceedings by which commencement, continuance, and termination, will be given to the suit thus evoked into the Dispatch Court:—2. Things, the several things intrinsically valuable, and relatively valuable, the possession of which may become necessary to the exercise given by him to the aggregate of his power: whether things corporeal or incorporeal; corporeal, whether moveable or immoveable:—things relatively valuable, the several written instruments and other documents, if any, that have been exhibited in the coart *à quo* on the occasion of the suit:—3. Persons, for the special purpose of securing the transference of those same things, and eventually for the elicitation of any such evidence as it may be found necessary to call for at their hands.

22.—3. Power *punitive:* exercisable on all persons omitting to pay obedience, or applying resistance or obstruction to such power imperative as the purpose in question may require to be exercised by the Judge. Special purpose of it:—by the fear of it, securing obedience to corresponding mandates by the issuing of which exercise is given to the imperative power in its several branches, as above.

23.—4. Power *remunerative:* exercisable for any special purpose, in so far as fear of punishment is insufficient for the accomplishment of that same purpose. Note, that remuneration, involving in it the necessity of eventual punition for the purpose of obtaining the matter of reward, is in its nature more expensive than *punishment;* besides being, to a great extent, less certain in respect of the production of the effect aimed at.

24.—5. Power *satisfactive:* exercisable in relation to persons, if any, by whom suffering shall have been incurred in consequence of *aid* lent to prehensive power when employed in the endeavour to produce obedience or surmount resistance or obstruction. Included in *satisfaction,* is *compensation.*

25.—6. Power *self-extensive:* exercisable in so far as by experience, or well and specifically-grounded and assigned anticipation, the several other powers hereby instituted and conferred may have come to be, in the eyes of the Dispatch Court

Judge, insufficient for the accomplishment of the all-comprehensive end or purpose of this Act. As to this power, see art. from 71 to 92.

26.—7. Power *self-regulative:* power of making any such ulterior *general* regulations as may be found necessary to the accomplishment of that same general end or purpose: both these powers being, as per article 99, subject to instant *disallowance* by any one of the three several conjunctly supreme constituted authorities: namely, King, Lords, and Commons.

27.—vi.*Operators.* These will in the first place require to be distinguished into—1. those by whose acts exercise is given to the several powers—say *magisterial,* the several power-holders; 2. those by whose acts submission, or say compliance, is manifested in relation to the exercise given to those same powers—say *ministerial* operators.

28. In both cases, the hands employed in the operation may be either the person himself, who is spoken of as the operator, or those of some other person acting in his stead. In the first case, the operation and the operator may be said to be immediate; in the other case, unimmediate. In the first place, calling in aid the Latin language, the operation may be styled an operation *propriâ manu;* in the other case, an operation *alienâ manu.*

29. Note, that where the operator is the Judge, and the power exercised is the imperative, the hands employed by the Judge will naturally and most probably be his own; the operation, an operation *propriâ manu.* Where the power exercised is the *prehensive,* if the subject-matter be a thing corporeal or a person, the hands employed will be those of a subordinate, styled accordingly a prehensor; the operation accordingly, in so far as the Judge is operator, an operation *alienâ manu:*—in so far as it is a thing incorporeal, and thence not tangible, the act of prehension will, like the thing said to be prehended, be but fictitious; and, as will be seen, the power really exercised the *imperative;* and thence the operation performed, an operation *propriâ manu.*

30. In so far as delegated authority has place, the distinction between operations *propriâ manu* and *alienâ manu* has place: the party delegating, operating *alienâ manu;* the party delegated to, operating *propriâ manu.*

31.—vii. Relative *time.* Under this head, nothing presents itself as requisite to be said in addition to what is above.

32.—viii.*Purposee,* according to the most general and comprehensive description that can be given of them, to the accomplishment of which the exercise given to several of the above-mentioned powers requires to be directed, these:—

33.—1. Giving execution and effect to the ultimate *decree,* or say *judgment,* which the Judge, on the consideration of the law applying to the case, and the facts belonging to the case, as presented to his view by the evidence, may see reason to

pronounce at the conclusion of the suit of which he has taken cognizance. Call it the *ultimate,* or say *execution-performing* purpose.

34.—2. Making appropriate provision before-hand for such execution and effect: namely, by securing the eventual forthcomingness of the several subject-matters, real and personal, necessary. Call it the *instrumental,* or say *execution-securing* purpose.

35.—3. Securing the exhibition of such appropriate and needful *evidence* as the individual suit in question happens to have afforded: namely, by securing the forthcomingness of the source of the evidence in each instance; the source, whether personal, real, or written,—written, consisting of personal exhibited through the medium of real. Call it the *evidence-securing* purpose.

36.—ix.*Occasions* on which exercise may come to be given, or require to be given, to the several above-mentioned powers. When considered in the most general point of view, these may be said to be as follows:—

37.—1. For exercise to be given to power imperative, need of obedience, or say compliance, for the several *purposes* in question, as towards the several mandates requisite to be issued by the Dispatch Court Judge.

38.—2. For exercise to be given to the prehensive power, disobedience, resistance, or obstruction, manifested to the exercise of the imperative power. Subject-matters on this occasion operated upon, as above: *persons* of all descriptions, things of all sorts, to the prehension of which resistance or obstruction is opposed; or to the subsequent disposal of them according to their several destinations.

39.—3. For exercise to be given to power satisfactive, power compensative included, need of compensation for damage sustained by aid lent in case of necessity to functionaries occupied in surmounting resistance or obstruction, as above.

40.—4. For exercise to be given to power remunerative, need of the motive produced by hope of good, in aid of the operation of the motives produced by fear of evil, as applied by exercise given to power punitive, for the purpose of surmounting resistance or obstruction, as above.

41. To one or other of these heads will be found referable whatsoever operations require to be performed, or written instruments to be exhibited, in the course of *judicial procedure,* whatsoever may be the subject-matter of the suit:—of procedure, whether in a case called *civil,* or in a case called *penal.*

Enactive.

Art. 1. The Judge of the Dispatch Court, when, and so soon as, he has determined to take to himself the cognizance of any suit at that time depending in any one of the Equity Courts in question, will make the arrangements requisite for staying all proceedings in that same court. Name of the *mandate,* by the delivery of which such stoppage will be effected, a *Sistition mandate. Form as per Schedule* No. VIII. For the

course to be taken, for determining whether or no to take cognizance of the suit, see Section X. *Suits cognisable, &c.* and Section XIV. *Examination of Solicitors.*

Enactive—Instructional.

Art. 2. Persons, to all or any of whom such his *sistition mandate* will, upon occasion, be addressed, the following:—

i. The Town Solicitors, and where need is the Country Solicitors, of the several parties to the suit.

ii. The several parties to the suit.

iii. In the three several branches of the Chancery Court,—to-wit, the Lord High Chancellor's, the Vice Chancellor's, and the Master of the Rolls' Courts,—the several Masters in Chancery.

iv. In the Equity side of the Exchequer Court, the Remembrancer.

v. Any other persons, if any such there be, to whom, for the effectuation of the stoppage, it is, in the judgment of the Dispatch Court Judge, necessary that such *sistition mandate* be addressed.

In so doing, it will be his object—to produce the requisite effect, in the speediest manner, and with the fewest mandates possible.

Art. 3. In a case in which the Equity suit is by a Bill of Injunction, having for its object the staying the proceedings in a Common Law suit,—power to the Dispatch Court Judge, to take cognizance of such Equity suit, in the same manner as of any other Equity suit; and in the same manner to hear and determine, and give execution and effect to the suit: and, for this purpose, to issue *sistition mandates,* if necessary, to any functionaries employed, or about to be employed, in the *Common Law* suit, the proceedings in which had been, by the Bill of Injunction, stopped; as well as to attorneys and any other persons concerned. As to Ecclesiastical and other Courts, see Arts. 69 and 70.

Enactive.

Art. 4. Exceptions excepted,—*persons* of all sorts—*things* of all sorts, *written instruments* included,—for dealing with all such matters, in all such modes as for the purposes of this Act, that is to say, the establishment and employment of the new judicatory in question, may be requisite and necessary, power is hereinafter given to the Dispatch Court Judge.

Instructional—Expositive.

Art. 5. *Prehension.* In this may be seen an operation, the performance of which may be requisite and necessary, in relation to *persons* of almost all sorts, and *things* of all sorts without exception.

Instructional—Expositive.

Art. 6. *Prehension and Imperation.* In this may be seen the operation, which it may be requisite and necessary to perform, in relation to persons of all sorts, exceptions excepted, as per Article 27—prehension, that is to say, in some instances, without need of antecedent imperation; in other instances, not unless and until imperation relative thereto has antecedently been performed.

Art. 7. In relation to the same subject-matter, followed, of course, must exercise given to power prehensive be, by exercise given, in some shape or other, to power *dispositive:* for whatsoever is for any purpose of justice taken in hand, will, in some ulterior way have to be *disposed of.*

Enactive.

Art. 8. *Power Prehensive and Dispositive.* Power to the Judge to cause *prehend,* and, for the general purpose of giving execution and effect to his decrees and other mandates, to make *disposal* of all such matters, the disposal of which is, in any way, necessary to the fulfilment of any purpose of this Act.

Expositive.

Art. 9. Subject-matter, *relatively* valuable,—subject-matter *intrinsically* valuable: under the one or the other of these heads will all the subject-matters here in question be comprised.

By subject-matters *relatively* valuable, understand all such as are so, relation had to the suit, be it what it may, which, on the occasion in question, for the purpose of this Act, the Judge is thus taking out of the hands of any at present existing Court, into his own hands.

Art. 10. Necessary to the enabling him to make disposal of all such intrinsically valuable things as are subject-matters of the suit in question, will be the possession of those same relatively valuable subject-matters: possession, that is to say, in conformity to their several and respective natures.

Enactive.

Art. 11. In relation to every suit, of which he takes cognizance, power is accordingly hereby given to the Judge, as far as may be, to take into his possession* all such *documents* as at that time are, or shall thereafter have come to be, in the possession of

the Equity Court, in which such suit is in pendency; to-wit, whether such Court be the Master of the Rolls' Court, the Vice-Chancellor's Court, or the Lord High Chancellor's Court.

Art. 12. For this purpose, he will issue, addressed to the Registrar of the High Court of Chancery, his *document-transference mandate:* tenor of it *as per Schedule No. IX.,* giving therein notice of a day, on or before which the matters in question shall be delivered to the Registrar of the Dispatch Court, together with a *list* of the documents so delivered, and of all others, if any, which are *expected,* and a certificate, declaring that the articles in that same list contained, are all that have been respectively received or expected.

Art. 12*. The power of taking* into his possession the documents belonging to the suit, why thus conferred on the Judge of the Dispatch Court?

Answer.—Reasons:—

i. To the original existing Equity Court, unless and until restored to it, as per Section XXIII. *Eventual Retro-transference of Suits,* they cannot be of any use.

ii. To the Dispatch Court it may very naturally happen to them to be of use.

iii. For guidance to subsequent relative proceedings, knowledge of those antecedent is, in the nature of things, generally speaking, necessary: and, to this general rule, the particular case here in question presents no exception.

iv. The principle is recognised in practice, in the case of the transference of the record from the Common-Law Courts in *Westminster* to the *County Courts at the Assizes,** on the occasion on which the *trial* is performed: that is to say, after an interval of six or twelve months, at the end of which, if anything is done, it is nothing more than the elicitation of the evidence; an operation which might so much better have been performed at the commencement.

Instructional.

Art. 13. In the most ordinary state of things,—on the part of the proposed defendant, the forthcomingness, besides the advantage of contributing to secure the performance of the service, as above, in the event of its being found due, will have the effect of throwing more light upon the state of the case, in respect of the matter of *fact,* than could be thrown upon it by the presence and examination of any *other* person: and, in this case, by such his presence, both these desirable purposes would be accomplished at the same time. But if, in consequence of such examination, as above, the state of the case appears to be such, that no benefit is likely to be produced, either to the other party or to the defendant himself, by such his attendance—at any rate, not till some light has been thrown upon the facts of the case by the examination of some *other* person or persons—in this case, not of the defendant, but of such other person or persons, will the examination be taken in the *next* place.

Thus much, as to things really existing, called by lawyers things *corporeal.* As for things *fictitious* (called by them things *incorporeal,* or in one word *rights,*) and that which *prehension* will be found to mean, when applied to them, and in particular those rights in the prehension of which functionaries under the name of sequestrators are wont to be employed in and by the Equity courts,—as to these things, for the prehension of *them,* no intermediate agent will be necessary.

Enactive.

Art. 14. If on the day so appointed, such transmission, as per art. 12, has not been effected, the Judge will, on the then next day or at any day thereafter, dispatch to the official chamber of the Registrar, a *Prehensor,* with directions to *prehend,* and bring with him the instruments in question, wheresoever they are to be found. For what belongs to a *prehensor,* see Section VII. *Prehensors, &*c.

Art. 15. To the exercise of this power should any resistance be made,—power to such prehensor to prehend and bring before the Judge, any or every person so resisting: whereupon,—after taking and making entry of the examination,—to wit, of all persons so resisting, and of any such other persons to whom it has happened to be in a condition to furnish evidence in relation thereto,—he will, if he thinks fit, whether for the purpose of procuring compliance, or for that of punishment for the transgression, commit any person so resisting, to any such prison in the city of London, or any one of the four thereto contiguous counties, as to him shall seem meet. Name of the *warrant,* or say *mandate,* issued for this purpose, an *Incarceration mandate.* Form thereof, as per *Schedule No. X.*

Art. 16. Term for and during which the incarceration produced by such commitment shall be appointed to continue,—any number of days, not exceeding seven entire days, exclusive of odd hours, reckoning from the moment of commitment:—the *hour* as well as *day* of liberation being in the mandate of commitment mentioned;—which said time may, as often as shall be judged by him to be needful, he renewed by a fresh *incarceration mandate,* and may at any time be terminated by a *disincarceration mandate.* Form thereof, as per *Schedule No. XI.*

Art. 17. To the exercise of such prehensive power should any resistance or destruction be opposed, power to the prehensor to give exercise to his appropriate *aid-compelling power,* as per Section VII. *Prehensor, &c.* art. 15.

Art. 18. For giving execution and effect to such *document-transference mandate,* as per art. 12, power to such prehensor to call upon any person belonging to any office appertaining to any such Equity Courts, to aid him in the *selection* of the appropriate instruments: and, in case of refusal, or apparently intended delay, in respect of the performance of such service, to prehend any such person, and bring him before the judge, who will accordingly deal by him as per art. 14, 15, 16.

Art. 19. Of all proceedings carried on in relation to the exercise given to any of the above powers,—including all *evidence* thereto relative,—the Registrar, under the direction of the Judge, will take minutes, and make entry in the register.

Art. 20. In these minutes will be contained not only the *evidence* elicited, but the *questions,* or say *interrogatories,* by which the several statements were respectively elicited; and in both instances the very words which were employed.

Art. 21. After such transference as above,—to whatsoever written instruments or other documents it shall have happened to be delivered in, or tendered to, any office belonging to the above-named Equity Courts (as per art. 11) the officer having the direction of the business of such office is hereby required, on the earliest day thereafter possible, to transfer the same to the office of the Dispatch Court Registrar (as per art. 12:)—and, to every such subsequently-received instrument, apply the powers for securing the transference thereof, as above:—and moreover, to these several provisions the Lord High Chancellor, Vice-Chancellor, and Master of the Rolls, are hereby required, in case of need, to do what depends upon them respectively towards giving execution and effect.

Art. 22. To the Equity side of the Court of Exchequer apply the several powers, by articles 11 to 20 applied to these several above-mentioned divisions of the Equity side of the High Court of Chancery: but in such sort, that whatsoever in those same Chancery cases applies to the *Registrar,* applies, in the case of the Exchequer Court, to the *Remembrancer.*[*]

Art. 23. Subject-matters intrinsically valuable, or in relation to which exercise may be given to the Judge's power of prehension, are—all subject-matters, of which in the nature of things the prehension is possible.[*]

Expositive.

Art. 24. These same subjects are either *persons* or things: things are either corporeal or incorporeal; things corporeal, again, are either immoveable or moveable. Follow exemplifications and explanations presently.

Art. 25. In relation to things *intrinsically* valuable, apply all the several powers as above, by articles 11 to 20 applied to the purpose of surmounting non-compliance, resistance, and obstruction to prehension and disposal of things *relatively* valuable.

Art. 26. *Purposes,* for which such prehension may be made—(prehension, whether of things or persons)—these:—

i.*Execution-effecting* purpose: giving execution and effect to that disposition of substantive law, on which the suit is grounded:—execution-effecting; or say, *ultimate* or *effective* purpose.

ii.*Execution-securing* purpose: securing to the Judge the means of effecting the aforesaid effective purpose, in the event of his seeing reason so to do:—*execution-security;* or say, *interlocutory, intermediate, interventional, provisional, enabling, instrumental,* or *defeasible* purpose.

iii.*Evidence-securing* purpose: making effective provision for the elicitation of such evidence as it has happened to the suit to afford, in relation to the several matters of fact on which the demand and the defence respectively shall have been grounded:—securing the elicitation of the evidence; that is to say, by securing the *forthcomingness* of the persons, things, and written instruments, or other documents, which are respectively the *sources* of it.

Instructional.

Art. 27. On the occasion of exercise given to the Judge's prehensive power,—mementos, which, for his guidance in respect of the *choice* to be made by him of subject-matters of such exercise, he is required to bear in mind, are these which follow:—

i. Introductory observation, this: not only in respect of the subject-matter of the suit, but in respect of money for incidental *costs,* may need of prehension have place. Hence, to any degree small may be the sums, for the discharge of which prehension may have to be made: and to any degree indigent may persons be, whose misfortune it is to have been made defendants.

ii. In making prehension for the *execution-securing* purpose,—take such subject-matters as are applicable to the *execution-effecting* purpose, in preference to such as are not.

iii. Accordingly, in preference to *persons*† take *things:* that is to say, things of all sorts—moveable, immoveable, and incorporeal.

iv. Among *things;*—in preference to those which are valuable to no person but the *owner,* and other things not valuable to the *plaintiff,* take such as are valuable to the plaintiff,—that is to say, capable of being rendered so by transference of possession, temporary or definitive.

v. In preference to things, by the prehension of which no effect can be produced, other than that of *burthen*‡ to the defendant,—take those by the prehension of which *benefit* as well as burthen is producible; that is to say, benefit to the acquirer thereof, as well as burthen to the loser.

vi. Among things, by the prehension of which benefit as well as burthen is producible,—take in preference those by which the *greatest benefit* to the plaintiff is producible, in preference to those by the prehension of which *no* benefit is producible to the plaintiff, or not so much as by the prehension of other things.

vii. Accordingly, in preference to things incorporeal, or say *rights* not transferable,—take things corporeal, or rights transferable.

viii. In preference to a thing, in which a third person,—that is to say, a person who is not a party to the suit—or say, who is a stranger to the suit, *has* an interest, or say a *share,*—take things in which *no* person other than the party in question has a share.

ix. Not that by any such extraneous interest any objection will be afforded, if it be clear that by the prehension of the thing in question, the interest of such stranger to the suit is not damnified; or, being damnified, will have received adequate *satisfaction* in every shape, *compensation* for the damage included.

x. Take, for example, the mode of prehension styled, under the existing system, *foreign attachment:*—stopping the payment of a debt due to the defendant in the suit; stopping the payment, that is to say, with a view to its being actually or eventually made to the plaintiff in that same suit; for, foras-much as the money is in all events to be parted with, it will commonly make no difference to the stranger to the suit in question, whether it be by the one party or the other that it is received.

xi. Of the case where, by the prehension, the interest of a stranger to the suit is liable to be affected, not this instance. At the hands, whether of an individual or of Government, the defendant receives,—in the shape of salary, for example,—a continuous remuneration for correspondently continuous service due. If so it be, that by abstraction made of the portion in question of such his pecuniary means, the service capable of being rendered by him is liable to be rendered less valuable to the stranger to the suit, as above, the detriment to the interest of the stranger will be to be taken into account.

xii. In preference to a subject-matter, of which the party has *not* the actual possession, but only in relation to it the *right* of possession, to be taken in future, absolutely or in contingency,—take one of which he *has* the actual possession. For example, to the prehension of an estate in land, in remainder or reversion, for the purpose of raising money by the sale of it,—take in preference an estate in possession, of equal marketable value. For, commonly, such thereafter-eventually-about-to-be-possessed estate will not sell, without more disadvantage to the party than in the other case.

xiii. Note, that if of things, by the prehension of which burthen alone is produced, prehension is allowed to be performed,—it is only, either for the *execution-securing* purpose, or for the *evidence-securing* purpose: for, if by *execution* no benefit to the plaintiff is produced, the only beneficial *execution-effecting* purpose is, instead of being fulfilled, disfulfilled. By the imposition of any such burthen, no good purpose other than that of punishment can in any shape be produced; and, for punishment, by the supposition, in the sort of suit in question (namely, a purely civil suit,) no demand has place. In a suit of this class, if any such demand has place, it must be on the ground of some *transgressions* committed *in the course of* the suit in the Dispatch Court.

xiv. Among things, by the prehension of which benefit to the plaintiff will be produced, as well as burthen be imposed on the defendant,—take those, by the prehension of which without lessening that same benefit, burthen the *least afflictive* will be imposed on the defendant, in preference to those, by prehension of which, burthen *more afflictive* will be imposed on that same defendant.

xv. Example.—For the *execution-effecting* purpose,—in preference to household goods or stock in trade, for the purpose of their being sold, take portions of Government annuities, commonly and familiarly called, money in the funds or stocks.

xvi. In preference to things for the prehension of which the *more complex,* and thence the less surely *effective* and more expensive, *mode of operation* is necessary,—take those for the prehension of which the *less complex,* and thence the more surely effective and less expensive mode will suffice.

xvii. Example: *here* likewise, the preference given, as above, to prehension of money in the funds.

xviii. Further exemplification of the mode of minimizing afflictiveness:—Whether it be for the execution-effecting or the execution-securing purpose,—take, in preference to *useful* household furniture, trinkets and furniture merely *ornamental:* and, in preference to necessary tools and other instruments of workmanship, household furniture, useful as well as ornamental; in a word, all such things as are *not necessary,* in preference to all such as *are.*

xix. For the purpose of effecting the transmission of a *right* to a valuable thing for the use of the plaintiff, at the charge of the defendant,—never will the Judge seek to employ the *unwilling* hand of another person, in preference to the effecting it by his own hand, or by willing hands under his command.

xx. Accordingly, only for the elicitation of *evidence,*—whether for the purpose of determining the right to the subject-matter in dispute,—or for the purpose of ascertaining the existence, and securing the eventual forthcomingness, of the things in question,—or of property of the defendant to be received in lieu of them,—will the Judge prehend the *body* of the defendant: never, for no other purpose than such as the compelling his signature to a *deed* by which the right to the thing in question is transmitted to the plaintiff, or to any person on his account. For, if effected by the signature of the Judge, the transmission of the property might be the work of no more than a single instant: if *endeavoured* at, by compulsion applied to the individual, it might be staved off for years, or be prevented altogether.*

Art. 28. On whatever occasion the Judge performs prehension at the charge of one party,—it will be his care to exact, at the charge of the party at whose instance, or in whose favour he performs it, such adequate *counter-security* against abuse, as the nature of the case, and the circumstances of the parties, appear to him to require.*

Enactive.

Art. 29. In regard to any mass of property, constituting the whole or any part of the subject-matter of the suit,—power to the judge to place the same, for the purpose of the suit, under the care and management of persons, one or more,—in such number as he shall deem requisite,—to be chosen and approved of, by joint choice and consent of all persons interested therein: and if, after the party or parties on one side have made their choice, the party or parties on the other side refuse,—or, after invitation

received, and adequate time allowed, omit,—to make *their* choice, nominating accordingly the same, or some other person or persons,—power to the Judge himself to make such choice and nomination in their stead. Name of a person so appointed, a *Consignee.* As to these, see Section VIII.

Art. 30. At the instance of any party to the suit, or of his own motion,—power to the Judge, at any time, to cause to appear before him, and submit himself to word-of-mouth examination, every such *Consignee,* or say *Trustee,* touching his proceedings on the occasion of the trust.

Instructional.

Art. 31. Note, that this *special* power he would have in virtue of his *general* powers. Sole cause of the special mention thus made of it,—maximization of the security against misconception and misinterpretation, in relation to a matter of such essential importance: to the end that the *efficiency** of this same security may be the more clearly and fully conceived.

Art. 32. Reciprocally beneficial will be the application made of these several powers: at the charge of the Plaintiff for the benefit of the Defendant, as well as at the charge of the Defendant for the benefit of the Plaintiff.

Instructional.—Ratiocinative.

Art. 33. For the *guidance* of the Judge, are these suggestions delivered; not, in any instance, for the imposing on him a peremptory *obligation;* forasmuch as, to an extent more or less considerable, in many instances, it is not on any one of these pairs of competing circumstances considered by itself, but on several of them considered in conjunction, that, upon the whole, the course most proper to be taken will depend.

Enactive.—Ratiocinative.—Expositive.

Art. 34. In vain would be created, and conferred on a Dispatch Court Judge, the powers in general terms above mentioned, if the giving special and effective exercise to them depended on the concurrence of any authority, co-ordinate or super-ordinate to his own.

Accordingly, deemed *wrongs,* and constituted *offences,* are hereby all acts having for their object or tendency, the frustrating or weakening the relief hereby intended to be administered to suitors and persons having need to become suitors; and against those wrongs, provided will be seen hereafter the several appropriate remedies, by means of the correspondent specific powers.

Acts hereby constituted offences, by whomsoever committed, whether he be a suitor, a public functionary, or an individual at large, are accordingly those here following:—

i. Non-compliance with, or say disobedience to, or non-observance of, any mandate issued by the Judge for the *sistition [Editor:?]* of the suit, or for the transference of any written instrument or subject-matter thereto belonging, as per articles 1, 5, 6, 7, 8, 12.

ii. Resisting the transference of any written instrument, or any other document, from any other Court to the Dispatch Court: resisting—that is to say, by physical force, in an immediate way applied.

iii. Obstructing such transference: obstructing, that is to say, preventing, or needlessly retarding it, or doing any act in the intention of preventing, or needlessly retarding it.

iv. Purposely forbearing, or through negligence omitting, to afford aid to such transmission, when, by or by authority of the Dispatch Court Judge, requisition of such aid has been made.

v. Of anything immoveable, resisting or obstructing, the *prehension* or *prehension-following,* or say *post prehensive,* legal *disposal,* when the thing has been prehended, or endeavoured to be prehended, by authority from the Judge, for any purpose of this act.

vi. So, of anything moveable.

vii. So, of any incorporeal subject-matter of property: in which case the resistance or obstruction may be figurative, corresponding to the nature of the subject-matter.

viii. Retaking, or endeavouring to retake, any written instrument or other document, or *thing,* immoveable or moveable, after prehension as above.

ix. Resisting or obstructing the prehension or consequent legal disposal—say, the *post-prehensive* disposal—made, of any *person,* when endeavoured to be effected, for or on account of, any such resistance, obstruction, omission, or recapture, as aforesaid.

x. Resisting, or obstructing, in the Justice-chamber, any of the proceedings of the Dispatch Court, during the sitting thereof.

xi. In relation to any relatively important matter of fact, endeavour used to produce deception in the mind of the Judge acting as such: endeavour, by whatever means—whether immediately, or through the medium of any other person, or of any thing; and whether by communication of deceptions information, by word of mouth, or in writing, or by any other signs, evanescent or permanent, or by suppression of instructive information.

xii. Liberating, or endeavouring to liberate, any person, by force or fraud, from any such prehension, or post-prehensive legal disposal, as above.

Exemplificative.

Art. 35. Of obstruction to the proceedings of the Dispatch Court Judge, during the sitting of the Judicatory,—exemplifications these:—

i. Motion, produced in any mode productive of that effect.

ii. Sound, produced in any mode, inarticulate or articulate, by its loudness, or otherwise, productive of that effect.

iii. In particular, ungrounded ill-will or contempt, by language, gesture, or deportment, manifested towards the Judge, or any other person, during the sitting of the Judicatory.

iv. Continuance to speak, after silence imposed by the Judge.

Art. 36. Of the modes of such effectuation of, or endeavour at, deception, examples are the following:—

i. False assertion; whether spontaneous or in answer to any question, or say interrogatory, put in relation to the suit in hand—whether by the Judge, or by any other person hereby authorized to put the same:—interrogatory, whether in the *oral,* or say word-of-mouth form, or in the written form: oral, including all other *evanescent forms of discourse;* written, all other *permanent* forms of discourse.

ii. Forgery, of, or committed upon, any document, employed or designed to be employed, or of a nature to be employed, in the character of evidence, in any suit transferred to, or instituted in, or designed to be transferred to, or instituted in, the Dispatch Court: forgery, whether *defalcative, fabricative,* or *alterative.*

iii. Suppression, as applied to any evidentiary document, in the form of *writing,* or in any other tangible and permanent form:—suppression, to wit, whether definitive (destructive included) or temporary; and whether of the document itself, or of the information of its existence.

iv. Personation: committed by the delinquent's pretending to be this or that other person.

v. Suppression of any material evidence which might otherwise have been *orally* delivered: suppression—of evidence, from whatsoever source, personal, real, or written; and whether by deception, by physical force, by intimidation, or by hope or receipt of remuneration.

vi. Production of, or endeavour to produce, by any other means, in the mind of the Judge, *deception* in relation to any relevant and relatively important matter of fact; relation had to the event or to the course of the suit.

Enactive.—Instructional.

Art. 37. *Evil-consciousness, and heedlessness,** or say, *want of due attention.* In meting out the quantity of punishment, the Judge will bear in mind, and hold up to view, the differences produced by these two circumstances, in the evil of the offence.

Ratiocinative.

Art. 37*. On evil-consciousness depends almost the whole of the evil of the *second* order, composed as it is of *danger,* and *alarm: danger,* of repetition by the delinquent himself, or others similarly circumstanced; *alarm,* produced by the apprehension of that same danger. As to the evil of the *first* order, it consists in the suffering actually felt by *individual sufferers,* where there are any such persons, as in the case of a private offence there are always—in that of a purely public offence, never. In the case of a purely public offence, where the subject-matter of the offence is a subject-matter of property—money, say, or money's worth—and nothing else, were it not for the evil of the second order, as above, no preponderant evil at all would be produced: no suffering to set against the enjoyment, the prospect of which constituted the motive to the offence. The evil of the second order, consisting as above of *danger* and *alarm,* is in the case of *heedlessness,* at the utmost small, commonly next to none; in the case of *evil-consciousness,* with intention naturally persisting, in *extent* in some cases commensurate with that of the whole country and its population—witness the case of an offence contributing to war, whether foreign or civil—it is in most cases *indefinite,* not to say *infinite.*

Enactive.

Art. 38. Power to the Dispatch Court Judge, to cause to be prehended and incarcerated, any person by whom any such frustration, as per art. 34, shall have been endeavoured to be effected:—*time* of prehension, the very instant after the commission of the offence, or as soon thereafter as may be; and this, whether the time and place of the endeavour be that of the *sitting* of the Judicatory, or, if need be, any other.

Art. 39. Term of incarceration, no longer than seven full days: but renewable at discretion, *toties quoties,* by a fresh mandate, or addition made to a former mandate, as often as the purpose shall be found to require.

Ratiocinative.

Art. 39*. Why such renewals, and these repeated at the end of such short terms?—

Answer.—Reasons:—

1. That by forgetfulness, the offender may not be left in a state of sufferance for a longer term than one week.

2. That the power-controuling eye of public opinion may be the more frequently drawn down upon the transaction.

Instructional.

Art. 40. *Safe custody* merely, or *coercion,** —whichsoever of these two different objects it is that the purpose requires, the Judge will, on this occasion, be careful to have in view.

Expositive.

Art. 41. Coercion is either positive or negative: positive, that is to say, *compulsive,* or in one word, *compulsion:* negative, that is is to say, *restrictive,* or, in one word, *restraint.*

Enactive.—Instructional.

Art. 42. If safe custody only be the object, his endeavour will be to find some apt individual, to whom, with the consent of the person to be placed under such custody, he may accordingly be so placed.

Art. 43. Only in case no such apt person can be found, will the offender in question be consigned to a prison.

Art. 44. Some one person being responsible as *consignee,* pecuniarily responsible may be rendered other persons, in any other number, in so far as necessary.

Art. 45. When *coercion* is the purpose—as for example, compelling disclosure, or actual delivery, of a *thing moveable,*—apt for this purpose, as consignee, can be no other person than the keeper of a prison.

Instructional.

Art. 46. In what prison the incarceration shall in this case have place, the Dispatch Court Judge will determine: regard being had to convenience in respect of nearness of the prison to the Justice-chamber, and aptitude of the accommodation capable of being afforded by it.

Art. 47. For the interval, during which a person about to be *consigned* to the custody of a friend of his choice, is on the look-out for such friend,—he will continue in the custody of a prehensor—principal or depute: and in such custody he will continue, and, if need be, go about in quest of such consignee, until the time allotted by the Judge for the purpose has elapsed.

Ratiocinative.

Art. 47*. Extinguished on this plan will be the delay, expense, and vexation, attached to the practice of *holding to bail,* as at present carried on.

Enactive.

Art. 48. On, or at any time after, such incarceration,—power to the Judge to liberate the offender, on his finding security for the eventual surrender of his body, in any such mode or modes, in, and by which, to all parties taken together, the least quantity of inconvenience (danger of loss included) promises, in his opinion, to be produced.*

Instructional.

Art. 49. Referable to one or other of four heads will be found every *remedy* capable of being applied to the *wrong* done by any maleficent act (those here in question included,) which, by prohibition, explicit or virtual, has been converted into an *offence:* namely,

i. The *preventive,* or say the *anticipative,* or *antecedently preventive.*

ii. The *suppressive.*

iii. The *satisfactive,* including the *compensative.*

iv. The *punitive,* or say the *subsequentially,* or *ulteriorly preventive.*

Remedies preventive or suppressive are the above powers, and such applications as are hereby intended to be made of them.

Instructional.

Art. 50. Persons by whom, for the application of any one of these remedies, the requisite proceedings may be instituted, these—

i. An individual alleging himself to be, or in danger of becoming, a sufferer by any hereby, as above, prohibited offence.

ii. His Majesty's Attorney-General.

iii. The Dispatch Court Judge himself, of his own motion.

Instructional.—Expositive.—Enactive.

Art. 51. Now, as to the *punitive* remedy. For the misdemeanours in art. 34 mentioned—all of them detrimental to the ends of justice in general, and to the end and purpose of this institution in particular,—the Judge will apply pecuniary

punishment, or say *mulct,* and imprisonment, or say *incarceration,* at *option* and at *discretion:* at *option,* that is to say, having the choice whether he will employ one of the two, and which, or both; at *discretion,* that is to say, having at his choice, in regard to whichever of them he employs, the quantity of it he will employ.

Instructional.—Exemplificative.

Art. 52. Note well—that the suffering, and thence the punishment, for the offence, does not commence, till after, and at the point at which, the enjoyment, and thence the profit, in all shapes, from the offence, is taken away: to-wit, by pecuniary loss, or by other punishment, to an equivalent amount. A *punishment,* which falls short of being equivalent to the profit by the offence, operates, by the exact amount of the difference, in the character of a *reward.* This, accordingly, will the Judge, in meting out the quantity of the punishment, be careful to bear in mind and to apply to practice.

Art. 53. Mulct, appointed for the species of offence (suppose) £5: profit by the individual offence, £10. Consequence of the proposed penal law, reward to the amount of £5. In name and outward show, the law is penal: in effect, it is remunerative: operating in a way the exact reverse of that which, in appearance at least, was intended.

Art. 54. In meting out the quantity of the mulct, the Judge will be directed not by the *absolute* quantity, but by the *relative* quantity, relation had to the pecuniary circumstances of the delinquent. In the breast of a person, by whom property is possessed to the value of £40,000, less suffering will naturally be produced by a mulct of £10,000, than in the breast of a person who has no more than forty shillings would be produced by a mulct of ten shillings. Such is the interpretation which he will accordingly put upon the statute, called the *Bill of Rights,* in which it is said, "*excessive punishment ought not to be inflicted.*"*

Art. 55. Offence, say *perjury,* or *subornation of perjury.* Punishment (suppose) transportation, or imprisonment with hard labour for seven years. Less afflictive might it be to the offender to lose half or more of his disposable property, though it were £40,000, or £400,000, than be subjected for that length of time to that species of punishment.

Instructional.

Art. 56. For information as to the pecuniary circumstances of the offender,—the Judge, in so far as in his judgment the relative amount of the mulct contemplated renders it *worth while,* will make special inquiry: and this, as well by the evidence of the offender himself, as by evidence from any other quarter, or say, extraneous evidence. As to this, see Section XIX.: see also, as to the undangerousness and positive advantage of the powers herein conferred, note at the end of Section XXIV.

Art. 57. For the bringing into the shape of money whatsoever he thinks proper to be taken in the way of mulct, the Judge will take into account, and so far as meet is, take

in hand and dispose of, whatsoever property the delinquent himself has power to dispose of.†

Enactive.—Instructional.

Art. 58. Exceptions excepted,—the pecuniary punishment, in so far as the means of undergoing it have place, will be preferred to the corporal.

Ratiocinative.

Art. 58*. The pecuniary, why preferred to the corporal punishment?

Answer.—Reasons:—

i. In the case of the pecuniary, to wit, out of the evil produced by the punishment, cometh forth—over and above the good consisting in the subsequentially-preventive efficiency of punishment, additional good: to wit, profit, applicable to the use of the individual wronged, or the public, or both, as the circumstances of the case may require: out of the corporal punishment,—good, over and above such preventive efficiency, none.

ii. In this case, imprisonment will be the punishment specially suited to the circumstances of the indigent,—pecuniary, to those of the opulent, offender.

Enactive.—Instructional.

Art. 59. Exception is—where of divers co-offenders one, being relatively indigent, is, as far as can be learnt, likely to receive for any mulct imposed on him, compensation at the hands of one or more who are relatively opulent. In this case, to the opulent it may be proper to apply, in addition to the pecuniary, the corporal punishment; lest after indemnifying his accomplice, he should be in receipt of net profit, in any shape, from the inefficiency of the punishment.

Enactive.—Instructional.

Art. 60. For the offence, be it what it may, where *pecuniary* is the shape in which, in the whole or in any part, the *punishment* is applied,—to the purpose of *satisfaction,* to wit, in the shape of *compensation,* for the suffering in all shapes produced on the part of individuals, will the produce of the mulct be applied, in preference to the public revenue.

Ratiocinative.

Art. 60*.—Reasons, these:—

i. Not less great is the subsequentially-preventive efficiency of the forced transfer, when employed to the profit of the individual, than if employed to the profit of the public revenue.

ii. Commonly it is even greater; inasmuch as (if there be any difference) if the *purse* into which the profit goes is that of the individual whom it has been his (the offender's) endeavour to cause to suffer, and to whom he accordingly bears ill will, the suffering produced by the contemplation of the profit and enjoyment by such transfer will naturally be greater than will be the suffering produced by the contemplation of it, if the receiving purse is that of the public at large, toward which no such ill-will was borne by him.

Enactive.—Instructional.

Art. 61. If the pecuniary circumstances of the party damnified are better than those of the delinquent, the Judge will not take from the delinquent anything beyond what is adapted to the subsequentially-preventive purpose of punishment; for, if he does, the more he takes, the greater will be the aggregate composed of the sufferings of the two parties.*

Ratiocinative.

Art. 61*. The power to administer compensation, and award damages, why thus conferred on the Judge of the Dispatch Court?

Answer.—Reasons:—

i. True it is—that, under the *regular* system, by Judges are *costs* alone awarded; by Jury, *damages.* True: but no reason does this precedent afford, why it should be so under the here proposed *summary* system.

ii. If a suitor has to pay a given sum, say £20, what matters it to him whether it is by the fiat of a Jury or of a Judge that he has to pay it?—or whether, instead of *costs* or *damages,* the word employed be *fine?* So far as concerns the sum, on one and the same occasion, paid by him,—altogether immaterial* to him, as above, is the difference.

iii. That, in the present case, compensation, for suffering occasioned by misconduct, should be awarded,—is exactly as needful—as decidedly required by justice—as in every other case: but, if awarded at all, it is by this same Judge that it must be awarded; for by no other authority can it be. By a Jury it cannot be awarded, without giving existence to the very evil, which the here-proposed institution is employed to annihilate.

iv. To the Judge, by the supposition, every particular—on the one hand, of the suffering—on the other, of the misconduct by which it has been caused—is immediately and directly known. By no fresh evidence, by no fresh argumentation, could it be rendered more particularly or more completely so.

v. To the cognizance of a Jury would be to be presented, instead of the phenomena themselves,—at the end of an interval, by which the image of the facts in the memory would have been more or less truncated, obscured, and distorted, an alleged description, given by somebody or other (it is neither easy nor material to say who) of these same facts:—a portrait, ornamented on both sides with an embroidery of costly and useless eloquence.*

vi. But if, as above, to the quantity of money allowed to be abstracted on the score of punishment, no certain limit can with propriety be prescribed—how can, or why should, any such limit be prescribed to the quantity allowed to be abstracted on the score of *compersation,* or say *damages?* By whatsoever is abstracted from a man on the score of punishment, in no other shape can good be produced, than that of the contribution made to the prevention of subsequent similar offences;—to the would made by the past offence no healing balsam is applied:—whereas by every particle of the matter of good, not merely abstracted from the author of the wrong, but transferred to the sufferer by that same wrong, the would is in proportion closed, and contribution so far made to a perfect cure.

vii. As per article 1, indispensable necessity requires, that for execution and effect to be given to them, the decrees and other mandates of the Dispatch Court Judge should not be in any way or degree dependent on the free-will of any other Judicatory.

viii. Because, though nothing hinders that, under the procedure of the Judge, a Jury might be put to officiate in this Dispatch Court,—yet, of the complication of the machinery necessary to the introduction of that system, and the uncertainty resulting from the want of all determinate rules for its guidance, a quantity of delay and expense, incompatible with the application of the summary course of procedure to the field here in question, would be the unpreventible result.†

Enactive.—Ratiocinative.—Expositive.

Art. 62. Lest any evidence, which it has happened to the suit to afford, should remain unemployed, and for want of it, deception and misdecision be produced,—created, and conferred on the Judge of the Dispatch Court, to be applied to the purpose of this Act, are the ulterior powers following:—

i. Power to elicit evidence* from all *sources* without exception:—sources, whether personal, real, or written; quasi-written included: personal, derived from *persons:* real, derived from the appearances of *things:* written, derived from persons, and communicated through the medium of things, that is to say, *paper,* written on, or any other matter so dealt with, as to constitute a visible or tangible and permanent instrument of discourse: personal evidence, whether that of an *evidence-holder at large,* or say, an *extraneous* evidence-holder, or that of an *evidence-holding party,* on either side of the suit, who respectively are by this same means rendered *evidence-yielders.*

Art. 63.—ii. So; to elicit evidence in all *shapes:* that is to say, whether *responsive,* or *spontaneous:—responsive,* that is to say, in answer to *questions,* or say

interrogatories;—spontaneous, that is to say, uttered by a person to whom, on the occasion in question, no interrogatories have as yet been addressed:—*responsive,* whether by *oral,* or say *word-of-mouth* answers, to questions orally uttered, or epistolarily uttered, in a written or quasi-written shape: the evidence elicited in the orally-uttered shape being, by means of *counter-interrogation* and otherwise, more effectually secured against the danger of being contributory to deception: in the epistolarily-uttered shape, admissible for the purpose of obviating expense, or delay, or both, when likely to have place, in such quantity, as by the evil thereof to outweigh the evil likely to be produced by the probability of misdecision; that is to say, for want of the security afforded against it by the oral mode of elicitation, subject to counter-interrogation, as above.

Art. 64.—iii. So, on every occasion, to permit questions to be put, not only by parties on both sides, and their several professional assistants, but also by any other person at large, by whose interrogation a promise appears to be afforded, of its being productive of instructive answers.

Art. 65.—iv. So, of his own motion, or say *spontaneously,* to put questions to a person under examination, or say an *Examinee,* so it be *vivâ voce,* and in open judicatory; without waiting for spontaneous narration on the part of the Examinee, or for questions put to him from any other source, as above.*

Ratiocinative.

Art. 65*. Why admit of the Judge's instituting—of his own motion, without application from any other quarter, an examination, and thereby a suit?

Answer.—Reasons:—

i. Of information from any other quarter, the only use is, in relation to the facts in question, to plant knowledge in the mind of the Judge.

ii. This being the case,—if by means of his own observation such knowledge be possessed by him, so much the better.

iii. Obviated, by the means here in question, is the danger of the evidences not being possessed by him at all; namely, by reason of its not being presented to him from without.

iv. So, likewise, all such delay and expense, as might have been produced by the presentation of it at a later period.

v. To such knowledge, by what means soever obtained by the Judge, the same publicity will, of course, be given, as will be to any *extraneous* evidence.

vi. On this plan, in case of delinquency in any shape, the *certainty,*† of the application of the *punitive,* and of the other remedies, in so far as respectively applicable, will be at its maximum.

Enactive.—Instructional.

Art. 66. For the obtainment of evidence, which how material soever, might not otherwise have been obtainable, although in a superior degree presenting a probability of being impartial, and thence trust-worthy,—created hereby, and conferred on the Dispatch Court Judge, is the additional power following. By means of the evidence elicited at the *outset,* the Judge will in many cases see reason to believe, that from such or such an individual, considered in the character of an *evidence-holder,* evidence material to the suit may, in all probability, be elicited. In such case, whatsoever advance, if any, of money, is regarded by him as requisite to be made to such evidence-holder, power is hereby given to him to cause it to be made: made, by all parties, in so far as they actually take part in the suit; and this, without regard to the question, in whose favour such evidence is most likely to operate.

Art. 67. In what proportion such advance shall be made by the several parties,* the Judge will determine, consideration had of their respective pecuniary circumstances.

Art. 68. For the purpose of securing compliance with this requisition, he may announce to each such party his intention, in the event of non-compliance, to proceed as if the evidence in question, having been elicited, had been in any degree, how high soever, unfavourable to the interest of such non-complying party: and, accordingly, in case of necessity, so may he proceed: and such non-compliance may be considered and spoken of by him as an exemplification of that species of fraud, the result of evil-consciousness, which is practised by *suppression of evidence.*

Ratiocinative.

Art. 68*. *Reasons:*—Evils by this same power obviated:—

i. Evil the first: misdecision, through mendacity produced by bribery.

ii. Cut off will thus be a source of undue favour, which, under the existing system, has place on the part of witnesses: namely, under the notion of advance made, for no more than the expense necessitated by the journey, to and fro, with demurrage, and compensation for loss of time,—receipt of money in excess, in addition to what is necessary;—money advanced, for the purpose, and with the effect, of a *bribe.* By committing to the discretion of the Judge, the determination of the sum, and the imposing—upon all parties—alike, or in proportion to their pecuniary circumstances respectively, the burthen of the advance,—this source of corruption will be cut off.

iii. Evil the second: oppression and depredation, by imposition of needless *costs.* In the present state of things, a suitor, who, in respect to the subject-matter of contestation, is confident of being deemed to have right on his side,—and, on that score, of obtaining the reimbursement of his costs, at the hands of the party or parties on the other side,—has it in his power to heap oppression on his adversary to an indefinite amount, by needless expenditure on this score: oppression—and moreover depredation for the benefit of persons connected with him:—for example, his solicitors or other lawyers.

iv. The richer a man is, the stronger is the temptation into which he may be led, by the invitation thus given to him by the existing state of things.

v. This is among the resources, which will of course be seen presenting themselves to the hand of the dishonest—the *malâ fide* suitor, and his authorized professional accomplice.

Enactive.—Exemplificative.

Art. 69. If a question, the ultimate decision of which depends jointly upon the proceedings in an Equity Court, and those in an *Ecclestastical** Court, is in pendency in an Equity Court,—cognizance thereof may be taken by, and thence transference made of both suits into, the Dispatch Court.

Examples are as follows:—

i. If, on the ground of insanity, the validity of a *marriage* is disputed, or about to be disputed, in an Ecclesiastical Court.

ii. If the subject of contestation is the *validity* of a *last will,* or the *disposal* of the property under it.

Enactive.—Ratiocinative.—Exemplificative.

Art. 70. As to the designation of the species of subordinate Courts, not sufficiently comprehensive is the preceding article. Another example is afforded by whatsoever intercourse an Equity Court holds with any Common-Law Court, whether of record or not of record.*

It is therefore hereby provided, that whatsoever authority, in the course of any suit, for the effectuation of the object of the suit, the Equity Court has need to make exercise of, in relation to the proceedings of any Court thereby and in so far rendered subordinate to it, or in relation to any functionary thereto belonging, the same authority is the Dispatch Court authorized to exercise in relation to that same subordinate court.

Enactive.—Ratiocinative.

Art. 71. Dispatch Court Judge's *self-extensive,* and *provisionally,* or say *eventual enactive,* powers. Lest, for want of adequate power in the Judicatory, the beneficial purpose of this Act should in any respect fail of being fulfilled,—power is hereby given to the Judge, from time to time to make any such provisional arrangements,—subject to disallowance by his Majesty or either House of Parliament, in manner hereinafter mentioned,—as in his judgment shall, for that purpose, have been found requisite and necessary, Name of the instrument, by which any such arrangement is effected, a *Judiciary-bred eventual Act,* or, *Statute supplemental to*—this present Act, naming it.

Instructional.

Art. 72. Circumstances, indication of which will be attached to this instrument, the following:—

i.*Day,* on which, in manner hereinafter mentioned, it is *published.*

ii. Day, on which it will, if not disallowed, acquire *binding force.*

iii. Day, on which, as in the case of an Act of Parliament, if different from that same day, it will, as is customary in Acts of Parliament, take its *commencement.*

iv. Day, on which the obediences, or say, observances, or compliances, thereby called for, will begin to have place.

Model for such *eventual* statute in other respects, the present Act.

Formula serving for the introduction of an eventual statute of this sort, *see in Schedule No. XII.*

Enactive.

† Art. 73. After receiving the signature of the Judge, his official and personal name included, the manuscript of each such supplement will, by the Registrar, be delivered to the King's printer; and as soon as may be, whenever the impression is ready for distribution, a printed copy thereof will, under the same signature and by the same hand, be delivered into the hand or the office of the Speaker of the House of Commons, for the use of the House of Commons; another, in like manner, to the Speaker of the House of Lords, for the use of the House of Lords; and another to the President of his Majesty's Privy Council, for his Majesty's use; and, of such several deliveries notice will, on that same day, in like manner, be delivered, for immediate insertion, to the printer of the *London Gazette,* and to the printers of such other newspapers, if any, as to the Judge shall seem meet.

Ratiocinative.

Art. 73*. Why, at the commencement of the time appointed for disallowance, cause Judge's supplemental Judiciary-bred eventual Acts to be printed, and notice of the impression given?

Answer.—Reasons:—

i. Such impression will be analogous to the impression given to proposed Acts of Parliament, when, according to the present practice, they are in the state of *Bills.*

ii. By the two notifications,—namely, to the two Houses of Parliament,—instead of one and no more as at present,—as also to the public at large,—a correspondent security will be given, against all abuse of this same eventually enactive power.

Enactive.—Instructional.

Art. 74. Length of time for disallowance or suspension,—whether performed by his Majesty, the House of Lords, or the House of Commons,—will be [seven] full days, exclusive of the day on which the delivery of the printed copy of the supplement in question has been made.

Art. 75. Days from which the length of time will be computed, these:—

i. During the sitting of Parliament, neither House being in a state of adjournment, the day of delivery, as above.

ii. In the case of the House of Lords,—if the House be under adjournment, the day on which the House meets.

iii. In the case of the House of Commons, if the House be in a state of adjournment, the day on which the House meets.

iv. During the recess, in the case of his Majesty,—if neither absent at more than [one hundred] miles distance from his Majesty's palace in the metropolis, nor labouring under an indisposition incapacitating him from attention to business,—the day on which such delivery, as above, is made to the President of his Majesty's Privy Council.

v. If absent at a distance greater than [one hundred] miles,—the day on which his Majesty has returned to his said palace, or arrived elsewhere within that same distance, as certified to the Judge of the Dispatch Court, by the said President.

vi. If labouring under indisposition as aforesaid,—the day on which such indisposition shall have ceased; as, in like manner, certified to the Judge of the Dispatch Court by the said President.

Enactive.

Art. 76. Power to the Judge to add, to any amount, to the above-mentioned length of time, but not to defalcate from it.

Art. 76*. On each individual occasion, respect for the legislative authorities will dispose him to make any such addition as can be made without detriment to the ends of justice.

Enactive.

Art. 77. If, on any occasion, through inadvertence, or under the pressure of some unforeseen exigency, it should happen to him to have made defalcation,—such defalcation may be, on his part, a misdemeanour: but no act which, on the ground of the exercise so given to his provisionally-legislative power, he may have performed in his judicial capacity, will on that account be *void.*

Art. 78. Of the issuing of such eventual Act, information will be given by the Registrar, by delivery of a printed copy thereof, under the signature of the Judge, to the several constituted authorities, in manner following:—

i. To his Majesty, by delivery to the President of his Majesty's Privy Council.

ii. To the House of Lords, by delivery to the Speaker thereof.

iii. To the House of Commons, by delivery to the Speaker thereof.

iv. To the Secretary of State for the Home Department, by delivery to the Secretary for the time being, or any Under-Secretary of his.

Instructional.

Art. 79. To the care of the Judge it will belong, to leave open to his Majesty and the two Houses, for the disallowance of this power, as large a quantity of time as the exigency will admit of.

Enactive.

Art. 80. If Parliament be not then sitting, or either House be in a state of adjournment, the giving exercise to this power of disallowance—or say negation power—will, of necessity, belong exclusively to his Majesty, as above.

Enactive.—Instructional.

Art. 81. When the day appointed for the commencement of such eventual enactment is arrived,—if no instrument declaratory of such disallowance has in the mean time been received by the Judge, the Act will take its place among the temporary Acts of that same, or if Parliament be not sitting of the preceding session, and will bear on its title the name of the day on which it begins to be in force.

Art. 82. Of such *certificate,* as per art. 75, immediate notification will, under the care of the said President, be made to all suitors of the Dispatch Court, and to the public at large, in the *London Gazette:* to wit, in a Gazette Ordinary or Extraordinary, as the case may require.

Art. 83. To such *disallowance* or *suspension,* as per art. 74, expression will be given in manner following:—

i. If effected by his Majesty, by the word "*disallowed,*" or the words "*Suspended untilmeeting of Parliament,*" written on the instrument in question, with his Majesty's signature thereto attached, and the counter-signature of the President of his Majesty's Privy Council.

ii. If effected, as above, by the President of his Majesty's Privy Council,—by the single signature of the said President.

iii. If effected by the House of Lords,—by the words "*By the House,*" and the signature of the Speaker thereof.

iv. If effected by the House of Commons,—by the words "*By the House,*" and the signature of the Speaker thereof.

Art. 84. For the purposes aforesaid,—power to his Majesty, from time to time, to appoint to officiate as Deputy to the President of his Majesty's Privy Council, on the occasion of his Majesty's absence, as above, or indisposition,—any other Member of his Majesty's said Council.

Art. 85. Each such *Judiciary-bred eventual Act,* when by expiration of the disallowance time it has received the assent of his Majesty and the two Houses, and thus passed into a law,—will be aggregated to the rest of the Acts of Parliament: but, for distinction's sake, in the title of it will be inserted, before the word *Act,* the words *Judiciary-bred appropriately confirmed:* and, in place of the day of its date, as at present, will be inserted the word *submitted,* on such a day, mentioning it, and the words *confirmed, and passed, by expiration of disallowance time,* on such a day, mentioning it.

Enactive.—Ratiocinative.

Art. 86. For the more effectual check to arbitrary power and usurpation of legislative power, by the judicial authority,—to each article of his Judiciary-bred eventual Act, the Judge will subjoin an indication given by him of the mode in which the same is, in his opinion, conducive to one or more (mentioning them) of the several *ends of justice:*—prefixing, to the name of the evil corresponding to the ends of justice, the words—"*Reason, obviating.*" This done, the *reason-assigning,* or say *ratiocinative,* matter so expressed, will stand thus—"Reason, obviating mis-decision;" or "Reason, obviating non-decision;" or "Reason, obviating needless delay;" or "Reason, obviating needless expense;" or "Reason, obviating needless vexation;"—prefixing to each such reason, if more than one, a *numerical figure,* indicative of the order in which it stands.

Art. 87. In case of disallowance,—to these reasons of the Judge, will be applied, by the respective superior authorities, counter-reasons, in one or more of the forms following, namely:—

i. Disallowed, as being detrimental to one or more of the ends of Justice (naming it or them.)

ii. Disallowed, as being detrimental to his Majesty's prerogative.

iii. Disallowed, as being detrimental to the privileges of the House of Lords.

iv. Disallowed, as being detrimental to the privileges of the House of Commons.

Art. 88. From the President of his Majesty's Privy Council, will every reason assigned in his Majesty's name be understood to emanate: in respect of it, it is *he* that will be understood to be responsible.

Art. 88*. Why state the reason, assigned by the President of the Council, as *his* reason, and not that of the Sovereign?

Answer.—Reason:—To avoid compromising the Royal dignity, by controversy: especially in the case of a female sovereign, or in the case of a Regency.

Art. 89. If, on any occasion, it should be the pleasure of the House of Lords not to assign any reason for its disallowance,—the Speaker thereof will add to the word *disallowed,* the words *without reason assigned:* and so in the case of the House of Commons.

Art. 90. Instead of disallowance or suspension, should it be the pleasure of either House to take for a subject-matter of *amendment,* any such Judiciary-bred eventual Act,—as if it were a Bill,—so of course it will be.

Enactive.—Expository.

Art. 91. Included in this power is—that of making regulations for the conduct of the business of this Judicatory: as in the case of those regulations, of generally-applying and permanent effect, which, in the language of the Westminster-Hall Courts, are styled *Orders,* or *Rules and Orders.*

Ratiocinative.

Art. 91*. This self-extensive power,—why give to the Judge a power thus unprecedented? *Answer.*—Reason:—Beneficial effects, the following:—

i. Making, without the delay of an Act of Parliament and the correspondent consumption of the time of Parliament, provision for unforeseen defects and exigencies.

ii. Committing to the functionary who, by his appropriate aptitude, derived from such experience and correspondent attention as cannot have had place in the instance of any other person, is best qualified, the *duty* of making on each occasion the provision requisite.

iii. Giving an *example* of an arrangement, having for one of its *objects,* or say *ends in view,* the maintenance of the constitutional subordination of the judicial authority to that of the legislature.

iv. In outside show, by this arrangement, *addition* is made to the power of the Judge; in *design* it *is,* and in *effect* it will be seen to be—the applying a limitation to it: and that a highly needful one.*

Enactive.

Art. 92. To the validity of any article in any such Judiciary-bred provisional Act, its repugnancy, how decided soever, to any preceding Act of Parliament, will not constitute any objection.

Ratiocinative.

Art. 92*.—Reasons:—

i. Scarcely proposed could be any enactment, in relation to which might not be found, in this or that statute, some general clause, to which such proposed enactment might not, and not altogether without truth, be stated as repugnant.

ii. Witness, for example, the clause in Magna Charta: "We will not deal with any man" (so and so) "but by the judgment of his equals, or by the law of the land." Here then, it might be said, is a law of the land, to which the proposed enactment in question would be repugnant.

iii. An enactment having its origin in this source would not, in any instance, have received the force of law, without having received the assent of all three branches of the legislative body as truly as any Act of Parliament that ever was made.

iv. Of *Judge-made* law every proposition to which the force of law is given, is repugnant, at any rate, to this clause of Magna Charta, and commonly to this or that clause in some other statute.

v. No ground can be stated, for any apprehension, of a plan, formed by the Judge of this proposed Court, for giving to his power any extension detrimental to the ends of justice.

vi. Purged as he is of sinister interest by the disallowance of all fees, no motive for any such undue extension could he have.

vii. Supposing him actuated by any such sinister motive, no ground could he have for any such hope, as that of seeing any such plan carried into effect. Not proposable by him could be any enactment, which would not run counter, or be thought to run counter, to the particular interest of Judges, and of all persons linked to them by a community of sinister interests,—and thereby excite, and bring out into action, their opposition to it in both Houses, if for such opposition any colour could be found.

Enactive.

Art. 93. Null and void will be any operation, by which,—immediately, or in whatsoever degree remotely,—obstruction is offered to the operation of the Dispatch Court: for example, by Certiorari, Writ of Error, Mandamus to or from a Common-Law Court; Injunction by, or Appeal from, an Equity Court. By any such proceeding

should any such obstruction be attempted, the Dispatch Court Judge will proceed as if no such proceeding had issued.

Art. 94. In pursuance of an *Incarceration Mandate* from the Dispatch Court Judge, a person (suppose) has been incarcerated,—and, by some existing judicatory, a writ of *Habeas Corpus*—or say a *Body-adduction*mandate*—has been served upon, or say delivered to, the keeper of the prison, in which the incarceration has place. In this case,—if, for the issuing of such body-adduction mandate, the judicatory in question has lawful authority,—obedience thereto will in course be paid. But, with the body, the keeper will transmit the incarceration mandate; and upon sight thereof, the judicatory in question is hereby required to remand the prisoner, in the custody in which he came, to the prison from which he came.

Art. 95. By the Judge or Judges by whom such body-adduction mandate had been issued, or by any other Judge or Judges, should the prisoner, instead of being remanded, have been disincarcerated, or sent into or to any other place of confinement,—power to the Dispatch Court, by a fresh incarceration mandate, to cause the re-incarceration of the said prisoner: and so, *toties quoties.*

Art. 96. Power also to the Dispatch Court Judge to inflict on the person or persons concerned in such disincarceration—one, or more, or all of them—at option and at discretion, such punishments as in and by art. 51 are appointed: stating, on the occasion in question, whether the delinquency had for its cause evil-consciousness or want of due attention (art. 37.)

Ratiocinative.

Art. 96*. Why thus give to the judicatory power to cause the adduction of the prisoner, divested at the same time of the correspondent power of disincarceration?

Answer.—Reasons:—

i. To obviate all power of abuse in the hands of the Dispatch Court Judge.

ii. To obviate on the part of the public at large all suspicion of such abuse.

Enactive.

Art. 97. For any expense and vexation, produced by the application made for such body-adduction mandate, power to the Dispatch Court Judge, by his compensation-awarding mandate, to administer, at the charge of any or all the individuals who have been contributing to the production of such expense and vexation, compensation to the respective use of those who have been sufferers by it.

Ratiocinative.

Art. 97*. Why thus give power to the Dispatch Court Judge, not only for frustrating all endeavours, on the part of the existing authorities, to frustrate the incarceration

performed by him, but moreover to impose on them the burthen of compensation and even of punishment?

Answer.—Reasons:—

i. To omit anything that was necessary to the impossibilizing the efficiency of all chances for such frustration, would be—to establish eventual appeal from the Dispatch Court to some such already existing Courts, one or more of them.

ii. Suppose no such powers provided, a course which would naturally be taken by any adversary of the proposed relief, would be the harassing with the expense and vexation inseparable from the existing system any or all of the persons, on the several occasions, concerned in the administration of this same relief.

iii. For this purpose, any one of all the several authorities who at present are authorized to issue a writ of *Habeas Corpus* would suffice.

iv. To secure against frustration the hereintended design, the mere frustration of the *endeavour* to prevent the disincarceration would not suffice. Were it not for the proposed punishment, the mere expense, necessary to the infliction of the expense and vexation on the persons concerned in the administering the relief, would naturally find but too many, who would be effectually disposed to take it upon themselves.

v. Under the checks hereinafter provided, much less probable will be seen to be any abuse of the Dispatch Court Judge's power of *incarceration,* with the subsidiary powers, here provided, than would be the power of *disincarceration,* with the subsidiary powers of inflicting vexation, if left in the hands of the existing constituted authorities.

vi. Of such virtual appeal, the effect would be—instead of *substituting* the summary to the dilatory system, to *add* the one to the other: and thus render the course of procedure still more dilatory than the proposed relief found it.

vii. As to the nature of the addition,—this would depend upon the course of procedure pursued in the at present existing judicatory, by which, by the supposition, cognizance would, in this indirect way, have been taken of the proceedings of the Dispatch Court.

viii. In the state of things here proposed, no exercise or assumption of this power can have place, without appropriate *warning:* without drawing to it the attention, not only of the public at large, but of the superordinate authorities—legislative and executive.

ix. Exercised, as above, by the existing Judges,—exercised, on each occasion, is this same power, altogether without warning of the intention to exercise it. Nor, unless by a sort of miracle, has anybody out of doors any knowledge of what is to be done.

x. By *malâ fide* suitors—by dishonest suitors on both sides, at the suggestion of their learned advisers, it would, of course, and to a certainty, be employed:—by learned Judges, it would—but too naturally and probably—be countenanced and effectuated.

xi. By the here-proposed principle, how formidable soever may be the appearance presented by it to a superficial glance, no change whatever in the constitution will be produced—no power added to, or subtracted from, the Crown, or either House—no power given to the people at large.

xii. Necessary* to the keeping the door shut against all frustration, will, upon due examination be seen to be all this machinery:* but, what is most probable is—that, under the controul established by it, matters will go on so quietly, as to cause it to present itself to a hasty view as needless and superfluous.

Enactive.

Art. 98. Of all proceedings, in relation to this matter, before the body-adduction-mandate-issuing judicatory, the Dispatch Court Judge will so order matters that minutation and recordation shall be made, and the record kept in the office of the Registrar of the Dispatch Court.

Enactive.—Expository.

Art. 99. Included in this same self-extensive power of the Judge, is the power of making, from time to time, general regulations for the direction of the proceedings of this his own judicatory.

Ratiocinative.

Art. 99*. Of this arrangement, under the *form* of an *extension* applied to the power of the Judge, the *effect* is in truth a *restriction:* for, in respect of the *exercise* of it, a sort of *moral obligation* may be seen to have place. Supposing no such power, he would, on each occasion, do, without pre-announcement, whatsoever it were his pleasure to do.

ii. On the other hand, let this power be established, he will, in this case, in proportion to the exercise given to it, give to all persons concerned information of what they have to expect, and thus in a proportionate degree *prevent disappointment.*

iii. At the same time, by so doing, he will submit such his arrangements to the *tribunal* of *public opinion;* and thereby, to any imperfections that may have place in them, elicit the appropriate amendments, antecedently to any suffering on the part of individuals in consequence of those same imperfections.

Enactive.—Ratiocinative.

Art. 100. Strong, as above, being the mass of *power* conferred on the Dispatch Court Judge, correspondently strong will need to be the *checks* provided for security against mis-exercise of that same power. Hence the enactments which now follow.

For corruption, oppression, or extortion, the Judge may be punished as for a *misdemeanour.*

Mode of procedure, Information: filed *ex officio* by his Majesty's Attorney-General, and not otherwise.*

Enactive.

Art. 101. At the trial, questions may be put to the defendant, as to any extraneous witness: in case of wilful falsehood, his punishment may be the same as that of a witness would be in case of perjury; from silent or irrelevant response, the Judge will draw inferences, as from any other portion of *circumstantial* evidence: all objection, on the ground of his being called upon (as the phrase is) *to accuse himself,* notwithstanding.

Ratiocinative.

Art 101*. Why thus elicit evidence from the lips of the defendant?

Answer.—Reasons:—

i. As to the Rule of Common Law, by which exclusion is put upon evidence from this source, for a demonstration at large of its *absurdity* in all cases, see the *Rationale of Evidence.*

ii. So, of its *inconsistency:* the exclusion having place where the evil and danger from the admission of the evidence in question amounts absolutely to nothing, and not having place where the evil is at its maximum.

iii. So, in respect of the exclusions, which have place, where the evidence is elicited in its best shape—namely, that of response to interrogation *vivâ voce,* subject to counter-interrogation on the spot,—and having not place where it is elicited in the worst possible shape—namely, that of *affidavit* evidence,—with time, in indefinite abundance, for premeditation, and exemption from the security which subjection to counter-interrogation affords, against falsehood, and against deception by means of it.

iv. Even were the exclusion proper in all other cases, it would not be so in this: forasmuch as—in this case, a man could not be subjected to the interrogation, without his own previous consent, as signified by the acceptance given by him to the office by which he will have been subjected to it.† —See further, Section XIX. *Subsequential Evidence,* &c.

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SECTION VII.

PREHENSORS AND MESSENGERS.

Instructional.—Ratiocinative.

Art. I.—i. Prehensors,* —Messengers,—Consignees. Of the three different classes of functionaries so denominated, conjunct consideration will be seen to be necessary. They are, all three, so many channels through which is, and cannot but be, carried on between the Judge on the one part, and things and persons on the other part, that *intercourse* which is so indispensably and continually necessary to all exercise of his authority in relation to these its subject-matters. Presenting to view the mutual relations between all these several functionaries is the purpose of the following observations:—

ii. In an *immediate* way, with neither of these two subject-matters can any such intercourse be carried on otherwise than to a comparatively very narrow extent: more especially with *things:* for the remainder, necessary therefore is the intervention of *intermediate* functionaries. Under one or other of the following denominations will all these functionaries be found comprised.

iii. Of the intercourse of the Judge with a *thing,* the sole purpose in view is its *forthcomingness:* namely, for one or more of the purposes in Section VI. *Judge's Powers,* art. 26, mentioned: of his intercourse with a *person,* an additional purpose is—*information:*—obtainment of evidence, or say information, without need of forthcomingness, either at the judgment-seat or anywhere else: information, at the hands of a person, who in this case is considered, and dealt with, in the character of an *evidence-holder,* or say, *eventual informant.*

iv. Necessary, in addition to the intervention of the *Prehensor,* becomes thus that of the secondly-mentioned sort of functionary—the *Messenger.*

v. So likewise, for producing, on the part of the person, without prehension, *locomotion:* namely, for the purpose of *forthcomingness,* whether at the Judgment-seat, or at any other place.

vi. If, for any one of the three *purposes,* for which, as per Section VI. *Judge's Powers,* art. 26, prehension may require to be made—namely, the execution-*effecting,* the execution-*securing,* or the *evidence*-securing,—*continuance* in the possession of any functionary acting under the orders of the Judge, is necessary,—thereupon comes the demand for the thirdly-mentioned sort of functionary—the Consignee, or say *In-trust-holder,* as per Section VIII. art. 1.

vii. If it be to the class of *things moveable* that the subject-matter to be placed in the possession of the *Consignee* belongs,—an intermediate functionary whose service is necessary, is—a *Prehensor: locomotion* being in this case requisite.

viii. So likewise, if it be to the class of *persons.* If to the class of *things immoveable,* not:—locomotion being in this case impossible.

ix. So likewise, if to the class of *things incorporeal:* and for that same reason.

x. As to *fitness:*—for the three species of service in question, materially different for the most part are the sets of qualifications requisite: hence the need of functionaries in a corresponding degree different.

xi. On the part of a *Prehensor,*—qualifications requisite are,—in company with the appropriate instruction, strength of body and mind over and above the ordinary degree. True it is—that, for the prehension of a *thing,* were persons out of the question, for no such extraordinary qualifications would ever need have place: but, forasmuch as, for prehension of a *thing,* removal of obstruction opposed by *persons* may eventually be necessary,—hence, for the prehension of things, qualifications the same as for the prehension of persons will be necessary.

xii. On the part of a Messenger, no qualifications of any sort, in a degree above the most ordinary, are necessary.

xiii. But, for this branch of service, apt, in an extraordinary and peculiar degree, is the whole machinery of the *Letter-post:*—trustworthiness, punctuality, and cheapness being, as per art. 14, the attributes in a peculiar degree belonging to it.

xiv. On the part of a consignee, if the subject-matter of the consignment be a *person,* qualifications necessary will be those of a jailor: if a thing immoveable, or an aggregate of things moveable, the qualifications will be those requisite for *custody* and *management,* and will accordingly vary according to the nature of the things in relation to which the exercise of those two functions, or one of them, is necessary for the *purpose* in question, whether it be execution-*effecting* or execution-*securing.*

xv. Accordingly, any person who is fit to be a Prehensor is fit to be a Messenger. Not true, however, is it that every person who is fit to be a Prehensor is fit to be a Consignee, or say an In-trust-holder, to whose management or custody, things immoveable, or aggregates of things moveable, are consigned, or say confided.

So much for principals. Now as to deputes.

Under two former heads,—in the case of two above-mentioned functionaries—namely, the Judge and the Registrar,—mention has been made of the sort of functionaries styled *Deputes;* and of the sort of functionaries by whom it is fit that they should be located:—namely, their respective principals. But, in the case of a Prehensor, this fitness (it will be seen, as per art. 7*,) has not place.

Enactive.

Art. 2. Power to the Dispatch-Court Judge, to locate Prehensors, one or more, as need may arise. Form of the location instrument, as per Schedule, No. XIII.

Enactive.—Expositive.

Art. 3. Functions of a Prehensor, these:—

i. Of things and persons respectively, to make all such prehension and subsequent disposal, as the Dispatch Court Judge shall, by his appropriate mandates, have directed him to make: as to which, see Section VI. *Judge's Powers, &c.* art. 15, 17, 18, 23, 24, 25, 26, 27.

ii. Between the Dispatch Court Judge and any other individual, as also between any one individual and any other,—to make communication by letter, or any other missive,—by his (the Prehensor's) hands delivered,—in such manner as the Judge shall, by his appropriate mandate, have directed.

Enactive.

Art. 4. Salary of a Prehensor, [NA] a-year: payable in the same manner as (see Section II.) the salary of the Judge.

Art. 5. Dislocable at all times by the Judge will be every Prehensor. Reasons he will be expected to assign. Form of the *dislocation instrument,* as per Schedule, No. XIV.

Art. 6. So likewise, suspendible. Form of *suspension instrument,* as per Schedule, No. XV.

Art. 7. Power to the Judge, from time to time, to locate Prehensors *occasional;* to wit, either by the day, or for the occasion, as need shall arise. Form of the location instrument, as per Schedule, No. XVI.

Ratiocinative.

Art. 7*. Why, in a manner thus indefinite and variable, make provision for the service looked for at the hands of *occasional* Prehensors?

Answer.—Reasons:—

i. Somewhere or other, power of providing functionaries for the exercise of functions of this description, there must at all times be: and, altogether without limit is the number, the need of which may have place.

ii. To the Prehensor Principal, power thus unlimited cannot safely or consistently, as in the case of the Dispatch Court Registrar, be allotted: too strong to be at all times effectually resisted, would be the temptation to overstock the office with incumbents.

iii. Of the Judge's mandates the efficiency, and thence in that respect his reputation, will, in the nature of the case, depend in some degree upon the aptitude of the choice in each instance made by him.

iv. Consequence,—in hands other than those of the Judge, power in this shape cannot, it should seem, with propriety be reposed.

Art. 8. Pay of a Prehensor occasional, whatsoever, at the time, or on the occasion in question, the Judge shall think fit to appoint.

Art. 9. Source of such pay, the purse of the party applying for, or having need of, the Prehensor's appropriate service: in case of inability on his part, source the same as that provided in and by Section VI. *Judges' Powers, &c.* art. 66, 67, 68, when the purpose is the obtainment of evidence.

Enactive.

Art. 10. For giving in detail expression to the powers and obligations attached to the situation of Prehensor,—power and obligation to the Judge, to draw up and cause to be printed, and from time to time to amend (causing them each time to be printed), regulations, for directing the exercise given by a Prehensor to such his functions. Name of the paper containing such regulation, the *Prehensor's Code.*[*]

Art. 11. Attached to a printed copy of the Prehensor's Code, under the signature of the locating Judge, will be the location instrument. At the time of location, delivered will be the paper, in open judicatory, into the hand of the Prehensor, by the locating Judge.

Art. 12. For wrong in any shape alleged to have been committed by a Prehensor as such, to no judicatory, other than that of the Dispatch Court Judge, shall recourse be suffered by him to be made.

Art. 13. Considered as an act of *obstruction,* as per Section VI. *Judge's Powers,* art. 34,—so considered, and accordingly dealt with by the Dispatch Court Judge—will be any act by which such application shall have been made, or entertained and endeavoured to be effectuated.

Ratiocinative.

Art 13*. Reasons:—

i. Only for the purpose of obstruction—only with evil consciousness for its accompaniment—could any application to a Court acting under the regular system have place.

ii. In the Dispatch Court, heard and delivered it would be, at next to no expense.

iii. In a Westminster Hall Court,—not, but at an expense, having on each side, for its limit downwards, not so little as £20: upwards, how many hundreds it is impossible to say: expense in special pleading and appeal included, as they cannot but be.

Instructional.—Ratiocinative.

Art. 14.—i. Eminently apt for the purpose of Messenger's service, is the class of functionaries employed by government in the conveyance of letters: styled in the aggregate the Letter-Post. Trustworthiness, punctuality, cheapness,—in a degree of perfection, absolute as well as comparative,—are all these desirable qualities possessed by the system carried on by it.

ii. Thus seated, not only would the weight of the burthen be in a prodigious degree lessened, but the whole of it would be taken off from the so-grievously-galled shoulders of the afflicted suitors.

iii. Were it not for the danger of *abuse*—of abuse, of which in such magnitude, and such multitude and variety of shapes, the regular system of procedure affords examples,—the party on whose account the missive requires to be delivered,—and by whom the mission of it will, in natural course, have been applied for,—might for this purpose be, as at present to so large an extent, his professional assistant is, the functionary on this ocsion employed.

iv. Though, to entrust to a person so circumstanced the execution of this trust, to the exclusion of all other persons, would, as above, be to expose the service to too great a danger,—yet, to no objection seems exposed the giving permission to the party, in person or by proxy, to *accompany* the government functionary: a course which in some cases, for securing the appropriate delivery, he will naturally be disposed to take.

Enactive.

Art. 15. To every Prehensor, whether permanent or occasional, belongs the *aid-compelling* function.†

Expositive.

Art. 16. By the Prehensor's *aid-compelling* function, understand *that,* by the exercise of which, if need be, he calls for, and, by the fear of eventual punishment in case of noncompliance, uses his endeavour to obtain,—active assistance at the hands of each person so called upon, towards the enabling him to give execution and effect to the mandate, whatever it be, issued and directed to him, in such his capacity, by the Judge; or, to any *general* regulation, when any such there is, by which he is required to render his official service, in any shape, on any occasion, *without waiting* for any mandate, to be, on the individual occasion in question, issued by the Judge.

Enactive.—Ratiocinative.

Art. 17. To the end that, with all requisitions, made by a person lawfully exercising the authority of a Prehensor, compliance may at all times be given,—and, that to no requisitions, made by any person falsely pretending to be possessed of such authority, compliance may at any time be given—provided with an appropriate badge of office will be every Prehensor, whether permanent or occasional. By the choice, and under the direction, of the Judge of the Dispatch Court, will this symbolical instrument or apparatus, with any such component parts as shall have been deemed requisite to it, be at all times provided.

Enactive.—Instructional.

Art. 18. In respect of the description of the persons, on or over whom it shall be exercisable, to this authority there is no certain limit: on all persons whatsoever,—at his discretion, on his responsibility,—exercise will, on each occasion, be given to it.

Instructional.

Art. 19. For the guidance of such his discretion, *rules* prescribed to him are these which follow:

i. Only in case of need will any such aid be ever called for by him.

ii. Only to the extent of the need, will the call for it be made, or continued.

iii. In so far as, by the circumstances of the case, a choice of persons is afforded,—choice will in preference be made, of those, whose aid,—relation had to the public purpose in question,—promises to be most effectual: and, among them, of those to whom the assistance thus given promises to be least dangerous, and in other respects least burthensome; at the same time,—with reference to the evildoers, against whose unlawful opposition the aid is requisite,—least in danger of being productive of suffering, in quantity beyond what is needed.

Instructional.—Ratiocinative

Art. 20. Where the quantity of force needed is to such a degree considerable,—a party of regular military men promises to be in general preferable to any other: namely, as being more effectually under command, and on that account less in danger of producing evil beyond necessity, as well as of failing to fulfil the purpose. True it is—the smaller the quantity of such force necessary, and accordingly kept up, the better: but, the quantity of it being given,—the more extensive the application made of it to all useful purposes the better.

Enactive.

Art. 21. In case of non-compliance with an aid-compelling requisition made by a Prehensor, power to the Judge to impose, on each person so offending, a pecuniary mulct. In case of damage, in any shape, sustained in consequence of such non-compliance,—in compensation for such damage will this mulct, or such part of it as shall have been recovered, be applied: if there be no such damage, then will the whole of the mulct be transmitted by the Judge to the receipt of his Majesty's Exchequer: for a form for the instrument of such transmission, see Schedule No. XVII. So likewise any such ulterior mulct as shall have been deemed fit to be imposed, over and above such sum as shall have been deemed requisite for compensation, as above.

Art. 22. In case of inability on the part of the offender to pay such mulct, or any part thereof,—power to the Judge, to commit him or her to prison for such term as,—by the apprehension of the like offence on the part of other persons exposed to the temptation of becoming offenders,—shall, in his judgment, afford an adequate promise of preventing them from becoming so: that is to say, for such term, the suffering wherefrom, in the breast of the said offender, shall, in the judgment of the Judge, be the equivalent of that which would have been produced in the breast of that same offender, by the forced payment of the sum in question, had he possessed it, or been able to obtain it.

Enactive.—Instructional.

Art. 23. The prison will naturally be—some prison in the metropolis, or within a few miles thereof. But, for reason assigned, any prison within the quondam kingdom of England may be employed by him in preference,—and also, for reason assigned, the prison at any time changed.

Instructional.—Ratiocinative.

Art. 24. On this occasion, the Judge will consider and inquire—whether it was *ill will,* or *timidity,* or a mixture of both, that such non-compliance had for its cause: inasmuch as, in the quantum of suffering proper to be inflicted by him, on the score and for the purpose of punishment, the difference may be, in an indefinite degree, considerable. In so far as timidity alone has been the cause,—scarcely on any other account than that of *satisfaction* in the shape of *pecuniary compensation,* will be subject the non-complying individual, as above, to pecuniary privation. Why? Because, generally speaking, in such case, suffering will, in the character of *punishment,* be useless. For the evil, the avoidance of which was sought by the non-compliance, may have been bodily suffering unlimited in *magnitude:* and *that immediate;* and in appearance, and perhaps in reality, *certain:* whereas, generally speaking, the evil apprehended in the shape of *punishment* for non-compliance will have been, and to the person called upon, have appeared to be, comparatively *small,* and that *remote,* and more or less *uncertain.*

Instructional.—Exemplificational.

Art. 25. If the individual, at whose hands the aid is required, be of the female sex,—timidity is that, which non-compliance will have for its commonly-probable, and thence, generally speaking, presumable cause. But if, from other circumstances it appears, that not timidity, but ill-will, was the cause,—then, in regard to punishment for non-compliance, small, if any, by the consideration of sex will be the difference to be made.

If, for example, by the purposed closing of a door, a person of the female sex, affords, to one who should have been prehended, the means of escape,—or, by information afforded, delivers into his hands, for the purpose of vengeance, a Prehensor, or any person occupied in lending aid to him.

Enactive.

Art. 26. In case of damage, to person or property, sustained by an individual in consequence of his being, or *having been,* occupied, in lending aid to a Prehensor, in the exercise of his authority,—power to the Judge, as per art. 21, to administer to the individual so damnified, compensation, at the charge of all persons by whose delinquency such harm was produced. As to this power of awarding compensation, considered in respect of the reasons on which it is grounded. See Section VI. *Judge's Powers, &c.* art. 61* .

Art. 27. So likewise, to inflict, on any or every such wrong-doer, punishment,—in every instance, in which, and so far as, the suffering, produced by the obligation of making compensation, as above, would, in his judgment, fall short of being sufficient for punishment in respect of its *subsequentially-preventive* purpose: always remembering that,—supposing the amount to be in both cases the same,—the suffering produced by the obligation of parting with money or money's-worth, payable into the purse of an *adversary,* will naturally be greater than if it were into the *public* purse.

Art. 28. In default of the obtainability of the matter of compensation from the property of delinquents, as per art. 26,—power to the Judge, to give to parties so damnified, drafts upon the Lords Commissioners of his Majesty's Treasury: every such draft being accompanied with a brief report, expressive of the state of the case, of the several acts of delinquency committed, and of the damage by them severally or conjunctively produced, and the amount, in respect of which the pecuniary means of the several delinquents were found insufficient for the extraction of the penalties respectively assessed.

Art. 29. By their said Lordships,—if they see not any sufficient reason for suspecting excess on the part of the amount so drawn for,—it will accordingly be paid, within [six] days after sight: in the contrary case, their Lordships will, by a minute in the Treasury Book, and a copy thereof sent to the Judge,—express their desire that a copy of the minute of the whole transaction, as entered in the Register of the Dispatch Court, be transmitted to them: which received, they will either make, and

communicate to the Registrar, appointment of the time or times on which the amount of such draft, after such deduction, if any, as they shall deem proper,—shall be paid, or give notice of disallowance in the *London Gazette.* Whatsoever is paid,—without fee at the expense of the individual it will be paid.

Art. 30. So, in case of loss of *time* to a considerable amount, or extraordinarily meritorious exertion, on the occasion of aid so lent by a person, whose means of subsistence are wholly or principally composed of the price of daily labour,—power to the Judge on special proof made and recorded, to cause reward, to a correspondent amount, to be administered to the individual in question, by order upon the Registrar: by whom it will be paid, and entry thereof made under the head of *contingencies.*[*]

Of such order,—copy will, at the requisition of the Registrar (which will accordingly be made,) be printed in the next *London Gazette.*

Instructional.

Art. 31. On this occasion, the Judge will be on his guard against needless service, rendered or required for the sake of the reward.

Instructional.—Ratiocinative.

Art. 32. Note—that, on the occasion of the provision thus made for rewards, care is taken by the Legislature, not to allot, by a fixed sum, to a service subject to indefinite variation in respect of magnitude and meritoriousness, reward, to an amount which, if so fixt, would in most cases be either insufficient or excessive. In the very nature of the case, a premium on contribution made to the infliction of punishment as for a crime, is, if fixt, a premium on contribution to the commission of that same crime: the more crimes a man produces, the more rewards he receives for causing them to be punished. In the existing state of things, this disastrous *tendency* is but too extensively seen ripened into *act.*[†]

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SECTION VIII.

CONSIGNEES;* OR SAY, IN-TRUST-HOLDERS.

Expositive.

Art. 1. By an *In-trust-holder,* understand a functionary, to whose custody and care, with or without *management,* under the orders of the Judge, a *thing* or a *person* has been *consigned,* or say *delivered,* and thus *confided;* namely, by a *prehensor,* until the arrival—of the thing, in kind or in value, at its ultimate destination,—of the person at his ultimate destination,—on the occasion, and for the purposes, of the suit.

Art. 2. By a *confidee,* understand—a thing, or a person, so *confided.*

Instructional.

Art. 3. On the *purposes,* for which, on the occasion in question, the consignment is made, will depend—the description of the person or persons to whom, as above, in the capacity of *In-trust-holders,* the confidee is *confided,* or say intrusted: in this description,—*qualifications* and *number,* as in the articles hereinafter following, being included.

Art. 4. Of the *ultimate* purpose,—or say of the aggregate of all these purposes collectively taken,—the *description* is, the giving, in the completest manner and degree possible, consistently with the non-production of preponderant evil, execution and effect to such articles or clauses, in virtue of which, for the purpose of giving execution and effect to that part of the substantive law which is in question, termination may, in favour of whichsover side it be, require to be given to the suit.

Art. 5. As to *things,* of which—they being originally in the custody of the Judges of the existing judicatories in question, as per Section VI. art. 9, the value is purely *relative,*—either they will not need to be *prehended,* or if prehended, they will, in an immediate way, be delivered to, and placed in the custody of, the Registrar of the Dispatch Court. In relation to such things,—no demand for the service of an *In-trust-holder* will have place.

Art. 6. Of the sorts of things *intrinsically* valuable, by the nature of which a demand for the service of an In-trust-holder may have place,—some there are in relation to which it may happen that no demand for *special* management has place: nothing beyond safe custody. In the case of things of these sorts, so as the proposed *In-trust-holder* be in himself sufficiently trustworthy or by collateral security rendered so, what may happen to be the case, and, generally speaking, will be so, is—that, for no special qualification on the part of a proposed *In-trust-holder* is there any demand;—and that, for the due and adequate exercise of the functions belonging to

the *trust,* a single *In-trust-holder* will be sufficient. Examples of things thus circumstanced are the following:—

1. Money to any amount.
2. A dwelling, furnished or unfurnished.

Art. 7. For the due and adequate exercise of the functions of an In-trust-holder—in relation to things or aggregates of things, with relation to which, demand for special and appropriate management has place,—correspondent demand for qualifications, in various groups, corresponding to the respective natures of such things, will in consequence have place. Examples are the following:—

i. Ground-husbandry profit-seeking concerns:

1. Agricultural.
2. Mining.
3. Fishing.

ii. Manufacturing profit-seeking concerns:

1. Manufactures by wholesale.
2. Handicraft businesses.

iii. Merely distributional profit-seeking concerns:

1. Wholesale trades, home, or say domestic.

2. Wholesale trades, foreign.

3. Retail trades.

4. Trade, ambulatory by water.

iv. A profit-seeking concern, having for its subject-matter a thing *incorporeal:*—source of profit,—the exclusive right to *sell* things of the *species* in question; this right being derived from—

1. The inventorship thereof; or
2. The fabricatorship; or,
3. The vendorship.

Example of the inventorship,—authorship of a literary or imitative work.*

Enactive.—Instructional.

Art. 8. On the occasion of the location of an *In-trust-holder,* it will be for the care of the Judge to look out for persons, one or more, possessed of appropriate qualifications, correspondent and adapted, as above, to the nature of the concern, whatsoever it may be:—hearing whatsoever may be learnt, in the shape either of

proposal, or argumentation, from all parties interested: that is to say, in so far as *distance,* and thence danger of preponderant evil by delay, will admit.

Art. 9. So, to take into consideration the number of the In-trust-holders, whether it shall be *one* or more; and whether in the case of a concern which has divers *branches,* they shall be intrusted—all of them, to one hand or assemblage of hands, or one to one, another to another, and so on.

Art. 10. So, the exaction of *security* at the hands of In-trust-holders: in regard to each, *whether* it shall be exacted; and, if yes, in what *shape:* and,—whether security from *within,* or say *ab intra,* shall suffice,—or security *from without,* or say *collateral,* or *ab extra,* shall be added;—*from within,* that is to say, by eventual appropriate obligations, submitted to by the *In-trust-holder* himself: *from without,* that is to say, by such obligations submitted to by *co-obligees,* or say, in the present case, *co-assecurators.*

Art.11. So, the several appropriate functions, which, in relation to the things in question, may require to be exercised by such In-trust-holders respectively:—functions, namely,

i. As to *things:*—1. The procurative; 2. The conservative; 3. The applicative; 4. The reparative; 5. The eliminative.

ii. As to *money:*—1. The procurative; 2. The custoditive; 3. The applicative.

iii. As to *things, money, persons,* and *occurrences:*—1. The statistic; 2. The minutative and recordative.

iv. As to *states of things, arrangements,* and *ordinances:* the melioration-suggestive.*

Art. 12. So in regard to *remuneration:* namely, in the instance of each such In-trust-holder, whether any shall be received by him; and if yes, its *quantity* and its *quality;* or say how much, and in what *shape.*

Art. 13. In regard to the *shape,* it will be the Judge's care, that in no instance it shall be such as to place his *interest* in a state of *opposition* to his *duty.* Examples of such opposition, these—

1. In In-trust-holder's hands, *money* continuing in such quantity as to be capable of affording profit in the shape of *interest.*

Art. 14. So in regard to stock, in all shapes, as per art. 7: the Judge giving admission, and having, at all times, regard to suggestions by *interessee,* as per art. 8.

Art. 15. In and by the instrument of consignment, or say the consignment-effecting mandate, the Dispatch Court Judge will make mention of the purpose for which the transfer is made. As for instance,—

1. Purpose, management. Name of the instrument, the management-prescribing—or say directing—mandate. Form, as per Schedule No. XVIII.

2. Purpose, sale. Name of this his instrument, the sale-directing—or say prescribing—mandate. Form, as per Schedule No. XIX.

So, if for any other purpose.

Art. 16. Now, as to the case where the *confidee* is a *person.*—General heads under which the *purposes,* as per art. 4, may be ranked in this case, these:—

1. Remedial:—functions of the In-trust-holder in this case, those of a *keeper.*

2. Tutelary:—functions, those of a *guardian.*

3. Evidence-securing:—functions, those of a *keeper.*

Art. 17. General purpose remedial,—specific purposes, in this case, may be—

i.*Preventive:* Examples:—

1. Prevention of acts of force, having for their object obstruction to the exercise of any power belonging to the Dispatch Court Judge.

2. Prevention of evasion, from consignment made of the *confidee* to any In-trust-holder, for the purpose of confinement: *restrictive* the purpose may, in this respect, be termed.

ii.*Suppressive:* to wit, of negative delinquency in the shape of non-compliance with a mandate of the Judge:—ordering, for example, the transference—or say extradition—of a *thing,* as per articles following, in the character of a source of evidence, written or real;—or of a *person* in the character of an *evidence-holder:*—and, in each case, for the purpose of *prehension,* and delivery to an In-trust-holder; or, ordering indication to be made of a matter of fact, for the purpose of its being employed in evidence: in this case, *compulsive* is the denomination of the remedy: compulsion being the *means* by which, or say the *mode* in which it operates.

iii.*Satisfactive:* including the *compensative.* Applied to a thing, the remedy in this shape may be administered by extradition as above: applied to a person, it cannot be administered otherwise than by effecting extradition of a thing or things—valuable, as above—and delivery thereof, in kind or in value, as above.

iv.*Punitive,* or say *subsequentially preventive:* In-trust-holder, in this case,—keeper of a place of confinement: the confidee being placed under the care and custody of the In-trust-holder: namely, whether for the purpose of punishment thereby to be suffered, or for prevention of evasion of ulterior punishment in that or any other shape.

Art. 18. Subject-matters for the consideration of the Judge are in this case the following; namely—

i. The *quantity* of the suffering to be applied.

ii. The *place,* within which, or at which, by the In-trust-holder, the confidee shall be *kept,* or say *confined.*

iii. The *time* during which such confinement shall continue.

Art. 19. Of the suffering applied, the Judge will of course keep the quantity reduced to the smallest amount, consistent with the fulfilment of the special purpose, as per art. 17, with a view to which it is inflicted,—and with the non-production of preponderant evil in any shape.

Art. 20. As to the *place,* it may be either stationary or ambulatory.

Examples of the places when stationary, these:—

i. The house of the confidee himself.

ii. The house of a *friend* of the confidee: the occupier of the house praying for, or consenting to, the application thus made of it.

iii.*A lock-up-house:* that is to say—a house, in which, by an In-trust-holder, by whom such his business is carried on—professionally and for profit, *confidees* are *lodged* with or without *board,* in a state of confinement.*

iv. Failing the above places, in case of necessity, a prison.

Ratiocinative.

Art. 20*. Why this power of inflicting punishment on the innocent?

Answer.—Reasons:—

i. In the case here in question, preponderant suffering to the imprisoned individual, none: to parties, one or more, for want of the evidence, suffering in a pecuniary shape to the magnitude of which no limits can be assignable.

ii. Of suppression of true evidence the maleficent effects may be as great as those of falsification of true evidence or fabrication of false: and suppression of evidence is, if wilful, an offence against justice.

iii. Punishment is not, in this case, a proper appellation. For divers purposes other than punishment is suffering in this same shape habitually produced in English law, and in the laws of civilized nations in general: namely, the purpose of prevention and of suppression, as applied to maleficent acts of all sorts. Punishment is one out of the four species of remedies employable in the cure of the disorder called *delinquency:* the three others are—1. The preventive; 2. The suppressive; 3. The satisfactive; The 4th is the punitive:—the *preventive,* that is to say, the *antecedently* preventive; the

punitive having for its object the prevention of *subsequential* offences, and this being the only purpose for which the application of it is justifiable.

iv. Application of imprisonment for this very purpose, is not without example in English practice; nor are the examples rare.

v. This, too, without any of that attention which is here directed to be applied for the purpose of minimizing the suffering: and without either receipt or expectation of such attention, to imprisonment individuals purposely subject themselves—the evils of it being regarded by them as less than those to which, if out of prison, they would be subjected by indigence. See Section VI. *Judge's Powers.*

Enactive.—Instructional.

Art. 21. Instead of stationary, as in the above four cases,—power to the Judge—to render the restriction as to *place,*—and thence the condition of the confidee in respect of rest and motion, *ambulatory:*† the course of his locomotion being all the while such as is most agreeable to him; the confidee going wheresoever he pleases, so as he be all the while in the custody of the In-trust-holder, or some person employed on the occasion by him, the In-trust-holder being responsible for his forthcomingness:—and subject always to all such mandates, restrictive, or even compulsive, as for any of the above desirable purposes, shall have been delivered by, or by order of, the Judge.

Art. 22. In every one of these cases—for prevention of evasion, security will, if needful, be exacted by the Judge, as per art 10, according to the circumstances of the individuals interested in each individual case:—regard being had to the two antagonizing objects of consideration; namely, the evil producible by evasion, and the good produced by reducing to its minimum the quantity of suffering inflicted for the prevention of that same evil.

Instructional.—Ratiocinative.—Exemplificative.

Art. 23. Minimized may be by these means the expense and vexation produced under and by the existing system, in the view of providing security for the forthcoming of the persons in question:—extinguished, for example, the abuses following:—

i. The *bailing* system* with its expense, delay, and vexation, as at present carried on.

ii. For transfer of real property, compulsion† applied to a party, to cause him to do that which, without *agency* in any shape on his part, might be done by the Judge: in which case, lodged in the same party's hands, is a sort of *negative* applicable to the appropriate exercise of the judicial power in question, and capable not only of obstructing, but of frustrating it.

Enactive.—Expositive.

Art. 24.—II. General purpose the second, *tutelary.* Specific purposes correspond to the several efficient causes of the demand for the service of the In-trust-holder, which are the following:—

i. Intellectual weakness by reason of *immaturity* of age, or say, in one word, *minority.* Specific appellative of the *In-trust-holder,* in this case, *guardian:* of the confidee, *ward.*

ii. Intellectual weakness, by reason of mental derangement *not* referable to age. Specific appellative of the *In-trust-holder* in this case, *committee;* of the *confidee, idiot,* or *lunatic: idiot,* when the weakness is regarded as having had its commencement at birth, and as being thence incurable: *lunatic,* when regarded as having had its commencement at some point of time posterior to birth: and thence as curable or incurable as it may happen.

iii. Intellectual weakness, by reason of longevity: in which case it has been denominated *caducity.*

On this score, under the existing system, no such consignment is known to have had place: no appellative consequently in use, for the designation—either of an *In-trust-holder* or of a *confidee.* Appellatives that might here be applied are—to the In-trust-holder, *curator;* to the *confidee,* the *over-aged.*‡

Art. 25. Every minor, if any such there be, who, having father or mother living, is, in contrariety to the declared wishes of such father or mother, in wardship, under the Lord High Chancellor,—under the notion of the relative inaptitude of such his or her parent on the score of persuasion in matters of *religion,*—the Judge will emancipate from such guardianship; restoring the ward to the guardianship of the father; or, if the father be deceased, to that of the mother, or of any person by him or her appointed guardian, as the case may be.

Ratiocinative.

Art. 25*.—i. For if, on this score, a public functionary had it in his power to take a child out of the care of his natural guardian, or of any person by him or her appointed as guardian,—a power of *persecution* would thus be possessed, the peace of families exposed to disturbance, and, by successive Chancellors, so many mutually opposite persuasions might be endeavoured to be implanted in the same infant minds.

ii. So likewise, even if on the score of *morals.*

iii. If, throughout the whole community, in the case of all minors under natural or naturally appointed guardianship, as above—suits on this ground were liable to be instituted,—no end would there be to the *number* of such suits, nor to the *length* of them respectively.

iv. Supposing the institution of guardianship in this case beneficial, no sufficient reason can be assigned why the benefit should, by law, be conceded or denied, according to pecuniary circumstances; conceded to the rich, because rich; denied to the poor, because poor.?

Enactive.—Instructional.

Art. 26.—III. General purpose the third, *evidence-securing.*—Case I. Confidee, a *thing.* Of a *thing,* considered in the character of a source of evidence,—prehension may require to be made, for either of the three purposes following:—

i. Securing its forthcomingness.

ii. Securing it against changes liable to be made in its appearance for the purpose of deception; or say, against forgery of *real evidence.*

iii. Securing it against change with the like effect, though without any such sinister purpose; whether such change be the effect of a purely natural cause, or of want of attention to prevent it.

Instructional

Art. 27. In this case, the Judge will have to consider—whether, of the change of hands,—loss or detriment, in any shape, to any person, will be a consequence: and, if yes, whether to place the thing in the hands of an In-trust-holder (making, at the charge of the party requiring the consignment, compensation for such detriment)—or, in consideration of such detriment, leaving it in the hands in which it was found.

Enactive.—Instructional.

Art. 28.—Case II. Confidee, a *person.*—For the purpose of evidence,—to prevent the deperition thereof, power is hereby given to the Judge to place, in quality of an Evidence-holder, a person, in case of need, in the condition of a *Confidee,* in the custody of an In-trust-holder:—that is to say, if in his (the Judge's) opinion the importance of the suit to the parties, and the importance of the expected evidence in relation to the suit, are such as to afford an adequate compensation for the inconvenience about to result from the restraint.

Enactive.—Instructional.

Art. 29. In this case, of the costs of such consignment, including adequate compensation to the *confidee* for whatsoever inconvenience has in any shape been produced by the consignment,—that is to say, of the burthen of the cost,—distribution will be made between the parties, regard being had to their respective pecuniary circumstances.

Enactive.

Art. 30. By the Judge, an In-trust-holder of a *thing* or money may be—1. Located; 2. Suspended; 3. Dislocated; 4. Relocated. This, *toties quoties.* So, an Intrust-holder of a *person.*

Art. 31. For vexatious application made against an In-trust-holder, compensation may be made, or punishment inflicted.

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SECTION IX.

GROUNDS OF DECISION FOR THE DISPATCH COURT JUDGE.

Instructional.—Expositive.

Art. 1. Of every suit, the subject-matter of contestation is either—1. Matter of law; 2. Matter of fact; or, 3. Both together.

Enactive.

Art. 2. So far as regards the matter of law, every decision of the Dispatch Court Judge will have for its ground the *non-disappointment principle,*—or say, the disappointment-minimizing, or expectation-fulfilling, principle.*

Instructional.—Expositive.

Art. 3. Correspondent to the disappointment-minimizing principle is the following rule, to which it makes reference. On every occasion, in so far as benefit in any shape is the subject-matter of dispute, the question being, to which of a number of parties the possession, present or future, in whole or in part, shall be adjudged,—the manner in which for that purpose disposition will be made of it, is that by which, among all the *interessees* taken together, least disappointment will be produced.†

Art. 4. For the purpose of determining, as to the arrangement in question, whether it would be in contrariety to the non-disappointment principle, the Judge will consider within himself, whether, if the case were his own, if that same arrangement took place, any such uneasy sensation as that expressed by the word disappointment would thereby have been produced in his breast.

Art. 5. For the purpose of determining, as between any two arrangements, which of them would be most, which least, conformable to the non-disappointment principle, the Judge will consider within himself, by which of the two the greatest, by which the least, pain of disappointment would be produced, as above, in his breast.

Art. 6. For the purpose of determining the several arrangements which the greatest-happiness principle requires to be established in the several parts of the field of law, various other subordinate principles will have to be employed. But this is the only one which by his own authority the Equity Dispatch Court Judge can, consistently with that same all-ruling and master principle, make application of; for the applications made of the several others respectively, fresh enactments will be requisite and necessary.

Enactive.—Instructional.

Art. 7. To no decision or rule in force, or supposed so to be, in any other judicatory, at the time when the question comes before him for decision,—to no practice or *dictum* of any such judicatory,—will the Dispatch Court Judge pay any regard. Referring to this article, he will reprimand and stop from proceeding in this course any person by whom in argument any such irrelevant and inapplicable matter shall have been introduced.*

Ratiocinative.

Art. 7*. Reasons, these:—

i. Be the arrangement what it may, by whomsoever it is declared to be contrary to every principle of justice, or contrary to the first principles of justice, or contrary to justice, it is thereby acknowledged to be unfit to have place.

ii. Next in importance to the rule which prescribes maximization of happiness on the part of interessees, is the rule which prescribes minimization of disappointment on their part.

iii. Conformable to the non-disappointment principle, any such rule or decision as above would be useless: unconformable, it would be maleficent.

iv. Consistent with one another are all arrangements rightly deduced from the non-disappointment principle: completely inconsistent with one another are many of the rules and decisions listened and conformed to by the existing Equity Courts.

v. Not more hostile to the rules and decisions of the existing Equity Courts can be any arrangements deduced from the non-disappointment principle, than are to one another many of the existing rules and decisions of those same Courts. Witness those pronounced on the subject of last wills.†

vi. Not worse nor otherwise dealt with will thus be the rules and decisions of the existing Equity Courts by the Equity Dispatch Court, than by those same Equity Courts, without any the least reserve, are those of the several Common-Law Courts and those of the several Ecclesiastical Courts throughout a great part of the extent of the field of jurisdiction occupied by these same Equity Courts. If it is, or ever was fit, that the rules of one Court should, by another Court established in a dark age, be overruled, why not by one established in a more enlightened as well as in a less enlightened age?

vii.*Ex post facto* arrangements, as well as contrary to the non-disappointment principle, are both those made by the existing Equity Courts, and all those that are grounded on the Judge-made and so-called unwritten law by the Common-Law Courts, and the Ecclesiastical-Law Courts, and Admiralty Courts: but most scandalously inconsistent with that exclusively defensible principle—the non-disappointment principle—are the rules and decisions of the existing Equity Courts;

as well as with the profession included in the import of the term Equity: intimation being thereby meant to be conveyed of a better sort of justice.

viii. Contrary to acts of Parliament are various of the rules and decisions, application of which is made by the existing Equity Courts: witness those on the subject of the registration of deeds.

ix. Avowedly in contrariety to the enactments of the Legislature, may be seen rules and decisions of the Equity Courts: witness the instances brought to view in the tract intituled "*Indications respecting Lord Eldon,*" in the miscellany intituled "*Official Aptitude Maximized—Expense Minimized.*" (V. 348.)

x. By the exclusion put upon all mention of the rules and decisions of the existing Equity Courts, saved will be the prodigious quantity of time and expense employed in the reference to them in the existing practice.

Instructional.

Art. 8. Of interpretation in cases of doubt, applied to post-obituary dispositions,—principles applicable, these:—

i.*Non-disappointment,* or say *disappointment-preventing* or *minimizing* principle.

ii. Where and in so far as this principle has no application, the *benefit-maximizing* principle.

iii. When neither the disappointment-minimizing nor the benefit-maximizing principle are applicable, the *lot-employing* principle;—rather than by litiscontestation applying the money, part of it, to the use of lawyers in sheer waste: for example, in the scribbling of useless writings, or partly in travelling.

iv. In the first instance,—*i. e.* antecedently to application made of the benefit-maximizing principle, apply the lot-employing principle, as being the simplest in its operation, and saving the property from being wasted in the purchase of lawyers' service, useless witnesses, and journeys of evidence-holders: this done, then the Judge will determine whether the inequalities of fortune on the part of co-claimants are sufficiently great to warrant the application of the benefit-maximizing principle.

v. In cases in which no one of the above-mentioned principles is applicable, give the matter in dispute to government for the benefit of the whole community.

vi. Determine to what degree of remoteness in relationship, expectation of post-obituary acquisition shall be considered as extending: and this in the two several cases of existence and non-existence of amicable intercourse betwixt the defunct and the living:

1. Means of simplification, or say simplicity-effecting arrangements, proposable as aplicable to post-obituary dispositions:—

i. Applying to the subject-matter of property—

Abolition of the distinction between real and personal property.

ii. Applying to the judicatories having cognizance of contestation in relation to those same subject-matters of property—

Abolition of all sorts of judicatories except one: giving to one and the same sort of judicatory (exceptions excepted) jurisdiction in all sorts of cases.

2. An example this, of the distribution capable of being made of the subject-matter of legal arrangements for the purpose of co-operation in codification.*

3. Note, in this point of view, that of *post-obituary* and *introvival,* or say *intervival* disposition, the subject-matter is or may be the same: namely (exceptions excepted,) the aggregate mass of the objects of general desire, including the matter of wealth in all its ramifications.

vii. Modes of division in cases in which no ground can be found for giving the subject-matter in question to one of two contending parties, to the exclusion of the other, these:—

1. Division into two equal shares,—the assumption being, that the right does belong either to the one or to the other beyond doubt, no third person having any ground of title to it.

2. Lot, without division;—according to the result of the lottery, the subject-matter going in totality either to the one or the other.

Of these two, the mode of division seems the preferable one. Ground of this opinion, this:—what cannot but be admitted is, that in the breast of each one of the two competitors, the pain of disappointment cannot fail to have place. On the other hand, what is supposed and assumed to be true is, that the sum of the pain in the case of division will not be so great as the sum of the pain in the case of non-division; and conversely, the sum of the pleasure produced in the case of division will be greater than the sum of the pain in case of non-division.†

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SECTION X.‡

SUITS' COMPARATIVE SUITABLENESS; AND ORDER OF COGNIZANCE.

Instructional.

Art. 1. Of the Dispatch Court the institution has in view two purposes:—1. Main purpose, introductorily to the establishment of a proposed all-comprehensive system of judicial procedure, having for its object the minimization of delay, expense, vexation, misdecision, and denial of justice, together with the correspondently-comprehensive judiciary establishment necessary to the application of it;—the affording, without the expense which would be necessitated by the establishment of the system in the first instance, an experimental proof of the conduciveness of the procedure system to such its beneficent end.—2. Collateral purpose;—by means of this experiment, affording relief to a number as large as conveniently may be, of the persons labouring under the pressure of those same evils, in a species of judicatory the procedure of which is pregnant with them in the most signal abundance.

Instructional.—Expositive.

Art. 2. Subjects of consideration on this occasion, these:—

i. From what Court or Courts suits shall be transferred to the Dispatch Court.

ii. From such Court or Courts, what shall be the suits so transferred.

iii. The suits so transferred, what shall be the order in which cognizance shall be taken of them by the Dispatch Court Judge.

Enactive.—Expositive.

Art. 3. As to the Court or Courts:—From the High Court of Chancery alone shall suits be transferred to the Dispatch Court;—from the High Court of Chancery, including the Vice-Chancellor's Court, and the Master of the Rolls' Court.

Ratiocinative.

Art. 4. Not from the Equity side of the Court of Exchequer. For if of suits more than one, hearing takes place, they cannot any two of them be heard at the same moment: and if not heard at the same moment, they must be heard in some order one after another: and if so heard one after another, a determination as to what shall be the order in which they are to be heard, must be made beforehand. If from one Court alone they are received, a predetermination in this sort is capable of being made; but if

it were from Courts more than one that they were designed to be received, no such determination does the nature of the case admit of.

Enactive.

Art. 5. The Dispatch Court Judge will not, in any stage of the proceedings, take in hand any suit which has been instituted by a Commission of Bankruptcy.

Ratiocinative.

Art. 5*. Why not? *Answer.*—Reason: So great may be the quantity of business to be done in a single suit, that it might fill up the time of the Judge to such a degree as to keep back for and during an indefinite length of time Equity Court suits in indefinite number.

Enactive.

Art. 6. A Petition, which in the case of a suit commenced by a Commission of Bankruptcy, is in present practice presented to the Lord Chancellor, will accordingly be addressed to the Lord Chancellor, and not to the Dispatch Court Judge.

Enactive.

Art. 7. The Dispatch Court Judge will not, in any stage of the suit, take in hand any proceeding which has been commenced in the Insolvency Court.

Ratiocinative.

Art. 7. Reason: The same as in the case of a proceeding commenced by a Commission of Bankruptcy.

Enactive.

Art. 8. Exception excepted, every proceeding, the commencement of which has taken place, either by a Commission of Bankruptcy, or in an Insolvency Court, will be carried on in the same Courts respectively as at present, anything in this present Act notwithstanding.

Enactive.

Art. 9. Exception is where, for giving execution and effect in a suit which, having taken its commencement in the Equity Court, has been transferred into the Dispatch Court, it is necessary that by the Dispatch Court exercise should be given to powers operating on subject-matters on which those same Courts have either of them begun to operate.

Exemplificative.

Art. 10. Of these powers, examples are the following:—

i. Power of prehending and disposing of property which at the time of the transference was in the hands of either of those same Courts.

ii. Power of prehending and putting to use any written source of evidence, which at that time was or has since come to be in the possession of either of those same Courts.

Enactive.

Art. 11. For giving execution and effect to the above-mentioned powers, the powers exercisable by the Dispatch Court, in relation to persons and things belonging to the above-mentioned Courts, are the same as those exercisable over and in relation to persons and things belonging to the Equity Courts, as per Section VI. *Judge's Powers.*[*]

Enactive.—Instructional.

Art. 12. In manner following will the suits transferred, and the order in which cognizance is taken of them, be determined:—

i. Issued will be, on the [NA] day of [NA] next, his Majesty's Commission, by which appointment will be made of the Dispatch Court Judge.

ii. So soon as he has received his Commission, the Dispatch Court Judge will issue his mandates, addressed to the needful officers of the several Equity Courts, requiring them forthwith to make returns comprising the information following:—namely,

> 1. Names of the several suits, the first proceedings of which bear date in any part of the several years from the year of our Lord 1810 to the present year, both inclusive.
> 2. In a column headed by the word *concluded,* as to such in relation to which it can be ascertained that they have been concluded, information of the day on which such conclusion took place; and in a third column, the species of document by which it appears that the same took place; and in a fourth column, the names of the last proceedings that have been had in those in relation to which it does not appear that the conclusion thereof has taken place.
> 3. Name of the species of suit, in so far as the same can be ascertained.
> 4. Names and official residences of the several town solicitors on the plaintiff's side in the several suits.

Ratiocinative.

Art. 12*. As the Bill cannot pass without the approbation of both Houses, one or other House might be depended upon for the spontaneous procurement of the just-mentioned information. But as it may happen that, with reference to the purpose for which it is hereby required, the information so obtained may fall more or less short of being complete,—hence the necessity of a provision to this effect for the supply of it: the rather, as the demand for it will be more constantly and assuredly under the eye of the Dispatch Court Judge, than under that of either House of Parliament: and may arise at times at which those same Houses respectively are not sitting.†

Enactive.

Art. 13.—iii. Into the Dispatch Court will be transferred, in the first place, all suits which will have taken their commencement within [*twenty*] years, reckoning back from the day on which his Majesty's Commission to the Dispatch Court Judge is issued.

Art. 14.—iv. On that same day, by an advertisement in the *London Gazette,* a day will be appointed before which all suits, if any such there be, the commencement of which took place at a date anterior to those same [twenty] years, shall be so transferred. Name of these suits, the *superannuated* suits. Name of the before-mentioned suits, the *primarily-appointed,* or say *non-superannuated* suits.

Art. 15.—v. The two classes of suits,—primarily-appointed and superannuated, or say subsequentially appointed,—being added together in one list, the order in which the total number of them shall come in for cognizance will be determined. Name of the just-mentioned list, the *total,* or say the *aggregate* list of the so-transferred suits.

Ratiocinative.

Art. 15*. Why these suits alone,—not all such as are in pendency?—*Answer:* Some sorts of suits there are, in relation to which it is not possible to say for and during what length of time they may have been in pendency: in which case, no year later than the first of the proceedings of which any record of the Court is extant, could be pitched upon as that in which commencement shall be given to the series. Here then would be, in vast proportion to the useful, a quantity of useless matter, in the supplying of which a correspondent quantity of time and labour would have to be consumed.

Enactive.

Art. 16. As to the order in which by the Dispatch Court Judge cognizance shall be taken of the suits transferred to it from the Equity Courts, if it be not determined, as per art.—,* by the order in which Dispatch-Court-praying petitions are received, it will be determined by *lot.*

Ratiocinative.

Art. 16. *Question:* Why by lot? *Answer:* For the reasons following:—

i. Of the suits included in the above-mentioned period, the number will be a determinate one. But unless, and until the number of those to which anterior points of time gave commencement is also a determinate one, the total number of those to which admission to the Dispatch Court is to be given, will remain undetermined.

ii. Even supposing this total *number* in any way determined, still the *order* in which cognizance is to be taken of them will remain undetermined. For, though by the official books the day on which each suit took its commencement would be indicated, still by this circumstance the order of cognizance will not be determined. For, though the order of the days in the year is a determinate one, still as between the suits that took their commencement all of them on the same day, of the order in which they did so, no indication will by this means be afforded; nor in the nature of the case can be afforded by any other means than *lot.*

iii. Lot will thus far be employed of necessity: longevity, the ordinary and thence the most obvious one, is by the uncertainty of the influx of suits of anterior date prevented from being employed throughout; nor, on consideration, will any decisive reason, it is believed, be found why it is desirable that it should be.

iv. It may be thought that the quantity of the suffering from the non-termination of the suit is the proper standard by reference to which precedence should be settled. But upon closer consideration it will be found, that from no possible data, singly or collectively taken, is this quantity ascertainable.—1. Value of the subject-matter in contestation; 2. Expense of the suit; 3. Longevity of the suit;—not from any one of these circumstances, nor from all of them together. Of every one of these circumstances, not to the absolute quantity is that of the suffering proportionable, but to the relative;—relation had to the individual's pecuniary circumstances: and thence, in the case of each individual, different, not to speak of the universally unascertainable quantity of individual sensibility.

1. In cases to a great extent, the *value* of the subject-matter of contestation will not, even at the termination of the suit, have been ascertainable: as, for instance, all those in which the suit has for its object the applying to wrong the *preventive* remedy.

2. As to the *expense* of the suit,—it is composed partly of the money *already* at the then present time disbursed, partly of that remaining *about* to be disbursed:—a quantity, of which in most cases the ascertainment would be impossible.

3. As to the *longevity,*—it is composed partly of the past duration, partly of the eventually future duration; that is to say, of that which in the case of non-transference would take place; and unascertainable would be, not only in most cases the eventually *future,* but even in many instances the *past:*—namely, by reason of the impossibility of ascertaining the day or time of commencement, without going back to such a

number of years as would render the delay productive of burthen to an amount preponderant over the benefit.*

Enactive.—Instructional.

Art. 17. Mode which, for determining the order of priority as between suit and suit among suits of the same class, will on the present occasion be employed,—mode of proceeding by which choice is excluded, and to all eyes shown to be so,—this. Square tickets of card paper,—all of them of exactly the same form and size,—one for each suit, being provided, and on each of them the name of a different suit, under the care of the Registrar, inscribed,—a square box or other receptacle, deep and wide enough to receive a human arm is provided:—Name of a ticket of this sort, a *priority-indicating* ticket, or for shortness, a *priority* ticket:—and into this receptacle, in open court, by the Registrar, in the sight of all present, these tickets are successively dropped. This done, upon this same receptacle, a cover, composed of a piece of cloth, with a slit in it, being temporarily fastened, and the receptacle with such its contents sufficiently shaken, the tickets are successively drawn out one by one; and, in the order of their succession copied upon a sheet of paper prepared for that purpose:—*arm* thus employed (suppose) that of a child too young to be susceptible of instruction for a sinister purpose.

Enactive.—Expositive.

Art. 18. Of the several superannuated suits, such if any as remain untransferred, and thence not included in the above mentioned lottery, will be removed into the Court of Exchequer for continuance and termination in manner hereinafter mentioned.

Art. 19. Provided always, that any such untransferred superannuated suit, instead of being so removed into the Exchequer Court, may, on condition that for the purpose of decision cognizance shall not be taken of it till after those in relation to which the order of precedence has been so determined as aforesaid, be transferred to the Dispatch Court; and for effecting such transference, a petition to the Dispatch Court Judge from any one of the plaintiffs, if more than one, will suffice. Name of such petition, a Transference Petition. *Form of it as per Schedule No. XX.*

Art. 20. As to suits which being to be commenced at a time subsequential to such transference, would otherwise have been brought before the Court of Chancery,—during the continuance of the Dispatch Court they will be brought before the Court of Exchequer.

Art. 21. Provided always, that should it have pleased his Majesty to appoint another Judge for the cognizance of such subsequential Equity suits, they will, instead of being brought before the Court of Exchequer, be brought before such subsequentially-appointed Dispatch Court Judge: and for the appointment of such supplemental Judge, he proceeding in the same manner as the originally-appointed Dispatch Court Judge, power to his Majesty is hereby given.

Enactive.—Expositive.

Art. 22. Neither from the originally-instituted Dispatch Court,—nor from the subsequentially-instituted Dispatch Court, should any such be instituted,—is any appeal appointed. Should it appear to any member of either House of Parliament, that the decision pronounced by the Judge of either Court is not according to justice, he will be at liberty to move for leave to bring in a Bill for the establishment of a different rule for the time to come.

Art. 23. Provided always, that for corruption, oppression, extortion, and wilful, or say *malâ fide* misdecision, the Dispatch Court Judge may, by his Majesty's Attorney, be prosecuted by *ex officio* information in the Court of King's Bench: and in case of conviction of such wilful misdecision, the decree shall be reversed, and another decree substituted by the successor of the so-convicted Judge. See Section VI., *Judge's Powers,* art. 100.

Art. 24. Should it appear, that by the two aforesaid Judges, decrees have been made from which two conflicting rules are likely to be deduced, remedy will be applied by act of Parliament, in the same manner as by art. 15.

Ratiocinative.

Art. 25. From the non-institution of appeal, or say the substitution of an appeal in this mode for appeal to the House of Lords, no preponderant inconvenience will on any just ground be apprehendible. By the institution of appeal to the House of Lords, the disease, in respect of the delay and expense (not to speak of danger of misdecision,) would be continued in a great part of its force. So would it if sent to the existing Court of Exchequer Chamber, composed of eight Judges, or the Court composed of the twelve Judges: besides that in either of these cases it would have to be decided upon the only principles with which they are acquainted, and to which they are naturally attached—principles adverse to that of this Act.

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SECTION XI.

AUXILIARY JUDGES AND ACCOUNTANTS.

Enactive.

Art. 1. For the performance of various incidental operations of Equity Court procedure, when transferred to the Dispatch Court, instituted hereby, in addition to the Dispatch Court Judge and his Deputes, are a class of Judges subordinate to him, and acting under his direction, by the name of Auxiliary Dispatch Court Judges, or say, Dispatch Court Judges Auxiliary, with their several Deputes.

Instructional.—Ratiocinative.

Art. 2. On this occasion, as on every other, desirable results are the following:—

i. That delay, expense, and vexation, should be minimized.

ii. That to this end, appropriate aptitude in all its branches be maximized.

iii. That, for the sake of appropriate moral aptitude, matters be so ordered that no person be a *gainer* by needless addition to expense or delay.

iv. That, on the contrary, such persons, as many as may be, may by any needless expense or delay occasioned by them respectively, be *losers.*

v. That, in respect of the *quantum,* the remuneration be as small as it can be made, without preponderant evil, by detriment to the appropriate aptitude of the functionaries to whom it is allotted.

vi. That, in respect of the *shape* in which it is administered, for the sake of appropriate intellectual aptitude, cognitional and judicial, and appropriate active aptitude, matters may be so ordered, that by fear of public opinion all persons absolutely or comparatively inapt in those respects, be deterred or prevented from accepting official situations.

vii. So, all persons in quality of locators, from locating them in those several situations.

viii. That on the part of functionaries thus located, *emulation* may have place; that is to say, competition for remuneratory approbation at the hands of the Public Opinion Tribunal:—that judicial authority, in relation to which, the popular or moral sanction is the legislative.

ix. That no suit should by its complexity, and thence by its lengthiness, put a stoppage beyond what is unpreventible, to the dispatch of others more than one.

x. That for minimization of delay and expense conjoined with each other, the supply of judicial functionaries may be *elastic;*—always sufficient for the maximum of dispatch, never more than sufficient;—at all times fitting itself to the quantity of the business by which the demand is produced.

xi. That, by means of the correspondent number of subordinate judges, of the various operations which have need to be performed in the course of the same suit, as many as possible may be carried on at the same time.

xii. That the chain of causes and effects may thus be organized in such sort as to maximize the probability of the production of the several desirable results, each of them in the highest degree possible.

Art. 3. For accomplishing by the above means the above objects, the arrangements that are provided will here be seen.

In regard to the minimization of delay and expense, the accomplishment of the object will depend partly upon the state of mind on the part of the operating functionary—partly on the state of things on the part of the subject-matter operated upon. In relation to minds, that which presented itself as capable of being done, has already been brought to view in the several preceding Sections. Remains to be seen, what is capable of being done in relation to the subject-matter to be operated upon;—namely, the aggregate mass of the matter belonging to the several suits which the Dispatch Court Judge will at the time of his appointment find depending in the several Equity Courts. “Many hands make light work,” says the proverbial rule: corresponding principle, the *distribution principle.*

Art. 4. Under the guidance of this principle, for the assistance of the Judge hitherto designed by the appellation of the *Dispatch Court Judge,* is provided a set of Judges under the name of *Auxiliary Judges:*—for his assistance, and thence operating, to wit, on different parts of the matter of the same suit at the same time as he:—for his assistance, and thence operating under him and by his direction. Thus, then, over and above the stock of machinery already brought to view, comes to be brought to view an additional and different stock, under the name of *Auxiliary Judges,* with their *et ceteras.*

Art. 5. But whatsoever were the objects in view, and aimed at in the case of the original machinery, the same will have place in regard to the case of the supplementary machinery. With respect to the *quantum* of the supply, always enough, and never more than enough, was the *quantum* aimed at and endeavoured to be provided in the case of the original machinery: the same is the description of the *quantum* aimed at and endeavoured to be provided in the case of the supplemental machinery:—and, to speak more particularly, for the Dispatch Court Judge have been provided his Deputes, for the Auxiliary Judges, be they ever so many, must be provided their respective Deputes. Thus then, and for the purpose of this close fitting,

as in the case of the fabled seven-league boots, already alluded to, the same elasticity, suppleness and pliancy, will be needed in this case as in that.

Art. 6. Thus much as to the quantity of the fresh supply. So as to quality,—appropriate aptitude in all its four branches. As to the means of producing it, and instruments to be provided for the production of it, together with the manner in which application requires to be made of those same instruments, here, as there, the instrument is the matter of reward—the active, the moving force, by which application is made of it, *remuneration:* here, as there, the direction and mode in which application is made of it, such as will *accelerate* the motion of the instruments it is applied to, and, in a word, the whole moving part of the machinery,—not *retard* it. Here, as before, this will be determined by the terms and conditions on which they operate, and the publicity of those same operations,—upon the force with which the voice of public opinion operates upon them, in such sort as to secure the rectitude of the direction in which, and the velocity with which they operate.

Art. 7. For aught that as yet has appeared no reason has been given why, to the Dispatch Court Judge and his Deputes, addition should be made of a set of Judges of a different species, according to the intimation given by the provision thus made of a different name. The reason of this diversity is the benefit looked for from the saving in the article of expense. For an Auxiliary Dispatch Court Judge, a small fraction—say a tenth part—of what at the commencement of the institution would probably be found necessary, may, as will be seen, suffice: and considering the magnitude of the number of assistants which it will probably be necessary to provide for the Dispatch Court Judge Principal, not inconsiderable will be the total amount of the saving thus produced: indeed, were it not for this economy, it seems probable, that in practice an insuperable bar to the whole institution would be opposed by the magnitude of the expense.

Art. 8. For this reason, a necessary operation has been the putting out and deducting from the remainder of the business that sort of work for the performance of which the remuneration attached in practice to the less difficult sort of work can be shown to be sufficient: and for this purpose, magnifying glass in hand, to apply the eye of scrutiny to the several atoms of which the matter of the practice, or say procedure, is composed: this accordingly is what has been done.

Art. 9. In so doing, observation came to be made of a distinction which has place between the species of suits which may be styled simple, and a species which may be styled complex. By a complex suit, understand any suit which contains in the body of it, and as it were imbedded in it, a number more or less considerable of simple suits: insomuch, that after the commencement of the complex suit in question, before it can have been brought to its termination, other suits arising out of the matter of it must, in a number more or less considerable, have received not only their commencement, but their termination likewise. Of this, see further on.

Enactive.—Expositive.

Art. 10. Thus, then, established in the Dispatch Court there will be four distinguishable classes of Judges, whose denominations are the following:—

1. Head or say Chief Judge Principal.
2. Head or say Chief Judge's Depute.
3. Auxiliary Judges Principal.
4. Auxiliary Judges Depute.

By these several denominations they will henceforward be designated.*

Enactive.

Art. 11. Functions of an Auxiliary Judge, two:—that is to say—

i. The Master's Service-performing function; or say, the Master's Service function.

ii. The Elementary, or say Excretitious Suit-dispatching function; or say, the Collection and Distribution-performing function.

Expositive.

Art. 12. By the *Master's service-performing* function,—understand that function to which exercise is given by the performance of the several operations which in the Court of Chancery are performed by the functionaries styled *Masters,* with the exception of these administrative operations which by Section VIII. are transferred to *Consignees.*†

Expositive.

Art. 13. By the *Elementary-suit,* or say *Excretitious-suit-dispatching,* or say *Collection-and-Distribution-performing* function—understand the following:—Where by a last will or a conveyance of the whole or any part of the estate, or say property, of an individual, with his concurrence and consent, for the discharge of his *debts,* a gross sum has to be divided into shares,—deciding in what manner it shall be parcelled out among such persons as by the written documents received from the Equity Court, or from the claims put in by the persons in question, in the proportions that shall appear to be due to them:—and in case of contestation, deciding upon the validity of the several claims made of the several shares.

Instructional.

Art. 14. In a pecuniary account, as between debtor and creditor, whatsoever be the number of items, no one of them is there to which it may not happen to be the subject-matter of contestation, and thence of a suit: in this way, out of one suit which, when transferred to the Dispatch Court, was still in pendency in the Equity Court out of

which it was transferred, may, after such transference, be made grow suits in any number, to which may accordingly be given the denomination of excretitious suits; and to the Equity suit out of which they grew, the correspondent denomination of a pregnant, or say prolific, or proliferous suit.

Art. 15. Of a suit of this sort, the subject-matter is of the number of *things* spoken of in Section VIII. as being of a nature to be placed in the hands of a *consignee* until an effectual distribution of the aggregate sum of money in question among the persons thereunto entitled can be made.

Art. 16. Accordant with one another are the two functions in this;—namely, that to the due exercise of them no scientific law learning is necessary, any more than to the Commissioners of most of the Small-Debt Courts, by whom are notwithstanding exercised functions as effectually and incontestably judicial as those exercised in and by any of the several Wesminster-Hall Courts: nor so much as to one species of Judge—the class of Judges styled Justices of the Peace. On the Chief Dispatch Court Judge-Principal is the reliance for the performance of whatsoever operations, to the performance of which the need of scientific law learning, such as that supposed to be possessed by the Wesminster-Hall Judges, has place.

Enactive.—Ratiocinative.

Art. 17. Taking cognizance, each of them, of so many elementary suits or parcels of elementary suits, at one and the same time, may be each one of any number of Auxiliary Judges: and thus will be saved a correspondent portion of the time which would otherwise be occupied by the complex suit of which they are the elements.

Enactive.

Art. 18. The moneys, for the collection of which an Auxiliary Judge is appointed, will be paid, as above, into the hands of a Consignee or Consignees (as per Section VIII. *Consignees,)* or into the Bank of England. Name of the mandate by which the receipts of a sum of money for this purpose is ordered to be made, a *Money-reception-ordering Mandate:* form, as per Schedule No. XXI., saving some small sum reserved for current expenses, as in the case of money paid in by order of the Judge Principal.

Art. 19. A sum of money, when adjudged due to any party, will be ordered to be paid by such Consignee, or by the Bank of England, to him to whom it is adjudged due. Name of the mandate, a *Payment-ordering* Mandate: form, as per Schedule No. XXII.

Enactive.

Art. 20. In every case, the matter will come, in the first instance, before the Judge Principal: for him it will then be to determine whether to keep the whole of the suit for his own cognizance, or to allot any and what part of it respectively to a Judge Depute or a Judge Auxiliary: to a Judge Depute he will accordingly allot, as above, whatsoever part there may be for which law learning is regarded by him as needful: to

an Auxiliary Judge, in his quality of accountant, whatsoever part there is in the instance of which correctness in arithmetical operations is necessary, and dispatch of course desirable.

Enactive.—Ratiocinative.

Art. 21. Of every such Court, by whichsoever functionary kept, the Judge Depute or the Judge Auxiliary, the doors, exceptions excepted, should be constantly open. In each instance, if visitors came, the more there were of them the better; if none came, no harm could any such arrangement be productive of: and in every case, on the part of the Judge, the habit of witnessing the influx, or even without the habit, the eventual expectation of it, would naturally be productive of more or less good: better would be the state of things than under the existing practice, in which the business is performed in a hermetically-sealed receiver, the Master's Court; and accordingly, responsibility, security against malpractice, in a word, appropriate aptitude in all shapes, minimized.

Enactive.

Art. 22. For giving, in case of non-compliance, execution and effect to the *payment-ordering-mandate* of an Auxiliary Judge, application will be made of the thereto-applying powers conferred by Section VI. *Judge's Powers,* on the Judge Principal: that is to say—1. Prehensive power, as per art. 5; 2. Prehensive and imperative power, as per art. 6; 3. Prehensive and dispositive power, as per art. 8; 4. Prehensor-dispatching-power, as per art. 14; 5. Incarcerative power, as per art. 15; 6. Disincarcerative power, as per art. 16.

Art. 23. Means of obtaining the application of these same powers to those same purposes, the following:—

i. By the Auxiliary Judge a certificate is given of the needfulness of the power in question for the purpose for which the application is made: reference being therein also made to the minutes of the evidence by which the fact of such needfulness is regarded by him as being established. Name of such certificate, a *prehension-requiring certificate,* or a *prehension-and-imperation-requiring certificate,* &c. as the case may be; adding to the name of the compulsory mandate the word *requiring.*

Art. 24. In a case in which the suit has been transferred to the cognizance of an auxiliary Judge, the party defendant will either be found being so on the occasion in question in some other Court than the Equity Court in question, or not: if yes, the Dispatch Court Judge Principal will, at the time of the transference by him made of the cognizance of the suit to the Judge Auxiliary, cause the documents, if any, and money, if any, thereto belonging, to be transferred to the Equity Court Registrar, as per Section VI. *Judge's Powers:* and retaining the money, will hold the documents ready to be produced at all times for the inspection of the Auxiliary Judge during the hearing of the suit in question, as also at all other times. The demand being thereupon about to be resisted in the Auxiliary Court, the Judge will, on the application of the plaintiff, convene the defendant; that is to say, him who is so in such other Court: and thereafter the proceedings will be the same as in the case where, at the time of the

transference into the Dispatch Court, the suit was not found to be in pendency in any other Court.

Art. 25. When, on the occasion of a suit in and by which, collection or distribution of money having to be made, the cognizance thereof, so far as regards these purposes, is by the Judge Principal transferred to a Judge Auxiliary,—the instrument by which such transference is performed will be an appropriate mandate issuing from the Judge Principal, and addressed to the Judge Auxiliary. Name thereof, a *Cognizance-transferring Mandate:* form, as per Schedule No. XXIII.

Art. 26. On this occasion, of two states of things, the one or the other will have place: In and by the Equity suit, all debts due to the estate, and all debts due from the estate, will already have been ascertained, or the existence of debts of one or other description, or both, will remain to be ascertained.

Art. 27. Whether of all debts due to and all due from the estate, the existence has or has not been ascertained, either all debts due to the estate have been got in, or some or all of them remain to be got in. If any remain to be got in, a judgment will either have been formed or not, whether any, and what, are to be considered as desperate, in such sort that no suit for the recovery thereof is to be engaged in. In the case of those that have been got in, either the whole amount will in the course of the Equity suit have been disposed of, or a part more or less considerable will, at the time of the transference of the suit from the Equity Court to the Dispatch Court, be in the Bank of England, standing in the name of the appropriate functionary of the Equity Court.

Enactive.

Art. 28. In the case of money due on the score of a legacy, on order made for payment of any sum,—power to the Auxiliary Judge to make provision for eventual *refusion* in consequence of just demands not at that time known, and for that purpose to require security for the refunding of whatsoever may be requisite for the satisfying of such demand.

Art. 29. Mode of providing for such refusion, this: Forbearing to issue a *payment-ordering mandate,* as per art. 19, to any creditor or person, until by him or her such security has been found. Name of the mandate, a *refusion-securing mandate:* form, as per Schedule No. XXIV. Employable modes of such security, as per Section VIII. *Consignees,* art. 10. The sum, for the eventual refusion whereof security is thus provided, may be the whole or any part of the sum, payment of which is ordered, as above.

Ratiocinative.

Art. 29*. Why ordain any such refusion? *Answer.*—Reasons:—

i. To prevent injustice to creditors, who without blame on their part are by local distance, infirmity of mind or body, or other cause, prevented from coming in within time.

ii. To preserve the parties from the delay, expense, and vexation of the sole accustomed remedy against such injustice: namely, an Equity suit.

Enactive.—Instructional.

Art. 30. On the occasion of each individual suit, the Dispatch Court Chief Judge Principal will either perform with his own hand the whole of the business belonging to it, or distribute the whole or any part of it among the several other Judges, in such proportion as shall have been deemed by him most conducive to the ends of justice.

Art. 31. Thence it is, that between the functions belonging to one of the classes above named (art. 11), and the functions belonging to another,—as between the functions belonging to the hereinafter-mentioned accountants, no need has place for the drawing of an exact line.

Art. 32. That which, on this as on every occasion, is essentially desirable, is—that (as elsewhere mentioned) the provision made should be *elastic,*—fitted, or capable of being made fit, to the circumstances of each and every individual case. Proportioned to the degree of this elasticity is the latitude of the discretion given to the Judge. Proportionably dangerous would this latitude be, but for the *regulator* which is capable of being applied to it. This regulator is the obligation of giving *reasons* for what he does: for, by this operation of reason-giving, the matter is brought under the cognizance of the Public Opinion Tribunal.

Expositive.

Art. 33. Between the service of the Auxiliary Judge and that of the Dispatch Court Judge Depute, in respect of the elementary-suits-dispatching function, the difference is this:—By the Dispatch Court Judge Depute the whole of the business of the suit in question is carried on, in the same manner as it would have been by the Dispatch Court Judge Principal: by the Auxiliary Dispatch Court Judge, in virtue of his excretitious-suits-dispatching function, such parts only as are hereinabove mentioned; see art. 49.

Ratiocinative.

Art. 33*. Of the institution of these same Auxiliary Judges, over and above the Dispatch Court Judge Deputes, as per Section V., the uses and correspondent reasons, so far as regards their excretitious-suits-dispatching function, are these:—

i. Of the sorts of suits of which the Judge Principal has cognizance, there not being any one to which it may not happen to be taken cognizance of by a Judge Depute,—in other words, his field of service being co-extensive with that of the Judge-Principal, whose Depute he is,—thence it is, that for the rendering of the service for which he is engaged, need has place for appropriate skill in his instance, not less than in the instance of the Judge Principal by whom he has been deputed: need for appropriate skill, and thence ultimately for correspondent remuneration at public

expense:—whereas, for the cognizance of a suit of the sort of these same elementary suits, the minimum of appropriate skill may be sufficient: for example, that which is possessed by the species of unlaw-learned Judge, styled a Commissioner of the sort of Small Debt Courts, styled Courts of Requests or Courts of Conscience.

ii. Small, it will have been seen, is the number in which Dispatch Court Judges need or ought to be constituted: whereas, on the occasion of one and the same *pregnant* suit, it may happen to elementary suits in any number to have place, and to any number of them to be referred to the cognizance of one and the same Auxiliary Judge.

iii. Whatsoever be the number of these same elementary suits, and whatsoever be the number of the Auxiliary Judges among whom they are distributed, so many as there are of these same Auxiliary Judges, so many are there which are capable of being carried on all of them at the same time: thence a correspondent saving of delay to the suitors, and of the expensively-remunerated time of the Judge Principal.

Exemplificative.

Art. 34. Examples of excretitious suits are—1. Suits maintained in quality of plaintiff by the consignee of the estate of a person deceased, on account of monies which he has to *collect;* 2. Suits maintained by him in quality of defendant, in case of his thinking fit to refuse compliance with demands made upon him in consequence of his having money's worth to *distribute.*

Expositive.

Art. 35. By the Auxiliary Judge's master's service-performing function, understand the aggregate of the several functions performed in an Equity Court by the sort of subordinate Judge intituled a Master in Chancery, in subordination to the Lord Chancellor, the Vice-Chancellor, and the Master of the Rolls.

Enactive.

Art. 36. Located by the Chief Dispatch Court Judge will be the Auxiliary Dispatch Court Judges, in such *number* as, in addition to the Dispatch Court Judge's Depute, he sees reason to regard as necessary and sufficient for the purpose of minimizing delay in the suits of which he has cognizance. For reasons, see above. Form of location, *see Schedule* No. XXV.

Enactive.

Art. 37. Term of service, unless dislocated, the same as that of the Dispatch Court Judge-Principal, as per Section II. art. 4, 5.

Enactive.

Art. 38. Power to the Judge-Principal, for reasons assigned, to suspend, dislocate, and relocate every such Auxiliary Judge, as in the case of a Judge-Depute, by Section V., *Judge's Deputes,* art. 6.

Enactive.

Art 39. In the situation of Auxiliary Dispatch Court Judge, attendance will be the same as that of the Judge-Principal, as per Section XII., *Sittings, times of.*

Enactive.

Art. 40. In case of sickness, the Judge-Principal, or a Depute of his, as the case may be, will take the requisite measures for the substitution of a succedaneous Auxiliary Judge to the one so incapacitated by sickness; as per Section V. *Judge's Deputes,* arts. 3, 4, 5.

Enactive.—Ratiocinative.

Art. 41. Responsible for every Judge-Auxiliary will be the Judge-Principal, as per Section V. art. 7, for every Judge-Depute. Reasons in *this* case, the same as in *that.*

Enactive.—Instructional.

Art. 42. Power to the Dispatch Court Judge-Principal, on his responsibility, to locate in the situation of Auxiliary Judge, in and for the suit in question, any such person as in his opinion is sufficiently qualified for the performance of the functions in and for the elementary suit or suits in question to be exercised.

Ratiocinative.

Art. 42*. Why leave thus absolutely to the discretion of the Dispatch Court Judge-Principal, the choice of every Auxiliary Judge, with the several correspondent powers of suspension and dislocation?—thus absolutely, and without rendering the possession of a qualification in any determinate shape necessary?

Answer.—Reasons:—

i. In the case of the situation of a Justice of the Peace, the power of location is thus absolute, and so as to the power of dislocation: and in that case, no need of application, for the purpose of obtaining such dislocation, has place.

ii. As to qualification, in the case of that situation, no qualification of any kind has place, other than one in which it is nugatory, affording not any the least security for appropriate aptitude in any shape: in the case of a Justice of Peace at large, income of

£100 a-year in a particular shape: in the case of a Justice of the Peace in the situation of a London Police Magistrate, the having eaten a certain number of *dinners* in one or other of four large dining-rooms.

iii. Responsible will the Judge-Principal be to the Public Opinion Tribunal for every such choice: and on every occasion, fixed upon him with a view to it will be all eyes. Responsible is nobody for the choice made of Justices of Peace at large:—nobody to any effectual purpose, in the case of the Police Magistrates.

iv. For the *uses,* thence the *purposes,* by which the institution of these Judges was suggested, and which accordingly constitute the grounds and reasons which it has for its support, see those to which expression is given above, in Section V., *Judge's Deputes,* art. 12*.

v. To the needful number of the Dispatch Court Judge's Deputes, limits comparatively narrow may be seen set by the considerations there brought to view. If, in the case of complex suits, as above described, that number were not capable of being enlarged, Equity Court suits in indefinite number would have to *stand still,* waiting for the termination of this or that one comparatively unimportant and insignificant suit.

vi. What is the number likely to be found requisite?—Answer: At the utmost, very considerably less than that of the *Masters in Chancery,* considering how much more assiduous their attendance would be, and that they would not have anything to gain by the practice by which those masters in the arts of depredation make such enormous gains—that of chopping the business times into small scraps, the greatest part of each of which evaporates in inefficiency—in gossip, newspaper-reading, or non-attendance; and who attend not more than half the days in the year, or some such matter, upon an average: of one of them in particular, in a pamphlet published a few years ago, mention may be seen made, in whose instance the time employed in the exercise of his functions exceeded not five months out of the twelve.

Enactive.

Art. 43. Power to the Dispatch Court Judge to locate Accountants in such number as from time to time, in his judgment, the demand indicates.

Enactive.

Art. 44. On the occasion of every such location, he will frame an appropriate report, stating his reasons, as in the case of Auxiliary Judge's Depute, by which he has been induced to make such location.

Art. 45. This report he will address to the House of Commons, and deliver or transmit the same to the Clerk by whom execution is given to the orders made for the printing of papers for the use of the Honourable House.

Enactive.

Art. 46. Attached to the office of Auxiliary Dispatch Court Judge will be a salary of [£400] a-year: payable at the same time and in the same manner as by Section II. art. 1, that of the Dispatch Court Judge Principal.

Ratiocinative.

Art. 47*.—i. This was the salary attached to the office of Police Magistrate at the institution of it, anno 1792. With this remuneration, David Colquhoun, the well-known and most meritorious functionary the office was ever filled by, was well content, to the knowledge of the author of these pages. Added some years afterwards to this £400, was £200: and *subsequently* another £200:—on each addition, if, in respect of the satisfaction given, there was any alteration, it was from good to indifferent, and from indifferent to still more indifferent.

ii. Added to remuneration in this pecuniary shape and quantity, and the inducement it affords, will be in *expectancy,* though not certain, yet in degree proportioned to the appropriate aptitude exhibited in this situation, the situation of Judge Principal in one or other of the proposed local judicatories, if and when, as herein proposed, instituted.

Enactive.

Art. 48. Attached to the office of Accountant Auxiliary Dispatch Court Judge will be a salary of [£300] a-year, payable as above.

Ratiocinative.

Art. 48*. This, and no more, is the remuneration attached to the office of Comptroller in one of the Boards, and with this remuneration the occupant located in the office, in the teeth of usage by mere merit, was and is well content, to the knowledge of the author of these pages.

Enactive.—Instructional.—Ratiocinative.

Art. 49. Between the description of persons employed as Judge Deputes, and the description of these employed as Judge Auxiliaries, shall there be any, and what difference?—Answer: Yes. Of the appointment made of Judge Deputes, the purpose is their doing all sorts of business without exception that are done by the Judge Principal—those which require the greatest share of law-learning, as well as those that require the least: whereas the business allotted to the Auxiliary Judges is that in the case of which the greatest quantity of time is necessary, and the least quantity of law-learning sufficient:—as per art. 33.

Enactive.—Instructional.

Art. 50. Qualifications suitable and desirable, are, so far as regards judiciary procedure,—such as the *elicitation of evidence,*—law-learning and law-practice: so far as regards the taking the accounts, accountantship practice.

Art. 51. Of persons in whose instance the requisite law-learning may reasonably be looked for, are—1. Barristers of short standing as such; 2. Students of long standing as such. Of persons in whose instance the requisite accountantship may reasonably be looked for, any person by whom, in the character of a profit-seeking occupation, that business is carried on. Suits there may be, in which a demand for appropriate qualification in both these respects may have place: to these cases the Judge Principal will pay due regard.

Instructional.

Art. 52. The logical field of service being, as above, no wider than that of one of the numerous Judges of a Small Debt Court, called a Court of Conscience, they not being lawyers, no greater share of law-learning will be necessary in *his* case than is regarded as necessary in *theirs.*

Enactive.

Art. 53. If in a case of which an Auxiliary Judge is taking cognizance, a point of law comes upon the carpet, power to the Auxiliary Judge, or to any party in the suit, to cause the decision to be referred to the Judge Principal.

Enactive.

Art. 54. To the Dispatch Court Judge Principal, appeal lies from the decisions of every one of the Judges subordinate to him, as above.

Art. 55. From no one of those same Judges does appeal lie to the decision of any other.

Ratiocinative.

Art. 54* and 55*.—i. Of any transient glance bestowed upon the immense delay and expense produced by every appeal in the present state of judicial practice, a natural result is, an apprehension of the like in this case: altogether groundless it will be found on a second glance.

ii. In relation to any point, or any number of points, in the decision of any one of these subordinate Judges, appeal may on that same day, or even in that same hour, be made to the one Judge Appellate, and ultimate decree pronounced by him.

iii. In this case, of the causes by which in the present practice effects so pernicious are produced, *one* will not have place at all: the other will not have place but in a much inferior degree of efficiency.

iv. The cause which will not have place at all is—on the part of the *malâ fide* suitor, on the defendant's side, when debtor, staving off the time of payment, thence profit by interest of money or profit in trade; on either side, when to a certain degree richer, gaining the matter in dispute by the inability of the adverse party to go on with the suit: on the part of the lawyers on both sides, the profit by fees.

v. The cause which will not have place but in a much inferior degree of efficiency, is—on both sides, the lawyers' profits by fees. By exclusion of that part of the expense which is produced by the delay, exclusion will be put upon the lawyers' profit on that expense: what remains obtainable by the lawyer or lawyers, amounts to no more than the fee for a single speech in addition to the first, and by the cost of this second speech the *malâ fide* suitor will be divested of all benefit in every shape, from a groundless or ill-grounded appeal.

vi. In the ordinary state of things, the *uses* of appeal are—1. Preserving consistency as between one and another in the series of judicial decisions; 2. Security against *malâ fide* misdecision. But as to the first of these uses, no application has it on the present occasion: for by express provision, all such application is purposely interdicted: and the other will actually be derived from it.

vii. As to any further stage of appeal, in addition to this one, what has been elsewhere shown is—that from any number of such additional stages in any number, no additional security against *bonâ fide* misdecision can be derived.*

Enactive.—Ratiocinative.

Art. 56. Such appeal may be made, not only from the ultimate decree, but from the decision on any intermediately intervening question, from the commencement of the suit to the close of it. For, by any such intervening decision, it may happen that the fate of the dispute between the parties may be decided, as well as by the ultimate decree.

Enactive.

Art. 57. In case of groundless appeal, power to the Judge Appellate to give costs; and even in addition thereto, to impose mulct.

Enactive.

Art. 58. Power to the Law Auxiliary Judge to locate Deputes, as many as he sees need for: all of them on condition of serving without remuneration in and during the probationary year, as per Section V. *Judge's, &c. Deputes.*

Ratiocinative.

Art. 58*. Advantages resulting from this plan of Probationary Deputes' location, these:—

i. By an experimental test it is rendered manifest whether the service has or has not need of the several functionaries in question.

ii. So likewise whether and in what degree, relation had to the office in question, the several functionaries are endowed with appropriate aptitude.

iii. They will, each and every one of them, have the most efficient motive for doing his best in the exercise of the functions belonging to his office.

iv. No individual who does not feel within himself a consciousness of his appropriate aptitude, together with a determination to do his best, will take upon himself the duties of the office. No impelling motive will he have for taking it upon himself: an effectual restraining motive he will have to prevent him from taking it upon himself. See Section V. *Judge's, &c. Deputes,* art. 12*.

v. No impelling motive will the Auxiliary Judge Principal have for locating any such Depute, unless in his judgment the service has need of an additional functionary in the office in question, and the individual whom he has it in contemplation to locate, possesses appropriate aptitude in relation to it:—aptitude not merely absolute, but comparative also; comparative, comparison had with every other individual by whom acceptance would be given to the office.

vi. By the exertions made by their subsequentially located colleagues, the antecedently located Auxiliary Judges will be stimulated to correspondent exertions on their parts: and thus will be kept alight a spirit of emulation, from which, on the part of the whole number, appropriate aptitude will naturally receive increase: the fire of emulation will be kept alive, and continually on the increase.

vii. All this without a particle of expense to the public:—to the public, nor yet to any individual who is not, with his eyes fully open, prepared and willing to take the office upon himself.

viii. The service will not be in danger of continuing burthened with the expense of a needless or unapt functionary,—expense in the shape of money or reputation;—burthened, by the reluctance to inflict a wound on the feelings of the individual.

ix. In the whole field of efficient service, is there a situation to which this principle of probationary location—say, this *probationary-location principle,*—may not be seen to be applicable with indisputable advantage?—in every instance, good consequences important and indisputable; evil consequences, none. Is there any such situation? Absolutely none: such is the answer that may be given with unhesitating confidence.

Enactive.

Art. 59. Thereupon the Auxiliary Judge Principal will present to the Chief Dispatch Court Judge a written instrument, containing the name of the person proposed by him to be located in the situation of Auxiliary Judge Depute, and declaratory of his opinion of the appropriate aptitude of the individual so proposed. Name of the instrument, an *appropriate aptitude certificate. Form of it,* as per Schedule No. XXVI.

Enactive.

Art. 60. Thereupon, the Chief Judge, if consenting, will subjoin his countersignature to the signature of the Auxiliary Judge Principal; and the location will thus be perfected.

Enactive.

Art. 61. Should the Chief Judge refuse or forbear so to join in the location, power to the Auxiliary Judge to present to the Chief Judge a requisition to state in writing his reasons for such refusal or omission: and if within [*four*] weeks from the day of the delivery of such requisition no such statement shall have been made, the instrument of location will be valid, notwithstanding the non-appearance of such countersignature, entry being made thereon of such requisition and non-compliance. *Form of the requisition,* as per Schedule No. XXVII.

Expositive.

Art. 62. By his consent, as testified by such his countersignature, the Chief Dispatch Court Judge is not to be understood to be responsible to public opinion for the aptitude of the individual so proposed by the Auxiliary Judge Principal.

Instructional.—Exemplificative.

Art. 63. Businesses of which, in the existing practice, the Masters in Chancery have cognizance, proper for the cognizance of the Judge Principal and his Deputes, and which as such will be reserved by him for his and their disposal, are those for the dispatch of which law-learning is requisite, such as is regarded as not being obtainable otherwise than by professional practice:—Examples, the cases in which it is referred to a Master to report concerning the goodness of the title to a landed estate which is destined to be sold or purchased.

Art. 64. Of the businesses of which, in the existing practice, the Masters in Chancery have cognizance, those proper for the cognizance of an Auxiliary Dispatch Court Judge are those for the disposal of which law-learning, such as is regarded as not being obtainable but by professional practice, is not requisite.

Examples are,—

i. Elicitation of evidence: for, to the Judges of the Small Debt Courts called Courts of Requests, otherwise called Courts of Conscience, by none of whom is any such law-learning possessed, is this function in every instance assigned.

ii. Formation of a judgment on the question of fact in evidence to him exhibited, or by him or in his presence elicited: for, to no unlaw-learned men at large, in the character of jurymen, is this function in every instance assigned.

Art. 65. To one or other of the above heads will be found referable all businesses of which under the existing practice Masters in Chancery have cognizance.

Enactive.

Art. 66. In contemplation of the absence of sinister interest it is, that in a suit coming under the cognizance of the Dispatch Court Judge, power is herein given to him—for deciding in favour of the authenticity and verity of an alleged source of written evidence, for the purpose of saving the delay and expense which would be the inevitable accompaniment of the transference of it to the Justice Chamber, in which the Judge in question sits:—a decision to this effect,—not indeed absolute and immutable, but liable to reversal or modification in the event of subsequential adequately-probative evidence of its want of authenticity or its falsity: on which occasion, moreover, adequate security will be taken for the application of adequate remedy in the satisfactive shape, in the event of disproof so made.

Instructional.—Ratiocinative.

Art. 67. For this reason, in addition to that of the saving in delay,—for these reasons it is, that instructions are given to the Judge Principal to take into his own hands, as much as may be, without preponderant evil by the consumption of his own time, the elicitation of the mass of evidence that belongs to the case, instead of committing the function to the charge of a Master or Masters, as in the practice of the Equity Courts.

Instructional.

Art. 68. In the procedure of the Dispatch Court Judge, sources of saving in respect of delay and expense, whence correspondent accelerative and economizing arrangements will be the following:—

i. Eliciting without interruption the whole mass of evidence which the suit affords, instead of splitting the process amongst days in indefinite number, distant one from another by intervals to an indefinite degree longer.

ii. Absence of all sinister interest by reason of fees, the aggregate of which increase with the aggregate quantity of time employed, or supposed to be employed, in the elicitation of it,—an interest which operates to so flagitious an extent.

iii. Where, and in so far as without preponderant inconvenience it can be done, distributing among Auxiliary Judges in an indefinite number, the elicitation of different parts of the mass of evidence belonging to one and the same suit.

Of these sources of saving, the two first have place in Jury-trial: the last is peculiar to the present institution.

iv. Giving power to the Judge to assume provisionally the establishment of a relatively-material fact by adequately-probative evidence, where no ground of suspicion of want of authenticity or verity has place, security being taken for eventual reversal or modification of the decision so grounded: as for example, the authenticity of a signature to a written document; forgery, especially under such a check, being too improbable to be reasonably presumable.

v. Care thus will be taken by the Judge to maximize the number of *admissions:* that is to say, the number of the material facts admitted by the party in whose disfavour they operate. The greater the number of these admissions, the greater the saving of the delay and expense of extraneous evidence: the expeditious means of procuring such admissions, epistolary correspondence per post, with inducement administered by the imposition of the burthen of costs, with ulterior remedy satisfactive, and even punitive if need be, in case of evil consciousness in respect of refusal to admit the existence of a fact, the existence of which could not but be known to the party so refusing.

Enactive.—Instructional.

Art. 69. Of the matter of the several suits, the Chief Judge Principal will on each occasion make such distribution among the Judge Deputes, the Auxiliary Judges, and the Auxiliary Judge Deputes, as shall, in his opinion, be most conducive to the ends of justice,—saving the regard due to the responsibility of the Auxiliary Judges for their several Deputes.

Instructional.—Ratiocinative.

Art. 70. In regard to the question of fact, what is material is—not that by one and the same person, or body of persons, judgments should be pronounced having for their grounds evidence applying to facts between which no connexion has place, as in Jury-trial is uniformly the case,—but that, in so far as possible without preponderant inconvenience in the shape of delay or expense, or both, the elicitation of the whole mass of orally-elicited evidence should be performed by or in the view of the same person or persons by whom the judgment grounded on that same evidence is pronounced. Why?

i. Because, where falsehood accompanied with evil consciousness has place, it is capable of being betrayed and made apparent by indications which it is not in the power of description to present to the Judge:—by indications—that is to say, by tone of voice, colour and lineaments of the face, gesture and deportment, in all imaginable respects: whence also the importance of having in the presence of each other two

evidence-holders whose evidence is on good grounds expected to be in a state of mutual contradiction.

ii. True it is, that in some cases this identity is not *material;* in others not *possible.* The case in which it is not, comparatively speaking, material, is where, on the part of the evidence-holder, no sinister interest, applying to the suit in question, has place: as for instance, a public functionary having in his custody a source of written or oral evidence.

iii. Cases there may be, in which, either absolutely or without preponderant evil in the shape of delay or expense, or both, evidence-holders, two or more, cannot be brought together in the presence of the same evidence-eliciting and deciding Judge.

Instructional.

Art. 71. By the institution of Auxiliary Judge Deputes, the finishing stroke will be given to the system of accelerative and expense-saving arrangements included in and provided by the institution of the Dispatch Court with its correspondent procedure.

Art. 72. As the Dispatch Court proceeded,—as the Chancery Courts became emptied of their business, the Masters in Chancery might be pensioned off. Power to the Lord Chancellor, or to the Dispatch Court Judge, with the Vice-Chancellor or the Master of the Rolls, so to dispose of such and so many of them as he thinks fit:—A man to whom this retreat was an object of desire would of course make application for it by a written document: in the case of a man, should there be any such one, to whom it was not an object of desire, the appearance of its being so might be put on by his signature being attached to a document to the same effect; this being an expedient he would naturally be glad to concur in as a screen from the imputation of inaptitude.

Ratiocinative.

Art. 72*. Why give this power to functionaries more than one?

Answer.—Reasons:—

i. That, on the occasion of any operation unpleasant or pleasant to the individuals thus dislocated, the individuality of the operators may not be known to them.

ii. This is one of the cases, small in extent and number, in the instance of which the exception has place to the general rule by which individual responsibility, and thence on the part of the functionary, single-seatedness, is recommendable.

iii. Increased will be the demand for this concealment by exercise given to the power of assigning a situation with its functions to each functionary thus dislocated, in such sort as to render the pension conditional on acceptance given to the situation so assigned.

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SECTION XII.

SITTINGS, TIMES OF.

Enactive.

Art. 1. Exceptions excepted, every day in the year will the Judge of the Dispatch Court sit on duty:—hours, not fewer than [6]; that is to say, from [10] in the morning till [4] in the afternoon.

Ratiocinative.

Art. 1*. *Every day:* duty of the Dispatch Court Judge, why rendered thus assiduous?

Answer.—Reasons:—

i. If for so much as a single moment, delay of justice,—that is to say, denial of justice for the time,—is an evil, so is it at each succeeding moment; and the greater the number of such successive moments, the greater is the aggregate of the evil.

ii. Completely is it in the power of the government to put an exclusion upon this evil. Yet does it decline to do so. Why?—*Answer:* Even because, for the comparatively small benefit and comfort of the comparatively few to whom it is bound by the bands of a common sinister interest, it chooses with its eyes open to afflict with the immensely greater burthen and discomfort, all besides.

iii. On no day in the year does a Justice of the Peace, in a case in which he is empowered to act singly,—that is to say, without another Justice of the Peace sitting and acting with him:—on no day does he scruple, or if so inclined, omit, to take cognizance of any suit which is brought before him at its commencement, or to proceed in one of which he has already taken cognizance.

iv. Justice of the Peace:—of the sort and degree of assiduity actually habitual on the part of Judges of this class, what are the causes?—Answer: These—

v. As to the sort and degree of assiduity: this requires explanation. Day on which a Justice of the Peace sits—not *every* day, but *any* day; that is to say, any day that is agreeable to him to sit. Yes: *every* day that it is agreeable to him to sit;—all those days, but no other days.

vi. Motives by which existence was given to this species of judicatory, what?

Answers:—

1. Benefit thereby afforded to the particular interests, pecuniary and quasi-pecuniary, straightforward and sinister together, of those by whom it was instituted.

2. To that same particular interest, benefit afforded in the shape of power.

3. So in the shape of amusement:—a comedy, tragedy, or tragi-comedy, acted: a dramatic entertainment; the principal part by an amateur performer—his Worship; the inferior parts, by his suitors.

vii. For the benefit of this or that sinister interest which they possess in common, Honourable Gentlemen and Noble Lords concur in the enactment of this or that Act,—whether salutary or for their conjoint benefit, predatory or oppressive. To make sure of giving execution and effect to it, they concur in constituting, each one of them,—himself and every other of them, Judges, to whom cognizance is given of all offences alleged to have been committed against this law. What is the result?—Answer: The system of procedure styled the summary:—the only system of procedure which ever had for its ends the ends of justice: in a word, to render the system perfect and applicable to all sorts of cases, so far as regards the mode of procedure, nothing wanting but certain additional powers and means, on the part of the Judiciary Establishment, certain securities for appropriate aptitude, moral, intellectual, and active; whereof those for appropriate moral aptitude are commonly called checks. Of these securities, about forty may be seen provided in *Constitutional Code,* Ch. XXI. *Judiciary Collectively,* § 32. *Securities for appropriate aptitude.*

viii. "*When sleeps Injustice, so may Justice too.*" Too often repeated can never be, till it is profited from, this memoriter verse. As often as a measure of sham law reform is in discussion in either House,—and into neither have any better measures been as yet introduced,—some stentorian voice, speaking through a trombone, should lift itself up, and drown the sound of hypocritical trash on both sides.

ix. Health, recreation, and comfort of the profession, quotha? This is a paramount and predominant consideration: conclusive, for the securing of good in this shape to preeminently learned few—(for the ordinarily learned will not complain of being overburthened:)—for the small comparative ease of this minute minority of the community—for the sake of a dozen or two, or a score or two—for these it is, that the millions are to be tormented.

x. Nor is this all: for on the field of law, tyranny has place, and is exercised on a large scale: and by the lawyers in silk gowns, the lawyers in stuff gowns, by whom non-lawyers are plundered and oppressed, have themselves been oppressed and plundered of their rightful share in the common.

xi. In the cluster composed of three of the so called Equity Courts, two of the Judicatories could not be brought to sit at the same time. Why? Because had they done so, the consequence would have been, that though by this simultaneity the addition made to delay, by setting them down to operate at different times of the day, would have been done away, by which means in a correspondent degree the torment of suitors (that is to say, the relatively honest part of the number) would have been

lessened, yet so would have been the mass of the fees stowed into the preeminently learned pockets shrouded by the silk gowns.

xii. After consuming the first fruits of his energy, and enfeebling his faculties, with perhaps more or less of his health, in a morning Court, in the service of one set of clients, the learned harpy gives the dregs of those same faculties to another set of clients in an evening Court. The consequence is, that those Barristers, who if the two Courts had sitten at the same time, would have been leaders in one, fail of being leaders in either. Of the suits that within a given time might have been heard, and ought to have been heard, and, if all pretended regard for justice were not a mockery, would have been heard, only half are heard. Why this addition to factitious delay? why the ever-pertinacious refusal to break down the monopoly thus established?—*Answer:* Because, of the whole goodly fellowship of those leaders, actual and possible, the most eminent and influential have seats in Honourable House; in which said Honourable House, if for their sakes the less influential are not kept in a state of comparative starvation, they might become troublesome: and instead of helping Ministers to plunder and oppress the subject many, might consume Honourable and Right Honourable time in debates, and obstruct the execution of the measures determined upon.

xiii. Among all these learned harpies, and in particular the arch-harpies among them, should it to any one have happened to make sacrifice of Hygeia to Plutus,—to have thus thrown away a part of his health in his search for gold,—indemnity is called for by him. Indemnity: at whose charge? At the charge of the relatively honest part of the whole population of suitors:—delay—the quantity of delay, measure of which is taken as above, organized and established. Set apart of every year is to be a large portion, during which the learned harpy is to continue feasting upon the prey seized by him, injustice all the while triumphing.

xiv. A surgeon, a physician,—what vacations, what holidays, what respite from hard and painful labour, what assistance to health by alleviation of it, have they or either of them? For any good to himself, whether in the way of pleasure, or of profit from any other source, or saving from loss, what day in the whole year can either of them stand assured of? For a shilling or two, or from efficient and unrequited benevolence, all night long, pinched with cold or drenched with rain, does the country surgeon pursue his way to the poor sufferer's cottage. In the scale of morality and beneficence, of all professional men does not the medical man stand highest?—the indiscriminate defender of right and wrong by the indiscriminate utterance of truth and falsehood, lowest—down at the bottom, many degrees below zero—even at the point where mercury freezes?

xv. True indeed it cannot but be, forasmuch as both are men,—that as by a lawyer a suit is nursed, so by a medical practitioner, every here and there, instead of the patient, the disease. But in the case of the medical practitioner, this sacrifice of morality and the happiness of the comparatively many to the happiness of the comparatively few, is but an exception: whereas, on the part of the law practitioner, it is the universal rule. In the case of the medical practitioner, only in the less employed and inferior part of the profession is it the practice; for the most amply

employed—those whose whole time is employed, have nothing to gain by any such cruel and dishonest practice: whereas in the law profession, it is by those who, being the most amply employed, are thereby possessed of the largest portion of influence, and in places in which the lot of the million depends upon the course taken by the one or the few,—it is by these, cruelly and dishonestly, that evil upon such immense scale is produced.

xvi. Not that it is upon degrees in the scale of morality that the question turns: it stands upon ground much more easily measured: it turns upon numbers. On what ground stands the claim to regard on the part of the subject-many?—on the part of the subject-many; and in particular against the lawyer tribe, and the dishonest part of their hirers, that of the relatively honest and afflicted portion of the community of suitors, added to the so much greater portion of the community consisting of those who, were they not by tyranny and corruption bereft of the means, would become suitors? Of the twenty millions or thereabouts, of which in the two islands the community is composed, where is he whose happiness has not as good a title to regard as that of any other: whatsoever may be the number of those of whose happiness, for the purchase of happiness in larger portion in the breast of others, it may be absolutely necessary to make sacrifice?

xvii. If in one shape—namely, the shape of immediate profit,—the medical practitioner has an incentive to nurse the disease,—in another shape—namely, that of reputation, obtainment of good repute and avoidance of bad repute,—he has a restriction: and whatsoever suffering would in his instance be produced by dishonest practice, it would be present to his senses: accordingly, honesty has sympathy for a corroborative.

xviii. But in the case of the law practitioner, whatsoever is done in the way of nursing the suit, is covered from the eyes of all but his accomplices and sharers in the profits of the misery-producing trade: nor in the higher branch of the profession, of the suffering produced by any mal-practice of his in any shape is any part ever, unless by mere accident, present to his senses: so that, in this case, no place is there for sympathy. By this or that question, or by purposed misrepresentation of this or that matter of fact, the law practitioner—the law practitioner of the highest order—puts the extinguisher upon this or that claim, of the well-groundedness of which neither he nor any one else to whom the state of the case is known, entertains any so much as the smallest doubt: on the occasion of which, the expectation of the party in the right is of course correspondently intense and sanguine; the disappointment produced, with its inseparably-accompanying pain, correspondently intense and severe. Of this suffering, to the senses of the solicitor presents itself, or does not, a single glance: to those of the leading advocate by whom it was caused, not so much as a momentary glimmering. Into the purse of the author of the evil have found their way some ten or twenty guineas: of the injured suitor the whole life remains drenched in bitterness, by which he is at last brought to an untimely grave.

xix. By the medical practitioner, the man whose leg has been fractured is not left to die of a mortification; the man who has a stone in his bladder is not left to suffer for years together for want of the solution or extraction of it. Whence comes this state of

things?—*Answer:* From this. Were the sufferer to die for want of medical aid, no fee would the medical practitioner receive; were the sufferer left to suffer with the stone in his bladder for one, two, or three years, no fees all the time would the surgeon receive: in which state of things, the longer the stone remains without anything done towards ridding the sufferer of it, the longer is the time during which no fees are received:—whereas in the case of that malady, the seat or source of which is in the body-politic, the longer the delay with its attendant pain continues, the richer the profit made by the authors of it.

xx. Uniformly opposed to the interest of the client is the interest of the law practitioner: of the practitioner on the opposite side of the suit, completely; of the practitioner on his own side, not altogether, but to a considerable degree always. If it be his interest that his client, right or wrong, justly or unjustly, should gain the suit, it is not the less his interest that the expense,—and so far as that is increased by delay, the delay,—be maximized.

xxi. Partly from the close connexion between the interest on the one side and the other—partly from the sympathy produced by the spectacle of human suffering as above, beneficence—gratuitous beneficence—to a vast extent, has place in the instance of the medical practitioner; to no extent at all, in the case of the law practitioner. Of the afflicted, the number gratuitously relieved by the medical practitioner is perhaps not less considerable than the number for relief of whom remuneration is received:—in the case of the sufferer, whose suffering has injustice for its cause, inquire where you will, scarcely in a single instance will you find any such thing as gratuitous service.

xxii. Among law practitioners, infamous would that man be held, who should be known to be ready to render his appropriate service upon reduced terms: *to Coventry* would he be sent by the whole fraternity of his learned brethren: to consign him to utter ruin, no endeavours on their part would be wanting. For the giving increase to the present business, and extorting pay of advocacy service, by no expedient that could by human ingenuity be devised for the purpose, would any the least reproach be in this quarter incurred: approbation, if not public, at any rate secret and universal.*

Enactive.—Ratiocinative.

Art. 2. Days excepted are as follows:—

1. All Sundays,

2. Christmas day.

3. Days hereby allowed to the Judge for health, recreation, and care of his private affairs. These are—

i. [Fourteen] days following one another, of which Christmas day is the first.

ii. [Fourteen] days following one another, of which Midsummer day is the first.

Art. 3. The Auxiliary System, as per Section XI. *Auxiliary Judges,* being established, the relaxation thus allowed to the Dispatch Court Judge may have place without any delay to the proceedings of the Judicatory, and accordingly without detriment to justice.

Art. 4. Power to his Majesty, by order in Council, at any time, on timely notice given in the *London Gazette,* with or without other periodical publication, to vary the places of the vacation days in the Calendar, so as the number of them be not increased.

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PART II.—

PROCEDURE.

SECTION XIII.

DEFINITIONS.*

Expositive.

Art. 1. By an *attendant*—meaning in a Justice-Chamber—understand any person who, during the exercise of any judicial function, is therein present.

Art. 2. By *attendants official,* understand all judicial functionaries who being subject to the mandates of the Judge are so present in the Justice-Chamber as above: professional persons included, that is to say, barristers and attorneys of all classes.

Art. 3. By *non-official* attendants, understand any other person who, in whatsoever capacity, is so present in the Justice-Chamber; including more particularly, parties on the demandant's side, parties on the defendant's side, evidence-holders, narrating witnesses, or say extraneous witnesses.

Expositive.—Ratiocinative.

Art. 4. For the designation of the ensuing new arrangements, correspondent new denominations are indispensably necessary: of these new denominations, for rendering them free from obscurity and ambiguity in divers instances, corresponding definition and explanation. Necessary will be seen to be this expository matter, to prevent misconception, and misdecision, or decision on grounds foreign to the merits.

Expositive.

Art. 5. By an *evidence-holder,* understand any person considered as having it in his power to furnish evidence of any description, relative to the suit in question.

Art. 6. *Evidence-holder extraneous:* by this appellation, understand any evidence-holder who is not a party to the suit.

Art. 7. Considered in respect to its source,—personal, real, and scriptitious,—under one or other of these specific denominations may every evidence, or say piece of evidence, be included.

i. By *personal* evidence, understand the information furnished orally, or say by word of mouth; discourse by a person acting in the character of a *testifier,* or say *testificant,*

or *narrating* witness: narrating, in contradistinction to a *percipient* witness; for these two characters are sometimes included in the same person; at other times, not.

ii. By *real* evidence, understand information furnished to the senses by anything, moveable or immoveable, otherwise than through the medium of discourse: for example, the signs of deterioration or improvement exhibited by a thing deteriorated or improved; signs of operation, visible or otherwise perceptible, in a substance or person operated upon, or an instrument operated with, as in case of homicide.

iii. By *scriptitious* evidence, understand *personal* information furnished through the medium of *real.* Of scriptitious, written is the originally-exemplified, and still the most extensively-employed modification.

Exemplificative.

Art. 8. *Quasi-oral,* is an appellative by which may be designated any visible and evanescent representation of audible discourse: for example, the finger language.

Art. 9. Moveable and immoveable: in both these states, quasi-scriptitious evidence has been exemplified; immoveable, as in columns, edifices, and rocks.

Expositive.

Art. 10. *Evidence-elicitation:* by this appellation, understand *reception* of evidence, with or without active operations performed for that purpose.

Art. 11. *Evidence-elicitator,* or *examinant:* by these appellations, understand any person by whom, for the extraction, or say obtainment of any piece of evidence, active operations are employed.

Art. 12. *Examinand, examinee:* by these ppellatives, understand any evidence-holder from whom evidence is extracted; by examinee, one from whom the operation of extracting it is going on or has been completed.

Art. 13. *Demandant,* or say *plaintiff:* by this appellative, understand any person by whom commencement is given to a suit at law; he at the same time thereby demanding service in some shape at the hands of the Judge. Under this appellative are included the imports respectively attached to the words *complainant, prosecutor, informer,* or say *informant.*

Art. 14. *Proposed demandant* or *plaintiff:* by this appellation, understand him by whom or for whom application is made for the purpose of his being admitted in the character of demandant, or say plaintiff.

Art. 15. *Proposed defendant:* by this appellation, understand him concerning whom it is proposed that the service demanded at his charge, of the Judge, be rendered by the Judge, unless by contesting, or say controverting the justice of the demand, he thus

defends himself, or takes certain measures and performs active operations for the purpose of defending himself against it.

Art. 16. *Minutation:* by this appellative, understand the operation by which, in proportion as orally-elicited evidence is delivered, the tenor or supposed purport of it is committed to writing: the *tenor,* that is to say the very words.

Art. 17. By *recordation,* understand the operation and course of conduct by which the product of minutation, or evidence, or source of evidence, is taken into keeping, and preserved for use.

Art. 18. By an attendant's *House of Call,* understand a house to which by the LETTER post, general or twopenny, as the case may be, a LETTER if directed will, accidents excepted, be sure to reach him; and at which it may and will for all purposes of *notice* be presumed to have been delivered at the time of the day at which, by the post in question, letters are customarily delivered.

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SECTION XIV.

EXAMINATION OF SOLICITORS.

Enactive.

Art. 1. If (as per Sections I. and X.) Dispatch-Court-praying petitions in sufficient number shall have been received,—before the opening of the Dispatch Court the Registrar will have received from the Secretary of State (as per Sect. I. *Judge located, how)* the several petitions by which cognizance has been given to the Dispatch Court of the several suits.

Art. 2. From these documents, the Registrar, under the order of the Judge, will have framed two lists:—the one, containing simply the names by which the several suits stand denominated and distinguished in the several Courts from which it is desired that they should be transferred: name of this list, the *Suits' name list:*—the other, containing the several names of the several suits as above, but under the name of each such suit the names of the several other individuals who on either side are understood to be parties to that same suit, whether in quality of parties principal, or say interested parties, or, in one word, *principals,*—or in quality of parties auxiliary of fiduciary, or say, in one word, fiduciaries, or say (employing the name commonly in use) *trustees.*

Expositive.

Art. 3. By an intended benefitee, understand a person by whom it is intended by the law in question that the benefit of the right in question shall be enjoyed. By a fiduciary, or say a trustee, understand a person by whom it is intended by the law in question that his acts in relation to the subject-matter in question shall be exercised for the intended benefitee in question.

Exemplificative.

Art. 4. Of the several parties bearing to each other respectively the relation of intended benefitees, or say principals and fiduciaries, or say trustees, examples are the following:—

I.

Principals, Or Say Intended Benefitees:

1. Persons under full age, or say Minor; in virtue of the relation, Ward.
2. Person labouring under infirmity of mind.
3. Wife.

4. Heir-at-Law.
5. Next of kin.
6. Legatee.
7. Intended benefitee in every case where a power given to a person is charged with the obligation of employing it to the benefit of another.
8. A private partnership.
9. A body corporate.
10. Member of a Joint Stock Company.
11. Creditor of a Bankrupt.
12. Creditor of an Insolvent.
13. Parishioner of a Parish.

II.

Fiduciaries, Or Say Trustees:

1. Guardian.
2. Committee.
3. Husband.
4. Executor or Administrator.
5. Executor or Administrator.
6. Executor or Administrator.
7. Trustee, or say in some cases Agent.
8. A Partner, Manager, or other agent.
19. Governor, Chairman, Secretary, or other representative employed for the purpose.
10. Governing body of the Joint Stock Company.
11. Assignee of the Bankrupt.
12. Assignee of the Insolvent.
13. Church wardens and Overseers of the Parish.

Instructional.—Expositive.

Art. 5. Note, that by a man's being an *intended benefitee,* or say by his having an *interest in his own right,* in the subject-matter in question, he will not with the less propriety be rendered capable of being, with relation to others, interested in their own right, designated by the denomination of a *trustee* of that same subject-matter: in the words commonly in use, he may be *possessed* of it, or otherwise interested in it, in trust for himself and those others conjointly.

Enactive.

Art. 6. If in sufficient number Dispatch-Court-praying petitions, by which, as above, the order of cognizance will have been determined, have not been received, the suits to be transferred, together with the order in which cognizance is to be taken of them, will have been determined; namely, by lot, as per Section X. *Suits' comparative suitableness,* Art. 16.*

Enactive.

Art. 7. So soon as the term is elapsed which has been appointed for the sending in to the Dispatch Court information of the existence of the extra-long-standing suits (as per Sect. X. art. 14,) the Dispatch Court Judge will by his appropriate mandates begin to convene the town solicitors of the parties in the several suits, for the purpose of taking their examinations. Name of the sort of mandate, an *Attendance-commanding mandate:* Form, as per Schedule No. XXVIII.

Art. 8. The number convened for examination on the first day will be the number which he expects to be able to examine in the course of that day's sitting: and from the experience afforded by that first day he will be the better enabled to deduce the numbers to be convened for succeeding days.

Instructional.—Ratiocinative.

Art. 9. Purposes of such examination, these:—

i. Ascertaining who the several parties to the several suits are; what their names; and how they are circumstanced, in respect of actual residence and thence forthcomingness, and in other relevant respects,—for the purpose of the commencement of the suit by the initiatory examination of the parties.

ii. Ascertaining and making a list of the past proceedings in the Equity Court, that by its being seen where they *end,* it may be seen where the summary procedure in the Dispatch Court, commencing with the initiatory examination of the parties, will have to *begin:*—in which said *past* proceedings will be included the whole of the evidence elicited down to that time, none but what is documentary, that is to say in writing, being receivable in an Equity Court.

iii. Affording data for calculations respecting the quantities of time, absolute and comparative, at the end of which each suit is likely to have received its termination, and of the quantities of the Judge's time which it is likely to occupy.

Art. 10. For the Dispatch Court Judge, subjects of consideration, which preparatorily to the examination of the first-examined set of solicitors, and therefore to the examination of the parties (as per Section XV. *Initiatory Examination of Parties),* are these which follow, distinguishable into two lists:—

i. List the first:—Past state of things and events, the scene of which lies in the Equity Court.

ii. List the second:—Future contingent states of things and events, the scene of which lies in the Dispatch Court.

Art. 11. Note, that though in regard to the several suits subsequent to the first, these particulars, most or at least many of them, may not have to be put to use till those

same suits come respectively to be called on, yet from the amplitude given to the list, the following are the advantages that may be derivable:—

i. To individuals examined at the first sitting, time may be saved—namely, the time which would otherwise have to be occupied by their respective examinations, preparatory to the calling on of the suits for the purpose of which they come respectively to be concerned.

ii. In some instances, the accommodation of the suit may be the result of the disclosures thus made in relation to it.

Enactive.

Art. 12.—I. List the first:—Past state of things and events, the scene of which lies in the Equity Court. Particulars to be comprised therein, these:—

i. Names of the several parties in the suit:—names at full length;—christian (or in case of non-christian, the names equivalent to them), and surnames.

ii. In regard to each, mention whether it is in his or her own right that he or she is party, or in the right of another or of others, mentioning whom; that is to say, whether principal or trustee, as per art. 4.

iii. Their respective ages; so far as to show whether they are of full age or under age.

iv. The condition, in so far as known, of each one, in respect of marriage: whether bachelor, married man, or widower; spinster, married woman, or widow.

v. The occupation, as far as known, of each one, or other condition in respect of rank and situation in life: for example, in the male sex, Member of either House of Parliament; Member of the Official Establishment, mentioning the office held by him; person living, without profit-seeking occupation, upon his fortune:—if a married woman, the like in regard to her husband:—if a single woman, without profit-seeking occupation, yet without fortune of her own, the fortune of the relative or relatives from whom she derives her means of subsistence may be considered and spoken of as being her fortune, the question not being in any case to be elicited.

vi. The residence, as far as known, of each one: the description given of it, such that a LETTER may be sure of reaching him or her by the post.

vii. Stage at which the suit has arrived; as indicated by the several operations that have been performed, and written instruments that have been issued out of the offices of the Court in the course of it.

viii. Stage of the suit; as indicated by the names of the several offices of the Court in which business as above (No. 7) has been done in the course of it.

ix. In regard to examination of witnesses (including *parties* examined in the manner of witnesses,) if it is going on, day on which it commenced: if terminated, day on which it terminated.

x. So, in regard to the Master's office.

xi. So, in regard to such others of the offices as this head of consideration is applicable to.

Enactive.—Instructional.

Art. 13. Applicable are these same subjects of consideration not only to the principal or original Bill, but to any accessary Bills, to which it may have happened to be filed in consequence of it, or for the purpose of it.

Expositive.

Art. 14. By the *principal* Bill, understand the Bill in and by which the demand made upon the Court for the judicial service in question, or say for the obtainment of the benefit sought by application to the Court, was first made.

Art. 15. Accessary Bills, capable of being filed in consequence of an original Bill, are these which follow:—namely, 1. Cross-Bill; 2. Supplemental Bill; 3. Bill of Reviver; 4. Bill of Review.

Art. 16. Accessary Bill, capable of being filed for the purpose of the suit, during the same, or antecedently thereto, is a Bill filed for the single purpose of the examination of witnesses *in perpetuam rei memoriam:* the original Bill being eventual only, and, it may happen, never filed: as it may happen, in particular, in the case where it is only in contemplation of an original Bill not existing, that the said *perpetua rei memoria* Bill is filed.

Expositive.—Instructional.

Art. 17. By perusal of the several Petitions, together with the above-named list, the Judge will have been enabled to form a conception more or less correct and comprehensive, in relation to the subject-matter and the existing state of the suit in question, of the topics following: that is to say,—

i. The subject-matter of the demand preferred by the Equity suit: or in other words, the nature of the judicial service thereby demanded at the hands of the Judge.

ii. Ground or grounds of such demand.

iii. Refusal to comply with such demand, as declared by or deducible from the deportment of each several defendant: say, in case of his inaction, *proposed* defendant.

iv. Ground of such refusal, as declared by or inferred from such deportment.

v. Proceedings in behalf of the several parties on each side of the suit: proceedings—that is to say, operations performed, and instruments delivered in or issued.

Art. 18. The appropriate information obtainable from the documents in question being thus obtained, the next object of his consideration will be, in regard to each such suit, what further information conducive to the above end presents itself as obtainable by examination taken of solicitors employed in the several Equity suits.

Expositive.—Instructional.

Art. 18. Furnished by this examination will be information respecting operations likely to be eventually requisite, and for the purposes following:—

i. Ascertaining and settling what shall be the subject-matters of examination at the time of the initiatory examination of parties and witnesses, in the suit in question.

ii. In relation to things *intrinsically valuable,* as per Sect. VI. *Judge's Powers,* art. 9, to determine what in consequence of such examination shall eventually be prehended.

iii. So, in relation to things *relatively* valuable; to wit, documents.

iv. In relation to such other *persons,* whose evidence may have need to be elicited, to determine in relation to which of them it may be proper to proceed by means of an *attendance-requiring mandate,* and which others, if any, by means of a *response-requiring mandate.*

v. So, in relation to what persons, if any, it may be necessary to proceed by a *prehension-and-adduction-requiring* mandate.

Enactive.—Instructional.

Art. 19. On the attendance of each such Solicitor, the Judge taking in hand a Petition belonging to the suit in which he is solicitor, will proceed to take his examination touching the matter of the articles therein contained; in such sort that to the information afforded by the party or parties, confirmation or amendment,—to wit, defalcation, addition, or substitution,—may be applied, as the case may require.

Art. 20. On this occasion, antecedently to his proceeding to the examination of any *party* to the suit, the Judge will either rest satisfied with the examination of one such solicitor, or proceed to the examination of others on the same day, or on a subsequent day, as the circumstances of the individual case in question may require.

Enactive.—Instructional.

Art. 21.—II. As to List the second. Future contingent states of things and events, the scene of which lies in the Dispatch Court, are the following:—

i. As to each suit, whether and in what instances, after the initiatory examination, intercourse between the Judge on the one part, and the parties and witnesses on the other part, is likely to be needful. For provision on this subject, see Section XVI. *Appropriate Intercourse secured.*

ii. So, whether and in what instances, and in what manner, for appropriate forthcomingness of things and persons, taking security is likely to be needful. See Section XVII. *Mutual security for appropriate forthcomingness of things and persons.*

iii. So, whether and in what instances, for the expense of evidence, without which justice cannot be done, money from a fund other than the property of the party in whose favour it would operate is likely to be needful. See Section XVIII. *Evidence-procuring money, how provided.*

iv. So, whether and in what instances, after the initiatory examination, the attendance of parties and that of witnesses in Court is likely to be needful. See Section XIX. *Subsequential Evidence, how elicited.*

Enactive.—Instructional.

Art. 22. Subject-matters for consideration with regard to costs, are these which follow:—

I. Costs of the proceedings in the Equity Court: namely—

i. Of the original Bill, and of the accessary Bill or Bills, if any;—distinguishing: between costs actually paid and costs incurred; distinguishing also the costs of each such Bill; as also the several parties on whom the burden of the costs has borne and bears.

ii. So, as to ulterior costs, were the suit to continue in the Equity Court; so far as an estimate can be made of them.

iii. Costs of any branch of the proceedings, which in the existing practice is wont to be in a particular degree expensive: for example, 1. Commission* to examine witnesses in England or abroad; 2. Sale† of an estate in land, or other subject-matters of real property; 3. Making out the title to a subject-matter of real property. As to this matter, see Section XXI. *Equity Court costs, how disposed of.*

II. Probable costs of the proceedings in the Dispatch Court. See Section XXII. *Dispatch Court costs, how disposed of.*

Art. 23. *Execution,* what and how it may have to be performed: to wit, in such manner as to give the most complete effect to the intentions which will have to be made reference, and require to be conformed to: intentions,—that is to say, those to which in the case of written, or say statute law, in and by the substantive branch, or say main body thereof, expression is actually given by the actual Legislature; and in the case of that same branch of the so called *unwritten* law, called also *common law,* is feigned to be, and spoken of as if it were the intention of the imagined Legislature, and thereby as constituting the rule of law. See Section XX. *Execution, how performed.*

Art. 24. Special subject-matters for the consideration of the Judge:—Of the suit in question, length of continuance, past and future probable: Of the causes of it, examples are the following:—

i. Essential: to wit, the complexity of the species of suit.

ii. Contingent and accidental: to wit, distance in respect of place, and thence in respect of time, in the case of witnesses and parties.

iii. Latentcy: that is to say, where it is known that this or that source of evidence is in existence, but not in what place it is.

Art. 25. *Eventual retrotransference:* namely, of the suit in question to the judicatory whence it will have been called into the Dispatch Court: and of such transference, whether any probability has place: and if yes, in what manner and at what time it may be requisite that such transfer be made. See Section XXIII. *Eventual retrotransference.*

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SECTION XV.

INITIATORY EXAMINATION OF PARTIES, &C.

Enactive.—Instructional.

Art. 1. At the time of the initiatory attendance, parties attending there will be, one or more. So likewise, along with them, extraneous witnesses, none, one, or more.

Art 2. If of such attendants there be more than one, by and with the examination of which one of them it will be most proper to begin, the Judge will commonly have been enabled to form his judgment by the preparatory examination undergone by solicitors, one or more than one in that same suit employed, as per Section XIV. *Examination of Solicitors.*

Art. 3. If there be co-attendants, two or more, he will, according to the circumstances of the individual case before him, either complete the examination of the attendant first interrogated before commencing that of any other, or pass from one to another in any such order as to the purpose of ascertaining the matters of fact belonging to the case shall have appeared to him best adapted.

Enactive.—Expositive.—Instructional.

Art. 4. A party to a suit is either a principal or an auxiliary. A principal party is one whose self-regarding pecuniary interest is actually affected, or liable and likely to be affected, whether beneficially or burthensomely, by the course of the suit: that is to say, by the ultimate decision by which execution and effect may come to be given to the demand in and by the Equity suit, being or not being in his favour. An auxiliary party is one whose own self-regarding interest is not in either way affected by the suit: for at the Justice Chamber he holds intercourse with the Judge for the support of the self-regarding interest of some party or parties principal, as above. For a list of examples of principals, and auxiliaries or say trustees, see Section XIV. *Examination of Solicitors,* art. 4.

Enactive.—Instructional.

Art. 5. Exceptions excepted, on the occasion of every suit brought before the Dispatch Court, every individual, as well on the one side as on the other, will appear and attend in person. So likewise, on the first appearance of each suitor, in company with him, his solicitor.

Art. 6. Exception is, where through infirmity of body or mind, the suitor is incapacitated from attendance, or prevented by any impediment either absolutely

unsurmountable, or not surmountable without preponderant evil, of which the solicitor will, on his examination, give account.

Art. 7. In the case of every suit in which trust has place, the trustee or trustees, and the intended benefitee or intended benefitees, are expected to appear, whether their names respectively are or are not upon the register-book of the Court, or any written instrument delivered in, at any time, on the occasion of the suit: and in case of non-attendance on the part of any one of them, the solicitor will be expected to give account thereof.

Enactive.

Art. 8. At the first calling on of a suit in the Dispatch Court, the parties, or in default of the appearance of any one or more, such as are forthcoming will stand forth in the presence of the Judicatory:—the parties, that is to say, with or without the presence and assistance of their respective solicitors: and at the same time present will be the Bills and Answers belonging to the suit, with or without the mass of evidence thereto belonging.

Art. 9. By the party or parties on the plaintiff's side will then be produced a paper exhibiting the demand, without stating either evidence adduced in support of it, or the law or the fact which it has for its ground: only it being expressed in the form of articles, the party or parties on the defendant's side will, in regard to each article, be interrogated respectively, whether they admit or contest it; and the answer in the affirmative or the negative will be entered.*

Art. 10. Process on the occasion of a suit:

i. By every suit at law, *demand* is made of a *service* to a certain effect, at the hands of a Judge.

ii. But it is also made at the charge of a party in the character of a *proposed defendant.*

iii. Person to whom in the first instance it is capable of being communicated, in such sort as to give commencement to the suit,—either the Judge or the said proposed defendant.

iv. But, generally speaking, no use can there be in making such communication to a proposed defendant before the communication is made to the Judge. For, on the supposition that the defendant will perform the service demanded at his charge, no need is there of application of any sort to the Judge.*

Art. 11. Sole proper initiatory process, one of these two:—1. A simple operation; 2. A writen instrument:—and of the several classes of operations—1. By or on behalf of a person in the character of *demandant,* or say *plaintiff,* application made by word of mouth, demanding the service desired by the applicant at the charge of the proposed defendant; 2. Delivery of a written instrument to the same effect. Name, by which this instrument may be designated, the *Demand Paper.*

Suppose the suit such that, by preserving the remembrance of it, service would in any shape be rendered more than equivalent to the charge, you thereby suppose the need of a Record: and of this same instrument, a demand paper, as here described, is of necessity the first ingredient.

Persons by, or by direction of one or other of whom it must be drawn up, are the applicant or the Judge. If the applicant, so much the better: because, in this case, saved is a correspondent portion of the time of the Judge and other judicial functionaries: and this, whether it be by the applicant's own hands, or by those of any other person whose assistance he has been able to procure. But suppose him unable to procure any such assistance, is a party, by whom wrong has been suffered, to remain remediless? Forbid it justice. Well then: this being the case, a party who conceives himself to have been wronged, will have to tell his story to the Judge, and to the Judge it will belong to consider and determine, whether the individual case, as so described, belongs to any one, and which of the *sorts* of cases in which, either to an uncompleted *right* in any shape, *completion* is required by the law to be given by the Judge; or to and for *wrong* in any shape, *remedy* in any shape to be applied. Denominations, under one or other of which every such remedy will be found reducible, these four:—1. *Preventive;* 2. *Suppressive;* 3. *Satisfactive;* 4. *Punitive,* or say *subsequentially-preventive.* Of the satisfactive species, principal subspecies, the *compensative* and the *restitutive.*

Enactive.—Expositive.

Art. 12. The suit in the Dispatch Court will (as above, art. 5,) have commenced by the appearance of a plaintiff, or in case of need, an appropriate substitute of his, making a statement of the facts, in so far as they have come to his knowledge, and any such other material facts as he has heard and believes. When thereupon the first meeting on both sides takes place, the plaintiff—that is to say, he or his solicitor—in order to continue the elicitation of the facts which he expects will operate in favour of his case, will have to put and propound to a party on the defendant's side, questions having for their object the elicitation of evidence operating in favour of his the plaintiff's case.

Art. 13. This done, the defendant himself, or his solicitor, will put to the plaintiff questions tending to bring forth facts operating in favour of his the defendant's side; and this done, will state, of the facts operating in favour of his the defendant's side, such, if any, as have happened to fall within his own knowledge; in other words, in relation to which he has himself been a percipient witness.

Note, that the general complexion of the case will have been brought to view by the solicitor on the plaintiff's side on the occasion of the general examination performed (as above) on the occasion of the appearance for giving explanation in relation to the petitions, the signature of which is assumed.

Enactive.—Instructional.

Art. 14. Witnesses examined at the examiner's office will be examined *de novo,* of course, and in public.

Art. 15. So likewise all defendants, whether they have put in answer or not, and whether the answer has been completed or not.

Art. 16. So likewise all plaintiffs at the instance of any defendant.

Ratiocinative.—Instructional.

Art. 17. In all these several cases, an effective as well as prompt mode for eliciting the truth will be employed, either instead of or on the back of a less effective and very commonly delusive mode.

Falsehoods, in plenty, will of course be detected: but where the averment has been upon oath, punishment as for perjury would be needless and useless: in a word, so much misery in waste.

Even the shame that would be the inseparable attendant will be matter of regret and sympathy rather than a just cause of indignation: against those by whom the unapt system is upheld and profited from, rather than against those who by them are forced into it should indignation be directed.

Enactive.

Art. 18. In case of prosecution for perjury, charged as having been committed in the course of an Equity Court suit, or a suit of which cognizance has been taken in the course of an Equity suit, no evidence elicited by the Dispatch Court Judge shall be adduced in support of the prosecution.

Expositive.

Art. 19. The parties, as many of them as, within the time, are within the reach of the power of the Judge, will, every one of them, in relation to any written instrument written by him, or adopted by his signature, find himself under the necessity of either admitting or denying it to be his: and by the obedience thus paid to the joint dictates of common honesty and common sense, time by months, or even years, money by pounds, or scores of pounds, may be saved.*

Enactive.

Art. 20. Exceptions excepted, as in the Small-Debt Courts, so in this Dispatch Court, counsel will not be employed: or where employed, no more than one counsel will in general be allowed to appear on either side. But as to *Eleemosynary Advocates,* see Sect. IV.

Art. 21. Exception is, where it appears to the Judge that on one of the two sides in the suit—namely, the plaintiff's and the defendant's—there are parties more than one whose interests in the suit are in such sort and to such a degree opposite, that no argument can be used in favour of one, and made to operate in favour of one of the

interests, without its operating in disfavour of another on that same side: in which case the Judge will, if he think proper, give admission accordingly, stating his reasons for so doing; of which, with the rest of the proceedings, entry will of course be made on the record.

Art. 22. The statements made, whether by testifying parties or extraneous witnesses, in both instances under the obligation imposed by penal responsibility in case of falsehood, being the only statements having in respect of evidence any claim to regard, the counsel on the plaintiff's side will not in every case have to make a statement of the several facts constitutive of the ground of the plaintiff's demand, nor the counsel on the defendant's side to do the like on that side. But the solicitor on the plaintiff's side, or the counsel on that side, as the case may be, will state, in the first place, such facts in relation to which, according to his conception, the parties are agreed; stating thereafter such, if any such there are, in relation to which they are disagreed: stating at the same time wherein such disagreement consists: and the like statement, if needful, having been made on the defendant's side, thereupon will cease the elicitation of the evidence.†

Enactive.

Art. 23. To Solicitors—that is to say, to the town solicitors respectively employed by the several parties, admission cannot be refused: the party in some instances being essentially incapable of conducting the business for him or herself, and in most, if not all instances, a demand having place every now and then for information at the hands of the only individuals immediately and directly acquainted with the several proceedings, disguised as they have been by their technical dress, that have had place in the course of the suit. Moreover, though every party will be competent to make answer to questions concerning facts which have come, or are supposed to have come, within his or her knowledge, it is not every party that will have been adequately qualified for putting the questions necessary to the bringing to light facts which have come to the knowledge of a party, or of an extraneous witness, on the other side.

Enactive.

Art. 24. Every person attending, as above, whether party, party's solicitor, or extraneous witness, will be subject to examination at the discretion of the Judge; as likewise any other person to whom it may happen to be at any time present in the Court. To no such examinee will any oath be administered: but in case of wilful falsehood in answer to any question put by the Judge, any such examinee will be punished as for wilful perjury: that is to say, by fine or imprisonment, or fine and imprisonment together, with or without hard labour: in which case the falsehood will be styled criminal, but will not be punishable by transportation: and for falsehood not wilful, but committed through temerity, or say heedlessness, such examinee will be punishable by the said Judge as for a misdemeanour: in which case the falsehood will be styled culpable.*

Art. 25. If in the judgment of the Judge, the proof of such falsehood, criminal or culpable, is sufficiently conclusive, he may proceed to execution on the spot: as in case of contempt of Court, committed during the sitting of the Court.

Art. 26. So likewise on suspicion: where ulterior proof is regarded as necessary, commitment may have place on suspicion, if deemed necessary to prevent escape from eventual execution, and so stated: but in this case, the examinee may at the discretion of the Judge be liberated on bail, until the next day appointed for his reappearance: and so, *toties quoties,* until pronounced Guilty or Not Guilty.

Enactive.

Art. 27. Whatsoever discourse is, during the sitting of the Judicatory, uttered, in relation to the suit, by the Judge, with the intention of its being heard by the audience or any part thereof, or uttered by suitors, witnesses, solicitors, or counsel, with the intention of its being heard by the Judge, will be minuted down on the spot in short-hand, by or under the direction of the Registrar of the Judicatory: and under his direction will be printed and published for sale. (See Section III. *Registrar.)*

Enactive.

Art. 28. Subject to the discretion of the Judge, as to the obligation or permission to make response, questions may be put to one another by parties, their solicitors, and extraneous witnesses. So also by any other person present, in the character of *amicus curiæ:* but this not till after leave granted antecedently to indication given of the tenor of the question desired to be put.

Art. 29. On the occasion of every such question, included in the minutes in conjunction with the tenor of the answers, shall be that of the questions themselves;—those put by the Judge himself not excepted.

Enactive.

Art. 30. Exceptions excepted, on the occasion of any question put to him by the Judge, every individual is bound to give some answer or other: if with relation to the suit in question he be not a party but an extraneous witness, for non-response he may be committed to prison; nor discharged from prison without payment of a pecuniary mulct, in so far as able; applicable, the whole or in part, to the purpose of indemnification for the delay occasioned by such his refusal.

Art. 31. Be the question, or say interrogatory, what it will, every person will be able to make some answer to it. If in relation to the subject-matter in question, so it is that he has not any knowledge, belief, or opinion, so then may he say. If, having some knowledge, belief, or opinion, he denies that he has, by such denial, falsehood criminal or culpable is capable of being committed, just as by any assertion: and so if he speak of any matter of fact as highly probable, while he regards it as but slightly probable; and so *vice versâ.*

Art. 32. No person shall be compelled to deliver any opinion concerning religion, or concerning what is or what ought to be the form of the government of this or any other political community.

Art. 33. If by a party so interrogated it is suspected that his being called in as a witness, and so interrogated, is a proceeding that had for its object the procuring evidence in relation to another suit depending or intended, he may declare to the Judge his belief or suspicion to that effect: and the Judge, if in his belief such be the design, will refuse to lend himself to it.

Art. 34. If, as in case of suspicion of perjury, an examinee refuses to make answer, such refusal may be taken into consideration in the character of evidence; to wit, circumstantial evidence of guiltiness.

Art. 35. The Judge, in the course of all interrogatories put by him, will be upon his guard, and carefully abstain from putting any interrogatories pregnant with deception in any shape: as, for example, tending to cause the examinee to believe that he the Judge knows anything in relation to him or his conduct that he does not know, or believes anything that he does not believe.

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SECTION XVI.

APPROPRIATE INTERCOURSE, CONSTANT AND UNIVERSAL, SECURED.

Enactive.—Ratiocinative.

Art. 1. For securing intercourse, at all times, between all parties concerned,—Judge and his subordinates on the one part, individuals in the several capacities of parties litigant and extraneous witnesses on the other,—it is thus enacted:—

Art. 2. No person who has once made his appearance in the Justice-Chamber in the presence of the Judge, shall be suffered to depart until he has given sufficient security for his eventual attendance therein, unless and except in so far as for special cause left at liberty by the Judge.

Expositive.—Ratiocinative.

Art. 3. On this as on every other occasion, would you avoid making choice of the greatest instead of the least evil? Then, whatever you do under the notion of compelling the party to do what ought to be done by him, take care that he has notice of it: that is to say, that the virtual mandate on which you profess to rely as that by which his inducement to compliance is constituted, be really present to his mind: in a word that the notice may be real, not merely nominal; that he may really have notice, not merely be said to know. For this purpose it is that the above provision is made.*

Enactive.

Art. 4. From every examinee, at the first time of his attendance on the occasion of the suit in question, antecedently to his departure, the Judge will require and exact the indication of his *House of Call;* that is to say, a house at which letters sent by the LETTER post will, accidents excepted, be sure to reach him; and at which, for the purposes of *notice,* it will be presumed that such letters will have been delivered at the times at which by the post in question letters are customarily delivered.

Art. 5. For and during the time during which it may happen that, for the purposes of the suit in question, need of his attendance may have place, such presumption will continue.†

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SECTION XVII.

MUTUAL SECURITY FOR FORTHCOMINGNESS OF PERSONS AND THINGS.‡

Expositive.

Art. 1. An act of bondsmanship is any act by which any person subjects himself to the obligation of rendering to any other any sort of service.

Art. 2. An act of subsidiary bondsmanship is any act by which any one person, for the benefit of another person, binds himself to render service in certain shape to a third.

Art. 3. An act of bondsmanship in general, and subsidiary bondsmanship in particular, is either judicial or extrajudicial.

Art. 4. By the service which it is capable of having for the subject-matter of the promise, the party benefited may be a party on the pursuer's side, or a party on the defendant's side.

It may be any sort of service from which the party is capable of receiving benefit in any shape, in the course or on the occasion of the suit.

It may happen to it to be rendered gratuitously or for a price.

Expositive.—Enactive.

Art. 5. To the requisition or admission of it by the Judge, the concurrence of these conditional circumstances is necessary: and when these concur, he will require it or admit it accordingly.

Note.—Now as to *excuses** excuses for non-appearance—excuses for non-appearance of a party—the party defendant in a suit at law.—Rummage the modern *books of practice* (such is the name given by practisers to books of procedure)—rummage over the whole library of them from beginning to end,—no such *word* as *excuse,* nor any mention of the *thing* itself, will you find. Turn to the earliest law book extant, in which any thing occurs on the subject of such *practice,* scarcely of anything *but* excuses will you find anything said. Strange enough the difference to a first glance; altogether natural to a further glance. On the part of an individual, on whom the burthen of attendance at a distance from home was sought to be imposed,—and this for no other purpose than that of imposing on him another burthen to an indefinite degree greater,—for throwing off both burthens, and if possible making his escape from them altogether, ingenuity would of course be upon the rack:—abundant would be the excuses; proportionably so, what would be to be said of them in the books. So much for practice in its ancient form. On the other hand, on the part of a man in

whose instance the taking on him the burthen was never other than an operation voluntary and well paid for,—no such sensation as that of reluctance being possible, no such operation as that of making excuses can ever be performed: consequently, on the subject of this operation, nothing in any book written on this same subject would there ever be to be said. So much for *practice* in its *modern* form.

In the view given by *Glanville,* of the course of procedure as carried on in that day by that same Glanville, Chief Justiciary under Henry II. in his work intituled *de Legibus et Consuetudinibus Angliæ*—under the name of *Essoignes* or *Exoines* in law-French—in law-Latin *Essonia* (plural of *essonium)*—a list is given of *excuses,* received in those days in lieu of attendance.

Good (says the inquisitive reader:) so much for this incidental topic. But of the principal matter what is said? The subject-matter of controversy being (suppose) title to a piece of land, what is said of the *efficient cause* of the demandant's alleged right or title to this same land? What is said? Why, next to nothing. The parties being once fairly brought together in the presence of each other and the Judge, the question, who was entitled to it, was a question which, it was *assumed,* would presently be settled: just as at present a demand is, which in a Small-Debt Court is made by a baker on a customer for a dozen of quartern loaves:—on which occasion, employment might be given to an action of *ejectment,* with a few years of delay and a few hundred pounds of expense, with about as much propriety and use as, at present, employment is given to an action of the sort so denominated on the occasion of a dispute about the property of a piece of land. As to efficient causes of title,—of any such matter, incidentally only, in the way of allusion, and under a different head, is mention made, namely, of about five or six of them, in Book XIII. Chap. II.

Nor altogether without reason was this same *assumption,* this assumption of *promptitude,* made; strange as it may seem to those whose ideas of real-property law have no more instruction, nor other source, than that system of procedure which has had for its object and occupation the maximizing the insecurity of that same property, and the dilatoriness of all law proceedings, in relation to it, for the benefit of its pretended guardians.

To this dead and for so many hundred years buried topic, resurrection will now be given: and, as to the name *essoign,* it still lives, remaining attached to one of the days reckoned from, in lawyers' gibberish, when putting to use the *fixt days*' device.—(See *Petition for Justice.*)

Number of these *excuses,* according to the above-mentioned Grand Justiciary, four. Wretchedly inadequate this list, regard even had to the scanty exigencies of the state of society for which it was given. For giving it completeness, common sense, applied to the common exigencies of society in its present state, will now suffice. For securing verity to the affirmation, observable care at that time employed, none: at this time, on this occasion, the same care will be employed in this case, as in all others.

Of apposite excuses, a list, as complete as may be, will have been locked up and authorized by law. Existing *mendacity licence* will have been cancelled; responsibility

substituted: substituted as effectually, as by punishment for perjury, under the existing system, it is *vainly.*

The individual by whom the *excuse* is sent in, will be either he whose attendance it is that is commanded,—say the *mandatee,* or *another* individual *for* him: if the *mandatee,* the non-compliance to be accounted for will be the non-attendance. But in each of *three* cases—that is to say, death, non-information of the summons, and physical inability to make response—not only will compliance, but *excusation,* or say assignment of the *cause* of non-compliance, that is to say of his non-appearance, be on his part impossible. Here then is provision to be made of a *vicarious excuse given,* or say *excusator,* or *apologist,* by whom affirmation will be to be made (which may be by *LETTER post)* of the fact, by which the *non-responsion* in conjunction with the *non-attendance* was produced. Here, then, will be two species of eventual *excusator—excusator proper,* and *excusator vicarious*—to whom, on the cover, every mandate for attendance will be directed: eventual mandatee vicarious, a person uncertain, any person (to wit) at that time seen by the messenger (the postman) in the house: to which functionary the requisite *instruction,* for the performance of his duty, will in and by the particular Code belonging to his office have been communicated.

By *malâ fide* litigants, and their solicitors and attorneys, for staving off the termination of the suit, and consequently for evading proof of the receipt of the mandate, *devices,* as many and effective as human ingenuity can contrive, will of course be contrived: all these the tenor of the law will have used its endeavour to obviate.

Under the existing system, in the local field of procedure, a sort of *hunt* has at all times been carried on, and at all times under every possible system, so long as man is man, will continue to be carried on: carried on, on the part of each apparent hunter, with or without intention to catch, according to circumstances. To the species of *game,* which is the subject-matter of this hunt, no *name* has as yet been assigned: yet, name assigned to it there must be, or no directions as to the *catching* it can be given. Call it, then, a *summonee;* and on this particular occasion, a *summonee for attendance:* and, attached to every *summonee proper* for *attendance* and *response* both, will be a *summonee vicarious* for response alone, as above. Thus it is, that for the purpose of this *logical* species of *hunt,* the *huntees* require to be put *in couples* in all cases; as, in the *natural* species of hunt, do the hunters in some cases.

In regard to permission and obligation as to attendance, provision will have been made by law for *interest* in all its several established modifications: *self-regarding* interest, *trusteeship,* and partnership, which is a compound of both: *trusteeship* in all the several forms in which the relation between the trustee and the intended benefitee manifests itself. Examples these:—1. Guardian and ward: 2. Husband and wife; 3. Agent and principal; 4. Chairman or secretary, or other nominees of a joint-stock company, and the rest of the members; and so on. (See Section XIV. art. 4.)

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SECTION XVIII.

EVIDENCE-PROCURING MONEY, HOW PROVIDED.

Enactive.

Art. 1. For elicitation of evidence likely to be material to the suit, power to the Judge to require advance of money from suitors on both sides.

Ratiocinative.

Art. 1*.—i. By this means undue influence on witnesses prevented.

ii. A source of oppression cut off, and suitors prevented from going to needless expense, in the expectation that the other party will have to reimburse it.

iii. The richer a man, the stronger on his part the temptation to corruption and oppression in this form. It is a resource for *malâ fide* suitors.*

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SECTION XIX.

SUBSEQUENTIAL EVIDENCE, HOW ELICITED.

Enactive.

Art. 1. As to the mode of elicitation,—exceptions excepted, oral, perpetuated, as above, by instantly-succeeding minutation, is the mode that will be employed.

Enactive.—Ratiocinative.

Art. 2.—Exception i. Without preponderant evil in the shape of danger of deception, and thence of misdecision, saving produced by the epistolary mode in respect of delay and expense; intercourse being carried on free of expense, by means of the letter-post; the *House of Call* being settled as per Section XVI. art. 4.

Enactive.—Ratiocinative.—Exemplificative.

Art. 3.—Exception ii. The oral mode relatively impracticable: for example, the residence of the proposed examinee not being sufficiently known or settled, or being in a distant dependency of this realm, or in territory of a foreign state.

Enactive.

Art. 4. In this case it will rest with the Judge, consideration had of the circumstances of the individual case, to avail himself of such means of intercourse as it may happen to afford; or, for want of such means, to proceed without the piece of evidence in question, or to dismiss the suit from the cognizance of the Dispatch Court.

Enactive.

Art. 5. Subject to re-examination in the oral mode, in case of need, at the discretion of the Judge, will be every piece of evidence elicited in the epistolary mode:—re-examination, that is to say, of the same examinee, with or without counter-evidence and corroborative evidence elicited from other sources.

Art. 6. Submitted, before issuing, to inspection and amendment on the part of the Judge, will be every piece of evidence so elicited in the epistolary mode, as above.

Art. 7. The Judge may, at his discretion, taking the sense of the parties, settle *in terminis* the answers required to be given by the examinee, in return to the epistolarily-uttered interrogatories. In this case, with the exception of the oath, the answer so returned will in its force be analogous to an *affidavit:* the species of evidence, affidavit evidence.

Exemplificative.

Art. 8. Example of a case in which, by reason of its simplicity, it may happen that the course thus chalked out may be pursued without evil consequence in the shape of deception and misdecision through falsehood, criminal or culpable,—authentication of a written instrument, by acknowledgment made by the examinee that a signature purporting to be his is really his.

Enactive.—Ratiocinative.

Art. 29. Neither in respect of fabrication, nor in respect of utterance accompanied with evil consciousness, should forgery be presumed. Accordingly, every written instrument delivered as genuine, and as having been framed and signed without any invalidating circumstances, will be admitted, unless by some party to the suit, the existence or suspicion of its being tainted with forgery, or adopted under invalidating circumstances, be declared.

Expositive.

Art. 30. By invalidating circumstances, understand—I. Illegal force; 2. Fraud; 3. Blameless mistake.

Enactive.

Art. 31. Except as above, no evidence, personal, oral, or written, will be excluded, otherwise than for irrelevancy, and thence uninstructiveness.

Art. 32. Between the evidence of parties to the suit, or say party-witnesses or litigant-witnesses, and the evidence of extraneous witnesses, or say individuals who are not parties to the suit, no distinction will be made as to competency or trustworthiness.

Ratiocinative.

Art. 32*. Why this provision?—*Answer:*

i. On the part of an extraneous witness, an interest not less strong, even in any degree stronger, than on the part of a party to the suit, may have place, not only without possibility of being proved, but without being so much as exposed to suspicion: hence, if on the score of interest, and for fear of deception by reason of it, the evidence of a party, or the evidence of a non-party known to have an interest in the suit, ought to be excluded, so ought all evidence whatsoever.

ii. Whatsoever be the value in dispute on the occasion of the suit, the seductive force of pecuniary interest will depend, not on the absolute quantum of the value, but upon its relative value, relation had to the pecuniary and other circumstances of the individual in question.

iii. The force of the seductive interest in question being the same (suppose) in both cases, its tendency to produce deception will be much less in the case of a party witness than in the case of a non-party witness. Why?—Because in the case of the party witness, the Judge is aware of it, and of course upon his guard against it: in the case of the non-party-witness, not.

iv. Under the existing system, in cases in which the seductive force of interest is at its maximum, and the mischief producible by it also at its maximum, the evidence of a single witness has commanded, and may at any time command the decision: instances more than one have had place, in which a man has been put to death for murder on the single evidence of an accomplice, purchased by impunity with a thousand pounds reward, promised in case of conviction and not otherwise: nor in these cases did any doubt in respect of the guiltiness of the sufferer anywhere manifest itself.

v. Under the existing system, in cases in which no seductive force in any shape is known to have place, the mere name of interest in a pecuniary shape,—namely, the eventual expectation of a profit amounting to no more than a minute fraction of the value of the smallest denomination of coin, necessitates exclusion: in here and there a particular instance, the bar has been removed by a statute on purpose; but with these exceptions, it remains unremovable.

vi. Scarcely in any other than the pecuniary shape is interest received as a cause of exclusion. By no other attractive force than that of money is a man's testimony capable of being drawn aside from the path of sincerity: and by that attractive force of money, though it be next to nothing, every man's testimony is sure to be thus drawn aside. Such, in relation to this matter, are the maxims on the ground of which the existing system has been established.

Enactive.

Art. 33. In regard to priority of elicitation, as between co-demandants, defendants, and extraneous witnesses respectively, the Judge will in each individual case be guided by the circumstances of that same case: employing in the first place his endeavours to elicit with the utmost prudentially practicable promptitude, or say with the minimum of useless delay, each piece of evidence: in the next place, his caution in not giving to any piece of evidence publicity in such sort as to give mendacity-assisting instruction to subsequently-about-to-be-elicited evidence: regard being also had to the convenience of all persons concerned in respect of times of attendance.

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SECTION XX.

EXECUTION, HOW PERFORMED.

Instructional.

Art. 1. Of a suit in the Dispatch Court, the sole side to which the operation designated by the term *execution* applies, is the defendant's: a case in which the side it might be supposed to apply to is the demandant's, or say the plaintiff's, is only where, in an anterior suit connected with that in which execution is called for, he was defendant.

Art. 2. In every suit, at the close thereof, the question is, in respect of the service demanded at the hands of the Judge by the suit, shall it be rendered or not? if not, whether any and what instead thereof? In either case, unless the correspondent service demanded at the charge and at the hands of the defendant in question is rendered by him, execution will have to be performed: if both services be denied, no such execution will have to be performed.

Art. 3. In the course of any suit, as well on the part of a demandant as on the part of a defendant, it may happen that delinquency may in any one of a variety of shapes have had place: and in consideration, and on the account of such delinquency, that remedy in the shape of compensatory satisfaction, or punition, or both, may be to be administered. But by any demand for either of these purposes, initiation, or say commencement, is given to a fresh and distinct suit. In no other shape than that of inactive, in consequence of a simple refusal, can execution be performed to the disadvantage of the demandant's, or say the plaintiff's side.

Art. 4. Under the head of the execution-securing purpose, have been seen the several operations which for that purpose the Judge is empowered to perform upon the person of the defendant, and on things belonging to him. To perform execution at the charge of a defendant, is to give fulfilment to the effective purpose of the prehensive powers, or say the power of prehension given to the Judge, as per Section VI. *Judge's Powers, &c.*

Art. 5. Difference between fulfilment given to the execution-securing and the execution-effecting purpose, this: for the former, whatsoever suffering is inflicted on the defendant is but defeasible; in other words, may be temporary, short of perpetual;—in the other, it is perpetual.

For example: if it be a house or a horse that is taken from him, if the operation be the execution-securing, he loses the use of it for a time; if the execution-effecting, he loses it for ever. So in the case of money.

By the difference between the two purposes will the difference between the operations respectively performed by the Judge be directed.

Enactive.—Expositive.

Art. 6. Operation or operations, by which to an ultimate decree of the Dispatch Court Judge, execution and effect will be given, these:—

When and in so far as it is by the delivery of the subject-matter in question that appropriate satisfaction is administered to a demandant, this subject-matter being a thing intrinsically valuable, will be either a thing or an aggregate of things corporeal or incorporeal: if corporeal, moveable or immoveable: money, with casual exception to a small extent, the representative, equivalent, and substitute of the above,—in a word, of all other things.

Without the consent and concurrence of the owner are all other things capable of being prehended: so likewise money, in so far as the individual pieces are in the physical possession of this or any other individual, and by the Judge it is ascertained that they are, and where they are.

Not so money, in the sense in which it is indicative of value, and as such is capable of being delivered and removed in the shape of a given number of pieces of the precious metal in question; the individual pieces, supposing the value of them to be to the amount in question, being at the choice of the person on whose account they are delivered.

Enactive.—Instructional.

Art. 7. For the purpose of such execution, the Judge will take such course, by which at the charge of all parties, delay, expense, and vexation, will be minimized; taking accordingly for the subject-matter of prehension things or persons, or both: and if things, the causing to be made over to the person to whom satisfaction is done, either the things themselves, or money in lieu; if money, then to raise it, causing the requisite things to be sold by virtue of his *vendition mandate,* or say *sale-ordering mandate.*

Expositive.

Art. 8. By the initiatory examination and during the continuance of the suit, the means of intercourse for this purpose will have been ascertained and established.

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SECTION XXI.

EQUITY COURT COSTS, HOW DISPOSED OF.

Enactive.—Instructional.

Art. 1. Costs incurred in the Equity Courts in the suits which the Dispatch Court disposes of,—in relation to this matter, what course shall the Judge take?—*Answer:*

i. Take it into his own hands he must: otherwise, as to this matter the suit remains in the Equity Court; effectual relief afforded, none.

ii. Supposing the suit terminated by mutual consent;—in this case, in some way or other the costs cannot but be disposed of: the course taken in that case will so far afford a parallel and standard of reference. But upon such agreement, compulsion is out of the question: and here, need for compulsion may have place, especially where on either side *mala fides* has place.

iii. The only difficulty is that which regards taxation. That both parties should sit down with their own costs would not be consistent with justice: it would be giving to the *malâ fide* suitor the benefit sought for by him. Where there is no *mala fides,* each party may sit down with his own costs; unless difference as to pecuniary circumstances may present a claim to allowance to the relatively indigent from the relatively opulent, in return for the relief afforded him by the Dispatch Court. Where no taxation has place, simple arithmetic may do the business. Where taxation has place—*i. e.* where *mala fides* has place,—in this case by a Judge-depute may the business perhaps be done.

Enactive.—Expositive.

Art. 2. In the course of an Equity suit, it every now and then happens that in virtue of some rule of procedure or practice, reimbursement of costs to one party at the expense of another has place, on some incidental occasion, and without reference to the mere question between the parties, or to the consideration of which party has in respect of the main question been most in the wrong or most in the right: from which state of things it may happen that a party who on the score of the main question has to receive costs—that is to say, reimbursement of the costs expended by him—has had to pay, and has accordingly paid costs, in respect to this or that incidental matter, as above. To arrangements of this sort, when already made, the Dispatch Court Judge will not without some special and sufficient reasons give disturbance: but neither in any of these ways, nor in any other, will he assist any party in taking advantage of his own wrong: whatsoever arrangements he finds necessary to make to avoid doing injustice in this shape, he will on this as on every other occasion make.

Art. 3. Under the name of Equity Court Costs, include for this purpose and on this occasion costs expended and incurred in any Courts, Common-Law or Ecclesiastical, on the proceedings of which, or in the result thereof, the Equity Court costs had on the occasion of the suit in question exercised, or was in a way to exercise any controuling or directing power: as to which, see Section VI. *Judge's Powers,* &c.

Enactive.—Instructional.

Art. 4. Suppose a case in which, on the part of the plaintiff, at the commencement of the suit, the demand made in it was groundless, and he conscious of its being so: but in the meantime in the course of the suit, on the part of a party to whose damage wrong has been done by the institution of the suit, incidental breach of regulations, or say irregularity, has been committed in such sort that money on the score of costs has been paid by him to a party on the other side, or according to the regulations become requisite to be paid by him. In the allotment he makes in regard to costs, the Dispatch Court Judge will consider, that but for the dishonesty of such plaintiff, and the suffering thereby wrongfully inflicted by him on the defendant, to whom he has constituted himself adversary, no such transgression on the part of the defendant could have had place. Power accordingly to the Dispatch Court Judge to cause such *malâ fide,* or say evilly-conscious, plaintiff to refund the whole or any part of the money so received or allowed in account under the name of costs, and in any proportion allot and refund it to the party by whom it was paid, or his representatives, as the case may be, to him or them alone; or else to the public revenue alone; or in any proportion to divide the same between the individual and the public revenue.

Enactive.—Instructional.—Ratiocinative.

Art. 5. Note, that though in general there will in this respect be no difference between one party and another on the same side, and accordingly on failure of proof, direct or circumstantial, to the contrary, the presumption acted upon will be that there is none,—yet, as this is a case not incapable of having place, accordingly, should it appear to have place, the Judge will act accordingly: seeing the regard by him had in this as in all other cases to their several pecuniary circumstances, he will assess the whole of the costs upon him or those whose state of mind has been that of evil consciousness, no part upon him or those whose state of mind has been that of blamelessness, and so in the case of blameable heedlessness.

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SECTION XXII.

DISPATCH COURT COSTS, HOW DISPOSED OF.

Enactive.—Ratiocinative.

Art. 1. As in the case of compensation, making imposition of mulct, and disposal made of Equity Court costs, so in the case of the costs disbursed and incurred in the Dispatch Court, regard will be had to the pecuniary circumstances, absolute and relative, of the parties,—regard had and correspondent and appropriate allotment made: for, whatsoever reason for such regard and disposal has place in any one of those cases, the same has place in every other. To no person does it make any material difference under which of all these names, on which of all these occasions, for which of all these causes, he has to pay: in regard to payment, to him all that is material is, what he has to pay, and where and at what time or times he will have to pay it.

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SECTION XXIII.

EVENTUAL RETROTRANSFERENCE OF A SUIT TO THE EQUITY COURT.

Enactive.

Art. 1. Antecedently to the day on which this Act is appointed to expire, the Judge, unless in the mean time further continuance shall have been given to it, is hereby required to pronounce a decree in relation to each one of the suits which are at that time in pendency in his judicatory. This decree will be final or interlocutory, according to the progress made in the suit. If it be interlocutery, the suit will, for the purpose of receiving a final decree, revert of course to the Court from which it had been withdrawn: and except in so far as appealed from in such Court, all directions contained in such decree will, in and by such Court, be conformed to and carried into effect as if it were in such original Court that the decree had been pronounced: and in such direction will be included whatsoever it shall have seemed good to the Judge to determine in relation to costs.

Art. 2. In respect of all such suits, if any, in which a final decree having been pronounced by the Dispatch Court Judge, execution, either in the whole or in part, remains on the dissolution of such Court unperformed, such decree will receive its completion or its entire performance in the original Courts.

Instructional.—Enactive.

Art. 3. If as hereby eventually intended, a complete system of Local Judicatories shall have been established antecedently to the expiration of this Act, or of any Act passed for the continuance of it, or if a Local Judicatory for the London Judge-shire shall have been established, all such suits as at that time are still in pendency in the Dispatch Court will be to be transferred to such London Local Judicatory, instead of the original Court.

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SECTION XXIV.

EXPENSE OF THE COURT, HOW PROVIDED FOR.

Enactive.

Art. 1. At the charge of the public revenue, disposal of which is made by the Parliament of Great Britain and Ireland, will the whole expense of the Dispatch Court be defrayed.

Ratiocinative.

Art. 1*. Of the here-proposed institution it is a principle, that of the remuneration received by the public functionaries employed, no part shall be paid by a party on either side of the suit, but the whole by Government: in the same manner as most other parts of the national expenditure. On the contrary, under the existing system, paid, on the whole or in great part, at the expense of the suitors, are the functionaries belonging to the Equity Courts. Instead of leaving the several subject-matters of the suit in the hands in which they are at present deposited, and operating upon them while in the hands of the functionaries of the Equity Courts, why remove them into the hands of the Dispatch Court Judge? *Answer,* as above:—If, after a suit has been taken out of the hands of an Equity Judge, any subject-matter of the suit were to remain in the hands of his subordinates, or any of them, the consequence would be, that whatsoever disposition came to be made thereof, need would from time to time have place for some operation to be performed in relation thereto by this or that one of those same subordinates. Either those which such subordinate had been accustomed to do no otherwise than on receipt of a fee, he would have to do without receiving remuneration in that or any other shape, or fees such as he would have received otherwise will be to be received by him at the expense either of the suitor, or, as above, of Government. Compelling him to do without remuneration that for which by legal practice he had been authorised to expect remuneration, would be an infringement of the non-disappointment principle, and would afford a natural, nor that an altogether ungrounded matter of complaint on the score of injustice. Take the subject-matter out of his hands, this cause of complaint has no place. True it is, the pecuniary loss to him is the same in the one case as in the other. But on the other hand, in the one case, the labour, such as it is, continues to be imposed upon him—imposed upon him without his being paid for it. But what is more material is—that he is in no other state than he would be in if it were by compromise, or by impoverishment of the parties on one or both sides, that the cessation were produced: and it will be hard to say, that the State ought to be inhibited from granting to parties that cessation of suffering which they would not be inhibited from granting to themselves: or that the Government having, by its unapt arrangements, for the sake of its creatures, begun to administer to the parties impoverished something under the name of justice, should be bound, merely for the sake of those its functionaries, to do

the suitors evil to an amount much more than equivalent to the good thereby done to those same creatures. As to the fees, were the payment of them to be continued, the continuance of the expense would not be the only evil produced. To it would be added that of the delay. For, in each instance, when a fee is received, it is on the occasion of some operation performed: if the payment of the fees be continued, so must be the performance of the several operations coming to be performed on the several successive occasions.

Enactive.

Art. 2. Fund out of which the expense of the Dispatch Court will be provided for,—the Consolidated Fund.

Art. 3. An *auxiliary* extraordinary and specific fund, to be drawn upon in aid and relief of the above-mentioned general and ordinary fund, will be composed of the produce of such *fines,* or say mulcts, as will by the Judge have been imposed upon and exacted from offenders, or say transgressors or delinquents, in respect of all such offences, or say acts of transgression or delinquency, on the occasion and in consideration of and punishment for which such fines will respectively have been imposed.

For the list of these same offences, see Section VI. *Judge's Powers,* &c. art. 34.

Ratiocinative.

Art. 3*.—i. So far from being a source of expenditure, the Dispatch Court, proceeding on the principle in that section indicated, may reasonably be expected to be, and ought to be endeavoured to be made, a source of revenue. So also, and thereby, of moral melioration.

ii. Consideration had of the prodigious amount to which, under the existing practice, falsehood—wilful falsehood, as well with oath as without oath,—has place, it is but too certain that, notwithstanding the repressive power of the arrangements herein above provided, it will at the outset have place to a very extensive amount on the part of persons of all degrees of opulence in the several capacities of suitors and witnesses.

iii. But in each such instance, no sooner is it become manifest, in the eyes of the Judge, and as he will perceive in the eyes of all the bystanders, that delinquency in this shape has had place, than under Section VI. the delinquent will be detained in the Justice Chamber, interrogated as to his pecuniary circumstances, and if the Judge sees reason, incarcerated, and not liberated till he has paid the sum which, by the *Mulcting Mandate** he has been ordered to pay: and this process may be continued by the examination of extraneous witnesses in the case of delinquency in this shape, exactly as in the case of delinquency in any other shape.

iv. As to the amount of the mulct in each individual case, the grounds upon which it is to be fixed have been already pointed out in Section VI. art. 52, and following. If from an individual the aggregate of whose property amounts to no more than £5, it is right

and justifiable for the Judge to exact on the score of delinquency in any shape such his £5,—from an individual the aggregate of whose property amounts to £500,000, can it be otherwise than right and justifiable for that same Judge, on the score of delinquency in that same shape, to exact such his £500,000?

v. True it is, that wrong and unjustifiable it would be, if into the pocket of the Judge, money to his own use being in both cases exacted by him, money to a greater amount were exacted in the case of the £500,000 than in the case of the £5. But by the Dispatch Court Judge no money would to his own use be exigible or receivable in either case, or in any case.

vi. Not on the *absolute,* but on the *relative* quantity (need it be said?) of the money exacted from a person on the score of delinquency and punishment, depends the quantity of the *suffering* produced by the loss:—on the *relative* quantity, relation being had to his pecuniary circumstances.

vii. Almost too obvious and too manifestly incontestable is the truth of this position, to admit of its being thus in a direct way laid down in the character of a ground of proceeding. Laid down, however, it must be;—to such a degree and to such an extent, by sinister interest, and interest-begotten and authority-begotten prejudice, have at all times the eyes of public men—of the ruling and influential few—been blinded to it.

viii. This blindness,—if real, self-regard has it for its efficient cause: if apparent only, hypocrisy for its accompaniment.

ix. In the direct and exact proportion to his opulence is the rich and influential man a gainer by the success with which this delusive rule, having been received as if prescribed by justice, is applied to practice.

x. In this same proportion, if besides being a depredator he is an oppressor—a hater of those under him, as well as an inordinate and too passionate self-lover,—is the pleasure he derives from the thoughts of the suffering of which on their part it is productive.

xi. "*Excessive fines ought not to be imposed:*"—by these words is expression given to one of the positions, propositions, aphorisms, or axioms, contained in the famous Declaration of Rights, to which the Revolution of 1688 gave birth. And the *absolute* is the sense in which we see by Judges of the Supreme Criminal Court (as in one sense it is so aptly called,) it has ever since been interpreted. And of the interpretation thus put upon it, what have been the efficient causes? One negative cause, this:—by this outward show of mercy nothing has been lost to the Judge: from a fine to the largest amount no more money goes into his pocket than from a fine to the smallest amount.*

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SUPPLEMENTAL SECTIONS:—

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SECTION I. *Or* XXV.

BANKRUPTCY AND INSOLVENCY.

By the arrangements hereinbefore provided (see Section XI. *Auxiliary Judges,)* would be effectively made that due distribution of the assets of an insolvent, which by the two existing systems—namely, the Bankruptcy system and the Insolvency system, is so vainly endeavoured to be made; and the enormous waste made by the machinery of the Bankruptcy Court, and the still more enormous waste which has place in the case of insolvency, would thus be saved.

The first person to whom it happened to suspect the solvency of his debtor would repair to the Judicatory, and obtain from the Judge an *attendance-commanding,* or a *prehension-and-adduction* mandate, whichsoever the case presented itself to the Judge as requiring. The defendant on his appearance would be asked whether he admitted the demand or contested it. If he admitted it, or on contestation judgment for it were pronounced against him, he would be asked whether he is ready to pay, or prays a respite. If he prays a respite, he will then be required to produce an account of his debts, his credits, and other means of payment; and on failure of assets, notice will be given to his other creditors, as well as this one, to come in. By being brought into Court, and therein into the presence of the Judge, a man's suffering is not greater than, nor so great, as by being consigned to a gaol, or under the notion of a mitigation, to a spunging house, where, instead of being divided amongst all his creditors, or made over to any one of them, his property is divided, so large a portion of it, among the lawyers, official and professional, the keepers of those ill-famed houses being a species of gaoler, and as such an official lawyer. By being laid under the obligation of giving a list of his debts and his assets on this occasion, and in this way without expense, his suffering is not greater than it would be under the Bankrupt laws; for under the Bankrupt laws this same disclosure he would be obliged to make.

Instead of one alone, to the detriment of all the rest, all persons to whom money from him is due will receive the same proportion of their due; no part of it would go into the pockets of a set of men to whom no part of it is due—namely, the aforesaid lawyers.

Of that part of the aggregate mass of the property of bankrupts and insolvents which now fails of being paid to their creditors, a large proportion would be saved for them: not, it is true, the *whole;* for before the debtor has been caused to appear before the Judge, it will have been in his power to any amount—1. To give undue favour to a creditor or creditors of his own choice; 2. To do so in appearance for his own benefit, by making over to them his property, in trust for himself; 3. To dissipate it by giving it away; 4. To lay it out in the purchase of services yielding no permanent equivalent transferable to creditors; or 5. In the purchase of consumable goods, consumed accordingly. But in the two first cases, the transfer in so far as proved might be declared void, and the transferree, if solvent, made to refund, and in the case of evil

consciousness or temerity punished: and in the three other cases the then maleficent debtor might be punished. And by the apprehension of the punishment in these cases, the maleficent act would be prevented in a large proportion of the number of the instances in which in the present state of things it has place; and that delay would be saved which at present is created for the sake of the sinister profit, and thereby a loss by the *interest* added to the loss by the *principal.*

But whatsoever be the amount of it, no otherwise can this good effect be produced than on condition of substituting the hereby-proposed system of procedure, with the contemplated judicial establishment, to those which are at present in existence: the judicial establishment; because indispensable requisites are a multitude of Judges (though each acting singly,) and these sitting without intermission,—sitting with as little intermission as the keeper of the gaol and the keeper of the spunging-house:—the procedure system; for necessary are, on the part of the pursuer, initiatory examination,—on the part of the defendant, obligation of answer, viz. *vivâ voce* by questions arising out of answers, and under a sanction equivalent to that of an oath.

Now as to proceedings in case of insolvency incidentally discovered.

1. Relative, or say particular; 2. Absolute, or say general:—into these two cases, taken together all-comprehensive, the case of *Insolvency* requires to be distinguished.

In the most ordinary case, the sort of insolvency which by the demandant is supposed to have place on the part of the supposed defendant, is no other than relative, or say particular: by some cause or other, compliance on the part of the proposed defendant with the demand made by the demandant is prevented; but what that cause is, is not by the demandant matter of knowledge or belief: in particular, it is not known that inability to comply with the demands of other demandants, actual or probable, or say future contingent, is the cause or among the causes of non-compliance with relation to this same demand of his.

But of that summary mode of procedure which under the proposed system is the only mode employable in every instance in which on the part of a defendant absolute insolvency has place, one effect will in every case be this:—If with the demand made by the demandant, compliance at the hands of the defendant is desired, compliance on the spot, if the subject-matter of the demand be money, will be ordered: for this he will by the original *hither-come* mandate have been prepared. If then, if at that same sitting the money is not produced by him, he will be provisionally consigned to some person for custody, for the purpose of compulsory compliance. Such will be the result unless on his part relative inability, or say insolvency, is alleged.

Then will the defendant have to say to the Judge,—This is what you have ordered me to do—to pay to the demandant this sum of money; but to do this, is what I am not able.

Thereupon comes of course a dialogue to the effect following:—

Judge to Defendant.—You see how the matter stands. Before you quit this justice chamber, you must pay this money, or state to me that you labour under an inability so to do, and what are the circumstances which this inability has for its cause.

Defendant to the Judge.—Sir, I am not able to pay this money.

Judge.—How happens this?

Defendant.—Sir, at the moment your attendance-requiring mandate reached my hands, I had due to me divers debts from so many different debtors, and in this interval I have not been able to obtain from them money in sufficient amount to satisfy this demand.

Judge.—On what day, if on any, do you expect to be able to obtain from them or otherwise the requisite and sufficient sum? Are there any, and what persons besides this demandant, to whom you owe money? If yes, if on that day you have money sufficient to satisfy the demand of this demandant, shall you also have money sufficient to satisfy the demands of all such your other creditors?

Such are the questions by which, in the case in question, it will be the duty of the Judge to elicit satisfactory answers. For if by law he is bound to obtain satisfaction for this one just demand, not less is he to obtain equal satisfaction for all others.

Into the state of the defendant's affairs the Judge will accordingly at this same hearing proceed to examine; and by questions arising out of answers, he obtains an insight into that same state, which if not particular in a degree sufficient to afford a warrant for proceeding *definitively* in relation to any other debt, is at any rate as particular as the circumstances of the case admit of its being made.

To supply the deficiency, then, at this same time comes the order, requiring the examinee, on a day appointed, to reappear with a written list of debts and effects,—debts due *to* him included;—in a word, with what, in Insolvency Court language, is called a Schedule.

In this way, at the earliest moment possible, the bloody flux is stopt. The Judge proceeds convening, as far as needful, all the defendant's other creditors and debtors.

In amount proportioned to each one's need, if he sees reason, he respites payment: payment from the defendant to his creditor; from the defendant's debtors, to their creditor the defendant.

On this same occasion, if he sees need, he puts questions, having for their object the ascertaining whether, in contemplation of insolvency, undue favour has not been shown by the defendant to this or that creditor, to the detriment of the rest. If yes, he causes the excess to be refunded.

Great will be the efficiency of this arrangement; and this not merely in making *reparation* for the wrong, but in the *prevention* of it.

True it is, that for this arrangement machinery will be necessary; but to how prodigiously less an amount than that of the Bankruptcy and the Insolvency system put together!

All this over and above the diminution produced by the substitution of this same summary mode to the procedure before the *Master* in a case of *accounts,* between parties who on all sides are in a state of solvency.

What now does the existing system? The provision made in the case of insolvency, it splits into two branches: two branches, vying with each other in inaptitude—in inefficiency for all purposes but those of the lawyer brotherhood. Now for a result: Average amount of the dividend under the *Bankruptcy system* [NA] in the pound; under the Insolvency system, not so much as a shilling in the pound.

As for the causes of this waste, the development of them requires too much of detail, thence too much of time and letter-press, to be performed now and here.

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SECTION II. *Or* XXVI.

HENCEFORWARD DISPATCH COURT.

Enactive.

Art. 1. At the end of a service-year, reckoning from the day on which the Dispatch Court Judge took his seat, or any time sooner, the aptitude of the institution with reference to its intended purposes, having been deemed sufficiently demonstrated and made manifest by appropriate experience, power to his Majesty to institute an additional Dispatch Court for cognizance to be taken of such suits of the nature of Equity suits, as would otherwise have to be instituted in an Equity Court. Name of such additional Court, the *Henceforward Dispatch Court:*—name of the mandate for the purpose, the *Henceforward-Dispatch-Court-instituting Mandate:* form, as per Schedule No. XXX.

Enactive.

Art. 2. At the same time at which, and on the same day on which (as per art. 1,) the Henceforward Dispatch Court is instituted, the existing Equity Court will, by an accompanying mandate of his Majesty, be dissolved. Name of the mandate by which such dissolution is effected, the *Equity Court-dissolving Mandate.* Form thereof, as per Schedule No. XXXI.

Ratiocinative.

Art. 2*. Why not leave open to suitors the option of making application either to the thus newly-instituted Judicatory, or to the at present and then existing Equity Court?

Answer.—Reason:—If the option were left open, all the *bonâ fide* suits would indeed be instituted in the Henceforward Dispatch Court. But for the benefit of the expense, delay, or vexation, or all together, *malâ fide* suits in the same number as at present antecedently to the institution of the Dispatch Court, would be brought before the at present and then existing Equity Conrts.

Enactive.

Art. 3. Suits cognizable in the Dispatch Court will not be cognizable in the Henceforward Dispatch Court. Suits cognizable in the Henceforward Dispatch Court will not be cognizable in the Equity Dispatch Court.

Art. 4. Power to the Henceforward Dispatch Court Judge, exceptions excepted, to take cognizance of suits belonging to the cognizance of every other Court of Justice now or then in existence.

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SCHEDULES TO THE BILL.

[*The Schedules are not found to have been drawn by the Author. The following is a List of such as are referred to in the various Sections of the Bill.*—Ed.]

I. Form of Commission locating a Dispatch Court Judge,—(Section I. art. 3.)
II. Dispatch-Court-praying Petition,—(Section I. art. 4.)
III. Record of Proceedings in the Election of a Judge,—(Section I. art. 13.)
IV. Deputes of Judge, Registrar, &c. Forms for Location,
V. Deputes of Judge, Registrar, &c. Forms for Dislocation,
VI. Deputes of Judge, Registrar, &c. Forms for Suspension, and
VII. Deputes of Judge, Registrar, &c. Forms for Relocation,—(Section V. art. 13.)
VIII. Judge's Powers:—Sistition Mandate,—(Section VI. art. 1.)
IX. Judge's Powers:—Document-transference Mandate,—(Section VI. art. 12.)
X. Judge's Powers:—Incarceration Mandate,—(Section VI. art. 15.)
XI. Judge's Powers:—Disincarceration Mandate,—(Section VI. art. 16.)
XII. Judge's Powers:—Formula for the introduction of a Judiciary-bred Eventual Act,—(Section VI. art. 72.)
XIII. Prehensors, &c.:—Judges' Location Instrument,—(Section VII. art. 2.)
XIV. Prehensors, &c.:—Dislocation Instrument,—(Section VII. art. 5.)
XV. Prehensors, &c.:—Suspension Instrument,—(Section VII. art. 6.)
XVI. Prehensors, &c.:—Occasional-Prehensor-locating Instrument,—(Section VII. art. 7.)
XVII. Prehensors, &c.:—Mulcts-transmission Instrument,—(Section VII. art. 21.)
XVIII. Consignees:—Judge's Management-directing Mandate,—(Section VIII. art. 15.)
XIX. Consignees:—Judge's Sale-prescribing Mandate,—(Section VIII. art. 15.)
XX. Suits' Suitableness:—Petition for Transference to Dispatch Court,—(Section X. art. 19.)
XXI. Auxiliary Judges, &c.:—Money-reception-ordering Mandate,—(Section XI. art. 18.)
XXII. Auxiliary Judges, &c.:—Payment-ordering Mandate,—(Section XI. art. 19.)
XXIII. Auxiliary Judges, &c.:—Cognizance-transferring Mandate,—(Section XI. art. 25.)
XXIV. Auxiliary Judges, &c.:—Refusion-securing Mandate,—(Section XI. art. 29.)
XXV. Auxiliary Judges, &c.:—Form of Location,—(Section XI. art. 36.)
XXVI. Auxiliary Judges, &c.:—Appropriate-Aptitude Certificate,—(Section XI. art. 59.)
XXVII. Auxiliary Judges, &c.:—Requisition for Reasons of refusal to appoint,—(Section XI. art. 61.)

XXVIII. Examination of Solicitors:—Attendance-commanding Mandate,—(Section XIV. art. 7.)
XXIX. Judge's Mulcting Mandate,—(Section XXIV. art 3*. iii.)
XXX. Henceforward-Dispatch-Court-instituting Mandate,—(Suppl. Section XXVI. art. 1.)
XXXI. Equity-Court-dissolving Mandate,—(Suppl. Section XXVI. art. 2.)

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PLAN OF PARLIAMENTARY REFORM,

IN THE FORM OF A CATECHISM, WITH REASONS FOR EACH ARTICLE: WITH AN INTRODUCTION, SHOWING THE NECESSITY OF RADICAL, AND THE INADEQUACY OF MODERATE, REFORM.

BY JEREMY BENTHAM, ESQ.

originally published in 1817.

PARLIAMENTARY REFORM CATECHISM.

INTRODUCTION.

SECTION I.

HISTORY OF THE ENSUING TRACT—ALARMING STATE OF THE COUNTRY AND THE CONSTITUTION.

The following little tract was written as long ago as in the year 1809. It was offered at the time to one of the time-serving daily prints, in which other papers on the same subject had already found admittance. No name was sent with it: and, the weathercock being at that time upon the turn, insertion was declined.

From that time to the present, despair of use kept this, together with so many other papers, upon the shelf. In a state of things, such as the present, if in any, they possess a chance of finding readers.—Sad condition of human nature!—until the cup of calamity, mixed up by misrule, has been drunk to the very dregs, never has the man a chance of being heard, who would keep it from men's lips.

For a long time past had the necessity,—and not only the necessity, but supposing it attainable, the undangerousness,—of a Parliamentary Reform, and that a radical one, presented itself to my mind, if not in a light as yet sufficiently clear for communication, at any rate in the strongest colours. Long had this sole possible remedy against the otherwise mortal disease of misrule, been regarded by me as the country's only hope. Long had I beheld, and not long after did I delineate the road to national ruin, in the economy of *Edmund Burke,* adopted and enforced under *William Pitt,* by the pen of his confidential adviser, *Mr. Rose.* The first of these sketches is already before the public;* the other will soon be so.

Drawn on, in the road to that gulf, from those times down to the present,—the country, if my eyes do not deceive me, is already at the very brink:—reform or convulsion, such is the alternative. How faint soever the hope of its being attainable,—I for one, under the disease under which I see the country lingering, cannot discover any other than this one possible remedy. Of the composition of it—such as in my conception it must be, to be productive of any effect—some conception was and is now endeavoured to be given in the ensuing little tract. On the subject of the necessity, more than a few introductory pages cannot at this time, and in this place, be spared. To give any adequate conception of it, would require a much larger work.

For the destruction of everything by which the constitution of this country has ever been distinguished to its advantage, no additional measures need be employed: let but the principles already avowed continue to be avowed—let but the course of action, dictated by those principles, be persevered in—the consummation is effected.

Gagging Bills—suspension of the Habeas Corpus Act—interdiction of all communication between man and man for any such purpose as that of complaint or remedy—all these have already become precedent—all these are in preparation—all these are regarded as things of course.

The pit is already dug: one after another, or all together, the securities called *English liberties* will be cast into it. With the sacred name of reform on their lips, and nothing better than riot or pillage in their hearts, let but a dozen or a score of obscure desperadoes concert mischief in a garret or an alehouse, fear will be pretended—prudence and wisdom mimicked—honest cowards will be made to acquiesce and to co-operate by feigned cowardice:—for the transgression of the dozen or the score, the million will be punished, and from the subjects of a disguised despotism will be made such under a despotism in form, to which disguise is no longer necessary:—such is the state of things, for which it is time for every man to prepare himself.

As for the *Habeas Corpus Act,* better the statute-book were rid of it. Standing or lying as it does, up one day, down another,—it serves but to swell the list of sham-securities, with which, to keep up the delusion, the pages of our law books are defiled. When no man has need of it, then it is that it stands: comes a time when it might be of use, and then it is suspended.

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SECTION II.

MOST PROMINENT PRESENT GRIEVANCE, GAREISONING FRANCE.

The plains, or heights, or whatsoever they are, of *Waterloo*—will one day be pointed to by the historian as the grave—not only of French, but of English liberties. Not of France alone, but of Britain with her, was the conquest consummated in the Netherlands. Whatsoever has been done and is doing in France, will soon be done in Britain. Reader, would you wish to know the lot designed for you? Look to France, there you may behold it.

In France, on the subject of their common interests, no longer can any information be received through the channel of any newspaper, other than those which are not only instruments, but avowed instruments, in the hands of the ruling despotism: no longer, from any source, any information that has not for its object deception—constant and universal deception: information in which, with a degree of anxiety proportionate to its importance, truth is suppressed, and by which pernicious error is circulated and inculcated. A newspaper, into which any expression can find its way, by which the "*feelings*" of "great characters" in their high situations can in any degree be "*hurt*"—(and is it possible they should not be hurt, as often as any misdeeds of theirs are exposed?)—any such source of instruction is in that country a no longer tolerable nuisance. The same causes will produce the same effects: the same "great characters" by which the monster of anarchy has so happily been crushed in France—by these same exalted persons will the same monster be crushed in Britain.

There they are—our fifty thousand men, with the conqueror of French and English liberties—the protector of the Bourbons—the worthy vanquisher and successor to Bonaparte at the head of them: they are—and, until every idea of good government—every idea of anything better than the most absolute despotism—has been weeded out,—once more as thoroughly weeded out by the Bourbons, as ever it had been by Bonaparte,—there it is that the whole of them, or whatsoever part may be deemed sufficient for the purpose, are destined to continue.

There they are, and for what is it that they were planted there?—For security? For the security of Britons? for the security of Frenchmen? for the security of Germans? for the security of Netherlanders? for the security of any other race of men under the sun? Impossible.

Had the security, of anything but the universal despotism which produced it, been the object of that new holy league, by which all France is put under a garrison—the means of security were as obvious as the efficacy of them was certain,—and in comparison with the existing ones, the modes and forms lenient to the vanquished. Blow up all their fortifications without exception: carry off all their cannon: destroy all their arsenals and their founderies: destroy all their manufactories of arms of every

kind: leave them not a fowling-piece: mark out for predicted vengeance every attempt to set up another foundery:—parcel out half the country among the allies: or, should any such partition be too dangerous to Christian charity among the crowned and newly-christianized Christians, divide the whole into any number of lots. Yes: though the whole country were parcelled out into lots,—still, if in each lot men were left to take their own measures for the preservation of what was left to them,—all these inflictions put together would have been mercy, in comparison of that of fastening upon their shoulders the old man of the woods, with his 150,000 foreign guards.

For the moment, in respect of *subjection,* and absence of everything that ever went under the name of *liberty,* France is but what she was. Exit the old weathercock, enter the *ultras,* and then Spain will be to France the model of good government. Then, under the protection of the Waterloo conqueror and his employers, the wardrobe of the Holy Virgin will be supplied with a new gown, and every prison in the country with a new set of torture-boots and thumb-screws.

Let him who thinks himself able, figure to himself a case in which there would not be a demand—an adequate demand—for the system of garrisoning France;—on the supposition that the existence of any such demand has place at present. The demand is composed of *possibilities,*—converted, it is alleged, into practical *certainties* by past facts. There *have been* Septembrians and anarchists;—*ergo,* no sooner does France cease to be garrisoned by us, than the reign of those miscreants will recommence. There *has been* one Napoleon Bonaparte;—*ergo,* no sooner does France cease to be garrisoned by us, than in comes either the self-same, or exactly such another. Well: these past events, who is there that can cause them not to have had place? Nobody. Well then; never, never can it cease—the necessity of garrisoning France with English armies.

Once more:—For what, then, is it that France has been, is now, and by the blessing of God is destined to be forever, garrisoned? Is it for security?—is it for the keeping out anarchy?—is it for the keeping out *bad* government? Alas! no: to any such object, never, never has any real fear attached itself: the healing—the moderately monarchical—constitution, on which, at their entrance, the despots set their perfidious foot, would that have been bad government? No: it was not for keeping out *bad*—it was for keeping out *good* government. Under whatsoever form it might have been established—constitutional monarchy, or upon the model of the American United States, democracy—*there* was the real object of terror to all the newly re-christianized crowned heads,—and to their loyal and correspondently pious,—coroneted, and not yet coroneted advisers.

There they are—but happily with the Atlantic between us and them—the never-sufficiently-accursed United States. There they are—living, and (oh horror!) flourishing—and so flourishing! flourishing under a government so essentially *illegitimate!* Oh what a reproach to legitimacy! Oh what a reproach, a never-to-be-expunged reproach, to our own Matchless Constitution—matchless in rotten boroughs and sinecures! Oh! had they but one neck—these miscreants! Ten times, twenty times, any number of times, the blood spilt at Waterloo, would be well spent in cutting it.

There they are, with their prosperity the effect: there they are, with their good government—their matchless good government—the cause of it.

There they are—but, happily, with two thousand leagues of sea between us and them—the ten millions of two-legged swine, with the illegitimacy and the unincumbered and undisturbed prosperity in which they wallow.

But now—suppose the same, or a similar accursed government, with the accursed prosperity, transplanted from that blessed distance—planted under our very noses: planted with no more than one-and-twenty miles of sea to dilute the stench of it. Without so much as a single *useless place, needless place, overpaid place, unmerited pension*—not to speak of *sinecures*—no not so much as a *peerage,* to settle a borough or buy off a country gentleman:—suppose these *miscreants*—not one of them re-christianized—not one of them occupied in embroidering a robe for the Holy Virgin—debating, and resolving, and enacting—without so much as a single bayonet to secure good order to their deliberations;—resolving and enacting, and, like their accursed preceptors and forerunners, paying off public debt faster than we are contracting it:—suppose all this state of things brought into existence—brought into existence, and not more than half-a-guinea or a crown, for a place in a passage-boat—not more than three hours row in a wherry—necessary to enable a man to see it.

In this case, by what possibility could the eye, the head, or the heart, be shut against the spectacle of the united nuisances—*prosperity* and *good government?* To what use deny their existence? With as much effect might a man deny the existence of the dome of St. Paul's, in the face of those who are viewing it from St. James's park.

Here then is *one* use, for the fifty thousand Britons, who, in France, with the hundred thousand men of other nations, are preying at one and the same time upon the vitals of France and Britain. Here is one use—behold now another.

The other use—need it here be mentioned? Exists there that reader, who has not already told it to himself? Yes, it is to return to all plans of reform, to all petitions for reform—to all groans—to all complaints—to all cries for mercy—the proper, and properly, and already proposed answer, the bayonet. The bayonet? Yes: by the blessing of God, the bayonet. But is it altogether so sure, that, should matters come to the push, the direction that will be prescribed by legitimacy is exactly the direction in which the bayonets will move? The men by whom they will be to be pushed, of what class are they? Are they of the blood royal?—are they of the peerage? Are they not of the swinish multitude?—are they not as perfect swine as we are? Is it possible they should ever forget it? And when, in a direction that is not pleasing to him, the swine is driven, is he not apt to retrograde?

An army in France necessary for the security of Britain? Yes! if an army in China is so too;—not otherwise.

Propose anything good; the answer is at hand:—wild, theoretical, visionary, Utopian, impracticable, dangerous, destructive, ruinous, anarchical, subversive of all

governments—there you have it. Well, but in America there it *is:* and no such evil consequences—nothing but what is good, results from it. Aha! and so the United States government is your government, is it?—You are a republican then, are you?—what you want is, to subvert this constitution of ours; the envy of nations! the pride of ages!—matchless in rotten boroughs and sinecures!—Very well: begin and set up your republic. and, in the meantime, you, who are so ready to talk of *feelings,* think what *yours* will be, when, after a few nights lodging in the Tower, the knife of the hangman, after having rubbed off its rust upon the Spenceans, is doing its office in your bowels.

Propose anything that would put any power into the hands of those of whose obedience all power is composed: you propose *democracy;* and if any such epithet as *democratical* is applicable to it, there you have a reason, and that a conclusive one, for casting it out without further thought: casting it off as if it were a viper, and trampling upon it: and for this reason—for there needs no other—is eternity to be given to every thing that is corrupt and mischievous.

What, according to these men, is the use of the constitution? To make the *people* happy? Make them happy!—curse on the swinish multitude! What then? Why, to make the *one* man happy, the one object of legitimate idolatry,—with the small number of *others* to whom it accords with his high pleasure to impart any of the means of happiness.

Now, by this bugbear word *democracy,* are the people of this country to be frightened out of their senses?—frightened by Gwelphs any more than by Stuarts, into passive obedience and non-resistance.

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SECTION III.

CAUSES OF THE ABOVE AND ALL OTHER MISCHIEFS:—PARTICULAR INTERESTS MONARCHICAL AND ARISTOCRATICAL, ADVERSE TO THE UNIVERSAL—THEIR ASCENDENCY.

Goaded to the task by the groans of all around me, of late,—with an attention, which the nature of the objects that were continually forcing themselves upon all eyes and upon all ears, rendered more and more painful to me,—I have been looking more closely than ever into the constitution;—I mean the present state of it;—and, in as few words as possible, of this most appalling of all examinations, what follows is the result.

As early as the year 1809, and I forget how much earlier, it had seemed to me (it has been already hinted,) that in the principle which, by those in whose hands the fate of the country rested, had not only been acted upon but avowed, the road to national ruin might be but too clearly traced. This principle was—that in the hands of the trustees of the people, the substance of the people was a fund, out of which, without breach of trust, and without just reproach in any shape—*fortunes*—as the phrase is—by those who, without exposing themselves to punishment, could contrive to lay their hands on the means, might be—nay—and, it being matter of necessity, at any price, and to an amount absolutely unlimited, ought to be—*made.*

In this principle I saw the two domineering interests—the monarchical and the aristocratical—which in our mixed constitution—(for such at least it was at one time)—antagonizing with the every now and then struggling, but always vainly and feebly struggling, democratical: completely agreed,—and without concert, because without need of concert, co-operating with each other,—in the dissemination, and in the inculcation of it: the party out of power as well as the party in power inculcating it in theory; the party in power, by theory and practice.

That, on the part of both these interests, this principle, together with the practice that belonged to it, was but too natural—was abundantly evident: that, for its adoption, it had any such plea as that of necessity, was a notion which, when once taken in hand, vanished at the slightest touch.

Power, money, factitious dignity—by an attractive force, the existence of which, and the omnipotence, is as indisputable as that by which the course of the heavenly bodies is determined—*each* of these elements of the *matter of good*—that precious matter, the whole mass of which, in so far as at the hands of the monarch it is sought by a member of either of the two other branches of the efficient sovereignty, operates in the character of *matter of corruptive influence*—attracts and draws to it the *two others:* the greater the quantity a man has of any one of them, the greater the facility

he finds in his endeavours to obtain for himself the two others; each in a quantity proportioned to his desires:—those desires, which in human nature have no bounds.

The more he has of any one of them, the more therefore it is his *wish* to have of *that* and all of them. But the more he has of any one of them, the more is it *right* also that he should have of them? All of them at the expense of the people,—the poor people, at whose expense whatsoever is enjoyed by their rulers is enjoyed? Oh gross, oh flagitious absurdity! The more? No: but on the contrary the less. Whatsoever be the quantity of the *matter of reward,* which, in any shape whatsoever, may be necessary to obtain at a man's hands the requisite service, the more he has of it in any *one* shape,—the less the need he has of it in any *other* shape.

In the case of the poorest individual,—in the character of a *guardian,* by any man has any such immoral notion ever been started, as that, in the substance of his *ward,* any proper source of enrichment to himself is to be found? Power, over a single individual and his little property, a sufficient payment for the labour: and power over twenty millions, and their property, together with all that mass of patronage,—lucrative of necessity, a great part of it,—shall it not be sufficient? Those who either have no property, or have it not in sufficient quantity for their maintenance,—such men must, indeed, either be paid or not employed:—but, among men who not only have property, but have it in sufficiency, is it supposable that there can ever be a deficiency in the number of those, in whom the *pleasure* of possessing such power will be sufficient compensation for all the *pain* attached to the exercise of it? Look at the country magistracy: see we not there—not only an example, but a host of examples? Yes: and in those examples a host of proofs.

Unfortunately—in the breasts of all who have *power, merit* being, as they all agree and certify—to one another and to the people, infinite—so must be the *reward.*

Of the demand for the matter of reward—viz. money, power, and factitious dignity—(these are its principal shapes)—the infinity and absolute irresistibility being thus established, then and thereupon comes the demand for the supply—and that supply a proportionable one. Here, however, to a first view, comes somewhat of a difficulty. From the body of the people—how habitually soever blind and passive—money in *infinite* quantity cannot be demanded all at once: they would become desperate; they would rise: better (they would say to themselves,) better be shot or hanged at once, than starved.

A set of *drains* must therefore be established and set to work: drains, by and through which, by degrees—those degrees ever in the eyes of the devourers but too slow—under colour either of *use,* or what is so much better, of *necessity*—money may be drawn out of the pockets of the blinded, deluded, unsuspicious, uninquisitive, and ever too patient people:—1. Wars: 2. Distant and proportionably burthensome dependencies all over the habitable globe—(and note, that, in prosecution of these views, every such dependency, without exception, has been made a source of net expense—net expense, the amount of which is destined to perpetual and unlimited increase:) 3. Penal colonies: 4. Claims of universal dominion over the universal water-way of nations, with a determination to destroy the shipping of all nations by whom

those claims shall be contested: 5. Annexation of "*Hanover* to *Hampshire*:" and that to the end that not a hostile gun may be fired anywhere on the continent, but that we may be in readiness to interfere, subsidizing one of the contending parties, and helping to oppress the other![*] 6. Splendour of the crown; that effulgence, with the increase of which—and in exact proportion to that increase—will increase the respect, and with it the submission, and with it the happiness of the people: 7. Erection of *Hanover* into a kingdom for that purpose, and that the Hanoverians may the less grudge the increase of taxes that will be necessitated by the increase of *dignity.* Here, though not yet a complete one, is a list of these productive drains:—and are they not efficient ones?

As for *war*—never can a pretence for it be wanting—a pretence not yielding to any, in which, at any time in the course of the present reign, it has ever been made:—no; never can a pretence be wanting, so long as that nation exists anywhere, against which war can be made.

The nation—the nation to be warred upon—is either formidably strong, or providentially weak:—if formidably strong, too long have we delayed the necessary task of obtaining, at the expense of it, indemnity for the past and security for the future:—if providentially weak, now is the favourable time for taking advantage of its weakness, and preventing it from becoming formidable:—now has the Lord of Hosts—as the archbishop's prayer will not fail to inform us—delivered the enemy into our hands! Thus, if there be nothing *past,* for which to obtain *indemnity, security* for the *future* will, at any rate, be an easy purchase.

The French people, for example—already have they had one set of *Septembrizers,*—and—so happy were they under them—by the first favourable opportunity they would give themselves another: and, no sooner had they septembrized France, than they would cross over, and, with the assistance of the travelling orator and the *Spenceans,* septembrize us in the same way. The French have already had one Bonaparte;—so happy were they under him—leave them to themselves—immediately they would give themselves another. In his scheme for invading and conquering this country, the first Bonaparte failed:—the second Bonaparte, by whom such another plan would immediately be formed, would succeed in *his.* From these two considerations put together, or indeed from either of them, follows the necessity of garrisoning France, and keeping possession of the country till the danger is at an end:—yes, till the danger is at an end; which it is impossible it ever should be.

Yes: wars would be invaluable, were it only for the *merit* of which they are the never-failing sources. When a battle is fought—unless it be a drawn one, which does not often happen—it must be gained by somebody. Gained on one side it must be, in what degree soever the generals on the respective sides are fit or unfit for their work. The greater the number that fight, the greater the number of those who are capable of being killed. A battle is gained,—the number of the killed is great,—and half a million is scarce enough to reward the merit which, from one single bosom, has been displayed in it.

In regard to all these drains of money, and all these sources of merit and reward,—the great misfortune is this: For every shilling which, by means of any one of these drains, unless it be the last, the men of merit—and all placemen without exception are *ex officio* men of merit,—for every shilling which the men of merit thus put into their pockets, some score, or some dozen at least, must come out of the pockets of the poor people. A man who sets his neighbour's house on fire, that he may roast an egg for himself,—is the emblem by which a certain sort of man is pictured by Lord Bacon. Would you see a man of this sort, you need not look far, so you look high enough for these five-and-twenty years, or thereabouts—to go no further back—has this poor nation been kept on fire, lest the emblematic eggs in sufficient quantity should be wanting to its rulers.

Money, is it wanting (and it always is wanting) for the support of the *splendour of the crown?*—for the support of *royal dignity?* Money supplied by parliament—supplied in a direct way, and without a burthen more than correspondent to the supply being deficient—and it always is deficient—Droits of Admiralty are sent by Almighty Providence to feed, but never to fill up—for nothing can ever fill up—the deficiency. The persons, for the reward of whose merit more and more of that object of universal desire is everlastingly wanted—these persons join with one another, not only in commencing groundless war, but in commencing that groundless war in a piratical manner,—in a manner in which the monarch and his instruments may add millions to the conjunct splendour,—not only the foreigners who thus and for this purpose have been converted into enemies, are plundered, but the men, by whose hands the plunder is got in, deprived of that which, had the war been commenced otherwise than in the way of piracy, would have been their due. Thus do these on whom it depends bribe one another to commit piracy!—piracy, which has been made legitimate, because, by their power and for their own benefit, it has been made unpunishable!

Money, power, factitious dignity—among the *modifications* of the *matter of good*—among the *good things* of this wicked world—these, as it is the *interest,* so has it ever been the study,—as it has been the study, so has it been the endeavour—of the monarch—as it has been, so will it, and where the monarch is a human being, so must it be everywhere—to draw to himself in the greatest quantity possible. And here we have one *partial,* one *separate,* one *sinister* interest, the *monarchical*—the interest of the ruling *one*—with which the *universal,* the *democratical* interest has to antagonize, and to which that all-comprehensive interest has all along been,—and unless the only possible remedy—even parliamentary reform, and that a radical one, should be applied,—is destined to be for ever made a sacrifice:—a sacrifice? Yes: and, by the blessing of God upon the legitimate and pious labours of his vicegerent and the express image of his person here upon earth, a still unresisting sacrifice. Omnipresence, immortality, impeccability—equal as he is to God, as touching all these "*attributes*" (ask Blackstone else, I. 270, 250, 246, 249,)—who is there that, without adding impiety to disloyalty, can repine at seeing anything or everything he might otherwise call his own, included in the sacrifice?

Meantime the money, which, in an endless and boundless stream, is thus to keep flowing into the monarchical coffers—this one thing needful cannot find its way into those sacred receptacles without instruments and conduit-pipes. Upon and out of the

pockets of the people it cannot be raised, but through the forms of parliament:—not but through the forms of parliament, nor therefore without the concurrence of the richest men in the country, in their various situations—in the situation of peers, great landholding, and as yet uncoroneted commoners, styled *country gentlemen,*—and others. In those men is the chief *property* of the country, and with it—(for in the language of the aristocratic school, *property* and *virtue* are synonymous terms)—the *virtue* of the country. And here we have another partial, separate, and sinister interest—the *aristocratical* interest—with which the democratical interest has also to antagonize:—another overbearing, and essentially and immutably hostile interest,—against which, and under which, the universal interest has to struggle, and as far as possible to defend itself.

Such is the state in which the country lies:—the universal interest crouching under the conjunct yoke of two partial and adverse interests, to which, to a greater or less extent, it ever has been made,—and to the greatest extent possible, as far as depends upon them, cannot, in the nature of man and things, ever cease to be made, a continual sacrifice.

For the consummation of this sacrifice, adequate *inclination*—such is the nature of man—never could have been wanting:—but as to the *power*—the effective power—never at any former period could it have been seen swelled to a pitch approaching to that at which it stands at this moment.

Well: such being the swell of voracious power, what are the means—what the instrument—by which it has been effected? What but the precious matter already mentioned?—Yes, the very *matter of good:*—for such in *itself* it is, but, by reason of the two relative *situations*—the situation of the hands by which it is possessed, and that of the hands, which the very nature of man keeps ever open to receive it, operating—and by the whole amount of it—in the character of matter of *evil—matter of corruptive influence.* Ever upon the increase is the quantity of this essentially good, this accidentally, but alas! how extensively pernicious, matter:—ever upon the increase the pernicious effect of it. In an endless series of alternating and reciprocating operations, this matter is itself both effect and cause. Waste begets corruption; corruption, waste. Fed through the already enumerated drains—viz. useless places, needless places, overpay of needful places, groundless pensions, and sinecures, some number of times more richly endowed than the most richly endowed efficient offices—these, together with peerages, and baronetages, and ribbons—for peerage-hunters, baronetage-hunters, and ribbon-hunters—these, by their bare existence, and without need of their being either asked or offered,—always with the fullest effect, never with the personal danger, or so much as the imputation, attached to the word *bribery,*—operate in the character, and produce the effect, of *matter of coruptive influence:* that pestilential matter, against the infection of which not a household in the country can be said to be secure, from the archiepiscopal palace down to the hovel by the road side.

What? not the ducal mansion? Oh no: *that* full as little as any other. The duke, who, if there were no such thing as a ribbon, nor any such place as a gaming-house, nor . . . . but there is no end to the *et cæteras*—might of himself be independent, is dependent

by his dependents: and the more enormous the mass of his property, the more numerous, as well as the higher, the list of his alliances,—the wider and the more craving is the circle of his dependents.*

Laud his virtue, party orator, party scribe:—laud that virtue, which is composed of rank and property, and consists of nothing else: laud him to-day, while he is yet yours:—come to-morrow, he has crossed over, and his place is on the other side. A duke has a borough, and in it a brace of seats. Sincere or insincere, quoth the duke to one of his agents, whose attachment to the cause of the people was well known to him, cast your eyes around you, and find me out the two honestest and ablest men you can lay your hands on, to fill those seats. The agent bestirs himself, and reports. But ere the report reaches its destination, the coroneted patriot has found money wanting, and the borough, the seats, with the patriotism that would have filled them, are all sold.

Yes: in this country—under this constitution—may be seen an official person, who by his station is, for ever, *ex officio,* C—r-† General: it is his *situation* makes him so: it suffices for the purpose: *to produce the effect* (and let this be well observed,) *no overt act—no, nor so much as a thought—is on his part necessary:*—were it possible for him to have the *will,* scarcely in his *situation* would it be in his *power* to avoid being so.

Well: this attribute, which Blackstone has forgot to add to the other "*attributes*" of the god of his idolatry—this attribute of C—r-Generalship, which, after all, could not have place if there were not a parliament to c—,—this inseparable attribute, disastrous as it is, does it, in this our country, form any peremptory objection to monarchy? Not it indeed. But why not? Even because, in *democratic ascendency*—such as it would be constituted by *radical reform*—the corruption would have its antidote—its constantly operating antidote—and that antidote an effectual one.

Extinguish monarchy?—suppress, extirpate the peerage?—Oh, not I indeed: nothing would I extinguish; nothing would I extirpate: *uti possidetis*—that which you have, continue to have—and God bless you with it:—this, in all matters of reform—this, in so far as is not inconsistent with the very essence of the reform, is—and, so long as I have had any, has ever been—with me a ruling principle. Leaving, with all my heart, the full benefit of it to monarchy and aristocracy—to the *ruling few,* my aim, my wishes, confine themselves to the securing, if it be possible, a participation in that same benefit to *democracy*—to the *subject-many*—to the poor suffering and starving people.

Monarchy a property! Not it indeed. Monarchy is a trust: is it not, Prince Regent?—have you not said it is? Peerage a property? Not it indeed. Peerage is a trust: is it not, my Lord anybody? If it is not, what business have you to be what you are, and where you are?

Ascendency! ascendency—that is what is sufficient: this, therefore, is all that should be asked for. In Ireland, we have Protestant ascendency. Well: and what is the effect? In Ireland, the Catholics—the great majority—are not yet, it is true, quite so well

circumstanced as could be wished: still, however, they exist; still they are not extirpated.

For the seduction of his fellow-traveller, what was the course taken by the ingenuity of Ferdinand Count Fathom? Ask his biographer—ask Smollet: he will inform you. He began with picking her pocket: her purse, and with it her virtue, was then at his command. By mere existence on the throne on which he is sitting, without need of stirring a finger, uttering a word, or giving a nod, in the character of that Ferdinand, and with the same disastrous success, may the monarch of these realms act. Accomplices—the hero of Smollet's history had none: he needed none. The official s—of Britannia's virtue—the C—r-General of this country—may have as many as there are men, in whose breasts exists an *effective demand* for any of the good things which he has at command: and, in regard to this *effective demand*—as Adam Smith would call it—the difficulty would be to find—not the bosom in which it *does,* but the bosom in which it *does not* display itself.

In this state of things, C—r-General being the proper style and title of the head-manager of the concern, taken by himself,—add the aristocracy—the corrupted and corrupting aristocracy—*C—r-General & Co.* is the proper firm of the partnership. As to the business of it, it consists but too plainly, like that of the Bank of England, in draining the contents of all pockets into its own; and the more intolerable the indigence thus produced, the more craving the demand for that corruptive supply, by the hope of which men are engaged to concur in the continually repeated measures, from which the indigence receives its continually repeated aggravation.

Now of this almost universal corruption, what is the effect? A mere *moral* spot?—a mere *ideal* imperfection? Alas! no: but a somewhat more palpable and sensible one. What the real, the sensible mischief consists in is—the *sacrifice* made, as above, of the interest and comfort of the *subject-many,* to the overgrown felicity of the *ruling few:* the effect of the corruption being—to engage all whom it has corrupted to bear their respective parts in the perpetual accomplishment of their perpetual sacrifice. Is not this sufficiently intelligible? Well, if *that* expression be not, perhaps *this* may be: viz. that the *subject-many* long have been, and, but for the only remedy, may with but too much reason for ever expect to be, continually more and more grievously oppressed, that the *ruling few* may be more and more profusely pampered.

Now suppose an army of Frenchmen garrisoning England, as an army of Englishmen (oh! pretenceless and inhuman tyranny!) are garrisoning France. In that case, what would the description of our condition be? What but that the dominion we were groaning under was the dominion of a set of men whose interest was opposite to our own, by whom that oppositeness was understood and felt, and by whom our interest was made a continual sacrifice to that separate and hostile interest. Well: *that,* and but too indisputably, is it not the description—the too just description—of the dominion under which we live?

Discarding the case of *public*—of *national*—subjection under a foreign yoke, take the case of *private*—of *domestic subjection:*—take the case of *negro* slavery. The description of the case, is it not still the same? The slaveholder, it may be said—for it

is continually said—has an interest in common with that of his slaves. True: and so has the mail-coach contractor in common with that of his horses. While working them, and so long as they appear able to work, he accordingly allows them food. Yet, somehow or other, notwithstanding this community of interest, so it is, that but too often negro as well as horse are worked to the very death. How happens this? How but because, in the same breast with the conjunct interest, is lodged a separate and sinister interest, which is too strong for it. Even so is it in the case of C—r-General and Co., under whose management the condition of the poor people is day by day approaching nearer and nearer to the condition of the negro and the horse.

"I can have no interest but that of my people," says the royal parrot—I can have no interest but that of my people: with these words in his mouth, he gives the touch of the sceptre to a bill for establishing a nest of sinecures.*

Under the constitution as it stands—under the administration as it is carried on—in what state, as towards the one and the other, are the affections of the people? Take the answer from Lord Castlereagh *(Morn. Chron.* Feb. 8, 1817.) In the year just ended, 53,000 were the number of firelocks "indispensably necessary to aid the civil power in the discharge of its duty:" in other words, to keep the people from the endeavour to substitute a better to the government as it stands. Now, indeed, at this season of forced retrenchment, 5000 is the number of men to be struck off from the desired complement of 53,000. Struck off! Why? because they are regarded as superfluous? Oh no: for of those means of coercion which require no money, boundless is the supply which at this very moment is providing. Why, then? Even because,—as under the most perfectly undisguised despotism, so under a disguised one,—in so far as supplies cannot be had,—the revenue having, in the compass of a single year, fallen off, for example, by any such amount as that of one-sixth,—retrenchment must be made. In this time not only of peace but of triumph—no Pretender in existence—France, instead of a cause of fear, an object of compassion—three-and-fifty thousand men necessary to be kept up to prevent a second revolution! In the same year of the last century, as this is of the present one, our great-grandfathers—what would they have said to such a number?—our great-grandfathers,—in whose days, a Pretender continually threatening from abroad, and at home a strong party, even after a defeat, were still strong enough to keep on foot matter for another rebellion, which in twenty-eight years from that time, actually broke out! In the same year of the last, as this is of the present century, what was the whole number demanded and provided for this same service? Answer: 16,000, and no more; not so much as *one-third* of the number actually in demand, as above. Walpole, then in opposition, opposing even that number on the ground of alleged excess.*

Well then: by a standing army it is that we are governed: and a standing army—a standing army of the magnitude which has been seen:—this, this is the sort of instrument, without which, it is said, we could not be governed; and by which,—so long as the constitution, in the form into which it has been moulded, lasts,—it is the intention of those that govern us that we shall be governed. And this is that constitution—that Matchless Constitution—in the praises of which, those whose opulence or power have been produced by, or are dependent on, the abuses of it, never tire. And in this Constitution we have a Parliament:—and in this Parliament a House

of Commons:—and in this House of Commons a mask for a military government of its own erection:—and this mask so transparent an one! and, under this military government, so long as the mask remains—under this military government are we to lie down, now and for ever, prostrate and contented.

Well: the *United States*—the seat of *representative democracy,* alias anarchy—what *plots,* real or pretended, have they, or have they ever had, in their bosom? What *standing army* is it that they have? On the subject of those concerns, which are the concerns of every man, what laws have they to prevent each man from communicating with every other?—on pain of death, to prevent every man who is *not,* from speaking his mind to any one who *is* a *soldier?*

Oh! but the fault, whatever it is, it is always the fault of the people:—behaving continually worse and worse, they must continually be treated with more and more just severity:—the sinners for their own sins—the non-sinners for the sins of the sinners—so long as any of them are left alive . . . .*

No: at this time—at any time, on the part of the people, any extensive discontent, that has ever manifested itself, never has it been the fault of the people. Discontent? No: patience—too much patience—in *that* has been their fault—their only fault: a sad fault *that:*—and, unhappily, under every government but an adequately representative government—under which alone the concerns which are those of every man, are left without restraint to the discourse of every man—an incurable one. The people? What interest have they in being governed badly?—in having their universal interest sacrificed to any separate and adverse interest? But the men by whom they have been governed—the interest which these men have had in governing badly—in governing as they have governed—this interest has here been made manifest, or nothing can be.

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SECTION IV.

SOLE REMEDY IN PRINCIPLE—DEMOCRATIC ASCENDENCY.

Such being the disease, behold now the remedy—the only remedy: he for whose nerves it is too strong, let him, as soon as the irritation pains him,—take warning and shut his eyes against it; let him shut his eyes, and prepare his neck for a yoke, the pressure of which will continue on the increase, till either convulsion breaks it, or existence sinks under it. This remedy—two words, viz. *democratical ascendency,* will, in principle, suffice for the expression of it. Taking this for the general description of the *end,—parliamentary reform* will next make its appearance in the character of a *means:* parliamentary reform *in general* as a proposed means: *radical* parliamentary reform, as the only means, by which either that immediate end, or the ultimate end—political salvation, can, in the nature of the case, be accomplished.

Without any outward and visible change in the forms of the constitution,—by the means already indicated, by the mere instrumentality of the ever-increasing mass of the matter of good operating in the hands of the crown in the character of matter of corruptive influence,—have the two separate, partial, and sinister interests,—viz. the *monarchical* and the *aristocratical,*—obtained over the *democratical* interest (which is no other than the *universal* interest,) not only an *ascendency*—but an ascendency so complete, that, under the outside show of a mixed and limited monarchy, a monarchy virtually and substantially absolute is the result.

Without any outward and visible change in the forms of the constitution—though waste already committed cannot be caused *not* to have been committed—though past misrule cannot be caused not to have reigned—yet may the plague be stayed. To the democratical, to the universal interest, *give*—one might almost say, restore—that ascendency which by the confederated, partial, and sinister interest has been so deplorably abused, and so long as it continues, will continue to be abused:—thus you have the remedy: *this* is what parliamentary reform will do, if it does anything: *this* is what parliamentary reform means, if it means anything.

This, in the year 1780, and again in 1783, was the declared wish—the accomplishment of it the avowed, the official, the parliamentary endeavour of the late Duke of Richmond: a duke—and with royal blood, though from a sinister channel, flowing in his veins: already, even at the earliest of those two periods, a veteran: a veteran—not only in the army, but in parliament, in office, and of course in high office. His declared object was—the restoring to the people what by him were regarded as their *unalienable rights:* and what,—taking the word *right* in a certain altogether usual sense, though assuredly not in a legal sense, may with indisputable propriety be said to be so:—his *object*—giving to the people those rights: his declared and principal *means—universal suffrage* and an *annually renewed* House of Commons.—Now this peer—this duke—what object less good than *this* could have

been his object?—what his expectation? Could it have been *anarchy?*—could it have been so much as *democracy?* But read his plan—one of the few schemes of legislation, to which the authors have been at the same time able and willing to give the support of *reasons.* Read his plan, and with it read his reasons: they are contained in a LETTER dated August 15, 1783, and addressed to "Lieutenant-Colonel Sharman, commander of the Volunteers, Ireland." Some *ipse-dixitism* in it about *rights,* might, in point of reasoning, though perhaps not in point of power of persuasion, have been spared: but, setting aside the *ipse-dixitism,*—better and sounder, and closer reasoning, is not often to be found. Never yet has that man been found who durst grapple with it. Men shut their eyes against it, and write and talk as if it had never been in existence.*

Now in this change—for unless the plague continues and spreads, a change there must be—in this change, is there any *innovation?* No: in substance there is not so much as an *innovation.* The one thing needful is—that the *power of the purse* should be actually and effectively in the hands of the real representatives, the freely chosen deputies of the body of the people: the *power of the purse, that* being the power by the exercise of which, for the defence of the people against Stuart tyranny, all other needful powers were acquired. Now, at various periods in the history of this country, this all-productive power was actually in the hands of the people: witness statute after statute: witness in one reign, viz. the splendid and unhappily conquering reign of Edward III., and at thirty-two years interval, two statutes, by each of which the annual holding of a parliament—and in those days parliaments annually holden were annually changed—was declared to be the legitimate state and condition of the government.

Now, if in those days—in those days in which the press was unknown—in which scarce any man but a priest could so much as read—and in which there was nothing worth the reading—no—not so much as the bible—to be read;—if in those days, in which standing armies were unknown, the people could, without danger to themselves or anybody else, possess and exercise the power of the purse;—if in those days of ignorance and barbarism, all this could be;—in these our days, under the protection of such a forest of bayonets;—in these our days, in which every man either reads or hears his newspaper—and in which everything that, in this part of the field at least, man can need for his instruction, may be to be found in newspapers;—in these days, shall blind cowardice, or tyranny in the skin of cowardice, find in pretended universal ignorance a pretext for scorning universal suffrage? But of this more in an ensuing section.

But enough, and already too much, of the endlessly mischievous absurdity involved in the word *innovation.* What! is evil converted into good by being old?—good into evil by being new? What! is experience worth nothing? In toothless infancy is there more wisdom than in grey hairs? From self-contradictory nonsense, let us come to common sense: from long past and widely dissimilar, let us come to the present state of things.

In the ascendency of the democratic interest,—to anything but the continuance of unconstitutionally usurped and most perniciously abused power, is there any the slightest show of danger?—in any determinate and assignable shape, any the smallest ground for apprehension? What shall decide? Shall it be *experience?* Well: by

experience, and that as well in its *negative* as its *positive* shape, the decision is pronounced.

Look to positive experience: behold it in the American United States. There you have—not merely democratic ascendency—democratic ascendency in a mixed government—but democracy—pure democracy, and nothing else. There you have—not one democracy only, but a whole cluster of democracies: there, all is democracy; all is regularity, tranquillity, prosperity, security: continual security, and with it continually increasing, though with practical equality divided, opulence. All, all is democracy: no aristocracy; no monarchy; all that dross evaporated. As for us, we need no such purity; we could not brook it: the dross has a glitter on it; our eyes are used to it,—*that* glitter: we cannot part with it. With us, so far as consists with national salvation, possession not only of *property* but of *power,* even though that power be but a *trust,* is a sacred thing: the *uti possidetis* principle, as in international law a well known and frequently applied, so in internal government, a sacred principle. Well, let us keep it then—the whole of it: not pure democracy do we want, nor anything like it: what we want is, under the existing forms of subjection, the ascendency—the virtual and effective ascendency—of the democratic interest: this is all we are absolutely in need of: with this we should be content: with less than this it is in vain to speak of content: for less than this cannot save us.

Look to *negative* experience. While, in the language of legitimacy and tyranny, and of the venal slavery that crawls under them, *democracy* and *anarchy* are synonymous terms,—see whether, on the whole surface of the globe, there is, or ever has been, anywhere so much as a single example, from which this abuse of words can receive countenance. Look once more at the United States, and see whether, on the habitable globe, there exists anywhere so *regular,* so *well-regulated* a government.

Look not to *Greece* or *Italy:* look not to ancient or to middle ages: look not to any *self-acting* democracy. Compared with the democracy here in question—compared with a *representative* democracy—a democracy in which the sole power exercised by the people is that of choosing their deputies, and in those deputies their rulers,—whatever else has been called *democracy,* has had nothing of democracy but the name.

Well then: forasmuch as in democracy, though it be American democracy, a *total* democracy,—forasmuch as in a democracy, standing by itself without support from anything but itself, there be no such thing as danger—no diminution of security for person, property, reputation, condition in life, religious worship—in a word, for anything on which man sets a value,—what ground can the nature of the case afford, for any apprehension of danger—in a *partial* democracy, with monarchy and aristocracy by the side, and at the head of it, for its support? for its support, and for keeping it in order, a standing army—a conquering—an irresistible standing army—that grand instrument of order—all around it?

Well then: such being in general terms the instrument—and the only possible instrument—of political salvation, now as to the principles by which the *application* made of it requires to be guided.

At present, the cause of the *misrule* is this: viz. the *rule* is completely in the hands of those whose interest it is—their interest, and thence of necessity their desire, and, as far as depends upon them, the determination—that the misrule should continue:—the thing required is—leaving the executive part of the government where it is—so to order matters, that the controuling part of the government shall be in the hands of those whose interest it is that good government shall take place of misrule: of misrule in every shape, and more particularly in the two most intimately connected and mutually fostering shapes—waste and corruption, corruption and waste. Now these are the whole body of the people, two classes alone excepted: viz. those by whom a loss in the shape of *money,* and those by whom a loss in the shape of *power* (not to speak of factitious dignity) would be sustained or apprehended from the change! As to what regards *money,* the *uti possidetis* principle being received and acted upon,—supposing delinquency out of the question, the only loss that could befal anybody would be, loss of the chance of increase. As to what regards *power,* in this shape it cannot be denied, that, of any change,—by which misrule could on the whole, or any considerable part, be made to cease,—loss of power actually in possession—and *that* to no inconsiderable amount—would be an altogether inevitable consequence. Loss of money? Yes! But of what money? Of money at present expected to be received as the wages of corruption. Loss of power? Yes! But of what power? Of that power which at present, for the purchase of the wages of corruption in the shape of money, as well as other shapes, is perpetually on sale.

Before proceeding any farther, up comes (it must be confessed) a question, the title of which to an answer cannot admit of dispute. In the case of so vast a multitude of individuals, of the vast majority of whom it were too much to suppose that they had any tolerable acquaintance with the business of government—how is it that there can be any adequate probability of their concurring in the making a tolerably apt choice, in regard to the persons by whom it shall thus be carried on?

The short answer is—that, as the matter stands, the question is but a question of curiosity and theory. That, for the purpose in question, a choice sufficiently apt *can* be made—*is* habitually made—and, with entire confidence, may be reasonably depended upon—is, by the American examples above referred to, put altogether out of doubt. The question is, then, reduced to *this:* viz. in what, among the circumstances belonging to the case, are we to look for the *cause* of a state of things, of the existence of which there cannot be a doubt,—but which, in a distant and abstract view of it, presents itself as thus improbable.

For giving immediate facility to the answer, a distinction no less familiar in itself, than important in its consequences, may here be brought to view. This is—the distinction between a *self-formed* and a *derivative* judgment. On the ground of any *self-formed* judgment, few indeed could, in a case such as that in question, be expected to act with any tolerable degree of wisdom or felicity:—true: but neither is it less so, that on the ground of *derivative* judgment, there exists not (nor in this country is ever likely to exist) any such large and miscellaneous body of men, of whom the majority may not, even in such a case as this, be expected, and with reason, to act with a degree of felicity adequate to the purpose. For, in respect of those concerns which, to each individual taken by himself, are of still superior importance—viz.

physic, law, and *religion,* for example—every man who is not, in his own eyes, competent to make, on the ground of his own self-formed judgment, the choice of an agent or assistant, does he not feel himself reduced to the necessity of acting on the ground of *derivative* judgment?—in a word, on the ground of *public opinion?*—and, under the yoke of this, as well as so many other necessities, the business of life—of private, of domestic life—goes on in the way we see. Of *private* life? Well, and why not also of *public* life. Of the business of *each?* Well, and why not then the business of *all?*[*] And note, that on this occasion, the probability of making any such choice as shall be not only foolish but mischievous—(and in so far as it is not practically mischievous, no matter how foolish it is) is not only circumscribed, but circumscribed within very narrow limits, by the nature and number of the individuals, who, on an occasion such as that in question, can offer themselves, with any the least prospect of finding acceptance at the hands of the majority of so large a multitude as that in question: say at least, several thousands. True it is, that were the electors, for example, the parishioners of a small parish,—many might be the instances in which it might happen, that foolish and ignorant men might, in considerable and those preponderant numbers, agree in the choice of some artful and profligate man of their own level and their own set,—by whom, to his own private and sinister purposes, their confidence would be abused. But when—whether it be in respect of territory as well as population, or in respect of population alone—the electoral circle is of any such large dimensions as those in question, all such individual and private causes of seduction and deception are altogether out of the question: no man can either propose himself, or be reasonably expected to be proposed, but upon the ground of some reputed qualification, of his possession of which, supposing him to possess it, the whole population of the electoral district will be in some sort in the possession of the means of judging.

But of all qualifications, real or imaginable, the qualification, such as it is, which consists in the possession of property to such an amount as to draw attention, is at the same time the very qualification, concerning the possession of which men in general are best satisfied with their competence to form a right judgment,—and that on which, in proportion to its real virtue in the character of presumptive evidence of appropriate aptitude, the greatest reliance is,—by men in general, and in particular by the most uninformed classes,—wont to be placed.

The men who at present determine the course of election by the influence of *will on will*—these same men, in the event of the proposed change—these same men, and in a proportion much more likely to outstrip than to fall short of their deserts,—would they not, by the influence of *understanding,* real or imputed, on *understanding,* exercise, for the most part, the same effective power—produce, for the most part—so far as concerns possession of the seats—the same effects as now? Possession of the seats?—Yes; viz. in the case of those, in whose eyes, after the necessary change, on the only terms on which they would be to be had, these seats would be worth having. But among those by whom the office is at present possessed—possessed, and on each occasion, at each man's pleasure, the functions that belong to it either exercised or neglected,—how many are there in whose eyes it would be worth possessing, if at all times the *functions* could not be left neglected, except when, under the spur of sinister interest, the *power* of it came of course to be abused?

Well—and suppose, among 658 members—(for the supposition, *that* number may do as well as another,)—among the 658 members, returned under a system of democratic ascendency, *ten* knaves should be found plotting and confederating with one another (though what in that case could they be gainers by any such plotting?)—and fourscore and ten fools foolish enough to be led by them. In such a case, what is the mischief they would be able to do?

Alas! how happy would not the state of things be in comparison of what it is, if there were not more than *thrice* ten knaves occupied without ceasing, not only in the plotting of mischief, but in the doing it and carrying it into effect!—more than *thrice* ten such knaves—(or, if it be but *once,* the *once* is but too sufficient)—and more than thrice fourscore and ten,—in whom, in a proportion altogether indeterminable,—the knavery of following, with eyes wide open, at the tail of the knaves,—and the folly of suffering themselves to be led, with winking, or half-closed, or carelessly, or purposely averted eyes,—are combined.*

Ascendency? Yes; ascendency it must be: nothing less will serve.

Talk of *mixture:* yes, this *may* serve, and *must* serve: but then, the intrinsically noxious ingredients—the ingredients which must be kept in, though for no better reason than that we are used to them—and being so used to them, could not bear—(for who is there that could bear?)—to part with them—these ingredients, of which the greatest praise would be that they were inoperative, must not be in any such proportion of force, as to destroy, or materially to impair, the efficiency of the only essentially useful one.

Talk of *balance:* never will it do: leave that to Mother Goose and Mother Blackstone. Balance! balance! Politicians upon roses—to whom, to save the toil of thinking—on questions most wide in extent, and most high in importance—an allusion—an emblem—an anything—so as it has been accepted by others, is accepted as conclusive evidence—what mean ye by this your *balance?* Know ye not, that in a machine of any kind, when forces *balance* each other, the machine is at a stand? Well, and in the machine of government, immobility—the perpetual absence of all motion—is that the thing which is wanted? Know ye not that—since an emblem you must have—since you can neither talk, nor attempt to think, but in hieroglyphics—know you not that, as in the case of the body *natural,* so in the case of the body *politic,* when motion ceases, the body dies?

So much for the *balance:* now for the *mixture*—the mixture to which, as such, such virtue is wont to be ascribed. Here is a form of government, in which the power is divided among three interests:—the interest of the great body of the people—of the *many;*—and two separate interests—the interest of the *one* and the interest of the *few*—both of which are adverse to it:—two separate and narrow interests, neither of which is kept on foot—but at the expense, to the loss, and by the sacrifice, of the broader interest. This form of government (say you) has its advantages. Its advantages?—compared with what?—compared with those forms of government, in which the people have no power at all, or in which, if they have any, they have not so much? Oh yes: with any such form of government for an object of comparison, its

excellence is unquestionable. But, compare it with a form of government in which the interest of the people is the only interest that is looked to—in which neither a single man, with a separate and adverse interest of his own, nor a knot of men with a separate and adverse interest of their own, are to be found—where no interest is kept up at the expense, to the loss, by the sacrifice, of the universal interest to it,—where is *then* the *excellence?*

Nay, but (says somebody,) in the form of government in question, what the *supreme*—the *universal* power is—is a compound—a mixture of the three *powers* corresponding to the three *interests:* what the *excellence* produced by it is in, is—not any one of the three ingredients taken by itself: no—it is the *mixture.* Take away any one of the three masses of power, the mixture is changed: the excellence is diminished:—take away any two of them, mixture has place no longer:—the excellence vanishes.

Good—this notion about *mixture:* Oh yes, good enough, so long as the respective natures of the several interests are kept out of sight. Look at them, and then see whether it be possible that, taking the power of the people for the *simple* substance,—by the adding to it either or both of the two other powers, and thus making a *mixture,*—any such quality as *excellence,* with reference to what belongs to the *simple* substance taken by itself, can be produced.

A form of government, in which the interest of the whole is the only interest provided for—in which the only power is a power having for its object the support of that interest,—in this form of government behold the *simple* substance. To this simple substance add, separately or conjunctively, a power employed in the support of the interest of one *single* person, and a power employed in the support of the interest of a comparatively *small knot* of persons,—in either of these cases you have a *mixture:*—well: compared, then, with the *simple* substance, when and where can be the advantages of this *mixture?*

What—what could man ever find to say in behalf of *monarchy,* but that monarchy is *legitimacy?*—or in behalf of *aristocracy,* but that *property is virtue?*

Fair questions these:—should any man feel disposed to answer them, let the answers be so too: and let them not—Oh! let them not! be either imprisonment or death!

Go to the flour-mill: get a sack of *flour,* in which there is flour, and nothing else:—make bread of it,—there you have the simple substance. In making your bread, add now to the flour some powder of *chalk,* with or without some powder of *burnt bones:* in either case you have a *mixture.* Well, in either case, so long as you do not add to the flour too much of that which is *not* flour, your bread may afford nourishment: it may give to your constitution—to the constitution of your natural body—a support. But, from either of these two new ingredients, does this body of yours derive any nourishment? the constitution of it any support? your bread anything that can be called by the name of *excellence?*

Father of the *representative* system! O rare *Simon De Montfort!*—thou who, in giving birth to it—without perhaps intending good to human being, save one—didst to mankind more good than ever was done by any one other mortal man!—in giving birth to that most beneficent system, thou gavest birth to the only practicable democracy—to the only democracy, of which extent beyond a nut-shell, or duration beyond a day, are attainable attributes! Comes the persecution of the *Stuarts,* and democracy—representative democracy is planted in America, with nothing but monarchy to hang over it:—comes the persecution of the G—, the monarchy is now cut up:—and now the salutiferous plant, established in its own roots, cleared of every weed that had choked it, shines in all its purity,—rears and spreads itself, with matchless, and enviable, and envied, and hated, and dreaded vigour. By the mere passing from the one country to the other—oh what a host of plagues and miseries in detail—major each in itself, minor compared with the two capital ones—did it not leave behind! Well worth taking and holding up to view would be the list of these abuses: but, for any such task, the present is no place.

No:—*but* for the English Constitution, *democracy,* the only democracy worth the name, never could have been known. Oh rare English Constitution!—there, there is thy greatest—there thy only lasting praise!

Balance? equality? No: I cannot say *equality,* when what I mean is *ascendency.* Palsied would be this hand—motionless this pen—if, for the first time in a life, already of some length, it were to attempt deception. Ascendency—this I do mean, nothing less: more I do not mean—indeed I do not. The monarch may, for aught I know, plunge his hangman's knife in my bowels; but I am not for "cashiering kings." The one thing needful and sufficient for the purpose—this I would have if I could: this I would have if I could, whatever were its name. More than this—not being in my view needful for the purpose—more I would not have if I could. For any more than for myself—for any more than myself—no title have I to speak. In speaking thus for myself, I speak what I should expect to find the sense—so long as it were the quiet sense—of a vast majority of the people—in two at least of the three kingdoms—high and low, rich and poor together. But, should the only remedy be refused, oppression continue, and exasperation rise against it, then it is not quiet sense that will speak, but exasperation: and, as to what exasperation may say or do, who is there that can undertake to measure it?

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SECTION V.

REMEDY IN DETAIL: RADICAL PARLIAMENTARY REFORM: ELEMENTARY ARRANGEMENTS IN THIS EDITION OF IT—THEIR NECESSITY.

Immediate cause of the mischief—on the part of the men acting as representatives of the people, coupled with adequate *power* a sinister *interest,* productive of a constant sacrifice made of the interest of the people.

Causes of the above cause,—in the breasts of these same agents,—*undue independence,* coupled with *undue dependence:* independence as towards their principles; dependence as towards the C—r-General, by whose co—tive influence the above-mentioned sacrifice is produced.

Here, in the above elements—here, in a nutshell, may be seen the mischief and its causes:—against this mischief, revolution apart, behold in *Parliamentary Reform* the name of the only possible remedy. In these elements, when developed, may be seen—what *radical* reform is—what the sort of reform termed *moderate* is; thence, what and where the difference.

The reform sketched out in the ensuing plan being of the *radical* kind,—the advantages, by the consideration of which the several elementary arrangements contained in it were suggested, will there be found. But, on the present occasion, what is required is—from all the several arrangements in question, to show—this having been the result of the inquiry—that while, by *radical* reform, a remedy, and that an adequate one, would be applied,—by *moderate* reform, no remedy would be applied, or next to none. In brief, the *undue independence* would remain, and with it the *undue dependence.*

Thus far in generals: now for development:—

First point to be considered—*situations,* in and to both which, to be effectual, the remedy must apply itself. These are—

1. Situation of *parliamentary electors.*

2. Situation of *parliamentary representatives.*

1. First, as to the situation of *parliamentary electors.*

Take for the description of the *ultimate* end, *advancement of the universal interest.*

In the description of this end is included—*comprehension* of all distinguishable *particular interests:* viz. in such sort, that such of them, between which no

repugnancy has place, may be provided for in conjunction, and *without defalcation:*—while, in regard to such of them, between which any such repugnancy has place, such defalcations, and such alone, shall be made, as, when taken all together, shall leave in the state of a *maximum* whatsoever residuum of comfort and security may be the result:—with exceptions to as *small* an extent as possible, interests *all* to be *advanced:* without *any* exception, all to be *considered.*

1. In the character of a means, in this same description is moreover included—if it be not rather the same thing in other words—*virtual universality of suffrage.*

2. In this same description is moreover included—if it be not the same thing again in other words—*practical equality of representation* or *suffrage.*

Applied to the name of the quality *universality,* the use of the adjunct *virtual* is—by the limitation of which it gives intimation, to distinguish it from *unlimited* universality of suffrage; *unlimited,* or *absolute,* being the *degree* of *universality,* which, but for the application of some limitative adjunct, would, according to the correct import of the word, be to be understood. Of absolute universality, if admitted, the effect would be—to admit to the exercise of the franchise in question persons of various descriptions, none of whom would be capable of exercising it to the advantage either of others or of themselves. *Idiots,* and *infants* in leading-strings, may serve for examples.

By *virtually* universal suffrage, what I mean is—that which will remain of absolutely universal suffrage, when from the number of individuals designated by the word *universal,* all such *defalcations* shall have been made, as, by specific considerations, shall have been shown to be productive, each of them of a *benefit* in some special shape: that benefit being at the same time *preponderant* over every inconvenience, if any such there be, resulting from the limitation thus applied:—a limitation, viz. to the operation of the principle, by which the comprehension of all interests, as far as practicable, is prescribed.

If, in the instance of any *one* individual of the whole body of the people, it *be right* that the faculty of contributing to the choice of a representative—to the choice of a person, by whom, in the representative assembly, his interest shall be advocated, be possessed and exercised,—how can it be otherwise than right, in the instance of any one *other* such person? In this question, viz. in the impossibility of finding an answer to it, unless it be in the case, and to the extent, of the several defalcations above alluded to,—will, it is believed, be found contained the substance of the argument in support of *universality of suffrage.*

If, in the instance of any one individual, it *be right* that he should possess a *share,* of a certain degree of *magnitude,* in the choice of a person, to form one in the aggregate body of the representatives of the people,—how can it be right that, in the instance of any other individual, the share should be either *less* or *greater?* In this question is contained the substance of the argument in support of *practical equality of representation.*

That which *universality of suffrage* has for its limit is—need of defalcation for divers special causes or reasons: to give intimation of this limit is the use of the adjunct *virtual.* That which *equality of representation* has for its limit is—in the first place, the inconvenience, which in the shape of *delay, vexation,* and *expense,* could not fail to be the result of any endeavour, employed at any assignable point of time, to give existence to *absolute* equality; in the next place, the impossibility, resulting from the diversities of which, in respect of increase and decrease, the quantity of the population is everywhere susceptible; viz. the impossibility of keeping on foot—for any length of time, any such absolute equality,—supposing it to have, in the first instance, been established.

3. In the same description is, moreover, included *freedom of suffrage: freedom,* to which, in the present instance, may be considered as equivalent terms—*genuineness* and *non-spuriousness.*

To say that a suffrage ought to be *free,* what is it but to say—that the *will* expressed by it ought to be the very will of the person by whom it is so expressed?—the will of that person and of that person only; his *self-formed* will,—the product of his own *judgment, self-formed* or *derivative* as the case may be,—not produced by the knowledge or belief of the existence of any *will* or *wish,* considered as entertained by any other person, at whose hands the voter entertains an eventual expectation of receiving *good* or *evil,* in any shape: good or evil, according as, by him the said voter, the wishes of such other person, in relation to the matter in question, shall or shall not have been conformed to?

In so far as, in the instance of any voter, the vote which is given is, according to this explanation, and in this sense, not *free,* it is manifestly *not genuine:* it is *spurious:*—under the guise and disguise of the expression of the will of the *voter,* it is the will—*not* of the voter, but of some *other* person. In so far as it is given as and for the will of the voter, the giving it, is it any thing better than an act of *imposture?*

3 or 4. *Secresy of suffrage.* Short reason, its necessity to secure *freedom; i. e.* to secure *genuineness*—to prevent *spuriousness.*

Extensive and important as is the result of the whole body of electoral suffrages, given in the aggregate number of the electoral districts; yet, under any scheme of representation, in which any approach were made to *virtual universality* and *practical equality* of suffrage,—the *value,* even in his own eyes, of the *interest*[*] which any one man can have, in the choice of any one candidate in contradistinction to any other, will, generally speaking—and, unless in so far as it may happen to it to be swelled by affections and passions, produced by accidental circumstances—he extremely minute: so minute, that, barring such accidental causes of augmentation, scarcely can there be that *private* and *separate* interest so small as not to be capable of prevailing against it: of prevailing against it, in such sort, as to give to the vote a direction, *opposite* to that which would be the result of the regard entertained by the voter for such his share in the *universal* interest:—always supposed that, in the case of such self-regarding interest, the advantage corresponding to it is regarded as *certain* of being received; which, in the case of a bribe for example, it always is.

In the case of the vast majority of the number of voters that would be produced by the principle of universal suffrage,—half-a-guines, for example, or any interest equivalent to the interest corresponding to that sum, may, under a certainty of its being received, be stated as abundantly sufficient for the purpose. But, setting aside the case of an interest created by expectation of eventual good or evil—expected, as in that case, at the hands of some other person or persons, according to the direction *known* to have been given to the vote—it is not in the nature of the case, that from a vote given by a single one out of any such large number of electors as is in question—say for example three or four thousand—any assurance or operative expectation whatsoever, of any effective advancement of self-regarding interest to any such amount—no, not so much as to any such amount as the value of a single shilling—should be entertained by any man. By *himself,* nothing could the *candidate* in question, supposing him chosen, do for the advancement of any such individual self-regarding interest on the part of the voting elector; much less could the *elector himself,* by any disposition given by him to a vote, by which no effect whatsoever could be produced without the concurrence of a thousand or two of other votes.

Thus it appears, that by no *indigenous*—by no *inbred*—self-regarding interest, could any quantity of seductive or corruptive force, adequate to the purpose of effectual corruption, be created.

Not so in the case of such self-regarding interest, as in so many various circumstances is capable of being created by seductive or corruptive force, operating *from without.* In the present state of things, four thousand guineas for example, more or less, is said to be the average price of a venal seat. On this supposition, four thousand, *minus* one, being supposed to be the number of voting electors, two thousand guineas would suffice to carry the election; and, on any other election, supposing four thousand guineas the price paid,—here would be a couple of guineas, which any man, and every man, would have it in his power to receive by the selling of his vote. Here, then, is a quantity of corruptive force amply sufficient. Half-a-guinea per vote, or some such matter, has been spoken of, as the price habitually paid—and by whom paid? By a member eminent for probity as well in public as in private life; and this, in a borough, in which his probity—lying more within knowledge than elsewhere—cannot but be held in at least as high estimation as it can be anywhere else. But if, thus operating *ab extra,* an interest corresponding to the sure receipt of half-a-guinea suffices to determine the conduct of each one of a two or three thousand of electors, much more will four times that sum.*

True it is, that, in any such state of things as that which is here proposed,—at no such sum as four thousand guineas, or anything approaching to it, could the value of a seat remain. But, no such seat could remain, without possessing some value: and, so long as the seat possessed a venal value, so long would each one of the number of the votes on which the possession of it depended.

Thus minute is the portion of corruptive force which ought to be regarded as generally adequate to the production of the corruptive effect,—on the supposition that, as in the present state of things, the direction taken by the vote is in each instance *known* or *knowable.* On the other hand, let but this direction be to a certainty *unknown* to every

individual but the voter himself,—the freedom—the complete freedom—of his suffrage, is the necessary result. In vain—at the instance, or for the satisfaction of any other person, at whose hands eventual good or evil is expected—in vain would he disclose, though it be ever so truly, the direction taken by his vote. Apprized, as every voter would be, that in such a case, not *veracity* but *falsehood* would be the course prescribed by a sense of moral obligation—under the uncertainty produced by the diffusion of a maxim to this effect, and by the universal *declaration* by which the observance of it might be enforced—by no elector could any adequate inducement be found, for putting in any such case any real restraint upon the *freedom* of his suffrage: by no other person, in the character of *tempter,* would be seen any adequate prospect of advantage—advantage, even from simple solicitation, still less from pecuniary expense, employed in the endeavour to divest the suffrage of the freedom so essential to the utility of it.

True it is, that it is only on the supposition, that on the part of the majority of the voters there exists, in the breast of each, either from self-formed or from derivative judgment, a practically adequate conception of the course dictated by his share in the universal interest,—true it is, that only in so far as this supposition is in conformity to fact, will the freedom in question, supposing it secured, be subservient to the great ends proposed: but, of the propriety of a supposition to this effect, proof sufficient for practice has already, it is presumed, been afforded. Nor as yet is the subject closed.

Freedom of suffrage being taken for the *end,*—it will soon (it is hoped) be generally seen and recognised, how essential, in every instance, to the accomplishment of this *end, secresy of suffrage* is, in the character of a *means.*

In what different ways freedom of suffrage is *capable* of being taken away,—to what extent, and by the influence of what descriptions of persons it actually and constantly *is* taken away,—these are among the topics, under which the state of the case will presently be brought to view.

So much as to the situation of *elector:* now as to the situation of *representative.*

For the purpose of this part of the argument, the situation of elector must be supposed to have been properly marked out and established: and, for the marking out and establishment of it, the fulfilment of the above condition—the investing of the suffrage with the above-mentioned desirable qualities—viz. virtual universality, practical equality, freedom, and secresy, must be regarded as effected.

1. *Due dependence*—i. e. *dependence as towards constituents;* 2. *Due independence*—i. e. *independence as towards every other person:*—these, together with *universal constancy of attendance,* present themselves as occupying in relation to this situation—as occupying, and on the same line—the first rank, in the scale of *ends* and *means.*

1. Dependence as towards constituents.—Understand dependence to this effect, viz. that, in the event of a man's becoming, in the eyes of the acting majority of his constituents, to a certain degree deficient in respect of any of the elements of

appropriate aptitude (viz. appropriate probity, appropriate intellectual aptitude, or appropriate active talent,)—it may, before he has had time, by means of such deficiency, to produce, in any considerable quantity, any irremediable mischief,—be in the power of his constituents, by means of a fresh election, to remove him from his seat.

2. Independence.—Understand as towards all other persons at large, but more particularly as towards *C—r-General and Co.,* by whose influence alone, the nature of the case considered, *dependence,* as towards himself, can ever,—in the instance of any proportion approaching to a majority of the whole population of the House,—have place.

1. As to *due dependence*—i. e. *dependence in relation to electors.*

According to another supposition, the truth of which has, it is presumed, been proved,—on the part of the electors—at any rate, on the part of the great majority of them—there *does* exist the disposition to contribute towards the advancement of the universal interest, whatsoever can be contributed by their votes: by those votes, by the aggregate of which—that is, by the majority of that aggregate—will be determined the individuality of the several persons on whom, in the character of their representatives, will be incumbent the duty of acting their parts respectively, towards the accomplishment of that same ultimate and comprehensive end.

Unfortunately, by the essential and unchangeable nature of the two situations,—viz. that of C—r-General and Co. with the immense mass of the *matter* of *good*—(not to speak of a less, but still very considerable, mass of the matter of *evil)*—both *matters* not only capable of being made to operate, but, by reason of these same relative situations, at all times—without need of any active and purposely directed operation on the part of anybody to that end—actually and with prodigious effect operating in the character of matter of corruption,—the representatives of the people are, one and all, exposed to the action, and that an altogether intense one, of this same baneful *matter.* In this state of things, that which in the very nature of the case is altogether impracticable is—the keeping them in any such state, as that in which no such sinister interest would be capable of being, in any sensible degree, productive of any sinister effect. Towards preserving a man, then, in such a situation, from being thus corrupted, all that the nature of the case admits of is—so to order matters, that in the event of his becoming obsequious to the influence of the matter of corruption, and thereupon manifesting a deficiency in the element of appropriate probity, his power of doing mischief may receive a termination as speedy as the other exigencies bearing upon the case may admit.

2. As to *due independence: independence as towards C—r-General and Co.*

In regard to this endowment, what is manifest is—that by any direct means—by any means other than that which consists in the rendering the representative dependent by reason of his seat—dependent, therefore, in a degree which cannot be greater than that, whatsoever it be, which corresponds to whatsoever may, in his eyes, be the value of that seat,—nothing towards securing to him the possession of this endowment can

be done. This being the case, this endowment resolves itself into the before-mentioned one—viz. due dependence; nor, in addition to the antiseptic power possessed by the due dependence, does it appear that by any circumstance referable to the head of independence—due independence—any ulterior security can be afforded.

That which, Monarch and Lords remaining, no reform in the Commons could prevent the Monarch from doing, is—the giving to any member of the Commons House, or to any person in any way connected with him, a useful and needful place, a needless place, a useless place, an overpaid place, a ribbon or other badge of factitious dignity, a baronetcy, a peerage: and so in the case of any number of the members:—in this state stands the *mischief.* But that which a reform in the Commons, so it be a radical one, can do, is—so to order matters, as that, on the occasion of the next general election that has place, the electors, if in their eyes the appointment wears the character of a bribe, shall have it in their power to rid themselves of the supposed betrayer of his trust:—in this state stands *the remedy.* In the way of *punishment,* not to be inflicted but on *legal evidence,* true it is, that against the bestowing of the matter of corruption, not on the member *himself,* but only on a person connected with him, nothing does the nature of the case admit of in the way of remedy: but, so far as concerns the withdrawing their confidence for this purpose, no legal evidence is necessary.

Such being the *primary* or *principal* securities, follow now two *secondary* or *instrumental* ones.

3. *Impermanence* of the situation; viz. to the degree in which it is secured by *annuality* of *re-election:*—by the annual recurrence of the elective process.

In two distinguishable ways does this species of instrumental security contribute to the two principal ones:—1. In proportion to the *short-livedness* of the power, diminishes, both to purchasers, and thence to sellers, the *venal value* of it;—the profit capable of being reaped by *C—r-General and Co.* by corrupting the representative in question, and engaging him to betray his trust: 2. The profit to C—r, and thence, in the shape of money or money's worth, the price which he will be willing to pay, and thence the corruptible representative be able to receive. In the same proportion, moreover, increases the power of the *antiseptic*—the corruption-opposing—remedy, placed in the hands of his constituents: the sooner the time for re-election comes, the earlier will that remedy be applicable.*

To reduce to its minimum the quantity of time, during which it shall be in the power of the representative to continue in the supposed course of mischievous conduct, what would be requisite is—that *immediately,* on the supposed commission of any such breach of trust, it should be in the power of his *principals,* that is to say, of the majority of his constituents, to divest him at any time of such his trust.

But, to produce any such effect might require the keeping of the body of the electors in such a state of almost continual attention and activity, as would be incompatible with that degree of attention to their means of procuring and insuring to themselves, in their respective productive occupations, those means of subsistence, without which

the requisite quantity would, to a more or less considerable extent, fail—and thereby mischief be produced, in a degree far more extensive than could reasonably be expected to be produced, by the difference between a possession capable of being revoked at any time, and upon the shortest notice,—and a possession, the termination of which could not be effected oftener than at the recurrence of some determinate and short period, such as that of a single year: in which last case, the maximum of the average duration of the supposed disposition to pursue a mischievous course would, vacations considered, be reduced to considerably less than the *half* of the year.

On this occasion, two inconveniences present themselves as requiring to be guarded against, viz. general want of *preparedness,* and particular and incidental fraudulent *surprise.* When,—for a judgment to be passed by the several bodies of electors, on the conduct of their respective representatives, a determinate and universally fore-known day is appointed,—the time capable of being occupied in the consideration of that conduct will, in every instance, be the same:—in every instance allowing of more time and opportunity for appropriate and universal preparation, than could have place upon any other plan. Thus much as to general preparation: now as to particular surprise. In this one word, *surprise,* may be seen a species of fraud, to which all public bodies stand exposed. By a particular knot of confederates, whose object is to carry some measure, which, in case of a full attendance, would not in their apprehension be approved,—a day is appointed—the earlier, in general, the more favourable to the fraud;—two connected objects being of course aimed at:—the one *respecting attendance*—to *get in* those from whom they expect support—the other, to *keep out* those from whom they expect opposition—in both cases in as great numbers as possible: the other, respecting *preparation*—in such sort that *supporters* may be as *well* prepared,—*adversaries,* such as cannot be prevented from attending, as *ill-prepared*—as possible; these objects are accordingly, in each case, pursued:—pursued by such particular means as the particular nature of the case happens to afford, and admits of.

By the fixation of a determinate and universally fore-known day, both these inconveniences stand excluded: *but* for such fixation, the door to both lies open.

4. *Exclusion* of *placemen* from the faculty of *voting* in the House.

The mischief, against which *impermanence* of the situation is calculated to operate as a security, is *contingent* receipt of the matter of corruption: he who to his *seat* in the House adds the possession of any other office, with benefit in a pecuniary or any other shape annexed to it,—every such man is *actually* harbouring in his bosom a correspondent portion of that pestilential matter, and is actually under the dominion of its baneful influence.

In the *plan* may be seen the *reasons,* by which the utility of the attendance of placemen in the House, with faculty of *speech,* and even of *motion,* is brought to view: and in the same place is shown, the inapplicability of those reasons to the faculty of *voting,*—and the sufficiency of this unnatural and baneful union to brand, with the just imputation of imbecility, whatsoever confidence can be placed in any

assembly, in which a so certainly efficient cause of habitual improbity, breach of trust, and misrule, is harboured, and suffered to operate.

True it is, that to the case of the holders of places and pensions *at pleasure,*—to them and them alone does the demand for the exclusion in question present itself in its utmost force. But, to the case of the holders of places *during good behaviour,* as the phrase is—a tenure to the purpose in question not substantially different from tenure for life—the demand, though not in *equal,* presents itself as having place in *sufficient* force.

A place or pension of this description may be, and, it should seem, ought to be, considered as a sort of *retaining fee. Gratitude*—private gratitude—as towards the patron—this motive, though, in comparison of self-regarding interest, a social and laudable motive, yet in comparison, especially when acting in opposition to *patriotism*—a motive equally social, and operating upon the more enlarged and important scale,—it operates in the character of an instrument of *corruption;*—gratitude, viz. even when it is *genuine,* and stands alone. But, to whom is it unknown, that, in whatever breast *fear* or *ambitious hope,* looking to the *future,* has place,—gratitude, looking, or pretending to look, solely to the *past—gratitude,* wherever the past presents a pretence, is a cloak—a cloak put on by the *self-regarding* motive—a cloak presented by *decency* and *prudence.*

5. *Universal constancy of attendance.*

Be the place what it will, in which, if at all, the function, be it what it may, must be performed,—that function cannot be performed by a man who is not *there.* A maxim to this effect seems not to be very open to dispute.

Beneficial effects of such universal constancy—mischiefs resulting from the want of it—these, together with the means of effectually securing such attendance, may be seen in the *plan* itself.

The additional character, in which, on the present occasion, it seems necessary to bring it more particularly to view, is—that of an additional security against *undue dependence* in the only case in which it can be productive of practical mischief, viz. the case in which a *majority,* and that a *permanent* one, have been brought under the dominion of the corruptive influence. By absentation, every man who, in the case of a *pernicious* measure, is in his real judgment against it; but who, by the sinister influence of C—r-General and Co., is prevented from acting in consequence, at the same time that, were it not for such influence, he would attend and vote in favour of it;—by mere absentation, does every such man do exactly *one half* of the utmost quantity of the mischief that he could do by attending and voting in favour of the pernicious measure: and so, *vice versa,* in the case of a *beneficent* measure. On the other hand,—by supposition, the man being one who, on the occasion of the vote he gives, is, in the main, induced to be determined by consideration of public good,—then so it is, that, if the mischievousness of it be to a certain degree palpable, if he were in attendance, shame would suffice to prevent him from giving his vote on the sinister side. But, to the case of mere absentation, the cause of it not being known,

shame cannot attach itself: here then, in so far as attendance and non-attendance are left optional, the half of every man's effective influence in the assembly is left in the condition of a saleable commodity, capable of being sold to C—r-General and Co. without earthly restraint of any kind—not only without fear of *punishment,* under the name of punishment—but without fear of *reproach* or *shame.*

And thus it appears, that, after everything which, for the securing of probity—appropriate probity—in the breasts of the individual members, each in his separate capacity, against the assaults of corruptive influence, can be done, has been done,—*universal constancy of attendance* remains, in the character of a supplement, necessary to the securing, on the part of the aggregate body, the same indispensable element of official aptitude.

Now then, if, of an assembly constituted by a system of deputation, in which suffrage was at once virtually universal, practically equal, and completely free,—and that assembly composed of persons, each of whom was removable, at the earliest, in a week or two,—at the latest, in less than a year,—so it were that, by the means of corruptive influence always remaining in the hands of C—r-General and Co., even under a system of constantly universal attendance, a permanent majority could be bought,—then, on this supposition, the due and requisite dependence, viz. dependence on constituents, could not have place. But, that any such open corruption should readily have place, seems morally impossible. Even under the present system, spite of all its corruption, here and there a case has been seen, in which the corrupt will of C—r-General and Co. has experienced effectual resistance. Yes; even under the present system: how then could it ever be otherwise under a pure one?

That, even in so much as a single instance, or so much as any one occasion, any such general corruption should, in such a state of things, have place, seems altogether out of the sphere of human probability. But, to produce any permanent and unremedied bad effect, it would require that such corrupt majority should be a permanent one:—for, suppose it ever to cease, the majority of a single day would suffice to unravel the web of corruption, and devote the corruptionists, if not to punishment under the forms of law, at any rate to universal indignation and abhorrence, with a certainty of never more being reappointed to the trust which, by the supposition, they had thus abused.

Thus far as to the points of most prominent importance. Remain for consideration the arrangements necessary to the simplification of the mode of election, and thence to the exclusion of mischief in so many various shapes, such as *delay, vexation, expense, drunkenness* and *tumult* at *elections,*—and *litigation* in consequence of, and even antecedently, and with a view to election:—mischiefs that have place, and, to a certain degree, are even fostered, under the existing mode. But, in regard to these, reference to the *plan* itself may here suffice.

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SECTION VI.

DIFFERENCES BETWEEN THIS AND THE ORIGINAL EDITIONS OF RADICAL REFORM.

So much for *absolute* views: now for a *comparative* one.

In the above explained list of principal arrangements—taking *ten* for the number—I find in the original editions of Radical Reform, these following, viz.—

I. Applying to the situation of *elector,* these three, viz.—1. *Comprehension of all interests;* 2. *Virtual universality* of suffrage; 3. *Practical equality* of suffrage:—these three—unless the first and second should be regarded as the same object under two different names.

But, in these same original plans, neither *secresy* of suffrage, nor therefore (as it seems to me) *freedom* of suffrage, are included.

II. Applying to the situation of *Representative,* these three, viz.—1. Operating in the character of an *instrumental* security, impermanence of the situation, viz. by means of annuality; and,—in so far as this suffices,—the two principal securities, viz. *due dependence,* and, to the extent of its operation, *due independence;* 2. Due dependence as towards electors; 3. Due independence as towards C—r-General and Co.

But, referable to this last head, in this same original plan two other securities which I do not find,—but which, in the character of instrumental securities, with reference to those principal ones, have presented themselves to my view as indispensable,—are—1. Exclusion of placemen from the right of voting; 2. Universal constancy of attendance.

Here, then, are *four* additional securities: two of them applying to the one situation, two of them to the other,—four additional securities, in respect of which I hold myself more particularly responsible.

Taking the other edition,—or, in case of difference, those other editions,—of Radical Reform, for the original edition or editions,—the edition composed of these same securities, with the addition of the four others, which, in the character of instrumental, and indeed indispensable securities, I have thus ventured to propose, may be distinguished by the name of my edition of Radical Parliamentary Reform, by anybody that pleases.*

Arrangements for the simplification of the process of election,—and thereby for the diminution of delay, vexation, expense, drunkenness, and disturbance,—are to be found not only in the radical reform system, but moreover, in principle at least, in

some of the moderate reform plans: in so far as they are in this case, they belong not to the present head.

Of the Radical Reform Plan—so far as concerns *annuality of election,*—the unknown member of the House of Commons, at whose instance the rest of the House joined in that *petition*—(such in those days was the form)—to which Edward the Third *twice,* in the shape of a *law,* gave his sanction,—may be considered as the original inventor. In the late reign, viz. as above mentioned, in 1744, it found in *Thomas Carew* a parliamentary reviver, and in him and *Sir John Phillipps* (not to mention others) two most powerful advocates: on which occasion, as hath been seen, it did not want much of being carried. Within the compass of the present reign, has this same arrangement found in the Lords an advocate in the person of the *late Duke of Richmond;** and, since his death, viz. anno 1809, in the Commons,† in the person of *Sir Francis Burdett:* but, of the degree of extension insisted upon by the Duke of Richmond, no inconsiderable part appears to have been given up by Sir Francis Burdett.

Finding *that* limitation already proposed, and from a quarter so respectable; finding it already proposed, and regarding it as promising—at any rate in a degree sufficient for a first proposal—to be effectually conducive to the purpose,—finding it already thus proposed,—and preferring, on every occasion in which a regard for the end in view will admit of such preference, union to dissension,—hence it was that, in the annexed *Plan,* drawn up anno 1809—and word for word as it stands at present—I adopted this same limitation. With the arrangement in that same state, I should, after the closer consideration recently bestowed upon the subject, be to a considerable degree satisfied. At the same time, after maturer consideration, on the one hand not seeing in it any source of danger, even though it were in a state of extension still more ample than that in which it was prescribed by the Duke of Richmond:—on the other hand, beholding in a limitation which I have ventured to propose a specific one—and *that* in my eyes a very important one, which will be brought to view under the appropriate head,—hence it is, that, to give a general intimation of the difference, the name which, in this my edition, is given to *universal suffrage,* is, *virtually universal suffrage.*

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SECTION VII.

VIRTUAL UNIVERSALITY OF SUFFRAGE FURTHER CONSIDERED.

Now as to universal suffrage. Subject to defalcation, each for special reason,—in all eyes but those to which tyranny is the only endurable form of government,—what principle can be more impregnable?

1. Who is there, that is not susceptible of discomfort and comfort—of pain and pleasure?

2. Of what is human *happiness, felicity, well-being, welfare*—call it what you please—composed, but comfort and absence of discomfort—pleasure and exemption from pain?*

3. The happiness and unhappiness of any one member of the community—high or low, rich or poor—what greater or less part is it of the universal happiness and unhappiness, than that of any other?

4. Who is there, by whom unhappiness is not avoided—happiness pursued?

5. Who is there, by whom unhappiness ought not to be avoided—happiness ought not to be pursued?

6. Who is there, that, in avoidance of unhappiness, and pursuit of happiness, has not a course of conduct to maintain—which, in some way or other, he does maintain,—throughout life?

7. Who is there, whose conduct does not in its course take, on each occasion, its direction from a *judgment* of the one kind or the other:—from a *self-formed* or a *derivative one?*

8. Who is there, whose conduct is never, on any occasion, directed by any other than a *self-formed judgment?* Who is there that, in relation to the most momentous of the private concerns of his life, does not frequently find himself under the obligation of taking for his guidance a judgment of the *derivative* kind?—a judgment of no firmer texture?

9. How many are there, in whose instance the part taken by a man, in relation to his own private affairs considered all together, is not of greater importance to himself (not to speak of the whole community,) than any part could be, which, in relation to the whole number of public affairs taken together, could, even under a system of universal suffrage, ever come under his cognizance?

20. In so far as between the interests *of the subject-many,* and those of the *ruling few,* any such relation as that of *incompatibility* has place,—suppose, on the part of the *ruling few,* the *prevalent*—or though it were the *exclusive*—possession of *appropriate intellectual aptitude,* suited to the nature of the case,—in what way or degree would the *interest*—would the *welfare*—of the *subject-many* be benefited, so long as in those ruling bosoms, instead of *appropriate probity,* the opposite, *improbity,* had place?†

Security—general security—against misrule—in this are we to behold the *only use* and *advantage* resulting to the community from the utmost amplitude of extent, which, subject to the necessary defalcations, can be given to the right of suffrage? *Answer:* The *main* use and advantage? Yes, but assuredly not the only one.

Another is—(for is it not?)—the extent given to the pleasure—the *pleasure* of power* —derivable from the exercise of it. By the first English monarch of the Stuart race, the pleasure of scratching where it itches was pronounced too great a pleasure for a subject. On the same principle, in the eyes of many an aristocrat of the present day, so will the pleasure, attached to the exercise of a power, so furiously and indignantly grasped by the monopolizing hand. Yes: in the eyes of the aristocrat. But so will it be in the eyes of a lover of his country, or of a lover of mankind?

So much for the *comfort* of the *elector.* Come now the *social virtues,—probity—benevolence—beneficence,*—considered as not being wholly without hope of finding place one day in the breast of the *representative:* in this breast, *virtue;* thence in both breasts, *comfort,* for its fruit.

A third use and advantage attendant on the maximization of the extent given to this right, will it not accordingly be to be found in the proportionable extent which will so naturally be given to the *demand,* and thence to the *supply,* of those precious virtues,—considered as exercisable by men of *high,* on the occasion of their intercourse with men of *low* degree? (See, on this head, the Plan itself.)

The art and habit of affording, in the shape suited to each occasion, in the general intercourse of life, *pleasure,*—in which is necessarily included the *negative* art and habit of avoiding to produce *displeasure—courtesy,* in a word—the *word* as well as the *thing* derived from *court*—in common account, the diffusion of virtue in this shape, has it not been regarded as a use and advantage attached to *monarchy?* Yes:—nor surely without reason. But, when for its head-quarters it has the *palace,* in what way does it propagate itself? To the level of the lowest ranks it descends not, but as it were by accident, by slow degrees, and through an indefinite number and variety of channels. But, in the case here in question, reaching the lowest level at one step, it fills the whole atmosphere of society with its balmy influence.

3. Third collateral use—security afforded *against vice* in all its shapes, and *for virtue* in all its shapes.

4. By the same *tie* by which in this case the candidate is restrained from giving the reins to misconduct in the particular shape above mentioned, *viz.* insolence towards

individuals in the particular situation in question,—by this same tie, with more or less good effect, is he restrained from misconduct in all other shapes in general—public as well as private: by the same *spur* by which he is urged to the making of the comparatively small sacrifices, necessary to the attainment of the reputation of *urbanity* within the limited circle in question, by this same *spur* is he continually urged to the making of those greater sacrifices—those continually recurring and perseveringly reiterated sacrifices, by which, throughout the whole field of a man's influence, in public as in private life, pre-eminence in virtue is attained:—sacrifices of smaller *present* to greater *future* interest; sacrifices of *self-regarding* to *social* interest; sacrifices of social interest on a *less* extensive to social interest on a *more* extensive scale.

III. Now as to *defalcations*.—So far as concerns *extension,* the main object being *comprehension of all interests,*—suppose the defalcation in question capable of having place without prejudice to that object, slight may be the advantage that will suffice to warrant it.

First comes the principle, by which (saving always the rightful supremacy of the *universal-interest-comprehension* principle,) intimation is given of the propriety of *defalcation,* considered as applied to the extent capable of being given to the right of suffrage. Call this, for shortness, *the legitimate-defalcation* principle.

Next come an *exception* or *exceptions,* that may be found to present themselves as proper to be made to the application of this principle.

This principle is—that if, in the instance of any class of persons, it be sufficiently clear, that they neither are, nor can be, in such a state of mind as to be, in a sufficient degree, endowed with the appropriate intellectual aptitude,—then so it is that, in the instance of such particular class of persons, a defalcation may be made: made, viz. without prejudice to anything that is useful in the *interest-comprehension* principle.

The consideration, by which the principle is itself suggested, and the application of it directed, is the regard due to the quality of *appropriate intellectual aptitude.* In the case of this or that class of persons, suppose it clear that no such aptitude can, in any degree sufficient for practice, be reasonably expected to be found,—what follows is—that, from the extent given to the right in question, a *defalcation* may be made, correspondent to the extent occupied in the field of population by this class: and thus, without prejudice to the extent given to the *universal-interest-comprehension* principle.

Take now a few examples:—

I. *Minors.* By the word *minors* is immediately brought to view one vast class of persons, to which, without prejudice to the *interest-comprehension* principle, the *legitimate-defalcation* principle promises to be found applicable.

On this occasion, for forming a limit to the extent to be given to this class, what is evident is—that with full assurance, an *age* may be taken, such as, that from the

extent belonging to the dominion of the *universal-interest-comprehension* principle, no defalcation shall be made by the application of the *legitimate-defalcation* principle: and even let the age fixed upon for this purpose be supposed to be too early an age, still one great advantage remains untouched;—which is—that in its application to individuals, the defalcation is not *permanent;* not permanent, but *temporary* only, and the *utmost duration* of it limited. As to the *age* most proper to be fixed upon for this purpose,—in this may be seen a topic neither unsusceptible nor undeserving of a separate consideration: but, for anything like a full consideration of it, neither *time* nor *space* can be allowed here. Under British law, in relation to private concerns at large, viz. in respect of the sole and separate management of those concerns taken in the aggregate, *one-and-twenty* is the age at which the right commences. But at a much earlier age does this and that particular right commence: such as the right of making a *last will;* and, what is more to the purpose, the right of *choosing a guardian.* And note, that though the concerns here in question are, in respect of *extent,* the public and universal concerns, and the importance of them proportioned to that extent, yet, on the other hand—instead of being, as in the present case, *integral,*—the right here in question is but a minute fraction of the *integral* or *entire right* of choosing the fraction of a *guardian,* for the management of those great common concerns.

For what remains, see the next head.

II. *Females.* As to persons of this sex, the sex in which the half, more or less, of the whole species is contained—usually, if not constantly, have they on this occasion been passed over without notice: an omission which, under a Mahometan government, might have place with rather less prejudice to consistency than under a Christian one.

The great leading considerations above brought to view—viz. the *universal-interest-comprehension* principle, the quality of *appropriate probity* and *appropriate intellectual aptitude*—these guides to decision, if they apply not with propriety to both sexes, it seems not easy to say with what propriety they can be applicable to either.

As to the *interest-comprehension* principle,—a task which, to the purpose of making application of it on competent grounds, presents itself as indispensable, is—the taking a survey of the state of the *laws,* by which at present the share between the two sexes is determined.

Thereupon, a sort of preliminary question presents itself as likely enough to be put:—Suppose—for argument's sake suppose—the result to be, that on this part of the field of law, due justice has not hitherto been done to the weaker sex: on this supposition, can any such expectation exist, as that in the formation of a plan in relation to suffrage, any better justice will be done? The answer is—that, barring the intervention of this or that special obstacle, there seems no sufficient reason why any such justice should be despaired of. For, upon a spurt, upon the spur of the occasion, even against the general bent of permanent interest,—are now and then seen to be made, such sacrifices as, under the permanent, and habitual, and tranquil operation of particular interest, are never seen to be made.

As to *appropriate intellectual aptitude*—in the case of *monarchy*—in the case of integral possession of supreme and all-comprehensive power—by no man, perhaps, unless it be by *John Knox,* has physical weakness been brought forward in the character of an objection to the practice of vesting political power in the softer sex: by no man, even in the case of the *electoral* function, where, as in the instance of the *East India Direction,* the *active* or *self-acting,* including the *imperative* power, is in the hands of an *aristocracy:* an aristocracy, itself in England subject to the mixed monarchy, but exercising the electoral function in relation to the sort of local monarchy, by which, under the guise of a *council,* under the *presidence* of a *governor,* in British India so many millions are ruled.*

Although, in all these several instances, the propriety of the arrangement were confessedly established,—yet in the case of the *democratic* species of election in question, the propriety of it could not be stated as presenting itself in any such character as that of a necessary consequence. As to anything approaching to a decided opinion,—anything of that sort—any attempt towards it—would in this place be altogether premature. Of the few observations here hazarded, what then, it may be asked, is the use? The use (I answer)—the design at least, is—to show in what way, and with a degree of attention suited to its importance, the subject is capable of being treated, in respect to *principle:* of two modes of treatment, which may be the more proper one—on the one hand, the mode here exemplified, or on the other, this or a *horse*-laugh, a sneer, an expression of scorn, or a common-place witticism, the reader will determine.†

III. *Soldiers and Sailors.* If of these classes mention must here be made, scarcely can it be for any other purpose than to show that they have not been out of mind. From participating in the exercise of this franchise, all those who are out on foreign service stand excluded by physical, by absolutely insurmountable obstacles: this being constantly and unavoidably the case with many, and incidentally with all,—those, in whose instance the bar is not applied by physical obstacles, need the less repine, should the necessity arise of excluding them by legal ones. *Individually* considered, no tenable objection could surely be opposed to the suffrage of any individual of this so extensive and eminently meritorious a class of public servants. But, collected in a mass, under the command of C—r-General and Co., they might, in any part of the country, or in many parts of the country at once, be set a-rolling like an *avalanche,* overwhelming, as they rolled, the settled population of (who can say how many?) electoral districts. Here is a mischief; but a mischief to which, by a few regulations, no less obvious than the mischief, there could be no difficulty in opposing an effectual bar.

To the above perfectly obvious grounds of defalcation, add, for consideration, this one more, which will perhaps be found not quite so obvious.

IV. *Non-readers.* For shortness, let this be the name of the class: also, for shortness, take the following compressed intimation of the ground of the thus proposed defalcation, with the political and moral institution attached to it, and of the mode proposed for fixing the termination of it. *Principle,* not at variance with the *universal-interest-comprehension* principle: *duration* of the exclusion—not only temporary, but,

to an indefinite degree, capable of being shortened by the exertions of the individual excluded.—*Proof* of the cessation of the cause of exclusion, public: *matter,* taken for the subject of the proof,—in the first place, the *law* by which the elections in question shall, in the here supposed state of things, have been regulated; to which might be added (regard being had to matter and applicable space) this or that portion of *other* appropriate matter:—but for any such details the present is no place.

For the *collateral effects,* moral and intellectual—of such an institution, inquire of the *National Society:*—inquire of anybody—those excepted whose wish—(for, alas! some such are there not?) whose undissembled wish has been, to keep us of the swinish multitude—to keep us for ever in our state of swine.

Defeasible as it is at all times at the pleasure of the excluded party,—if by this exclusion the exercise of the right may, in the instance of some person of full age, be suspended,—in the instance of *minors,* might not, on proof given, as above, of possession obtained of appropriate intellectual aptitude—might not the acquisition of it be accelerated?

So much for *defalcation,* considered as applicable to the extent to be given to this franchise. Behold now a principle of *exception,* operating as a bar to a little swarm of other defalcations,—such as, but for this consideration, would, on grounds more or less cogent, be apt to present a call—some of them a peremptory call—for acceptance.

This principle is the *simplification principle.* On the ground of deficiency, in one or other, or both, of the elements of the appropriate aptitude in question—viz. *appropriate probity* and *appropriate intellectual aptitude*—various are the classes that might be proposed for exclusion: *foreigners* in amity, foreigners in *enmity* but at large, *outlaws, convicts, vagrants, insolvents, bankrupts, lunatics*—these may serve as examples.

O rare *simplicity!* handmaid of beauty, wisdom, virtue—of everything that is excellent!—Simplicity—applied to every subject to which, without preponderant inconvenience, it can be applied—simplicity, though but a sort of *negative* good, is not the less *a good.* To the exclusion of *sensible* (which are the only *real)* evils, may it without scruple be applied, where the only evils that can result from the application are but, as it were, *nascent* and *insensible:* evils, for example, which,—though if they existed in a certain quantity, they *might,* or even *would,* be felt,—yet, in the greatest quantity in question, *cannot* be felt;—evils, in a word, which,—though but for the operation of counter causes, they would or might be productive of actual sensible sufferance or loss of comfort,—yet, by the operation of such counter causes, will be prevented from carrying that capacity into act.

So much for principle; now for application. Even at the place of election, much more in a judicatory of *appeal* constituted for the purpose,—among the accompaniments of every such investigation are the intimately connected mischiefs, with which all judicature is so liable to be infested, viz. *delay, vexation,* and *expense.* In all these may be seen real and sensible—acutely sensible evils. But, in the case of a *right,*

which, how important soever, when taken in its *integrality,* is to all really effective purposes, such as the establishment of laws, and the execution of measures of administration, itself but the *fraction of a fraction,*—suppose that by the exceptionable classes, all of them taken together—that is, by the admission given to them, be they ever so exceptionable, no sensible change for the worse can ever, in all human probability, be made in the conduct of public affairs;—the consequence is, that the supposed inconvenience is ideal and theoretical merely, not actual and practical.

The *simplification* principle, thus explained,—apply it to the question as between the extent indicated by the word *householders,* and the extent here marked out as designated by the words *virtually-universal suffrage.* In the *plan* itself, on the occasion of which the attention was confined to householders, an expedient may be seen proposed, having for its object the *maximization* of simplicity;—the *minimization* of the triple yoke of inconvenience—the *trinoda necessitas*—composed of delay, vexation, and expense, which, by *nature* in a certain proportion, by sinister *art* commonly in a much greater proportion, has been made to press upon the neck of so many sorts of *public,* but most intolerably of all upon the neck of almost all *judicial,* proceedings.

Look at what is said in Mr. Cobbett's LETTER on this subject to Earl Grosvenor (*Cobbett's Register,* February 22, 1817,) and, in respect of simplicity, and its consequences as above explained, judge whether, compared with the *householder* plan, even with the benefit of the above-proposed instrument of simplification, the *virtually-universal plan has not the advantage.*

In this same view, note a principle of precaution, having regard to relative *time.* The evidence, on the ground of which a claimant's title to the franchise is provisionally to be allowed,—let it be—not of the *oral,* but, as proposed in the plan, of the *written* kind—a *document,* suppose *a card*—suppose *a ticket*—penned, and authenticated, and allowed, at a time *anterior* to that of the election. By this means all discussion is excluded from that *time:* in the instance of each voter, the operation of voting may, as in the case of *holding up of hands,* be instantaneous. *Forgery* and fraudulent *personation* are the only causes of deceit left possible: and, forasmuch as by small numbers no promise of effect would be afforded, while among large numbers, the larger the number the fuller the assurance of detection,—no probability can this possibility have for its accompaniment.

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SECTION VIII.

VIRTUAL UNIVERSALITY OF SUFFRAGE—ITS UNDANGEROUSNESS.

On the topic of supposed or imputed dangerousness, after what has been seen already, accept the following observations, compressed to that degree of compression which *time* and *place* necessitate.

Objection:—Universal suffrage, universal hostility and anarchy.—*Answer:* No, not the smallest approach to any such evils.

Hostility?—under what provocation, and against what object? Provocation now, alas! but too abundant: in that case, absolutely none. Provocation, say you?—say, instead of it, its exact opposite. Yes: in place of provocation, and that inveterate,—fresh and never before experienced beneficence. Provocation—where should it find its object? In a branch of government, now for the first time, at the instance of the people themselves, repaired and improved for their benefit, and then placed in their own hands?

Suppose mischievous activity, on what occasion or in what shape should it exert itself? The sort of power which they would be called upon to exercise, what is it? Is it,—as in *legislation* and *command,* as well *civil* as *military,*—directly, immediately, imperatively, impressively, and coercively acting *power?*—No, but a mere exercise of the unimperative faculty of deputation—an exercise performed under the veil of the most tranquil and silent, and absolutely impenetrable and imperturbable secresy,—performed by a mere turn of the hand,—and, in the instance of each individual, in the same moment begun and ended:—a power which, if such it must be called, is but the fraction of a fraction: the power of making one of a vast multitude, the majority of which must join, ere they can seat so much as one man in an assembly,—one man, with whom another large majority must join, and with that large majority, the majority of another assembly, ere he can give effect to any power by which *command* is issued, and *obedience* produced.

Be the mischief what it may,—suppose the people, in any considerable number, inclined to effect it. In their eyes, or in any eyes, what sort of prospect of accomplishing the supposed obnoxious purpose could the nature of the case afford? How deep, as well as at the same time how hollow, must not the scheme of speculation be supposed to be, that is thus supposed to be entertained by the supposed precipitate and unthinking multitude? Of himself, not one of them could, so much as in expectation, have any the least part in it: if accomplished, the persons by whom it is accomplished must be the majority of a set of persons, all different from these voters; yet this majority composed of individuals, all of them without exception bent upon the execution of this same pernicious scheme:—and what could they hope to get by it?

When, by the passions of a populace, mischief has been perpetrated or aimed at, is it by any such telescopic and deep-laid schemes that it has ever been aimed at?

No: it is not in the dangerousness and mischievousness—it is in the undangerousness and beneficialness of this and the other elements of reform, that, in the minds of the *ruling and influential few,* the opposition made to it has its real ground. Not in the want of light—pure and instructive light—in the political hemisphere—not in the *want* of it, but in the abundance of it, look for the true object of their fears. The *increase* of light—were that any part of their object, how to compass that object is no secret to them. Confined to the quarter in which, when it is of use to them—applied to the accomplishment of the grand object—the openly avowed object—the "*prostration of understanding and will*" at the feet of a priesthood, itself by original institution prostrate—and so lately so much more profoundly prostrated,* —at the feet of a prelacy, itself in a state of everlasting prostration at the foot of the throne—applied to this object, never can there be any want of anxiously directed activity. In regard to *appropriate intellectual aptitude,* what is the real, the everlasting fear?—lest it be deficient? No: but lest it be abundant. Yes: on the hemisphere of *religion,* to delude them with false and *political* lights—on the political hemisphere, to keep them plunged in the thickest darkness: such, in their "*high situation,*" is the policy of "*great characters;*" such, in the very nature of things, it is ever destined to be, when vouchsafing to determine the lot of the *swinish multitude.*

Of this supposed dangerous and mischievous right, by what mode and form of instruction would the exercise be prefaced and prepared? On the one part, would it be, as *now,* by *haranguing*—(by haranguing—*loud,* and, till the present state of things be replaced by a better, how can it be other than *impassioned?*)—on the other part, by *thronging:* by thronging, if not actually tumultuous, continually, by the naturally and incessantly increasing tyranny, expected or pretended to be expected to be found,—and for the sake of the thus manufactured pretext, always wished to be found—tumultuous? Oh no. On the one part, by a course of *writing,* on the other part by a corresponding course of *reading?* Oh yes:—*the pen in hand*—behold in this the true organ for administering sound, dispassionate, and undelusive information:—in *the eye*—in the *stillness* and *leisure* of the closet, applied to the *silent paper,* behold in this the true organ for the reception of the matchless blessing. *Lips* on the one part, *ears* on the other part:—behold in these the so imperfectly adapted—the only originally employable organs, in the fugitive, the ever questionable, the ever delusive information—the only information capable of being communicated and received by such organs,—the sole and sadly imperfect resource of immature, unlettered, and unenlightened times.†

As to speechifying and writing—and the comparative beneficialness and innoxiousness of the sort of information to be respectively looked for to the two sources. By speeches, many an assembly has been driven into precipitate and mischievous resolves: by writings, much fewer, not to say none. By speeches, followed on the spot by resolutions taken on the spot, falsehoods are asserted—means of detection excluded; in writings, scarce can falsehood be brought forward on one side, but time for detecting and refuting it has place on the other:—by speeches, imagination is fascinated,—passion in excess excited,—time for comprehensive

conception and cool judgment denied;—substitute *writing,* no advantage can in any of these shapes be gained by any side, to the injury of any other. When tongues and ears are the organs of converse;—in an assembly, congregated under the notion of *hearing speeches,*—by its own clamours (and with what unhappy frequency is not this mischief exemplified!) by its own clamours—that is, by the clamours of a few impatient tongues,—on both sides of the question—or, what is so much worse, on one side only,—may not only all *documents,* but all *argument,* be excluded? whereas, in so far as *pens* and *eyes* are the organs,—by no power but that of a tyrant—of a tyrant about the throne, or on a bench—can any minds be deprived of the knowledge of whatsoever *has* been said, or *can* be said, on both sides.

Thus, not only in the first instance, but so long as the subject continued to be viewed no otherwise than at a distance,—that, in this state of mind, by the vastness and indeterminateness of the compound idea, produced by the combination of *annuality of election* with *universality of suffrage,*—conception should be at first bewildered, and the passion of *fear* kept in a state of excitation,—in *this* there is nothing strange: the strange thing would rather be, if the case were otherwise.*

Note here a little operation—an operation which may be performed by anybody who has leisure. Turn to the *history of boroughs:* pick out the most *open* ones: those in which the right has the extension indicated by the word *householders,* or by the word *pot-wallers,*—go back as far as recollection—recollection about individual character—can carry you,—say, to the commencement of the present reign. Under the head of each such borough, look over the list of the *representatives,* who from that time to this have sat for it:—this done, then it is that you may be in a condition to pronounce—whether, when compared with the seats, filled in the most generally approved and lauded mode, viz. the *county seats* (of which in the next section,) any distinctly-marked deficiency, in respect of any one of the three *elements of appropriate aptitude,* be to be found: *appropriate aptitude,* as divided into its never-to-be-forgotten three branches, viz. appropriate *probity,* appropriate *intellectual aptitude,* and appropriate *active talent.*

"Aptitude? elements?" cries a voice from Bond Street, "d—you and your three elements! No, no: property! property! that's our sort! that's the only element we know of—worth all your's, and a hundred such put together.

"Oh no, d—e!" cries another from a *four-in-hand,* interrupting himself while in the *establishment of a raw*—"Oh no: you've forgot one—and that's blood, d—e: look there, (pointing to the horse's shoulder) look there,—there you have it, d—e. To be sure, to sit comfortably, a man should have both,—no doubt of that; but where one fails, t'other must serve instead of it. After all, blood's our surest card: vingt-un runs off with property now and then—blood it can't run off with: that sticks by us. Come, if you must have three elements, here's an amendment for you,—Blood, Property, Connexion: these are our three elements—blood and property in ourselves; connexion in the good fellow we put in to think and speak for us. There now, you old fellow! off with your three elements—off with them to Utopia: 'twas there you got em from, d—e!"

Well, good gentlemen, look over the list I am speaking about:—look it well over—look at the *seats*—look at the *sitting-parts* they have been filled by—look at them well—and as little will you find any deficiency in the stock of your own legitimate elements—man and horse elements together—as of my swinish ones.

Look to the most populous of all populous boroughs! look to Westminster! Number of electors, even many years back, not fewer than 17,000: swine not all of them indeed—the Dean and Chapter being of the number—not to speak of Right Honourables and Honourables;—swine's flesh, however, predominant—abundantly predominant: swinish the character, of the vast majority of that vast multitude.

Well then, look to Westminster—look first to time present—see now what you have there. See you not Lord Cochrane? What do you see there? See you not blood and property in one?—blood from ancestors—property from the source most prized—the source from whence all your oldest property sprung—enemies' blood, with plunder for the fruit of it?—See you not Sir Francis Burdett?—have not you there blood enough and property enough? Look now a little back:—before you had either Cochrane or Burdett, had not you Charles Fox? had you him not as long as the country had him?

Even within this twelvemonth, when a vacancy was apprehended, what sort of man was it that was looked to for the filling of it? Was it a man *of* and *from* the people? Was it the *Cobbett,* with his penmanship, his 60,000 purchasers, and his ten times 60,000 readers? Was it the *Henry Hunt,* with his oratory? Was it not *Cartwright,* of the *Cartwrights* of *Northamptonshire?*—was it not *Brougham,* of *Brougham?*—and howsoever by these men the plea of Ulysses might be put in—"Neve mihi noceat quod vobis semper Achivi profuit *ingenium,*"* not the less were there the *genus* et *proavi;*† —and whether sitting for Westminster, or looked to for Westminster, the case of a man who had neither the *blood* element nor the *property* element, remains still without example.

Look at Bristol, the next most populous city. When a man was looked for, who should, if possible, stem the tide of corruption—that tide which so naturally flows so strong in maritime and commercial cities—who is it that was looked for? Was it the Spa Fields orator?—did he not try and fail there? Was it not Sir Samuel Romilly?—and though (from an irregularity, for which, by some country gentleman or other, whose *aptitude* was in his *acres,*—a Mr. *Eyre,* or a Mr. *Frankland,* which was it?—he was so consistently called to order,) the blood he had came from the wrong side of the channel, and with a something in it too nearly allied to *puritanism* to be relished by *legitimacy,*)—yet (not to speak of the *swinish* elements, which are of no value but in *Utopia*)—blood, such as it was, there was in him—*blood?*—yes; and *property* too,—though, whether then as now *savouring of the realty,* let others, who know, say,—to sanction it.

Look to the most populous among boroughs: look to *Liverpool.* When the same pestilential tide was hoped to be stemmed at Liverpool, who is it that great commercial port and borough called in to stem it? Was it the *Cobbett?*—was it the *Spa Fields Orator?* Here too, was it not *Brougham,* of *Brougham?*

Propensity to look wide of the true mark—to look to and to accept, in lieu of the only true and direct elements of appropriate aptitude, those supposed circumstantially but deceptiously evidentiary ones—*blood—property*—add if you please, *connexion*—this is not peculiar to *English,* it is common to *human* nature: yes, to human nature; and till that nature be transformed, never will the propensity—be it useful, be it mischievous—be rooted out of it.

Look to *ancient,* look to *republican Rome.* To protect them against the aristocracy, the people obtained a *representative*—a *single* representative—a *representative* whose style and title was, *Tribune of the people:* in the breast of this one individual was contained *their* Commons House. Well—this man—who to them was a *host,* and their *only* host—from what men, from what *caste* of men did they take him? From among themselves? Not they indeed. From whence then? Even from their oppressors—their very oppressors themselves—from the *Patricians.* Such (it has been observed by somebody, was it not Montesquieu?) such was their choice, for hundreds of years together.

Well;—in thus advocating *virtually-universal suffrage*—and as to *absolutely-universal suffrage,* though, preferably to the other, I do not, nor ever should advocate it—I should nevertheless, as *Earl Grey* did once, "prefer it to the present system;"—in thus advocating *virtually,* or though it were *absolutely,* universal suffrage,—what is given as above, is it all mere theory?—is it not *practice* to boot?—*practice,* or somewhat not very easily distinguishable from it?—is it not *experience?*

"Oh but," says somebody, "this which you call *practice*—this, in support of which you are calling in experience—this is not *any universal-suffrage* plan—this is not even your own *virtually* universal-suffrage plan: this is but the *householder* plan.

Yes, to be sure, in *name* it is but the *householder* plan; though where a *pot* constitutes a *house,* how much narrower soever the *ground* of the right is, the right itself must be admitted to be a little more extensive. But, be that as it may, if so it be that what you insist on is, that, in the field of political arrangement, nothing should ever be tried, but what in the self-same shape has been tried already, then so it is that, on this part of the question, my pen is stopped. But, upon this principle, here or anywhere—at this time or at any other time—well or ill—can or could government ever be carried on?

On your side, for the future (not to speak of the past)—for the future, will you take it up, and steadily, and to the last, adhere to it? Vast as it is, and poisonous as it is vast, will you so much as pledge yourselves to be content with your existing stock of *panaceas?*—with your universal-personal-security-destroying acts?—with your universal gagging acts?—with your *liberty-of-the-press*-destroying statutes, and judge-made *ex-post-facto* laws?—with your *universal-popular-communication-destroying* acts?—with your acts for stopping up the ears of *soldiers,* and for engaging them, in the character of informers, to imbrue their hands in the blood of their brothers, their sisters, their fathers, and their mothers?—with your *petition-rejecting* and *hope-extinguishing* decisions and orders and resolutions?—with your resolves for *rejecting petitions unheard,* because, *in aid of the pen, the press* had been employed

in giving the circulation to the matter of them?—with your *sham precedents,* brought forward for a colour to such liberticide resolves?

Well: if you shrink at this, remains still a possibility of your forbearing to insist here upon *individual* identity—of your listening to identity in *principle* and *specie.*

But if identity of *principle* will satisfy you, how, so long as you admit the *householder* plan, how can you be at a loss for *principle* in support of virtually-universal suffrage? Take in hand the fellowship of *householders:* take in hand the fellowship of *universal-suffrage men:* apply to each of the two fellowships the two tests of appropriate aptitude—the tests of appropriate aptitude, in those two of its three branches which apply to the case in question—the case of *electors.* Apply to them the *appropriate-probity* test: say, have you a sufficiency of it in your *householders?* Well then, on what grounds can you look for any want of such sufficiency in *my universal-suffrage men?*—of universal-suffrage men, although, instead of being, as here proposed, *virtual,* the universality were *absolute.* Your *householders*—is it their interest to possess, to retain, and upon occasion acquire property?—to acquire it (which to do would not, unless they could retain it, be of any great use to them.) Well then—among my *universal-suffrage men,* how many will you find, who would fail in any respect of being partakers in that same interest? Apply to them next the appropriate *intellectual aptitude* test: your *householders*—the interest which they possess in regard to property—the interest they have in possessing, acquiring, and retaining of it—that source, that sole and indispensable source of subsistence, and continuation of existence,—are they in a sufficient degree sensible of its existence? Then in what less degree, think you, would my *universal-suffrage men* be sensible to a matter of fact, to which (infants in arms and persons insane excepted,) no human being sensible to anything ever failed of being sensible?

In *your* eyes, and with reference to your habits and your means, the *all* of the sort of men to which the great majority of them belong is as nothing. Think you, that therefore, in their eyes, it is no more? The all of A, how much less is it in the eye of A, than the all of B in the eye of B? When you have solved this problem,—then, and not before, say that universal confusion and universal destruction of property would be the results of universal suffrage.

For its success, true it is, that this reasoning supposes, with reference to the formation of a judgment on the subject of it, the existence of a competent qualification in the shape of appropriate intellectual aptitude. Unfortunately, just at this moment—such of you as are honest—you have no such aptitude. Spectres have stalked in, and planted terror and confusion in your minds. *Cobbett,* in the character of *Apollyon,* the Destroyer,—Cobbett, with a *universal-levelling machine* in his hand,—Cobbett, with the Spa-Fields Orator at his heels:—these are your bugbears. From the contemplation of these hobgoblins comes the spirit of wisdom with which you are inspired.

Well then, take them up—to give your theory its finish, take them up, and plant them in the House of Commons. Chosen by the swinish multitude, behold them seated on the Treasury Bench:—in that situation in which anything may be done, there is nothing they would not be ready to do, so long as in any shape they saw anything they

could get by it. Yes: of course they would. Yes: but, according to this theory of yours, they are to level all property, and, of course, by levelling it, destroy it. Now, by so doing, what is it they could get, either of them? Some property they have, each of them: that one of them that has least, some number of times the amount of the utmost that could be expected to be put into his pocket by the operation of the universal-levelling machine.

"Oh, but these men, even these, are not the worst. The worst, to be sure, they are that we as yet know of. But what you perhaps *don't* see, and we *do* see is—the mob which is still behind them. This mob, which would begin with pushing them on, do you think it would end there? Oh no. No sooner were they seated, than after them it would be continually pouring in others that would be worse and worse. For, with the exception of us and ours, this is the way with all men. Their object—their constant object is—to do, in every imaginable shape, as much mischief as they can continually contrive to do:—such is their *end;* and for their *means* and their *instruments,* how can they do otherwise than take up and employ, and be perpetually upon the look-out for, the most mischievous agents that are to be found. Such being their constant study and endeavour—the constant study and endeavour of this mob of yours—this mob, that you and all that think with you want to set upon us and destroy us—what will be the consequence? The men they will be finding out and pouring into the House will be—each of them worse than every other—men, the least mischievous of whom will be mischievous enough to *out-Hunt* Hunt, and to *out-Cobbett* Cobbett."

The universal-suffrage plan being considered in the character of a *cause,*—for the *effect* on the monarchico-aristocratical theory, behold, in the above scheme of universal mischief and its consequence, universal destruction given—given, not merely as a *probable* effect, but as one that, in a practical sense, ought to be regarded as *certain.* And, for the *accomplishment*—not to speak of the *commencement*—of this same scheme, what are the sort of beings that are to have existence? Human beings? Oh no: so far from it, a set of creatures, such as no man ever saw: a set of beings, in respect of the features essentially requisite for so much as the commencement of any such scheme, as opposite to all known human beings as can be conceived. Without one of the motives that are known of, and against the bent of all the motives that are known of—such is to be their course of action. Of no such motive as *social interest* are they to have any the smallest spark. As little are they to have of that sort of motive, *self-regarding interest,* on which the human species is in a more especial and necessary manner dependent for its existence. On this career of theirs are they to set out, bent upon destruction—upon destruction of all property,—and with it, or before it, of all that derive support from it, ending or beginning with themselves.

In the words *wild* and *wildness* seems to be condensed the substance of all the *talk*—(to call it *reason* or *argument* would be misrepresentation,)—say then the *talk*—by which universal suffrage has been opposed. Wildness? Oh yes; and but too much of it. But in what place is it that it will be found?—in the *universal-suffrage* plan, with the practice and experience on which it is *grounded,* or in the *theory* with which, against all practice and experience, it has been *opposed?*

True it is—but too true—as matters stand at present, they have not, *all of them,* means so sufficient as could be wished, to inform and qualify themselves: they have not—so much as the *majority* of them—any such sufficient means to inform and qualify themselves: they have not—the majority of them—*means* so sufficient as could be wished to inform themselves aright as to what good government is, or what the value of it: they have not—the majority of them—sufficient means of access to the *documents* on which the acquisition of this necessary knowledge depends: they have not any such sufficient means in any regular way to *read the newspapers:* they have not—many of them—nay, even the majority of them—they have not as yet so much as the requisite skill in the elementary art of *reading.*

True. But these their deficiences—whatsoever they may be—is it in these deficiencies that we are to look for the consideration—the sole, the chiefly prevalent consideration, or so much as any part of the consideration,—by which your anxiety, and your determination, to exclude them from the right of suffrage is produced? Alas! alas! no.—These deficiencies—there is not any one of them, that it would not be little less difficult to you actually to supply, than to will or wish to do so: there is not any one of them, which they could not supply without any assistance of yours; which they would not supply to themselves, of themselves, if left to themselves; which they could not to themselves supply,—if, instead of aiding them in, your wishes and endeavours were not employed in the preventing them from, the receiving of such supplies. Of these same supplies, there is not one of them that, in the American States, is not actually and abundantly received. Received? Yes: and of the supply thus received, what is the fruit? What? is it anarchy? No; but instead of it, the best government that is or ever has been:—that, with which yours forms so strong, not to say so complete, a contrast.

Look on this occasion—if by any means you can endure to look that way—look once more to the American United States. Behold there democracy—behold there pure representative democracy. In the shape in question, any more than in any other shape, what mischief do you see there? In the American United States is there no property? Has it ever been destroyed since the establishment of independence?—has it ever been destroyed there, as it was here, in 1780, by your *anti-popery* mob; and—(not to speak of *Luddites,* and so many other non-religious)—in 1793, by your Church of England *anti-sectarian* mobs, with orthodox and loyal justices of the peace (see Hutton's Life) to encourage them? In any one of these commonwealths has any, so much as the slightest, shock been ever given to it? All this while, since that auspicious day—these supposed destroyers of all property and all government—the great body of the people, has there ever been anywhere that day, in which they have not had full swing?—has there ever been that day, on which, for the keeping of them quiet, any one of your *panaceas* has been applied;—applied, or so much as thought of?—yet has there at any time been that day, in which the door of that immense country has not stood wide open to the *scum of the earth,* as you would call it? and amongst others, to your own wild Irish—to those wild Irish, who by your misrule, and by the fear of your *torture-mongers,* have been driven into banishment?

"Oh, but," says somebody, "what they have in America is—not the *universal-suffrage* plan: it is more like the *householder* plan: only still less popular:—it is actually the *property* plan."

True: in *individuality,* as above, it is not the *universal-suffrage* plan; but, in *principle,* look once more, and say once more—where and in what, if in anything, consists the difference? The *property*—the income there acquired from landed property—there, even as here—consider, even where largest, how small it is, compared with the least amount of what is necessary for, and actually expended on, the means of sustenance.

Well but—will you then give us the *householder* plan?—will you give us the American plan? With either of those plans, we for our parts—I, for one—I, for my part at least, should be contented. Oh no: for *opposition,* indeed—for *refusal*—this or anything may serve: but for *agreement*—for *consent*—that's quite a different affair:—no: in the way of *concession,* nothing.

After all, what need can there be for looking to any such distance? Intellectual aptitude? sufficiency of appropriate intellectual aptitude?—is that the question? Look at home. Once more look at home. Turn your eyes to Westminster. By the hand of virtue, in that great metropolis of reform, behold democracy—already for these ten years past—though with the mass of corruption, as it were a mill-stone, still overhanging and threatening, yet still seated on her throne:—Westminster, a field of contention, on which, till that auspicious moment, monarchy and aristocracy—the everlastingly leagued, yet everlastingly bickering, adversaries of good government—had, from the commencement of the dynasty, been tearing one another and the country to pieces:—impoverishing one another; poisoning the morals of the people. Instead of this system of abuse, behold freedom of election—perfect and unexampled freedom:—yes, freedom: and with it sobriety, temperance, tranquillity, security. And this under what system of representation? Even under the householder plan—the same which *Mr. Grey* proposed—which *Earl Grey* is so much afraid of:—the householder plan—the almost equivalent of virtually-universal suffrage.*

No exaggeration here: nothing but simple truth. In proof, take, in the most compressed state possible, the following facts:—within a certain circle—were that a very small one—all of them notorious—all of them everywhere uncontrovertible.† The Americans—they impose no tax upon the means of political information; you impose an almost prohibitory one. Why impose so enormous an one? Is it for the sake of the money? In some degree of course, yes: for where money is to be had, in what place and at what price is it not raked for? It is raked for in the courts that should be courts of justice, to the destruction of justice: it is raked for in the stores of medicine, to the destruction of health and life. Yes, surely, in some degree for the money, but in a still greater degree for the sake of the *darkness:* the same transparent cunning which, in the teeth of all argument, and without the shadow of a pretence, has so recently, yet repeatedly engaged you to deprive them of the use of the press for giving expression to their desires, engages you, in relation to all these affairs, which while they are yours, are at the same time so much their own, to keep them in the state of the profoundest ignorance possible, that in the existence of that ignorance you may have a plea for the perpetuation of it.

"Oh, but the information they get, it is, all of it, from Cobbett:—misinformation, all of it:—mischievous information:—a great deal worse than none."

Well, be it so: what of that? The information you could give—yes, and would give too, if you gave any—*that* is good information, is it not? Well then: what is it that hinders you from giving it? Have you not money enough?—enough at any rate for such a purpose? Know you not of writers enough, who—all of them, as touching righteousness and piety, inferior to nobody but yourselves—would—though none of them, any more than yourselves, for the sake of the money, have any objection to the taking of it? Have you not your champions, with and without names, and with names worse than none?—names with which paper such as this ought not to be defiled? The same hands which circulate your substitutes to the Bible, would they not serve, yea, and suffice, to circulate whatsoever writings it might seem good to you to circulate, for the purpose of serving as *antidotes,* and by Divine blessing as *substitutes,* to all such others, by the influence of which good government might, in the fulness of time, be substituted to misrule?

"Oh, but to contend with jacobins and atheists!—with jacobins who would substitute the *Habeas Corpus* act to the abolition of it—atheists, *who would substitute the Bible* to *creeds* and *catechisms!*—to think of contending with such wretches on anything like equal terms!—to think of arguing with miscreants, for whom annihilation would be too mild a destiny!"

Aye—there's the rub! Ever under a monarchy—whether pure and absolute, or mixed and corrupt—ever under a monarchy—everywhere but in that seat of licentiousness, a representative democracy,—does *excess* in *force* employ itself in the filling up of all *deficiencies,* in the articles of *reason* and *argument:* and, the more palpable the deficiency, the more excessive, the more grinding, the more prostrative, the more irresistible the force.

So much for us of the swinish multitude: so much for us and our ignorance. But you—honourables and right honourables—how is it with you?

You tolerate publication of debates. But is it for the sake of general information and the diffusion of it? Oh no: it is for individual vanity, and the gratification of it. He who is at the head of you—the ablest head you ever had—after he had fired off his speech against corruption—his furious speech, with the double-headed shot in it from top to bottom—his speech, in which all that is least mischievous in corrupt influence is fired upon with red hot shot, while all that is most mischievous in it is spared,—did he not send it himself to Cobbett,—to the Cobbett whom you would all crush?

What they are in want of is not so much the *time* as the *liberty* to inform *themselves.* What you are in want of—you who have time as much as you choose to have—you who, so many of you, have time, so much more of it than you know what to do with—what you want, what you want, is *inclination*—the *inclination* to inform *yourselves.*

Thus deficiency—the evil of it, be it what it may, is a removable one: from you it came, by you it is kept up: at your pleasure it lies to remove it. Leave them but the liberty: by their knowledge will your ignorance be put to shame.

Your deficiency—the evil of *your* deficiency—is that evil a removable one? Yes: establish reform, and that a radical one, you will then—and I will presently show you how—have removed it. But upon any other terms, it is absolutely without remedy. It is fixed to your freehold: it sticks to *property:* to *your* only element of aptitude: the only element you either possess or acknowledge. From property—from that plethory of the good things of this world in all their shapes, under which the man who is gorged with property is condemned to suffer—from that surfeit comes *love of ease:* love of ease—that appetite which, existing in excess—in that degree of excess, in which in your situation it does so generally and so necessarily exist—is *indolence.* But be the field of action what it may, indolence and information are exclusive of each other. Labour of the body—labour of the mind—in his spare time will the man, who being used to labour, loves labour—in his *spare* time—be it ever so small—will he do more, than will the man, who, being unused to labour, hates labour, do in his *whole* time.

Opulence, indolence, intellectual weakness, cowardice, tyranny: Oh yes, these five are naturally in one. From opulence proceeds indolence—from indolence, intellectual weakness—from intellectual weakness, cowardice—from cowardice, tyranny. A phantom of danger presents itself: could he but fix his attention upon it, and look steadily at it, the phantom would vanish; but, being unexercised, his mind is weak: he has no such command over it. The phantom haunts him: it continues terrifying him: it plants an ague in his mind:—in his delirium he catches at every straw that presents to his eyes the image of a chance for stopping his fall into the gulf which he sees yawning for him: his bowels, if amidst his entrails he ever had any, wither: to his sick mind, no feelings but his own present any tokens of existence:—no barbarity—no wickedness—so it but afford the glimmering of an addition to the stock of accumulated securities with which he has overlaid himself, comes amiss to him. Frantic at the thoughts of the danger to himself, with or without thinking of any exterior objects, he gives his *fiat* to the cluster of tyrannies by which the security of the whole people—his own along with it—is destroyed. Trembling with terror and terror-sprung rage, he lends his hand to the opening of the Pandora's box, and pours forth the contents of it upon the heads of the whole people. And thus it is, and by this course—and even without the aid of sinister interest in any other shape—thus it is that, by the very fear—the groundless fear—of its destruction, security may be destroyed. May be? Yes: and, by that, and sinister interest in all its shapes together, if it be not already, is, while this pen is moving, on the very point of being destroyed.

Yes!—you pillage them: you oppress them: you leave them nothing that you can help leaving them: you grant them nothing, not even the semblance of sympathy: you scorn them: you insult them: for the transgression of scores, or dozens, or units, you punish them by millions; you trample on them, you defame them, you libel them: having, by all you can do or say, wound up to its highest pitch of tension the springs of provocation and irritation, you make out of that imputed, and where in any degree real, always exaggerated irritation, a ground, and the only ground you can make, for

the assumption, that, supposing them treated with kindness—all their grievances redressed—relief substituted to oppression, they would find, in the very relief so experienced, an incitement—an incitement to insurrection, to outrage, to anarchy, to the destruction of the supposed new and never-yet-experienced blessing, together with every other which they ever possessed or fancied.

Levelling!—destruction of all property! Whence is it they are to learn it?—what is there they can get by it?—who is there that ever taught it them?—whose interest is it—whose ever can it be—to teach it them? How many of them are there, who would, each of them, be so eager to lose his all? The all of a peasant—to the proprietor how much less is it, than the all of a prince—the all of him whose means of livelihood are in his labour, than the all of him whose means of livelihood are in his land? Who again is it, that, in your notion at least, they are at this moment so abundantly looking to for instruction? Is it not Cobbett? With all his eccentricities, his variations, and his inconsistencies, did he ever attempt to teach them any such lesson as that of equal division of property—in other words, annihilation of it? In the whole mass of the now existing and suffering multitude, think ye that one in a score, or in a hundred, not to say a thousand, could be found, so stupid, so foolish, as either of himself or from others, to fancy that, if without other means of living, he had his equal share in the whole of the land to-day, he would not, twenty to one, be starved upon it before the month were out? Oh! if the men, in whom—truly or erroneously—they behold their friends, were not better instructors as well as better friends to them than you are, or than it is in your nature to be, long ere this would the imputation you are thus so eager to cast on them, have been as substantially grounded as it now is frivolous.

No, no:—it is not *anarchy* ye are afraid of: what ye are afraid of is *good government.* More and more uncontrovertibly shall this fear be proved upon you;—proved upon you, from the sequel of these pages, even to the very end.

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SECTION IX.

FREEDOM OF SUFFRAGE FURTHER EXPLAINED—SEDUCTIVE INFLUENCE—ITS FORMS, INSTRUMENTS, &C.

Sub-topics proposed to be brought to view under this head. Opposite of freedom of suffrage, *spuriousness:—efficient cause,* by which—*motives,* by which—*influential persons,* by whom—*modes,* in which—*situations,* in and by which—*instruments,* by or with which—it is produced;—in respect of *mischievousness,* differences as between instrument and instrument;—*seat-traffic* as between proprietor and purchaser, how far mischievous;—*penal laws* for prevention of spuriousness, how far *useful.*

For the more effectual explanation of these several particulars,—distinctions, and points of agreement, not all of them (it is believed) as yet sufficiently noticed,—and for giving expression to these distinctions, here and there a word or phrase not as yet in general use,—must unavoidably be brought to view.

I. *Efficient cause.*—As in the case of election at large, so in the case of parliamentary election in particular,—the efficient cause, by the operation of which *freedom* of suffrage is or may be *excluded—spuriousness* to that same extent *substituted,*—may, with reference to the person operated upon, be termed, *seductive influence:*—it being understood that the sort of influence here in question is—according to a distinction already noted, the influence—not of understanding on understanding, but of will on will.

II. *Motives.*—As to the sort of motive, through which seductive influence operates, it may be either of the nature of *hope,* or of the nature of *fear:*—in the first case, it may be termed *pleasurably-operating;* or, in one word, *pleasurable* or *alluring:*—in the other, *painfully-operating, painful, terrific;* or, in so far as it operates with effect, *coercive.*

In general, when *seduction* is the word employed, the *pleasurable* is the sort most apt to be brought to view by it: but, of the two, as everybody feels, the *painful*—the *terrific*—is, in its general nature, the sort by much the more powerful in its operation; and, in the particular case here in question, it is by *that* that by far the greatest part of the mischief (it will be seen) is produced.*

III. *Modes.*—By seductive influence,—in whichsoever of the above two shapes it operates,—freedom of election may be excluded—spuriousness of suffrage in that same proportion produced and introduced:—introduced, viz. in either of two *modes;* the one *direct,* the other *indirect:—direct,* in so far as the situation of the persons to whom the force applies itself in the first instance is that of the *electors* themselves;

indirect, in so far as the situation thus applied to is that of persons at large, considered in the capacity of *candidates:*—candidates *actual* or *proposable.*

Proprietor, *proprietory seat,* proprietorship; *sole* proprietor, *co-proprietor; land-holding* proprietor, *office-bearing* proprietor.* —*Terrorist,* terrorism; *vote-compelling*† terrorist; *competition-repelling,* competition-*quelling* or *subduing,* competition-*excluding* terrorist; *land-bestriding, purse-brandishing* terrorist:—*Bribe-offering, bribe-giving, seducer* or *seductionist, corruptor* or *corruptionist;*—bribe, in the *pecuniary* or *money* shape; bribe, in the *quasi-pecuniary* shape; ordinary bribe, *bribe-royal:*‡ —reference being had to the operative *motive,* viz. *fear* or *hope,* and to the *situation* operated upon. Of the objects meant to be respectively presented to view by these terms—of these objects, together with their mental relations—a general conception will, it is believed, present itself at the first mention; and, by the occasions on which they will come to be employed, whatsoever may be wanting to clearness or correctness will presently, it is hoped, be supplied.

IV. *Instruments.—Free suffrage, proprietorship, terrorism, bribery:*—behold in these the instruments by one or other of which every vote given by an elector is produced: by which, taken all together, the 658 seats in the House, taken altogether, are filled.

As to the *votes,*—the number of those which, on the occasion of each election, are really *free,* is the *residuum* of the number of those which, by any one or other of the above three instruments or modifications of the efficient cause of spuriousness, have been rendered *spurious.* Small, indeed, will probably appear to be the proportion of those in the filling of which *free suffrage* performs commonly the greater part; scarce one, perhaps, in which it constantly performs the whole.

As to *free suffrage,* of this instrument the nature is sufficiently explained, by its being said to be the result of the absence or non-operation of the several other instruments.

In regard to *votes* and the *seats* filled by them, the proprietor is already in possession of that which, antecedently to success, the terrorist and the corruptionist does but aim at. Proprietorship has for its effect the effect of terrorism or corruption consummated and perpetuated: freedom of suffrage excluded in perpetuity.

In relation to any seat or pair of seats, suppose amongst co-proprietors a disagreement as to the choice. In this case, a *competition* may have place: and room is made for employment to be given to the two remaining instruments, either or both of them, viz. *terrorism* and *bribery.*

So much as to the instruments themselves: now as to the *field,* and the different *parts* of the field, in which they respectively operate.

As to *proprietorship,* the field of its operation is composed of and confined to the *proprietory seats:* that being said, all is said.

As to *terrorism,* the *county seats* present themselves as constituting that part of the field, in which its operation is at the same time most conspicuous and most extensive: subjects of the oppression exercised by it, in the *direct* mode, *electors* alone; in the

indirect mode as above, *candidates,* actual and proposable:—Candidates,—and through them electors again, viz. by the exclusion put upon the countless multitude of those persons, the worthiest of whom might otherwise have been taken for the objects of their choice. The shape in which, in this case, it operates in preference, is that of the *land-bestriding* terrorism. In this shape, and this alone, it operates, where there is no competition: electors being driven *to* the polling booth by the vote-compelling influence of the oppressive instrument—rival candidates driven *from* it by its competition-excluding influence. Comes a competition,—then it is that, in aid of *land-bestriding* terrorism, bribery and *purse-brandishing* terrorism are called in: the self-same money, while operating on electors in the shape of *bribery,* operates upon rival candidates in the shape of *terrorism.*

Thus stands the matter, in the case where the vote-compelling power of the instrument is, or is deemed to be, strong enough to operate upon the situation of candidate with such a degree of efficiency, as gives it the character, not merely of a competition-repelling, but of a competition-excluding instrument. By the opposite case, a demand is presented for a supplemental one in the *bribery* shape: in this case, while it is in the *alluring* shape that the influence operates on the situation of elector, it is in the *terrific* shape that it operates on the situation of candidate. In truth, it is only by the prospect of the quantity of force likely to be exerted by the instrument in its *alluring* shape upon the situation of *elector* in the event of a competition, that it can operate upon the situation of *candidate* with any such force as that which is indicated by the appellation of *competition-excluding terrorism.*

In the case of these *county* seats, if we look for the persons on whom, in the character of *electors,* it is in the shape of *terrorism* that the seductive influence operates, we shall find them—in the first place, *tenants;* in the next place, *tradesmen, shop-keepers, artificers,* and other persons of all sorts, in whose instance, by hope of custom for goods or labour, or by *hope* from any other source, or by a motive of a more irresistible nature from the same sources, viz. *fear* of loss—(fear, having for its object loss of any such profit or benefit, as in those or any other shapes had already been in use to be derived from the rich man's expenditure—not to speak of any interest which he may have, or be supposed to have, with the superior givers of good gifts,)—consider themselves as more or less dependent on his *good will,* and those *good offices,* which may be among the expected fruits of it.

In this case, the instrument of force by which the voter is compelled and the vote extorted, is, on the part of the dependent elector, the fear of giving offence to, and thereby losing the *good offices,* and perhaps suffering under the *ill offices,* of the terror-inspiring candidate. In so far as—consideration had of the amount of the apprehended loss, and of the elector's ability, in respect of his pecuniary circumstances, to preserve himself from it—the force is sufficient to engage the elector to take upon himself the expense of journeys to and from, and demurrage at, the election town,—in so far, *terror*—as being a force which in this case costs nothing to the person by whom it is applied—is the seductive force called into action: in so far as, in respect of its quantity, the force which in this shape is at the disposal of the candidate, is regarded by him as not sufficient,—seductive influence in the opposite shape, viz. *bribery*—seductive influence in this acceptable and *alluring* shape—is

called in and employed, in aid of that which operates in the *terrific* shape:—*indemnification,* viz. against the expense of *journeys* and *demurrage,* is the cloak in which in this case the bribery is enveloped.

Thus much as to the situation of *elector.* Look upwards—look to the situation of *candidate,* and the instrument which you have just been seeing operate upon *electors,* in the shape of an instrument of *alluring* seductive influence—viz. the money spent in *bribery*—this same instrument you may *now* see in the shape of an instrument of *terror,* operating—and this, too, of itself, and without need of any hand to work it—operating upon the situation of *candidate:* operating, according to the degree of its efficiency, with the effect of a *competition-encounter-repelling,* a *competition-quelling,* or a *competition-excluding* instrument.

In the election *town* itself,—and within that circle, within which, by reason of *vicinity* to the town, all demand for expense of journey and demurrage, and consequently all cause and pretence for indemnification on that score, stands excluded,—the terrorism, in the above, viz. the *purse-brandishing* shape, finds not any place in which it can operate: and, as to rival candidates, actual and proposable,—the greater the distances between this central spot and the abodes of the respective voters thus purchasable, the more strongly coercive will be the force of the rival and terror-inspiring purse.*

Of *terrorism,* considered in respect of both the situations on which, and thence in respect of both the modes and directions in which it operates,—but more particularly in respect of the *competition-excluding* mode, the effect seems as yet, in comparison of its mischievousness, to have attracted but little notice.* In brief, so far as regards the *competition-excluding* mode, it may be thus expressed:—the reducing the quantity of appropriate official aptitude in the Honourable House, from that *maximum* to which a regard for the welfare of the community would seek to raise it, to that slender (alas, how slender!) scantling, which experience has brought to view:—a proprietorship in land, or a mass of property sufficient to operate with effect either in the way of *terrorism,* or in the way of *bribery;*—in the latter case, a surplus of ready money, to the amount of from £4000 to £5000 over and above what is necessary for habitual expenditure, and ready to be employed in the purchase of power in this shape;—an appropriate connexion with some person, who is himself in possession of an appropriate qualification, in one or other of those shapes:—in these behold the *conditions,* one or other of which is indispensably necessary, and at the same time altogether sufficient, to the purpose of a man's being chosen to fill this most important of all offices. So as the *purse* be but *full* enough, no matter how *empty* the *head.*

Note well the *persons,* to whom, in this instance, the exclusionary force is in an immediate way applied: note well, that they are not the *electors* themselves, but persons at large, considered in the character of *proposable candidates:* note well the hand by which that same force is applied: note well, that it is not the hand of any individual *human being,* but the hand of the invisible *nature of things*—the offspring of the election system taken in its whole *compages.* Now then, all these circumstances considered, pregnant as is this state of things with a mass of mischief so immense, but

at the same time so incalculable and inscrutable, great need not be the wonder at its having in so great a degree escaped notice.

The case of the *county* seats being thus explained, no further details can (it is supposed) be necessary for conveying a correspondent conception of the case of the *borough* seats. In so far as, by *terrorism* applied to the electors, the effect can be produced,—in this shape of course, as being free of expense to the seductionist—in this shape it is that the seductive influence is applied. At the same time,—in so far as the number of those, to whom in this unexpensive shape seduction can be applied with effect, being regarded as insufficient to carry the election, the assistance of bribery is regarded as necessary,—bribery is the shape in which it is accordingly applied: and here too, in so far as *bribery* is the force applied to the situation of *elector,—purse-brandishing* and *competition-excluding terror* is the instrument which, as above, applies itself to the situation of *rival candidate,* actual and proposable.

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SECTION X.

BRIBERY AND TERRORISM COMPARED.

Bribery and terrorism,—mischiefs compared. In both instances, what is it that forms the character of the case? Is it not the *spuriousness* of the *will* to which the effect is given? In both cases, is it not that the will, to which the effect is given, is the will—not of the person whose will it appears to be, and in pretence is intended to be, and in reality said to be,—but that of some *other* person, whose will it does not appear to be, and in pretence is intended not to be, and accordingly is not said to be?

Well: so much for the general nature and character of the effect produced, supposing it produced. Now, as to the degree of *probability,* as a mathematician would say,—is the degree of *certainty,* as other men say,—that belongs to this important and mischievous effect.

The *quantity of interest* at stake—for conception's sake, be it money or money's worth, for it comes to the same thing—say the sum at stake: this sum, being in the two cases the same—say, for example, £5;—for *one* instance in which you would find it producing this effect in the way of *bribery,* in *ten* instances perhaps you would find it producing that same effect in the way of *terrorism.*

Situations in which the effect depends,—two: that of the elector to be operated upon, and that of the proposed representative, by whom or to whose use the other is to be operated upon. Look, in the first place, to the first: for, unless it be with a prospect of accomplishment, an object is not aimed at. Here, if *bribery* is to be the instrument employed, behold the obstacles—the opposing motives—which the seductionist—the proposed representatives or his supporters—have to overcome: fear of punishment at the hand of the law—fear of reproach from *without*—and, in so far as *conscience* may be regarded as concerned in the matter, fear of reproach from *within.* In this same case, if *terrorism* is the instrument—and the only sinister instrument in the way to operate—by no one of the above obstacles does the power of the instrument find itself opposed. In the case of *bribery,* the operation has an external tangible instrument, viz. the money, or money's worth; and the application of the instrument is rendered determinate by the circumstances of place and time, and by the necessary acts of intercourse betwixt man and man for the purpose. To the case of *terrorism* belongs not any one of all these exterior and determinate accompaniments:—no such tangible instrument does it admit of: of no such intercourse is there any need in it:—no external and determinate object does it present, to which any such inward sentiment as *fear of reproach* can attach. In this state of things the two first of the three restraining motives cannot, and the other (generally speaking) will not, operate.

Look now to the situation of the person—the proposed representative—by whom, or to whose use, the effect is to be produced. To the production of it by *bribery,* special application is on every occasion necessary: special application, and *that* attended with

hazard in various shapes to him by whom, or to whose use, it is made:—hazard of scorn and reproach, instead of acceptance, at the time; in case of engagement, hazard of non-fulfilment; in either case, hazard of disclosure, followed or not followed by prosecution. To the production of the effect by *terrorism,* no special application is, with any such constancy, necessary: in many instances, it assuredly has place—perhaps in most: but there is no saying to what extent it may be produced, by the mere notoriety of the wishes of the person, in whose power is the source of terror:—by this general indication, with or without the assistance of any of those particular indications, of which, in infinite variety, the case is susceptible.

To the application and operation of the *matter of seduction* in the shape of *bribery,* the *matter of wealth* in the shape of ready money is necessary: and, in proportion as the desired effect is produced,—or rather as the endeavour, successful or unsuccessful, to produce the effect is exerted,—loss equal in amount to the expenditure is sustained. In the case where it is in the shape of *terrorism* that this same naturally useful, but accidentally misapplied and pernicious, matter operates,—though in this case, as in the other, the quantity of matter capable of operating towards the effect has its limits,—still, without *loss* in any shape to him by whom the profit is reaped, does it perform its seductive office.

In a word, so far as bribery is the instrument, loss is certain, profit precarious: so far as terrorism is the instrument, loss none; effect, if any, profit without loss.

In the case of *bribery,* the danger of punishment at the hands of law, together with the less uncertain, though less intense, suffering at the hands of general disrepute,—these together may be seen composing no slight obstacle to the procurement of *agents,* such as to the requisite *disposition* shall add the ability, necessary to the production of the effect desired. On the other hand, in the case of *terrorism,* operating in the way in question—while, as above, what may very well happen is—that no application of any kind whether made on the part of the terrorist *himself,* or on the part of any person in the character of an *agent,* shall be necessary,—yet in that same character scarcely will there exist that well-wisher to his cause, in whose instance any aversion to the task of conveying the appropriate intimation will have place.

Thus much as between *bribery* and *terrorism:*—now as to the two contrasted cases, in both which the force is supposed to be applied in the shape of terrorism,—in the one case *by* the power of the law; in the other case *without* the power of the law. Suppose an *act* passed—(many a worse law has been passed, is passing, and will be passed)—suppose an act passed, imposing a penalty of £5 on every man, who, being tenant of the Duke, Marquis, or Earl of Mickleland, viz. to his estate at Fearham, in the county therein mentioned,—and having moreover a right of voting at all elections in and for the said county,—shall, at any election of a knight to serve in parliament in and for the said county,—refuse or omit to give such his vote in favour of any such person whom for that purpose it shall please such his grace, or such his lordship, to nominate. Suppose for this purpose a bill moved for:—here would be an occasion for Whig eloquence!—here would be fretting, and fuming, and vociferation! Even now, supposing any such bill moved for—(not that—considering the more convenient shape in which the same effect is produced for the benefit of both parties—not that in

either there exists any the smallest interest exciting any one to move it)—highly questionably it might be,—nay, even now, while everything that is most atrocious, and most fatally destructive of what little remains good in the constitution is passing every day—questionable it might be, whether a bill to any such effect would make its way through the two Houses.

Well:—but in a law to such an effect, in point of efficiency and thence of mischievousness, would there be anything comparable to what has place in this behalf, in the existing and everlastingly lauded state of things? Sums the same, of the thus *legitimated* influence of *property,* would the force be equal to the already "*legitimate influence*" possessed by that same representative of, and substitute to, probity and intellectual aptitude, in the present state of things? No: a dead letter, or not much stronger, would be the five-pound penalty. By the profit of it, even if levied and received, would be covered but a small part of the expense. Instead of the lordly and angry hand,—by this or that friendly and commissioned hand (such are the powers of appropriate legal arrangements) might the profit be received: by an appropriate microscope, a flaw—such as all proceedings are *kept* exposed to—might peradventure be discovered; but before this, by the very attempt, as indicated by the purchase of the first piece of parchment by which the proceedings were commenced, might such a storm of odium be raised, as the nerves of his grace, or his lordship—though he had been a *Sir James Lowther*—would not be able to stand.

So much for the case in which,—neither by him whose endeavour it is to impose it, nor by him whose endeavour it is to avoid it,—the loss is any otherwise to be looked for, than through the ever-wavering and perpetually-delusive hand of the man of law. Contrast it now with the case in which the source from which it is looked for, is a force, which without need of any such treacherous and inadequate instrument may be applied at pleasure. In the former case, odium maximized; vexation and expense certain; execution distant and uncertain:—in this case, execution at pleasure; odium covered up; no vexation, no expense.

In the instance of *vote-compelling* terrorism, the establishing it by law is, as above, as yet but a supposition. In the instance of *competition-excluding* terrorism, it has, as everybody knows, now, for above this century past, been matter of fact: (year 1710: Act 9 Anne, c. 4, § i.) £300 landed property—and that too in a particular shape—the *minimum:* £300 a-year, going as far as a thousand a-year at least, money of the present time. At that time the monied interest being particularly strong among the Whigs, the landed interest among the Tories,—Tories strong in the House of Commons,—so it was, that, on the occasion of the exclusion thus endeavoured to be put upon the genuine elements of appropriate aptitude in favour of the spurious ones, monarchy and aristocracy acted with conjunct force. In both creeds, *property* is *probity,* was then a fundamental article. Well:—after all, triumphing over sinister theory, experience forced upon men the conviction, that, with the Birmingham article employed to the exclusion of the genuine one, business could not go on. So completely had the absurdity of the idea been demonstrated,—anno 1784 and thenceforward, that of the two great leaders of the opposite parties, Pitt the second and Charles Fox—each in his day a minister—a situation in which, if any, the demand for appropriate probity should have been at the highest pitch—the one had from the first

no more than a *minimum*—and that to the last drowned in debt: the other, not even that *minimum.* Well: neither of them having on principle,—one of them not having even by law,—a right so much as to sit in the House, how come they to be there? *Answer:* Oh—by the usual instruments—*House-of-Commons' craft and lawyer-craft*—the difficulty had been removed. Lawyers had been to work, and set up a manufactory of sham qualifications. Lawyers got their fees; disqualified men, their seats;—the work, which should have been performed by *sincerity,* was bungled out by the more acceptable hand of *fraud:* and thus, in the *Blackstone* phrase, *everything was as it should be.*

Thus much for the comparison between the case of the seductionist whose instrument is *bribery,* and that of him whose instrument is *terror:* the situation in both cases being that of an individual. The same representative of the source of the power being in this case, as in the two former, still the same.

Compare now the situation of the individual operating in the character of *terrorist,* with that of the *universal seductionist:* the seductionist, by whose hand, though by no means unpractised in the use of terror, the instrument of seduction most extensively and conspicuously employed is—the instrument mostly known by the name of *bribery,* or *corruption:*—the instrument of *alluring* influence.

By both seductionists—the individual terrorist and the universal seductionist—in whichsoever of his two shapes the latter may, on the occasion in question, be found operating—the same mighty mass of advantage is possessed:—in the one case, as in the other, without personal application—without application so much as by agents—yet, with the sure assistance of agents, and these unpaid—in abundance—may the desired effect be purchased. No expense—not so much as of thought: no exposure to rebuff and scorn:—no exposure to that sort of disappointment which, in case of engagement, is produced by the breach of it on the other side:—no exposure to legal punishment—to public reproach—nor so much as to reproach of conscience:—all these so many millstones hanging over the head of the venal, and, comparatively at least, innoxious sinner, whose sin has taken upon itself the nature of bribery.

But in all these cases, the less efficient the restraint, in these and all other imaginable shapes, opposed to the pernicious effect,—the greater, in each instance, the probability of its taking place: the greater, in *each* instance, the *probability* of its taking place, the greater the *extent* to which upon the whole it will take place, and thence upon the whole the greater the *mischievousness* of it: in each instance, in which it is efficient,—the result being, in both cases, of one and the same nature, viz. the giving effect to the will of some other man, instead of that of the voter, by whom the vote is given as the expression of his own free will,—the comparative aggregate mischievousness of the two practices is great in proportion to the *extent* in which they respectively have place.

Yes: compared with the system of *terrorism,* the system of *bribery* is virtue. Under the system of *bribery,* both parties are pleased: the *giver* of the bribe gets what *he* most desires; the *receiver* of it what *he* most desires: both parties are gratified; both

parties are contented; in both situations you see smiling faces, indexes of contented hearts. Under the system of *terrorism,* whatsoever feeling of satisfaction can have place, look for it on one side only: and even on that side scarcely can it have place, without having for its alloy the apprehension of odium, and that odium just:—frowns above; gloom below:—sympathy, satisfaction, nowhere.

Turn back now to what is said on the *extent of the right of suffrage:* note once more the *collateral* uses attached to the amplitude of that extent: apply these considerations to the present case. In comparison of what has place under terrorism,—*urbanity,* though under the system of *bribery* not so much cherished as under the system of *freedom,* finds a door naturally open to receive it: not so under *terrorism.* Whence the difference?—The answer has been already given: Of the benefit that may be acquired by the *receipt* of a *bribe* a man has no need, equal to what he has of *that,* of which—he having already the habitual possession or fixed expectation of it,—terrorism threatens him with the *loss.* Whatsoever be the magnitude of his bribes, yet, suppose him to a certain degree obnoxious, whether it be in public or in private life—and in particular if it be, for instance, the man whose sole trust is in those means of sinister influence, he may, to an extent more or less considerable, experience the mortification of seeing them refused. Repression of insolence is therefore in his situation prescribed by considerations, and urged by motives, which, in the case of the secure *terrorist,* or the possessor of a *proprietory seat,* have no place.

Thus it is that—each being considered separately—bribery, if not *absolutely,* compared with *terrorism* at least, is a useful practice. Terrorism having place on *one* side, place bribery on the other,—the lesser evil, if *evil* it be now to be called, becomes positively *useful,* by the check it is capable of giving to the greater evil. By the terrors inspired by a full purse brandished on the other side, the vote-compelling terrorist may himself be either driven out of his seat, or so wrought upon as, in respect of it, to bear his faculties more meekly than he would otherwise. Himself *incapacitated*—by *peerage,* for example—or *disinctined,*—the *nominee,* to whom, under the influence of this check, he has recourse, may (it may thus happen) be a person less unpopular—in any, or every respect, less unapt—than the person who, but for this salutary restraint, would have been the object of his choice.

Of one mischief with which *terrorism* is pregnant, while *bribery* is altogether pure from it, no more than a slight hint can in this place be afforded. Producing with so much more disastrous an efficiency the same common *disease,* viz. *spuriousness of suffrage,*—the force of terrorism operates at the same time towards the suppression of the only remedy. By the same tyranny, by which the demand for *reform* is created, the *petition system,* in which alone it can originate, is endeavoured to be crushed. *Desperateness* is thus another symptom added to the malignity of the disease: and to this symptom the influence of bribery is happily inapplicable. By mere situation,—no expense in any shape, not so much as in the shape of thought,—does the bare image of the frowning terrorist repel from the paper—repel in countless numbers—the hands by which, if free, it would have been signed: while, strong as is the interest by which, in so many places, the disbursement of the money necessary to the purchase of *votes* is produced,—on no occasion is any interest strong enough to produce any such

disbursement, in the quantity necessary to the purchase of *signatures to petitions,* to be found.

Interested alike in the preservation and increase of abuse and misrule in all its forms,—monarchy, and the aristocracy that crouches under its feet, operate—with united force operate—as in case of *votes*—even without exertion—still more powerfully of course if with exertion—towards the keeping the door as closely shut as possible against the only remedy. The situation in this case *operated upon* is that of the aggrieved subject, who—but for the frown of inexorable tyranny—would have become a petitioner, but who, by the spectacle of the united thunderbolts suspended over his head, finds his hand arrested, and the complaining paper prevented from receiving his signature.

Not satisfied with operating in the quiet and *negative* form of *restraint,*—coercion is at this moment busying itself in the positive and more galling form of *constraint,*—under the guise of *declarations of loyalty,* circulating or stationing *declarations of abhorrence* as towards the only remedy:—under the G—s as under the Stuarts, woe be to *petitioners!*—grace and favour to *abhorrers!*

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SECTION XI.

PURCHASE OF SEATS—IN WHAT CASES MISCHIEVOUS—IN WHAT BENEFICIAL.

In comparison of purely *gratuitous,*—nomination for what in law language is called *valuable consideration*—is it upon the whole a pernicious, a beneficial practice, or a matter of indifference?

Answer: In each instance, which of the three qualities belongs to it will, in this, as in all other cases, depend upon the manner in which the *universal interest* is affected by it.

In comparison of the person, who but for the *sale* would have been seated in the way of *gratuitous* nomination,—the course taken by the possessor by *purchase,* will it be *more* beneficial, *less* beneficial, or neither more nor less beneficial, to the public interest? In this question may be seen the answer to the last preceding one.

For this last question, from no other source can any answer be deduced than from the consideration of the *quality* and *quantity* of the effective influence exercised by the individual in question, in all shapes taken together, during his continuance in the seat.

Individuals being unknown, as to the *quantity* nothing can here be said. Quantity being supposed the same,—as to the *quality,* which depends on the *direction* taken by it, thus much, and thus much only, can be said,—viz. that for ascertaining it, in so far as it is capable of being ascertained, the only *criterion* which the nature of the case affords is,—the consideration of the situation occupied by him with reference to *party. Tories, Whigs, People's men, Neutrals*—taking him during the whole of his career together, with which of all the several classes thus denominated, has he acted?

In the course of this inquiry, the persuasion which the author has all along found pressing upon his mind with irresistible force is—that, to the *disposition,* the *Tories* or *King's men* add already not only the *power,* but the *practice,* of driving the country down headlong in the descent that terminates in the gulf of pure despotism:—that—such is the state of interests—the Whigs, whether in or out of office, are driving, and would continue to drive on in that same course; though in both situations with a degree of force and velocity more or less inferior to that which belongs to the nature of their naturally and almost constantly successful rivals:—that, if it be among the decrees of destiny, that in its way to that abyss the country shall at any point be stopped,—it can only be by the energy of the people, headed and led by the few *people's men* by whom any place shall have been found in the House, reinforced by such of the Whigs, if any, in whose view, as the prospect of perdition comes nearer and nearer, the shares they respectively possess in the *universal* interest, may come to present itself as exceeding in value their respective shares in the

particular and separate interests possessed by them in virtue of their connexion with the party to which they belong.

In this view of the matter—barring the application of the only remedy as above—the arrival of unmitigated despotism being, sooner or later, a result altogether certain,—the only effect of which, in this respect, the practice in question, or any other, can be productive, is that which respects the predicament of *time:* the causing it to take place a little *sooner* or a little *later* than it would otherwise.

Of the practice of *venal,* contrasted with that of *gratuitous* nominations, is the *acceleration* or the *retardation* of this catastrophe most likely to be the effect? I answer—the acceleration; and for these reasons:—

It being the property of *money* and *money's worth,* when applied to the accomplishment of any object, to apply to the minds on which that accomplishment depends, a quantity of influencing force, over and above whatsoever would otherwise be acting on those same subjects in that same direction,—the effect of the *venality, i. e.* of the *purchases* made by means of it, will in this case be—to give to the party, whichsoever it be, by whom they are made, an accession of strength beyond what it would possess otherwise.

The accession of strength, whatever it be, which may be derivable from this source,—by which of the several denominations is it likely to be devived in the greatest quantity?—*Answer:* By the Tories:—by that party, headed as they are and supported by C—r-General and their interest and their affections identified with his.

As it is, the number of *members* belonging to this denomination,—not to speak of persons without doors—*corruption-eaters,* and *corruption-hunters,* and *blind-custom-led* men, and *indifferentists* taken together,—seems at present to be far greater than that of all the other denominations put together: and, as despotism advances,—and while this sentence is writing, it is advancing in seven-leagued boots,—the number will be receiving continual increase. Proportioned to their number will be the aggregate amount of the quantity of ready money in their hands, applicable to this convenient purpose: and,—quantity of money in hand the same—of him whose prospect of appropriate return is nearest, the biddings will naturally be higher than of him whose prospect is more distant.

Thus much as to the *general* tendency of the practice. But, from this general tendency, supposing it admitted, does any such proposition follow, as that to the character of a true *people's man* it belongs to lay down to himself any such rule as that of *abstaining* from it? No, surely: but exactly the reverse. The greater the velocity of the disastrous descent, the more strenuous are the exertions by which it should be endeavoured to be retarded.

For my own part, had I some ten or twenty millions of money at my disposal,—I would, though to an opposite purpose, effect the very monopoly, the mischievousness of which, reference being made to the at present established practice, has just been represented as being in the direct ratio of the *extent* of it. Instead of buying land with

the money for my own kindred, I would buy liberty with it for the people. With that money, not only should I buy up all the existing venal *borough seats* and *county seats,* as they came to market, but I should raise to the rank of venal ones many others which now are not so. With that money in hand, I could and would open honourable eyes, in sufficient abundance: I would enable them even to see—(oh the astonishing sight!)—that liberty is better than slavery, sincerity than imposture, good government than misrule, the absence of waste and corruption than the presence, dependence on the people than dependence on an essentially insatiable shark with his subsharks—the love and respect of the people, than their merited abhorrence.*

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SECTION XII.

SECRESY OF SUFFRAGE—ITS IMPORTANCE FURTHER DEVELOPED.

In the situation of Election voters,—in the character of a security *for* freedom of suffrage, and *against* spuriousness of suffrage, not only the *utility* but to a great extent the *necessity* of secresy,—in the character of a security against all seductive influence operating *from without,* whether in the shape of terrorism or in the shape of bribery (that is, in every shape whatever, *gratitude* of the purely social kind excepted,) its *necessity*—in a preceding section (Section V.) and in the Plan itself, all these tutelary properties have been brought to view.

Turn back to Section X.—behold once more the troop of dependents driven to the poll-booth, with stewards in front and rear, to prevent desertion. By the protecting veil of *secresy,* suppose now the direction given to the voter completely hidden—hidden from all tyrant eyes—say, would any such trouble ever be given to stewards? By terror may a man be driven to the place of election,—true:—but, under the shield of secresy, it is not by terror that, when he *is* there, the *direction* given to his *vote* can be determined.

But, in this same case, secresy, as it excludes terrorism, so does it exclude bribery: for, though by *gratitude* and *sympathy* alone what *may* happen is—that a bribe shall in this case be productive of the desired effect,—yet such is the feebleness of the chance, as to exclude (it should seem) all probability—all practical probability, and thence all adequate expectation—of effecting by this means the desired purpose. Where the engagement is of such a nature, that the act of contracting it is a transgression against the laws of morality and political probity, who is there that can fail to acknowledge that the fulfilling of that same engagement is—not an *atonement* for that first sin, but a *repetition* of it? If this doctrine be just and true,—nay, whether it be so or not,—in a case such as that in question, endeavours to instil this antidote into the mind to which, in the way in question, the matter of corruption has been applied, seem little in danger of being either deficient or ineffectual.

Now, suppose *universal suffrage* established, or suffrage to such an extent as not to exclude *paupers.* Let but the direction given to the vote be completely unknown to all but him who gives it,—a pauper—having no prospect of gain in the event of his giving it in favour of the less fit candidate—nor of loss in the event of his giving it in favour of the more fit candidate,—would, if the delivery of his vote seemed to him worth the trouble—would naturally, if in his own conception unable to form a judgment of his own—would, of course, among such persons as he beheld within his reach—look out for those whose reputation, in respect of the joint qualities of appropriate probity and appropriate intellectual aptitude, stood highest,—from *them* endeavour to learn which of all the proposed candidates was, in their opinion, the fittest—and give his vote accordingly. Such would be the case under the system of

secresy. How would it be under the system of publicity? His subsistence—his very existence—depends upon the pleasure of the local magistracy: his vote would be as absolutely at their command, as the voting ticket at the command of the hand by which it is dropped into the box. Think of the proportion borne by those who already are in a state of pauperism, to those who are not yet fallen into that disastrous state. This vast part of the democracy would be completely in the hands of the removable nominees of the crown. Yes:—in the hands of titled country terrorists, and corruption-eating and corruption-hunting court divines, ready to join hand in hand with hubble-bubble city corruptionists, for the protection of a commissioned associate, in the habit of exercising to his own use, on condition of exercising other arts to the use of court and treasury, the "*useful*" art of "*poisoning,*" so long as it were upon such and such alone of his Majesty's subjects as it should please them to consign to contempt and torment by the appellation of "*ale-drinkers.*"

And thus, by the new instrumentality of universality of suffrage, if unprotected by the necessary shield of secresy—thus, without commotion or drop of blood shed, the constitution would be changed; changed from its present state, of an impure but not yet to a certainty altogether unpurifiable mixture, into a pure and ever unamendable despotism.

In correspondent obedience to one of those solemn ordinances, which have been so often passed for show,—with the exception of the metropolis, at which it is kept collected in greatest quantity,—all military force is, at all parliamentary election times, ordered at a distance from the place: as if for a troop of dragoons, by whose sabres the mask would be so effectually cut off, and by any the smallest movement of which, in this line of parliamentary service, the whole country, if by anything it could be, would be thrown into a flame,—as if for any such instruments of terror there could be any the slightest demand, when, without the stirring so much as of a finger or a tongue, the object can be and is so effectually accomplished by the invisible and motionless spectre of *terrorism.* Thus are *gnats* strained at, that *camels* may be swallowed.

Such being the state of things, by what strange accident—by what strange delusion—can it be, that, in the situation in which so vast a proportion of the whole body of the people are held down by the indissoluble bonds of civilized society,—the necessity of secresy in the character of a shield to *freedom,* in the character of a security against *spuriousness* of suffrage—at any rate under the joint yoke of *monarchy* and *aristocracy,*—can have been made to conceal itself from any eye? In such a case, how is it that a man can avoid seeing, that by *publicity* terror is armed, by *secresy* disarmed?

A man *ought*—every man *ought*—to sacrifice in every case—to sacrifice in this case in particular—his own personal interest to the universal interest. Good:—there we have an antecedent. Ergo, so he *will:* there we have the *consequent.* Well: if in the consequent there be any truth, here are we already in *Utopia:* no need of *penal laws;* no, nor so much as of *sermons.*

Call a man names—hard to any degree of hardness—*slave, coward,* or if there be anything harder,—by any such insult will he in any degree be disposed to practise the self-denying lesson, thus preached to him by a censor, who himself is all the while sitting upon velvet?

On this occasion, as on any other,—if, in any imaginable way, without determinate and preponderant mischief, means can be found for reconciling private with public interest, and thus saving both from sacrifice,—can any valid reason be given why such means should not be employed?

Suppose that, by any such expression of scorn, ninety-nine men out of a hundred, or though it were but one out of the hundred, could thus be engaged to devote themselves to ruin,—to ruin, or though it were but any the slightest inconvenience,—how is it that, while the useful and desired effect might as completely and surely be produced without inconvenience in any shape,—how is it that by any such discipline the sum of happiness would be increased?

This shield, without which all pretence to freedom is imposture,—in what sort of situation could any objection to the use of it have found either origin or acceptance? Only in one or other of these two: the *one* is—that of a man who—his whole dependence being in terrorism, in bribery, or in a mixture of both—beheld in the freedom secured by secresy a bar to his designs; the *other,* that of a man to whom—that same situation exempting him from all such sensation as that of fear on any such score—no idea of any such sensation had ever presented itself as likely to have place, among the multitude whom he saw at his feet; or, if it had, had never otherwise presented itself than as a matter of indifference.

In conversation even, and that a confidential one, with a man now no more, ballot being mentioned by me as a *causa sine qua non* of freedom, he made wry faces, muttered out the word *nasty,* and turned off the discourse. He was a patron of seats; his votes wavering: he was a great landholder; and not the most popular among landholders.

"*Cowardly dogs!*" said an expert swimmer, who having crossed a deep river at his ease, looked back and beheld his companions, some of whom could swim, lingering on the other side—"*cowardly dogs!* are not ye ashamed of yourselves?"

As to any supposed difficulty with regard to the accomplishment of the purpose, altogether groundless would be any objection on that score. With notorious and undisputed constancy is the effect accomplished, for example, at the *India House.*[*] In the sort of situation here in question, should any inconvenience be found to attend the mode there employed, others might and would be devised in plenty, every one of them exempt from inconvenience.

No: not in the invention of a mode by which the purpose shall be *accomplished,*—but in the devising of a mode by which—to remotely situated as well as to conniving eyes—the purpose shall be made to *appear* to be intended and accomplished, while in effect as well as design the *opposite* purpose is accomplished,—in *this* lay the only

difficulty. Turn now to *Honourable* House, and in that seat of self-proclaimed honour, behold this difficulty, after having, during a course of *ages,* been constantly surmounted, at last by miracle rendered for ever unsurmountable. Turn to *Morning Chronicle* debates, and therein you may see, that on the 6th of February 1817,—the time of Honourable House having already for a whole hour been occupied in the organization of a *ballot* for a *committee of secresy,*—up, from the opposite side of the house, starts *Mr. Brougham,* and with the exception of one out of one-and-twenty, reads the names of the members, the choice of whom was to be the result of all this secresy.

Comes the next day (7th February 1817,) and, in speaking of the *ballot,* the noble lord at whose motion this time-consuming process has been carrying on, admits it to be *open to the insinuations* "*that had been conveyed;*" "still, however," says the report, "he did not think that the House would join . . . . . in reprobating a practice established by *the usage of ages.*" Of no imposture which, for the delusion of the public, Honourable House had been in use to practise—of no such imposture would even the most public detection afford to Honourable House any inducement strong enough to engage honourable gentlemen to cease practising it. *In* and *to* Honourable House itself, such is the portraiture given of the said Honourable House by a noble lord, who, at that same moment, is seen occupied in the giving direction to it, and the intimacy of whose acquaintance with its true character could not without injustice and folly be contested.

Not the less pertinaciously maintaining by argument the excellence of this "*usage of ages,*"—even the principle of *universal suffrage* ("it had been contended," he observed, "by many") would not be productive of a fair representation of the people without it. True: but between the *many* and the *one* there was one difference: the ballot thus advocated by the *many* was a *real* one: the ballot advocated by the *one* was a sham one. "*High,*" in the tone of scorn and sarcasm, was the epithet thereupon given to the "*authority,*" by which the use of the instrument of freedom is thereupon stated as recommended: "*high,*" as who should say *contemptible.* Now if *contempt* there must be, where will be the fittest object for it to be found?—in the titled would-be impostor, who knowing a practice to be a *sham,* attempts to pass it off as *genuine,*—or the untitled good man and true, who holds up to view as *sham* that which he sees to be *sham,* and as *genuine* that which he sees to be *genuine?*

For illustration,—the effect of ballot, as applied to other situations, presents some claim to notice. Whatsoever be the situation, and the *ultimate* effect,—the effect which secresy has for its *proximate* result is—the enabling the voter to give effect to *his own will,* to the exclusion of every *other.* This being true in every case,—in the situation of a public trustee, consider it in the character of a security for appropriate probity:—a security for the faithful execution of his trust. In this situation, whatsoever be the nature of this public *trust,* and of the public *interest,* for the support of which the trust has been instituted,—in so far as, in his own view of it, his own individual interest *coincides* with such public interest, secresy is the mode and the only mode, that affords an adequate assurance of the fulfilment of the intended purpose. On the other hand, when (the situation in which he is acting being here likewise that of the holder of a public trust) the danger is—that, in his own view of it, the tendency of his

individual interest is, on the point in question, *opposite* to the public interest—to that public interest for which he is in trust,—insomuch that he thereby stands exposed to the temptation of sacrificing such public to his own private interest,—in any such situation, the greater the publicity is that is given to his proceedings, the stronger is the check, such as it is, the tendency of which is to restrain him from joining in such sacrifice: consequently, on the other hand, the more entire and assured the secresy,—the stronger the temptation, and the greater the facility afforded to such sacrifice.*

Now transfer in idea the ballot to Honourable House—adjourned (suppose) to *Utopia,* for the purpose of so ordering matters that on this one occasion the practice of Honourable House shall not be tainted with imposture. Suppose at the same time a member, in whose instance dependence and independence preserve (both of them) the customary relations: independent as towards the swine who dare to style themselves his constituents, he is dependent constitutionally dependent—as towards the *Emanuel* of Judge Blackstone. First, let the case be one, in which,—whether in his *individual* capacity merely, or in his capacity of partner in the *universal interest,* or in both capacities together,—he would, in his own view of the matter, be a sufferer by the proposed measure if carried; say a bad or needless *tax:*—at the same time, were he to oppose it, he would, from the resentment of the said Emanuel, in his own view of the matter be in danger of becoming a sufferer to a *greater* amount: in this case, secresy will in his instance operate—and that with indisputable effect—as a shield to appropriate *probity.* Now, let the case be one in which, in the same capacities, and in the same eyes as before, he would be a gainer: say that of any one of the swarm of bills for the extirpation of English liberties—any bill, in a word, for the fastening, in a manner still more excruciating if possible, the joint yoke of monarchy and aristocracy upon the neck of the swinish multitude: in this case, instead of being a shield to appropriate *probity,* secresy would be a shield to the opposite *improbity.*

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SECTION XIII.

EXCLUSION OF PLACEMEN, &C. FROM THE RIGHT OF VOTING—MISCHIEVOUSNESS AND PROFLIGACY OF THE OPPOSITE ARRANGEMENT.

On the topic here brought to view, something has been said already, in a preceding section (§ V.;) something also in the *Plan* itself: in each of these places something; and surely in either of them enough to satisfy any reasonable and unprejudiced mind: in a word, any mind whatever, that is not led blindfold, either by *sinister interest* or *interest-begotten* prejudice, or by an undiscriminating regard to *custom: custom,* that blind guide, to the guidance of which, if to the rejection of *reason,* none but the blind submit themselves.

Placemen seated by the king, with right of speech, and even right of motion: placemen from all the departments of government, from which a demand for information can present itself—each of them *with* right of *speech* and *motion*—but in every case *without vote:*—this is what is there proposed.†

Decompose thus in idea the existing practice, though as yet it never has been decomposed in practice. Perform this operation for yourself, gentle reader, if so it be that your habits and faculties are suited to the task—suited to the performance of the operation; or, at any rate, to the conception and remembrance of the result of it:—if not, turn, at any rate, from this section; else, nothing that you will see in it can be otherwise than misconceived.

Let there be no mistake. By nothing that has here been said, or will be said, is any such foolish insinuation meant to be conveyed,—as that, to the possession of an office under the crown—accompanied with any such mass of profit as shall be found adapted to the nature of it,—to the possession of any such situation, when considered by itself, any mark of reprobation ought to be annexed. To the case in which it operates with the effect of a bribe—a regularly repeated bribe—to this case, and to this alone, is everything which has been, or will be, said of *offices,* in the character of masses of the matter of *corruption,* meant from first to last to be applied. No:—considered in its own nature—considered even in any connexion, other than that of the sort here in question—*office* is no more a bad thing than *money* is a bad thing. Censure passed on office thus connected, is no more a censure passed on office at large, than censure passed on a murder committed for the sake of money with a knife, would be a censure on the use of money or on the use of knives. Considered in this point of view,—and independently of the particular connexion here pleaded against,—as it is with any one office, so is it with every other:—to no part of the official establishment—whether among those parts in which the office is in the gift of the monarch, or among those of which the patronage is in any other hands;—neither to any such part, nor to the whole taken in the aggregate;—has anything which is here said been ever meant to have any application.

If the sitting in perpetual judgment over the conduct of the several functionaries, possessors of offices in all the several departments of government—if this be not of the number of the functions properly belonging to, and, in show at least, exercised by the Commons House,—what other functions are there that can be said to belong to that same House? If, in so far as exercised with propriety and effect, this function of the House has not its use,—to what good use, with what good effect, can its other functions—all or any of them—be exercised?

In the situation of those functionaries, who, under the official name of *judges,* are judges and nothing more,—an incident which of necessity has sometimes happened, is—that, of a suit, in which one of these judges has been a party, being instituted and carried on in a judicatory in which his seat on the bench was situated;—of course, when the cause has come to be heard, he has been anywhere but upon that bench. What would his brethren—what would the bar—what would the audience—what would the public—have thought and said, had he staid and voted there? If, in a word, the *judica-teipsum* principle—the principle brought to view by Blackstone, for the purpose of condemnation—and illustrated by the story of the sinning and repentant pope, who, in virtue of a sentence passed by himself upon himself, was burnt alive,—were, on any of those seats which are called *benches,* realized?

In the situation of any one of the *twelve,* say rather of the *fifteen* superior judges,—on the occasion, though it were of but one single cause, and *that* between individual and individual,—suppose a man convicted of having received a *bribe:*—by bench, bar, audience, public—what would be thought and said of him, as above? By the very height of its improbability (for assuredly few political suppositions can be more improbable,) the case serves but the better in the character of a case put in the way of supposition, for the purpose of argument.

Well—here, in the Commons House—in the instance of every member by whom a political situation of any other kind, under the patronage of the crown, is at the same time holden, this *judica-teipsum* principle, as above explained, is it not exemplified and realized?

In any such instance—on any occasion in which, by any such member, in case of a division, a vote is given—the other situation having either money or money's worth attached to it—the taint of *bribery,* is it in any degree *less* strong upon the case of such member, than if a bank note—say of a hundred pound—had but just before been received by him?—received, under an engagement, "*implied,*" or (if Mr. Speaker pleases) "*express,*" that such or such should be the direction given to his vote? Oh no: it is abundantly *more* strong; for, in the section in which the comparison has been made between *bribery* and *terrorism,* this has been shown already. At any time at which a quarter's salary is put into his hand, the effect of it in the way of seductive influence,—is it in any degree *less* than that which would be produced by money to the same amount put into his hand (suppose him not in *that* or any other office,) under a stipulation—*implied* or *express* as before—that during the next ensuing quarter, on every occasion on which a vote should come to be given by the Cabinet Ministers,—such of them as were in the House,—his vote should be on the same side with theirs? *Less,* did I say? Not it indeed; but much greater. Why? *Answer:* Because,

in the case of a *bribe,* so called,—the amount of it, being on each occasion *fixed,* is on each occasion *limited:* whereas, in the case of the bribe *not* so called—of the bribe received under the name of *salary* attached to an *office,*—though that *one* office and no other is in the man's *possession,* yet in *prospect,*—by the side of it, beneath it, and above it,—each with its emoluments, is a cluster of other offices—a cluster boundless in number and value—for self and friends.

In the highest—in the most comprehensive—in the in every way most important seat of judicature in existence,—in the judicatory in which the lives and fortunes—the everything—not of A and B only, but of all the inhabitants of the whole empire—not to speak of those of almost all other countries on this globe—are, day by day,—if not actually at stake,—liable to be at stake, in the exercise given to its powers,—do the men in question,—in a number, on almost every occasion, capable of deciding the part taken by the whole House, and thence by the whole Government,—as often as the conduct of the partnership to which they belong is called in question, sit and act, each man as judge in his own cause: each of them, in respect of every vote he gives (I speak of those who to their seats add offices of emolument, from which they are removable at the pleasure of the crown,) each of them tainted with the matter of *corruption;* and *that,* as hath been shown, in a form, in comparison of which *bribery* is purity.

Suppose this told of a foreign country:—with what horror would not the state of government in that country be regarded! with what commiseration that of the wretched people!

Think then of the American United States!—think of the sentiments with which, on so many accounts—and on none more particularly than on this account—the condition to which *we* are doomed, cannot but be regarded by a citizen of those happy States!

Storm of indignation in the breast of Honourable Gentleman:—at this page, should his patience have lasted him thus long,—down, not improbably, goes the page on the floor, and then the foot upon it. Never but of one complexion—and that the purest—are his *conduct,* his *intentions,* or his *motives. Self-regarding* interest—the *motive* corresponding to that interest—the sort of motive, on the general predominance of which over every other the whole species is continually dependent for its very existence,—never for any such sordid motive can any place be ever found in so honourable a breast.

A hundred to one,—for want of the habit of examination, no tolerably clear conception has he, on any occasion, of the *springs of action* by which his own conduct is determined: no tolerably clear conception of anything that is passing in his own mind.

On the present occasion,—supposing him able to endure any such task, as that of forming a comparative estimate of the degrees of mischievous efficiency, as between *corruption* in the shape of *bribery,* commonly so called, on the one part, and *corruption* in the shape of *place-holding* and *place-hunting* on the other,—in the

following queries he may perhaps find some assistance, while occupied in that more instructive than pleasant process:

1. Whether, if on any occasion, in effect or in intention, the measure brought upon the carpet by the minister be *mischievous,* or the measure opposed by him *beneficial,*—in which case his opposition, in so far as effectual, is mischievous,—whether, in any such case,—for securing, as far as depends upon votes in that House, the production of the mischief,—any means more effectual than the sort of arrangement in question could be devised?

2. Whether, in the case of punishable bribery,—the bribe being either in possession or in prospect,—the *connexion* between the desired *end* and the criminal and punishable *means,* can, in any degree, be *closer* than—or even so *close* as—in the present case?

3. Whether, by the *impunity* which in the bribery case has *not* place, and in this case *has* place, the *strength* of the temptation, or the *probability* of its being yielded to, is diminished?

4. The like questions, with regard to the *ignominy* and *reproach* which in the case of the *bribery* have place,—and which in the present case find their place occupied by *honour* and *respect;*—at any rate in the breasts of the custom-led and unreflecting multitude?

5. Whether, in the case of the *bribery,* the quantity of the *matter of good,*—operating, whether in the shape of money, money's worth, or any other shape, in the character of matter of corruption,—is not *fixed,* and by being fixed, *limited?*—and whether,—to the quantity of that same precious matter, in the shape of *offices* and so forth, capable of being held by himself, or by connexions of his of all sorts and sizes—relations, friends, dependents—in countless multitudes—held by the side of him, underneath him, and above him—his own situation being, at the same time, compared with the moment at which a bribe in the ordinary form is received, a *permanent* one,—and, unless it should please him whose place is above all a perpetual one—whether, to the quantity of this same seductive matter there be any determinate limits? whether, compared with that of a mass of the matter of corruption, applied and received in the shape of a *bribe* commonly so called, the seductive power of a mass of that same matter, in the shape here in question,—in the eye of imagination, inflamed as it is by desire,—be not as infinity to one?

6. Whether, in the connexion which thus by positive institution has been established between the *public mischief* and the *private benefit,* there be any the smallest public use?—the smallest public use,—or, except the creation, preservation, or increase of the public mischief, any other assignable intended use or effect than the production of the private benefit?

7. Whether, if in any of the imputations here attached to the monstrous conjunction in question—the conjunction of the perpetually accountable situation with the situation to which account is perpetually rendered—whether, if in any of these imputations there be anything really grievous to the feelings of any one to whom they apply, there

has ever been a time at which it has not been in his power to rid himself of it?—and whether there has ever been a time at which it has not been in the power of the majority of those who find their profit in the monstrosity, to rid the country of it?

8. Whether, when, in a case of imputed delinquency, all other evidence, and that sufficient, is against a man,—any other resource be left to him than the vehemence of the protestations by which he makes assertion of his own innocence?—and whether, from any such vehemence, the probative force of such his evidence receives in the eye of reason any increase?*

Suppose a prize offered, for him, by the fertility of whose imagination that political arrangement should be proposed, which, with a view to justice and public utility, should be most flagrantly flagitious;—to any purpose but that of corruption and misrule, the most grossly and palpably absurd:—could any *other* be found capable of making a match for *this?* Oh no: not although every man who ever gave himself to politics were to employ his whole life in the research. Suppose such a prize offered,—would all the poetry, added to all the oratory of the right honourable the president of the board of controul, suffice him to win it?—No, not even though the Quarterly Review and British India were left to themselves, and the whole mass of his powers concentrated upon this one object.

A constitution, with this poison—slow, but not the less sure—in the bowels of it! Rotten, even from the time that this poison was injected into it, must have been the Matchless Constitution,—rotten at the core—and, of such rottenness, what we are now suffering is among the fruits.

As a match for *Utopia,* suppose a *Cacotopĩa* discovered and described,—would not filth in this shape be a "*fundamental feature*" in it?

For fear of the influence of the crown in a relatively subordinate sphere,—judges forsooth in certain courts—though in certain courts only—judges, in courts where *four* of them sit together, though not in the court in which the powers of all four are condensed into one breast—judges in these relatively subordinate situations, fixed firmly on their benches,—while on the benches on which the fate of these men and all others depends,—the judges, on whom the whole of the business depends, are thus kept—kept for ever—in a state—not only of dependency, but corruptedness! Behold here another gnat strained at, while camels and cameleopards are swallowed.

Search the whole fabric through, where will an end be found to this tissue of hypocrisy:—to this mixture of sham securities and real mischiefs—of sham securities provided, and real mischiefs fostered?—*efficiency* to bad *purposes,* coupled with *inefficiency* to *good* ones?

Hypocrisy? Yes: over and over. Can any hypocrisy be more shameless—more transparent—than that which is manifested in marking *bribe-taking* with *punishment,* and, as far as may be, with *infamy,* while, in the person of a so-styled representative of the people, place-holding under the crown is held in honour? The *place-holding* held in *honour!*—Why? Even because the corruptors and the corrupted—the bestowers and

the receivers of the matter of corruption—have need that so it should be. *Bribe-taking* marked with punishment and with infamy!—Why? Even because the corruptionists,—by whom the matter of corruption, together with the impunity and the honour, is given and received in that other—in that wholesale and so much more profitable shape,—have no need of it in any such petty and retail shape. By vituperating it in the shape in which it is of no use to them, men think to earn—and, if they do earn, it is without expense—the praise of virtue: of that virtue, the vice opposite to which has taken such full and never disturbed possession of their practice and their hearts.

Limit the number of those pretended representatives of the people? of these real representatives of the monarch? Limit the number of those public trustees into whose hands, as sure as quarter-day comes, the bribe by which they are hired shall be paid? Limit the number of those men who, on the bench of justice, as often as they become malefactors, shall sit in judgment on their own conduct and that of their accomplices? Well: when, for the purpose of this limitation, a bill is ready for passing, tack on then to it a *rider,* limiting the number of street-prostitutes that shall be employed as teachers in any boarding-school for young ladies.

Once upon a time, and once only,—into one of the plans of *moderate* reform, peeped (it will be seen)—and with congenial modesty—a proposition for a limitation to this effect. Once, and once only: nor does it appear that, on that one occasion, a proposition so daring—so innovational—so Utopian—so near to Jacobinical—found any one to second it.*

Oh blessed Constitution!—that in which (for of this you will find men ready to assure you) *business could not go on,* unless, in this way, delinquents—and those upon the largest scale—were judges in their own cause! And thus it is that, in the mind of every man who thinks, *impeachment*—the sole legal remedy against misrule—has been blotted out of the list of remedies.

Give me a place—give me a peerage—give me court favour: I will pocket £10,000 of the public money—I will confess I have done so,—and with honour on their lips—proclaiming each man his own honour—noble lords shall declare me innocent.

Oh Matchless Constitution!—And so, in this Matchless Constitution—such is the nature and virtue of it—business could not go on,—unless, besides being judges, each one of them in his own cause, those by whom everything is done, were not—every one of them—throughout the whole course of his service—corrupted: corrupted in a mode of corruption beyond comparison more effectual and more mischievous than that of bribery!

Look now to the United States!—look to the General Congress! See whether, in that head seat of democratic government, corruption in any such shape is in any instance to be found. What! does not business then go on in Congress?—in Congress, where, in the very last year that was, there was a *surplus* to the amount of a *fourth* of the year's income, instead of a *deficit,* as *here,* to the amount of a *sixth*?†

Take the heir-apparent of a *duke*—(alas! poor duke!)—take him, and, having seated him in the House of Commons, put him into a coloured sinecure, to serve as a substitute to an automaton for signing papers: his hand to the papers; the *will* by which it is directed, together with the *judgment,* such as it is, that belongs to that will, safe lodged all the while in another place. In this one picture behold the anti-jacobin *triad—Waste, Corruption,* and *Oppression: waste* made of the *salary; corruption,* the purpose it is applied to; *Oppression,* the channel through which for such purposes it is extracted. Behold the lauded *preparatory seminary* for the training of young nobility to business: behold a training school for young nobility, in the true *anti-jacobin* style: behold in the *triad* the true and everlasting object of *anti-jacobin worship:* behold now the *regius professor of piety* in the Honourable House: behold him—should any such blasphemy as this assault his eyes—behold him rending his heart—not at the sight of the *waste*—not at the sight of the *corruption*—not at the sight of the *oppression*—but at the allusion which, with the help of Mr. Attorney-general, he will have descried: the allusion made to a something more sacred than the Bible—to a substitute, which, with all-embracing, and blessedly efficient, orthodoxy, is put into the place of that old-fashioned miscellany—a substitute which, in the Established Church of *Scotland,* a man would no more rend his heart about, than in the Established Church of *Morocco.*

Reader, is the language here too warm for you? Turn to the *Plan* itself, there may you find the substance of it in as cool a state as the coldest heart can desire.

In any language—warm or cold—let him, who thinks he can, produce an answer to it.

Look once more to the United States:—see—whether, in that seat of democracy—of representative democracy—where swinish rulers are chosen by swinish multitudes—see whether, in that seat of illegitimate incorruption and good government—any such monster is to be found, as a man constituted judge—perpetual judge—in his own cause?

Oh blessed Constitution!—a constitution in which it is become a fundamental principle—*become,* I say—for for centuries it was otherwise* —that, among those who rule, there shall not be a man who is not judge in his own cause! Can it be matter of wonder, that among men thus self-qualified for the function of rendering justice—men,—in whose instance the sacrifice of *universal* interest to *particular*—of *social* interest upon the *largest* scale to *self-regarding* interest upon its own narrow scale—of *duty,* in a word, to *interest,* is matter of constant and universal practice—should not be to be numbered among those who are given to change?

And in this state is the Constitution, which in this very state, on pain that shall follow, we are called upon and forced to love!

Say, Mr. Wilberforce, how long shall a state of things like this be looked upon with no other than a smiling and admiring countenance? How long shall *reform,* and not *abuse,* be the object of all fears? When immorality is thus operating—operating upon the largest scale—say, what in this world is *religion* good for, if, instead of a *check,*

immorality finds in it a support?—if, instead of a support, *morality* finds in it a *substitute?*

The man who, with open eyes, lauds the constitution with these sins in it—sins circulating in every vein, and tainting every fibre—the man who, with open eyes (and your eyes,—have they not had time to open themselves?) lauds and cherishes all these sins, say, where is the sin among them all, of which the guilt does not lie upon his head?

Sad—oh sad condition of human nature! Conceive, if you can, the enormity so atrocious, that, so as this one circumstance be but superadded to it,—viz. that of its having been habitually practised—practised with impunity by men in power, and under the protection of the law—will not, if by any strange accident exposed and complained of, find in that quarter a host of inexorable and indignant supporters and defenders—in that of the suffering multitude, alas! with how few exceptions!—so many indifferent and incurious observers, if not prostrate venerators! Presented at first in its true colours, and by its proper phrase, it would not perhaps have gained acceptance: presented in an improper phrase—dressed up in false colours—it passes without objection,—and, for ages after ages, the country is tormented by it.

Ah! when will the yoke of *Custom*—Custom, the blind tyrant, of which all other tyrants make their slave—ah! when will that misery-perpetuating yoke be shaken off?—when, when will *Reason* be seated on her throne?

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SECTION XIV.

UNIVERSAL CONSTANCY OF ATTENDANCE—ITS IMPORTANCE.

I.

Plan Of This Section.

Actual state of things in respect of attendance:—Mischiefs from non-attendance, viz. 1. In respect of moral aptitude; 2. In respect of intellectual aptitude; 3. Mischief by securing greater attendance on the corrupt side.—Interests, by the play of which, the numbers in attendance are determined.—Inconsistency as between the licentiousness as to this point in this situation, and the comparative strictness in other public situations.—Remedy from any exertions of individuals impossible—but by reform, the disorder incurable; the constitution already subverted by it.—Abdication, whether not more truly predicable of Honourable House than of James the Second.—The incurableness of the disorder, and the consequently incurable corruptness of Honourable House, declared by *Hatsel,* chief clerk of the House.

Such are the sub-topics, under which the matter of this section will be found.

Mischiefs *individually seated*—mischiefs *collectively seated:*—to one or either of the two heads thus distinguished, will be found referable whatsoever mischiefs can be seen flowing from this source.—Mischiefs *individually seated*—those of which, the seat of them being in the character of the individual individually considered, the nature may be understood from and exemplified in the effect produced by them, in the case of any one such individual:—mischiefs *collectively seated*—those of which the *seat* cannot be found in the state and condition of any individual, individually considered; but of which the *source,* as well as the *seat,* will be found in the state and condition into which the whole House, taken in the aggregate, will be seen to be put—put by the use made of the habit of individual delinquency in this shape, in the character of an instrument of public mischief in a variety of shapes:—an instrument of *packing,* employed in the art and mystery of political *packing,* as applied—to the securing on each particular occasion, out of the mixed mass, a predominant proportion of corrupt matter in the composition of the assembly—and to the use made of corrupt measures—not only of each of them, individually taken, considered as applied to its own particular corrupt purpose,—but of all of them, collectively or separately, considered as employed in serving as instruments of *extension,* for the keeping out of uncorrupt ones.

Confined to the individually seated part of the aggregate mass of mischief flowing from this source, may be seen to be the slight view of it given in the *Plan* itself, as well as in the general sketch given of the system of Radical Reform in Section V. In

the present section, that more complex part, here styled the *collectively-seated part,* will, according to the intimation above given, be taken up and laid open to view.

II.

Actual State Of Things In Respect Of Attendance.

Instead of being what it is pretended to be—a check upon the power of the monarch, the power of the *Commons House* an instrument of misrule in his hands—an instrument by which he has been enabled to sacrifice, and accordingly has sacrificed, the universal interest to a cluster of particular interests, of which his own personal interest is at the head. Behold, in this state of things, the mass of abuse, to which it is the object of parliamentary reform to devise and to apply a remedy—an appropriate and adequate remedy. Among the requisites for the accomplishment of this object, is the detecting and holding up to view in its true colours, every particular abuse which shall have been found to enter into the composition of the aggregate mass—every *arrangement,* every *custom,* which, in the character of a co-operating cause, may be found contributing to the production of the disastrous effect. In the instance of such of the component abuses as have as yet been brought to view, notorious in general has been not only the existence and the nature of the abuse, but, to a considerable degree, the *extent* to which it has place. In the instance here in question, the *existence: yes;* and in some measure the *nature* of it. Not, however, even *this* entirely:—not, assuredly, in all their magnitude and variety, the *evil consequences:* and, as to the *extent* to which it has place, information on this head—information in any tolerable degree adequate—is a treasure that remains yet to be dived for, in the ocean in which it lies drowned.

For the taking and presenting of a clear, a correct, and complete view of the state of the House in this respect, during a given period—say from the commencement of the present reign—the following present themselves as the heads under which matter should be collected. Sources of information, the *journals* of the House, the votes of the House, and such accounts as are extant of the *debates:* accounts, of the *incorrectness* of which, supposing them in this or that instance incorrect,—any more than of their *incompleteness,* supposing them incomplete, as, unless by accident, they always are—no member can have any moral right to make complaint, until he has done whatsoever may be in his power towards the removing, in the one only way, the inconvenience in those its two distinguishable shapes:—

1. Number of *days* on which, in the course of each *year,* the House was sitting, and, in it and by it, *business,* in some shape or other, accordingly *done.*

2. Number of *days* in which the *Speaker took the chair;* but, for want of the requisite number of members (viz. forty) business could not be begun upon:—whereupon, the hour being arrived, adjournment took place of course.

3. Number of *days* in which, business having been begun upon—the requisite number of members present therefore complete—so it was, that by the departure of members,

a deficiency in the number present, as compared with the number that should be present, having been produced, and notice publicly taken of it,—the business was stopped, and an adjournment thereupon took place of course.

4. Number of *days* in which, a deficiency having as above taken place, the business went on notwithstanding; the Speaker sitting all the while and beholding the deficiency, but no other member standing up to notice it.

5. Numbers of the *members* on both sides, on the occasion of the several *divisions* which on the several *days* took place. The list of these divisions, with the numbers, being rendered as complete as may be,—then will come to be made a selection of *two* contrasted classes of cases:—*one,* in which, the *importance* of the question being in a remarkable degree *high,* the *numbers* were in a remarkable degree *low;* the other, in which, the importance of the question being in a remarkable degree *low,* the *numbers* were in a remarkable degree *high.*

6. *Calls of the House*—numbers of them in each year: with the numbers in the respective *divisions,* if any, which took place on the days respectively appointed.*

Remain two other topics, in relation to which, any information, supposing it attainable, could not fail to afford additional instruction; but of which, so far at least as regards *time past,* the attainment presents itself as hopeless, unless possibly in a very small number of instances.

7. On the occasion of each division, numbers absolute and comparative of *place-holders* and non-*place-holders.* From a document of this sort, what would be shown with certainty is—the number of the individuals belonging to one species of the genus *corruptionist,* viz. *corruption-eaters:* but, under the species *corruption-hunters,* no precise number of individuals could ever be distinguished; under the influence of the ever-attracting, and scarcely-resistible, *cocagne* above spoken of,—the difficulty would be, among the whole remainder of the numbers voting on this side, to find so much as the single individual, who did not appertain to this latter species, and thence to the genus in which it is included.

8. Number of members present at the time of the *division,* compared with the numbers present at different portions of the length of time employed in the debate. In ordinary tribunals, the two operations—*oyer* and *terminer*—being expressly included in the same commission, and *oyer* being regarded as forming a useful, not to say a necessary, preparative to *terminer,*—he who performs either of them, performs both: in this extraordinary tribunal, not inconsiderable (as everybody knows) is the proportion of those distinguishing more than distinguished Honourables, who, regarding *oyer* as a useless formality, come to the *terminer* at once: by which principle of dispatch, a proportionable saving of *time* is effected. *Quere:* on the occasion of each division, the number of these economists, and the quantity of the saving effected by each?

III.

Mischiefs From Non-attendance:—Mischief 1. *Mischief In Respect Of Moral Aptitude.*

Only by regard for regularity is produced the mention made of this topic in this place. In the Plan itself, may be seen how, in the licence given to dereliction of duty in this shape, is contained a *sub-licence,*—by which, without danger of shame or reproach in any shape, every man is empowered, within any given space of time, to produce exactly half the effect which, within that same space of time, could have been produced by an uninterrupted series of votes, given by him in support of a series of measures, not only corrupt but scandalous: so scandalous, and *that* to such a degree, as that,—whatsoever had been his wishes,—had he been present, he could not have prevailed with himself to abstain from voting in opposition to them in every instance.

IV.

Mischief 2. *Intellectual Mischief—Deficiency In Respect Of Appropriate Intellectual Aptitude, And Appropriate Active Talent.*

Probity being supposed not deficient, principally upon appropriate *intellectual aptitude* depends the propriety of the direction given, on the several occasions, to a man's *vote:* in the case where it is not with himself that the measure has originated, principally upon appropriate *active talent* the aptness of the matter of which his *speeches* are composed: in this case, certain it is with himself that, singly or in conjunction with others, the measure has originated, on *intellectual aptitude,* as evidenced by the choice made of that same measure, and of the more particular measures, if any, including the occasional penning of written instruments—for example, *motions, resolutions,* and *reports* of *committees*—which, as being subservient to it, are included in it: but upon *appropriate active talent,* in another shape, depends the matter of those several instruments.

That, in respect of these two so intimately connected elements of aptitude, a general and predominant state of *inaptitude* is among the natural and naturally unavoidable effects of the whole system taken together, is a matter which, in some sort, has already been brought to view. On the one hand, necessity of *hard labour,* in both these elementary shapes, to *aptitude* in the aggregate shape in question; on the other hand, *exclusion* put upon the *hard labour,* and thence, upon the *aptitude,* viz. by *rank* and *opulence:*—of rank and opulence together, the effect being to put a man already, and even to a greater amount, in possession of that sort of consideration which, but for these unmerited advantages, might, in the character of an adequate reward, have sufficed to extract from him the exertions necessary to furnish his mind, and in sufficient quantity, with those same endowments. By rank, opulence, or connexion, is a man put in possession of this office: by the pride, joined to the indolence derived

from the same sources,—is he, in respect of the endowments here in question, more or less disqualified from the exercising, with any benefit to the universal interest, the power attached to this most important of all offices.

Of these three modes of entrance into a seat, *connexion* is that by which the greatest chance for any tolerable stock of these endowments is left. Why? Because, in the instance of a *patron,* rendered such by proprietorship, or by terrorism,—what here and there will happen is—that, on failure of all persons connected with him by natural relationship, some person or other shall, by the possession, or reputed possession, of the endowments in question, in a degree more or less distinguished, have been recommended to his choice.

In this state of things,—to men seated by *connexion,* with the addition of men seated by *profession,* but in a more particular degree to the latter,—of these two intellectual endowments will such stock as is to be found in Honourable House be, generally speaking, almost confined: at any rate, small indeed, in proportion to the whole number (658,) will be the number of those in whose instance, otherwise than in company with the one or the other of these two marks of distinction, any tolerable stock of these endowments is found discernible. In that House, the term *conntry gentleman,* is it not a sort of by-word?—is it not commonly regarded as presenting, in one word, the idea of a sort of character, compounded of mental indolence, mental vacuity, and mental weakness?

In those two quarters, then—*connexion* and *profession*—in these two quarters are the two intellectual endowments in question almost exclusively looked for.

Well: and in those same quarters suppose them found,—what is the consequence? The universal interest, is it by this means benefited? On the contrary, much more probably is it injured. Only in so far as these two *intellectual* endowments are in the same breast united to the one moral one—only in so far as they are united to *appropriate probity*—will the *universal interest* receive from them any net benefit:—only on the terms of this auspicious union, will it so much as escape the being sacrificed. But, the higher the degree in which, by the individual in question, they are possessed, the higher will be the price which, at the constantly *overt market,* of which C—r-General is *clerk,* they will fetch: the higher the price, the higher the temptation, and the less the probability of resistance.

In this state of things—the promiscuous multitude being by intellectual weakness prepared for the reception of mental poison—the select few, by sinistrously-derived strength, for the injecting of it—observe what will be the effect of the cluster of arguments, comprehendible under the common appellation of the *argumentum à superficie ad superficiem*—arguments from *surface* to *surface*—appositely employed. Gorged with public money obtained on false pretences out of the taxes—behold a man, whose whole political life has been employed in helping to give increase to waste, corruption, and the consequent oppressions,—summoning up, when the time comes, all his powers, to the duty of guarding this complication of disorders against the only remedy: and the history of any one such individual is the history of a class. *Quicquid recipitur, recipitur ad modum recipientis*—says a maxim of the old-school

logic:—a maxim in which more instruction is contained than can often be obtained from any such musty source. Of whatsoever is received, correspondent to the constitution of that by which, or him by whom, it is received, will be the effect. On a mind prepared by sound and manly instruction for the resisting of it, poison such as that would have no effect: but those with which it has to deal, are minds that, by want of instruction, or by such instruction as is worse than none, have been prepared for yielding to it: instruction, by which the whole duty of man is summed up in the "prostration of understanding and will" at the feet of a set of men, tied by every bond that corruption can devise, to those habits of self-blinded partiality, with which all prudence and all justice are equally and utterly incompatible.

The more attentively the stock of evidence, which the nature of the case, and the existing state of things, affords, is looked into,—the more clearly will the operation of the above causes of inaptitude be seen exemplified, and their efficiency demonstrated.

Look at the debates: yes, and if to such a degree your patience will suffer you to draw upon it, look *into* these same debates.

To so prodigious an extent, not only no mark of active talent, no mark of intellectual aptitude—but, on the contrary, proofs, and, how deplorably abundant!—and that on the most important occasions—that of no such part of man's frame as the *intellectual,* has any use been so much as attempted or endeavoured to be made. In the *volitional,* with the passions and affections by which it is put in motion, in the volitional and sensitive parts alone, are any marks of exercise discernible. Vituperation—in the strongest as well as most unqualified terms that passion can supply,—vituperation, altogether unaccompanied by indication made of any specific grounds for the opinion, or pretended opinion, thus involved in, and indirectly expressed by it—such, with the addition of more or less of the matter of trivial *fallacy,* in its several shapes, of which a list might be made out,* —is the matter, of which in general—and in a more particular degree on the occasion of the great topic here in question—speeches, honourable and right honourable, may be seen to be composed. With a degree of energy, proportioned to the dangerousness of the disease, and the salutary efficiency of the proposed remedy *wild, visionary, impracticable,* mischievous, and so forth,—are the imputations cast upon it,—gross ignorance, conjoined with mischievous madness, the attributes ascribed to the authors and supporters of it.

By the barking of a dog—by the screaming of a parrot—might as much light be seen thrown upon the question, as by this or that speech (and by how sad a proportion of the whole number of speeches!) reported—and for the most part to no small advantage—as having issued from the lips of honourable gentlemen, right honourable gentlemen, noble lords—not to speak of noble and learned ones. By the votes of those and other inferior animals, is indication given of the state of *the will* and *the affections:* by the speeches of so many unfeathered bipeds, by whom such large draughts are drawn upon us for our respect, and so much sufferance brandished over our heads in the character of punishment, for the purpose of extorting from us that sentiment, or at any rate the outward show of it,—by these speeches, is the state of that same faculty, and of those same affections, expressed and indicated: affections as pure from all admixture of reason, in this case as in those others.

Let not what is thus said be misconceived. Not to any such effect as that of weakness in argument does the indication here afforded mean to point. No: it is merely to the utter absence of all argument—of everything which, on the individual by whom it is uttered, could have passed for argument. Opinion, ungrounded opinion—this is what we have from them: nor even *that* in its own shape, but disguised in the garb of a mere expression of *will,* mixed with that of the passion which produced it. And this passion,—with what sort of expectation is it manifested? Even with this, and this only:—such is the height and weight of the authority of the orator, that by the mere perception of his supposed *self-formed* judgment, will the desired direction be given to the *derivative* judgments, of all those by whom that perception has been obtained.

From what cause, then, this expectation? Oh, from this cause: not only *probity* but *wisdom* are among the appendages of *rank* and *opulence:*—to him are known to belong these primary and only essential requisites—therefore so of course do those derivative appendages: from the very causes of his inaptitude does he derive the assurance of his aptitude. Idiosyncrasies apart, a man of *twenty thousand* a-year will accordingly speak with twice the persuasive force of a man of but *ten thousand* a-year: a man who is everlastingly noble, with some number of times the force of one who is but honourable. Such is the expectation of the man himself: and unhappily—such is the force of inveterate prejudice—neither is that expectation by any means so groundless as it is to be wished it were.

V.

Mischief 3. *Mischief By Securing Greater Attendance On The Corrupt Side.*

A matter, which henceforward should be never out of mind, is—it is only on the supposition of the existence of a number of members, in whom,—in a degree adequate to the placing of their votes on the several occasions on the proper side,—the several elements of appropriate aptitude are combined,—and these on each occasion in a number sufficient to the outnumbering of such of the members as, by sinister interest, by interest-begotten prejudice, by indigenous weakness, or by adoptive prejudice, are stationed under the dominion of C—r-General and Co.—only on this supposition can any such copious attendance be anything better than an object of comparative indifference.

On this supposition, here once for all brought to view—on this supposition, as in the character of a necessary basis, must be considered as grounded everything which in the course of the present section remains to be said.

In the present state of things—and, in a word, under any other than what is looked for from the proposed radical reform—the existence of any such majority on the side of uncorruption (unless it be on this or that extraordinary occasion, on which,—in the minds of the several corruptionists, in sufficient numbers—whether *corruption-eaters,* or but *corruption-hunters,*—it happens either to some particular interests of their own, or to their share in the universal interest, to operate with such a force as for the

moment to overbalance the force of their partnership share in the corruption concern)—any such superiority of numbers on the side of uncorruption, presents itself as being,—even on the supposition of the most perfect and universal constancy of attendance,—altogether hopeless. Thence the demand for the *other* proposed articles in the system of reform;—for, supposing this single one adequate to the purpose of securing the effect desired, the advantages expectable from reform would, in so far as concerns *virtual universality of suffrage,* be reduced to those above distinguished by the appellation of *collateral:* and these and all the others put together might, upon a fair account taken, be found scarcely sufficient to compensate for the evils of change.

But, when the state of interests comes to have been fully seen into, what amongst other things will be seen is—that scarcely would the repugnance produced by all the other articles put together, exceed that which this single one would of itself be sufficient to produce: and that, by no instrument of less cogency than that composed of the system of radical reform taken in *all* its parts, could abuse in the *one* shape here in question be excluded.

Another memento, which in this place it may be of use to give, is—that the state of things, the existence of which is, on the occasion, and in the course of the ensuing observations all along assumed, is—that the course of action, to which, on the part of the servants of the crown, the particular mischief here in question—the established course of transgression—is rendered subservient, is more or less mischievous. Why? Because the effect of it is—to secure to their measures, be they what they may, an undue advantage: an advantage, the property of which, on each occasion, is to be of no use but to the wrong side as such; and not to be capable of being reaped, but through the instrumentality of that mass of seductive influence, which has been shown to be in their hands.

Follows now an indication of the *collectively-seated* portion, of the mischief produced by the habit of non-attendance in its present shape; and an indication of the sinister interest by which that habit is put to use and fostered.

Too manifest to need explanation or comment is the sinister interest which the ministerial leaders have, in the absence of members whose votes,—together with their speeches, if any,—would have operated on the opposite side.

Sinister interest *of the day*—sinister interest of *the session:*—in the sinister interest here in question, these two branches may be distinguished.

The sinister interest of the *day* is that which regards the business of the day: the fewer the adversaries present, not only is the victory the more assured beforehand, and the more signal afterwards, but the time consumed in making, hearing, and answering speeches, and the labour in making and prompting speeches, is by so much the less.

In respect of neither of these sinister interests would the habit of absentation be of use to C—r-General and Co. if the number of absentees were as great in proportion on his side as on the opposite side. But of this there is never any fear: the means, viz. the sinister influence which they have in their hands, being adequate—not only to the

purpose of securing conformity in case of attendance,—but, for the purpose of such conformity, adequate moreover to the more difficult purpose of securing attendance.

True it is, that in this instance as in most others, whatsoever the ministerial side for the time being has in *possession,* the opposition side has in prospect. But in this case, between *possession* and *prospect* so mighty is the difference,—that, compared with so substantial an instrument of compulsion as that which the ministry have in their hands, that which the opposition leaders have in theirs is but little better than a phantasmagoric image of it.

In the sinister interest of *the session,* note moreover two distinguishable branches: the *efficient* or *effective;* and the *preventive* or *defensive.*

First, as to the *efficient* or *effective* sinister interest: it consists in the increased *facility,* as well as *certainty,* given to the adoption of all such measures as it may be the wish of the administration to see carried into effect. As the *session,* and along with it the season, advances, the attractions of the town diminish; those of the country increase. The *motives* or *inducements,* by the force of which *absentation* is produced, gain in strength; and the number of the individuals, in whose instance they are preponderant, receives continual increase.

If the diminution of numerical strength produced by the operation of this cause were the same on both sides, no such sinister interest as that in question, would have place on the ministerial, any more than on the opposition side. But, for a counterpoise to the force of this cause of absentation, the ministerial side has a power, of which their adversaries are destitute. With the highest degree of efficiency, as above shown, the cabinet ministers command the attendance of the removable *corruption-eaters* of the inferior classes, as also the *corruption-hunters;* and this with a degree of efficiency proportioned to the estimated value of their respective possessions and prospects.

Of the nature of the *defensive* or *preventive* interest, some intimation is already given by the name thus employed for the designation of it: by the same cause by which certainty and facility are given to their own enterprises, certainty is given to the defeat of all adverse measures on the other side. *Of all adverse measures?* "Good," says somebody; "but what *are they,* these measures, which, with reference to the side *in question,* come under *the denomination of adverse* measures?" *Answer:* All measures whatsoever: measures *directly, or specially* adverse—measures *indirectly,* in a *general* way adverse;—by these two adjuncts stands expressed the only difference.—By every measure carried into effect by the adversary,—by every such measure,—be it what it may, if popular, *reputation* is gained; and whether popular or not, *power* displayed. "*There must not be two Chancellors of the Exchequer,*"—is one of the few sayings remembered of *Pitt the second.*

But, whatsoever assurance of ultimate frustration may, in this way, be afforded,—the same periodical cause of flight adds a further assurance from a still more advantageous source, viz. *preventive anticipation,* or *preoccupation* of the House. Partly in virtue of the established rules of proceeding, partly in virtue of the majorities, on the habitual existence of which their continuance in their situation

depends,—the members of the cabinet possessing at all times an all-comprehensive command of the aggregate mass of the business of the House—a command by which are determined, not only the *choice* of the elementary parts to be admitted into that mass, but the *order* in which they shall respectively be admitted,—admittance for the whole mass of *their own measures* is at all times of course secured: admittance to the *measures,* and therefore command of the quantity of *time* necessary for that purpose. This portion being thus sure to them, whatever portion might otherwise be occupied by business not originating in themselves, it is therefore their interest to minimize.

For this purpose *three* expedients present themselves to their hands:—1. One (which belongs not to this head) is the *deferring the commencement* of the session to as late a point of time as possible; in which way, moreover, the interest of the *pillow* is served at the same time with the general interest of corruption; say, *staving off sessions:* 2. Another is—the inserting into the whole length of the allotted period, on as many pretences as can be found, times of *recess* as many, and each of them as long as possible; say, *maximizing recess:* 3. A *third* is—the rendering as large as possible the number of the days in which, by the original or incidental failure of the numbers made requisite to give validity to the proceedings, the carrying on of the business is prevented; say, *maximizing barren days.*

Now then, on every day on which it suits their purpose that the number of members necessary to give validity should be present,—by means of their official *whippers-in,* it is evidently in the power of the treasury to secure, and by circular letters and word of mouth applications they accordingly do secure, the presence of that necessary number: this object thus secured, in the same hands being likewise the legal powers of giving to the whole session whatsoever length it may happen to their purposes to require,—on every other day it is therefore their interest, as above, that this condition to validity should remain unfulfilled, in such sort that nothing should be done. From no barren day, nor from any number of barren days, can the sinister interest of C—r-General be subjected to any loss: because, for any day or number of days thus lost at an *anterior* part of the session, it is in his power to add at the *posterior* part as many as he pleases: at this *posterior* part; that is, at the part at which the ratio of the number on the opposite side to the number on his own side will be less and less.

By a conspiracy on the part of the opposition members, to flock into the scene of action in numbers greater than usual, on this or that particular day, what might now and then happen is—the cabinet junto's being taken by surprise: and in this way it is, that this or that thing might happen to be done, which could not by any succeeding majority be undone: *evidence,* for example, procured, and admission thus given to lights, which could not afterwards be extinguished. To obviate any such inconvenience, a sort of *rule of courtesy* has, with the concurrence of both parties, been established; viz. that no motion of considerable importance shall be made without previous notice. In this rule, however, it does not appear that motions having for their object the procurement of *official evidence* have in general been considered as included: hence an accident which is said to have now and then happened is—that evidence, which, in case of an attendance sufficiently full, would with the most inexorable effrontery have been refused, has by surprise been extorted. One mode of denying justice, and by far the most effectual, is the denial of the evidence necessary

to the obtaining of it: the most effectual,—because by the mere production of the evidence, justice, in so far as depends upon *the tribunal of public opinion,* will frequently be done. *Rule—general,* not to say *universal;* whenever, to a motion for special evidence, denial is opposed,—that denial has self-confessed delinquency at the bottom of it. By *the tribunal of public opinion* it ought to be taken as and for *confessional* evidence, and that evidence conclusive: taken as *conclusive evidence,* and *judgment* as for the utmost possible amount of the thus concealed guilt pronounced accordingly.

In this way,—of the useful measures which otherwise might have been brought to maturity, some are prevented from being brought forward so much as in the way of *motion:* and thus far even *conception* is prevented: others, in the instance of which *conception* has not been prevented, are prevented from being productive of the desirable and desired effect; and in this case, and in this way, *abortion* is procured.

To the quantity of effect produced by those means of *barrenness* and *abortion,* of which, as above, with more or less facility the manufacturing is in the hands of the minister,—is added that of another set of means, neither the existence nor the efficiency of which depend, in any considerable degree, in any direct way, upon any exertion of *his,* but the existence of which, together with that of the system under which they are bred, will of course find on his part a degree of protection proportioned to the service derived from them by his own sinister interest. To this head may be referred—

I. The avocations produced by the *separate,* and consequently, with reference to the public service, the *sinister* interests appertaining to the several professions: viz. those of—1. Lawyers—practising lawyers; 2. Army officers; 3. Navy officers; 4. Diplomatists; 5. Governors and other persons in office, in any of the several distant dependencies.

II. The avocations specially incident to the situation of the members for *Ireland,* taken in the aggregate.

Thus, to each *particular* interest is the *universal* interest made to give way: and, by these particular interests, not only is absentation produced on the part of the individuals, but, in many instances, and to a no inconsiderable extent, not only for the accommodation of individuals, but for the accommodation of a whole professional class, is this or that particular business, or class of business, put off. Thus, by means of *terms* and *arrests,* it having been originally contrived, by and for the particular interest of the *lawyer-class,* that during certain periodically-recurring portions of every year, denial of justice should have place,—so it is, that for the incidental accommodation of this or that individual partner in that separate and sinister interest, the whole business of the nation is moreover incidentally put off. And, forasmuch as in their situation of *corruption-eaters,* among lawyers, the crown lawyers—essentially acting partners in the firm of C—r-General and Co.—are constantly in the number of the members,—while *corruption-hunters* are naturally more numerous on the prosperous than on the unprosperous side of the House,—here may be seen another

advantage, which the great sinister interest of C—r-General and Co. draws to itself from the cluster of lesser interests with which it is surrounded.

VI.

Interests, By The Play Of Which The Numbers Of Members Present Are Determined.

As in the physical, so in this part of the political world, by the conflict and compressure between the *centripetal* and *centrifugal* forces, is, at each instant, the *locus* of the several objects in question determined.

In the physical world have been *observed* physical *attraction* and *repulsion;* to which, by inference and supposition, have been added *primæval impulse.*

In this part of the *political* world, behold as analogous counterparts, analogous to those of the physical world, *moral* attraction and repulsion: instrument of moral *attraction* and *desire, pleasure;** productive of a corresponding *interest,* and operating in the character of a *motive:* instrument of moral *repulsion, pain;*† productive also of a corresponding *interest* and *desire;* and, though in a direction opposite to that just mentioned, operating also in the character of a motive, and capable of operating with much greater force.

First, as to *centrifugal* interests: for, as above, such for shortness may be the term employed for the designation of that class of interests, the force of which, as applied to this part of the political world, operates in a *centrifugal* direction, as above explained: interests, the tendency of which is constantly, and the effect but too frequently, to reduce to the state of *an exhausted receiver* the condition of Honourable House: to produce a *vacuum,* of which, in the case of any receptacle of the *physical* kind, it might not be altogether easy to produce so perfect an example. On the one hand, *miscellaneous* interests—on the other hand, *ministerial* interest—interest peculiar to the ministerial side of the House, but more particularly to the case of such of the leading members whose station is on that side. Of the first operation by which the class of centrifugal interests requires to be divided, behold, in the sub-classes thus distinguished, the two results.

Among miscellaneous interests may be distinguished—on the one hand, interests of *universal operation*—interests incident to all men as *men*—say, for shortness, *universally-operating* interests—on the other hand, interests peculiar to *profession* or *office*—say *professional interests*—interests of the *professional purse;* in some cases, *interests of the counting-house:* and so, in the case of *office, official interests* or *interests of the office.*

For the designation of all or any of these particular interests, in so far as with reference to that portion of the visible business of which the House is the seat, it happens to them to operate in the character of avocations, may be employed the appellation of *centrifugal* or *house-clearing* interests.

To the head of interests common to all men as men may be referred—1. Interest created by the aversion to labour—say interest of the *pillow;* 2. Interest incidentally created by miscellaneous private business—say interest of the *closet;*‡ 3. Interest created by the love of pleasure taken in the aggregate:—the tendency of the sort of interest in question being in this case *sinister,* say accordingly, *interest of the cup of Circe.*

Next and lastly, as to *centripetal* interests:—*house-filling* interests they cannot be styled; for so it is, that on no one day was the House ever filled by them.

But for this or that particular interest, operating in the character of a *centripetal* force—operating in a direction *counter* to that of the above-indicated *centrifugal* force—operating in a direction opposite to that in which the force of the above-mentioned confederacy of *sinister* interests acts, as above—operating in a word, in so far as they are effective, in such sort as to produce attendance,—the House would of course constantly, as in fact and experience it is so frequently, be a desert.

Miscellaneous interests,—ministerial interest:—in this may be seen a division, which, as it has served for the cause of absentation, may with like propriety and convenience be employed for the marshalling of those *counter-causes* by which a limit is set to the operation of the above repulsive cause.

To the head of *miscellaneous* house-peopling causes may be referred—1. The hope of *strengthening* a man's *own interest; i. e.* preserving or raising the man's station in the scale of *public repute:* of public repute, whether on the ground of appropriate *aptitude,* with reference to the situation, or on the mere ground of the *power* and *reputation* dependent on it;—2. Hope of *serving a friend, i. e.* rendering good offices to the individual, or class of men in question; whether through sympathy, or in hope of return in the like shape;—3. Hope of *serving the party,* viz. to which, if to any, for the time being it happens to the individual in question to have attached himself;—4. Hope of witnessing an *interesting* debate: say, in this case, interest of the *amphitheatre.*

"Well:—and in the whole list of the official causes of attendance—in the whole of the entire list thus professed to be made out—is no place to be found for that cause which consists in a sense of duty? Candour! what is become of *candour?* Charity! what is become of *Christian charity?*" *Answer:* By neither of these virtues is *misrepresentation* in any degree or shape prescribed.

If, in any degree capable of being taken into account, any such virtuous motive had place,—658 being the number of the members, in whose instance the *right* in effect, and in name the *duty* of attendance has place,—no such phenomenon as that of the House in the state of a desert would on any day have place. Unhappily, in fact and experience, not a session, perhaps, was ever seen, in which a number of such universally-assumed holidays were not seen to have had place, in that high school of self-licensed truantism and indiscipline.

Among the efficient causes of attendance, remain those interests, the operation of which is confined to the *ministerial* side of the House: those interests, of the operation of which one part of the effect has already been seen under the head of *Mischief* 3—*mischief,* by securing greater attendance on, and greater effect to, the corrupt side.

By the subordinate, as well as the superior official situations, may be seen shared the interest of the *sceptre* in its three distinguishable forms: viz. 1. Interest corresponding to the present *pleasure of power*—pleasure derived from the *present* possession and exercise of power; 2. Fear of losing it, or seeing it decrease; 3. Hope of giving increase, or at least stability, to it.

In the instance of those by which the superior situations—say, for greater distinctness, the *cabinet* situations—are occupied, this interest of the *sceptre* suffices, for the most part—suffices, without any such fear as that of eventual punishment in the shape of dismission—to secure, in a state of tolerably habitual constancy, the fulfilment of the duty of attendance.

In the inferior situations,—but for the wholesome fear last mentioned, insufficient to secure the bearing of this burthen with any tolerable degree of constancy, would be all the sweets of office. Therefore it is, that, for securing the production of so indispensably necessary an effect,—to the general fear of being deprived of these sweets by casualties applying to the whole party, is, and cannot but be, added the special fear of being eventually deprived of them: deprived of them, even by the superior and regularly-protecting hands, should any inexcusable degree of weakness be manifested, in respect of those exertions of self-denial which are necessary to the opposing an effectual resistance to the attractions presented by the interest of *Circe's cup,*—with or without those other interests which have been stated as operating in conjunction with it.

But if, even in the case of actual *corruption-eaters*—of those in whose instance those sweets are already in possession, thus faint and unsteady is the operation of those causes, by which a tendency to attendance is produced,—judge how much fainter and fainter it cannot but be, in the several more and more remote situations—of *corruption-hunters* attached to *corruption-eaters* in possession, and corruptionists who are such but in expectancy—considered in their several continually receding situations, viz. of those imaginary *corruption-eaters* in chief—of imaginary *corruption-eaters* in subordinate situations—and of those imaginary *corruption-hunters,* whose melancholy station is at the furthest point of distance.

In the plan in question, as in every other, to the particular cluster of interests which spring out of his own particular situation, in the instance of every man is added the share he has in the universal interest. But, by this interest alone, unaided by any of these others, would the House, with any tolerable degree of regularity, be supplied with a number sufficient for the carrying on of the business?—for the carrying it on in any manner whatever, good or bad? The answer is already given. Not even with the aid of all these separate particular interests is the effect produced, much less by the single power of the share thus possessed in the universal interest.

Not that, in default of all these other interests, produced as they are by the existing causes,—the machine of state would be in any great danger of falling to pieces: kept together in some way or other, no fear but that in that case it would be. Kept together; but how? For its immediately operating cause or causes, the effect would have an interest, or cluster of interests, created for the purpose.

Of such factitious interest, or cluster of interests, would you see an example? Look to the House of Lords. For the giving exercise to that branch of the supreme power,—which is so useful, not only to the high branch by which it is exercised, but to one still higher,—*three* is the number of persons that has been made *necessary;*—three, and no more, the number that has been made *sufficient.* Now, of what persons this *triad,* is it composed? *Answer:* Of the *Lord Chancellor,* of the noble *chairman of committees,* and of a *prelate*—out of the thirty prelates, right reverend and most reverend, some one by whom the blessed comforts of religion have just been administered to the congregation so composed. And of the care thus taken by each of his own share in the universal interest, what in these several cases is the immediate cause? In the instance of the *Lord Chancellor,* his office of speaker, with the mass of emolument in the shape of salary, fees, and patronage, attached to it:—in the instance of the noble *chairman of committees,* his salary, with its *et cæteras.* Remains the *prelate*—the only person of the three, for whose benefit, to pay him for the care thus taken by himself of himself, no special immediate interest is created—created in manner as above at the expense of swinish multitude. Obvious is here the contrast, with the sort of injustice which it involves. In excuse for such an irregularity, all that can be pleaded is, that the number of the right reverend and most reverend persons thus loaded—English and Irish together—being *thirty,* a thirtieth part of the time of the whole session measures the quantity of the load thus imposed upon any one of them, without special recompence.

From the example thus exhibited in a sphere of superior dignity,—learn, as above, the mode in which in the similar, howsoever inferior, sphere in question, the immediate interest necessary to the preserving the machine from falling to pieces, would, in the hypothetical case in question, be created. Power without obligation in the regions above—obligation without power in the regions below—such is the scheme of division and distribution appointed and carried into effect. To the Diveses the good things; to the Lazaruses the evil things. Propose that, in any such his high situation, noble lord or honourable gentleman should stand engaged thus to take care of his own interest without being paid for it,—noble lord or honourable gentleman would stand aghast at the injustice.

VII.

Inconsistency Of The Non-attendance Ad Libitum In This, In Comparison With The Indispensable Attendance In Other Offices.

This, unless that of the Monarch be excepted, beyond comparison the most important of all offices—the very office, under the eye of which the business of every other

office, without exception, is liable to be brought for censure: this—of all offices in virtue of which any business at all is done—(for *sinecures,* acknowledged in that character—sinecures, whether *profane* or *sacred,* are not here in question)—this, of all offices of business, the office in which neglect of duty is at the same time more extensive—more habitual—more constant—more manifest—more manifestly mischievous—more scandalous than in any other. A sort of riddle this: but the solution comes along with it. Power supreme: power unincumbered with obligation:—situation irresponsible:—in these few words and phrases, behold the solution of it.

Look at the situation of the twelve Judges: look at the situation of the eleven Masters in Chancery:—look at the situation of the Commissioners of the Customs:—look at the situation of the Commissioners of the Excise:—look at the situation of Commissioners of the Navy:—in all those offices, so comparatively narrow in respect of their field of action—so inferior in respect of the extent and importance of their business—where will you see anything like it?

In the situation of Member of the House of Commons may a man remain for a whole parliament: no efficient obligation for so much as a single day's attendance—sees M.P. written after his name,—swaggers, and franks letters—throws upon the shoulders of the swinish multitude the burthen of payment for his private correspondence. This, and more, is what in that public situation a man may do for his private benefit, without rendering to the public, in any shape whatever, an atom of service.**Call of the House:*—yes: if so it be that he is within call, and grudges the trouble of sending a false excuse. But more on this head a little further on.

In one point of view, more flagrant is this abuse even than *sinecurism.* By *sinecurist,* as such, nothing at all is done: nothing is there that, so long as that title belongs to him, can be done by him. But if not anything at all, so neither can any mischief be done by him. Thus as with *sinecurist.* How is it with *Honourable Gentleman?* For no one *good* purpose is he under any *obligation* whatever to bestow a single moment of attendance: while, for all *bad* purposes, he may attend as often as he pleases.

Sinecures professed being thus disposed of, look through the whole scale of office:—begin at the bottom, end at the top; see whether, at any one point in it, any such monstrosity is to be found.

Look at the *exciseman.* Were but a small part of that truantism which is committed by Honourable Gentleman manifested by the exciseman, dismission—(unless he had good borough-interest)—dismission would be his portion, nor that portion undeserved.

"Speak of me in the same breath with a fellow such as that!" cries Honourable Gentleman, swelling, strutting, and making up to the glass, to view himself—"compare me to an exciseman!—a man of my property!—a man of my '*influence,*' and that '*influence,*' all of it, so legitimate! Chair! chair! Look to the chair, sir! is it not legitimate? have you not told us so?"

"Oh yes, sir—all of it legitimate—the influence of your property, if so it be that you have any, and that property of the right sort. But this property of yours, is it of the right sort?—is it of any sort? Was it really by *property* that you forced your way in?—was it not by *connexion* that you crept your way in?—and whatsoever it was that brought you in, are you now really worth a groat? No: nor yet half a groat, if your name be Sheridan, or . . . . But for proving the *species* here, one name is enough.

"An exciseman!—compare you to an exciseman! Sir, if your title to respect were as sure as that of an exciseman, much surer would it be than it is. Of an exciseman, two things are sure to be true: 1. That in a shape appropriate with reference to the situation into which he has procured himself to be placed, he possesses in some degree the connected qualifications of appropriate intellectual aptitude, and appropriate active talent; for without them he could not be what he is; 2. That by means of these same endowments, service to the public is—in a certain shape, and a certain quantity, actually rendered by him. In his instance, both these good things are sure to be true—in yours, which of them? Sir, neither the one nor the other: no, nor any other whatsoever."

Up now to the opposite end of the scale. Lift up your eyes to the *throne:*—behold the man that sits on it. In principle or practice, even in that situation, is any such monstrosity to be found? In that situation, few, assuredly, if any, who, if asked, would deny that, in their ever-legitimate situation, the *power* belonging to it is a *trust.* Here, in this country, by our *own* monarch, by our *Prince Regent,* in so many words—while *Fox* was the word of words—was it not declared so to be?

So much for principle. But here, in this case—what unhappily is not true in every case—we have not only acknowledged principle, but, in some degree, even accordant practice. To papers upon papers does the monarch give his signature: to papers, not for his own benefit merely, but for the people's likewise:—to papers to which his signature must be given, and is given, or the machine of the state would fall to pieces: to papers for everybody's use: not like honourable gentleman's signature, for his own use, or that of his own connexions merely, and to save them the expense of postage.

Let there be no misconception. Mark well the point that is here in question. Not the *quality,* not the *goodness,* not the *value,* of the service performed—but the fact—the mere fact—that service *is* performed: not the propriety of that which, in cases of attendance, is done,—but the fact—the mere fact—of the attendance.

VIII.

Individual Delinquents Blameless—Who Blameable.

Of the view thus given of the state—not of the *representation*—not even of the *misrepresentation,* but of the *non-representation*—the habitual and established *non-representation*—together with the causes by which it is produced, what is the practical object? That on individuals,—considered in the character of persons in whose breasts, on each or any one of the particular days appointed for business, by

sermons as from a pulpit,—to any such effect as that of producing a strict fulfilment of the duty here in question,—any such sense as what is called a *sense of duty,* may, on any reasonable ground, be expected to operate? No—no, indeed: as well to the deaf adder, or to the congregation to which no minister but *St. Anthony* ever preached, might any such sermon be addressed. By any individual, to whom anything in the way of reproach or so much as of exhortation, having for its object the increasing the frequency of his attendance, were addressed,—the answer that would be given—nor that commonly an insufficient one—is altogether obvious. "By no vote of mine," would he say—"by no vote of mine, unless accompanied by an adequate number of other votes on the same side, would any adequate effect be produced. But, with the exception of the ministry, of no such requisite number can any sufficiently grounded assurance be ever entertained. In their hands is seen and felt a mass of power, of which, to a certain extent, and that a sufficient extent, the efficiency stands assured—power exercisable at all times:—to the pack which *they* keep belongs an establishment of whippers-in, to whose voice all such dogs as have a certain collar about their necks are instinctively obedient: to them it *does* belong to compel them to come in. To them? Yes, but to no one else: in their hands is the already sensible and tangible *whip:* to the opposition leaders, nothing but the phantasmagoric image of it: to no others, so much as that image!"

Under circumstances such as these, where is the individual ever to be found, on whom reproach can ever find room to attach itself with any decided force? "Everybody's business is nobody's business:" not less true than trivial is that familiar adage.

One case indeed may be assigned,—in which, on some better ground than as above, blame might find spots to fix upon. Suppose an adequate remedy brought to view, and endeavours used for the giving effect to it: on that supposition, what it would be difficult to find, would be—not the person on whom blame—just blame—*would* attach, but the person on whom it would *not* attach, in the event of his omitting to use any endeavour in his power towards the accomplishment of that end. Just blame?—just reproach? Yes: but to what effect any such reproach, whatsoever were its justice? *Answer:* To no effect at all, supposing the stream of general and preponderant interest to run in opposition to it. But of this further, when the interests, which occur in shutting the door against every efficient system of reform, come to be brought to view.

IX.

Honourable House Incorrigible: This Disorder Incurable: The Constitution Subverted By It.

Well now, note what has been seen:—1. The nature of the species of delinquency in question; 2. The vast—the undeniable mischievousness of it; 3. The impossibility of the mischief's ever finding a remedy in the exertions of individuals on individual occasions; 4. The sinfulness of the sin, in the breast of every individual who, after proof seen of its sinfulness, shall forbear to contribute his best endeavours, by whatsoever sweeping measure may be most surely effectual, to purge the House of it:

to cleanse the House from it; and if so it be that he himself is of the number of the sinners, thus to bring forth the only fruits meet for repentance. All these things seen, exists there that man, in whose eyes the wish, to behold the concurrence of the votes necessary to the substitution of appropriate *probity* in this shape to the opposite improbity, brings with it any so much as the minutest chance for its accomplishment? If so, too plain indeed will be, if it be not already, his mistake.

On this occasion, as on all others, before you put yourself to any expense in the article of *argument,* look first to *the state of interests:*—think to overcome the force of interest by the force of argument? Think as well to take *Lisle* or *Mantua,* by peas blown out of a peashooter. The man who hastened to Rome, to convert the *Pope* to Protestantism—never let him be out of mind. When the Pope has put on Protestantism, look then to Honourable House:—then it is that your eyes shall behold Honourable House putting on *uncorruption* in the room of that *corruption* which sits now so easy on it. Think then whether there be that imaginable shape in which uncorruption would sit upon Honourable House more gallingly than in that of *universal constancy of attendance!*—a shape, under the pressure of which—unless they respectively gave up their seats—the *land-officer,* the *sea-officer,* the *diplomatist,* would have to give up their *commissions,*—the *governor* or other *office-bearer* in the distant dependencies, his *office,*—the *lawyer* his *practice,*—the *official lawyer* his *office* and his *practice,*—the *fox-hunter,* for months together, his *dogs* and *horses,*—the *opera-fancier,* his *operas,*—the Bond-street *lounger,* his *lounges.*

Address yourself to the man who sits by *proprietorship*—address yourself to the man who has come in by *terrorism*—address yourself to the man who has come in by *bribery*—address yourself to the man who, through *proprietor, terrorist,* or *bribe-giver,* has come in by *purchase:*—with the exception of some half-hundred or thereabouts, address yourself to any one of the 658:—tell him that his situation is a *trust,* that to fulfil that trust is a *duty*—tell him that the situation of monarch is a trust—that the *Prince Regent* has declared it so to be—and that in the hands even of the *Prince Regent* it never has been, nor ever can be, a perfect sinecure;—talk to him in any such strain:—so you may if you please, but first prepare yourself for a horse-laugh in your face. "The Prince Regent indeed! Yes: to him it is *indeed* a trust, it is not for him to do nothing but what he pleases. O yes; duty, and duty enough, has he to do: papers upon papers must he sign, when the time comes; it is for *that* that he is where he is. Sir, my case—be pleased to understand—is quite a different one. At this time, and at all times, I can do, sir, and I will do, sir, as I please. When it is more pleasant to me to go in than to stay out, I go in: when it is more pleasant to me to stay out than to go in, I stay out. This, sir, it is to be independent: this, sir, is the duty of an independent Member of Parliament: this, sir, is the use of a man's being a Member of Parliament."

Well now, honest reader, what you are supposing all the while is—that principles such as these are but the principles of *individuals:*—principles which, in so far as they are really harboured and acted upon, are but the accidental result of individual profligacy and insolence: principles too, which, in the representation thus given of them, are in the beat of argument more or less exaggerated. Alas! if such be really your thoughts, in sad truth you are in an error:—an error which you will be but too

deplorably liable to fall into, should any such expectation be entertained by you, as that on that seat of self-proclaimed honour, any real regard for duty—even for acknowledged duty—is to be found. Duty as to constituents?—duty as towards swinish multitude? "Oh no!" cries Honourable House, "leave that duty to the swine." Duty to Honourable House? Yes: on this occasion, at any rate, that duty, and no other, is the duty Honourable House knows of. Now in all this is there anything of misrepresentation?—anything of exaggeration? Read now, and judge.

Honourable House has its rules and customs: behold now one of them. Unless forty members or more are present, business cannot be begun upon:—here you have a rule. But when Honourable House so pleases, motion having been made and seconded for that purpose, what is called *a call of the House* is made. A day is named—always a more or less distant one—and, on that one day, attendance on the part of all and singular the members is commanded. Look once more at this *rule*—at this *custom:*—whatsoever be its name, constituted by this rule or custom, here you have a duty—an obligation established. Established? Aye: and, as often as Honourable House shall so please, enforced: for, not a member is there who, should he fail of paying duty and homage to Honourable House, either by attendance or excuse, may not—would not peradventure—by order of Honourable House, be imprisoned: imprisoned and squeezed for patronage-swelling fees. Well then—in the obligation either to attend or send excuse—here you have not only an obligation, but an obligation, as often as it shall please the Honourable House, made *perfect:* here you have *indeed* a duty. A duty? but towards whom? Even towards Honourable House, by whom, and by whom alone, it has been created,—by whom, and by whom alone, when enforced, it is enforced. But in this very duty—a duty thus created, and no otherwise enforced—in this very duty you have the *abrogation* of all duty as respecting the service at large—of all duty as towards the people in the character of constituents. Obligation, confined to one particular occasion—what is it but *licence* as applied to all other occasions? Thus it is that of Honourable House it is the law—the will—the pleasure—the constantly-entertained and frequently-declared pleasure—that, in regard to attendance—except in obedience to command issued by Honourable House,—Honourable Members shall at all times do as they please. And this is what was to be proved. Now in this, is there anything misrepresented? anything exaggerated? As towards constituents—as towards swinish multitude, of obligation not so much as the weight of a feather: not so much as that sort of obligation, the levity of which is recognised by moralists, distinguishing it as they do by the name of an *imperfect* one.

Proposing at the same time that all other things shall remain as they are, and therefore as "they should be," in or out of the House,—suppose then a man to stand up and propose, that on the part of honourable gentlemen who risk nothing by it, *attendance*—a duty not occupying half the year—should, for and during so moderate a portion of each man's time, be rendered as constant and universal, as on the part of soldiers, who, the whole year, and on every day in the year, risk their lives by it:—To any such effect, any such proposal would it be endured? The whole House, would it not be in an uproar? A voice crying, *make a stand! make a stand!* aye, and with echoes too—echoes from both sides,—would it not once more be heard, and from the reforming side of the House? To the pious among honourable gentlemen, would not

the preacher of this part of the *whole duty of man* be as surely an *atheist*—to the political, a *jacobin*—as if his motion had been for *universal suffrage?* Say, how should it be otherwise—when, by the one measure as by the other, the *best* interests (as the phrase is)—the best interests on both sides—would alike be elbowed out, and made to give place (oh intolerable thought!) to the universal interest?

No: assuredly not to Honourable House are these arguments, or any part of them, addressed: their interest is to remain as they are and what they are, so long as the injured people and their brave defenders shall behold them sitting there. No: not to the deaf adder—not to that deaf adder, whose deafness has been produced by the charms of sinister interest, will any such charms as can be contained in argument be addressed. The ears which by the voice of honest interest—of that interest, the voice of which is in unison with universal interest—are prepared to listen to arguments, pleading the cause of that interest—these, and these alone, are the ears, to which, with any the slightest expectation of their being listened to, these arguments, howsoever in form and by compulsion addressed to any other quarter, are, or in sincerity and reality can be, addressed.

X.

Abdication—More Truly Predicable Of Honourable House, Than Of James II.—Quere, As To Forfeiture.

Think now of *James the Second.* How *he* governed, every body knows. Think how he fled from his trust, and how by Honourable House he was declared to have *abdicated* it. Well then—this trust of his—by what sort of conduct on his part was it that he *abdicated* it? Till the moment when, for the purpose of the moment, it pleased Honourable House to change the sense of it, *did* not—in every other instance in which an office of any kind is mentioned, *does* not—the word *abdicate* mean giving up *intentionally* and from *choice?* And that tyrant—one of the most tenacious of all tyrants—would anything short of the most unsurmountable necessity have ever forced him to give up either the office, or so much as a single atom of the power belonging to it? So much for him whose name was *king:* turn now to him or them whose name is *legion.* See whether, from that time to the present—or say for shortness since the Irish Union—by the vast majority among the members of the House—the exercise of the whole trust belonging to the House, has it not been *deserted:*—deserted, and if *desertion* be *abdication, abdicated?* If, spite of all his endeavours to continue in the exercise of the functions belonging to a trust, a man may thus legally be said to have abdicated it—and be dealt with as if he had abdicated it,—how much more truly—how much more justly—where the forbearance to exercise them is most notoriously his own free—his own even licentiously free act?—and of any one man, to any number of men?

If, for grounding a practical consequence in other places, the word *abdicated*—the great parliamentary word, which, by the hand of *lawyer-craft,* by which this sense was forced into it, Honourable House forced upon the other House,—if this word be not of itself yet strong enough, take in hand the word *forfeiture:*—take along with it the

word *non-user:*—consult Mr. Justice Blackstone: see whether—be the office what it may—private or *public*—and if *public,* "whether it concerns the administration of justice or the *commonwealth,*"—of two causes of forfeiture, *non-user* be not one:—a cause, yea, and "of itself a *direct* and *immediate* cause." In all this, is there anything of *subversion?* anything of *sedition?* Be it so: but on whom shall fall the punishment? On me? It is not I that have made the sedition: all that I have done is to *find* it:—to find it, even where myriads upon myriads have found it before me. I am not the delinquent—the seditionist—the enemy of government. I am the informer—the servant of government—the unpaid as well as spontaneous informer—which is more than all informers are.—Judge Blackstone—if you want the seditionist—in him you have the seditionist: his body let Lord Sidmouth take up, and set to rot along with the living ones—unseen and unseenable—in one of his *bastilles.*

Yes: if parliamentary doctrine is to be taken for authority, and that authority decisive, who is there—what lawyer at least is there—that does not see, on how much better and truer ground, than the power of the monarch in that day, may the power of Honourable House in these our days be deemed and taken to have been forfeited—forfeited to and for the use and benefit of the people?

Let me not be mistaken. What I mean here to say is—*not* that the Honourable House is, exactly speaking, *a corporation:—not* that to the *King's Bench*—the judicatory by which corporations are purged, and persons wrongfully acting as members of them ousted,—it belongs to purge Honourable House. No: if to the lot of Honourable House it should ever fall to be *purged,* the judicatory by which the purge is administered must be of a constitution, and above all, of a complexion, somewhat different from that of the *Court of King's Bench.* At present, all I mean is—to point the attention of the proper judicatory, whatever it be, to the description, as above, of the *case* by which, according to Mr. Justice Blackstone, the demand for a purge of this sort is created.

XI.

The Incurableness Of The Disorder—And The Consequently Incurable Corruptness Of Honourable House—Declared By Hatsell, Chief Clerk Of The House.

Is not this yet enough? Of misrepresentation—of exaggeration—of rash and ungrounded, or insufficiently grounded inference—of any such imputed result of audacious hostility,—after what has already been seen, can any charge—any suspicion—still remain? Well then: call in John Hatsell—call in the man, who, while in his place the chief servant, has long by his works, descriptive of the practice of the House, and published for the use of the members, been looked up to as the oracle of Honourable House: to a man in his situation—will anything of hostility—and if of partiality, partiality on the adverse side—be imputed?

Hear, then, what is said by him of the *non-attendance* and its consequences.

"It not being customary of late years," says he, vol. ii. p. 68 to 72, "to enforce the calls of the House by taking Members who do not attend into the castody of the Serjeant, in the twenty years that I have attended at the Table," (date of this second edition, 1785,) "there has not occurred a single instance: although at the time of ordering the call, there is always a resolution come to, 'that such Members as shall not attend at the time appointed, be taken into custody.' It does not become me to determine, how far this lenity of the House, in admitting every trifling excuse that is offered, conduces to the end proposed—or whether it would not be better not to order a call, than to make it nugatory by not enforcing it." Such, then, in the thus honestly published as well as declared opinion of the most competent of all judges, was at that time the state of the disorder itself. Behold now what in the same opinion are among the *effects* of it.

"*The controul which the*independent*Members of the House ought to have over the conduct of the*Ministers*is,*" says he, "entirely lost."

Well:—if this be not a subversion of the constitution, what else can be? If it be not by this, that what was best in the constitution of this country was distinguished from what was worst in the worst of other governments—by this, viz. that a body of men chosen by the people,—so chosen and so circumstanced, as not to be in any state of dependence as towards the servants of the monarch chosen by the monarch,—that this body of men, so chosen and so circumstanced, possessed "*a controul over*" those same servants of the monarch,—by what else was it that this same constitution was ever thus distinguished? Well then:—in the thus declared opinion of this official and intelligent, as well as assiduous, observer of the conduct of the House,—already, at the time when this was written by him—already, in the year 1785—was this "*controul . . . entirely lost.*" This said—this disastrous truth proclaimed—and this said—by whom? by an adversary—a hostilely partial adversary? No: but by a most faithful, zealously attached, universally respected, and not too sparingly rewarded, howsoever richly deserving—servant.—In what way, too?—in the way of speech spoken—spoken in the heat of debate, and without time for reflection? No: but in a cool didactic and written treatise, the result of the *viginti annorum lucubrationes*—the twenty years' lucubrations he had just been speaking of—and this republished without alteration, in a *second* edition, after the opportunity taken of receiving any objections, could any objections have been made, to what he had thus been saying in the *first.*

If then, even at that time—even in 1785—even before the Pandora's box was opened upon it, which was opened by Pitt the second, and now again and with additions re-opened upon it—if even then the constitution was "*subverted,*" in what sort of plight is it now? But, if the subversion—so full of horror in the eyes of Mr. Speaker,* had, at the very time when he was thus giving expression to these horrors, already taken place,—the subversion of such a subversion—is it not *restitution?* is it not among the objects which, by every safe and legal means, every true lover of his country ought to contribute his utmost endeavours to the accomplishment of? When *subversion* is the calamity that has taken place, what better can happen to it than to be *subverted?*—when *captivity* was the calamity that had taken place, what better could have happened to it than to be *led captive?* By a stronger, suppose a weaker man set with his feet where his head should be: what better could happen to him than to find himself set on his legs again?

Of the declaration made by Honourable House of the forced *abdication of James the Second,* the day is no secret. Of the declaration voluntarily made by the same Honourable House of *its own* voluntary abdication, as above, the day is not more dubious: Thursday, the 10th of May 1744—there it is.—*Commons' Journals*—Report that day from "Committee appointed to consider of the most proper methods to enforce a more early and *constant* attendance of the Members upon the service of the House.". . . . *Resolutions,* five in number: whereof three, and three alone, on the subject of *constancy*—meaning, of course, on the part of every one, as well as of every other of the Members. Of these three—all of them together, had they been carried into effect, inadequate—the first and third put aside, the only one agreed to never acted upon—never from that time till the present: viz. "That no Member do absent himself from the service of the House, without special leave of the House."†

Thus, in the opinion of this faithful servant, but not less intrepid and still unquestioned censor of the House,—the constitution had even then been subverted,—and in the disorder mentioned by him—viz. *non-attendance*—in this free and generally prevailing abdication—the subversion had its cause. Well then: in this same opinion, this cause—was it of the number of those which are capable of being removed? Not it indeed; for with the following note do these Observations of his conclude:—"It appears, from the Report of May 1744, how inadequate every measure has been, that has been hitherto proposed, to prevent the evil: *nothing can correct it entirely,* but a *sincere desire* in the Members themselves to attend to that duty for which they were elected and sent to parliament." *Nothing,* says he, *can correct it,* but—what? A sort of *desire,* the existence of which, to any such extent as would be necessary, would be an effect without a cause: for, in the situation in question, of any such desire, so long as man is man, the existence has been shown to be impossible.

Now of this dereliction of duty—this most deliberately determined—most perseveringly maintained, and still maintained—dereliction of duty—of acknowledged duty,—is either the existence or the cause, or the intended perpetuity, open to dispute? The existence, you see it in the journals:—the cause of it, is it not in the non-existence of *due* dependence, coupled with the existence of that *undue* dependence which is the effect of it?—the perpetuity, is it not secured to the disorder, by the nature of its cause? This so determinately perpetual dereliction of acknowledged duty,—does it not, of itself, afford an indisputable demand for a remedy from without, by which the determination shall be put an end to?—for a remedy by which the cause will be removed?—for the only remedy by which, in the very nature of the case, it ever *can* be removed?

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SECTION XV.

REPRESENTATIVES—IMPERMANENCE OF THEIR SITUATION—ITS IMPORTANCE:—OBJECTIONS—THEIR GROUNDLESSNESS.

On this part of the field, into a comparatively small compass must be compressed whatever can here be said: by the joint pressure of *time* and *space,* no inconsiderable quantity of matter, that had been collected for the purpose of this section, has, for the present at least, of necessity been extruded.

Utility and *usage:* to one or other of these heads may be referred whatsoever matter can here find room for the reception of it. *Utility,* as deducible from the unquestionable principles of human nature, as manifested by universal experience: *usage,* a source of argument, the demand for which will be seen to arise—partly out of the connexion it has with *utility* through the medium of *experience;* partly out of the means of defence it will be seen to afford against adverse prejudices and fallacies.*

I. First, as to *utility.*

In the *Plan* itself, from *impermanence* in general,—and, in the way of example, from *annuality* in particular,—*four advantages—beneficial consequences—uses,* in a word—are stated as resulting: whereof *three* having more particular respect to appropriate *probity;* the *fourth* to appropriate intellectual aptitude, and appropriate active talent.

I. Consider, in the first place, the case of each member, taken individually.

1. In the first place, the *shorter* the term he has in his seat,—the *nearer,* in cases of imputed misconduct, the term at which any mischief produced by such misconduct may be made to cease;—and, in the way of example to others, the more impressive the sort of punishment involved in a removal produced by such a cause.†

2. In the next place, by lessening, by the amount of the difference in the length of the term in the two opposite cases, the inducement which a candidate could have to launch out into expenses too great for his circumstances,—lessening thereby the danger of his coming into the House in a *venal* state.

2. Next, consider the case of the *whole House,* taken in the *aggregate.*

3. The smaller the length given to that service, the smaller the length of sinister service which a corruptly-disposed member will have to sell; the smaller, consequently, the length which it will be in the power of C—r-General and Co. to purchase.

4. The greater the number of the parcels into which the present length of service is broken down, the greater the number of those lengths of service which, for the continuance of a given length of corrupt service at the hands of a majority of the members, C—r-General and Co. will have to purchase; and thence the greater the chance that the aggregate number of the masses of the matter of corruption at his disposal will prove insufficient for that pernicious purpose.

5. Of the utility of the proposed transitoriness, in the character of a security for appropriate *intellectual aptitude* and appropriate *active talent,*—the proof, it is imagined, will not be much in danger, either of experiencing denial, or so much as escaping spontaneous notice. By discourses indicative of ignorance or intellectual weakness—by constant silence and inactivity—by absentation or slackness of attendance—by any one or more of these features of unfitness,—in the instance of every member in which they respectively have place, may his inaptitude, absolute or comparative, be betrayed, and indication given of it to his constituents. In this way, partly by *original* exclusion, produced by self-conscious inaptitude without trial,—partly by *subsequent* exclusion produced after and by trial,—produced, in a word, by the light of *experience*—may the House be cleared:—cleared, not as now, of those natural, and unpaid, and necessary—yet alas! how insufficient!—guardians to its aptitude in all shapes, and more especially to its probity—those constituents, in whose faces it so frequently, and always so needlessly, shuts its door under the name of *strangers*—and whom, as such, it *clears* itself of, as the phrase is, in the character of incumbrances and nuisances;—but of the multitudes of those real incumbrances and nuisances with which, in the situation of *members,* it is, under the existing system, to so great a degree infested; viz. empty-headed idlers, who, in default of all other means of consuming time, drop in now and then,—and, to save themselves from the trouble of thinking, throw themselves into the ever-extended arms of C—r-General and Co.—thus giving their support to misrule—saying, and perhaps fancying, they are *supporting government:* thus, and even without need of being purchased, contributing to the formation of the waste-and-corruption-and-oppression-producing majority; and, at the same time, by the amount of what might have been their share of the spoil, leaving undiminished, and by so much the larger, in the hands of the arch-corruptionist, the mass of the matter of corruption,—in readiness to be employed in the purchase of such other of the members, in whose instance, on the one hand, the *demand* for the matter of corruption is more importunate; on the other hand, the *return* they are capable of making for it, in the shape of pernicious service, more valuable.

Under the existing system, not only has C—r-General no interest—no positive interest—in the *largeness* of the number of members endowed with a more than ordinary share in these accomplishments; but, on the contrary, he has a positive interest in the *smallness* of that number. In addition to those measures which for keeping the machine from falling to pieces, must be carried into effect, the object he has to accomplish is—the carrying into effect—in number, extent, and value, to the greatest extent practicable—such others, as shall in the highest degree be conducive to the advancement of his separate interest. Now, for this purpose, true it is—that, in a limited number, men provided in the highest degree with these endowments,—as well as at the same time prepared at all times to make the requisite sacrifice in the article of

probity,—are, on the occasion of the use made of them,—necessary. At the same time, for speech, motion, and occasional penmanship, suppose this number, whatever it be, completed:—this done, every individual above this number is a nuisance: the greater the value of his talents, the higher are his pretensions raised: the higher his pretensions raised,—and the greater the danger lest, by inadequacy of the quantity of the matter of corruption at command, he should be disappointed, and by discouragement driven to the other side: and moreover, the greater the number of these men of pretension, the greater the danger lest, by the quantity of time respectively employed by them in the display of their respective pretensions, a greater quantity on the whole might be consumed, than any demand he might have for *delay,* on the score explained in the section on *non-attendance,* could require: in which case they would be proportionable sufferers—sufferers, and to no use—in respect of the *interest of the pillow.*

Annuality of election, forsooth, a *wild*—a *visionary* arrangement? *wild* and *visionary,* when, within the view of those by whom it is thus denominated, stands the vast metropolis—its population little less than the tenth part of all England—the great seat and example of *representative democracy*—in which, for so many centuries past, the vision has been realized? realized, and all the time with such illustrious good effect, and without the shadow of inconvenience?

But here, perhaps, lest argument should be altogether wanting, comes a sudden turn to the opposite side: and now, with an air of triumph, at the bottom of this potential impermanence is shown eventual permanence: permanence—which, should it ever be actual, will be excessive.

Cases may be shown (it has been said)—cases in which, under annuality of election, the same person has been seated for life: here, then (it has been added,) where *mutation* has been the object thus aimed at, not *mutation* but *perpetuity* has been the result.

Be it so: but by this result, what is it that is proved? that the potential impermanence is a bad arrangement? By no means: but rather that it is a good one. Why? Because, under this instrument of good discippline, so good has been the behaviour of the functionary, that no fault has been to be found in him: no hope of supplanting him conceived by anybody else.

And, after all, in the particular instance here in question—in the *Common Council,* chosen by the *liverymen of the city of London*—of this *potential impermanence* is it so clear that any *actual permanence,* in such sort and degree as to have become productive of mischief in any assignable shape, has frequently, if ever, been the result?

In what character is it that impermanence is meant to be established?—in that of an *end?* an *independent end?* No surely: but in the mere character of a *means*—a means leading to an ulterior result in the character of an *end:* leading in a word to *good behaviour,* the result of appropriate aptitude in all shapes on the part of the

functionary. Well then suppose the end fulfilled, what signifies it how matters stand with regard to the means?

What! from the circumstance of a man's being, by the free suffrage of the undisputedly proper judges of his conduct, repeatedly and uninterruptedly—each time by the light of an additional body of experience—pronounced *fit* for his trust,—from this circumstance, standing as it does alone, will you infer him to be *unfit?* Grant that, in some situations, so it may be, that by nothing better than mere *negative merit* on the one part, and on the other part by the *force of habit*—by the property which *habit* has of superseding *reflection*—so it might happen, that a man of inferior merit might, by his continuance in the situation, put an exclusion upon a man of *positive* and *superior merit,*—still, in a situation such as this—a situation covered with a lustre, of which, in its present sordid state, it is not in the nature of the representation to afford an example,—small surely is the danger, but that by a swarm of competitors,—no expense having place by the terror of which any man can be excluded,—the attention of the electors will be sufficiently called and pointed to the probable degree of comparative aptitude, on the part of the provisionally accepted object of their choice.

But, should the case prove otherwise—or even *for fear* the case should prove otherwise—how easy would it be, by a slight amendment, to provide, that after having without intermission sitten for such or such a number of years, a member should, for the space of one year—or, if so it must be, some greater number of years,—cease to be eligible?—and so *toties quoties?*

The argument, which from potential impermanence infers probably excessive permanence,—in what circumstance shall we find the source of it? In great measure, not improbably, in the sort of paradoxicality that belongs to it, and the ingenuity and depth of thought that present themselves as evidenced by it. Here, as elsewhere, dig a little way, you get a paradox: dig a little further, you get the solution and exposure of it.

Give to the observation the utmost credit that can be due to it,—in the way of practice nothing more would result from it than a *suspension*—such as that proposed. But a sort of misconception, than which nothing is more common, is—the taking up an observation, the result of which, supposing it ever so well grounded, is but the need of a corresponding amendment to the proposed plan,—and then, without further thought, swelling it out into the shape of a peremptory objection, calling for the exclusion of the plan altogether.

II. Next, as to the question of *usage.*

Supposing, that from sufficient argument, the question of *utility* has received its answer—and *that* decision in favour of the proposed impermanence,—this being supposed, not improperly may it surely be observed, that to any such question as that about *usage,* any endeavour to find an answer is but a work of supererogation. That for centuries past, no such impermanence has had place, is altogether notorious: to what use, then, it may be asked, bring forward—even supposing it to have had place—an *ancient* usage, which has had for its opposite a more recent usage?—a

usage bearing date in times more remote from, and thence more dissimilar to, our own—having for its opposite a usage less remote, and less dissimilar?

To this question may be returned two answers:—1. One is—that howsoever, in the eye of superior reason, the argument grounded in utility may be more *substantially probative,*—yet, constituted as human nature is—at any rate, at the stage beyond which the public mind is not yet advanced in this country,—the argument from usage—and in particular from ancient usage—affords a promise of being more *efficiently persuasive.*

2. Another answer is—that, on the present occasion, the argument from *usage* may, when considered in a certain point of view, be seen to come under, and in that way to coincide with, and operate in confirmation of, the argument from *utility.* Against the proposed impermanence, objections have been made on the ground of supposed *confusion* and *instability:* and, from words such as these, proportioned to the vagueness—to the confusedness—of the ideas attached to them in the minds of those by whom they have been employed, hath, as usual, been the portentousness of the eventual public *calamities,* brought to view by heated passions and excited imaginations, in the character of *consequences,*—and the intensity of the confidence with which the eventual arrival of these same calamities has been predicted.

Well then:—as to these points, such (it will be seen) as follows, is the state of *facts.* Age after age,—a degree of impermanence superior even to that which is here proposed, had place. And, during all that time, of this same impermanence what was the effect?—confusion?—instability?—anything, to the designation of which any such words could be employed? No:—but, on the contrary, the very result which, in the here proposed *plan,* is proposed as the *proper end in view,* or *object to be aimed* at; viz. on the part of *the representatives of the people,* dependence where due—dependence on the people: thence independence where due—independence as towards the monarch:—on the part of the *monarch,* dependence where due, dependence on the people—in a word, *democratic ascendency.*

Thus did matters continue, until—by the *civil wars* produced by contested title as between the Houses of *York and Lancaster*—by the successive *conquests,* and states of subjection—abject and universal *subjection*—to which those wars gave birth—by the final triumph of Henry VII., his almost unexampled rapacity, coupled with a degree of frugality altogether unexampled—by the vast and altogether unexampled mass of treasure precipitated from that source into the coffers of his son and successor—by the still more enormous mass of treasure absorbed from the patrimony of the church—from a mass of landed property, which, so long before as the year 1362, had been computed to amount to one-third part of the whole kingdom* —absorbed, in a word, principally from the dissolved monasteries, and at the same time, with a correspondent profusion, scattered abroad by that furious and sanguinary tyrant—so it was, that by the united force of terrific and alluring influence, every such sentiment, as that of independence as towards the monarch, wanted but little of being eradicated from every English breast.

In regard to the *duration,* coupled with the *frequency* of parliaments—the following are, in general terms, the results already obtained, from a not as yet quite completed search,—now making by a friend (on whose accuracy and judgment, as well as candour, I have a well-grounded confidence,) into the several authentic sources of information already published, with the addition of others, as yet unpublished, and some of them as yet unnoticed. When the search has been completed, I hope and believe it will be laid before the public in all its amplitude:—

I. *As to frequency.*

1. That, from the year 1258 (42 H. III.) down to the year 1640 (16 C. I. c. 1,) the monarch, in so far as he could be bound by an act of parliament, stood bound to hold a parliament once a-year at the least. Thus far as to the *law.*

2. That as to the *usage* that had place in pursuance of the law, from the year 1265 (49 H. III.) down to the year 1484 (1 R. III.) beyond which date the search in question has not yet extended—being a period of upwards of two hundred years—small is the number of years, in which a parliament does not from the documents appear to have been summoned; and in those instances, supposing no such summons to have had place, the omission may, with few or no exceptions, be accounted for, either by the absence of the Monarch in a foreign country (France or Scotland,) or by the existence of a civil war in the heart of the kingdom.

Thus much as to *frequency.*

II. Now as to *duration.*

3. That in all that time there is but *one* instance, in which the same parliament appears to have continued for and during a portion of time *so long* as a *year:* and that, in *that* one instance the duration was not so long as thirteen months.

4. That in that time, it appears that in a number of instances, within the compass of one and the same year, *two, three,* and even as many as *four* different parliaments, were held: so that the clause *and oftener if need be,* was not a mere random anticipation, having no ground in experience.

5. That, of what is now understood by *a prorogation,* the earliest instance that has been found is one which took place anno 1407—(8 H. IV.;) that, in some few instances anterior to that time, it appears as if, during the Christmas or the Easter holidays, something of an adjournment took place: But that in some even of *these* instances, the parliament that met was a fresh parliament; fresh writs of summons having in these instances been issued.

6. That however, in regard to the question of *impermanence—impermanence* in any such degree as that indicated by the word *annuality*—none of these cases of *prorogation* are material: inasmuch as whatsoever may have been the number of these prorogations, in no instance does it appear that the same parliament continued in existence so long as a whole year; *that* one excepted, in which the extra duration was not more than a few days.*

Speaking of the parliament that was held anno 1407 (8 H. IV.)—"This," observe the authors of the Parliamentary History, vol. i. p. 306, "is the longest parliament we have yet met with:—it was continued nearly a year, which was an innovation on the ancient constitution, taken notice of by several historians as a great blot on this reign."—There—honourable gentlemen—behold in those grave and universally respected authors of the *Parliamentary History*—the history so much lauded by the late *Judge Barrington,* brother of the above-mentioned existing bishop—behold in them another set of *jacobins,* to be added by you to *Dean Swift,*—and to those *predecessors of your's,* who, so lately as in the last reign, were so near making a majority in favour of *annuality.*—Where, in their view, was the *innovation?*

Of the body of proof thus promised, and already in part afforded, so small is the quantity that would suffice to *repel*—not to say to *transfer*—the imputation of ignorance and wildness—the charge which with such unfortunate and unfortunately groundless confidence, has, from so many quarters, been thrown out.

Now then: when thus it will have been seen, that no otherwise than by a course of unquestionable tyranny and misrule was that so much more felicitous, though earlier state of government subverted,—what is the consequence? Even that, as for the benefit of a race of monarchs, a reign of manifest usurpation is regarded as if blotted out of the line of *usage*—so, and with no less propriety, for the benefit of a nation, may a like usurpation, though committed *by* monarchs, yet if committed to the manifest violation of the rights of the nation, acknowledged as such by unrepealed laws, in the formation of which monarchs have concurred,—be considered as blotted out:—a felicitous—and, in that only rational sense, a *legitimate*—course or line of government,—obscured only, but not blotted out, by an infelicitous and thence an *illegitimate* one. In this way, if *imagination* be to be called in (and why it may not with as much propriety be called in and employed in support of, instead of in opposition to, *reason* and *utility,* let any one say who thinks himself able,)—if *imagination* be to be called in—*imagination,* with its favourite instrument, the word *right,* used in a figurative and *moral* sense, that insensibly it may be taken and employed in a *legal* sense—why should not *usage*—usage so long continued, so extensive, and so steady—be regarded as creative of *right?* and *that right* suspended only in its exercise—suspended and not destroyed—by the intervening interval of *wrong?*

If so, and supposing the facts to be what they are here stated to be,—then so it is, that for the claim made to the benefit of short parliaments, to the ground of practical and manifest utility,—as bottomed upon the relations between interest and interest,—may be added the ground of constitutional right. *Usage,*—is it consigned to disregard? *Utility* remains sole arbiter, and annuality triumphant. Usage,—is it regarded and consulted? Right, is it considered as created by usage? Here, then, to the ground of *utility,* is *superadded* the ground of *right.*

Two or three centuries of right, followed by two or three centuries of palpable wrong;—is it not time—high time—that *right* should be *restored*—that *subversion* should be *subverted? Legitimacy—monarch's legitimacy*—does it stand upon ground so substantial in any case—as *right—people's right*—in this case?

In regard to *usage,* considered in the character of a circumstance by which, on the field of government, it is proposed that conduct should be directed, or at any rate influenced,—in what character, for the purpose of any such application, does it require to be considered?—in that of a *guide,* by whose course our course, as by one sheep that of other sheep, ought blindly to be determined? determined—and that with a degree of deference more and more implicit, the earlier the *times*—and thence the less experienced in themselves, as well as the more dissimilar to our own—the times in which this usage had place?

No assuredly: but in the character of a *source of instruction*—of instruction, to be derived from an attentive scrutiny into the relations, of what nature soever, observable as between the circumstances of the past time in question, and the circumstances of the present time: as a *storehouse,* in which reason may find matter to work upon; not as *a pillow,* on which, without prejudice to security, indolence and imbecility may sleep on and take their rest.

A point which, supposing it true, is to be proved, is—that, in the primeval times in question, not only was the degree of impermanence in question in a state of habitual existence,—but that it had for its *cause,* for its *accompaniment,* and for its *consequence,* that very state of things—that very *democratic ascendency,* for the re-establishment of which it is here proposed in these latter times.

Assuredly, in the development of this proof, no great difficulty will be found. For what purpose was it that *a parliament*—including the assembly composed of representatives deputed by the people—in a word, a *Commons House*—was wont to be called together by the monarch? *Answer:* To get money. Well: and if, without the trouble of calling together and treating with these deputies, he could, in his view of the matter, have got the money he wanted, would he at the same time have subjected himself to all that labour, and to the risk of finding it to be—what it sometimes actually proved to be—labour in vain? Not he indeed. That he should have done so, is not in human nature. Well then: so often, and so long, as he was at all this pains to prevail upon the people to supply him with money,—so often and so long did he feel himself as towards the people—as towards the great body of the people—in a state of dependency; and, for centuries together, this state of dependency was one uninterrupted state:—a state of dependency—not as now, as towards a comparatively small confederacy of men,—the majority of them pretending, and falsely pretending, to be representatives freely chosen by the great body of the people, and themselves acting in a state of corrupt dependency under himself. Well:—this, then, and nothing more, is what has been meant as above by *democratic ascendency:* the sort and degree of democratic ascendency, for the establishment of which it is that the system of arrangement here proposed, under the name of *radical parliamentary reform,* is contended for: the *establishment,*—for which the word *re-establishment* will, it is hoped, be seen to be the no less apposite appellative.

With relation to these *our* times, to both those *other* portions of time the appellation of *old times* belongs without dispute. The appellation of *good old times*—if to either, to which, then, shall it be given? Shall it be to those later times, when,—sometimes for the gratification of the everlastingly conjunct, and mutually inflaming and inflamed

appetites—thirst for money and thirst for power,—oppression was constant, universal, and unchecked—waste always unchecked, and, except in those reigns in which frugality was stained by oppression, raging* —and corruption, if less abundant than at present, rendered so no otherwise than by its being, in respect of the demand for it, in so great a degree superseded by the more surely efficient, and, to a tyrant hand, the so much more pleasant instrument—viz. terrorism? Shall it not rather be to *those* old times, in which due dependence was so firmly established in both its indispensable branches—dependence of the monarch on the people's representatives—dependence of the people's representatives on the people their constituents: due dependence everywhere; corruption nowhere;—unchecked waste, unchecked oppression, nowhere?

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SECTION XVI.

MODERATE REFORM—ITS ARRANGEMENTS—THEIR INADEQUACY.

Comprised or comprisable under the denomination of *moderate reform,* what are the arrangements which at different times have been proposed?

The inadequacy, and little less than uselessness of them, even on the supposition of their being, all of them, brought forward together, and comprised in one proposal, and carried into effect—

Much more the inadequacy of them, taken singly, or in any number *less* than the whole—

Such are the sub-topics, destined for consideration in the present section.

Supposing *moderate reform,* in its most perfect shape, thus inadequate,—supposing *radical reform,* as hereinabove described, the only remedy that presents any tolerable chance of proving adequate,—whence happens it, that by a set of men professing themselves "*Friends of the People,*" and, as such, enemies to corruption,—to corruption—the radical disease for which *reform* has all along been looked to in the character of the only remedy,—whence comes it, that by these men the adequate remedy has all along been rejected?—the inadequate one, if any, embraced and brought forward?

For a solution of this problem, the source or principle referred to and employed will be *the state of interests.* But, to show in what particular way, in the case here in question, the state of interests thus operates—operates in such manner as to oppose an insuperable bar to every proposition for adequate reform from such a quarter, will be the business of the ensuing section.

For a general conception of the aggregate mass, of the distinguishable arrangements, capable of presenting a title to a place in the system distinguished by the appellation of *The Moderate Reform System,*—take, in the first place, the following analytical table of the several proposals for parliamentary reform, brought forward in parliament since the commencement of the present reign:—moderate and radical taken together:*
—

Total number of the occasions on which reform has been advocated in parliament,	15
Deduct number of occasions on which no specific proposition has been brought forward,†	3
Remains the number of the occasions, in—each of which, specific propositions, one or more, have been brought forward,	12
Deduct number of the occasions on which the species of reform proposed has been *radical,*‡	2
Remains, for the number of occasions on—which the species of reform proposed has been of the *moderate* cast,	10

Appendix—No. 1, 2, 5, 7, 8, 10, 11, 12, 14, 15.?

† App. No. 4, Hon. W. Pitt, anno 1782; No. 6, Alderman Sawbridge, anno 1784; No. 9, Mr. (now Earl) Grey, anno 1792.

‡ App. No. 3, Duke of Richmond, anno 1780.

? App. No. 1, Earl of Chatham, anno 1770; No. 2, Alderman Wilkes, anno 1776; No. 5, Hon. W. Pitt, anno 1783; No. 7, Right Hon. W. Pitt, anno 1785; No. 8, Right Hon. H. Flood, anno 1790; No. 10, Mr. (now Earl) Grey, anno 1793; No. 11, Mr. (now Earl) Grey, anno 1797; No. 12, Mr. (now Earl) Grey, anno 1800; No. 14, Hon. T. Brand, anno 1810; No. 15, Hon. T. Brand, anno 1812.

For this system, considered as a whole, the most determinate basis that can be found may be seen in the paper originally printed anno 1793, by the Society formed anno 1792, principally of Whig members, under the name of *The Friends of the People,* and reprinted (I understand) by *Mr. Evans,* in his Parliamentary Reform pamphlet, just published.

On these occasions, the following are the heads to which the several proposed arrangements that have been brought forward, have presented themselves as referable:—

I.

Proposed Arrangements Applying To The Situation Of Elector.

i. Arrangements, giving extension to the electoral franchise, or right of suffrage, and thus making advances more or less considerable towards virtual universal suffrage.

1. In the case of a county seat, admitting copyholders, Nos. 11 & 14.

2. In the case of a county seat, admitting leaseholders, No. 11.

3. In the case of the proposed number of *additional borough seats (or in*all*borough seats?) admitting householders at large,* Nos. 11 & 13.

II.

Proposed Arrangements Applying To The Situation Of Representative.

ii.—giving Increase to the number of Seats regarded as not venal, viz.

4.—1. County seats, Nos. 1, 2, 7, 14, 15.

5.—2. County-division, or territorial-district seats; viz. Seats formed by division of counties into such districts, Nos. 11, 13, 14.

6.—3. Populous town seats, Nos. 2, 7, 12, 14.

iii.—applying Diminution to the number of Seats regarded as venal, viz.

7.—1. Suppression without compensation proposed, Nos. 2, 5, 12, 14, 15.

8.—2. Suppression with compensation proposed, No. 7.

iv.—excluding from all seats a part,—but a part only, and that an indeterminate one—of the number of the Members regarded as sold to the C—r-General, by the circumstance of their holding situations of profit, from which they are removable by him at pleasure.

9. To the at present established *septennial* duration of the power conferred by a seat substituting *triennial,* No. 11.

III.

Proposed Arrangements Applying To Both Situations; Or Rather To That Of Elector, *And That Of* Candidate.

v.—diminishing the Expenses and other inconveniences incident to Elections.

10.—1. By causing the poll to be taken in districts of small extent, carved out of the electoral districts: say *voting-districts,* or *sub-districts,* Nos. 11, 13, 14.

11.—2. By causing the poll to be taken for *all places* on *one* and the same *day,* Nos. 11, 13.

12.—3. By inhibiting every elector from giving his vote in *more* places than *one,* No. 11.

These six clusters of arrangements—consider them now in their respective bearings upon the state and condition of the two situations in question; viz. that of *elector* and

that of *representative:* including in the latter case that of *candidate,* or *proposed candidate.*

I. *As to that of* Electors.

In the account given of radical reform, taken according to the present edition of it (see § 5, § 6,) four expedients or arrangements were stated as essentially necessary, and of the goodness of their title to that character, some presumption, it is hoped, afforded. These are,—1. Virtual *universality* of suffrage; 2. Practical *equality* of suffrage—*i. e.* practical equality in respect of the quantum of the influence exercised by the several electors in virtue of their respective suffrages; 3. *Freedom* of suffrage; 4. Thence, as an indispensable instrument of freedom, inviolable *secresy* of suffrage.

Consideration had of their mutual relation and relative importance, with as much, perhaps, if not with greater, propriety—this order might have been changed, or even reversed.

1. First, then, as to *secresy of suffrage.* Upon the effect given to the principle here in question depends, as hath been so often observed, *freedom of suffrage*—freedom, viz. in both its contrasted modes,—freedom as against *terrorism,* and freedom as against *bribery.*

In no individual scheme of *reform,* capable of being designated by the generic term *moderate* reform, is any such proposition in favour of *secresy of suffrage* to be found.

2. Consequently, no such security as is afforded by that principle against *non-freedom,* alias *spuriousness* of suffrage, in whichsoever of those two modes it is considered.

3. As to *virtual universality of suffrage.* Originally, by those advocates for reform, who in 1792 and 1793 acted in a society under the title of the *Friends of the People,*—in the instances of what has hereinabove been designated by the name of the *householder* plan, no inconsiderable advance was made. But to the *county seats* it was not proposed that this extension should be applied: and of the existing county seats it was proposed (anno 1797,) that from 92 the number should be increased to 113:—increased by 25: a little more than a fourth.* Moreover, the leader of that eminently useful association having since put from him an arrangement so effectual,—scarcely does it seem at present entitled to be numbered among the arrangements belonging to *moderate reform:* from the system of moderate reform it seems to have been as it were expelled, and driven for refuge into that of *radical reform.*

Be this as it may,—to the giving force and effect to the *universal interest,* in the struggle which it has to maintain against all partial interests in general,—and in particular against the hitherto irresistible separate and sinister interest of C—r-General and Co.,—the efficiency of virtual universality would, it has been shown (§ 7, 8,) be altogether precarious,—without the assistance of *freedom,* and thence of *secresy* of suffrage. Hence it is, that without that shield to *freedom,*—by whatsoever

plan—whether the abovementioned householder-plan, or any other, any advance were made towards virtual universality of suffrage,—it would be matter of some uncertainty, whether, with reference to the universal interest, service or disservice would be the effect of it.

4. Lastly, as to *practical equality of suffrage.*

Reference had to the existing state of things—towards the sort of equality here in question, an advance—nor that an inconsiderable one,—would be made by *virtual universality of suffrage,*—on the supposition that full effect would be given to *virtual universality;* even supposing that, were it possible, no separate attention to *practical equality* would be paid. Still, however, without such separate attention, the most effectual provision that on that supposition could be made for *practical equality,* would remain in a state very far from complete. Take, for example, *New Sarum* and *Gatton:* by the application of the principle of *virtual universality* to those two boroughs respectively—those same two boroughs still continuing to fill each of them a parliamentary seat—the contrast which the state of those two seats of snug proprietorship would, in respect of *equality* as between the effect of one right of suffrage and another—the contrast which the state of those two seats of snug proprietorship would form with the state of Yorkshire, for example,—would be no less striking than at present.

In any all-comprehensive advance made towards this species of equalization, would evidently be included the breaking down of the several counties, each into two or more *less extensive* electoral districts.

In no edition of *moderate reform* have I been able to observe any such decomposition advocated. By *Mr. Brand,*—whose edition, together with that which was once *Earl Grey's,* may be stated as being the two by which the advances made towards *radical* reform were most extensive,—this decomposition is indeed distinctly brought to view,—but no less distinctly is an *exclusion* put upon it.

But in the section (§ 10) in which *bribery* and *terrorism* are brought together and confronted,—it has been shown how, as well by the *vote-compelling* as by the *competition-excluding* operation of it, the seductive force of terrorism is increased: increased by and in proportion to the geographical extent possessed by an electoral district:—in proportion to remoteness from the poll-book,—*expense* and consumption of *time* by *journeys* and *demurrage* will have been seen to be increased; thence, to a proportionable extent, *exclusion* put upon such electors, in whose instance the *repelling* force of those inconveniences is not overcome by the *compelling* force of terrorism; *oppression* and *spuriousness,* in the case of all those, in whose instance to the pressure produced by the expense and labour of the journey, is added the obligation of contributing by their suffrages to the advancement of a candidate, to whose advancement they are absolutely or comparatively averse.

Out of the *six* above-stated clusters of proposed arrangements proposed by moderate reform,—such, then, is the inefficiency of the *three first*—viz. 1. Those having for their object, or professed object, the giving *extension* to the *electoral franchise;* 2.

Those having for their object, or professed object, the giving *increase* to the number of seats regarded as *not venal;* 3. Those having for their object, or professed object, the *diminution* in the number of seats regarded as *venal:* and in these three groups will be found comprised all those which have immediate relation to the situation of *elector.*[*]

II.

*Next As To What Regards The Situation Of The*Representative*Body And Its*Members.

In relation to this part of the election system, *three* in number are the arrangements which, in the present edition of *radical* reform, are proposed as so many essential arrangements, necessary to the establishing in that quarter the union of *due independence* with *due dependence:* viz. 1. *Exclusion of placemen* from the right of *voting* (leaving them always in possession of the right of *speech* and *motion;)* 2. Measures, such as shall be necessary, for the securing on the part of each member a constant and punctual *attendance* on the service of the House; 3. *Impermanence* of the situations respectively occupied by the members in virtue of their respective seats; viz. that degree of impermanence which corresponds to and is produced by the *annual* recurrence of the election process.

Observe, on this occasion, the object and use of these several proposed arrangements:

1. By the *first* of them, a correspondent degree of *independence,* as towards C—r-General, is produced on the part of the members, *individually* considered.

2. By the *second* of them,—besides the additional sureties afforded for *intellectual aptitude* and *active talent,*—a *remedy,* in the nature of a *check,* is provided: provided against that disorder, which, in addition to the improbity it gives birth and assistance to on the part of members *individually* considered,—gives birth and support to the various *devices* by which C—r-General and Co. contrive to give increase to the *aggregate* of the effect, produced by the aggregate mass of the matter of corruption in their hands; viz. by keeping out of the House, on the several particular occasions, a number, more or less considerable, of the members by whom, if present, a check more or less efficacious might be opposed to their particular measures.

3. The *third* has for its object—the giving the necessary strength to those ties by which the dependence of representatives on their constituents is established.

Arrangements belonging to the general head in question, *three:* the *two first* for due *independence,* the *third* for due *dependence.*

Observe now what appears to be the habitude of *moderate* reform, as towards these several last-mentioned proposed arrangements:

1. In relation to the *first,* it seems rather difficult to say, whether, in what has been proposed, as above, *moderate* reform, considered in its present state, ought or ought not to be considered as taking any part.

For the purpose of shutting the door of the House against actual corruption-eaters—persons actually sitting with the bread of corruption in their mouths—a proposition, as above noticed (viz. in § 13,) was indeed, in one instance (anno 1810,) brought forward. But, by the honourable gentleman (Mr. Brand) by whom, on that occasion, it was brought forward, it was, on the next occasion (viz. anno 1812,) abandoned.

On this occasion, supposing its title to a place in the budget of moderate reform admitted,—a simple reference to what (in § 13) has been said on the subject of its inadequateness may here suffice. By the place it leaves to the *domini,* among the corruption-eaters,—while the acknowledged *fures* are excluded,—the principle, instead of being *reprobated,* is *approved* and *confirmed.*

2. As to the second point, viz. *attendance.* Of the disorder produced by the violation of this duty—the fulfilment of which forms a necessary preliminary to the performance of every other,—in no one of all the several proposals, included in the *moderate* reform system, are any symptoms to be found, indicative of any the slightest glance, as having ever been directed towards this object: to the disorder itself,—nor consequently to any arrangement considered as presenting the prospect of a remedy. On this subject, moderate reform, in every one of its editions, maintains the most completely uninterrupted silence.

3. As to the *third* point, viz. *impermanence:* impermanence of the situation of representative, as constituted by *annuality* of election.

As to this matter, for the purpose of reducing to its *minimum* the length of the term, and thence raising to a corresponding *maximum* the degree of *due dependence*—of dependence, on the part of each representative, as toward his constituents,—under *radical* reform, the comparatively short time indicated by the word *annuality* is insisted upon as above; viz. the reduction of the at present established long term indicated by the word *septenniality,* to the dimensions of this short term.

On the other hand, on the occasion of the reduction, which, in some degree or other, both editions of particular reform concur in proposing,—moderate reform insists at stopping at the stage indicated by the word *trienniality. Triennial parliaments* it admits of and calls for: against *annual* parliaments it insists on shutting the door.

That, in comparison of annuality, the remedy indicated by *trienniality* is inadequate,—and in what respects and degrees it is so,—are questions, the answers to which may afford matter for a separate section.

Remain two proposed arrangements, the utility of which, as far as they go, is here admitted; but, in relation to which, the doubt is—whether, having, as far as appears, been deserted by the men who at one time were their advocates, and who still

continue to belong to the denomination of *reformists*—viz. *moderate* reformists,—they can with propriety be at present regarded as having a place in the moderate reform system: whether, from having in former days been *sound, practical,* and *necessary,* they may not, in the eyes of existing *moderation,* have become *wild* and *visionary.* These are—1. The *householder plan,* as above mentioned: an article of the number of those which apply more especially to the situation of *electors.* This, as far as it goes, is an advance made towards *virtually universal suffrage:* and, in that character has been mentioned, as an arrangement which—though not completely adequate—might, by *radical* reformists, for the present at any rate, be acceded to without much reluctance.

But, by a *radical* reformist it could not be refused to any electoral district—to any part of the population: whereas, by *no moderate reformist,* by whom it has ever been advocated, does it appear that the application of it has been proposed—any further than to such *town* electoral districts, as upon his plan were proposed to be established: at any rate, to some of the *counties* in their capacity of *electoral districts.*

Lastly, as to the plan for exclusion or reduction of the expense, delay, vexation, and disorder, at present attendant on, or incident to, the election-process;—viz. 1. Voting by districts; 2. Carrying on the process in all places on the same *day;* 3. Arrangements to prevent the same person from giving his vote in or for *places* more than one.

Neither of the second, nor of the third, of these proposed arrangements, do I find any mention in my own Plan (drawn up anno 1809) as herein printed. Regarding at that time their importance, as being—howsoever in an *absolute* view considerable,—inferior, in a comparative sense, viz. as compared with the others herein brought to view,—it has never yet happened to me to apply to either of them any considerable portion of attention: useful and unexceptionable, in so far as practicable,—such is the character in which they have, on each occasion, presented themselves to a cursory glance.

In regard to *voting by districts,*—in the ensuing Plan of radical reform it may be seen presented in a shape rather more determinate, it is believed, than in any of the moderate reform plans: nor, in any one of them, does it seem to present itself in a form sufficiently *determinate* for contrast and discussion.*

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SECTION XVII.

TRIENNIALITY INADEQUATE;—ANNUALITY NECESSARY.

Comes now what remains to be said on the subject of *impermanence.*

The conflict is between *annuality* of election and *trienniality.*

I. Compare, then, the two degrees of impermanence—in the first place with a view to appropriate *probity.*

1. In the event of misconduct, the remedy is by a better choice. In the case of annuality, behold here promptitude maximized; in the case of trienniality, degree of promptitude no more than one-third of what it is in the other case.

2. So, in respect of discontinuance of choice, or, in one word, *removal,* considered in the character of *punishment,* operating in the way of *example* to others.

3. In respect of *expense,* whence, in case of excess and consequent pressure, *temptation to venality.* In the case of *annuality,* behold here the temptation to expense *minimized:* in the case of *trienniality,* the temptation *thrice* as great.

N. B. By the *secresy of suffrage,* here proposed as an arrangement essential to the utility of radical reform, the temptation to expense being altogether, it is believed, taken away,—if this be admitted, the advantage attached to annuality on this score will, as to a considerable portion of it, be to be left out of the account.

Under annuality, for the purpose of corruption-hunting, scarcely would it be worth the while, of a man deficient in probity, to offer himself a second time to choice, thereby exposing his character to scrutiny: at any rate, small, as above, is the price which C—r-General would be at the same time able and willing to give to him;—prompt the time at which his power of doing mischief might be put to an end.

Under trienniality, *three years* is the term for which every man may sell himself to anybody:—three years, the term for which his service may be bought by C—r-General:—three years, the time given to him to remain in a complete state of *independence* as towards *constituents;* thence in a state of complete *dependence* and mischievous obsequiousness, as at present, as towards his *purchaser.* Trampling on his duty—doing the work of political uncleanness with greediness, during the whole of the two first years, with a part more or less considerable of the last,—just at the close of the term—(adequate active talent being supposed to be in his possession)—by some dashing and momentary display in the exercise of the art of popularity-hunting, the corruption-hunter may have promised himself—and perhaps not altogether without success—the satisfaction of thus atoning for his past

misconduct, in the eyes of a never-with-sufficient-universality-or-constancy-attentive, and thence for ever too indulgent, people.

Even under a system of *radical* reform—of reform in all other particulars such as here proposed—in all other particulars (suppose) perfect—such, in here and there an instance, may, in this particular, be the result of an unfortunate choice once made. But, in other particulars,—for want of this or that other of the features essential to completely efficient reform—whether it be virtual *universality* of suffrage, practical *equality* in respect of the effect of the right of suffrage, or *secresy,* and thence *freedom* of suffrage,—suppose the system so constructed, as that it shall be in the power of any individual to secure to himself the perpetual command of a seat;—on this supposition,—if by indolence, by unpopularity, or by any other cause, it should happen to him to have become disinclined to occupy the seat in his own person any longer,—there remains the seat, which he may find himself in a condition to give or sell to this or that other Honourable, by whom the like pernicious use may be made of it: and so—parliament after parliament—so long as the seat continues in his hands.

Exactly in this case would the representation continue to be,—supposing *that* mode of *moderate* reform adopted, of which the reduction of septenniality to trienniality is the principal, if not the only feature.

II. Next as to appropriate *intellectual aptitude* and *active talent.*

In the case of annuality,—in the event of deficiency—absolute or comparative—in respect of these endowments—both or either of them,—in the case of annuality, behold here, as above, *promptitude* of the remedy *maximized:* in the case of trienniality, promptitude no more than *one-third.*

Here, then, is a three years' term,—during which a man, whose appropriate talents are, all of them, with or without his probity, either in his *acres* or his *purse,* may fill a seat with useless matter as at present:—matter at best useless, and naturally prone to become worse than useless: for, generally speaking—(though, alas! in one way, exceptions are not altogether wanting)—the more destitute a man is of *natural* dignity of character—of natural title to estimation and respect—the stronger his inducement to sell himself to C—r-General;—purchasing in exchange *factitious dignity,* in the shape of baronetcy or ribbon,—for self, or for relative, friend, or dependent, in any one of those, or of some other more substantial shapes. And howsoever, for no more than a single vote, with whatsoever constancy and punctuality repeated, the least valuable of these implements may be deemed too great a price,—yet, if by one such article bestowed upon one individual, seats more than one should be to be commanded, the bargain may here and there be, by both parties, found a convenient one.

Referable to this head, comes now an objection ascribed to Mr. Brand. Under annuality, the term not long enough for gaining the requisite stock of *experience:* under trienniality, the term long enough.*

Answer. 1. In this respect, during the whole of the first year, *annuality* and *trienniality* are exactly upon a par. Under *annuality,*—in the election of the *second* year, every representative, who has served the first year, will, in respect of presumable aptitude, have, in this respect, the advantage of every candidate, or proposed candidate, who has not as yet served. And by this consideration, in default of determinate considerations pleading on the other side, it seems natural that the choice of the electors should be determined.

But by the bye, in either case, of what avail is *opportunity* of acquiring aptitude, any further than as the opportunity is improved? And, under the existing system, unless it be on the part of a dozen or two, where is the *motive?* See above, in various places. And what, accordingly, the *disposition* and the *habit?* See the section on Attendance.

2. The idea of detaching *speech* and *motion* on the one hand, from *vote* on the other, and by that means securing, even on the part of the ministerial side, a supply, so much more to be depended upon than at present, of appropriate aptitude in the shape of *active talent*—this idea not having entered into the design, nor perhaps into the conception, of the honourable gentleman,—on this supposition, the comparative smallness of the quantum of intellectual aptitude possessed by such of the members as have votes, will not have presented itself to his view. On the supposition of radical reform, the men for whose decision the arguments on both sides are presented, will be a set of men who have no interest in a wrong decision: and, in default of *self-formed* judgment, the opinion from which *derivative* judgment will, in their instance, be derived, will, in that state of things, wherever, in the balance of reason and argument, the scales hang tolerably even, be most naturally the opinion delivered by the members of administration:—by those members, to whom not only *speech,* but *motion,* is proposed to be so extensively and uniformly secured.*

In the imputation meant to be conveyed by the words *wild* and *visionary,* and so forth—(for by honourable gentlemen the charge of finding sense for their eloquence has, along with so many other burthens, been left to us of the swinish multitude)—in the number of these conjecturable imputations, on this occasion likewise, are we to place the charge of tendency to produce *disorder?* But if to parliamentary elections of any sort a charge of this sort attaches, it must assuredly be to elections of that sort, which would have place under the system of virtually universal suffrage. Under that head (see § 8) the proof, it is hoped, will be found tolerably sufficient, that, in no instance, under that system, of mischief,—in any of the shapes in which the term *disorder* is ever employed for giving expression to it,—would there be any reasonable ground for apprehension. But if not even on the supposition that the widest possible extent were given to the right of suffrage, still less on the supposition of any less narrow extent: and if not in any one year, then not in three successive elections for three successive years, any more than in one such election having place in the first of these same three years.

If, in either case—viz. in case of *annuality,* or in case of *trienniality,*—under radical reform—or even, to go no farther, under virtually universal suffrage,—tendency to disorder were worth a thought,—rather on the case of trienniality than on the case of annuality should the thought be bestowed. Why? For this plain reason—Because, the

longer the term in the seat, the greater the value of the seat; the greater the value of the seat, the stronger the incitement in both situations,—that of candidate and that of elector; the stronger the excitement, the greater the temptation to disorder in every shape.

On this occasion likewise, if it be worth while, look once more to experience. During the ancient period above mentioned, while parliaments were changed, not merely every year but oftener,—from impermanence, even when carried to that degree,—in any such shape as those which are included under the head of *disorder,*—in what instances does inconvenience appear to have ever had place?

"Nay, but," it may be said, "no wonder. During all that period, parliamentary service was a service of burthen,—not, as now, of profit: the object was not to get into it, but to keep out of it."

Answer. Yes: accidentally, but not uniformly: especially considering that in those days the servants were paid for the service, and that by the proper hands—their masters: and as to disinelination, it was, unless by accident, disinclination—not on the part of servants as toward the service—burthen and pay together—but on the part of the masters as towards the expense of paying for it. As to the statute of Henry the Sixth, though by it great *concourse* is proved—great concourse the state of things, *competition* the probable cause of it—*disorder,* instead of being proved, is disproved.

Well, if this *ancient* experience will not suffice—and small indeed to the present purpose must be confessed to be its value—look to ancient and modern experience combined in one—linked together in a long and uninterrupted chain, having for its last link *present* time. Look to the metropolis:—look to the *city of London:*—look to the *common council:*—electors the whole body of the liverymen, in number several thousands:—elections annual:—districts in which the votes are taken, *sub-districts.* In what shape was disorder ever seen *here?*

"Nay, but," says the adversary, "this sample of yours is not a fair one. Your universal-suffrage men—or even your householders—speak of them in the same breath with the *London liverymen? men* who are not only *householders,* but such *substantial* householders?"

I answer: Not in the poorest classes, any more than in the richest, will *disorder* in any shape have place, where no *cause* of disorder in any shape has place: and, by the means so often brought to view, every imaginable cause of disorder has been shown to be removed. Even in the present disastrous times—under the pressure of such unexampled cause of irritation—in the vain hope of obtaining mercy and relief at the hands of their oppressors—what multitudes have we not seen collected together—multitudes in ten times the number that would ever be present at any such elections as those here in question;—and yet,—to the sad disappointment of those tyrants by whom disorder below is so eagerly looked for, as a pretence for, and thence an instrument of, tyranny above,—not a spark of disorder visible.

Will not that suffice? Look then to Westminster:—number of inhabitants, 162,085; number of electors, at least 17,000; voters not distributed among *sub-districts,* but driven all together—all into one and the same pollbooth: compared with the case of *annuality,* existing interests rendered the more stimulating by the superior value of the object of competition, and by the rareness of its recurrence. Freer from disorder in every shape is it possible for election to be, than (see p. 472) in this great city—its population part and parcel of the contiguous population of more than a million—it has been for these *ten* years past?

Well: to secure, and for ever, the same undisturbed tranquility all over the three kingdoms,—nothing on the part of Honourable House but the *will*—so it be but sincere—is necessary.

On the ground of general principles, were the advantages on the side of *annuality* ever so slight—or even altogether wanting—especially when it is considered that, under the original system, not only was it actually established, but the good effects of it were even at that time so manifest and undeniable—on this ground, ere with any colour of reason, or pretence, or any hope of the reputation of sincerity, *trienniality* can continue to be set up in preference to it, can it be otherwise than that some grounds—some specific and determinate grounds—must, in support of such alleged preference, be produced?

Towards the close of the reign of Charles the First, (16 C. I. c. 1,) at the opening of the Long Parliament—the so often repeated and so long observed engagement, for the annual holding of fresh parliaments, having been so long and so continually violated as to have become in men's conceptions obsolete,—*trienniality* was, for the *first* time, established by law instead of it. *Trienniality* and not *annuality?* Why? Because, at the commencement of the struggle, parliament did not feel itself strong enough to exact anything more: to exact the restoration of the original and so thoroughly approved, but unhappily so long despaired of, state of things.

In Charles the Second's time, (16 C. II. c. 1,) the legitimacy and despotism which led to the Revolution, having for four years been reseated on the throne,—the provisions extorted from the piety of the father being found too efficient, were repealed: these repealed, others, the merit of which consisted in their inefficiency, substituted.

In William's time, (6 W. and M. c. 2,) the inefficiency of the provisions dictated by Charles the Second having been so fully and so superfluously proved by experience, others less inefficient were substituted. Here, too, however, instead of being *annual,* the duration was made *triennial.* Triennial? Why? Because by this time the value of a seat to the occupant was pretty fully understood: and, for the giving to it the utmost duration, and thence the utmost value which at that time had ever presented itself as endurable, the two above-mentioned precedents furnished honourable gentlemen—the honourable gentlemen of those days—with a pretence.

Comes the new dynasty of the Gwelfs, and now one of the first acts of the first of them (1 G. I. c. 8) was to poison the constitution of the country: of that country, the voice of which had called him to the throne. Most probably the scheme was in the

greater degree, if not exclusively, the scheme of the honourables among his advisers: the benefit to them being as manifest, as to the ill-advised monarch it was problematical. Their *constituents* had seated them for three years: they seated *themselves* for four years more. An analogous retaliation would have been another Gunpowder Plot—not contrived only, but executed. How long shall *principals* continue bound by chains of iron—*trustees* by nothing but cobwebs? According to these men, to such a degree was the nation adverse to the new king,—all the official establishment, added to all the army and the majority of the peerage, would not, without the continued service of these honourables, have sufficed for his support. Well then: if it was so—(not that it was so)—what was he better than an usurper, fenced about by this guard of petty tyrants? The monarch was no usurper: he was fairly seated. Not so honourable gentlemen. What shall we say of their successors?—successors seated by the original sin of their forefathers—seated by the same breach of trust?

Remains one short observation, by which much sad matter is brought to view. In the situation in question, only in proportion as it contributes to strengthen the ties of their dependence, is impermanence, and thence annuality in comparison of trienniality, of any use: only, therefore, in the case, and to the extent, of that portion of the whole population of Honourable House, who are in any degree dependent for their seats on the good opinion of the persons styled their constituents: and how small that minority is, which is composed of the persons whose presence is not a nuisance and an insult to the whole people of the United Empire, let them say, to whose industry the melancholy secret has been revealed. Before the Irish Union, anno 1793, according to the *Friends-of-the-people Society,* of the 558 seats,—by patrons, 154, seats filled, 307; not known to be so filled, 251; known majority of sham representatives, 56. Since the Union, anno 1812, according to Mr. Brand,—of the 658 seats, by patrons (*i. e.* single patrons, acting as such in severalty) 182, seats filled 326; add ditto, filled by compromise between forty pair of Terrorists, seats filled, 80:* total 406 and more: representatives not known to be sham, 252, and no more: known majority of sham representatives, 154 and more.

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SECTION XVIII.

INTERESTS ADVERSE TO ADEQUATE REFORM—SUPPORT GIVEN BY THEM TO MODERATE, TO THE EXCLUSION OF RADICAL: TORIES—WHIGS—PEOPLE'S MEN.

A sort of paradox—a sort of riddle—here presents itself. Behold it in the following train of conflicting circumstances.

Of the function of the Members of the Commons House as such—representatives sent, or supposed to be sent, by the body of the people, to officiate in the character of their trustees and agents, sole use the securing on the part of the servants of the monarch a due dependence on the will—on the supposition that the will will be governed by the interest—of the whole body of the people. Seductive influence of the monarch and his servants a *bar* to that use. *Removal* of this bar the proper object of every change that under any such name as that of *parliamentary reform* can be proposed. The mode of reform called *radical,* as above explained,—this the only change by which that removal can be effected. *Moderate* reform a change altogether inadequate. Such the state of things which (not to speak of other eyes) to the eyes of the set of men in question has been all along lying open.

Now as to the line of conduct pursued by them under and in relation to this same state of things. Among the professed advocates for parliamentary reform, on the part of the confederacy of leading men, styling themselves (for, at the formation of the confederacy thus they actually did style themselves)—styling themselves *Friends of the People*—and, at that time, by one great preliminary service of unspeakable use, really acting as such,—on the part of *these* men, and in particular on the part of such of them as are or have been in possession of seats in that same house, a declared *hostility* towards every *adequate* plan of reform—an exclusive preference given to that altogether *inadequate* one. Under the state of things thus described,—in the repugnancy between profession and practice—professions so universally kept up by so vast a body, composed of men of the most respectable characters, in the highest walks of life—in this repugnancy—in this sort of inconsistency—lies *the riddle.*

Here then we have the riddle. In the *state of interests,* on the part of the body of men in question—in this source and no other—will the *solution* of this riddle, by any person whose curiosity may happen to have sent him in quest of it, be to be found.

Follow now the sub-topics under which the matter of this Section will be found:—

I. Sole clew to political conduct, interest.

II. Tories—Whigs—People's men:—general coincidence of interests as between Whigs and Tories.

III. Particular points of radical and efficient reform, by which the joint interests would be affected.

IV. Reforms to which they would be equally irreconcilable, though contributing nothing to democratic ascendency.

V. Country gentlemen—opposition of their particular interests to efficient reform, and thereby to the universal interests.

VI. Options—Compromises—Experiments—Postponements.

VII. Uses of this exposure.

I.

Sole Clew To Political Conduct, Interest.

In this public situation, or in any other, be the *individual* who he may, have you any such wish as that of possessing either a clew to his conduct in time past, or a means of foreknowing his conduct in time future? Look to the situation he is in, in respect of interest. Have you any such wish in regard to an *aggregate body?* Look still to interests:—look to the situation which the whole or the majority of that body are in, in respect of interest.

In the case of an individual *unknown,* it is your *only* clew: in the case of a body—meaning the governing part of it,—except in so far as, by accident, the view taken by it of its interests may have been rendered erroneous by weakness,—it is a sure one.

Yes: in this one short phrase, *the state of interests,* every man has at hand a glass, in which,—when set up in the field of *morals*—and more particularly in that compartment of it which embraces *politics,*—any man, who is not afraid of seeing things as they are, may at all times see, what it will not at all times be equally agreeable to him to see. Where the object or objects which it presents to his view have something more or less of unpleasantness in them—where the effect of them is to check the vivacity of that swaggering and strutting pace, which, when in their vibrations before a looking-glass, pride and vanity are so apt to assume,—nothing is more natural than that the eyes should have a tendency to close themselves. But, on this occasion, let a man's eyes be closed by him ever so fast, in those same eyes at which it began, will the compression terminate: it will not communicate itself to any other.

In the case of a man by whom a public situation in any way efficient is occupied,—the correctness of the conception which he himself has of what is passing and about to pass in his own mind,—and in particular of the *springs of action* by

which his own conduct has been and is in a way to be determined,—is, to the public at large, a point as indifferent as it is unascertainable: but, to that same public, a conception as correct as can be formed in regard to these same springs of action, and the share they have respectively had, and are in a way to have, in the production of the several effects, is frequently a matter of no inconsiderable importance.

In the view of giving what facility it may be in my power to give to an inquiry of this sort, in the hands of any such persons, by whom the need of engaging in it may happen to be felt, I will accordingly in this place, notwithstanding the repetition involved in them, venture to submit two *rules* or *directions:* the one positive, the other negative.

1. Positive Rule.—*To satisfy yourself beforehand, what, on a given occasion, will be the course a man will take,* look to the *state of interests:* look out for, and take note of the several interests, to the operation of which the situation he occupies stands exposed.

2. Negative Rule.—*In your endeavour to satisfy yourself, what, on the occasion in question, is the course he will take, pay no regard whatever to professions* or *protestations:*—to protestations, by whomsoever made, whether by the man himself or by his adherents: never to professions and protestations, directly made, in and that very shape: still less, to professions and protestations muffled up in any such disguise, as that of a storm of indignation poured forth upon the malignant and audacious calumnistor, by whom any such expectation is held up to view, as that the conduct of the men in question will on that occasion or any other, be in any degree likely to receive its direction, from those *springs of action,* on the *predominant* force and efficiency of which the preservation of every individual is every day of his life dependent.

A case,—in which, by the application of the above rules, it may here and there happen to a man to be led into a conclusion, more or less erroneous,—is that of an *individual.* For, in the case of an individual, the most correctly framed general rules will every now and then find themselves put to fault, by the unconjecturable play of individual idiosyncrasies.

Far otherwise is it in the case of a body of men; more particularly in the case of a body, the motives of which are in so great a degree open to universal observation as those of a political party. The larger the body, the more unerring the indications afforded by those rules.

Take, for example, the case of *universal suffrage* and the late Duke of Richmond. By what tolerably intelligent mind, knowing nothing of him but that he was a *duke,* could any such expectation have been entertained as that of finding in this duke an advocate—a zealous and persevering advocate—for universal suffrage? Yet, by this or that incident in the interior of his life—some temporary heart-burning, for example, between this great aristocrat and his monarchical cousin,—the apparent mystery might perhaps have been—may still perhaps one day be explained,—the paradox removed, the riddle solved.

Accordingly, that there shall never again be *a duke,* in whose instance universal suffrage shall find a zealous advocate—is a prediction, which the observation of that one case should suffice to prevent a man from being forward to utter: and so in regard to each of the several features, essential to *radical, i. e.* to *efficient*—parliamentary reform. But that there never will be a time, in which *all* dukes, or so much as a majority of the fellowship of dukes, will, under any other impulse than that of fear, join in the advocating of any such arrangement, may without danger of error be pronounced with unhesitating confidence.

So in the case of the *Whigs,* considered with a view to radical parliamentary reform. That, among those members of parliament, who at present, on the occasion of a party-question, are in the habit of voting in and with the party so denominated, there are not *any,* who, at *any* time, will be found advocating this only efficient bulwark against the ocean of ulterior misery with which the country is threatened,—is a prediction happily no less improbable than it would be uncomfortable. But that, by any other impulse than that of *fear*—by any impulse other than that by which the conduct of their more prosperous antagonists, *the Tories,* will be directed—neither the whole body, nor so much as the majority of the numbers of the party in question, will ever be engaged in any such self-denying course,—is a prediction which, by a short glance at the state of the interests bearing upon the situation in which they stand, any man may feel himself compelled inwardly to join in, as well as warranted in uttering, with an unhesitating, howsoever melancholy, confidence.

That by an absolute monarch—not only *under* him, but even *in the place of him*—a representative democracy should be established,—this, even this, is upon the cards. By no other means could so heroic an act of beneficence be exercised:—by no other means could so vast and unperishable a treasure of love and admiration be collected and laid up:—by no other means could so novel and striking a manifestation of talent and genius be displayed:—by no other means could even so vast a mass of power be exercised: power exercised, and for ever, over posterity: a power, with reference to which, the vainest and most selfish of despots—Lewis the Fourteenth—recognised, and foretold, what those who came immediately after him experienced—his impotence.

Of voluntary surrenders of *monarchy*—surrenders made into the hands of expectant and monarchical successors, there is no want of examples: not even in modern—not even in European history:—*Charles* the Fifth of *Germany,* monarch of so many vast monarchies—Christina of Sweden—Victor Amádeus of Savoy—Philip the Fifth of Spain:—here, in so many different nations, we have already four examples. But, on the part of an *aristocratical* body, of the surrender of any the minutest particle of power which they were able to retain, where is there as much as any one example to be found?

II.

Tories—Whigs—People'S Men:—General Coincidence Of Interests As Between Whigs And Tories.

To this purpose at least, all—and to every other purpose, almost all—in whom in all its several forms parliamentary reform finds opposers, may be considered as belonging to the class of *Tories.*

To this same purpose, all by whom, to the *exclusion of radical* reform, *moderate* reform is advocated or supported, may be considered as belonging to the class of *Whigs.*

In respect of all the several elements belonging to the system of radical reform,—and in particular according to the edition here ventured to be given of it, it has been seen what,—with the exception of a certain confederacy of particular and sinister interests—are the exigencies and demands of the *universal interest*—of the interest of the whole people. Those by whom that universal interest is advocated, may, for distinction's sake, be termed *People's men.*

Now then, so it is, that in respect of these same matters, *Tories* and *Whigs*—both parties (it will be seen) acting under the dominion of the same seductive and corruptive influence—will be seen to possess the same separate and sinister interest:—an interest completely and unchangeably opposite to that of the whole uncorrupt portion of the people.

That which the Tories have in *possession*—viz. the matter of good—the object of universal desire in all its shapes:—the matter of good—the whole of it, by the relative situation of C—r-General and Co. on the one part, and the members of both Houses on the other part, converted into matter of corruptive influence—the Whigs have before them in *prospect* and *expectancy.*

In the first place, as to *waste* and *corruption, corruption* and *waste.* Of the *Tories,* it ever has been, and ever will be, the interest—to keep that portion of the substance of the people, which is expended in waste and corruption, as great as possible: so of the *Whigs* likewise. Under *non-reform,* this quantity will be left untouched: under *moderate reform,* the reduction in it, if any, would be *minimized:* under radical reform, it would be *maximized.*

In the next place, as to *seats.* Of the *Tories,* it is the interest—that the power belonging to the seats which they have at their disposal—that, therefore, in number as well as value, the seats themselves—should remain undiminished. On the part of the Whigs, so far as concerns the seats at *their* disposal, behold the self-same interest.

Partly to *proprietorship,* partly to *terrorism*—(not to speak of bribery)—to terrorism, as well of the *competition-excluding* as of the *vote-compelling* species—are the *Tories* in the greater proportion indebted for *their* seats. To the same instrument of

subjection—to the same extinguisher of freedom—without any ascertainable difference in respect of proportions—are the *Whigs* indebted for *their* seats.

Of the *Tories,* in respect of their seats, it is the interest to be *absentees ad libitum:* absentees for the purpose of half the effect of corruption as above explained: absentees—for the purpose of private interest, dissipation, and idleness. On the part of the Whigs, with the exception of that corrupt purpose, in which none but those in power can be partakers—still the same sinister interest.

Among the *Tories,* it is the interest of all persons who have seats at command, to enjoy, clear of *obligation,* the full private benefit of those situations, and of the *power* they confer: clear of obligation in every shape, and in particular, clear of all such obligation as that of possessing any the smallest grain of *appropriate aptitude.* In respect of interest, the *Whigs,* if taken individually, will be seen to be in that same case.

Not having in possession, nor in any tolerably probable and near expectancy, any share in the existing mass of the matter of corruption;—no public money at their disposal—no peerages, no factitious dignities;—hence so it is, that—setting aside their respective masses of private property,—in the power attached to the seats they possess in the two Houses—but more particularly in the most efficient of the two—they behold the sole efficient cause of whatever pre-eminence they can hope, as a party, to possess in the scale of influence. In the eyes of the people at large, the sort of corporate union they have been wont to maintain among themselves, presents itself to them as securing to them a sort of chance of entering, once more, on some unknown occasion, be it for ever so short a time, into the possession of efficient and profitable power. In that auction, at which, by greater and greater manifestations of obsequiousness, the favour of C—r-General must, by all competitors, be at all times bid for,—impossible as it is for them—incompatible with their distinctive character—to outbid, or so much as to come up to the present occupants,—it is not in the nature of things, that any possession, which it may be supposed possible for them to attain, should be of any considerable continuance: of any continuance beyond that of the longest of those short-lived ones, which past experience has brought to view.

But if ever, as a body, the Tories go out altogether, the Whigs as a body, being the only formed body in existence, must come in: come in—and, being a body, come in together. Here, then, such as it is, is a chance: and the thing of which it is a chance being, so long as it lasts, a mass of power never much less, and now not at all less, than absolute,—thus it is—especially to those of them who elsewhere have nothing but this chance—thus it is that, being their everything, were it even much less than it is, it could not be prized at anything less than the full value. And, the smaller the portion which is thus left to them, it being their all, the more, rather than the less pertinacious, will be their determination to preserve it undiminished.

Thus, without any need of *concert*—most probably, therefore, without any assistance of actual concert—has a sort of tacit *cooperation* been kept up between the two contending parties: an alliance in form but defensive, but in effect but too offensive, against the people and their interests.

III.

Particular Points Of Radical And Efficient Reform, By Which The Joint Interests Would Be Affected.

In regard to *seats,* by the interest of the *Tories* it is required, that, as well in respect of the *number* of seats in their possession, or within their grasp,—as also in respect of the *value* of those several seats—taken in all the *elements* of which in such a case *value* is susceptible—things, if in the sense of particular and sinister interest they cannot be made *better,* should at any rate continue as they are. Without any the smallest difference, all this may it not be predicated of the interest of the *Whigs?*

I. As to the *number* of these seats.

Of the particulars above brought to view in the character of arrangements included in the *present* edition of radical reform, the following will be seen to concur in lessening the *number* of the seats in the possession of the present possessors; meaning by present possessors, not merely the existing individuals, but moreover all others whose possession will be the result of the same causes. These are—1. *Virtual universality of suffrage;* 2. *Practical equality of suffrage;—i. e.* practical equalization of the quantities of population and territory respectively comprised in the two proposed sorts of electoral districts, viz. *population* and *territorial* districts; 3. *Secresy of suffrage;* thence, 4. *Freedom of suffrage.*

As to the particular means by which this general effect will be produced, they will not be far to seek. By the *virtual universality,* in conjunction with the *practical equality,* the present possessors, together with those who would have been their successors, would be excluded from the *proprietory* seats: by the same causes—with the addition of the *secresy,* and its fruit, the *freedom*—all those to whose possession either *terrorism* or *bribery* would be necessary, would in like manner stand excluded:—excluded as well from such seats as they are now in the habit of filling, as from all such other seats, to the acquisition of which those same modes of seduction would be found necessary.

All seats being thus laid open to all candidates, self-proposed and proposable,—whatsoever advantage would remain to the existing occupants, would be the result—either of habit on the part of electors, or of good reputation, already acquired, in respect of the several elements of appropriate aptitude so often brought to view: of which reputation, the evidentiary cause might be either of a *direct* nature, consisting of service already performed in this same line of public service, or of a *circumstantial* and *presumptive* nature; the presumption derived from virtue manifested, or supposed to have been manifested, in other parts of the field of action, public or private: among which that negative sort of virtue, which consists in the innoxious and unoffensive application of the matter of opulence to the use of the possessor and his particular connexions, is in little danger of being overlooked or undervalued.

II. As to the *value* of these same seats.

Impermanence of the situation—necessity of constant attendance—exclusion from official situations, unless on condition of losing the right of voting:—by the conjunct operation of these several arrangements, would the value of all seats be reduced: reduced in the instance of all seats without exception, by whomsoever occupied; the reduction therefore attended with a correspondent sensation of *loss,* in the instance of all existing occupants of such seats.

As to those members who, in the existing state of things, add to the profitable possession of official situations, the not altogether useless, though not additionally profitable right, of exercising controul over, and sitting in judgment on themselves and one another, in the character of representatives of the people,—the effect which the change would have in their instance, would be the obligation of making their option between the assurable possession of the profitable office, and whatsoever chance they might respectively have of obtaining the unprofitable vote.

1. *Virtual universality* of suffrage; 2. *Practical equality* of suffrage; 3. *Freedom* of suffrage; 4. *Secresy* of suffrage: under the head of arrangements applying more immediately to the situation of *elector,* have these four articles been conjunctly brought to view: under the head of arrangements applying more immediately to the situation of *representative,* the *three* following:—viz. 1. *Impermanence* of situation—say, as particularized by the word *annuality;* 2. Efficient obligation to *constancy of attendance;* 3. *Exclusion of placemen* from the right of *voting*—though not from the right of speech or that of motion.

By the set of arrangements thus applying to the situation of *elector,*—by these would the existing seats be slipt from under the individuals by whom, when not otherwise more profitably or pleasantly occupied, they are at present filled: by the set of arrangements thus applying to the situation of *representative,* would be stript off a great part—who shall say in what sad proportion the greater part?—of the value which, but for so merciless a defalcation, might have been found attached to such newly furnished seats, as by the operation of the first-mentioned set of arrangements, would be substituted to the existing ones.

Annoying—lamentably annoying—would all these several innovations be to the Tories:—little less so would they be to the Whigs. Sole difference,—the difference between possession and expectancy—and *that* confined to the option which, in so far as office is concerned, would be to be made, as above, between vote and office.

TABLE, showing, on a rough calculation, from Mr. Oldfield's History of Boroughs (first edition,) the respective Numbers of Electors in the several Cities and Boroughs in *England,* the Parliamentary Seats of which are ordinarily regarded as open to competition: also (from the second edition of that work) the Number of Counties, Cities, and Boroughs in *Ireland,* regarded as being in that same condition; together with a like Calculation of the Population, as well as the Numbers of the Voters in the instances undermentioned.

ENGLAND.		IRELAND.			
Places.	*Voters.*	*Places.*	*Voters.*	*Population.*	*Members Returned Freely.*
1. Westminster	17,000	1. Cork (County)	20,000	416,000	1
2. London	7,000	2. Tyrone (County)	20,000		1
3. Bristol	6,000	3. Tipperary (County)	12,000	170,000	1
4. Norwich	3,000	4. Galway (County)	4,000	140,000	2
5. Gloucester	3,000	5. Cavan (County)	3,000	81,000	1
6. Coventry	2,400	6. Limerick (County)	3,000	170,000	1
7. Liverpool	2,300	7. Waterford (City)	3,000	110,000	1
8. York	2,233	8. Dublin (University)	441		2
9. Southwark	1,900	9. Dublin (City)		190,000	2
10. Lancaster	1,800	10. Roscommon (County)		86,000	1
11. Worcester	1,700	11. Kildare (County)		60,000	1
12. Nottingham	1,700	12. Sligo (County)		60,000	1
13. Hereford	1,200	13. Carlow (County)		44,000	1
14. Durham	1,200	14. Drogheda		20,000	2
15. Exeter	1,200	15. Meath (County)		4,000	1
16. Hull	1,180	16. Carrickfergus			2
17. Lincoln	1,100	17. Monaghan (County)			1
18. Leicester, about	1,000				22
19. Yarmouth	787				
20. Bridgenorth	700				
21. Ipswich	623				
22. Shrewsbury	600				
23. Maidstone	600				
24. Southampton	600				
25. Abingdon	600				
26. Reading	600				
27. Tewksbury	500				

28. Barnstaple	450	
29. Stafford	400	
Electoral Districts	29	
Seats	61	
London having	4	
Abingdon, but	1	

MR. OLDFIELD'S RECAPITULATION.

(Part II. Vol. IV. P. 300, Edition 1816.)

Members returned	by 87 Peers in England and Wales,	218	
	by 21 Peers in Scotland,	31	
	by 36 Peers in Ireland,	51	
	Total returned by Peers,		300
Members returned	by 90 Commoners in England and Wales,	137	
	by 14 Commoners in Scotland,	14	
	by 19 Commoners in Ireland,	20	
	Nominated by Government,	16	
Total returned by Commoners and Government,		187	
Total returned by nomination,		487	
Independent of nomination,		171	
Total of the House of Commons,		658	

IV.

Reforms To Which They Would Be Equally Irreconcilable, Though Contributing Nothing To Democratic Ascendency.

By *trienniality* alone, next to nothing, if not absolutely nothing, would be done.

Even by *annuality,* little more: the application of it would in England be confined to the small number of cities and boroughs, in which the number of individuals participating in the right of suffrage is considerable enough to operate as an antidote, more or less efficacious, to the poison of corruptive influence.

Two arrangements might be mentioned, by which, taken together, more—much more—would be done, than by *annuality* taken by itself: viz. 1. *Exclusion of placemen's* votes—*speech* and *motion,* as proposed, reserved; 2. *Universal constancy* of attendance, supposing it really effected.

By neither of these arrangements would any the slightest ground be afforded for the imputation of *jacobinism:* by neither of them would any the slightest advance be made towards the restoration of democratic ascendency: by neither of them would any extension be given to the right of suffrage.

Still, however, in whatsoever degree efficient,—deplorably short of adequate would be the above pair of remedies, without the addition of that other, which in a late reign was so near being applied, viz. the limitation to the prerogative in respect of the right of creating peers. Part and parcel of the legitimate influence of property, when swollen to a certain bulk, is that of conferring on the possessor a sort of *right* to a peerage: a sort of constitutional, customary, half-legal right; subject of course to the universal condition of being in league with the party in power at the time being. Thus it is, that, on one side or the other, all the families in the three kingdoms, within whose field of vision this highest lot in the inventory of corruption is included, are everlastingly enlisted in a state of irreconcilable hostility with the universal interest. If neither *Pulteney* nor *Pitt the first*—each the first man of his time—could withstand the temptation of this bait, think how it must be with the herd of fox-hunters! Within the circle thus marked out, suppose one man proof against the force of the enchantment—suppose this one miracle: comes the next generation, the miracle is at an end. And, while the as yet uncoroneted class of seat-owners and irresistible terrorists—proprietors of seats by descent or conquest—are thus held in corrupt thraldom, by a coronet with no more than four balls on it,—the already coroneted proprietors of the same fractions of the integer of despotism are kept in the same state of fascination by coronets of superior brilliancy.

In the last reign but one, a never renewable concurrence of circumstances gave to reform in this shape the concurrence of two out of the three branches of the legislature.* In the minds of the peers of those days, the consideration of the defalcation, to which the value of the honour would be subjected by every increase given to the numbers of the sharers—this interest, minute as it was, obtained, by the advantage of proximity, the prevalence over the remote, but so much more valuable interest, in respect of which that order of men are sharers with the whole body of the ruling few in the profit of corrupt misrule. Taught by so long a course of intervening experience, the peers of present time are better calculators. By the Lords Temporal, jacobinism—by the Lords Spiritual, atheism—would be descried, in any attempt to defalcate any the smallest atom from that part of the mass of corruptive influence which operates in this shape.

As to the *exclusion of placemen's votes,*—scarcely more fully entitled to its name was the celebrated *self-denying ordinance,* by which—with the exception of *Cromwell*—the members of *Charles the First's Long Parliament* were reduced to the same sad dilemma, of making each of them his option between two incompatible offices. In that way was corruption at that time rooted out, because there existed a *Cromwell,* and there existed *puritans:* neither in that way—nor, much it is to be feared, without convulsion, in any way—will corruption at this time be rooted out: for we have now *no Cromwell:* we have now *no puritans.*

"Oh! but this is nothing but your own surmise—your own ungenerous and groundless surmise—one of the fruits of your own selfish, and wild, and visionary, and jacobinical and atheistical theory."

Good gentlemen—if I am indeed so ungenerous as to behold men as the Almighty made them,—and as they must be, on pain of ceasing to exist;—if such is indeed my theory,—it is neither in any respect without its sufficient warrant in the universally, and necessarily, and undeniably prevalent principles of human action,—nor yet (for so it happens) without its grounds, in the shape of special evidence, applying to this particular case.

To the Whigs—these securities against corruption—securities, as far as they went, so efficient—to the Whigs, would they any one of them be endurable? Not they indeed. *Annuality*—with all its *wildness* and *visionariness*—annuality would be far less intolerable. How should it be otherwise? By *exclusion of placemen's votes,* prospects would be destroyed: by *obligation of attendance,* ease would be transformed into hard labour: by limitation applied to the number of the peerages, the triumph of *property* over *probity* would be arrested in its course.

Exclusion of placemen's votes might be submitted to by such of them by whom indolence or want of talent would be recognised as excluding, in their own instances respectively, the slender portion of endowment necessary, and,—in the case of all but the few leaders,—sufficient, to the earning of the pay thus to be earned; but, in every eye without exception, the most visionary of all imaginable visions would be *that* by which the fulfilment of incontestable duty—though in the field of time not covering near so much as half the year—(see Report, 27th March 1817, p. 20) were to be regarded as either practicable or desirable.

As to what regards *constancy of attendance,*—the proof, as shown already under that head, stands upon your own journals.

As to what regards the exclusion of placemen's votes, I call in *Mr. Brand.* To the nerves not only of *Whigs,* but of *Whig-Reformists* (of course altogether *moderate reformists,)* so intolerable was found to be the odour of this instrument of purification, that on the only one of the two occasions on which *Mr. Brand* executed the originally announced design of an annual reproduction of his proposition for parliamentary reform,* he found himself obliged to leave out this most efficient and unobjectionable of his proposed arrangements: and even then—such had been the offence taken, at the injury done to the party, by propositions admitted on the former occasion in favour of the people—from 115 against 234, his numbers were reduced to 88 against 215.†

On this same occasion, another too efficient proposition, omitted by the same honourable reformist, was—*that* for the taking of the votes in parochial or other such small districts.

On this same second and last occasion, in a word, everything that had been before proposed was reduced or altered to that for the abolishing, in some way not mentioned, the proprietory seats, and the giving an increase to the number of the

county seats: to the number of the sources of that terrorism, by the consideration of which, the mind of Charles Fox had, as above (§ 7,) been repelled from the idea of that measure.

Note that, from their giving in the first instance the support of their votes to a proposed arrangement of reform, it follows not by any means, that honourable gentlemen have any the smallest liking to it, or any the slightest intention to continue their support to it: even from *speeches*—nay even from *motions*—in support of it, neither can conclusions in affirmance of inward favour and intentions be drawn with any certainty: for, by maturer reflection, operating upon intervening experience,—further and true lights showing the falsity of the lights by which they had at first been guided,—original deviations from the path of consummate wisdom lie at all times open to correction. Witness *Earl Grey,* and *Lord Erskine,* and *Mr. Tierney,* with *et cæteras* upon *et cæteras.*

On these occasions—as on all occasions—one object at least, if not the only object, is to make display of numbers, and thus strike terror into ministerial bosoms. That object accomplished or abandoned—the expedient has, well or ill, performed its office, and, like a sucked orange, is ripe for being cast aside.

Not in any such degree exposed to error are the conclusions that present themselves from the opposite course. When, upon any measure of reform, an honourable *back* has been turned,—expect, ye good men and true, to whom disappointment is a treat—expect to see turned again, with a smile, towards reform in that or any other shape, the honourable *visage* that belongs to it.

V.

Country Gentlemen—Opposition Of Their Particular Interests To Efficient Reform, And Thereby To The Universal Interest.

To the interest of the great landholders—whether in the situation of *country gentlemen,* employing their influence in the providing of seats for themselves or their connexions,—or in the situation of peers, conferring, in the character of *patrons,* seats on any but themselves—radical reform, would it not be generally and undeniably prejudicial in a variety of ways?

1. Of the circle,—filled by those in whose eyes the perpetual vision of a *coronet,* suspended over their head in the aërostatic region, occupies the place of the *Labarum* or the *New Jerusalem,*—mention has just been made.

2. In virtue of the principle of *practical equality of suffrage,* the counties, in the character of territorial election districts, would—most, if not all of them—require to be broken down and divided. To the class of persons in question, what in this respect would be the consequence? That a gentleman, who in an entire county beholds at present an Edom over which he may cast forth his shoe, would find this *integer* reduced to a *fraction*—a fraction corresponding to the number of the electoral districts

into which the county would be divided. Say, that for procuring to him, as before, *a seat,*—the fraction, in which the greatest part of his territorial property is situated, would suffice. So far, so good: his station in *theHouse* would remain unchanged. But the *county*—from his importance in the *county*—from every part of his influence but that immediately and exclusively attached to his seat in the House—a defalcation, proportioned to the number of the fractions, would be produced.

Of the electoral districts into which the county is divided, let four (suppose) be the number: from each of them, one seat to be filled. On this supposition—in the field of his present dominion, instead of *one* joint-potentate, he would have *three* to share with him: instead of one *Pompey,* each *Cæsar* would have three *Pompeys*.

3. Even in that one of the four supposed fractions, in which his territorial demesnes were principally or exclusively situated,—his possession even of the *one* seat in question might lose much of its present security.

Once more, in the force of *terrorism—of competition-excluding terrorism*—does not a *knight of the shire* behold his surest dependence? If yes, then proportioned, as above shown (§ 7, 8,)—proportioned to the extent of that same shire—is the pressure of that force.*

VI.

Options—Compromises—Experiments—Postponements.

For my part, if it depended upon me, gladly would I give up annuality,—if at that price, even though it were confined to the population districts, I could obtain the householder-plan, accompanied with secresy of suffrage:—compensation given for proprietory seats, and even for close boroughs. I feel, as sensibly as any one of them can do for any other, the plague which it would be to honourable gentlemen—year after year, as regularly as the year comes—to set, each of them, his stewards to drive to the poll-booth his portion of the swinish multitude:—I feel still more sensibly the plague which it cannot but be to be so driven:—in no instance, by the idea of uneasiness, considered as having place in any human breast—honourable, any more than swinish—and not outweighed by greater satisfaction elsewhere,—is any such sensation as that of satisfaction ever produced in mine. Quantity of corrupt matter, the same, in both cases:—by the reproduction of it every year, instead of once in every three years, much would be lost to individual comfort: nothing gained to public security—security against oppression and legalized pillage. Nothing will I conceal,—nothing will I exaggerate. Even by the exclusion of the whole number of *corruption-caters,*—supposing their places filled by an equal number of *corruption-hunters,* nothing more than the difference in effect between fear of loss and hope of gain would be gained. No: nothing more than that difference: but whether that difference would be slight and inefficient, let any one judge, after making the case his own, and asking himself which would be the greater—his grief on losing his all, or his joy on doubling it. Always, at the expense of the least suffering possible, would I obtain the good I look for. Many men *deserve* reward:—no man *deserves* punishment.

When a surgeon cuts into a limb, is it because the patient has *deserved* the smart? No: but that the limb may be healed. Reward *is*—punishment is *not*—a thing to be *deserved.*

For my own part—not much should I want of being satisfied, for and during the short remainder of my own life—could I but see the quondam *Friends of the people* repent of their repentance: repent of it, and no more said: it would be too hard upon them to ask them for the reasons of it. But freedom!—freedom!—wheresoever given—by whomsoever given—all suffrages must be *free*—or they are worse than none. *For* and *with* the people the thing might surely be done, with the *Friends of the people*—and those not friends in name only—for their leaders.

VII.

Uses Of This Exposure.

Of this display of the state of interests—of this exposure, melancholy as it is—melancholy and inauspicious, but not the less necessary—what now is the practical use?

Answer.—1. That those who, on looking into themselves, have the satisfaction of beholding in themselves merit sufficient for the purchase of a stock of popularity of the true and everlasting fabric, ample enough to afford adequate compensation, not only for the supposed lost seats, but for the reduction in the vulgarly estimated value of those new ones, to which they might look with such well-grounded confidence,—that these men, if any men there be that can behold themselves in this description,—happy enough as they would be not to need the adding to the stock of their other merits the merit of self-denial,—may come forward,—come forward, and, instead of sitting with folded hands to see us crushed, or lending their hands to the work of crushing us, condescend to head us, and lead us—us of the swinish multitude.

2. That those who, to a stock of merits in other less assured shapes add a supplement of sufficient strength in the rarest of all shapes, *self-denial*—pure and genuine *self-denial*—may join those others in the same generous course.

Yes, peradventure, here and there, at one time or other, may be found a few such superior minds. Such was the Duke of Richmond's: he did not scoff at *universal suffrage:* he advocated it. He himself framed—he himself made public—a plan of reform,—and that plan was founded on it.

Yes—in this or that House—nay, even in each House, to-day or to-morrow—may be found here and there a few such eccentrically generous minds: and these the people will have for their leaders: and these their leaders will be adored:—in lifetime they will be worshipped; and, after death, passing through death to immortality, they will be immortalized.

But, to be thus immortalized, they must have been transfigured into *people's men:—Whigs* they would be no longer, but *renegadoes.*

3. That, when these refined spirits are thus drawn off, and lodged in their proper receptacle, the heart of an adoring people, the power of the *caput mortuum,* which they will have left behind—the weight of it at any rate in the scale of *authority*—may find itself reduced to its true and proper amount.

As to these last—whatsoever arguments, grounded on the principle of general utility—on the respective relations of the two rival modes, the *moderate* and the *radical,* to the universal interest,—whatsoever arguments of this only genuine stamp it shall have been their good fortune to have found—will, on this occasion as on others, like all other arguments drawn from the same clear fountain, operate, and tell with their due and proper weight. But the argument in the shape of *authority*—the argument which, being composed of the alleged *self-formed* judgment of the supposed *closely thinking few,* seeks to supply, as it were from an inexhaustible fountain, matter for the *derivative* judgment of the *loosely thinking many*—of this argument, in proportion as, the state of their interests being laid open, the direction in which the prevalent mass of interest operates is seen to be adverse to the only efficient mode of reform—of this instrument of delusion, the force and efficiency will evaporate.

Arguments of that only genuine stamp being inacessible to them—none such, on their side of the case, being afforded by the nature of the case—what then will be their resource? *Answer:* Henceforward, as till now, silence, storm, or fallacy. But, of the stock of such arms as the arsenal of *fallacy* offers to their hands, a part not altogether inconsiderable—and that among the readiest at hand—has already been brought out:—brought out, pre-exposed to a damping atmosphere, and thus rendered unfit for use.

In all this truth, unwelcome as it cannot but be, mark well—there is nothing of *vituperation.* Employed on this occasion, vituperation would be as ill-grounded as it would be useless. Man is a compound of *nature* and *situation.* Such is the force of *situation* here, no probity of *nature* can ever have power to resist it. If these men were to be stoned, how many are there among us, who, upon trial, would be found entitled to cast the stones? That which, in this behalf, these men do and forbear to do,—what is there in it which those who are most angry with them would not—with few exceptions indeed—do and forbear to do in their place? Thus sad—and, but for the silently increasing strength of their own minds, hopeless—is the condition of the people. Everything, that in any shape has *power* at its back, is either *Whig* or *Tory.* The *Tories* are the people's avowed *enemies.* Man must change his nature, ere, to any radically remedial purpose, the *Whigs*—the great body of the Whigs—can be their *friends.*

In so far as, to the receiving on any occasion protecting assistance at their hands, real sympathy is necessary,—it may now be imagined whether, by the great body of the people, any such affection can ever be reasonably looked for from the body of the *Whigs.*

Happily, to the receipt of such assistance to a certain degree, on most parts of the field of government except this all-embracing one, no such feeling, it will be seen, is in that quarter necessary.

Between that aristocratical confederacy and the great body of the people, in respect of most matters of detail separately taken, the community of interests may be stated as being commonly to a certain degree sufficient for their purpose.

On no occasion, under the ever-increasing weight of the yoke of oppression and misrule, from any hand other than that of the parliamentary Whigs can the people receive any the slightest chance—(talk not of *relief*—for that is at all times out of the question,) but for *retardation of increase.* As to *liberty of speech,*—to all such purposes, everywhere *out* of the House, it is already gone. In the House, the Whigs still have—and probably for some time longer will continue to have—possession of that instrument, without which no resistance can be made. In the sort of struggle, faint as it is, which from time to time the Whigs contrive to summon up strength enough to maintain against the ever overbearing force of their antagonists,—scarcely any way without serving in some way or other the interest of the *people,* can they so much as *endeavour* to serve *themselves.*

Not that, by such hands, abuse in any shape can be *eradicated:* for the benefit of the eventually succeeding nursery-men, each *stool* must be preserved: meantime, however, even by such hands, there is scarce an abuse but may be clipped.

The time, will it ever come, in which, on the one hand, so intolerable will have become the system of misrule—so grievous the yoke of despotism,—on the other hand, in the eyes of the Whigs, so plainly hopeless the chance of their ever being, though it were but for a moment, taken into power,—that, in their calculation, the value of their share in the *partial* and *sinister* interest will no longer be greater than that of their share in the *universal* interest? The time, will it ever come, in which, in each man's estimate, the system of misrule and oppression will have swollen to such a pitch, that, on the occasion of the sacrifice made of the universal interest on the altar of despotism, he has more to fear in the character of a victim, than to hope for in the character of priest? This will depend—partly on the degree of precipitation or caution with which the system of despotism proceeds on in its course—partly on the joint degree of discernment and public feeling which shall have place on the part of the Whigs. But the great fear is—lest for their saving themselves and the country together, the time may not already be too late.

Already a Lewis, G—will before that time have been made a Ferdinand. Individuals or bodies—without means of communication, nothing effectual can be done by any two parties for mutual defence. Between mind and mind, sole instruments of communication these three:—the *tongue,* the *pen,* and the *press.* By the *pen,* without the aid of the press, nothing effectual can in these days be ever done. Of what will be done, and *that* without delay, for the depriving the people of the use of the *press,* an earnest has been already given: given in the here several times alluded to, but elsewhere too little noticed, decision of the House of Commons. As to the *tongue,* under one of the late liberticide acts, two London *aldermen,* sitting at Guildhall, have sufficed to put an end to all public use of *that* instrument, on this or on any other part of the field of politics. In this state is *civil liberty.* In *Liverpool,* already has the arm of persecution been raised against the *Unitarians.* In this state is *religious liberty.*

The heart is pierced through and through with the melancholy truth. Yes: all that rule—all that even think to rule—are against the people. Causes will have their effects. Sooner or later, unless a change takes place, the people—the people, in their own defance—will be against all that rule.

A parting word or two, respecting the pamphlet lately published by Mr. Evans.—Time forbidding all examination of it with my own eyes, the following is the result of a report made to me by an intelligent friend. With little or no exception,—historical facts, authorities, arguments, nay even proposals—in favour of *radical* reform: conclusions—conclusions alone—in favour of *moderate.* Historical facts and authorities, many and important ones: many which, could I have found time for the gleaning of them, I should not have failed to add to the number of the notes above distinguished by the name of *Shield Notes:* I say *shield notes;* the others—for want of room—and with much more of satisfaction than regret—being omitted.

Under these circumstances, it cannot but be my wish that every person into whose hands this too long work may fall, may yet add to it the pamphlet of Mr. Evans.

Another word or two on the *mode of treating* the subject.

In the section on *impermanence,*—to the duration expressed by the word *annuality,* the objection made by Mr. Brand, on the score of want of experience, will have been seen. Of the argument so employed on that occasion by the honourable gentleman, the *source* being the same, viz. *the principle of general utility,* as that from which, on every part of the field of politics, my own arguments are drawn on all occasions,—to that argument, so far as regards the legitimacy of the *source,* it was accordingly impossible that any objection could be entertained by me. The sort of business in question, be it what it may,—in the choice of a functionary for the performance of it, *appropriate aptitude*—aptitude with reference to that same business—being the term by which the *end* properly belonging to the subject—the proper and all-comprehensive end—is brought to view,—appropriate *probity,* appropriate *intellectual aptitude,* and appropriate *active talent*—each of them with reference to that same end—are on all occasions the terms employed by me as capable of serving, when taken together, and as serving accordingly, for giving expression to all the several constituent *parts* or *elements,* so often mentioned, of that fictitious whole: endowments, by the possession or non-possession of which, in so far as in each instance the matter of fact is capable of being ascertained,—whatsoever be the function in question,—and whosoever the person chosen for the exercise of it,—the propriety or impropriety of the *choice* may be, and ought to be, determined. In the setting up of this particular standard, as the standard suited to the nature of the particular subject, may be seen one instance of the application made of the above-mentioned leading principle—*the principle of general utility.* In the standard of comparison thus set up, may be seen the basis of the annexed Plan: and, on the occasion in question, to this same standard (it may be seen) did the discernment and judgment of the honourable gentleman in question conduct him likewise:—the case being such, that, in the position in which he stood, not only did the *subject,* but the *side* in which, in relation to that subject, his position was, admit of his drawing his argument from that same clear and quiet source. From that same source—as on all

occasions, so on this,—were of course drawn the arguments which it fell to my lot to find on the other side. Between the one and the other, the reader, the state of whose mind in respect of interest leaves him at liberty to form an unseduced and unbiassed judgment, will have had to decide.

To find so much as a single instance in which the question was argued upon such ground, as well as with such temper—all logic, no rhetoric—was a real treat to me. Had all the arguments, from that as well as other quarters (I speak of the assembly, not of the individual,) been of the same *temper* as well as from the same *source,*—the ensuing *Plan* shows not only the *source* from which, but the sort of *temper* in which, and in which alone, everything which came from me on the subject would have come.

In preserving while thus occupied that same cool and quiet temper,—in preserving it from beginning to end,—not any the smallest difficulty did I ever experience: as little should I experience in discussing with any person that same question, point by point, so that the arguments were on both sides drawn from that same source. In that same temper, from that same source, in that same course of argument, by that one honourable gentleman was that one step made: but, in any sort of temper, on that same ground, in that same course of argument, and on that same side, to take another—at any rate, to take many such other steps—so it were upon *terra firma,* and not in the region of air and clouds—would not, I am inclined to think, by any honourable gentleman on that same side, be found an altogether easy task: not even by the honourable gentleman in question, who of all *moderatists,* in so far as he seems to be at liberty to give expression to his own sentiments (for it has been seen under what a yoke he has been working,) seems to be least remote from *radicalism.*

In respect of temper, is there a reader to whom the cause of the difference observable between the *Plan* itself and the *Introduction* to it is an object of any the least curiosity? I will answer him without disguise. For *any* eyes that could find patience to look at it, was the *Plan* itself designed. A few exceptions excepted—(and those—alas! how few!)—for swinish eyes alone this melancholy *Introduction,*—not for honourable ones. Against interest—against a host of confederated interests—what can argument do? Exactly as much as against a line of musketry.

A last word on the new oppression to which we are now doomed, viz. the *suppression of petitions:*—the closing up of that channel, through which, under the protection of the *bill of rights,* from that time down to that of the present session, we possessed, all over the kingdom, the means of knowing one another's thoughts on the subject of our common interests.

Framed by that masterly hand, which is so consummately adequate to every work it undertakes—(ah! would the times were such as might allow it to undertake none but good ones!)—framed by this exquisite hand, I see just come out a set of arrangements, admirable as they are new, for giving the most efficient and timely, the most in every way commodious, publicity to the proceedings of the House. The first specimen has just reached my hand: but, from amidst these flowers, a snake,—how can I help seeing it?—lifts up its head and threatens me:—"Any *petitions,* or other proceedings, *which may occasionally be printed by special order, might* follow as a supplement or

appendix to the votes, not impeding their daily delivery, and be printed and circulated afterwards with due diligence, according to their length."

Any petitions? Yes: and therefore any petitions, even for *parliamentary reform*—even for *radical reform*—even for the wild and visionary reform—*may henceforward be printed,* so it be *by special order.* But for dissemination of any such visionary matter, in its whole extent, or in any considerable portion of its extent, any such *special order,* will it be generally obtained?—was there any design that it should? Till now, even of those visions was the *substance* in use to be inserted in the votes: and thus, on so easy a condition as that of putting on the uniform of prescribed respect, petitioners, in all parts of the United Kingdom, might, without fear of adding to the troubles of Mr. Attorney-General, have had the possibility of coming to the knowledge of one another's minds.

By a former decision,—so perfectly pretenceless, and here more than once alluded to,—seeing the use of the press interdicted to petitions for reform—seeing that clause of the bill of rights which regards petitions, thus in part already repealed by a decision of the House of Commons,—how can any eye, how averse soever, avoid seeing another wound, and that a still more desperate one, now given to the liberties, which, by that so much celebrated, but alas! how vague and imperfect, law, were in part professed—in part intended—to be secured?

So far as concerns the new matter added, admirable as these new arrangements are,—since the day on which, in addition to the power, the talent requisite to the making of them found its way into the chair from which they issued, has there ever been a time in which the demand for them did not exist? No: but not till now has the demand been so imperative for this—the final—suppression of all pernicious visions.

Addition—compression—acceleration—to whatsoever has been done in any one of these ways, never was applause more sincere than that which has here been paid: as to *postponement*—so far as necessary to the acceleration of the *essence,* postponement of the mass at large is a small price paid for a great benefit. But *suppression*—saving special order or special motion—suppression thus final,—and, among the matters suppressed, the matter of all *petitions*—and, among these petitions, all petitions for *reform,*—here lies the evil: and a more protentous one, where shall it be found?

Economy, forsooth, the motive! O rare economy!

From the suppression of the whole quantity of matter proposed to be suppressed, the greatest quantum of expense, *upon* and *out* of which a saving, to a greater or less amount, can by possibility be made, £2000 a-year:* and, out of this aggregate mass, what would be the greatest amount of saving that could be made by the suppression of *petitions* alone? A few hundreds a-year, or perhaps only a few score. But the sum thus to be saved by the suppression of petitions—suppose it to amount to the *whole* of the £2000—which, however, is impossible. For this £2000, would any man, who was not an enemy to English liberties, be content to sell so valuable a portion of them as this? To sell *this*—now that so many *others* have so lately been torn from us?—*this,* on the

preservation of which depends perhaps the only chance yet left to us for the recovery, or the preservation, of any of the others?

If, of all places imaginable, the place chosen for the seat of economy—and such economy!—must be the Chapel of St. Stephen—once the great sanctuary of English liberties,—might not even *there* some more proper source or object for it be found? Suppose, for example, under the head of expense, the saving made were made of or upon the money so regularly consumed, in that same place, in the periodical pampering, performed at the expense of the people upon their self-styled representatives:—upon these sometimes self-styled servants of the people, while so many of their masters are perishing every day for want of necessaries?

By the first glance, at the first specimen of the new arrangement in company with the *report* by which it was explained, was the suspicion in question awakened:—within the compass of *ten* days, behold the confirmation it has already received from experience.

Since this beautifully, and, in every part but this, irreproachably, commodious regulation has been acted upon,—*five* instances of petition for reform have occurred: in *one* of them alone has the *printing* been ordered: in every other of the four instances, suppression has been the result. In the one instance in which the printing was ordered, how came it to be ordered? Because, on the part of the member by whom it was presented, there was a real desire that no such suppression should take place. In the four other instances, how happened it that the petitions were thus suppressed? Because, in the instance of the honourable members by whom they were respectively presented, either there was an opposite desire, or whether the petition was circulated or suppressed was a matter of indifference.

Last date of the first Number, viz. 45, of the paper printed upon the new plan, under the title of "*Votes and Proceedings of the House of Commons,*"—24th April 1817. In this number, p. 392, follow two articles in the words and figures, following:—

"36. Reform in Parliament, &c. Petition of *Wolverhampton, presented.*"

"74. Reform in Parliament, &c. Petition of persons residing in *Andover, presented.*"

That this was the first paper printed in pursuance of the new arrangement, appears from the two articles following, viz.

"76. Votes and Proceedings of the House,—Resolution of 28th March, as to a more convenient method of preparing, printing, and distributing them, *read.*"

"77. Ordered, That the votes and proceedings of this House be printed, being first perused by Mr. Speaker, and that he do appoint the printing thereof, and that no person but such as he shall appoint do presume to print the same."

(*N. B.* To no such effect as that of either of these two last articles, has any article appeared (down to the 3d of May) in any succeeding number of these votes.)

Votes, &c. No. 48, 25th April 1817, p. 396.

"31. Taxation and Reform of Parliament, &c. Petition of Provost, &c. of *Linlithgow;* to lie on the table."

Votes, &c. No. 47, 28th April 1817, p. 400.

"37. Retrenchment of Expenditure, Reform of Parliament, &c. Petition of inhabitants of *Dunfermline,* relating thereto; to lie on the table."

In this same No. 47, p. 400, note the following articles:—

"38. Academical Society of London,—Petition for permission to continue their debates; to lie on the table, and to be *printed.*—[Appendix, No. 4.]"

N. B. Members stated as belonging to the universities or inns of court: one of them a Member of Honourable House. Society close: no swinish multitude: class thus favoured, the gagging—not the gagged. Privileged orders, partaking, or preparing to become partakers, in the separate and sinister interest. It required the undaunted zeal of Mr. Recorder Sylvester to find any objection here.—*See Morn. Chron. 3d May* 1817; *proceedings of the London Sessions, May 2d.*

To manifest his respect for the principles and interests of Honourable House, what is it that the generous hardihood of the learned gentleman would not be ready to do—yea, in the very teeth of Honourable House?

"39. Distress and want of employment,—Petition of inhabitants of Birmingham; to lie on the table, and to be *printed.* [Appendix, No. 5.]"

Distress great; about reform, nothing.—Useful ground afforded for the new job: for diverting from the only remedy the attention of the suffering people; for leading them to suppose that their distresses are really an object of regard; and, as of course, for giving increase to *influence.*

Votes, &c. No. 50, 1st May 1817, p. 412.

"20. Reduction of taxes, Reform of Parliament, &c. Petition of inhabitants of *St. Ives* (Hunts,) &c.; to lie on the table, and to be printed. [Appendix, No. 7.]"

In this *one* behold the instance—the only instance—in which, after presenting the petition, the member moved that it be printed. This member was *Sir Francis Burdett.*

The only inducement which Honourable House can have to submit to any such measure as this of its own reform—this sole inducement being composed of the desires of the people, as made known to one another as well as to Honourable House—which reform never can take place, but in proportion as the particular interest of Honourable House is made to give way to the universal interest—is it now in human nature, that by Honourable House anything should be omitted which, in the

eyes of Honourable House, can, consistently with the rules of human prudence, be done towards the prevention of so unpleasant an effect?

That in this or that instance, for some time after the introduction of the new arrangement, no resistance should be made to a motion for giving to these applications, how unwelcome soever, the before-accustomed circulation, is altogether natural: especially when, by any such resistance, such a pressure as that which it would be in the power of Sir Francis Burdett to apply, would have to be encountered. Yet even already, out of *five* petitions, is the extinguisher dropped upon *four:* this under the *green tree*—judge how it will be in the *dry?*

"Why load the parliamentary press with any such useless trash? These petitions—either they agree with one another, or they disagree. Do they agree? from some one manufactory do they all come. Do they disagree? the greater the disagreement, the more conclusive the proof of wildness—of visionariness—of the impossibility of doing anything that shall be generally satisfactory to the swinish multitude." Behold here an argument, ready to serve, and to prevail—and at all times—for the suppression of that which is to be suppressed.

Has no such plan of suppression been ever formed,—or, one having been formed, will honourable gentlemen prevail upon themselves to relinquish it? Nothing can be more simple or unobjectionable than the remedy:—standing order, that every *petition* that has been *received* shall be *printed* of course, and in due course. On motion duly made, suppose an order to this effect refused:—of the justness of those suspicions, which, consistently with any regard for the public welfare, could not be suppressed, would any such refusal fall anything short of the most conclusive proof?

That which, in each instance, is given as and for the petition of such and such persons, might it not be proper that by some of those tokens, which everywhere else are in use—(for example, the insertion or omission of inverted commas)—information should be given, whether the matter so printed be the very *tenor* of the petition in question, or only the *purport?*—the petition *at length,* or *an abridgment?*—an abridgment compressed to any degree of compression, from the *minimum* to the *maximum* inclusive?—the discourse, in a word, of the exactly ascertainable persons whose discourse it purports to be; or the discourse of some other person, neither ascertained, nor by any person, except those who are in the secret, ascertainable?

Good Sir Francis (through this channel I now address you, it being the only channel through which it is in my power to reach you)—*Good Sir Francis,* look at the Appendix to the Votes, 1st May 1817, p. 8:—look at the paper, No. 7, in which may be seen enveloped, in the above-described cloud, the account of the *St. Ives*' petition printed at your instance. Tell us, on your approaching commemoration day, to which of all the above-described descriptions we are to refer it.—12*th May* 1817.

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CATECHISM OF PARLIAMENTARY REFORM;

OR, OUTLINE OF A PLAN OF PARLIAMENTARY REFORM; IN THE FORM OF QUESTION AND ANSWER; WITH REASONS TO EACH ARTICLE.

SECTION I.

ENDS TO BE AIMED AT ON THE OCCASION OF PARLIAMENTARY REFORM.

Question 1. What are the *ends,* to the attainment of which a system of parliamentary representation and parliamentary practice ought to be directed?

Answer. Many might here be mentioned. But, whatever be their number, they may be brought, all of them, under one or another of three expressions, viz.—

1. Securing, in the highest possible degree, on the part of members (that is to say, on the part of the greatest possible proportion of the whole number,) the several *endowments* or *elements of aptitude,* necessary to fit them for the due discharge of such their trust.

2. Removing, or reducing to the smallest possible amount, the inconveniences attendant on *elections.*

3. Removing, or reducing to the smallest possible amount, the inconveniences attendant on *election judicature.*

Question 2. What are these *endowments* or *elements of aptitude?*

Answer. They may be comprehended, all of them, under one or other of three expressions: viz. 1. Appropriate *probity;* 2. Appropriate *intellectual aptitude;* 3. Appropriate *active talent.*

Question 3. What is to be understood by *appropriate,* applied as here to endowments?

Answer. In the case of each such endowment, that modification of it, which is, in a particular manner, suitable to the particular situation here in question, to wit, that of a representative of the people,—deputed by a part, to fill, in the character of a trustee or agent for the whole,—a seat in that assembly, to which belongs one out of three shares in the legislative department of government, together with the right and duty of watching over the exercise of the two others, viz. the administrative and the judicial.

Question 4. What is to be understood of *appropriate,* as applied to *probity?*

Answer. On each occasion, whether in speaking or delivering his vote,—on the part of a representative of the people, appropriate probity consists in his pursuing that line of conduct, which, in his own sincere opinion, being not inconsistent with the rules of morality or the law of the land, is most conducive to the general good of the whole community for which he serves; that is to say, of the whole of the British empire:—forbearing, on each occasion, at the expense either of such general good, or of his duty in any shape, either to accept, or to seek to obtain, or preserve, in any shape whatsoever, for himself, or for any person or persons particularly connected with him, any advantage whatsoever, from whatsoever hands obtainable; and in particular from those hands in which, by the very frame of the constitution, the greatest mass of the matter of temptation is necessarily and unavoidably lodged, viz. those of the King, and the other members of the executive branch of the government,—the King's Ministers.

Question 5. What is to be understood here by *appropriate,* as applied to the endowment of *intellectual aptitude.*

Answer. Forming a right judgment on the several propositions, which, either in parliament or out of parliament, but if out of parliament, with a view to parliament, are liable to come before him: and, to that end, in parliament forming a right conception, as well of the nature of each proposition, considered in itself, as of the *evidence* adduced or capable of being adduced, whether in support of it or in opposition to it, and the observations thereon made, or capable of being made, in the way of *argument for* it or *against* it, as above.

Question 6. What is to be understood here by *appropriate,* as applied to *active talent?*

Answer. Talents suited to the due performance of the several *operations* which, in the course of his service, in or out of the House, but more particularly in the House, it may happen to a member to be duly called upon to perform, or bear a part in:—for example, *introducing,* or endeavouring to introduce, by way of *motion,* any proposed law or measure which he approves: delivering a *speech* in support of any proposition which he altogether approves; or in opposition to one which he altogether disapproves: proposing an *amendment* to any proposed law or measure which he approves in part only: drawing up, or helping to draw up, a *report,* concerning such or such matters of fact, for the inquiring into which it has happened to him to have been appointed to act as chairman, or other member, of a committee: putting relevant *questions,* concerning matters of fact, to persons examined before the House, or any committee of the House, in the character of *witnesses.*

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SECTION II.

MEANS, CONDUCIVE TOWARDS THESE ENDS.

Question 7. What are the *means* that promise to be most effectually conducive to the accomplishment of the above several ends?

Answer I. In the first place come those which have for their end or object, the securing, in the highest degree of perfection, the several *endowments* or *elements of aptitude,* requisite on the part of members, as above.

These are—

1. Exclusion of *placemen* in general from the right of sitting in the House, in the quality of *members* entitled to *vote.*

2. Seating in the House *official persons,* named by the king, from each department, *without* right of *voting,* but with right of *speech* and *motion,* subject at all times to restriction or interdiction by the House.

3. Elections, frequently, viz. annually renewed: with power to the king to ordain a fresh election at any time.

4. Speeches (made in the House) correctly, completely, and *authentically,* taken down, and regularly and promptly *published.*

5. Constancy, punctuality, and universality of *attendance,* secured.

Answer II. Next comes the *means,* which have for their end the removing, or reducing to their least possible dimensions, the *inconveniences* attendant on *elections,* and *election judicature.*

For shortness, that which is proposed, let it be stated as done.

6. In each electoral district, the number of the voters is uniformly large.

7. Each elector's title, *payment* made to a certain amount to *certain taxes:*—the evidence of such title, a duplicate of the *collector's* receipt: the paper (call it the *voting-paper,*) *delivered,* or else *transmitted* (for example, by *post,*) to the returning officer; in case of transmission, the elector having first written upon it, according to directions printed on the voting-paper itself, the name of the candidate for whom he means to vote.

8. When performed by *delivery,* the voting is *secret.*

To establish the genuineness of the collector's signature, and the sufficiency of the same, the voter presents his voting-paper to the returning officer, in presence of the agents of the candidates. The shortest glance suffices. Its admission is signified by marking it with a stamp. The voter is thereupon presented with a ticket, which, out of the sight of every person, he drops through a slit into a box, marked with the name of the candidate for whom he means to give his vote. Penalty on forging the signature of a collector, or personating a voter: to enforce it, each voting-paper is retained. Delivery not to be performed by proxy: for in that case a known friend of one of the candidates might require to be the proxy, and thus the design of secresy would be frustrated.

9. To insure secresy, as well in the case where the voting is performed by transmission (viz. by post) as where it is performed by delivery, the voting-paper contains a promise of secresy, signed by the voter, and conceived in terms of such strength, that without offering an affront to him, neither a candidate, nor any one on his behalf, can request the breach of it. Not that even by this means the assurance of secresy can be rendered altogether so perfect in the case of transmission, as in the case of delivery as above.

Marks in lieu of names are not admitted. They would be incompatible with secresy. A vote is of little value to him, who, not being as yet able to write, grudges the trouble necessary to the learning to write his name.

10. Members' seats, say, for example [600] whereof, for example, two-thirds—say [400]—seats for *territory:* and the remainder—say [200]—seats for population.

11. To form the *territorial* electoral districts, the whole soil of Great Britain and Ireland is divided into, say [400] districts, as nearly equal as is consistent with convenience resulting from local circumstances. One member is chosen for each. Not that, with reference to the end in view, if by accident, here and there, one should be found not above half the size of an average district, and, here and there another as much as twice the size, the inequality would be material. Parishes compose the elementary portions. No parish is divided.

12. The *population* electoral districts are composed of certain towns, the population of which amounts to a certain number of souls or upwards. Say, merely for illustration, 10,000:—precision might be given, on examination of the population returns. Each of these towns fills one or more seats, in proportion to its numbers; but in such sort, that the whole number of seats thus filled does not exceed the 200. Such inequalities as in this case would be unavoidable, would here also be, to every practical purpose, immaterial. But such as they are, once every 50 or 25 years they might receive their correction.

The principle of *equality* has not any claim to anxious regard, any otherwise than in as far as, by a departure from it, the degree of perfection with which the grand end in view is attained,—viz. appropriate aptitude on the part of such portion of the House as carries with it the power of the whole,—would, on this or that occasion, receive a sensible diminution. For local interests, the provision made is on this occasion

sufficient, if whatever inequality has place, to the prejudice of any such particular interest, is the result,—not of design, but accident.

The three capitals, London, Dublin, and Edinburgh, would thus possess that ascendency which is their due: due to them, not merely on the score of population, but also on the score of appropriate information and intelligence.

13. For the seats corresponding to these population electoral districts, voting, otherwise than in the most surely secret mode—viz. *delivery*—need not be admitted.

14. On the part of persons possessing the one qualification required as above, such circumstances as would be apt to present themselves in the character of grounds of disqualification, need not be regarded. *Aliens,* for example, would be admitted: but to such a degree would they be out-numbered, that though they were all enemies, no sensible practical mischief could ensue. *Females* might even be admitted; and perhaps with as little impropriety or danger as they are in the election of directors for the government of the 30 or 40 millions of souls in British India.

By all the inequalities and other untoward results put together that could have place in the above plan, no practical mischief could be produced, equal to that which, on the present plan, a single pocket borough is sufficient to produce.

On such occasions as the demarcation of the territorial districts, and the fixation of the population districts, or their respective numbers of seats,—*human reason* would, in many instances, have no application. In those instances, the decision might be made by lot.

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SECTION III.

MEANS—THEIR USES, WITH REFERENCE TO THEIR RESPECTIVE ENDS.

Question 8. These several *means,* in what way are they conducive to their respective *ends?*

Answer. For greater distinctness,—in the instance of each one of these *means,* ask rather, in the first place, to which of those ends it is conducive, and then in what way or ways it tends to be productive of that effect.

By understanding, in the instance of each means, in what way or ways it is *conducive* to this or that *end,* it will be understood in what way or ways it is of *use* with reference to such end, and thus far what are the *uses* or good effects of the particular arrangement thus operating in relation to that end in the character of a *means.*

Question 9. So, then, the several arrangements in question have, each of them, for its object, neither more nor less than this, viz. the being, in the character of a *means,* conducive, in some way or ways, to the accomplishment of one or more of those ends?

Answer. Such is indeed, in every instance, their *direct* and primary object, and their principal use. But, in the instance of most of them, further—and, as they may be termed, *collateral—uses* or *good effects,* and those of no mean importance, may be seen resulting from them, as of course.

Question 10. What are these *collateral* uses or good effects?

Answer. For greater clearness, it seems better to defer this statement till after the *principal* and direct uses of these same means have been brought to view.

Question 11. And so, to be satisfied, and justly satisfied, with the several proposed arrangements, nothing more is necessary, than to see, in the instance of each, in what way or ways it is conducive to this or that one of those ends?

Answer. Assuredly: unless from the employment given to each or any of them, such or such *bad* effects should be shown to be likely to take place; bad effects, the amount of which, taken all together, would be so great as to outweigh the sum total of the *good* effects above spoken of.

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SECTION IV.

MEANS CONDUCIVE TO APTITUDE IN MEMBERS: I. PLACEMEN NOT TO VOTE, NOR TO BE SEATED BY ELECTION.

Question 12. The exclusion proposed to be put upon the votes of placemen,—to which of the above ends does it promise to be conducive?

Answer. To *probity,*—appropriate probity.

Question 13. In what way?

Answer. In this way. By keeping the right of voting out of the hands of persons possessing other situations, to which,—in the shape of money, power, reputation, and in other shapes,—advantage in large masses is attached,—together with expectation of further and further advantage, in the same and other shapes,—all liable to be taken from them, without reason assigned, and at the king's pleasure:—persons thereby so situated, that, speaking of the generality of them, it is not in the nature of man that they should not, on all ordinary occasions, be in the habit of sacrificing, and continue disposed to sacrifice, in so far as depends upon each man's vote, the general interest of the empire and their public duty in every shape, to the desire of preserving such advantageous situations: to that desire, and thence to the desire and necessity of conforming themselves to the will of the person or persons, be they who they may, on whom their continuance in such situations depends.

Nor should any such disposition appear wonderful, when it is considered, that even the worst king and the worst minister having, on many points, the same interest with the body of the people, it is not in the nature of man, that they should harbour any such intention, or any such wish, as that of doing, on any occasion any act, that may be in any degree productive of injury to the general interest, except in so far as it may happen to this or that particular interest of their own to be served by such act: and that,—so long as they content themselves with doing no other sort of mischief than what has been commonly done already,—they stand assured of support, not only from each other, but from the multitude of those, in whose eyes the standard of right and wrong is composed of nothing more than the practice of "great characters," that is, of any characters whatsoever, in "high situations."

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SECTION V.

MEANS, &C. CONTINUED.—II. PLACEMEN SEATED BY THE KING, WITH SPEECH AND MOTION, WITHOUT VOTE.

Question 14. Seating official persons, from the official departments, without votes, but with the right of speech and motion, subject to restriction or interdiction by the House,—to which of the ends does this arrangement promise to be conducive?

Answer. To intellectual aptitude—appropriate intellectual aptitude.

Question 15. In what way?

Answer. In this way. On the part of the King and his Ministers, it being all along matter of necessity to secure for their measures, either the co-operation, or at least the acquiescence of the House, it will be all along their interest, and therefore naturally their endeavour, to find out and station in the House such persons, as, being furnished with the requisite degree of obsequiousness as towards his will, are in an eminent degree distinguished by the talent of persuasion, including that sort and degree of appropriate *intellectual aptitude* which is necessary to it. This intelligence, be it what it may, the House may at all times be thus made to have the full benefit of, and at the same time, without having its decisions perpetually exposed to be turned aside into a sinister course, by the weight of so many dependent votes, expressive—not of any will of the voters, guided by any opinion of their *own* concerning the general interest, but of the will, guided by the particular and thence sinister interest, of the king, or of some minister, or of some private and unknown favourite of the king's.

By this means the King and his Ministers would possess at all times what, at least in their own view of the matter, is the best chance for obtaining, and maintaining, in the House, the only *honest* kind of influence, viz. *the influence of understanding on understanding:* and *that* purified, viz. by the preceding and following proposed arrangements taken together, from that *dishonest* kind of influence,—the exercise of which is on both sides, in the relative situations in question, inconsistent with appropriate probity,—viz. *the influence of will over will.*

Question 16. But, is it not necessary, that every man, who proposes a law or measure in the House, should have a vote to give in support of it?

Answer. No more than that every advocate who makes a motion in the court of King's Bench should have a vote to give in support of it on the bench.

In the business of judicature, to the giving to the justice of the case the benefit of such appropriate intelligence and active talent as may be afforded by the advocates on both sides, it has never yet been thought necessary, or so much as conducive, that the

advocates on either side should take their seats on the bench, each of them with a vote equal in its effect to that of any of the judges.

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SECTION VI.

MEANS, &C. CONTINUED.—III. ELECTIONS FREQUENT—ANNUAL.

Question 17. The proposed frequent renewal of elections,—to which of the above ends does it promise to be conducive?

Answer. To all three: and in the first place to *probity.*

Question 18. In what way?

Answer. In divers ways:—

1. On the part of each member taken individually: viz. in case of transgression, by the prospect of eventual exclusion; and that speedy, to wit, at the next election—at furthest within a twelvemonth:

2. On the part of the whole House, taken collectively: viz. by reducing, to so small a quantity, the length of sinister service which it would be in the power of the king or his ministers to purchase at the hands of any one member: and increasing at the same time the number of such lengths of service, as, ere they could secure the commencement or continuance of any sinister course of government, they would find themselves under the continually recurring necessity of purchasing, out of the whole number of members.

3. By reducing, in so great a degree, whatever inducement a candidate would have, on the occasion of a contest, to launch out into any such expense, as, by straitening his circumstances, might, in the hope of obtaining an indemnification, engage him to place himself in a state of dependence on the king, or this or that set of ministers: whether ministers in possession or ministers in expectancy, making in this respect no difference.

Question 19. In what way does this means promise to be conducive to *intellectual aptitude* and *active talent?*

Answer. By perpetually holding up to the view of each successful candidate, now become a member, the near prospect of a fresh election, on the occasion of which it may happen to his constituents to have the choice of the same or any additional number of rival candidates: for all whom the encouragement will be greater and greater, in proportion as, on his part, any feature of unfitness, absolute or comparative, has, in either of these two shapes, been manifested; viz. whether by discourses indicative of ignorance or weakness, by constant silence and inactivity, or by absentation or slackness of attendance.*

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SECTION VII.

MEANS, &C. CONTINUED.—IV. SPEECHES AUTHENTICALLY AND PROMPTLY PUBLISHED.

Question 20. To which of the above ends does the correct, complete, authentic, and constant taking down, and regular publication, of all speeches made in the House, promise to be conducive?

Answer. To all three.

Question 21. In what way does it promise to be conducive to *probity*?

Answer 1. By impressing upon each man's mind the assurance, that by the public in general, and by his own constituents in particular, he will, thenceforward, and then for the first time, *be judged of,* and in the only way in which, in his situation, a man can be rightly and justly judged of, *according to his works:* held up, according to his deserts, to *esteem* or *disesteem,* for everything which he *has* said, and not, as happens but too often at present, for saying that which he had not said.

2. In so far as concerns veracity and sincerity, by operating as a check upon those misrepresentations, which, for the purpose of the moment, are so apt to be hazarded, under favour of the at present indispensable rule, which precludes reference to anterior debates: misrepresentations respecting the speaker's own opinion; misrepresentation respecting facts at large; misrepresentations respecting the speeches of other members; misrepresentations, sometimes resulting from carelessness and temerity, sometimes accompanied with insincerity, or in other words, with wilful falsehood.

Question 22. In what way does it promise to be conducive to *intellectual aptitude?*

Answer. In the several ways following, viz.

1. By furnishing to each member, on the occasion of each motion, a correct and complete view, of whatsoever *evidences* and *arguments* have, on the occasion of the same motion,—or any other past motion so connected with it as to afford either evidences or arguments justly applicable to it,—been brought forward: thereby, so far as they go, furnishing him with better and safer grounds on which to found his opinion, his speeches, if any, and his vote, than can be furnished by any other means.

2. By impressing upon each man's mind that assurance of being judged of according to his *words,* which has just been brought to view, in the character of a security for appropriate *probity.* For, the more correct the judgment which he is assured will be passed upon that part of his *works,* the stronger the motive which he has for making

whatsoever exertions shall appear to him to be necessary, to save him from the dishonour of being found wanting in point of appropriate *intellectual aptitude.*

3. By furnishing the only completely efficient means for detecting and pointing out the existence, and successfully counteracting the influence, as well of the *misrepresentations* above mentioned, as of those rhetorical *fallacies* and devices, the efficiency of which depends partly on the irremediable *uncertainty*—in which, in the case of word-of-mouth discourse, the *identity* of the words in which they are conveyed, remains involved—partly on the want of the time requisite for searching out and bringing to light the errors and false judgments which they serve to propagate and inculcate.*

4. By keeping out of the house such persons as, on the ground of experience, shall, either in their own judgment, or that of their constitutional judges, have been found unable to abide this test.

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SECTION VIII.

MEANS, &C. CONTINUED.—V. ATTENDANCE, PUNCTUAL AND GENERAL, SECURED.

Question 23. Constancy and punctuality of attendance, on the part of each Member, and thence of the whole House,—to which of the ends does it promise to be conducive?

Answer. To all three ends.

Question 24. In what way to *probity?*

Answer. In sundry ways, as follows, viz.—

1. In relation to this point, whatsoever indication can be afforded, by the correct and complete taking down and *publishing* a man's *speeches,* as above, it is only through the medium of his *attendance,* and in proportion to the constancy of his *attendance,*—to wit, in the only place in which they can be spoken,—that any such speeches are, or can be afforded.

2. When, on this head, such is the state of *law* and *custom,* as, on each occasion (with the exception of such of the members, whose constant obsequiousness to the will of the *arch-tempter,*—not to say the *C—G—*, together with the whole of their support on every occasion, is secured by the dependence of their situations) leaves it altogether at a man's option whether he will attend or not: in this case, by simply forbearing to attend at the place where, in point of *moral duty,* his attendance is due, it is, on every occasion, in the power of any man, and every man, to afford to the arch-tempter, and that without either shame or danger, exactly *half* the support which, without such shame and danger as he could not perhaps have brought himself to expose himself to, he could not have afforded, by attending and voting on that side:—and so in the case of any particular improper and pernicious measure, to which, on the score of any particular sinister interest, whether of a party or altogether private nature, he finds himself exposed to the temptation of showing undue favour: thus, whether it be by leaving unopposed what he ought to have opposed, or by leaving unsupported what he ought to have supported—doing effectually by his absence, exactly half the mischief, which, howsoever desirous, he durst not have done in case of his presence.

Question 25. In what way to *intellectual aptitude?*

Answer. The more frequent a man's attendance, the greater his experience; and the greater his experience, the more perfect is that branch of his *intellectual aptitude* which consists in an acquaintance with the nature of his business, whatsoever it may be.

Question 26. In what way to *active talent?*

Answer. The more frequent a man's attendance, the greater will be his experience: and be the business what it may, the greater his experience in the examination and management of it is, the greater will be his expertness at it:—that expertness, which is, at the same time, the effect of active talent, and the cause of it.

Question 27. Considering how thin, except on extraordinary occasions, the attendance is at present, what reasonable expectation can there be of anything like an habitually universal attendance, and by what means can it be secured?

Answer. On the part of a trustee or an agent, whose duty cannot be performed but at a certain place, absentation from that place is a neglect which involves in it every other, and against which forfeiture of the trust is, as soon as it takes place, an effectual as well as gentle remedy. Let but the operation of election recur with the proposed degree of frequency, it brings with it of course this remedy, together with a time of trial, sure to recur at a stated and never long distant period. For insuring the efficacy of this remedy, in the instance of every such member to whom the continuance in his seat is an object of desire,—and thereby for securing in every such instance a degree of constancy and punctuality of attendance, equal at least to what is seen in any of the *offices,* there can need but one thing more, which is—an equally sure and effectual *notification* of every such act of transgression, as it takes place.

To this purpose, a regular and authentic publication, of two Tables of the following descriptions, would obviously suffice:—

Table I. Daily-General-Attendance Table: exhibiting, for each day, the name of every member present at any time of the sitting, together with the part taken by each, on each question on which there has been a division.

N. B.—If, to the present tedious, inconvenient, and inadequate mode of division, were substituted the prompt, convenient, adequate, and obvious mode of giving in names, each man giving in his name, for instance, on a card, without stirring from his place, divisions would of course be much more frequent than at present, and the knowledge obtained by the constituent, of the political conduct and character of his representative, proportionally more complete.

Table II. Annual-Individual-Attendance Table: exhibiting, on every day of sitting throughout the year, for the instruction of his constituents, the conduct of each representative, in respect of *attendance, vote,* and *speech:* with the grounds of *excuse,* if any, for each default, in case of non-attendance.

N. B.—On extraordinary occasions, for party purposes, instances have now and then been known, on which tables, of the nature of the above-mentioned *General-Attendance Table,* have, without authority, been printed and disseminated by individual hands.

If the security thus afforded were found not sufficient,—punishment, in the pecuniary shape, combinable with reward in the same shape, might, in the most simple and

effectual manner, without need of prosecution, or intervention of lawyers and lawyercraft, be employed to strengthen it: employed,—viz. by a law framed upon the principle of that class of laws which are said *to execute themselves.*

On his election, each member *deposits* with the clerk a sum of money: say (merely for illustration) £400.

A computation is made of the greatest number of days in the year during which it is probable the House will sit; say, as before, 200. Each day of attendance, on entrance, the member *receives back,* from the hands of a clerk appointed for that purpose, £2: and, at the end of the year, if the number of days of sitting has fallen short of the computed number, £2 is returned for each day whereby it has so fallen short.

If the aggregate of the sums thus forfeited on each day were divided among the members attendant on that day, the force of *reward* would thus be added to that of *punishment.*

Of the many opulent, and thence idle incapables, who at present, while the *House* is left empty, crowd the *list,* some would probably, even on the proposed plan of representation, obtain, by means of the illustration shed around them by their opulence, a probationary year, with little or no intention, or at any rate without any persevering habit, of regular attendance. The superfluity of these idle favourites of fortune would, in this way, afford a not altogether unwilling supply to the exigencies of the more assiduous and less opulent. And here would be emolument without corruption: *pay,* for, and in proportion to, honest *service.*

In this way, the *penalty* for non-attendance, with or without the *reward* for *attendance,* might, by the light of experience, be increased or reduced at pleasure.

Question 28. The arrangements above proposed,—are they to be considered as being, when taken together, sufficient to insure, on the part of the population of the House, a degree of *probity*—appropriate probity,—sufficient for all occasions?

Answer. Against so vast and perpetually-increasing a mass of the matter of temptation and corruption, constantly and indispensably lodged in a single hand, no remedy that promises to act as a preservative can safely be considered as superfluous.

Suppose the plan established, and *that* to its utmost extent, it would still be necessary to watch over the *matter of corruption,* in whatsoever part of the system it is lodged,—to purge the system of it, where it is useless and needless, by the whole amount of it,—and to restrict the quantity of it, in cases where,—although, in a certain quantity, it may for such and such a specific purpose be found necessary,—yet, in any greater quantity, not being necessary, it is purely and simply mischievous.

Whatsoever is either *good* in itself, or thought to be so, is capable of being employed in the character of *matter of reward:* and whatsoever is employed in the character of matter of reward, becomes *matter of corruption* when applied to a *sinister* purpose: when applied to a man, in such manner as to direct his endeavours to the doing *good* to the *one* or to the *few,* at the expense of preponderant *evil* to the *many.*

Of the matter of reward, with or without title to reward, nothing ever is or can be bestowed by the king, that is not bestowed at the expense of the people.

Title to reward is—adequate *service* rendered, or in some shape or other about to be rendered, to the public: and of the matter of reward, whatsoever is bestowed without such title, established by such proof of title as the nature of the service is susceptible of, is bestowed as matter of *favour:* and, besides being bestowed in *waste,* whatever is bestowed as matter of mere favour operates as matter of *corruption,* by the expectation of it.

Of the matter of corruption applied to the purpose of corruption,—peerages, bestowed not only without extraordinary public service, but without public service in any shape, or so much as the pretence for it, constitute a conspicuous example.

In the shape of a peerage, the *matter of corruption* is capable of being employed to the corrupting of those, whose opulence suffices to preserve them from being corrupted by it in any other shape. County members and borough members together,—the occupiers of no inconsiderable part of the whole number of seats, are held by the king in a state of—invisible, perhaps, but not the less corrupt, less constant, or less efficient—dependence. In one House by peerages, in the other by advancements in the peerage, the pretended independence of judges is converted into dependence.

In the reign of George I., a bill for restraining the employment of the matter of corruption in this shape, passed the House of Lords. Since that time, the quantity thus employed has received a prodigious increase. The reign in which the bill was thrown out of the Commons, was the same, in which a set of representatives who had been elected by their constituents for three years, were engaged and enabled to elect themselves for seven years; thus vitiating the constitution by a poison of new invention, under the effects of which it has been labouring and lingering ever since.

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SECTION IX.

INCONVENIENCES INCIDENT TO ELECTIONS, AND ELECTION JUDICATURE.

Question 29. What are the inconveniences attendant on elections?

Answer. They are so various,—and dependent, many of them, on such various contingencies,—that it seems scarce possible to make a complete enumeration of them. The principal of them will, however, it is supposed, be found comprehended under two heads:—viz. 1. To candidates, expense and vexation; 2. On the part of electors and *persons at large,* loss of time (a loss which is of itself equivalent to so much expense,) idleness, drunkenness, quarrels, mischief to person and property on the occasion of *riots.*

Question 30. What are the *sources* of the expense?

Answer. These will vary, according as the expenditure of money in such or such a way is permitted or prohibited by law, and in case of prohibition, according as the prohibition is followed or not followed by compliance.

Here follow some of the principal items—

1. Given, with a view to the election, though antecedently to a vacancy, and thence penalty-proof,—*entertainments:* instruments of corruption defying all limitation, as well in point of number as in point of expense.

2. Previously to the election, expense of drawing up and publishing advertisements, in newspapers and handbills.

3. At *previous meetings,*—and *on the election day* at the place of election,—expense of engaging persons to attend as *clerks,* and make minutes of proceedings.

4. In the case of *distant votes,* expense of conveyance, with or without refreshment, during the journey, to and from the place of election.

5. Money, or money's worth, given for votes; whether directly, in the way of bribery to the voters themselves, or indirectly to other persons having the command of votes in the way of influence.

6. In the case of a *scrutiny,* expenses of counsel, attorneys, and other agents employed in the attack and defence of the disputed votes.

7. Occasional lawsuits; produced by the uncertainties which, to so great an extent, hang over the titles to election right, and the intrigues employed for the creation, preservation, or destruction of such rights.

Question 31. What are the inconveniences attendant on election judicature?

Answer. Expenses, vexations, and delays.

Question 32. Wherein consist the *expenses?*

Answer 1. In fees to counsel,—viz. for opinions, and, in case of a trial before an election-committee of the House of Commons, for attendances, day after day, at the committee.

2. In money paid to witnesses for expense of journeys and loss of time.

3. In fees to attorneys and other agents, for carrying on the cause, as above.

4. Occasionally, in the expenses of suits at law, concerning such offices as, in the case of seats for boroughs, confer the right of voting on the election of members, or, in some way or other, the means of influencing such elections.

Question 33. Wherein consist the *vexations?*

Answer 1. In that burthen of attendance which falls upon the members (fifteen in number,) of whom the judicatory is composed;—2. In those vexations which, on that occasion, in the shape of anxiety, candidates experience, or are liable to experience;—3. And in those which fall upon such witnesses, in whose instance such compensation money as happens to be allowed to them, as above, is, or is thought to be, more or less inadequate.

Question 34. Wherein consist the *delays?*

Answer. In the stop so frequently put to the business of the House, by the anxiety of members to avoid serving on these judicatories. On the occasion of the sort of lottery, by which the fifteen* who are to serve on each cause are determined,—to avoid being thus impounded, they have frequently been known to absent themselves, in such numbers, as not to leave in attendance the number necessary to constitute a House.

2. In the length of time, during which, in case of an *undue return,* the *electors,* instead of the person who in their eyes is most fit, see their share of power exercised by one who in their eyes may be to any degree unfit, and the *candidate,* whose right it was to be returned, loses the benefit of that right.

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SECTION X.

ELECTION INCONVENIENCES—MEANS FOR THEIR REMOVAL.

Question 35. In what way do the above-mentioned means promise to be conducive to the removal of the inconveniences attendant, as above, on elections and election-judicature?

Answer. As to *expense,*—by striking off at one stroke all expenses whatsoever; except such as are comparatively inconsiderable,—such as those incurred in the publication of advertisements by the candidates, and those incurred incidentally on the occasion of previous meetings.

To render this effect apparent, the slightest glance at the above-mentioned sources of expense will suffice.

1. *Loss of time, idleness, drunkenness,* and *riots,* have for their cause *large concourses* of people, with entertainments given to electors by candidates, or their friends. But any such large concourse of people will have no object: nor (votes being secret) will any man be at any such expense in giving entertainments, the receivers of which may, for aught he can know, be composed, in as large a proportion, of his adversaries, as of his friends.

2. The expense of conveyance and refreshment, in the case of distant voters, will be struck off altogether. For, there cannot be any pretence either for offering or receiving money on that score, when the utmost effect that could be expected from the longest journey may equally be produced by a paper put into the post.

3. As to lawyers, clerks, and other agents, neither on the occasion of the collecting the votes at the place of election, nor on any such occasion as that of an election-committee of the House, can there be any use or room for any such assistance. All that the returning officer will have to do, is—out of the boxes denominated from the several candidates, to count the number of *voting-papers* that have been put into each box: observing only whether the sum mentioned by the collector as received, be really in each instance either equal to, or greater than, the minimum required by the law to constitute a qualification.

As to vexations,—such as those from the obligation of serving on election judicatories, and from the delays attendant on such judicature,—there would be no such vexation, because there would be no such judicature: and there would be no such judicature, because there could be nothing to try:—unless, by possibility, and that without probability, any such offence should be committed, as, by the collector, a refusal to sign and deliver the duplicate receipt on the *voting-paper;*—or, by a postmaster, a suppression of a multitude of such papers at the post-office; or, by a

returning officer, a false return,—respecting this or that one out of a small number of matters of fact, all of them simple, and in their nature either of themselves notorious, or easily made notorious.

For the purpose of punishment, prosecutions for any such offences would of course be left to the established dilatoriness of the technical mode of procedure pursued in the ordinary courts. But, for the purpose of applying an immediate parliamentary remedy to a false return, a single day's sitting of a Grenville-Act committee of the House of Commons, would suffice.

Question 36. If, in the instance of each elector, the disposition made by him of his vote were thus to be placed altogether out of the reach of the public eye,—so that a vote may be refused to the most worthy, given to the most unworthy of all candidates, and that without danger, and consequently without fear of shame,—might there not be too much reason to apprehend, that considerations of a purely selfish nature would become generally predominant?

Answer. No: not to any such effect as that of seating a candidate really and generally deemed less worthy, to the exclusion of a candidate really and generally deemed more worthy: which effect is the only practical bad effect the case admits of.

If, indeed, matters were so circumstanced, that, by voting in favour of a candidate deemed by themselves comparatively unworthy,—or, to cut the matter short, in favour of any candidate whatsoever,—it were possible for the majority of the electors in any district to obtain, each of them for himself, any considerable private advantage, which, by the open mode of voting, he would be deterred from aiming at:—were this really the case, it were certainly too much to expect, that they should, the greater part of them, commonly forego any such advantage: and,—if such sacrifice of public interest to private were accordingly repeated in a considerable proportion of the whole number of electoral district,—the inconvenience to the public service might be found sensible and considerable.

But when, by the shortness of a man's time in his seat, and the multitude of the persons, to each of whom, at the hazard of being betrayed by any one of them, and this without any tolerable assurance of his giving his vote in favour of the briber, the bribe would be to be offered,—when by all these means together, the obtainment of a seat by bribery is rendered, as it would be, to so unprecedented a degree improbable,—it does not seem possible to divine by what means a candidate, generally deemed the less worthy, should obtain an effectual preference, to the exclusion of one generally deemed the more worthy.

On the other hand, in the case of the *open* method hitherto in use, the effect of it is, on every occasion, to force electors,—and *that* in a number to which there are no limits,—to give their vote in favour of the less worthy, to the exclusion of the more worthy, candidate,—on pain of suffering, each of them, some personal inconvenience, to the magnitude of which there are no limits.

And this power,—which, by means of some such relation as those between landlord and tenant, between customer and dealer, between employer and person employed, in a word, between patron and dependent, men of overswaying opulence possess and exercise over men less favoured by the gifts of fortune,—this power of *forcing* men to vote against their consciences, has been termed "the legitimate influence of property," and spoken of as that foundation-stone, by the removal of which, "the subversion of the constitution" would be effected.

If, in the event of his voting in favour of him who, in his estimation, is the *less* worthy candidate, in preference to him who in his opinion is the more worthy candidate, a man sees no prospect of advantage to himself, nor of disadvantage in the contrary event,—it seems not too much to hope and expect, that his vote will most commonly be in favour of that candidate who, in his opinion, is the *more* worthy candidate.

If conscience will not do this, it will do nothing. But assuredly, the less deeply men are *led,* or lead themselves, into *temptation,* the more likely they will be to be *delivered,* or to deliver themselves, from *evil.*

The less it is that the law expects from every man, the less it will expose itself to disappointment. *Less* than the disposition to do good,—so far as it is to be done by serving the public, in such cases, and in such cases only, in which it can be done without an atom of loss or other inconvenience to himself,—cannot surely from any man be expected.

Question 37. Any such mode of voting by a mixture of writing and printing,—is it not—in comparison of the good *old* mode of voting, practised by the *wisdom of our ancestors,* viz. voting by word of mouth—an *innovation,* and that a signal one?

Answer. In one point of view, it *is* an innovation—in another, *not.* Considered as an art in general use, the *art of writing* must,—to whatsoever purpose applied, and consequently when applied to any such purpose as this,—be acknowledged to be an innovation, and that a very signal one: then comes the art of *printing,* which, especially when considered as an art in general use, is a still more sweeping one. These arts being innovations, it cannot but be an innovation to apply them—whether to the purpose in question or to any other purpose. But if these be innovations, they will not, it is hoped, be placed in the class of mischievous ones.

On the other hand,—if in this, as in other matters, the wisdom of our ancestors be considered as consisting in the employing, for each purpose, at each point of time, the best and most convenient method in their time known and practicable,—there is not, in the mode of voting here proposed, any innovation at all, much less a mischievous one.

Our ancestors employed the most convenient mode practicable, in employing the *word-of-mouth* mode: *we,* their posterity, employ the most convenient mode practicable, in employing the *written* and *printed* mode.

Thus doing, we may therefore be said, and with truth, to take the wisdom of our ancestors for our guide.

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SECTION XI.

COLLATERAL ADVANTAGES, REFERABLE TO THE SITUATIONS OF ELECTORS, PLACEMEN, LORDS, &C.

Question 38. These that have been mentioned,—are they all the *advantages* resulting, or all the *uses* derivable, from the *means* above proposed to be employed, for securing the several elements of aptitude on the part of members?

Answer. Far from it. Various collateral advantages may be seen resulting, in case of the employing of these means.

Question 39. What are the *classes of persons,* by or through whom these collateral advantages would be received?

Answer. They are various: and in particular, five descriptions of persons may be mentioned in this view; viz.—

1. Parliamentary electors, by whom, under whatsoever denomination, viz. by their votes, members of the House of Commons would be seated.

2. Members of the House of Lords.

3. King's men, whether in or out of the House; that is to say, the persons occupying, under the king, the principal public offices.

4. The higher classes of the people, taken at large.

5. The lower classes of the people, taken at large.

Question 40. In what particular *ways* does the employment of these means promise to be serviceable, in the instance of these several descriptions of persons?

Answer 1. To *parliamentary electors,* as such, it promises increase of *appropriate intellectual aptitude;*—2. To king's men in the House, and to their respective subordinates in or out of the House, increase of appropriate aptitude in all the several points of aptitude, viz. probity, *intellectual aptitude,* and active talent;—3. To members of the House of Lords, increase of intellectual aptitude, and at the same time increased security for probity;—4. To the higher classes at large, increase of probity and intellectual aptitude;—5. To the lower classes at large, increase of comfort, viz. by increase of kindness and courtesy towards them, on the part of the higher classes;—and on their own part, increase of appropriate intellectual aptitude from the habit of appropriate discussion.

Question 41. What are the several *parts* of the plan by which those several advantages promise to be produced?

Answer 1. That which seats placemen in the House from the several *departments,* with every right but that of voting;—2. That which provides for the correct and complete taking down, and immediate and regular publication, of all *speeches* made in the House;—3. And that which gives uniformly extended *numbers* to the voters in the several electoral districts,—*liberty* to all their votes,—and *regularly frequent* recurrence to the elections.

Question 42. In the case of electors, in what way do the promised collateral advantages promise to take place, and from what means?

Answer. From the correct and complete publication of all speeches made in the House, the electors would, as well as the member, be gainers, by so much as each man pleased—as many of them as pleased—in the article of *intellectual aptitude*—appropriate intellectual aptitude.

Of the probity of his representative, so far as indicated by his attendance,—and, in case of his attendance, of his probity and intellectual aptitude, in so far as indicated by his vote,—and, in case of his speaking, of his probity, intellectual aptitude, and active talent, so far as indicated by his speeches,—every elector that pleased would, on every occasion on which he pleased, possess the most complete and correct evidence that the nature of the case admitted of.

Question 43. In the case of *placemen,*—in what shapes, and by what means, do the promised collateral advantages promise to take place?

Answer. By the tendency which such a situation would have to raise to a maximum, in their respective breasts, the several *endowments,* or elements of aptitude above mentioned, relation being had to the business of their respective offices.

The beneficial influence of the arrangement would not confine itself to the case of those *superordinates* in office, who, in virtue of it, would be seated in the House: it would extend to their respective *subordinates out of the House.*

Take first the case of the superordinates,—seated in the House, and by official duty, and the proposed *attendance-tables,* rendered constant in their attendance there.

1. *Probity,* appropriate probity, will, in their instance, have for its aid the continual *scrutiny,* actual or impending, to which they will remain subject—subject, with full power of giving, to themselves and to one another, whatsoever support can be afforded by *speeches*—that is, by *evidence* and by *argument,*—but without that power of self-support, deserved or undeserved, which a confederated body of men—linked together by one common interest, and that a sinister one,—afford to themselves and one another by their *votes:* men who, while they are co-partners and co-defendants by their *offices,* are fellow-judges over each other by their *votes.*

2. To *intellectual aptitude,*—appropriate intellectual aptitude,—on the part of official persons of the same descriptions, the arrangement promises increase;—viz. by rendering it to them matter of increased necessity, to obtain and retain correct and complete information, respecting the whole mass of business habitually transacted in their respective offices; lest,—by want of correctness, completeness, or promptness, in the answers given by them to questions put to them in the House, from time to time, in relation to such business,—any deficiency on their part, in point of appropriate official intellectual aptitude, should stand exposed.

Take next the case of the several *subordinates, not having seats* in the House.

Probity—appropriate probity: increase in this endowment will in *their* instance have, as will be seen, for its immediate cause, the increase of both endowments, viz. probity and intellectual aptitude, as above, on the part of their respective *superordinates, having seats* in the House.

1. As to *probity,*—be the office what it may, the more correctly, completely, and generally, the business of it is understood, the more difficult will it be for improbity, in any shape, on the part of a subordinate, to profit by any undue protection, which any superordinate in the office might happen to be disposed to give to it: and, the more *correct* and *complete* the *information* is, which the superordinate possesses in relation to the business of his subordinates, the more effectual will be the degree of *vigilance,* be it what it may, with which it may happen to him to be disposed to look into their conduct in this view.

2. Again, as to *intellectual aptitude*—appropriate intellectual aptitude,—be the species of *information* what it may, the more *frequently* any such superordinate in office is liable to be called upon in the House to furnish it, the more frequently will he thereby be obliged to address himself to this or that subordinate, for information, in relation to such parts of the business as happen to be more immediately within the sphere of action of such subordinate: and the more frequently and *suddenly* any such subordinate is liable to be thus called upon, the more cogent will be the motives, by which he will find himself urged to obtain and retain the most complete mastery, which it is in his power to possess, of the business in question: lest, in respect of this element of official aptitude, any deficiency should eventually come to be exposed.

3. As to *active talent,*—appropriate active talent,—by whatsoever means, in these several situations, the arrangement in question promises to be conducive to the increase of appropriate *intellectual aptitude,*—by the same means, and in the same proportion, it promises to be conducive to *this* more immediately efficient element of official aptitude.

On the part of official men of both descriptions, it moreover promises to secure, in another way, a more and more ample measure of appropriate active talent, as well as intellectual aptitude;—viz. by keeping out of the respective offices all such *unfit* persons, as,—either in their own opinion, or in the opinion of those to whom it belongs to judge,—are unable to abide such close, and continually impending, scrutiny.

Question 44. In the present state of things, are not the business and conduct of official men, in the several departments, open in this same way to this same sort of scrutiny?—and, such information as comes to be wanted, is it not continually called for, and obtained from them, in and by the House?

Answer. To a certain degree, yes: but not upon a plan approaching in any degree to the character of a complete and adequate one.

In the *superior* departments,—such as the treasury,—the several offices of principal secretary of state for home affairs,—of ditto for colonial and foreign affairs,—and of ditto for the conduct of the war,—in the military department, the admiralty, and the ordnance,—it is matter of accident whether the persons responsible in the first instance shall be in the House of Commons, in the House of Lords, or in neither: while, in several of the *subordinate* departments,—such as the excise and customs, the stamp office, the assessed tax office, the navy office, the victualling office, and others,—so it is that, in pursuance of the partial, insincere, and reluctant system of purification that has been employed,—it has, by positive law, been made impossible for any person, acquainted with any part of the business, to occupy a seat in the only House of Parliament that would otherwise have been accessible to him: as if there were anything either pernicious, or inconvenient, or so much as unusual, in a man's having a seat in an assembly in which he has not a vote.

Question 45. In the instance of any one of these departments, is there then ever any *ultimate* deficiency in respect of such information, as, in the judgment of the House, is proper to be collected and brought to view?

Answer. Not much perhaps, if compared with that which is *actually called for:* but much, if compared with that which *ought to be* called for, and would be called for, if the means of obtaining and calling for it were thus prompt, easy, and complete,—in the degree in which, on the proposed plan, they would be.

In this or that department that might be mentioned,—the navy-office for instance,—the business of the office is a chaos, inclosed in a dark laybrinth, of which no clear and comprehensive view has ever yet been taken, so much as by any of the persons habitually at work in it.

And, even in the case of such information as, on such points on which it is called for, comes to be actually given, the degree of *promptitude,* with which it is at present furnished, is apt to fall very short of that with which it might and would be furnished, if the persons, by whom or under whose direction it were to be furnished, were constantly under the eye, and at the command, of the House: and many are the instances, in which *that,* which does not come *promptly,* and almost at the moment at which it is called for, might, for any use that is or can be made of it, as well not have come *at all.*

And though, to answer its proper and intended purposes, it is altogether necessary that the matter of such information should be put in a *written* form,—yet, to every one to whom jury-trial is known, it is manifest how uninstructive and unsatisfactory a dead

mass of written evidence frequently is, in comparison of what it would be, if the import of it were upon occasion explained and elucidated, and the *correctness* and *completeness* of it secured, by apposite questions put on the spot by word of mouth, followed by immediate and unpremeditated answers, and with further questions, in case of need, suggested by those answers; and so on till every obscure point were made clear:—exactly in the same way as, for the conducting of his own private business, in the bosom of his own family, every head of a family obtains such information as he happens to stand in need of, from his own children or his own servants.

Question 46. In the case of the House of *Lords,* by what means do the promised advantages promise to take place?

Answer. By means of that article which provides for the correct and complete *taking down,* and immediate publishing, of all *speeches* made in the House of Commons.

Question 47. In what way does it promise to be productive of those advantages?

Answer 1. In case of a bill, or other measure, sent up from the Commons to the Lords' House,—it promises to be productive of a degree of appropriate intellectual aptitude as yet unexampled, by furnishing the members of that House,—upon whose decision the fate of every proposed *law* (not to speak of other incidental and miscellaneous measures) depends,—a correct, complete, and authentic representation of the several *arguments,* by which it has been supported and opposed.

2. In the same way it tends to secure, in the same superior quarter, an increased degree of appropriate *probity;*—for, when all the several arguments, which, in the case, for example, of a proposed law, have been adduced in favour of it,—when all these arguments have been consigned to determinate words, and those words committed to writing, together with all the arguments that could be found capable of being urged against it on the other side,—in this case, the more satisfactory and cogent the arguments in favour of it appear, the more difficult will it be for any member of the Upper House to find out and set in opposition to it, any arguments that will bear the test of the public eye; or for the whole House, without any warrant afforded on the ground of reason, to venture, howsoever uncongenial it may be to particular interests or favourite prejudices, to reject it.

Question 48. In the case of the *higher classes* at large, by what means do the promised advantages promise to take place?

Answer. By means of that article which provides for the *frequent* recurrence of elections,—in conjunction with that which prescribes, in relation to the several seats, an increased and nearly uniform *extent* to the *numbers* of the persons sharing in the election franchise.

Question 49. In what way?

Answer. In both ways;—viz. in the way of *intellectual aptitude,* and in the way of *probity.*

1. In the way of *intellectual aptitude*—appropriate *intellectual aptitude,* it promises to improve the texture of their minds, by bringing within the reach of a much greater number of them than at present, the prospect of a place in the most efficient seat of government: such place being at the same time tenable, not absolutely, but only upon such terms, as, after the first year, will leave to each man little hope of his being continued in it, in any other event than that of his having made manifestation of distinguished *active talent,* or at least *intellectual aptitude:* and, by thus giving increase to the number of competitors, giving proportional increase to the exertions made by each, in the hope of manifesting his superiority over the rest.

2. In the way of *probity*—appropriate probity,—by rendering it the interest of every man—who sets before his eyes any such prospect, at whatsoever period of his life it may be his hope to see it realized—to lay a foundation for such hope, by an uniform and constant course of *kindness* and courtesy, as well as of *justice,* towards all persons on whom the success of his exertions may be in any degree dependent: and, in particular, as towards the *lower* classes, which, of necessity, are everywhere the most populous ones.

In the present state of things,—a borough-holder, or a man of first-rate opulence, who, by weight of metal, is looked upon as able to sink every bark that should dare to steer the same course, commands the seat, without need of paying any such price for it.

Question 50. In the case of the *lower* classes, by what means do the promised advantages promise to take place?

Answer. By means of the article last above mentioned. It being, to so considerable an additional extent, as above, the interest of the *higher* classes, to maintain, in their intercourse with the lower classes, an uniform and constant course of justice, kindness, and courtesy,—hence, by each individual of those higher classes, in proportion as his conduct is fashioned by that interest, the feelings of the lower classes will be respected, and their interest consulted, and treated with regard.

Out of the virtue of the higher classes, thus cometh forth the comfort of the lower.

Question 51. *These* collateral advantages—are they *all* that can be stated as likely to result from the plan, in case of its being adopted, and in proportion as it is adopted?

Answer. If the question be confined to the plan itself, meaning the arrangements of which it is composed,—then so it is, that to one or other of the above five heads, whatsoever beneficial results can be stated as likely to be produced by the plan, would, it is supposed, be found referable.

But, if the *principles,* by which these have been suggested, are found to be those which belong to the nature of the case—if, in the list of objects brought to view in the character of *ends* proper to be aimed at, none are included but such as have a just title to a place in it, and all are included that have any such just title:—let this be supposed, and by means of these principles, the plan will, in this case, be found capable of being applied to an *additional* and perfectly distinguishable use;—to wit, the serving as a

test or touchstone, by which the eligibility of every *other* plan, that has been, or that can ever be, brought forward, may be tried.

In the persons of members—in the persons of the representatives of the people,—is it conducive—and if so, by *which* of the several arrangements contained in it, is it conducive—to *probity,* to *intelligence,* to *active talent?*

By all of them put together, is it thus conducive in a sufficient degree?

The same questions, with regard to the several classes of *placemen* belonging to the executive branch of government.

The same questions, with regard to the *Lords*—without whose concurrence nothing, in the way of legislation, can, on any occasion, be done.

The same questions, with regard to the several *inconveniences* attached, in the existing state of things, to elections and election judicature.

Such are the questions, by the application of which the eligibility, absolute and comparative, *of any and every other plan,* would, it is supposed, be rendered pretty clearly apparent.

Strong and sound may that plan be pronounced, that shall have stood examination upon these interrogatories: self-convicted of insufficiency, the plan that shall have shrunk from the test which they afford.

The *arrangements* themselves can no farther be of use, than in proportion as they are adopted. But,—although they should not, any one of them, be adopted,—yet the *principles* on which they are grounded, and by which they were suggested, might still, in this way, be found to be not altogether without their use.

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A SKETCH OF THE VARIOUS PROPOSALS FOR A CONSTITUTIONAL REFORM IN THE REPRESENTATION OF THE PEOPLE, INTRODUCED INTO THE PARLIAMENT OF GREAT BRITAIN, FROM 1770 TO 1812.

ADVERTISEMENT.

The information contained in the ensuing paper is in so high a degree apposite and instructive, that the temptation to reprint it in this place could not be resisted. The hand by which it was drawn up was that of *Mr. Mcadly,* author of the Memoirs of the Life of Dr. Paley, and other works. To the favour of that gentleman, the author of the present tract was some years ago indebted for a few copies: and, by the want of acquaintance with his present address, is precluded from the faculty of requesting his consent. No bookseller's name being in the title-page, it could not have been intended for sale: and in proportion as this reprint may have the effect of giving increase to its publicity, the generous designs, which gave birth to so much well-applied labour, cannot but be promoted.

1.*House of Lords,*Monday, May* 14*th,* 1770.—The Earl of Chatham, in moving an *Address to the King, to desire he would dissolve the present Parliament,* stated, that, "instead of depriving a county of its representative," alluding to the case of Mr. Wilkes, "one or more members ought to be added to the representation of the counties, in order to operate as a balance against the weight of several corrupt and venal boroughs, which perhaps could not be lopped off entirely, without the hazard of a public convulsion."

["Purity of parliaments," said his Lordship, in answer to an address of thanks from the city of London for the above declaration, June 1st, 1770, "is the corner-stone of the commonwealth: and as one obvious means towards this necessary end, to strengthen and extend the natural relation between the constitution and the elected, I have publicly expressed my earnest wishes for a more full and equal representation, by the addition of one knight of the shire in the county, as a farther balance to the mercenary boroughs. I have thrown out this idea with the just diffidence of a private man, when he presumes to suggest anything new in a high matter. Animated by your approbation, I shall continue humbly to submit it to the public wisdom, as an object to be most deliberately weighed, accurately examined, and maturely digested."

And again, in a LETTER to Earl Temple, April 17th, 1771, he said,—"Allow a speculator in a great chair, to add, that a plan for a more *equal representation,* by additional *knights of the shire,* seems highly seasonable; and to shorten the *duration* of parliament not less so."]‡

2. House of Commons,*Thursday, March* 21*st,* 1776.—Alderman Wilkes moved, "That leave be given to bring in a bill for a just and equal representation of the people

of England in parliament;" which being seconded by Alderman Bull, was opposed by Lord North, and lost without a division.

["My idea," said Mr. Wilkes, "in this case, as to the wretched and depopulated towns and boroughs in general, I freely own, is amputation. I say with Horace, *Inutiles ramos amputans, feliciores inserit.* I will at this time, Sir, only throw out general ideas, that every free agent in this kingdom should in my wish be represented in parliament; that the metropolis, which contains in itself a ninth part of the people, and the counties of Middlesex, York, and others, which so greatly abound with inhabitants, should receive an increase in their representation; that the mean and insiguificant boroughs, so emphatically styled the rotten part of our constitution, should be lopped off, and the electors in them thrown into the counties; and the rich, populous, trading towns, Birmingham, Manchester, Sheffield, Leeds, and others, be permitted to send deputies to the great council of the nation."]*

3. House of Lords,*Friday, June* 2*d,* 1780.—The Duke of Richmond was introducing his bill to restore annual parliaments, to procure a more equal representation, and to regulate the election of Scotch peers, when he was prevented from proceeding by the alarming riots in Palace-yard.

[By his Grace's bill it was intended to enact and declare, "That every commoner of this realm, excepting infants, persons of insane mind, and criminals incapacitated by law, hath a natural, unalienable, and equal right, to vote in the election of his representative in parliament. That the election of members to serve in the House of Commons ought to be annual. That the manner of electing the Commons in parliament, and all matters and things respecting the same, be new-modelled according to the present state of the kingdom, and the ancient unalienable rights of the people. That the number of members in the House of Commons being 558, the total number of electors should be divided by that, to give the average number of those, having a right to elect one member."

"My sentiments on the subject of parliamentary reform," said his Grace, in a LETTER to the High Sheriff of Sussex, Jan. 17, 1783, "are formed on the experience of twenty-six years, which, whether in or out of government, has equally convinced me, that the restoration of a genuine House of Commons, by a renovation of the rights of the people, is the only remedy against that system of corruption, which has brought the nation to disgrace and poverty, and threatens it with the loss of liberty."]†

4. House of Commons,*Tuesday, May* 7*th,* 1782.—The Hon. William Pitt moved, "That a committee be appointed to inquire into the state of the representation in parliament, and to report to the House their observations thereon." He was seconded by Alderman Sawbridge; but Sir Horace Mann moving the order of the day, it was carried by a majority of twenty,—Ayes, 161—Noes, 141;—and the original motion lost.

[Mr. Pitt said, "He would not, in the present instance, call to their view or endeavour to discuss the question, whether this species of reform or that; whether this suggestion or that, was the best; and which would most completely tally and square with the

original frame of the constitution;—it was simply his purpose to move for the institution of an inquiry composed of such men as the House should, in their wisdom, select as the most proper and best qualified for investigating this subject, and making a report to the House of the best means of carrying into execution a moderate and substantial reform in the representation of the people."]‡

5. House of Commons,*Wednesday, May* 7*th,* 1783.—The Hon. William Pitt moved, 1. "That the most effectual and practicable measures ought to be taken for the better preventing both bribery and expense in the election of members to serve in parliament.

2. "That whenever it shall be proved before a select committee of the House of Commons, duly appointed to try and determine the merits of any election or return for any place in the kingdom, that the majority of the electors had been guilty of corrupt practices in such election, it will be proper in all such cases, that such place shall from thenceforth be disabled from sending representatives to parliament; and that such electors as shall not (by due course of law) be convicted of any such corrupt practices, shall be enabled to vote at the election of the knights of the shire in which such place shall be situated.

3. "That in order to give further security to the independence of parliament, and to strengthen the community of interest between the people and their representatives, which is essential to the preservation of our excellent constitution on its true principles, it is proper that an addition should be made to that part of the representation which consists of members chosen by the counties and the metropolis." Mr. Henry Duncombe seconded the motion, but the *order of the day* being moved by Mr. Powys, was carried,—Ayes 293—Noes 149;—Majority 144.

[Mr. Pitt gave notice to the House, that if the above resolutions were carried, he should then move for leave to bring in, a bill to provide for the disabling of such places from sending members to parliament, in which the majority of electors shall have been proved guilty of corrupt practices, and a bill for the better securing the independence of parliament.]*

6. House of Commons,*Wednesday, June* 16*th,* 1784.—Alderman Sawbridge moved, "That a committee be appointed to inquire into the present state of the representation of the Commons of Great Britain in parliament." He was seconded by Alderman Newnham; but Lord Mulgrave moving the previous question, it was carried,—Ayes 199—Noes 125;—Majority 74.

[Mr. Sawbridge went at large into the state of the representation in various parts of the country, and asked, "Whether such a system as that which at present prevailed could be called a fair, an equitable, or a satisfactory one? His object would consequently be to have all the light which could be thrown upon the subject collected under the inspection and cognizance of the House, that they might see whether anything farther ought to be done or not, and then what the specific remedy ought to be. His motion bound the House to no species of reform, but merely put the matter in progress, and would serve to convince the people of their sincerity, on a subject where so much

expectation had been raised." A similar motion of the Alderman's, on the 12th of March preceding, had been rejected by the former parliament—141 against 93.]†

7. House of Commons,*Monday, April* 18*th,* 1785.—The Right Hon. William Pitt moved, "That leave be given to bring in a bill to amend the representation of the people of England in parliament;" which being seconded by Mr. Henry Duncombe, the House divided,—Ayes 174—Noes 248;—Majority 74.

["His plan," Mr. Pitt observed, "consisted of two parts: the first was more immediate than the other, but they were both gradual. The first was calculated to produce an early, if not an immediate, change in the constitution of the boroughs; and the second was intended to establish a rule by which the representation should change with the changes of the country. It was, therefore, his intention to provide, in the first instance, that the representation of thirty-six of the most decayed boroughs, which should be disfranchised on their voluntary application to parliament for an adequate consideration, should be distributed among the counties, and that afterwards any which might still remain of a similar description, should have the power of surrendering their franchise, and the right of sending members be transferred to such large and populous towns as should desire it."]‡

8. House of Commons,*Thursday, March* 4*th,* 1790.—The Right Hon. Henry Flood moved "for leave to bring in a bill to amend the representation of the people in parliament," and was seconded by Mr. Grigby; but Mr. Pitt threatening to move an adjournment, the motion was withdrawn.

["My proposition," said Mr. Flood, "is, that one hundred members should be added, and that they should be elected by a numerous and responsible body of electors; the resident householders in every county:—resident, because such persons must be best acquainted with every local circumstance, and can attend at the place of election with the least inconvenience or expense to themselves or the candidate; and householders, because, being masters or fathers of families, they must be sufficiently responsible to be entitled to the franchise. They are the natural guardians of popular liberty in its first stages,—without them it cannot be retained.]?

9. House of Commons,*Monday, April* 30*th,* 1792.—Mr. Grey gave notice of his intention of moving, in the next session of parliament, for a reform in the representation of the people; when Mr. Pitt declared his decided hostility to the measure, and was supported in it by several members who were usually hostile to his administration.

[At a general meeting of the Friends of the People, associated for the purpose of obtaining a parliamentary reform, April 26th, after approving of and adopting unanimously an address to the people of Great Britain, on the objects of their association, it was resolved—

"That a motion be made in the House of Commons, at an early period in the next session of parliament, for introducing a parliamentary reform.

"That Charles Grey, Esq. be requested to make, and the Hon. Thomas Erskine to second the above motion.

"Signed by the unanimous order of the meeting, W. H. Lambton, Chairman.]§

10. House of Commons,*Monday, May 6th,* 1793.—Mr. Grey presented a petition from certain persons, members of the Society of "Friends of the People," stating, with great propriety and distinctness, the defects which at present exist in the representation of the people in parliament, which they declared themselves ready to prove at the bar; urging the necessity and importance of applying an immediate remedy; and praying the House to take the same into their serious consideration. Mr. Grey declined bringing forward any specific plan of reform, and moved "for the appointment of a committee to take the petition into consideration, and report such mode of remedy as shall appear to them proper." The Hon. Thomas Erskine seconded the motion, and, after two days' debate, the House divided,—Ayes 41—Noes 282;—Majority 241.

[The petitioners, in concluding, thus forcibly recapitulated the objects of their prayer.

"That your Honourable House will be pleased to take such measures, as to your wisdom may seem meet, to remove the evils arising from the unequal manner in which the different parts of the kingdom are admitted to participate in the representation.

"To correct the partial distribution of the elective franchise, which commits the choice of representatives to select bodies of men of such limited numbers as renders them an easy prey to the artful, or a ready purchase to the wealthy.

"To regulate the right of voting upon an uniform and equitable principle.

"And finally, to shorten the duration of parliaments, and, by removing the causes of that confusion, litigation, and expense, with which they are at this day conducted, to render frequent and new elections, what our ancestors at the revolution asserted them to be, the means of a happy union and good agreement between the king and people."]*

11. House of Commons,*Friday, May 26th,* 1797.—Mr. Grey moved for "leave to bring in a bill to reform the representation of the people in the House of Commons," and was seconded by the Hon. Thomas Erskine. On a division there appeared,—Ayes 93—Noes 258;—Majority 165.

[Mr. Grey proposed, that "instead of 92 county members, as at present, there should be 113: instead of two for the county of York, for instance,—two for each riding, and so in other counties, where the representation is not proportionate to the extent of soil and population: that each county or riding should be divided into grand divisions, each of which should return one representative, and that the right of election should be extended to copyholders and to leaseholders, for a certain number of years. That the other members should be returned by householders; that great towns should require a greater number of electors to one representative; that the country should be divided into districts, and no person permitted to vote for more than one member; that

the poll should be taken through the whole kingdom in one day; and that the duration of parliament should be limited to three years.]†

12. House of Commons,*Friday, April* 25*th,* 1800.—Mr. Grey moved, "That it be an instruction to the committee appointed to consider of his Majesty's most gracious message respecting the union between Great Britain and Ireland, to take into their consideration the most effectual means of providing for, and securing the independence of parliament." Mr. Tierney seconded the motion, which was rejected on a division,—Ayes 34—Noes 176;—Majority 142.

[After objecting to the increased influence of the crown, which might arise from the introduction of 100 Irish members, in the present state of the representation, Mr. Grey said, "Although I do not agree that it is necessary for those who disapprove of any specific plan, to propose a substitute, I am ready to state what I consider calculated to remove some part of the inconveniences which we apprehend. I would suggest, that 40 of the most decayed boroughs should be struck off, which would leave a vacancy of 80 members. I should then propose that the ratio, on which Ireland is to have 100 representatives, should be preserved: and the proportion to the remainder 478 would give us 85 members for that country. The county elections would give 69 members, and 16 remain to be chosen by a popular election, by the principal towns. By this motion it is only intended to keep parliament in its present state—to prevent it from becoming worse."]‡

13. House of Commons,*Thursday, June* 15*th,* 1809.—Sir Francis Burdett moved, "That this House will, early in the next session of parliament, take into consideration the necessity of a reform in the representation." Mr. Madocks seconded the motion, and the House divided,—Ayes 15—Noes 74;—Majority 59.

["My plan," said Sir Francis Burdett, "consists in a very few, and very simple regulations; and as the disease we labour under has been caused by the disunion of property and political right, which reason and the constitution say should never be separated, the remedy which I shall propose will consist in reuniting them again. For this purpose, I shall propose,—

? "That the freeholders, householders, and others subject to direct taxation, in support of the poor, the church, and the state, be required to elect members to serve in parliament.

"That each county be subdivided according to the taxed male population, and each subdivision required to elect one representative.

"That the votes be taken in each parish by the parish officers; and all elections finished in one and the same day.

"That the parish officers make the returns to the sheriff's court, to be held for that purpose at stated periods; and

"That parliaments be brought back to a constitutional duration."]*

14. House of Commons,*Monday, May* 21*st,* 1810.—The Hon. Thomas Brand moved, "That a committee be appointed to inquire into the state of the representation of the people in parliament, and of the most efficacious means of rendering it more complete, and to report the same, with their observations thereupon, to the House." He was seconded by NA, and, on a division, there were,—Ayes 115—Noes 234;—Majority 119.

[Mr. Brand said, "that he did not mean to touch the right of voting for county members, except by letting in copyholders, and assimilating the mode of voting in Scotland to the practice of this country; but that, whilst he left the right of voting so far untouched, he should propose to disfranchise the boroughs, in which the members were returned upon the nomination of individuals, and, as the numbers of the House would be diminished in that proportion, to transfer the right of returning such members to populous towns, and to apply any surplus to the more populous counties; that he would recommend the duration of parliament to be made triennial, together with a concurrent arrangement for collecting the votes by districts and parishes. And that, with a view to the independence of parliament, persons holding offices without responsibility should not be suffered to have seats in that House."]†

15. House of Commons,*Friday, May* 8*th,* 1812.—The Hon. Thomas Brand moved "for leave to bring in a bill to repeal the act 31 Geo. II. c. 14, and to entitle copyholders to vote for knights of the shire." The Marquis of Tavistock seconded the motion, and the House divided,—Ayes 88—Noes 215;—Majority 127.

[Mr. Brand said, "he would also propose to get rid of nomination, and to throw the representation of the close boroughs into an enlarged representation of the more populous counties. One part, therefore, of the plan which he had in view, was to bring in a bill for the abolition of those boroughs, and the consequent appropriation of a more extensive suffrage to the more populous counties, from whence an equalization of members to the different parts of the empire would arise. He did not wish to make any innovation, but rather to restore to the constitution what the great innovator, Time, had taken from it."]‡

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RADICAL REFORM BILL, WITH EXTRACTS FROM THE REASONS.

BILL, INTITULED PARLIAMENTARY REFORM ACT; being AN ACT FOR THE MORE ADEQUATE REPRESENTATION OF THE PEOPLE IN THE COMMONS HOUSE OF PARLIAMENT.

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PRELIMINARY EXPLANATIONS.

Universal Suffrage, Annual Parliaments, and *Election by Ballot:*—at public meetings, these are the words commonly (it is believed) employed, for expressing the essential features of Radical Reform.

Another expression, however, there is, which in some respects seems to afford a promise of being more apposite. This is—*secret, universal, equal, and annual suffrage;* or say—*secresy, universality, equality, and annuality of suffrage. Suffrage* is the common subject, to which all these qualities are referable: it presents a bond of union, by which all these elements may, in our conception, be knit together into one whole.

I. *Secresy* is of the very first importance: because where there is no secresy, there can be no assurance of *genuineness.* The vote may be bribed or forced; and, whether bribed or forced, the vote is the expression of the wish—not of the voter, but of him by whom he is either bribed or forced. So far as this state of things has place, the wishes, by which the choice is determined, will be—not the wishes of the *many,* governed by the interests of the many, but the wishes of the few, governed, by the interests of the few—by that comparatively narrow body of interest which is in a state of continual opposition to the universal interest, and to which, in so far as the opposition has place, or by the ruling few is thought to have place, the universal happiness will be made a constant sacrifice. So at all times it has been; and, till the many have at all times the choice of those by whom their affairs are managed, so at all times, from the very nature of man, it will be sure to be.

In this Bill, in its largest shape, when published with the accompanying reasons on which it has been grounded, the following will, in a more particular manner, be shown to be the distinguishable evils, to the avoidance of which, secresy of suffrage is indispensable:—

1. Mis-election, Non-election, or Null-election.—Positive mis-election has place in so far as the representative returned is positively unfit. Comparative mis-election has place, in so far as, if the representative actually returned had not been returned, another more fit would have been returned.

2. Oppression. This has place, in so far as, by fear of evil at the hands of an individual, a person, entitled to vote, is induced to vote contrarily to what would otherwise have been his wishes, or prevented from voting according to what would otherwise have been his wishes.

3. Corruption. This has place, in so far as, by hope, or in consideration of some good at the hands of an individual, a person is induced to vote contrarily to what would otherwise have been his wishes, or is prevented from voting according to what would otherwise have been his wishes.

4. Insincerity. This has place, in so far as, whether by oppression or by corruption, a man is induced to give his vote contrarily to what would otherwise have been his wishes.—To give, as the expression of a man's unbiassed wishes, a vote which is not so, is imposture.

5. Vexation and expense, by journeys to and from the place of election, or demurrage at that place, under the yoke of the oppression.

6. Needless discord, and eventual ill-will, between man and man: the consequence of forced declaration of sentiments, or pretended sentiments.

7. Injuries to person and property, by means of tumults: from forced or bribed declarations of pretended sentiments.

8. Injuries to reputation, by election calumnies.

9. Vexation and expense by litigation.

10. Needless expense from other causes.

By secresy of suffrage, even without the aid of any other remedy, almost all these evils are either completely done away, or at least lessened. The only exceptions are—Non-election, and Null-election. This will be shown at length in the work at large.

Without secresy, all those other elements of reform put together would be worse than useless. Not to speak of tradesmen dependent on the opulent for custom—labourers, and household servants, and journeymen manufacturers—all dependent on masters for employment—and paupers dependent on magistrates for existence (the last class but too little distinguishable from the others):—all these would have to give their votes according to the declared or presumed wishes of those on whom they are dependent, in despite of their own wishes, and their own consciences. But of these is composed the great majority of the people. Thus would the supposed remedy be but an aggravation of the disease.

The votes of the majority of the electors, and thence of the whole number of the representatives, would thus be at the command of magistrates:—of magistrates, such as the Manchester magistrates! and, through them, of ministers such as Lord Sidmouth, and monarchs such as his Prince Regent.

But magistrates, such as are not already like the Manchester magistrates, may all of them, but for Radicalism, be so at any time; for they are, all of them, placed by the Monarch—all of them removable at his pleasure.

In the State of New York, the members of the House of Representatives are, all of them, elected by secret suffrage. It was, declaredly, as a measure of experiment, that in 1777 secresy was in this case appointed in the first instance: by the experience of forty-two years it stands confirmed.* Yet in that country the demand for secresy, as a

security against intimidation and corruption, is as nothing compared to what it is in this.

Secresy at the hustings, it has been said, is of no avail: for a man, who has given his vote in secret, may always, it is said, be made to *tell* how he has given it. To *tell* how he has given it! The deception lies in the word *tell.* What matters it what a man has *told,* when by nothing that a man has told, or ever can tell, can he cause any other man to *know?* When by no man but the voter himself the vote given by him has been perceived, not only may he avoid letting any person *know* what the vote has been, but for him to communicate to any other person any such *knowledge* is absolutely impossible. I say to Colonel Lowther or Mr. Lamb—Sir, I have given you my vote. In so saying (suppose) I have said true. Good: but how can the honourable gentleman know that, in so saying, I have said true? He can no more know that what I have said is true, than he could have known it to be true if it had been false.

Before the day has closed, Mr. *Such a one* (suppose) has said a score of times the thing which is not: the same Mr. *Such a one* goes to bed in the persuasion, that for a fact to be *said* to be so, and really to be so, is exactly the same thing.—Oh ye of little thought!

II. *Universality* we say for shortness, instead of *Virtual Universality.* No man means that children that can but just speak, should vote: no man appears to mean that females should vote.

To some it has appeared necessary to exclude from voting *persons insane,* and *criminals:* to exclude them by special exception. No wonder:—yet nothing can be more needless. Such as are lawfully under confinement, would no more be let out to vote than for any other purpose. As to those who are not under confinement,—*criminality,* if it means anything to the purpose, means *mischievousness.* But the most mischievous among criminals, adjudged and denominated such after legal conviction, could not set his foot in either House, without finding himself in company with men in numbers—not to say in a vast majority—more mischievous than himself: men, whose principal differences from himself, consists in impunity derived from situation and confederacy—in impunity added to greater mischievousness: men, whose mischievousness was acting on the largest scale, while his was acting on a petty scale. Exclude criminals? *How* will you exclude criminals? Exclude criminals convict? Yes, *that* you may: but, even in this class, in which mischievousness is not secured from the imputation of criminality by high-handed impunity,—of those convicted, how small is the proportion to those not convicted!

Look to the effect! look to the effect!—To look out for grounds for exclusion, is mere lost labour, where, if all that are proposed to be excluded are admitted without exception, no practical bad *effect* can be produced but by a *lasting majority* of the House. Members might be sent from the hulks by scores, and yet no lasting mischief done. All the persons put together, whom, for any other cause than want of property, it has ever been proposed to exclude, would nowhere, under universality and equality of suffrage, suffice to return so much as a single member to the House. All itineration

of voters from polling-place to polling-place, is by this Bill (Section 2) excluded. This considered, take to this purpose foreigners in amity—even foreigners at enmity—outlaws, bankrupts, insolvents—yes, and peers into the bargain—(not by voting do peers do the mischief that they do—not by voting, but by bribing, and above all by forcing votes)—the truth of the position will not be disproved.

By annoyance to the members, and thus by disturbance, in an unlimited degree, to the business of the assembly, mischief without bounds might indeed be done: done, by any single member, whether from the hulks or from the drawing-room. But, against all such mischief, provision is made in this bill, more effectual than has ever yet been in the House. See Section 13.

It is for want of considering the subject on a sufficiently large scale, that objections deduced from the unfitness of individuals, without considering whether the number of them could ever swell so as to produce any mischievous effect, have in a case of this sort been considered as applicable.

Exclusion, in so far as unnecessary, is by no means innoxious. Out of it grow contestation, litigation, mis-election, null-election. These are the reasons, and are they not sufficient ones?—for excluding it? Yes, exclusion is, in all such cases, fit for nothing but to be excluded.

Look once more to America: to United America. In some of the States, the pecuniary qualification exacted is real; in others, it is no more than nominal; and, where qualification is but nominal, suffrage is virtually universal. Payment of a tax, which every man is admitted to pay, and which the poorest can afford to pay, is a qualification purely nominal. If, in the admission of universal-suffrage-men, there were any mischief—any so much as the least danger—it could not, in that country, fail to be seen:—seen by the difference in point of social order and prosperity between those States in which the pecuniary qualification is highest, and those in which it amounts to nothing. In Pennsylvania it amounts to nothing. Number of free inhabitants, of all conditions, ages, and sexes, 800,000: number of voters at a late election, 108,000. These numbers were lately given me, by an authority above dispute. Pennsylvania is of all the State among the most flourishing and the most orderly, if in this respect there be any difference.

Under radicalism, all property, it is said, would be destroyed. So says Mr. Deputy Jacks:* all property destroyed, the monarchy and the aristocracy notwithstanding. Mr. Deputy Jacks—has he ever heard of such a place as Pennsylvania? In Pennsylvania, for these forty years, radicalism has been supreme: radicalism without monarchy or aristocracy: radicalism without controul, and not any the slightest shock has property there ever received.

Property, it is continually said, is the only bond and pledge of attachment to country.—Not it indeed. Want of property is a much stronger one. He who has property, can change the shape of it, and carry it with him to another country, whenever he pleases: he who has no property, can do no such thing. In the eyes of those who live by the labour of others, the existence of those by whose labour they

live, is indeed of no value: not so in the eyes of the labourers themselves. Life is not worth more to yawners than to labourers: and their own country is the only country in which they can so much as hope to live. Among a hundred of them, not ten exceptions to this will you find.

Now as to the qualification by *reading.*—At first blush, it seems to involve exclusion:—it does no such thing in effect. From two to three months social pastime, at the hours of repose from work, would give it to all adults in whose eyes the privilege were worth that price: and he, in whose eyes it were not worth that price, could not, with much justice, complain at the not having it. Qualification by householdership does involve exclusion: for it is not in every man's power to pay rent and taxes for a house. Householdership is evidence of property; it is for this cause that it is required by those who stipulate for it. Qualification by payment of taxes—*that* too involves exclusion: if by payment of taxes be meant that which is anything to the purpose. Qualification by payment to indirect taxes, if those be the taxes meant, is *universality of suffrage:* for where is the human being that pays not to taxes on consumption? to the taxes called *indirect* taxes? Payment to direct taxes—to assessed taxes for example—is householdership under another name. Qualification by reading involves no exclusion: for every man who chose could give it to himself. He could do so, before a bill such as this could go through the forms, even supposing Honourable House ever so well disposed to it.

An elector is a trustee: a trustee ought not to be unfit for his trust.

It is to reading that the people owe all their strength: that strength at which, even thus early, tyrants tremble.

III. By *equality of suffrage,* is meant equality of effect and value, as between the suffrage of one man and the suffrage of another. The greater the number of the votes to each seat, the smaller is the effect of each vote.

1. Of practicable equality, as between district and district, the principal use is to secure, even in the least populous district, a number of votes sufficient to render bribery, and corruption in other shapes, impracticable: and, upon this plan, such will be the number, if the utmost inequality, as between the number of votes to one seat and that to another, is confined within the limits here proposed. See Section 1.

What should never be out of mind is—that without the reduction universally made in the marketable value of votes by this equality as between suffrage and suffrage,—without the reduction made in the value of a seat by annuality of suffrage,—without the defalcation made, from the effective force of corruption, by the greatest practicable reduction made by the exclusion of placemen, in the quantity of money and money's worth applicable to the purpose of corruption,—without these aids, secresy of suffrage would not suffice to insure exclusion of effective corruption: for, to an extent more or less considerable—without discoverable and punishable bribery,—money, money's worth, or benefits in various other shapes, might be made receivable by a voter, in the event of the success of this or that candidate, and not otherwise: and thus, without hazard of prosecution, the ends of bribery might be

obtained. Still, so long as the majority of the members are not kept in a constant state of sinister obsequiousness by the monarch or the minister, corruption among the voters to this or that seat—nay, even corruption on the seats themselves—is but an evil in tendency, not a sensible one.

2. In the case of the *county* seats—from inequality of suffrage, that is to say, from inequality of distance from the polling place, as between some residences and others—comes inordinate distance in the case of the largest polling districts: thence, either undue exclusion, or unduly oppressive burthen by expense and loss of time, in journeys to and fro, and demurrage.

3. Supposing inequality between district and district so great as to afford a ground for the supposition of partiality on the part of the carvers, here would be a sense of injustice. Evil in this shape, the provision made in Section 1 will, it is hoped, be found effectually to exclude. Suppose, for instance, that by local circumstances, reason should be afforded for allotting to this or that election district not more than *half* the average number of votes; to this or that other not fewer than *double* the average number. By inequality to no greater amount than this, supposing good local grounds assigned, no considerable cause for suspicion would, it is believed, be produced.

IV. Of *annuality of suffrage,* the main uses seem to be as follows:—

1. The faculty of divesting of their power all unfit representatives, before they have had time to produce any lasting mischief.

2. The keeping them out of the way of temptation, by rendering their breach of trust not worth purchasing by the corruptor-general, at any price for which it would be worth the while of a man in his situation to sacrifice his good name.

To this frequency of recurrence, objections have been made. One is composed of the proportionably frequent repetition of the election evils. But those evils arise solely out of the existing system, and they will be seen to be completely excluded by the system here proposed. At present they are carefully preserved, or even increased:—increased to the utmost, by the rich and worthless, in order to keep off all competitors that would be fitter men than themselves.

3. Another objection is—that under annuality of suffrage the changes of hands would not in fact be so frequent as they now are under septenniality. Re-election (it is said) would grow into a habit, and there would be no particular time for breaking it. The answer is—change, oftener than once in seven years, would not *then* be, as it is *now,* impossible: impossible, how strong soever the reason for it may be: unless indeed it should happen to be regarded as called for by the particular interest of the monarch and the minister, and then it may be made with every imaginable degree of frequency. Under *annuality,* with the degree of frequency thus expressed, the change will actually take place as often as, in the judgment of the only persons who have before them the means of judging right, there is a sufficient reason for it. Rendering a thing impossible, is but an awkward contrivance for rendering it more frequent. Means

more refined could scarcely be found: means more effectual could, without much difficulty.

4. Another objection is—that under annuality there would not be time enough for going through a business of any considerable length by the same hands. The short answer is—that if fit for the business, the same hands will be continued: if not fit, the sooner they give place to such as are fit, the better.

Under the existing system, interruption of all business that, by being beneficial to the universal interest, would be prejudicial to the separate and sinister interest of the ruling few, does, and to an enormous degree, constantly take place; and so long as the existing system continues, the evil thus produced by it will continue: interruption, and not only that, but what is so much worse, prevention. [See Parl. Reform Cat. Introd. § 14.] Under the proposed system it would not take place. [See this Bill, § 12.] On the other hand, no business that is brought on in pursuance of the sinister interest of the rulers, ever can suffer interruption: for theirs is the choice of times. Time there always is for depredation and oppression: time there never is for remedy against either. Just so as at Manchester: time there was enough for killing or hacking men, women, and children: no time for receiving proof of it. Methods there are, and most effectual ones, for keeping off whatever it is that right honourable gentlemen choose to keep off, and this without so much as the trouble of a debate.

For hundreds of years, in times of the greatest prosperity—of as great prosperity as the ferocity, the ignorance, and the superstitions of the times admitted of—suffrages were given, and representatives renewed, not only annually, but oftener: the result, much good, no preponderant evil assigned or assignable. If Lord Holland will indemnify the bookseller, the proof shall be printed at large, from the records. A careful and honest hand I know of, has made large progress in the collection of it. How happy would his lordship be to find that, as to this matter, he has been under mistake! how prompt to declare it!

The States in the North American Union are by this time twenty-two: and in every one of them suffrage is annual; one excepted, in which it is or was half-yearly. In the Congress alone it is *biennial:* in this case, manifestly by reason of the length of journeys between the place of meeting and some of the States. From the frequency in question, no inconvenience was ever so much as alleged. But, to eyes determinately shut, nothing is ever visible. Annuality is incompatible, it is said, with any government: so say Whigs and Tories: yet, in United America, government is in a better state than in England: even Whigs may be seen declaring this.

In republican America there are no dungeoning acts, no gagging acts, no riot acts: accordingly there are no riots. In republican America, there is no punishment for free inquiry, on pretence of punishing seditious meetings and blasphemy: there is, therefore, no sedition there; and there is more religion than in England.

The English constitution has its good points, and it has its bad points. The good points are—those which have been preserved in America with improvement and increase. The bad points are—those which it has in common with Turkey, with Russia, with

Spain, with Austria, with Prussia; with that country from which the Guelphs came, and to which they may perhaps return. The bad points cannot very easily be defended one by one: they may with perfect ease be defended all together: and this is what is always done, although not always meant, as often as a man joins in the parrot cry of Constitution! Glorious Constitution! Matchless Constitution! Those whose sinister interest attaches them to the bad points, call, of course, for our attachment to the whole. And thus it is that, in the name of *loyalty,* our attachment is called for to whatever is most mischievous and vile.

A work is in the press, from which a judgment may in some measure be formed, whether, among so many seats of misrule as there are in Germany, there is any other state in which it is carried so near to perfection as in Hanover: whether the scraps of liberty which had been left by the Bonapartes, have not already been destroyed there under the Guelphs. In what is *there effected,* read what is *here intended.* The principles of Charles the First were read in the sermons of Doctors Sibthorpe and Manwaring, and in the judgments and opinions of the judges of that time: the principles of George the Fourth may be read in the sermons of the Courier, and in the charges of Lord Chief-Justice Anybody.

Secresy, universality, equality, and annuality—behold in them the four cardinal points of the constitutional compass: secresy is the polar star.

Without secresy of suffrage, universality, equality, and annuality, altogether, would be worse than nothing. Even without universality, without equality, without annuality, secresy would of itself do much: nor against it, even by those who suffered most by it, could so much as a shadow of objection be raised. Secresy would be a strong pledge for complete reform, and of itself no inconsiderable step to it. It would of itself be a great part of the reform, and might engage men to wait with thankfulness and patience for the rest. In what multitudes would the galling chains of terrorism be broken by it!—what a downfal to the white slave-trade!—what a body of private prudence rescued from oppression!—what a body of genuine patriotism rescued from self-sacrifice! Mr. Brougham would second the motion, or a laugh would run through Westmoreland, as often as his eloquence ventured to indulge itself in a complaint of Lowther influence.

All cry of danger—danger to property—would here be without pretext. If in radicalism there were any real danger, it might be excluded by *graduality.* Yes, by graduality. But by what graduality? Not assuredly by that which Lord Erskine, and his clients, have so plainly shown *they* mean—a gradual progress in doing nothing. No: but a gradual introduction of members really chosen by those by whom they pretend to be chosen:—really chosen by those whose interest is the universal interest. The proportion—say a fourth at a time; say a fifth; say a sixth. France, which under its newly simplified and improved mode of election lets in a fifth at a time, has in that particular shown us an example. I mention this—not as necessary—not as eligible—but as that which a Whig, if there were any sincerity in him, could not object to.

Against radicalism, where anything better than bellowing or barking has been brought forward, it has been in the shape of a prediction of the *destruction* of property, as a result to be apprehended. Whether for this apprehension there be any substantial ground, may be seen in a paper, with which this will ere long be followed, under the title of Radicalism not Dangerous.*

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TITLE OF THE PROPOSED ACT.

"*Parliamentary Reform Act: being an Act for the more adequate Representation of the People in the Commons House of Parliament.*"

TITLES OF THE SECTIONS.

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PREAMBLE.

By the King,† with the advice and consent of the Lords Spiritual and Temporal, and the Commons in Parliament assembled; for the more adequate representation of the People in the Commons House, it is thus enacted:

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Section 1.—

Seats And Districts.

Art. I. This Act has for its main subjects the matters following; namely:—

1. The number of Seats in the Commons House, and of the Districts by which they are to be filled. See Articles 2, 3, 4, 5, 6.

2. The description of the *Electors,* by whose votes these several seats are to be filled: say *Electors, who: see* Section 2. *See* also Section 5, *Election Apparatus;* Section 7, *Voters' titles, how pre-established;* Section 8, *Election, how;* Section 10, *Vote-making habitations, how defined.*

3. The description of the persons, who shall be capable of filling those several seats as *Members:* say *Eligible, who;* Section 3. *See* also Section 6, *Promulgation of recommendations in favour of proposed members.*

4. The *process* by which those seats shall be filled: say *Election, how; see* Section 8. *See* also Section 4, *Election Offices;* Section 5, *Election Apparatus;* Section 7, *Voters' titles, &c.*

5. The *time,* during which the members shall, without fresh election, continue in their seats: say *Members' continuance; see* Section 11. *See* also Section 12, *Vacancies, how filled;* Section 13, *Security for the House against disturbance by members.*

Art. II. The number of *Seats* shall be, as at present, six hundred and fifty-eight.

Art. III. For determining what persons are to be Electors, the whole surface of the United Kingdom shall be divided into *Election Districts,* the same in number as the Seats. *See* Section 9.

Art. IV. In and for each election district, *one* Member and no more shall be elected.

Art. V. In respect of quantity of population, the election districts shall be as nearly *equal* to one another, as convenience, in respect of local circumstances, will permit.

In no district shall the number of electors be less than [half]* the average magnitude: in no district more than [double].

But, unless for special cause assigned, no purposed departure from the average shall be made.

In quantity of *population* being thus nearly equal,—in *extent,* the districts will consequently be proportionably different. *See* Section 9.

Art. VI. For saving of delay, vexation, and expense in journeys, and inconvenience by thronging at the place of polling, any *election district* may be divided into *Polling Districts,* called also *Sub-districts.*

In each sub-district, the votes belonging to that sub-district shall be received, and thence transmitted to the office of the election district. *See* Section 8.

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Section 2.—

Electors, Who.

Art. I. Saving as per Article VI. Every male person, in whose favour a written instrument in the form in Article IV. described by the name of a *Vote-making Certificate,* shall, by the persons therein described, have been signed in manner therein mentioned,—shall, in and for the election district to which, according to the description given in Sections 9 and 10, he appertains, be entitled to deliver his vote, as per Section 9, at the Election of a Representative of the People for that same district.

Art. II. To be valid, such vote-making certificate must be signed by three persons, styled *Vote-makers.*

Art. III. No person can be a Vote-maker, unless he or she has been a householder, occupier of a household within the election district in question, for and during at least [twenty-six weeks] next before the day on which the certificate is signed.

For the arrangements established for determining what habitation shall to this purpose be deemed a household, *see* Section 10.

Art. IV. Here follows the *form* of a *vote-making* certificate:†

Election district [NA].

Polling district [NA].

This is a *Vote*-making Certificate, made to serve for the ensuing Parliament, which is to meet on the 1st day of January in the year 1822.

The day on which it is made is the [NA] of [NA] [1821.]

The person to whom it is to give a vote is [NA].

The persons, by whose declaration, as hereinafter expressed, this certificate, and thereby the vote, are given, are we, whose names and descriptions are here, by our several hands respectively, immediately underwritten, in the alphabetical order of our surnames; to wit,

[NA]

[NA]

[NA]

That which we hereby certify is, that, according to the several true declarations following, as contained in the nine numbered paragraphs following, he the said [NA] is entitled to give a vote, in the polling district above mentioned, on the election of a Member to serve for the election district above mentioned, in the above-mentioned ensuing Parliament.

"1. At the house of [NA] above written, on the day above written, on or about [NA] of the clock in the [NA] we, whose names and descriptions are above written, did write them: to wit, each of us his own name and description, in the sight, and at the same time in the hearing, of the two others.

"2. In our sight and hearing is now present the above-mentioned [NA]. His name and description, his name being herein and now immediately written by his own hand, here follows, to wit [NA] Inmate in the household whereof the above-mentioned [NA] is householder.

"3. He declares to us, that in the above-mentioned household, to wit [NA], for upwards of [*four*] weeks together, ending with the commencement of this day, he has been [*an inmate.*] It is our belief, that this his declaration is true.

"4. He declares to us, that he is upwards of twenty-one years of age. It is our belief, that this his declaration is true.

"5. In the sight and hearing of all of us together, he has read aloud the whole of the printed part of this certificate.

"6. Also, divers lines, pitched upon by us at random in the act of parliament, by which this certificate is required.

"7. It is the sincere belief of every one of us, that the lines so pitched upon by us were really read by him, and that they had not, any of them, been committed by him to memory, for the purpose of their falsely appearing to be read. They were not, in any part, repeated by him from the mouth of any other person.

"8. From the manner of his reading, as above, we do believe him capable of reading any portion of the 'New Testament,' as printed in the English language.

"9. He has, in like manner, in our presence, signed the declaration following: 'I do hereby seriously, deliberately, and solemnly, declare and promise to my fellow-countrymen, as follows:—

Declaration.—1. '*When, at the approaching election, by means of this certificate, I have given my vote, I never will declare, nor otherwise endeavour to make known, to any person whatsoever, directly or indirectly, either for or against what proposed Member such my vote was given.*

'2. *Should any question be ever put to me, any one word said to me, or any sign made to me, having for its object the causing me so to make known my vote; every such*

question, word, or sign, I shall consider, as the law considers it, as an attempt at oppression.

'*I do hereby declare, that under the sense of such oppression, no more reliance ought to be placed on anything I say, than if the same were addressed by me to a robber, or to a person insane, for the purpose of saving, from immediate destruction, my own life, or that of some person dear to me. Witness my hand.* [NA].' "

Art. V. Here follow the *Instructions,* as to the mode of obtaining and making use of this blank certificate:—

Of this certificate, in its blank state, two copies are delivered at the same time, from the polling office of the polling district at which the vote is to be given, to, or to the use of, the proposed voter. When filled up, they are, by him or some person on his behalf, presented at the office.

At the office, one of them, if found correctly filled up, is delivered back, to the end that, at polling time, it may, on being presented by him, procure him admission to the place where he is to deliver his vote. The other is left at the office. They are to be filled up, each of them in the same words.

For issuing out blank certificates, and receiving them when filled up, the hours of attendance at the office are—in the forenoon from [NA] to [NA]; and in the afternoon from [NA] to [NA].

Art. VI. No person, who, during the whole or any part of the time of his residence in any such household as aforesaid, shall have been either officer or private, in any branch of his Majesty's military service, by land or water, in such sort as to be subject to martial law,—shall, in respect of such residence be entitled to a vote, unless during the whole of such time he shall have been the householder thereof: nor accordingly shall any vote-making certificate in his favour be received at the polling office, unless, in the appointed place, the word***householder* is inserted.

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Section 3.—

Eligible, Who.

Art. I. For the filling of a seat in the Commons House, a man may be proposed, either with or without his own concurrence.

If with his own concurrence, he is *a candidate.*

In either case, he is a *proposed member.*

Art. II. To qualify a man to be so elected, two requisites are necessary:

1. A *recommendatory certificate,* otherwise styled a *certificate of appropriate aptitude,* as per Article III.

2. Payment, by him or to his behoof, of coin made of a certain sum of money, under the name of *indemnification money,* towards the defraying of the election expenses.

The sum appointed is [*one hundred and twenty pounds.*]

Art. III. Here follows the form of such a *Certificate of appropriate aptitude:*—

"District of [NA], [*year, month, and day.*]

"1. We the undersigned do hereby recommend *A. C.* [*here describe his condition in life and abode*] as a person fit to serve as a representative of the people of Great Britain and Ireland, in the Commons House.

"2. In our consciences we sincerely believe, that in all the several points of *appropriate aptitude* taken together, viz. *appropriate probity, appropriate intellectual aptitude,* and *appropriate active talent,*† he is either more fit than, or at least as fit as, any other person, who being willing to serve, can entertain any reasonable expectation of being elected in and for this district.

"3. For any thing that we know or believe to the contrary, he would if elected, be willing to serve."

N. B. 1. *To render this certificate valid, the concurrence of six recommenders is necessary.*

Any number of names greater than *twelve* is not admissible.

All, if any, that follow the twelve first written, are to be struck out by the officer to whom the instrument is delivered.

N. B. 2. *Each recommender must, for one year at least, ending with the day of his signature, have been an inhabitant within the election district.*

So, at the end of his signature, he must declare.

N. B. 3. *Of this certificate there must be three copies, all signed by the several recommenders.*

Of these copies, one may be taken back by the person who delivered them.

The two others remain for that time in the office.

The following are the names, conditions in life, and abodes of the recommenders, in their several handwritings:—

[NA].

Art. IV. [NA] days before the day for the delivery of a *definitive recommendatory certificate,* proposed recommendatory certificates, in favour of the same proposed Member, may be delivered in by so many sets of recommenders, in any number.

If more than one are delivered, the person so recommended, or his authorized agent, may, by writing his own name, or the first letters thereof, at the end of each name, select out of them the requisite number of names: and the persons, whose names they are, are the co-certifiers in the *definitive recommendatory certificate.*

If no such selection be made, the proposed certificate *first* delivered in, is the definitive certificate.

For this purpose, entry of the day, month, hour, and minute of delivery, shall be made by the clerk, on the face of the instrument.

So also, in the books of the office, in the journal of that day.

Art. V. [NA] days before the election day, the several definitive recommendatory certificates shall have been delivered in at the district election office: after that time, unless for remedy to neglect, wilful or casual, at the office, no such certificate shall be received.

At the time of the delivery of the certificate, the indemnification money shall be paid.

A receipt, dated and signed by the clerk, shall be given as well for the money, as for the certificate.*

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Section 4.—

Election Offices.

Art. I. For conducting the business of elections, by sub-district clerks and district clerks, under the direction of an Election-Master-General, the following offices are hereby ordained:—

Art. II. In every election sub-district, there shall be a *Polling Office.*

Therein are delivered in, one by one, the votes appertaining to the same sub-district.

Of the office-bearer, the official name is—*Clerk of the Election Sub-District Office,* or *Polling Office, Clerk of the Polls,* or *Poll-Clerk* in and for that sub-district. For his functions, see Sections 2, 3, 5, 6, 7, 8, 9, 10.

Art. III. In every election district, there shall be a *District Election Office.*

Therein, from each polling office within the district, is delivered in the accounts of the numbers of the votes therein given for the several proposed members. Of the office-bearer, the official name is—*Clerk of the Election District Office,* or *Election Clerk* in and for that district. For his functions, see Sections 2, 3, 5, 6, 7, 8, 9, 10.

Art. IV. The election-office of the district may be under the same roof with the polling-office of any sub-district.

The conduct of the business may be in the hands of the same person.*

Art. V. An office, under the name of the *National Election Office,* shall be attached to the House of Commons.

Of the office-bearer, the official name is—*Master of the National Election Office,* or *Election-Master-general,* or *Election Master.*†

His functions are as follows:—

1. To issue out election-writs for the receipt of votes.

2. To receive the returns made in obedience to such writs.

3. To direct and superintend the conduct of all persons in the offices of polling and district clerks.

Art. VI. The Election-Master-general is to be appointed by the Crown, at the recommendation of the Keeper of the Great Seal.

He will be at pleasure removable by the Speaker of the House of Commons.

Art. VII. The Election-Master-general appoints the several district election-clerks, and the several poll-clerks.

For special cause assigned, he has power to remove at any time any district election-clerk, any polling-clerk, or any of their respective deputies or assistants.

Of his order for this purpose, an attested copy shall, on the day on which the original is transmitted, be delivered in at the office of the Speaker of the House of Commons.

Art. VIII. By death, or sudden indisposition of office-bearers, the business might, but for due provision, be delayed or frustrated: so likewise by unexpected increase in quantity in some parts of the business: for remedy it is thus ordained:—

In every sub-district, the poll-clerk has power to appoint, and revoke at pleasure, a *deputy.*

Every such deputy, as well as his principal, has power to appoint any number of *assistants:* their powers, subject to his authority, are the same as his.

Except in case of special exception, every provision, in which mention is made of the *principal,* shall be understood to extend to his *deputies* and his and their assistants.

The person appointing is, in each case, responsible for the conduct of the person whom he appoints.

Art. IX. In the case of a district office, like power and responsibility, as per Art. VIII. for providing eventual deputies and assistants.

Art. X. If, at any time, in any district, there should not be any person capable of acting as poll-clerk, the district-clerk has power to appoint a person, who, during the vacancy, shall perform the functions of the vacant office.

Art. XI. By incapacity, negligence, or disaffection, on the part of a poll-clerk, the business might be inconveniently delayed or frustrated, before the election-master-general could have time to appoint another in his stead. For remedy, it is thus ordained:—

The district-clerk has power, on his responsibility, in case of necessity, to appoint a person to officiate in place of any such poll-clerk, until the determination of the election-master shall have been made known.

If, for want of such temporary appointment, any such delay or frustration shall ensue, he is responsible for this default, as if it were his own.

An instrument of *appointment,* signed by him, shall for this purpose be delivered in at the polling-office.

On or before the signature of it, a copy, accompanied with a brief intimation of the cause, shall be transmitted by post to the election-master, at the national election-office.

Another copy shall be entered in the register of the district-office.

Art. XII. In the case of the national election-office, like power and responsibility, as per Article VIII. for providing eventual deputies and assistants.

On the decease of an election-master-general, the business of his office shall, by such deputies and assistants, be carried on, until a successor to the office shall have been appointed.

Art. XIII. By reason of death, or other accident, it might happen, that, in a district-office, for want of a person authorised by the election-master-general, the business shall be at a stand, and the completion of the election process in this district, within the appointed time, become impracticable. For remedy, it is thus ordained:—

In case of necessity, the chairman of the magistrates of the county in which the district-office is situated, has power to appoint a person to perform the business, until an appointment from the election-master-general shall arrive. *Poll-Clerk Substitute by necessity* shall be the name of office of the person so appointed.

So, in default of such temporary appointment, any justice of the peace, whichsoever shall soonest reach the office.

Art. XIV. In no instance, to any deputy, assistant, or substitute, as above, shall any remuneration be given at the public expense.

To the principal it belongs to afford compensation for labour, of the demand for which any deficiency on his part has been the cause.

In case of vacancy in the office of the principal, any remuneration, given to any subsidiary functionary as above, shall be taken out of the pay allotted to the office.

Art. XV. For the more clear, correct, complete, incontestable, and lasting preservation of the evidence of such transactions as shall have place in virtue of this act, and thereby securing the eventual responsibility of all persons concerned,* it is thus ordained:—

On the occasion of every act which the office-bearer performs, he shall make entry thereof in the proper register-book of his office, attested either by his name at length, or by the first letters thereof, together with the place, and the time as expressed by the year, month, and day of the month.

He shall moreover state the capacity in which he acts, whether as *principal, deputy, assistant,* or *substitute by necessity;* as likewise, if he be not the principal, the office of the principal for whom he acts.

On the occasion of every act which he performs, in presence of an individual, having interest therein, as proposed voter, or agent for a proposed voter, or otherwise—he shall make mention of the name and residence of such individual, as declared by him.

He shall moreover add to the designation of the day, as above, the hour of the day; namely, the last hour that has been completed; and shall, if required, add the minute.

To every instrument in which he bears a part, he shall, before it passes out of his hands, annex his attestation; including name of office, proper name, place, and time, as above.

Art. XVI. For the more effectual prevention of mis-entry through fraud or error, it is thus ordained:—

In no entry made in the register of any office ordained by this act, shall any word or portion of a word be, on any occasion, or in any manner, obliterated to such effect as to be illegible.

In so far as error is discovered, or supposed to be discovered, the course shall be to draw a plainly perceptible line along the length of the word, or part of a word, meant to be condemned.

For the designation of the person by whom the correction is made, his name, or the first letters thereof, shall in the margin be subjoined by him.†

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Section 5.

Election Apparatus.

Art. I. In the whole of its texture, and in this section in particular, the act has for its main end the prevention of the following *evils,* all of them incident to the election process, that is to say,—

1. *Mis-election, Non-election,* and *Null-election:* mis-election, by the election of persons positively unfit, or less fit than would have been returned otherwise: mis-election, to wit, by want of secresy of suffrage, and thence by want of freedom, as against intimidation and corruption.

2. *Needless delay, vexation, and expense,* by *length of journeys* to and from the place of election, and of *demurrage* there.

3. *Tumults;* that is to say, injuries to person or property, openly inflicted by persons assembled in large numbers, in a state of irritation.

4. *Vexation and expense* to *individuals,* by *litigation* respecting rights of suffrage.

5. Needless *expense* to the *public,* in respect of the *process* employed.

It has thereby for its main end the securing to the public, in respect of the election process, the several benefits of *due election, dispatch, tranquillity,* and *economy.*

Art. II. In respect of time, accidents excepted, the election process is accordingly thus ordered:

1. In every polling-district the voting process is to be completed in one day.

2. In every election-district the votes are, on the next day, to be received, from the several polling-district offices, at the election-district office; and the return being then made up, is, on that same day, to be thence transmitted to the national-election office.

3. These days shall be each of them the same, in every election-district throughout the United Kingdom; or at least in Great Britain and Ireland respectively.

4. To this end it is so ordered, as that each man's title to vote shall have been established, by a day, anterior by a sufficient length of time to the voting day. *See* Section 7.

5. And this in such sort as that, setting aside the cases of forgery, fraudulent personation, and certainly provable and punishable falsity of assertion—for no one of which offences any adequate temptation can, it is believed, present itself—no such title shall stand exposed to litigation or adverse contestation.

Art. III. Here follows a specification of the *apparatus,* and corresponding set of *operations* hereinafter immediately described, by means of which, for the purposes just mentioned, the election process is in each district to be carried on:—

No. 1. Proposed *Member's blank recommendatory certificates.* Tenor, as per Section 3. Form and size such as are suitable for *placarding.*

No. 2. *Blank vote-making certificates.* Tenor, as per Section 2.

No. 3. Sets of *voting name-cards:* to be used as per Section 8.

No. 4. Sets of *secret-selection boxes,* for selecting name cards: to be used as per Section 8.

No. 5. Sets of *vote-receiving boxes* for receiving name-cards when selected: to be used as per Section 8.

No. 6. Sets of *name-card boxes,* or compartments, for containing the name-cards, while in the selection boxes.

No. 7. Sets of *distinction tickets,* for distinguishing from one another, and from the surrounding multitude, by universally conspicuous marks, the voters and other classes of persons, bearing different parts in the election process: to be used as per Article VII.

No. 8. *Stereotype plates,* for printing blank *recommendatory certificates,* as per Sections 3, 6.

No. 9. *Stereotype plates,* for printing blank *vote-making certificates,* as per Sections 2, 7.

No. 10. *Printing presses,* or other *machines,* for *printing* or *stamping* blank certificates, *voting-cards,* and *distinction tickets.*

Art. IV. A *voting-card* is composed of two oblong slips, of exactly the same size and shape; each of them (suppose) two inches by one inch, forming together a square: applied one upon another, they exactly coincide.

1. On one side of each of them, the name of a candidate, the same name on each, is either stamped, or in case of necessity, written.

2. With the exception of the name, they are, each of them, white on the stampt side, black on the other side.

3. They are connected together by two hinges, each formed of a piece of thread, one near one end of the length, the other at an equal distance from the other end.

4. When the two slips are applied, one upon another, the only two surfaces exposed to view are both of them black, and the name which is on the white surfaces, is unperceivable.

For the mode of voting by means of one of these cards, *see* Section 8.

Art. V. A *secret-selection box,* is a box in and from which the voter selects the name of the proposed member for whom he intends to vote.

1. Within this box are *name-boxes:* in number not less than that of the proposed members.

2. Each box contains as many voting cards as there are persons entitled to vote in that polling district; all presenting to view, as per Art. IV. the name of the same proposed member.

3. In form, the selection box resembles a hot-bed frame, or a tradesman's show-glass, of that sort which has a sloping front.

4. In size it is (suppose) about two feet in length by one foot in width; and in depth, in front one foot, at the back 15 inches.

5. In the back board, is a plate of ground glass, for the letting in of light, without rendering any objects within it visible.

6. In each of the sides is a hole, large enough to let in a hand with part of the forearm, in such sort that a man's two hands may meet within it to facilitate the selection of the intended name.

7. In the top is a narrow plate of glass not ground, of such form and size as to enable a voter to see the several boxes with their several contents, and thus select the name of the proposed members for whom he intends to vote: but in such sort that nothing within the box shall at that time be visible to any other person.

8. Lest, by the place of the hands while selecting, it should be known, or guessed, from what proposed member's box a voter has selected his card, the boxes are so disposed, that no name can be reached on either side, till the arm has been considerably advanced within the box.

9. In this view, the space destined for each proposed member's voting cards is distributed into different boxes; and in situation the different boxes allotted to different members are made to alternate one with another.

10. Or else the whole number of cards together may be lodged promiscuously in one and the same receptacle.

11. The receptacles may be either separate boxes, or compartments made in the same box.

12. In the boxes, the cards are placed with the inscribed sides uppermost.

13. Each selection box is made to contain name-cards for six proposed members, and no more.

14. Should the number of the proposed members ever exceed this number, each successive proposed member, or his recommenders must, at the production of the recommendatory certificate, furnish, at their own expense, a *selection-box,* capable of containing *name-boxes* equal in number to the whole number of proposed members constituted by the addition which they respectively make.

Art. VI. A *vote-receiving box* is a box of cast-iron, or other sufficiently strong and cheaper metal, if such there be:—

1. In form it is (suppose) a double cube, standing on one of its small sides.

2. In size, it is large enough to receive and keep concealed a number of *voting cards,* equal to that of the whole number of persons entitled to vote in the polling-district in which it is employed.

3. On the top is a lid, which opens by a hinge, and when closed rests on a rim, so as to form one surface with the remainder of the plane into which it fits: in such sort, that when sealing wax, being dropt on it, has been impressed with a seal, the lid cannot be opened unless the seal is broken.

4. In this lid is a slit, into which, at the time of voting, the cards are successively dropped. Near this slit rises a pin, on which slides a metallic plate, by which the slit is occasionally closed.

5. In form and dimensions, the slit is so ordered as to receive the cards with ease, without exposing the name to view, as they are dropt in, or afterwards.

Art. VII. Here follows the description of a *distinction ticket:*—

1. Place where worn, the front of the hat.

2. Material, cotton, or any other cloth, if cheaper, that will not tear or spoil by wet.

3. Size and form, such as to cover the front half of the crown of the hat.

4. Colour of the border, and of the letters of an inscription included within it, different according to the class.

5. For poll-clerks and their occasional deputies and assistants (suppose) black; for constables, blue; for proposed member's agents, green; for voters, red.

6. Contents of the inscription, the name of the individual; beneath it, the name of the class to which, as above, he belongs.

Art. VIII. For the purpose of the first election—from the national-election office, may be furnished, to the several polling offices, accompanied with necessary descriptions and instructions, the several implements following; to wit—

1. Secret-selection boxes.

2. Vote-receiving boxes.

3. Stereotype plates, for printing blank recommendatory certificates.

4. Stereotype plates, for printing blank vote-making certificates.

5. Printing presses, or other machines, for printing or stamping blank certificates, voting cards, and distinction tickets, as above.

The use of these stereotypes and presses is to prevent the stock from being exhausted, by accidents, negligence, or design, in such sort that before a sufficient supply can be obtained, the voting process may be delayed, or even frustrated, and thus mis-election, non-election, or null-election, may ensue.

Art. IX. For dispatch, or economy in respect of construction and carriage, the election-master-general may appoint any other place or places, in which the above articles, or any of them, shall be constructed, and from which they shall be conveyed to their respective destinations.

In this case, instead of the articles themselves in the requisite quantity, let specimens or models be transmitted from the office.

Art. X. When once provided, the several implements shall be kept in the offices to which they respectively belong.

At the expense of the counties in which the offices are respectively situated, the implements shall, in proportion as they are consumed, or become decayed or useless, be, from time to time, repaired or replaced, as the case may require.

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Section 6.—

Promulgation Of Recommendations In Favour Of Proposed Members.

Art. I. For *sufficiency* and *equality* of *notification,* and to exclude, as far as may be, all such *undue advantage* as might be derived from *superiority of expenditure,*—provision is hereby made as follows for the promulgation of recommendatory certificates.

Art. II. From the several *definitive recommendatory certificates* delivered in favour of the several proposed members, as per Section 3, the election-district clerk prepares the *general recommendatory certificate paper* of the district.

Copies thereof shall, under his care, be printed in two forms: namely, the *placard form* and the *newspaper advertisement form.*

The text is the same in both. It is composed of the form, as per Section 3, Article III.; omitting only the prefixed date, and the three notes; and adding the several lists of recommenders, headed by the names of the respective proposed members.

The order, as between list and list, shall be the same as that in which they were delivered in at the office.

The instrument is to be attested and signed by the district clerk.

Art. III. Choice of placarding-places shall be made in this manner:—

A list of edifices within his district, such as shall seem to him proper for this purpose, shall be made out by the election-clerk of each election-district.

[NA] days at the least before the election day, a copy of such list, directed to the election-master-general at the national-election office, shall be delivered in, by the election-clerk, at the nearest, or other more convenient, general post-office.

Art. IV. In this list shall be comprised:—

1. All polling offices.

2. All other government offices; and in particular all post-offices, and excise-offices.

3. All town-halls.

4. All cathedrals, parish churches, and chapels of the Established Church.

5. All dissenting meeting-houses; including Catholic chapels, Quakers' meeting-houses, and Jewish synagogues.

6. In every town or village, containing [one hundred] houses, and not containing any such public building as above,—licensed public-houses, one, two, or three, to be fixed upon by the election-clerk at his discretion, regard being had to the purposes mentioned in Article I.*

Art. V. [NA] days after the receipt of such list at the national-election office, reckoning according to the course of the post, shall, by each district-election clerk, be allowed for the consideration of his list by the election-master-general.

At the end of this length of time, with the addition of that which, in the instance of each such election-district office, regard being had to local distance, is necessary for the transmission of an answer thither from the national office,—if no answer therefrom have been received, such list is to be employed.

If an answer is received from the election-master-general, giving order for amendments, then shall such amendments be conformed to, and the list employed shall be such as the amendments indicate.

Of the answer received, or of the expiration of the time without answer, as the case may be, entry shall be made in the register-book of the district office.

Art. VI. Here follows a provision for keeping up the list of placarding-places:—

[NA] days before the last day of each successive year, a copy of the printed list of the year last preceding,—with indications in writing, proposing such amendments as, by the lapse of time, shall, in the judgment of the said election-district clerk, have been made requisite,—shall in like manner, by means of timely transmissions from the district offices, according to their respective distances, have been received at the election-master-general's office.

They shall thereupon be re-transmitted and employed, subject to amendments, as per Article V.

Art. VII. In each election-district, as soon as the general recommendatory certificate paper has been completed, and (as per Articles IV. and V.) the number of placarding-places ascertained,—the district-clerk shall cause to be printed, in the placard form, a number of such certificates, equal to that of the said placarding-places, with a surplus sufficient for incidental demand.

Having so done, he shall by post, as per Article III., transmit, to each of the several polling offices within his district, a number correspondent to that of the several placarding-places within that polling district, with a competent surplus, as above.

Art. VIII. Immediately upon receipt of his allotment of general recommendatory certificate papers, each polling-office clerk shall make appointment of a competent

number of persons, under the name of *election placarders,* by whose hands the several placards shall be affixed on the several placarding-places.

To each of such election placarders he shall deliver, in manuscript or print, a *paper of instructions* for his guidance in the execution of such his office.

Art. IX. For the more effectual prevention of all obstruction thereto, each such election placarder shall, within such polling district, have the power, as attested by the ensign of office, of a *special constable.*

Of these powers a specification shall be contained in such paper of instruction.

The election-master-general shall, from time to time, as occasion may require, draw up a paper of such placarding instructions for the whole kingdom.

But with all such variations, and such only, as in his judgment may be suitable to the circumstances of particular districts or sub-districts.

Art. X. On payment of [1*s.*] the editor of every newspaper, having, or designed to have currency in any election district, may, if desirous of publishing in such his newspaper, the general recommendatory certificate paper of the district, cause his name and address, accompanied with an intimation of such his desire, to be registered at the office of such district.

This done, a copy of such paper shall, at or before the time when the operation of placarding commences, be transmitted to him by the general post from the said office.

As between newspaper and newspaper, it is the duty of the election clerk so to order matters, that every such newspaper shall receive such certificate paper, as nearly as may be at the same time, in such sort that no advantage be given to any one to the prejudice of any other.

Art. XI. Of every such general recommendatory certificate, the copy shall in every newspaper be free of stamp-duty.

It shall be printed without change, and without any comment immediately prefixed or subjoined.

If, in the printing thereof in any newspaper, any change be made, for the purpose or to the effect of undue preference or prejudice to any proposed member, whether by omission, addition, or substitution, or any difference in the type or mode of printing, the proposed member so injured shall have his remedy against the editor of the newspaper, by action for damages, and with costs.

Art. XII. Of the three original definitive recommendatory certificates, delivered in favour of each proposed member, at the election-district office, as per Section 3, Article III. the clerk shall by the next post transmit one to the national election office.

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Section 7.—

Voters' Titles Pre-established.

Art. I. The following are the *evils,* for the avoidance of which the arrangements in this Section are ordained:—

1. *Vexation and consumption of time,* in the *proof* of *claims* to the right of suffrage, and in *contestations* respecting it.

2. In case of disagreement, *eventual litigation,* with the vexation and expense attached to it.

3. *Consumption of time* in such sort as incidentally to produce *non-election* or *null-election;* or at least the *excluding* of persons in number more or less considerable, from the exercise of their *rights of suffrage.*

4. In case *householders'* votes alone are by law admitted, intrusion of *inmates'* votes.

For the avoidance of these evils, it has been thought good that, *antecedently* to the day of voting, the title of each voter shall have been established.

Art. II. For this purpose, at each polling office, three several register books are to be kept; namely—

1. *The application book.* In this book, entries are made of applications made for blank vote-making certificates.

2. The *voters' book.* In this book, persons, by or for whom application is made as voters, are set down in the alphabetical order of their surnames.

3. The *filled-up certificate book.* This book is composed of the duplicates of the vote-making certificates in the state they are in when filled up. They are kept in the office, to form a standard of comparison for the corresponding duplicates, when produced on the polling day, in support of each person's claim to be admitted to vote.

Art. III. [ ] days at the least before the appointed polling day, to enable himself to give a vote, the proposed voter must take out two copies of a blank form of a vote-making certificate, as per Section 2.

The place at which he applies for this purpose, is the polling office of the polling district within which the habitation in respect of which he proposes to vote is situated.

He may apply in person, or by any person appearing for him, as *agent* for this purpose.

In the application book, before the blank certificates are delivered, entry is made of the name and habitation of the proposed voter, on whose behalf the application is made.

The description given of his *name* is that which is prescribed in Section 2.

The description given of the *habitation* is that which is prescribed in Section 10.

If the applicant is the *proposed voter* himself, note of his being so is taken, by entering under the word *application,* with which one column of each page in the book is headed, the word *personal;* adding, as per Sections 9 and 10, the description as given by him of the habitation in respect of which he claims to vote: also whether as householder or as inmate.

If he be any *other person,* then, under the words *application by agent,* with which another column in the same page is headed, are inserted the name and habitation of the proposed voter; as also the name and abode of the agent.*

To each such entry is prefixed an indication of the year, month, and day of the month on which the application was made: also the name of the applicant, signed by him.

This done, on payment of [3*d.*] for each, the blank certificates are delivered.

Art. IV. The use of the *voters' book* is to exhibit the names of voters in *alphabetical* order, that being the only order in which reference can at all times, without loss of time, be made.

Whenever a pair of blank certificates has been delivered, and entry has accordingly been made in the *application book,* as per Article III,—the name of the proposed ovter is entered in this book, according to the situation of his surname in the alphabet.

In a line with it are written the words *certificate delivered,* together with the month and day of the month, and the page in the application book.

For each of these indications, a column, headed accordingly, is provided.

Art. V. The instruments being thus delivered, [ ] days at the least before the day of election, the proposed voter must come in and produce them at the polling office, by himself or agent, filled up as per Section 2.

These the clerk examines; and if he finds the duplicates sufficiently conformable to each other, and to the directions contained in the tenor of them, as per Section 2, he returns one of them forthwith to the person by whom it was produced.

But first he writes or stamps on it the words Examined*and found correct, and re-delivered, to be used in giving the vote:* together with the month, the day of the month, and his signature.

The other he retains for the use of the office. It constitutes a page in the book called the *filled-up certificate book.*

He attests it in like manner; and, instead of the words *Examined and found correct,* and *re-delivered,* &c. he writes or stamps on it the words, *The duplicate hereof was examined, found correct, and re-delivered, to be produced on giving the vote.*

Art. VI. For remedy against misconception, error, or fraud, in the composition of vote-making certificates, it is thus ordained:—

If in either duplicate of a pair of filled-up certificates, any error is observed by the clerk, intimation of such error, and of the alteration necessary for correction, is afforded by him.

It is expressed by entries briefly made in the margin of the instrument, and authenticated with signature and date, as per Article V.

If the correction thus required be of such a sort as that, for the prevention of fraud, it is in his judgment necessary that a fresh meeting of the vote-makers should have place,—he thereupon, after entry made of the errors and of the alterations requisite, gives intimation of such necessity, and of the cause thereof, to the person applying, and writes or stamps upon the paper the words, *A fresh meeting is required.*

If in his judgment such fresh meeting is not necessary, he stamps or writes the words *A fresh meeting is not required.*

If in his judgment, consideration being had of the state of the errors, and the situation, quantity, and quality, of the corrections requisite, the same instrument cannot conveniently be made to serve,—he delivers a fresh blank instrument, having first written or stamped on the corrected instrument, the words, *Returned for Returned for incorrectness asabove explained; fresh pair of blank certificates at the same time delivered:*—with date and attestation as above.

If in *one only* of the duplicates error requiring correction is observed, he retains for the filled-up certificate book, the correct duplicate. But, for the memorandums, instead of the words, *Duplicate hereof found correct, and re-delivered to be produced on giving the vote,* he inserts the words, *This duplicate found correct: the other found incorrect, and re-delivered for correction.*

If *in both* duplicates error requiring correction is observed, he returns them both, noted as above.

In this case he delivers blank certificates, or not, as the case may require.

Art. VII. For remedy against accidental loss or defacement of vote-making certificates, before or after filling up, it is thus provided:—

Suppose any such accident to have happened, the proposed voter, by himself or agent, makes application at the office for a fresh certificate, or fresh certificates, as the case may be.

He declares the nature of the accident: for example—*Lost by accident, destroyed by accident, defaced by accident.* If defaced and not lost, he produces it.

Of this declaration, entry is made in the application book, in the same manner as in the case of an original application.

For such entry the same fee is paid.

Such application may be made more than once: but if, from the number of successive applications, already made by or in behalf of the same proposed voter, it should appear to the clerk that it was through sinister design, or wantonness, that they were made, delivery may be and ought to be refused by him.

In this case, entry shall be made by him, noting the number of the times, and adding, *Delivery refused on suspicion of sinister design or wantonness.*

So likewise, if it be suspected by him that a person, applying in the name and character of a proposed voter, is not such proposed voter, but an impostor:

Or that a person, applying in the name and behalf of a proposed voter, was not authorised by him:

In all these cases he shall, in the application book, make entry of the ground on which, as above, delivery was refused.

Art. VIII. On payment of a fee of [3*d.*] for the whole, these and all other books of the office are, in office-hours, open to the inspection of all persons, so far as may be without hindrance to the more material parts of the business.

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Section 8.—

Election, How.

Art. I. For the periodical day of the first meeting of a parliament, see Section 12: [ ] days before that day, the election process everywhere commences.

It *commences* at the sub-district office, where there is one: it is *completed* at the district-office:—

Art. II. Here follows the mode of proceeding at the polling-office:—*

At the time of voting, the station of the poll-clerk is separated, by a rail or other sufficient partition, from that of the multitude, voters and others.

Near to him is the *secret-selection box,* described in Section 5.

Within reach of this box is the station of a *vote-receiving clerk,* by whom the *voting card,* immediately as it is selected by the voter, is received from him, and dropped into the *vote-receiving box,*—both described in Section 5.

That the state which, at the time of the delivery, the voting card is in, may be perfectly seen by the whole company present, the station of the receiving clerk is, though at some distance, and by a rail separated from the spot occupied by the voter at the selection-box, yet within reach of it, and at the same time elevated a little above it: in such sort that the card cannot be delivered by the voter, without his raising his arm to deliver it, nor received by the receiving-clerk without his lowering his arm to receive it.

Art. III. The hustings are more or less raised above, and by a sufficient partition separated from, the attendant multitude.

Included therein are—1. The station of the poll-clerk; 2. The station of the proposed members, or of any such agents of theirs as are in attendance; 3. The station of the voters' secret-selection box; 4. The station of a vote-receiving clerk, with his vote-receiving box.

To prevent confusion, interposed between the station of the attendant multitude and the hustings is a passage; in width sufficient to afford a convenient station to one man; in length (suppose) six, eight, or ten feet; formed by a sufficient partition, with a bar at each end.

To give admission to a voter, the bar at the end furthest from the hustings is lifted up.

He presents himself, with his distinction-ticket on his hat.

On his admittance into the passage,—for the information of all concerned, and in particular of the poll-clerk, the voter's surname first, and then the first LETTER of it, are audibly pronounced, and at the same time the voter's copy of his vote-making certificate is handed up by him to the poll-clerk.

On receiving the voter's copy, the poll-clerk, being informed as above, turns to the corresponding copy, as it stands in the filled-up *certificate-book:* a short glance enables him to see whether the copy thus prescribed is the duplicate of it.

As soon as he is satisfied of its being so, the bar opens; and the voter repairs to the secret-selection box, within which he chooses the card that bears the name of the proposed member for whom he means to vote.

Art. IV. In the secret-selection box, the voter, looking through the pane of glass in the top, introduces his hand or hands, at the side apertures, and having taken up the card that bears the name of the proposed member for whom he means to vote, closes it while yet in the box, by applying together the two white surfaces with the name, leaving on the outside the two black ones.

In this closed state he takes it out; and, holding it aloft, delivers it to the vote-receiving clerk.

The vote-receiving clerk, without opening it, instantly drops it into the receiving-box.

If the two plates, of which this card is composed, are not clapped together, as above, by means of the hinges on which they turn, the name on one or both of them may be visible: in that case, the card is torn; and he who presents it loses his vote.

So, if they are folded together with the two black surfaces on the inside; in this case the name will be on the outside of each of them, and thus be visible.

If the proposed voter takes out more cards than one, they are replaced in the box, and he loses his vote.

If, having received the card closed, with the two black surfaces on the outside, the receiving-clerk, before he drops it into the receiving-box, opens it, in such sort that the name, or any part of it, is visible,—he is by the poll-clerk dismissed from his office, and divested of his distinction-ticket on the spot.

Art. V. As soon as the voter hath, as above, delivered up his card, he is let out through a *bar;* which, to prevent stoppages, is different from the one through which he was let in.

As he passes out, his copy of his vote-making certificate, by which admission to the selection-box was procured to him, is returned to him, for the purpose of its being eventually employed by him on succeeding elections. See Art. XII.

Art. VI. For dispatch, two or more secret-selection boxes may be employed: one receiving-clerk may serve for two or more boxes.

Art. VII. As soon as the time appointed for the admission of voters is expired, the poll-clerk closes the vote-receiving box, by sliding the plate over the slit, as per Section 5, Art. VI. He then applies his seal to the junctures, in such manner that, without breaking it, the lid cannot be opened, nor the slit uncovered.

He then admits the election agents, in like manner, and for the like security, to apply their seals.

Lastly, he covers the whole, by a covering of cloth without seam: the junctures are secured by seals, as above.

The box is in this state delivered, by the poll-clerk, to a messenger, by whom it is taken to, and deposited in, the election-district office.

Art. VIII. Regard being had to the respective distances, the election-master-general appoints the time or times of the day, at or before which the vote-receiving boxes shall, from the several polling-offices, have been received at the district-election office.

Art. IX. Here follows the mode of proceeding at the district-election office:—

1. At this office are provided boxes, marked with the names of the several proposed members.

2. As soon as the vote-receiving boxes from the several polling-districts are come in, or the time allowed for their coming in is elapsed—they are opened by the district-clerk, in presence of the several proposed members or their agents, or such of them as choose to attend.

3. In presence of the whole company, the voting-cards are thereupon taken out and sorted: the cards respectively appertaining to the several proposed members, being dropped into their respective boxes.

Art. X. The numbers being immediately summed up, the name of the proposed member, in whose favour the comparative majority of the whole number of votes is found to have been given, is openly declared.

The instrument of return, drawn up by means of a blank form provided by the election-master-general, the same for every district, is attested by the district-clerk: the agents of the several proposed members add their respective attestations, or their declining so to do is noted.

On the instrument of *return* are entered the numbers of the votes for the several proposed members at the several polling districts.

The instrument is, that same day, transmitted by post to the national-election office.

Art. XI. If, and as often as, by tempestuous weather or other accident, the free resort of the voters to the polling-office within the ordinarily appointed time has been

rendered impracticable, the poll-clerk, within his district, has power to prolong the time.

In such case he shall give the earliest possible notice to the voters in general, to the district-election office, and to the national-election office.

Art. XII. Follow the conditions on which, to save time and trouble, each voter's certificate, after having been employed in any voting district, may be employed at each *succeeding* election, without need of fresh signatures by co-certifiers:—

At the first election at which it is employed, the poll-clerk, before the voter's departure from the hustings, re-delivers to him his certificate, having first stamped, or caused to be stamped upon it, the words following, together with the date and his signature:—*Re-delivered, to be employed at succeeding elections.*

On each succeeding election, if, at the time of its exhibition at the office, there has not, on the part of the voter, been any change of name or abode, it is again, as per Section 7, marked with the words—*Found correct, and re-delivered for further use,* together with other words and figures to the effect in that section described.

If there has been any change of *name,* entry thereof shall be made, introduced by the words—*Present name.*

If there has been any change of *abode,* in that case are to be added words and figures designative of the fresh abode, preceded by the stamped words—*Present abode.*

A vote-making certificate, once employed in any one polling district, may, on these conditions, be thereafter employed in any other polling districts in the United Kingdom.

Art. XIII. For the more effectual prevention of disturbance, every person officiating as clerk of a polling-office, shall, within his sub-district, and every sub-district immediately continguous to it—during the continuance of the whole of the election process, possess and exercise, so far as shall be necessary for this special purpose, the powers belonging to the office of *justice of the peace:* in particular, the power of appointing *special constables.*

Upon occasion, all instruments signed by him shall, by all justices of the peace, within their respective fields of jurisdiction, be backed: backed as the same instruments might be, if signed by any regularly appointed justice of the peace.

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Section 9.

Election Districts And Polling Districts, How Marked Out.

Art. I. In this Section, provision is made for determining the *limits* of the several *election districts,* with the *polling districts* therein respectively contained.

In the following Section, for determining the *mode* in which the several vote-making households shall be *ascertained, registered, denominated,* and *marked.*

Art. II. For these purposes, *commissioners,* in such number as to his Majesty shall seem meet, will by his Majesty, at the recommendation and with the advice of the election-master-general, be appointed.

Their numbers may, from time to time, be augmented or reduced, as occasion may require.

Of these commissioners, the official name is—*Commissioners of Survey and Demarcation and Enumeration for Parliamentary Election purposes; or Commissioners of Survey and Demarcation; or Demarcation Commissioners.*

Art. III. For *Great Britain,* one set of such commissioners shall be appointed; for *Ireland,* a different one.

Art. IV. No election district or subdistrict shall be composed partly of land in *Great Britain,* partly of land in Ireland.

Art. V. As between England and Scotland, no such separation, as per Article III. need have place.

Art. VI. The surveys to be performed are two:—1. The *preliminary* or ordinary geographical; 2. The *appropriate.*

Art. VII. The *preliminary* operation is, that by which the geographical divisions—expressed by degrees, minutes, and, if need be, seconds, of longitude and latitude—will, as in ordinary maps, be determined and marked out, by physical and mathematical observations, measurements, calculations, and delineations; with the addition of the physical distinction between land and water, with or without the distinction between plain land and elevated; together with the existing political divisions into kingdoms, provinces, counties, hundreds, and so forth.

Art. VIII. The *appropriate* operation is that by which the new and appropriate division into election-districts and sub-districts will be performed.

It will have for its basis the ordinary geographical operation.

Art. IX. The appropriate operation, in its several parts, may either be performed at nearly the same time with the ordinary operation, or at any greater intervals, according as the election-master-general shall from time to time appoint.

In so doing, let him have regard to convenience in respect of delay and expense; and, in each instrument of appointment, particularise his reasons.

Art. X. For the preliminary and the appropriate operations, the same set of commissioners may serve.

Out of the general set, particular sets or particular individuals may from time to time be appointed by him to particular portions of the business: he will throughout have regard to presumable appropriate aptitude, as indicated by profession, known experience, or otherwise.

Art. XI. Of the preliminary operation, the maps, constituting the geographical result, will be upon two different scales:—namely, the *country scale* and the *town scale.*

Art. XII. The country scale is that upon which the general or all-comprehensive map is to be constructed.

Of this general map, let the scale be large enough for inserting, in every space allotted to a country parish, the name of the parish.

Also, in every space allotted to a town parish, a number referring to its name in the margin of the map; as likewise, in a manner more or less conspicuous, an indication of the *site* of every the smallest dwelling-house.

Art. XIII. From this map shall be copied or constructed, on the same scale,—or on a scale as much larger as local convenience, in the judgment of the election-master-general, may require,—separate parish maps, exhibiting the several parishes:—namely, either on the original country scale, or on an enlarged country scale.*

In some instances—for example, to the purpose of the poor-rates—the parish, by reason of its largeness, stands already divided into sections, named *tythings* or *townships,* or by some other appropriate name. In every case of this sort, at the discretion of the commissioners, may be constructed, instead of one map of the whole parish, a map for each one of these sections.

Or, so as the whole parish be exhibited, any two or more of them may be comprised in one and the same map.

An *extra-parochial place* may either have a map to itself, or be comprised in the map belonging to some adjacent parish or section of a parish.

Art. XIV. On the town scale, shall be constructed maps, and portions of maps, large enough to exhibit to view, in a more distinct manner, the sites of the several habitations.

According to the density of the population, in some parishes the whole of the territory will require to be laid down upon the town scale;

In other parishes, no part of it.

In others again, the whole of the territory being laid down upon the country scale, namely, on the original scale,—or, as per Article XIII, on the enlarged scale,—particular portions, one or more, will require to be laid down likewise upon the town scale.

These will be to be exhibited either in the margin, or upon a separate sheet, as convenience may require.

Art. XV. Here follows the description of the mode of indication, which, for facility of reference, shall be employed in every such map:—

1. By parallel vertical lines, crossed at right angles by horizontal lines, the whole surface of the engraved part of the paper or parchment is divided into a certain number of compartments.

2. To the left of the left-hand one of the vertical columns thus formed, is attached a correspondent vertical column, composed of the letters of the alphabet, with any such number of additional marks of the same nature, as may be necessary for the designation of the total number of the compartments in that column, as A B, &c.; A a, A b, &c.; B a, B b, &c.

3. Over the highest horizontal line runs a line of numbers in numerical order; one over each vertical column.

4. By means of a LETTER or pair of letters, with a number added to it, each compartment in the map will thus have its distinctive name. The LETTER will show the place of the compartment in the horizontal line; the number will show the place of the compartment in the vertical line.

5. Thus the first compartment on the left at top will be A 1; the next to it in the horizontal line at top will be A 2; the next below it in the vertical line B 1.

6. The several places mentioned in the map are set down in the margin of it, in the alphabetical order of their names. Immediately after the name of each place comes the LETTER and number of the compartment within which it will be found.

7. As for example:—Abingdon, D 7; if that be the compartment within which that town is placed in the map.

8. Of this series of names, with such their respective accompaniments, entered as above on the margin, is composed an index to the map. It is called the *marginal index.*

9. The lines by which the boundaries of the compartments are expressed are called *indicative lines, index lines, lines of reference, or reference lines.*

10. These lines of reference are to be expressed in such manner as to be as clearly distinguished as possible from the ordinary geographical lines, expressive of longitude and latitude.

For example: by difference of colour, or by their being, the one undiscontinued, in the manner of an ordinary line, the other composed of dots.

Art. XVI. Here follows the mode in which the districts are to be marked out:—

In the operation, the commissioners will have for their object the rendering these portions of territory as nearly *equal* to one another in respect of population, as the necessarily and continually changeable condition of every portion of country, in respect of population, and the regard due to local convenience, will allow.

As they proceed in their survey, they will note and set down the several *habitations* in each parish or other such place.

In each habitation, they will inquire out, and set down, the numbers of the inhabitants, under the distinctions of sex and age. Of the male inhabitants, the age will be to be noted: of the female inhabitants, not.

To this purpose, habitations are to be distinguished into *simple* and *compound.*

A *simple* habitation is a habitation inhabited by one householder,* and no more: and thus containing but one household.

A *compound* habitation is a habitation containing householders, and thus households, more than one.

Instances of compound habitation are—

1. An ordinary house, when it happens to be inhabited by more householders than one:

2. An edifice, designed to contain, and accordingly containing divers habitations; as a college, an alms house, an hospital, an inn of court:

3. An edifice which, though not principally designed for habitation, yet incidentally affords lodging to householders, one or more: as the treasury, the East India House, a town hall, or any other public office.

Art. XVII. For these purposes it will be necessary, that not only each habitation, but in each compound habitation each household, shall have its distinctive name.

These names will be constituted by words and figures, for which see Section 10.

The name of the habitation will be composed of the name of the *approach* to it, with a number (to wit, the name of an arithmetical number) annexed.

Of what is meant by *approach,* the words *Edgeware Road, Hounslow Heath, Kew Green, Putney Common, Parliament Street, Chancery Lane, Grosvenor Square, Palace Yard,* will serve for the present as examples. *See* Section 10.

Art. XVIII. As the population comes thus to have been ascertained, the numbers expressive of it will be set down in the map with reference to the division into parishes.

So likewise with reference to the *compartments* in the map, as per Article XV.

In each parish, section of a parish, or extra-parochial place, as the case may be, males so many; females so many; males, of such and such ages.

So in each compartment.

Art. XIX. When the United Kingdom has thus been laid down in the general map, and the several habitations with their inhabitants noted down in it, then and not before will be the time for determining and marking out the division into districts and sub-districts; always with a view to equality of population as between every one and every other.

Art. XX. In the marking out of districts and sub-districts, the commissioners are to be guided by the division into parishes, sections of parishes, and extra-parochial places.

On this occasion they are not to divide a parish, or section, or extra-parochial place, in such sort as to allot one part to one district or sub-district, and another part to another;

Unless, for want of such division, the inconvenience should be in an adequate degree considerable—

1. In respect of length of journeys* to and from the polling district;

Or, 2. In respect of inequality of population, as between district and district.†

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Section 10.—

Vote-Making Habitations, How Defined.

Art. I. The operations, ordained by this section, have for their purpose the determining with precision what individuals shall possess on each occasion the right of suffrage.

The mode employed, is that of reference made to the *habitations* which they respectively inhabit.

For this purpose, it is necessary to appoint a set of marks by which every such habitation may at all times be manifestly known to have that effect; and may at the same time be indisputably distinguished from every other.

The sort of mark employed for this purpose is the *name of some approach to it,* with the addition of some *numerical figure* or figures, as per Section, 9, Article XVII.

It differs no otherwise from what is everywhere already in use, than by being fashioned to the degree of conciseness and uniformity which is necessary to adapt it to the present purpose.

Art II. The *name* of an *approach* is to be composed of *two words,* and no more: the first constituting the *individualizing* part of the name; the other, the *specific* part:—to wit, the name of the species of approach.

Thus, in *Downing Street, Downing* is the individualizing part; *Street,* the specific part.

Where the name in present use contains, as above, two words and no more, it will, without special reason for alteration, be preserved unaltered.

Where it consists of but one word, this word will be the individualizing part of its name, and a specific part will be to be added. Thus *Whitehall* may become *Whitehall Street.*

Where the name contains *more* than two words, all that are above two are to be omitted. Thus *Saint Anne's Street* becomes *Anne Street.*

Where, for their present name, two or more streets have, each of them, some individual name, with an adjective or other distinctive name, different in each, added to it, the distinctive names are to be both omitted: the two approaches are to be thenceforward designated by one and the same name.

Or else let a new name be given to one or each of them.

Thus, in the case of *Upper Brook Street* and *Lower Brook Street,* either *Upper* and *Lower* may be both omitted, and the two streets thus reduced to one;

Or, if they are kept *distinct,* the name of one may remain unchanged; and in this case a new name will be given to the other.

Thus, if *Upper Brook Street* is named *Brook Street, Lower Brook Street* may be named *River Street.*

The case of the two-worded name being the most common case, in general no change will need be made. In no instance let any change be made, unless for special reason assigned.

But, for avoidance of confusion, let matters be so ordered that in no parish shall any two approaches stand designated in the maps by the same name.

So neither in any polling district.

Art. III. Of every habitation, whether simple or compound, the name is to be composed of two parts, the *verbal* and the *numerical:*

The *verbal* part is to be the name of the approach; the *numerical* part is to be the name of the number, in the common Arabic character, as is at present customary on house-doors.

In the case of each approach, the numbers are to follow one another, as usual, in the order of the numeration table.

Art. IV. Where the habitation is near or contiguous to more approaches than one, the verbal part of the name is to be the name of some one and no more of the several approaches: of one or of another, as may be most convenient.

Art. V. Where the habitation is a compound one, there, in the marginal index of the map, as per Section 9, add to the name of the number the LETTER C.

And distinguish from each other the several households in it by numbers, in the same manner as simple habitations are to be distinguished, as per Article III.

Art. VI. A simple habitation may give any number of inmates' votes; but it can give no more than one householder vote.

A compound habitation gives as many householder's votes, as it contains households having each its householder of the male sex.

In addition to each householder's vote, it may give any number of inmates' votes.

Art. VII. A household, which on one day has for its householder a person of the female sex, may, on another day, have for its householder a person of the male sex.

This considered, * let no habitation or household be omitted in the account, by reason that the householder is a female.

But let females' households be distinguished by an appropriate mark; for instance, the letter F.

Art. VIII. In the marginal index of each map, as per Section 9, the approaches are to be set down in the alphabetical order of the individualizing parts, and not under that of the specific parts of their names. Thus *Downing Street* will stand before *Exchange Alley;* although *Alley* would stand before *Street.*

For it is by the individualizing part of its name that the object is principally distinguished. The specific parts are in many instances indiscriminately applicable. In this case, for example, are the words *road, street, lane.* Not so the words *square, crescent.*

Art. IX. Under the direction of the election-master-general, *door-plates,* resembling those in common use, but on a uniform plan, to be fixed, one on some one door of every habitation in the United Kingdom, shall for this purpose be provided.

The use of them is—to make it known, at all times, to all persons concerned, what habitations confer votes, and what do not: and thus save the need of applying on every occasion to a register; and at the same time afford indications for securing the correctness of the *books* in which *votes* are *registered.*[*]

Art. X. In the provision made respecting door-plates for this purpose,—*cheapness, durability,* and *uniformity,* will be to be attended to.

Uniformity is of itself a help to cheapness:—since the greater the number made on the same pattern, the cheaper the article may be afforded.

Its durability will be the greater, the more effectually, in case of depredation, its marketable value would, in the act of depredation, be destroyed.

For this purpose it should be as thin as is consistent with natural durability: and, by a pin passing through the door, it may be effectually fastened in the inside.

Having regard to these objects, it will be for the election-master-general to determine—in what, if any, proportion these implements shall be furnished from his office, and in what, if any, proportion, from any and what other places.

The plates themselves being thus provided, the *inscriptions* may, perhaps, be most advantageously made by *stamping machines,* one to be kept at each district office, as per Section 5.

For, the several appropriate inscriptions can no otherwise be ascertained than from the maps;

And of the territory comprehended in the district, there will of course be a general map kept in the district office.

Also a set of maps of the several parishes and parish-like places contained in it.[†]

Art. XI. For the affixing of the door-plates, persons are to be provided, *by authority,* in each district.

In each district they are regularly to be appointed by the poll-clerk.

But in any districts the election-master-general may direct that they shall be appointed by the respective district clerks.

The districts, in which the demand for the exercise of this power is most likely to occur, are those which are completely town districts.

The reason is—that in town districts, the extent of ground requisite to be traversed will be comparatively so inconsiderable: so that in one town district a smaller number might perhaps suffice than would be necessary in each one of the whole number of sub-districts contained in a country district.

A *door-plate fixer* is removable at any time by the authority by which he was appointed.

For the guidance of door-plate fixers in the performance of their duty, the election-master will from time to time furnish *instructions.*

Before the tenor of the instrument is definitively determined, he will cause it to be communicated to the several district clerks and sub-district clerks, in such sort as to receive any such suggestions as they may respectively see reason to communicate.

To each door-plate fixer shall be delivered a printed copy of such instructions, signed by the office-bearer by whom he has been appointed.*

Art. XII. In the interval between election and election, fresh rights of suffrage will have come into existence. This effect will have been produced in every one of four ways:—

1. New habitations will have been erected and become inhabited by householders.

2. Habitations that for a time had been uninhabited, will have received inhabitants, and thence householders.

3. Habitations, whether simple or compound, will have received additions to the number of their householders.

4. Households will have passed from female into male hands; and will thus, in each instance, have given birth to a fresh vote.

This considered, here follows the provision made for the giving publicity and effect to the several rights of suffrage, as they come into existence:—

[NA] days at the least before the earliest day for the receiving of blank vote-making certificates, to be filled up for the purpose of the then next election, as per Sections 2

and 7, every person, who in any one of the above four ways has come into possession of a right of suffrage, applies in person or by his agent, at the polling-office, for notoriety and effect to be given to such his right.

The demand made, and [1*s.*] paid, appropriate mention is thereupon made, in his presence, in the registers of the office, in the margin of the map of the polling-district as kept in the polling-office, and in the margin of that copy of the map of the parish in question which is kept in the polling-office.

At the same time he receives a certificate, in which the existence of these entries is declared, and an assurance given, that on or before a day therein mentioned, an appropriate door-plate will have been fixed on the door of the household of which he is householder.

For the fixing of such door-plate, within the time so described, the poll-clerk is accordingly responsible.

Art. XIII. By the converse of the several events brought to view in Article XII. rights of suffrage will have become *extinct.*

For the making of the requisite entries and the requisite changes in door-plates, it belongs to the election-master-general to take order, and by printed *circulars* from time to time to transmit *directions,* correspondent in tenor or effect, to the several polling-offices.

Art. XIV. In several parts of Great Britain, for various purposes, parishes have, as above, been considered as divided into subparishes, called tythings or townships.

In relation to every such sub-parish, it rests with the election-master-general, in each instance, to determine whether, to the purposes of this Act, as per Section 9, Article XX., it shall be considered as included in the parish of which it forms a part, or on the footing of a separate parish.

Art. XV. In divers parts of Great Britain are to be found tracts of land, which have never been considered, at least to all purposes, as included within the limits of any parish; these have accordingly been known by the name of *extra-parochial places.*

As often as, in the course of their operations, the commissioners come to any such extra-parochial place, they shall proceed in relation thereto, in the same manner as in relation to a parish.

Art. XVI. As to the map, they may, in this case, attach it to the map of any contiguous parish at their choice: regard being had to convenience in respect of bulk and other particulars: distinguishing it in this case by some particular colouring.

Or they may consign the representation of it to a separate map.

Such separate map they shall cause to be deposited in the vestry of some contiguous parish: in the choice of such parish, they will have regard to the convenience of all parties interested.

Art. XVII. In some instances, portions of territory subject to the same authorities are severed from each other.

Of this or that parish, in this or that hundred or other division of a county, one part is severed from another by one or more intervening parishes.

Of this or that parish, one part lies in one hundred or other such division; another in another.

Of this or that parish, one part is in one county, another in another.

In a case of this sort, no part of a parish shall, to the purposes of this Act, be considered as belonging to any part, from which it is in any of those ways severed: but each part shall either be considered as constituting a separate parish, or shall be annexed to some other parish, such as shall be pointed out, as above, by regard to general convenience.

So, in the case of sub-parishes, as above.

Of any such divided township or parish, or county, or division of a county, one part may accordingly be included in one district; another in another.

So likewise one part in one polling-district; another in another.

So even where, as in the ordinary case, the several territories are at present undivided.

Art. XVIII. So soon as commissioners have been appointed, in a number sufficient to proceed on the business, notice of such appointment, mentioning the days, shall, by the election-master-general, be caused to be inserted in the London Gazette.

From thence it may be inserted, tax-free, in every periodical and other publication.

On the first day of every month succeeding that in which such appointment shall have been completed, the several sets of commissioners shall respectively transmit to the election-master-general an account of their respective proceedings.

Of these several accounts, notices, with brief abstracts, shall, as soon as may be, and not later than within a week after they have respectively been received, be inserted in the London Gazette.

From the London Gazette, they may forthwith be copied, tax-free, into all other periodical publications.

Each account, at length, shall with all convenient speed, by the election-master-general, be transmitted for impression to, and be accordingly printed by, the king's printer.

It shall be printed in at least two forms at the same time.

One shall be the cheapest legible form that can be devised.

This, as soon as printed, shall be transmitted for sale to each polling-district, to be sold at the office, or at any such other places as the election-master-general may appoint.

It shall be sold to retail customers at a price not exceeding [ten] per cent. upon the retail price of the paper on which it is printed.

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Section 11.—

Members' Continuance.

Art. I. Except as per Section 12, the term during which a representative of the people shall, without a fresh election, continue in his seat, shall in no case be longer than *one year*.

Art. II. Throughout the kingdom, the *day* on which the new representatives of the people are regularly to take their seats, is—[*the first day of January*.]

On that day, the Speaker shall, with such members of the out-going assembly of the representatives as choose to attend, appear and deliver up the possession of the place of meeting to the in-coming assembly. The incoming assembly, till its Speaker has entered into office, is presided over by the chief clerk.

Art. III. If, by any accident, the in-coming assembly are on that day prevented from forming a House competent to do business, the out-going assembly continues in the exercise of its functions, until the day on which the in-coming assembly is competent to the exercise of them.

Art. IV. Dissolution is not produced by the decease or disability of the monarch.*

Art. V. On the expiration of an assembly, the business continues in the hands of the new assembly, as if they were one and the same.

Art. VI. In committees, vacancies are accordingly filled up, as if produced by death or resignation.†

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Section 12.—

Vacancies Supplied.

Art. I. A seat in the Commons House may be rendered vacant by any one of nine causes:—

1. By non-acceptance.

2. By election to divers seats.

3. By death.

4. By mental derangement.

5. By succession to a peerage.

6. By resignation.

7. By acceptance of a lucrative function under the Crown.

8. By acceptance of a peerage.

9. By expulsion.

Art. II. [*The first day of January*], in every year, is the day appointed for the first meeting of a new parliament.

On or before that day, every person who, having been elected member for any district, chooses to serve, must, either in person or by LETTER (addressed to the election-master-general,) signify his acceptance.

Failing of such signification, the next day, a new writ is issued for a member to be elected in his place.

Art. III. Suppose the same person returned for divers districts. If he does not choose to serve for any one of them, a fresh writ for each one is issued, as above.

If, choosing to serve for this or that one, he has signified his choice accordingly, fresh writs are issued for all except that one.

Art. IV. In case of the death of a member, the election-master-general, as soon as he has received what in his judgment is sufficient evidence of the fact, issues his writ for a fresh election accordingly.

In the books of his office, he makes entry of the evidence: as, for instance, LETTER from such or such a person; noting the day on which it reached the office.

Art. V. So, if a member becomes afflicted with mental derangement.

Art. VI. So, if a member comes by succession to a peerage.

Art. VII. Every member is at liberty to resign his seat at any time.

To do this, he signs the form of resignation hereto annexed, and delivers it, or causes it to be delivered to the Speaker, at the sitting, or at the rising, of the House.

The Speaker, on receipt of it, attests it, and immediately transmits it to the national-election office.

The election-master, on receipt of it, issues by the next post his writ for a fresh election, as above.

Art. VIII. Upon his acceptance of a lucrative function under the crown, as per list, a member's seat becomes vacant, as if by death.

Art. IX. So, in case of his acceptance of a peerage.*

Art. X. For the case of expulsion, *see* Section 13.

Art. XI. On a vacancy, if, by reason of distance, it is not possible for a new member to take his seat before the session is at an end, no election writ shall issue.

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Section 13.—

Security For The House Against Disturbance By Members.†

Art. I. In so far as such exclusion is necessary for securing its proceedings against disturbance by annoyance in any shape, the House has at all times power to exclude any of its members.

But, on each occasion, the House shall and will declare, in particular, by what species of annoyance such disturbance‡ was effected, and by what individual instance of misbehaviour that species of annoyance was produced.

Art. II. For terminating, or preventing the repetition of, such annoyance, the House may either expel the delinquent member altogether, or exclude him for a limited time.

Art. III. If the duration of such exclusion shall, at any one time, exceed the term of [*twenty-eight*] days, such exclusion shall have the same effect as expulsion: and the electors, of the district for which he sat, shall proceed to elect a member to sit in his place.

Art. IV. They are however at liberty to re-elect the same member: and so for any number of times.

Art. V. In case of temporary exclusion, the House, as a condition precedent to re-admission, may exact of the delinquent member a promise in writing, never thenceforward to cause disturbance to the proceedings of the House, either by annoyance in the particular shape in which he has been declared to have offended, or in any other shape.

Art. VI. So, in case of his re-election: whether by the district for which at the time of such annoyance he was serving, or by any other district.

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Section 14.—

Indisposition Of Speakers Obviated.

Art. I. To secure the national business against interruption by interruption of the sittings of the Commons House,* an occasional substitute for the Speaker shall at all times be forthcoming: *Vice-Speaker* is his official title.

Art. II. The Vice-Speaker shall at all times be provided by the Speaker, by an instrument of appointment consigned to the custody of the chief clerk.

The appointment is revocable by the Speaker at pleasure, on and by the appointment of another person to that office.

Art. III. For the acts of the Vice-Speaker in respect of such his office, the Speaker is responsible, as if they were his own.

Art. IV. To the office of Vice-Speaker no emolument shall, in any shape be attached.

Art. V. The House has, at all times, power to substitute to any Vice-Speaker another of its own choice.

Art. VI. In default of the Speaker and the Vice-Speaker, the functions of the Speaker shall be exercised by the chief clerk: in his default, by the clerk who is senior in standing; and so downwards, according to the length of service.

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APPENDIX, INCLUDING GENERAL EXPLANATIONS.

On the present occasion, it was thought better not to incumber the text of the proposed bill with any considerable portion of the matter, which, on the supposition of its being completed, would have been to be inserted in this place. The text of this part may eventually be added, together with the *reasons* at large.†

Of the particulars which, in this place, there will be occasion to bring to view, the use, if any, will not be confined within the limits of the present bill: it may be seen extending itself over the whole field of legislation.

To an Appendix, on this as on other occasions, are proposed to be referred five distinguishable sorts of matter:—1. Fixation; 2. Exposition, or Explanation (including Definition;) 3. Enumeration; 4. Abbreviation; 5. Forms of Instruments. For designation, these names will, it is hoped, be found to serve. Exemplifications, as well as explanations, now follow.

1. *Fixation.* Instances there are, in which senses more than one being plainly enough brought to view by the word or phrase in question, doubts may have place, in which of them it was meant that they should be understood. Of the operation termed *fixation,* the function in these cases is—to indicate, according to the occasion, some one of those senses to the exclusion of the rest.

Take, for example, the word *day.*

1. On some occasions it is employed to mean a determinate portion of the time occupied by a revolution of the earth round the sun.

2. On other occasions, it is employed to mean no more than a *portion* of that time; namely, that portion, as far as it can be distinguished, during which the light of the sun is visible: in this latter case, the meaning is expressed without ambiguity by the words *day-time, the day-time.*

3. When a portion of time is spoken of, as the time within which a certain operation is required, forbidden, or permitted, to be performed,—and, for the designation of it, the word *days,* in the plural, preceded by the name of the number, is employed,—as for instance, *five days,* or *ten days,*—thence is liable to arise a question, whether, in the portion of time thus designated, are to be considered as included so many days, each of them entire; or whether the intention will be satisfied if the first only, or the last only, or both the first and the last, are respectively but the *portion* of a day. It is on these occasions, that in common usage the words *inclusive* and *exclusive* come to be employed in conjunction with the word *days.* Fuller explanation cannot be given without more space than can be spared here.

For the removal of the ambiguity thus brought to view, in several parts of the present bill, an appropriate fixation would need to be made. Of this case, the passages in which the word *days* is preceded by a blank space, afford so many instances.

4. In the instance of the word *days,* taken as above in the plural, a particular demand is created by the institution of the *Sabbath.* On the occasion in question, in the number of days mentioned, shall the Sabbath day, where it happens to form one of them, be reckoned, and considered as included, or shall the number intended be understood to be that same number, *over and above* the Sabbath-day? The answer will depend on the nature of the occasion. If what is regarded as *work* be to be done in the intervals, the intervening Sabbath-day or Sabbath-days must be considered as added to the number: otherwise not.

II. *Exposition* or *explanation,* including *definition.* The demand for *fixation* has place, in so far as, by the word in question, more senses than one are, all of them, more or less distinctly brought to view. What in this case is necessary is—to decide between them, by *fixing* upon some one of them to the exclusion of the rest. The demand for *exposition* or *explanation* has place, in so far as, were it not for the operation thus denominated, it might happen that no object at all might present itself as clearly designated. *Fixation* has for its purpose, the removal of *ambiguity:* explanation, the clearing up of *obscurity.* Between the import of the words as thus explained, the separation will not always be very distinct: especially since, by the same word, on the same occasion, a demand for both operations may be presented: and although by the operation which happens to have been performed, no more than one of them may have been the direct object, the other, it may happen, has been accomplished.

Synonymous, or nearly so, to *explanation,* is *exposition.*

Of *exposition* there are several modes. For the complete enumeration and explanation of them, more room would be requisite than can be afforded in this place.

A mode commonly employed, or at least intended and supposed* to be employed, is that styled *definition.* By *definition* seems commonly to be understood, the exhibition of some word of more extensive signification, within the signification of which, that of the word in question is included,—accompanied with the designation of some circumstance, whereby the object designated by it stands distinguished from all others that are in use to be designated by that more extensive appellative.

III. *Enumeration.* Of this word the import is sufficiently clear: it neither requires, nor admits of, *fixation* or *explanation.*

On the occasion in question, enumeration may have for its subjects either *species* or *individuals.* Of species or modes of *operation,* instances are afforded by the present bill. They will be found in the ensuing example of *exposition,* as applied to the words *disturbance* and *annoyance,* which may be seen in black-LETTER in the text of Section 13, *Security, &c. against disturbance, &c.*

Of the species contained under the given name of *offices,* an enumeration is proposed by the present bill, namely, in Section 3, *Eligible who,* as constituting another portion of matter proper for the *Appendix.*[*]

IV. *Abbreviation.* To the result designated by this word, the operations designated by the three foregoing words—*fixation, explanation, enumeration*—may, any of them, be rendered subservient. For these several instruments of perspicuity, let the *word,* for which they are respectively in demand, present itself, in the body of law in question, ever so many times,—the *demand* for the sort of elucidation respectively afforded by them may present itself that same number of times.

At the same time, if every time the principal word came to be employed, the adjunct or adjuncts, such as have been deemed necessary as above, were to be attached to it at full length, there is no saying to what enormity of extent the bulk of the body of law would thus be swelled. Happily, to the production of the effect required, no such full-length repetitions are necessary. If, to the principal word in question, the adjunct or adjuncts deemed necessary are but annexed the first time it comes to be employed, every succeeding time the word is employed, the purpose of them may in great measure be answered, by a bare notice given of their existence.

For a memento of this sort, the typographic art affords an instrument as simple as it is efficient—*an appropriate type:* and if, throughout the whole tenor of the work, this type be not applied to any other use than this, any sort of type may serve.

In the text of the present bill may be seen an example. In Section 13, *Security, &c. against disturbance, &c.,* to the words *disturbance* and *annoyance,* an elucidation, the tenor of which will be seen presently, is proposed to be applied in the Appendix. Of the aid thus provided for sincere conception, and the check for sinister application, notice is afforded by the type called *black-letter,* in which they are printed.

Thus, and without prejudice to *certainty,* may the operation of abbreviation be performed, upon a mass of law, *by means of* the above-described instruments of elucidation—any or all of them.

But it may also be performed *without* any of them. Examples may be seen in the *Introduction* to "Burn's Justice." Of the two parts contained in that Introduction, the first has for its title—"*Certain abbreviations made use of in this work.*" Of these instances of abbreviations (23 in number) the first is in these words:—"1. The word *justice* is always to be understood to mean *justice of the peace,* when not otherwise expressed." In this case, to the principal word *justice* is added (we see) an *adjunct:* and the abbreviation consists in the constant omission of this adjunct. With few if any exceptions, in the other twenty-two instances, the instrument of abbreviation employed is the same; namely, *omission of an adjunct:* notice of the omission, once for all, having thus been given.

Of the abbreviation thus afforded, the utility cannot but have been felt by thousands and tens of thousands. But that from the above-mentioned instrument—an appropriate type—the service so rendered could not but have received no small increase, will be

no less manifest. For, among so many readers of that useful and masterly performance, scarcely perhaps has there been one, to whose mind the notice so given once for all at the commencement of the work, has, in all its parts, been at all times present. By an appropriate type, it would, on each occasion, have been revived. By the appropriate type, true it is, that the particular nature of the adjunct omitted would not have been expressed. But a notice which, on every occasion, *would* have thus been given, is—that to the word or phrase in question, an elucidation would be found provided, in some shape or other: and in what particular shape, is a point which the nature of the context would not often leave exposed to doubt.

Abbreviation is not the only useful purpose to which the separation thus proposed between text and authoritative comment is capable of being made subservient. Another is—the saving from the imputation of frivolousness, or even of ridiculousness, this or that matter of detail, the insertion of which may, by an attentive consideration of the subject, have been represented to the draughtsmen as indispensable. In a case of this sort, if he declines employing the expedient, his work will be liable to find itself in a dilemma, from which it will not be easy for him to disengage it without injury to it. If he omits the obnoxious matter altogether, he leaves the door open to wilful misrepresentation, to misapplication, and arbitrary rule: if he inserts it, he gives disgust to the thoughtless many, to whom the sensation of the moment is everything, the future nothing:—and who either cannot or will not see, that by those who have the power, misrepresentation, wherever, in addition to a motive, any the slightest pretext can be found for it, will be sure to be practised? At the same time, by the addition which it cannot but make to the bulk of the mass of law, the subordinate species of matter, if not detached from that to which it is subordinate, will, in proportion to its bulk, contribute to render the whole mass to such a degree incomprehensible, that while inefficient as a protection, it will be efficient only as a snare.

True it is, that whether interwoven with the main body or detached from it, the matter of elucidation will not the less be the legislator's work. But in the main body it would present itself to all readers and on all occasions: in the appendix, it would as it were withdraw itself from the attention of readers in general, reserving itself to be consulted only by this or that particular class of readers, and by them only eventually, in case that by this or that event a call for their applying their attention to it should be made: and, in this case, as the occasion will place the importance of the explanation in its true light, it will thus be saved from the imputation of frivolousness.

5. *Forms of instruments.* Of this species of matter, the form of a *vote-making certificate* in Section 2, and the form of a *recommendatory certificate* in Section 3, afford so many examples. For matter of this sort, the appendix has just been spoken of as being, generally speaking, a proper place. That it would have been such in the present instance will scarcely appear disputable. But, on the present occasion, so paramount was the importance of these two instruments—so much of the whole plan do they give intimation of—that though the *appendix* could scarcely be denied to be a proper place, the *main body* of the proposed Act would, it was thought, be deemed *the* more proper place.

When the destination of this receptacle—the *appendix*—is thus settled and determined, the structure of the work of which it forms a part will in some sort be to be directed by it. To the appendix may be referred whatsoever matters appear capable of being thus disposed of, consistently with the grand object; namely, the implanting and keeping at all times, in the mind of the subject-citizen, such part of the rule of action—such part and such only—as, according to his situation in life, he may have need of for his guidance at *all* times: reserving for other parts those particulars which it will not be necessary for him to form any detailed conception of, till a particular state of things, calling for application to be made to that part of the law, has taken place. Thus, whatever concerns this or that species of *contract,* a man cannot have any need to trouble himself with, till either he has entered into a contract of that sort, or has in contemplation the entering into it, or has need to enter into it. But this refers to another division of the entire body of the law; namely, the division into the *general code* and the collection of *particular codes:* the *general code* containing those parts of the rule of action which all persons have need to be informed of; the particular codes, those parts only which so many particular classes of persons have respectively need to be informed of.

As in the present proposed Act, so in any other Act, and in the whole body of the law, if any such work were anywhere to come into existence, here then would be two distinguishable parts—*main body* and *appendix.* In the appendix would be included the *elucidations,* the *abbreviations,* and the *forms of instruments.* To this part might also be consigned the *rationale,* or collection of *reasons,* supposing provision made of an instrument of elucidation and justification at once so useful and so difficult to frame. I say the *rationale;* for to this place it might be posted off, except in so far, as in this or that instance, for the more immediate perception of this or that *reason,* it were thought fit either to interweave it with the body of the article to which it belonged (a mode frequently pursued in an act of parliament, and pursued in several places of the present bill,) or, in the form of a note, to subjoin it, in the margin, at the bottom of the text.*

Taken together, main body and appendix would be the entire Code. Separated from the appendix, the main body would be a sort of *abridgment* of the entire Code. Sanctioned by the same hand as that from which the appendix received its sanction, the abridgment thus made would be an *authoritative one.*

Here follows the portion of *expository* matter proposed to be inserted in the appendix, for the exposition of the words *disturbance* and *annoyance* in Section 13 of the text.

[*Disturbance—Annoyance.*]—Art. I. To this purpose, it matters not in what shape, and by what means, the annoyance be produced, it among its effects be that of causing disturbance to the proceedings of the House.

Art. II. It matters not to what *sense,* or what *faculty,* the annoyance has been applied: as for example—

1. To the sense of *hearing;* by noise, whereby Members are prevented from hearing anything spoken or read: for instance, by untimely vociferation, by stamping or

scraping with the feet, or even by coughing or blowing of the nose, if performed, not through necessity, but for this or any other forbidden purpose.

2. To the sense of *sight;* for example, by preventing any Member or Members from having the Speaker of the House in view, or the Speaker from having any other Member in view; or by repairing to the House, with the visible marks or other symptoms of any noisome disease.

3. To the sense of *smell;* by uncleanliness in any shape.

4. To *health in general;* by a Member repairing to the House at a time when he is labouring under any infectious disease.

5. By personal injury in any shape, done, or attempted, or intended, or proposed to be done to any Member, or any officer of the House, or to any other person present.

6. To the tranquillity of the assembly, by words or deportment threatening personal injury in any shape,—to be done, whether to the whole assembly present, or to any particular Member or other person present. Here ends the *explanation.*

In the particular case here exemplified, supposing that, as here, in the designation of the proposed ground for exclusion, words such as "*annoyance*" and "*disturbance*" (the words employed in the Bill) were employed, I durst not, without very particular exposition, such as that here proposed to be given, depend upon them as sufficient to secure the exclusion of sinister interpretation: in particular, on the part of Honourable House, even under any constitution that would be given to it. In the reign of Charles the Second it was, that Honourable House concurred in an act (18 C. II. c. 2, § 1,) declaring the importation of cattle into England from Ireland "*a nuisance,*" and punishing it as a crime Were it not for the check, applied by specifications such as the above,—with less violent torture of words might the House, at any time, have applied that term of reproach to the act of any Member, who, rendered obnoxious to noble lords and honourable gentlemen by attachment to the cause of the people, had by some trifling indecorum in language or deportment, afforded a pretence. Not many years ago, a Member, whose language had long been sufficiently indecorous, was stopped in the very act of offering violence to the person of the Speaker. Being on the right side in politics, and violent on that side—his transgression was regarded with the indulgence that might have been expected. But had Horne Tooke been the man—Horne Tooke, for dread of whom, after the House had for so many ages continued open to clergymen without inconvenience or complaint, an exclusion was put upon the whole order in the lump—mercy might not quite so readily have taken the place of justice.

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RADICALISM NOT DANGEROUS.

EXTRACTED FROM THE MSS. OF JEREMY BENTHAM.*

PART I.—

INTRODUCTION.

SECTION I.

RADICAL REFORM BILL RECAPITULATED.

On the 6th of December last (1819,) was submitted to the consideration of the public, a tract entitled "Bentham's Radical Reform Bill, with extracts from the reasons." The tenor of this proposed Bill was preceded and introduced by "Preliminary Explanations," in which the several features of Radical Reform were brought to view, with the uses and advantages which presented themselves as attached to each. Secrecy of suffrage—virtual universality of suffrage—practical equality of effect and value as between right and right of suffrage—with annuality of suffrage, are there given as the four elements of which the aggregate called Radical Reform is in my view of it composed.

Secrecy, as being the only security for genuineness of suffrage, is there stated as being of more importance than all the other elements put together.

Virtual universality was there proposed as being the only degree of extent which seemed either defensible on principle, or capable of affording any assured promise of giving universal satisfaction, or any near approach to it. In regard to extent, I for my part, if it depended on me, would gladly compound for householder suffrage; but I do not see how those who on this plan would be excluded from the right of suffrage, and also would perhaps constitute a majority of male adults, should be satisfied with such exclusion; and being myself unable to find what appears to me a reason in favour of it, I must leave the task to those who consider themselves able to accomplish it.

Absolute equality being physically impossible, if equality be at all regarded, practical equality must of necessity be substituted. Local convenience cannot but prescribe—and that through the whole country—a degree of departure more or less considerable. But to say that in any instance such departure should be prescribed by it as shall render the votes in the most populous district more than four times more numerous than the votes in the most thinly peopled district, seems altogether beyond the bounds of probability.

As compared with trienniality of suffrage, annuality did not present itself to me as being of that importance that should prevent me, on the supposition of its depending upon myself, from surrendering it, on condition of obtaining trienniality—with secrecy of suffrage, equality of suffrage, and householder suffrage; but if asked for a reason, I am no more able to give what appears to me a reason in favour of it in preference to annuality, than I am to give what appears to me a reason in favour of householder suffrage in preference to virtually universal suffrage.

On the ground of precedent and experience:—In favour of annuality, I see the ancient parliamentary practice in England, the existing practice in the governing body of the metropolis of the empire, and the practice in every one of the American United States: in every instance without alleged inconvenience in any shape. In support of trienniality, I see nothing but the epithet "moderate," which those who adhere to it insist on bestowing on it. When proposed, it seems commonly to be proposed without the addition of either secrecy of suffrage, virtual universality of suffrage, or so much as practical equality of sufrage; and on these terms I see not any effect good or bad that can be produced by it, except the giving additional frequency to a contest of which the evils are undeniable—and which,—abstraction made of a faint chance of ulterior change,—produces not any the smallest change on the state of the representation, leaving uncorrected and unpalliated all the abuses and evils, the hope of eradicating which, presents the only possible use and demand for the system which it professes to give.

Against Radical Reform as above explained, unless the above-mentioned word *moderate* be regarded as a reason, I had for a long time been unable to discover any nearer approach to a reason, than a sort of language which in writing is to written reason, what bellowing or barking, or an inarticulate yell, is to reason in the form of spoken language.

On the Tory side of Honourable and Right Honourable House, and other honourable places, "subversion of all order," and "subversion of the Constitution:" on the Whig side, "absurd, visionary, and senseless; wild and impracticable," and so forth: and in the principal Whig newspapers, such is every now and then the agreement with the Tories, as to produce passages such as these:—"Senseless schemes of reform, which if realized, would plunge us into anarchy and confusion."*

When from such pens as Earl Grey's and Lord John Russell's not in addition to argument, but in lieu of all argument—of all attempt at argument—nothing is to be found but a set of words in which, in addition to the assumption of the thing in dispute, nothing but an expression of passion is to be found, what inference more natural, not to say conclusive, than this, namely, that it was by the experienced inability of finding anything in the way of argument to adduce on that side, that that uneasiness had been produced which gave itself vent, and sought relief in words such as these? The *pen,* I say, and this not only in speaking of Lord John Russell, but of Earl Grey: the reasons which I have in view are those of his Lordship's speech in 1810,† and his Fox-Dinner Newcastle speech, [19th September] 1817. For nothing can be more evident than that, before or after the lips, it was from the pen of the noble Earl that the discourses which in these instances bear his name proceeded.

If it were required of me to give a model of inanity, I know not where a more finished model of that sort of composition, among so many as the public is daily favoured with, could be referred to. If intellectual could like physical gas be compressed within a given space, it should have had a place at length: but as this cannot be done, all that can be done here is to give reference to the place where it may be seen at full length, coupled with the intimation of the observations which the reader should have in view in reading it.

Thus much as to the footing on which the question of the usefulness of radical reform appears to have stood till lately. But of late the aversion to the proposed change in question has given itself vent in objections of a more determinate shape. In radical reform is viewed as an effect, of which with greater or less certainty it is viewed as pregnant,—a general destruction of property,—whether from a proposed scheme of equal division, supposed to be in the contemplation of reformists, or from, it is not exactly said what, other cause.

In this instance, it is true, as in every other, what is asserted is taken for granted,—assumed as certain without so much as an attempt to give a reason why it should be regarded in that light. Here, however, though without proof or attempt at proof, we have something determinate in the shape of an assertion. Here, for the first time, is a something presenting itself in what is called a tangible shape. Here is a something which in its nature is capable of being taken hold of, and taken hold of it shall accordingly be, that by its being sifted to the bottom the impartial reader, if peradventure any such person is to be found, may see what it is worth.

But (says somebody) a question that will naturally be presenting itself to the mind of a reader is, for whose use is it that this disquisition of yours is intended? To this question I will give a plain answer. The aggregate mass of hostile readers I divide for the purpose into the sincere and the insincere. By the *sincere* I mean all such persons as either by such reflection as they themselves have bestowed on the subject,—*i. e.* by a self-formed judgment, or by the assertion made by others, sincere or insincere,—*i. e.* by a derivative judgment derived from the authority of the opinion or supposed opinion of those others,—have been led to adopt the alarming apprehension. If there were not persons in no small number, to whom in my own opinion this description is truly applicable, these pages would not—could not—have had existence. The labour being on that supposition without hope, would on that same supposition have been without a motive—an effect without a cause.

As to the insincere, these are the opponents from adverse interest. These, the more perfectly they are in their own minds convinced that no answer capable of lessening the effect of it on the minds of the sincere can be given to it, the more thoroughly they will be confirmed in the determination to maintain the most perfect silence in relation to it—the most perfect silence—and when it is forced by accident upon their notice, to put it under, by some general expression of scorn and contempt, such as they are so perfectly in the habit of employing, and accordingly seeing accepted at the hands of those who by the same interest stand engaged to bestow on it the same reception.

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SECTION II.

PERSUASION OF THE DANGEROUSNESS OF RADICALISM—CAUSE OF IT, AND OF THE VITUPERATIVE EXPRESSION GIVEN TO IT.

That in a point of such vital importance,—a point in comparison with which all that are to be found in the whole field of politics are, separately taken, as nothing—because collectively they are all comprehended in it—the question in dispute should on one side, without any exception, be taken for granted—that in this case a proceeding which in every other case would be universally acknowledged to be contrary to reason, should have been so universally prosecuted, has at times struck me as perhaps the most extraordinary phenomenon that has ever yet presented itself to the intellectual world.

Be it more or less extraordinary, the solution of it may, I think, be found in the following considerations:—

Whatsoever be the subject to which it has ever happened to them to apply themselves, the weakest and the strongest are upon a par. If they take upon themselves to decide, their decisions are equally liable to be erroneous—erroneous to any degree of absurdity. Interest, with or without internal consciousness on the part of the individual, is in every case capable of producing this state of vacuity. When, the instant he veers to put his mind in such a direction as to view the object in question in a point of view in which it would produce in his mind an unpleasant sensation,—in such case, unless he finds himself under the pressure of an irresistible obligation, he turns from it of course.

Thus it is with thousands upon thousands in the present case. Looking at radical reform, a man sees nothing for himself or his friends to gain by it. On the contrary, he sees more or less that it seems to him he and they would lose by it. Why then should he give himself the trouble of fixing his eyes on that side? A mode much less unpleasant, and as it appears to him a sufficiently safe one, is to hear what his friends say on the subject, and to take his opinion on it from them. It is sufficiently safe; for among them he beholds those whose capacity of forming a right judgment on a question of this sort occupies the highest place in his eyes. It is not only a pleasant course, but it is the only one which he would not find intolerably irksome. By adopting the other course, he would not only have the pain of receiving disagreeable truths—truths, to himself—abstraction made of all other persons—personally disagreeable, but by doing so he would render himself disagreeable to his friends; he would perhaps lose the only society he has immediate access to—the society in which he beholds whatsoever he most values—the principal, if not the only object of his affection and respect.

As to inconvenience, either in entertaining or in deducing the opinion in question—of no such inconvenience does he expose himself to the smallest risk. No concern need he give himself on the subject: the opinion is ready found to his hands—the opinion and the sort of language—the only sort of language, that need be employed in the support of it. Wild and visionary—absurd, visionary, senseless, mischievous, destructive; by the leading hound in the pack the cry is commenced: the others have nothing to do but join in it. The principal singer has sung the solo part: the others in chorus have but to repeat it.

The course of a man's conduct having been determined by his private interest, or at least by his opinion of his private interest, the language he employs is that which presents itself to him as best suited to the support of that private interest. If he can find nothing more promising, in speaking of any measure by which he regards his interest as being opposed, he deals with it like Earl Grey, and says it is absurd, visionary, and senseless—or like Lord John, and says it is wild and visionary. This done, other men on the same side, thinking that a man who speaks so well as Earl Grey does, would not, in a matter of such vital importance, speak so decidedly without due consideration, join with him and cry, "absurd, visionary, and senseless;" whereas, all the consideration ever bestowed upon the matter by the noble leader, was, how to excuse himself from adopting a measure, which, while it agreed so well with the public interest, agreed so ill with his private interest, and what form of words afforded the fairest promise of answering that purpose: and these were the words that happened to present themselves.

Not that, even if it were fit to be employed in other respects, I could, consistently with perfect truth, think myself warranted in retorting upon Earl Grey his word senseless, or deny that by Lord John the object of his vituperation was really regarded as impracticable.

Visionary indeed the plan would be, if in it were regarded the assumption that by a man situated as Earl Grey is, a plan so nearly in unison with the sentiments formerly professed by him could find support—could find anything better than the most strenuous opposition. Visionary indeed would be any expectation that could be entertained of its finding favour in his sight. Impracticable there need be no doubt of its being regarded by Lord John, since it was not natural that he should regard it as capable of being carried against that opposition, in his concurrence with which he was so fully determined.

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SECTION III.

TERMS OF THE ACCUSATION,—SPEECHES FROM THE THRONE, 16TH JULY AND 21ST NOVEMBER 1819.

Thus stands the accusation, as far as could be collected from those vague generalities which have been so abundant, and in which alone the adversaries of radical reform have ever ventured to express themselves.

Looking with persevering anxiety for something in a tangible shape from some persons of the one party or the other who had a name, it was with no small satisfaction in this respect, with how much dismay soever on other accounts, that I found at last what I wanted, and in the place to which I should from the first have looked for it.

The charge, such as it is, will be found collected from two speeches from the throne: the one that of 13th July 1819; the other, that of 23d November 1819.

"Those whose projects, if successful," says the July speech, "could only aggravate the evils which it is professed to remedy: and who, under *pretence of reform,* have really *no other object* than the subversion of our happy constitution." To these persons "*machinations*" are imputed, and these machinations Lords and Gentlemen are immediately called upon, "in co-operation with the magistracy, to use their utmost endeavours, on return to their several counties, to defeat."

On this occasion, by Lords and Gentlemen in their aggregate character, nothing is as yet called upon to be done—so far, so good. For, how great soever the evil, by the mere aim at producing it, unaccompanied with any probability of its being produced, no sufficient warrant for any coercive or otherwise burthensome measure could assuredly be afforded. Unhappily, this reserve did not long continue.

Here, as yet, on reform itself, neither in the radical shape, nor in any other, is any determinate imputation directly cast. It is only "on pretence of reform" that the "machinations" are alleged to have been carried on.

Is it then that by radical reform, supposing the "machinations" in question "successful," the "subversion" in question would be produced? This is not directly said. But this is what is at any rate insinuated: and it is in the view of causing everybody to believe it, that this language is employed.

The object declared to be *aimed* at is—"the subversion of our happy constitution." Of the evil in question, the alleged cause cannot therefore but be a design by which the constitution would be affected: and that by parliamentary reform in any shape, the constitution would in a certain way be affected, cannot be denied: and this was the only design on foot by which any such effect could be produced. By depredation and

violent destruction of property, let evil to ever so vast an amount have been produced, the constitution would remain untouched.

Now as to the November speech:—and there, though never otherwise than in the way of allusion and insinuation, reform, radical reform, may be seen but too sufficiently designated. A ground is premised for the "measures" about to be proposed: "measures requisite for the counteraction and suppression of the system" alluded to. This ground is stated as constituted by "a spirit utterly hostile to the constitution of this kingdom, and aiming,* not only at *the change*† of those political institutions which have hitherto constituted the pride and security of this country, but at the *subversion of the rights of property,*‡ and of all order in society."

Taking the two speeches together:—here then are two evil designs charged—charged on the same class of persons, namely all reformists—meaning, or at the least including, all radical reformists.

In the July speech, the design is the *subversion of the constitution,*—that design, and no other. In the November speech, it is "the subversion of the rights of property." Of the design first charged, the description given has no determinate meaning. Accordingly, no mention would have been made of it, but for the intimate connexion between the speech by which this accusation is conveyed, and the other speech by which the other accusation is conveyed.

In defending the design of the radicals against the imputation that has been cast upon it, it seemed not sufficient to defend it against the imputation of a tendency to produce evil in the particular shape designated by the words, "the subversion of the rights of property." For supposing that, although it were clear of that imputation, it were not clear of the imputation of preponderant evil in some other shape or shapes—on this supposition it would still remain indefensible.

To the denial of its tendency to produce evil in that particular shape, it therefore seemed necessary to prefix a denial of its tendency to produce *preponderant* evil in *any* shape. It has become necessary to add to the more particular counter-averment a more general one. But a counter-averment implies a correspondent original averment, to which it stands opposed. The original averment, then—where in this case shall we find it?—*Answer:* If anywhere, it must be in the abovequoted words—"aiming at the subversion of the constitution."

Now this subversion, either it means nothing at all, or what it means amounts to this, namely, a preponderant mass of evil—a mass of evil presenting a net amount over and above whatsoever good in any shape will have been produced by the same cause. Yes, preponderant evil; for as to the being simply productive of evil, *that* cannot be matter of charge against any political measure whatsoever. Taken by itself, coercion in any shape, by whatsoever hand applied—whether any private hand, or the hand of Government itself—is evil. Government the most perfect that imagination itself could frame, would still be but a choice of evils.

If, then, the effect of the imputed design, supposing it carried into effect, were anything less than the production of preponderant evil, it would not constitute the matter of a charge. But this supposed preponderant evil, in what determinate shape are we to look for it? To this question, the charge has not furnished an answer. Yet in this charge, and in the other (that about property,) to which, it being less indeterminate, a determinate answer will be given—will be seen the sole ground of those disastrous laws, by which disaffection has been more abundantly propagated than by any of the writings which they are employed to repress.

Thus it is, that to do anything they please—to destroy any man, or any number of men they please, and in any manner they please—it costs those under whom we yet live, no more than a phrase with half-a-dozen words in it: and that this phrase should have anything belonging to it that can be called a meaning, is not necessary. In the present instance, so empty of meaning is the phrase, that with all the hapless labour, the bitter fruits of which have been seen, I have been reduced to find one for it—to make one for it in the way of inference.

Note—that for the general counter-averment there will be found more use than what might readily have been imagined. In the course of this defence, one argument will be seen by which the state of things aimed at by radical reform is cleared of the more particular charge of a tendency to produce preponderant evil, in the shape of the subversion of the rights of property; it will be seen cleared of the charge of a tendency to produce preponderant evil in any shape; and not only so, but it will be shown by experience to have been productive of effects, which the most determined opponents of radical reform will not deny to have been replete with preponderant good. This refers to the case of Ireland, of which mention will presently be made.

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SECTION IV.

THE ACCUSATION IN GENERAL TERMS—COUNTER-AVERMENT.

In regard to the present liberticide measures,* and their bearings upon radical parliamentary reform, the case stands thus: In justification of them, and as proof of the necessity, what is alleged is—that by or by means of the supporters of radical reform, whether with or without direct correspondent intention, some great evil, unless prevented by these measures, will be produced: and it is for the prevention of this evil, that not only these reformists, but all the other members of this whole community, are deprived of so large a part of their securities against misrule, which the state of its laws, establishments, customs, and modes of thinking, has till now afforded.

In particular, as and for the shape, or one of the shapes, in which the evil in question has been said to be apprehended, is that which has been designated by the phrase, "*subversion of the rights of property.*"

Was ever allegation of apprehended evil more perfectly destitute of support?

In a country said to be the seat of political liberty, were measures pregnant with more serious and undeniable evil ever adopted and employed?

On the second of these topics I propose not to touch at present: it is with the first alone that what remains of these pages will be occupied.

By this measure I feel myself injured and oppressed in my general capacity of a member of this great community.*

By the imputation on which they have been grounded, I feel an additional injury cast upon me, in the character of a radical reformist. Had they been peculiar to myself, my own injuries would not have been worth mentioning; nor accordingly would they have been mentioned: but I have millions to share with me even in that injury which is the least extensive.

On these topics my own persuasions are as follows:—

1. That radical reform, if carried into effect, would not be productive of any preponderant evil, but, on the contrary, of preponderant good.

2. That in particular, the "*subversion of the rights of property*" would not be among the effects of it.

3. That no design of any active measures, tending to any subversion of the rights of property, has ever been entertained by any number of reformists: at any rate, not by any number competent to prosecute any such design with mischievous effect.

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SECTION V.

PLAN OF THIS DEFENCE.

On the present occasion, all endeavours to find so much as an attempt at proof having been fruitless, whoever he be to whom the affirmation presents itself as erroneous or untenable, either he must remain silent, suffering to go abroad, as if it were true and unanswerable, an opinion which to him appears in the highest degree pernicious, as well as erroneous and untenable, or he must engage in a task so pregnant with difficulty and embarrassment, as the proving of the negative. This course, there being no other, must here be mine.†

Under the pressure of this untoward necessity, the course I shall take is this:—

i. To show in the first place, from the consideration of the general nature of the case, that neither the accomplishment of any subversive partition, nor therefore the formation of any such correspondent design, is, or was, or ever will be, possible. This will be the business of Part II. of this short work.

ii. In the second place I shall show, that in the information afforded in relation to this subject may be seen a sufficient security against preponderant evil, not only in this shape, but in every other shape.

If from the power which radical reform would place in the hands of men of the class of universal-suffrage men, or at any rate in those of all householders, preponderant evil in any other shape were justly and reasonably to be apprehended, the improbability of its taking place would be no sufficient defence. But as a ground for any such supposition, neither argument deduced from the general nature of the case, nor experience in any particular instances, have ever been adduced. In proof of the opposite assurance, I shall adduce, in the first place, the case of the United States. Under that head I shall call to mind, that so far from anarchy, government better in every respect than in England is in that country the result, not merely of democratic ascendency in a monarchy, but of actual democracy, and that those under whose influence in the character of electors, the business of that really matchless government is carried on, are persons whose condition is not substantially different from that of universal-suffrage men here. This will form the business of Part III.

iii. In farther proof of this same assurance I shall adduce, in the last place, the case of Ireland, in the years from 1778 to 1783 inclusive. Under that head I shall in this instance likewise call to mind and show that instead of anarchy, under democratic ascendency maintained by a class of men not substantially distinguishable from universal suffrage men, the business of government was carried on in a manner confessedly superior in every respect to any in which in that same country it ever had been carried on before, or ever has been since. This topic will furnish the matter of Part IV.

In the Part next ensuing, it may afford some assistance to conception, if the reader is put personally in possession of the course taken to show, from the very nature of the case, the impossibility of the evil apprehended by some, pretended to be apprehended by others,—and thereby of every such design as that of giving birth to it. This course will be shown by the following topics, which will be seen forming the heads of so many sections:—

1. Conditions necessary to the existence of the imputed design—their concurrence impossible.
2. In equal shares, general partition of immoveables impossible.
3. In equal shares, general partition of moveables impossible.
4. In equal shares, general partition of property in any other shape impossible.
5. Determination as to who shall be sharers impossible.
6. In any other than equal shares, general partition of property in every shape impossible.
7. Concurrence in any other plan of general spoliation impossible.
8. Concurrence of constituted authorities necessary, but impossible.
9. Accomplishment being manifestly impossible, the design is impossible.
10. The talked-of spunge affords no proof of any such design.

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PART II.—

DEFERENCE FROM THE GENERAL NATURE OF THE CASE.

SECTION I.

CONDITIONS NECESSARY TO A MAN'S EMBARKING IN SUCH A DESIGN.

The task here undertaken is—to show that the sort of design imputed is in its nature an impossible one. No such design *could have been* formed: therefore no such design *has ever been* formed—such in this part is the argument. The accomplishment of a design is one thing: the formation of it is another. Of the impossibility of a design being accomplished, the impossibility of its being formed by a number capable of making any advance towards the accomplishment of it, is not a necessary consequence in every case; but it will be seen to be so in this. On the other hand, be the design what it may, that if it cannot be formed, it cannot be accomplished, will surely not be disputed.

For the formation of a design of the sort in question, certain points must in the nature of the case have been agreed upon. Upon these several points no agreement can have had place: therefore no such agreement has ever taken place. He who admits the antecedent, will admit the consequent.

Among these points are the following: namely—

1. Subject-matters of the partition, what? (1.) Immoveable subjects of the rights of property; (2.) Moveable subjects of the rights of property (both these are real); (3.) Fictitious subjects of the rights of property: for example, annuities and offices, in regard to which a further explanation will be given. These different subject-matters of the rights of property,—shall they be all of them taken for the subjects of the partition, or only two of them, and what two? or only one of them, and what one?

2. Sharers, who? the radicalists alone, or the existing proprietors with them?—among the radicalists, males alone, or males and females together? and in both cases, adults alone, or adults and non-adults together? The difficulties which would *in practice* attach upon any choice that could be made in answer to these questions, will be more particularly brought to view.

3. Proportion as between the sharers of the several shares: equal or unequal?

4. Mode of operation, *i. e.* partition; and operating hands to be employed in it.

Among these must be the constituted and established authorities of the country for the time being, whatsoever they may be. If it were nothing more than the moveable plunder of a camp or town, no: no such permanent power might be regarded as necessary. But according to the spirit as well as the LETTER of the charge, those rights of property, the subject-matter of which exists in the immoveable shape, constitute the principal part, if not the whole of the mass of rights, the subversion of which is alleged to be aimed at.

The consequence is—that of the design as charged, one part is, either the continuance of the existing constituted authorities, under their present names, and charged with their present functions, or the establishment of a new set of constituted authorities, with correspondent names and functions. Here then will have been another choice to be made.

Sect. II. *In equal shares, partition of Immoveables impossible.*

Sect. III. *In equal shares, partition of Moveables impossible.*

Sect. IV. *Partition of Property in other shapes impossible.*

Sect. V. *Determination of the Sharers impossible.*

Sect. VI. *In shares other than equal, partition impossible.*

[As the matter which constitutes the above five sections is to be found with little variation in the Tract on the Levelling System (in Vol. I. p. 358,) it has been considered unnecessary to repeat it here.—*Ed.*]

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SECTION VII.

CONCURRENCE IN ANY OTHER EXTENSIVE PLAN OF SPOLIATION IMPOSSIBLE.

Nay but (says somebody) no such *regular* and generally-agreed plan of partition and plunder will perhaps be fixed upon. But, under the guidance of these leaders, the multitude may proceed in the work of insurrection, depredation, and destruction, without any plan at all: trusting to their leaders for their having already framed an apposite plan, or at any rate for their framing one before the time for action comes. All this while, the leaders may have been acting on a secret plan of their own—a plan having for its object the acquisition of opulence, in some shape or other, for each, the condition of the multitude being left to chance.

Answer. For the purpose of the argument, let a secret plan have been formed by the leaders, and that secret plan as dishonest and mischievous as any one pleases. But still, in front of this secret plan, must have stood an avowed plan—an openly avowed plan—a plan which, to the great majority of the supposed insurrectionists and would-be depredators, must afford a promise more or less plausible—plausible, howsoever hollow, of probable good to each of them.

As to any such blind confidence of this or of anything else, the existence may be asserted and even supposed. But of any such thing not any the smallest symptom or probability in any shape can be indicated. On the contrary, not the abundance of confidence, but the absence of it, is the state of things which the multitude of evidences that have at different times met the public eye have rendered remarkable and notorious.

Let us see, then, whether to the multitude, judging each for himself, it be possible that any other imaginable plan should afford any better promise than those which have been brought to view and disposed of: this being at the same time understood, that there remains not any other, the effect of which would not be the narrowing the number of the sharers. In the case where all individuals without exception are proposed to be sharers—sharers to an amount, more determinate conceivable and clearly expressible than any other—we have seen what the bars are that oppose themselves. But to any plan, from the benefit of which individuals of any description should stand excluded, the exclusion would be opposing an additional obstacle. In any view which could be taken of the case, by any the most sanguine imagination, the obstacles that could not but be opposed to the plan by all constituted authorities with their adherents, could not but present themselves as sufficiently formidable. But on this supposition, of a scheme narrowed by exclusion, every individual excluded would add to the strength of the obstacles that oppose themselves as above to the scheme of all-comprehensive benefit. Here, then, comes a dilemma. Let the excluded be few, the saving by the exclusion will be so much the less: let the excluded be many, the force of resistance, added to that of the constituted authorities, will be so much the greater.

Every conceivable plan, by the accomplishment of which the alleged mischief in question, or the subversion of the rights of property, would be effected, being thus disposed of, and the accomplishment of it being over and over again shown to be impossible, it is not too soon, it is hoped, to declare it so to be. I accordingly challenge all anti-radicalists to bring to view any other plan which, having that subversion for its object, shall now, upon the face of it, be seen by everybody to be impossible; and if, being unable to bring to view any such plan, a man will notwithstanding persevere in the assertion that there may be, and eventually will be proposed such a plan, and that men will act upon it, I must leave any one to say whether it be in the nature of the case that he who says this should believe his own assertion to be true.

At every step the discussion has taken, anti-radicalist readers, if any such it should have, will of course have been turning aside from it with disgust, and exclaiming—"We did not mean this, we did not mean that, we did not mean anything of all this—can it ever have been your belief that anything so palpably absurd would have been meant by anybody?"

Well then, if you did not mean this, what did you mean? Do you know what it is you mean? You, by whom, in every the most offensive shape you could find, opprobrium has for so many years been poured forth—poured forth, not only upon such multitudes, which to you is nothing—not only upon such moral worth, which to you is again as nothing,—but upon much pecuniary worth and even high rank, which to you is everything.

Say then at length, what it is you mean! Speak out, or, by that sort of evidence which even from men whose declaration is worth nothing, is more conclusive than it is in the power of any declaration from any man ever to be—prove in a word, by silence or evasion, that in thus dealing by us, you have all along been talking without meaning, and acting as accuser without ground.

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SECTION VIII.

CONCURRENCE OF ANY CONSTITUTED AUTHORITIES IMPOSSIBLE.

Be the plan of partition what it may, if the effect and benefit of it is to be more than momentary, the necessity of a concurrence, and that a persevering one, of the constituted authorities for the time being, has been already brought to view—(Section I.) Here, if the pile of impossibilities is not yet high enough, here then is another stage to add to it. The constituted authorities, by which the scheme will be carried into effect, will either be the existing set as they stand at present, or a new set. As to the existing set, the least objectionable plan being what it has been shown to be, a concurrence on their part would scarcely be expected. Sooner than concur in any such work of certain self-destruction, they would of course all of them fly the country, or die with arms in their hands, in their endeavours to resist it. But, how certainly soever, in the eyes of the now existing constituted authorities, supposing any advance made in such a scheme, their own destruction would be among the results of it, it could not be more so in their eyes than it would be in the eyes of any person whatsoever, into whose hands the immediately operative power of government could come to be transferred.

A design of this sort agreed upon, and nobody to put the question—by what hands the business would be to be done? A design of this sort thus blindly agreed upon—agreed upon by numbers competent to make serious advances toward the execution of it? If any such supposition can be made, it must be by some orator, by whom a correspondent conception has been formed of the state of the understanding on the part of the swinish multitude: my powers are unequal to it.

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SECTION IX.

ACCOMPLISHMENT IMPOSSIBLE—DESIGN IMPOSSIBLE.

If that which a man would be glad to do, is in his eyes impossible to be done—so long as it is so, he will neither attempt to do it, nor design to attempt it. A position to this effect may, it is hoped, without much fear of contradiction, be advanced.

One position remains, which for the completion of the proof of *not guilty* it will be necessary to advance, but to which the assent may not be quite so sure. This is—that supposing any such desires to have had place, a persuasion of the impossibility of success has, on the part of those whose concurrence would be necessary, all along accompanied it.

To this position no probable cause of dissent, on the part of any person whose situation in respect of private interest and interest-begotten prejudice admits of the giving reception to truth, presents itself.

Not so on the part of those by whom the speeches in question were penned and put into the Royal mouth. By them the persons accused, having to the amount of so many millions been pronounced guilty—guilty of the design of accomplishing that, the impossibility of which has so repeatedly been shown and proved—the accused pronounced guilty, and execution taken out, not against them alone, but against all the other members of the community along with them, they stand engaged not merely to deny the impossibility of such a design, but to maintain—to maintain for ever, and without flinching, its existence.

In so far as sincerity, if supposable, has had place, imagination—imagination alone—having been the hand by which the plan ascribed to the supposed levellers has been drawn, such according to this plan has been their desperation, such their rage, that how perfectly well soever assured of their own ultimate destruction—still, under the assurance, or though it were but the hope, of seeing it preceded by the destruction of their adversaries, even the prospect of self-destruction has been an inviting one to them.

But not even by this supposition, extravagant as it is, could any tolerably substantial ground be made for the imputation. For supposing destruction to come, they and not their adversaries, would be the first to be involved in it; and this priority is too manifest to have ever been unobserved by themselves.

Yes, if they were all agriculturists, on that supposition, with a spade in hand, ground to turn up with it, and potatoe cuttings to put into it, if a man could live for a time without fuel or fresh clothing, he might keep himself alive, provided always that he could wait till the potatoe germs had grown into potatoes.

Such is the condition in which, on the receipt of the supposed benefit, the labourers in husbandry would find themselves placed: such the prospect which it would hold out to them. The labourers in manufactures, and other labourers other than those in husbandry,—what is the prospect it would hold out to *them?* In comparison with their lot, the lot of the man bred up in husbandry labour—ruinous as we have seen it—would be an enviable one. The period arrived, the husbandman would have nothing to learn; the non-husbandman would have everything to learn—digging, manuring, sowing, weeding, reaping, everything: all this he would have to learn, and in the meantime he would have to starve.

Meantime the supposed objects of this desperate rage—the owners of property—how would it be with them? They would be the last to suffer: all of them together the last; and among them, the richer a man were, and thence by the supposition the more obnoxious, the longer it would be before his time of suffering came. With more or less disadvantage, he who had property would, by exporting it along with himself, retain a part of it, or get something for it in the way of exchange. But the supposed intended plunderers, no property could they export, any more than their own persons, the land they could not export, and that, with or without buildings on it, is all—so it has been shown over and over again—that would be left in their hands. Yes: it is upon their heads that the calamity would fall in the first instance. Never, anywhere, but in the wages of labour can they have beholden the source of their subsistence. As to the manufacturers in particular, in no small proportion have they had for their sole purchasers the opulent class, as rising one above another throughout the whole scale of opulence.

Long before the time when the power of commencing the partition had got into any of the hands charged with being disposed to use it, the proprietors, instead of continuing to employ any of their money, as usual, in the purchase of the manufactures they had been accustomed to consume, would cease from all such purchases altogether. With everything they had or could get, that is exportable, they would take their flight from the country, as above.

Before this topic is closed, one other circumstance must be brought to view, and that is, the smallness of the lot by which, in the character of a motive, the determination to embark in an enterprise so full of personal hazard as well as difficulty, must have been produced.

Note, that by this one circumstance stand excluded from the number of the possible associates, all those who, in possession or expectancy, beheld within their grasp any mass of property not much below the value of the *equal lot.* Instead of supporters, all such persons the scheme would have for its inflexible opponents. But at the command of their opponents are all the possible *means* of support to the scheme on one hand, of opposition to it on the other. At the command of the supposed associates, what are the means? The hands they were born with—these and nothing else. Such are the hands, of which the Monarch of this country, with his Lords and Commons, have been stricken with that fear, the expression of which is contained in the two late speeches which have above so often been brought to view: in these speeches—in the consequent addition of the 10,000 men and upwards to the standing army of 100,000

and upwards, and in that *real* subversion by which, in virtue of the new laws, the constitution has been secured against the *imaginary* one.

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SECTION X.

THE TALKED-OF SPUNGE NO PROOF OF THE DESIGN.

But by Radicalists (says somebody) a wish to see a national bankruptcy effected—or, as the phrase is, a spunge applied to the debt, has at radical reform meetings been openly and uncontradictedly spoken of in the character of a desirable result: and here would unquestionably be subversion of "rights of property."

To this come the following short answers:

1. Spoken of in such meetings—yes. But how? Rather as an expected cause of reform than as an intended effect. No otherwise than in so far as it has been declared to be an intended effect, does it apply to the present purpose.

2. Even supposing it intended to be produced, and produced accordingly, it would not amount to the design insinuated in the speech. True it is, that to the amount of this debt, so much of the rights of property in that shape would be subverted: but property in all other shapes would, for anything that this would do, remain untouched. Note well, that subversion—not of "*rights of property,*" *i. e.* some rights of property—but of "*the rights of property,*" *i. e.* all the rights of property, is the object charged to be aimed at. Every time a handkerchief is picked out of a pocket, subversion of rights of property takes place. Note likewise, that from the aggregate mass of property in the country, though no addition would be made to it, no defalcation would be made. I do not say that no preponderant evil would be produced. But that is another consideration, which will meet us presently.

3. The very design, whether in itself it be useful or pernicious, proves even a respect for property in all other shapes. For what would be the effect, or supposed use of it? Only to take off so much burden—so much of deduction—from property in all other shapes: deduction, namely that made by taxes. Suppose property, in all other shapes, dealt by according to that design, the existence of which was in the speech declared to be believed, it has been seen what would have become of it, and whether, by the very partition, the impossibility of paying the debt, and thereby the virtual abolition of it, would not have been effected. But that no such design of universal partition can possibly have been entertained, has, it is believed, been sufficiently shown.

4. To no one of the supposed plotters in question would or could any immediate benefit be produced by this spunge. Ceasing to pay dividends to the present annuitants would not put money into the pocket of any reformist, or any one else. Suppose the dividend divided amongst the reformists instead of the present annuitants,—is that what is meant? But on this supposition the debt would not be abolished; it would be kept up.

5. It is not by all radicalists, nor by more than a very small part of the whole number of radicalists, that so much as a wish to see this state of things take effect has been expressed: take effect in any character—either as a fruit and consequence, or as a cause.

Thus much as to ineligible reform in that particular shape. But amongst the plans of reform, or expected fruits of reform held up to view, suppose in any number, schemes ever so extravagant. By any such extravagance could any just cause of objection be formed against any that were free from the extravagance? If yes, nothing could be more easy than for men in power to manufacture in this way a bar to all reform, and that an insuperable one. To employ a number of men to propose and advocate each of them "an absurd, visionary, and senseless" plan of reform (to use Earl Gray's phrase,) or "a wild and visionary plan" (to use Lord John Russell's phrase,) would be quite as easy as, and somewhat less odious and nefarious than, to give birth to crimes by employing instigators for the purpose of their becoming informers.

That, without any exception, all who call for radical reform should be uniformly well informed and wise, is an expectation which it will be time enough to regard as a reasonable one, when wisdom in that same degree has manifested itself on the part of their rulers.

The supposition on which acts of government and speeches made in houses, seem uniformly to be grounded, is that of consummate excellence on the part of those who have any share in the powers of government, coupled with consummate depravity on the part of those who have none: the supremely ruling *one,* sharing with the Almighty in his attributes, as Blackstone, who enumerates them expressly, assures us he does; those in authority under him a little lower than the angels; the subject-many devoid of reason, and in shape alone differing from beasts: hence it is that they are unfit to be, and incapable of being, reasoned with—fit only to be crushed and slaughtered.

That by the persons in question any such design should ever have been harboured as that of endeavouring at the subversion of the rights of property in other shapes, has, it is hoped, been sufficiently proved to be impossible. That by those same persons, in a number more or less considerable, the design may have been harboured of endeavouring at "the subversion of the rights of property" in this particular shape, seems neither impossible nor improbable. But, against a mere design, supposing it to have no chance of producing either the effect aimed at, or any bad effect in any other shape, not only would "subversion of the constitution," but even reason and argument, be so much words and paper thrown away. He in whose eyes the catastrophe is not regarded as capable of being produced otherwise than by the political ascendency of those whom he regards as labouring to produce it, will see no cause for apprehending evil in that shape, unless in so far as the existence of such ascendency should in his eyes be more or less probable. Still, however, as from that endeavour preponderant evil could not fail to take place, might not such a demonstration be in their eyes at least productive of good effect? Evil in that particular shape has not any probability, yet from those same endeavours, evil in this or that other shape, may in those same eyes or in other eyes be more or less apprehended. On this supposition, if to their own satisfaction it were demonstrated, that by any endeavours made or declared to be

made by them towards "the subversion or extinction of the rights of property" in this shape, no good—preponderant good to themselves—could take place, but that on the contrary much preponderant evil could not fail to take place, might not such a demonstration be, in their eyes, at least productive of good effect?

From any declared or known anti-radicalist, any such statement would have to encounter the force of adverse prepossession. From a known radicalist it many stand a better chance of being regarded with whatever attention may be due to it.

These things considered, it has been thought that the following suggestions in proof of the ineligibity of this supposed remedy, in respect of the interests of any persons who in the character of radicalist may have been occupied in the endeavour to apply it, might not be without their use.

If it should appear, that while the extinction of the debt without equivalent would be productive of preponderant evil to a very great amount, the abolition of it by means of an equivalent would still be productive of preponderant evil, though to a less amount, the result will be a practical conclusion, such as under existing circumstances may not be without its use.

Reasons against a national spunge,—*i. e.* complete insolvency on the part of government:—

1. Upon the face of it, it presents not any national advantage in any shape. Yes: if the creditors were all of them or the greater proportion of them foreigners; for here would be pecuniary advantage for a *motive: counter-motive* none, but the dishonesty, and the attendant consequences of it. Setting foreigners out of the question, on setting money against money, all that were in the character of debtors would gain: all that were in the character of creditors would lose. Taking into the account the whole of the community together, here, then, in money there would be no gain. But money is of no value, otherwise than as a means of happiness. Now in happiness there would be great loss: for, quantity and quality being equal, and all other circumstances the same, suffering from loss is always greater than enjoyment from gain; otherwise there would be no preponderant evil produced by depredation in any shape, nor reasonable cause for punishing it.

2. Among those who would suffer soonest and most, would be all those by whom a change of this sort has been considered or spoken of as desirable. Among them, in an indefinitely large proportion perhaps, the greatest portion are those by whose labour such goods are manufactured as have for their consumers and purchasers, persons whose property is in this shape. From this defalcation, though all labourers would suffer, labourers in manufactures would suffer in the greatest degree: for among their productions are those which can best be spared. Among the productions of husbandry alone are those which consistently with life cannot be spared.

3. It has never yet been shown, nor, it is believed, can it be shown, in what particular shape any preponderant good from any such forcible and unlooked-for transfer of property should come—should come at any time how widely soever distant. That in

the first instance, and for an indefinite length of time, distress, to an incalculable but at the least a prodigiously vast amount, would be produced, cannot be matter of doubt to anybody. If at the end of the account, preponderant good in any shape were to be enjoyed, it would only be by such persons as, in respect of fixed property, or means of subsistence in other shapes, should have been enabled to weather the storm. And among these scarcely would any person of the class now in question be to be found.

In a word, the distress produced would be certain and immediate: the looked-for equivalent—the alleviation, would be uncertain and remote.

When the advantages from extinction in any way are brought to view, first comes the taking off of the taxes, then the lowering of prices to the pitch from which they were raised by the taxes. Unfortunately, the first result is not by a great deal so speedy as imagination is wont to paint it. When taxes are taken off, there remain the tax-gatherer and the clerks to be provided for; and thus it is that it is only as a tontine annuity increases, that that part of the burthen of taxation which is composed of the expense of collection can be diminished. The tax-gatherers and clerks may indeed be turned out to starve; and for a warrant for so dealing with them, some bad name or other may be attached to them. But by this bad name, neither will the sensibility of the individuals to suffering be diminished, nor the part which their happiness constitutes of the universal happiness, nor their right to have as much regard shown to their happiness as to that of an equal number of other persons.

Look the whole community over, scarcely will you find that description of persons for whom some bad name or other has not been found: none whatever, for which a name of that sort might not be found. But to make any such pretence for evil doing requires no more ingenuity than, nor so much time as, the tying a canister to the tail of a dog for the purpose of tormenting him.

Such is the sad effect of profusion—that evil, of which with so many others the essence of monarchy is composed. This expenditure with its burthen is the work of an instant: suppose relief to come, half a century may have elapsed, and still the exoneration is not complete.

Just so or worse it is with armies. Raise them you may in a few months: disband them you may in the compass of a day. But as to exoneration from the expense—Oh no: half a century may have elapsed, and still the relief remain incomplete. Here too comes in another feature: tax-gatherer and office-clerk *should not* be turned out to starve;—soldiers *will not* be.

4. The burthen in this shape being already in existence, and not to be got rid of but by preponderant burthen in other shapes, the continuance of it in this shape seems productive of a distinct and peculiar advantage;—namely, the opposing a proportionable difficulty to war. The power which has most effectually at command a greater body of the necessary and effectual means of war than any other has—not to say than all others put together have—such a power is surely in less danger than any other can be, of being forced by aggression into a war of mere defence: and as to offensive wars—wars for conquest, or for the pleasure of being insolent, whatsoever

may be the real propensity, scarcely of any such propensity will the existence in their own instance be avowed, at least in direct terms, by any men in the situation of rulers.

Now, under a constitution or form of government such as ours, the profit, real or apparent, to the ruling few, and thence the propensity to engage in needless and useless and unjust wars, is so strong, and all other counteracting causes so completely wanting, that the difficulty opposed by the burthen in question to such wars seem to me a blessing beyond all price.

4 *continued,* or 5. If this country were more likely to be engaged in a war of necessity, and mere defence—in a necessary and defensive war, than in an unnecessary and offensive war,—on that supposition, the effect of the extinction or diminution of the debt might upon the whole be advantageous. But to advance any such position shall be left to those, if any such there be, who either believe the truth of it themselves, or can make sure of persuading others so to do.*

Now by war, whenever there is one, men of the class of the radicalists—in a word, of the unopulent many—will be greater sufferers than any that stand above them in the scale of opulence. For, in the case of war, let it come when it will, money must be found. It must be taken from all classes; and the less a man has of it, the less he can spare for this or any other purpose.

But (says somebody,) by the reformists, supposing them to have the ascendency, war, except in the case of its being necessary war, will not be engaged in. Easy enough this to say—not quite so easy to be assured of. Under democratic ascendency there would still remain—besides the people's Commons—the monarch with his Lords, all of them with their inbred appetite hungering and thirsting after war, instead of righteousness. Power, money, plunder, honour and glory, additional distant dependencies—more and more offices and honours—depredation in all its shapes—in all of them applicable to the purposes of corruption: honour, and glory—pleasure of insulting and oppressing foreign nations. Upon the functionaries in office, high and low, all these incentives will be operating with unabated force; and for producing a correspondent inflammation in the breasts of the people in their character of electors, no power would be spared.

Not that, merely for this purpose, any one could seriously maintain that the accumulation of a national debt—especially a national debt heavy enough to prevent war, would be an eligible measure. All that is meant is—that when the community has been subjected to a public burthen in this shape, this is the shape in which for that purpose it were desirable that it should exist, so long and in so far as it exists in any shape; that in particular no such thing as a sinking fund should ever be established: and that accordingly, should any permanent surplus be found to have existence in the produce of the existing taxes, the result should be the abolition of a correspondent quantity of the produce of those, of which the continuance was found, in all respects taken together, the most pernicious.

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PART III.—

DEFENCE FROM EXPERIENCE IN THE CASE OF THE UNITED STATES.

So much for the general nature of the case.

In *experience,* is there anything to give countenance to a supposition thus shown to be in theory so extravagant as well as completely groundless?

In experience? On the contrary, from experience all the evidence that the case furnishes is directly in the teeth of the supposition, and puts the most decided negative upon it.

Look first to the *North-American United States.* In that vast region—a region peopled with men of English race, bred up in English habits—with minds fraught with ideas, associated with all English ideas by English language,—in that vast region, what is the state of things? If not indeed exactly what in the British Isles it would be rendered by democratic ascendency as established by radical reform, it is at any rate a state of things which to the present purpose is not materially different from it: and in particular a state of things, which, if it had been in human nature to give birth to any such design as that of a general subversion of the rights of property, would have been full as likely to give birth to such a design as the condition of the radicalists in the British Isles can now be.

Well, then, in those United States such is the state of things in respect of the influence of the people at large in the business of government. What, then, is the consequence? Any such subversion of property as the form proposed is accused of being to a certainty productive of? No—nor any the least approach to it. Any inferiority in respect of general tranquillity and felicity in other shapes, as compared with the British Isles? On the contrary, a great and perfectly uncontrovertible superiority.

First, then, as to the parallelism—the virtual identity of the features or elements of radicalism, *secrecy, universality, equality, annuality* of suffrages. All this, literally or virtually, you have in Pennsylvania and in New York, and, deducting slaves, these are the two most populous of the twenty-two United States. Anno 1810, population of the two, little less than a third of the whole. *Secrecy, annuality,* you have *literally:* and of the four elements these are the only two of which, in the literal sense, the existence is possible.

Universality a trifle short of it you have *virtually:* qualification in New York, *renting* 40s. a-year: *renting* sufficient—possession in property not required.* In Pennsylvania, not so much as renting 40s. or renting anything, required: payment "to any state or county tax" sufficient—payment though it were but once made:† and any man that pleases may offer himself to make it.

As to equality of suffrage,—*i. e.* equality in effect and value as between right and right in suffrage,—the effectual point is not arithmetical equality, but absence of any such degree of inequality as would be the result and proof of partiality and injustice. All charge of injustice on this score being in these instances unknown, details of the partition would not pay for the trouble of the research.

Here, then, is not merely radicalism—not merely democratic ascendency—not merely representative democracy in conjunction with monarchy and aristocracy,—but pure democracy, without any such supposed security for property—for good order, as the phrase is, as independent power lodged in the hands of the one, combined with independent power lodged in the hands of the few, are supposed to give. Well; and what has been the result? subversion of the rights of property? No—nor at any time any the least tendency towards any such thing. From the foundation of the several colonies down to the present time, property existing in all degrees of inequality from 0 up to half-a-million or more, and in all those proportions alike secure.

Sedition, insurrection against the constituted authorities—popular discontent—any thing of that sort? Near forty years have already elapsed since the triple yoke of monarchy, aristocracy, and sham democracy, were cast off: and nowhere in the Union have any of those symptoms of misrule at any times shown themselves.

Is it that distress has been there unknown? Not it indeed. Distress there has been, but too much of it. But the distress itself has not there been better known, than has the cause, the only cause of it. This being known, as little have men thought of making it matter of charge against their government or their constitution, as if, instead of want of market for productions, it had had drought or inundation for its cause.

In our Islands, the distress has had two causes: the deficiency of demand as in the United States for produce, and that excess of taxation which has been produced by vicious constitution and misrule. The misrulers place it of course, the whole of it, to the commercial account; no part to the financial and constitutional: but the people, who not only feel but see what the taxes are, as well as in what state the constitution is, are not to be thus blinded. No indeed. By shutting their eyes against facts, it is not in man's power to cause those facts not to have had existence; and thence it is, that notwithstanding all speeches and all invectives, and all penal laws and all prosecutions, and all hangings and all sabrings, it remains an undeniable truth, that if nothing will satisfy a man but the seeing the people quiet and content with their government while they are labouring in penury and distress, it is to pure democracy, or at least to democratic ascendency, that he must look for it.

Oh but (says somebody,) *New York* and *Pennsylvania*—these states are but two out of that number, which at first was thirteen, and now amounts to two-and-twenty. True: and for this very reason the experience is but so much the more instructive—the evidence afforded by it but so much the more conclusive. In several States of the Union, the qualification is not only real as well as nominal, but inordinately high: yet nowhere from the remoteness from universality has any advantageous effect, from the nearness to it any disadvantageous effect, been either experienced or surmised.*

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PART IV.

DEFENCE FROM PARTICULAR EXPERIENCE IN THE CASE OF IRELAND: Years 1777 Or 1778, To 1783.

SECTION I.

ANALOGY BETWEEN THIS AND THE PREVIOUS CASE.

We come now to the case of Ireland. In the case of the United States, what we have been seeing is—as the cause of the effects in question, representative democracy—pure democracy. This is not exactly the same state of things as that which we have been stating as the natural, the necessary, the desirable effect of radical reform—namely, democratic ascendency. But though not exactly and exclusively that, it is that and more: and if so it were, that radical reform, with its inseparable fruit democratic ascendency, were in any degree mischievous or dangerous, pure democracy would to a much higher degree, be mischievous or dangerous.

In the United States, for the cause of the effects in question, we have seen pure democracy: for its effects of the negative kind, instead of the alleged subversion of the rights of property, no such subversion; effects of the positive kind, condition in respect of the rights of property better, much better, than under Matchless Constitution, with the benefit of English institutions the whole mass of them: condition in respect of general felicity as dependent on the possession of its several elements and external instruments, generally superior likewise.

In the case of Ireland, we shall see a case still more exactly in point. For a length of time quite sufficient for experiment—quite sufficient for the support of every inference,—we shall see democratic ascendency established and maintaining itself: maintaining itself, not indeed under the name of parliamentary reform—radical parliamentary reform—but what is more, with the essential characters of it. So much for the cause of the effects inquired after: as to the effects themselves, they will be found still in their nature the same as in the United States. Subversion of the rights of property, none—subversion of the constitution, none. Thus much for the merely negative effects: look now to the positive effects. Here, on the side of Ireland, we shall find a brilliant superiority:—the average mass of felicity exalted to a pitch unknown before or since—public and private *felicity;* and, as at once a cause and consequence of it, public and private *virtue.*

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SECTION II.

DEMOCRATIC ASCENDENCY, HOW PRODUCED.

In the case of Ireland, the state of things here designated by the appellation of democratic ascendency had for its cause the system which has been distinguished by the various appellations of "Irish Volunteer Association," "Irish Association," "The Volunteer Association," "The Volunteer System;" meaning in every case the system carried into effect by a body of men in Ireland distinguished by the appellation of "Volunteers," "The Armed Volunteers," or "The Associated Volunteers."

In the formation of their character, the following circumstances may be seen united:—

1. The members, for what they did, had no authority from Government.

2. They were self-formed into regular bodies.

3. They were self-trained to the use of arms, individually and collectively.

4. They were provided with arms of all sorts—in some places even with cannon.

5. The aggregate body was constituted by, and composed of, a number of smaller bodies self-formed, all over the kingdom. The aggregate or national body, of provincial bodies: each provincial body of local bodies, occasionally assembled in various towns or neighbourhoods.

6. In each such place, the members of the several bodies met together by voluntary agreement, in such sort that each one of them had for his electors all the others. This, it may be seen, so far as it went, was universal suffrage. So far as it went; and in the case of parliamentary election by universal suffrage, it is not that on every occasion every one who had the right would on every occasion exercise that right, but that every one, without exception, would be free to exercise it.

7. By the body associated in each town or place, delegates were at one time or other chosen and sent to a provincial assembly composed of the delegates from all the towns of places in which associate bodies were formed, in that one of the four provinces into which the kingdom of Ireland then was, and that part of the United Kingdom is now divided; as also to a National Assembly that met at Dublin, the metropolis.

8. The persons under whose command, in the character of military officers, the rest acted in the character of armed volunteers, were chosen by the suffrages of the rest in the character of privates—by the suffrages of those who placed themselves under their command, And among these officers were some among the highest in rank and opulence; and in particular, the Duke of Leinster, the first man in the peerage, and then, as at present, the only Duke not belonging to the Royal family.

The conjuncture was an unexampled one. The time was that of the American war—a war in the course of which, in addition to so many of its distant dependencies, the British monarchy had those of France and Spain to contend with. At sea, the superiority of Britain, which for some time was precarious, became at length converted into a decided inferiority. An invasion was every day expected, and Ireland being the point manifestly the most vulnerable, was the point upon which it was mostly, if not exclusively, expected.

A time at length arrived, at which, to defend the country, or rather of those in power in it and over it, the British rulers could not muster any more than 5000 men—5000 instead of the 20,000 which had been demanded as necessary. Abandoned by the Government to their fate, the people in various parts of the country stood up and prepared for their own defence.

In this state of things, the English rulers had the choice of two evils—to suffer the enemy to make a conquest of the country, or to suffer the inhabitants to take up arms, under an utter uncertainty as to the use that would be made of the power thus acquired. Of the two evils, they chose that which, even in regard to their own particular interest, was manifestly the best: they suffered the people to take their course.

That in so doing they were insensible to the magnitude of the danger they were exposing themselves to, was not in the nature of the case. In their situation, every danger is magnified and over-valued, rather than undervalued. But to avoid exposing themselves to it without immediate ruin, was manifestly impossible. They submitted to it with as good grace as they could: they not only joined in applauses and thanks to the objects of their jealousy, but put arms into their hands—16,000 stand of arms is the number mentioned.

While the danger from without was still growing every day more and more urgent, an attempt was made to provide against the interior and more lasting one. But by this attempt to avert it, the internal danger was but increased. For the purpose of bringing the volunteers regularly under the command of the constituted authorities, commissions from the Crown were offered to men of note in the country—to members of the local aristocracy, and hands were not wanting for the acceptance of them. But the purpose was too obvious: of such commanders there was no want, but volunteers could not be found, and men were wanting to such commanders. Freely men would serve—but under those in whom they had confidence. Monarchists and aristocrats there were not wanting, to subject the people to martial law, with the irresistible and remediless servitude that belongs to it; but hands were not so ready to receive as to make offer of such chains. None would serve under officers appointed by the monarch: every day more and more were ready to serve: and did serve, under commanders chosen by themselves—in concurrence with men pursuing the same objects, and partaking in the same affections. Shame and weakness was the result on the part of the constituted authorities: exultation and increase of strength on the part of the people.

In this state of things, the physical force of the country was manifestly in the hands of the people—of all such of the people as chose to take a part in the exercise of it. In a word, democratic ascendency was fully established: democratic ascendency—not democracy; for neither by the armed citizens themselves, nor by any man of their choice, was any act of authority ever exercised. Corrupt as it was—an object of universally declared aversion, and contempt—nothing was done but what was done by the Parliament, that is by the Ministry, with both Houses prepared and hired to do whatever should be required. Commercial emancipation and parliamentary emancipation united the wishes of almost everybody. These points were accomplished: and nothing could be more evident than that, but for the armed association, they never could have been accomplished. In what they were able to do, the English rulers, and those who in Ireland were sold to them, saw what more, in case of necessity, they were capable of doing: and this seen, whatever was done, it was by the constituted authorities that it was done.

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SECTION III.

FRUIT OF DEMOCRATIC ASCENDENCY A GOLDEN AGE.

Such being for five years together the effect of the volunteer system—of the will of the people manifesting itself on the principle of universal suffrage—in a word, of democratic ascendency substituted to a mixture of monarchical and aristocratical ascendency under a foreign monarch, and calling itself Protestant Ascendency because it was by Protestant hands that the tyranny was exercised—such being the nature of the powerful influence exercised by the body of the people on the conduct of the government—what were the results?

Subversion of the rights of property? No such thing. Subversion of the constitution? No such thing. In the constitution of the kingdom of Ireland, a change was indeed effected. But even on the occasion on which it was effected, numerous as were the authorities without the concurrence of which the change neither was nor could have been effected, ample in every case was the applause bestowed upon it. Scarcely in any one was an objection made to it—nor has so much as the shadow of an objection been raised against it since. That one flagrantly bad point removed, all the other points, good and bad together, continued as before.

Such being the institution—democratic ascendency—behold its fruits: tranquillity, harmony, morality, felicity, unexampled. Such as they were—behold another miracle—by the evidence of all parties in one voice, their existence was acknowledged. People's men triumphed in their golden age, and recorded it. Aristocratic Whigs, even after they had succeeded in destroying it—in substituting to it the iron age—trumpeted it, calling it their own work. So conspicuous was it—so incontestable, that not even could the most zealous monarchialists and Tories forbear confessing its existence.

Abolition of English institutions? No such thing. Good and bad together, English institutions remained as they were.

These indeed are but negative results—the mere absence, of certain results that have been seen presented to view in the character of pure evils (and the first of them—namely subversion of the rights of property—unquestionably such) and all of them as being the certain result of any state of things, under which the great body of the people were left free to give expression to their wishes.

It is with this experience full in view—all of them being at that very time not only in existence, but moreover in a situation which not only enabled them, but engaged them to apply their minds to the observation of everything that passed—that the men to whom we are indebted for the speech from the Throne, scrupled not to represent as

eventually certain in Great Britain and Ireland, all those results the complete absence of which was in that instance so conspicuous in Ireland.

Will it be said that this was not democratic ascendency, for that these armed bodies were composed of men serving in the character of privates under the command of officers; and that these officers were many of them, if not most of them, members of the aristocracy—several of them among the highest in the conjunct scale of power, riches, and property, as above observed and acknowledged?

True: of this description were the officers of this army in a certain proportion. But let that proportion have been ever so large;—suppose them all Members, either of the House of Peers, or of the House of Commons: with any the less propriety would the result have been termed democratic ascendency? Not it indeed: and for this simple reason. Over any one of the privates in this army, no one officer had, at any one time, any power other than that which the privates chose all of them to give to him. No king's commissions—no military law. Nor was it that the officers chose the privates: it was by the privates that they themselves were chosen officers.

All this time it was the people at large—it was the privates, that governed, so far as they chose to govern. As to the members of the aristocracy, including the creatures and instruments of the monarchy, each in the character of member of the democratic association had a voice indeed, but no one had any more.

To prevent evil in any shape, nothing was there in the breast of any one, but the awe he stood in of the rest. Yet, such is the effrontery of some—such the blindness of so many—mere anarchy is still the name that so long has been, and so long will continue to be given, to the only sort of government that is anything better than an established nuisance.

Place and time considered, even had the evil results, the absence of which has been brought to view, actually on this occasion had place, it would not by any means have followed, that in England or Scotland at this time, by the same power as effectually in the hands of all who chose to partake in it as it was then, those evils or any of them would have been produced. Who is there that can be insensible to the magnitude of the body of political experience that has presented itself to view since that time? Who is there that in respect of the extent to which the diffusion of political instruction has had place, can be insensible to the difference between Ireland on the one hand, and England and Scotland on the other?

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SECTION IV.

COINCIDENCE OF ITS CHARACTERS WITH THOSE OF RADICALISM.

The position to be proved—and proved from the example here in question is—Radicalism not Dangerous. What has been shown already is, that democratic ascendency has nothing dangerous in it. The thing now to be shown is, the virtual coincidence between democratic ascendency as in that case established, in respect of government, and the state of things that would be established, if a free and genuine representation of the people in the Commons House were established upon the principles of Radical Reform.

Impossibilities must not here be looked for. Between a state of things once actually in existence, and a state of things only in imagination and proposal—between a state of things established without authority—by other than the constituted authorities,—and a state of things as proposed to be established by legal regulations—the work of the constituted authorities,—a coincidence in terms cannot rationally be expected. All that can be reasonably looked for is, that between the substance of the elementary arrangement, or leading features on the one part, and those on the other, the coincidence shall be found to have place.

First comes *secrecy of suffrage.* Here, instead of the cause—the cause which if not followed by the effect, would not be of any use or value—we must look for the effect. We must look for freedom, or, in a word, for genuineness: we shall find it in the particular state of things in question, secured by other causes—secured to a considerable degree, but still too far short of that degree of perfection, in which it would be secured by secrecy of suffrage.

It is not in itself that secrecy of suffrage is of any use. The only use it is of, lies in the effects of which it is productive to the community at large. Freedom, and thence genuineness of the votes, and thereby assurance that in each instance the vote given is conformable to what in the conception of the voter is the universal interest: to the individual, security against that coercion and oppression which might otherwise be exercised on him, on account of the service he has or would have rendered to the universal interest,—namely, by preventing him from rendering it, or punishing him for having rendered it, as the case may be.

In the case in question, freedom had place then, from the very nature of the case; for no one could have been a member of the association, and as such given his vote in the choice of the delegate sent by it, who had not been rendered a member of it by his own real inclination. That among those who appeared in that character there were many who on ordinary occasions would have felt themselves dependent on the pleasure of this or that individual or number of individuals, in the character of patron or patrons, cannot be matter of doubt; but in the circumstances of the time they found

several shields against oppression from that cause. In the impossibility of resisting the tide of public opinion and popular sentiment, the dependent would find an excuse which could not but operate with more or less effect to soften the rigour of an oppressing patron: and in that same force he might, and in many instances would, find a protection by the contemplation of which the patron would be deterred from exercising the oppression, with whatever power the desire to exercise it might all the while be operating at the bottom of his heart.

Next comes *universality of suffrage.* To the existence of this universality of suffrage, what is necessary on the occasion in question is, not that all persons should actually vote, but that all persons should, as against any legal impediment, find themselves at liberty to vote: that upon no person, by the exaction of qualification or otherwise, any exclusion should be put on the ground of want of property, or for any other cause. That in the case in question, such was the state of things has been rendered manifest. The Protestants being that part of the population in which the institution appears to have originated, if upon any description of persons an exclusion had been put, not want of property but want of orthodoxy would have been the cause. That at the outset, in this or that part of the country, exclusion for that cause had place to a certain extent, seems to be sufficiently declared. But if Lord Sheffield, a declared and contemptuous adversary to Radical Reform, is to be believed, as the institution spread, exclusion on this ground vanished, and it was in proportion as Radical Reform forced itself into mens' eyes and hearts, that exclusion vanished; and in a ratio greater than that of its population to the Protestant part, Catholicism soon found place in the body of the associated volunteers.

Will it be said, that though on the ground of want of property, no direct and manifest exclusion was put on any one, yet an indirect and not less effectual exclusion was produced by the need of money for the purchase of arms, and for subsistence during the time occupied in training? As for arms, to the extent that has been seen (16,000,) they were furnished by Government; and as to the remainder of the total number of the associates, property in the arms not being necessary to their use of them, the cost of the requisite supply to all those who could not with convenience to themselves make the purchase, would be a mere nothing among the men of first-rate opulence, who by participation in the common interest were engaged, heart as well as hand, in the design, till Parliamentary reform came upon the carpet, and gave, as we shall see, an opposite direction to the current of aristocratic interests and desires.

Thirdly, as to *equality of suffrage.* Rather for the purpose of showing that no one of the elements of radicalism has been passed by, is any particular mention made of this one. The circumstance upon which equality of effect and value, as between one man's and another man's right of suffrage depends, is equality of population as between each elective district and every other. By no other instrument than the hand of law could any approach to equality in this particular, it is sufficiently evident, have on that or any other occasion been effected. By no other instrument, nor even by that, without a constant, particular, and all-comprehensive body of arrangements, such as that which has lately been submitted to the public view,* nor by even that instrument, before the end of a considerable length of time. Of the districts in which the several component bodies of the all-comprehensive association were formed, the dimensions

would necessarily be those which, having originally been marked out by the legal arrangements, had been perpetuated by the universally-employed denominations.

Fourthly and lastly, as to *annuality of suffrage.* This feature of the plan is subordinate in the scale of importance to universality, as both together are to freedom and genuineness, and thence to secrecy. If in its composition the representative body be such as determines it at all times to sacrifice to the interest of the corporation—of the ruling few of which it makes a part—the interest of the subject-many, any frequency of removal has little other and better effect than a correspondent repetition of all-comprehensive vexation and expense.

Be this as it may, of democratic ascendency, as manifested during the prevalence of the Irish volunteer system, not simply annuality of election, but ultra-annuality, had place. Under democratic ascendency, as it would be regularly organized and permanently established in the case of the Commons House,—under and by virtue of a system of Radical Reform, certain terms would of course be appointed, on which the electors should be called upon to renew the signification of their wishes, and thus correct any imperfection which in this or that instance may have been produced by a less auspicious choice. In the case of the self-formed body in question, its composition and operations not having been the result of any pre-established arrangement, no such simultaneous and periodical faculty of change, leaving each individual in secure possession of his situation during the whole interval between change and change, would naturally present itself. The result was a still greater degree of impermanence than under the arrangement of annuality of suffrage: a still greater degree of impermanence, and thence a still closer dependence on the the part of representatives, on the good opinion and will, and self-supposed interest, of constituents.

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SECTION VI.

EXTINCTION OF DEMOCRATIC ASCENDENCY AND REFORM—RESTORATION OF MONARCHICO-ARISTOCRATICAL ASCENDENCY, AND ITS CONSEQUENCES.

Having continued so long—Democratical ascendency—how came it to end? Having proceeded so far,—Reform—how came it to stop?—*Answer:* Democratical ascendency was brought to its end by the leaders whom the people, in their character of associated volunteers, had chosen; and in particular by those of them who were in Parliament. Democratical ascendency being stopped, monarchico-aristocratical ascendency was restored, and reform was stopped of course. These leaders—how came it that they deserted and betrayed the cause of those by whom they had been chosen?—*Answer:* Because they had gained everything that in their eyes was for the advantage of their aggregate interest,—namely, the aristocratical interest; and if they had proceeded with the people any farther, the next step they took would have been for the advantage of no other interest of theirs than that which they had in common with the people. Now, this broad interest was in their eyes of less value than their own peculiar one. As for the interest of the rest of the community, in so far as distinct from their own, it was not, it never had been, it never could have been, of any value in their eyes. In the eyes of here and there an extraordinarily constituted individual, perhaps yes; but taking them as a body, it is inconsistent with the nature of men that it ever should have been so.

By the emancipation of Irish trade from English oppression, they had given increase to the wealth of the people and to their own along with it: by the emancipation of the Irish Parliament from the English Parliament, they had given increase to their own power, without giving proportionate increase, if any, to the power of the people. By Parliamentary reform, in so far as it was efficient, they would have given increase to the power of the people at the expense of their own:—of course it was not to be endured.

Being all of them public men, and in particular of that class of men—the Whigs—to whose interest it is not safe openly to cast off, as do the Tories, all pretence of regard for the interest of the people,—for deserting the cause of the people it was necessary to find a pretence. It was necessary to them all: to Lord Charlemont in his acting; to Mr. Hardy, his eulogist, in his writings; to Mr. Grattan in his speeches. Then, as now, the substance of their pretences was included in the two words, mischievous and impracticable.

So long as they had confined, as far as appeared, their designs to commercial and parliamentary emancipation, the people had had the most influential members of the aristocracy of the country, not only for their leaders, but for their sincere and active

friends and co-operators. No sooner had Parliamentary reform come in view, than their leaders, continuing still in the exercise of their functions, became in secret the most determined and irreclaimable opponents. Still, however, they were not the less, but rather the more determinately their leaders; for it was for the more sure frustration of the most important and salutary of their designs and measures, that their original friends secretly became their adversaries, continued to be their leaders, and to employ all their art and energy in giving obstruction to these same measures.

For this policy, such as it was, the Irish nation, and along with it the British, are chiefly indebted to the Earl of Charlemont: for the disclosure of it, to his Lordship's biographer, which of course is as much as to say his panegyrist. With Mr. Hardy's most interesting as well as instructive performance, the public was not gratified till the year 1810.* Of Mr. Plowden's more general history, the date being 1803, the secret for which the friends of radical reform are so highly indebted for the candour and simplicity of the biographer, was, as was natural, still a secret to the historian. The treacherous lord is accordingly mentioned by him, not merely as the actual, but as the well-meriting object of the public confidence.

The 29th of November 1783 was the important day on which the fate of Parliamentary reform, and with it that of Ireland, and thereby also that of Great Britain, was—no one can say for what length of time—decided. Up to that day, continual had been the advance on the part of the associated volunteers, the only true representatives of the people—the retreat on the part of the British monarchy, with its dependents and adherents in the two Houses. On that day, within trumpet's sound of the then sitting Parliament, the Convention was sitting, with the Earl of Charlemont for its president. To the House of Commons from the Convention came, with a Parliamentary Reform Bill in his hand, Mr. Grattan's great and worthy rival Mr. Flood. The House of Commons made a stand. At the end of an almost furious debate, the motion was rejected by a large majority, the mover having been dealt with in the character of the chief of an invading enemy.

Masters of the field, the two Houses resumed their independence. They gave exercise to it by the appropriate resolutions and addresses. Volunteer bodies,—provincial assemblies,—conventions—were now put upon their good behavour. From universally acknowledged benefactors and saviours of their country, a few words would have sufficed for converting them into, and declaring and constituting them, traitors.

No sooner had Parliament marked the Association, and in particular the meetings of delegates, with the character of delinquency, than the men of rank and opulence among its leaders either quitted it altogether; or if they continued their attendance on it, did so for no other purpose than that of putting a stop to its operations, and nullifying its influence.

The last meeting of any assembly under the name of a convention or assembly of delegates, was held as an illegal one, and those by whom it was convened were, though members of the official establishment, prosecuted and punished.

Though the only means by which any constitutional reform could have been effected, had thus been stigmatized and proscribed, reform itself had not been formally included in the proscription, nor were meetings for that purpose either simply and indiscriminately prohibited, or endeavoured to be rendered ineffectual by restrictive regulations. Petitions and bills, having a reform in the representation for their professed object, were therefore, on more occasions than one, presented to the Commons House. But with the exception of the bill which, so long as eleven years after the critical censure passed on the Convention in 1783, was moved in 1794 by Mr Brabazon Ponsonby, whatever was proposed was so far short of radical reform, as to be void of all real efficiency; and even these changes, insufficient as they were, were rejected with scorn as absurd, and with horror as dangerous.

In this state of things, finding democratic ascendency, and efficient reform under the constitution hopeless, the friends of the people—the only men who were really so, little by little began to turn their eyes to democracy, as being the people's only remaining hope.

Between the termination of the American war in 1783, and the commencement of the French revolution in 1793, disturbances in various parts of the country, on the part of various sets of insurgents from various causes, took place. On the part of the Protestants, the great all-comprehensive grievance was the system of universal corruption and misrule: on the part of the Catholics, the great and all-eclipsing grievance was Catholic slavery—the remedy exclusively or chiefly looked for, Catholic emancipation. Thus differing in their objects, the two sects, in the course of their opposition to Government, frequently clashed and persecuted each other. All this while, Government availed itself of this dissension, and stands charged with having fomented it, and by connivance, and even instigation, given encouragement and increase to the outrages which were so savage and so abundant.

On this occasion, in Ireland, as on every occasion everywhere else, the great object of those who shared in the power and sweets of Government was to maintain, and with as much increase as possible, their power. The extraction of the money of the subject-many for the benefit of the ruling few, being, in so far as it was distinct from the prior object, that which in the scale of estimated importance stood next to it, occupied the middle place between that and the comfort and tranquillity of the people.

Among the effects of everything that is commonly presented to view by any such words as discord or disturbance, are the lessening, or tendency to lessen, the quantity of money capable of being extracted as above, and the calling upon members of Government for an extra proportion of attention and mental labour. By the first-mentioned of these effects, the interest of the purse was disagreeably affected—by the other, the interest of the pillow. Even while employed in giving support to them, it became an object with the Government to apply some check and limitation to the discontents—some relief to the sufferings it was producing. Though it had force enough at command to set insurrection at defiance, a different and less atrocious policy presented itself as eligible, and was adopted.

Division, as it was the most obvious expedient, so from the very outset it was employed: but in the course of things—as by this means discord with its mischiefs to the rulers as above was kept up—the less pleasant operation of giving to one of the naturally opposed parties a partial relief was superadded; vengeance sacrificing its gratification at the irresistible call of self-regarding prudence. To which of the two parties the relief should be administered, was not exposed to doubt. The Protestants, whose object was a Parliamentary reform, and that a radical one, could not be expected to be satisfied with anything less. But Parliamentary reform would to the powers that be—confederacies of monarchy and aristocracy—Parliamentary reform would, by the whole amount of it, be the surrender of so much power—a partial abdication which King George was no more disposed to than King James was to that total one which he knew not of his having effected till he was informed of it by the two Houses. By Parliamentary reform, everybody who had power in his hands would have lost more or less of it. By any relief that was proposed to be given to the Catholics, he did but exercise it. The Monarch lost none—the aristocracy lost none. The Protestants were the party by whom the expense of it would be paid. By no concession to the reformists, either in the shape of gratitude, or in any other, could much popularity be expected: by no benefit, except under the notion of its being the fruit of voluntary kindness, can any such sentiment as gratitude be produced; and little must he know of the nature of man, and especially of men in that situation, to whom any such free good-will could present itself as possible.

Among the advantages possesed by despotism, one is—that so long as the blindness produced by it continues, the praise of mercy may, in proportion as the despotism is pure and complete, be reaped in conjunction with the profit of tyranny. Under it, vice is at all times covered with the mantle of virtue. Rightly understood, all mercy supposes tyranny—every claim to the praise of mercy is a confession of tyranny: take away tyranny, that which is called mercy is, if beneficially exercised, nothing more than justice. The more mischief a man has it in his power to produce, the greater the quantity which he has it in his power to abstain from producing: and for every lot of evil which the monarch abstains from producing, he obtains at the hands of the prostrate multitude the praise of mercy. Monarchy is almost the only soil in which that species of vice which calls itself mercy can make its appearance. Under aristocracy, the praise being as it were lost on such a multitude—lost for want of an individual to fix upon, is seldom claimed. In a democracy, there being no person in whom any such power as that of doing evil with impunity is to be found, there is no place for mercy.

Under every monarchy—under every aristocracy—under every form of government which is compounded of these two, the great body of the people are, in the eyes of their rulers, objects of a mixed sentiment, composed of hatred and contempt: the most crafty are those in whom the dissocial affection is covered by a cloak of sympathy; but among the vulgar herd indolence prevails, and the expense of the covering is saved. Only where every such covering is most completely and disdainfully cast off, could any such law be ordained as that which, assuming as a fact its being itself, on the part of the people, the object of hostile affection, attaches pains and penalties to the expression of it. By every act which it does under the motive of stifling the expression of the sentiment, the intensity of it is increased. Few are the boys who, by

a certain number of lashes applied by a tyrant schoolmaster, might not be made to cry out, “I love you, Sir,” in any language which he professes to teach; but to expect to find the boy in whose breast the affection so designated should by any number of lashes be produced, is a sort of expectation not compatible with any degree of blindness short of that of which the late liberticide measures have afforded so conspicuous an example.

Under such a government there is a continual conflict—or, as Swift would say in the Tale of a Tub—a continual game of leapfrog between love of money and love of vengeance. By love of vengeance, if it stood alone, the whole species would be devoted to extirpation. In ordinary times, love of money steps in, and says, Nay, but if no payers of taxes were left alive, no taxes would be paid. Some circumstances there are, which admit of a compromise between the contending passions. When population has got the start of subsistence, and the indigent become troublesome, the irascible appetite may be permitted to indulge itself without prejudice to the concupiscible, by a prudent and discriminating use of muskets or sabres. The irascible, while it is affording a feast to itself, may even be rendering a service to the concupiscible. In proportion as the number of paupers is decreased, so is the burden of the poor-rates.

While, to the Catholics, Government with one hand held out relief, and in driblets even administered it, it set the Protestants against them on the other. By this policy, the attention of both sects was diverted from the dreaded enterprise, and both parties were enfeebled. Instead of menace, the great body of the Catholics betook themselves to prostration. Catholic suffrage was given to them—Catholic emancipation was offered to their hope. Those who wanted the faith necessary to such hope, became insurgents—were unsuccessful—were subdued, and thus instead of the electors and representatives which victory would have rendered them, they became rebels and traitors. Being thus brought under management, the great body was prepared for offering their necks, along with those of their Protestant fellow-countrymen, to that measure from which the people of both nations received the common yoke.

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CONCLUSION.

A charge then has been made—a charge than which a more perfectly groundless, a more absurd one, never was or could be made. Myriads are its direct objects, and with them millions have been the victims of it. All this I have proved: and now that I have proved it, what am I or any one to be the better? Too probably, but so much the worse. The stronger the proof, the more intolerable the provocation—the provocation afforded to those against whom there is no security—whose will is their only law, and who, the more highly they are provoked, will be but the more likely to set upon me their legal black mastiffs, and drag me into a prison, there to finish what remains of life.

Subversion of the Constitution—enmity to English institutions—almost treason; what needs there more than a few such phrases—phrases completely void of all meaning other than that by which the disposition and designs of those by whom they are employed is manifested. Almost treason to-day, it may be quite treason to-morrow: Judges ready to decide this: Crown lawyers ready to call for this—all this is secured, and abundantly secured by the Constitution as it stands.

If to do this by the forms of the law would be too much trouble, what should hinder men in power, with or without the pretence of searching for treasonable or seditious matter, from sending a soldier or an armed yeoman to put me to death? The deed done, a pardon or a *noli prosequi* follows. This too is secured by the Constitution as it stands.

Not to speak of Constitution, for there is no such thing—if I love a government under which such things not only can be done, but are done, how can I do so without hating, or at least regarding with indifference, sixteen or seventeen millions of human beings whose misfortune it is to live under it? Can I do this? No; but I can say I do so: and after this declaration, if this will satisfy them, I am ready to do so at this time, and at all times.

The advocate of reason has drawn forth all his reasons—rendered demonstration complete, and disproof impossible. What is the consequence? Is conduct in anywise amended by it? Is any of the desired effect produced by it? No: either it is turned aside from, with a mixture of fear and scorn, or if noticed, noticed no otherwise than as a butt for ridicule. Look—did you ever see such a fool as this man! as if when we said he meant to strip us of our property, we, or any man of common sense, could believe it. No—let him go to Rome with his reasoning, and make the Pope turn Protestant: or to Constantinople, and make the Sublime Porte turn Christian. This is the radicalist who thought he should bring us over to radicalism, by showing that the principles of it had been professed to be acted upon in King's speeches. You remember how Brougham quizzed him, and how good a laugh it made for us. A parliamentary ground? Yes: *that* every parliamentary measure must have of course,—not that the ground must have any truth in it: where has the man lived all this while?

Now, let any man who has ever thought it worth while to consider what Parliament is—let him say whether, if instead of the words about subversion of the rights of property, an equal number of words taken by lot out of Johnson's Dictionary would not in that place have had the same effect; and whether if in addition to what has been done, the Bill of Rights had been repealed in form, and the mutiny act made perpetual, the majorities would have been less, or Whigs more numerous and constant in their attendance, or more active for the people's interest in their counties?

Let not the substance of the charge brought against us by the destroyers of our liberties—by the subverters of our rights—be out of mind. The object we are charged with aiming at is, to their purpose at least, precise enough: it is, the subversion of the rights of property—the subversion, not the destruction:—the subversion by means of a new partition; for, without aiming at destruction, which as above is impossible, no other mode of subversion is there that can be aimed at. But we have seen how impossible it is that any plan for mere partition of property should be formed and acted upon. What they put into his speech—the men who put it there,—did they themselves believe it to be true, or did they not? If they did, think of their wisdom: if they did not, think of their honesty;—think of the task which that man has to perform, whose endeavour it is to expose the falsehood of those pretences on the ground of which, for the more effectual preservation it is said of "English Institutions,"* English liberties have been destroyed. An absurd design is professed to be imputed—so palpably absurd, that the fact of its being really supposed to be entertained is impossible. Of this impossibility a manifestation has been made. What is the consequence—that the charge is retracted? Oh no: but some other design of equally palpable absurdity is then imputed. Confute the second imputation, then comes a third: and so on, out of the tyrant's brain come chimeras after chimeras in any number. Now, if it were possible, suppose the last chimera destroyed, what would the accused—and if not all accused, the whole people of the country have been punished—what would the accused be the better for it? Not a whit. This power is still in hand: a power by which every oppression in every shape in which it is wished to be exercised, can be exercised at pleasure. The power is still in hand,—it can equally be exerted with a pretence as without a pretence. The pretences under which the subversion has been effected are all dissipated: but the subversion remains the same. The wolf and the lamb,—how often has that fable been—how often will it continue to be—converted into fact? The devourer's pretences are all refuted, but the victim is not the less devoured.

The men in question—the accused—protest and declare in the face of day—thousands and ten thousands—that they have no such design—no design whatever by which the right of property could be touched. The state of the representation rendered what it is pretended to be—that is their aim: that, and nothing more. These protestations, what regard do they receive? Not any. Though the individuals are unknown, yet that they are radicalists is known, and this is sufficient to deprive them of all title to be believed. Men drenched in insincerity—men to whom no one who has ever been at the pains of making observations on them believe anything they assert the more for their asserting it,—these men—though even not these men individually and responsibly,—throw out an insinuation to this or that effect—an insinuation which means anything or nothing, just as they see convenient. This insinuation is acted

upon,—the declarations of the thousands of witnesses are set down in the account as equal to 0; such in this case is the law of evidence.

How unequal is the contest between honesty and reason on the one part, and sinister interest in or out of office on the other!—how hard the lot of the advocate on the honest side! On the part of sinister interest, a short phrase composed of falsehood and nonsense is thrown out, and this is to be accepted as a reason—as a reason, and that of itself a conclusive one, on which the whole difference between good government and bad government in this country, and thence perhaps in every other—at this time, and thence perhaps at all times—is to depend.

The advocate of reason sets himself to work: he displays the nothingness, he detects and exposes the fallacies. What is he the better? The exposure is turned aside from: the compound of falsehood and nonsense continues to be delivered, with the same effrontery and the same intolerant arrogance as ever. Even were that abandoned, some other phrase of the like material would be employed instead of it: the same work would be to do over again, and with equal fruit.

Subversion of the Constitution: your aim is to subvert the Constitution. Behold in this phrase one of those compounds of falsehood and nonsense, equally useful to, and equally employed by Tories and Whigs. The Constitution—in which is implied the constitution of the state as in existence: herein lies the falsehood. This Constitution you are aiming to subvert: here is the nonsense. So applied, subversion means nothing: that which has no existence cannot be subverted.

Now, as to the existence of a constitution. For these forty years and more we have known what a constitution is, and so long every man who has chosen to know has known that we have no such thing. Look to United America. Behold there twenty-two states, each having a constitution of its own—a real constitution; and the Congressorial government, which has a constitution in which all these others are included. These constitutions were established each of them by a convention chosen by the great body of the population—by that body out of whose obedience all power is composed, and by the interests of which all power ought in its exercise, in so far as it is not tyranny, to direct itself. There we see so many real constitutions. In this country, what have we, to which we give that name? A mere fictitious entity—a creature of the imagination—a sham—an imposture. When the existence of a constitution is asserted or assumed, what is done? Out of his own head, to suit his own private or party purposes, in the form of words that presents itself as best adapted to these sinister purposes—some one says, “the Constitution is so and so”—“the constitution says so and so;” while the truth is, that the Constitution not being anything, is not so and so;—not being anything, it says nothing—neither so and so, nor anything else. Common sense being none—truth being none—reason being none—argument being none—on either side, these dissensions,—how are they to be made up? Within doors by effrontery, by arrogance, by violence, by intolerance:—without doors by sabres, by bayonets, by field-pieces.

Is it really among your wishes that we should possess the blessing? Give us then a Constitution, or let us give one to ourselves. This done, then, and for the first time, we

shall have one. Let us first have a Constitution, and then the offence of aiming at the subversion of it will be a possible one.

The Constitution you figure to yourselves.—tyrants, what is it? A collection of the pretences under which, and the written formularies in and by which, you have been in the habit of carrying on the incessant war for the sacrifice of the universal to your own particular interest—the carrying on in the most regular and commodious manner the work of oppression and depredation on the largest scale. This is what in your eyes is the Constitution. This is everything you wish, and does for you everything that you wish of it.

[*]See *Introduction to the Principles of Morals and Legislation,* Chapter XVI. *On the proportion between punishments and offences.* Vol. I. p. 86.

[†]B. ii. c. 10, vol. ii. p. 45, edit. 8vo. 1784.

[*]The rate of charges will be found in 39 & 40 G. III. c. 99. The average is about 20 per cent.—*Ed.*

[*]B. ii. ch. 30.

[a]Interest.

[b]Usury.

[c]Hazard run.

[d]Felt by the loan.

[e]Usury.

[f]Interest for money lent.

[g]It for the present.

[h]Losing it entirely.

[i]Lenders.

[k]Rate of general interest.

[l]Money.

[m]Specie.

[n]Circulating.

[o]Exchange.

[p]Money.

[q]Banker.

[r]Cash in his own shop.

[s]Lenders.

[t]The rate of the national interest.

[u]Circulating cash.

[x]Interest.

[y]Lenders.

[z]Lending.

[*]Edit. 1784, 8vo, p. 177.

[†]B. II. ch. iii. edit. 8vo, 1784, vol. ii. p. 20.

[*]B. II. ch. iii. vol. ii. p. 27, edit. 8vo. 1784.

[*]B. IV. ch. ii. vol. ii. p. 182, edit. 8vo.

[*]B. I. ch. x. vol. i. p. 176, edit. 8vo, 1784.

[*]B. IV. ch. viii. vol. ii. p. 514, *et alibi,* edit. 8vo. 1784.

[*]Some parts of the following work were formerly published as the fourth Book of the work entitled *Rationale of Reward:*—they are now inserted in the places they were originally designed to occupy in Bentham's *Manual of Political Economy.—Ed.*

[†]To Adam Smith, the science alone has been the direct and constant object in view: the art the collateral and occasional one.

[*]Knowledge may be considered as a branch of power. It is power so far as it depends upon the mental condition of the party whose power is in question. Power, in the narrower sense of the word, depends upon the state and condition of external objects—objects exterior with reference to him.

[*]Supplying capital is supplying power. Capital might be supplied in England by taking off, *quoad hoc,* the restraints imposed on the accumulation of capital by partnership.

[†]Among these several classes, *agenda, sponte acta,* and *non-agenda,* the distribution of the imaginable stock of institutions will differ in a very considerable degree, according to the different circumstances of the several political communities.

In regard to defalcations from general opulence for the security of subsistence, an arrangement of that sort which in one country may be at once *needful* and *practicable,* may in another be either not *needful,* or, what is more apt to be the case, *not practicable.* The greater the degree of opulence, the greater the list of *sponte acta*—the less, therefore, that of *agenda.* In England, abundance of useful things are done by individuals, which in other countries are done either by government, or not at all. Docks, harbours, canals, roads; institutions for relief against misfortune in a variety of shapes, and from a variety of causes—bodily affliction, death of friends, fire, hostile captures, and criminal depredation. In Russia, under Peter the Great, the list of *sponte acta* being a blank, that of *agenda* was proportionally abundant.

[*]The compound term, "matter of wealth," is employed to prevent ambiguity: it carries with it a reference to quantity. There are many things which may constitute part of the matter of wealth, which when taken separately, or in small quantities, would hardly be called wealth. Thus the wealth of a stationer may consist in rags, a small portion of which lying on a dunghill few would call wealth; none, however, could deny that they might constitute part of the matter of wealth.

Opulence, though so nearly of kin to wealth,—and the rather for that very reason—requires to be distinguished from it. Opulence is relative wealth, relation being had to population. Quantity of wealth being given, the degree of opulence is therefore not *directly,* but *inversely,* as the population; *i. e.* as the degree of populousness—as the number of those who are to share in it: the fewer the sharers, the larger each one's share.

[†]Wealth, considered as arising at successive periods, is called *income.* That portion of it which is employed for the purpose of giving increase to its amount, is called *capital.*

An individual who would in any manner employ himself in the accumulation of wealth, ought to possess—1. Materials on which to work; 2. Tools wherewith to work; 3. A place in which to work; 4. Necessaries for his subsistence while at work. All these objects are comprised under the name of *capital.*

In the order of history, labour precedes capital: from land and labour everything proceeds. But in the actual order of things there is always some capital already produced, which is united with land and labour in the production of new values.

When an article of the produce of land or labour, in place of being consumed or kept for the use of him who has made it or caused it to be made, is offered in exchange, it then becomes an article of commerce—it is merchandise.

In all civilized societies, a class of persons is found, who purchase of the manufacturer, that they may sell to the consumer.

The whole of the operations of manufacture and of sale may be described by the general terms of production and trade.

[*]Thirty years after the conclusion of the seven years' war, some ammunition bread that had been baked for the Prussian army at the time of that war, was found in such a state as to have been eatable; a piece of it was eaten for curiosity's sake by a person whom I knew. In default of stones, which have sometimes for want of iron been used as cannon balls, this ammunition bread might have been applied to the purpose of defence.

Iron is the best material for knives and hatchets, though in Otaheite and elsewhere they are made of stones. A person whom I knew, once cut his finger (as he told me) with a piece of Suffolk cheese.

Hammocks, articles of subsistence (or rather of customary luxury, not indispensably necessary to subsistence, for a Russian often sleeps upon a bench, or upon the floor,)—articles of subsistence of a middle nature between clothing and lodging, are frequently applied to the purpose of defence on shipboard, being stowed in such manner as to deaden the stroke of the shot.

[†]Instances of instruments of mere enjoyment are abundant:—tobacco and perfumes may be sufficient for illustration.

[‡]It is in consequence of the interconvertibility above mentioned—wealth in one shape being convertible into every other—that every instrument of mere enjoyment is a pledge of security, and that national power, so far as depends upon wealth, is in proportion not to absolute, but only to relative opulence—not to the absolute quantity of the matter of wealth in a nation, but to its ratio to the mass of the population. For of the aggregate value of the aggregate mass of the matter of wealth in a nation, the part dedicated to enjoyment is the only part applicable to the purpose of defence. What is necessary to subsistence must be applied to subsistence, or the man must starve. Hence the reason why France, so much superior to Britain, not only in population, but in absolute wealth, is yet inferior in power, except with relation to countries so near that the expense of invading them may be more or less defrayed by the contributions raised in *them.*

[*]In the character of an article of subsistence, a pound of potatoes and a pound of pine-apples may stand pretty nearly upon the same level;—but a single pound of pine-apples may sell for the same price as one hundred pounds of potatoes,—the pound of potatoes selling for a halfpenny, and the pound of pine-apples for one hundred halfpence. This being the case, out of the hundred halfpence, which is the price and value of the pound of pine-apples, one halfpenny goes to subsistence, and the remaining ninety-nine to mere enjoyment. It is the same thing as if the halfpenny had been employed in the purchase of another pound of potatoes, and the remaining ninety-nine in the purchase of perfumed powder for the hair, instead of being put into the mouth for nourishment.

[*]Examples: Establishments for the propagation of knowledge; viz. on the subject of those *arts* on which the augmentation or preservation of the matter of wealth, in any of its shapes, depends. In England—1. The Board of Agriculture; 2. The Royal Institution; 3. The Veterinary school; 4. The Royal Academy: viz. to a certain degree,

if considered in this point of view.

In each of these several instances, the amount of profit reasonably to be expected is beyond calculation; while the individuals, among whom it may come to be shared, are equally out of the reach of conjecture. On the other hand, in the character of a source of profit, there is no limited assemblage or class of individuals, to whom the establishment of any one of these institutions would at the same time have been practicable, and have afforded a reasonable expectation of payment for the expense.

5. An illustrious and more useful example—because more *needful,* as well as more *extensive,* than all these English ones put together, supposing the execution to correspond with the design—is afforded by the universities and other education-establishments now setting on foot in the Russian empire (1801.)

6. France, on the same supposition, may be referred to for another.

The justification of the communication from sea to sea through Scotland by the Caledonian canal, is to be sought for in the same principles, though the preponderance of profit over expense can scarcely be expected to prove equally considerable. Of the profit, part, though to an unassignable amount, will distribute itself among a limited, and perhaps individually assignable description of individuals: other part, in portions altogether unassignable, among individuals more clearly unassignable; viz. among the community at large. On this supposition, it seems, it is that the expense was divided between the aggregate of these private purses and the public purse. Had the profit to the local proprietor and other neighbouring inhabitants been adequate, and a fund adequate to the whole expense been obtainable from that source, the propriety of a contribution at the public expense would have fallen to the ground.

[†]Examples: 1. Facilitating the conversion of inter-community of occupation of land into separate ownership.

2. Abolition or modification of those laws by which land is vested inalienably in a line of natural successors, how much soever by impoverishment disabled from causing increase, or even preventing decrease, in the value of its produce.

3. Abolition or modification of laws, which give the like perpetuity to obligations attached to property in land, in the case where those obligations are attended with greater *burthen* (viz. in the way of obstruction of increase,) to the party *on* whom they are imposed, than *profit* to the party *in whose favour* they were imposed. Such is the case with many of the *obligations* termed (with reference to the party favoured by them) *feudal rights.*

4. Gradual abolition and intermediate modification of those personal obligations which come under the head of *slavery.*

[*]Considered as a measure of *special* encouragement, having for its object the increase of the aggregate mass of wealth, it would belong to the head of *non-agenda.* Operating by discouragement applied to a rival branch of industry—viz. the same

occupation in the hands of foreigners,—operating in this way, and not by grants of money, it made no addition to the general wealth in the way of forced frugality.

[*]To the opulence of the Prussian empire Frederic the Great made some real additions, and some imaginary ones. The imaginary ones consisted in encouragements given to this and that branch of profit-seeking industry: the real ones consisted in money given on condition of being employed in the shape of capital. But to be given to Peter, it must have been taken from Paul and his brethren. This he scrupled not to do: his object being—the increase of his own power and grandeur, not the preservation of the means of enjoyment in the hands of his subjects: he was content to purchase opulence at the expense of justice. At a similar expense, Egypt not only was, but continues to be, enriched—enriched with pyramids and temples.

Perhaps, having placed himself in a state of perpetual insecurity by injustice towards his neighbours, he found himself under a sort of necessity of increasing his means of security by this injustice towards his subjects. On this supposition, the injustice consisted—not in the taxes for defence, and the taxes for the production of national wealth as a fund for defence, which the perpetually impending danger had rendered necessary,—but in the wars of rapacity by which the perpetually impending danger had been produced.

Among the largesses bestowed by the same monarch, we may find another class which does not come under either head of reprobation. These consist in money given in reparation of damage done by war. Largesses of this class are not only unexceptionable, but useful: being consistent as well with the interests of justice as with those of national opulence. Their utility rests on the same basis as that of insurance against loss by calamities purely physical.

As to the largesses given under the notion of *special* encouragement (encouragement to a particular branch of trade in preference to others,) though the addition set down as made on this score by each sum of money so bestowed was imaginary, yet from that same sum of money flowed a real addition, though on a different score; viz. on the score of *forced frugality,* as above explained.

[*]To this head belongs the investigation of the influence of money on *real wealth*—or say, for shortness, *wealth.* Money may well be put in contradistinction to everything else which is ever called *wealth:*—which is ever considered as a modification of the matter of wealth: for *money,* so long as it is kept in the shape of money, and in the same hands, is of no kind of use. In that shape no man can ever make any kind of use of it but by parting with it, or at least standing engaged to part with it. What value it has, is in the way of *exchange:* value in the way of use it has none. When out of that shape the materials are thrown into other shapes, then indeed they have their value, but for which they would have had none in the way of exchange. Paper money, not having in respect of its materials any value in the way of use, has no value but in the way of exchange: nor in that way, but on the supposition of its being capable of being exchanged for that money, or an equivalent for that money, of which it contains and conveys the promise.

[†]The following is an indication of the indirect incometax resulting from increase of money:—In Britain (anno 1801) money is about £72,000,000: income about £216,000,000—(72 : 216 : : 1 : 3.)—*Each* million added to *money,* adds therefore *three* millions for ever to *pecuniary income;* and this (setting aside the 15 per cent. for ever (£150,000) for profit on the million if employed in the shape of capital) without addition to real income. If in every year, £2,000,000 be added to money *(plus* £300,000 for an equivalent to the addition made as above to real wealth) in 36 years (anno 1837) the nominal or pecuniary amount of a mass of real income equal to the amount of 1801, will be doubled, *i. e.* become £432,000,000: to which will be added £10,800,000 for an equivalent to the intermediate addition to real wealth (£300,000 × 36.) But the £432,000,000 of 1837 being worth no more than the £216,000,000 of 1801, each £100 of the £432,000,000 will be worth but £50 of the £216,000,000; that is, the income of each *fixed incomist* will by that time have been subjected to an indirect income tax of £50 per cent. He whose pecuniary income in 1837 is double what it is in 1801, will in point of *wealth* be neither a *gainer* nor a *loser* by the change. *Not* so in point of *comfort.* For by so much as he is a gainer in wealth in the *one* way, by so much he is a loser in the *other:* and by the nature and constitution of the human frame, sum for sum, enjoyment from *gain* is never equal to suffering from loss.

[‡]As if a proprietor of a mine of gold or silver, living solely on the income yielded to him from his mine, and spending his whole income, as income is spent by non-labouring hands, were to receive an increase of such his rent in the shape of gold or silver ready coined, and spend the whole of it as before;—or as if a government should issue paper money in discharge of its debts, or for defraying the consumptive part of its expenditure.

[?]As in the case of paper money issued by a banker to a borrowing customer, agriculturist, miner, fisher, manufacturer, or merchant, to be employed in trade, &c.

[§]The compensation, besides being inadequate in quantity, is in its application unconformable to justice, being shared in larger proportion by the mercantile man, *for whose benefit* the tax has been imposed, than by the public on whom it has been imposed.

[¶]Money, inasmuch as while it remains in the same hands it possesses not any value in the way of *physical use,* has no other value than what at the instant of its passing from hand to hand it possesses in the way of exchange.

[*]This is what governments should consider, when they engage to make payments of money in large masses at once to governments or individuals in foreign countries.

[*]In Ireland, in 1788 or thereabouts, the reduction of the rate of interest from 6 to 5 per cent. was proposed in Parliament as a means of increasing wealth: but though proposed by the administration there, was rejected after a hard struggle. "*The Defence of Usury,*" which I sent over at the time, contributed to throw out the measure, as Parnell, then Chancellor of the Exchequer, very good-humouredly acknowledged to me.

[†]For the proof of these positions, the reader is referred to Mr. Bentham's "*Defence of Usury, showing the impolicy of the legal restraints upon pecuniary bargains.*" Inconsistency is the natural companion of laws dictated by narrow views: it it is lawful to lend or borrow at any rate of interest in maritime enterprises; as if the pretended dangers and pretended abuses, which render the indefinable evil named usury so much the object of dread, could only exist upon dry land, and depended upon the solidity or fluidity of the element upon which the enterprises were carried on.

[‡]In England, a capitalist cannot employ any portion of his capital in trade, without being considered a trader, and, consequently, responsible in the whole extent of his fortune. There is not statute law to this effect, but it is said to be a rule of common law.

[*]This has been partially accomplished by 7 W. IV. & 1 Vict. c. 73, which empowers the crown to limit by patent the responsibility of the partners of trading companies.—*Ed.*

[†]Wealth of Nations, b. ii. ch. 4.

[*]See b. i. ch. ix.

[*]Adam Smith, after having read the LETTER upon *Projects,* which was addressed to him, and printed at the end of the first edition of "*The Defence of Usury,*" declared to a gentleman, the common friend of the two authors, that he had been deceived. With the tidings of his death, Mr. Bentham received a copy of his works, which had been sent to him as a token of esteem.

[*]When, at the expense of a war which has cost a hundred millions of money, and in which a hundred thousand lives have been sacrificed, England has got a new colony,—whatever portion of wealth in the shape of capital is *transferred* to the new spot, the Englishman considers as *created.* For a few *negative* hundred thousands a-year, he looks upon the *positive* hundred millions as well bestowed. On the strength of this negative increase in opulence, the Englishman increases in insolence; the German envies him; the Frenchman would devour him;—and thus it is that wars are never to have an end.

It is true, that by the export of capital, a check is applied to the virtual income tax imposed upon fixed incomists by the reduction effected in the rate of interest by the continually increasing *ratio* of that part of the mass of money which is employed in the shape of *capital,* to the remainder which is employed in the shape of expenditure of income, but this is a good which is effected without being intended to be done.

[*]Bryan Edwards, in his History of the West Indies, even in exaggerating the utility of colonies, does not suppose the rate of profit upon capitals employed in the plantations greater than seven per cent., whilst it is fifteen per cent. upon capital employed in the mother-country.a

[*]Each being multiplied by the number of times it has been employed within the year in making the purchases of which ultimate prices are composed.

[†]It may, however, happen in some instances, that a branch of industry, which if pursued would be more profitable than any other, requires a mass of capital of such magnitude as individuals separately taken, or in small numbers, are not able to raise. But where this happens, it can only be in consequence of positive regulation of government, which in contemplation of the mischief apprehended from overgrown masses of capital, in certain cases forbids, limits, or seeks to limit, the quantity of capital that shall be applied under one management to any branch of industry,—by limiting the number of individuals who shall be allowed to contribute to it,—or by not suffering a man to embark in trade any part of his property without embarking the whole. In giving an encouragement in this shape, government does little or nothing more than remove obstacles of its own creating, and the good it does, if any, is done at no expense.

[*]At least where the revenue of the government is not the produce of land, or the interest of money formed by an accumulation of rent. Of this nature is a part of the revenue of the republic of Berne.

[*]It is true, though it may not be worth the expense of supporting it by bounties with a view to the increase of wealth, it may be proper to assist it as a means of subsistence or defence. It is still more true, that what ought not to be done with the intention of supporting an unprofitable branch of trade, may yet be proper for preventing the ruin of the workman actually employed in such business: but these are objects entirely distinct.

[*]Adam Smith has made a mistake in saying, that a bounty upon production was a means of abundance, on which account it was better than a bounty on exportation.

[*]The same effect is produced when it is endeavoured to favour the importation of corn, for example, by giving a bounty to the first importers. Its effect is to increase the price in foreign countries.

[*]I mean always in virtue of its destructive properties: for in a general way, no laws except those by which other laws are repealed, can fail of doing harm, as being so much lumber, by the load they add to the system.

[†]The drawback of the salt duty in favour of fisheries may be mentioned as one which formerly existed.

[*]It is said that the success of the American armies was partly owing to their skill in these employments. Composed almost entirely of husbandmen, they excavated ditches and formed entrenchments and other works connected with camps, with a facility which astonished their adversaries. The Russian armies possess the same advantage in a still higher degree.

[†]Upon this subject, see Vol. I. *Principles of the Civil Code,* p. 333.

[‡]Ibid. Vol. I. p. 341.

[*]It is not without distrust that I here give this feeble extract, from a manuscript work of Mr. Bentham's, *On Prices,* and upon the causes which *increase Prices.* It embraces so great a number of questions, that it is not possible to give a correct outline of the whole in so short an abridgment.—*Note by Dumont.*

[*]See Vol. I. *Principles of the Civil Code,* Chapters IV. and V. *Laws relative to subsistence and abundance.*

[*]If a patent be taken out for each of the three Kingdoms, the expense is estimated at £120 for England, £100 for Scotland, and £125 for Ireland. *Vide* Commons' Report on Patents.—*Ed.*

[†]It is scarcely necessary to remark, that in blaming the abuse, no reproach is intended to be cast upon the individuals, who, finding it established, profit by it. These fees form as lawful a portion of their emoluments as any other. It is, however, to be desired, that in order to put a stop to this insult and oppression, an indemnification were granted at the public expense, equal to the average value of these fees. If it be proper to levy a tax upon patents, it ought, instead of being levied in advance upon capital, to be postponed till the patent has produced some benefit.

[‡]Increase of population is desirable, as being an increase of—1. The beings susceptible of *enjoyment;* 2. The beings capable of being employed as *instruments of defence.* It results of course from the increase of the means of subsistence, and *cannot be carried beyond them.*

Of population, nothing is said by Adam Smith: yet of what use is wealth, but with reference to population?—and how can either be considered in any comprehensive point of view without the other? since, *quantity* of wealth being given, degree of opulence is inversely as population.

[*]The name of Mr. Malthus, who will for the future occupy the post of honour in political economy upon the subject of population, is not mentioned here, because this work was many years anterior to his. This chapter, with many other fragments, was communicated to the authors of the *Bibliotheque Britannique,* published at Geneva, and was inserted in the 7th volume in 1798. If Mr. Malthus had known it, he might have cited it as an additional proof that his principle relating to population was not a new paradox. But what was new, was to make a rational and connected application of it; to deduce from it the solution of so many historical problems; to survey Europe with this principle in his hand; and to prove that it cannot be resisted without producing great confusion in social order: and this is what Mr. Malthus has accomplished, in a manner as conclusive as respects his arguments, as interesting in respect of his style and his details.—*Note by Dumont.*

[*]The author is consistent, and Montesquieu appears to me not to be so. Book xxxiii. ch. x. he has well explained the true principle, but he has not followed it.

His elogium upon the regulations of Augustus respecting marriage, is extremely singular. They have pleased Montesquieu by some vague idea of the protection of *morals.* They violate every principle of reward and punishment; they are neither analogous nor proportional; they punish a man because he is unhappy or prudent—they reward him because he is happy or imprudent: they corrupt marriage by mercenary and political views; and, after all, the object aimed at is missed. Montesquieu acknowledges the impotence of these laws. The benefit of the remedy being null, there remains only the evil.

He blames Louis XIV. (ch. xxvii.) for not having sufficiently encouraged marriage, by only rewarding prodigies of fecundity.

Louis XIV. did too much by his establishments for the poor nobility, and he has been too frequently imitated. Humanity was the motive of these foundations; but this humanity was equally productive of evil as it respected those who bore the expense, and as it respected the class whom it was intended to relieve, and who were not relieved. On the contrary, the more the indigent of this order were assisted, the more they increased. In fact, every individual requires a certain quantity of wealth to be in a state to marry. Does he marry imprudently, his distress is without doubt an evil; but it operates as a warning to other persons of the same class. If you oppose this natural effect, if you institute foundations for families, if you grant pensions or other favours on account of marriage, what follows? It is no longer an establishment submitted to calculation—it is a lottery, in which hope is consulted rather than prudence; many venture, but few succeed. You intended to give support, and you have laid a snare. What you did in order to diminish the evil, has only served to make it worse. In pity to these unfortunate persons, they ought not to be encouraged to marry. When they no longer are deceived by hope, they will no longer be unhappy.

In England there is neither restriction nor encouragement, and there is no dread lest the stock of nobility should fail—there is no dread lest celibacy should be hurtful to population. The shameful and sad misfortune is not known there, of the existence of a class of persons set apart to idleness and poverty.—*Note by Dumont.*

[*]I have under my eyes a large political work of M. Beausobre, counsellor to the King of Prussia, in which, at the article *Population,* he gives no less than twenty recipes for increasing it.—The nineteenth is as follows:—"It is proper to watch during the fruit season, lest the people eat that which is not ripe." He ought to have provided the means for carrying this regulation into execution; to have indicated the number of inspectors who should judge of the ripeness of fruit, the watchmen who should be stationed over it, and the magistrates who were to judge of its infractions.

Another method consists in "hindering men from marrying very disagreeable women." He neither says to what judge he would remit this delicate inquiry, nor upon what principles he would have the ugliness of women proved; nor the degree of inquiry which ought to be permitted, nor the fees that ought to be paid. The remainder is very nearly in the same taste.

Hindering the marriage of old men with young women—that of young men with

women much older than themselves—hindering the marriage of persons not likely to have children: there are other recipes of this political pharmacopœia little less ridiculous, but not less useless.

His complaints respecting prostitution are reasonable, if they had for their object the misery of the class of courtesans, victims of a constrained celibacy: they are of no force as respects population, which suffers nothing. I refer to what has been said upon this subject in Vol. I. *Principles of Penal Law,* Part III. Ch. V. p. 541, Prob. 2, to make such arrangements that a given desire may be satisfied without prejudice, or with the least possible prejudice.

[*]When indirect taxes are levied upon articles of luxury, a man need pay no more than he pleases; but the case appears to be otherwise as respects the poor, when they are levied upon articles of necessity.—*Ed.*

[*]I speak of the recently *past:* one knows not well what to say of the present.

[†]Indirect taxes, being collected from venders, presuppose exchange: direct taxes may alike be levied, exchange or no exchange—they may be levied on producers, venders or non-venders. The further a nation is advanced in the career of opulence, the fewer the articles produced by non-venders. A main cause, as well as effect, of opulence, as per Adam Smith, is division of labour:—as this advances, fewer and fewer sorts of things are done by the same hand; till at last, some one sort of thing excepted, there is nothing that a man does not find it cheaper to buy than to make at home. This applies more particularly to manufactures: in agriculture, the division is stopped by a variety of causes, which for the most part, though not *in toto,* are insuperable.

France used to swarm, and swarms as much as ever, with petty occupiers of land—proprietors or not proprietors; who producing each of them the greater part of what he consumes, have the less need, and the less ability, to purchase; and who, accordingly, if they were not forced to pay direct taxes, would scarcely pay anything.

[‡]See *Escheat* vice *Taxation,* Vol. II. p. 585; and *Protest against Law-Taxes,* Vol. II. p. 573.

[*]This principle may admit some exceptions, but they are very rare: for example, a tax may be imposed upon intoxicating liquors, with the design of diminishing their consumption by increasing their price.

[*]Of *noscenda,* the most instructive indication I know of is that given by M. Necker, *Admin. des Finances,*—but without reference to particular uses as determined by particular *agenda* or *non-agenda.*

[*]The most instructive body of data the world has yet seen, is that furnished during Mr. Pitt's administration, principally by the House of Commons' Committee of Finance, of which the pretended reimpression is but a mutilated extract.

[†]In this line, an interesting example has been lately set by the Danish government, on the occasion of the tribunals lately instituted under some such name as that of *Reconciliation Offices.* I speak of the *design:* materials for judging of the *execution* have not reached me.

[‡]By 6 & 7, W. IV. c. 86, a general register of births, marriages, and deaths, was established in England. A similar measure for Scotland has been before Parliament, but has not yet (October 1838) passed.—*Ed.*

[*]The salt duties were repealed in 1823.—*Editor.*

[*]It is mere quibbling to say that these or any of them *may* be introduced, when extravagant duties bar their introduction.

[*]This injudicious and baneful decree is singularly illustrative of the extreme absurdity of that part of the constitution which only allows the Cortes to sit for three, or at most four months of the year. Whether they have little or much to do, they are compelled to employ the same time about it. They are to be treated, as an able Portuguese Journalist observes, like babies, who must be put to bed at a fixed hour whether they are sleepy or not.

The writer takes it for granted that the decree exists, though neither he, nor any individual he has seen, is able to speak to the fact of its publication.

[*]The ways and means for 1820-21 were thus calculated:—

Net Custom-house revenue,	Reals 80,000,000
Do. other revenue,	341,500,000
	421,500,000
Expenses of collecting,	109,000,000
Gross revenue,	530,500,000

[*]Cap. I. art. 4. of the Spanish Constitution.

[*]As a guide to estimate the consumption of foreign corn in Great Britain, the imports and exports for 21 successive years will be found in Tables D and E. They were published in 1813 by order of the House of Commons. By these it would appear that the pro-rata annual importation of wheat, taking this period into account, was about 450,000 quarters; and of flour, 200,000 cwts.; which, taken in round numbers at 50,000 quarters, makes 500,000 quarters in all. The pro-rata exports of the same period were about 43,000 quarters of wheat, and 100,000 cwts. of flour; say in all, 68,000 quarters of wheat; so that the net amount of foreign grain consumed in Great Britain will have been about 430,000 quarters yearly. Calculating the annual consumption of the country at 11 millions of quarters, the proportion employed of foreign to home-produced wheat will be about a twenty-sixth part. Dr. Adam Smith gives no data, but assumes the proportion in his time to have been as 1 to 570. Can such a change have really taken place?

In Spain, one-thirtieth part of the whole consumption is the general amount of importation. The estimated quantity employed yearly is said to be 60 million fanegas: the average yearly importation is 2 million fanegas (Antillon.)

These calculations can be only deemed approximative, not correct. In great towns, one quarter of wheat *per annum* for every individual is made out to be the general consumption. London consumes about 19,000 sacks of flour weekly; but this proportion is necessarily much too high with a reference to great Britain, in many parts of which the majority of the population employ no wheat at all.

[*]When the pen was first set to work upon these pages, there was generally understood to be a deficiency of paper money. At present, there is at least no such deficiency:—a superabundance seems much more probable. At the time of the want, the proposed paper presented itself as a remedy against the want: now, at the time of the superabundance, it presents itself as a safeguard against the sort of mischief—past, present, and impending—which may be traced to the superabundance.

[†]See Chap. XI.

[‡]On the first institution of the sinking fund, either designedly or undesignedly, the facts seem to have been forgotten, that all the accumulations at compound interest would arise from taxes; as also that to borrow with one hand, and at the same time to redeem with the other, must be attended with loss. The loss occasioned by this latter practice has been ably exhibited in Dr. Hamilton's Work on the national debt.—*Ed.*

[*]See Chap. XII.

[†]See Chap. V. § 1.

[‡]See Chap. V. § 2.

[?]See Chap. V. §§ 3, 4, & 5.

[§]See Chap. X.

[¶]See Chaps. I. III. & IV.

[*]See Chap. V. § 6.

[†]See Chap. VI.

[‡]See Chap. VII.

[?]See Chapters VIII. & IX.

[[1.]]Art. 1. *(In whatever quantity.)* The money thus raised being appropriated to the redemption of stock annuities, when that redemption is completed, the emission will cease, by articles 6 and 20; and, subject to that limitation, the more copious the emission, the more profitable the measure.

As to the mode of limiting, in cases of necessity, the portion producing the effect of money in the circulation, see note to Art. 16, and Ch. IX. *Rise of Prices.*

[[2.]]Art. 1. *(Half-yearly.)* Yearly would be more simple (as may be seen in the form exhibited for that purpose in Table II.) as well as more profitable to government; but being unconformable to the established usage, it would be apt to strike the customer as a great drawback from the value, stand in the way of the profit expected as under mentioned, by forbearance on the part of note-holders to receive the interest (see Ch. V.) and would be in a manner destructive of the advantage obtainable in the way of *compound* interest by persons keeping the paper in hand, as stock is kept in hand, for that purpose.

[[3]]Art. 2. (*A farthing.*) By taking, for the standard note, a principal sum, having for the amount of its *daily* interest, at the proposed rate of interest, an *even* sum (*i. e.* a sum having an existing piece of coined money or number of pieces of coined money, corresponding to it,) the *multiples* of this *standard* note will in like manner have *even* sums for the respective amounts of their daily interest, and their *aliquot parts* will have for their amounts of interest, sums capable, when put together, of being made up into even sums.

Here, as in Exchequer bills, the interest is computed daily, that each note may receive from each day a *determinate* addition to its value, and may pass accordingly in circulation.

The smallest of all notes possessing this property is taken for the standard note, because the smaller a note, the greater the number of persons that are capable of becoming customers for it.a

The standard note being scarcely small enough in this view, it were better, perhaps, that not only the *half,* but the *quarter* of it should be issued at the same time.

The larger notes will serve to protect the smaller ones from the contempt which might otherwise attach upon them, by reason of the smallness of the daily, and even weekly, amount of interest.

[[4]]Art. 2. (3 *per cent.*) For the reason why no higher rate of interest could be allowed with profit on a series of notes carrying daily interest, nor any lower above 2⅜ per cent., which in the first instance might be too low, see *Currency Table,* note *m.*

[[5]]Art. 2. (*Bottom of the scale.*) See *Currency Table.*

[[6]]Art. 2. (*Forbearance.*) See *Currency Table.* On a note which passes on from hand to hand, any number of years may elapse before the interest on it is received from government; since the interest may be received by each holder with less trouble from the individual to whom he passes it. Hence one source of the profit to government (see Chap. V.) It is only where a man *keeps* a note in his hands as a source of income, that the interest of it will be applied for at the offices. In fact, it is

only in the case where a man means to hoard up at compound interest, that it will be necessary for him to receive the interest upon his paper from government; inasmuch as, without trenching upon the principal, he may spend the income from his notes, by passing off a *proportion* to that amount, keeping in hand the rest.

[[7]]Art. 4. (*Interest added.*) Upon all notes of the same denomination, interest must commence upon the same day (say the first day of the half year,) otherwise 365 notes of the same denomination might be of so many different values: and if interest is to commence on that day, a purchaser in the way of issue must pay for the note accordingly; otherwise customers would be apt to delay taking out their notes till the last moment; keeping their money in their pockets, or employing it in other ways in the meantime; and then they would pour in, all at once, in crowds too great to be served.

[[8]]Art. 5. (*At a less price.*) Want of security against depreciation has hitherto been the bane of government currencies, and is *among* the reasons why banker's paper, yielding a low interest, is taken, notwithstanding the existence of a government currency (exchequer bills) yielding a higher interest. Government must, it is true, have the money it wants upon any terms; but so long as it reserves to itself the faculty of selling any *one* species of annuities (*ex. gr.* the existing stock annuities) in a quantity commensurate to the amount of the money it wants, at the *times* price, it may refuse to sell any other (such as the proposed note annuities) under a *fixed* price. As anybody may have as much of these annuities as he will at par, nobody will ever give more; and as no more can ever be sold than is applied for, and the demand for these annuities will increase as the mass of existing stock annuities comes to be redeemed, by the money raised by the sale of these note annuities, backed by the money from so many other funds, no man need ever part with them at a less price; since, by taking an annuity note in the way of circulation, a man will save the trouble of going to the office for it, and taking it out in the way of issue, not to speak of the small fee which it may be necessary to require. (See Art 17, and Chap. IV.)

[[9]]Art. 7. (*Paid off.*) By an assurance to this effect, nothing can ever be lost to government; because, so far from profit, while an annuity to the amount of £3 a-year can be paid off by £100, an annuity to no more than £2 : 19s, a-year can never be paid off but to a loss: and it will be no small recommendation, especially when, by the operation (as will be seen) of this measure, the complete redemption of the existing mass of annuities has been brought to view. (See Chap. V. § 2.)

[[10]]Art. 11. This, if not stopped by the expense (which increases with the number and not with the value of the notes,) would be attended with several advantages.

1. The copper notes, the receiving of interest upon them being attended with a degree of trouble, in proportion to the number requisite to produce a principal yielding a mass of interest worth regarding, would stay in the circulation, and by lessening *pro tanto* the amount of the supply capable of meeting the demands of those who want their paper to hoard for the purpose of income, it would increase the scarcity of the paper of the first issue, and render customers the more willing to accept a second issue at a reduced rate of interest.

2. The profit by *forbearance* to *receive the interest* (see Chap. V.) would take place upon the whole of this branch of the currency.

3. The proposed paper, being so effectually guarded (as will be seen) against forgery (see Explanations to the *Form of an Annuity Note,*) and the copper coinage so much exposed to that crime, notwithstanding all the exertions that have been made to rescue it, the saving to the public, especially to the inferior and more numerous classes, on this score, would be a matter of considerable and almost universal accommodation;—and,

4. The saving to government, by the diminution of the expense of renewing the copper and other coinage, would be proportionably considerable.

How far the expense would be capable of being paid for by the profit, would be learned by experience from the *silver notes.*

The minuteness of the small notes would be protected from contempt by their relation to the large ones; and to go in change for one another, they must, all of them (even *copper* not excepted,) bear an *interest,* and the same *rate of interest.*

A reason for making the extension *gradual,* may be to avoid perplexing the public mind with a multiplicity of notes of different values, before it has been familiarized with any of them. But, at the worst, the magnitudes would be little, if anything, more numerous than in the case of bank-notes.

[[11]]Art. 13. (*Upwards.*) The time for issuing *large* notes, *i. e.* notes of the magnitude of the *smallest exchequer bills* and upwards (in a word, all annuity notes above the £50 : 8s. notes,) will not arrive till after stock 3 per cents. are at par; for, till then, exchequer bills, yielding more interest, will draw off from the proposed annuity notes all customers whose quantum of money capable of being kept in hand extends to such a purchase; unless possibly in the remote parts of the country, where exchequer bills are unknown, or not in use.

[[12]]Art. 14. (*Received at government offices.*) Were this to be done from the *first,* a great lift would certainly be given to the proposed currency at once: the only objection seems to be, the possibility lest, in case of any sudden turn taken against it by the public mind, the exchequer should for a time be overloaded with it, *i. e.* labour under a *deficit* of cash (the only money that nobody can refuse) to the amount of it. But in Chapter IV. the improbability of such an event, and at the same time an effectual remedy, is pointed out.

Supposing bank-notes to be driven out of the circulation,a the same sort of *necessity,* or supposed necessity, which gives employment to *bank* paper in the transactions of governmentb and in other transactions upon a large scale, in preference to cash, to save *counting, examining,* and *luggage,* would create an equal demand for the *annuity note* paper on that score.

[[13]]Art. 15. (*Post-offices.*) *Dispatch, punctuality, cheapness* in the transaction of the business, *sufficiency of number,* and *equality of distribution* in regard to the *stations,* forming the characteristics of the post-office establishment, as compared with all other provincially-diffused official establishments. These form the properest *stations* for the transaction of the business, as well as the properest, or rather only proper, standard for the *mode* of conducting it. In the London penny post-offices, deliveries of letters six in a day; therefore once every day cannot be too often for deliveries of packets of annuity notes. Six times a-day go letters, some of them with money in them; therefore *once* in a day cannot be too often for money to go without the letters.

The oftener the receiver's hands are emptied of the principal money, the less the degree of pecuniary responsibility that need be required of him: few of the existing post-offices, town or country, that may not be trusted with a day's stock (say £200 or £300) at a time (more in some places, according to the opulence and populousness of the spot;) many whom it would not be prudent to trust with a month's stock, say thirty times that amount.

This public money being required to be kept unmixed with any other monies, and in a government package, and the officer declared to be a "*servant*" of government,—in respect of its deficiency, otherwise than from accident, he *might* be treated on the footing of embezzlement;—capital felony in case of absconding; single otherwise.

In the penny post-office, one-tenth of a penny is the pay in respect of each letter, for marking each with two stamps; besides the trouble of examining and receiving the money, and occasionally of giving change, in the case of those letters with which money is paid.

The proper quantum of pay is in all cases the least that will be accepted by a person competent to the business; such cases only excepted in which, from the nature of the service, the value of it is capable of being raised to an indefinitely increasing pitch of excellence by extraordinary exertions.

With this exception, quantity of *trouble, not value* of the subject-matter, any otherwise than with a view to pecuniary responsibility, is the proper standard and efficient cause of demand for pay. *Poundage,* considered as a mode of remuneration, is therefore very apt to be disproportionate and excessive.

On a letter, for which no more than a penny is received—out of which penny the expense of conveyance must be defrayed, as well as a portion of the expense of general superintendence, and a profit made—10 per cent. for the trouble of receiving it, is at the same time almost as little as *can* be given, and yet (though in this case no more than the tenth part of a penny) as much as *requires* to be given. For receiving the price of a set of stamps, some of them as high as several pounds a-piece, the same poundage would be acknowledged to be excessive.

If the trouble attending the issuing of an annuity note (the filling up the blanks, and examining and taking care of the purchase money) were no greater than that of

receiving a penny-post LETTER (allowance made for the proportion on which money is received, and the requisite extra trouble taken,) experience shows that the tenth part of a penny would be a sufficient recompense: but the trouble would be in a considerable degree greater—perhaps three, four, or five times as great:—therefore so, it would be necessary, should the pay. A halfpenny might in this way be necessary, and at the same time sufficient, in the case of the standard note of £12 : 16s.; and upon a note of this magnitude, not only a halfpenny, but several pence, might perhaps (as will be seen in Art. 17,) without much inconvenience be thus imposed; and thus, as far as notes of that magnitude were concerned, the expense of management at the local offices might be thrown upon the individuals—the purchasers. But though a purchaser might not grudge a few pence for the profit to be made in the way of interest upon a £12 : 16s. note, he certainly would not give so much as a halfpenny for the profit to be made upon a sixpenny note, as it would be three or four years before the interest would have reimbursed the fee thus advanced. In notes that were to a certain degree below the standard note (say in the £3 : 4s. or £1 : 12s. notes,) it would be necessary that the fee upon each, though not remitted altogether, should be reduced below the amount of the lowest coin,—a farthing; which would be the case, if notes under the £3 : 4s. note, for instance, were not to be taken out but in *parcels,* and a halfpenny or a farthing were the fee upon each parcel; in which case it would be necessary that government should make up the difference. This it would be well worth its while to do, even upon the copper notes; since, in Yorkshire, according to Adam Smith, before the restriction on small notes, sixpenny notes were issued by individuals in abundance.

As to the *general* annuity note office,—having no intercourse with individual customers, nor with the local office-keepers but by letter, the nature of the business admits of its being conducted with perfect regularity, and upon a plan extremely simple. (See Chap. V. § 2, *Profit in respect of management.*)

[[14]]Art. 16. (*Least quantity.*[a]) A note under this amount would consequently not be capable of being taken out singly, but only as one in a parcel, with other notes of the same or different magnitudes. So also, *perhaps,* in regard to the carrying in notes to the local office to be sent up to the general office, to be returned from thence with the interest; as likewise in regard to the changing large for small notes, or *vice versá,* or injured notes for fresh ones. But instead of a prohibition, as above, the same end might be answered, perhaps more advantageously, in some, at least, of the above instances, by a small fee, acting as a penalty to the amount of it, as by the next article.

By this means, the offices would be kept clear of the most troublesome, as well as numerous, class of customers. *Silver* notes, for example, would in that case be taken out, not *singly* by *journeymen* manufacturers, but in *parcels* by *masters,* by whom at pay-day they would be distributed among their journeymen.

Interest would by this means be *capable* of being received at the offices upon the smallest notes (which, as above, is necessary to their passing in change for large ones;) though what is probable is, that on the small it will scarcely ever be demanded. (See on this head, Chap. V. *Profit by interest undemanded.*)

What is the least note that can be issued with profit, will be determined by the quantity of *time* occupied in the operations necessary to the issue of it. Possibly on this account, in the silver, or at least in the copper notes (if any,) the actual signature of the local office-keeper might be dispensed with, and a stamp of some kind (affixed at the time of issue at *his* office, or previously at the *general* office) be employed in its stead.

In this power is included that of suspending the issue of notes of any particular magnitude or magnitudes; by which means, in case of an *inordinate* demand for the proposed paper (viz. such an one as shall threaten to swell to a pernicious magnitude the quantity of it producing the effect of money in the circulation,) a stop may be put at any time to the inconvenience. (See Ch. IX. *Rise of Prices.*)

[[15]]Art. 17. (*Emission, exchange,* or *payment* of *interest.*) Imposing, after the opening of the office, the minutest fee on any of these occasions, would be a breach of engagement, and moreover, if otherwise than by authority of parliament, an invasion of parliamentary rights.

In regard to the fixation of the amount, no harm could result from allowing to the executive government a moderate latitude; such as from a farthing to sixpence on the standard note of £12 : 16s.; and room would thus be allowed for following the dictates of convenience, as indicated by experience. Without being so great as to check the *issue,* the fee might perhaps be made to favour the *circulation.* In the circulation it might produce a *premium,* the *maximum* of which would be the amount of the fee.

The progress of the issue being known everywhere, it is scarcely possible that, in one and the same *place,* this paper should be meeting with customers in the way of issue, and at the same time meet with refusals in the way of circulation; the *trouble* of *taking out,* however small, being, with or without the *expense* of the proposed fee, so much saved by taking the note in the course of circulation. Not even as between different places does it seem very likely that any such contrariety should take place; but were the inconvenience to happen, the proposed fee, if made a little larger than would otherwise be necessary, might afford something of a remedy. Suppose the fee on the £12 : 16s. to be 4d., and the circulation dull at York, while the issue was brisk at Bristol: a York banker, taking them at par at York, might, by sending them to a correspondent at Bristol, sell the notes there at 2d. or 3d. premium, especially if a correspondence of that sort were favoured in regard to postage. So long as this lasted, the issue at York would be stopped; instead of getting them at the government office, the customer would get them at the bankers, whereby he would save 1d. or 2d., besides a part of the trouble; and the load upon the market at York would be taken off. An agio to an *unlimited* amount would indeed be destructive of one of the characteristic advantages of the measure; but an agio to an amount thus strictly *limited,* would scarcely (it is supposed) be felt as a disadvantage. Were the note kept in hand, though it were but for a few days, the interest on it for that small space of time would afford complete reimbursement of the greatest possible amount of loss.

If, in regard to the quantum of the fee, the principle were, that it should amount to just so much as would be sufficient for the remuneration of the local distributor,—this,

again, would be a reason for making it variable within certain bounds; for, under any given plan for conducting the business, it would be matter of experiment what is the lowest fee that would be sufficient; and by such improvements on the plan, as reflection fed by experience might indicate, the time and trouble, and thence the quantum of remuneration necessary, might from time to time come to be reduced.

[[16]]Art. 18. (*Accounts published.*) The uses of such publication are as follows:—

1. That, from seeing this paper taken out in the way of *issue,* people may be the more ready to take it in the way of circulation.

2. That in case of its proving to be in any degree an impediment to the circulation of bank and country banker's paper, the parties concerned may, by observing how the paper spreads, have timely warning to withdraw or keep out of the market any superfluity in their own paper.

3. That in case of any local difficulty as to the circulation of the paper in *one* part of the country (for instance, by reason of any sudden and extraordinary demand for cash) the load of the paper in the market may be lightened, by sending it to *another* part of the country, where the issue is observed to be going on briskly.

4. That from the amount of the issue in the course of each given period, indications may be deduced of the degree in which any *temporary* cause of depreciation must have operated, before it can have the effect, not only of stopping the *issue,* but subjecting to a *discount* the quantity already *in circulation.*

5. That *data* may be afforded, from which the several classes of persons interested may be able to foresee the approach of the several results or effects in which they are interested; such as the *rise of stock* 3 per cents. to par—the growing *scarcity* of government annuities—the *reduction* of the *rate of interest* paid by government in respect of them—the increase in the mass of national *capital,* by the paying off the annuitants—the *reduction* of the rate of interest *in general,* &c.

[[17.]]Art. 20. (*Conversion.*) *Conversion* is a word used for shortness, to indicate the result of two operations:—on the part of government, the redemption of such or such a mass of stock annuities; and on the part of the stockholders so expelled, a purchase made of the fresh mass of note annuities to equal amount—a result which, in the case where a man does not choose to part with the mass of annuity he receives from government, is a necessary consequence.

That the disposition to accede to such conversion should be nearly universal, seems altogether probable. The loss of interest is but a sixtieth; and, in all other points, the change will be greatly to a man's advantage. In a very short period it cannot fail of taking place. When stocks (three per cents.) are no higher than par, the £2 : 19s. note annuities are (it is true) worth, as far as interest only is concerned, no more than £98 : 6 : 8;—but no sooner are three per cents. up at 102, than the £2 : 19s. per cent. are worth upwards of £100¼.

Among any such group of annuitants thus forcibly expelled, there will always be a certain proportion (it is true,) who at the time of the expulsion were desirous of disposing of their annuities, and would have done so, had the matter been left to their choice. But, by the supposition, there will be at the same time another group desirous of purchasing a mass of annuities, equal at the least to that which is thus wished to be disposed of; otherwise the price of the article would not be at par, which it is supposed to be;—therefore, setting the one demand against the other, the whole amount of the mass of annuities paid off at or above par, may be set down as so much taken from a set of proprietors, who will not part with such their property, but will accept of it in the proposed new shape.

Proposed mode of effecting the conversion.—Adjoining to the room where a man signs in the stock-book a recognition of the redemption of his mass of stock annuities, are two other rooms—a money-room (as at present the dividend-warrant room) and an annuity-note room. Question by the clerk: "Is it money you want? yonder is the room for receiving money, and here is the warrant for it. Do you keep your annuities? yonder is the annuity-note room, and here is your warrant for the amount in annuity-notes."

On this occasion, *two* provisions, customarily inserted in the acts, will require observance;—1. That notice (a year in some instances,a half-a-year in others)b be given of the intention to pay off; and that the masses paid off at once be not less than of a certain magnitude—£1,000,000 in some cases, £500,000 in others. Of the *former* the object was, as it should seem, that a man may have time to form his plans in regard to the employment of his money; of the *other,* to obviate the suspicion of personal preferences, which, if the masses were small and undetermined, might be manifested in favour of individuals; viz. by paying a man off, or respiting him, whichever were most advantageous at the time.

To comply with these conditions, as far as appears either practicable, or material, or consistent with the practice and intention of the legislature:—suppose the course taken, in regard to the redemption of the *stock* annuities, with a view to their proposed conversion into *note* annuities, to be as follows, viz.—

1. Notice to be given, in the usual form, on the day immediately preceding the *next* day for a half-yearly payment, or on any earlier day subsequent to the then *last* day of half-yearly payment;—such notice to be expressive of a general *intention* on the part of parliament, from and after the day mentioned in such notice, to pay off the then remaining mass of stock annuities, in masses or lots of not less than the above stipulated magnitude of £500,000, as fast as the sums of money for the making of such payments shall respectively be completed;—the order in which the masses shall be paid off, to be determined by a lottery, unless changed in the way next mentioned.

By the publication of the progress of the issue in the newspapers, it will be known all over the kingdom, day by day, what sum is in hand applicable to this purpose. The masses being marked in numerical order for this purpose, each stockholder will see, day by day, whether the mass his portion of stock belongs to is ripe for payment, or if not, how soon it is likely to become so.

That a *general* notice of the *intention,* in contradistinction to a particular notice for the very day, was all that was meant by the legislature, may be inferred with some degree of assurance from the practice in Mr. Pelham's case. Fifty-seven millions worth, and upwards, was the mass of capital in relation to which notice was given on that occasion—that, in the event mentioned, it should, on a particular day mentioned, be paid off: so that, if the invitation given had remained altogether without compliance (an event which for some time was highly probable,c) the whole would on that one day have been to be paid off, and the money put into the hands of as many as on that one day might happen to apply for it. But, that such payment could have taken place, either in respect of the whole of the mass, or so much as the greater part of it, and that, either on the day fixed, or on any assignable subsequent day, within a week's or a month's or even a quarter's distance of it, is a result that does not present itself as probable.

To borrow nearly fifty-eight millions in the lump, and at that early period too—or even nine and twenty millions, and that payable all in one day—presents itself as an affair of no small difficulty, even on the ordinary footing of mutual obligation as between the two contracting parties. How much greater the difficulty, if (as by the supposition contended against) one party (composed of the eventual lenders) was to be bound, while government, the eventual borrower, was to remain loose!

It seems, therefore, that (according to the interpretation put in that instance by parliament) by a notice that the capital of government annuities will, to such amount, be paid off on such a day, nothing more is to be understood than that (as here proposed) a *part* will be paid off on *that* day to such as apply for it, and the *remainder* at some *subsequent* day or days, according as the money for paying off shall happen to come to hand.

If not—and if it were regarded as an article not to be dispensed with, that no one parcel of the consolidated 3 per cents. should be paid off but on one of the half-yearly days in use for the payment of the dividends on those annuities, and that day posterior, by one day at least above a twelvemonth, to the first day on which the notice to that effect shall have been made public—the consequence will be, that upon the *first* parcel so paid off, the loss of *time* and *interest* will amount to a full twelvemonth; but that upon all *subsequent* parcels, the loss of time will be such as cannot amount to less than a year and a quarter upon the whole. For paying off the *first* parcel—say on the 25th of December 1804—the latest day on which notice can be made public, will be the 24th of December 1803. For paying off the *second* parcel, the earliest day that can be appointed will be the 24th of June 1805. Should a parcel of the magnitude required by the act (£500,000) have come in or been made sure by the 25th of December 1803, notice may be given on the next day, appointing, as the day of payment in respect of that *second* sum, the 24th of June 1805. But on this *second* transaction, 1¼ year, all but a day, would be lost. If, again, by the 23d of June 1804, a *third* sum happened to have been collected or made sure, and notice given accordingly for the 24th of June 1805, as before—then upon that sum no more than a year and a day would be lost, as above mentioned; and upon the *whole,* supposing the intermediate days—of collection perfected, and notice given accordingly—to run in a

regular series between such earliest day and such latest day, it would, by the nature of an arithmetical series come to the same thing as if the quantity of time thus lost amounted to 1¼ year in *each* instance.

[[18]]Art. 22. (1½ *per cent. nearly.*) See Table I. Note *m.* From 3 to 1½ is no greater reduction than from 6 to 3;—being that which, in the course of 33 years, viz. between 1717 and 1750, took place in regard to divers parcels of stock, though the reduction of the great mass from 4 to 3 per cent. was not completed till 1757. (See Sinclair on the Revenue, II. 112.)

When Adam Smith wrote, the rate of interest in the Dutch funds was already as low as 2 per cent. [B. I. ch. ix.]

[[1]]The figures of reference refer to explanatory matter, the greater part of which has been thought not worth inserting in this *compressed view.*

[[24]]The type (say) as *tall again* as the tallest ever employed, the dimensions to be fixed, and types more than half as tall again prohibited.

The great quantity of letter-press places the information where it is most useful; and, together with the variety of type employed, renders the task of the forger so much the heavier.

For trust purposes (such as settlements, &c.,) where the magnitude of the sum renders it worth while, the form of the Note might be varied, so as to be divisible into three, four, or more parts. The expense of the plates might be defrayed by a small extra fee on each Note. An Exchequer Bill, though for £1000, affords no such security. A Bank Note, whether for £1 or £1000, is divisible into two parts; but, yielding no interest, is not the subject of a settlement. Settlements of stock require sometimes *journeys,* always expensive *formalities.*

[[28]]Insert here, or on the paper mentioned in Note [21,] "*To make up the value of the Note for any odd day (*i. e. *any day which is not in the Table,) add a farthing for every day between such odd day, and the day next before it in the Table.*"

[[29]]Insert here, or in the paper mentioned in Note [21,] "*When the blanks in this Register are all filled up, this Note, if not paid off, will be exchanged for a fresh one* gratis."

The obliteration of the Register of the payments made, is the only profitable fraud of which these entries are susceptible; and that might easily be rendered impracticable. The number of years here inserted, is that, at the end of which the value of the Note will have doubled itself, at simple interest.

Another mode of indication might be furnished by the principle of the French *Coupons.* An edging composed of compartments similar to those exhibited in the Table. In the interior column, the compartments filled with the figures expressive of the several half-years; in the exterior, the compartments left blank; and, on making the

payment in respect of each half-year, one to be stamped off a few words being inserted, as in the Table, for the purpose of explaining the import of the defalcation.

[[3]]The wording of the engagement is grounded on that of an *Exchequer Bill.* The *size* may be exactly that of a *Bank Note.*

[[4]]The *yearly* form, having been the first framed, is here inserted, to show its comparative simplicity; but (for the reasons mentioned in the *Observations on the Plan)* it is not proposed to be employed. Placed as it is, it saves the two other compartments from being covered by the leaves of the book.

[[5, 7, 8, 9, 10]]These blanks cannot be filled up till the last hand is put to the official arrangement of the business. The filling up will depend on the number of Notes issued, the number of hands employed in the General Office, the number of office hours for each hand, and on the mechanism employed for giving dispatch to the operations.

[[14, 22]]The object most difficult of imitation, to an *ordinary* artist, is a portrait engraven by a *first rate* hand. Imitation being a capital offence, the form must be such as no artist could possibly adopt, but with criminal views. The Epigraph should be so placed as that, in case of imitation, the intention shall betray itself at the earliest stage possible. A single *plate,* if multiplied according to the method invented by Professor Wilson of Glasgow, as described in his paper reprinted in Nicholson's Philosophical Journal for May 1798, will serve for any number of impressions.

[*]A government engagement couldnot, like this, have been rendered *depreciation proof,* but for the pre-existence of stock annuities, and its connexion with them as above. The exigencies of government not being susceptible of limitation, no species of engagement could be offered, of which the price should be fixed, and the quantity limited to what could be disposed of at that price, but for the co-existence of some other species of engagement unlimited in respect of the quantity offered at market, and thence exposed to an unlimited diminution of price.

[*]This (should it ever come into existence) will be the only species of property known, which not only pays for keeping, but pays without either risk or trouble. To the aged and parsimonious, it will be a new discovered treasure. Timidity and indolence are the natural accompaniments of that disposition to parsimony which is so natural an accompaniment of old age. To place money out at interest in any other way, is a work not only of exertion but of hazard: in this way, a man escapes from both.

To *hoard* money—to keep in hand any quantity that might be placed out at interest—is to suffer a continually increasing loss. Yet the habit of sustaining this loss is found a concomitant—and that not an unfrequent one—of the habit of parsimony.

At the hour of death, ready money, in large masses, has been found in the hands of the parsimonious of all ranks, from the beggar to the prince. But what prince, or what beggar, is there, who will hoard metallic money, when, by simply forbearing to part

with this new species of paper money, he may, every day of his life, be not only preserving his property, but adding to it?

[*]Of the annual amount of money received in the shape of income, and *capable* of being employed in the purchase of the proposed paper, a conception may be formed from the supposed amounts of the several component branches of the national income, as exhibited in the *income table* framed for the purpose of the income tax, and printed in Mr. Secretary Rose's Finance Pamphlet of 1799; to which are subjoined the amounts of the same articles, according to the estimate of Dr. Beeke.a

	Official Estimate.	Dr. Beeke's Estimate.
Land rents,	£25,000,000	£20,000,000
Farming profits,	19,000,000	15,000,000
Tithes,	5,000,000	2,500,000
Mines, navigation, and timber,	3,000,000	4,500,000
Houses,	6,000,000	10,000,000
Proportion for Scotland,	5,000,000	8,500,000
Income from possessions beyond sea,	5,000,000	4,000,000
Interest in funds, deducting foreign property,	15,000,000	15,000,000
Foreign trade,	12,000,000	8,000,000
Shipping,		2,000,000
Home trade,	18,000,000	18,000,000
Other trade,	10,000,000	
Labour,		110,000,000
	£123,000,000	£217,500,000

Observations.—The more regular the receipt, and the larger the masses received, are, in proportion to the total income of the year, the better adapted are they to the purpose of the proposed temporary employment. Stock dividends occupy the highest point of the scale—professional profits, where accumulation is out of the case, the lowest. The weekly pay of a labourer would afford him no inducement to take out annuity-note paper in the way of issue, unless in case of boarding; but in the way of circulation, it would at least be upon a footing with cash.

[†]The following *bill of costs,* exhibiting the charges attendant on dealings in stock, though it were for the minutest portion, in cases where, by distance of residence and want of connexions in the metropolis, the party is obliged to have recourse, in the regular way of business, to professional assistance, may serve to show how ill adapted government annuities are, upon their present footing of stock annuities, to enable a man to employ inthat way to advantage, either a *small* sum for any length of time, or even a considerable sum for a *short* time; and this, even independently of those contingencies which in the latter case have so frequently the effect of converting expected profit into positive loss. The charges are such as I have reason to look upon as rather under than overrated. By doing certain parts of the business himself, or getting them done gratis by a friend, a man may save so much of the expense;—as his wife might save the expense of a mantua-maker, by making her own gown: but a

contingency of this sort does not prevent the professional charge from being, in a general point of view, the proper standard of expense.

I. *Charges on Purchase.*

	s.	*d.*	£	*s.*	*d.*
1. Country attorney's attendance on the party, to take instructions for the purchase of the stock in the party's name,	3	4			
2. Town agent's attendance on a broker to make purchase,	3	4			
3. Broker's fee on the smallest purchase,	2	6			
4. Attendance at the bank for a blank power of attorney to accept stock and receive dividends, agent's and attorney's fees together,	6	8			
5. Price of the power of attorney (in 1800, now 21s.),	11	6	2	5	8
6. Attorney's attending and attesting execution of ditto, with two witnesses,	6	8			
7. Attendance at the bank to get it passed (agent's and attorney's fees together,)	6	8			
N.B.—This is commonly charged, but if contested, not allowed.					
8. Letters and parcels (a usual lumping charge,)	5	0			

II. *Charges in respect of Receipt of Dividends.*

1. Agent's attendance at the bank to accept stock (both fees as before,)	6	8			
2. Fees on receipt of each dividend (both,)	6	8	0	3	1 8 4
3. Letters and parcels,	5	0			
			3	4	0

III. *Charges on Sale.*

1. Attendance to give commission to a broker for the sale (both),			6	8	
2. Attendance for a blank power of attorney, from the principal to the agent in town, for selling (both),			6	8	
3. Power of attorney, (now 2ls.)			11	6	
4. Attendance on execution (both),			6	8	2 5 8
5. Attendance at the bank to make the transfer (both),			6	8	
6. Broker's fee,			2	6	
7. Letters and parcels,			5	0	
					5 9 8

IV. *Contingent Charges.*

1. Fee on private transfer,—if the books were shut at the time of the purchase, 2*s.* 6*d.;* the same if they were shut at the time of the sale; charges therefore on both together,			0	5	0
					£5 14 8

If the party die before the stock is resold, the whole of the above expense of £2 : 5 : 8 will be to be repeated; and to it there will be to be added the expenses attendant upon proving the will, or taking out letters of administration to the deceased.

[*]This branch of profit will have for its accompaniment, and that, as we have seen already, an inseparable one, the effect, and that an advantageous one, of taking out of

the market a mass of stock equal to the mass of annuity paper issued, although the burthen on government, in respect of the mass of annuity to be paid, remain the same. But though the effect be produced immediately and at all events, the profit resulting from it depends upon two other circumstances;—viz. the having money to raise for the creation of government annuities, and the arrival of the period which will put into the hands of government the power of bringing its annuitants to consent to a reduction in the amount of their several annuities. These constitute two perfectly distinguishable branches of profit, which will be considered in their respective places.

[*]The interest upon exchequer bills ceases when they are paid into the hands of the receivers of taxes.

[*]These papers appear to have been written in August 1800. At that time Mr. Bentham calculated the annual saving upon £6,500,000 of exchequer bills at £126,234 per annum.

[*]Table showing the principal sums of the several notes entering into the composition of £100 worth of annuity-note paper, with their respective amounts of interest, taken from Table of Annuity, Note Currency.

PRINCIPAL of the NOTES.			AMOUNTS of INTEREST.		
£51	4	0	£1	10	4
25	12	0	0	15	2
12	16	0	0	7	7
6	8	0	0	3	9½
3	4	0	0	1	10¾
0	16	0	0	0	2¾
£100	0	0	£2	19	0

[†]A portion of profit under this head would arise in Period I. It will, however, reach its maximum at the end of Period II., thenceforward its amount will decrease as the amount of the debt diminishes.

[‡]Profit by *interest undemanded* ceases, it is to be remembered, at every reduction, in proportion as the conversion from the paper bearing the higher rate, into paper bearing the lower rate goes on:—because, whenever a note is paid off, the whole amount of interest remaining due upon that note must be discharged as well as the principal. It follows that, in regard to the paper of such issue, the *time of forbearance* cannot date from any earlier period than the *opening* of that issue.

[*]The premium is a necessary condition of the co-existence of two papers of the same denominative value, bearing different masses of interest: a man would never give £100, or the value, for a mass of paper called £100, and yielding £1 : 3 : 8½ a-year interest, if for the same price he could get a mass of paper which, though called but £100, yielded £1 : 9 : 6 a-year interest.

[†]See further, Chapter VI. *Advantage by addition to National Capital.*

[*]By this restriction, the amount of the premium might perhaps be made less than it would have been otherwise;—but this would comparatively be of little moment.

[†]This, though so evidently true as to appear little better than nugatory, will be apt enough to be overlooked, or even appear disputable: for such will naturally enough be the case, if, after rising the first year of the application of the given cause of elevation, stocks should, in consequence of fresh causes of depression, experience a fall the next, or any other succeeding year.

[*]This supposition is actually realized in the case of money employed in the redemption or purchase of portions of the land-tax, and laid out in the purchase of masses of stock annuities on government account, to be added to the sinking fund. The money for a purchase of that sort cannot be supposed (unless here and there by accident) to be saved out of the income of the year, and defalcated from what would otherwise have been the unproductive expenditure of the year, unless in the case where, without any such call, a sum to the same amount would have been saved, and employed or lent out in the shape of *capital.* It is therefore so much *taken from* the mass of national capital:—on the other hand, when handed on to the stockholders of whom the stock is bought, and in payment for their stock, it is *then* so much *added to* the mass of national capital; being so much which would not have taken that course, had it not been for the measure. It therefore leaves the amount of national capital where it found it.

[*]I say *restitution;* for as the amount is *added to* productive capital upon the redemption of the debt, so was it *taken from* productive capital on the creation of the debt. The case might be supposed, in which this restitution should be complete, and even more than complete. It must, however, still be remembered, that the parties into whose hands this new wealth is poured, are not the parties from whose hands the wealth expended in war was originally drawn;—that money given to A is no compensation for loss of money, of life, or of limbs to B;—that if the acquisition be made, it is made by no other means than that of the most cruel pinching;—and that if the money wrung from *pleasurable* expenditure had been added, the whole of it, in the first instance, to productive capital, instead of being consumed in misery-making expenditure, the addition to productive capital and wealth would have been so much the more abundant. It may be further observed, that from the influx, or rather reflux of capital upon the redemption of the debt, suffering and loss must inevitably ensue to those whose incomes are reduced by the fall in the rate of interest of money. But this consideration may serve to reconcile the public in general, and the parties affected by it, that such *would* have been their suffering, and still greater, had there been neither borrowing nor redeeming, but had the country been reposing all the while in a state of uninterrupted peace.

[†]The source to which I am indebted for it, is the evidence of Mr. Henry Thornton, as printed in the several unpublished Reports of the Committees of Lords and Commons on the affairs of the Bank in March and April 1797, and reprinted in Mr. Allardyce's published Address to the Bank proprietors in the same year. In the form of a note, the substance of that evidence would form a valuable addition to the future editions of Adam Smith's Wealth of Nations.

[*]It is a fact no less curious than true, that by a mere collateral circumstance, such as the *mode* of transfer appointed, and the nature of the *evidence* required in *proof of title,* the nature of a species of property, *in itself* the same in both cases, should undergo so material a change. Without a degree of expense, destructive of a part, or the whole, or even more than the whole of the value, *stock,* as we have seen, cannot be broken down into masses corresponding to those small and diversified portions into which money is and must be divided:—nor can it at any expense be either bought or sold on any occasion without loss of time, and the obligation of personal attendance at one certain place, the same for the whole island, wheresoever the residence of the parties may happen to be in each instance. It cannot be carried by a man in his pocket, and so like so much cash distributed among any number of hands, at the very instant the occasion for each disbursement arises. Annuity-note paper, like cash and Bank of England paper, but still more divisible, is already broken down into a multitude of portions still more various, and commensurate to all purposes—and, like cash, is to be had at all times and in all places.

I have a weekly bill of £1 : 12s. to pay to my baker. The £1 of it which should have come to me in bank paper, has, in consequence of the million of supposed deficiency of that paper, failed me. Can I say to him, "*Come to the bank, and I will transfer to you* £1 : 12*s. worth of stock?*" His answer would be—"True, £1 : 12s. is the worth of the stock you will give me to-day, but what will it be to-morrow; I have my batch of bread to mind, my journeymen to overlook, my customers to wait upon; I can find no time to go with you to the bank to-day to receive stock, another day to receive the interest, and another day to sell the stock: and if I were to receive it, what would the principal amount to when the brokerage is paid out of it? No: it would be cheaper to me to give up the debt, than to obtain payment for it on such terms."

How different would be the case, if, instead of stock, I had my £1 : 12s. worth of government annuities in the shape of an annuity note! "Here (I should say) is your money—£1 : 12s. is what I have just been giving for it: pass it to-day—everybody will give you the same sum for it:—keep it till to-morrow sevennight—anybody will allow you an additional farthing for it, and so on a farthing for every eight days, for as many times eight days as you may think fit to keep it."

[†]

The total of national income, according to the estimate of Dr. Becke, was	£217,000,000
The quantity of national money was estimated as under:—	
Gold, silver, and copper,	£45,000,000
Bank of England paper before the pressure of 1797,	10,000,000
Country bank paper, about	12,000,000
Bills of exchange, by random conjecture,	3,000,000
	£70,000,000
To which may be added (1800,) addition by £1 and £2 notes, about	3,000,000
	£73,000,000

[*]1. On the part of the *bank,* the extension given to the quantity of their paper—not in notes of the then usual magnitude, but in notes of the reduced magnitudes—the £1 and £2 notes;—whereby the market was enlarged to such an extent as, if given to it at an earlier period, would, it seems probable, have prevented the exigency.

2. On the part of *government,* the suspending to a certain degree the action of the restrictive laws, by which individuals had been prevented from issuing notes below a certain magnitude.

3. On the part of the *commercial body,* by their agreement to accept of Bank of England paper, without demanding cash for it.

4. To the force of these *factitious* remedies was added that of the *natural* remedy, the return of the hoarded money of both kinds into the circulation upon the cessation of the alarm.

As no man can keep any unnecessary quantity of money by him for any length of time but to a loss, would not this natural remedy, together with the preceding one, have been sufficient?

That the exigency of the case would have admitted of the waiting for the operation of these two last-mentioned remedies, is more than I will undertake to say. But that if it would, the application of the two first might have been omitted with great advantage on another score, is an opinion that will, I imagine, be acceded to by whoever recognizes the mischief pointed out as flowing from every addition to the quantity of money, metallic or paper, in Chap. IX. *On the Rise of Prices.*

[†]To a theoretical glance it might be apt to appear that the lesser quantity of money might serve to convey the same quantity of annual receipts as the greater, if in proportion to the deficiency in the *quantity of matter,* the *velocity* of the circulation were to be increased. But upon examination, I do not imagine it would be found by what means the velocity would be capable of receiving any adequate increase. The natural effect of those pressures, to which such increased velocity would be a relief, is—not to *accelerate* the circulation, but to *relaod [Editor:?]* it.

[*]It therefore would not begin to act in this capacity till after Period I.; but from thenceforward the quantity would be more than adequate to the purpose here in question in a prodigious degree.

[†]In the compass of thirty-three years, viz. from 1717 to 1750, interest on divers parcels of the national debt was reduced from £6 to £3 per cent.—(Sinclair, II. p. 214.)

[‡]One instance, 32 Geo. III. c. 55.

[*]Address to the Proprietors of the Bank, 1798.

[*]By the reduction of interest on government annuities from 4 to 3 per cent. in Mr. Pelham's time, 1749 to 1750; 23 Geo. II. ch. 1 & 22.

[†]Exchequer bills.

[‡]Estimate, &c. edition 1794. Dedication, p. lii.

[?]By Mr. Ellison, agent to the Association of Country Banks.—Lords' Report, p. 87.

[§]By Article 18, Chap. I.

[*]Estimate, &c. ib. 62.

[*]Chapter IV. *Grounds,* &c.

[†]Chapter VIII. *Particular Interests,* &c.

[*]The case of the incorporated banks of Scotland does not appear to differ materially in this respect from that of the incorporated and unincorporated country banks of England.

[†]By the tax upon country bankers, government has already taken to itself a share in the profit on that paper. In so far as country bankers' paper came to be extruded by the proposed government paper, the profit by this tax would fall of course to be deducted from the sum total of profits promised by the proposed measure.

[‡]In this case, nothing would be receivable at the annuity-note offices but cash.

[?]The estimated amount of bank and country bankers' paper in 1800.

[§]The estimated amount of money of all kinds in 1800, nearly.

[*]Upon the whole, then, the result is, that by every £100 worth of paper issued by a banker, he imposes a tax upon the community, and that to an amount prodigiously greater than that of his own profit.

[†]For example, let £6,000,000 be the quantity of extra influx money introduced into the circulation in the course of the year;—let the quantity of extra labour produced by this extra influx be equal to full employment for 100,000 fresh hands: the allowance would be perhaps sufficient as applied to the whole amount of fresh labour produced within the year by all causes, the existing quantity of money, and the supposed extra quantity taken together:—applied, therefore, to the latter alone, it will be excessive. It is not a matter of necessity that any addition at all to the mass of vendible commodities shall have been produced by the extra influx of money, since a particular application of the existing quantity of money in the country, without any accession to it whatsoever, is altogether adequate to the producing the utmost possible degree of accumulation. (But for illustration's sake, the supposed state of things may serve as well as if it were more correct.) Call the average value of the produce of the labour of these 100,000 fresh hands 12s. a-week for each: this in round numbers will be

£3,000,000 a-year. £3,000,000, then, is the quantity of extra influx money remaining, the efficiency of which is spent altogether in degrading the value of the mass into which it flows, and producing the correspondent rise in the price of vendible commodities.

[*]This, it may be thought, should not be considered as constituting part of the *bonus,* inasmuch as in some of the acts, and probably in all the acts prior to that date, it will be found that a year's notice previous to redemption was among the stipulated terms. On the other hand, if instead of waiting for meditations and negotiations, and observations to be taken of the times, a plan had been adopted in the first instance, such as (like the proposed plan) would have given the public the benefit of the reduction from the instant that the rise in the rate of interest in general, and of money in the funds in particular, had rendered the commencement of it practicable, the probability seems to be, that the extra interest, not only of the year in question, but of one or more preceding years, might have been saved.

[†]Written 1800.

[‡]As £577,034 is to £2,169,673, so is £1,212,608 to £4,559,458.

[*]This being so perfectly opposition-proof, is a feature by which the proposed mode of reduction stands distinguished in a very striking point of view from every other. Though this consequence of the proposed conversion were ever so clearly foreseen, by those who, either from factious motives, or on the honest ground of personal motives, were disposed to thwart it, though it were even expressly announced by government (as indeed virtually it could not but be,) it would not be in the power even of conspiracy so much as to impede it. By refusing the paper, each conspirator would make a complete and certain sacrifice of his own personal advantage, without the smallest chance of affording any sensible help to the common object of the conspiracy. Limitation only, not prevention—limitation to a degree altogether without effect—would be the utmost possible result of the most unanimous and most persevering opposition on this ground.

[*]In the case of the second set of subscribers, two years were struck off from the half per cent. for seven years that had been allowed to the first set. First act, 23 Geo. II. c. 1. Second act, 23 Geo. II. c. 22.

[†]Since the above was written, a passage has been discovered in *Pinto,* whereby it appears that at the date of his book (1771) a law to this effect existed in *Holland,* in respect of the interest-bearing paper of that country, termed *obligations.* [De la Circulation, et du Crédit, p. 81.] There is a great deal of good and a great deal of evil (he says) in the effects of this law: but the good appears to consist in the mode of *employing* the money as above—the evil, in the *hands* in which the management is reposed, or in some other such *collateral* circumstance as the forced sale of property, in whatever other shape it may be in, besides money, for the purpose of converting it into *this.*

[*]*Frugality,* itself a virtue, is an *auxiliary* to all the other virtues: to none more than to *generosity,* to which, by the unthinking, it is so apt to be regarded as an *adversary. The sacrifice of the present to the future,* is the common basis of all the virtues: frugality is among the most difficult and persevering exemplifications of that sacrifice. Important in all classes, it is more particularly so in those which abound in uncultivated minds. In these, to promote frugality is to promote *sobriety:* to curb that raging vice which in peaceful times outstrips all other moral causes of unhappiness put together. In the prospects opened by frugality, the wife and children have a principal share: they derive nothing but vexation and distress from the money spent at the *gin-shop* or the *ale-house.* Compared with the *prodigal,* the hardest of *misers* is a man of virtue.

In the "*Outline of a plan of provision for the poor,*" as printed in Young's Annals of Agriculture,a among the *collateral uses* there mentioned as derivable from the system of *industry-houses* there proposed, is that of their affording, each of them to its neighbourhood, a *bank,* for the reception and improvement of the produce of frugality on a *small scale,* under the name of a *frugality bank.* In the plan that was handed about of the then proposed *Globe Insurance Company,* since established by act of Parliament, among the uses mentioned as proposed to be made of the stock of such company, is that of carrying on the business of such a *frugality bank,* with a reference to the suggestions given in the above papers.

Were the proposed annuity-note paper to be emitted, "*Every* poor *man might be his own banker:*" every poor man might, by throwing his little hoards into this shape, make banker's profit of his *own* money. Every country cottage—every little town tenement—might, with this degree of profit, and with a degree of security till now unknown, be a *frugality bank.*

[*]To judge of the *steadiment* which an engine of this nature is capable of applying to established order, turn to France and see the support it lends to *subversion:* the affections of the people ebbing fast into the old channel; but the revolution in property operating as a barrier against the return of *ancient* monarchy, and as a sheet-anchor to the *name* of a commonwealth.

[†]Irish debentures—price and value not less than £100—paper or parchment instruments as much out of the reach of the body of the people as exchequer bills—have to this purpose as little application as so much stock.

[‡]Though the debt is in loose paper, it is in large paper, and in that respect on a footing with stock. There seems therefore no bar to the introduction of the proposed plan, unless it be from local circumstances, such as without particular investigation and opportunities it lies not in a man's way to be informed of.

Who can say but that the circulation of this paper might come to extend itself even beyond the sphere of British dominion?—the value of this paper in exchange having been once established and certified by experience.

"Narrainee is a base silver coin struck in Cooch Bahar, of the value of about tenpence,

or one-third of a sicca rupee. The commodiousness of this small piece, the profits the people of Bootan derive from their commerce with Cooch Bahar, and some local prejudices against the establishment of a mint, have given the narrainee in these regions, as well as in those where it is struck, a common currency, though both countries are perfectly independent of each other, and totally different in their language and manner."—*Turner's Thibet,* 1800, 4to, p. 143.

The seal or other mark of the East-India Company on their packages (I remember hearing once from authority that appeared unquestionable) is received in *China* at vast distances from the factories, as satisfactory evidence of the quantities and qualities of the contents, to the value perhaps of some hundreds of pounds. Is it a supposition altogether chimerical, that a similar confidence might be brought in process of time to extend itself to the exchangeable value of a piece of paper, value a few pounds or a few shillings? In Africa, in more places than one, Park (as he tells us) made a paper money out of the Lord's Prayer. Might not commercial experience give *at length* a value which was thus given by mere superstition without experience?

[*]Supposing the general plan of the proposed annuity-note currency to be discarded, an advantage upon a smaller scale might still be derivable from it, by applying some of the features of it to the improvement of the existing species of government currency called an exchequer bill, in such manner as to cause it to be accepted of at a lower rate of interest than it would otherwise be.

1. It might be made out for much smaller sums, say £10 or £5; that is to say, a part of the whole mass might be broken down with a view to general circulation—a competent portion being reserved in the present large sums for operations on a large scale.

2. It might be furnished with the proposed aids to computation, by proper tables printed on the front or back of it.

3. It might be made to receive those facilities for general circulation, which depend upon the physical qualities of the paper—viz. upon the size, form, texture, and thinness, &c., which are possessed by the notes which compose the currency of the Bank of England.

4. It might be invested with all the new securities against forgery which are here proposed.

5. Markets for the purchase of it might be opened all over the country, by the simple expedient of remitting it, in such quantities and proportions as should be deemed advisable, to the several local offices already in the pay of government:—for example, post-offices—stamp-offices—excise-offices—custom-house offices.

This suggestion is made solely for the purpose of illustration. Compared with the proposed general plan, the sacrifice made by thus confining the application of it, would be a sacrifice without an object. Limited as it is in respect of its total amount—limited as it is in respect of the duration of the annuity conveyed by it, the

exchequer-bill currency is radically incapable of meeting the demand of the two classes of *petty hoarders;* and thus a proportionable part of the accommodation afforded to individuals would be lost. The utmost it could do, would be the going a small part of the way towards meeting the demand for temporary interest on the part of the other great class—possessors of temporary sums—customers for *flying annuities:*—and even to this portion of the demand, it would become less and less suitable, as the time when the annuity would cease, and the trouble of carrying in the bill for payment, and receiving the redemption money for it, approached.

The supposed modification and improvement of the exchequer-bill currency would be productive of but a part, and that a very small part, of the advantages held out by the institution of the proposed annuity-note currency. But by the institution of the proposed annuity-note currency, the advantages thus derivable from the supposed improvement of the exchequer-bill currency would be obtained in their full extent—obtained in the way of collateral result, and without any distinct measures directed to that end.

At an early period of the exchequer currency, bills were issued for sums as low as £10, or even £5. How it should have happened that the practice of issuing such small notes should have ceased, and the *minimum* note be raised to and invariably fixed at its present pitch of £100, is not difficult to conceive. The form of the security would naturally be adapted to the convenience of the *lenders,* more especially as the lenders were individuals acting on their own account, and the borrowers statesmen acting without any personal interest for the public at large. The lenders on this security have been, on the one part, and that the principal part, the immensely opulent company the Bank of England;—on the other part, the small but prodigiously opulent circle of monied men, known to each other, and meeting one another continually at or in the neighbourhood of the Exchange. £100 was a magnitude quite small enough for persons of this class. The faculty of employing in the same way a smaller sum, suppose £50, would have been of no use to them;—even £100 is not so much as they would each be under the necessity of keeping by them, or at their bankers, for the purpose of current expenses, and payments on a small scale. Bills of less magnitude would thus be attended with no advantage, and they would be attended with the disadvantage of making a proportionable addition to the trouble of computation. Another relative disadvantage, and a much more considerable one, is, that the effect of small bills—£10 and £5 bills for example—would be to open the market to a greater number of customers; thence to increase the competition for the article, and to raise the price;—in other words, to lower the rate of interest upon this paper, and thence diminish the profit to be made by purchasing it.

Whether government were aware of this at the time, is a point which at this time of day it might perhaps be difficult to ascertain. They might see it, but not be able to profit by it. If in times such as those of King William and Queen Anne, the connected circle of London monied men concurred in insisting upon large sums in preference to small sums, it would have been difficult for the government to resist:—pressed by the exigencies of the moment, it might have been hazardous, and perhaps impracticable, to wait for the success of an experiment upon the more extended scale. As to the monied men, some would be aware of this, others not:—witness the Bank, who,

guided (it should seem) rather by habit than reflection, forbore for such a length of time to give that extension to the circle of customers for their paper, which, when given at last, relieved them from their embarrassments, and seems to have proved that the scarcity which had produced their embarrassments might as properly be called a scarcity of *small notes,* as a scarcity of *cash.*

[*]This branch of the prerogative, like most others, had its origin in force, with little or no regard to public utility: the king took it, not from any view of the general advantage the nation would reap from his taking it, but because he found his private advantage in taking it. But the utility of the institution is not the less real;—the advantage is not less really among its effects, though it were not the final cause of the institution. It has at times in this country, and regularly in several other countries, produced a profit to government; but its constant object has been the guarding individuals against loss by fraud from the substitution of coin of inferior value to that indicated by the exterior appearance of the pieces.

The monopoly of the metal coinage, it is to be observed, is confined to the *fabrication* of such coin as shall be legal tender; *i. e.* as a creditor shall be obliged to receive in satisfaction of his debt:—for as to the fabrication of medals of the same intrinsic value, or purporting to be of the same intrinsic value, there is nothing against it in law, so long as the impression upon them is not an imitation of the medals made on government account. The monopoly consists in the taking the coin fabricated on the king's account for the sole subject of that part of the law of contracts which prescribes what acts shall amount to the payment of a debt.

[*]The greatest part of the capital of the Bank of England has been laid out in the purchase of government annuities; the directors of the bank therefore can never distribute these annuities in the shape of dividends amongst its stockholders, unless they receive them from government.

[*]A bank-note has other properties calculated to guard it against forgery;—but these do not belong to the present matter.

[*]Here it is clear, that a law which is indirect as to one act, becomes direct in reference to another. These terms are correct only when they refer to one and the same act, or to two different laws.

[*]Assignable, that is either by name, or at least by description, in such manner as to be sufficiently distinguished from all others; for instance, by the circumstance of being the owner or occupier of such and such goods.

[*]With regard to offences against a class or neighbourhood, it is evident that the fewer the individuals are of which such class is composed, and the narrower that neighbourhood is, the more likely are the persons to whom an offence is detrimental to become assignable, insomuch that, in some cases, it may be difficult to determine concerning a given offence whether it be an offence against individuals or against a class or neighbourhood. It is evident also, that the larger the class or neighbourhood is, the more it approaches to a coincidence with the great body of the state. The three

classes, therefore, are liable in a certain degree to run into one another, and be confounded. But this is no more than what is the case, more or less, with all those ideal compartments, under which men are wont to distribute objects for the convenience of discourse.

[*]The conditions themselves having nothing that corresponds to them in England, it was necessary to make use of the foreign terms.

[*]To prevent objections, I remark here, that religion is here only considered as an object of political utility, and not with reference to its truth; whilst as to the effects of religion in preparing us for a better life, or giving us an assurance of its possession,—these are points from which the legislator can draw no assistance.

It is better to say, an offence against religion, the abstract entity, and not an offence against God, the self-existing Being. For in what manner can a feeble mortal injure the Eternal, and affect his happiness! In what class shall this offence be ranked? Could it be an offence against his person? his property? his reputation? or his condition?

[*]When a nomenclature has been formed respecting a collection of things before their nature is known, it is impossible to draw from it any general propositions which will be true. Take *oils,* for example: under the same name of *oils* have been comprehended oil of olives and oil of almonds, sulphuric acid and carbonate of potass.—What true propositions can be deduced respecting the *delicta privata* and the *delicta publica,* the *delicta publica ordinaria* and the *delicta publica extraordinaria,* established by Heineccius in explaining the Roman laws? What can be deduced from the *felonies,* the *præmunires,* the *misdemeanours* of the English laws?—from the *penal cases,* the *civil cases,* the *private* and the *public* offences of all laws? These are objects composed of such disproportionate parts, of words referring to such heterogenous things, that it is impossible to form respecting them any general proposition.

[*]That is, their primary mischief.

[†]*Admit.* J I mean, that *retaliation* is *capable* of being applied to the cases in question, not that it *ought* always to be employed. Nor is it capable of being applied in every *individual* instance of each offence, but only of some individual instance of each *species* of offence.

[*]Because the person who in general is most likely to be sensible of the mischief (if there be any) in the offence, viz. the person whom it most affects, shows by his conduct that he is not sensible of it.

[*]Grounds; that is to say, circumstances which affect the necessity of punishment—which render it greater or less, or altogether unnecessary.

[(a)]*without lawful cause.*] This requires a reference to the general head of grounds of justification.

[(b)]*caused.*] It is of no consequence, either in what manner, or by what means, the mischief has been done—whether the person have been beaten or wounded with or without instruments,—whether it have been occasioned by a stone or other solid body—by a current of air or other liquid—by water, light, heat, or electric matter directed against the party injured—or by presenting some disgusting or hideous object to the touch, the taste, the smell, the hearing, or the sight—or by administering, by force or otherwise, a drug producing vomiting, fainting, or other inconvenience.

It is of no consequence that the means employed have been indirect; for example, whether a dog or any other animal have been employed as the instrument, or whether, by false insmuations or other artifices, an innocent person, or even the individual himself, have been employed for the same purpose; as if he have been persuaded to walk into a trap or a ditch which had been concealed; or voluntarily to expose himself to the action of causes injurious to his health.

The offence may be equally committed by removing the remedy of which he would stand in need against some approaching evil of the same nature: as, for example, if food be removed from the reach of a man pressed with hunger—if the medicines of a sick man are taken away.*

[(c)]*another.*] Refer to the title which treats of *self-regarding offences,* which corresponds to this species of private offences.

Refer also to the title which treats of *semi-public offences* of the same kind; from which it would be proper to refer again to the different codes established for the regulation of trade and manufactures, from the abuse of which suffering may result, corporal uneasiness or danger to persons not assignable,—such as those relating to innkeepers, tallow-chandlers, tanners, distillers, braziers, &c.

[(d)]*uneasiness.*] It is of no consequence that the point of contact which is the cause of it is slight. It suffices for its production that it takes place against the will of the party injured. Hence the evil of this offence may vary, from the slightest uneasiness to the most extreme torture.

[(e)]*ulterior.*] If any ulterior damage accrue, it must be referred to some other title of offences, as irreparable corporal injuries—imprisonment, &c.—Refer to the *Table of Offences.*

[(a)]*lawful cause.*] Here to the ordinary grounds of justification, it is necessary to add a new one—property in the thing. But what is this property?—how shall it be shown that it is possessed? Here, then, a reference to titles to property is necessary.

[(c)]*contributed.*] the same reference.

[(d)]*to destroy* or *injure.*] To destroy a thing, is entirely to deprive it of those properties, in virtue of which it may be useful to man: to injure, is partly to deprive it of these qualities. If, instead of the properties which are altogether destroyed, it becomes possessed of others of less value, this amounts to the same thing.

Destruction and injury differ only in the quantity of the value destroyed.

Destruction is injury carried to its completion—injury is partial destruction.

[(e)]*thing.*] Reference to the general title which treats of things and their kinds.

[(f)]*value.*] It is of no consequence whether it be a thing which possesses a commercial value—that is to say, whether it be of a nature to be useful to a great multitude of persons without distinction, as for example, eatables—or whether it have only a particular value, which would be useful only to a certain individual; for example, a paper on which he had made notes which were only useful to himself.

[*]The nine following Chapters might have been placed among the *Principles of the Civil Code,* but as the objects are therein considered in an abstract and scientific manner, I have thought it better to insert them in this part of the work, which is, so to speak, the skeleton of jurisprudence.

[†]Doctor Fordyce built one which he sent to the Antilles. It was made of pasteboard and paper.

[*]Inst. lib. ii. tit. 1.

[*]In France there were old maps according to the divisions into dioceses, provinces, financial districts, military governments. Many others might have been made according to the diversity of jurisdictions and laws, or of customs which varied in each different province.

[*]Appellations drawn from the Latin are more convenient, this language being more precise and suitable for forming compound words than the English.

[†]The law in this respect is now altered by 2 & 3 W. IV. c. 75, § 16.

[*]Hence the table of *obligations* is the counterpart of the table of services: we may distinguish the obligation *agendi*—obligation *non-agendi*—obligation *patiendi*—obligation *benè patiendi*—obligation *malè patiendi.*

The idea of obligations referring to the passive faculty, though much less familiar, has been employed by the Romanists—example, *obligationes ex delicto.*

[†]Those two branches of rights are very distinct, but they have no proper names, and I have not found any suitable word in ordinary language for designating them. I would call right *in corpus,* right of physical contrectation; and the right *in animam,* right of *moral contrectation.* Instead of moral contrectation, I would rather say *pathological,* if this term were familiar.

These denominations have two inconveniences: 1. They are new, and new words frighten the readers; 2. They are formed of words which have no previous analogy with the language.—*Contrectare* signifies to *handle,* to *touch.* The word is used

figuratively, and Cicero says, *Mente contrectare varias voluptates.* Necessity only can justify innovation in nomenclature.

Pathological is a medical term; but in legislation there is also necessity forexpressing that which concerns the affections, the feelings, the internal impressions. In ordinary use, *physical* and *moral* are contrasted; but moral is employed with very different meanings, so that it is often obscure and equivocal.

[*]Integral, though the most compound of all, is yet the most easily conceived and the shortest to express. For this reason, in making an exposition of rights, it is proper to commence with this.

[*]The noblest minds have fallen into this error. Adam Smith, in speaking of two laws which he had good reason for disapproving, says—"These two laws were evidently violations of natural liberty, and consequently bad."—*Wealth of Nations,* book iv. ch. 1. This *consequently* would annihilate all laws.

[*]What is here called a *collative event* has been commonly called *title* or *means of acquisition.* To be the individual in whose favour a collative event has happened, is to have a *title.* I shall shortly show the reason of this change of denomination.

[†]For example, if in building a house one should honestly have employed the materials of another. If, in melting some of my metal, some of your metal should be mixed with it, &c.

[*]The word contract, invented and used by the Roman law, is applicable indifferently to many dispositions which are not promises, such as purchases, sales, loans, &c. Besides, instead of a single disposition, it always indicates many at one time,—dispositions on both sides. Promise is the most explicit word, that which best excludes every false idea.

[*]A horse is lent: he falls ill: ought the lender or the borrower to pay for his cure? A room is let, without mention being made of for what time—what notice ought to be given to the occupier before he is obliged to quit? According to the variety of contracts, and of things which are the subjects of them, a corresponding variety of adjective obligations is required.

[†]The species of contract called wagering ought to be an object of particular attention. According to the application which is made of it, it may include in itself all the force of a law, and of a law which acts with the double sanction of punishment and reward. It may be employed in the way of subornation for all imaginable crimes. Bet, for example, that a certain person does not live beyond a certain time, and trace the consequences which such a bet may have.

In the case of losses by fire and shipwreck, assurance is only a species of wager; and its effects as an instrument of subornation are only too well known.

It may have a mischievous effect by its application to adjective law—to procedure.

During the time that the sex of the Chevalier D'Eon was doubtful, it became the subject of a wager. The action was brought in one of the courts of Westminster, and many persons were called to appear and depose upon this subject. This species of wager might be designated by the name of wager of vexatious inquisition.

[*]When any such power exists without limits (that, for example, of specifying places as sanctuaries), nothing more is required for destroying the effect of all laws sanctioned by any considerably afflictive punishment.

The clergy in England once endeavoured to obtain possession of the landed property in England by converting it into burying grounds, until the legislature put a stop to the progress of such metamorphosis.

[*]This first condition may be wanting in those cases in which the judge acts in virtue of his office: for example, when he causes the arrest of an individual who has behaved improperly in court.

[†]This fourth condition would be wanting when there is no written law—when custom is conjectured and followed. In new cases there is no custom to follow—and all cases were at first new.

[*]Those who have ranked this power among the attributes of the executive power, have not observed that it was purely a power of command, a power of legislation.

[*]In England, the king can perform no act without having some individual, or some officer, responsible for it. He cannot even arrest an individual. In this manner his power is limited by the responsibility of those who are necessary as the instruments of it: and it is thus that the punishment of nullity is attached to actions which it is wished to prevent.

[*]This object can rarely be accomplished. The Canton of Berne levies no taxes: its government is supported by its property. It is almost a unique case, and perhaps it is not desirable that it should be general. In governments in which the people have no part, the necessity of attending to the solvability of the contributors is a species of safeguard for them.

[†]The famous English law of *habeas corpus* is an example of procedure *ad compescendum,* with regard to offences directed against the person. What renders it famous is, that the ministers, who act by order of the king, are subject to it as well as others. It allows of no arbitrary imprisonment. The action *ad exhibendum* of the code Frédéric produces a similar effect with regard to things.

[*]Cocceius' Code Frederic.

[*]It may also be considered as divided into substantive and adjective. The substantive branch of the law has for its business the giving direction and effect to human conduct;—the adjective has for its business the giving execution and effect to substantive law.

[*]Though fictitious, the language cannot be termed *deceptious* in intention at least, whatsoever in some cases may without intention be the result.

[*]In this form, the exposition is of the sort styled *definition,* in the narrowest sense of the word,—*definitio per genus et differentiam:*—exposition effected by indication given of the next superordinate class of objects in which the object in question is considered as comprehended, together with that of the qualities peculiar to it with reference to the other objects of that same class.

The import of the word *faculty* being still more extensive than that of the word power, as may be seen by its assuming the adjunct passive, the word power is, in a certain sense, not unsusceptible of the definition *per genus et differentiam:* but to complete the exposition, an exposition by periphrasis may perhaps require to be added.

[*]See *Principles of Procedure,* Vol. II. p. 65, Ch. XII. § 4.

[*]See also *Principles of the Civil Code,* ch. 6, Vol. I. p. 304.

[*]In England a disproportion still greater than this is actually exemplified.

[*]Set the loaf on the table;—put coals on the fire;—open the window:—in these commands may be seen so many examples of the laws of which a private family is the scene;—and in seeing these laws, what will also be seen is the integrality of their character.

[†]For the several distinguishable faculties perceptible in the mental frame, consult *Chrestomathia.*

[‡]On this subject the most ancient treatise which has reached the present time, is, under the name of Logic, to be found among the works attributed to the great philosopher Aristotle.

[*]In the session of 1810, the Earl of Stanhope is reported to have stated in his place in the House of Lords, that he had with his own eyes read through the statutes at large from beginning to end. Without much danger of error, it might be affirmed that perseverance (not to speak of time and money) adequate to such a task has not, in the instance of any other individual, professional men included, been realized for at least this century past. After omission of repealed and expired statutes to a vast amount, the present price of the last edition of the statutes exceeds the average annual income of any individual of the labouring classes in England.

[*]See one of Lord Grenville’s speeches on the regency question, January 1811.

[*]See the head of *Uncognoscibility.*

[*]Chapter VI. § 2.

[*]Of all instruments of longwindedness, the most unmerciful is that which is called a Preamble. It is a sort of excrescence growing out of the head of a section. If it be a

part, it never forms any more than a part of a section, or even so much as a grammatical sentence. When the preamble is concluded, the principal part of the sentence is not yet begun.

In one instance which I have observed, the preamble of the act alone contains no fewer than thirteen closely printed pages of Ruffhead's edition of the Statutes; and in all these thirteen pages nothing is as yet said—nothing as yet done. Many a work has appeared in several volumes, each volume containing little if anything more in quantity of words than are contained in that one portion of an unfinished sentence.

In English law, a preamble commences with the word "Whereas,"—in French law with the word "*Considerant.*"

Of the two, the French term is the clearer and more expressive. In fact, what the draughtsman requires of his readers, the legislator of his subjects, is *to consider;*—to take and keep under consideration the whole matter of the preamble together; nor that only, but that and the first section at least, that from the preamble the contents of the enacting part may receive that elucidation which in his declared opinion is necessary.

"By myself," says he, "this whole mass of introductory matter was considered, all this whole mass of matter borne in mind at the same time, for the purpose of framing the enacting part;—on you I impose the task of taking and bearing in mind all this elucidatory matter, as you would wish or hope to understand the enacting part."

Such is the task imposed upon the reader in the case of these thirteen enormously filled quarto pages:—in all this immense wilderness no resting place,—no, not so much as a breathing place.

[†]Examples in prize act 1805, 45 Geo. III. c.72, High and Vice-Admiralty legislated together.

[‡]Section 4, *Longwindedness.*

[*]45 Geo. III. c. 72.

[†]During the administration of the late Mr. Pitt, a person by whose habits the language of statutes as well as of reports had been rendered familiar to him, happening to be in treaty with government, was encouraged to draw up with his own hand the draught of the law necessary to carry the treaty into effect. Desirous of making to his country the best return in his power for the benefit in which it was his hope to participate, it occurred to him to endeavour to take advantage of the opportunity, and apply it to the purpose of planting in the statute-book, for the chance of its serving one day as a precedent, a literary composition in which these helps to intellection should find a place, which, be its importance ever so considerable or ever so inconsiderable, every man that writes endeavours to the best of his ability to infuse into every other.

The terms in which from all quarters, in the profession and out of the profession, from

men of all parties as well as men of no party, he heard complaints of the imperfections of the compositions poured forth in such abundance into the country by the hands of right honourable gentlemen and right honourable lords, led him to impute the phenomenon to that combination of carelessness and ignorance and indolence, of which the marks seemed to be so abundant.

A draught was accordingly prepared, which, much about the same time, and before it was submitted to the pleasure of the higher powers, found its way to two professional gentlemen, one of whom at that very time was, the other has since that time been, in possession of the same great law-office.

By one of them it was returned, with the observation that it was good, and by far too good, to possess any chance of finding acceptance.

To the other it was an object of instantaneous and undissembled horror,—Gallicism and Jacobinism were stamped upon the face of it. The imputation, in truth, was not altogether without foundation. The matter of it was broken down into divisions, sections, and articles;—each article was of a moderate length, and provided with a number, for the purpose of enabling those whom it might concern to refer to it at once, instead of their being sent on each occasion to wander over the whole field, without being sure on any occasion whether they had or had not found the thing they were sent in quest of.

This was certainly a matter of Gallicism: for it is in this form that French lawyers then did, and still continue, to draw up their laws. But what the learned and orthodox censor either did not know, or chose not to seem to know, is, that it was no more a mark of Gallicism, of French principles, than it was of Austrian or Prussian, or Spanish or Sardinian, or Portuguese or Hindostanee principles—or, in a word, of the principles of every other civilized country, into the nose of whose government and inhabitants the man of law has not fixed his hook, as in British noses it is still fixed.

It was, in short, no more a mark of French principles than it was of British principles:—to wit, in so far as the principles of a British soldier may be taken for British principles. For somehow or other, whatsoever be the cause, be it impotence or be it inadvertence, the articles of war do furnish an instance in which gentlemen who have learning for their attribute, have the mortification of seeing the language of common sense and common honesty substituted for a moment to their own dialect of the flash language.

As to the dignitaries in question, one of them (it need not be mentioned which) was a British lawyer, who had engaged in the practice of the profession with a real desire of contributing to clear the field of those abuses from which profit in such abundance flows into the coffers of its professors, and of rendering the law subservient to its professed ends—a man who, notwithstanding his endeavours in this line, was in his day the most popular man in his profession in the kingdom—the man, to enjoy a momentary glance of whom, men have come from the remotest parts of the country.

As to the other dignitary, any particular designation of him, direct or indirect, would

be as useless as it would be invidious. The observation made, as above, by him, differed not materially from that which any other person of similar and equal learning would have made, or been ready to make, in his place.

[*]In and for the purpose of another work,† a systematical view was endeavoured to be given of the aggregate body of *offences*—meaning, of sorts of human actions, in relation to which, in respect of the mischiefs of which they respectively threatened to be productive, it naturally would, on the part of a legislator, come to be proposed for consideration, and in general had been matter of consideration among legislators, whether it might not be advisable to render them objects of prohibition and punishment, or something that should have the effect of punishment.

At the first step, the aggregate body thus denominated was broken down into four divisions:—and the groups comprised in those several divisions were so composed, that of each group, that is to say, of every individual in each group, a number of propositions, twelve or thereabouts, might be predicated, and this in every instance without involving any proposition that was false.

These propositions being such as in every instance appeared to lead to practical conclusions—conclusions indicative in each instance of a probability that, by pursuing such or such a line of conduct in legislation, might be effected the prevention of sensible mischief and inconvenience (mischief reducible ultimately to this or that modification of pain, or to loss of this or that modification of pleasure)—this scheme of classification was recommended, as adapted to the purpose of the enunciation of useful truths.

On adverting, on the same occasion, to the schemes of classification employed in relation to the same subject by men of law in general, and by English lawyers in particular, an assertion was advanced, that no scheme of classification was to be found in use, of the primary classes of which, propositions completely true could in any thing like an equal number, if in any number at all, be applied.

[*]As these remedies apply, each of them, to several imperfections at once, they cannot be made to follow the order of the imperfections.

[*]A portion of the matter of law, considered merely in respect of the expression given to the side or aspect presented by the will of the legislator to the species of act which it takes for its object, may be distinguished into—1. Matter of a directive nature; 2. Matter of a sanctionative nature.

Directive matter is either *obligative* or *de-obligative,* i.e. permissive;—obligative matter is either *jussive* or prohibitive:—*de-obligative* imports either permission to forbear doing an act which by matter of the jussive cast had been commanded, or permission to do an act which by matter of the prohibitive cast had been forbidden.

Sanctionative matter is either penal (*i. e.* eventually punitive) or remuneratory:—either, for giving effect to directive matter of the obligative cast, it denounces eventual punishment; or, for giving effect to such directive matter as

would be of the jussive cast, if the sanctionative part were of the penal cast, it announces, in case of performance, eventual reward.

[*]With regard to the two numbers, the singular and the plural,—whether both shall be employed, and which, is a fit subject for grammatical rules, which might easily, and ought to be given by authority once for all.

[†]In other words, to the verbal title substitute the numerical.

[*]By the reference thus made to the number of sections, a contradiction will naturally appear to be given to the general proposition which it is employed to exemplify and illustrate. But it is only a contradiction in appearance. True it is, by somebody or other, nobody knows who, before each paragraph, in the printer's sense of the word paragraph, a number is prefixed; but for any such purpose as the one here in question, the number might as well not be there. It is no part of the act. It has not received the mysterious touch of the sceptre.

Wo worth the wretched wight, who, in speaking of any such portion, should presume to denominate it by the name thus given to it. With what inexorable severity, with what appalling indignation, would his professional reputation be torn to rags and tatters by an Eldon or an Ellenborough! what notes and tones of admiration would be called forth by the grossness of his ignorance! Not that it is in the nature of things that the eye of any noble and learned lord should ever be pained by any such abomination: it would be blotted and cast out with condign ignominy from the speaker's office—it would be a laughing-stock among the clerks.

[*]It has thus been employed throughout the *Constitutional Code,* which may be referred to as an example of the use capable of being made of this form of speech.

[†]*Constitutional Code.*

[‡]In speaking, placing the accent or emphasis upon a syllable other than that which constitutes the characteristic part of the word. In pronunciation deviating from analogy without use.

[*]The distinction of clergyable and unclergyable was abolished by 7 & 8 Geo. IV. c. 28, § 6.—*Ed.*

[*]See Appendix, "*Logical Arrangements.*"

[*]1. Richness in collateral matter brought to view in the way of allusion; 2. Splendour (calculated to operate on the imagination;) 3. Pathos (calculated to operate on the affection.)

[†]See Chapter V. § 7.

[*]A law is also susceptible of a categorical, or a hypothetical form. It may be expressed thus:—"Every man who, &c. shall suffer," &c.; or it may be expressed thus:—"If any man, &c. he shall suffer," &c. The distinction expressed by the two

terms *categorical* and *hypothetical* has place in reference to propositions in the logic of the understanding: equally has it place in the logic of the will. The categorical is the form employed in enactive propositions in every country except the British Isles, and some, though not all, of its distant dependencies. The hypothetical is a form peculiar to English legislation:—the evil consequences resulting from it are lengthiness, and consequent and proportionate obscurity. On the occasion of each article, in a chain to the length of which there is no limit, scraps of sentences, to none of which there is any conclusion, are strung on, one upon the tail of another, before so much as a single sentence in a complete state makes its appearance. It has for its effect (and when has it failed to have had for its object?) the maximizing the difficulty of comprehending the enactment.

[†]*Composite,* so termed in allusion to the order termed the composite in architecture.

[*]*Petition for Justice.* See Vol. V. p. 476.

[*]See *Principles of Procedure,* Vol. II. Ch. XXIII.; *and Elements of the Art of Packing,* Vol. V.

[*]Melanges de Literature et de Philosophie.

[†]Obligation—right—power—privilege, &c.

[‡]In his book De L'Esprit.

[?]In his Treatise on Man, or rather the Abridgment of it.

[*]For a full explanation of these elements or dimensions, see *Introduction to Morals and Legislation,* Vol. I. p. 15. Chap. IV., *Value of a lot of pleasure or pain, how to be measured.*

[*]See *Table of Springs of Action,* Vol. I. pp. 193-219.

[†]In respect of the pleasure produced by the drinking of the liquors in question, when not carried to any such degree as to produce sensible ill effects, may it not be said, and without impropriety, that in the case of a person to whom such potations are productive of agreeable sensations, it is by the force of the physical sensation that he is invited or excited to such acts?

[*]The list of sanctions was afterwards enlarged by Bentham, see Note. *Introduction to Morals and Legislation,* Vol. I. p. 14.

[*]The last sheet of the MSS. from which the foregoing sketches are taken, is dated 21st Oct. 1814, Ford Abbey: at the foot of this sheet there is a pencil mark *Go on,* but no traces have been found of the subject having been resumed.

[*]See Vol. V.

[*]It will be seen that this arrangement was afterwards slightly departed from by the author.—*Ed.*

[*]Number of them, down to the 49th of Geo. III. 62: as per Abstract, &c. by John Tidd prat; Esq. 1829.

[*]In the original edition, these heads are printed only on one side of the leaf. Appended to them are the following

Directions For Communicating The Information.

1. For receiving the information contained in each page, the back of which is left blank, provide a sheet of paper: for example, of the size called *foolscap.*

2. Placing both leaves on one level, at the top of the length of it, and at the middle of the breadth, paste one of the leaves of this pamphlet: for this purpose it is that these leaves are printed on one side only.

3. Do so, by each of the leaves which are printed for this same purpose.

4. Write the matter in a fair and compact hand: if perpendicular, so much the better; because the more legible.

5. Of the paper in question, that part which is below the letter-press divide into four equal columns, for receiving the information in manuscript: columns thus narrow in preference to the whole breadth. Leave the two spaces, one on one side, one on the other, of the letter-press, in blank, for the purpose of receiving any such observations as I may see occasion to make.

[*]As to heads 8 and 9,—note, that some persons there can scarcely but be, who may not be able to forward correct information in relation to thoseheads. So, perhaps, under No. 7.

[†]A remark here is necessary in regard to trustees. At the hands of one who is party to a suit, no otherwise than in compliance with the forms employed by conveyancers, without his having had any confidence reposed in him—no reason can there be why any information should be looked for; no reason why any participation in the Petition should be considered as requisite, or conducive to the purpose of it.

[‡]A case is just now mentioned to me, in which the costs of the commission to examine witnesses amounted to £9000: this from a person who was in possession of the particulars.

In one of the late pamphlets an instance is mentioned, in which one single fee charged by the Master for the sale of a single estate was between £500 and £600, he contributing nothing but his fiat to the proceeding.

[*]See *Nomography,* supra, p. 233.

[*]*Power.*] Omitted after this word may be the words "*is hereby given.*" Familiar, already, in legal language, is this elliptical form: witness, in particular, in the business of *conveyancing.* No ambiguity, any more than obscurity, is occasioned by it. *Frustra fit per plura quod fieri potest per pauciora,* says a law maxim, not ill known, though so little observed. This maxim works well: for it works by *estoppel* against the man of law.

For the same reason, frequent throughout will be seen to be the omission of the verb *substantive.* With the conciseness, it gives nerve and dignity. In Latin prose, as well as poetry, it is frequent: and so in English poetry. In the Latin works of Linnæus, the illustrious Swedish naturalist, *scarcely* is the verb *substantive* to be found.

[†]*Judicatory.*] *Judicatory,* not *Court.* Court is in a high degree pregnant with ambiguity: having, besides its topographical and architectural, various political senses, in addition to the *judicial.* Witness the *Court* of *Aldermen, Court* of *Common Council,* &c. &c. &c. From all this ambiguity the word *judicatory* is free. On the present occasion, however, so far as regards the giving denomination to the new Judicatory, the word *Court* is employed; the public, as well as the professional ear, being so much more accustomed to it than to the word Judicatory.

[‡]*Suit,*] or *Cause.* Upon the word cause an exclusion is hereinafter put. Reasons:—

1. Its ambiguity. Continual is the need of employing it in its more extensive sense, as in the locution *efficient cause.*

2. *Suit can* be employed, where *cause,* as synonymous to suit, can *not.*

3. Examples:—1. Suit at Common Law; 2. Suit in Equity. Scarcely is it ever said, *Cause at Common Law, Cause in Equity.*

[?]The arrangements contingent upon this and the subsequent articles were, as per Section X. *Suits' comparative suitableness,* at a later period modified by the author, for reasons which are explained in the note at the beginning of Section X.—*Ed.*

[§]*Transference.*] 1. As to the arrangement, by which in the present instance, a suit is, without imputation of misdecision, taken out of the *possession* of the Judge in whose judicatory it originated, and removed into another, operating upon principles widely different,—taken out of the regular and technical course, and removed into the natural and summary,—in this feature there is nothing that has not its sanction in established practice.

2.—i. In the first place comes the widely-extending case, in which, by the writ called a *certiorari,* a suit is taken out of any one of the existing local, into one or another of the Westminster-Hall judicatories. On this head, these few words may suffice. Of this arrangement the origin being lost in a manner in the clouds of antiquated lore, no precedent exactly *in point,* as the phrase is, is afforded by it. True it is, that those

courts, out of whose hands the jurisdiction was thus taken, were of the inferior, not of the superior order. But, suppose need of change to have place, what difference does it make whether the courts be of the one order or of the other?

3.—ii. Be this as it may, in the second place comes the whole jurisdiction of the Equity Courts; more particularly that branch of it, by which a suit being in the possession of a set of Common-Law Judges, was and is, without any the least suspicion of misdecision on their part, taken out of their possession and carried on and determined, upon altogether different principles; and this interruption given to the suit at any part of its course.

4. True it is—that, in two circumstances, nor these immaterial ones—the present modern case differs from that ancient case.

5.—1. One is—that in this case, the object is, and the incontestable effect will be, the reduction of the mass of delay and expense from a mountain to a mole-hill: in that case, one effect has been, nor can it be doubted but that one object, and that the main one, was the raising the *hill* (the appellation of *mole-hill* would not here be in its place) into a mountain.

6.—2. The other is—that, in that case, during the sleep of the infant legislature—the, in those days, ricketty, weakly, and purblind legislature—the usurpation was effected, by one subordinate instrument of the King's executive authority encroaching upon another: their common master, if he understood anything, understanding nothing but fighting and hunting, and looking another way, not knowing nor caring what they were about;—in the present case, by the legislature itself,—the only authority which is, or dares pretend to be, competent to the purpose.

7.—iii. In the third place, a proposition there is, which, though not carried into effect, may not be altogether on this occasion without its claim to notice. It is, that about the institution of a *commission* for the clearing off of certain arrears: an expedient mention of which is made in the Preface. Of the mention on that occasion made of that expedient for the production of the needful effect, the purpose is the exhibition of its impracticability, and of its inaptitude were it practicable. Of the mention here made of it, the only purpose—the only one, but that a sufficient one—is, the presenting to the public at large, and Equity suitors in particular, the observation, that all persons, and in particular all lawyers, who have acceded to that proposition, stand precluded—or, in lawyers' language, *estopped*—from stating, as an objection to the present system, the circumstance of its taking a suit out of one set of hands, and placing it in a different set.

8.—iv. In the fourth and last place, look to France—look to Bonaparte's code: in that so-recently-framed, and so-highly-and-extensively-approved body of existing law, may be seen the same salutary and well-intended arrangement exemplified; though without any such ulterior benefit in contemplation, as that which the here-proposed institution has for its object; namely, the affording, for the efficiency and beneficence of all-comprehensive change proposed, the pre-ascertained security here promised by the cheap and quiet experiment hereby organized.

9. In that one of the French legislator's five codes, which bears the title of *Code de Procedure Civile,* Art. 7. is a passage, of which the following is a translation:—"The parties may at all times present themselves spontaneously before a *Juge de paix:* in which case he will hear and determine the matter in dispute between them, either in the last resort, if either from the law or the parties he has authority so to do, or subject to appeal: *and this even where he is not the natural* (or say proper) *Judge* of the parties, either by reason of the habitation of the defendant, or by reason of the local situation of the subject-matter in dispute."—Here ends the passage; meaning, of course, by subject-matter in dispute, a thing immoveable, such as (for example) a piece of land, a house, or other erection, &c.

10. In the character of a precedent, the value of this arrangement will not escape the notice of a real lover of justice. Off fly the fallacies and cavils, of which the words *theoretical, speculative, utopian, good in theory,* with their *et cæteras,* are the vehicles. Behold here, in this *law* and in this *practice,* not only what *may* be done, but what *is* done, where the ends aimed at are the proper ends of justice. Not that in Bonaparte's Procedure Code these ends are uniformly, and undeviatingly, and exclusively aimed at: for in the penning of it, the claw of the learned harpy has here and there contrived to come in for its share;[a] but that they are so in a degree prodigiously superior to any that can be seen exemplified in any Procedure code anywhere as yet established.

11. Danger to justice,—can any ground be formed for any such apprehension, from a power to this effect, given to the individual, whoever he may be, who, in the judgment of the majority of those whose interest it is that the best choice should be made, is the worthiest that all England can afford? Why, for these fifteen years, or more, has this same power been possessed and exercised, and that without complaint, all over France (not to speak of other countries,) by a numerous class of judges, many individuals of which have for their remuneration not so much as £50 a-year as salary, without any thing in the shape of fees.

[*]*Queries* for the defenders of the so-called Equity Courts, to make answer to—in Parliament, and by the press, on pain of being understood to have confessed the inaptitude of those same judicatories, and the aptitude of the proposed transference.

i.—Query 1. Under the name of Equity Courts, judicatories have been instituted, by which suits were drawn, from the average *length* of a year or two—(the length in a common-law suit) to many times that length: in some cases, from the necessary length of a few *minutes* to as many years: why should not these same lengths be reduced to years, months, days, or minutes, according to the complexity or simplicity of the matter of fact, and the tardy or immediate forthcomingness of the evidence?

ii.—Query 2. In these same pretended seats and sources of equity, the *expense* has been swollen, from the next to nothing, corresponding to the minutes of attendance, to the hundreds, thousands, and tens of thousands of *pounds:*—why should it not, from the tens of thousands and so forth of pounds corresponding to the tens of years, be reduced to the next to nothing corresponding to the tens or units of minutes?

iii.—Query 3. In these same pretended seats and sources of equity, that means and time might be provided, for dividing the money of suitors in such vast proportion among the lawyers—more than forty millions' worth of property in the shape of government annuities, besides landed and other property to an unmeasurable amount, have been taken into, and remain in, the hands of judges:—why should not a judicatory be instituted, by which the property would be taken out of the hands of the plunderers, and placed in the hands of the individuals who would otherwise be plundered?

iv.—Query 4. These same pretended living guides to human action—have they not—sometimes instead of, sometimes even in opposition to and frustration of, the only really existing rule of action—the only alleged rule of action which has a determinate and visible assemblage of words, and consequently an existence belonging to it—have they not, all along, been spinning out, do they not continue to spin out, an alleged rule of action purely imaginary, having no determinate assemblage of words, nor consequently existence belonging to it? still punishing men, to the ruin of their fortunes, for non-compliance with demands never issued—for non-conformity to rules never laid down? and thus, instead of that *certainty* on which human happiness depends, keeping on foot an all-pervading system of uncertainty?—to this uncertainty, why should not that certainty, which, by its only instrument, a written rule of action, might be substituted, be accordingly substituted?

v.—Query 5. By lawyers in abundance, and even by non-lawyers, consolidation is set up against codification; consolidation represented as requisite and necessary; codification as mischievous, or impracticable, or both:—do not they thus, every one of them, his utmost towards narrowing the application of the very benefit which he professes himself desirous of seeing established?

vi.—Query 6. When, on the mere ground of those imperfections, of which, whatever be the subject, literary composition is susceptible, he professes to regard *written* law as being less conducive to the ends of law, than is the so-called *unwritten* law, as if that were less susceptible of these very imperfections,—does he not thereby pass a peremptory condemnation on the very work which, under the name of *consolidation,* he is all the while recommending to be done?

vii.—Query 7. In these same seats of professed loyalty and professed regard for constitutional subordination, the occupation of the Judge consists, all along, in giving the force of law to rules having the effect of laws, of his own making; and thus, by his single authority—he being a creature of the King alone, made what he is by the King, and by such his creator every moment liable to be unmade,—substituting this course of unscrutable legislation of his own making, by authority of the King alone, to the legislation of the only legitimate and acknowledged legislature, composed of King, Lords, and Commons, in Parliament assembled:—why should not the only legitimate be substituted throughout to this, as well as every other, illegitimate legislature?

[*]*Written instruments.*] Take, for example, *affidavits,* when evidence in that shape is required or admitted, as it is in all suits in the Superior Courts, and in particular in the

Equity Courts. Immediately, or unimmediately, by his own hands, or by the intervention of others, the Judge receives (suppose) a profit proportioned to the number, or the lengthiness, or both, of the instruments of this sort admitted by him or called for by him. The motive he is determined by (suppose) is profit. But the motive he assigns, is of course the anxiety of his desire to come at the truth, for the purposes of justice: and, supposing the absence of his last-mentioned desire, by what means can any such absence be ever proved?

Take, for sub-example of the example, the case of the Honourable William Long Wellesley, and the proceedings by which the custody of and power over his children were taken out of his hands. Affidavits piled upon affidavits. All the occurrences that for a long course of years took place for any purpose, or could be supposed to have taken place, in the bosom of a large and extensively-allied family, taken for the subject-matter of a pile of conflicting affidavits. All this while, no other desire, but that of coming at the strict truth, had the Chancellor during whose reign the inquiry began; no other desire has the Chancellor in whose reign it is perhaps continuing. How should he? when, as everybody knows, in the breasts of rulers in general, and in particular of rulers of such high degree, no desire other than such as is most praiseworthy ever has place.

[*]To bring to view the mutual equivalence or these locutions, belongs to a branch of art and science which may be termed *Nomography.* This again belongs to a branch of logic which has not yet been brought into notice, and which may be termed the *Logic of the Will,* in reference and contradistinction to the only branch of logic as yet designated by that name, and which may be termed the *Logic of the Understanding.* A treatise on Nomography will be found in the works of the author of these pages. [See *ante,* p. 233.]

[†]Compared with these fee-gathering taxes, the tax called *Ship-money,* which constituted the proximate cause of the civil wars, styled the Grand Rebellion, was it not excusable, not to say justifiable?

A subject-matter not altogether undeserving of consideration, might it not be—whether a rebellion against King, Lords, and Commons, to shake off the tax by which justice is, as has been seen, to so vast an amount, denied and excluded, might not, if necessary, be even more clearly justifiable than a rebellion against the King, to shake off the tax by the proceeds of which ships for national defence were actually provided?

[*]The giving this shape to the remuneration allowed to Judges, had in its origin necessity for its excuse, not to say its justification. See this proposition demonstrated in the work intituled *Petitions for Justice,* Vol. V. The giving to it this same shape at present has no excuse—in this instance or in any other.

[*]Manifold are the *occasions* on which, vast the *extent* to which, public money has been expended, on the substitution of location in the way of gift, to location in the way of sale: *buying out,* and thus, in pretence, *extinguishing,* the profit by patronage; in effect, leaving it in the same hands untouched: thus adding to the corruption-fund

the whole of the price paid.—See "*Indications respecting Lord Eldon,*" Vol. V. p. 348.

[*]Such being the mode of payment under the Dispatch Court *summary system*—confront with it now an exemplification of the Equity Court *regular system,* the place of which it is proposed to take. Look into the office of the sort of subordinate Judge styled a *Master in Chancery:* the *Court* of this Judge, such office may be styled—in so far as a closed closet can with propriety be styled—a *Court;* meaning a Court of *Justice.* Behold here the whole business carried on in a manner, than which the wit of man could not have devised any other more exquisitely well adapted to the sole real purpose—the purpose of raising the two conjunct quantities—factitious delay and official profit—to the highest possible pitch: judicial attendance paid for by the *hour,* each such hour separated from every other by an interval of days or weeks, no one of those hours composed of so many as sixty *minutes;* no one of them sure of being composed of so many as sixty *moments;* of these moments, a number more or less considerable employed—partly in discussing the news of the day, partly in gathering up the thread that had been broken, and refreshing the traces that had been obscured, by so many intervening heterogeneous businesses.

[*]*Sheriff-Deputes.*] Note, the acting *Depute* is styled *Sheriff-Depute Substitute;* the acting *Principal* being styled *Sheriff-Depute,* and the official person styled a *Sheriff,* a sinecurist. *Official person?* Yes: but, having no function to perform, with what propriety can this, or any other sinecurist, be termed a *functionary?*

[*]*Power-holder.*] Analogous compound appellatives, *householder, freeholder,* &c. To the application made of this mode of designation, further extension will hereafter be given; to wit, in and by the words *exemption-holder, evidence-holder, right-holder,* &c.

[†]*Checks,* or say securities against abusive advantages capable of being made of those same powers and exemptions.

[*]*Precedent.* Of power not less extensive, a precedent may be seen in that given to the Commissioners for Inquiry into the subject of Real Property. And note, that in that case it was not, as here, by the King in Parliament that the powers were given, but by the King alone, with the counter-signature of the Keeper of the Privy Seal. Date of the commission, June 6: year of the King, the ninth: year of our Lord (not added), 1828.

"And for the better discovery of the truth in the premises," says the instrument, "We do by these presents give and grant to you, or any three more of you, full power and authority to call before you, or any three or more of you, such and so many of the officers, clerks, and ministers of our Courts of Law and Equity, and *other* persons, as you shall judge necessary, by whom you may be the better informed of the truth in the premises, and to inquire of the premises and every part thereof, by all *other* lawful ways and means whatsoever.

"We do also give and grant to you, or any three or more of you, full power and

authority to cause all and singular the officers, clerks, and ministers of our said Courts of Law or Equity, to bring and produce upon oath before you, or any three or more of you, *all* and singular rolls, records, orders, books, papers, and *other writings* belonging to our said Courts, or to any of the offices within the same, as such officers, &c."

If, when conferred by the Crown alone, the conference of this power is legal, constitutional, and unexceptionable,—how much more clearly unexceptionable where the whole power of Parliament is, as here, applied to it? True it is, that the operations, to which in *that* case it extends, are no others than those designated by the words "*bring and produce,*" not extending to *definitive* transference; but, for the purpose here in question, such transference is necessary.

Turn now to the existing system. Look to it under the so-perfectly-distinguishable, though so-intimately-associated heads of factitious delay and expense; not forgetting complication, thence obscurity, uncertainty, and misdecision.

Living instruments, by means of whom, and consequently *upon* whom, Equity Courts operate, three: a *Sheriff,* a *Serjeant-at-arms,* and a *Sequestrator:* a Sheriff, for operating indiscriminately upon persons and things; a Serjeant-at-arms, for operating commonly upon persons only; a Sequestrator, for operating upon things exclusively. These, for Equity Court proceedings, by a bill and answer, exclusive of proceedings under a Bankruptcy Commission: as to which, see the next section—Sect. VII. *Prehensors.*

1. First, as to the *Sheriff.* This functionary is the common *Jack-of-all-sides* (juvenile cricket-players will understand this), to four different masters at once; namely, the three Westminster Hall Common-Law Courts, in all ordinary cases, and the Equity Judge, now and then, in an extraordinary case. By *the* Sheriff, understand, on this occasion, the Sheriff of Middlesex: the sheriff of that county alone, of all the fifty, having been regarded as having his residence near enough to the Equity Justice-chamber, to be capable of being operated upon by the Equity Judge, without preponderant inconvenience; accordingly, over this Edom alone has the David of Equity ventured to cast forth his shoe.

Not much less near at hand, it is true, than Middlesex, are three other counties; Surrey, to wit, Kent, and Essex;—a discovery, of which, for other purposes, and in particular for purposes styled *police* purposes, use has of late years been made. But, by causes which it would take too much room to explain, no other living instrument of this kind was found so well fitted as this Middlesex one to a Lord High Chancellor's hand.

Note now how well fitted,—"No man can serve two masters," says *Scripture* as well as Reason: meaning, by *serve,* serve *well.* But, hundreds of years ago, four sorts of judicial masters there were, besides this one, who, if they had not had each of them a fraction of this functionary to serve them for a servant, would have had *none.*

There are—the King's Bench, Common Pleas, and Exchequer National Judicatories,

having all of them the Sheriffs of *all* counties at their command; with the Justices of Peace in general sessions throughout the nation; County Judicatories, these—each having no other sheriff than the sheriff of its own county at its command.

In those days, the process of the King's Judges being not unfrequently withstood by the Barons and Knights his feudatories,—the operations of civil government could no otherwise be carried on than by a sort of *guerilla* warfare. Commander of the army in each shire, the Earl—*Saxonicé* Alderman, *Latiné* Comes, meaning companion of the King, whence *Normanicé* Comte, *Hispanicé* Conde, &c.: Lieutenant-General, *Anglo-Latine* Vice-Comes, *Saxonicé* Scire-Gereve, (Deputy Commander of the Tertorial Division, thus denominated:) whence, by contraction, *Sheriff.*

And so, because, so long ago, this miserable makeshift was regarded as necessary,—it must now-a-days, to the exclusion of every appropriate instrument,—now, when it has so long ceased to be necessary,—be continued.

For centuries upon centuries, this *Vice-Comes* has been a deputy without a principal: the principal (who, when he had existence, was called the *Comes,* alias the *Earl* of the *County,* or say *Shire),* an imaginary being, without a real "*habitation*"—without anything but a "*name.*" For a specimen, but no more than a specimen, of the suffering—of the practical and too real suffering springing out of this theoretical and ideal confusion, see "*Petition for Justice,* § 14. *Results of the Fissure—Groundless Arrests for Debt.*" (Vol. V. p. 491.)

2. Secondly, as to the *Serjeant-at-Arms.* This functionary is a satellite, appointed on each occasion by the Equity Judge himself. How he came by this his formidable title, requires explanation. Once upon a time, some person or other having omitted to do something which by the Judge he had been bid to do,—his Lordship dreamt that a *rebellion* had been raised, which being admitted, an army became necessary for the suppression of it. Thence came the Chancery writ, styled a "*Commission of Rebellion:*" by which was meant—not, as in the case of a "*Commission of Inquiry,*" a commission to *make* the thing, for the making of which the commission was issued—not a commission to *make* a rebellion, but a commission to *quell* one. Commander of the army, or commander and army, all in one, this same *Serjeant-at-Arms.*

3. Lastly, as to the *Sequestrator.*[a] While, during a course of years, for the sake of the profit upon the expense, the Chancellor, with his myrmidons, was making believe to do that which, if so minded, he could have done, with next to no expense and vexation to anybody, in the course of some number of days or hours,—a sort of operation called *sequestration* required to be performed: and this, like other *operations,* required *operators.* Sequestration, the operation: sequestrators, the operators:—in these may be seen the "*manipulus furum,*" of whom the Serjeant-at-Arms was, in case of necessity, the *Thraso.*

For the purpose of giving execution and effect to a portion of *substantive law,*—and, to that end, for the purpose of giving execution and effect to the correspondent *judicial mandate* issued on the occasion of a *demand* made on the Judge for his

appropriate service,—on that same occasion and to that same purpose, what is requisite is, that, into the hands of the Judge be taken either the subject-matter itself of the demand—namely, the mass of property or other benefit, of what nature soever it be, which is the object of declared desire; or else a *person,* who for shortness is called a *defendant:* meaning thereby a *person,* who, on the occasion in question, for the purpose in question, is assumed to be in possession of this same object, and prepared to *defend* himself, in that arena, against all endeavours to take the object from him: though the truth is—that, so *costly* in this field has the war been made, that out of a thousand, not one is there who, how justly soever entitled to the possession, would, if called upon, be able so much as to *begin* to defend himself in that same field, with any possibility of effectual defence:—say then the *defendant,* or *proposed defendant,* himself. But, this same person, or any *person*—to what *end?* to what *purpose?* Except where, the case being a penal one, the punishment appointed is such as requires the *body* of the individual to be forthcoming for the purpose of being subjected to it, no use is there for the *body,* but for the purposes of coming at, by that means, the *valuable thing* itself, which is the object of the desire.

To this end, the Dispatch Court Judge, if, meaning honestly, he has the power, will act according to the circumstances of the *individual* case. The demandant he has seen and examined, of course, at the very outset of the suit: this being the very operation from which the suit has received its outset. From this examination he will have framed his judgment as to what cource to take, for the purpose of securing, with the minimum of delay, vexation, and expense, to all parties, the eventual rendering of the service demanded; that is to say,—if, in his view, a preponderant probability has place, that the proposed defendant, unless prevented, will convey, out of the reach of the Judge, not only the subject-matter of the service demanded, but his *body* likewise, by means of which, in case of need, the compliance with the demand might be compelled, he will for this purpose cause *hold* to be taken—*prehension* to be made—of things moveable, things immoveable, and body—one, two, or all three, as occasion may require: mindful throughout, on no occasion to produce so much as one atom of *evil,* more than is necessary for the production of the preponderant *good* endeavoured to be produced.

[*]*Taking.*] 1. By what hands, then, shall they be *delivered* into it?

2. To the situation of a judicial functionary of the grade of a Judge, a manual operation such as this is not congenial.

3. To the eyes of the Judge thus ousted of jurisdiction, the witnessing of it would be needlessly painful.

4. Not but that, for the wound thus producible, a precedent, or something very near to one, were it needful, might be found.

5. But no such wound is needful.

6. On the part of the subordinates, on whom the duty is here imposed of submitting to the operation, no such vulnerable dignity has place.

7. On this occasion, as on every other, whatever is done, the less the expense, in every shape, at which it is done, the better.

8. As to superordinates, they will know better than in any open and direct way to attempt to throw obstacles in the way of obedience on the part of their subordinates.

9. *Here,* then, may be seen—*benefit maximized, burthen minimized.* Turn now to the *existing system: there* may be seen burthen maximized, benefit minimized.

10. To exhibit, were it even no more than a rough outline, of the several diversifications of the course taken—taken by the existing system in general, and by the Equity branch of it in particular, for the attainment of these two conjunct sinister ends,—would require, for a basis, a sketch of the whole body of judicial procedure; including, in the Equity part of it, the two vast morbid excrescences—the *Bankruptcy* Courts and *Insolvency* Courts.

11. This being *here* impracticable, suffice it to say that it is by the observation of the opposite practice, as carried on under the existing system, and of the enormousness of the mass of evil produced by it, that the several *preferences* here recommended were suggested.

12. At the head of the mass stands the portion of it produced by the practice by which for the price set by Judges, to every man who can and will pay that price, the liberty of any and every other man is *sold;*—sold, together with the additional powers of involving in utter ruin men in countless numbers by a known and infallible process,—supposing him so lost to all sense of humanity and shame as to accept of the invitation—still, as well as for ages past, held out to him by English Judges. Such is the practice by which, on the ground of the false assertion of a debt due, to the amount of which there are absolutely no limits, the prehension of the *person* of a man, and in consequence the destruction of his *commercial credit,* may be effected: the act of inflicting the suffering not being preceded by any inquiry into the *need* of it; the need of it—that is to say, for any one of the three above-mentioned purposes of justice. In the practice of no other country, in so flagitious a form (one may venture to say), have depredation and corruption on the part of judges been seen to manifest themselves. For a brief, but to this purpose sufficient history, of the course by which this part of the system has been brought to its present state of perfection, see *Petitions for Justice,* Device XIV. *Groundless Arrest for Debt.*[*]

13. Root of this, as of every other abomination of judge-made and fee-gathering law, the original sin inoculated by it—exclusion of the parties from the presence of the Judge. Necessary not less to the minimization of the burthen to the defendant, than to the maximization of the benefit to the plaintiff, is information obtained by the Judge, as to the circumstances of the parties on both sides, and in particular on the defendant's, at the very *outset* of the suit: for, on the state of the pecuniary circumstances of the defendant will depend the means which, for making provision for the *execution-securing* as well as for the execution-effecting purpose they afford: and, at *that stage* of the suit, no otherwise than by the word-of-mouth examination of

the plaintiff can that same information be obtained:—of the plaintiff himself, or of any such representative of his, whom, according to his condition in life, the necessity of the case has on that occasion substituted or added to him.a

14. Of the thus all-comprehensive and hitherto unexampled extent here proposed to be given to the power of prehension, one natural enough consequence is—that, to a first glance, not only augmentation of the Judge's power should present itself as a principal *object* of it, but, moreover, in a degree more or less considerable, detriment to the interest of the defendant, as the *effect.* On a closer inspection, however, it will be seen, that, by the variety of choice thus afforded, effectual service is rendered to the defendant's, no less than to the plaintiff's side:—whereas, under the existing system, burthensome to an outrageous amount as is the prehension *actually performed,* still more outrageously burthensome is the *power,* as above given, of performing it:—at any rate, by the option of substituting to a more a less burthensome mode of operation, no mischievous addition to power is effected: and, with not less solicitude has been looked out for—the mode of operation which will be least burthensome to the defendant's, than that which will be most beneficial to the plaintiff's, side.

15. As to *security,*—for the several modes in which, for the several above-mentioned *purposes,* it may be given, and the *occasions* on which it may require to be given, see Section XVII. *Prehensor.*

16. Minute indeed is the proportion, which the imagination of a non-law-learned reader could present him with, of the immense mass of expense and delay produced by the Equity practice in relation to this subject, with the correspondent probability of misdecision and unjust non-decision: in a word—of the imaginary rule of action thus feigned, the efficiency to all mischievous, mounted on inefficiency to all good purposes. Under the head of *Sequestration,* six pages in Madox's Chancery, II. 20, 4to, 210, will suffice to exhibit to him a miniature picture of one part of this mountain of predatory abuse.

17. Suggestions have, of late days, been brought forward, having for their subject-matter imprisonment for debt, considered in the abstract; and for their object—on the face of them, if not at bottom—the abolition of imprisonment, to the whole of the length to which it can, on that same occasion, be employed. Supposing *this* to be the proposition, with as much reason might be proposed abolition of *punishment* on every occasion—of punishment in every *other* form, on the occasion of *transgression* in every other form. Without the discernment to see that exceptions are necessary, or without patience to attend to them—thus does sentimentality, regardless of the dictates of the greatest-happiness principle, apply itself but too often to the establishment of general and sweeping rules.

[*]Since that work was printed off, the law on the subject has been materially altered by 1 & 2 Vict. c. 110.—*Ed.*

[*]*Exchequer.*] Incidentally apply these same powers to the several Superior and other Common Law Courts: see above, art. 3. Also to the Ecclesiastical Courts: see below, art. 69 and 70.

[*]*Possible.*] Say, in four words, *Prehendenda* are all *prehensibilia.*

[†]*Persons.*] Note, on this occasion, that where slavery has place,—*slaves,* though *persons,* being considered and dealt with on the footing of *things,* they may become eligible subject-matters of prehension, as well as the *land,* on which they are, have been wont to be, and are about to be, employed.

[‡]*Burthen to the defendant.*] Example:—Among things incorporeal, or say *rights,* right of entering into an obligatory engagement of any kind; right to Judge's service for *remedy* to *wrong* in any shape; rights, these, the prehension and consequent suspension or final loss of which is among the consequences of *outlawry* and *excommunication,* to which, antecedently to his appearance, and for the mere purpose of compellinghim to make such appearance, a defendant is subjected under the existing system:—subjected, at the *outset* of the suit, before any declaration is made, true or false, of the ground of the demand thus vexatiously made by the plaintiff; subjected to prehension thus relatively *useless,* things *incorporeal* and fictitious, in preference to, and to the exclusion of, all things relatively *useful:* that is to say, things really existing, moveable and immoveable.

[*]*Prehension.*] Turn now to the existing system. Consequences, under the several above-mentioned heads, these:—

1. Purpose, *execution-securing.* Prehended instead of any subject-matter of property, applicable ultimately to the purpose of the suit, nothing but the body of the defendent: whereupon to prison he is consigned, unless security *ab extrâ* be found by or for him; security, and for what?—for compliance with the demand? No: but for his being ultimately consigned to prison,—a place which no more produces money than it does corn or potatoes. Consequence of the operation, the defendant's pecuniary substance, in large proportion, is divided, not among creditors, but one part of it among lawyers; another part consumed in waste. Nor is the thus miserable and misery-producing security obtainable at the hands of an Equity Judge; only at the hands of a set of Common-Law Judges.

2. Preference the first: Things preferred to persons. Instead of this, Common Law prehends persons, and will not prehend any *thing*—employing this *burthen* without *benefit,* and the most instead of the least afflictive course. Equity enhances upon the system of oppression and depredation. Common Law prehends indeed the body, but does so in the first instance, and for comparatively trifling expense: Equity, not till after the party wronged has been loaded with vast and unbounded expense in possession, with still more vast in expectancy—the product of correspondently enormous delay: not prehending for the eventual use of the parties wronged any one thing it prehends—not so much as the body of the author of the alleged wrong, without defaming, oppressing, and plundering him, by force of a calumnious lie, by which a man, whose only crime or offence is poverty, is proclaimed guilty of *rebellion*—a capitally-punished crime.

3. *Things moveable.* For securing eventual execution, and thence at the earhest stage, or any stage antecedently to the latest, Common Law, or Equity, do not either of them

prehend one. Common Law does in some cases, at the latest stage; Equity not even then.

4. Of the aggregate mass of immoveables, Common Law does not at the *first* stage prehend any part: at the last stage for *execution-effecting,* of any such part as under the name of *leasehold* is held for a number of years certain, it does indeed prehend the whole: of such part as is termed freehold, being held for a number of years uncertain, as being determinable by the cessation of a life, or the longest of a number of lives, commonly three, it prehends the half, and no more than the half; namely, by means of a writ called an *Elegit:* this by a process of division by which, whether anything valuable is or is notgiven to the plaintiff to whom it is due, no small quantity of his property, and the defendants'—of the property of the party wronged, as well as of that of the author of the wrong, is divided among Judge & Co.

5. Turn back now and seewhat, on this same occasion, will be the course taken by the Dispatch Court Judge.

Applying, all along, his careful attention to the above rules, he will look into the individual circumstances of the individual case, and those of the individual parties; and whatsoever they render it possible for him to do, this he will do, with reference to every one of the above-mentioned purposes.

Whatsoever, for any one of those same purposes, he can take with his own hands, he will take with those same hands: whatsoever he can take, but no otherwise than by other hands, he will take by other hands. By other hands: but by what? By unwilling ones? No surely: but by willing ones, so long as any such, who are also in other respects apt, are to be found. To Common-Law Judges or Equity Judges, as the case may be, he will leave it to try, or pretend to try, what can be done for the purpose in question by a set of hands, the main occupation of which, where it is not the sole one, is the taking of the money of both parties into their own hands, and putting the same into their own pockets.

[*]*Counter-security.*]For the different *shapes,* or say *modes,* or *forms,* capable of being given to such security and counter-security, see *Petition for Justice,* prayer part, art. 35, 36, 37, (Vol. V. p. 501.)

No such counter-security does the *existing* system, in any of its branches, provide. Anciently, in the Common-Law branch, yes: but under the fee-gathering system, forasmuch as to all suits by those who were *unable* or *unwilling* to afford such counter-security a bar was thus put,—the bar was, of course, sooner or later, removed.

[*]*Efficiency.*] Of this remedy, compare the effectiveness with that of a Bill in Equity; by which, at the hands of an unwilling defendant, at the end of five years, nothing more will have been effected than the elicitation of the evidence of that *one* individual, out of an indefinite number of individuals, of the evidence of *all* whom the elicitation may, for the purpose of the suit, be necessary!

In the aggregate of the matter of the xx. paragraphs of the *instructional* article 27,

together with that of the articles 28, 29, and 30, may have been seen *one* part of the endeavours applied, in the here proposed system, to the alleviation and minimization of the mass of human suffering, liable to be produced, and in so large part unavoidably, by the hands, conjunctly or separately operating, of the Legislator and the Judge. By the opposite practice, as exhibited by the existing system, have these measures of relief, in almost every instance, been suggested. An end, which never has been aimed at,—nor, so long as the fee-gathering system continues in operation, ever can be aimed at,—how should it in any instance have been accomplished?

[*]*Evil-consciousness,*] that is to say, the being apprised of the evil produced by the offence. Under Rome-bred law, throughout the whole field of delinquency, runs this distinction between *evil-consciousness* and *insufficiency of attention;* or say, in this case, *inattention, heedlessness,* or (from the Latin word *temeritas,* as employed in the locution *temerè litigantes),* temerity, or, in some cases, *rashness:* in the language of that law, unappositely is this distinction expressed by the words *dolus* and *culpa; dolus* (a word meaning *deceit)* being employed where no deceit is aimed at. *Evil-consciousness,* commonly called, in English-bred as well as Rome-bred law, by the uncharacteristic and obscure Latin appellation of *mala fides;* in Rome-bred law, also, *dolus. Heedlessness,* in English-bred law not named, and by English judges and other lawyers (such is *their* heedlessness) scarcely heeded; being confounded sometimes with *evil-consciousness,* sometimes with *blamelessness.* Of the distinction, prime in intensity, as well as extent, is the importance: blind to it have been at all times the founders of the fiction calling itself English Common Law: a defect, sufficient of itself to stamp upon the whole system the character of worthlessness, *comparative* at least, not to say *absolute.*

[*]*Coercion,*] Parts of the mind, to one or other of which, whether for good or evil, human agency applies itself—the *intellectual* and the *sensitive:* to the intellectual applies itself every instrument by which deception is produced by means of fraud; to the sensitive applies itself every instrument which works by means of anti-legal physical force, anti-legal intimidation, anti-legal allurement: in the case of coercion, it is by force, or intimidation, that the effect is produced.

Note here the difference between *anti-legal* (or, as the word more commonly used is *illegal)* and *anti-constitutional. Anti-legal* means prohibited by the penal branch of the rule of action; *anti-constitutional* means unconformable to the *constitutional* branch of the rule of action. *Corruption*—in both its forms, the *intimidative* and the *alluring*—corruption, when power or opulence is the instrument of it, is, to a vast extent, not *anti-legal:*—as to *anti-constitutionality,* it is not contrary to what *constitutional* law *is,* however contrary to what constitutional law *ought to be,* and is falsely *said* to be. Suppose a tenant turned out of his farm or shop, and thereby consigned to ruin by his landlord, for giving a vote in a manner disagreeable to that same landlord: by such ejectment, corruption—namely, the intimidative species of it, is practised. In this, however, there is nothing *illegal;* nothing repugnant to that which the constitution *is:* how repugnant soever to that which the constitution *ought* to be.

[*]Turn now to the existing system. There, on an occasion such as those above described, for the description of the offence, the locution commonly employed

is—*Contempt of the Court.* This locution, as being loose and vague,—liable to be abused, and accordingly most abundantly and mischievously abused,—is on the present occasion, in the text of the Bill, purposely forborne to be employed. It might be employed—to justify incarceration, for discourse uttered by word-of-mouth or in writing; and thus—for that appeal to the Public Opinion Tribunal, to which no obstruction should in any case be opposed. Under the existing fee-gathering system, it is employed, as often as by the *price* put by judges on their appropriate services, real or pretended,—the impossibility of compliance with their mandate is produced. Having made a man poor, they proceed, and punish him for being so. For poverty,—for non-performance of impossibilities,—for an offence to which the Judge himself has given birth,—for these things it is that the Judge punishes. And, to oppression, adding insult and defamation, he punishes, for alleged contempt, where terror—the opposite to contempt—is certain, and contempt impossible.

[*]See further on this subject, Section XXIV. *Expense, how provided for,* note.

[†]If, in this way, throughout the whole field of litis-contestation, and in particular throughout the whole field of delinquency, the burthens, so far as the pecuniary circumstances of individuals admitted, were laid exclusively on the party in the wrong,—all factitious costs being, as upon the here-proposed summary system they would be, abolished,—not only might the party in the right be exonerated of all the expenses, to which, under the existing regular system, he is subjected by unreimbursed *costs,*—but, in no small proportion, might be defrayed that expense, the burthen of which is, under the here-proposed system, transferred from the back of the suitor to that of the Government, as trustee for the public at large. But, such is the power of that delusion of which *words* are the instrument, that, for a long time, a much less burthen than that which is endured with patience under the name of *costs,* might, probably, by men in large proportion, be bitterly and loudly inveighed against, if imposed under the name of *punishment.*

[*]1. The topic of *remedies* being now, so far as regards the present purpose, at a close,—turn now to the existing system. Of the four species of remedies,—the originally-preventive and the suppressive are not here in question: remain the satisfactive, in which is included the compensative, and the punitive, or say the subsequentially preventive. In relation to these two, what then does the existing system? Of these two, for wrong in no shape does it so much as propose to itself to make provision of more than one. Sorts of shops, of which Judge & Co. are the shopkeepers, two: commodities sold, in one of them, a chance, such as it is, for money, which, when given in the name of compensation for wrong, they call *damages;* commodity sold in the other sort, a chance for the benefit produced by punishment; the enjoyment, such as it is, reaped by one man, from the contemplation of the suffering produced by punishment inflicted on another:—say, for shortness, the pleasure of *revenge,* or *vengeance:* and, in one of the shops, moreover,—namely, the King's-Bench shop,—you may call for damages or punishment, which you will; but (what seems whimsical enough), both together, even at that shop, where both are upon sale together, you cannot have. True it is—that while, in consequence of your asking for it, they serve out to you a quantity of the commodity you ask for—namely, the chance for damages, they serve out to you along with it, a quantity more or less

considerable, of that other commodity which you have not asked for. But, no thanks to them. They don't know that they do so: they don't know what it is they are doing.

2. It is not by them that the commodity you did *not,* is added to the commodity you *did,* ask for. Not by their hands is this addition made, but by the hands of Nature. It sticks on without their perceiving it, and thus it is that you come by it. Go to a plumber, and buy a quantity of lead: buying the lead, you buy the chance of a quantity of silver in it; but if there really be any, it is more than the plumber knows of: it was left in, to save the expense of taking it out; and, in the case of the King's-Bench shop, where, under the name of justice, justice or injustice is sold, as it may happen,—whether the quantity of the suffering, which thus sticks to the *damages,* when actually served out, be sufficient for the purpose of the subsequentially-preventive remedy, is matter of accident. They know as little about it, as the plumber who serves out the silver with the lead, knows what use will be made of either: they know about the matter, as little as they care.

3. A natural question here, is—seeing this—that a shop is always open, where the *two* commodities may be had together, for the price of *one,*—the so much less valuable, along with the more valuable, and without any extra charge for it—how is it that, to any of the shops any man goes and gives his money for the less valuable article alone?

4. The answer is—that the difference depends upon *evidence:* upon the *source,* and thence the reputed *quality,* of the evidence which the party wronged happens to have at his command. For, according to the rules of the several shops, along with your money, you must, for the most part, for form's sake, have at your command and exhibit a quantity of evidence: at any rate a something which, without being evidence, is by them received as and for evidence. The King's-Bench shop has, as above intimated, two sides—the *civil* side and the *penal* side: on the *civil* side is sold the chance for *damages:* and there the evidence they insist upon is of a particular sort, regarded as a superior sort;[a] and if (such is your misfortune) you have none of this sort to produce, you must either go without remedy, or betake yourself to the other side: in this case, all you can have for your money is the pleasure of revenge; and for that, the shop you must apply to is either the penal side of that same King's-Bench shop, or some other shop, where they have nothing better to sell than this same pleasure of revenge.[b]

5. But, of this commodity,—the chance of which is thus sold on the penal side, and is worth so little, and to a man who believes in the same creed as those Judges profess to believe in, worth absolutely nothing,—the price, though so high as to be out of the reach of the vast majority of the people, is still abundantly less extortious and unreasonable than that of the chance for compensation.

6. Under the existing system, "no wrong is there that *has not* its remedy:" such is the aphorism delivered by Blackstone, and ready to be repeated by all those in whose minds law learning has extinguished the sense of shame. "No wrong is there that *has* its remedy:" this aphorism is not indeed exactly true, but it is beyond comparison nearer to the being so than its above-named opposite.

7. That which, on this occasion, was undertaken for, is an indication given of the *inadequacy* of the *provision* made, under the existing system, by *Judge-made law,* for *remedy* to *wrong* in the several shapes of which it is susceptible, together with some general intimation of the causes by which such its *worthlessness* has been produced: of two of these causes, such general intimation has here been afforded: namely, the absurdity of not so much as attempting to administer any more than one of two remedies, where the nature of the case admits of and requires the application of both; and the still more flagrant absurdity of shutting out or letting in the one and the same evidence,—that is to say, the testimony of one and the same man,—according as it is the one sort of remedy or the other that, if admitted, he would apply for. As to what regards this latter absurdity, further particulars belong not to this place; but they may be found in ample abundance in the *Rationale of Evidence.*

[*]*Immaterial.*] 1. Not so as to lawyers, professional or official. This supposed £20,—let it be *instanter,* and by the order of the Dispatch Court Judge, that it is paid,—the £20 is £20, and no more: let it be paid, not till after the *fiat* of a jury has been obtained for it,—the £20 is £50 perhaps, perhaps £100, the difference being distributed among these same lawyers: how many more hundreds—is what, till after the event, no man can have any assured ground for saying.

2. Damages without a jury! Trial by jury set at nought! Palladium of English liberties invaded! Arbitrary power—power, till now unknown to the Constitution—conferred on Judges! Constitution subverted! Chaos come again! *Theses* these amongst others, for declamations by learned scholars. Closely interwoven with the heart-strings of common lawyers, is the love of jury-trial: how could it be otherwise? for of this love, the root is now laid bare.

3. In another work of the author's,—namely, his *Procedure Code,* Chap. XXIII., the subject of *Jury-Trial* is treated of at large: and a substitute for the present system provided (in Chap. XXVI.) under the denomination of a *Quasi-Jury.* According to the plan proposed,—at the instance of a party on either side, or of the Judge himself, all benefit derivable from the employment given to a Jury is afforded by use of the body styled as above, a Quasi-Jury; of which, for minimization of the expense, the number is minimized, and by which is possessed every power possessed by a Judge except the decisive power styled the imperative: this being reserved to him in consideration of his superior intellectual aptitude, and for the sake of laying on his shoulders responsibility in its fullest state.

4. But the mode of procedure, to which the Dispatch Court is the experimental substitute, being one in which no Jury is employed, the non-employment of a Jury could not be urged as a ground of objection to it: and on the present occasion, an object highly desirable was the maximum of simplicity:—an object to the attainment of which no small obstacle would have been presented by the addition of the ulterior institution of a Quasi-Jury.

5. In the here-proposed system, is there any degree or sort of difficulty? any sort or degree of danger? or of probability of evil consequences? In the here-proposed system, no. In the *existing* system, ifyou wish to find it, you must look for all the

difficulty, for all the mischief; and not in probability, but in certainty.

6. Difficulty! in what should it consist? What is required is, that on each occasion a man should judge as he would in his own business, between his own children, or his own servants, in his own house. In so judging, wherein consists the extraordinary difficulty? If really any such difficulty have place, where is it that it commences? Between the state of things which forms the matter of the domestic, and that which forms the matter of the forensic mode and course of procedure, the only differences are those which regard the number of the persons, and the extent and number of the places concerned, and the powers for effecting execution of orders and elicitation of evidence. But, for effecting execution of orders and elicitation of evidence, powers no less sufficient than those which within its field of action the domestic tribunal possesses, and much more ample and effective than the existing tribunals all together possess, are by the supposition given to the here-proposed forensic tribunal. These powers being by the supposition possessed, at what addition to the number of the *persons,* at what addition to the amplitude or number of the *places,* subject to the authority of the domestic tribunal, should the difficulty supposed to have place in regard to the business of the forensic tribunal commence? In these may be seen questions to which it belongs to the objector to find answers: and in the finding any, rational and satisfactory,—here indeed it may well happen to him to experience no small difficulty.

7. Danger? probability of evil consequences? Under the here-proposed system, absolutely none: under the existing system, not merely probability of evil consequences, but certainty:—yes, absolute and unhappily abundant certainty; if factitious delay, expense, and vexation, not to speak of misdecision, and non-decision where decision is due,—are evil consequences.

[*]Ends, sacrificed to means,—gnats strained at, camels swallowed;—inconsistencies in endless tissue:—such throughout is *Judge-made* law.

[†]1. Note here, that, in several of the above articles, may be seen so many specimens of the matter of the proposed *Penal Code,* Book or Part I. *Offences collectively considered:* the remainder of which, namely, Part II., is contained under the head of *Offences severally considered.*

2. In the accompanying Table, are exhibited the contents of this first part, in and by the titles of the several Chapters: for the present purpose, to the words employed in the original Table, are added here and there a few words of explanation, Annexed to each title is proposed to be, if time and space admit,—a reference to that article of the present section, which presents to view a sample of the contents of it.a

3. Not altogether uninstructive (it is hoped) will be the comparison, if made, of the here-exhibited matter and titles of the proposed Code—with the matters and titles of any work by which, under the existing system, the Penal branch of law is undertaken to be exhibited, and exhibited accordingly, as it *is,* or, as it is *said* to be: Law—as it *is,* namely, *Statute law,* or say *Parliament-made* law: Law as it is *said to be,* namely, Fictitious Law, or say Common Law, or Judgemade Law. Instructive, in no small

degree, the comparison—between the anxious and continued regard paid to human feelings throughout the one; and the utter disregard throughout the other:—to *human feelings,* that is to say—to *pain* and pleasure—(for the several diversifications of which, in the little work intitled *Table of Springs of Action,* determinate denominations have been found and employed)—disregard, in a word, for everything but the sinister interest of the framers, contemplated through the medium of the technical words and phrases of which the gallimautrey is composed.

4. In Book or Part II., containing Offences *severally* considered—under the head of each offence, application is made, of the matter of the greatest part of Part I.: *application,* that is to say, either by quotation or reference.

5. Of the penal matter employed on the present occasion, no part is there, which is not in and by that same proposed Penal Code, employed likewise and applied on other occasions; but in the ulterior and more extensive use so made, no sufficient reason was seen for omitting, on the present occasion, to make application of it to the present particular use. Being, however, necessarily *modified,* and in many instances more or less *changed,* in subserviency to the present *special* purpose, the several articles are not to be considered as exact *quotations* from the work at large. By the being thus presented to view as having been applied to a more extensive purpose, the matter will not (it is believed) be found rendered the less applicable to the present purpose.

6. But for the determined withholding of encouragement in every shape from above,—by the mere assurance of appropriate attention, effective encouragement would have been administered, and that same Penal Code would, many years ago, have made its appearance in a complete state.

7. On a late occasion, forgery considered in its application to no other modification of the offence than that by which property is affected, furnished of itself matter for a large folio: and of the ground which, as may be seen here, no more than a part of one single page sufficed to cover, no more than a part was covered by the hundreds of pages of that same folio volume. What, no that occasion as on others, was not considered, is—that forgery, in the whole of its extent, is but *one* modification of the art of *deception;*—and that, of all the offences, actual and possible, in the *calendar,* there is not one, in and to which this baneful art is not capable of being rendered instrumental and suxiliary. Constructed on the condensed plan here exemplified, a *Generally-applying Code* (so called in contradistinction to a *System of Particular Codes,* applying to so many different classes of persons)—or say, for shortness, a *General Code*—may be composed of no more than one or two octavo volumes, and yet be perfect: constructed upon that present pursued plan, it may be composed of so many hundreds, or as many thousand volumes, and still be imperfect. The Penal Code at large is in preparation and considerable forwardness. But, as already intimated, not exactly the same as those *here* employed, are the terms and method there employed. By the application here made of the *principles,*—abridgment, and alteration, in other respects, were necessitated.

[*]*Elicit evidence.*] In relation to this subject, see *Constitutional Code,* Vol. I. Chap. VI. *Legislature,* §27, *Legislation Inquiry Judicatory.*

[*]Power to elicit evidence, *omnigenous, unaquâque:*—by these few words, may be kept in memory the matter of these three articles, 63, 64, and 65.

To this Judiciary part of the Act belonged the operation of *instituting* the powers relative to the elicitation of evidence; to the Procedure part presently ensuing, belongs the operation of *directing the application* to be made of those same powers.

[†]*Certainty.*] 1. Under the existing system, *uncertainty* is at its maximum.

2. Take for example the case of *perjury,* in the course, or on the occasion, of a suit: to authorize conviction, two witnesses, or what is regarded as equivalent, being at present made requisite,—and the expense of prosecution being such, as persons in comparative number extremely small add to the *will* the *power* of defraying,—the consequence is—that, of many thousands of instances, in which the offence is committed, not more than one is prosecuted for.

3. Under the existing system,—not from the Judge but from the party, in all cases called *civil cases,* comes the demand for evidence. Before application made for the *subpœna* (as it is called)—that is to say, the *evidence-requiring* mandate, the *solicitor* of the party to whose interest in the suit the evidence is regarded as serviceable, enters if he can into conversation with the supposed *evidence-holder,* and performs with him a sort of preparatory *rehearsal.*

4. Mark now the effect of this state of things: that is to say, of the power of producing misdecision through deception, which it places in the hands of a dishonest *evidence-holder.*

5. An evidence-holder, whose evidence is necessary to right decision, is inimical (suppose) to one of the parties. By the existing system is put into his hands a sure mode of affording gratification to his ill-will at the expense of justice.

6. His testimony, supposing it truly delivered, would it be *favourable* to his intended victim?—he either refuses all communication with the inquiring agent, or by falsehood represents it as being unfavourable: and, to this falsehood, it not being uttered upon oath, nor in any other way punishable, complete and sure impunity is thus secured to the author of the device. On the other hand, will the testimony, in so far as true, be *un*favourable to the destined victim? If yes, the evidence-holder enters into conversation with the aforesaid agent, and furnishes him with such false information, as, by its apparent favourableness, engages the aforesaid victim to become or continue, party to the suit: party, on the plaintiff's or defendant's side, as the case may be.

7. At the trial, being now upon his oath, he says nothing but what is strictly true.

8. Consequence to the thus described victim, loss of cause: thus is the caught in a trap, and perhaps ruined.

9. And in this trap may any man be caught by any other man who will be at the

expense of thus baiting it.

10. From this trap,—the sort of wisdom and probity which so eminently characterize the existing system have concurred in excluding all means and possibility of *escape.*

11. When the dishonest witness comes upon his examination before the Judge,—you (the party injured by him), may you make known his dishonesty?—may you bring forward any evidence, or give utterance to any observation, the effect of which might be to cause him to appear to be what he is?—Not you indeed: this would be—to "discredit *your own* witness:" and, says the Common-Law rule, "*you must not discredit your own witness.*" This (says the reason of the rule) would be as much as to say he is *not* trustworthy; which having said, you are thereby *estopped* from saying anything to the contrary of it:—as if the human species was composed of two distinct sub-species; one that never told anything but truth; the other, that never told anything but falsehood.

12. Behold now at its height the triumph of law over justice! Behold now the indiscriminate defender of right and wrong, with the constant predilection and partiality for his more munificent custom—behold him in all his glory: behold him pouring forth his torrent of reproach, obloquy, and contumely, on the party, who to his knowledge is in the right,—and the praise of probity and injured innocence on the dishonest wrong-doer, by whose villany, with the assistance of his hirelings, the ruin of the destined victim has thus been accomplished.

13. Give the reins now to imagination. Scene a tavern:—Behold the *partie quarreé:* 1. The so successfully dishonest suitor; 2. The ingenious witness—his accomplice: 3. Their experienced and expert attorney; 4. Their learned and long-robed confidential advisers—all laughing, chuckling, and jesting, over the convivial bottle.

14. "He spoke falsely on one occasion, *ergo* so he will on every occasion."—What logic!—as if the same man who would speak truly when he saw more to fear than to hope from speaking falsely, might not speak falsely when he saw more to hope than to fear from speaking falsely; as if the accident of having been a *percipient* witness of this or that matter of fact, had for its proper consequence the putting him into the power of whosoever happened to have need of his testimony, and this so completely, that a lawyer might with truth and propriety say of him, to the party whom he is hired to do injustice to, *this man is your own witness:*—as who should say "this horse is your own horse," or "this ox is your own ox!!!"

15. Excluded by this article will be—all exclusion put by the existing system upon evidence on the ground of security against deception. For a demonstration of the impropriety of all these exclusions, and an indication of the ways in which deception, instead of security against deception, is produced by them, see *Rationale of Evidence,* Book IX.

16. Nor, of enlightenment, applied to this subject, is there any want of precedents in existing practice. For inquiring into the state of the law, with a declared view to its improvement,—three separate commissions, to so many different sets of

commissioners, have been issued within these few years. In every one of these commissions a power to this effect stands included. In no one of these commissions is to be found so much as a single instance of application made of any of those exclusionary rules, of which the mass of the matter of Common Law on this subject is, in so large a proportion, composed.

17. As little are any traces of regard for them to be found in the practice of the two Houses of Parliament and their committees, whatsoever be the subject of the inquiry.

18. If, to the exclusion put upon these same exclusionary rules, by each of these three component parts of the legislative body, acting separately, no reasonable objection can be made,—with how much less reason can any objection be opposed to this same arrangement, if the authority of the whole of that supreme body be thus employed in the making of it, as it will have been if this Bill passes into an Act?

19. Under the existing system,—whether on the score of verity, a piece of evidence shall be elicited or not, depends upon the *name* given to the Judicatory in which the suit has place, and the course of procedure that happens to be pursued in it. In a Judicatory styled an *Equity Court,* the testimony of a party is excluded when spontaneous, and allowed to be extracted, and thus admitted, when reluctant: in a Judicatory styled a *Common-Law Court,* it is neither admitted when spontaneous, nor allowed to be extracted when reluctant.

20. Think now of the quantity of injustice, and of human suffering in consequence, which, from the origin of the existing system to the present day, cannot but have flowed from this one source!—from misdecision thus produced, obviously; from non-decision for want of legal demand, not so obviously, but not less incontestably:—by exclusion put upon evidence, which if admitted would have been veracious and effective,—right, in all its shapes left undemanded; *wrong,* in all its shapes, left unchecked by remedy: by remedy in any one of its shapes—preventive, suppressive, satisfactive, punitive.

[*]Productive of additional benefit to justice would be—an additional arrangement, for drawing upon the public purse, for evidence from this source, when the parties, one or more of them, are in a state of pauperism: in the principle on which the proposed practice is grounded, as per *Constitutional Code,* Ch. XII. *Judiciary Collectively,* § 13, *Justice for the Helpless.*

Even under the existing system, precedents applicable to this purpose are not altogether wanting.

[*]*Ecclesiastical.*] A natural enough question here is, why include those Courts? Without this reinforcement, will not the opposition from the Equity and Common-Law Courts be sufficient? *Answer:* By the insertion,—notice of the opposition is given to the people at large, and to Equity suitors in particular; and their attention is thus called to the obstacle which they have to surmount; of this obstacle, were it not for this warning, they might not be sufficiently aware.

[†]See Art. 3.

[*]1. By the Equity Courts, from first to last, power, legislative in effect, though in so inconvenient a form, has been exercised:—to wit, by the establishment of *rules of action,* in the establishment of which the King in Parliament—the only supreme legislative authority recognised as such—has borne no part.

2. Not content with this, they have of late years, declaredly, and without disguise, overruled acts of Parliament to a vast extent. Witness the statute of *claims,* the statute of *frauds,* the statute for affording protection against *undocketed judgments,* and the *register* acts. See Tyrrell, 306. *Repealed* is the word this most enlightened and beneficently-intentioned professional and official lawyer employs, on this occasion, without scruple. In regard to tithes,—"everything has been presumed," say the *Real Property Commissioners,* Report I. p. 64, "to disturb enjoyment, and stir up controversy." And again, p. 68, "the frequent instances, in which, by technical rules, never understood but by lawyers, the intention of the testator, which Courts always profess to observe, is completely defeated, are a reproach to our law."

3. The circumstances in which, on the part of the legislature, this anti-constitutional insubordination, confusion, anarchy, and uncertainty as to all rights and obligations, have had their cause,—apply not to this case alone, but to *Judge-made* law throughout the whole of its expanse: and have accordingly, on many an occasion, been brought to view elsewhere.

4. States of the mind, to which these evils may be referred, are—partly indolence and negligence,—partly sinister interest. Legislators, regarding themselves as having a community of sinister interest with Judge & Co., give themselves thus, by connivance, the advantage of establishing, by the hands of Judges, in an indirect and unobserved manner, and without drawing the attention of the people at large upon the subject,—many an arrangement, which self-regarding prudence might have prevented their attempting to establish by their own hands.

5. Resistance to any arrangement to the effect thus proposed, may accordingly, without danger of injustice or error, be considered and stated as conclusive evidence of a wish and endeavour to give strength and extension to *absolute,* under the mask of *limited,* power, in the hands of the ruling one, and sub-ruling or co-ruling few.

6. Any one of a number of words would,—if that same arbitrary power were not obstructed, as it is, by the correspondent and opposite arbitrary power of relatively ignorant men in the situation of jurymen,—suffice to give to these Judges an unlimited power of virtual legislation.

7. In their hands, the word *libel* would of itself suffice to place the press on the same footing as that which it is on in Spain and Portugal.

8. The word *conspiracy* has for some time been making its progress over the field of penal law, and is capable of converting into a crime any species of act, on account of which, it is the *will,* determined by the sinister interest or interest-begotten prejudice,

of the Judge, to inflict punishment on any individual by whom that same act, how completely soever innoxious, has ever been done.

9. No wonder that it should be more agreeable to Judges to see the manufacture of the rule of action in their own hands, than in those of the legislature: to Judges, and to all members of the legislature, who, in their own view of the matter, are, as above, linked with Judge & Co. by the tie of a community of sinister interest.

10. As a *material* and *local* field is covered by webs, spun out of the bowels of spiders,—so is the logical field of law covered with nets, spun out of the brains of *Judges*—and more particularly of *English* Judges.

11. Thus it is, that over so vast a portion of the whole extent of the rule of action, the mind of the Judge is either the *best* or the *worst* source in which it can originate: the *best,* when untainted with, or purged from, the impurity infused into the situation by the fee-gathering system; the *worst,* when infected and polluted by that all-corrupting contagion.

12. From these considerations has been deduced, a plan for preserving the rule of action,—when brought from the state of Judge-made law, into the state of a code,—from being covered over with a fresh growth of that same imaginary and spurious law.

13. To the general propositions laid down by Judges, in the delivery of their judgments,—as well as to the tenor of those judgments themselves,—it would be made matter of duty, to every Judge, as often as he saw, in the text of the Code, a passage presenting a demand for amendment—whether defalcative, additive, or substitutive—to apply a proposed amendment, expressed in the very words, in which, if approved, it would stand as part of the act to which it applies itself: exactly in the same way as that in which an *amendment* is applied in and by a legislative body: in which case,—in so far as, by the only legitimate legislature approved,—it would be aggregated to, and become part and parcel of the body of the Code. In relation to this matter may be seen, *in terminis,* a string of provisions in the proposed *Constitutional Code,* when published: to wit, at Ch. XII. *Judiciary Collectively*—§ 20, *Judges' eventually-emendative function.*

14. By so simple an expedient, and with such entire certainty, will be accomplished—that state of things, the accomplishment of which, in the hope and endeavour to prevent it, men in such numbers have been so forward to declare impossible.a

[*]*Body-adduction.*] Part and parcel it is of the here-proposed system, to employ for appellatives to all the several judicial mandates and other written instruments of procedure, locutions expressed in the mother-tongue, and rendered as extensively intelligible as possible, instead of words such as *Habeas Corpus;* or scraps of words, such as *Ca. Sa.* or *Fi. Fa.* having for their effect, not to say for their object, the contributing to render the rule of action—the declared standard of obedience—inaccessible to those at whose hands obedience is called for, and on

whom, in case of non-performance, punishment is inflicted. Under the existing system, this vile jargon, by which mystery and a semblance of science are made out of nonsense,—and which, in proportion to its maleficence, should be an object of abhorrence—is rendered an object of as much respect, as by sinister interest, interest-begotten prejudice, and authority-begotten prejudice, can be procurred for it. To the peculiar terms of botany this sort of translation has for this long time been applied. Say *peculiar* in preference to *technical:* the appellative *technical* having, by the maleficent application made of it by lawyers, been brought into such merited disgrace. Of an innovation correspondently beneficent, the present occasion furnishes a convenient opportunity of exhibiting an exemplification.

[*]*Necessary.*] 1. Of the necessity of all this precaution, the persuasion has for its ground the observation made of the rooted habit of insubordination, which, under matchless constitution, has place, on the part of the Judges of the Superior Courts, in relation to the legislature.

2. In two distinguishable shapes does this insubordination show itself: not only muffled up in a covering of technical jargon, as in the case of a decision on grounds foreign to the merits (as to which see *Petitions for Justice,* V. 476); but, even in an open way, by decisions, on the occasion of which, disobedience to Acts of Parliament is explicitly and undisguisedly avowed.

3. In the practice of the Earl of Eldon, when Chancellor, an instance of it may be seen in the pamphlet entitled "*Indications respecting Lord Eldon,*"a (V. 348.) No want on the part of the learned fraternity of lawyers will there be of exertion to frustrate the object of this act. Their endeavours must be anticipated and provided against. For further example of what is capable of being done in this way, behold a case which happened to fall within the cognizance of the author of these pages. Needful for a public purpose was a piece of land to be bought by government. Attorney-general, the now Earl of Eldon: Solicitor-general, the now Lord Redesdale. Under their joint care was drawn an instrument necessary to the obtaining possession of the land: reluctance on the part of an occupier was necessary to be provided against, and power of seizure in a certain event provided. In a certain case, yes: but in what case? In the case of "*refusal,*" said the instrument: in that case and no other. What was the consequence? That an occupant had but to sit silent and inactive, forbearing to signify any refusal; and there the business would have ended, unless King, Lords, and Commons, had been set to work afresh, to set it a-going again. After much entreaty, with no small reluctance, these pre-eminently learned persons were induced to make the requisite change. Of this inaptitude of expression, where are we to look for the cause? To inaptitude in a moral shape, or to inaptitude in an intellectual shape? In a moral shape, in one; in an intellectual shape, in both—was the hypothesis of one who was a sufferer by the delay: on the part of both, the indescribable and continually-declared horror, of all change is matter of notoriety:—horror of all change;—in other words, anxiety to preserve from diminution the aggregate mass of human suffering, leaving it to receive increase from the undisturbed action of all those causes, by which it has been raised to the height at which it stands. These things considered, figure to himself who can, the agonies into which they will be thrown by the prospect of a Dispatch Court!

4. By the hands of Judges the ruling and influential few are thus enabled to serve their own particular and sinister interest, at the expense of the interest of the subject-many, in an oblique and unperceived course, in cases in which shame or even fear would prevent them from doing so in a direct and avowed way.

5. The emblem of the cat's paw is thus in some sort realized: in some sort,—but with this difference: in the fable, it was not without reluctance, nor without smart, that the quadruped lent its hand: whereas in the case of the bipeds, no smart is ever felt, nor consequently any reluctance: in the stock of the ready-roasted and tempting chesnuts they got their full share.

6. This community—of feeling, and sinister interest, and conduct—can never be too frequently brought into nor too distinctly and conspicuously held up to view.

[*]*Machinery.*] 1. In relation to the existing regularly-proceeding Judges,—consideration had of the situation and circumstances in which they are placed, in respect of sinister interest, interest-begotten prejudice, and authority-begotten prejudice,—the opinion which, on this occasion, must be assumed and acted upon by the legislature, cannot consistently be any other than that, for preventing the endeavour to frustrate the establishment of the proposed summary system, nothing short of a full persuasion of the impossibility of success can suffice.

2. Unfortunately for all parties—for the community at large on the one part—for the fraternity of the men of law, taken in the aggregate, on the other,—no satisfactory compensation does the nature of the case admit of their being made to receive:—for the pecuniary suffering, the official branch of the order, yes; but the professional branch, no:—for the suffering in point of estimation and influence, neither the one branch nor the other.

3. Think of Sir Ilay Campbell. Rather than see the Judicatory of which he was President cut in two, and himself reduced to preside over no more than half of it instead of the whole, this President of the Supreme Judicatory of Scotland divested himself of the whole.

4. Yet in this case no defalcation had place in the article of estimation: in no such character was he held up to view as that of a man whose sole title to esteem at the hands of the community was the habit of proceeding, during the whole of his official life, with more or less skill, in a course adverse to the welfare of the community in respect of the ends of justice.

5. In this state of things, that for the frustration of the design all imaginable engines will be set to work, from all quarters, is the assumption that ought to be acted upon.

6. In the instance of any one or even more of the persons so situated, suppose—not only no obstruction purposely opposed to the introduction of the proposed system, but even aid actively and zealously given to it; still, by no such phenomenon would disproof be offered of impropriety on the part of the general rule: a true hero, in this

civil line of public service,—a true hero would any and every such functionary be: but men of ordinary not of heroic mould, are the men the existence of whom should, on the occasion of this, as of all measures of legislation, be assumed and acted upon.

7. Among the devices employed for this purpose, by a man of this fraternity, will of course be—the strutting upon paper, and swelling and looking big, in Houses Honourable and Right Honourable, like a Cæsar, an Alexander, or a Bombardinian on the stage,—or a turkey-cock in a farm-yard,—with scorn and indignation poured forth against the affront put, by any suspicion of this kind, upon his honour and dignity.

8. Suspicion? yes: but for this there is no help: for it is by the nature of things, or say by the nature of man, that the suspicion will be stirred up. Suspicion, and thence resistance to the force of his authority, in the event of its being employed in any such endeavour as that of frustrating this plan of beneficence and justice.

9. Affront? true: but from every such affront it depends upon himself most effectually and completely to preserve himself: and *that* by so simple and easy a means, as the negative act—the act of abstaining from all such endeavours as his situation exposes him to the suspicion of wishing to use.

10. Not but that, from all humiliation not indispensably necessary to the effectuation of the design, the existing superior authorities have, all of them, by the course thus taken, been carefully preserved: on no occasion, by any functionary so situated, is any operation called for: only at the hands either of this or that subordinate of theirs, or of individuals in the situation of *suitors.*

11. Pursued in this case is the pattern, set by the Equity Judges, when over-ruling, and reducing to nothing, the power of the Common-Law Judges. Not to those same Judges themselves, but to the suitors in their respective judicatories, were the mandates of the Equity Judges directed.

12. Thus it was—that, by the Equity Courts, greater delicacy was exemplified in their deportment towards the Common-Law Courts, than by the Common-Law Courts to one another.

13. When, from the Court of Common Pleas, the cognizance of a suit is transferred to the Court of King's Bench, *error* is in so many words imputed to the Judges of that inferior Court.

14. So, when, from the Judges of the Court of King's Bench, in some cases to the Judges of the two other Common-Law Courts sitting in the *Exchequer-Chamber,* and thence to the Lords; in other cases, directly to the *House of Lords.*

15. But, on the conduct of no one of all these dignitaries, will any imputation of *error* be cast in any such direct way, by a Judge of the Dispatch Court.

[*]In the procedure part, under the head of *Subsequential Evidence elicited,* the *principles* respecting the elicitation are prescribed; but the present being the place

allotted to the *powers* given to the Judge, here is the place in which, in the first instance, mention requires to be made of the corresponding *checks*.

[†]1. As to the check thus applied to the power of the Judge,—in the eyes of corruptionists, and all other persons, if any there are, who are wedded to the existing system, far from affording an answer to any objection on the score of the magnitude of the power, it will operate as an additional objection: forasmuch as, in so far as it has this effect, it establishes what in such eyes will, of course, be a *bad precedent;* having for its tendency, the reconciling the public mind to the idea of subjecting to eventual punishment, and thereby to present and actual controul, those who, in the existing state of things, are not by law subject, in effect, to punishment or controul in any shape.

2. The greater the power a man has of doing wrong, the less likely is he to do wrong;—such is the vulgar theory; till at last, when you come to the highest pinnacle in the temple of power, there you behold a being perched upon it who is under an absolute personal incapacity of doing wrong in any shape—a being who could not do wrong, were he to labour at it with all his might:—and, under matchless constitution, upon this assumption is government founded.

3. The King is impeccable; the House of Lords is impeccable; the House of Commons is impeccable: and yet there are not three impeccable, but one impeccable—the Parliament. The House of Lords is legion; the House of Commons is legion; but these are legions, not of unclean, but of the very cleanest spirits. Whosoever would find favour in their sight must thus think, or pretend to think, of the constituted authorities. Of unintentional error, a successor of each official or other influential person may be susceptible; of intentional error, of evil-consciousness, not: neither of the one nor the other, the actual incumbent.

4. Intentional error or misconduct in any shape, especially in that shape in which it has place every day on the part of all,—that is to say, departure from the law of veracity and sincerity,—is universally held a good ground for a man's subjecting himself to the risk of being put to death by a disputant, for the chance and hope of putting to death that same disputant.

5. Neither on this occasion, nor on any other, should the utter impunity secured to Judges under the existing system be ever out of mind. Urged by remorse, or any other less difficultly supposable cause, should an English Judge court punishment, his prayer would not be granted. *Nemo auditur, perire volens*—is among the maxims of Rome-bred law: in English law, it would not be cited, but the benefit of it would be granted.

6. If in large proportion men were not found silly enough to give credence to absurdities in the shape above pointed out, men would not in so large a proportion, not to say universally, be found possessed of the effrontery necessary to the giving utterance to them. But forasmuch as every man perceives that it would be for his benefit to be regarded as possessor of absolute perfection, or something little short of it, and his pretensions would find no opponent in any other man whose pretensions to

it he does not oppose,—hence it is that by common consent—by an agreement, not the less effectual for being tacit,—every such man gives false evidence in favour of other, and by this evidence the unreflecting multitude of people without doors are, in but too large proportion, deceived and dealt with accordingly.

7. Thus would the check provided threaten them with the prospect of seeing themselves divested of the power of exercising depredation and oppression without stint: that power which so lately, by the influence of Lord Eldon, Lord Tenterden, and Mr. Peel, obtained at the hands of Parliament, in addition to those *motives* which can never be wanting: the *means* of heaping affliction on affliction, on a class of men distinguished from all others by the distress under which they were labouring: namely, by the power of imposing on them taxes without stint; this, for the purpose, and with the effect, of putting the money into the pockets of the learned collectors.—See *Indications,* &c. V. 348.

8. For, in one of the ways or modes in which *subordination* is established, in relation to this newly-invented sort of Judge, would—not only the Chief Justices of the Common-Law Courts, but the Lord High Chancellor himself, be unavoidably placed in a state of subordination.a

9. Manifest, it is true, to the eyes of the Chief Justice of the King's Bench could not but be the state of subordination in which, in the more direct and conspicuous mode, the newly invented functionary, placed, as above, over his head, will be reciprocally placed under *him.* Still, by what he gained in this way, far from adequate would seem to him the compensation for what he would lose in that other way.

10. For, in no instance could the old established dignitary inflict punishment or pronounce sentence on conviction on the new intruder, without presenting to the imagination of the people at large, a scene, in which he himself would be acting the principal character, while undergoing that same humiliation.

11. Consequence, of course,—from the great Westminster-Hall volcano, now at least, if not before, a volley of explosions:—explosions of learned gas from all quarters.

i. "All this immense mass of power! a mass so absolutely unprecedented! and to whom?—to such an upstart creature of the fancy, as this imagined Judge:—power, over every member of the community, the King alone excepted: power, over everybody, even to the purpose of *punishment:* power, over the head of the law!—power, and for the declared purpose of superseding his authority!—Constitution subverted! all good order—order itself destroyed, and confusion substituted.

> "Blush! blush, thou sun! Start back, thou rapid ocean!
> Earth! mountains! valleys! all commixing crumble!
> And into chaos pulverize the world!
> For Grimgribberian has received a blow!
> And Chrononhotonthologos shall die!"

ii. "And the inconsistency! the monstrous inconsistency! The thus constituted supreme dignitary, to whom this immense and unprecedented mass of power is given, made to answer to interrogatories! subjected to a treatment, to which the Common Law, in its matchless humanity, suffers not the vilest criminal to be exposed!" Thus far for the ears of the lay-agents.

iii. Then, in a whisper, to learned brethren—"What a precedent this! At this rate, where is the criminal that will escape?—at this rate, a man really guilty will have no chance! He will confess at once!—all our learning, all our ingenuity, all our eloquence, will be of no use to him! Think of the learned pockets!—think of our pockets!—think of the vacuum this will make in them! Instead of coming to us, as at present, his money, if he has any, will go to the party he has wronged! What can be more contrary to the *very first principles of justice,* to *every principle of justice?*"

iv. And then there is the ex-officio information! Look at these reformists. At one time thus crying out against it; now they are giving employment to it!

v. Then there is the Chief Justice of the King's Bench enabled now (and as to his willingness, can it at any time be doubted?) to wreak his vengeance on the intruder, by whose upstart power, judiciary authority is in all its established shapes laid low. And to enable him to give himself this regale, what is there wanting, but an invitation from Mr. Attorney-General?

vi. Then sits a jury. But, with the united eloquence of the Lord Chief Justice and the Attorney-General, the mouth-piece of the Crown, thus enlisted together in support of a cause so much their own, where is the Jury that will be able to stand against them? What word can possibly present itself to their tongues other than the word *Guilty?*

12. Tantalizing, in a sad degree, will thus be the situation of a Chief Justice of the King's Bench. No otherwise could he root out the effectually responsible power of the Dispatch Court Judge, than on condition of thus undermining his own irresponsible and arbitrary power, that power of maleficence without stint, the loss of which is to every possessor of it, naturally so intolerable.

13. Think of a Lord Tenterden, thunderbolt in hand; and, opposite to and under him, a Sir James Scarlett, calling upon him to hurl it at the head of the devoted Salmoneus!

14. So much for learned objections. Now, at the sound of plain sense, behold them vanish. Each taken separately,—strong, it must be confessed, are the two antagonizing powers. Put them together, and, like the salt with which our food is seasoned, the elements they are composed of put off their corrosive nature, and become mild and salutary.

15. Out of the *two dangers* is formed *security.* The old established functionaries will not suffer anything;—and as little will the new created one.

16. As to subjection to interrogation, what danger to innocence is it pregnant with? what consequence, worse than that of clearing it of any imputation that may have

been cast upon it?

17. From what source did these objections ever spring, other than that of a wish to afford to guilt, in every shape, an encouraging chance of escape?

18. As to the two Giants—the Chief Justice and the Attorney-General, grim as they are on all occasions, on the present occasion behold them thus rendered not only less grim, but motionless: Motionless! Yea, even as Gog and Magog. Without a call from the Attorney-General, the Lord Chief Justice of the King's Bench cannot stir; without an order from the First Lord of the Treasury, the Attorney-General cannot, or at least will not, stir.

19. But, suppose the order received. Comes then the matter before a Jury: and, if there be any occasion, on which, in the multitude of these counsellors, there is a safety, this surely is of the number. Say that, on ordinary occasions, when Government prosecutes, they are but too apt to cast off the responsibility from their own shoulders upon those of my Lord Judge, and economizing *thought* as they would *money,* say at once *Guilty,* to save trouble. On an occasion such as this, and this so unextraordinary a one, little apprehension of any such promptitude need assuredly have place.

20. Thus blind were they, for example, when—in pursuance of the standing conspiracy against the liberty of the press—one of the machinations of which was and is, the converting all history into an instrument of delusion by suppression of all facts and comments, by which sin in any shape might be imputed to any one of Blackstone's Gods upon earth,—the body of the Editor of a Weekly paper was, at the command of Lord Tenterden, given up to him to be consigned to a two years' imprisonment, for daring to hold up the character of George the Third in an unfavourable point of view.

21. In ordinary cases, true it is, instances of such blindness have in all times been in sad abundance. But the present case is an extraordinary one. To the necessity of justice to human happiness,—and to the hatred of it in the breasts of English Judges,—the eyes of the public, even of that public of which Jurymen are composed, are at length beginning to open themselves. Sir James Scarlett might cry aloud, and Lord Tenterden spare not,—a Jury, after hearing, from the lips of the Dispatch Court Judge, justice and common sense substituted for the first time to pickpocket absurdity and nonsense, would *pause* (as the phrase is) before they sacrificed the author of so much good to the vengeance of the opposers of it.

[*]*Prehensors.*] 1. Reader, whoever you are, let not the word *Prehensor,* innovational as it is, startle you: indispensable was the demand for it: and, whatsoever cloud it presents itself as being involved in, a short explanation will blow off. What was wanted is—a word that should signify *to lay hold off:*—to lay hold of what? *Answer*—All such objects, whatsoever they may be—as the purpose in question may require to be laid hold of. And these objects—what are they? *Answer—things* of all sorts, and *persons* of all sorts: *purpose,*—that of supplying means of remedy for the wrong complained of, by the *demand* with which the suit commenced,—or means for the elicitation of the evidence necessary to the proof, or in so far as disprovable, the

disproof, of that same wrong.

2. For the designation of this function, true it is—already in use is the word to *apprehend,* with some of its *conjugates.* But this composite word has divers other senses: nor is it applied to *things:* to things of any sort—immoveable, moveable, or incorporeal. No less short of being adequate are the words *arrest—to arrest. Prehensor,* from the Latin *prehendo,* without the *ap,* does what is wanted, clear *of everything that is not wanted.*

3. By the mere act of *laying hold of* the subject-matter—whatever it were,—if nothing further were done with it, no good would be done: with this same subject-matter, whatever it be, consequently, by this same operation no good is done, or something further is done: either it is simply ejected out of the place in which it was found, or it is transferred from that place to some other.

4. True it is—that by the words *Prehensor* and to *prehend,* of none of the above modes of disposal is any intimation given. But, by no signs which language furnishes, can all these things be signified at once; and, when the original cloud is cleared away, as above, the idea of some ulterior disposal, such as the purpose in question requires, will present itself of course.

5. *Operator, operation, mandate* by which the orders of the Judge are signified to the operator. For all these several matters, has place the need of appropriate nomenclature. Of the *mandate* the denomination will be determined by those of the two others.

6. First, as to *operator* and *operation.* Under the existing system,—in the language of *Justice of Peace* procedure, when the operation is *prehension, warrant* is the word employed for the designation of the *mandate,* by which it is ordered to be performed; when simple *imperation, summons:* as to the *operator,* he is in both cases the same functionary, and *Constable* is the name given to him.

7. In the language of *regular* procedure, diversified in an extraordinary degree is the nomenclature employed in the designation of the *operator:* 1. Serjeant-at-Arms; 2. Sheriff's Officer; 3. Bound-Bailiff,—vulgariter, Bum-Bailiff; 4. Tipstaff; 5. Messenger; 6. Apparitor: these may serve for examples: for completion of the list, neither time nor space can here be spared.

8. Note, that in some of these cases, the only function given to the functionary is that of the *Prehensor;* in others, it is that of the *Messenger;* in others, again, both functions are given to the same individual. In *Bankruptcy* procedure, confounded under one and the same denomination, namely that of *Messenger,* are the two so different services—that of a *Messenger* and that of a *Prehensor.*

9. Then again when the *function* is that of the *Messenger,* the *operator* is—in some cases, not a public functionary, but an agent of the party: for example, an Attorney's Clerk: and, in this case, *serving* and *service* are the terms employed in designating the *operation.*

10. In this case, as in all others, the more simple and undiversified the nomenclature employed in the designation of the several mutually-related objects, the clearer are the conceptions conveyed by it. Hence the length of this explanatory and justificative Note.

[*]*Code.*] For the purpose of extracting money, to be disposed of in such manner as seems good to them, the constituted authorities find no difficulty, in preparing and causing to be delivered, the appropriate mandates. Witness, for example, the Assessed Tax Notices, by which householders are required to give information of such taxable articles as they have in their occupation. Scarcely of a Prehensor's Code would the contents be more bulky, than of one of these papers which are twice a-year delivered at every taxed house.

[†]1. Under the existing system, in the higher class of criminal cases (namely those which from the species of punishment allotted to them are so unappropriately styled *felonies),*—power of exercising this function is given to the party wronged. So, under the original Roman law in cases called *civil.*

ii. On this occasion, to the danger of *abuse* no great regard seems to have been paid. Witness the phrase *obtorto collo:* witness also the *rupit in jus* mentioned in Horace.

iii. Small indeed is this danger,—if, where the plaintiff is *Prehensor,* to the right of *prehension* the obligation of *adduction* to the judgment seat, is attached.

iv. Where apprehension of endeavour, on the part of the defendant, to avoid the *rencontre* has place in the breast of the plaintiff,—more diligence is of course to be expected at the hands of a person thus interested, than at the hands of an uninterested public functionary. But the difference may be supplied, by liberty on the part of the plaintiff to accompany the public functionary: and this liberty, if not taken away by law, will have place of course.

[*]In the accounts of public offices, this is a customary head. The fund will be provided, in this as in other cases.

[†]To a deplorable extent, throughout the whole field of legislation, is exemplified the evil of fixation, where variability in the quantity of the matter in question, whatever it be, and thence applicability of such quantity to the particular circumstances of each individual case, is prescribed by prudence. Instances are—as hereinabove mentioned—1. Fixed *premiums;* 2. As elsewhere mentioned, fixed *penalties;* especially when in a *pecuniary* shape: 3. As per *Petitions for Justice,* Device VIII. (V. 470) *Blind fixation of times for Judicial operations,* on the occasion of which, the quantity of time best adapted to the purpose is susceptible of variation to an extent more or less ample.—See also Sect. VI. *Judge's Powers,* art. 52 to 55.

[*]*Consignee.*] 1. On a preceding occasion, namely, in Sect. VI. art. 29, 44, and 47, in the view of conformity to usage, this word was employed, for the purpose of giving expression to an idea, for the designation of which, it has on closer inspection been

found unfit: this, as well as several other words, which, for their termination, have this same syllable *ee.*

2. For the purpose of giving denomination to the species of functionary, whose functions are spoken of in the text, some *appellative* was altogether indispensable; and a *single-worded one,* in every instance in which an apt one can either be found or made, is eminently desirable: namely, for conciseness, and for avoidance of that entanglement with the circumjacent words, which is, in the case of a many-worded appellative, so liable to have place.

3. By the three-worded appellative, *Holder-in-trust,* the idea in question may, with indisputable aptitude, be designated. But, by simple transposition, these three words, as the reader sees, are capable of being, as it were, *melted* into one.

4. Appellations, bearing the most perfect *analogy* in relation to *this,* are in most familiar use. Witness householder, innholder, freeholder, bottleholder. In the word *intrustholder* the number of syllables is not greater than in this same word *bottleholder,* so familiar to the practitioners and amateurs of *pugilism.*

5. Perhaps, for some little time to come, there may be a use in keeping the three component words separated from each other by two hyphens: as thus, *in-trust-holder.*

6. So much, as to the need and propriety of this second of the two appellations: the second employed as equivalent and synonymous to the first. Now as to the inaptitude of the first.

7. Whatsoever be the operation in question,—for conveying to the mind the idea of it, *two* sorts of appellations are and have at all times been requisite, not to say necessary: one, for the designation of the *operator,* or say *agent;* the other for the designation of the subject-matter *operated upon,* or say in one word the patient, whether the class this same patient belongs to be the class of *things* or that of *persons:* and, if the operation consists in the transference of the subject-matter from one *hand* (plainly or figuratively speaking) to another, then—requisite to be added is an appellative for the designation of a *third* object, which may be termed the *recipient,* or say *receiver.*

8. For the designation of the *operator* (whether plainly or figuratively so called) together with the *subject-matter operated upon,*—each expression being the correlative of the other,—the original language of the *lawyer* class—namely the Norman-French—furnished a pair of apt *desinences,* or say terminations: namely, for the *operator,* or, otherwise *er* (not to speak of *ant* and *ent:)* for the *subject-matter operated upon, single* é with an *accent;* rendered into English by a *double ee.*

9. Thus far, all was and is well. But, in process of time came upon the carpet, as being necessary to the completion of the group, the idea of a *recipient,* presenting, as above, a demand for an appellative. What was to be done? In this quandary,—up starts, with its accent on its head, LETTER é, and presents to view a species of appellative ready-made, and already in use. True it is—the idea was not exactly the same. It was, however, near of kin: and, the age being a rude and little-discriminating one,—an

appellative, that belonged to another idea, and did not exactly fit the one in question, was in the hurry taken in hand, and clapt on to this new idea: as, in a crowded passage, a man will sometimes take up another man's hat instead of his own.

10. Instances are—*consignee, assignee, mortgagee, trustee.* After what has been said, *consignee* and *assignee* speak for themselves: not so—*mortgagee* or *trustee.*

11. As to mortgagee,—the species of conveyance termed a *mortgage* being the transfer of the subject-matter in question from one hand to another, upon certain conditions,—the *mortgagee* should, according to the original analogy above-mentioned, be the name of that same subject-matter: and, for the designation of the *person recipient,* or in one word the *receiver,* some other appellative should have been, and accordingly should at present be, looked out for.

12. But, in the sense the inaptitude of which has thus been brought to view, so rooted in the language is this same word *mortgagee* while there is not as yet in use any other single-worded appellative by which this same idea can by possibility be brought to view,—that, for the present at least, it must be left in the undisturbed possession of the ground on which it has planted itself.

13. "For my part," says the author of these pages, "never till this moment has it seemed to me that the idea associated in my mind with this word was a clear one."

14. What has added to the confusion, has all along been—the syllable *mort:* meaning *death.* Death? what has it to do with the matter? as little as any other thing that can be mentioned. For this species of transfer, before any apt and generally intelligible set of appellatives can be found, *Death* must be turned out of doors, and a substitute for him or her provided. The *Real Property Commission* will (let us hope) find this operation not unworthy of being included in the catalogue of its so well-directed cares.

15. As to the word *trustee,*—it presents itself as being much too extensively and firmly rooted in the language, ever to be drawn out: nor, on the other hand, does any considerable harm appear to be done by it.

By a kindred, though not exactly similar, misapplication, the word "*examinant,*" substituted to *examiner,* has been, itself, taken for the subject-matter of *examination,* elsewhere.

16. Two other words here present themselves as having a claim to notice: namely, *assignee* and *sequestrator.* In both instances,—besides their inaptitude for bringing to view the correlative ideas herein above-mentioned,—their import is too narrow to admit of their receiving, on the present occasion, any employment.

17. As to the word *assignee,* the idea presented by it, is—that of a species of *trustee,* under whose care and management a *stock of things* of all sorts is placed, to the intent that it may be brought into the shape of *money:* of that money, the ultimate destination being—the *distribution* of it among a set of *creditors.*

18. In that case, in the idea of the *subject-matter confided* is not included that of a *person:* except in the singular, and happily comparatively-narrow, case of *slavery:* and, for the present purpose, a word capable of being made to present the idea of a *person* as well as that of a *thing,* was necessary.

19. By the word *sequestrator,* the idea presented is—that of a functionary, whose functions are confined to the case where *the subject-matter of the intermediate possession* is *a thing;* namely, a thing *immoveable,* and *that* not intended to be converted into *money.*

20. Two sorts of judicatories there are—in which, to a functionary whose functions are of this description, employment is occasionally given by the Judge: namely, an *Equity Court,* and an *Ecclesiastical* Court: both acting under *Rome-bred-law.*

21. Of the term *consignee,* the use seems to have been, hitherto, confined to the case where the parties, both or one of them, are *traders,* and it is in the way of trade, that the *things* in question (which may be actually received or not, as it may happen,) are *designed* to be received.

[*]Of property in this shape, mention may be seen made in *Penal Code Table,* attached to *Constitutional Code.*

[*]See *Constitutional Code,* Chap. XI. *Ministers severally,* throughout.

[*]Under the existing system, the colloquial name for a house of this sort is—a *spunging-house.* The denomination is of that character, which has been termed *dyslogistic.* See *Table of the Springs of Action.* (I. 195.) *Neutral* name, no other than *lock-up-house,* as above, hath as yet been found.

[†]*Ambulatory.*] Within the memory of the author of these pages, *Davy,* serjeant-at-law, a man alike conspicuous for his eloquence and the profuseness of his expense, was seen travelling on the circuit in the custody of the sort of sheriff's officer, termed a *Bound-Bailiff,* or *Bum-Bailiff.*

[*]*Bailing system.*] Final cause of, and motive to, the abuses in this case—1. Lawyers' profit on the needless operations on the occasion in question performed, and written instruments framed and issued; 2. Benefit of patronage with relation to the several subordinate judiciary offices, by the possession of which the functions in relation to those same operations and instruments are performed.

[†]Final cause of, and motives to, this needless compulsion—1. Lawyers' profit, as above, upon the operations and instruments employed in the endeavour, real or pretended, to effect it; 2. Addition to the value of the offices of all sorts employed in such endeavour, and of the patronage consisting of the power of location to these same offices. See *Petitions for Justice,* throughout.

Though suggested by the abuses belonging more particularly to the Equity Courts, the remedies here brought to view will be found equally applicable to those which, under

the existing system, have place in all the other Courts in which justice is professed to be administered.

See a particular account of the needless increase of the expenses, in a letter, signed Henry Beamont, fourteen years officer of the Sheriff of Middlesex, in *Spectator* of August 14th, 1830.

[‡]*Over-aged.*] Analogous locutions:—1. Overgrown; 2. Overpaid; 3. Over-loaded; 4. Overworked; 5. Over-taxed.

Under the here-proposed summary system—under a system having for its ends in view the ends of justice,—evil to no inconsiderable amount might, every now and then, by consignment performed on this ground, be prevented. Under the existing regular system—under a system having for its ends in view, ends opposite to the ends of justice, namely, depredation, unpunishable, and irresistible, in the shape of profit to lawyers, official and professional—by the power of consignment on this ground, evil to a vast, an immeasurable, and an ever-increasing amount, would be produced.

From the misery produced already by the dominion exercised by the Chancery *wolves* over the *young lambs,* let any one, from observation and analogy, figure to himself the addition that would be made to it by the extension of it to the *old sheep.*

[?]1. The incident by which a case was made for this provision, is a recent enactment of Judge-made law: an Act, made and passed, as in all other cases of Judge-made law, without any words belonging it, by the Earl of Eldon, when Lord Chancellor:—an arrangement by which, with such brilliant success, a new combination was made between *sale* and *denial* of justice: *sale,* for benefit in the shape of *profit; denial,* for benefit in the shape of *ease: sale,* to the comparative few who have wherewithal to pay the price; *denial,* to the immense many who have not.

2. In two interesting publications, the Honourable William Long Wellesley has lately given the history of a course of plunderage, in execution of the above predatory law, of which he and his have been, and still continue to be, victims. Of the property of him and his children, little if anything less than £50,000 (if I understand aright one who should best know, though others say not so much as £5,000) seized and distributed in the sort of receptacle which, in Holy Writ, is termed *a den of thieves.*

3. On the ground of this *precedent,* to any individual to whom it is agreeable to give acceptance to the offer—to every such individual, with or without confederacy with the head of the law, or his subordinates—on the ground of this precedent (for, under Matchless Constitution, a single precedent made by a single Judge suffices, on all occasions, to make law) a sure course may be seen opened, for the like plunderage, at the charge sooner or later of all the members of the aristocracy of the country,—those of both Houses of Parliament included. Having taken for the intended victim a sufficiently opulent family, in which a child under age is entitled to property independently of the father,—a Jackal, with or without concert with the Lion, by so simple a process as the filing a Bill in Equity against the father, transforms, by this means, the child into a *ward* of the High Court: the property in question is thereupon

taken into the hands and placed at the disposal of the Judge; and the costs of the suit are taken out of it, as far as it goes:—by so extensively practicable a course of pillage, may the precedent set in Mr. Wellesley's case be pursued and turned to account, to the extent herein-above described.

4. Now mind what this *calumniator-general*—this instrument and accomplice of every particular calumniator, who, as above, can and will come up to his price, and hire him—mind how he comports himself, should it happen to himself to be the object of defamatory imputation. Suppose it *bribery,* for example. If the imputation be true, he takes care not to proceed by civil action: for, in that case, the truth of it may be proved, and he brought to shame: no;—he proceeds by criminal prosecution: and in that case, security being thus provided for all malefactors, the truth is not permitted to be proved, and the man punished is—not he who committed the crime, but he who addressing himself to the Public Opinion Tribunal, gave information of it:—a sample this, out of thousands upon thousands, of what, under Matchless Constitution, is administered under the name of justice!!

5. Note here—that, though, in this case, impropriety, in some shape, in the conduct of the father, must be imputed, it is not necessary that the imputation should have so much as a syllable of truth in it, for (as shown in *Petition for Justice,* Device 4) in the shop of which the Lord High Chancellor is Master, and his Vice-Chancellor and his Master of Rolls, Foremen,—is sold the faculty of ruining—not only the fortune but the character of the victim; and this by a process, the success of which is altogether out or the reach of disappointment, in every case, in which so much of the pecuniary means of attack as the plaintiff is able and willing so to apply, are sufficient to exhaust the pecuniary means of resistance: instead of suing to Public Opinion, he prosecutes;—thereupon eulogized is the criminal—punished his just accuser.—Matchless-Constitution-justice this!

[*]*Non-disappointment principle.*] 1. By means of the non-disappointment principle,—by this means and no other, can any determinate import be annexed to the locution *vested rights:* take away from it this import, suppose this import not to belong to it, none remains. In case of a right being taken away from a man, if the attributive *vested* be attached to it, what is thereby meant to be asserted is—that the pain of disappointment thereby produced in his instance is greater than would be produced by the loss of that same right if the attributive *vested* were not with propriety applicable to it.

2. Where the idea in the mind, in so far as it is clear and determinate, is the idea of contrariety to the rule alluded to by the *non-disappointment principle,* two expressions commonly employed are—*contrary to the first principles of justice,* and *contrary to every principle of justice.* Considered in themselves, these expressions are, both of them, nonsense—mere nonsense. That which they concur in supposing is, that a list of principles and a corresponding list of rules, generally recognised as coming under that denomination, are in existence: whereas, no such lists are capable of being produced by any person by whom the existence of them is thus asserted.

[†]Thus it is, that, throughout the whole of the *Pannomion,* or say all-comprehensive body of law, to which the presentproposed Bill belongs, the arrangement made is deduced from the consideration of the quantities of pain and pleasure likely to be produced by it,—or say, from its effects on the happiness of all persons interested, or (as the familiar phrase has it) on *human feelings.* Void of all claim to regard on the part of any rational mind is every subject-matter of consideration on any other ground than that of its influence on the feelings of some sensitive being.

Correspondent, on every occasion,—mutually connected, and fit to be kept in mind in conjunction, are the subject-matters of consideration following; that is to say—1. Ends in view; 2. Axioms of pathology; 3. Reasons; 4. Rules; 5. Principles:—together, they constitute the grounds of every proposed arrangement:—

1. By an *end in view,* is meant some portion of good, considered as endeavoured to be produced by the arrangement proposed:—of good, that is to say, possession of some pleasure, or exemption from some pain.

2. By an *axiom of pathology,* understand a proposition declarative of a connexion as having place between any event or state of things in the character of a cause, and pain or pleausre, or both, in the character of effects of that same cause.

3. By a *reason,* as applied to a proposed enactment, understand a proposition designed to give information, presenting to view some such connexion as being under consideration, which to the legislative draughtsman served as an inducement to propose the arrangement in question, and which he expects to have the effect of causing those to whose minds it presents itself, to regard that same arrangement with satisfaction.

4. By a *rule,* understand a proposition declarative of the manner in which the connexion has place between some such cause and the corresponding effect; or say, a statement made of a lot of happiness as likely to be produced by the course of conduct thereby recommended.

5. By the noun-substantive *principle,* with some attributive attached to it, allusion is made to the corresponding rule: and the number of words that would be employed, with the quantity of embarrassment that would be produced in the sentence by the insertion of the rule into it, are thereby saved.

[*]In *Constitutional Code,* Ch. XII. *Judiciary Collectively,* § 20, *Judges' eventually-emendative function,* provision is made for the continued amendment of the law, as often as the demand for alteration manifests itself, by the insertion of proposed enactments certified to Parliament by the Judge *in terminis:*—the insertion to be made by an appropriate functionary in course, unless stopped by motion made in one or other House of Parliament. Of the effect of this power, an experimental exhibition might by the Dispatch Court Judge be made.

[†]When the property is to a certain degree considerable, any dishonest person in the situation of executor may, under the invitation given him by the existing system,

make a sure profit. Of the whole number of claimants, if there be but some *one* whom he can procure to join with him in this scheme of iniquity, this claimant commences against the executor a Bill in Equity: whereupon the whole mass, how large soever, of the property, is during the continuance of the suit locked up in the hands of the executor, by whom the interest of it is put into his own pocket. This I have been assured by professional men, is a known and customary practice: in this case a sort of *divorce* has place, between the sinister interest in respect of delay and the sinister interest in respect of expense: by the delay, sinister interest is increased; by the expense, diminished.

[*]The author appears, from a note, to have had in view other principles to come in between the above, but has left this portion uncompleted: reference being made to some other work on *Legacies,* as a source from which illustrations might be drawn.—*Ed.*

[†]*Foundations of property shaken!* will of course be among the cries raised against the proposal of this same Equity Dispatch Court. Foundations shaken! as if that could be shaken which has no existence. Foundations shaken! instead of shaken, say rather established. Resting on the at-present-existing grimgribber, the pretended rule of action rests upon a quicksand with volcanoes under it. All-comprehensive rule, not *detur digniori,* but *detur locupletiori.*

Corruption regularly organized, established, universalized, unpunishable, irresistible,—the so-much-boasted purity.

No other machinery, good or bad, applicable to the purpose, being in existence, the Real Property Commissioners, in their Reports, while presenting to view the changes which in their view of the matter require to be made in the instruments employed in conveyancing business, mention the existing Equity Courts as the Judicatories by which execution and effect shall be given to the enactments proposed to be made for this purpose:—machinery which, under the load of expense and delay at present lying upon it, cannot be set to work by one out of perhaps a dozen, perhaps a score, of the sets of persons that have need of it.

[‡]1. When Section the first was sent to the press,a the expectation entertained was, that for the purpose of participating in the hereby-promised benefit,—namely, the substitution of a system in which delay and expense are minimized, to one in which those evils are maximized,—suitors in sufficient numbers would join in a Petition to the King for that purpose, and that to them, upon the principle on which arbitration is sanctioned by law, the choice of the Dispatch Court Judge might be committed. Such was the expectation entertained and proceeded upon at the time when the matter of that first section was sent to the press; and so it continued to be, till not only the matter originally destined for this section had been written, but matter also for the whole remainder of the Bill.

2. For the purpose of trying the experiment, a tract moreover was published, intituled "Equity Dispatch Court Proposal; containing a Plan for the speedy and unexpensive termination of the suits now depending in Equity Courts;—with the form of a Petition,

and some account of a proposed Bill for that purpose."a But before the present section had been sent to the press, it had become but too certain that the experiment had failed—so far at least as regarded the trial of it proposed in that tract to be made.

3. Not only the matter of that publication, including a detailed account of the matter proposed for the present Bill, but the principal part of it *in terminis,* including the whole of the matter down to the present section, with the exception of some subsequently-made and not-as-yet-communicated amendments, had received, not only from amply competent judges, but from men high in professional eminence, the most unreserved approbation.

4. But, on the part of suitors, such was the terror of what might befal them from the resentment of the lawyers, official and professional, belonging to the Courts in question, that by the invitation given in the above-named tract, from no more than two suitors, one from each of two suits, was any application produced: and in both these instances this obstacle had been removed, the persons in question being in a state of actual hostility with the Court, in the hands of which they had been undergoing a course of depredation and oppression for a multitude of years. That it was in this terror that the failure had its cause, is matter not merely of inference, but also of experience: for, in various instances, by the above-mentioned approvers, endeavours were employed to persuade suitors to join in the proposed petition; and notwithstanding the just estimation in which the opinion of the givers of the advice was held by the receivers of it, still the terror was so great as to prevent them from taking the course recommended by it.

5. By this failure, however, neither had the demand for the remedy to the grievance in question been shown to be less urgent, nor any ground afforded for diminishing the confidence in the here-proposed remedy. On the contrary, the perception and acknowledgment of the inaptitude and utter depravity of the existing judicial establishment and procedure have been increasing daily in intensity and extent.

6. Moreover, the plan for the accomplishment of which a bill had been brought into the House of Commons, on the motion of the learned member who has since been elevated to the situation of head of the law, and subsequently pursued by the announcement of a bill for the same purpose, with the necessary amendments, as being about to be moved for in the House of Lords, has been declared to be dropped.

7. Under these circumstances, how much soever the encouragement to perseverance was weakened, the inducements in other respects remained; and with even augmented force.

8. As to the machinery here visible, the only part which, by the abandonment of what regards the proposed Petition is rendered needless and thence unserviceable, is the matter of Section I. *Judge located, how;* and a portion, more or less considerable, of Section VI. *Judge's Powers.*

9. But though, with reference to the purpose of the present Act, this is rendered unserviceable, to other purposes of still more extensive importance it will, it is hoped,

be seen to be in no inconsiderable degree applicable and serviceable: in particular, that portion the matter of which bears reference to the subject-matter of the Penal Code.

[*]See further as to *Bankruptcy and Insolvency, Supplemental Section* I. or XXV.—*Ed.*

[†]1. Notwithstanding the above provision for the taking of this same information, a Committee of the House of Commons would be not less competent: and by this additional engine, addition might be made to the extent of the information obtainable by the Dispatch Court, as well as the assurance of the completeness of it.

2. Saving might moreover be made in the article of expense: namely, that which would be necessitated by the elicitation of the information from the several Courts, if performed by the Dispatch Court Judge.

3. By orders to one or more of the Equity Court offices, from which returns have of late years been presented, might be obtained the days of commencement, as above, of the suits commenced in the several years: also the names of the Town Solicitors on both sides; or at any rate (what would be sufficient), on the plaintiff's sides.

4. Of the several *proceedings* had, down to the then present time—proceedings, that is to say, operations performed, and written instruments issued from and received into the several offices, information would be afforded by the several solicitors (as per Section XIV. *Examination of Solicitors:)* and thereby of the Committee's *time* a correspondent quantity, which would otherwise have to be expended in the oral examination of those same solicitors, saved.

5. If, for any particular purpose,—such as the bringing to view the cause of the longevity of the suit,—the committee should see reason, it would then rest with them to convene the solicitor or solicitors; and, by word of mouth, elicit the appropriate information.

6. Such is the advance which, towards the end in view, is capable of being made by the House of Commons without the concurrence of the House of Lords; and thence, clear of the danger of non-concurrence, as well as of that retardation which, to an indefinite extent, would even in the case of concurrence be inevitable.

[*]See the note at the beginning of this section, and its relation to this article. The article referred to was afterwards omitted by the author,—*Ed.*

[*]*Lot.*] Apparent objections which present themselves to be obviated, with answers to them, are the following:—

1. Severe the loss, thence proportionable the reluctance, on the part of professional men, all of them, to the furnishing of the information required: the lottery, in proportion as to clients it is an advantageous course, being to lawyers a disadvantageous one.

2. From the disclosure made of the quantity of the business respectively possessed, more or less considerable the suffering.

3. Considerable the difficulty of surmounting this same reluctance, in such sort as to secure the fulfilment of the obligation.

4. Considerable the delay and expense necessary to the causing the orders issued for this purpose to be made known to all the several individuals from whom the information would in this manner be endeavoured to be obtained.

5. Considerable would be the difficulty of ascertaining the fact of the knowledge, for the purpose of applying punishment in case of disobedience.

6. As to the hardship to individuals from the benefit to the community, matter of just regret as it would be in this as in all other cases, it not only ought not to be regarded as constituting a peremptory objection to the eliciting this necessary information, but is not so in legislative practice. Witness, for example, the returns so repeatedly ordered and made of the numbers of the stamps issued out to the several newspaper editors.

7. As to the hardship of the disclosure, and thence the reluctance, it would not however be so great as on a first glance it might be expected to be. From a man's having little or no business in Equity suits, it would not follow but that he had business to any amount in Common-Law suits.

8. As to the delay and expense of the requisite notification, great indeed would it be were it necessary to give a separate notice to every person on whom the call for the information has need to be made,—namely, the several solicitors residing in or in the near neighbourhood of the metropolis. But situated and circumstanced as they are, one common notice would serve for all as effectually as a separate notice to each. The measure being of course the subject of universal conversation as well as interest during the progress of the Bill, abundant and effectual would be the notice received by every one of them long before the passing of it.

9. By every one who has had any acquaintance with the proceedings in the Courts of Chancery, were it only from the newspapers, it must have been seen in what enormous quantities competition for priority, with correspondent altercation, has in the highest of the three Courts habitually had place. Of complaints of the grievance, no want of length or loudness in that place need be feared; the longer the complaint of the delay continues, the more of it is produced,—expense on the one part, profit on the other, proportionable. The complaint of the fat man in the crowd stands immortalized by the poet's epigram. Like unto it are the complaints of delay made on an occasion of this sort by learned gentlemen.

10. In one instance, under the Lord High Chancellor's jurisdiction, the principle which, in the character of a source of decision on the question of precedence, prescribes *chance* to the exclusion of *choice,* is actually applied to practice. This is,

where for a Commission of Bankruptcy, in different cases, in numbers more or less considerable, by the respective solicitors, application at the appropriate office is made at the same time.

11. For reasons why, in cases similar to this, existence is capable of being with greater benefit to justice given to *chance,* or the lot-employing principle, rather than to choice, with examples of such similar cases, see *Constitutional Code,* Chap. IX. *Ministers collectively;* §16, *Located, how;* Articles 67 or 8 to 77 or 18.

[*]Of these same classes of Dispatch Court Judges, the number and lengthiness of the respective denominations cannot but be matters of just regret. This must be confessed. But in both these shapes the imperfection was unavoidable: and in neither is it greater than that which has place in the existing practice.

1. *Lord Chief Baron of the Court of Exchequer.* This denomination is more lengthy than any one of the hereinabove-proposed denominations; and is, moreover, wholly uncharacteristic. The word *Judge* is a term employed in the ordinary language of all nations, and is to every ear, without exception, familiar, and free from obscurity as well as ambiguity.

2. *Puisne* (pronounced *puny) Baron of the Exchequer.* This is equally uncharacteristic with the foregoing, and not less lengthy than those here proposed.

3. *Lord Chief Justice of the Court of Common Pleas.* Little less uncharacteristic this, and not at all less lengthy. Moreover, the word *Justice* is, by reason of its ambiguity, an awkward substitute for the word *Judge:*—the name of a fictitious entity employed also in making designation of the real entity:—the name of a quality employed also in making designation of a substance,—a living and rational sort of substance.

4. Like observation as to King's Bench Judges.

5. *Lord High Chancellor.* This is also uncharacteristic. Little less lengthy is it than the here-proposed appellation. It is not so universally familiar as the word *Judge:* it belongs not, as that does, to the ordinary language of every nation.

6. *Vice-Chancellor* has the same uncharacteristicalness. So likewise the same want of familiarity: and, to an ordinary ear, the prefix *vice* has on the face of it an awkward ambiguity, from which the word *depute* is free:—the idea opposite to that of the name of the fictitious entity, *virtue,* being by this application brought up into the mind in conjunction with that which it is here employed to designate.

7. *Master of the Rolls.* This is in a superior, not to say supreme, degree uncharacteristic; and more than simply and negatively uncharacteristic, as being in a positive sense awkwardly ludicrous. Like the word *vice,* it operates as an incurable provocative to punning; its inferiority in lengthiness affords not a sufficient compensation for its uncharacteristicalness and its other above-mentioned features of inaptitude.

To the lawyer class, these imperfections are by usage rendered imperceptible: not so to the other classes; more especially to the most numerous, to whom on this as on other occasions most regard is due.

[†]1. Compare with the security afforded by the provisions herein made for oppropriate aptitude, in relation to Masters-in-Chancery business, the utter absence of all security for such appropriate aptitude in the situation of Master in Chancery under the existing practice.

2. In the case of other Judges of all classes and grades, publicity has place; and this security stands instead of all others: and under all the imperfections which have place, so considerable and effective is this security, that in the comparatively tolerable state in which we see it, it keeps the administration of justice.

3. But in the case of the Masters in Chancery, even this security is wanting: under the veil of secrecy in which the Master's closet is involved, by the operation of that sinister interest to which unbounded licence is allowed, is carried on the system of depredation and counteraction of all the ends of justice; and these closets are, with or without exception, rendered so many dens of Cacus.

4. Emolument, enormous,—false pretences on which it is obtained, scandalous,—mode of payment, so far as regards fees, such as places interest in a state of as violent opposition to duty as can be conceived. Pay, for the whole year, varying from £3000 to £4000:—number of days of attendance in the whole year, various and accidental; in instances which have many years been before the public, not more than as many as compose five months out of the twelve. In one instance, which has been before the public, a fee of not less than £570 extorted for a signature, which by an automaton might have been subscribed with equal use.

5. Of the business for which Master and Clerk are paid in fees, a vast proportion is done by the Clerk alone: and this part, upon the whole, probably the least badly done. And the emolument being so enormous, thus is the value of the patronage screwed up to an enormously high pitch: for, under these circumstances, no relation or other connexion of the patron can be too weak or too depraved to be thus enriched by him. For depredation and oppression, to whatsoever degree carried, no redress by any possibility obtainable from any hands other than those of the patron, whose interest in it, and benefit derived from it, rises in the same proportion as that of a patron with the incumbent of an ecclesiastical benefice.

6. By a tenth part of the emolument, several times the aptitude might, were there any such desire, be obtained.

[*]See the subject of appeal more fully treated of elsewhere—*e. g.* in the tract intituled *Scotch Reform, &c.* Vol. V.

[*]An instance of ingenuity directed to this object and with this effect has very lately come to the knowledge of the author of these pages.

Case stated for opinion of Counsel, with fee proportionable. Solicitor's name upon the brief, as usual; with the papers thereto belonging. Well, says the pre-eminently learned Counsel—what do you bring these papers to me for? I can't spare the time for looking after these—you must first take them to some other Counsel who will look over them, and report his opinion upon them: and upon his report, not upon the pile of papers, will my opinion be grounded.

[*]Some portions of matter originally included under this head have apparently been distributed under others, to which they appropriately belonged: as for instance, Sect. VII. *Prehensors,* art. 1.; Sect. VIII. *Consignees,* art. 1; Sect. XIV. art. 3. &c. No such places have been found for the articles now following.—*Ed.*

[*]See Note at beginning of Section X.—*Ed.*

[*]*Commission.*] Not long ago, to the author of these pages, mention was made of an instance in which the expenses of a commission to examine witnesses, though the distance of the places at which the examination was taken was not greater than that between Paris and London, was upwards of £9,000.

[†]*Sale.*] In one of the pamphlets that have been published of late years, an instance is mentioned, in which one single fee charged by the Master for the sale of one single estate was between £500 and £600: he contributing nothing to the proceeding but his *fiat,* as notified by his signature.

[*]At this first hearing, savings in delay and expense will incontestably and manifestly be the following:—

1. The facts which in the plaintiff's bill are alleged will by the defendant be either contested or admitted. If they are all admitted, remains as and for the subject-matter of contestation the question of law; and the time and expense saved will be all the time and expense which in the Equity suit remained to be employed in the elicitation of the evidence respecting the question of facts.

2. If some are admitted, some contested, then the saving will be all such time and expense as would otherwise have been employed in and produced by the elicitation of those which are admitted: as also all the time that would have been to be expended in the elicitation of all such as would not otherwise have been elicited at the same time with those which are admitted, or those which being contested remain to be elicited.

3. Whatsoever portions of evidence remain to be elicited, measure may thus immediately be taken of the quantity of time requisite for the elicitation of them: and thence, on substantial ground, expectation built of the time at which the suit will receive its termination.

4. If in a large proportion of the number of instances the maximum of time cannot be determined with certainty, the minimum of time may in every instance: as, for example, where the distance in respect of time has for its cause the distance in respect of place.

[*]In contradistinction to the term *defendant,* simply, altogether necessary is the appellation *proposed defendant.* Cases in which, under the existing system, the term defendant being employed is improperly employed, two:—1. Where he performs the service demanded at his charge; 2. Where, being purely passive, he omits to perform it:—of this distinction, not inconsiderable is the practical importance.

For what purpose is it that, by the existing system, the name of defendant is stamped on a man by whom nothing in that character is done? *Answer:* For the purpose of finding a pretence for plundering him.

[*]Under the existing system, for the purpose of proving that a LETTER or a signature to a note of hand, or to a bond, was written by the man by whom it was written, a witness may have been fetched from Australia or Peru, this operation having been pretended to be, or having even really been necessary, while the man may have been living all the while within a stone's throw of the Justice Chamber, and every now and then, on the occasion of some discussion carried on in the course of the suit, standing up in full view of the Judge.

Bad enough this, assuredly. But what is still worse, and cannot but frequently have place, is, that on the occasion of this or that suit no such extraneous witness can be found: and in this case, ruin may be the lot of the honest man, opulence and triumph that of the cheat, whom, by the assurance of success thus offered tohim, the Judges, authors of this corruption-spreading arrangement, have rendered such.

Under the existing system, neither by all the powers of the Common-Law Courts, nor by all the powers of the Equity Courts, can an acknowledgment of this sort be obtained. To no matter of fact of any sort will a Common-Law Court call for a man's answer in any shape at the instance of his adversary:—to a fact of any other sort than this, exceptions excepted, at the end of some five or six years in case of his unwillingness, an Equity Court, yes; but as to the making him admit or deny the fact of his having written the words in question, no means are there for it. The only means the nature of the case admits of is this: The paper being, in the view of the presiding Judge, produced to the interrogatee, and the words in question pointed out to him, the question put to him—Did you write this, or did you not?—and for this the mutual presence of the interrogatee and the Judge is, as everybody sees, necessary. An examination of this sort, does it ever happen to it to be performed by a set of Commissioners, furnished with the documents in question for the purpose? If yes, thereupon comes a fox chase: fox, the party intended to be examined; dogs—well-fed dogs—the Commissioners.

[†]On the plan herein set forth, the truth of the case would come out at the earliest moment, and except the vexation which would result from the indispensable attendance, no suffering, either under the name of punishment or any other, produced, without previous demonstration that by the person in question the alleged guilty act had been performed, and that it was of the number of those to which prohibition stood attached by the hand of the legislature. Say, for shortness, promptitude of proof or disproof, maximized; misdecision by punishment without proof, none.

Turn now to the existing system. Here, amongst other vices, may be seen,—delay maximized, groundless suffering not the less enormous for not being inflicted under the name of punishment, to which is exposed every person in the kingdom, at the hand of a Government Advocate, paid by and acting under the orders of the highest Board—a body of King's ministers, all completely irresponsible.

Not a single person in the kingdom of England on whom it is not in the power of this same Cabinet toimpose a virtual mulct, or say pecuniary penalty, to an unlimited amount, at pleasure, without need of proof, or so much as a pretence of proof.

To the Government Advocate—Attorney. General, his official name—order is by this same Cabinet given to issue an instrument styled an *ex officio information.* Innocent or guilty, the devoted victim finds himself, on pain of being treated as if he was guilty, under the obligation of putting in a correspondent written instrument, which he is not admitted to put in without paying, under the name of fees, money to an unlimited amount.

Out of the pockets of the people at large do these same Cabinet ministers thus pay this instrument of theirs, in the first place: then in the next place do they impose a virtual tax on these same victims, putting the produce into the pockets of the various functionaries, superordinate and subordinate, of the Judiciary establishment, connected with the aforesaid Attorney-General by the ties of sinister interest.

Of this state of things, an occurrence that has recently called forth a considerable portion of public notice, may afford an apposite exemplification.

[*Hiatus in MS. The account of the occurrence alluded to is not given, nor can it now be discovered. The comment is as follows.*—Ed.]

This being a criminal offence, here then is an act to which the appellation of an act of defamation may with incontestable propriety be attached.

But on the person by whom this same act has been exercised, should punishment in any shape be inflicted? Here then comes a just demand for satisfaction in the shape of compensation for the expense and vexation attached to the operation of judicial self-defence: and supposing the burthen imposed by the necessity of making this compensation,—suppose it not sufficient for punishment, thereupon comes a demand for the infliction of ulterior suffering under the name of punishment.

But now suppose, on the other hand, that by that same high functionary of the law, that same criminal act so imputed to him was really committed. On this supposition, should either such compensation or such punishment have place? No, surely: but at the least, permission; and rather than punishment, reward; reward at the public expense:—simple permission, if this without reward would be sufficient to produce the information; reward, on the contrary supposition.

In the here-proposed Bill, in the event of a criminal offence being committed by any one of the high legal functionaries in question, for the future prevention of such

offence, punishment is appointed to be inflicted on him. Why? Because, amongst the objects proposed as ends in view of this same Bill is the prevention of all such offences.

Under the existing system, in the actual practice of its Judicatories, in case of the commission of any such offence, punishment in outward show is indeed appointed. But in the system of procedure which is applied to this portion of the main body of the law, such arrangements are established, that instead of punishment, impunity, and even remuneration, is the result. Why? Wherefore but that, on the part of the functionaries by whom this state of things was brought into existence, it was really the wish that of the criminal offences in question the abundance should be maximized: and the motive, the profit in all shapes derivable from these same offences,—derived by themselves, and in general by such persons by and with whom they connect themselves by the ties of sinister interest or sympathy.

Now if this is not tyranny, what is? If in England, under such a state of things, tyranny is not established—established by law, in so far as the practice of the functionaries of Government is law, where else is tyranny to be found? In Spain, in Portugal, or in Morocco?

[*]See Section VI. Art. 37, 37*, and note.

Behold upon how simple a matter of fact or circumstance the character of a whole system of procedure may be determined: by how familiar, and at the same time how manifest, notorious, unconcealed, and unconcealable a vice, it is capable of being rendered hostile to all the ends or justice.

In French procedure, the licence to mendacity is still more ample than in the English. In the English, it is in some small degree repressed, and it has been seen in how small a degree, by the punishment attached to it, in so far as delivered in the shape of *affidavit* evidence: in French procedure, in no such shape as that of affidavit evidence, is evidence ever delivered.

True it is, that falsehood in evidence having for its subject-matter the facts belonging to the case, has punishment attached to it in French procedure, as in English.

But in French procedure also, as in English, the distinction has place between evidence and pleadings: between the cases, the parts in the course of the suit, in which falsehood is punishable, and the cases in which it is not punishable.

Among the cases in which it is not punishable, are those in which it is employed in framing a ground for the removal of the suit from one Judicatory to another: in removing the suit by appeal, by which error, and in so far misconduct, is imputed to the Judge appealed from, or without any such imputation, bandying has place—*bandying,* as explained in the *Petition for Justice.* (See Vol. V. 473.)

In the French judiciary system, the number of the judicatories, one above another, being excessive,—though not so excessive, nor by a good deal so diversified, as in the

English, nor the factitious expense in any of them anything near so ruinous,—hence arises what there is that is correct in the statement given of it in the French work quoted in the *Morning Chronicle* of 12th March 1830.

[*]Turn now to the existing system, in regard to notice.

1. For the giving of notice on each individual occasion, the Judge of the Dispatch Court is provided with adequate means,—namely, those which common sense, when there is no sinister purpose to answer, employs of course; those means being suited to the particular circumstances of each individual case; and having nothing to get by avoiding to employ them, his employing them, and to the best advantage, is a matter of course.

2. Under the existing system, the Equity Judge, as well as every other Judge, having much to get by these as well as all other notices not being received, takes care accordingly to avoid being provided with the means proper for causing them to be received: the place to which he sends the information is any place other than that at which at the time in question the man is, in relation to whom the pretended wish is that he shall receive it. Uttered by word of mouth, it is uttered by proclamation in some place in which at the time it is sure that he will not be. Uttered in black and white, it is caused to be printed in some paper—*London Gazette,* for instance—on which it is sure he will not cast an eye: and as these modes of avoiding to communicate information will serve in equal perfection in one case as in another, hence the advantage of doing the thing by general rules.

3. As to the use derived by the learned marksman from thus missing the mark, it lies not assuredly very deep below the surface. Were the party to know what it is that is required of him, he might do it: in which case, those good things would not be got which are got by his not doing it. Not knowing what it is that is required of him—meaning always what is pretended to be required of him—he omits doing it. Thereupon, if he has land, you lay hold upon his land; and good things in plenty you find means to make out of it: if he has no land, when the worst comes to the worst, he has at any rate a body; and if along with this body of his, he has money, or money's worth, at command, the more and the longer you plague him, the more money out of him you get.

4. If and when thus punished for not doing that which care was taken it should not be in his power to do, of course for the chance of seeing his suffering put an end to, then in the appointed form comes an application from him for relief. By the punishment, he was tormented; by the costs of this application, his torment is augmented: but in proportion as he is tormented, the learned tormentors are comforted.

5. Meantime, whatever be that good which the Dispatch Court Judge can do without doing needless evil to the suitor, he will, as above, do in every case at once, instead of endeavouring to plague the suitor for the chance of forcing him to do it. On every occasion, he will go directly to the object, because nothing is to be got by him from going zig-zag. Under the existing system, the ground being strewed with fees,

turnings and windings are multiplied, because the larger the course, the greater the number of fees that are capable of being picked up on it.

[†]*House of Call.*] In Buonaparte's *Code Civile, Election de domicile* is the locution employed to denote what is here denoted by the locution *House of Call.* But compared with those here proposed, the provision made by the arrangements there employed will be seen to fall short of being adequate. As to house of call, the phrase is already in familiar use: to fit it for its present purpose, all that it wanted was to have its import appropriately directed and fixed.

[‡][*Under this head, reference is made by the Author to his Procedure Code; the matter of this section not having been written. See also Section VII. Prehensors, &c. The following matter on Bondmanship or Surety is found in this place: as also a note bearing more immediate relation to the particular subject of the present section.*—Ed.]

[*]*Excuses.*] House of Commons Votes, 2d March 1830, No. 2: "And the names of Mr. * * * * * being called, and excuses being offered for them, they were ordered to attend the Ballot on Tuesday, 16th March."—No. 6: "*Cork City Election.* Order for the attendance of Mr. R. read; Mr. W. his medical attendant, called in and stated on oath, ... Mr. R. excused . . . discharged from further attendance."

[*]Under the existing system, demand for evidence is made, not from the Judge, but from the party. Bad effects of this system are—

1. If the witness be hostile or timid, the agent has it not in his power to bring him forward.

2. Witnesses' examination by the agent not being on oath, no punishment for falsity.

3. Opportunity to witness to entrap the party and make him lose his suit; viz. by giving the agent a false story favourable to him; and on the trial, upon oath, giving the truth.

4. At the trial you cannot refute him by other evidence: you cannot *contradict* your own witness.

Such is the triumph of law over justice.

[*]See Schedule No. XXIX.

[*]1. Behold in the provisions contained in the foregoing articles, fresh occasion and fuel for explosions of learned gas, in addition to those which by the self-extensive power conferred on the Judge will have been elicited.

2. First comes—"Violation of the Declaration of Rights!" But on this spitfire, a wet blanket has already been cast, and the noxiousness of the explosion taken away.

3. Of the next, and perhaps last, the sound may be to this effect:—See the would-be extortioner! behold in him Empson out-empsonized! Dudley out-dudleyfied! What these men practised on a minute scale, this man—such is his audacity!—recommends to be practised on an infinite—a boundless scale.

4. To these virtuous accusations behold answers two—each of them sufficient for grounding a verdict of not guilty upon: What is here proposed is simply, whatsoever suffering it is deemed by the Judge proper to be produced on the part of the offender, to give to it this quality, this shape; not to make addition to it. Empson and Dudley having for their object, the procuring for their royal employer money as much as possible, produced suffering which but for the desire of the money would not have been produced.

5. Sole pocket into which it is proposed the money should go, the pocket of the whole community: into the pocket of the King;—*technicaliter et grimgribberaliter,* to the surveyor of the green wax;—*Anglicè,* to the pocket of the King, after having been told over a gridiron by this creature of one of his ministers, not a farthing of it.

6. In the breast of the delinquent, whatsoever be the lot of suffering produced, in the breasts of tax-payers in indefinite and unascertainable multitude,—namely, the poor among the tax-payers,—a much larger quantity will be saved.

7. In the breast of the Judge, no assignable motive, inducement, or temptation, to give to such his power, on any occasion, any abusive exercise, has place, more than whatsoever would have place if to the suffering were given any other imaginable shape.

8. In the day which gave birth to the statute by which a stigma was imprinted on the practice of imposing "excessive fines," fresh in all memories was the sentence by which on Hampden the second, son and heir of Hampden the first, a fine of £40,000 was imposed:—a sum, in those days of comparatively small taxation, equal in value to three or four times the nominal amount of the present day. In that state of things, powers such as those hereinabove proposed would have been pregnant with a mass of mischief, protestations against which could not have been too energetic. The money exacted would have gone, the whole of it, into the pockets of a spendthrift King: and being dislocable at pleasure, the occupants of the bench of justice were the breath of the nostrils of him whose seal was on them,—the occupant of the throne. A pair of Empsons, and another of Dudleys, might have composed the population of the King's Bench; and under a Charles the Second or a James the Second, the rapacity of the Seventh and the profusion of the Eighth Henry might at one and the same time have been polluting the same throne.

9. True it is, that for giving to the mass of evil that completeness and perfection which the proposed powers would have given, the power of scrutinizing by oral examination the state of the offender's pecuniary circumstances would still have been necessary. True it also is, that grave considerations—considerations such as in the mind of a Lord Eldon were capable of breeding *great doubts,*—would have opposed a bar of no mean strength to the assumption of such a power. For, as may be seen in the *Petitions*

for Justice, of an exclusion put upon this element of natural procedure was formed the key-stone of the feegathering system: and by every instance of it employed in practice, what would be regarded as a dangerous precedent—a bad precedent—would have been set:—a practice of which no more than one exemplification,—namely, that afforded by the justification of *bail,*—had been suffered to creep in.

10. Of bringing these things to view, what (it may be asked) is the purpose? *Answer,* this: To render it plain and incontestable, that against the cluster of powers proposed to be united in the hands of the Judge, no valid objection can be deduced from that same Declaration of Rights: for that whatsoever beneficial tendency is commonly regarded as being possessed by it, is in the proposed authority of the Dispatch Court carried into effect: and that the security which in that case was imperfect, and given to no more than a few, is in this case perfect, and given to all: that in that state of things, the power of exacting money, of mulcting without stint, connected with the equally unlimited power of eliciting evidence of the state of pecuniary circumssances, would to a certainty have been abused, and to an extent destructive of all property: whereas in the present state of things under the here-proposed checks, the certainty is, that such abuse could not have place in any degree.

11. So much for the certainty of revenue: now as to the probable amount of it. Neither within a hundred, a thousand, or a million of pounds, need it be confined. The proper standard of reference and measurement in this case is indeed the aggregate value and amount of the offender's property in all shapes. But *what* amount? *Answer:* Not the *absolute* amount, but the *relative*—relation had to the state of his pecuniary circumstances;—that is to say, to the sum of his needs or his demands for money, compared with the sum of his means of satisfying those demands.

12. Result upon the whole, a compound of public frugality and moral improvement,—the economy the efficient cause of the morality: a compound, but in proportion altogether incapable of being reached so much as by conjecture; the elements antagonizing in one way, co-operating in another. In each and every individual instance in which by the operation in question money is raised, the correspondent want of morality will have been proved: at the same time, by the example set by it—by the warning given by it, abstinence would be probabilized—abstinence to an extent unlimited and unlimitable: and free would be this compound from every the smallest particle of danger in every shape.

13. But under the assurance of the salutariness of both these results, and of their being one or other or both together actually produced, no great regret need be entertained at the thoughts of the impossibility that would oppose itself to any such operation as that of determining their mutual proportion—the proportion of each of them to the other.

14. Shut up for ever would be the affidavit and perjury manufactory, the seat of which is the Chancery Bench. Gone for ever, the occupation of the ex-Chancellor; blown up, the high pressure engine, of which he was the chief engineer: rescued, the child from the arms of the devouring hypocrite; restored to those in which it had been placed by the hands of Nature as its proper guardians: left in the possession of the right owners, the property of both; instead of being distributed between himself and his accomplices

by the irresistible arch-depredator, the head of the law.

15. Given to public morality, melioration to a vast and indefinite amount: to public revenue, vast and indefinite increase;—the whole without addition made to human suffering. Deny, on definite grounds, who can, that these results will follow.

16. Personal and sinister interests to which the proposed system stands opposed:—Among high functionaries, all patronage owners; and among them, where is the individual who is not so? all dishonest men, in whose view it is to employ mendacity as an instrument of profitable maleficence: all lawyers who stand prepared to serve as instruments of maleficence to any dishonest suitors; that is to say, all lawyers by whom their aid to the here-proposed institution shall after consideration had of it have been withholden:—all rich men who are not more enamoured of justice, than it is natural for men in general, and in particular for rich men, to be.

17. As in this instance, so in every other, under Matchless Constitution, the more intensely and extensively beneficial a proposed arrangement is, the less the probability of its being adopted, and carried into effect in practice: under Matchless Constitution as it is, and so long as it continues to be as it is. But from the consideration of this state of things, is any valid reason suggested for abstaining from proposing what is good? *Answer*—Quite the contrary. For, the greater the quantity of good proposed, the greater the quantity that at each moment of time will be offering itself to the eyes, and calling forth the attention of the subject-many: the greater the quantity, the greater and stronger the quantity of attention bestowed: the greater the attention to a state of things so afflictive, the stronger the affliction: the stronger the affliction, the louder the outcry: the louder the outcry on the part of those same subject-many, the stronger the fears in the breast of their adversaries, the ruling few:—and these same subject-many, how little soever they may have to hope from the mercy of the at present irresistible arbiters of their fate, have everything to hope,—yes, and to be assured of,—from their uneasiness and their fears.

[*]In the Pamphleteer, No. 17, for January 1817, *vide* Vol. V. p. 278.

[*]Parl. Reg. xv. anno 1784. Commons, Earl Nugent. “He (Lord Chatham) had often said, that Hanover was a mill-stone about the neck of England, that would weigh her down, and sink her.”

[*]In the pension list are still to be seen the pensions enjoyed by divers ladies, procured for them by a certain *duke,* they being relations of his by marriage, then in a state of infancy; their father, a hero of the turf, living and dying in the bosom of affluence.

In one part of the present most religious reign, there existed an *Earl of Leinster:*—at that time, and under that title, *premier peer of Ireland.* Being so high, and withal so rich, he was made a *duke,* that with the exception of the blood-royal, no race might ever be so high as his. When for some time he had been a duke, being so high as he was, it was found that he was not rich enough. On the pretence of his administering the sort of *law* called *equity,*—but having no more to do with either, or with *justice,*

than the *Duke of Montrose* has, who receives his £2000 a-year for calling himself *Lord Justice-General,*—he was accordingly made *Master of the Rolls:* assistant as such to and under the Lord Chancellor of Ireland—receiving fees, and doing nothing whatever for any of those fees: helping thus to deny justice to the poor—falsely pretending to render justice, and from richest and poorest without distinction exacting money on that false pretence: "obtaining money on that false pretence;" and instead of the Hulks, having his station at the head of the House of Lords.

After those examples—to which scores of such might be added—let any one speak of the *matter of wealth,* in the character of a *preservation against corruption:* for this is among the pretences by which the waste made of it, by the cramming of official pockets with it, has been justified.

[†]Whatsoever blanks may eventually be observable in the remainder of this work, the prudence of the printer is the virtue to which the honour of them will be due. In the present instance, for filling up the *deficit* between the *C* and the *r,* the candour and sagacity of the reader may employ the letters *onservato,* or any others, if any others there be, which in his view may be more apposite.—(*Note to the original edition.*)

[*]Behold the connexion between waste and corruption, in the view taken of it by divers statesmen at divers periods.

Proceedings of the Society of the *Friends of the People,* London, 1793, May 5th, *W. Baker, M.P.* chairman, *Lord John Russell, deputy chairman*—p. 22—"We positively affirm, that in fact, a case has lately occurred, which, on the very principles of the objection, establishes the necessity of a reform in the construction of the House of Commons. We mean the late *armament* intended to act *against Russia,* which might have involved the nation in a most impolitic and ruinous war; and to which a large majority of the House of Commons gave their support, in direct contradiction to the real interests, and to the acknowledged sense of the people."

Page 31—From the answer (to Major Cartwright's society,) proposed from the committee for the adoption of the society:—"The immense accumulation of debt,—*the enormous taxation of seventeen millions of annual revenue*—demonstrate that the collective interests of the community have been neglected or betrayed."

Parl. Reg. anno 1793, p. 408?—*Burke,* anno 1770? as quoted with applause by *Mr. Erskine,* now *Lord Erskine.*—"When the House of Commons was thus made to consider itself as master of its constituents, there wanted but one thing to secure it (this was in 1770,) against all possible future deviation towards popularity—an *unlimited* fund of money to be laid out according to the pleasure of the court."

Parl. Reg. anno 1793, p. 420. *Mr.* (now *Sir Philip) Francis.*—Speaking of parliamentary reform, "This (says he) is the only measure that can restore and preserve the constitution—that can prevent such ruinous wars in future."

Parl. Reg. anno 1793, p. 319.—*Charles Fox* and *Edmund Burke.*—"Since that time" (1784, the year of Pitt the second's accession,) "four-fifths of the elective franchises

of Scotland" (in this work he had the aid of the first Lord Melville,) "and Cornwal more particularly, have passed into the hands of government; and the prediction, which an honourable gentleman (Mr. Burke) then made upon the occasion, has been literally fulfilled—no House of Commons has been since found *strong enough* to oppose the ministers of the crown." Thus far Charles Fox:—add—nor *willing enough.*

Woodfall's Debates, vol. iii. anno 1797. *Charles Fox* and *Pitt* 2d.—Speaking of the American war, and observing that, popular or not popular at the commencement (anno 1780,) in which year a dissolution of parliament took place, the war was at any rate "extremely unpopular, as a proof that the parliament did not even then (anno 1780) speak the voice of the people:" and after asserting the opportunities of information possessed by him, and the care and accuracy with which he had endeavoured to avail himself of them, he adds, "Not more than three or four persons were (then) added to the number of those who had from the beginning opposed . . . . that war."

In the same page, *Pitt* being present, Fox, from words alleged to be those of Pitt, imputes to him a persuasion to that same effect:—"You see," says Pitt, as thereupon quoted by Fox—"you see that so defective, so inadequate is the present *practice,* at least, of the elective franchise, that no impression of national calamity, no conviction of ministerial error, no abhorrence of disastrous war, are sufficient to stand against that corrupt influence which has mixed itself with election, and which drowns and stifles the popular voice."

Woodfall's Debates, anno 1797, iii. 323.—*Charles Fox.*—There is a lumping consideration . . . . which, now more than ever, ought to make "every man a convert to parliamentary reform: there is an annual revenue of *twenty-three millions* sterling, collected by the executive government from the people." Thus far Fox. Anno 1797, it was these twenty-three millions: now, year ending 5th January 1817, £57,360,694. Last year, year ending 5th January 1816, it was £66,443,802. Commons House, Abstract of net produce of revenue; years ending 5th January 1816 and 1817. Date of order for printing, 3d February 1817. The hope, of course excellent, with all speed, its deficiency will be supplied, and increase added. Well now: besides the other evils, is it not by the twenty-three millions that the sixty-six millions have been generated? In another twenty years, will the sixty-six millions have been swelled to 132 millions? No:—but for what reason? Only because, before it can have arisen to that pitch, the people must, in such a proportion, have been either slaughtered or starved, that by no addition, either to the slaughtering or the starvation, could any increase be produced.

Woodfall's Debates, anno 1797, iii. 330.—*Charles Fox.* (Speaking *of* and *to* Pitt 2d.)—He "has bestowed no fewer than 115 *titles,* including new creations and elevations from one rank to another: how many of them are to be ascribed to national services, and how many to parliamentary interest, I leave the House to inquire." So far Fox. This was no more than thirteen years, from 1784 to 1797: since that time, twenty years have elapsed: to any person who would have the goodness to inform me, on produceable grounds, what the addition that has since been made may amount to, that I may give to the information such publicity as may be in my power, the gratitude of all honest reformists will be due.

Parl. Reg. anno 1793, p. 383.—"*Mr. Grey,*" (now *Earl Grey)* "remarked, that when *Mr. Pitt* moved for an addition of 100 members to be added to the counties, he could not carry his motion; and yet he had contrived (this was in nine years from 1784 to 1793) to procure the nomination of forty members by indirect means; for he had added to the House of Peers thirty members, who either nominated directly or by irresistible influence, that number of members of the House of Commons as . . . . the petitioners were ready to prove." See the petition, ib. p. 518, in which it is asserted, that at this time (1793) 150 *members* owe their elections entirely to *peers:* and that *forty peers* return eighty-one members.

Parl. Reg. anno 1793, p. 383.—*Mr. Grey,* now *Earl Grey.*—"Were the evils of the American war nothing? These were, in his mind, entirely owing to the unequal and corrupt representation in parliament."

[*]Upon a necessarily hasty search, made into such documents as happen to lie within my knowledge and my reach,—the following are the amounts of such part of the army, as appears to have been employed—employed for the same sort of service as that one above, for which the 53,000 have been employed. To match the present and last year, the years here exhibited, by the description of *years of ordinary demand,* have all of them been years of manifest and complete peace. Out of the hundred years in question, no more than 29 (it may be observed) are on this occasion brought to view. Of the comparative smallness of this number, there have been three causes:—1. About half the number of years have been years of actual war. 2. Of the remaining *fifty* or thereabouts, being *years of peace* (*i. e.* years in no part of any of which was war actually carried on,) *twenty-nine* was the only number, concerning which, in the sources of information in question, any information could be found. In consideration of their being so nearly in agreement with each other, and at the same time forming so considerable a majority, *twenty* out of the twenty-nine are here inserted, under the above head of *years of ordinary demand.* In the case of the remaining nine years, ranked, as will be seen, under the contrasted head of *years of extra demand,*—the circumstances of the times not being, for any such purpose as the present, capable of being subjected to a particular examination,—the very circumstance of the superiority of the numbers, in so much smaller a number of instances, has been regarded as constituting an adequately conclusive proof, that in those years respectively there existed some special cause of alarm,—either from within or from without, or both,—of such a nature, as to cause the condition of those years to make an approach more or less considerable to the condition of war years.

How (it may be asked)—how is it that, by preparation for war to be carried on abroad, increase should be given to the number of troops employed or provided for home service? Answer—They are raised and kept at home in *readiness* to be employed in foreign service: and till they are thus employed, they are not distinguishable from those destined to no other than home service.

Note that, in the very nature of the case, to a very considerable amount, though it be impossible to say to what amount, the number cannot but have been—so from the very first, even Walpole himself declared it to be—superfluous and excessive: the excess having for its cause the principle of the inseparable union between waste and

corruption, as already brought to view.

Years of *ordinary* demand.				*Extra* demand.	
Years.	Number of Soldiers.	Years.	Number of Soldiers.	Years.	Number of Soldiers.
1717	16,000	1767	16,754	1728	22,955
1739	17,709	1768	17,265	1734	25,734
1736	17,704	1769	17,142	1740	28,852
1737	17,704	1775	17,547	1741	29,033
1738	17,704	1774	18,024	1742	35,554
1752	18,857	1786	14,380	1746	33,030
1753	18,857	1787	14,140	1770	23,000
1764	17,532	1788	14,380	1771	23,442
1765	17,421	1789	17,448	1784	21,505
1766	17,306	1790	17,448		

? From Chandler's Debates, years 1717, 1728, 1729, 1734, 1737, 1738, 1740, 1741, 1742. From Almon's Debates, 1752, 1753, 1764, 1765, 1766, 1767, 1768, 1770, 1789, 1790. From Annual Register, 1769, 1771, 1774, 1784, 1786, 1787, 1788. From Almon's Parliamentary Register, year 1775.

Shields and Monitions—by these two appellations, two different sets of quotations, examples of which are hereinafter likely to be found, may be designated: *shields,* composed of quotations exhibiting opinions accordant with those here delivered, and having for their object the defending those opinions against the scorn or hostile terror of those, in whose eyes, by the single word *innovation,* be the proposition what it may, an objection, and *that* a conclusive one, is afforded: of these an exemplification has just been seen:—*monitions,* composed of quotations from persons who—being *absolutely,* and, generally speaking, more or less well-informed as it may have happened—have, by one means or other, commonly by that presumption which is so natural an accompaniment of power, by what means soever obtained—been led into the misadventure of betraying, at any rate, *relative* ignorance,—by their eagerness to overwhelm with the reproach of ignorance men in inferior situations, whose interests and wishes have been regarded as not accordant with theirs.

As to the quotations employed as *shields,* an intimation given once for all, may in this place have its use. In the *plan* itself, may be seen the train of reasoning, by which I was led to the several particular conclusions: in the formation of that train of reasoning, no opinions drawn from any external source bore any part: hence it is, that,—unless what regards the narrowness there given to the extent of the electoral franchise be regarded as an exception,—in no instance has it happened, that the opinions here employed as *shields* had served in the character of sources of judgment or invention: the formation of the opinion having, in every instance, preceded the discovery of the external support.

Not that I could ever suppose myself exempt from the yoke of that necessity,—by which, on many of the most important occasions of life, all humankind are condemned to speak and to act, upon no firmer ground than that of *derivative*

judgment:—not that any such continually disproved fancy could ever for a moment have had place in my thoughts,—but that, on any question or subject, those excepted on which a *self-formed* judgment had been formed by me, it has never happened to me to see, in my own instance, any use in the endeavour to present anything to the public eye. Ascribing to my own opinion, taken by itself, as little intrinsic weight as it is possible for any other person to ascribe to it,—never giving it as worth anything, and by this only means making sure of never giving it for more than it was worth,—accordingly so it is, that, in the *reasons* subjoined to it by way of support, they having been the considerations from which the judgment expressed by it had been deduced,—in these reasons may be seen the only claim, which I could ever regard any opinions of mine as possessing to the public notice.

As to *innovation,*—in the instance of every man, by whom, under that name, any proposed measure is held up to view in the character of a just object of horror or terror—let it be judged whether, by the importance attached to that universally irrelevant argument, an acknowledgment is not made of a sort of incapacity of framing, in relation to the subject, any self-formed judgment—a sort of incapacity of producing any arguments that are not irrelevant ones. Of the consciousness of any such sense of incapacity—if not humility, at any rate toleration as towards dissentients should be a natural, and would be a more becoming result: unhappily, pertinacity and intolerance are full as apt to have place in the *inverse* as in the *direct* ratio of the soundness of the judgment—of the degree in which *appropriate intellectual aptitude* has place,—and of the quantity of appropriate information possessed.

[*]So long as, in any shape, offences, having for their object relief from the mischief of misrule, are committed,—the laws, whatever they are, that have been made for the punishment of them, are thereby proved insufficient; and thus it is, that, for the self-same offences, fresh and fresh laws, continually increasing in extent and severity, must be made.

Theory as well as practice, is not this become already a maxim of government?—is not this become the very character of the government? Lie as you are, you are more and more oppressed gradually:—seek relief—forcibly, or be it ever so peaceably—you are oppressed and crushed suddenly. When all *hands* are cut off, lest they should write treason—all *eyes* put out, lest they should read treason—all *tongues* cut out, lest they should speak treason—then it is that the climax of precautionary wisdom will be at an end.—Yes: then, indeed! but how much earlier? Not at all: unless, in some part of this or a future century—as towards the close of the seventeenth—the people—soldiers and all—should become *effectually* tired of such theory and such practice.

[*]Existence, however, it has, and—viz. at Hone's, 55, Fleet-street, and 67, Old Bailey; Hone being editor of the Reformer's Register—that existence may even at this day be had for twopence. The title is—The Right of the People to Universal suffrage and Annual Parliaments, clearly demonstrated by the late Duke of Richmond.—In this LETTER of his, the Duke is against *secresy of suffrage.* By a sort of sentimentality, with perhaps a little of self-regarding interest, perceived or unperceived, at the bottom

of it, was his objection—for such as it is, there is but *one*—dictated. A little further on, it may be seen what a contrast the Duke's logic on this head makes with that which had dictated what he has said on the two others. As to his *bill*—date of it anno 1780, it is not to be found in the Parliamentary Register, but was published by itself, first (it is said) by *Ridgway,* and just now (Feb. 1817,) by *Hone.*

[*]Reader, mark well the following parallel: when read, go back a few pages, apply it to pages 5 and 6. I.

Under Mixed Monarchy—British Constitution.

1. Falling off of the receipts of this last year, ending 5th January 1817, as compared with those of the last preceding one, £9,083,108.

2. Receipts of the same year, ending 5th of January 1817, £57,360,694.

3. Proportion of the amount of the *deficiency* to that of the *receipt,* about *one-sixth.*II.

Under Representative Democracy—American United States Constitution.

1. Receipts of the last year (ending five days earlier than the above, British)—dollars 47,000,000.

2. Deduct payments and appropriation that same year, 38,000,000.

3. *Surplus* remaining in the treasury, applicable in discharge of the public debt, 9,000,000.

Proportion of the *surplus* to the *expenditure,* about one-fourth.

4. Public debt at the end of the last year, dollars 110,000,000. Amount in pounds sterling, the dollar about 5*s.* about 27,500,000.

The British sums are taken from the Commons' House document, 3d February 1817: the American from that which follows:—

Morning Chronicle, Jan. 2, 1817: Extract from the *Message,* transmitted by the *President* of the United States of America, to both Houses of *Congress,* Dec. 3, 1816.

"It has been estimated, that during the year 1816a the actual receipts of revenue at the treasury, including the balance at the commencement of the year, and excluding the proceeds of loans and treasury notes, will amount to about the sum of 47 *millions of*

dollars: that, during the same year, the actual payments at the treasury, including the payment of the arrearages of the war department, as well as the payment of a considerable excess beyond the annual appropriation, will amount to about the sum of 38 *millions of dollars;* and that consequently at the close of the year, there will be a surplus in the treasury of about the sum of 9 *millions of dollars* . . . . . The floating debt of treasury notes and temporary loans, will soon be entirely discharged. The aggregate of the funded debt, composed of debts incurred during the wars of 1776 and of 1812, has been estimated with reference to the 1st of January next (1817,) at a sum not exceeding one hundred and ten millions of dollars.

[*]Woodfall's Debates, anno 1797, vol. iii. p. 316.—*Charles Fox.*—"I say that it is demonstrated, beyond the power of subterfuge to question, that genuine representation alone can give solid power, and that, in order to make the government strong, *the people must make the government.* I say, that you ought to act *on this grand maxim of political wisdom thus demonstrated,* and call on the people according to the original principles of your system to the strength of your government;—I say, that in doing this you will *not innovate*—you will not *imitate,*"—(meaning the French Constitution, which he had been speaking of)—"you will only recur to the true path of the Constitution of England. In making the *people* of England a *constituent part of the government* of England, you do no more than *restore* the genuine edifice, designed and framed by our ancestors."

Parl. Reg. anno 1793, p. 377.—*Mr. Grey,* now *Earl Grey.*—"In bringing forward this business, he was aware how ungracious it would be, for that House to show that *they are not the real representatives of the people.*"

Ibid. p. 379.—*Mr. Grey,* now *Earl Grey.*—"Why should *innovations* of the *prerogative* be watched with less jealousy, than innovations in favour of the *popular* part of the constitution?"

Parl. Reg. anno 1793, p. 380.—*Mr. Grey,* now *Earl Grey.*—"On looking into the journals of the 24th of May 1784, he found a motion made, that the King's speech should be read, wherein his Majesty says, that he would be always desirous to concur with his parliament, in supporting and maintaining in their just *balance* the rights of every branch of the legislature."

Parl. Reg. anno 1793, p. 387.—*Mr. Grey,* now *Earl Grey.*—"Are all these innovations to be made, in order to increase the influence of the executive power?—and is nothing to be done in favour of the popular part of the constitution, to act as a *counterpoise?*"

Parl. Reg. anno 1793, p. 407.—Commons.—"A modern author of great eloquence," [*E. Burke,* anno 1770?], says *Mr. Erskine,* now *Lord Erskine,* "speaking of those changes in the English government, truly said, 'The virtue, spirit, and essence of a House of Commons, consists in its being the express image of the feelings of the nation. It was not instituted to be a controul *upon* the people, as of late it has been taught by a doctrine of the most pernicious tendency, but as a controul *for* the people.' "

Parl. Reg. anno 1793, p. 417.—*Sir William Young.*—"A delegation of members to that House, ought ever to be . . . . of persons having one common interest with those who sent them there." So much for *principle:* now for *fact.* Who were the persons in the parenthesis here marked as omitted? *Answer*—"Gentlemen answering the description of those whom he then addressed." Could this have been serious?—was it not irony?

Parl. Reg. anno 1793, p. 465.—*Mr. Whitbread.*—"Sir, I maintain that there ought to be *a community of interest* between the people and their representatives."

Parl. Reg. anno 1793, p. 468.—*Mr. Whitbread.*—"We wish only to restore to the democracy that power which it ought to possess."

Works of *Sir William Jones,* by *Lord Teignmouth,* vol. viii. p. 506.—"Speech on the reformation of Parliament," spoken anno 1782, May 28, at the London Tavern, afterwards penned and published by himself.—"It is true," says *Sir William Jones* in this speech "that the *spirit* of the constitution ought not to be changed:" [no, in so far as good: in so far as bad, why not?] "it is false that the *form* ought not to be corrected: and I will now demonstrate that the spirit of our constitution requires a representation of the people *nearly equal,* and *nearly universal.*"

[*]Understand here, the interest consisting in his individual share in the universal interest.

[*]Setting aside the fear of personal shame, and of the evil example that would be set to the public—many an election do I remember, in which not only a couple of guineas, but the half or the quarter of that sum, or even less, would, under any degree of affluence, have sufficed to determine the direction which I myself would have given to my vote. Imagine then whether, in my eyes, the sort and degree of moral guilt attached to the case of election bribe-taking on the part of the lower orders in general, can be very intense.

[*]Almon's Debates, anno 1744, January 29.—On a motion for annual parliaments, in preference to triennial, made in 1744, by *Thomas Carew,* these arguments were urged with great force by him, and in reply to the ministerial advocate, Sir William Yonge, by *Sir John Phillipps,* whose son was created, in the present reign, *Lord Milford.* The negative was carried by no more than 145 to 113: majority no more than 32. The only other speaker reported is Humphrey Sydenham, much inferior, who spoke in support of the motion. Of Yonge's reasoning, the weakness may to a curious degree be seen prominent.

Further on comes the occasion for observing the confidence with which the wish for annual parliaments has been regarded as confined to vulgar ignorance, or a wish to destroy the government.

[*]Since writing the above, I have become sufficiently assured, that long before the time when the ensuing *Plan* of mine was drawn up, the expedient of the ballot had, in

more publications than one, been advocated by Major Cartwright: but none of these publications having been seen by me, more than this I am not enabled to say.

[*]See Appendix.

[†]Ibid.

[*]See Table of Springs of Action, by the Author, Vol. I. p. 195.

[†]In respect of general utility and propriety, behold what were the sentiments of Sir William Jones, on the subject of virtual universality of suffrage: from the authorities to which he refers, judge whether, in the best of those old times, such was not the ancient usage: behold, moreover, how frivolous were the pretences on which were grounded the still-existing defalcations made in the time of Henry VI.

Works of Sir William Jones, by Lord Teignmouth, vol. viii. p. 507.—"Speech on the Reformation of Parliament, anno 1782, May 28."—Speaking of the feudal system—"Narrow and base," he says, "as it was, and confined exclusively to landed property,a it admitted the *lowest freeholders* to the due enjoyment of that inestimable right, without which it is a banter to call a man *free,* the right of voting in the choice of deputies to assist in making those laws which may affect not his property only, but his life, and, what is dearer, his liberty; and *which are not laws, but tyrannous ordinances, if imposed on him without his suffrage, given in person or by deputation.* This I conceive to have been the *right of every freeholder,* even by the feudal polity, *from the earliest time;* and the statute of Henry IV. I believe to have been merely declaratory: an act which passed in the seventh year of that prince, near four hundred years ago, ordains, that 'all they who are present at the county court, as well suitors *duly summoned* for the same cause, as *others,* shall proceed to the election of their knights for the parliament.' *All suitors,* you see, had the right, and *all freeholders* were *suitors* in the court, however low the value of their freeholds. Observe all along that *one* pound in those days was equal to *ten* at least in the present time.b Here, then, is a plain declaration, that minuteness of *real* property created no harsh suspicion of a dependent mind; for a harsh suspicion it is, and, by proving too much, proves nothing." Thus far Sir William Jones. Behold now the words of the statute 7 Henry IV. c. 15. After reciting the grievous complaint of the Commons (in the French original *communalté*) "of the undue election of the knights of counties . . . . sometime made of affection of the sheriffs, and otherwise against the form of the writs, to the great slander of the counties, and hindrance [retardation] of the business of the commonalty in [of] the said county,"—it enacts, that, at the county court, after proclamation, "*all they that be there present,* as well suitors duly summoned for the same cause *as others,* shall attend to the election of the knights for the parliament, and then in the full county [court] they shall proceed to the election, freely and indifferently, notwithstanding any request or commandment to the contrary."

And, a little after, it adds—"And in the writs of parliament to be made hereafter, this clause shall be put:—"Et electionem tuam in pleno comitatu tuo factam distincte et aperte sub sigillo tuo et *sigillis corum qui electioni illi interfuerint* nobis in Cancellaria nostra ad diem et locum in brevi contentos, certifices indilate." Note that,

without any distinction made, what is here required is—that the seals to be affixed shall be the seals of those—*i. e.* of *all those—who shall have taken part* in the election. *Villeins,*—composing still no inconsiderable part of the population, though it is impossible to say exactly what part, being (it may be supposed) plainly out of the question,—who were the persons thus admitted to the exercise of this franchise? Who but all who were not Villeins? With the exception of a class of persons happily no longer in existence, if this be not virtually universal suffrage—suffrage more extensive than in the case of the "*householders,*"—by *Charles Fox* and *Mr. Grey* (as will soon be seen) proposed to be admitted—by the said Mr. Grey, now *Earl Grey,* proposed not to be admitted—if *this* be not, what else can be?

Even as to *Villeins,*—were they, after all, really excluded? Look to the *words:* clearly not. Who were the persons by whom the elections were to be made? Suitors summoned as such, and they alone? No: but "*all they that be there present.*" Well, but (says somebody,) in the state of villeinage, no will of his own could any person be said to have. So much for *surmise;* and, but for particular inquiry, not an unnatural one. Well, as to the *fact.* Eight-and-twenty years before the time in question, viz. anno 1377, was passed the statute 1 R. II. of which c. 6—a chapter of considerable length—is in the old French—and, in the *vulgate* edition, not translated. From this statute it appears, that already, even at that time, villeinage was a condition very different from slavery. *Rent* did they pay: and though, instead of money, it was in the shape of *services,* yet these services were certain. In this statute, what is assumed as a general fact is—that they were able to pay *a fine* to the *king,* besides making *satisfaction* to their *lords.* The main offence imputed to them is—obtaining liberation from those services by forged deeds.

The existing *copyholders* are the posterity of the ancient villeins. *Tenants*—the villeins were—the copyholders are—so were they and are they styled—*by copy of court roll.* Deriving from the records of the court the title to the lands they occupied, what can be more natural, than that to *that* same court they should lie under an *obligation*—under which it included the *liberty*—of access and resort to it. But, supposing any of them *present* at any such court, how is it possible that they should not have been included in the assemblage designated as above by the word "*others?*"

Presently, in the "*excessive*" multitude of the persons resorting to those courts, we shall see a *fact,* and the *only fact,* employed in another reign, twenty-five years afterwards, as a pretence for limiting in those same courts the right of voting to those who possessed, in *freehold,* an estate equal in value to £40 a-year money of present time. But, unless copyholders be supposed to have, even at *that* time, made a part of it, where shall we find matter enough out of which to compose any such *excessive* multitude?

True it is, Blackstone (see his "Considerations on the Question concerning Copyholders," &c. London, 1758, p. 7,) applies a limitation to the import of the word *other;* (it should be—the French is—*autres, others:*) confining it to suitors. For this surmise, however, no ground does he give: nor of any such or other limitation can I find any intimation given, in or by any word or words of the statute.—"*Communalte du dit Countee,*" says the old French. "*Omnes illi qui electioni illi interfuerint,*" says

the Latin inclosed in it.

So much for the strong and prosperous reign of Henry the Fourth, in which virtually universal suffrage was then established. Comes now the weak and disastrous reign of his idiot grandson, under which, under the sort of pretences that will be seen, it was curtailed.

Statute 8 H. VI. c. 7.—"What sort of men shall be chosen, and who shall be chosen knights of the parliament." Follows the *vulgate* translation: the original, which is in the old French, would fill up too much room here. Of the translation, except as here corrected, I have by examination assured myself of the correctness.

"Item, Whereas the elections of knights of shires to come to the parliaments of our Lord the King, in many counties of the realm of England, have now of late been made by *very great, outrageous, and excessive number of people dwelling within the same counties* of the realm of England, of the which, most part was of people of *small substance,* and, [*or*] *of no value,* [i. e. *worth*] whereof every [one] of them pretended a voice *equivalent,* as to such elections to be made, *with the most worthy knights and esquires* dwelling within the same counties, whereby manslaughters, riots, batteries, and divisions among the gentlemen and other people of the same counties, shall *very likely* rise and be, unless convenient and due remedy be provided in this behalf. (2.) Our Lord the King, considering the premises, hath provided, ordained, and stablished, by authority of this present parliament, that the knights of the shires, to be chosen within the said realm of England, to come to the parliaments of our Lord the King, hereafter to be holden, shall be chosen in every county of the realm of England, by *people dwelling* and resident *in the same counties,* whereof every one of them shall have *free land or tenement* to the value of forty shillings by the year at the least, above all charges." . . . . .

As to the *grounds.* First, as to any supposed deficiency in respect of *appropriate intellectual aptitude.* Among those who, in the shape of landed property, had *not* so much as 40*s.* a-year of that day—going as far, say as £40 money of the present day—small indeed probably was the number of those who were able to *read:* how much larger among those who *had* their 40*s.* and more? Probably enough, very little. As for the "knights and esquires," some few of them not improbably were in those days able to *read:* but by not one of them, most certainly, was any book to be found from which any information, tending to the increase of *appropriate intellectual aptitude,* could be extracted.

So much for *intellectual aptitude:* now as to *freedom of suffrage.* "Manslaughters," &c.? . . . . What! at that time, in any one instance, had any of these mischiefs really taken place? No: no such thing is so much as pretended. What then? Oh, they *will very likely* take place, unless due remedy be provided. Aristocracy this—all over. But was ever pretence more plainly groundless? By the alteration of the value of money, the efficiency of the aristocratical principle has, in *this* part of the field of election, though no thanks to parliament, been somewhat diminished—extent of the right of suffrage somewhat increased. But—such, as will be seen, has been the influence of other causes—that from this extension no real advantage has resulted. See what in a

following section will be said on the subject of *vote-compelling* and *competition-excluding terrorism.*

On the ground of general utility and propriety—behold, moreover, the sentiments of *Charles Fox.*—Woodfall's Debates, anno 1797, p. 331.—"There is one position in which we shall all agree, that man has a right to be well governed. Now it is obvious, that no people can be satisfied with a government from the constituent parts of which they are excluded."

In regard to *universal suffrage,* even under that unlimited name, we shall find him acceding to it, and advocating it upon principle: refuting it no otherwise than upon the ground of a supposed matter of fact, in relation to which it has been seen, and will further be seen, the truth is exactly opposite. Not adverting to the effect of *secresy of suffrage,* the notion on which he here grounds himself is—that in the case of *non-housekeepers* in general, freedom of suffrage is not to be looked for.

Antecedently to the above passage, behold what he says in page 327—"My opinion is, that the best plan of representation is that which shall bring into activity the greatest number of independent voters:" thereupon it is that immediately he goes on and says,—"and that that is defective which would bring forth those whose situation and condition takes from them the power of deliberation." In this I heartily concur with him: but in the next section it will be seen to what this observation leads: an observation by which it may be seen (ib. p. 326) he was led to the disapprobation of giving any *extension* to the system of *county* representation.

A little earlier in the same page, "I have always," (says he,) "deprecated universal suffrage, not so much on account of the *confusion* to which it would lead, but because I think that we should in reality lose the very object we desire to obtain:—it would in its nature embarrass and prevent the deliberative voice of the country from being heard." Thus far Charles Fox: meaning by reason of the supposed want of freedom, as above. As to *confusion,*—upon any thing like the plan here proposed, all danger of this sort will be seen to be most completely excluded. Charles Fox sat for Westminster. In the Westminster election what confusion do we see? Yet, in the Westminster election, there remain in abundance natural causes of confusion, all which would, on the plan in question, be completely excluded.

So much as to what might be and would be. But now look at what actually has been. Anno 1807, Sir Francis Burdett was, for the first time, elected successor to Charles Fox. Since then, near ten years have elapsed, and in all that time no more *confusion* than if Westminster had been a pocket borough. See the History of the Westminster Representation from that time in Hone's Reformist's Register, No. 3: a most interesting picture of the state of purity and good order, into which election proceedings not only *may be* brought, but *have been* brought, and in it have already for ten years been continued, under a degree of extension so little short of that of universal suffrage.

In the same sentiments—both as to the general principle and the ill-grounded reason for putting it aside,—already had he spoken, and even still more explicitly, in the year

1793.

Almon's Parl. Register, anno 1793, p. 497.—"His" (Fox's) "objection to universal suffrage was not distrust of the decision of the majority, but because there was no practical mode of collecting such suffrage; and that by attempting it, what from the operation of hope on some, fear on others, and all the sinister means of influence, that would so certainly be exerted, fewer individual opinions would be collected than by an appeal to a limited number. Therefore, holding fast to the right of the majority to decide, and to the natural rights of man, as taught by the French, but much abused by their practice, he would resist universal suffrage."

At that same time, *Mr. Grey,* now *Earl Grey,* though he did not approve of universal suffrage *absolutely,* approved of it,—yea, and moreover of annual parliaments,—*comparatively,* viz. in comparison of the existing system.

Woodfall's Debates, anno 1793, p. 383.—"He" *(Mr. Grey)* "did not approve of the Duke of Richmond's plan of reform, though he thought it better than the present system." The Duke of Richmond's plan? Well, what was it?—Suffrage universal, parliaments annual: this, but without *secresy,* and thence without *liberty,* of suffrage.

[*]For the place of *this* pleasure in the list of *pleasures,* see *Spring of Action Table,* published at the same time with the present tract. *(Vide* Vol. I. p. 195.)

[*]In the county of York, if my information be correct, may be found a borough, to which belong two seats, in relation to which the electoral function is virtually performed by a single person of the female sex.

[†]Woodfall's Reports, anno 1797, p. 327.—*Charles Fox.*—"I hope gentlemen will not smile if I endeavour—" After saying as above, he adds—"My opinion is, that the best plan of representation is that which shall bring into activity the greatest number of independent voters, and that that is defective which would bring forth those whose situation and condition takes from them power of deliberation. I can have no conception of that being a good plan of election, which should enable individuals to bring regiments to the poll. I hope gentlemen will not smile if I endeavour to illustrate my position by referring to the example of the other sex. In all the theories and projects of the most absurd speculation, it has never been suggested that it would be advisable to extend the elective suffrage to the female sex; and yet, justly respecting, as we must do, the mental powers, the acquirements, the discrimination, and the talents of the women of England, in the present improved state of society; knowing the opportunities which they have for acquiring knowledge; that they have interests as dear and as important as our own; it must be the genuine feeling of every gentleman who hears me, that all the superior classes of the female sex of England must be more capable of exercising the elective suffrage with deliberation and propriety, than the uninformed individuals of the lowest class of men, to whom the advocates of universal suffrage would extend it; and yet, why has it never been imagined that the right of election should be extended to women? Why but because, by the *law of nations,*[a] and *perhaps*[b] also by the *law of nature,*[c] that sex is dependent on ours; and because, therefore, their voices would be governed by the relation in which they stand

in society. Therefore it is, sir, that with the exception of companies, in which the right of voting merely affects property, it has never been in the contemplation of the most absurd theorists to extend the elective franchise to the sex."

[*]See the Reverend Mr. Belsham's Observations on the Bishop of London's Charge, anno 1814.

[†]By Mr. Cobbett, this topic I observe just now mentioned by himself as having been frequently worked:—and if so, doubtless with that force and acuteness which might be expected at his hands, as well as with that copiousness and diffuseness, which is so well adapted to the situation of the bulk of those among whom he has to look for readers.

[*]Such, at any rate in my own view, it cannot fail to be: for in this state, for a long course of years, was my own mind:—the object a dark, and thence a hideous phantom, until, elicited by severe and external pressure, the light of *reason*—or, if this word be too assuming, the light of *ratiocination*—was brought to bear upon it. In the *Plan* itself may be seen at what period (viz. anno 1809,) fearful of going further—embracing the occasion of finding, in *derivative* judgment, an exterior support—I was not only content, but glad, to stop at the degree of extension indicated by the word *householders;*—taking at the same time for conclusive evidence of *householdership,* the fact of having paid *direct taxes.* But, the more frequently my mind has returned itself upon the subject—the more close the application made to it—the more minute the anxiety with which every niche and cranny has been pried into—the stronger has been the persuasion produced,—that, even from an extent as unbounded as that which would have been given to the principle by the vigorous and laborious and experienced mind of the *Duke of Richmond* (always with the proviso, that, by that secresy—which, somehow or other, he could not bear to look in the face—freedom should be secured)—no mischief, no danger, in any such shape as that which is denoted by the words *anarchy* or *equalization,* i. e. *destruction* of property, would ensue: in a word, not any the smallest defalcation from any rights, but those which are universally acknowledged to be mere *trust-rights*—rights, the exercise of which ought to be directed to the advancement—not of the separate interests of him to whom they are intrusted, but of the joint and universal interest.

Tranquillized, on the other hand, by the persuasion, that although, by defalcation after defalcation, very considerable reduction were made in respect of *extent,* still no very determinate and distinguishable defalcation might be made from the beneficent influence of the *universal-interest-comprehension principle,*—and that, by every extension obtained, the way could be smoothed to any such ulterior extension,a the demand for which should, in the continued application of that principle, guided by the experience of security, under the experienced degree of extension, have found its due support,—with little regret, considering the subject in a theoretical point of view, and altogether without regret, considering it with a view to *conciliation,* and in that sense *in* a practical point of view,—thus it was that without difficulty I found I could accede to the extent indicated by the words *householders,* or *direct-tax-paying* householders: due regard being at the same time paid to the arrangements prescribed by the *simplification* principle, as above.

Representation co-extensive with taxation?—with taxation in every shape? Oh yes; with all my heart: no danger to *property,* any more than to *person,* should I apprehend from it: for, under another description, what would this be but the *Duke of Richmond's universal suffrage?* But *the principle*—in the *principle* behold the defect:—a principle which is but the product of imagination—of imagination with nothing but itself for its support:—a principle not looking to *universal interest*—not looking to interest in any shape or to any extent—to human feelings in any shape or to any extent—to general utility—to utility in any shape or to any extent:—a principle deaf, unyielding, and inflexible:—a principle which will hear of no *modification*—will look at no *calculation:*—a principle which, like that of the *rights of man,* is in its *temper* a principle of *despotism,* howsoever in its *application* applied to purposes so diametrically and beneficently opposite.

Co-extensive with taxation? Why this reference, this adjustment? If, instead of *imagination, reason* be consulted, the answer is—that by extent coinciding with that of taxation, so it happens that in this country all *interests* are comprehended:—deference is paid to, practice would accordingly be guided by, the principle by which the comprehension of all interests is prescribed. Good: but if, in the principle which prescribes the giving admission at once to all interests, you were to have a principle which nobody but yourself would listen to, what would you be the better for it? And if, with a principle which, in numbers sufficient to carry the question, men would listen to and be governed by, you were to get a constitution, under and by virtue of which, for want either of *appropriate probity* or *appropriate intellectual aptitude,* or both, property and liberty would be destroyed,—what in *this* case would you be the better for your principle?—would not your condition be still worse—yea, much worse—than even at present?

Behold here—(for it is well worth beholding)—the relation—the instructive relation—between *theory* and *practice:*—of the goodness of *theory,* the test is, in every instance, its applicability to practice:—*good in theory, bad in practice:*—behold in this fallacy—this vulgar fallacy—a contradiction in terms.

But, if theory be recurred to, it suffices not that a proposed measure be good in itself;—the theory employed in support of it should also be a good one: a theory capable of being—and without practical mischief—applied to practice. But capable of being, without mischief, applied to practice, it cannot be,—if, no reference being made by it—no regard paid by it—to human *interests* or to *human feelings*—to feelings of *pain*—to feelings of *pleasure,*—it admits of no modification—no yielding of interest to interest—and thereby of no means of *conciliation:*—of no means of *conversion,* but overbearing despotism.

The horror and terror with which, by the words *universal suffrage* and *annual elections,* so many uncorrupted breasts are filled—(for I speak not here of the case of those in whose instance language and deportment are necessarily prescribed and fashioned by the predominance of sinister interest)—these self-disturbing and dissocial passions—to which object shall we look for the cause of the application thus made of them? Shall it not be to the weakness—alas! the too natural, and, in a greater

or less degree, the universal weakness—of yielding too readily to first impressions?—of giving the reins to *imagination,* and at the same time to that *love of ease,* which spares itself the labour necessary to close inspection and carefully comprehensive analysis? Oh yes: in the combination of all these co-operating causes may be found *power* but too sufficient for the production of these and so many other undesirable effects.

In my own instance, well do I remember the time when the principle of *universal suffrage,* howsoever modified, presented itself to me as being in a general view inadmissible. Yes: but *what* time?—any time subsequent to that attentive consideration and scrutiny, which the importance of the question now so imperiously calls for? Oh no: it was a time at which, as yet, no *purposed* attention had on my part ever directed itself to the subject. No: the closer the attention bestowed, the firmer has all along been my conviction—on the one hand, of the undangerousness of the principle, taken in the utmost extent to which the application of it can ever reach,—on the other hand, of the facility and consistency with which, for the sake of *union* and *concord,* defalcation after defalcation might,—provisionally at any rate, and for the sake of experience—quiet and gradual experience,—be applied to it.

As to what concerns the influence of understanding as understanding—in the case here in question the only beneficent, the only endurable influence,—my own persuasion is—that under the most unbounded universality of suffrage,—instead of being annihilated, the influence of *aristocracy* would still be but too great: too great, I mean, with relation to appropriate *intellectual aptitude:* too great not to give admission to many an idle and comparatively unfurnished, to the exclusion of a laborious and better furnished, mind.

As far as I have been able to collect it—and I have not been unsolicitous in my endeavours to collect it—the whole stream of experience runs that way.

In proof, or at any rate in illustration of this position—one particular incident, which has place in my own remembrance, has just been confirmed by cotemporary recollections. In the days of *Wilkes and liberty!*—among Wilkes's supporters—and indeed, for activity and extent of influence, at the head of them—was *Churchill the apothecary,* brother to *poet Churchill.* Election time approaching, Wilkes himself being, for the moment, by some incident or other, put out of the question—apothecary Churchill was proposed. *An apothecary member for Westminster!* By a loud and general clamour to this effect was the proposition immediately crushed:—yet, besides that extraordinary personal popularity, by which he had been enabled to render such commanding service to the fine gentleman, his *protégé,* was this apothecary of the number of those who kept their coaches.

As to *apothecaryship* and *gentlemanship,*—for my own part, if, of two candidates—knowing nothing of either, but that one was an *apothecary,* the other a *gentleman* of £10,000 a-year—the question were to be asked of me, *for which will you give your vote?* my answer would be at once—*the apothecary—the apothecary for me!*—Why? Even because in the mind of the apothecary—the apothecary being to a certain degree known as such—I should be assured of finding *intellectual*

aptitude—intellectual aptitude in the shape and degree corresponding to the exigencies of that eminently useful and respectable profession, including the branches of art and science that belong to it:—in the first place, *intellectual aptitude at large:* and scarcely can it happen but that, so it be considerable in degree, *intellectual aptitude appropriate*—appropriate, if not with reference to *any* subject without exception, at any rate with reference to the subject *here* in question—may with more or less facility be acquired: the already acquired *stock* or *capital* being, with more or less advantage, capable of being transferred and applied to the newly adopted branch of industry.

Thus much for the *apothecary*. Now as to the gentleman. This gentleman, with his ten thousand a-year—he having been bred up in the expectation of it—on what assignable or maintainable ground could I build an equal, or nearly equal expectation, of his possessing the requisite intellectual aptitude, in any tolerably competent degree, in any shape?—at any rate in any shape in which it would, any part of it, possess a tolerable chance of being *transferred* to this purpose? Intellectual aptitude—to whatever subject applied—is it not the fruit of *labour?*—is it to be had *without* labour? How then should he have come by it?—by the force of what *motives* shall that of the pain attached to the labour have been overcome?

[*]Thus miserably diluted by Dryden and Co. (Chalmers's English Poets, vol. xx. p. 532:—)

> —Nor may I lose the prize,
> By having sense which heaven to him denies;
> Since great or small the talent I enjoy'd,
> Was ever in the common cause employed;
> Nor let my wit and wonted eloquence,
> Which often has been used in your defence,
> And in my own, this only time be brought
> To bear against myself, and deem'd a fault.

[†]

> The deeds of long-descended ancestors,
> Are but by grace of imputation ours,
> Their's in effect.

[*]For the passages quoted, see Hone's Reformist's Register, February 15, 1817, No. 3. On reading them, a suspicion may possibly arise of their having been penned by the author of this tract. In respect of personal knowledge, the facts are all unknown to him:—the picture here given of them was equally so, till several days after it was in print.

[†]I.—

COMMENCEMENT. ***Origin Of The System Of Uncorruption And Free Election Established In Westminster.***

I. Object proposed. Inducements—"To return Sir Francis Burdett free from expense, or personal trouble, and without even making him a *candidate:* Sir Francis Burdett, the only man who had the sense and the courage to fight the people's battle. He had proved himself a friend to very extended suffrage, and to Annual Parliaments."

II. Managers,*who.* "Few in number, of no political importance whatever—without influencea —even their names unknown to the electors. The electors, from the long disuse of the elective franchise, in the way in which alone it should ever be used, had no confidence in each other. Each man was indeed ready to do his duty, yet few reckoned upon the same disposition in their neighbours . . . ."

III. Managers—*their mode of canvassing.* Managers to the people—"We have undertaken your cause; the way is open—it is before you; do your duty. Electors may receive letters of thanks from the candidates who are acting for themselves, but you will not expect to receive them from the committee who are acting *for*you, and *by your means.*"

IV. Result*as to* SUCCESS. "For Sir Francis Burdett, the object of their choice (himself not soliciting any man,) single votes as many within seven as all the candidates, four in number, had received among them; and nearly two-thirds of the whole number of electors polled, voted for him."

V. Result*as to* EXPENSE.—"From the commencement of the election to the close," sum total £780 : 14 : 4:—to the person thus chosen for *representative*—himself not so much as a *candidate*—not a farthing.

VI. Result*as to* MORALS.—"No drunkenness—no rioting—no murders—no bludgeonmen—no sailors—no Irish chairmen—no obstruction at the place of polling—no hired voters—no false swearing—no puffing and lying in the newspapers—no assassin-like attempt to destroy reputation—no attempt to mislead:—to the people was the business left: nobly and effectually did they perform it."

VII. Opposition*vanquished:* MEANS in vain employed by it: *Terrorism, bribery, falsehood*—the *holy triple alliance—impotent.*—"Threats, promises, persuasions, calumny, misrepresentation; frauds of all kinds; letters written for those who could not refuse their signatures, to induce others to procure votes; licences threatened; tradesmen to have their customers taken away."—*N.B.* From what I know of the source from whence the information came,—I should, upon occasion, stand assured of finding these general assertions made good by proof of individual facts.II.—

CONTINUANCE.

VIII. On the part of the managers, Perseverance: on the part of the system of uncorruption, Permanence.

"It is now nearly ten years ago; and from that time to this the electors of Westminster have kept their steady course, while corruption has been obliged to hide its head, and to draw in its claws."

"The electors of Westminster have, since that time *re-elected* Sir Francis Burdett *once,* and *Lord Cochrane twice,* on the same excellent plan. They have had to contend *three times* in *courts of law;* they have held upwards of *thirty* public meetings, all at their own expense—all, too, at an expense scarcely exceeding £4000."

In ten years, four thousand pounds—scarcely more—even with the drain from the *Great Hall!* But for the cramming of *giants,* ever *refreshed,* still insatiate—to how much more moderate a sum would not that so astonishingly moderate sum have been reduced!

IX. Principalities*and*Powers*contended with and vanquished.*—"In Westminster are the Courts of Law—the Houses of Parliament—the Palaces—the Admiralty—the Pay Office—the War and Ordnance Offices—the Treasury—the India Board—the great Army Agents—the Barrack Office—the Navy Office—the Victualling Office—the Tax Office—the Theatres—the Opera House—and many other offices and public establishments, *all* of them, from their very nature, *opposed to free election;* yet in this place—abounding beyond all others in the means and the love of corruption—in this place power was impotent against the people."

X. Sophistry*thus confuted by fact.*—"Westminster has replied, by its acts, to the calumny of the enemies of reform, that the House of Commons was corrupt, because the People were corrupt."

The people corrupt, forsooth! This was the plea of the alarmist, muddle-headed, joke-spinner, metaphor-hunter, and laborious would-be deceiver, now no more: in whose head no one idea was ever clear, nor any two ideas consistent. *The people corrupt,* forsooth! Corruption, why thus charge it upon the people? Even because, among the men he was addressing, he saw—and upon each occasion felt—an eagerness to catch at every pretence for shrouding, under a covering of contempt cast on the *subject-many,* the system of depredation and oppression, continually carried on at their expense, by the ruling few. Even because, supposing the pretended *corruption* to be regarded as having its source in that quarter, it could not but be regarded as being below the reach of remedy—and *reform,* in every shape and every situation, hopeless. The aim of this man was to extinguish hope.

XI. Contrast*between this genuine reform and Government sham-reform.*—"Talk of *reformation* and *economy* indeed! Here are examples of both, worthy the

contemplation of every man. Here is no petty retrenchment from unlimited extravagance; here is a radical reform in management and in morals, at once demonstrating that the people, and the people alone, are willing and able to do their own business in the best and the least expensive manner.

XII. Example*set,* Lesson*given,* Practicability*proved:* Assurance*of like* success*everywhere.*—"Westminster, at this moment exhibits a fair sample of what the whole people would be if the plan of reform proposed by Sir Francis Burdett were adopted. Corruption and profligacy would speedily disappear from among them; and the profligate and the corrupt would no longer dare to offer themselves as candidates to misrepresent and abuse them. Then must a man have a character for wisdom and integrity, who aspired to the high honour of representing a virtuous, a free, an intelligent, and brave people; and then would the wise and the virtuous, whose more correct notions of honour keep them out of sight, come forward, proud to receive real honours from their countrymen. And what is there, after all, in the conduct of Westminster, which would not instantly be put in practice by the whole people, if they possessed even the right of voting enjoyed by the people of Westminster?"

N.B. Freedom of suffrage here—freedom, to an extent sufficient for the purpose—and yet, (it may be observed) without the protection of *secresy.* True:—but though, in every other particular, a fit example for the whole kingdom, in this one it could not be. Why? Because, in the circumstances in which the population is placed, freedom, even without the aid of secresy, finds a protection, such as, unless it be in the adjoining metropolis, it would in vain look for anywhere else. Though by the particularly independent condition of the majority of the inhabitants, terrorism was vanquished, it was not till it had struggled and done its utmost. Terrorism, notwithstanding the majority being so great, how much greater might it not have been, had terrorism been disarmed by secresy?

Of democracy it is among the peculiar excellencies, that to good government in this form nothing of *virtue,* in so far as *self-denial* is an ingredient in virtue, is necessary. Such is the case, where the precious plant stands alone: no *Upas* tree, no clump of *Machineel* trees, to overhang it. But, in the spot in question, still live and flourish in conjunction both these emblems of misrule. Here then was, and still is, and will continue to be, a real demand for *virtue:* and here has the demand proved, as Adam Smith would say, an *effectual* one.

Shade of *Hampden!* look down, and in a host of tradesmen and shopkeepers, behold thy yet living and altogether worthy successors!

[*]*Gratitude* may perhaps here present itself as a *motive,*—which, though not of the nature of either terror or bribery, may not unfrequently be capable of being productive of the same effect: and, in so far as this case is considered as exemplified, *sentimental* may be the adjunct employed for the purpose of giving expression to it: say, *sentimental seduction,* or *sentimental seductive influence.*

But, in the instances in which, at bottom, no motive but of the *self-regarding* kind, and *that* looking to the *future,* viz. either hope or fear, or a mixture of both, has

place,—*gratitude,* the *social* motive, is a *cloak,* which, in so far as any tolerably plausible pretence can be found—(and whensoever a favour has been received, or supposed to be received, it always may be found)—is sure to be employed as a covering for the self-regarding motive: and, even when favours to any amount have been received, a *self-regarding* fear—fear of the *reproach of ingratitude*—is frequently the cause, by which, if not the whole, a part more or less considerable of the effect is produced.

On the occasion of *election bribery,* such as in this last case is the mode, in which the seductive influence is commonly applied and operates: in this way, if at all, must it operate, when the bribe is given *beforehand:* and in this case, to the reproach of ingratitude, will, in common apprehension, be added the stronger reproach of *improbity,* viz. in the shape of *perfidy.* See *Springs-of-Action* Table, as above.

From the situation of Elector, turn now to that of Representative.

In the motive of *hope,* with or without *fear,* and with a covering of *gratitude* more or less sincere, may be seen the seductive influence, by which, in this case, under the dominion of C—r-General, the conduct of members of parliament, both houses included, is, to so vast an extent, determined. To this case may be referred, in a more especial manner, the gratitude which has place under the sort of robe, the sleeves of which are of *lawn.* "*When I forsake my King, may my God forsake me!*" was the once famed speech of a high-seated and notorious profligate, to whom for once it seemed good to play the hypocrite. But in this case, *lawn* was not the material of the sleeves.

Hope, fear, gratitude,—in such situations, generally speaking, who but the Searcher of Hearts can distinguish the proportions in which those affections contribute to the production of the effect? Still greater is the difficulty as beween gratitude and fear of the reproach of ingratitude. When, in such a situation, the profession of gratitude has anything of sincerity at the bottom of it, the stronger the sincerity, the more mischievous the gratitude is apt to be. Why? Even because the stronger it is, the more strenuous the exertions with which it will operate towards the support of the separate and sinister interest.

As between *individual* and *individual,*—if, in so far as it exercises itself to the *benefit* of one individual who is the object of it, gratitude is a virtue,—yet, in so far as, when exercising itself to the benefit of the one, it exercises itself to the *injury* of any other, in so far, instead of being a virtue, can it be anything better than a vice? much more if, as between an individual and the whole community, exercised to the still greater injury of the universal interest. Gratitude, by which, at the expense of the universal interest, the private interest of the C—r-General is served—is this a virtue? Yes: if stealing money out of the Exchequer or the Bank, to slip it into the privy purse, would be a virtue;—not otherwise.

Behold a man eight-and-thirty years in parliament; three-and-thirty of those years in office: in all those three-and-thirty years—not to speak of the other five—though the measures of the monarch were ever so mischievous, never in any instance failing to give his vote (not to speak of his speeches) in support of them: and, in a life of him,

written in lawn sleeves, by a brother of the right honourable person in question, this habit, as will be seen, placed to the account of *virtue!* In respect of extent, as well as malignity, see the character of this mischief admirably displayed in an Edinburgh Review of the last year, or last but one. But in this place the matter is too apposite, as well as too impressive, to be sufficiently put to use by a mere reference. *Lord Viscount Barrington's* Life, by *his brother, the Bishop of Durham,* pp. 169 to 192: *time,* that of the American war. In October 1775, LETTER to the *King,* desiring leave to resign: no notice taken. June 7, 1776, for the first time, conversation on the subject with the King in his closet. Year of Lord Barrington's age, the sixtieth:—of his official service, the thirty-first. Hear Lord Barrington: this from his own manuscript:—"Many difficulties," I answered (p. 174,) "in respect to the House of Commons, were of the most serious kind, as *they affected my conscience* and my character. I have, said I, my own opinions in respect to the disputes with America: I give them, such as they are, to ministers, in conversation as in writing. I am summoned to meetings, where *I* sometimes *think it my duty to declare them openly, before perhaps twenty or thirty persons;* and the next day *I am forced either to vote contrary to them, or to vote with an opposition which I abhor;*" viz. not thatparticular opposition alone, but every opposition whatsoever, in whatsoever case, and on whatsoever ground acting.

Judge whether this be not true: view him in the year of his age the twenty-ninth; of his parliamentary service, the fifth or sixth (p. 12, anno 1745.) Then it is that, to his perfect astonishment, he discovers, that, in that one instance, opposition in parliament had given a certain degree of encouragement to rebellion: as if it were possible, that, where rebellion is in contemplation, opposition could in that place by any possibility be made, without contributing more or less to that effect. Thus made, the discovery, profound as we see it, suffices of itself to produce, on his part, a determination never to be in opposition in any case whatsoever: and to this determination, for such a number of years together—the whole time against his most decided judgment—to the support of one of the most tyrannical and disastrous measures—(disastrous?—to the would-be-enslaving country, yes: but to the country intended to be enslaved, how felicitous!)—ever contemplated, he most heroically adheres. Speaking of the rebellion in 1745, "he had seen," says his right reverend biographer and panegyrist—"he had seen, with some degree of remorse, how much the conduct of opposition had encouraged that enterprise. He perceived," continues he, "that appeals to the people against the parliament and the government contribute towards anarchy; and that ministers are more frequently deterred from right than from wrong measures, by the apprehension of opposition. Possibly," continues he, "some may think, that his having an employment in administration might have contributed to his adopting these sentiments: being once, however, offered to his mind, the force and *truth* of them became irresistible." Yes—"*the truth of them,*" says the good Lord Bishop.

Behold, then, the scrupulous Viscount, with his tender conscience. Thus, according to his own showing, was this man, and for so many years together, in the unvaried habit of voting against his own conscience—contributing in one of the most influential situations to the commission of legally dismurdered murders (to speak according to his opinion) committed in the wholesale way. And why? Only because, had his votes been given according to his conscience, and against these murders, he would have

seen other votes operating in aid of *his,* and contributing to the efficiency of his, by being given in favour of the only system his conscience could approve of. After this comes the determination expressed to the King, over and over, and over again—the determination thus to continue voting—and, at the head of the war department as well as in parliament, acting to this effect against his conscience: and this to the end of his days, unless and until it should please his Majesty to consent to his ceasing so to do. P. 179, June 1st, 1777—"Your Majesty knows the very bottom of my mind: *if, after that, you order me to remain as I am, I will obey you.* I find I cannot force myself from you; and, *whenever I go, your Majesty must voluntarily tell me that I may leave you.*" After, as well as before this, from p. 167 to 169, see passages, reporting conversations or letters out of number, all to this effect. "*The King thanked me warmly,*" (viz. for continuing to operate towards the perpetration of the dismurderized murders, against the declared dictates of his conscience,) "and said," continues his lordship, "*it was impossible to act a more handsome part* than I had done throughout." Thus it went on, the King still refusing dismission—permission to act according to conscience; the war secretary still obsequious; till almost three years after the date of the letter, by which, for the cause in question, the desire to resign was made known: the 16th December 1778, on which day, with this lesson before his eyes, *Mr. Jenkinson,* father to the *present Earl of Liverpool,* to whom his paternal care could not but have transmitted it, kissed hands as successor to the present Earl, who, on the 15th June 1809, (Cobbett's Debates, p. 1033,) "from long, deliberate, and mature consideration," said, "I am convinced, that the disfranchisement of the smallest borough . . . . would eventually destroy the constitution."—*N.B.* On this same 1st June 1776 (p. 179,) King to Lord Barrington:—"I will give you a mark of my favour at parting: but I wish much to keep you at present," &c.: and, during all this conflict betwixt gratitude and loyalty on the one side, and conscience on the other, the quantum of this mark of favour remained to be determined; it was settled at £2000 a-year pension (King's LETTER to Lord Barrington, *in terminis* (p. 191,) "until," says the letter, "he shall be appointed to some other employment."

Thus much for King and Ministers. Now for Bishop:—"Perhaps," says he, p. 169, "the reader may be disposed to interrupt my narrative by observing, that if Lord Barrington objected to the general system which administration had adopted, and which they continued to act upon, notwithstanding his remonstrances, it was his duty to have resigned his appointment, and not to have taken any further part in measures which he disapproved. *The answer is in itself complete.* As soon as Lord Barrington found these measures would be persevered in, he tendered his resignation: but he did it *in that candid and consistent manner which became Lord Barrington.* He did *not* make his difference of sentiment the subject of appeal to the public favour,a or the means of thwarting national efforts, and embarrassing the King and his Ministers: but he submitted it in a private LETTER to his Majesty, as early as *with propriety* he could, in the beginning of October 1775; and he renewed his instances, until his retirement from public life could be permitted, without inconvenience to his Majesty or to the interest of the public."

Behold in this one frame three portraits—the *King's,* the *Minister's,* and the *Bishop's*—drawn by the pious hand of the original of one of them. In these three behold, moreover, a amily picture of Matchless Constitution:—monarchy and

aristocracy above: sham democracy beneath—a slave crouching under both. But the sample afforded by this triad is a favourable sample: the King, a bettermost kind of king; the Peer and war-minister, a bettermost kind of Peer and minister: the Bishop, a bettermost kind of bishop: all agreeing in this, viz. that when a king is pleased to express a wish, be it even ever so faint a one, no part but obedience can be left to conscience. Note well, this from among the *better-most* sort: what would be to be expected from the *ordinary* sort? *Answer:* Exactly what we are now experiencing. These portraits from a *partial* pencil,—what if from an impartial one?

Walk in and see church and king!—walk in and see church and state! After this, what need can there be of libels? This, if it were not the work of a bishop, would it not in itself be the quintessence of all libels?—a libel on everything that is most *excellent?*—a libel accompanied with the most flagitious of all aggravations—the matters of fact unquestionably true?

Behold legitimacy *in puris naturalibus.* Behold not only passive obedience and non-resistance, but active obedience—active obedience to the monarch, whatsoever be his measures—professed and preached without reserve. If,—by any form given to language, thus speaking in generals,—it be possible, that any more profligate servility should be inculcated, any more profligate despotism invited, one should be curious to see it., And, while the pen is writing this, comes from Durham the intelligence, by which a practical comment on this theory is brought to view.

Turn back now to section 8,—one more glance at *Westminster* Election management. Behold there democracy—representative democracy—in its lowest stage: not, as in America, erect and independent; but, as in Britain, ever threatened and ready to be crushed. Say now whether *property* is *probity:* say whether *kingship* is probity: say whether *peership* is probity: say whether *bishopship* is probity: say whether,—if every one of these is probity,—*tradesmanship* probity, as exemplified for these ten years past in Westminster, is not worth all such other probities put together?

[*]Office-bearer—the term in common use in Scotland for the possessor of an office.

[†]In Pope's Homer, the God Jupiter is *cloud-compelling Jove.*

[‡]*Penny-royal,* as well as other *royals,* is already in the language. *Bribe-royal,* a term that may be employed to signify all and singular the good things, applicable at the pleasure of C—r-General, in *reward* for *parliamentary service,* certain or contingent, past or future: good things, some *transferable,* as offices and contracts: some *untransferable,* as knighthoods, ribbons, baronetcies, peerages: the two last *descendible.*

[*]By various persons—and even by persons by no means partial in their affections to the gentleman in question, it has happened to me, more than once, to hear spoken of as a matter of fact, not regarded as open to dispute, that in the instance of *Mr. Wilberforce,* in the character of a veteran member of parliament, might be seen a person, from whose declared judgment—self-formed or derivative—derivative judgments, in greater numbers than from any other, had, as it seemed to them, been

for a long time in use to be derived. Well: not many years ago, by the mere force of terrorism—competition-excluding terrorism—in the hands of an as yet untried competitor, was this man driven from the seat: that seat which, with the effect just mentioned, he had so long filled. And this seat, what was it? It was one of the two seats filled by the county of Yorkshire: a county, by the exorbitant amplitude of which, the joint power of *landholding* and *purse-brandishing* terrorism are swelled to a maximum. £120,000, I have heard mentioned as the sum, which on the occasion of one election was expended, by one only of the two victorious competitors for the two seats: but the victory had conquest—complete conquest—for its fruit. The condition of a *proprietory* borough—a proprietory borough held in *jointtenancy,*—such is the condition to which that vast county, inclosing in its bosom *three* large counties called *ridings,* is reduced.

This is not all. For, by the same instrument by which the disease is produced and fixed, is all remedy barred out. Petition—if it aim at any thing better than the continuance of the disease; by this same instrument is petition nipped in the bud. And thus it is, that so long as, between the two high allies, peace and union shall continue to flourish, the peace of the county (for such is the appropriate phrase) remains secure: the peace of Yorkshire secured, and by the same instrument which, under the auspices of the new-invented Christianity, is with such irresistible effect occupying itself in the giving security to the peace of Europe.

In the *debates,* moreover, traces are not altogether wanting, of the impression made by the experience of *terrorism:* and *that* in its several shapes of *vote-compelling* influence, *competition-repelling-and-excluding influence,* in the hands of peers; and *competition-repelling-and-excluding* influence in the hands of the *crown:* with which are mixed, indications of the existence and degree of the *undue dependence,* in which *nominees* are held by proprietory and other possessors of seats under the name of *patrons,* more particularly peers, contrasted with the *absence of due dependence* as towards electors, in the small number of instances, in which, in the whole assemblage of those by whose suffrages a seat or a pair of seats are filled, suffrages completely free are in any proportion to be found.

Behold accordingly in this note, the following instructive particulars:—1. By *Earl Grey,* at that time *Mr. Grey,* a peerage not as yet in any near prospect, the existence of *terrorism* recognised, and, in so far as exercised by *peers,* not approved of: 2. By *Charles Fox,* the part borne by *terrorism* in the filling of the *county seats* recognised, and *therefore* the *extension* of the *number* of those seats *not* approved of: 3. By *Charles Fox,* the effect of terrorism, in the formation of a squadron composed of *coroncted terrorists* and their *nominees,* listed under the banners and the orders of C—r-General, indicated,—and their numbers, as they stood at that time, mustered.

Parl. Reg. anno 1793, p. 383. *Mr. Grey,* now *Earl Grey.*—1. "Mr. Grey remarked, that when Mr. Pitt moved for an addition of 100 members to be added to the counties, he could not carry his motion: and yet he had contrived to procure the nomination of forty members by indirect means; for he had added to the House of Peers thirty members, who either nominated *directly*a or by *irresistible influence,*b that number of members of the House of Commons, as appeared from the petitions then on the table,

and which the petitioners were ready to prove."

Woodfall's Debates, anno 1797, p. 323.—*Charles Fox.*—2. "I submit, however, to the good sense and to the personal experience of gentlemen who hear me, if it be not a manifest truth, that *influence* depends almost as much upon what they have to *receive,* as upon what they have to *pay;* whether it does not proceed as much from the *submission* of the *dependent* who has a debt to pay, as on the *gratitude* of the person whose attachment they reward? And *if this be true, in the influence which individuals derive from the rentals of their estates, and from the expenditure of that rental, how much more so it is true of government,* who, both in the receipt and expenditure of this enormous *revenue,* are actuated by one invariable principle, that of extending or withholding favour in exact proportion to the submission or resistance to their measures which the individuals make?"

Woodfall's Debates, anno 1797, p. 326.—*Charles Fox.*—3. "A noble lord says that the county representation must be good—*that* must be approved of: be it so. This proposes to leave the county representation where it is: I wish so to leave it. I think, that representation ought to be of a *compound* nature: the *counties may be considered as territorial representation, as contra-distinguished from popular; but* in order to embrace all that I think necessary, *I certainly would not approve of any further extension of this branch of the representation.*"

3. Woodfall's Debates, anno 1797, p. 329.—*Charles Fox.*—"There is one class of constituents, whose instructions it is considered as the implicit duty of members to obey. When gentlemen represent *popular towns* and *cities,* then it is *disputable whether they ought to obey their voice,* or follow the dictate of their own conscience; but if they happen to represent a *noble lord* or a noble duke, then it becomes no longer a question of doubt: *he is not considered as a man of honour who does not implicitly obey the orders of his single constituent;* he is to have no conscience, no liberty, no discretion of his own; he is sent here by my lord this, or the duke of that, and if he does not obey the instructions that he receives, he is not to be considered as a man of honour and a gentleman. *Such is the mode of reasoning that prevails in this house.* Is this fair? Is there any reciprocity in this conduct? Is a gentleman to be permitted, without dishonour, to act in opposition to the sentiments of the city of London, or the city of Westminster, or of Bristol; but if he dares to disagree with the duke, or lord, or baronet, whose representative he is, then he must be considered as unfit for the society of men of honour? This, sir, is the *chicane and tyranny of corruption,* and *this,* at the same time, *is called representation.* In a very great degree, the *county members are held in the same sort of thraldom.* A number of peers possess an overweening interest in the country, and a gentleman is no longer permitted to hold his situation than as he acts agreeably to the dictates of those powerful families. Let us see how *the whole of this stream of corruption has been diverted from the side of the people to that of the crown—with what a constant persevering art, every man who is possessed of influence in counties, corporations, or boroughs, that will yield to the solicitations of the court, is drawn over to that phalanx, which is opposed to the small remnant of popular election.* I have looked, sir, to the machinations of the present minister in that way, and I find, that including the number of additional titles, *the right honourable gentleman has made no fewer than one hundred and fifteen peers* in the course of his

administration; that is to say, he has bestowed no fewer than one hundred and fifteen titles, including new creations and elevations from one rank to another:a*how many of these are to be ascribed to national services, and how many to parliamentary interests, I leave the house to inquire. The country is not blind to the arts of influence, and it is impossible that we can expect men to continue to endure them.*"

In the Statesman, for February 21, 1817, authenticated by the signature of Major Cartwright, may be seen a statement in these words:—"The writer has seen a very numerous troop of tenants, holding under a placeman and sinecurist, conducted to a county election as swine are conducted to market, one steward in the front, and another in the rear, as one hog-driver goes before the herd, and another follows after, to regulate the drift, and prevent straggling."

Thus far the worthy father of radical reform. From the nature of the two corresponding situations, coupled with the circumstance of the two stewards, one behind as well as another before, let any one judge whether the surmise is likely to have been unfounded, or the parallel inapposite.

[*]The only instance within my knowledge, in which, in any published work, any indication has been given of this circumstance, in the character of an imperfection attached to the constitution in its present state, is that which is afforded by a passage in *Mr. Wakefield's Account of Ireland,* vol. ii. p. 321. In it, after mention made of two names,—"Think," says he, "what must be the character and complexion of the constitution of this country, in so far as concerns the Commons House of Parliament, when for such a length of time as they have been in existence, neither of those names has ever been found in the list of the Members of this House." Of those persons, one was *Mr. Arthur Young;* the other was a person with whom, otherwise than by reputation, *Mr. Wakefield* had not any acquaintance—and of whom it is sufficient to say, that from early youth, throughout the whole course of his life—even at that time (anno 1812) not a short one—his time had been almost exclusively devoted to the endeavour to meliorate the condition of his fellow-creatures in all countries, but more particularly his own, by labour as unremitted as it could not but be thankless, applied to the field of legislation.

[*]The pace at which, in virtue of such a series of antecedent impulses, they saw the chariot of the State descending towards the gulph, was not yet rapid enough to satisfy the impatience of the *Phaëtons,* from whom it receives its guidance. Behold one instance in which, on the spur of the occasion, to give redoubled energy to the indefatigable arm, the *surtout* of common decency was cast off, as being a needless incumbrance.

A bill for the more effectually preventing the sale of seats for money, and for promoting the monopoly thereof to the treasury,by the means of patronage:—such was the title moved for by *Lord Folkestone* for the act 49 Geo. III. c. 118. Out of 161, 28 voted for this amendment. (Cobbett's Debates, June 13, 1809.) To *denounce* to the people, and in language so expressive, the true character, of this measure, required the generous boldness of a Lord Folkestone. To *read* this character in it, belongs to any man, to whom the words of it are not unreadable.

Would you form an adequate conception of the anxiety by which on this occasion that Honourable House was agitated? Read it in the anxiety expressed—not to say betrayed—by the right honourable gentleman who is the head of it. Bursting the bond of those delicacies, which, but six days before (June 1st,) had produced the well-considered and elaborate declaration, of the reluctance by which, down to that time, he had been restrained from "mixing in the debates,"—twice in one day—viz. on the 7th of that same month—did he stand up and insist, that the word *express (that* being the word employed for the grant of the licence included in the monopoly) should be inserted. Inserted?—and upon what grounds? On grounds to which the absence of all grounds would surely have been in so small degree an advantageous substitute.

In the determination of Honourable House to *establish* the monopoly at that time—in that determination which he was thus labouring to produce—he saw an earnest of their determination to *abolish* it as soon as the occasion should require: and, in an imagined rule of *common* law already punishing the practice with an adequate punishment in *both* cases, he saw a sufficient reason for *adding* a regulation of *statute* law for punishing it in the *one,* and for *refusing* to add it in the other, of those same cases.a

[*]Yet, by *Charles Fox,* as hath been seen, could the supposed impracticability of uniting freedom with universality of suffrage be urged in the character of an objection—and that, though the only one, a conclusive one—against the giving any such extent to the right of suffrage!

[*]In this case, what may perhaps be observed is—that, under the check thus applied, the *will* to which he gives effect is *not his own* will, any more than under the check applied by individual terrorism. True: but *here,* though it is not his *own* will, it is the only *proper* will; which is still better. To give effect to that will, the effectuation of which is in the highest degree subservient to the *public* interest in question—this is the only *ultimate* end: in relation to this *ultimate* end, the giving effect to his own *private* and individual will, as governed by his own private and individual *interest,* or supposed interest, is but a *means.* Be the means what it may, that which the public *service,* in respect of the public *interest* in question, requires, is, that when the means in question, *i. e.* that which is proposed in the character of a means, is really subservient to the end, *then* it should be employed—when it is *not* thus subservient, then it should *not* be employed.

[†]Say, in a number equal to the average of the number of those, who since the *irish Union* have had seats in the House,—*army* and *navy* officers, nominated of course by the monarch: officers—not, as now, engaged in active service, thence in a line of duty, with the fulfilment of which, the fulfilment of that of a Member of the Commons House would, if constancy of attendance, as hereinafter proposed, were effectually enforced, be incompatible,—but *veterans,* who, their service in their respective lines being at an end, would,—to a body of professional experience superior to that which at present, under the dispensations of blind chance, is afforded by the average of all characters and all ages,—add a degree of leisure, such as would not present a demand for any abatement from the most perfect constancy of

attendance.

These, attending of course in their respective uniforms—other official persons, in official uniforms expressive of their respective official situations, and thus at one view presenting the sort of information which they were respectively regarded as being in a peculiar degree qualified to afford. Choice of these uniforms: behold here an exercise—nor *that,* it is humbly supposed, altogether an unacceptable one—for the taste and talents of the *Prince Regent.* In the situation here proposed, the use of an appropriate uniform seems rather more obvious, than in those situations of a non-military nature, in which uniforms, it is said, are already in use.

[*]Like queries, in the case of a *chancellor,* supreme judge in a judicatory in which, immediately or through the channel of patronage, he pays himself by *fees,* the aggregate amount increasing with the aggregate of *individual bankruptcy* and public misery produced or increased by *war*—in the case of the judge of a *prize court* paying himself and Co. in like manner—the aggregate amount of the fees depending altogether upon *war*—chancellor and judge strenuous from first to last in the support given to war, by vote, eloquence, and influence. Think of this, and then say, whether, under a government so formed, in looking for the causes of war, commencement, and continuance, the eye need to convey itself to any unmeasurable distance?

Like queries in the case of a *judge,* sitting in a superior situation, to judge of the propriety, in each individual case and in the aggregate, of fees received to his own use in a subordinate situation;—and in another place, with transparent yet ever prevailing fallacies on his lips, and flame and fury in his eyes, slapping the door in the face of every measure, in which the vast majority of the people behold the only possibility left to them, of obtaining so much as a chance for justice!—See *Scotch Reform:* and *Protest against Law Taxes.*

Think, as often as war—and the causes and the profit and loss by it—come in question,—think whether in any company—private, or even mixed—it be a frequent occurrence to meet with an officer, in any branch of the *military* service, who makes any scruple of declaring his wishes to see war commence, or if already in existence, continued:—and, unless it be in the article of frankness, whether there be any reason for supposing human nature to be in this respect different in the one of those situations, from what it is in the other?

If, on any such occasion, from general rules the inquiry should descend to individual cases, then would naturally come the question, whether, in the individual instance or instances in question, there be any such known contempt of money, as, in such instances respectively, to take the individual case out of the general rule.

[*]See Section XVI. *Moderate Reform,* &c.

[†]See above, Section IV. p. 16, note.

[*]See Section XV—*Representatives—Impermanence,* &c.

[*]Of this body of evidence, taken in the aggregate, the importance will, it is believed, be seen in a light continually clearer and stronger, in proportion as this inquiry advances. To complete any such task as that of collecting it, would require abundantly more time, not only than at the present conjuncture, but moreover than at any future time, out of the small expectable remnant of my life, it would be possible for me to spare. If, to any person who has sufficient leisure, it should appear, that, in regard to the whole, or any part of this mass of information, the search would afford a sufficient promise of being productive of adequate use,—the consciousness of rendering to the public that service will be his reward: and if, for the purpose of enabling me to give to the stock so collected, such useful application as may be in my power, he will have the goodness to communicate it to me by letter,—he will be the object of an inward sentiment of esteem and gratitude, in the breast of a man, from whom no exterior demonstrations of it can, in the vulgar signification of the word, be *of use* to any one.

Under such heads as the above, with the addition of any such others as may suggest themselves as promising to be conducive to the desired purpose,—the matter, though it were but of *a single session,* might, in the way of *sample,* be of no small use. Suppose it were the last session: and from thence the research might be pursued, according to opportunity, from year to year. Supposing the research carried through more years than one, in this case, for exhibiting such differences as, in respect of members present and other particulars, cannot but have been made by the Irish Union, it is manifest how much the utility of such a process cannot but be increased, by taking for one of them a year anterior, and for another a year posterior to that event.

So long as it may be my fortune to escape the doom with which, in proportion to his activity in the service of his country in this laborious and melancholy line, every man who dares to manifest his love for it, and for what remains undestroyed of the useful parts of its constitution, is at this time threatened—so long, in a word, as it shall be my lot to remain alive, unkilled, and unbastilled—so long will every such contribution find, in the quarter to which it is consigned, the sincere endeavour to make the most and the best of it in the way of use.

[*]By an ingenious cultivator of the physical branch of art and science, *the clouds* have been endeavoured to be brought under the dominion of the tactical branch of logic. With somewhat better profit, it is supposed, in the shape of practical use, might the like useful operation be applied to the congeries of political *fallacies*—those clouds of the mental atmosphere. Take for an example of the *genera,* or some of them, suppose the following:—*argumentum ad verecundiam—ad quietem—ad socordiam, sive ignaviam—ad superstitionem—ad superbiam—ad metum, sivc timorem—ad odium—ad amicitiam—ad invidentiam.* Of the *classes,* under which these *genera* might be arranged:—*argumenta ad affectus,* to the affections and passions as above—*ad imaginationem,* to the imagination—*ad judicium,* to the judicial faculty. Example of a set of species under the genus *ad odium:*—I. *Bad-design-imputer's* argument; 2. *Bad-motive-imputer's* ditto; 3. *Bad-character-imputer's* ditto—*Varieties* under the *bad-character-imputer's* argument:—Imputation *à seipso—à socio—à consentaneìs—à cognominibus.*

A characteristic, which would be found common to by far the greater number of the articles in the system, is *irrelevancy:* irrelevancy with reference to the subject in debate. This character will, at a first glance, be seen to belong to the class, or order, or *division,* commonly denominated *personalities;* to which belonged two genera: the argumentum *ad odium,* as above particularized, and the argumentum *ad amicitiam.*

One day—by the sun of reason, will all these clouds of the mind be dissipated.

Conceive in vision *Honourable House,* or any other place of debate, if any such there be, in which debates are free:—conceive therein a complete list of these clouds of the mind, made out and digested in the form of a table:—conceive the chairman, his hand provided with a wand, to be occasionally employed, like that of *Don Pedro Rezio,* in the service of ridding the science, in the most expeditious manner, of all intruding superfluities. By a touch of this wand, applied to this or to that article in the table, might any orator, whose speech being, as at present, from beginning to end, so *many* speeches are, composed of elements no other than such as these,—speeches, by the whole amount of them so much worse than nothing—by one such silent motion—and without need of any such cry as *Order! order!*—be put to silence. Continuing the vision, conceive in Honourable House a table of this sort, and in the hand of Mr. Speaker *a wand,* the usefulness of which would be rather more obvious than that of any of the *wands* and *gold-sticks* which are seen in other places,—of such an instrument, aptly and steadily applied, what might be the effect? A *meeting,* of which, with the exception of the quantity of sound employed in the giving utterance to *motions,* and other instruments meant to be consigned to *votes* and *journals,*—a *Quakers' meeting* of the silent sort might serve as a prototype.

Awakening from these visions,—of the set of fallacies above exemplified, conceive the list completed and systematized,—how useful, as well as how abundant, might not the instruction be—which, in the published collections of *debates,* might be afforded, by a few words in the margin, indicative of the *genera* and *species,* to which the several *fallacies,* employed in the course of the several speeches, were found to belong! In the shape of logical instruction, what a value might not thus be given to matter in itself so much worse than valueless!

[*]For correctness, include in the import of the word *pleasure,* or rather add thereto, its equivalent in a *negative* shape, viz. *exemption from pain.*

[†]Include in like manner, or add, its equivalent in a *negative* shape, viz. *loss of pleasure.* See *Table of Springs of Action,* Vol. I. p. 195.

[‡]*Morning Chronicle,* 14*th March* 1818.—House of Commons' Debate on the Indemnity Bill.—Mr. Lyttelton. "The bill had been pressed through its various stages with extreme and indecent haste. For his own part, business of great importance had detained him for some days in the country from his parliamentary duties. Other members were probably in the same predicament."—(*MS. note in Bentham's copy.*)

[*]Some fifty or sixty years ago, sat for Essex a Mr. Luther. Report of the time, £20,000 the expense: staid out his six or seven years, and but once in the whole time took his seat. All this cannot but be more particularly known to Mr. Conyers.

[*]Speaker's Speech. Cobbett's Debates, 1st June 1809, p. 839.

[†]Commons' Journals, anno 1744, 10th May, p. 685.

"The Committee came to the Resolutions following:—

"Resolved, That it is the opinion of this committee, that the House be called over within fourteen days after the meeting of every session of Parliament; and that every Member then absent be taken into the custody of the sergeant-at-arms attending this House, unless such Member be employed in the service of the Crown abroad, or is incapable to attend by reason of want of health, or some other extraordinary occasion.

"Resolved, That it is the opinion of this committee, that no Member do absent himself from the service of the House, without the special leave of the House.

"Resolved, That it is the opinion of this committee, that every Member who shall absent himself from the service of the House for the space of two months, without the special leave of the House, be taken into the custody of the serjeant-at-arms attending this House."

[*]*Shield-note:* a gag for scorners. On three several subjects, viz. for *standing armies* and *demand for revolution,* as well as *annual parliaments,* behold the opinions of *Dr. Swift*—opinions not thrown out on the sudden, for a party purpose or in the heat of debate, but in a state of retirement, after a long course of *experience* in the very *arcana* of politics, and a long course of *subsequent reflections* on the subject of that experience,—poured forth into the bosom of a most confidential friend. From Balfour's edition of *Pope's Works,* Edinburgh, 1762, vol. vi. p. 133:—From *Dr. Swift* to *Mr. Pope,* Letter V. Dublin, January 10, 1720-1.—"You will perhaps be inclined to think, that a person so ill-treated as I have been, must, at some time or other, have discovered very dangerous opinions in government:—in answer to which, I will tell you what my political principles were in the time of her late glorious Majesty, which I never contradicted by any action, writing, or discourse. . .

"As to what is called a *revolution principle,* my opinion was this:—that whenever those evils, which usually attend and follow a violent change of government, were not in probability so pernicious as the grievance we suffer under a present power, then the public good will justify such a revolution; and this I took to have been the case in the *Prince of Orange's* expedition, although, in the consequences, it produced some very bad effects, *which are likely to stick long enough by us.*

"I had likewise in those days a mortal antipathy against *standing armies* in times of *peace:* because I always took standing armies to be only *servants hired by the master of the family for keeping his own children in slavery;* and because I conceived that *a prince who could not think himself secure without mercenary troops, must needs have*

a separate interest from that of his subjects:—although I am not ignorant of those *artificial necessities which a corrupted ministry can create, for keeping up forces to support a faction against the public interest.*

"As to *Parliaments, I adored the wisdom of that Gothic institution, which makes them annual:* and I was confident *our liberty could never be placed upon a firm foundation until that ancient law were restored among us.* For, *who sees not, that while such assemblies are permitted to have a longer duration, there grows up a commerce of corruption between the Ministry and the Deputies, wherein they both find their accounts, to the manifest danger of liberty? which traffic would neither answer the design nor expense, if parliaments met once a-year.*"

Well now, who was this Dr. Swift? an "*ignorant, wild, visionary enthusiast?* a Jacobin? an Atheist?"

[†]For the difference, in this and all other particulars, as between trienniality and annuality, see section 16, *Moderate Reform,* &c.

[*]See Barrington's Observations on the Ancient Statutes.

[*]Of parliamentary acts ordaining the annual, or oftener than annual, holding of parliaments,—by the researches above mentioned *three* other instances have been found, over and above those which are to be seen in the current editions of the statute book: these are—1. One in *Henry the Third's* reign, anno 1258 (42 H. III.) seven years anterior to that (1265, 49 H. III.) in which, for the first time, deputies from *boroughs* were summoned, viz. by *Simon de Montfort.* Reference for this is to *Rymer's Fœdera* and *Annales Monasterii Burtonensis.*—2. One in *Edward the Second's* reign, anno 1311 (5 Ed. II.) [Lately published *Statutes of the Realm,* i. 165, cap. 29, 34.] These two anterior to those printed in the common statute books, viz. among the statutes of Edward the Third.—3. One posterior to ditto, viz. in Richard the Second's reign; anno 1377 (1. R. II.:) for which see *Brady,* and the Monkish historian *Walsingham.*

Anterior to the year 1265 (49 H. III.) in which deputies from *boroughs* were first summoned, viz. by the rebel *Simon de Montfort,* comes a year (1264—48 H. III.) in which writs are, by the king, sent to the sheriffs of *counties,* commanding them to return each of them *four knights.* [*Brady—Parliamentary History—Report on the Public Records.*]

In several of the instances in which parliamentary sessions, more than one, appear to have been held in the compass of the same year,—the evidence, by which the diversity of the parliament will be made apparent, consists of divers existing lists of members returned to serve in parliament, in one and the same year, by and for one and the same county, city, or borough.

[*]Prosperous as it was in all transactions with foreign powers, the long reign of Elizabeth *(see Neale's History of the Puritans, by Toulmin)* was a reign of grievous oppression to all those who would not sacrifice to her thirst for power the religious

part of their consciences. Those who, with such undisturbed complacency, view the majority so long since established, little think by how grievous a course of oppression it was obtained. The state of Scotland shows what, had it not been for that oppression, would in that respect have been the state of England.

[*]For the immediate subject-matter of this analysis, see Mr. Meadly's paper, as reprinted in the Appendix to this work.

[*]On turning to the document from which this article in Mr. Meadley's paper, here reprinted, was taken, viz. Cobbett's Parl. Deb. xvii. p. 128 (Debate of May 21st, 1810,) I find, that in the plan on that day brought forward by the Hon. T. Brand, one proposed arrangement was, that "*the right of voting should be given to all householders paying parochial and other taxes.*" The reason for the mention thus made of it in this place is—that, in that paper reprinted from Mr. Meadley's, it will not be to be found. I hope not to find any other occasion for regretting my inability (pressure of time considered) to make the like reference to the sources in every one of the other instances. On the other hand, as to this modification of the *householder* plan,—it appears not that it entered into Mr. Brand's design to make application of it, in any other instance than that of the populous and at present unrepresented *towns* to which it was his design to give seats: to the *counties,* it seems pretty clear that it was not the design of this gentleman, any more than it had been *Earl Grey's,* that the advance thus made towards virtually universal suffrage should be extended.

[*]Taking the representation upon its present footing,—one feature it possesses, which in the way here in question is eminently prejudicial,—and in the instance of which, whatsoever use it may have had, has for centuries been in great measure, if not altogether, obsolete.

This is, all over England,—in the case of the counties without exception—and in the case of the boroughs, with no more than five exceptions—the having *two* seats, filled by *one* such territorial-*electoral district.* To this sort of duplicity I know not whether any rational cause has anywhere been assigned. Was it *for* provision against *sickness?*—was it that, in their negociations with the crown, the *fidelity* of each agent might find a safeguard in that of the other? Note, that by the want of the *press,* and even of the *pen,* the negociations in question were rendered comparatively secret and unchecked.

Suppose each county divided,—though it were into no greater a number of districts than *two,* with a seat allotted to each,—here would be some advance made towards *practical equality* of suffrage as above explained: here would be some advance, but that advance still far from adequate.

Under *moderate reform,*—it appears not that even this first step towards the equality in question has ever found favour among the advocates of these modes.

By *Mr. Brand* in particular,—by Mr. Brand, whose edition of *moderate* reform seems to *have* come nearest to *radical,*—the idea of thus dividing counties is brought forward and rejected.

But, in the circumstance by the consideration of which this rejection is stated—stated as having been produced,—I cannot, relation had to the great end as above explained, discover any determinate inconvenience.

The result which, in the speech ascribed to that gentleman, is stated as the ultimate inconvenience, is—that on such a plan, some inhabitant of a *town* comprised in the *county,*—in contradistinction to some inhabitant of the *country* part of that same *county,*—would be generally returned. So far the honourable gentleman. But under a system of *free* suffrage, supposing this result to take place, no inconvenience can I find in it. Neither the inhabitant of the country part, nor the inhabitant of the town part, would be chosen, unless by the majority of the electors he were deemed fitter than any other person they could choose: and, so long as they chose the fittest person that was to be had, whether a town or the country were the seat of his residence, would, for any reason I can see, be a matter of complete indifference.

In the next place, no cause can I discover adequate to the production of that same result.

"The freeholders of the town," says Mr. Brand, "would uniformly prevail over the freeholders of the county, because they could almost always outnumber them at an election." Yes, at present, while the only *territorial districts,* viz. the *counties,* are, most of them, with reference to this, not to speak of other purposes, so excessively extensive. Yes: under the *existing* state of things: scarcely, however, it should seem, in the state of things which be himself proposes. *Hertfordshire,* for argument's sake, he supposes to be divided into *four* districts. But so small is the extent of that county,—divide it into four practically equal districts, and, in a central spot of each, place the *poll-booth,*—small indeed would be the number of the electors that, by remoteness from that spot, would (one should think) find themselves practically excluded from the exercise of their right of suffrage.

[*]For the sake of distinction and clearness of conception,—for any such districts as, for the purpose of the more commodious *collecting of the votes,* may be proposed to be carved out of the *electoral districts,* I employ the appellation of *sub-districts:* understanding all along, by *electoral districts,* those which correspond to, and in number agree with, the number of the *seats:*—or, in contradistinction to the *electoral* districts, these *sub-districts* might be termed *voting districts.*

To express what is here expressed by *dividing the country into districts* (some of them, in the ensuing Plan, *territorial,* others *population,* districts,)—the phrase employed by an honourable gentlemana is, "*making the returns by districts*:" to express what is here expressed by *voting,* or *collecting the votes* in *sub-districts,* to be called *voting districts,* he says, "*taking the votes by districts.*" The occasions,—for speaking of the *districts* which, upon the *plan* in question, would have to correspond with the number of the *seats,* presenting themselves so continually,—hence the necessity of providing *a name* to speak of them by. As to the phrase employed by the honourable gentleman,—though the propriety of it may be considered as unexceptionable, yet, as it affords not any *name* for the *thing* I had such frequent

occasion to bring to view, it could not, on every occasion, be rendered applicable to *my* purposes: nor indeed, till after some little expense in the way of *attention,* was the state of things which it presents brought within my view.

[*]Cobbett's Debates, xvii. 131.—May 21, 1810.—"Annual parliaments would be found exceptionable, from the shortness of the period, by leaving the representative too little accustomed to business to be competent to his duties in that House."

[*]Cobbett's Debates, xvii. 130.—May 21, 1810.—*Hon. T. Brand.*—"Other gentlemen might consider other objections to the existing state of the representation of the people of more importance, and particularly that respecting the duration of parliaments. Upon this question he had bestowed much and earnest attention, and he found it one of *enormous difficulty,* but of *extreme interest* and equal importance. Septennial parliaments had a tendency, from the length of their term, to weaken the relation between the elector and the representative, and to shake the dependence of the one upon the other;—while annual parliaments would be found not less exceptionable, from the shortness of the period, by leaving the representative too little accustomed to business to be competent to his duties in that House, and from the too frequent recurrence to the troubles and contests of parliamentary elections. *The one term was too long to please the people; and the other too short to satisfy the members.* He, for his own part, would be inclined to take a *middle course* between the extremes of annual and septennial parliaments, and to recommend *triennial* parliaments; which, without the evils of either, would possess all the advantages of both."

Advantage to the member? Yes;—plain enough: advantage to the people still to seek. But mind this—members' interest set in the balance against the people's interest, and the scales, it should seem, hang even.

Consider, however, *where* this was spoken. The supposition that, when set against the interests of those trustees of the people, the interest of the principals should suffice to make the scales hang even—hazarded in that place, a supposition to any such effect, was it not a daring one? By the honourable gentleman "the question" had been "found"—thus frankly, he confesses—"one of *enormous difficulty, but of extreme interest and equal importance.*" Of enormous difficulty?—of extreme interest? O yes: no doubt it had. But the difficulty? where did it lie? In the "*interest.*" And in *what* "interest?" In the interest of the *members.*

All this while, let it not be forgotten, that—to keep out *improbity—corruption-hunting* improbity—is the capital object.

As to appropriate *active talent,* a case may be conceived, in which, taken in a certain degree of abundance, the effect of it may, upon the whole, be found—not only not of a beneficial, but, in some respects, and in a certain degree, of a positively prejudicial, nature. The desire to take a share in the speaking part of the business, or even in the writing part—suppose it to be to a certain degree extensive and intense, an inconvenience of a sort above noted on another occasion, viz. useless and excessive consumption—*waste,* in a word of so precious an article as *time*—disposable official time—may be the result. This considered—only for the sake of giving increase to the

number of the individuals duly qualified to become objects of choice, and thence increasing the probability of the best choice—is aptitude, in respect of *that one* of the three elements, an object to be desired and aimed at.

Not so in regard to appropriate *intellectual aptitude,* considered as distinct from appropriate *active talent;*—in respect of this element, inconvenience not being, either in the shape of *waste of time,* or in any other shape, liable to be produced by any degree of abundance,—*excess* cannot here by any possibility find place.

On the other hand, only in the event of its prevailing to a certain *extent,* will *deficiency,*—even in respect of this great, and to a certainty innoxious endowment,—be productive of any *practical*—of anything more than a *theoretical*—a *hypothetical*—in a word, of any *real*—inconvenience. On the part of a decided majority of the population of the House—say on the part of the great majority—suppose, for argument's sake, that, in every instance, the votes respectively given are on the right side,—on this supposition, it matters not whether the rectitude has for its cause a right *self-formed* judgment, a right *derivative* judgment, or even (supposing it concealed from public eye) the most perfect imbecility of judgment:—imbecility,—kept, in this last instance, in the path of rectitude by the hand of *chance.*

[*]The passage, as reported, not being altogether clear of ambiguity, here follow the words:—"Above *forty* persons returned *on either*" (each?) "*side,* by that which was denoted a *compromise.*"—*Cobbett's Debates,* xxiii. 102—*May* 6, 1812.

[*]The Peerage Bill of 1719.

[*]Cobb. Deb. xxiii. 99 to 106; May 8, 1812.

[†]Ibid, anno 1810, xvii. 164; anno 1812, xxiii. 106-161.—"He," Mr. Brand, "was ashamed thus to delay the House before empty benches; he expected a more full attendance *of those members who usually voted on the same principles with himself.*"

[*]Of the existing system of representation, that part which regards the counties, found (as hath been already seen, § 7, 8), no very strenuous admirer in the person of *Charles Fox.* To that most powerful advocate of the cause of the people, the denomination of *Lackland* belonged with no less propriety, than to the monarch to whom we are indebted for the first of our magna chartas: nor, either in Wiltshire or elsewhere, have any seats been observed among the appendages of Holland house.

By the Sheridan of Sheridans, support (I am just informed) was given, not only to annuality of parliaments, but to universality of suffrage. Time would not allow me the satisfaction of digging up the speech, in which, by a title still clearer than that of *Charles Fox,* this so long his first assistant proved his right to a place among the advocates of the wild and visionary system—ringleaders of the swinish multitude.

This service I understand has been performed in the lately published pamphlet of *Mr. Evans.*

[*]Report—27th March 1817,—on printed Votes, &c. p. 3.

[*]The shorter the man's continuance in the situation, the less the temptation to himself, his agents, and his friends, to spread false reports for the purpose of his obtaining it: false facts tending to prove on his part aptitude, or on the part of this or that rival inaptitude. For an additional chance of a possession not so long as a year, scarcely could it be worth a man's while to expose himself to lasting infamy.—*MS. note in Bentham's copy.*

[*]On the subject of these *fallacies,* some loose papers were, at the writing of the above paragraph, lying on the author's shelves. Not long ago,—to serve as a sort of appendix to some others, in which somewhat greater progress had been made, on the subject of the *Tactics of Political Assemblies,.* they were, by the author's friend, *Mr. Dumont,* put into that French dress, in which, by the same able hand, so many other uncompleted works of the author's have been made to appear so much to their advantage. Copies of this work are in London, probably some of them in the hands of the foreign booksellers: but, owing to some accident, none have yet been seen by the author of these pages:—1. Fallacies of the *Ins;* 2. Fallacies of the *Outs;* 3. *Eitherside* fallacies:—in the original, these were the general heads. One general character belongs to almost all of them; and that is *irrelevancy,* irrelevancy with relation to the particular subject, be it what it may, to which they are applied. It were truly curious to observe, in how large a proportion these are the materials of which parliamentary and other political speeches—not to speak of other political works—are composed. *(See the Book of Fallacies in this Collection.)*

[*]Such was the number in an election committee previous to 9 Geo. IV. c. 22.

[*]*N. B.*—In the original edition, a separate page is devoted to each proposal; in the present, the plan of numbering has been found necessary, to facilitate reference from the body of the work.

[†]Almon's Anecdotes of the Earl of Chatham, 8vo. II. p. 84; and Addresses from the Court of Common Council to the King, 1760-70, 167-8.

[*]Wilkes's Speeches, 1786, 8vo. pp. 54-71.—Parliamentary Register, 1776, III. 432-442.

[†]Parl. Reg. 1780, XV. 359-366.—Authentic copy of the Duke of Richmond's Bill.—LETTER to William Franklin, Esq.

[‡]Parl. Reg. 1782, VII. 120-141.—Wyvill's Political Papers, I. 442-480.

[*]Parl. Reg. 1783, IX. 688-736.—Wyvill's Pol. Pap. 253-5, 636-675.

[†]Parl. Reg. XV. 186-213. XIII. 295.

[‡]Parl. Reg. 1785, XVIII. 42-83.—Wyvill's Pol. Pap. 372-442.

[?]Parl. Reg. 1790, XXVII. 196-218.—Wyvill's Pol. Pap. II. 536-563.

[§]Parl. Reg. 1792, XXXII. 449-498.—Proceedings of the Friends of the People, 19, 20.

[*]Parl. Reg. 1793, XXXV. 375-522.

[†]Parl. Reg. 1797, Vol. II. 577-657.

[‡]Parl. Reg. 1800, II. 347-377.

[*]Cobbett's Parl. Deb. XIV. 1041-1071.

[*]Cobbett's Parl. Deb. XIV. 1041-1071.

[†]Cobbett's Parl. Deb. XVII. 123-164.

[‡]Votes of the House of Commons, 1812, No. 80.—*Morning Chronicle, 9th May* 1812.—Cobbett's Parl. Deb. XXII.

[*]See New York Constitution, Art. VI. Constitution of United States: Winchester, 1811, p. 112.—On a careful survey: States in which, for the most numerous branch of the legislature, election is by ballot, 7; open 2; not said which, 8. Add to ballot Connecticut, as per new constitution, so late as September 15, 1817.—For Congress, members for the most numerous branch are, in each State, "chosen . . . . . by the people of the several States." Electors' qualifications the same. Art. I. sect. 2, ib. p. 18. Mode of election not mentioned. It will in course have been the same.

[*]Morning Chronicle, 10th September 1819.

[*]See below, p. 599.

[†]*King* is the word employed here: employed in deference to custom. *Monarch* would be the proper word. In this country, there are three sorts of monarchs: a *King,* a *Queen Regnant,* and a *Prince Regent:* not to speak of William's Mary, who in name was a Queen Regnant with her husband, but in authority, as expressly declared, a Queen Consort and nothing more. Had the Princess Charlotte survived her father, her grandfather being still alive, she might have added to the list a fourth species of monarch—a *Princess Regent.—Protector,* being an unpopularised denomination—unpopularised, first by Richard, who became King Richard the Third, then by Cromwell—is already a fourth species of monarch: but a species not very likely to be revived.

Precision, such as this, is not to the taste of the man of law. *Monarch* would, in his eyes, be an innovation: the use of the word, a mark of theory and ignorance. He will not, so long as he can help it, part with the profitable wit of saying, upon occasion, that a man and a woman are the same person: or of contending, according as the vane of professional or official interest points, upon some occasions, that a Queen is a King, upon others that she is not; and so in regard to Princes and Princesses Regent.

[*]It is in pursuance of the custom generally observed in parliamentary bills, that the word thus designative of quantity is inclosed in brackets: so it will be in many other places. In bills as prepared for the House, the space between the brackets is left in blank: the blanks are filled up at a particular stage; and then is the time for the settling of the quantities. In the present draught, the blanks will in several other places besides this be seen filled up. The design of this was—to aid conception: the brackets show that the fixation was not considered as definitive.

[†]For greater clearness, here follows an exemplification of a *vote-making certificate* when filled up; names of persons being, of course, feigned names:—

Election district, *St. George's.*

Polling district, *Out ward.*

This is a Vote-making Certificate, made to serve for the ensuing Parliament, which is to meet on the 1st day of January, in the year 1822.

The day on which it is made is the 22d of October, 1821.

The person, to whom it is to give a vote, is *George Simpson, Arabella Row, No.* 10.

The persons by whose declarations, as hereinafter expressed, this certificate, and thereby the vote, are given, are we, whose names and descriptions are here, by our several hands respectively, immediately underwritten, in the alphabetical order of our surnames; viz.

Jackson, Thomas, Arabella Row, No. 19, *householder and carpenter. Householder, within the above-mentioned election district, for upwards of twenty-six weeks, ending this day.*

Laleham, Samuel, James Street, No. 10, *householder and glazier. Householder, within the above-mentioned election district, for upwards of twenty-six weeks, ending this day.*

Williams, Joseph, James Street, No. 20, *householder and carpenter. Householder, within the above-mentioned election district, for upwards of twenty-six weeks, ending this day.*

That which we hereby certify is—that according to the several true declarations following, as contained in the *nine* numbered paragraphs following, he the said *George Simpson* is entitled to give a vote in the polling district above mentioned, on the election of a Member to serve for the election district above mentioned, in the above-mentioned ensuing Parliament.

I. At the house of *Samuel Laleham,* above written, on the day above written, on or about *eleven* of the clock in the *forenoon,* we whose names and descriptions are above written, did write them; to wit, each of us his own name and description, in the sight,

and at the same time in the hearing of the two others.

II. In our sight and hearing is now present the above-mentioned *George Simpson.* His name and description, his name being herein and now immediately written by his own hand, here follows, to wit,

George Simpson, glazier, Arabella Row, No. 10. Inmate in the household, whereof the above-mentioned *Samuel Laleham* is householder.

III. He declares to us, that, in the above-mentioned household, to wit, *Arabella Row, No.* 10, for upwards of *four* weeks together, ending with the commencement of this day, 22d of October 1821, he has been an *inmate.* It is our belief that this his declaration is true.

IV. He declares to us, that he is upwards of 21 years of age. It is our belief that this his declaration is true.

V. In the sight and hearing of all of us together, he has read aloud the whole of the printed part of this certificate.

VI. Also, divers lines, pitched upon by us at random in the act of Parliament, by which this certificate is required.

VII. It is the sincere belief of every one of us, that the lines so pitched upon by us were really read by him, and that they had not, any of them, been committed by him to memory, for the purpose of their falsely appearing to be read. They were not in any part repeated by him from the mouth of any other person.

VIII. From the manner of his reading, as above, we do believe him capable of reading any portion of the "New Testament," as printed in the English language.

IX. He has, in like manner, in our presence, signed the declaration following:—"I do hereby seriously, deliberately, and solemnly declare and promise to my fellow-countrymen, as follows:—

Declaration.—"1. *When, at the approaching election, by means of this certificate, I have given my vote, I never will declare, nor otherwise endeavour to make known to any person whatsoever, directly or indirectly, either for or against what proposed Member such my vote was given.*

"2. *Should any question be ever put to me, any one word said to me, or any sign made to me, having for its object the causing me so to make known my vote; every such question, word, or sign, I shall consider, as the law considers it, as an attempt at oppression.*

"*I do hereby declare, that under the sense of such oppression, no more reliance ought to be placed on anything I say, than if the same were addressed by me to a robber, or to a person insane, for the purpose of saving, from immediate destruction, my own*

life, or that of some person dear to me. Witness my hand.

"George Simpson."

Here ends the exemplification of a filled-up vote-making certificate.

Of the direction for giving the alphabetical order to the names of the certifiers, the use is to prevent dispute, whether from mutual civility, or from claim of right.

[*]To prevent the votes of the resident voters from being, in particular districts, outnumbered by soldiers or sailors, stationed with or without such design, in large bodies.

[†]This degree of particularity promises, it is believed, to be of considerable use, by fixing the attention of the persons in question to these several points of appropriate aptitude, and thereby taking the chance of preventing men, by fear of shame, from giving their recommendation to a person eminently and notoriously deficient in any one of these points, or manifestly inferior to a rival candidate in all of them taken together. Lower than this mark in the scale of particularity it might not be easy to descend, without giving advantage to this or that particular party, and thus giving to this instrument the effect of a test act. Tyranny and corruption, under the mask of religion, might, for example, introduce orthodoxy, and thus keep the most conscientious characters out of the House, and force the poison of insincerity into the mouths and hearts of others.

The oaths and other engagements with which the statute-book swarms, are, with few if any exceptions, a great deal worse than useless. Either they have this exclusionary effect, or by their emptiness and looseness they afford, to those who have taken them, the pretence of acting under a sense of obligation, while no such sense is in their hearts. Hear a judge talk of his oath! What is that oath? A piece of old woman's tattle, that is never seen by anybody, means nothing, and has nothing in it that can have any tendency to bind anybody. O yes: one thing it has; and that is—a promise never to take a money fee of anybody. But this he breaks, in the face of day, and most days of his life. And thus it is, that in the teeth of Magna Charta, he *denies* justice to all but the rich, and makes *them* pay him for it.

[*]For the reason why all other disqualifications would here be useless, see those which apply to the case of electors in Section 2.

As to females, the disqualification stands upon grounds quite different in the two cases.

In the situation of member, mischievous, no less than obvious, would be the absurdity of an intermixture betwixt sex and sex.

Not so in the situation of elector: inconvenience there might be upon the whole, absurdity there would be none.

Nor even would there be any novelty in it. In the India House, among the self-elected representatives of sixty millions of Hindoos, are females in any number: ballot is the mode of voting: ballot, with the *form* of secresy, and as little as any one pleases of the effect.

Everywhere have females possessed the whole power of a despot; everywhere but in France, without objection. Talk of giving them as here the smallest fraction of a fraction of such a power, scorn without reason is all the answer you receive. From custom comes prejudice. No gnat too minute to be strained out by it: no camel too great to be swallowed.

As to *corruption,* this being the disorder which the here proposed arrangements are employed to combat, this part of the remedy, it must be confessed, is not altogether co-extensive with the disease. Of this imperfection the existence will soon be seen, and at the same time, why it is impossible that perfection should take its place.

The *objects of general desire*—money, power, factitious dignity, and so forth, compose the matter, by which, in the hands of monarch or minister, corruption, applied to the breast of a representative of the people, or that of an elector, does its work.

The *desires and passions,* in and by which it operates, are *hope* and *fear:* hope of obtaining the desirable object, or fear of losing it.

So far as depends upon the influence of hope, so long as the minister or the monarch has anything to give, it is impossible for any disqualifying enactment to guard the probity of the representative. At the next election, or even immediately upon acceptance, he loses (suppose) his seat. Good: but before this, he has secured something which is of more value in his eyes.

If, instead of obtaining it for himself, he obtains it for some person for whom he would otherwise have had to make provision at his own expense, he may indeed, if so his constituents please, lose his seat at the next election. But, in this case, he cannot be made to lose it sooner: for, a provision, causing one person to suffer in this way, for the transgression of another over whom he had no controul, would be too manifestly repugnant to justice to be endurable.

It may thus be seen, that, against corruption, in so far as it operates only by hope, good government has no means of contending, but the reducing to the lowest amount possible the sources of that hope: annulling, for example, all *future* grants of peerages, baronetcies, ribbons, and sinecures: especially all sacred sinecures, in comparison of which the profane are but as a drop in the bucket: anti-christian sinecures, the very acceptance of which has more of blasphemy in it than many an act which has been styled such, against that religion, on pretence of supporting which they are accepted.

Against the influence of fear in this case—fear of *losing* the good thing which is in hand—the sort of disqualifying enactment in question has more power. The loss is certain: and when, in the two cases, not only the object is the same, but the

certainty—in the one case of losing it, in the other case of gaining it—is the same, fear is beyond comparison more powerful than hope:—assurance of eventually losing a thousand a-year, which a man has in hand, will be seen by every one to be a much more powerful stimulant than any hope of gaining as much can be. It may be so in an infinite degree; since there is no chance so small as not to be capable of giving rise and support to hope; and a chance of acquiring the greatest quantity of wealth that was ever possessed by man, may be so small as to be worth next to nothing.

As to the wording—*office, commission, contract,* and *pension,* are the words employed on this occasion, as being familiar to every ear. The more proper expression would be some general one, under which the particular articles are comprised. For example—*source of emolument;* meaning source of emolument held at the pleasure of the Crown: and, where the import of it has been fixed, once for all, by an *exposition* inserted in the appendix to the statute, and in the text marked as such by a particular type—a type employed for all words and phrases thus expounded—it should thenceforward be employed without mention of any of the details included in it. (See p. 595.) But, for expounding it, the only effectual course would be to give a complete list of all the several sources of emolument to which the disqualification was meant to apply.

As to the *grounds* for disqualification, they are in this case three:—

1. Guarding the probity of the public trustee, as far as possible, against all temptation to betray his trust:

2. Preventing a man from sitting in judgment in one character, upon acts of his own done in another character; and thus, in case of delinquency, being judge in his own cause:

3. Preventing him from bestowing, on any public function of less importance, any part of that time, the whole of which would not be too great for this highest of all trusts, if executed with that degree of assiduity, which by the extent and importance of it, it demands.

Were the first of those grounds the only one, some offices there are—the office of *justice of the peace,* for example—which need not be considered as constituting a disqualification. Not so, when the *third* of these grounds comes to be considered. Under any system, under which the situation of representative of the people were considered as a source of obligation, if the magistrate and the representative were the same person, the magistrate could not act without robbing the representative.

Under the existing mode of sham representation, of no European despot is the power so perfectly disencumbered of all sense of public obligation, as is that of the occupant of a seat, belonging to a rotten borough, or to a county held under the yoke of election terrorism: and this is one short reason for a reform, and that a radical one. So far as depends upon law, despotism is at the bottom, limited government only on the surface. In Spain, the despot is one: in England, he is legion: and legion is composed not only of Tories but of Whigs. For an as yet uncontested demonstration of this utter

absence of all sense of obligation, *see* Parliamentary Reform Catechism, Introduction, § 14, on *Non-attendance.*

Opportune occurrence.—"Votes" of Honourable House, 26th November 1819. "*Jovis,* 25° *die Novembris* 1819. The House met, and forty members not being present at four o'clock, Mr. Speaker adjourned the house." *N.B.* The day before, met for crushing the small remaining fragments of English liberties, 381: professing to oppose it, a few sincerely, 150: together, out of the whole 658 members, 531 attended. Such are the men, who, as representatives, call not only for *obedience,* but *confidence.* Obedience, it is not in my power to withhold: confidence, it is no more in my power to give to them, than to the beloved Ferdinand.

As to judicial corruption, all great placemen being thus not only each man a judge in his own cause, but knit, by community of sinister interest, in a league with the majority of the others,—impunity—universal impunity—has been the constant and notorious result.

Among the members of this league are the highest judges: no illusion, therefore, was ever more complete, than that which trumpets forth the purity of English judges. No set of men is there, whose *interest,* as far as depends upon law, has been rendered more hostile to their *duty.* Impunity, coupled with superior profit, are the principal features by which they are distinguished from the most corrupt that can be found anywhere else. The only obstacle that prevents an English judge from being less corrupt than a Spanish, a Russian, or a Turkish judge, is the liberty of the press: and as far as judge-made law, called *common law,* is anything, there is no liberty of the press but what is contrary to law; and without violation of law, may be crushed at any time.

Note, that no disqualification of this sort could have its effect, but in proportion as the *fact of acceptance* werenotorious. The arrangements necessary to secure such notoriety would enter too much into detail to be inserted here. The principal is—that as soon as an appointment is accepted, the instrument of appointment, or a sufficient extract from it, shall be communicated to the house through the Speaker, and to the public through the Government newspaper. This, too, of necessity in all cases, as now by custom it is in some: and that, on failure of such communication, the appointment shall be void; *void,* that is to say, in such sort as to render the delinquent himself a sufferer by his usurpation; but not so as to extend the suffering to any persons who are unconscious of it.

Supposing a list of disqualifying sources of emolument, made out by authority as above,—a Member on taking his seat should, with this list in his hand, have to declare to this effect—*I am not in possession of any article in this list:* to which might, perhaps, be to be added—*nor in expectation.*

[*]By this clause, the expense of 650 officers may be saved. In a town district, there would, probably, be no need of polling offices, other than the district election office.

[†]Analogous denominations are *Post-Master-general,* and *Pay-Master-general.*

[*]On the first opening of this or any other extensive system of reform, opposition from persons of all classes in all quarters ought to be expected, and, as effectually as possible, provided for. In some of the offices, disaffection to the reform, and consequent betraying of trust: out of office, from high and low, opposition and artifice in every imaginable shape. The late proceedings at Manchester were not necessary to prove the truth of this observation; but they may help to render the public mind sensible of it.

Fraud.] Every man invested with power in any shape, from the lowest to the highest, will occasionally be disposed to abuse it: to abuse it in every way that can be imagined. By this maxim should every line be guided in this, and every other constitutional code. Whoever contests the truth of it, be sure that it is for the purpose of committing or supporting some abuse. By this maxim the scribe of every monarch *is actually* guided in the penning of a penal code. In speaking of the power that will be abused,—in a penal code, say, *natural* power—in a constitutional code, say, *political* power;—there lies the only difference.

Whenever interest, or prejudice, or passion, prompt, they, on whom the execution of the law depends, will, constantly or occasionally, to the utmost of their power, render it ineffectual, or exceed or misapply the powers of it.

Complain of the delinquents: the law is bepraised; you are referred for redress to the delinquents themselves, or those who are in league with them: and you are punished, or it is inferred at least that you ought to be punished, for calumny against the ministers of justice. *N. B.* Under the constitution as it stands, all ministers of justice of the highest order, are in league with the official delinquents of the higher orders. Situation forms the league of itself; it does so without need of any the least concert between individual and individual.

Think of grand juries, whose actings being secret, cannot by possibility be otherwise than right.

Think of a coroner, who, lest a jury should give a verdict of murder, will not suffer it to continue its sittings, till a House of Commons, interested in giving impunity, have had time to give it.

Think of Lord Sidmouth, who, to prevent abuse in a prison, renders the interior of it invisible, to all those who have not express leave, either from himself, or from some person in intimate connexion with him, for seeing it. Inquire whether this is not actually the case with the Millbank Penitentiary-house. Think of the slow tortures, with death for better concealment at the end of them, that might, in any prison, be inflicted by such means.

[†]Question. Power adequate to the carrying of the plan into effect, why thus lodge the whole of it in a single hand, the election-master-general's?

Reasons.—Security against failure. *Rule:*—Be the plan what it may, leave not in any one adverse hand the faculty of defeating it.

Be the plan what it may, every person whose concurrence is ultimately necessary to the carrying it into effect, has a virtual negative upon it. To insure such concurrence, nothing short of a power of removal, in the hands of a person well affected to the business, can be sufficient. Punishment, in any the greatest quantity, that on any such occasion can be employed,—punishment in the form of law,—never can, in any such case, be to be depended upon. By plausible pretence, by subtraction of evidence, or by a variety of other means, it may be evaded, or (what comes to the same thing) expected to be evaded: at the worst, indemnification against it may be received, or expected.

No person who, by whatsoever cause,—simister interest, interest-begotten prejudice, authority-begotten prejudice, or original intellectual weakness,—is likely to be rendered adverse, or determinately indifferent, to the production of the effect, should, therefore, be left in possession of any such negative.

If, as here, the production of the effect is placed within the power of one person—that person well affected to the business—the danger of failure is thus reduced to its minimum. To this one add any number of others, whose concurrence is thus made or left necessary: by every one so added, the danger of failure is increased.

If so it be, that, for this all-commanding situation, not so much as a single individual, competent, and at the same time well affected to the business, is to be found,—accomplishment is, on this supposition, hopeless: on the other hand, suppose one such individual, though there be no more than one, whom the system has either found or rendered well affected to it,—the requisite power, as above, being also given to him,—accomplishment may thus be rendered morally sure.

At the recommendation of the election-master-general are moreover appointed the commissioners of survey and demarcation, as per Section 9, and by him they are removable. And thus all the functions necessary are put under the guidance of one will.

In the Duke of Richmond's Radical Reform bill, the division of the election districts—this first step in the whole course—was allotted to the twelve judges. As well might it have been allotted to the twelve Cæsars. Their time was, even in those days, fully occupied. For this strange mathematico-political function to have been executed by them, well or ill, within any limited time, the concurrence of every one of them would have been necessary: for, by any one, on one pretence or other, or even without pretence, every requisite operation might, during an indefinite length of time, have been delayed. On the part of no one of them, could any such concurrence have reasonably been expected.

After that which would never have been done, had been done, the business was to go, all over the country, to grand jurors: and, for the occasion, every man who *had ever been* was to be one. No obligation was there upon any one individual to do any one thing in it: if a man who could and would do something were found, no responsibility was there upon him for anything he did.

The election-master-general is *an individual.* In the hands of an individual, not in those of any *board,* should any such all-sufficient and indispensably necessary power be lodged. Every board is a *screen;* and if, to the remembrance of a proposition of such practical and unquestionable importance, the play upon words is subservient, let it not be despised. Under the system of corruption the uses of a board are manifold:—1. To afford a screen to abuse in every shape. What is everybody's business is nobody's business: what is everybody's fault is nobody's fault: by each one the fault is shifted off upon the rest. So many members, so many confederates, all of whom—they and their connexions—join in affording support and protection to whatever misdeeds in any shape are committed by any one of them. 2. To afford a pretext for multiplication of offices; to each of which is attached its mass of emolument: so many needless offices, so many sources of waste, so many instruments of corruption. 3. If, upon occasion, any such desire should have place, as that of seeing the business miscarry, to secure the production of the so-desired effect.

Of course, never could any such expectation be entertained, as that of seeing any such plan as this carried successfully into effect, on any other supposition than that of the existence of a Prime Minister well affected to the business. Here then is *one* well-adapted mind necessary: that of an election-master-general of his choice, another: and now, for effectual accomplishment, these two concurrent minds would, in these two situations, be sufficient. Even with little aid from the great body of the people,—as for the most abject slavery, so for the perfection of liberty,—the quantity of the matter of corruption in the hands of a British prime minister would suffice.[a]

In the present practice, the sort of business, for the management of which the election master's office is instituted by this bill, is divided between two offices: that called the *office of the Messenger of the Great Seal,* for sending out the orders called *writs,* in pursuance of which the elections are to be made: that called the *office of the Clerk of the Crown,* for receiving the several answers called *returns,* in which it is stated what has been done in pursuance of these writs. In neither instance does the name of the office give any the slightest intimation of the nature of the business. The man who sends out these letters knows nothing about the answers; the man who receives the answers knows nothing about the letters; neither the one man nor the other know anything about what has been done in pursuance of the letters. Complication abundant; darkness visible; depredation the necessary and notorious fruit of it: depredation sanctioned and unsanctioned, regular and irregular, limited and unlimited: candidates contending for undue preference: officers bribed and giving it. Under the notion or pretence of excluding the corruption, legislators botching, time after time, in the usual style: 53 Geo. III. chap. 89, the date of the last botch: such is the mode, in which that correspondence is carried on by which Honourable House is filled. Object in filling it, mode in which it is filled, correspondence by which it is filled—is it not all of a piece?

[*]The more effectual the provision here made for the *equality* endeavoured at is, the less will be the advantage obtainable by any *additional* degree of *publicity,* capable of being given by undue favour or weight of purse. For repressing, by prohibitory provisions, with penalties, any such undue extra circulation, any endeavour that could

be used would be attended by a degree of complication, the inconvenience of which could not, it is believed, be paid for by the advantage.

[*]In this, as in other cases, powers for extraction of evidence would be necessary to the persons charged with the inquiry. But, as the details would occupy much room, and would contain little that is peculiar to the present case, they are not here inserted. One thing, almost peculiar to the present case, is—that the object of the inquiry is to administer *benefits,* namely, rights of suffrage to those who are the subjects of it, and not *burthens,* as in the case of taxes. Hence, instead of being shrunk from, the inquiry would generally, if not universally speaking, be met with alacrity.

[*]*Question:* Why, for establishing the existence of the several facts employed in the composition of the title to a vote, omit to employ the ceremony of an *oath?* Follow the answers:—

1. The effect of it would be to put an exclusion upon an eminently respectable class of persons, who, but for the bar set up against them by this instrument, would be entitled and admitted to vote.

2. By the ceremony, a considerable quantity of time and expense would be uselessly consumed.

3. In but too many instances, it is proved by experience to be void of efficacy, and thereby useless.

4. By giving increase to the number of instances in which it is notoriously an object of violation and contempt,a the application of the ceremony, on the occasion here in question, would have the effect of diminishing whatsoever influence it might otherwise still possess, and thereby whatsoever useful security it might otherwise be capable of affording.

[*]For some years past, a survey of Great Britain, on a scale that promises to be fully competent to this purpose, has been going on with, under the orders of the Ordnance Board. Of the *engravings,* the scale is *an inch* to a mile, not more: on this scale thirty sheets are already published. In these sheets are included the following six counties entire: namely, 1. Essex; 2. Cornwall; 3. Devon; 4. Somerset; 5. Dorset; 6. Hants; 7. Pembroke; 8. Rutland. Also parts of the four following ones:namely, 1. Kent; 2. Surrey; 3. Berks; 4. Wilts; 5. Shropshire; 6. Staffordshire. One of these maps is before me. In parts that I am acquainted with, I see expressed the sites, not only of streets in towns, but of single houses, where the magnitude of them is considerable. Even this might, perhaps, serve for the scale spoken of in the text, by the name of the *country scale.* But the scale on which the original *drawings* were made, is a scale of *six inches* to a mile. This scale might at any rate serve for what was in view in the text, in speaking of *the enlarged country scale.* Whether this would suffice for the *town scale,* I cannot take upon me to say. But, that which at any rate could not fail to suffice for this largest scale, is that on which *Horwood's map of London* is constructed. The scale of this map, if the information furnished from the geographer-royal's shop is correct, is twenty-six inches to a mile: a sheet of it lies before me.

[*]A precise definition of *a householder,* as contradistinguished from *an inmate,* would be requisite on this occasion, as well as on the occasion of the vote-making certificate, as per Section 2.

This definition would be as necessary on the plan of those who approve of householder suffrage and no more, as on the plan of those who call for virtually universal suffrage. A householder is one who pays taxes. Good: but what taxes? Taxes payable to the national fund, such as those of late years called assessed taxes? or taxes paid to local funds, such as poor-rates, &c.? and what local funds in particular?

Under the existing system, in some boroughs, every *pot-wobbler,* as the phrase is, is an elector: every habitation in which a pot is boiled, gives a vote, and in so far as this is admitted, the distinction between householdership and inmateship is obliterated. For, married or single, where is the person who for such a purpose, may not have it in his power to boil a pot? if not of his own, a horrowed one?

But, with that exception, under the existing system there is not (it is believed) in any house more than one householder: namely, the one person by whom all house taxes are paid. Lodgers, though there be ever so many different families of them, pay no house taxes: heads and all other members of families are indiscriminately styled inmates.

In this way the matter stands on a very simple footing: payment of the taxes is secured; and thus the only object looked to is accomplished. But the same building which, at one time, is used only as an out-house to a dwelling-house, is at another time inhabited, and used as a separate dwelling-house: and, whether it be for burthen or for benefit—for payment of taxes, or for giving a vote—it seems not easy to say why a man's lot should be varied by circumstances so indeterminate and irrelevant.

So far as concerns taxes, it seems right enough: for a lodger pays to his householder so much the more, on account of the householder's bearing his (the lodger's) share of the taxes.

But so far as concerns the right of suffrage, it seems difficult to say on what principle it should be confined to the person by whose hands thetaxes are paid. The principle of property is hardly applicable: for nothing is more common than for the lodger to be in better circumstances than the person by whom the lodging is let.

[*]In and by the course above submitted, any person might take upon himself to answer for the carrying the design into effect; and to describe such a course seemed to be the problem, the solution of which was called for by the nature of the case. Not but that, in a rough manner, it might perhaps be found not altogether impracticable to arrange the business without this process of survey, demarcation, and registering of habitations: and, if it were practicable, the saving in expense would be of no inconsiderable importance;—the saving in time, of incomparably greater importance. But, in that case likewise, the essential thing would be—that the direction of the process should be, the whole of it, in *one* hand: if committed to a number of hands,

those, for instance, of so many local authorities, there would never be an end to it.

Numerous would be the adversaries—some open, some perhaps disguised under the masks of friends: against the artifices of these last in particular, it would have to secure itself. It is sufficiently known what sort of a reform every Whig reform is that has ever been proposed in the character of a *gradual* reform: *a gradual progress in doing nothing.* But, were it not for a warning such as this, Whigs, if pressed, might, if they thought they saw their account in it, give in to the proposition even of Radical reform: and this, even in all its elements, without exception, they might accordingly support, up to a certain point of time, with very little danger of success. Among the local authorities, some would be in the confidence of the Whigs; others in that of the Tories: Whigs or Tories, on any such occasion, one thing they could find no difficulty in agreeing in; namely, to disagree without end.

One circumstance however there is, which is in favour of the business. The inquiry has for its object the knowing throughout who it is that has a right to vote. Among those who have the right, few, if any, will be desirous of losing it: and if they are, and lose it accordingly, there will be no harm done: nobody will have any injury to complain of. And, as to an election-master, it seems difficult to conceive how, in the adjustment of a set of rights, collectively indeed so important, but individually so small, he should be exposed to the action of any sinister interest strong enough to turn his course aside from the path of rectitude.

Operator—say, accordingly, upon *every* imaginable plan, operator in chief, *one* only, *the election-master-general.* Of his operation in Great Britain, the basis would be the population returns. In these he would see the parishes contained in each division immediately subordinate to that into counties. Within these limits, for determining relative positions, he would, upon the rough plan now in question, have no other constant and sure resource than what could be afforded by already existing maps: the rest would be to be done by separate inquiries. The population returns of 1812 point out the *persons* to be resorted to, and the *mode.*

In Ireland, unfortunately, the mass of those resources could not, it is apprehended, but be much more imperfect.

On any plan, district offices, with their respective office-bearers, could not be dispensed with. But, in any case, the *expense* need not be so great as at first sight it might be imagined. For the office, any town that, in other respects, would be suitable, would furnish a town-hall, a market-house, or some such public building. In the city of London, the churches are applied to this purpose, and without scruple. In case of need, even any dwelling-house might serve. Where necessary, portable hustings might be erected for the day at a very moderate expense. As to the office-bearer, neither in the case of the district-clerk, nor in the case of the sub-district-clerk, would much *time* be occupied. As to the district-clerk, he would have scarce anything to do on any number of days in a year beyond one. In both instances, the official person would naturally be some country attorney. For the salary of the polling-district clerk—the only one of the two upon whom there would be a demand for any considerable part of his time—a hundred a-year, or even less, might suffice. The office would bring him

into universal notice: with ordinary good behaviour, it would secure to him an ample stock of business.

In the case here supposed, the rights of suffrage not being determined by reference to habitations previously ascertained, distinguished, and denominated,—the difficulty to be overcome is that which might be liable to be produced by influxes of *itinerant* voters, brought together by accident without design, or by mischievous design. Householder suffrage might seem to obviate this. But, so as to exclude contestation and indefinite delay, how is it that for such a purpose the households could be ascertained and distinguished? Without contestation or difficulty, in by far the greater part of the United Kingdom, perhaps, yes: still, in many parts, there might remain enough to produce a quantity of contestation, the result of which it seems not very easy to foresee. Witness the Irish cottages.

[†]The journeys in question are—those between the *abodes* of the several voters on the one part, and the respective *polling offices* on the other.

That these journeys, with the expense and loss of time attending them, should be as short as general convenience in other respects will admit, is indisputably desirable. The smaller the polling district, and the nearer the office is to the central point of the district, the shorter, upon an average, will these journeys be. If, in regard to these points, namely, smallness and centrality of situation, these polling districts are brought into a conformity with general convenience,—what the election districts are—the election districts in which the polling districts are respectively included,—will, in these respects, be matter of indifference. The extent of the election district is determined by the quantity of population; and this, as nearly as convenience in other respects will admit, is to be the same in all. But as, in respect of density of population, the difference between district and district will be so great—having for its limits the density of the population in the purely town districts, and the thinness of the population in the thinnest peopled country district—hence the difference in respect of extent will be proportionably great.

But, in the instance of each district, proportioned to its *extent* will be the *number* of the polling offices which, for reducing the length of journeys, will require to be established in it. For *this* purpose, in the purely town district, no polling office distinct from the election-district office will be requisite:—nor does it appear why it should for any *other* purpose. For, even upon the universal suffrage plan, the greatest possible number of voters (it will be seen) would not be more than 5000 or 6000; the customary number perhaps not more than three-fourths or a half of that number: and, by adding to the number of *secret-selection boxes,* as per Section 8, an unlimited addition might be made to the number of voters giving their votes at the same time.

Thus much as to the main consideration, by which the number of the polling districts in each election district will require to be determined. As to the number, and in particular as to the number which might require to be established in the most thinly peopled election district, it is not possible to speak with anything like decision, without a calculation, the labour of which would not here be paid for by the benefit. The only consideration, by which any *limits* can be set to the number, is that of the

expense; and that unquestionably is no trifling one.

Here then comes in a question, by what fund the expense shall be borne? *Answer*—By the *national* fund; not by any local one. Neither the benefit, nor the facility of supporting the burthen, is any greater in the most thinly peopled than in the most densely peopled district: therefore neither should be the burthen itself, as expressed in pounds, shillings, and pence.

But though the *exact extent* of an election district is thus far immaterial, it may be in some degree matter of satisfaction to the reader to have in mind some general conception in relation to it. So likewise in relation to the *quantity* of the *population,* a quantity which, as above observed, will not only want much of being determinate, but will moreover be as near the average in the least extensive as in the most extensive districts. To this purpose, *Mr. Rickman's* masterly and most instructive *Preliminary Explanations* prefixed to the *Parliamentary Population Returns,* printed in 1812, for the use of the Members, afford us much and very satisfactory information.

First, then, as to Great Britain:—

1. Inhabitants in Great Britain (anno 1811) per do. 12,353,000

2. Square miles in do., as per do. . 87,502

3. Divide inhabitants 12,353,000, by *seats* 558, Number of inhabitants to a seat is . 22,137a

4. Divide *square miles* 87,502 by *seats,* thence by *districts,* 558, number of square iniles to a *district* is 156

5. In a district, greatest *direct* distance of any habitation from the district office, upon the supposition of its being in the centre of the circle in which the square is inscribed, is a fraction more than . . . . . 8 miles 6 f.

6. Greatest *travelling* distance, on the supposition that to the above distance is to be added one-fourth more for the twinings and windings of roads, a fraction less than . . . 11 miles

7. Greatest *travelling* distance, on the supposition that, by reason of want of exact centrality in a town sufficiently adapted to the purpose, there are in some districts habitations at a distance half as great again as the above from the district office, a fraction more or less than . . 16 m. 4 f.

But it is in districts that are purely *town* districts, that a large proportion of the total population of Great Britain is contained. Of any such attempt, as that of ascertaining the exact proportion, by travelling for this purpose over the whole field of the parliamentary returns, the use would not here pay for the labour. For aid to conception, let us assume a result, differing perhaps not very widely from the correct result, and suppose *the half* of the population to be contained in those districts that are

upon the purely town scale. But in districts so circumstanced, all taken together, the whole quantity of land is, in comparison of the whole quantity contained in the country districts, so small, that for simplicity of calculation, it may, perhaps, on this occasion, without any error very material to this purpose, be considered as nothing, and left out of the account. This being done, the consequence would be, that, to find the average number of square miles in a district, instead of dividing the whole number of square miles by the whole number, we should have to divide by no more than half the number of the districts. On that supposition, the lengths of utmost distance, as above mentioned, would be to be doubled. But, from the number of square miles in the most thinly peopled district, to the number in the most densely peopled district, the number would be descending in a regular series. This considered, instead of as large again, we may perhaps state the utmost length of journey, in that district which is the most thinly peopled, and thence the most extensive, as being half as large again as the number above stated.

On this supposition, we shall have for this utmost length, ... 24 m. 6 f.

Thus then comes in a topic, which, important as it is, could not have been touched upon in the text: namely, that of the injustice done, done by the Irish Union act, to Ireland, in respect of the proportionable number of the seats allotted to it. To Ireland, as to Great Britain, injustice in that or in any other shape *could* be done, and but too easily, under the system of disguised despotism:—*could* be done, and accordingly *was* done. But, with any prospect of success, neither in that, nor in any other shape, could injustice, especially so flagrant and so palpable, be so much as proposed, in any proposed system of equal liberty.

Note that, at the union with Scotland, the injustice was still more flagrant.

Now as to Ireland:—

1. Inhabitants in Ireland, as per Playfair's "Statistical Tables," anno 1800, and Pinkerton's "Geography," Vol. I. p. 213, anno 1807, by conjecture, in round numbers, . 4,000,000

2. From other accounts, that number being supposed to be rather under than over the mark, especially for the year of the British population returns, 1811, take, instead of it, the number which forms an exact third of the number of the inhabitants in Great Britain; namely, 4,114,333

3. Divide *inhabitants* 4,114,333, by *seats* 100, present actual number of inhabitants to a seat, neglecting fractions, is 41,143

4. Per Rickman, p. 30, "Scotland (with its islands) is about equal to Ireland in area, and is half as large as England and Wales." Supposing these dimensions correct, as they are sufficiently for the present purpose,—say then square miles in England and Scotland taken together being 87,502, as above, square miles in Ireland are 29,167

5. Divide square miles 29,167, by seats 100, No. of square miles in Ireland to a seat is . 291

Such are the existing proportions, as marked out by the Irish Union act, under the system of distribution actually in existence. Observe now what would be the proportions under a system of equal justice.

The *population* of Ireland being, as above, *one-third* of Great Britain, the number of *seats* allotted to Ireland ought to have been, and ought now to be, *one-third* of the number of those allotted to Great Britain.

1. No. of *seats* for Great Britain and Ireland taken together is 658

2. Instead of 658, take, for both together, the number which, being divisible by 3, is next above 658. This is 660

3. *Proper* share of Great Britain (three-fourths of 660) is accordingly—*seats,* instead of the present *actual* 558, ... 495

4. *Proper* share of Ireland (one-fourth of 660) is—*seats,* instead of the present actual 100, . 165

Anno 1707 (the year of the Scottish Union) population of England, as per Rickman, from the population returns of 1812, . . 5,240,000

Divide inhabitants 5,240,000 by seats 513, this gives, to a million of inhabitants, seats nearly 100

At that time the population of Scotland could not have been less than 1,000,000

Seats for the million no more than . . 45

Note, on these occasions, as on all others, injustice, the continually increasing offspring of uncontrouled power. At the Scottish Union, England being strongest, was unjust to Scotland. At the Irish Union, England and Scotland together being strongest, were unjust to Ireland. But, Scotland being swallowed up in England, it is still to England that the honour of the injustice is due. On the ocean, England prides herself in being unjust to other nations—in exercising dominion over them: and this is another of her honours. Lords of the ocean indeed! This means lords of all other men upon earth, whenever they come upon the ocean. Out of our own country what right have we to be lords over any other men any where? But the time is coming when rascality will be rascality everywhere: not less when manifested upon the largest scale, than when upon the smallest.

But (says somebody) is not this sowing dissension amongst the friends of reform? Sowing dissension? Yes; so it would be, if, by shutting his own eyes, it were in a man's power to shut other men's: if by shutting their own eyes against injustice, when prepared to be committed to their advantage, it were in the power of Englishmen to

shut the eyes of Scotchmen,—of Englishmen and Scotchmen together, to shut the eyes of Irishmen,—against injustice proposed to be committed to their disadvantage. But exists there any sort of mechanism capable of producing any such effect? I, for my part, know of none. Under the system of force and fraud, there is little difficulty in this; and practice insures, in a great degree, the success of it. Not so under a system of freedom and sincerity. In a case like this, I see not how, upon any tolerably promising grounds, a man can expect to receive justice, unless he begins with rendering it. For my part, I believe not that there either is, or can be, any scheme of political deception, that is not either already exposed, or in a way soon to be so. When a thing, that to me seems to be material, presents itself to my view, my notion always is—not that it will present itself to nobody else, but that it will present itself to everybody else.

Though in Ireland there has not as yet been any *enumeration* of the people, nor has any such *survey* been commenced, as that in which such considerable progress has already been made in Great Britain, [viz. in 1811,] yet, as in Ireland the quantity of surface is not more than about one-third of that in Great Britain, Ireland seems to be the country in which the conjunct operation might reasonably be expected to be soonest completed.

[*]The formulary thus expressed is here substituted throughout to the *Whereas* which has been hitherto in use. Without the benefit of the addition made by it to the otherwise sufficient incomprehensibility of the rule of action, the sentences in an act of parliament are sufficiently protracted and involved: with this addition, the attention is frequently exhausted before so much as any one expression of the legislator's will is so much as commenced. In Ruffhead's edition, I remember seeing a statute, in which the preamble, introduced by this word, occupies more than thirteen pages of that close and spacious letter-press. Bound volumes might be found, each of which does not contain more than this preamble. I am sorry I cannot now make reference to the statute. I am inclined to think it is one of those of which the East-India Company was the subject.

In French legislation, the sort of matter our lawyers introduce by a *whereas,* has a particular name. The times before the Revolution are those which I have in view. It is called the *considerant* of the law. It exhibits the facts or supposed facts, on the consideration of which, in the character of *reasons* or inducements, the law, or portion of law, has been grounded. But, like our *whereas,* this *considerant* used to *precede* the mention of the *facts,* and in the same way glue them together into one sentence. Leaving *them* to be set down before it one by one, the form here employed (it may be seen) sets them free.

The enormous practical mischievousness of the customary formulary—the sinister interest, by which it has been hitherto rendered sacred—the grammatical circumstances by which the two modes of expression stand distinguished—the alliance which, on this as on every other part of the field of law, has place between fraud and imbecility—these are topics that must be reserved for a future occasion. In this place, the room which anything like a full explanation would require, cannot be spared. Meantime, whatever may be the grammatical and logical description of the difference between the two modes, the effect of it can scarcely fail of rendering itself

perceptible to every eye that has ever found itself condemned to drag itself along the length of a British act of parliament. *British-and-Irish* I mean: but for the expression of this meaning, the Union act (it has been seen) has not afforded us a *single* word.

[*]Various and important are the *collateral* uses which a complete register of this sort might be found to have, chiefly under the head of *police;* for example, provision for the poor, prevention of crimes, securing the equal payment of taxes, &c. It will be evident, upon a little reflection, what strength would be given to whatever is good and popular in the laws, if, by means of everybody's *habitation,* everybody's *abode* were thus, *at all times,* capable of being made known to everybody. Let it not be forgotten, that the state of things in which the sort and degree of notoriety, that would be the result of the survey here in question, would have place, would not be that unhappy state of things, in which it is a question whether most evil would be produced by the execution or non-execution, by the strength or the weakness of the laws.

[†]Parishes in England and Wales are 10,647; in Scotland, 921: parishes and sub-parishes taken together, in England and Wales 15,741; in Scotland 1,005: extra-parochial places, about 200. By sub-parishes is here meant such divisions of parishes as severally maintain their own poor (stat. 13 & 14, c. 2, c. 12.) They are called "tythings or townships." Parishes and sub-parishes together are the places stated as having made separate returns. The parishes so divided are chiefly the seven northern counties of England, and they are all so: 30 or 40 miles square is no unusual extent; upon an average these northern are seven or eight times the extent of the southern counties.—*Parl. Pop. Returns, Prel. Observ.* 14, 15.

[*]For the execution of this business, on which, trifling as it may seem, the right in question will in so great a degree be dependent, neither the individuals interested, nor any local authorities, would be to be trusted. In neither case could uniformity of proceeding, or completeness of execution, be reasonably expected. In the case of individuals, failure in abundance would be produced by absence, poverty, or negligence; in the case of local authorities, by negligence or disaffection. In neither case would there be any effectual responsibility. In either case the expense would be greater than on the here proposed plan, reckoning consumption of time as expense.

As to the expense of the requisite remuneration for these door-plate fixers, if considered as constant, as in a certain degree it will require to be, it may naturally enough appear formidable. But, by uniting in the same individuals this function and that of the distribution of letters, this expense might be greatly reduced at least, if not wholly done away. To the exercise of both functions, in addition to *reading,* the same knowledge exactly and no more, would be indispensable: namely, an acquaintance with the site of every habitation within their respective fields of action.

Supposing it to be regarded as interfering with the patronage, or in any other respects with the power attached to the office of postmaster-general, nothing less than the most determinate opposition from that office would of course be to be expected. But the functionaries immediately under the patronage of the postmaster-general are the several *local postmasters,* not the *distributors of the letters:* and it is only to the function of *distributor of letters* that that of *door-plate fixer* would have to be united.

It would be for consideration how far, for economy's sake, it might be of advantage to unite, regularly or occasionally, the functions of district-clerk and poll-clerk to the function of local postmaster, instead of to the profession of attorney, as proposed in a former note.

To the function of *door-plate fixer* that of *constable* might, it should seem, be united with no small advantage: and thus, in so far as a constable is at present remunerated at the expense of the public, a proportionable saving might be effected.

[*]Among the artifices of misrule, are needless and useless and groundless nullifications, interruptions, and terminations of public business. No measures but those that have for their object either the interest of the people, or the interest of the opposition, suffer by these obstacles. The Crown has times and seasons at command.

[†]*Resignation.*] At present a seat cannot be vacated by simple resignation. When a member wishes to resign, he cannot do so without being appointed to an office under the Crown; which appointment, monarch or minister may refuse, or delay as long as he pleases. Refusal is not, indeed, customary; but it is not the less legal, and might, and would at any time be resorted to, if an expected successor were to a certain degree obnoxious. In Ireland, before the union, and on the occasion of the union, it was actually resorted to.

Among the inwardly harboured maxims, by which the practice of Honourable House conducts itself, a leading one may be stated to be this:—never do in a direct way that which you can do in an indirect way: in other words, never do without insincerity that which you can do by insincerity.

Thus, in the present case, one man cannot make room in the House for another, but a false pretence for it must be made: a false pretence; and to that false pretence, not only the out-going member himself, but the monarch and minister likewise, are parties.

The ground of the falsehood is this. In the statute-book are some half dozen acts, mentioning, by general description, certain offices, and other sources of emolument at the pleasure of the Crown, and declaring, that upon acceptance given to any office, &c. coming within that description, by a member of the House of Commons, his seat is vacated. Why vacated? Because, were he to continue in it, the office being one of those to which emolument is attached, his conduct would, by the fear of losing it, be apt to be rendered subservient to the particular interests of monarch and minister—adverse to the universal interest. Thus the very principle of all the acts is the notorious corruptness of the system of which they make a part.

Among these offices is one called *the Stewardship of the Chiltern Hundreds.* Of the system of falsehood, without which a seat is not suffered to be vacated, this office is the constant instrument. On this occasion, the following is the pretence, the falsehood of which is so notorious. Regarding the person in question as being eminently fit for the trust in question,—and willing, as well as able, to perform the duties of it, and

thereby to earn the emolument attached to it,—his Majesty has been advised, and is graciously pleased, to select him for that purpose, and place the office in his hands. What, in the instrument of appointment, is actually *expressed,* I cannot pretend to say; nor can I at this moment be certain whether any instrument for this purpose actually receives official signature. But, whether expressed or no, such are the allegations *implied.* Willing and determined to do his best towards the fulfilment of these duties, the Member who has thus been singled out, gives, on his part, to his Majesty his humble thanks, and to the office his acceptance. This being what is said—said by monarch and by minister—both saying it in solemn form by their signature, how stands the matter of fact? No duties whatever; no selection; the office is given indiscriminately and successively, to every Member that applies for it to all Members; who, one after another, apply for it; perhaps to several on one and the same day.

Thus drenched in insincerity is Honourable House. It is by insincerity men get into it; it is by insincerity men get out of it. Hear their speeches; look to their votes; look to their journals: see whether, without insincerity, anything that is done there, is ever done.a

Were not all regard for sincerity almost universally cast off in Honourable House—cast off by Whigs not less completely than by Tories—could sham representation have stood thus long in the place of genuine?

Among the effects of Radical reform, would be—not only in Honourable House, but in so many other places—in other houses—on the throne—on the seats of judicature—in the seats of education—if not to put an end to *this,* at any rate to put an end to the *empire of this.*

[*]This source of mischief should be cut off: and if under radicalism, of course it would be.

1. In the hands of monarch and minister, it is a perpetually ready bribe, for those who could not be bought by bribe in any other shape.

2. It gives additional strength to a body of men whose interests are avowedly distinct from, and thereby unquestionably opposite to, the universal interest; and who have in their hands the means of making perpetually repeated sacrifices of the universal interest to that separate and sinister interest.

3. It is giving continual increase to a breed of men who, from increase of numbers and extravagance, are in large proportion continually sliding down into a sort of elevated pauperism, which, according to an avowed maxim of Government, must be pampered at an expense proportioned to its factitious elevation. See the avowal of the maxim proved—upon the Whigs, in the "*Defence of Economy against Burke,*" and upon the Tories, in the "*Defence of Economy against Rose;*" both printed in the Pamphleteer.—[*See* these works in this Collection.]

To a limitation of this sort the Peers themselves would naturally have no great objection. In the reign of George the First, by an odd concurrence of causes, it was

favoured not only by the Lords, but by the Minister. But, as was altogether natural, it was effectually opposed in Honourable House.

[†]For an exposition of the words *annoyance* and *disturbance,* see Appendix.

[‡]This Section has two objects:—

1. To obviate the apprehension that annoyance may be given in the House to men of high habits by men of low habits; for, with men of this obnoxious description, to an unlimited amount, imagination, howsoever opposed by reason and experience, will, in the high-seated minds, be busy in peopling the house, supposing the seats in it filled by free and universal suffrage.

2. To secure individual members against groundless expulsion, and thereby their constituents against injury, by the injustice of an occasional majority of the house.

It being clear that, under any order of things, every governing assembly must possess, over its own members, whatsoever power is necessary to secure its proceedings against disturbance,—on this ground it is that Honourable House reserves to itself, of course, the power of excluding from its walls any person who shall have been pointed out by monarch or minister, to be so dealt with.

Thus it was that, in 1764, to please the Monarch, it expelled *John Wilkes.* The alleged cause was a *libel;* and a libel is—any discourse, in print or writing, which he who has power to punish for it chooses to punish for. Had that pretext failed, any words that had been spoken by him might have served: for, any words that Honourable House chose to expel a man for might, and at all times may be, for that or any other purpose, voted *scandalous: scandalous,* or, upon occasion—what would form so much stronger and commodious a ground—*blasphemous.* For, on the field of religion, whatever a man says that another man does not like, is, according to that other man, *blasphemy:* whereupon, in so far as he has power, he makes the miscreant smart for it.

Under the sway of corruption, no species of annoyance can be imagined, that Honourable House would not submit to, rather than submit to have this privilege defined, and thereby confined to its real uses. Not so under Radical reform.

The paramount objects here have been—to give effect to all legitimate causes of exclusion, and in so doing to put an exclusion upon all illegitimate ones. For this purpose, it was necessary to take what promised to be an exhaustive view of the legitimate ones. A temporary object was that which is herein above first mentioned: quieting the alarm which, in such a case, seemed liable to be felt by the opulent multitude, to whom personal ease is everything, public interest nothing.

[*]Hitherto, so long as a Speaker has been indisposed, the business of the House, and thereby the business of the nation, has been at a stand. On or without an intimation from a Monarch or a Minister, a Speaker, as well as any other man, may be indisposed whenever he pleases. The business of the nation is of no importance: a Speaker of the Commons House is not susceptible of infirmity, bodily or

mental:—One or other of these maxims is what the present practice in this matter has for its ground: it rests with Honourable House to say which. For the causes, see the note †, p. 157. Under radicalism, the business of the nation will *not* be of no importance: under radicalism, a Speaker will *not* be exempt from human infirmity.

Under real and preappointed law, the man in power—monarch, minister, judge—be he what he may—is not altogether without check: there is a something, which is or may be in the eyes of everybody, and which he may be *expected* at least to be bound by. Under imaginary and retrospective—or, as the phrase is, *ex post facto* law (for such is all common law)—he is without check: on each individual occasion, he imagines whatever suits his sinister interest, and says—*this is law.* This (he says) *is* law: and, as if that were not enough, from the beginning of things down to this time, so (if you will believe him) it *has* been; though this is the first time that any such thing ever entered into man's thoughts. See this in Blackstone: and this it is that makes "common law the perfection of reason." Of reason? But in what eyes? In the eyes of all those who have or have had the making of it; and of all those others whom they have made their dupes.

[†]The matter thus indicated was never published by the author. It will appear in this collection, if found in a sufficient state of preparation.—*Ed.*

[*]Why say "*intended and supposed,*" as if the thing intended on an occasion of this sort ever failed of being done? To this question something of an answer may here be expected. By logicians, when speaking of a *definition,* is commonly meant, as of course, the mode termed in Latin *definitio per genus et differentiam:* definition, afforded by the indication of a more extensive collection of objects, to which the object in question belongs—some *genus* (as the phrase is) of which it is a *species,*—together with the indication of some peculiar character or quality by which it stands distinguished from all other objects included in that same collection—from all other *species* of that same *genus:* and this form is that which, when what is considered as a *definition* is given, is the form constantly intended and supposed to be given to it.

Now then, by him who undertakes to give a definition in this form, what is necessarily, howsoever tacitly, assumed, is—that there exists in the language a word, serving as the name of a *genus* of things, within which the *species* of things indicated by the word he thus undertakes to define, is comprehended. But words there are, and in no small abundance, of which definitions of this sort are frequently undertaken to be given—or which are supposed to be as clearly and generally understood as if definitions in this form could be and had been given of them—but for which, all this while, no such more extensive denomination is afforded by this or any other language: and among them, words which, in law and politics, are in continual use, and upon the signification of which, questions of prime and practical importance are continually turning. Take, for instance, the words *right, power, obligation.* Now, in the way in question—namely, by indication of so many superior genuses of things, of which these words respectively designate so many species—it is not possible to define these words. No one of these three words can you thus define. The word *man* (for example) you *can* thus define: you may do so, by saying that he is *an animal,* and then stating a

quality by which he is distinguishable from other animals. Here, then, is a word you can and do thus define. Why? Because, comprehending in its import that of this same word *man,* stands that same word *animal,* by which is accordingly designated a *genus,* of which *man* is a *species.* So likewise in regard to *operations:* for example, that of *contracting,* in the *civil* branch of the field of law; and that of *stealing,* in the *penal* branch of that same thorny field. *Contracting* is one *species* of *operation; stealing* is another. But this you cannot say in the instance of *right,* or *power,* or *obligation;* for a *right* is not a *species* of anything: a power is not a *species* of anything: an *obligation* is not a *species* of anything.

The objects, of which the words *man, animal, substance,* are names, are extensive sorts or kinds of *real* entities: the objects, of which the words *right, power, obligation,* are names, are *not* sorts or kinds of any *real* entities: the objects, of which they are sorts or kinds, are but so many *fictitious* entities.a

[*]Note that, in the particular case here in question, namely, that of *offices,* &c. of a certain description, considered as having the effect of excluding the possessor from a seat in the House—it is not altogether clear that any enumeration of them would, to the purpose in question, be absolutely necessary; definition with exemplification might perhaps suffice. On the other hand, what is certain is—that without *definition* or *explanation*—without words of general description—enumeration, in a case such as this, would not suffice: Why? Because if *enumeration* were the only mode of designation employed, sinister ingenuity could not fail to set itself to work: under different names it would pour in objects on which it would bestow the desirable quality, free from the undesirable one; instead of *offices,* it would attach the emolument to *functions*—to *situations*—to *trusts*—to *posts*—to anything; and thus the purpose of the law would be evaded. To establish distinctions where there are no differences, is among the endeavours and the performances—not only of crown lawyers, but of every member of that profession, of which insincerity and artifice are not so much the confessed as the professed attributes.

[*]In its application to the *penal* branch of law, this mode stands exemplified in the first of those works of the Author's on legislation, which were edited in *French* by *Mr. Dumont.* In this way a quantity of letter-press, not larger than what has been seen contained in an almanack, might supply a man with as large a quantity of legal information as he would have need to carry in his head, with the addition of appropriate indication, sufficient to enable him upon occasion to present to his mind, in time for use, whatever was not contained in it.

In every such abridgment, it being as truly the work of the legislator as the work at large of which it is an abridgment, every man would of course behold a rule of action, on which he could repose an equally safe confidence.

I cannot let this occasion pass without observing, that an abridgment thus made is the only sort of abridgment on which any such confidence can be placed. On the part of any *uncommissioned* abridger, no degree of ability can have any such effect as that of giving to his work a just title to any such confidence. In the original, suppose imperfections in any abundance; in the abridgment, none. The greater the number of

these imperfections, the more delusive and dangerous to trust to will the abridgment be. For it is from what the original *is,* not from what it *ought* to have been, that the interpretation put upon it by *the judge* will be deduced: unless indeed it should happen to suit his private views to interpret it according to what it *ought* to have been. For wherever, through the medium of that which *is,* that which *ought to have been,* and *is not,* is discernible, the judge is upon velvet: with hands decorated with sham chains, he decides this way or that way, whichever he find most agreeable and convenient.

[*]This tract is now published for the first time. The dates on the MSS. from which it is extracted, cover the period from November 1819 to the middle of April 1820.

[*]Morning Chronicle, 22d November 1819.

[†]See Cobbett's Parl. Debates, XVII. 559 *et seq.*

[*]*Aiming.*] In this word may be seen the temper and disposition of the men by whom the means were proposed and concurred in. Except in so far as success is more or less probable, what need is there, and thence what ground is there, for new coercive laws, or so much as for punishment under the old? But vengeance was at heart, and discernment was blinded by it.

[†]*Change.*] The political institutions, good and bad together, being like the laws of the Medes and Persians declared immutable, for the purpose of perpetuating the bad, and the imperfection of the good—hence the mere act of aiming at a change, be it ever so good, is denounced as a crime—as the crime of some, for which, lest vengeance should remain unsatiated, all are to be punished.

[‡]Aiming at the subversion of all order in society, being a phrase utterly void of meaning—a phrase designative of nothing but the state of the understanding and the passions, on the part of those by whom it is employed, is, in its nature, incapable of an answer, other than what is given by the mention thus made of it.

[*]The Statutes of 60 Geo. III., commonly known by the designation of "The Six Acts."—*Ed.*

[*]I would describe myself by my country. How can I? The Irish Union Act has left me no means. As an Englishman, shall I say? But if there be any injury, Englishmen have not any greater part in it than Scotchmen. As a Briton, shall I say? Britons have not any greater part in it than Irishmen. As a Briton and Irishman, shall I say? Language will not suffer it. Yet I am just as truly an Irishman as I am a Briton, in so far as Briton includes Scotchman.

[†]The affirmative, not the negative, is the side in which proof should in the first place be adduced. Such is the acknowledged rule, not only in the field of local law, but in the field of universal law—in a word, over the whole field of reason. If to this canon there be any exceptions, small indeed is their extent, nor will the present case be found to be in the number of them.

Guilt is imputed to us—guilt of the deepest dye. But the proof, where is it?

Nowhere—none adduced—none so much as attempted to be adduced: yet condemnation follows—has followed—just as if there had been proof, and that proof complete and conclusive.

[*]In this country, under the existing state of the government, excitements to unjust and pernicious wars have place to a deplorable degree—to a degree greater than under any other form of government, either despotic or democratic.

In a democracy, those on whom war depends,—namely, the great body of the people,—have everything to lose and nothing to gain by war in any event. In a despotism, those on whom it depends may have to gain in the case of success, to a certain extent; but by any ill success they are complete losers, and their chance of gaining is never equal to their chance of losing.

But in this country, in the persons that form its government, those on whom war depends have much to gain in every event: whether the war be what is reputed a successful one, or be an unsuccessful one. What they have to gain is patronage—patronage contingent in case of conquest: in the case of ill-success and constant defeat, still, and for a certainty, there is additional patronage. True it is, that while gaining as ministers they will be losing as citizens; but to men in their situation, even the pecuniary gain will in the one shape often be, and will always appear to be, greater than the loss in the other. The gain is certain, immediate, and in large masses: the loss is unliquidated, gradual, and in great part contingent and remote.

One class of rulers there is, whose profit by war, so far as money alone is concerned, consists only in patronage. To this class belong, for example—1. The Monarch; 2. The Commander-in-Chief; 3. The first Lord of the Admiralty; 4. The Secretary at War.

Another class there is, to whom profit, over and above any that may come in the shape of patronade, is yielded by war, through the medium of the distress of individuals. To this class belong—1. The Lord Chancellor; 2. The Judge of the Admiralty Court. The Lord Chancellor, through the medium of the bankruptcies, of which it is productive; the Judge of the Admiralty Court, through the medium of the captures and the consequent litigations of which it is productive: add to which, till t'other day, a Lord, who by pretending to be a sort of clerk got to the amount of £38,000 a-year for himself and dependents together.

Under a despotism, no such excitements to flagitious war have existence. It is only under Matchless Constitution that the monarch has any need of the matter of corruption for carrying on his government.

[*]Constitution, p. 113, Art. VII.

[†]Constitution, p. 134, Art. III.

[*]The above is followed by extracts from contemporary works, illustrative of the prosperity and felicity of the United States. The matter contained in them being now

to a certain extent antiquated, it is considered that the space they would occupy in this collection may be more aptly reserved for the original speculations of the author.—*Ed.*

[*]See above, Radical Reform Bill, p. 579.

[*]Memoirs of the political and private life of James Caulfield, Earl of Charlemont, by Francis Hardy, Esq. London, 1810, 4to. (See p. 269, *et seq.)*

[*]*English Institutions.* In this phrase, let Scotchmen see the sort of regard testified for Scottish "institutions;" Irishmen for Irish.

[*]Bryan Edwards, in his History of the West Indies, even in exaggerating the utility of colonies, does not suppose the rate of profit upon capitals employed in the plantations greater than seven per cent., whilst it is fifteen per cent. upon capital employed in the mother-country.a

[[3]]Art. 2. (*A farthing.*) By taking, for the standard note, a principal sum, having for the amount of its *daily* interest, at the proposed rate of interest, an *even* sum (*i. e.* a sum having an existing piece of coined money or number of pieces of coined money, corresponding to it,) the *multiples* of this *standard* note will in like manner have *even* sums for the respective amounts of their daily interest, and their *aliquot parts* will have for their amounts of interest, sums capable, when put together, of being made up into even sums.

Here, as in Exchequer bills, the interest is computed daily, that each note may receive from each day a *determinate* addition to its value, and may pass accordingly in circulation.

The smallest of all notes possessing this property is taken for the standard note, because the smaller a note, the greater the number of persons that are capable of becoming customers for it.a

The standard note being scarcely small enough in this view, it were better, perhaps, that not only the *half,* but the *quarter* of it should be issued at the same time.

The larger notes will serve to protect the smaller ones from the contempt which might otherwise attach upon them, by reason of the smallness of the daily, and even weekly, amount of interest.

[[12]]Art. 14. (*Received at government offices.*) Were this to be done from the *first,* a great lift would certainly be given to the proposed currency at once: the only objection seems to be, the possibility lest, in case of any sudden turn taken against it by the public mind, the exchequer should for a time be overloaded with it, *i. e.* labour under a *deficit* of cash (the only money that nobody can refuse) to the amount of it. But in Chapter IV. the improbability of such an event, and at the same time an effectual remedy, is pointed out.

Supposing bank-notes to be driven out of the circulation,a the same sort of *necessity,* or supposed necessity, which gives employment to *bank* paper in the transactions of governmentb and in other transactions upon a large scale, in preference to cash, to save *counting, examining,* and *luggage,* would create an equal demand for the *annuity note* paper on that score.

[[14]]Art. 16. (*Least quantity.*a) A note under this amount would consequently not be capable of being taken out singly, but only as one in a parcel, with other notes of the same or different magnitudes. So also, *perhaps,* in regard to the carrying in notes to the local office to be sent up to the general office, to be returned from thence with the interest; as likewise in regard to the changing large for small notes, or *vice versá,* or injured notes for fresh ones. But instead of a prohibition, as above, the same end might be answered, perhaps more advantageously, in some, at least, of the above instances, by a small fee, acting as a penalty to the amount of it, as by the next article.

By this means, the offices would be kept clear of the most troublesome, as well as numerous, class of customers. *Silver* notes, for example, would in that case be taken out, not *singly* by *journeymen* manufacturers, but in *parcels* by *masters,* by whom at pay-day they would be distributed among their journeymen.

Interest would by this means be *capable* of being received at the offices upon the smallest notes (which, as above, is necessary to their passing in change for large ones;) though what is probable is, that on the small it will scarcely ever be demanded. (See on this head, Chap. V. *Profit by interest undemanded.*)

What is the least note that can be issued with profit, will be determined by the quantity of *time* occupied in the operations necessary to the issue of it. Possibly on this account, in the silver, or at least in the copper notes (if any,) the actual signature of the local office-keeper might be dispensed with, and a stamp of some kind (affixed at the time of issue at *his* office, or previously at the *general* office) be employed in its stead.

In this power is included that of suspending the issue of notes of any particular magnitude or magnitudes; by which means, in case of an *inordinate* demand for the proposed paper (viz. such an one as shall threaten to swell to a pernicious magnitude the quantity of it producing the effect of money in the circulation,) a stop may be put at any time to the inconvenience. (See Ch. IX. *Rise of Prices.*)

[[17.]]Art. 20. (*Conversion.*) *Conversion* is a word used for shortness, to indicate the result of two operations:—on the part of government, the redemption of such or such a mass of stock annuities; and on the part of the stockholders so expelled, a purchase made of the fresh mass of note annuities to equal amount—a result which, in the case where a man does not choose to part with the mass of annuity he receives from government, is a necessary consequence.

That the disposition to accede to such conversion should be nearly universal, seems altogether probable. The loss of interest is but a sixtieth; and, in all other points, the change will be greatly to a man’s advantage. In a very short period it cannot fail of

taking place. When stocks (three per cents.) are no higher than par, the £2 : 19s. note annuities are (it is true) worth, as far as interest only is concerned, no more than £98 : 6 : 8;—but no sooner are three per cents. up at 102, than the £2 : 19s. per cent. are worth upwards of £100¼.

Among any such group of annuitants thus forcibly expelled, there will always be a certain proportion (it is true,) who at the time of the expulsion were desirous of disposing of their annuities, and would have done so, had the matter been left to their choice. But, by the supposition, there will be at the same time another group desirous of purchasing a mass of annuities, equal at the least to that which is thus wished to be disposed of; otherwise the price of the article would not be at par, which it is supposed to be;—therefore, setting the one demand against the other, the whole amount of the mass of annuities paid off at or above par, may be set down as so much taken from a set of proprietors, who will not part with such their property, but will accept of it in the proposed new shape.

Proposed mode of effecting the conversion.—Adjoining to the room where a man signs in the stock-book a recognition of the redemption of his mass of stock annuities, are two other rooms—a money-room (as at present the dividend-warrant room) and an annuity-note room. Question by the clerk: "Is it money you want? yonder is the room for receiving money, and here is the warrant for it. Do you keep your annuities? yonder is the annuity-note room, and here is your warrant for the amount in annuity-notes."

On this occasion, *two* provisions, customarily inserted in the acts, will require observance;—1. That notice (a year in some instances,a half-a-year in others)b be given of the intention to pay off; and that the masses paid off at once be not less than of a certain magnitude—£1,000,000 in some cases, £500,000 in others. Of the *former* the object was, as it should seem, that a man may have time to form his plans in regard to the employment of his money; of the *other,* to obviate the suspicion of personal preferences, which, if the masses were small and undetermined, might be manifested in favour of individuals; viz. by paying a man off, or respiting him, whichever were most advantageous at the time.

To comply with these conditions, as far as appears either practicable, or material, or consistent with the practice and intention of the legislature:—suppose the course taken, in regard to the redemption of the *stock* annuities, with a view to their proposed conversion into *note* annuities, to be as follows, viz.—

1. Notice to be given, in the usual form, on the day immediately preceding the *next* day for a half-yearly payment, or on any earlier day subsequent to the then *last* day of half-yearly payment;—such notice to be expressive of a general *intention* on the part of parliament, from and after the day mentioned in such notice, to pay off the then remaining mass of stock annuities, in masses or lots of not less than the above stipulated magnitude of £500,000, as fast as the sums of money for the making of such payments shall respectively be completed;—the order in which the masses shall be paid off, to be determined by a lottery, unless changed in the way next mentioned.

By the publication of the progress of the issue in the newspapers, it will be known all over the kingdom, day by day, what sum is in hand applicable to this purpose. The masses being marked in numerical order for this purpose, each stockholder will see, day by day, whether the mass his portion of stock belongs to is ripe for payment, or if not, how soon it is likely to become so.

That a *general* notice of the *intention,* in contradistinction to a particular notice for the very day, was all that was meant by the legislature, may be inferred with some degree of assurance from the practice in Mr. Pelham's case. Fifty-seven millions worth, and upwards, was the mass of capital in relation to which notice was given on that occasion—that, in the event mentioned, it should, on a particular day mentioned, be paid off: so that, if the invitation given had remained altogether without compliance (an event which for some time was highly probable,[c]) the whole would on that one day have been to be paid off, and the money put into the hands of as many as on that one day might happen to apply for it. But, that such payment could have taken place, either in respect of the whole of the mass, or so much as the greater part of it, and that, either on the day fixed, or on any assignable subsequent day, within a week's or a month's or even a quarter's distance of it, is a result that does not present itself as probable.

To borrow nearly fifty-eight millions in the lump, and at that early period too—or even nine and twenty millions, and that payable all in one day—presents itself as an affair of no small difficulty, even on the ordinary footing of mutual obligation as between the two contracting parties. How much greater the difficulty, if (as by the supposition contended against) one party (composed of the eventual lenders) was to be bound, while government, the eventual borrower, was to remain loose!

It seems, therefore, that (according to the interpretation put in that instance by parliament) by a notice that the capital of government annuities will, to such amount, be paid off on such a day, nothing more is to be understood than that (as here proposed) a *part* will be paid off on *that* day to such as apply for it, and the *remainder* at some *subsequent* day or days, according as the money for paying off shall happen to come to hand.

If not—and if it were regarded as an article not to be dispensed with, that no one parcel of the consolidated 3 per cents. should be paid off but on one of the half-yearly days in use for the payment of the dividends on those annuities, and that day posterior, by one day at least above a twelvemonth, to the first day on which the notice to that effect shall have been made public—the consequence will be, that upon the *first* parcel so paid off, the loss of *time* and *interest* will amount to a full twelvemonth; but that upon all *subsequent* parcels, the loss of time will be such as cannot amount to less than a year and a quarter upon the whole. For paying off the *first* parcel—say on the 25th of December 1804—the latest day on which notice can be made public, will be the 24th of December 1803. For paying off the *second* parcel, the earliest day that can be appointed will be the 24th of June 1805. Should a parcel of the magnitude required by the act (£500,000) have come in or been made sure by the 25th of December 1803, notice may be given on the next day, appointing, as the day of payment in respect of that *second* sum, the 24th of June 1805. But on this *second*

transaction, 1¼ year, all but a day, would be lost. If, again, by the 23d of June 1804, a *third* sum happened to have been collected or made sure, and notice given accordingly for the 24th of June 1805, as before—then upon that sum no more than a year and a day would be lost, as above mentioned; and upon the *whole,* supposing the intermediate days—of collection perfected, and notice given accordingly—to run in a regular series between such earliest day and such latest day, it would, by the nature of an arithmetical series come to the same thing as if the quantity of time thus lost amounted to 1¼ year in *each* instance.

[*]Of the annual amount of money received in the shape of income, and *capable* of being employed in the purchase of the proposed paper, a conception may be formed from the supposed amounts of the several component branches of the national income, as exhibited in the *income table* framed for the purpose of the income tax, and printed in Mr. Secretary Rose's Finance Pamphlet of 1799; to which are subjoined the amounts of the same articles, according to the estimate of Dr. Beeke.a

	Official Estimate.	Dr. Beeke's Estimate.
Land rents,	£25,000,000	£20,000,000
Farming profits,	19,000,000	15,000,000
Tithes,	5,000,000	2,500,000
Mines, navigation, and timber,	3,000,000	4,500,000
Houses,	6,000,000	10,000,000
Proportion for Scotland,	5,000,000	8,500,000
Income from possessions beyond sea,	5,000,000	4,000,000
Interest in funds, deducting foreign property,	15,000,000	15,000,000
Foreign trade,	12,000,000	8,000,000
Shipping,		2,000,000
Home trade,	18,000,000	18,000,000
Other trade,	10,000,000	
Labour,		110,000,000
	£123,000,000	£217,500,000

Observations.—The more regular the receipt, and the larger the masses received, are, in proportion to the total income of the year, the better adapted are they to the purpose of the proposed temporary employment. Stock dividends occupy the highest point of the scale—professional profits, where accumulation is out of the case, the lowest. The weekly pay of a labourer would afford him no inducement to take out annuity-note paper in the way of issue, unless in case of boarding; but in the way of circulation, it would at least be upon a footing with cash.

[*]*Frugality,* itself a virtue, is an *auxiliary* to all the other virtues: to none more than to *generosity,* to which, by the unthinking, it is so apt to be regarded as an *adversary. The sacrifice of the present to the future,* is the common basis of all the virtues: frugality is among the most difficult and persevering exemplifications of that sacrifice. Important in all classes, it is more particularly so in those which abound in uncultivated minds. In these, to promote frugality is to promote *sobriety:* to curb that

raging vice which in peaceful times outstrips all other moral causes of unhappiness put together. In the prospects opened by frugality, the wife and children have a principal share: they derive nothing but vexation and distress from the money spent at the *gin-shop* or the *ale-house.* Compared with the *prodigal,* the hardest of *misers* is a man of virtue.

In the "*Outline of a plan of provision for the poor,*" as printed in Young's Annals of Agriculture,a among the *collateral uses* there mentioned as derivable from the system of *industry-houses* there proposed, is that of their affording, each of them to its neighbourhood, a *bank,* for the reception and improvement of the produce of frugality on a *small scale,* under the name of a *frugality bank.* In the plan that was handed about of the then proposed *Globe Insurance Company,* since established by act of Parliament, among the uses mentioned as proposed to be made of the stock of such company, is that of carrying on the business of such a *frugality bank,* with a reference to the suggestions given in the above papers.

Were the proposed annuity-note paper to be emitted, "*Every* poor *man might be his own banker*:" every poor man might, by throwing his little hoards into this shape, make banker's profit of his *own* money. Every country cottage—every little town tenement—might, with this degree of profit, and with a degree of security till now unknown, be a *frugality bank.*

[(b)]*caused.*] It is of no consequence, either in what manner, or by what means, the mischief has been done—whether the person have been beaten or wounded with or without instruments,—whether it have been occasioned by a stone or other solid body—by a current of air or other liquid—by water, light, heat, or electric matter directed against the party injured—or by presenting some disgusting or hideous object to the touch, the taste, the smell, the hearing, or the sight—or by administering, by force or otherwise, a drug producing vomiting, fainting, or other inconvenience.

It is of no consequence that the means employed have been indirect; for example, whether a dog or any other animal have been employed as the instrument, or whether, by false insmuations or other artifices, an innocent person, or even the individual himself, have been employed for the same purpose; as if he have been persuaded to walk into a trap or a ditch which had been concealed; or voluntarily to expose himself to the action of causes injurious to his health.

The offence may be equally committed by removing the remedy of which he would stand in need against some approaching evil of the same nature: as, for example, if food be removed from the reach of a man pressed with hunger—if the medicines of a sick man are taken away.*

[*]In and for the purpose of another work,† a systematical view was endeavoured to be given of the aggregate body of *offences*—meaning, of sorts of human actions, in relation to which, in respect of the mischiefs of which they respectively threatened to be productive, it naturally would, on the part of a legislator, come to be proposed for consideration, and in general had been matter of consideration among legislators, whether it might not be advisable to render them objects of prohibition and

punishment, or something that should have the effect of punishment.

At the first step, the aggregate body thus denominated was broken down into four divisions:—and the groups comprised in those several divisions were so composed, that of each group, that is to say, of every individual in each group, a number of propositions, twelve or thereabouts, might be predicated, and this in every instance without involving any proposition that was false.

These propositions being such as in every instance appeared to lead to practical conclusions—conclusions indicative in each instance of a probability that, by pursuing such or such a line of conduct in legislation, might be effected the prevention of sensible mischief and inconvenience (mischief reducible ultimately to this or that modification of pain, or to loss of this or that modification of pleasure)—this scheme of classification was recommended, as adapted to the purpose of the enunciation of useful truths.

On adverting, on the same occasion, to the schemes of classification employed in relation to the same subject by men of law in general, and by English lawyers in particular, an assertion was advanced, that no scheme of classification was to be found in use, of the primary classes of which, propositions completely true could in any thing like an equal number, if in any number at all, be applied.

[§]*Transference.*] 1. As to the arrangement, by which in the present instance, a suit is, without imputation of misdecision, taken out of the *possession* of the Judge in whose judicatory it originated, and removed into another, operating upon principles widely different,—taken out of the regular and technical course, and removed into the natural and summary,—in this feature there is nothing that has not its sanction in established practice.

2.—i. In the first place comes the widely-extending case, in which, by the writ called a *certiorari,* a suit is taken out of any one of the existing local, into one or another of the Westminster-Hall judicatories. On this head, these few words may suffice. Of this arrangement the origin being lost in a manner in the clouds of antiquated lore, no precedent exactly *in point,* as the phrase is, is afforded by it. True it is, that those courts, out of whose hands the jurisdiction was thus taken, were of the inferior, not of the superior order. But, suppose need of change to have place, what difference does it make whether the courts be of the one order or of the other?

3.—ii. Be this as it may, in the second place comes the whole jurisdiction of the Equity Courts; more particularly that branch of it, by which a suit being in the possession of a set of Common-Law Judges, was and is, without any the least suspicion of misdecision on their part, taken out of their possession and carried on and determined, upon altogether different principles; and this interruption given to the suit at any part of its course.

4. True it is—that, in two circumstances, nor these immaterial ones—the present modern case differs from that ancient case.

5.—1. One is—that in this case, the object is, and the incontestable effect will be, the reduction of the mass of delay and expense from a mountain to a mole-hill: in that case, one effect has been, nor can it be doubted but that one object, and that the main one, was the raising the *hill* (the appellation of *mole-hill* would not here be in its place) into a mountain.

6.—2. The other is—that, in that case, during the sleep of the infant legislature—the, in those days, ricketty, weakly, and purblind legislature—the usurpation was effected, by one subordinate instrument of the King's executive authority encroaching upon another: their common master, if he understood anything, understanding nothing but fighting and hunting, and looking another way, not knowing nor caring what they were about;—in the present case, by the legislature itself,—the only authority which is, or dares pretend to be, competent to the purpose.

7.—iii. In the third place, a proposition there is, which, though not carried into effect, may not be altogether on this occasion without its claim to notice. It is, that about the institution of a *commission* for the clearing off of certain arrears: an expedient mention of which is made in the Preface. Of the mention on that occasion made of that expedient for the production of the needful effect, the purpose is the exhibition of its impracticability, and of its inaptitude were it practicable. Of the mention here made of it, the only purpose—the only one, but that a sufficient one—is, the presenting to the public at large, and Equity suitors in particular, the observation, that all persons, and in particular all lawyers, who have acceded to that proposition, stand precluded—or, in lawyers' language, *estopped*—from stating, as an objection to the present system, the circumstance of its taking a suit out of one set of hands, and placing it in a different set.

8.—iv. In the fourth and last place, look to France—look to Bonaparte's code: in that so-recently-framed, and so-highly-and-extensively-approved body of existing law, may be seen the same salutary and well-intended arrangement exemplified; though without any such ulterior benefit in contemplation, as that which the here-proposed institution has for its object; namely, the affording, for the efficiency and beneficence of all-comprehensive change proposed, the pre-ascertained security here promised by the cheap and quiet experiment hereby organized.

9. In that one of the French legislator's five codes, which bears the title of *Code de Procedure Civile,* Art. 7. is a passage, of which the following is a translation:—"The parties may at all times present themselves spontaneously before a *Juge de paix:* in which case he will hear and determine the matter in dispute between them, either in the last resort, if either from the law or the parties he has authority so to do, or subject to appeal: *and this even where he is not the natural* (or say proper) *Judge* of the parties, either by reason of the habitation of the defendant, or by reason of the local situation of the subject-matter in dispute."—Here ends the passage; meaning, of course, by subject-matter in dispute, a thing immoveable, such as (for example) a piece of land, a house, or other erection, &c.

10. In the character of a precedent, the value of this arrangement will not escape the notice of a real lover of justice. Off fly the fallacies and cavils, of which the words

theoretical, speculative, utopian, good in theory, with their *et cæteras,* are the vehicles. Behold here, in this *law* and in this *practice,* not only what *may* be done, but what *is* done, where the ends aimed at are the proper ends of justice. Not that in Bonaparte's Procedure Code these ends are uniformly, and undeviatingly, and exclusively aimed at: for in the penning of it, the claw of the learned harpy has here and there contrived to come in for its share;a but that they are so in a degree prodigiously superior to any that can be seen exemplified in any Procedure code anywhere as yet established.

11. Danger to justice,—can any ground be formed for any such apprehension, from a power to this effect, given to the individual, whoever he may be, who, in the judgment of the majority of those whose interest it is that the best choice should be made, is the worthiest that all England can afford? Why, for these fifteen years, or more, has this same power been possessed and exercised, and that without complaint, all over France (not to speak of other countries,) by a numerous class of judges, many individuals of which have for their remuneration not so much as £50 a-year as salary, without any thing in the shape of fees.

[*]*Precedent.* Of power not less extensive, a precedent may be seen in that given to the Commissioners for Inquiry into the subject of Real Property. And note, that in that case it was not, as here, by the King in Parliament that the powers were given, but by the King alone, with the counter-signature of the Keeper of the Privy Seal. Date of the commission, June 6: year of the King, the ninth: year of our Lord (not added), 1828.

"And for the better discovery of the truth in the premises," says the instrument, "We do by these presents give and grant to you, or any three more of you, full power and authority to call before you, or any three or more of you, such and so many of the officers, clerks, and ministers of our Courts of Law and Equity, and *other* persons, as you shall judge necessary, by whom you may be the better informed of the truth in the premises, and to inquire of the premises and every part thereof, by all *other* lawful ways and means whatsoever.

"We do also give and grant to you, or any three or more of you, full power and authority to cause all and singular the officers, clerks, and ministers of our said Courts of Law or Equity, to bring and produce upon oath before you, or any three or more of you, *all* and singular rolls, records, orders, books, papers, and *other writings* belonging to our said Courts, or to any of the offices within the same, as such officers, &c."

If, when conferred by the Crown alone, the conference of this power is legal, constitutional, and unexceptionable,—how much more clearly unexceptionable where the whole power of Parliament is, as here, applied to it? True it is, that the operations, to which in *that* case it extends, are no others than those designated by the words "*bring and produce,*" not extending to *definitive* transference; but, for the purpose here in question, such transference is necessary.

Turn now to the existing system. Look to it under the so-perfectly-distinguishable, though so-intimately-associated heads of factitious delay and expense; not forgetting

complication, thence obscurity, uncertainty, and misdecision.

Living instruments, by means of whom, and consequently *upon* whom, Equity Courts operate, three: a *Sheriff,* a *Serjeant-at-arms,* and a *Sequestrator:* a Sheriff, for operating indiscriminately upon persons and things; a Serjeant-at-arms, for operating commonly upon persons only; a Sequestrator, for operating upon things exclusively. These, for Equity Court proceedings, by a bill and answer, exclusive of proceedings under a Bankruptcy Commission: as to which, see the next section—Sect. VII. *Prehensors.*

1. First, as to the *Sheriff.* This functionary is the common *Jack-of-all-sides* (juvenile cricket-players will understand this), to four different masters at once; namely, the three Westminster Hall Common-Law Courts, in all ordinary cases, and the Equity Judge, now and then, in an extraordinary case. By *the* Sheriff, understand, on this occasion, the Sheriff of Middlesex: the sheriff of that county alone, of all the fifty, having been regarded as having his residence near enough to the Equity Justice-chamber, to be capable of being operated upon by the Equity Judge, without preponderant inconvenience; accordingly, over this Edom alone has the David of Equity ventured to cast forth his shoe.

Not much less near at hand, it is true, than Middlesex, are three other counties; Surrey, to wit, Kent, and Essex;—a discovery, of which, for other purposes, and in particular for purposes styled *police* purposes, use has of late years been made. But, by causes which it would take too much room to explain, no other living instrument of this kind was found so well fitted as this Middlesex one to a Lord High Chancellor's hand.

Note now how well fitted,—"No man can serve two masters," says *Scripture* as well as Reason: meaning, by *serve,* serve *well.* But, hundreds of years ago, four sorts of judicial masters there were, besides this one, who, if they had not had each of them a fraction of this functionary to serve them for a servant, would have had *none.*

There are—the King's Bench, Common Pleas, and Exchequer National Judicatories, having all of them the Sheriffs of *all* counties at their command; with the Justices of Peace in general sessions throughout the nation; County Judicatories, these—each having no other sheriff than the sheriff of its own county at its command.

In those days, the process of the King's Judges being not unfrequently withstood by the Barons and Knights his feudatories,—the operations of civil government could no otherwise be carried on than by a sort of *guerilla* warfare. Commander of the army in each shire, the Earl—*Saxonicé* Alderman, *Latiné* Comes, meaning companion of the King, whence *Normanicé* Comte, *Hispanicé* Conde, &c.: Lieutenant-General, *Anglo-Latine* Vice-Comes, *Saxonicé* Scire-Gereve, (Deputy Commander of the Tertorial Division, thus denominated:) whence, by contraction, *Sheriff.*

And so, because, so long ago, this miserable makeshift was regarded as necessary,—it must now-a-days, to the exclusion of every appropriate instrument,—now, when it has so long ceased to be necessary,—be continued.

For centuries upon centuries, this *Vice-Comes* has been a deputy without a principal: the principal (who, when he had existence, was called the *Comes,* alias the *Earl* of the *County,* or say *Shire),* an imaginary being, without a real "*habitation*"—without anything but a "*name.*" For a specimen, but no more than a specimen, of the suffering—of the practical and too real suffering springing out of this theoretical and ideal confusion, see "*Petition for Justice,* § 14. *Results of the Fissure—Groundless Arrests for Debt.*" (Vol. V. p. 491.)

2. Secondly, as to the *Serjeant-at-Arms.* This functionary is a satellite, appointed on each occasion by the Equity Judge himself. How he came by this his formidable title, requires explanation. Once upon a time, some person or other having omitted to do something which by the Judge he had been bid to do,—his Lordship dreamt that a *rebellion* had been raised, which being admitted, an army became necessary for the suppression of it. Thence came the Chancery writ, styled a "*Commission of Rebellion:*" by which was meant—not, as in the case of a "*Commission of Inquiry,*" a commission to *make* the thing, for the making of which the commission was issued—not a commission to *make* a rebellion, but a commission to *quell* one. Commander of the army, or commander and army, all in one, this same *Serjeant-at-Arms.*

3. Lastly, as to the *Sequestrator.*[a] While, during a course of years, for the sake of the profit upon the expense, the Chancellor, with his myrmidons, was making believe to do that which, if so minded, he could have done, with next to no expense and vexation to anybody, in the course of some number of days or hours,—a sort of operation called *sequestration* required to be performed: and this, like other *operations,* required *operators.* Sequestration, the operation: sequestrators, the operators:—in these may be seen the "*manipulus furum,*" of whom the Serjeant-at-Arms was, in case of necessity, the *Thraso.*

For the purpose of giving execution and effect to a portion of *substantive law,*—and, to that end, for the purpose of giving execution and effect to the correspondent *judicial mandate* issued on the occasion of a *demand* made on the Judge for his appropriate service,—on that same occasion and to that same purpose, what is requisite is, that, into the hands of the Judge be taken either the subject-matter itself of the demand—namely, the mass of property or other benefit, of what nature soever it be, which is the object of declared desire; or else a *person,* who for shortness is called a *defendant:* meaning thereby a *person,* who, on the occasion in question, for the purpose in question, is assumed to be in possession of this same object, and prepared to *defend* himself, in that arena, against all endeavours to take the object from him: though the truth is—that, so *costly* in this field has the war been made, that out of a thousand, not one is there who, how justly soever entitled to the possession, would, if called upon, be able so much as to *begin* to defend himself in that same field, with any possibility of effectual defence:—say then the *defendant,* or *proposed defendant,* himself. But, this same person, or any *person*—to what *end?* to what *purpose?* Except where, the case being a penal one, the punishment appointed is such as requires the *body* of the individual to be forthcoming for the purpose of being subjected to it, no use is there for the *body,* but for the purposes of coming at, by that means, the

valuable thing itself, which is the object of the desire.

To this end, the Dispatch Court Judge, if, meaning honestly, he has the power, will act according to the circumstances of the *individual* case. The demandant he has seen and examined, of course, at the very outset of the suit: this being the very operation from which the suit has received its outset. From this examination he will have framed his judgment as to what cource to take, for the purpose of securing, with the minimum of delay, vexation, and expense, to all parties, the eventual rendering of the service demanded; that is to say,—if, in his view, a preponderant probability has place, that the proposed defendant, unless prevented, will convey, out of the reach of the Judge, not only the subject-matter of the service demanded, but his *body* likewise, by means of which, in case of need, the compliance with the demand might be compelled, he will for this purpose cause *hold* to be taken—*prehension* to be made—of things moveable, things immoveable, and body—one, two, or all three, as occasion may require: mindful throughout, on no occasion to produce so much as one atom of *evil,* more than is necessary for the production of the preponderant *good* endeavoured to be produced.

[*]*Taking.*] 1. By what hands, then, shall they be *delivered* into it?

2. To the situation of a judicial functionary of the grade of a Judge, a manual operation such as this is not congenial.

3. To the eyes of the Judge thus ousted of jurisdiction, the witnessing of it would be needlessly painful.

4. Not but that, for the wound thus producible, a precedent, or something very near to one, were it needful, might be found.

5. But no such wound is needful.

6. On the part of the subordinates, on whom the duty is here imposed of submitting to the operation, no such vulnerable dignity has place.

7. On this occasion, as on every other, whatever is done, the less the expense, in every shape, at which it is done, the better.

8. As to superordinates, they will know better than in any open and direct way to attempt to throw obstacles in the way of obedience on the part of their subordinates.

9. *Here,* then, may be seen—*benefit maximized, burthen minimized.* Turn now to the *existing system: there* may be seen burthen maximized, benefit minimized.

10. To exhibit, were it even no more than a rough outline, of the several diversifications of the course taken—taken by the existing system in general, and by the Equity branch of it in particular, for the attainment of these two conjunct sinister ends,—would require, for a basis, a sketch of the whole body of judicial procedure; including, in the Equity part of it, the two vast morbid excrescences—the *Bankruptcy*

Courts and *Insolvency* Courts.

11. This being *here* impracticable, suffice it to say that it is by the observation of the opposite practice, as carried on under the existing system, and of the enormousness of the mass of evil produced by it, that the several *preferences* here recommended were suggested.

12. At the head of the mass stands the portion of it produced by the practice by which for the price set by Judges, to every man who can and will pay that price, the liberty of any and every other man is *sold;*—sold, together with the additional powers of involving in utter ruin men in countless numbers by a known and infallible process,—supposing him so lost to all sense of humanity and shame as to accept of the invitation—still, as well as for ages past, held out to him by English Judges. Such is the practice by which, on the ground of the false assertion of a debt due, to the amount of which there are absolutely no limits, the prehension of the *person* of a man, and in consequence the destruction of his *commercial credit,* may be effected: the act of inflicting the suffering not being preceded by any inquiry into the *need* of it; the need of it—that is to say, for any one of the three above-mentioned purposes of justice. In the practice of no other country, in so flagitious a form (one may venture to say), have depredation and corruption on the part of judges been seen to manifest themselves. For a brief, but to this purpose sufficient history, of the course by which this part of the system has been brought to its present state of perfection, see *Petitions for Justice,* Device XIV. *Groundless Arrest for Debt.*[*]

13. Root of this, as of every other abomination of judge-made and fee-gathering law, the original sin inoculated by it—exclusion of the parties from the presence of the Judge. Necessary not less to the minimization of the burthen to the defendant, than to the maximization of the benefit to the plaintiff, is information obtained by the Judge, as to the circumstances of the parties on both sides, and in particular on the defendant's, at the very *outset* of the suit: for, on the state of the pecuniary circumstances of the defendant will depend the means which, for making provision for the *execution-securing* as well as for the execution-effecting purpose they afford: and, at *that stage* of the suit, no otherwise than by the word-of-mouth examination of the plaintiff can that same information be obtained:—of the plaintiff himself, or of any such representative of his, whom, according to his condition in life, the necessity of the case has on that occasion substituted or added to him.[a]

14. Of the thus all-comprehensive and hitherto unexampled extent here proposed to be given to the power of prehension, one natural enough consequence is—that, to a first glance, not only augmentation of the Judge's power should present itself as a principal *object* of it, but, moreover, in a degree more or less considerable, detriment to the interest of the defendant, as the *effect.* On a closer inspection, however, it will be seen, that, by the variety of choice thus afforded, effectual service is rendered to the defendant's, no less than to the plaintiff's side:—whereas, under the existing system, burthensome to an outrageous amount as is the prehension *actually performed,* still more outrageously burthensome is the *power,* as above given, of performing it:—at any rate, by the option of substituting to a more a less burthensome mode of operation, no mischievous addition to power is effected: and, with not less solicitude

has been looked out for—the mode of operation which will be least burthensome to the defendant's, than that which will be most beneficial to the plaintiff's, side.

15. As to *security,*—for the several modes in which, for the several above-mentioned *purposes,* it may be given, and the *occasions* on which it may require to be given, see Section XVII. *Prehensor.*

16. Minute indeed is the proportion, which the imagination of a non-law-learned reader could present him with, of the immense mass of expense and delay produced by the Equity practice in relation to this subject, with the correspondent probability of misdecision and unjust non-decision: in a word—of the imaginary rule of action thus feigned, the efficiency to all mischievous, mounted on inefficiency to all good purposes. Under the head of *Sequestration,* six pages in Madox's Chancery, II. 20, 4to, 210, will suffice to exhibit to him a miniature picture of one part of this mountain of predatory abuse.

17. Suggestions have, of late days, been brought forward, having for their subject-matter imprisonment for debt, considered in the abstract; and for their object—on the face of them, if not at bottom—the abolition of imprisonment, to the whole of the length to which it can, on that same occasion, be employed. Supposing *this* to be the proposition, with as much reason might be proposed abolition of *punishment* on every occasion—of punishment in every *other* form, on the occasion of *transgression* in every other form. Without the discernment to see that exceptions are necessary, or without patience to attend to them—thus does sentimentality, regardless of the dictates of the greatest-happiness principle, apply itself but too often to the establishment of general and sweeping rules.

[*]1. The topic of *remedies* being now, so far as regards the present purpose, at a close,—turn now to the existing system. Of the four species of remedies,—the originally-preventive and the suppressive are not here in question: remain the satisfactive, in which is included the compensative, and the punitive, or say the subsequentially preventive. In relation to these two, what then does the existing system? Of these two, for wrong in no shape does it so much as propose to itself to make provision of more than one. Sorts of shops, of which Judge & Co. are the shopkeepers, two: commodities sold, in one of them, a chance, such as it is, for money, which, when given in the name of compensation for wrong, they call *damages;* commodity sold in the other sort, a chance for the benefit produced by punishment; the enjoyment, such as it is, reaped by one man, from the contemplation of the suffering produced by punishment inflicted on another:—say, for shortness, the pleasure of *revenge,* or *vengeance:* and, in one of the shops, moreover,—namely, the King's-Bench shop,—you may call for damages or punishment, which you will; but (what seems whimsical enough), both together, even at that shop, where both are upon sale together, you cannot have. True it is—that while, in consequence of your asking for it, they serve out to you a quantity of the commodity you ask for—namely, the chance for damages, they serve out to you along with it, a quantity more or less considerable, of that other commodity which you have not asked for. But, no thanks to them. They don't know that they do so: they don't know what it is they are doing.

2. It is not by them that the commodity you did *not,* is added to the commodity you *did,* ask for. Not by their hands is this addition made, but by the hands of Nature. It sticks on without their perceiving it, and thus it is that you come by it. Go to a plumber, and buy a quantity of lead: buying the lead, you buy the chance of a quantity of silver in it; but if there really be any, it is more than the plumber knows of: it was left in, to save the expense of taking it out; and, in the case of the King's-Bench shop, where, under the name of justice, justice or injustice is sold, as it may happen,—whether the quantity of the suffering, which thus sticks to the *damages,* when actually served out, be sufficient for the purpose of the subsequentially-preventive remedy, is matter of accident. They know as little about it, as the plumber who serves out the silver with the lead, knows what use will be made of either: they know about the matter, as little as they care.

3. A natural question here, is—seeing this—that a shop is always open, where the *two* commodities may be had together, for the price of *one,*—the so much less valuable, along with the more valuable, and without any extra charge for it—how is it that, to any of the shops any man goes and gives his money for the less valuable article alone?

4. The answer is—that the difference depends upon *evidence:* upon the *source,* and thence the reputed *quality,* of the evidence which the party wronged happens to have at his command. For, according to the rules of the several shops, along with your money, you must, for the most part, for form's sake, have at your command and exhibit a quantity of evidence: at any rate a something which, without being evidence, is by them received as and for evidence. The King's-Bench shop has, as above intimated, two sides—the *civil* side and the *penal* side: on the *civil* side is sold the chance for *damages:* and there the evidence they insist upon is of a particular sort, regarded as a superior sort;a and if (such is your misfortune) you have none of this sort to produce, you must either go without remedy, or betake yourself to the other side: in this case, all you can have for your money is the pleasure of revenge; and for that, the shop you must apply to is either the penal side of that same King's-Bench shop, or some other shop, where they have nothing better to sell than this same pleasure of revenge.b

5. But, of this commodity,—the chance of which is thus sold on the penal side, and is worth so little, and to a man who believes in the same creed as those Judges profess to believe in, worth absolutely nothing,—the price, though so high as to be out of the reach of the vast majority of the people, is still abundantly less extortious and unreasonable than that of the chance for compensation.

6. Under the existing system, "no wrong is there that *has not* its remedy:" such is the aphorism delivered by Blackstone, and ready to be repeated by all those in whose minds law learning has extinguished the sense of shame. "No wrong is there that *has* its remedy:" this aphorism is not indeed exactly true, but it is beyond comparison nearer to the being so than its above-named opposite.

7. That which, on this occasion, was undertaken for, is an indication given of the *inadequacy* of the *provision* made, under the existing system, by *Judge-made law,* for *remedy* to *wrong* in the several shapes of which it is susceptible, together with some

general intimation of the causes by which such its *worthlessness* has been produced: of two of these causes, such general intimation has here been afforded: namely, the absurdity of not so much as attempting to administer any more than one of two remedies, where the nature of the case admits of and requires the application of both; and the still more flagrant absurdity of shutting out or letting in the one and the same evidence,—that is to say, the testimony of one and the same man,—according as it is the one sort of remedy or the other that, if admitted, he would apply for. As to what regards this latter absurdity, further particulars belong not to this place; but they may be found in ample abundance in the *Rationale of Evidence.*

[†]1. Note here, that, in several of the above articles, may be seen so many specimens of the matter of the proposed *Penal Code,* Book or Part I. *Offences collectively considered:* the remainder of which, namely, Part II., is contained under the head of *Offences severally considered.*

2. In the accompanying Table, are exhibited the contents of this first part, in and by the titles of the several Chapters: for the present purpose, to the words employed in the original Table, are added here and there a few words of explanation, Annexed to each title is proposed to be, if time and space admit,—a reference to that article of the present section, which presents to view a sample of the contents of it.a

3. Not altogether uninstructive (it is hoped) will be the comparison, if made, of the here-exhibited matter and titles of the proposed Code—with the matters and titles of any work by which, under the existing system, the Penal branch of law is undertaken to be exhibited, and exhibited accordingly, as it *is,* or, as it is *said* to be: Law—as it *is,* namely, *Statute law,* or say *Parliament-made* law: Law as it is *said to be,* namely, Fictitious Law, or say Common Law, or Judgemade Law. Instructive, in no small degree, the comparison—between the anxious and continued regard paid to human feelings throughout the one; and the utter disregard throughout the other:—to *human feelings,* that is to say—to *pain* and pleasure—(for the several diversifications of which, in the little work intitled *Table of Springs of Action,* determinate denominations have been found and employed)—disregard, in a word, for everything but the sinister interest of the framers, contemplated through the medium of the technical words and phrases of which the gallimautrey is composed.

4. In Book or Part II., containing Offences *severally* considered—under the head of each offence, application is made, of the matter of the greatest part of Part I.: *application,* that is to say, either by quotation or reference.

5. Of the penal matter employed on the present occasion, no part is there, which is not in and by that same proposed Penal Code, employed likewise and applied on other occasions; but in the ulterior and more extensive use so made, no sufficient reason was seen for omitting, on the present occasion, to make application of it to the present particular use. Being, however, necessarily *modified,* and in many instances more or less *changed,* in subserviency to the present *special* purpose, the several articles are not to be considered as exact *quotations* from the work at large. By the being thus presented to view as having been applied to a more extensive purpose, the matter will not (it is believed) be found rendered the less applicable to the present purpose.

6. But for the determined withholding of encouragement in every shape from above,—by the mere assurance of appropriate attention, effective encouragement would have been administered, and that same Penal Code would, many years ago, have made its appearance in a complete state.

7. On a late occasion, forgery considered in its application to no other modification of the offence than that by which property is affected, furnished of itself matter for a large folio: and of the ground which, as may be seen here, no more than a part of one single page sufficed to cover, no more than a part was covered by the hundreds of pages of that same folio volume. What, no that occasion as on others, was not considered, is—that forgery, in the whole of its extent, is but *one* modification of the art of *deception;*—and that, of all the offences, actual and possible, in the *calendar,* there is not one, in and to which this baneful art is not capable of being rendered instrumental and suxiliary. Constructed on the condensed plan here exemplified, a *Generally-applying Code* (so called in contradistinction to a *System of Particular Codes,* applying to so many different classes of persons)—or say, for shortness, a *General Code*—may be composed of no more than one or two octavo volumes, and yet be perfect: constructed upon that present pursued plan, it may be composed of so many hundreds, or as many thousand volumes, and still be imperfect. The Penal Code at large is in preparation and considerable forwardness. But, as already intimated, not exactly the same as those *here* employed, are the terms and method there employed. By the application here made of the *principles,*—abridgment, and alteration, in other respects, were necessitated.

[*]1. By the Equity Courts, from first to last, power, legislative in effect, though in so inconvenient a form, has been exercised:—to wit, by the establishment of *rules of action,* in the establishment of which the King in Parliament—the only supreme legislative authority recognised as such—has borne no part.

2. Not content with this, they have of late years, declaredly, and without disguise, overruled acts of Parliament to a vast extent. Witness the statute of *claims,* the statute of *frauds,* the statute for affording protection against *undocketed judgments,* and the *register* acts. See Tyrrell, 306. *Repealed* is the word this most enlightened and beneficently-intentioned professional and official lawyer employs, on this occasion, without scruple. In regard to tithes,—"everything has been presumed," say the *Real Property Commissioners,* Report I. p. 64, "to disturb enjoyment, and stir up controversy." And again, p. 68, "the frequent instances, in which, by technical rules, never understood but by lawyers, the intention of the testator, which Courts always profess to observe, is completely defeated, are a reproach to our law."

3. The circumstances in which, on the part of the legislature, this anti-constitutional insubordination, confusion, anarchy, and uncertainty as to all rights and obligations, have had their cause,—apply not to this case alone, but to *Judge-made* law throughout the whole of its expanse: and have accordingly, on many an occasion, been brought to view elsewhere.

4. States of the mind, to which these evils may be referred, are—partly indolence and

negligence,—partly sinister interest. Legislators, regarding themselves as having a community of sinister interest with Judge & Co., give themselves thus, by connivance, the advantage of establishing, by the hands of Judges, in an indirect and unobserved manner, and without drawing the attention of the people at large upon the subject,—many an arrangement, which self-regarding prudence might have prevented their attempting to establish by their own hands.

5. Resistance to any arrangement to the effect thus proposed, may accordingly, without danger of injustice or error, be considered and stated as conclusive evidence of a wish and endeavour to give strength and extension to *absolute,* under the mask of *limited,* power, in the hands of the ruling one, and sub-ruling or co-ruling few.

6. Any one of a number of words would,—if that same arbitrary power were not obstructed, as it is, by the correspondent and opposite arbitrary power of relatively ignorant men in the situation of jurymen,—suffice to give to these Judges an unlimited power of virtual legislation.

7. In their hands, the word *libel* would of itself suffice to place the press on the same footing as that which it is on in Spain and Portugal.

8. The word *conspiracy* has for some time been making its progress over the field of penal law, and is capable of converting into a crime any species of act, on account of which, it is the *will,* determined by the sinister interest or interest-begotten prejudice, of the Judge, to inflict punishment on any individual by whom that same act, how completely soever innoxious, has ever been done.

9. No wonder that it should be more agreeable to Judges to see the manufacture of the rule of action in their own hands, than in those of the legislature: to Judges, and to all members of the legislature, who, in their own view of the matter, are, as above, linked with Judge & Co. by the tie of a community of sinister interest.

10. As a *material* and *local* field is covered by webs, spun out of the bowels of spiders,—so is the logical field of law covered with nets, spun out of the brains of *Judges*—and more particularly of *English* Judges.

11. Thus it is, that over so vast a portion of the whole extent of the rule of action, the mind of the Judge is either the *best* or the *worst* source in which it can originate: the *best,* when untainted with, or purged from, the impurity infused into the situation by the fee-gathering system; the *worst,* when infected and polluted by that all-corrupting contagion.

12. From these considerations has been deduced, a plan for preserving the rule of action,—when brought from the state of Judge-made law, into the state of a code,—from being covered over with a fresh growth of that same imaginary and spurious law.

13. To the general propositions laid down by Judges, in the delivery of their judgments,—as well as to the tenor of those judgments themselves,—it would be

made matter of duty, to every Judge, as often as he saw, in the text of the Code, a passage presenting a demand for amendment—whether defalcative, additive, or substitutive—to apply a proposed amendment, expressed in the very words, in which, if approved, it would stand as part of the act to which it applies itself: exactly in the same way as that in which an *amendment* is applied in and by a legislative body: in which case,—in so far as, by the only legitimate legislature approved,—it would be aggregated to, and become part and parcel of the body of the Code. In relation to this matter may be seen, *in terminis,* a string of provisions in the proposed *Constitutional Code,* when published: to wit, at Ch. XII. *Judiciary Collectively*—§ 20, *Judges' eventually-emendative function.*

14. By so simple an expedient, and with such entire certainty, will be accomplished—that state of things, the accomplishment of which, in the hope and endeavour to prevent it, men in such numbers have been so forward to declare impossible.a

[*]*Necessary.*] 1. Of the necessity of all this precaution, the persuasion has for its ground the observation made of the rooted habit of insubordination, which, under matchless constitution, has place, on the part of the Judges of the Superior Courts, in relation to the legislature.

2. In two distinguishable shapes does this insubordination show itself: not only muffled up in a covering of technical jargon, as in the case of a decision on grounds foreign to the merits (as to which see *Petitions for Justice,* V. 476); but, even in an open way, by decisions, on the occasion of which, disobedience to Acts of Parliament is explicitly and undisguisedly avowed.

3. In the practice of the Earl of Eldon, when Chancellor, an instance of it may be seen in the pamphlet entitled "*Indications respecting Lord Eldon,*"a (V. 348.) No want on the part of the learned fraternity of lawyers will there be of exertion to frustrate the object of this act. Their endeavours must be anticipated and provided against. For further example of what is capable of being done in this way, behold a case which happened to fall within the cognizance of the author of these pages. Needful for a public purpose was a piece of land to be bought by government. Attorney-general, the now Earl of Eldon: Solicitor-general, the now Lord Redesdale. Under their joint care was drawn an instrument necessary to the obtaining possession of the land: reluctance on the part of an occupier was necessary to be provided against, and power of seizure in a certain event provided. In a certain case, yes: but in what case? In the case of "*refusal,*" said the instrument: in that case and no other. What was the consequence? That an occupant had but to sit silent and inactive, forbearing to signify any refusal; and there the business would have ended, unless King, Lords, and Commons, had been set to work afresh, to set it a-going again. After much entreaty, with no small reluctance, these pre-eminently learned persons were induced to make the requisite change. Of this inaptitude of expression, where are we to look for the cause? To inaptitude in a moral shape, or to inaptitude in an intellectual shape? In a moral shape, in one; in an intellectual shape, in both—was the hypothesis of one who was a sufferer by the delay: on the part of both, the indescribable and continually-declared horror, of all change is matter of notoriety:—horror of all change;—in other words,

anxiety to preserve from diminution the aggregate mass of human suffering, leaving it to receive increase from the undisturbed action of all those causes, by which it has been raised to the height at which it stands. These things considered, figure to himself who can, the agonies into which they will be thrown by the prospect of a Dispatch Court!

4. By the hands of Judges the ruling and influential few are thus enabled to serve their own particular and sinister interest, at the expense of the interest of the subject-many, in an oblique and unperceived course, in cases in which shame or even fear would prevent them from doing so in a direct and avowed way.

5. The emblem of the cat's paw is thus in some sort realized: in some sort,—but with this difference: in the fable, it was not without reluctance, nor without smart, that the quadruped lent its hand: whereas in the case of the bipeds, no smart is ever felt, nor consequently any reluctance: in the stock of the ready-roasted and tempting chesnuts they got their full share.

6. This community—of feeling, and sinister interest, and conduct—can never be too frequently brought into nor too distinctly and conspicuously held up to view.

[†]1. As to the check thus applied to the power of the Judge,—in the eyes of corruptionists, and all other persons, if any there are, who are wedded to the existing system, far from affording an answer to any objection on the score of the magnitude of the power, it will operate as an additional objection: forasmuch as, in so far as it has this effect, it establishes what in such eyes will, of course, be a *bad precedent;* having for its tendency, the reconciling the public mind to the idea of subjecting to eventual punishment, and thereby to present and actual controul, those who, in the existing state of things, are not by law subject, in effect, to punishment or controul in any shape.

2. The greater the power a man has of doing wrong, the less likely is he to do wrong;—such is the vulgar theory; till at last, when you come to the highest pinnacle in the temple of power, there you behold a being perched upon it who is under an absolute personal incapacity of doing wrong in any shape—a being who could not do wrong, were he to labour at it with all his might:—and, under matchless constitution, upon this assumption is government founded.

3. The King is impeccable; the House of Lords is impeccable; the House of Commons is impeccable: and yet there are not three impeccable, but one impeccable—the Parliament. The House of Lords is legion; the House of Commons is legion; but these are legions, not of unclean, but of the very cleanest spirits. Whosoever would find favour in their sight must thus think, or pretend to think, of the constituted authorities. Of unintentional error, a successor of each official or other influential person may be susceptible; of intentional error, of evil-consciousness, not: neither of the one nor the other, the actual incumbent.

4. Intentional error or misconduct in any shape, especially in that shape in which it has place every day on the part of all,—that is to say, departure from the law of

veracity and sincerity,—is universally held a good ground for a man's subjecting himself to the risk of being put to death by a disputant, for the chance and hope of putting to death that same disputant.

5. Neither on this occasion, nor on any other, should the utter impunity secured to Judges under the existing system be ever out of mind. Urged by remorse, or any other less difficultly supposable cause, should an English Judge court punishment, his prayer would not be granted. *Nemo auditur, perire volens*—is among the maxims of Rome-bred law: in English law, it would not be cited, but the benefit of it would be granted.

6. If in large proportion men were not found silly enough to give credence to absurdities in the shape above pointed out, men would not in so large a proportion, not to say universally, be found possessed of the effrontery necessary to the giving utterance to them. But forasmuch as every man perceives that it would be for his benefit to be regarded as possessor of absolute perfection, or something little short of it, and his pretensions would find no opponent in any other man whose pretensions to it he does not oppose,—hence it is that by common consent—by an agreement, not the less effectual for being tacit,—every such man gives false evidence in favour of other, and by this evidence the unreflecting multitude of people without doors are, in but too large proportion, deceived and dealt with accordingly.

7. Thus would the check provided threaten them with the prospect of seeing themselves divested of the power of exercising depredation and oppression without stint: that power which so lately, by the influence of Lord Eldon, Lord Tenterden, and Mr. Peel, obtained at the hands of Parliament, in addition to those *motives* which can never be wanting: the *means* of heaping affliction on affliction, on a class of men distinguished from all others by the distress under which they were labouring: namely, by the power of imposing on them taxes without stint; this, for the purpose, and with the effect, of putting the money into the pockets of the learned collectors.—See *Indications,* &c. V. 348.

8. For, in one of the ways or modes in which *subordination* is established, in relation to this newly-invented sort of Judge, would—not only the Chief Justices of the Common-Law Courts, but the Lord High Chancellor himself, be unavoidably placed in a state of subordination.[a]

9. Manifest, it is true, to the eyes of the Chief Justice of the King's Bench could not but be the state of subordination in which, in the more direct and conspicuous mode, the newly invented functionary, placed, as above, over his head, will be reciprocally placed under *him.* Still, by what he gained in this way, far from adequate would seem to him the compensation for what he would lose in that other way.

10. For, in no instance could the old established dignitary inflict punishment or pronounce sentence on conviction on the new intruder, without presenting to the imagination of the people at large, a scene, in which he himself would be acting the principal character, while undergoing that same humiliation.

11. Consequence, of course,—from the great Westminster-Hall volcano, now at least, if not before, a volley of explosions:—explosions of learned gas from all quarters.

i. "All this immense mass of power! a mass so absolutely unprecedented! and to whom?—to such an upstart creature of the fancy, as this imagined Judge:—power, over every member of the community, the King alone excepted: power, over everybody, even to the purpose of *punishment:* power, over the head of the law!—power, and for the declared purpose of superseding his authority!—Constitution subverted! all good order—order itself destroyed, and confusion substituted.

> "Blush! blush, thou sun! Start back, thou rapid ocean!
> Earth! mountains! valleys! all commixing crumble!
> And into chaos pulverize the world!
> For Grimgribberian has received a blow!
> And Chrononhotonthologos shall die!"

ii. "And the inconsistency! the monstrous inconsistency! The thus constituted supreme dignitary, to whom this immense and unprecedented mass of power is given, made to answer to interrogatories! subjected to a treatment, to which the Common Law, in its matchless humanity, suffers not the vilest criminal to be exposed!" Thus far for the ears of the lay-agents.

iii. Then, in a whisper, to learned brethren—"What a precedent this! At this rate, where is the criminal that will escape?—at this rate, a man really guilty will have no chance! He will confess at once!—all our learning, all our ingenuity, all our eloquence, will be of no use to him! Think of the learned pockets!—think of our pockets!—think of the vacuum this will make in them! Instead of coming to us, as at present, his money, if he has any, will go to the party he has wronged! What can be more contrary to the *very first principles of justice,* to *every principle of justice?*"

iv. And then there is the ex-officio information! Look at these reformists. At one time thus crying out against it; now they are giving employment to it!

v. Then there is the Chief Justice of the King's Bench enabled now (and as to his willingness, can it at any time be doubted?) to wreak his vengeance on the intruder, by whose upstart power, judiciary authority is in all its established shapes laid low. And to enable him to give himself this regale, what is there wanting, but an invitation from Mr. Attorney-General?

vi. Then sits a jury. But, with the united eloquence of the Lord Chief Justice and the Attorney-General, the mouth-piece of the Crown, thus enlisted together in support of a cause so much their own, where is the Jury that will be able to stand against them? What word can possibly present itself to their tongues other than the word *Guilty?*

12. Tantalizing, in a sad degree, will thus be the situation of a Chief Justice of the King's Bench. No otherwise could he root out the effectually responsible power of the Dispatch Court Judge, than on condition of thus undermining his own irresponsible

and arbitrary power, that power of maleficence without stint, the loss of which is to every possessor of it, naturally so intolerable.

13. Think of a Lord Tenterden, thunderbolt in hand; and, opposite to and under him, a Sir James Scarlett, calling upon him to hurl it at the head of the devoted Salmoneus!

14. So much for learned objections. Now, at the sound of plain sense, behold them vanish. Each taken separately,—strong, it must be confessed, are the two antagonizing powers. Put them together, and, like the salt with which our food is seasoned, the elements they are composed of put off their corrosive nature, and become mild and salutary.

15. Out of the *two dangers* is formed *security.* The old established functionaries will not suffer anything;—and as little will the new created one.

16. As to subjection to interrogation, what danger to innocence is it pregnant with? what consequence, worse than that of clearing it of any imputation that may have been cast upon it?

17. From what source did these objections ever spring, other than that of a wish to afford to guilt, in every shape, an encouraging chance of escape?

18. As to the two Giants—the Chief Justice and the Attorney-General, grim as they are on all occasions, on the present occasion behold them thus rendered not only less grim, but motionless: Motionless! Yea, even as Gog and Magog. Without a call from the Attorney-General, the Lord Chief Justice of the King's Bench cannot stir; without an order from the First Lord of the Treasury, the Attorney-General cannot, or at least will not, stir.

19. But, suppose the order received. Comes then the matter before a Jury: and, if there be any occasion, on which, in the multitude of these counsellors, there is a safety, this surely is of the number. Say that, on ordinary occasions, when Government prosecutes, they are but too apt to cast off the responsibility from their own shoulders upon those of my Lord Judge, and economizing *thought* as they would *money,* say at once *Guilty,* to save trouble. On an occasion such as this, and this so unextraordinary a one, little apprehension of any such promptitude need assuredly have place.

20. Thus blind were they, for example, when—in pursuance of the standing conspiracy against the liberty of the press—one of the machinations of which was and is, the converting all history into an instrument of delusion by suppression of all facts and comments, by which sin in any shape might be imputed to any one of Blackstone's Gods upon earth,—the body of the Editor of a Weekly paper was, at the command of Lord Tenterden, given up to him to be consigned to a two years' imprisonment, for daring to hold up the character of George the Third in an unfavourable point of view.

21. In ordinary cases, true it is, instances of such blindness have in all times been in sad abundance. But the present case is an extraordinary one. To the necessity of

justice to human happiness,—and to the hatred of it in the breasts of English Judges,—the eyes of the public, even of that public of which Jurymen are composed, are at length beginning to open themselves. Sir James Scarlett might cry aloud, and Lord Tenterden spare not,—a Jury, after hearing, from the lips of the Dispatch Court Judge, justice and common sense substituted for the first time to pickpocket absurdity and nonsense, would *pause* (as the phrase is) before they sacrificed the author of so much good to the vengeance of the opposers of it.

[‡]1. When Section the first was sent to the press,a the expectation entertained was, that for the purpose of participating in the hereby-promised benefit,—namely, the substitution of a system in which delay and expense are minimized, to one in which those evils are maximized,—suitors in sufficient numbers would join in a Petition to the King for that purpose, and that to them, upon the principle on which arbitration is sanctioned by law, the choice of the Dispatch Court Judge might be committed. Such was the expectation entertained and proceeded upon at the time when the matter of that first section was sent to the press; and so it continued to be, till not only the matter originally destined for this section had been written, but matter also for the whole remainder of the Bill.

2. For the purpose of trying the experiment, a tract moreover was published, intituled "Equity Dispatch Court Proposal; containing a Plan for the speedy and unexpensive termination of the suits now depending in Equity Courts;—with the form of a Petition, and some account of a proposed Bill for that purpose."a But before the present section had been sent to the press, it had become but too certain that the experiment had failed—so far at least as regarded the trial of it proposed in that tract to be made.

3. Not only the matter of that publication, including a detailed account of the matter proposed for the present Bill, but the principal part of it *in terminis,* including the whole of the matter down to the present section, with the exception of some subsequently-made and not-as-yet-communicated amendments, had received, not only from amply competent judges, but from men high in professional eminence, the most unreserved approbation.

4. But, on the part of suitors, such was the terror of what might befal them from the resentment of the lawyers, official and professional, belonging to the Courts in question, that by the invitation given in the above-named tract, from no more than two suitors, one from each of two suits, was any application produced: and in both these instances this obstacle had been removed, the persons in question being in a state of actual hostility with the Court, in the hands of which they had been undergoing a course of depredation and oppression for a multitude of years. That it was in this terror that the failure had its cause, is matter not merely of inference, but also of experience: for, in various instances, by the above-mentioned approvers, endeavours were employed to persuade suitors to join in the proposed petition; and notwithstanding the just estimation in which the opinion of the givers of the advice was held by the receivers of it, still the terror was so great as to prevent them from taking the course recommended by it.

5. By this failure, however, neither had the demand for the remedy to the grievance in

question been shown to be less urgent, nor any ground afforded for diminishing the confidence in the here-proposed remedy. On the contrary, the perception and acknowledgment of the inaptitude and utter depravity of the existing judicial establishment and procedure have been increasing daily in intensity and extent.

6. Moreover, the plan for the accomplishment of which a bill had been brought into the House of Commons, on the motion of the learned member who has since been elevated to the situation of head of the law, and subsequently pursued by the announcement of a bill for the same purpose, with the necessary amendments, as being about to be moved for in the House of Lords, has been declared to be dropped.

7. Under these circumstances, how much soever the encouragement to perseverance was weakened, the inducements in other respects remained; and with even augmented force.

8. As to the machinery here visible, the only part which, by the abandonment of what regards the proposed Petition is rendered needless and thence unserviceable, is the matter of Section I. *Judge located, how;* and a portion, more or less considerable, of Section VI. *Judge's Powers.*

9. But though, with reference to the purpose of the present Act, this is rendered unserviceable, to other purposes of still more extensive importance it will, it is hoped, be seen to be in no inconsiderable degree applicable and serviceable: in particular, that portion the matter of which bears reference to the subject-matter of the Penal Code.

[*]Reader, mark well the following parallel: when read, go back a few pages, apply it to pages 5 and 6. I.

Under Mixed Monarchy—British Constitution.

1. Falling off of the receipts of this last year, ending 5th January 1817, as compared with those of the last preceding one, £9,083,108.

2. Receipts of the same year, ending 5th of January 1817, £57,360,694.

3. Proportion of the amount of the *deficiency* to that of the *receipt,* about *one-sixth.*II.

Under Representative Democracy—American United States Constitution.

1. Receipts of the last year (ending five days earlier than the above, British)—dollars 47,000,000.

2. Deduct payments and appropriation that same year, 38,000,000.

3. *Surplus* remaining in the treasury, applicable in discharge of the public debt, 9,000,000.

Proportion of the *surplus* to the *expenditure,* about one-fourth.

4. Public debt at the end of the last year, dollars 110,000,000. Amount in pounds sterling, the dollar about 5*s.* about 27,500,000.

The British sums are taken from the Commons' House document, 3d February 1817: the American from that which follows:—

Morning Chronicle, Jan. 2, 1817: Extract from the *Message,* transmitted by the *President* of the United States of America, to both Houses of *Congress,* Dec. 3, 1816.

"It has been estimated, that during the year 1816a the actual receipts of revenue at the treasury, including the balance at the commencement of the year, and excluding the proceeds of loans and treasury notes, will amount to about the sum of 47 *millions of dollars:* that, during the same year, the actual payments at the treasury, including the payment of the arrearages of the war department, as well as the payment of a considerable excess beyond the annual appropriation, will amount to about the sum of 38 *millions of dollars;* and that consequently at the close of the year, there will be a surplus in the treasury of about the sum of 9 *millions of dollars* . . . . . The floating debt of treasury notes and temporary loans, will soon be entirely discharged. The aggregate of the funded debt, composed of debts incurred during the wars of 1776 and of 1812, has been estimated with reference to the 1st of January next (1817,) at a sum not exceeding one hundred and ten millions of dollars.

[†]In respect of general utility and propriety, behold what were the sentiments of Sir William Jones, on the subject of virtual universality of suffrage: from the authorities to which he refers, judge whether, in the best of those old times, such was not the ancient usage: behold, moreover, how frivolous were the pretences on which were grounded the still-existing defalcations made in the time of Henry VI.

Works of Sir William Jones, by Lord Teignmouth, vol. viii. p. 507.—"Speech on the Reformation of Parliament, anno 1782, May 28."—Speaking of the feudal system—"Narrow and base," he says, "as it was, and confined exclusively to landed property,a it admitted the *lowest freeholders* to the due enjoyment of that inestimable right, without which it is a banter to call a man *free,* the right of voting in the choice of deputies to assist in making those laws which may affect not his property only, but his life, and, what is dearer, his liberty; and *which are not laws, but tyrannous ordinances, if imposed on him without his suffrage, given in person or by deputation.* This I conceive to have been the *right of every freeholder,* even by the feudal polity, *from the earliest time;* and the statute of Henry IV. I believe to have been merely declaratory: an act which passed in the seventh year of that prince, near four hundred years ago, ordains, that 'all they who are present at the county court, as well suitors

duly summoned for the same cause, as *others,* shall proceed to the election of their knights for the parliament.' *All suitors,* you see, had the right, and *all freeholders* were *suitors* in the court, however low the value of their freeholds. Observe all along that *one* pound in those days was equal to *ten* at least in the present time.b Here, then, is a plain declaration, that minuteness of *real* property created no harsh suspicion of a dependent mind; for a harsh suspicion it is, and, by proving too much, proves nothing." Thus far Sir William Jones. Behold now the words of the statute 7 Henry IV. c. 15. After reciting the grievous complaint of the Commons (in the French original *communalté*) "of the undue election of the knights of counties . . . . sometime made of affection of the sheriffs, and otherwise against the form of the writs, to the great slander of the counties, and hindrance [retardation] of the business of the commonalty in [of] the said county,"—it enacts, that, at the county court, after proclamation, "*all they that be there present,* as well suitors duly summoned for the same cause *as others,* shall attend to the election of the knights for the parliament, and then in the full county [court] they shall proceed to the election, freely and indifferently, notwithstanding any request or commandment to the contrary."

And, a little after, it adds—"And in the writs of parliament to be made hereafter, this clause shall be put:—"Et electionem tuam in pleno comitatu tuo factam distincte et aperte sub sigillo tuo et *sigillis corum qui electioni illi interfuerint* nobis in Cancellaria nostra ad diem et locum in brevi contentos, certifices indilate." Note that, without any distinction made, what is here required is—that the seals to be affixed shall be the seals of those—*i. e.* of *all those—who shall have taken part* in the election. *Villeins,*—composing still no inconsiderable part of the population, though it is impossible to say exactly what part, being (it may be supposed) plainly out of the question,—who were the persons thus admitted to the exercise of this franchise? Who but all who were not Villeins? With the exception of a class of persons happily no longer in existence, if this be not virtually universal suffrage—suffrage more extensive than in the case of the "*householders,*"—by *Charles Fox* and *Mr. Grey* (as will soon be seen) proposed to be admitted—by the said Mr. Grey, now *Earl Grey,* proposed not to be admitted—if *this* be not, what else can be?

Even as to *Villeins,*—were they, after all, really excluded? Look to the *words:* clearly not. Who were the persons by whom the elections were to be made? Suitors summoned as such, and they alone? No: but "*all they that be there present.*" Well, but (says somebody,) in the state of villeinage, no will of his own could any person be said to have. So much for *surmise;* and, but for particular inquiry, not an unnatural one. Well, as to the *fact.* Eight-and-twenty years before the time in question, viz. anno 1377, was passed the statute 1 R. II. of which c. 6—a chapter of considerable length—is in the old French—and, in the *vulgate* edition, not translated. From this statute it appears, that already, even at that time, villeinage was a condition very different from slavery. *Rent* did they pay: and though, instead of money, it was in the shape of *services,* yet these services were certain. In this statute, what is assumed as a general fact is—that they were able to pay *a fine* to the *king,* besides making *satisfaction* to their *lords.* The main offence imputed to them is—obtaining liberation from those services by forged deeds.

The existing *copyholders* are the posterity of the ancient villeins. *Tenants*—the

villeins were—the copyholders are—so were they and are they styled—*by copy of court roll.* Deriving from the records of the court the title to the lands they occupied, what can be more natural, than that to *that* same court they should lie under an *obligation*—under which it included the *liberty*—of access and resort to it. But, supposing any of them *present* at any such court, how is it possible that they should not have been included in the assemblage designated as above by the word "*others?*"

Presently, in the "*excessive*" multitude of the persons resorting to those courts, we shall see a *fact,* and the *only fact,* employed in another reign, twenty-five years afterwards, as a pretence for limiting in those same courts the right of voting to those who possessed, in *freehold,* an estate equal in value to £40 a-year money of present time. But, unless copyholders be supposed to have, even at *that* time, made a part of it, where shall we find matter enough out of which to compose any such *excessive* multitude?

True it is, Blackstone (see his "Considerations on the Question concerning Copyholders," &c. London, 1758, p. 7,) applies a limitation to the import of the word *other;* (it should be—the French is—*autres, others:*) confining it to suitors. For this surmise, however, no ground does he give: nor of any such or other limitation can I find any intimation given, in or by any word or words of the statute.—"*Communalte du dit Countee,*" says the old French. "*Omnes illi qui electioni illi interfuerint,*" says the Latin inclosed in it.

So much for the strong and prosperous reign of Henry the Fourth, in which virtually universal suffrage was then established. Comes now the weak and disastrous reign of his idiot grandson, under which, under the sort of pretences that will be seen, it was curtailed.

Statute 8 H. VI. c. 7.—"What sort of men shall be chosen, and who shall be chosen knights of the parliament." Follows the *vulgate* translation: the original, which is in the old French, would fill up too much room here. Of the translation, except as here corrected, I have by examination assured myself of the correctness.

"Item, Whereas the elections of knights of shires to come to the parliaments of our Lord the King, in many counties of the realm of England, have now of late been made by *very great, outrageous, and excessive number of people dwelling within the same counties* of the realm of England, of the which, most part was of people of *small substance,* and, [*or*] *of no value,* [i. e. *worth*] whereof every [one] of them pretended a voice *equivalent,* as to such elections to be made, *with the most worthy knights and esquires* dwelling within the same counties, whereby manslaughters, riots, batteries, and divisions among the gentlemen and other people of the same counties, shall *very likely* rise and be, unless convenient and due remedy be provided in this behalf. (2.) Our Lord the King, considering the premises, hath provided, ordained, and stablished, by authority of this present parliament, that the knights of the shires, to be chosen within the said realm of England, to come to the parliaments of our Lord the King, hereafter to be holden, shall be chosen in every county of the realm of England, by *people dwelling* and resident *in the same counties,* whereof every one of them shall have *free land or tenement* to the value of forty shillings by the year at the least,

above all charges." . . . . .

As to the *grounds.* First, as to any supposed deficiency in respect of *appropriate intellectual aptitude.* Among those who, in the shape of landed property, had *not* so much as 40*s.* a-year of that day—going as far, say as £40 money of the present day—small indeed probably was the number of those who were able to *read:* how much larger among those who *had* their 40*s.* and more? Probably enough, very little. As for the "knights and esquires," some few of them not improbably were in those days able to *read:* but by not one of them, most certainly, was any book to be found from which any information, tending to the increase of *appropriate intellectual aptitude,* could be extracted.

So much for *intellectual aptitude:* now as to *freedom of suffrage.* "Manslaughters," &c.? . . . . What! at that time, in any one instance, had any of these mischiefs really taken place? No: no such thing is so much as pretended. What then? Oh, they *will very likely* take place, unless due remedy be provided. Aristocracy this—all over. But was ever pretence more plainly groundless? By the alteration of the value of money, the efficiency of the aristocratical principle has, in *this* part of the field of election, though no thanks to parliament, been somewhat diminished—extent of the right of suffrage somewhat increased. But—such, as will be seen, has been the influence of other causes—that from this extension no real advantage has resulted. See what in a following section will be said on the subject of *vote-compelling* and *competition-excluding terrorism.*

On the ground of general utility and propriety—behold, moreover, the sentiments of *Charles Fox.*—Woodfall's Debates, anno 1797, p. 331.—"There is one position in which we shall all agree, that man has a right to be well governed. Now it is obvious, that no people can be satisfied with a government from the constituent parts of which they are excluded."

In regard to *universal suffrage,* even under that unlimited name, we shall find him acceding to it, and advocating it upon principle: refuting it no otherwise than upon the ground of a supposed matter of fact, in relation to which it has been seen, and will further be seen, the truth is exactly opposite. Not adverting to the effect of *secresy of suffrage,* the notion on which he here grounds himself is—that in the case of *non-housekeepers* in general, freedom of suffrage is not to be looked for.

Antecedently to the above passage, behold what he says in page 327—"My opinion is, that the best plan of representation is that which shall bring into activity the greatest number of independent voters:" thereupon it is that immediately he goes on and says,—"and that that is defective which would bring forth those whose situation and condition takes from them the power of deliberation." In this I heartily concur with him: but in the next section it will be seen to what this observation leads: an observation by which it may be seen (ib. p. 326) he was led to the disapprobation of giving any *extension* to the system of *county* representation.

A little earlier in the same page, "I have always," (says he,) "deprecated universal suffrage, not so much on account of the *confusion* to which it would lead, but because

I think that we should in reality lose the very object we desire to obtain:—it would in its nature embarrass and prevent the deliberative voice of the country from being heard." Thus far Charles Fox: meaning by reason of the supposed want of freedom, as above. As to *confusion,*—upon any thing like the plan here proposed, all danger of this sort will be seen to be most completely excluded. Charles Fox sat for Westminster. In the Westminster election what confusion do we see? Yet, in the Westminster election, there remain in abundance natural causes of confusion, all which would, on the plan in question, be completely excluded.

So much as to what might be and would be. But now look at what actually has been. Anno 1807, Sir Francis Burdett was, for the first time, elected successor to Charles Fox. Since then, near ten years have elapsed, and in all that time no more *confusion* than if Westminster had been a pocket borough. See the History of the Westminster Representation from that time in Hone's Reformist's Register, No. 3: a most interesting picture of the state of purity and good order, into which election proceedings not only *may be* brought, but *have been* brought, and in it have already for ten years been continued, under a degree of extension so little short of that of universal suffrage.

In the same sentiments—both as to the general principle and the ill-grounded reason for putting it aside,—already had he spoken, and even still more explicitly, in the year 1793.

Almon's Parl. Register, anno 1793, p. 497.—"His" (Fox's) "objection to universal suffrage was not distrust of the decision of the majority, but because there was no practical mode of collecting such suffrage; and that by attempting it, what from the operation of hope on some, fear on others, and all the sinister means of influence, that would so certainly be exerted, fewer individual opinions would be collected than by an appeal to a limited number. Therefore, holding fast to the right of the majority to decide, and to the natural rights of man, as taught by the French, but much abused by their practice, he would resist universal suffrage."

At that same time, *Mr. Grey,* now *Earl Grey,* though he did not approve of universal suffrage *absolutely,* approved of it,—yea, and moreover of annual parliaments,—*comparatively,* viz. in comparison of the existing system.

Woodfall's Debates, anno 1793, p. 383.—"He" *(Mr. Grey)* "did not approve of the Duke of Richmond's plan of reform, though he thought it better than the present system." The Duke of Richmond's plan? Well, what was it?—Suffrage universal, parliaments annual: this, but without *secresy,* and thence without *liberty,* of suffrage.

[†]Woodfall's Reports, anno 1797, p. 327.—*Charles Fox.*—"I hope gentlemen will not smile if I endeavour—" After saying as above, he adds—"My opinion is, that the best plan of representation is that which shall bring into activity the greatest number of independent voters, and that that is defective which would bring forth those whose situation and condition takes from them power of deliberation. I can have no conception of that being a good plan of election, which should enable individuals to bring regiments to the poll. I hope gentlemen will not smile if I endeavour to illustrate

my position by referring to the example of the other sex. In all the theories and projects of the most absurd speculation, it has never been suggested that it would be advisable to extend the elective suffrage to the female sex; and yet, justly respecting, as we must do, the mental powers, the acquirements, the discrimination, and the talents of the women of England, in the present improved state of society; knowing the opportunities which they have for acquiring knowledge; that they have interests as dear and as important as our own; it must be the genuine feeling of every gentleman who hears me, that all the superior classes of the female sex of England must be more capable of exercising the elective suffrage with deliberation and propriety, than the uninformed individuals of the lowest class of men, to whom the advocates of universal suffrage would extend it; and yet, why has it never been imagined that the right of election should be extended to women? Why but because, by the *law of nations,*[a] and *perhaps*[b] also by the *law of nature,*[c] that sex is dependent on ours; and because, therefore, their voices would be governed by the relation in which they stand in society. Therefore it is, sir, that with the exception of companies, in which the right of voting merely affects property, it has never been in the contemplation of the most absurd theorists to extend the elective franchise to the sex."

[*]Such, at any rate in my own view, it cannot fail to be: for in this state, for a long course of years, was my own mind:—the object a dark, and thence a hideous phantom, until, elicited by severe and external pressure, the light of *reason*—or, if this word be too assuming, the light of *ratiocination*—was brought to bear upon it. In the *Plan* itself may be seen at what period (viz. anno 1809,) fearful of going further—embracing the occasion of finding, in *derivative* judgment, an exterior support—I was not only content, but glad, to stop at the degree of extension indicated by the word *householders;*—taking at the same time for conclusive evidence of *householdership,* the fact of having paid *direct taxes.* But, the more frequently my mind has returned itself upon the subject—the more close the application made to it—the more minute the anxiety with which every niche and cranny has been pried into—the stronger has been the persuasion produced,—that, even from an extent as unbounded as that which would have been given to the principle by the vigorous and laborious and experienced mind of the *Duke of Richmond* (always with the proviso, that, by that secresy—which, somehow or other, he could not bear to look in the face—freedom should be secured)—no mischief, no danger, in any such shape as that which is denoted by the words *anarchy* or *equalization,* i. e. *destruction* of property, would ensue: in a word, not any the smallest defalcation from any rights, but those which are universally acknowledged to be mere *trust-rights*—rights, the exercise of which ought to be directed to the advancement—not of the separate interests of him to whom they are intrusted, but of the joint and universal interest.

Tranquillized, on the other hand, by the persuasion, that although, by defalcation after defalcation, very considerable reduction were made in respect of *extent,* still no very determinate and distinguishable defalcation might be made from the beneficent influence of the *universal-interest-comprehension principle,*—and that, by every extension obtained, the way could be smoothed to any such ulterior extension,[a] the demand for which should, in the continued application of that principle, guided by the experience of security, under the experienced degree of extension, have found its due support,—with little regret, considering the subject in a theoretical point of view, and

altogether without regret, considering it with a view to *conciliation,* and in that sense *in* a practical point of view,—thus it was that without difficulty I found I could accede to the extent indicated by the words *householders,* or *direct-tax-paying* householders: due regard being at the same time paid to the arrangements prescribed by the *simplification* principle, as above.

Representation co-extensive with taxation?—with taxation in every shape? Oh yes; with all my heart: no danger to *property,* any more than to *person,* should I apprehend from it: for, under another description, what would this be but the *Duke of Richmond's universal suffrage?* But *the principle*—in the *principle* behold the defect:—a principle which is but the product of imagination—of imagination with nothing but itself for its support:—a principle not looking to *universal interest*—not looking to interest in any shape or to any extent—to human feelings in any shape or to any extent—to general utility—to utility in any shape or to any extent:—a principle deaf, unyielding, and inflexible:—a principle which will hear of no *modification*—will look at no *calculation:*—a principle which, like that of the *rights of man,* is in its *temper* a principle of *despotism,* howsoever in its *application* applied to purposes so diametrically and beneficently opposite.

Co-extensive with taxation? Why this reference, this adjustment? If, instead of *imagination, reason* be consulted, the answer is—that by extent coinciding with that of taxation, so it happens that in this country all *interests* are comprehended:—deference is paid to, practice would accordingly be guided by, the principle by which the comprehension of all interests is prescribed. Good: but if, in the principle which prescribes the giving admission at once to all interests, you were to have a principle which nobody but yourself would listen to, what would you be the better for it? And if, with a principle which, in numbers sufficient to carry the question, men would listen to and be governed by, you were to get a constitution, under and by virtue of which, for want either of *appropriate probity* or *appropriate intellectual aptitude,* or both, property and liberty would be destroyed,—what in *this* case would you be the better for your principle?—would not your condition be still worse—yea, much worse—than even at present?

Behold here—(for it is well worth beholding)—the relation—the instructive relation—between *theory* and *practice:*—of the goodness of *theory,* the test is, in every instance, its applicability to practice:—*good in theory, bad in practice:*—behold in this fallacy—this vulgar fallacy—a contradiction in terms.

But, if theory be recurred to, it suffices not that a proposed measure be good in itself;—the theory employed in support of it should also be a good one: a theory capable of being—and without practical mischief—applied to practice. But capable of being, without mischief, applied to practice, it cannot be,—if, no reference being made by it—no regard paid by it—to human *interests* or to *human feelings*—to feelings of *pain*—to feelings of *pleasure,*—it admits of no modification—no yielding of interest to interest—and thereby of no means of *conciliation:*—of no means of *conversion,* but overbearing despotism.

The horror and terror with which, by the words *universal suffrage* and *annual*

elections, so many uncorrupted breasts are filled—(for I speak not here of the case of those in whose instance language and deportment are necessarily prescribed and fashioned by the predominance of sinister interest)—these self-disturbing and dissocial passions—to which object shall we look for the cause of the application thus made of them? Shall it not be to the weakness—alas! the too natural, and, in a greater or less degree, the universal weakness—of yielding too readily to first impressions?—of giving the reins to *imagination,* and at the same time to that *love of ease,* which spares itself the labour necessary to close inspection and carefully comprehensive analysis? Oh yes: in the combination of all these co-operating causes may be found *power* but too sufficient for the production of these and so many other undesirable effects.

In my own instance, well do I remember the time when the principle of *universal suffrage,* howsoever modified, presented itself to me as being in a general view inadmissible. Yes: but *what* time?—any time subsequent to that attentive consideration and scrutiny, which the importance of the question now so imperiously calls for? Oh no: it was a time at which, as yet, no *purposed* attention had on my part ever directed itself to the subject. No: the closer the attention bestowed, the firmer has all along been my conviction—on the one hand, of the undangerousness of the principle, taken in the utmost extent to which the application of it can ever reach,—on the other hand, of the facility and consistency with which, for the sake of *union* and *concord,* defalcation after defalcation might,—provisionally at any rate, and for the sake of experience—quiet and gradual experience,—be applied to it.

As to what concerns the influence of understanding as understanding—in the case here in question the only beneficent, the only endurable influence,—my own persuasion is—that under the most unbounded universality of suffrage,—instead of being annihilated, the influence of *aristocracy* would still be but too great: too great, I mean, with relation to appropriate *intellectual aptitude:* too great not to give admission to many an idle and comparatively unfurnished, to the exclusion of a laborious and better furnished, mind.

As far as I have been able to collect it—and I have not been unsolicitous in my endeavours to collect it—the whole stream of experience runs that way.

In proof, or at any rate in illustration of this position—one particular incident, which has place in my own remembrance, has just been confirmed by cotemporary recollections. In the days of *Wilkes and liberty!*—among Wilkes's supporters—and indeed, for activity and extent of influence, at the head of them—was *Churchill the apothecary,* brother to *poet Churchill.* Election time approaching, Wilkes himself being, for the moment, by some incident or other, put out of the question—apothecary Churchill was proposed. *An apothecary member for Westminster!* By a loud and general clamour to this effect was the proposition immediately crushed:—yet, besides that extraordinary personal popularity, by which he had been enabled to render such commanding service to the fine gentleman, his *protégé,* was this apothecary of the number of those who kept their coaches.

As to *apothecaryship* and *gentlemanship,*—for my own part, if, of two

candidates—knowing nothing of either, but that one was an *apothecary,* the other a *gentleman* of £10,000 a-year—the question were to be asked of me, *for which will you give your vote?* my answer would be at once—*the apothecary—the apothecary for me!*—Why? Even because in the mind of the apothecary—the apothecary being to a certain degree known as such—I should be assured of finding *intellectual aptitude—intellectual aptitude* in the shape and degree corresponding to the exigencies of that eminently useful and respectable profession, including the branches of art and science that belong to it:—in the first place, *intellectual aptitude at large:* and scarcely can it happen but that, so it be considerable in degree, *intellectual aptitude appropriate*—appropriate, if not with reference to *any* subject without exception, at any rate with reference to the subject *here* in question—may with more or less facility be acquired: the already acquired *stock* or *capital* being, with more or less advantage, capable of being transferred and applied to the newly adopted branch of industry.

Thus much for the *apothecary.* Now as to the gentleman. This gentleman, with his ten thousand a-year—he having been bred up in the expectation of it—on what assignable or maintainable ground could I build an equal, or nearly equal expectation, of his possessing the requisite intellectual aptitude, in any tolerably competent degree, in any shape?—at any rate in any shape in which it would, any part of it, possess a tolerable chance of being *transferred* to this purpose? Intellectual aptitude—to whatever subject applied—is it not the fruit of *labour?*—is it to be had *without* labour? How then should he have come by it?—by the force of what *motives* shall that of the pain attached to the labour have been overcome?

[†]I.—

COMMENCEMENT. ***Origin Of The System Of Uncorruption And Free Election Established In Westminster.***

I. Object proposed. Inducements—"To return Sir Francis Burdett free from expense, or personal trouble, and without even making him a *candidate:* Sir Francis Burdett, the only man who had the sense and the courage to fight the people's battle. He had proved himself a friend to very extended suffrage, and to Annual Parliaments."

II. Managers,*who.* "Few in number, of no political importance whatever—without influencea —even their names unknown to the electors. The electors, from the long disuse of the elective franchise, in the way in which alone it should ever be used, had no confidence in each other. Each man was indeed ready to do his duty, yet few reckoned upon the same disposition in their neighbours . . . ."

III. Managers—*their mode of canvassing.* Managers to the people—"We have undertaken your cause; the way is open—it is before you; do your duty. Electors may receive letters of thanks from the candidates who are acting for themselves, but you will not expect to receive them from the committee who are acting *for* you, and *by*

your means."

IV. Result*as to* SUCCESS. "For Sir Francis Burdett, the object of their choice (himself not soliciting any man,) single votes as many within seven as all the candidates, four in number, had received among them; and nearly two-thirds of the whole number of electors polled, voted for him."

V. Result*as to* EXPENSE.—"From the commencement of the election to the close," sum total £780 : 14 : 4:—to the person thus chosen for *representative*—himself not so much as a *candidate*—not a farthing.

VI. Result*as to* MORALS.—"No drunkenness—no rioting—no murders—no bludgeonmen—no sailors—no Irish chairmen—no obstruction at the place of polling—no hired voters—no false swearing—no puffing and lying in the newspapers—no assassin-like attempt to destroy reputation—no attempt to mislead:—to the people was the business left: nobly and effectually did they perform it."

VII. Opposition*vanquished:* MEANS in vain employed by it: *Terrorism, bribery, falsehood*—the *holy triple alliance—impotent.*—"Threats, promises, persuasions, calumny, misrepresentation; frauds of all kinds; letters written for those who could not refuse their signatures, to induce others to procure votes; licences threatened; tradesmen to have their customers taken away."—*N.B.* From what I know of the source from whence the information came,—I should, upon occasion, stand assured of finding these general assertions made good by proof of individual facts.II.—

CONTINUANCE.

VIII. On the part of the managers, Perseverance: on the part of the system of uncorruption, Permanence.

"It is now nearly ten years ago; and from that time to this the electors of Westminster have kept their steady course, while corruption has been obliged to hide its head, and to draw in its claws."

"The electors of Westminster have, since that time *re-elected* Sir Francis Burdett *once,* and *Lord Cochrane twice,* on the same excellent plan. They have had to contend *three times* in *courts of law;* they have held upwards of *thirty* public meetings, all at their own expense—all, too, at an expense scarcely exceeding £4000."

In ten years, four thousand pounds—scarcely more—even with the drain from the *Great Hall!* But for the cramming of *giants,* ever *refreshed,* still insatiate—to how much more moderate a sum would not that so astonishingly moderate sum have been reduced!

IX. Principalities*and*Powers*contended with and vanquished.*—"In Westminster are

the Courts of Law—the Houses of Parliament—the Palaces—the Admiralty—the Pay Office—the War and Ordnance Offices—the Treasury—the India Board—the great Army Agents—the Barrack Office—the Navy Office—the Victualling Office—the Tax Office—the Theatres—the Opera House—and many other offices and public establishments, *all* of them, from their very nature, *opposed to free election;* yet in this place—abounding beyond all others in the means and the love of corruption—in this place power was impotent against the people."

X. Sophistry*thus confuted by fact.*—"Westminster has replied, by its acts, to the calumny of the enemies of reform, that the House of Commons was corrupt, because the People were corrupt."

The people corrupt, forsooth! This was the plea of the alarmist, muddle-headed, joke-spinner, metaphor-hunter, and laborious would-be deceiver, now no more: in whose head no one idea was ever clear, nor any two ideas consistent. *The people corrupt,* forsooth! Corruption, why thus charge it upon the people? Even because, among the men he was addressing, he saw—and upon each occasion felt—an eagerness to catch at every pretence for shrouding, under a covering of contempt cast on the *subject-many,* the system of depredation and oppression, continually carried on at their expense, by the ruling few. Even because, supposing the pretended *corruption* to be regarded as having its source in that quarter, it could not but be regarded as being below the reach of remedy—and *reform,* in every shape and every situation, hopeless. The aim of this man was to extinguish hope.

XI. Contrast*between this genuine reform and Government sham-reform.*—"Talk of *reformation* and *economy* indeed! Here are examples of both, worthy the contemplation of every man. Here is no petty retrenchment from unlimited extravagance; here is a radical reform in management and in morals, at once demonstrating that the people, and the people alone, are willing and able to do their own business in the best and the least expensive manner.

XII. Example*set,*Lesson*given,*Practicability*proved:*Assurance*of likes*uccess*everywhere.*—"Westminster, at this moment exhibits a fair sample of what the whole people would be if the plan of reform proposed by Sir Francis Burdett were adopted. Corruption and profligacy would speedily disappear from among them; and the profligate and the corrupt would no longer dare to offer themselves as candidates to misrepresent and abuse them. Then must a man have a character for wisdom and integrity, who aspired to the high honour of representing a virtuous, a free, an intelligent, and brave people; and then would the wise and the virtuous, whose more correct notions of honour keep them out of sight, come forward, proud to receive real honours from their countrymen. And what is there, after all, in the conduct of Westminster, which would not instantly be put in practice by the whole people, if they possessed even the right of voting enjoyed by the people of Westminster?"

N.B. Freedom of suffrage here—freedom, to an extent sufficient for the purpose—and yet, (it may be observed) without the protection of *secresy.* True:—but though, in every other particular, a fit example for the whole kingdom, in this one it could not be. Why? Because, in the circumstances in which the population is placed, freedom,

even without the aid of secresy, finds a protection, such as, unless it be in the adjoining metropolis, it would in vain look for anywhere else. Though by the particularly independent condition of the majority of the inhabitants, terrorism was vanquished, it was not till it had struggled and done its utmost. Terrorism, notwithstanding the majority being so great, how much greater might it not have been, had terrorism been disarmed by secresy?

Of democracy it is among the peculiar excellencies, that to good government in this form nothing of *virtue,* in so far as *self-denial* is an ingredient in virtue, is necessary. Such is the case, where the precious plant stands alone: no *Upas* tree, no clump of *Machineel* trees, to overhang it. But, in the spot in question, still live and flourish in conjunction both these emblems of misrule. Here then was, and still is, and will continue to be, a real demand for *virtue:* and here has the demand proved, as Adam Smith would say, an *effectual* one.

Shade of *Hampden!* look down, and in a host of tradesmen and shopkeepers, behold thy yet living and altogether worthy successors!

[*]*Gratitude* may perhaps here present itself as a *motive,*—which, though not of the nature of either terror or bribery, may not unfrequently be capable of being productive of the same effect: and, in so far as this case is considered as exemplified, *sentimental* may be the adjunct employed for the purpose of giving expression to it: say, *sentimental seduction,* or *sentimental seductive influence.*

But, in the instances in which, at bottom, no motive but of the *self-regarding* kind, and *that* looking to the *future,* viz. either hope or fear, or a mixture of both, has place,—*gratitude,* the *social* motive, is a *cloak,* which, in so far as any tolerably plausible pretence can be found—(and whensoever a favour has been received, or supposed to be received, it always may be found)—is sure to be employed as a covering for the self-regarding motive: and, even when favours to any amount have been received, a *self-regarding* fear—fear of the *reproach of ingratitude*—is frequently the cause, by which, if not the whole, a part more or less considerable of the effect is produced.

On the occasion of *election bribery,* such as in this last case is the mode, in which the seductive influence is commonly applied and operates: in this way, if at all, must it operate, when the bribe is given *beforehand:* and in this case, to the reproach of ingratitude, will, in common apprehension, be added the stronger reproach of *improbity,* viz. in the shape of *perfidy.* See *Springs-of-Action* Table, as above.

From the situation of Elector, turn now to that of Representative.

In the motive of *hope,* with or without *fear,* and with a covering of *gratitude* more or less sincere, may be seen the seductive influence, by which, in this case, under the dominion of C—r-General, the conduct of members of parliament, both houses included, is, to so vast an extent, determined. To this case may be referred, in a more especial manner, the gratitude which has place under the sort of robe, the sleeves of which are of *lawn.* "*When I forsake my King, may my God forsake me!*" was the once

famed speech of a high-seated and notorious profligate, to whom for once it seemed good to play the hypocrite. But in this case, *lawn* was not the material of the sleeves.

Hope, fear, gratitude,—in such situations, generally speaking, who but the Searcher of Hearts can distinguish the proportions in which those affections contribute to the production of the effect? Still greater is the difficulty as beween gratitude and fear of the reproach of ingratitude. When, in such a situation, the profession of gratitude has anything of sincerity at the bottom of it, the stronger the sincerity, the more mischievous the gratitude is apt to be. Why? Even because the stronger it is, the more strenuous the exertions with which it will operate towards the support of the separate and sinister interest.

As between *individual* and *individual,*—if, in so far as it exercises itself to the *benefit* of one individual who is the object of it, gratitude is a virtue,—yet, in so far as, when exercising itself to the benefit of the one, it exercises itself to the *injury* of any other, in so far, instead of being a virtue, can it be anything better than a vice? much more if, as between an individual and the whole community, exercised to the still greater injury of the universal interest. Gratitude, by which, at the expense of the universal interest, the private interest of the C—r-General is served—is this a virtue? Yes: if stealing money out of the Exchequer or the Bank, to slip it into the privy purse, would be a virtue;—not otherwise.

Behold a man eight-and-thirty years in parliament; three-and-thirty of those years in office: in all those three-and-thirty years—not to speak of the other five—though the measures of the monarch were ever so mischievous, never in any instance failing to give his vote (not to speak of his speeches) in support of them: and, in a life of him, written in lawn sleeves, by a brother of the right honourable person in question, this habit, as will be seen, placed to the account of *virtue!* In respect of extent, as well as malignity, see the character of this mischief admirably displayed in an Edinburgh Review of the last year, or last but one. But in this place the matter is too apposite, as well as too impressive, to be sufficiently put to use by a mere reference. *Lord Viscount Barrington's* Life, by *his brother, the Bishop of Durham,* pp. 169 to 192: *time,* that of the American war. In October 1775, LETTER to the *King,* desiring leave to resign: no notice taken. June 7, 1776, for the first time, conversation on the subject with the King in his closet. Year of Lord Barrington's age, the sixtieth:—of his official service, the thirty-first. Hear Lord Barrington: this from his own manuscript:—"Many difficulties," I answered (p. 174,) "in respect to the House of Commons, were of the most serious kind, as *they affected my conscience* and my character. I have, said I, my own opinions in respect to the disputes with America: I give them, such as they are, to ministers, in conversation as in writing. I am summoned to meetings, where *I* sometimes *think it my duty to declare them openly, before perhaps twenty or thirty persons;* and the next day *I am forced either to vote contrary to them, or to vote with an opposition which I abhor;*" viz. not thatparticular opposition alone, but every opposition whatsoever, in whatsoever case, and on whatsoever ground acting.

Judge whether this be not true: view him in the year of his age the twenty-ninth; of his parliamentary service, the fifth or sixth (p. 12, anno 1745.) Then it is that, to his

perfect astonishment, he discovers, that, in that one instance, opposition in parliament had given a certain degree of encouragement to rebellion: as if it were possible, that, where rebellion is in contemplation, opposition could in that place by any possibility be made, without contributing more or less to that effect. Thus made, the discovery, profound as we see it, suffices of itself to produce, on his part, a determination never to be in opposition in any case whatsoever: and to this determination, for such a number of years together—the whole time against his most decided judgment—to the support of one of the most tyrannical and disastrous measures—(disastrous?—to the would-be-enslaving country, yes: but to the country intended to be enslaved, how felicitous!)—ever contemplated, he most heroically adheres. Speaking of the rebellion in 1745, "he had seen," says his right reverend biographer and panegyrist—"he had seen, with some degree of remorse, how much the conduct of opposition had encouraged that enterprise. He perceived," continues he, "that appeals to the people against the parliament and the government contribute towards anarchy; and that ministers are more frequently deterred from right than from wrong measures, by the apprehension of opposition. Possibly," continues he, "some may think, that his having an employment in administration might have contributed to his adopting these sentiments: being once, however, offered to his mind, the force and *truth* of them became irresistible." Yes—"*the truth of them,*" says the good Lord Bishop.

Behold, then, the scrupulous Viscount, with his tender conscience. Thus, according to his own showing, was this man, and for so many years together, in the unvaried habit of voting against his own conscience—contributing in one of the most influential situations to the commission of legally dismurdered murders (to speak according to his opinion) committed in the wholesale way. And why? Only because, had his votes been given according to his conscience, and against these murders, he would have seen other votes operating in aid of *his,* and contributing to the efficiency of his, by being given in favour of the only system his conscience could approve of. After this comes the determination expressed to the King, over and over, and over again—the determination thus to continue voting—and, at the head of the war department as well as in parliament, acting to this effect against his conscience: and this to the end of his days, unless and until it should please his Majesty to consent to his ceasing so to do. P. 179, June 1st, 1777—"Your Majesty knows the very bottom of my mind: *if, after that, you order me to remain as I am, I will obey you.* I find I cannot force myself from you; and, *whenever I go, your Majesty must voluntarily tell me that I may leave you.*" After, as well as before this, from p. 167 to 169, see passages, reporting conversations or letters out of number, all to this effect. "*The King thanked me warmly,*" (viz. for continuing to operate towards the perpetration of the dismurderized murders, against the declared dictates of his conscience,) "and said," continues his lordship, "*it was impossible to act a more handsome part* than I had done throughout." Thus it went on, the King still refusing dismission—permission to act according to conscience; the war secretary still obsequious; till almost three years after the date of the letter, by which, for the cause in question, the desire to resign was made known: the 16th December 1778, on which day, with this lesson before his eyes, *Mr. Jenkinson,* father to the *present Earl of Liverpool,* to whom his paternal care could not but have transmitted it, kissed hands as successor to the present Earl, who, on the 15th June 1809, (Cobbett's Debates, p. 1033,) "from long, deliberate, and mature consideration," said, "I am convinced, that the disfranchisement of the

smallest borough . . . . would eventually destroy the constitution."—*N.B.* On this same 1st June 1776 (p. 179,) King to Lord Barrington:—"I will give you a mark of my favour at parting: but I wish much to keep you at present," &c.: and, during all this conflict betwixt gratitude and loyalty on the one side, and conscience on the other, the quantum of this mark of favour remained to be determined; it was settled at £2000 a-year pension (King's LETTER to Lord Barrington, *in terminis* (p. 191,) "until," says the letter, "he shall be appointed to some other employment."

Thus much for King and Ministers. Now for Bishop:—"Perhaps," says he, p. 169, "the reader may be disposed to interrupt my narrative by observing, that if Lord Barrington objected to the general system which administration had adopted, and which they continued to act upon, notwithstanding his remonstrances, it was his duty to have resigned his appointment, and not to have taken any further part in measures which he disapproved. *The answer is in itself complete.* As soon as Lord Barrington found these measures would be persevered in, he tendered his resignation: but he did it *in that candid and consistent manner which became Lord Barrington.* He did *not* make his difference of sentiment the subject of appeal to the public favour,a or the means of thwarting national efforts, and embarrassing the King and his Ministers: but he submitted it in a private LETTER to his Majesty, as early as *with propriety* he could, in the beginning of October 1775; and he renewed his instances, until his retirement from public life could be permitted, without inconvenience to his Majesty or to the interest of the public."

Behold in this one frame three portraits—the *King's,* the *Minister's,* and the *Bishop's*—drawn by the pious hand of the original of one of them. In these three behold, moreover, a amily picture of Matchless Constitution:—monarchy and aristocracy above: sham democracy beneath—a slave crouching under both. But the sample afforded by this triad is a favourable sample: the King, a bettermost kind of king; the Peer and war-minister, a bettermost kind of Peer and minister: the Bishop, a bettermost kind of bishop: all agreeing in this, viz. that when a king is pleased to express a wish, be it even ever so faint a one, no part but obedience can be left to conscience. Note well, this from among the *better-most* sort: what would be to be expected from the *ordinary* sort? *Answer:* Exactly what we are now experiencing. These portraits from a *partial* pencil,—what if from an impartial one?

Walk in and see church and king!—walk in and see church and state! After this, what need can there be of libels? This, if it were not the work of a bishop, would it not in itself be the quintessence of all libels?—a libel on everything that is most *excellent?*—a libel accompanied with the most flagitious of all aggravations—the matters of fact unquestionably true?

Behold legitimacy *in puris naturalibus.* Behold not only passive obedience and non-resistance, but active obedience—active obedience to the monarch, whatsoever be his measures—professed and preached without reserve. If,—by any form given to language, thus speaking in generals,—it be possible, that any more profligate servility should be inculcated, any more profligate despotism invited, one should be curious to see it., And, while the pen is writing this, comes from Durham the intelligence, by which a practical comment on this theory is brought to view.

Turn back now to section 8,—one more glance at *Westminster* Election management. Behold there democracy—representative democracy—in its lowest stage: not, as in America, erect and independent; but, as in Britain, ever threatened and ready to be crushed. Say now whether *property* is *probity:* say whether *kingship* is probity: say whether *peership* is probity: say whether *bishopship* is probity: say whether,—if every one of these is probity,—*tradesmanship* probity, as exemplified for these ten years past in Westminster, is not worth all such other probities put together?

[*]By various persons—and even by persons by no means partial in their affections to the gentleman in question, it has happened to me, more than once, to hear spoken of as a matter of fact, not regarded as open to dispute, that in the instance of *Mr. Wilberforce,* in the character of a veteran member of parliament, might be seen a person, from whose declared judgment—self-formed or derivative—derivative judgments, in greater numbers than from any other, had, as it seemed to them, been for a long time in use to be derived. Well: not many years ago, by the mere force of terrorism—competition-excluding terrorism—in the hands of an as yet untried competitor, was this man driven from the seat: that seat which, with the effect just mentioned, he had so long filled. And this seat, what was it? It was one of the two seats filled by the county of Yorkshire: a county, by the exorbitant amplitude of which, the joint power of *landholding* and *purse-brandishing* terrorism are swelled to a maximum. £120,000, I have heard mentioned as the sum, which on the occasion of one election was expended, by one only of the two victorious competitors for the two seats: but the victory had conquest—complete conquest—for its fruit. The condition of a *proprietory* borough—a proprietory borough held in *jointtenancy,*—such is the condition to which that vast county, inclosing in its bosom *three* large counties called *ridings,* is reduced.

This is not all. For, by the same instrument by which the disease is produced and fixed, is all remedy barred out. Petition—if it aim at any thing better than the continuance of the disease; by this same instrument is petition nipped in the bud. And thus it is, that so long as, between the two high allies, peace and union shall continue to flourish, the peace of the county (for such is the appropriate phrase) remains secure: the peace of Yorkshire secured, and by the same instrument which, under the auspices of the new-invented Christianity, is with such irresistible effect occupying itself in the giving security to the peace of Europe.

In the *debates,* moreover, traces are not altogether wanting, of the impression made by the experience of *terrorism:* and *that* in its several shapes of *vote-compelling* influence, *competition-repelling-and-excluding influence,* in the hands of peers; and *competition-repelling-and-excluding* influence in the hands of the *crown:* with which are mixed, indications of the existence and degree of the *undue dependence,* in which *nominees* are held by proprietory and other possessors of seats under the name of *patrons,* more particularly peers, contrasted with the *absence of due dependence* as towards electors, in the small number of instances, in which, in the whole assemblage of those by whose suffrages a seat or a pair of seats are filled, suffrages completely free are in any proportion to be found.

Behold accordingly in this note, the following instructive particulars:—1. By *Earl Grey,* at that time *Mr. Grey,* a peerage not as yet in any near prospect, the existence of *terrorism* recognised, and, in so far as exercised by *peers,* not approved of: 2. By *Charles Fox,* the part borne by *terrorism* in the filling of the *county seats* recognised, and *therefore* the *extension* of the *number* of those seats *not* approved of: 3. By *Charles Fox,* the effect of terrorism, in the formation of a squadron composed of *coroncted terrorists* and their *nominees,* listed under the banners and the orders of C—r-General, indicated,—and their numbers, as they stood at that time, mustered.

Parl. Reg. anno 1793, p. 383. *Mr. Grey,* now *Earl Grey.*—1. "Mr. Grey remarked, that when Mr. Pitt moved for an addition of 100 members to be added to the counties, he could not carry his motion: and yet he had contrived to procure the nomination of forty members by indirect means; for he had added to the House of Peers thirty members, who either nominated *directly*[a] or by *irresistible influence,*[b] that number of members of the House of Commons, as appeared from the petitions then on the table, and which the petitioners were ready to prove."

Woodfall's Debates, anno 1797, p. 323.—*Charles Fox.*—2. "I submit, however, to the good sense and to the personal experience of gentlemen who hear me, if it be not a manifest truth, that *influence* depends almost as much upon what they have to *receive,* as upon what they have to *pay;* whether it does not proceed as much from the *submission* of the *dependent* who has a debt to pay, as on the *gratitude* of the person whose attachment they reward? And *if this be true, in the influence which individuals derive from the rentals of their estates, and from the expenditure of that rental, how much more so it is true of government,* who, both in the receipt and expenditure of this enormous *revenue,* are actuated by one invariable principle, that of extending or withholding favour in exact proportion to the submission or resistance to their measures which the individuals make?"

Woodfall's Debates, anno 1797, p. 326.—*Charles Fox.*—3. "A noble lord says that the county representation must be good—*that* must be approved of: be it so. This proposes to leave the county representation where it is: I wish so to leave it. I think, that representation ought to be of a *compound* nature: the *counties may be considered as territorial representation, as contra-distinguished from popular; but* in order to embrace all that I think necessary, *I certainly would not approve of any further extension of this branch of the representation.*"

3. Woodfall's Debates, anno 1797, p. 329.—*Charles Fox.*—"There is one class of constituents, whose instructions it is considered as the implicit duty of members to obey. When gentlemen represent *popular towns* and *cities,* then it is *disputable whether they ought to obey their voice,* or follow the dictate of their own conscience; but if they happen to represent a *noble lord* or a noble duke, then it becomes no longer a question of doubt: *he is not considered as a man of honour who does not implicitly obey the orders of his single constituent;* he is to have no conscience, no liberty, no discretion of his own; he is sent here by my lord this, or the duke of that, and if he does not obey the instructions that he receives, he is not to be considered as a man of honour and a gentleman. *Such is the mode of reasoning that prevails in this house.* Is this fair? Is there any reciprocity in this conduct? Is a gentleman to be permitted,

without dishonour, to act in opposition to the sentiments of the city of London, or the city of Westminster, or of Bristol; but if he dares to disagree with the duke, or lord, or baronet, whose representative he is, then he must be considered as unfit for the society of men of honour? This, sir, is the *chicane and tyranny of corruption,* and *this,* at the same time, *is called representation.* In a very great degree, the *county members are held in the same sort of thraldom.* A number of peers possess an overweening interest in the country, and a gentleman is no longer permitted to hold his situation than as he acts agreeably to the dictates of those powerful families. Let us see how *the whole of this stream of corruption has been diverted from the side of the people to that of the crown—with what a constant persevering art, every man who is possessed of influence in counties, corporations, or boroughs, that will yield to the solicitations of the court, is drawn over to that phalanx, which is opposed to the small remnant of popular election.* I have looked, sir, to the machinations of the present minister in that way, and I find, that including the number of additional titles, *the right honourable gentleman has made no fewer than one hundred and fifteen peers* in the course of his administration; that is to say, he has bestowed no fewer than one hundred and fifteen titles, including new creations and elevations from one rank to another:a*how many of these are to be ascribed to national services, and how many to parliamentary interests, I leave the house to inquire. The country is not blind to the arts of influence, and it is impossible that we can expect men to continue to endure them.*"

In the Statesman, for February 21, 1817, authenticated by the signature of Major Cartwright, may be seen a statement in these words:—"The writer has seen a very numerous troop of tenants, holding under a placeman and sinecurist, conducted to a county election as swine are conducted to market, one steward in the front, and another in the rear, as one hog-driver goes before the herd, and another follows after, to regulate the drift, and prevent straggling."

Thus far the worthy father of radical reform. From the nature of the two corresponding situations, coupled with the circumstance of the two stewards, one behind as well as another before, let any one judge whether the surmise is likely to have been unfounded, or the parallel inapposite.

[*]The pace at which, in virtue of such a series of antecedent impulses, they saw the chariot of the State descending towards the gulph, was not yet rapid enough to satisfy the impatience of the *Phaëtons,* from whom it receives its guidance. Behold one instance in which, on the spur of the occasion, to give redoubled energy to the indefatigable arm, the *surtout* of common decency was cast off, as being a needless incumbrance.

A bill for the more effectually preventing the sale of seats for money, and for promoting the monopoly thereof to the treasury,by the means of patronage:—such was the title moved for by *Lord Folkestone* for the act 49 Geo. III. c. 118. Out of 161, 28 voted for this amendment. (Cobbett's Debates, June 13, 1809.) To *denounce* to the people, and in language so expressive, the true character, of this measure, required the generous boldness of a Lord Folkestone. To *read* this character in it, belongs to any man, to whom the words of it are not unreadable.

Would you form an adequate conception of the anxiety by which on this occasion that Honourable House was agitated? Read it in the anxiety expressed—not to say betrayed—by the right honourable gentleman who is the head of it. Bursting the bond of those delicacies, which, but six days before (June 1st,) had produced the well-considered and elaborate declaration, of the reluctance by which, down to that time, he had been restrained from "mixing in the debates,"—twice in one day—viz. on the 7th of that same month—did he stand up and insist, that the word *express (that* being the word employed for the grant of the licence included in the monopoly) should be inserted. Inserted?—and upon what grounds? On grounds to which the absence of all grounds would surely have been in so small degree an advantageous substitute.

In the determination of Honourable House to *establish* the monopoly at that time—in that determination which he was thus labouring to produce—he saw an earnest of their determination to *abolish* it as soon as the occasion should require: and, in an imagined rule of *common* law already punishing the practice with an adequate punishment in *both* cases, he saw a sufficient reason for *adding* a regulation of *statute* law for punishing it in the *one,* and for *refusing* to add it in the other, of those same cases.a

[*]For the sake of distinction and clearness of conception,—for any such districts as, for the purpose of the more commodious *collecting of the votes,* may be proposed to be carved out of the *electoral districts,* I employ the appellation of *sub-districts:* understanding all along, by *electoral districts,* those which correspond to, and in number agree with, the number of the *seats:*—or, in contradistinction to the *electoral* districts, these *sub-districts* might be termed *voting districts.*

To express what is here expressed by *dividing the country into districts* (some of them, in the ensuing Plan, *territorial,* others *population,* districts,)—the phrase employed by an honourable gentlemana is, "*making the returns by districts:*" to express what is here expressed by *voting,* or *collecting the votes* in *sub-districts,* to be called *voting districts,* he says, "*taking the votes by districts.*" The occasions,—for speaking of the *districts* which, upon the *plan* in question, would have to correspond with the number of the *seats,* presenting themselves so continually,—hence the necessity of providing *a name* to speak of them by. As to the phrase employed by the honourable gentleman,—though the propriety of it may be considered as unexceptionable, yet, as it affords not any *name* for the *thing* I had such frequent occasion to bring to view, it could not, on every occasion, be rendered applicable to *my* purposes: nor indeed, till after some little expense in the way of *attention,* was the state of things which it presents brought within my view.

[†]Question. Power adequate to the carrying of the plan into effect, why thus lodge the whole of it in a single hand, the election-master-general's?

Reasons.—Security against failure. *Rule:*—Be the plan what it may, leave not in any one adverse hand the faculty of defeating it.

Be the plan what it may, every person whose concurrence is ultimately necessary to the carrying it into effect, has a virtual negative upon it. To insure such concurrence,

nothing short of a power of removal, in the hands of a person well affected to the business, can be sufficient. Punishment, in any the greatest quantity, that on any such occasion can be employed,—punishment in the form of law,—never can, in any such case, be to be depended upon. By plausible pretence, by subtraction of evidence, or by a variety of other means, it may be evaded, or (what comes to the same thing) expected to be evaded: at the worst, indemnification against it may be received, or expected.

No person who, by whatsoever cause,—simister interest, interest-begotten prejudice, authority-begotten prejudice, or original intellectual weakness,—is likely to be rendered adverse, or determinately indifferent, to the production of the effect, should, therefore, be left in possession of any such negative.

If, as here, the production of the effect is placed within the power of one person—that person well affected to the business—the danger of failure is thus reduced to its minimum. To this one add any number of others, whose concurrence is thus made or left necessary: by every one so added, the danger of failure is increased.

If so it be, that, for this all-commanding situation, not so much as a single individual, competent, and at the same time well affected to the business, is to be found,—accomplishment is, on this supposition, hopeless: on the other hand, suppose one such individual, though there be no more than one, whom the system has either found or rendered well affected to it,—the requisite power, as above, being also given to him,—accomplishment may thus be rendered morally sure.

At the recommendation of the election-master-general are moreover appointed the commissioners of survey and demarcation, as per Section 9, and by him they are removable. And thus all the functions necessary are put under the guidance of one will.

In the Duke of Richmond's Radical Reform bill, the division of the election districts—this first step in the whole course—was allotted to the twelve judges. As well might it have been allotted to the twelve Cæsars. Their time was, even in those days, fully occupied. For this strange mathematico-political function to have been executed by them, well or ill, within any limited time, the concurrence of every one of them would have been necessary: for, by any one, on one pretence or other, or even without pretence, every requisite operation might, during an indefinite length of time, have been delayed. On the part of no one of them, could any such concurrence have reasonably been expected.

After that which would never have been done, had been done, the business was to go, all over the country, to grand jurors: and, for the occasion, every man who *had ever been* was to be one. No obligation was there upon any one individual to do any one thing in it: if a man who could and would do something were found, no responsibility was there upon him for anything he did.

The election-master-general is *an individual.* In the hands of an individual, not in those of any *board,* should any such all-sufficient and indispensably necessary power

be lodged. Every board is a *screen;* and if, to the remembrance of a proposition of such practical and unquestionable importance, the play upon words is subservient, let it not be despised. Under the system of corruption the uses of a board are manifold:—1. To afford a screen to abuse in every shape. What is everybody's business is nobody's business: what is everybody's fault is nobody's fault: by each one the fault is shifted off upon the rest. So many members, so many confederates, all of whom—they and their connexions—join in affording support and protection to whatever misdeeds in any shape are committed by any one of them. 2. To afford a pretext for multiplication of offices; to each of which is attached its mass of emolument: so many needless offices, so many sources of waste, so many instruments of corruption. 3. If, upon occasion, any such desire should have place, as that of seeing the business miscarry, to secure the production of the so-desired effect.

Of course, never could any such expectation be entertained, as that of seeing any such plan as this carried successfully into effect, on any other supposition than that of the existence of a Prime Minister well affected to the business. Here then is *one* well-adapted mind necessary: that of an election-master-general of his choice, another: and now, for effectual accomplishment, these two concurrent minds would, in these two situations, be sufficient. Even with little aid from the great body of the people,—as for the most abject slavery, so for the perfection of liberty,—the quantity of the matter of corruption in the hands of a British prime minister would suffice.[a]

In the present practice, the sort of business, for the management of which the election master's office is instituted by this bill, is divided between two offices: that called the *office of the Messenger of the Great Seal,* for sending out the orders called *writs,* in pursuance of which the elections are to be made: that called the *office of the Clerk of the Crown,* for receiving the several answers called *returns,* in which it is stated what has been done in pursuance of these writs. In neither instance does the name of the office give any the slightest intimation of the nature of the business. The man who sends out these letters knows nothing about the answers; the man who receives the answers knows nothing about the letters; neither the one man nor the other know anything about what has been done in pursuance of the letters. Complication abundant; darkness visible; depredation the necessary and notorious fruit of it: depredation sanctioned and unsanctioned, regular and irregular, limited and unlimited: candidates contending for undue preference: officers bribed and giving it. Under the notion or pretence of excluding the corruption, legislators botching, time after time, in the usual style: 53 Geo. III. chap. 89, the date of the last botch: such is the mode, in which that correspondence is carried on by which Honourable House is filled. Object in filling it, mode in which it is filled, correspondence by which it is filled—is it not all of a piece?

[*]*Question:* Why, for establishing the existence of the several facts employed in the composition of the title to a vote, omit to employ the ceremony of an *oath?* Follow the answers:—

1. The effect of it would be to put an exclusion upon an eminently respectable class of persons, who, but for the bar set up against them by this instrument, would be entitled and admitted to vote.

2. By the ceremony, a considerable quantity of time and expense would be uselessly consumed.

3. In but too many instances, it is proved by experience to be void of efficacy, and thereby useless.

4. By giving increase to the number of instances in which it is notoriously an object of violation and contempt,a the application of the ceremony, on the occasion here in question, would have the effect of diminishing whatsoever influence it might otherwise still possess, and thereby whatsoever useful security it might otherwise be capable of affording.

[†]The journeys in question are—those between the *abodes* of the several voters on the one part, and the respective *polling offices* on the other.

That these journeys, with the expense and loss of time attending them, should be as short as general convenience in other respects will admit, is indisputably desirable. The smaller the polling district, and the nearer the office is to the central point of the district, the shorter, upon an average, will these journeys be. If, in regard to these points, namely, smallness and centrality of situation, these polling districts are brought into a conformity with general convenience,—what the election districts are—the election districts in which the polling districts are respectively included,—will, in these respects, be matter of indifference. The extent of the election district is determined by the quantity of population; and this, as nearly as convenience in other respects will admit, is to be the same in all. But as, in respect of density of population, the difference between district and district will be so great—having for its limits the density of the population in the purely town districts, and the thinness of the population in the thinnest peopled country district—hence the difference in respect of extent will be proportionably great.

But, in the instance of each district, proportioned to its *extent* will be the *number* of the polling offices which, for reducing the length of journeys, will require to be established in it. For *this* purpose, in the purely town district, no polling office distinct from the election-district office will be requisite:—nor does it appear why it should for any *other* purpose. For, even upon the universal suffrage plan, the greatest possible number of voters (it will be seen) would not be more than 5000 or 6000; the customary number perhaps not more than three-fourths or a half of that number: and, by adding to the number of *secret-selection boxes,* as per Section 8, an unlimited addition might be made to the number of voters giving their votes at the same time.

Thus much as to the main consideration, by which the number of the polling districts in each election district will require to be determined. As to the number, and in particular as to the number which might require to be established in the most thinly peopled election district, it is not possible to speak with anything like decision, without a calculation, the labour of which would not here be paid for by the benefit. The only consideration, by which any *limits* can be set to the number, is that of the *expense;* and that unquestionably is no trifling one.

Here then comes in a question, by what fund the expense shall be borne? *Answer*—By the *national* fund; not by any local one. Neither the benefit, nor the facility of supporting the burthen, is any greater in the most thinly peopled than in the most densely peopled district: therefore neither should be the burthen itself, as expressed in pounds, shillings, and pence.

But though the *exact extent* of an election district is thus far immaterial, it may be in some degree matter of satisfaction to the reader to have in mind some general conception in relation to it. So likewise in relation to the *quantity* of the *population,* a quantity which, as above observed, will not only want much of being determinate, but will moreover be as near the average in the least extensive as in the most extensive districts. To this purpose, *Mr. Rickman's* masterly and most instructive *Preliminary Explanations* prefixed to the *Parliamentary Population Returns,* printed in 1812, for the use of the Members, afford us much and very satisfactory information.

First, then, as to Great Britain:—

1. Inhabitants in Great Britain (anno 1811) per do. 12,353,000

2. Square miles in do., as per do. . 87,502

3. Divide inhabitants 12,353,000, by *seats* 558, Number of inhabitants to a seat is . 22,137a

4. Divide *square miles* 87,502 by *seats,* thence by *districts,* 558, number of square iniles to a *district* is 156

5. In a district, greatest *direct* distance of any habitation from the district office, upon the supposition of its being in the centre of the circle in which the square is inscribed, is a fraction more than . . . . . 8 miles 6 f.

6. Greatest *travelling* distance, on the supposition that to the above distance is to be added one-fourth more for the twinings and windings of roads, a fraction less than . . . 11 miles

7. Greatest *travelling* distance, on the supposition that, by reason of want of exact centrality in a town sufficiently adapted to the purpose, there are in some districts habitations at a distance half as great again as the above from the district office, a fraction more or less than . . 16 m. 4 f.

But it is in districts that are purely *town* districts, that a large proportion of the total population of Great Britain is contained. Of any such attempt, as that of ascertaining the exact proportion, by travelling for this purpose over the whole field of the parliamentary returns, the use would not here pay for the labour. For aid to conception, let us assume a result, differing perhaps not very widely from the correct result, and suppose *the half* of the population to be contained in those districts that are upon the purely town scale. But in districts so circumstanced, all taken together, the

whole quantity of land is, in comparison of the whole quantity contained in the country districts, so small, that for simplicity of calculation, it may, perhaps, on this occasion, without any error very material to this purpose, be considered as nothing, and left out of the account. This being done, the consequence would be, that, to find the average number of square miles in a district, instead of dividing the whole number of square miles by the whole number, we should have to divide by no more than half the number of the districts. On that supposition, the lengths of utmost distance, as above mentioned, would be to be doubled. But, from the number of square miles in the most thinly peopled district, to the number in the most densely peopled district, the number would be descending in a regular series. This considered, instead of as large again, we may perhaps state the utmost length of journey, in that district which is the most thinly peopled, and thence the most extensive, as being half as large again as the number above stated.

On this supposition, we shall have for this utmost length, ... 24 m. 6 f.

Thus then comes in a topic, which, important as it is, could not have been touched upon in the text: namely, that of the injustice done, done by the Irish Union act, to Ireland, in respect of the proportionable number of the seats allotted to it. To Ireland, as to Great Britain, injustice in that or in any other shape *could* be done, and but too easily, under the system of disguised despotism:—*could* be done, and accordingly *was* done. But, with any prospect of success, neither in that, nor in any other shape, could injustice, especially so flagrant and so palpable, be so much as proposed, in any proposed system of equal liberty.

Note that, at the union with Scotland, the injustice was still more flagrant.

Now as to Ireland:—

1. Inhabitants in Ireland, as per Playfair's "Statistical Tables," anno 1800, and Pinkerton's "Geography," Vol. I. p. 213, anno 1807, by conjecture, in round numbers, . 4,000,000

2. From other accounts, that number being supposed to be rather under than over the mark, especially for the year of the British population returns, 1811, take, instead of it, the number which forms an exact third of the number of the inhabitants in Great Britain; namely, 4,114,333

3. Divide *inhabitants* 4,114,333, by *seats* 100, present actual number of inhabitants to a seat, neglecting fractions, is 41,143

4. Per Rickman, p. 30, "Scotland (with its islands) is about equal to Ireland in area, and is half as large as England and Wales." Supposing these dimensions correct, as they are sufficiently for the present purpose,—say then square miles in England and Scotland taken together being 87,502, as above, square miles in Ireland are 29,167

5. Divide square miles 29,167, by seats 100, No. of square miles in Ireland to a seat is

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Such are the existing proportions, as marked out by the Irish Union act, under the system of distribution actually in existence. Observe now what would be the proportions under a system of equal justice.

The *population* of Ireland being, as above, *one-third* of Great Britain, the number of *seats* allotted to Ireland ought to have been, and ought now to be, *one-third* of the number of those allotted to Great Britain.

1. No. of *seats* for Great Britain and Ireland taken together is 658

2. Instead of 658, take, for both together, the number which, being divisible by 3, is next above 658. This is 660

3. *Proper* share of Great Britain (three-fourths of 660) is accordingly—*seats,* instead of the present *actual* 558, ... 495

4. *Proper* share of Ireland (one-fourth of 660) is—*seats,* instead of the present actual 100, . 165

Anno 1707 (the year of the Scottish Union) population of England, as per Rickman, from the population returns of 1812, . . 5,240,000

Divide inhabitants 5,240,000 by seats 513, this gives, to a million of inhabitants, seats nearly 100

At that time the population of Scotland could not have been less than 1,000,000

Seats for the million no more than . . 45

Note, on these occasions, as on all others, injustice, the continually increasing offspring of uncontrouled power. At the Scottish Union, England being strongest, was unjust to Scotland. At the Irish Union, England and Scotland together being strongest, were unjust to Ireland. But, Scotland being swallowed up in England, it is still to England that the honour of the injustice is due. On the ocean, England prides herself in being unjust to other nations—in exercising dominion over them: and this is another of her honours. Lords of the ocean indeed! This means lords of all other men upon earth, whenever they come upon the ocean. Out of our own country what right have we to be lords over any other men any where? But the time is coming when rascality will be rascality everywhere: not less when manifested upon the largest scale, than when upon the smallest.

But (says somebody) is not this sowing dissension amongst the friends of reform? Sowing dissension? Yes; so it would be, if, by shutting his own eyes, it were in a man's power to shut other men's: if by shutting their own eyes against injustice, when prepared to be committed to their advantage, it were in the power of Englishmen to shut the eyes of Scotchmen,—of Englishmen and Scotchmen together, to shut the

eyes of Irishmen,—against injustice proposed to be committed to their disadvantage. But exists there any sort of mechanism capable of producing any such effect? I, for my part, know of none. Under the system of force and fraud, there is little difficulty in this; and practice insures, in a great degree, the success of it. Not so under a system of freedom and sincerity. In a case like this, I see not how, upon any tolerably promising grounds, a man can expect to receive justice, unless he begins with rendering it. For my part, I believe not that there either is, or can be, any scheme of political deception, that is not either already exposed, or in a way soon to be so. When a thing, that to me seems to be material, presents itself to my view, my notion always is—not that it will present itself to nobody else, but that it will present itself to everybody else.

Though in Ireland there has not as yet been any *enumeration* of the people, nor has any such *survey* been commenced, as that in which such considerable progress has already been made in Great Britain, [viz. in 1811,] yet, as in Ireland the quantity of surface is not more than about one-third of that in Great Britain, Ireland seems to be the country in which the conjunct operation might reasonably be expected to be soonest completed.

[†]*Resignation.*] At present a seat cannot be vacated by simple resignation. When a member wishes to resign, he cannot do so without being appointed to an office under the Crown; which appointment, monarch or minister may refuse, or delay as long as he pleases. Refusal is not, indeed, customary; but it is not the less legal, and might, and would at any time be resorted to, if an expected successor were to a certain degree obnoxious. In Ireland, before the union, and on the occasion of the union, it was actually resorted to.

Among the inwardly harboured maxims, by which the practice of Honourable House conducts itself, a leading one may be stated to be this:—never do in a direct way that which you can do in an indirect way: in other words, never do without insincerity that which you can do by insincerity.

Thus, in the present case, one man cannot make room in the House for another, but a false pretence for it must be made: a false pretence; and to that false pretence, not only the out-going member himself, but the monarch and minister likewise, are parties.

The ground of the falsehood is this. In the statute-book are some half dozen acts, mentioning, by general description, certain offices, and other sources of emolument at the pleasure of the Crown, and declaring, that upon acceptance given to any office, &c. coming within that description, by a member of the House of Commons, his seat is vacated. Why vacated? Because, were he to continue in it, the office being one of those to which emolument is attached, his conduct would, by the fear of losing it, be apt to be rendered subservient to the particular interests of monarch and minister—adverse to the universal interest. Thus the very principle of all the acts is the notorious corruptness of the system of which they make a part.

Among these offices is one called *the Stewardship of the Chiltern Hundreds.* Of the system of falsehood, without which a seat is not suffered to be vacated, this office is

the constant instrument. On this occasion, the following is the pretence, the falsehood of which is so notorious. Regarding the person in question as being eminently fit for the trust in question,—and willing, as well as able, to perform the duties of it, and thereby to earn the emolument attached to it,—his Majesty has been advised, and is graciously pleased, to select him for that purpose, and place the office in his hands. What, in the instrument of appointment, is actually *expressed,* I cannot pretend to say; nor can I at this moment be certain whether any instrument for this purpose actually receives official signature. But, whether expressed or no, such are the allegations *implied.* Willing and determined to do his best towards the fulfilment of these duties, the Member who has thus been singled out, gives, on his part, to his Majesty his humble thanks, and to the office his acceptance. This being what is said—said by monarch and by minister—both saying it in solemn form by their signature, how stands the matter of fact? No duties whatever; no selection; the office is given indiscriminately and successively, to every Member that applies for it to all Members; who, one after another, apply for it; perhaps to several on one and the same day.

Thus drenched in insincerity is Honourable House. It is by insincerity men get into it; it is by insincerity men get out of it. Hear their speeches; look to their votes; look to their journals: see whether, without insincerity, anything that is done there, is ever done.a

Were not all regard for sincerity almost universally cast off in Honourable House—cast off by Whigs not less completely than by Tories—could sham representation have stood thus long in the place of genuine?

Among the effects of Radical reform, would be—not only in Honourable House, but in so many other places—in other houses—on the throne—on the seats of judicature—in the seats of education—if not to put an end to *this,* at any rate to put an end to the *empire of this.*

[*]Why say "*intended and supposed,*" as if the thing intended on an occasion of this sort ever failed of being done? To this question something of an answer may here be expected. By logicians, when speaking of a *definition,* is commonly meant, as of course, the mode termed in Latin *definitio per genus et differentiam:* definition, afforded by the indication of a more extensive collection of objects, to which the object in question belongs—some *genus* (as the phrase is) of which it is a *species,*—together with the indication of some peculiar character or quality by which it stands distinguished from all other objects included in that same collection—from all other *species* of that same *genus:* and this form is that which, when what is considered as a *definition* is given, is the form constantly intended and supposed to be given to it.

Now then, by him who undertakes to give a definition in this form, what is necessarily, howsoever tacitly, assumed, is—that there exists in the language a word, serving as the name of a *genus* of things, within which the *species* of things indicated by the word he thus undertakes to define, is comprehended. But words there are, and in no small abundance, of which definitions of this sort are frequently undertaken to be given—or which are supposed to be as clearly and generally understood as if

definitions in this form could be and had been given of them—but for which, all this while, no such more extensive denomination is afforded by this or any other language: and among them, words which, in law and politics, are in continual use, and upon the signification of which, questions of prime and practical importance are continually turning. Take, for instance, the words *right, power, obligation.* Now, in the way in question—namely, by indication of so many superior genuses of things, of which these words respectively designate so many species—it is not possible to define these words. No one of these three words can you thus define. The word *man* (for example) you *can* thus define: you may do so, by saying that he is *an animal,* and then stating a quality by which he is distinguishable from other animals. Here, then, is a word you can and do thus define. Why? Because, comprehending in its import that of this same word *man,* stands that same word *animal,* by which is accordingly designated a *genus,* of which *man* is a *species.* So likewise in regard to *operations:* for example, that of *contracting,* in the *civil* branch of the field of law; and that of *stealing,* in the *penal* branch of that same thorny field. *Contracting* is one *species* of *operation; stealing* is another. But this you cannot say in the instance of *right,* or *power,* or *obligation;* for a *right* is not a *species* of anything: a power is not a *species* of anything: an *obligation* is not a *species* of anything.

The objects, of which the words *man, animal, substance,* are names, are extensive sorts or kinds of *real* entities: the objects, of which the words *right, power, obligation,* are names, are *not* sorts or kinds of any *real* entities: the objects, of which they are sorts or kinds, are but so many *fictitious* entities.[a]

[a]This fifteen per cent. was taken from one of the finance pamphlets of Treasury Secretary Rose. Some years before, to a question put by me to the late Sir Francis Baring, the answer was, six per cent. This meant, of course, over and above interest, then at five per cent.—Communicated by the Author.

[a]Had the bank been sufficiently aware of this, would they have waited, till compelled by necessity, before they issued their £2 and £1 notes?

[a]This (it should seem) would depend upon government; since if government, in the issues of annuity notes, refused to take bank notes in payment for them, the unwillingness to take barren paper, when interest bearing paper was to be had, would soon become general, if not universal. As to the propriety of this, or any further measures in the same view, see Chapters VIII. and IX.

[b]"Guineas cannot be used in any considerable dealings," says Mr. H. Thornton, in his evidence before the Committee of the House of Lords on the stoppage of the bank. (Report, p. 72; reprinted in Mr. Allardyce's Address on the Affairs of the Bank, Appendix, p. 54.) By Mr. Abraham Newland's evidence, in the above Report (p. 62,) it appears that the payments of cash into and from the exchequer, are small in comparison with the payments in bank notes; not above £50,000 or £60,000 a-day, upon an average, remaining in the exchequer in the shape of cash; forming a daily total of money (cash and paper together) averaging about £151,095 (see Chap. V.) And out of £20,000,000 paid on the score of dividends at the bank, not above £1,300,000 or £1,400,000 is paid otherwise than in bank-notes.

[a]Not less, for instance, than the amount of the quarter note (the £3 : 4s. note) or the half quarter (the £1 : 12s. note.)

[a]25 Geo. II. c. 27 (the first consolidated act;) 39 & 40 Geo. III. c. 32.

[b]3 Geo. III. c. 10.

[c]Sinclair, ii. 112.

[a]Observations on the Income Tax, second edition, 1800.The amount of the sums which, having been received in the shape of capital, are susceptible of the proposed temporary employment, is altogether unsusceptible of calculation. In the course of the year, it is greater or less than that of the sums received and kept for the purpose of expenditure.

[a]See that work as reprinted in the present collection.

[*]That these details are too particular, is an objection which requires proof. The necessity of those things which some would consider as minute may be easily proved.

[†]See Introduction to Morals and Legislation, Chap. XVIII. Vol. I. p. 96.

[a]For example: except where, as here, the disputants come jointly and unanimously to the judge for his arbitration, no personal attendance, on the part of them, or any of them, until attorneys have been appointed and acted on both sides; no personal attendance; consequently, no original election de domicile, by parties; nor at any subsequent time any such election, by any other persons.

[a]Sequestration and Sequestrator are terms of Rome-bred law: employed and applied to use, in both branches, spiritual as well as temporal, of that same important rule of action and source of judicature.

[*]Assizes.] True it is—that, in that case, the matter of the record being, nearly the whole of it, in its nature useless, no use is made of it: insomuch that, were the same quantity of blank paper sent into the country and back again, the service thereby rendered to justice would not be less than that which is rendered by the transference and retransference of the learning-fraught parchments. But, in Equity procedure, it is with the elicitation of the evidence that the suit commences; this is, in every case, the first operation performed: that is to say, the commencement of that same process; whatsoever be the number of years that may have been made to elapse before the conclusion of it, instead of the minutes—yes, frequently the minutes—that would have sufficed for it.

[a]Examples:—In case of mental imbecility, by reason of early minority, or insanity, the appropriate Guardian: in case of absence in foreign parts, the Agent: in case of a body corporate, a Deputy, in the person of a member, or an appropriate functionary.

[a]For example, if, in the King’s Bench shop, they have got from you all the money you can command, so that you are unable to pay for this or that instrument the

exhibition of which they have rendered necessary to the carrying on of the suit on your side,—in this case, they say that you hold them in contempt, as per note to art. 48; and this contempt they consider as being conclusive evidence of your being in the wrong, and deal by you accordingly; of your being in the wrong, on whichsoever side of the suit you are—whether the plaintiff's or the defendant's.

[b]For example, the Justice of the Peace Court, called the General Sessions, or Quarter-Sessions. absurdity of not so much as attempting to administer any more than one of two remedies, where the nature of the case admits of and requires the application of both; and the still more flagrant absurdity of shutting out or letting in the one and the same evidence,—that is to say, the testimony of one and the same man,—according as it is the one sort of remedy or the other that, if admitted, he would apply for. As to what regards this latter absurdity, further particulars belong not to thisplace; but they may be found in ample abundance in the Rationale of Evidence.

[a]The Table thus referred to, does not appear to have been prepared by the author: it has not been found among his MSS.—Ed.

[a]Imagery and allusion are helpers to memory. Image the first: scarred thus would be the neck of the Hydra. Image the second: cleared off as by an all-consuming fire,—cleared off never to repullulate—would be the jungle, in which so many wolves in sheep's clothing—inhabitants and lords of the soil, lie in wait for the passenger.Strongly perceptible is the want of an arrangement of this sort, in all the existing bodies of law, the arrangement and language of which have their origin in Rome-bred law; more particularly in Bonaparte's Code: and from this deficiency has been deduced an argument against Codification—against the applying to its use, the only instrument, by which men can be preserved from being deprived of the benefit of all their rights, and being subjected to all the established punishments, for want of this saving knowledge, the acquisition of which is, by all supporters of Judge-made law, purposely endeavoured to be rendered impossible.

[a]See Blackstone III. ch. 25. Every court inferior in power to Westminster-Hall Court is treated somewhat cavalierly. It is called "a base Court," and that imputed to it is not "Error" but "False Judgment."So in III. ch. 23, p. 372, the case of a Bill of Exception: in which case the subject-matter of virtual appeal is the opinion given by the Judge for the direction of the Jury. Note, if worth while, the humiliating circumstance.

[a]As to the different modes of subordination, see Introduction to Morals and Legislation, Chap. XVIII. Division of Offences (l. 96.)

[a]Section I. to VIII. were in print at the time of the author's death.—Ed.

[a]Published in 1830—(see above, p. 289.)—Ed.

[a][Estimated:] For to the whole of the year, positive statement could not be applied, near a month of it being at that time still to come.

[a]Reasons for doubting of the limitation will be seen below.

[b]If so, then to twenty at this present time, anno 1817.

[a]A law which has no existence.

[b]Perhaps.] A peremptory exclusion, by which one half of the species is excluded from that security for a regard to their interests, which in the case of the other half is pronounced indisputable. Ground of this exclusion—or at least a principal part of that ground—a perhaps!

[c]Law of nature—another non-entity. A too common phrase: in the present instance,—quere, what is at the bottom of it?

[a]Supposing this a speech spoken—hear him! hear him! would it not at this place be the cry from the opposite benches? Profound the discovery of the supposed confession—proportionably triumphant the exultation!

[a]By influence must surely have here been meant—not influence of understanding on understanding, the influence exercised by acknowledged wisdom on unexperienced probity—but the vile instrument commonly called and understood by this name; viz. the influence of will on will—the influence exercised by the double headed beast, whose name is terrorism and bribery.

[a]Learn hence, that, in the opinion of both brothers, public opinion—the whole force of seductive influence notwithstanding—was really against the American war. N.B. Public favour would not have given him the £2,000 a-year, or any part of it.

[a]i. e. by means of proprietorship of so many proprietory seats.

[b]i. e. by terrorism; with or without an admixture of bribery.

[a]Viz. in the compass of about thirteen years, from 1784 to 1797: in the subsequent twenty years down to this time, what may have been the addition? Inquire and report,—ye good men and true—who have leisure.

[a]Cobbett's Debates, June 7, 1809, xiv. 926.—"The Speaker stated his wish on the first view to extend the provisions of this bill to the purchase of seats in parliament, as well by office as by money. The great rule was—to strike at the prominent and most flagrant points of offence. Amongst those, most certainly, was the proof of an express contract. These, he would state, always impressed him with the conviction, that this species of traffic, whether carried on by implied or express covenants, was an offence against the law of parliament, and, in his opinion, punishable as a misdemeanor at common law. It was fully within the power of the House to provide any future enactments against any future offences, which in the course of the operation of this measure might subsequently arise."—"Mr. Ponsonby, with considerable diffidence in his own opinion, when opposed to the very high authority of the Speaker, still contended that the insertion of the term "express," in a declaratory act of parliament, conveyed the interpretation, that the penalty attached to express agreements, and that all of an indirect nature came not within its operation."—"The Speaker considered, that the resolutions of that House in 1779 bore fully upon a traffic carried on by an implied

contract, and therefore he saw no reason to oppose the proposed clause, as now worded."

[a]Mr. Brand—Cobb. Deb. xvii. 131.—Anno 1810, May 21.

[a]British Prime Minister? Upon this occasion, what then shall we say of Ireland? Answer—Nothing: upon this occasion, as upon thousands and millions of other occasions, the learned person, whoever he was, that drew the Irish Union Act, followed by so many pre-eminently learned persons who gave their sanction to it, has not left it possible. King of Great Britain and Ireland?—yes: this we are commanded to say—British and Irish King?—no: this we cannot say: constructed as the language is, the form given to the name of the United Kingdom will not allow of it. English king—there is: British king, and in him a Scottish king—there is: Irish king—there is none. English and Scottish interest taken together—you can speak of: for you can say British interests—Irish interests, in conjunction with English and Scottish, you cannot so much as speak of. On no occasion, in the grammatical form of an adjective, can the United Kingdom be spoken of, but Ireland must be left out: left by the writer or speaker unmentioned: left by the reader or hearer unthought of. Such was the skill, or such the good-will, of Pitt the Second and his scribes.But Ireland, where have been her eyes all the while? How long will she be content to remain thus an outcast? Since the Union, scarce has a day passed that I have not been plagued with the continually recurring necessity of thus dealing by her as if she were unheeded.One word would supply the remedy: for the United Kingdom, a name, by which, as England and Scotland are by Britain, all these nations would be brought to view. A word that would do this I have had in mind and on paper these thirteen or fourteen years. But by those to whom good taste, that is, their own whim, is everything, the welfare of mankind nothing, so sure as it were fit for the purpose, so sure would it be scorned:—and of such is the corporation of the ruling few composed.That, in this instance, language should have no influence on conduct, is not possible. For in what instance is not conduct a slave to language?

[a]Amongst others, English University Oaths, by which, at entrance, the members, all of them, swear to the observance of a set of ordinances, which no one of all these swearers fails to disobey: (see this shown in "Swear not at all:") these University men, all of them: and amongst them, with few exceptions, all who come afterwards to be Church of England clergymen; and, with no exceptions, all who come afterwards to be bishops and archbishops: not forgetting those who, under the name of blasphemy, are so eager to draw down punishment on the heads of all who, against that which for lucre they have made profession to believe, have written anything which, in their opinion, cannot be sufficiently answered otherwise than by fine and imprisonment.So likewise custom-house oaths, and a vast variety of other oaths prescribed by statutes. [See note prefixed to "Swear not at all," in this collection.]Also petty jurymen's oaths—oaths which are constantly violated by the minority, as often as any ultimate difference of opinion has place.

[a]In the Congress House of Representatives, the proportion was, in 1810, one representative to every 35,000 inhabitants: that is, if the whole territory were divided into election districts, 35,000 inhabitants to an election district.—Seyfert, p. 13.In the

constitution of these United States, of which the Congress is the general legislative body (date of the constitution, 17th September 1787,) in speaking of the Congress House of Representatives, it is said:—"The number of representatives (meaning from all the States taken together) shall not exceed one for every 30,000." Art. II. Section 2.

[a]It is from the class of men by which the proceedings of Honourable House have at all times, as they could not but have been, been guided, that the insincerity so conspicuous in the whole frame of them has manifestly been derived. Lies manufactured by lawyers, as such, are even by themselves acknowledged to be untruths, and, as such, constantly spoken of under the name of fictions. But never was the appellation of a lie ascribed to anything with more strict propriety than to these fictions. A fiction of law hurts nobody, says one of their Latin maxims. This lie embraces and overtops all the others. A fiction of law hurts everybody. Never was any one of these lies told, but it had for its object, and as far as it compassed its object, for its effect, usurpation and injustice. When a Judge wanted to do something which he was conscious he had no right to do, his way was, in relation to some matter of fact, to make an assertion, which, if true, might have afforded him a justification for what he did: but which, to his knowledge, was not true. Here then was a gross lie; and by lies of this sort, in the dark ages, did judges contrive to steal power, sometimes from parliament, sometimes from the monarch, sometimes from one another, under favour of that universal ignorance, which they had so successfully laboured to keep up, by the clouds in which, by these and other means, they had succeeded in enveloping their proceedings. The detail of these lies and these thefts may be seen in Blackstone: in Blackstone, who, so thoroughly depraved by bad education were his understanding and his morals, saw, for anything that appears, no harm in it.—Yes; usurpation and injustice. Never, in the coining of any one of these lies, could the coiner have had any better object; for if what he was doing had not been contrary to justice, the lie would have been of no use to him. Contrary to justice? Yes, and even contrary to law, as it stood, in so far as in such a shape, and in such hands, anything to which the name of law could with propriety be applied, could be said to stand, or to have existence.For some time past, no fresh lies of this sort—none at least that in flagrancy can compare with the old stock—have been coined: the people, it may have been feared, would not bear it. But the old stock is made the most of:—several purposes are continually answered by it:—purposes, as baneful to the people, as beneficial to those by whom the base currency is forced upon them. A vice, which for its mischievousness ought to be an object of universal abhorrence—the vice of insincerity in its very grossest forms—has, to their own profit—such is the efficiency with which power, decked in false science, can produce delusion—been converted by them into an object of almost universal veneration. To an eye that dares open itself, a curious sight is—to see how, in the very act of punishing this vice in others, they revel in it themselves. No; never has man been punished by them for lying, but a string of lies has been uttered by the judge, to help form the ground for punishing him. Every record is the discourse of some judge or judges. Look into any record, you will see the lies it teems with. Examine in detail the forms of judicial procedure, and see whether it be not in insincerity that they began, and from the beginning have continued. No proposition so absurd, no practice so flagitious—that custom and habit will not reconcile men to. When the king has made a man a judge, amongst other powers is this of converting vice into virtue: this is among the articles of faith which hitherto the people have bad

the goodness to believe.It may be seen in another work (Swear not at all) whether the clergy of the establishment are not, on their part, trained up for years in a course, even confessed by themselves to be that of habitual perjury: not to speak of the insincerity in so many other forms, with which, without exception, men, on their entrance into that profession, are by authority of law compelled to defile themselves.Of the sort of morality thus imbibed by the higher orders, who does not see—yes, and feel but too sensibly—the effects?—in particular, the effects produced by it in Honourable House, and in the whole system of sham representation, on which it stands? To men thus educated, how can insincerity—when so constantly practised to their own sinister purposes—be otherwise than an object of fond affection, and sincerity an object of terror and abhorrence? Thus it is, that whatsoever regard for sincerity has place in the "lower orders," it is not in consequence but in spite of the example set them: set them by those who, on no better ground than that of the riches and power with which fortune has favoured them, pretend to constitute the only class in which either wisdom or virtue is to be found.Protest against high-seated vice in this and so many other shapes, the answer is—You are an enemy to English institutions: as if, only by continuing to practise it, Englishmen had a power of converting vice into virtue.

[a]For expounding or explaining the import of any one of these names of fictitious entities, the nature of the case affords but one resource; and that is, the finding some class of real entities, which is more or less clearly in view as often as, to the name of a class of fictitious entities, any clear idea stands annexed,—and thereupon framing two propositions; one, in which the name of the fictitious entity is the leading term; the other, in which the name of a corresponding class, either of real entities, or of operations or other motions of real entities, is the leading term:—this last so ordered, that, by being seen to express the same import, it shall explain and make clear the import of the first. This mode of exposition has been termed paraphrasis—paraphrase: giving phrase for phrase.It is for want of observation made of this distinction, that all attempts to define words of the description in question, such as right, power, and obligation, have proved abortive. Of a regular and comprehensive body of law, framed in subservience to what are or ought to be the ends of law, a set of appropriate expositions for words of this description would be an indispensable accompaniment; but, for any such work, this is no proper place.In a work entitled "A Fragment on Government," published by the Author in 1776 [see Vol. I.] without a name, and long since out of print, indication was, for the first time, given of the utter impossibility of doing that which, in such numbers, men have been continually supposing themselves to have done. Instead of a superior genus, what on this occasion has been brought forward has been some term or other bearing in its import such a resemblance to the term in question, as to be capable of being, on some occasions, with little or no impropriety, employed instead of it. A right is a power—or a power is a right—and so forth; shifting off the task of definition, backward and forward, from one word to another; shifting it off thus at each attempt, and never performing it.But, though a right is not itself a species of anything, right has divers species, perfectly and clearly distinguishable; namely, by means of the benefits which they respectively confer, and the sanctions by which they are respectively created: and for each of these species a separate exposition would be found requisite.Give us our rights, say the thousands and the millions. Give us our rights, they say, and they do well to say so. Yet, of all who

say so, not one perhaps can say, not one perhaps ever conceived clearly, what it is he thus calls for—what sort of a thing a right is.