A

VINDICATION

OF THE

POWER of SOCIETY

TO

Annull the MARRIAGES of MINORS,

ENTERED INTO

Without Conſent of PARENTS or GUARDIANS;

IN WHICH

The Objections made thereto, in two Pamphlets lately publiſhed by the Rev. Dr. *Stebbing*, are fully conſidered.

By JOSEPH SAYER, Eſq.

Conjugium vocat; hoc prætexit nomine culpam.

LONDON,
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MDCCLV.
[Price One Shilling.]

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The POWER of SOCIETY, *etc.*

IF the great importance of Matrimony not only to the peace and order but to the very being of ſociety be conſidered, it muſt be allowed, that it is the indiſpenſable duty of legiſlators to make from time to time proper regulations therein. It was agreed on all hands that certain abuſes had crept into this inſtitution, and that, the old laws being in ſome things deficient in others eluded, it was high time to put a ſtop to theſe by a new one: yet was the utmoſt attention neceſſary that, ſo far as human prudence could foreſee and guard againſt it, no new inconvenience ſhould be introduced. How far *the late act for the better preventing clan-*

deſtine

deſtine Marriages will anſwer theſe two purpoſes time will ſhow: but with great deference to Authority it may be ſaid, that it was not paſſed with ſo much deliberation as the making new arrangements in an affair of ſuch conſequence deſerved. It has, as it might be expected, been the ſubject of much converſation: and ſome things have appeared in print. Amongſt the reſt, two pamphlets have been publiſhed by the learned Dr. *Stebbing*: one called *An Enquiry into the force and operation of the annulling Clauſes in a late Act for the better preventing clandeſtine Marriages with reſpect to Conſcience:* the other, *A Diſſertation on the power of States to deny civil protection to the Marriages of minors, made without the conſent of parents or guardians.* The two principal things which he has endeavoured to make out are, that if any perſon ſhall marry in any other way than this act directs, the law by declaring ſuch Marriage null does not diſcharge conſcience from the obligation: and that the ſtate has no power to deny civil protection to the Marriages of minors made without conſent of parents or guardians. To examine and refute what he has advanced in ſupport of this laſt propoſition is the preſent deſign: but in order

order thereto it will be neceſſary to take ſome paſſages in the *Enquiry* as well as the *Diſſertation* into conſideration [a].

AFTER laying it down as one eſſential by the law of nature to Marriage, that there be a ſufficiency of knowledge or underſtanding to qualify the parties to contract, the Doctor goes on in theſe words: " [b] Experience and " obſervation muſt be conſulted, to know at " what age perſons are ordinarily of ſuffici- " ent underſtanding to make the marriage " contract; and lawgivers ought not to act " againſt ſuch experience, but be directed by " it; in which care ſhould be always taken " to keep as near as may be to the ſtandard " of nature; and rather to fall a little below " it, than riſe much above it. If the law " ſhould ſay, that no woman ſhall marry till " ſhe is fourteen years of age, nor any man " till he is ſixteen, it would be a very ſafe " and reaſonable law; for few (in theſe parts " of the world at leaſt) ever think of mar- " rying ſo ſoon. But if it ſhould be declared " that no perſons ſhall be adjudged capable

[a] The reader is deſired to remember, that when any thing is cited from the *Enquiry*, the letter *E.* is prefixed in the margin to the number of the page: all other paſſages are from the *Diſſertation*. [b] P. 5.

" of contracting Marriage, till they are up-
" wards of twenty, it would be very unrea-
" ſonable: for nature may urge ſooner."
Without going into a nice enquiry at what preciſe age theſe urgings of nature are felt, one may venture to ſay that very few of thoſe the Doctor calls women feel them before the age of fourteen; and that very few of thoſe others called boys feel them before that of ſixteen: and it may be admitted that both ſexes are ſenſible of them ſome time before they are twenty one. A law then to hinder the latter from marrying till ſixteen, and the former till fourteen, ſo far from being reaſonable would be quite nugatory: for to what purpoſe is it to reſtrain by a general law when few ever think of doing it ſo ſoon. If the gratifying theſe urgings was the only thing to be conſidered all laws would be unreaſonable, for nature would beſt fix her own time: but if by ſufficient underſtanding to make the Marriage contract is meant ſufficient underſtanding for the other conjugal duties as well as the procreative, a law that perſons ſhall not marry till they have this is both ſafe and reaſonable. It is indeed ſaid, " [c] that this capacity of knowing the true end,

[c] *E.* p. 7.

" uſe

" uſe, and effect of the Marriage contract,
" follo ws cloſe at the heels of the capacity of
" procreation, and the natural appetite of
" Marriage. Every man confeſſes this who
" marries his daughter at fifteen, ſixteen, or
" ſeventeen years of age, (which there is
" ſcarce a parent in the kingdom, who
" would not do for the ſake of an advantage-
" ous match,) and the reaſon is plain, for the
" contract ariſes not from the parents con-
" ſent, but from the conſent and will of the
" child; which conſent, if the child were
" not in a capacity of contracting, would be
" abſolutely of no force." That the Doctor is of opinion that theſe capacities follow each other very cloſely, no one who has read theſe pamphlets can doubt: but has he ſhown they do ſo? Some do indeed marry their daughters at the ages he mentions; which may be a confeſſion that theſe were in the judgment of their parents of ſufficient capacity, or that they were tempted by what they judged an advantageous match to marry them before they were ſo: But it can never prove that children in general are ſo at thoſe ages. This which is called a plain reaſon, far from concluding to the point that theſe capacities follow each other ſo cloſely,

cloſely, amounts to no more than a naked aſſertion, which ſhall hereafter be conſidered, that if the act of the child himſelf is not valid the conſent of parents cannot make it ſo. One would think the Doctor muſt be miſtaken, when he ſays there is ſcarce a parent in the kingdom who would not marry his daughter at the age of fifteen, ſixteen, or ſeventeen for the ſake of an advantageous match. It ſeems abſurd that they ſhould act ſo inconſiſtently in their private with what they do in their publick capacity: for wherever the people have any ſhare in the legiſlative power, every act of this ſhould be conſidered as the act of parents in ſuch capacity. There is perhaps no one thing in which the laws of all civilized nations have been more uniform, than that theſe capacities do not follow each other ſo cloſely. In this country, by conſulting experience and obſervation it has in all ages been found, that in general neither ſex is capable of knowing and performing the duties of the married life till they are twenty one. The conſequence has been laws to prevent marriage before that age; and in this it cannot be denied that they have rather fallen below the ſtandard of nature than riſen above it: for as minors have been

been conſtantly held unequal to trifling contracts, they muſt be ſo to this moſt important one, on which the happineſs or miſery of great part if not the whole of their lives depends. It being however ſuppoſed, that by the law of nature parents were judges when they had the proper capacity, the civil power has in conformity thereto uſually left it in the power of parents to permit children to marry before the time fixed by law. An uncommonly early ripeneſs of underſtanding, or ſome other circumſtance, of which they are the beſt judges, may make the exerciſe of this expedient: but it cannot be fairly inferred that, becauſe a few do this, the united wiſdom of parents in all times and countries has been miſtaken as to this matter.

The ſecond thing laid down by the Doctor as an eſſential by the law of nature to Marriage, is a right to contract. In treating of this, he ſays, "[d] here lies the grand queſtion. "Is the diſſent of the parents a bar againſt "the child's marriage, ſuppoſing him other- "ways qualified? Hath nature given to pa- "rents ſuch a power? hath the poſitive law "of God given them any ſuch power? or "can civil laws give it them? To juſtify the

[d] p. 5.

"laws

" laws of many nations it ſhould be ſo; but " right is not to be decided by examples in " practice, how many or how great ſoever " they may be; but practice ought to be di- " rected by right; and the rule of right in " this, and all other caſes, is the univerſal " law of nature, by which men and ſtates " ought to govern themſelves, where the " poſitive law of God interpoſeth not." This grand queſtion is quite unfairly put; for by ſuppoſing the child otherways qualified it begs all that is in conteſt: the parental pow- er being founded on a ſuppoſition that they are not qualified to engage in an affair of ſo great conſequence. It ſhould properly have been, and in that light it ſhall be conſidered, Is the diſſent of parents a bar at any age to the child's Marriage, and to what age is it ſo? Before he enters on the firſt of the three queſ- tions, which the principal one divides itſelf into, hath nature given to parents ſuch a power? the Doctor would have it underſtood that the general conſent and practiſe of nati- ons is of no weight in it; for that this right reſts on the univerſal law of nature. The latter of theſe aſſertions I admit: but beg leave to differ from him as to the former. The learned

learned *Grotius* says [e], "there are two ways "of proving any thing to be part of the law "of nature, *a priori* and *a posteriori*. Of "these the former is a more refined, the "latter a more useful way. The method "*a priori* is to show the necessary agreement "or disagreement of any thing with a rational "and social nature: by the other *a posteriori*, "which if not an absolutely certain way is "a highly probable one, that is taken to be "part of the natural law which amongst all "nations, or all the more civilized, has been "so esteemed: for an universal effect must "have an universal cause, and there seems "to be no other cause of this so general an "opinion than that sense which is called "common sense." This doctrine of *Grotius* is confirmed in his usual manner by many

[e] *De jure belli et pacis*, lib. i. ch. i. § 12. Esse autem aliquid juris naturalis probari solet tum ab eo quod prius est, tum ab eo quod posterius. Quarum probandi rationum illa subtilior est, hæc popularior. A priori si ostendatur rei alicujus convenientia vel disconvenientia necessaria cum natura rationali et sociali: a posteriori vero, si non certissima fide certe probabiliter admodum, juris naturalis esse colligitur id quod apud omnes gentes aut moratiores omnes tale esse creditur. Nam universalis effectus universalem requirit causam, talis autem existimationis causa vix ulla videtur esse præter sensum ipsum communis qui dicitur.

of the beſt authorities. It is not done from an apprehenſion that this kind of proof will be wanting: but it was proper to ſhow that authority, when founded on the congruity of nations, is not to be ſo entirely diſregarded. To prove that nature hath not given parents ſuch a power, it is ſaid [f], " if the right of con-
" tracting Marriage does not lie in the child
" it muſt (in a ſtate of nature) lie in the pa-
" rent. It can lie no where elſe. But the
" right cannot lie in the parent. For
" though the being of the child comes from
" the parent, the rights of the child, as a
" diſtinct individual, do not. Every body
" underſtands that rights may accrue to the
" child, ſeparate from the rights of the pa-
" rent. If a friend gives my ſon an eſtate,
" the eſtate is his and not mine; nor is he
" in the uſe of it ſubject to my controul.
" Now can you tell me of any thing which
" is more a man's his than himſelf? Nothing.
" An eſtate given to my ſon is his, by the
" gift of the donor. Himſelf is his (by the
" inſtrumentality indeed of the parent, but)
" by the gift of GOD. Otherways a parent
" might at his pleaſure maim, diſmember, or
" murder his child, which no reaſonable man
" will ſay are not high violations of the na-
" tural

[f] *E.* p. 7.

"tural law." The right of contracting Marriage is undoubtedly in the child; yet what abſurdity follows from holding that he ſhall not exerciſe it, till he knows how to do ſo, without prejudice to himſelf. Can a child have a greater right to the uſe of any natural parts than his legs? But he is in the exerciſe of this ſubject to the controul of his parents. It muſt from the neceſſity of the thing be ſo; for if the power of walking comes on before the capacity of knowing where to walk with ſafety, a power of hindering his going into a river, or into the fire, muſt be lodged ſomewhere; and where could it be ſo properly as in the parents. This parental power muſt, in the nature of the thing, laſt till children are capable of knowing and avoiding danger. If it ſhould be aſked at what age they are ſo? the anſwer is, that parents are, in a ſtate of nature, the judges of that: for if a child ſhould be at liberty to ſay to them, I can walk very well, I won't have a maid always after me, but will go alone where I pleaſe, the uſe of it would be loſt. As one of ſix years of age might ſay this, one of four might, for a child can go alone even before that time; and many would be loſt by being left to themſelves too ſoon. In

ſociety legiſlators may fix the time when children ſhall be truſted alone: but to make it effectual, the duration of this power muſt in a ſtate of nature, as there is no judge to appeal to, be in the diſcretion of parents. To apply this. If the diſpoſition to Marriage comes on before the capacity of entring into that ſtate, it is equally neceſſary that the child ſhould be prevented from doing this. I do not mean to compare Matrimony to the being burned or drowned; but it may be ſaid, that it had been better for either of theſe to have happened to him in his infancy than to enter imprudently into it. If a friend gives my ſon an eſtate, it is to be ſure his and not mine; yet I have in a ſtate of nature a power over it: for if he may ſquander it away before he knows the proper uſe of it, my friend might as well have done nothing; the ſame neceſſity taking place here as in all caſes to which his capacity is not equal. Himſelf is indeed his by the gift of GOD: But, by the appointment of the ſame GOD, parents are to take care of him, and all that concerns him, till he is able to judge for himſelf; and it is their indiſpenſable duty to prevent, as far as they can foreſee, his doing any thing deſtructive to his

life

life or happineſs. There is a wide difference betwixt a power to defend a child from injuries, and a power to injure him. His inability to conduct himſelf makes the firſt neceſſary: but it cannot be inferred, that therefore parents may maim, diſmember, and murder him at pleaſure. It is ſaid, that his opinion in this matter "[g] ſo far as he knows, "concurs with the ſenſe of the ableſt maſters "in natural law." If this be ſo, the Doctor has been extremely unlucky in chooſing his authorities; for the few he has produced are not to the point, or conclude againſt it. The firſt of theſe is, "[h] liberty is in no caſe ſo ne-"ceſſary as in Matrimony." This is in general true but not to the purpoſe; for if the place in *Grotius* [i] whence it is taken be looked into, it will be found that this is cited from Quintilian to prove, that where the ſon has the moral faculty, which in another place is defined the being at the age of perfect judgment, the conſent of parents is not neceſſary to the validity of his Marriage. Another is from Biſhop Fleetwood. "[k] But

[g] *E.* p. 11. [h] *E.* p. 10.

[i] *De jure belli et pacis*, lib. ii. ch. v. § 10. Nuſquam tamen libertas tam neceſſaria quam in matrimonio eſt.

[k] P. 42.

"there

" there is ſomething common to all nations " and religions; and that in which they all " unite muſt needs be that which makes the " Marriage contract valid and obliging. And " what is that, but that a male and female " ſhould be at age, and at liberty to conſent, " and ſhould actually conſent to give each " other the uſe and dominion of each other's " body, excluſive to all the world beſides, as " long as they both ſhall live?" If this paſſage does not prove it neceſſary, even to the validity of a Marriage contract, that the perſon be of age and at liberty to contract, it proves nothing. At what age they are at liberty to do ſo, in a ſtate of nature, without conſent of parents, ſhall be afterwards conſidered. [l] The next authority is that of *Grotius*, and he ſeems to rely much upon it: for he introduces it with theſe words. " [m] Let us hear then what one of the " greateſt maſters in this ſcience hath ſaid " concerning the natural right of parents;" and after citing it ſays [n], " Thus far this

[l] P. 7. [m] P. 9.

[n] *Grot. de jure belli et pacis*, lib. ii. ch. v. § 2 to 7. Diſtinguenda autem ſunt tria tempora in liberis. Primum tempus imperfecti judicii dum abeſt vis elec-

" great

" great lawyer and caſuiſt. The paſſage is:
" There are three periods in the ages of chil-
" dren that ought to be diſtinguiſhed. The
" firſt is the time of imperfect judgment;
" whilſt the elective faculty or power of
" chooſing for themſelves is wanting. The
" ſecond is the time of perfect judgment: but
" whilſt the ſon continues part of his parents
" family. The third is the time after he is
" gone out of the family. In the firſt of
" theſe all the actions of children are under
" the dominion of parents: for it is right
" that they who cannot govern themſelves

trix—ſecundum tempus perfecti judicii, ſed dum filius pars manet familiæ parentum—tertium poſtquam ex ea familia exceſſit. In primo tempore omnes liberorum actiones ſub dominio ſunt parentum; æquum enim eſt ut qui ſe regere non poteſt regatur aliunde—at alius naturaliter inveniri non poteſt cui regimen competat quam parentes —— in ſecundo tempore cum jam judicium ætate maturuit, ſubſunt parentum imperiis non aliæ actiones, quam quæ ad familiæ paternæ aut maternæ ſtatum aliquid momenti habent. Æquum enim ut ut pars conveniat cum ratione integri. In cæteris autem actionibus habent tum liberi facultatem moralem agendi; ſed tenentur tamen in illis quoque ſemper ſtudere ut parentibus placeant. Verum hoc debitum cum non ex vi facultatis moralis ut illa ſuperiora, ſed ex pietate, obſervantia, et gratiæ rependendæ officio, non efficit ut irritum ſit ſi quid contra ſit factum, ſicut nec irrita eſt

" ſhould

" ſhould be governed by others; and there
" are none to be found to whom the govern-
" ment ſo properly belongs as to parents. In
" the ſecond, when the judgment is ripened
" by age, no other actions are ſubject to the
" dominion of parents, than ſuch as have
" ſome relation to the ſtate of the father's or
" mother's family: it being fit that a part
" ſhould conform to what concerns the
" whole. In other things children have a
" moral faculty of acting for themſelves:
" yet even in theſe they are bound to ſtudy
" conſtantly to pleaſe their parents. As this
" duty however does not ariſe, as in the former
" period, from the want of the moral faculty,
" but from conſiderations of piety, reverence,
" and gratitude, it does not go ſo far as to
" make what is done contrary thereto void:
" any more than a gift by the owner of the
" thing given is void, becauſe he did not at-
" tend to the laws of frugality. In the
" third period the child is in all things maſ-
" ter of himſelf: yet the duties of piety, and
" reverence remain, to the obligation, theſe
" being perpetual." This, though not in his

donatio rei a quocunque domino facta contra parſimoniæ regulas. In tertio tempore filius eſt in omnibus ſui juris. Manente tamen ſemper illo pietatis et obſervantiæ debito cujus cauſa eſt perpetua.

words,

words, is tranſlated as nearly as poſſible to the original. It being hard to conceive any man, eſpecially one of the Doctor's age and character, of ſo malevolent a diſpoſition as to intend the miſleading mankind, under the ſanction of ſo great an authority, in a point of the utmoſt conſequence; it muſt be ſuppoſed, that in his eagerneſs to maintain his notion he miſtook the meaning of this paſſage. There is no other way of accounting for his ſaying immediately after citing it [i], "with the firſt part of theſe periods we have nothing to do. For nature herſelf will not permit a child to marry till it has ſufficient underſtanding to diſcern between good and evil." No one thing in the world can be plainer than that, in the opinion of *Grotius*, all the actions of children are, during the age of imperfect judgment, under the dominion of parents, and that ſo far as to make what is done without their conſent void. Inſtead then of having nothing to do with this period, it is this, and the duration of this alone, that has any relation to the preſent queſtion. What is meant by underſtanding to diſcern between

[i] p. 9.

good and evil he beſt knows: but if the Doctor means any thing leſs than to know and perform the duties of the married ſtate, it is only ſaying in other words what he ſaid before, that this and the procreative faculty come on together; but this paſſage proves no ſuch thing. He goes on: "[i] But beyond this "there is a period, during which the laws "of ſome countries will not permit children "to marry without the conſent of their pa- "rents, though otherways they may be qua- "lified, that is, though they have what "*Grotius* calls the *vis electrix* or moral "faculty of acting; by which he is not to "be ſuppoſed to mean perfect wiſdom, or "perfect diſcretion, (which comparatively "ſpeaking very few ever come at) but ſuch "a ripeneſs of underſtanding as competently "qualifies perſons to tranſact common "affairs." Where thoſe countries lie, whoſe laws will not permit perſons to marry when properly qualified, I have never heard; but this I am certain of, that they are very ſtrange countries: for it being for the good of every country to encourage Matrimony as much as poſſible, there can be but one reaſon for laws to ſay that a child ſhall not marry till a certain age without conſent of parents;

[i] P. 9.

parents; and this is, that till then children are not in general qualified for it. *Grotius* cannot indeed be ſuppoſed to mean a great genius, or an uncommon underſtanding: but he means more than the Doctor is willing to underſtand, which is that the judgment ſhould be ripened by age. The perfection of judgments differs as much as the judgments themſelves; yet every one may be ſaid to be in ſome meaſure perfect, when it has attained, by age, a degree of ſtrength adequate to its own ſize. We are indeed told that the maturity of judgment, which conſtitutes the moral faculty [k], comes on far within the period uſually aſſigned to minority; for that without this a perſon is not capable of moral obligation, and to prove that minors are, a paſſage is cited from *Grotius:* but when the whole of it is given, which the Doctor has not done, it is far from ſhowing that minors in general have the moral faculty ſo early. After ſaying he is going to conſider what things are neceſſary to make a promiſe binding, that learned author goes on: [l] "The firſt thing requiſite is the

[k] p. 10.

[l] Lib. ii. c. xi. ſect. 5. Primum requiritur uſus rationis: ideo et furioſi, et amentis, et infantis nulla eſt pro-

" uſe of reaſon; therefore the promiſe of a " madman, an ideot, and an infant is null: " but it is otherways with regard to minors; " for although theſe, like women, are not " ſuppoſed to have ſufficient ſtrength of " judgment, that however is not always the " caſe, nor is that alone ſufficient to annul " the act. It cannot be aſcertained at what " preciſe age a boy begins to have the uſe of " reaſon: but this is to be learned from his " whole behaviour, or from what generally " happens in the country where he lives." The meaning is, that the promiſes of minors are not in all caſes like thoſe of madmen, idiots, and infants void; and he gives two reaſons for this difference, that they may ſometimes have the uſe of reaſon, and that the want of this is not alone ſufficient to annul them. It ſeems to me, that this ſecond exception to the general rule, is an

miſſio. Aliud cenſendum eſt de minoribus: Hi enim etſi non ſatis firmum judicium habere credantur, ut et feminæ, id tamen nec perpetuum eſt, nec per ſe ſufficit ad actus vim elidendam. Quando autem puer ratione uti incipiat non poteſt certo definiri: ſed ex quotidianis actibus, aut etiam ex eo quod communiter in quaque regione accidit, deſumendum eſt.

alluſion

alluſion to the power parents and guardians have of confirming the promiſes of minors, and that he would compare them to *femes covert*, whoſe promiſes are ſeldom binding without conſent of their huſbands: for it would be abſurd to ſuppoſe that a woman, if of years of diſcretion and not married, is incapable of binding herſelf by a promiſe. Whether *Grotius* means this or not, it is as clear as day-light, that the uſe of reaſon is abſolutely neceſſary to the validity of any promiſe, and another thing is equally clear, that the minor himſelf is not the judge of this; for it would be downright nonſenſe to refer him to his own actions, or to what generally happens in the country he lives in, in order to judge if he has himſelf the uſe of reaſon. It ſhall be afterwards ſhown, that parents only can, in a ſtate of nature, be the judges when this comes on. As it is not contended, that the parental power continues after the ſecond period or age of perfect judgment comes on, it would have been quite unneceſſary to take any notice of what is advanced to prove this, had not the Doctor both miſcited and miſtranſlated a paſſage from *Grotius*. It ſhould have been given thus:

thus[m]: " Beſides [n] the moral faculty a " queſtion ariſes concerning the conſent of " parents, which ſome make neceſſary by " the natural law to the validity of a marri- " age. In this they are miſtaken; nor do " the arguments they bring prove any thing " more, than that it ſuits with the duty of " children to obtain the conſent of their " parents. This we readily grant, provided " they are not manifeſtly unjuſt in refuſing

[m] Lib. ii. c. v. ſect. 10. Super facultate morali quæſtio oritur de parentum conſenſu, quem ad validitatem conjugii quaſi naturaliter quidam requirunt: ſed in eo falluntur: nam quæ adferunt argumenta nihil aliud probant, quam officio filiorum conveniens eſſe ut parentum conſenſum impetrent: quod plane concedimus cum temperamento, niſi manifeſte iniqua ſit parentum voluntas. Nam ſi in omnibus rebus filii reverentiam parentibus debent, certe præcipue eam debent in eo negotio, quod ad gentem totam pertinet, quale ſunt nuptiæ. Sed hinc non ſequitur jus illud, quod facultatis aut dominii nomine explicatur, deeſſe filio: nam qui uxorem ducit et maturæ eſſe debet ætatis, et extra familiam abit, ita ut in hac re regimini familiari non ſubjiciatur. Solum autem reverentiæ officium non efficit ut nullus ſit actus qui ei repugnat. Quod autem a Romanis aliiſque conſtitutum eſt, ut quædam nuptiæ, quia conſenſus patris deficit, irritæ ſint, non ex natura eſt, ſed ex juris conditorum voluntate.

[n] P. 13.

" it:

" it: for if in all things children ought to
" be adviſed by their parents, they ought
" more eſpecially ſo to be in an affair of ſo
" great conſequence as that of Marriage is.
" It does not however follow, that the right,
" which we have before called the moral
" faculty or power over his own actions, is
" wanting to the ſon; for as he that marries
" ought to be of years of maturity, and
" goes out of the family, he is not in this
" affair ſubject to the government of the
" family: nor does filial duty alone go ſo
" far as to annul every act contrary thereto.
" What is advanced by the Roman and by
" other laws, that ſome Marriages are void
" becauſe the conſent of parents is wanting,
" is not from the law of nature but from the
" will of legiſlators." This paſſage proves undoubtedly, that when children are of years of maturity they may marry without conſent of parents: but if this be all the Doctor meant to infer from it, why is it introduced with very near an aſſertion that the act of contracting Marriage is not under the dominion of parents? There was too in that caſe no need to leave out one part of the paſſage, and not to give the true ſenſe of another: both which whoever gives himſelf the trouble of comparing

paring it with the original will find to be done. I am unwilling to charge the Doctor with unfairneſs; but I muſt in juſtice to my ſubject ſay, that this is the ſecond inſtance from the ſame author, in which he has left out part of a ſentence. If this be accidental, it is very extraordinary that a man ſhould twice omit that part which not only makes againſt himſelf, but for want of it the paſſages are not compleat. From the Doctor's own authorities it is then quite plain, that parents have in a ſtate of nature a dominion over all the actions of their children till they attain the uſe of reaſon: and that ſo far as to make what is done without their conſent void. It is not ſaid at what age they do this, nor indeed, as it muſt be varied by climate and other accidents, can the preciſe time be fixed. The queſtion then, and it is the only one that can ariſe is, who in a ſtate of nature is to judge thereof? As there is no authority to be appealed to in ſuch a ſtate, the right of doing this muſt be in the parents, or in the child. To ſay it is in the latter, would in effect be ſaying there is no parental authority: for where is the difference between none and ſuch a one as is determinable at the will of the child? The ſame neceſſity on

which

which it is founded, makes the continuance of it proper over all ſuch acts as he is unequal to. A capacity of uſing a natural power does not imply a right to do it: for the exerciſe of ſuch right may be deſtructive to the child; and it may be obſerved, that moſt of the natural powers come on before the knowledge how to uſe them with ſafety. This has been illuſtrated in that of walking, and might be in others. In this caſe, it is not enough that the child be capable of venery: but the conſequences to himſelf of entring into Marriage are to be conſidered. It would be going into too large a field, to enumerate the various duties of huſband and father, mother and wife: and it is ſufficient for the preſent purpoſe to ſay they are many and ſome of them difficult to be diſcharged. The age then and experience of parents is certainly neceſſary, to judge when a child is qualified for theſe. A few parents may be fond of continuing this power too long: but the inconveniences ariſing hence are not to be compared with what muſt follow, from ſuppoſing it in the power of every child to tell his parents, *I find myſelf inclined to marry, I know myſelf wiſe enough for it, and I will do it in ſpite of your teeth.* If in any caſe a

child may, when he thinks himſelf man ſufficient, reject the parental authority anarchy muſt enſue: for as no other is acknowledged in a ſtate of nature, there would not unleſs this is ſupported be even the appearance of order: but if this ought in general to be held ſacred, it ought more eſpecially in the preſent inſtance, becauſe that which tempts to the throwing it off is the moſt violent of all the paſſions. Having thus endeavoured to ſhow that parents are, by the law of nature, judges how long their dominion over the actions of their children ought to laſt, I ſhall before I conclude this head conſider one paſſage. It runs thus: "[b] By our laws minority is no diſ-
" charge in caſes of felony; and every man
" who marries his daughter during minority
" confeſſes her capable of moral obligation;
" which is full to the point. For if the pa-
" rents conſent ſhould be allowed neceſſary
" to create a right to contract Marriage
" (which is the queſtion now under delibera-
" tion) it cannot influence the moral capaci-
" ty to make the contract, which the pa-
" rents conſent preſuppoſes, as that without
" which (the parents conſent notwithſtand-
" ing) the contract, would be *ipſo facto*

[b] P. 12.

null."

"null." I ſhould never have thought of comparing matrimony to felony: but as the Doctor has thought proper to do it, let us ſee how the compariſon holds as to the uſe he makes of it; which is, that minority ſhould not be a diſcharge in the one caſe more than in the other. To know that he ought not to rob requires ſome underſtanding: but no body will, I think, go ſo far as to ſay, that it does not require more underſtanding to guard againſt being overreached in a Marriage contract, and to perform the duties of it. If then a minor may be capable as to the firſt without being ſo as to the other, the Doctor's inference falls to the ground: for he may richly deſerve to be hanged for acting contrary to the knowledge he has, and yet does not deſerve to be married becauſe he has not the knowledge thereto neceſſary. There is no need to repeat what has been ſaid before,* as to the confeſſion of parents who marry their daughters during their minority. It is very true that conſent of parents cannot influence the moral capacity, or make the child, if he is not ſo in himſelf, capable of the contract: but it by no means follows, that, becauſe he contracts before he has the proper capacity,

* See Page 5.

the contract is notwithſtanding the conſent of parents *ipſo facto* null. The Doctor miſtakes the thing, when he ſpeaks of conſent of parents not being neceſſary to create the right to contract Marriage: for the right is in the child, and the conſent of parents is no more than a declaration that in their judgment the child is capable of exerciſing it. They may, by judging too favorably of his underſtanding, conſent to his contracting Marriage before he is fit for it: yet, as they are in a ſtate of nature the only judges of this, who ſhall ſay they are miſtaken? If they wilfully or corruptly misjudge, they muſt anſwer for the abuſe of this truſt to their Maker who inveſted them with it; but as no one has in that ſtate a power to reverſe their judgment, it cannot with any propriety be ſaid that the contract is *ipſo facto* null.

The next queſtion which the grand one divides itſelf into is, Has the poſitive law of GOD given parents ſuch a power? To this a ſhort and full anſwer might be given, *viz.* That the law of nature, as being the law of right reaſon, is the law of GOD, and conſequently as binding as any poſitive law can be. If then it has been or can be ſhown,

that parents have by this ſuch a power, it can never be inferred although the ſcriptures were ſilent that therefore they ought not to have it: but this is not the caſe; for as one great end of revelation was to revive and republiſh the great truths of natural religion, which were by various means obſcured and ſome almoſt loſt, this moſt important one was the proper object and is in fact part of it. There are ſo many inſtances in the *Old* Teſtament of its being exerciſed by parents, that it would be tireſome to mention them: but it may not be amiſs to give one, which ſhows that the parental power extended to ſons as well as daughters, and that the father could delegate it to a guardian. If this was not ſo the great Patriarch *Abraham* would not, as he does in the xxiv^th^ chapter of *Geneſis*, have obliged his ſervant to ſwear, in the moſt ſolemn manner that his ſon ſhould not marry any girl in the neighbourhood: but that he would get him a wife in his father's native country. Of all the moral duties that of obedience to parents is not only enjoined by the firſt commandment of the ſecond table, but the promiſe of one of the greateſt bleſſings of life, length of days, is annexed to it. One might have imagined the

the general directions that children ſhould reverence their parents, and its being conſtantly exerciſed by them, would have been ſufficient to evince that parents had ſuch a power: but as nothing leſs than an expreſs declaration of Scripture will ſatisfy ſome perſons, it falls out that there is even this. It is ſaid, *Numb.* xxx. 3, 4, 5. *If a woman vow a vow unto the Lord, and bind herſelf by a bond, being in her father's houſe in her youth, and her father hear her vow, and her bond wherewith ſhe hath bound her ſoul, and her father ſhall hold his peace at her: then all her vows ſhall ſtand, and every bond wherewith ſhe hath bound her ſoul ſhall ſtand. But if her father diſallow her in the day that he heareth, not any of her vows or of her bonds wherewith ſhe hath bound her ſoul ſhall ſtand, and the Lord ſhall forgive her becauſe her father diſallowed her* [c]. "This law (it "is ſaid) hath no relation to Marriage, for "1. Marriage is not a vow unto the Lord. "It is not once called ſo in Scripture. It is a "contract (or a vow if you like the word "better) between the man and woman. 2. "This law relates to married woman as "well as virgins, as it follows, ver. 6, 7, 8.

[c] P. 20.

"*If*

" *If ſhe had at all a huſband when ſhe vow-*
" *ed — and her huſband diſallow her on the day*
" *that he heard it; then he ſhall make her*
" *vow — of none effect.* But a married woman
" cannot make a marriage vow; for ſhe
" cannot have more than one huſband at
" once. 3. The vow here mentioned con-
" cerns ſomething that was to be done during
" her continuance in her father's houſe. But
" by marriage a woman ceaſes to be of her fa-
" ther's houſe, and puts herſelf under the
" power of her huſband." It might be ſhown, that every vow or ſolemn engagement may be properly ſaid to be made to the LORD, it being always ſuppoſed that he is a witneſs to and a puniſher of the breach of it, and that Marriage is the moſt ſolemn engagement that can be entered into: but theſe truths are too glaring to ſtand in need of proof; and the Doctor could never have ſpoke ſo ſlightly of Marriage as to call it only a contract between the man and woman, if he had recollected what he had ſaid in the enquiry. His words there are, " [d] Can you tell
" me of a contract in which God is not con-
" cerned? there is no ſuch thing; the moſt
" trifling bargain you make at market, or on
" exchange, is under his inſpection, and

[d] *E.* p. 21. " ſubject

" ſubject to his righteous judgment; and,
" though all the laws in the world ſhould re-
" claim, you cannot break it without offending
" him. And ſhall we, dare we, break a con-
" tract made in the moſt important affair in
" the world, and under the moſt awful ſo-
" lemnity of religion, amounting to nothing
" leſs than a ſolemn oath?" As to the ſecond objection that this law relates to married women as well as virgins, either the Doctor is miſtaken, or *Moſes* did not underſtand his own meaning. There is indeed another law which gives a huſband the ſame power over the vows of his wife, as this does a father over thoſe of his daughter: but it is plain, from the laſt verſe of the ſame chapter, that they are diſtinct laws and quite independent of each other. It runs thus, *Theſe are the ſtatutes which the Lord commanded Moſes, between a man and his wife, between the father and his daughter, being yet in her youth, in her father's houſe.* To the third objection it is ſufficient to ſay, that if the father has by this law a power of making all contracts and of courſe that of Marriage void, and does exerciſe it, the Doctor's inference falls to the ground: for the daughter in that caſe neither ceaſes to be of her father's houſe, nor

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has ſhe any huſband under whoſe power ſhe can put herſelf. This law mentions indeed only daughters: but if parents have ſuch power over theſe, they ought *a fortiori* to have it over ſons. Many reaſons are to be given for this: but the Doctor allows the former to be forwarder in their inclination to Marriage than the latter; for ſpeaking of women of ſixteen he ſays: "[e] Whatſoever "may be ſaid of men who very rarely "chooſe to marry ſo early, it ſeems to be a "very hard caſe upon them that they ſhould "be reſtrained from Marriage till they are "paſt one-and-twenty." It cannot be denied that the Jewiſh law is in all things, except ſo far as it it repealed or amended by the author of the Chriſtian religion, ſtill binding on Chriſtians: for his declarations that he came not to deſtroy it, and his frequent references to it, plainly ſhow that he intended to adopt part of it into his religion. This being ſo, there was no need of an expreſs precept as to this matter in the New Teſtament.

In entering on the conſideration of the third queſtion his grand one is divided into, which is Can civil ſtates give parents ſuch a

[e] *E.* p. 25.

power? the Doctor takes it for granted that neither GOD nor nature has given it them; and the ſubſtance of his arguments on this head is to ſhow that therefore ſociety cannot. When it is proved, which I ſubmit to the reader is yet far from being done, that parents had it not in a ſtate of nature, it will fall properly under conſideration whether ſociety can give it them? but if as I contend they had it in that ſtate, the queſtion is reduced to this, Can civil ſtates confirm ſuch a power to parents? this being admitted by the Doctor, who ſays, "[f] There can be no "doubt but that ſociety may aid the parent "in ſuch rights over his child, as he natural-"ly has," it is unneceſſary to go into the proof of it. One thing however is proper to be done, and that is to examine, whether the inconveniences aſcribed by the Doctor to the parental power do in fact reſult from it? for notwithſtanding all his arguments to ſhow that the ſtate has no power over natural rights, I am perſuaded that, if greater good would accrue to the publick from abridging or taking it away than from continuing it, the ſociety has a power to do either.

[f] P. 11.

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The 21ſt canon, which ſays that no children under the age of twenty one ſhall marry without the conſent of their parents or guardians, is cited, and, not content with ſaying he has ever been of opinion it is too hard, the Doctor expreſſes himſelf thus. "[s] Quo jure? God ſays without limitation of "time, Increaſe and multiply: man ſays you "ſhall not till you are one and twenty." As every one, who reflects a moment, muſt have the higheſt opinion of that great command increaſe and multiply, and be convinced a few extraordinary caſes excepted of the univerſality of its obligation; it follows that nothing thereto repugnant can conſiſt with ſound reaſon and good policy. The queſtion then is, whether annulling the Marriage of minors made without conſent of parents or guardians be ſo or not? It has been obſerved by thoſe who have turned their thoughts to ſuch calculations, that the produce of the intercouſe between a man and woman, ſuppoſing it to be begun at a proper time of life, is uſually four children. If other animals multiply too faſt, it is in the diſcretion of man the Lord of this lower world to leſſen their number: but as no earthly being has ſuch a power over the human ſpecies, it

[s] *E.* p. 25.

ſeems

ſeems agreeable to the order both of nature and providence that it ſhould not increaſe too faſt. As children are moreover for many years abſolutely ſhiftleſs, it is fit that no more ſhould fall to the ſhare of one couple, than they can with comfort to themſelves and without being overloaded with care provide for. It cannot be denied, that there is time enough to have more than double that number without marrying before the age of twenty one. The propenſity to the buſineſs of procreation does indeed come on ſooner: but like the other paſſions it encreaſes gradually till it comes to a ſtate of perfection. Many young perſons do not arrive at their full ſtature till near the age of twenty one, and very few at their full ſtrength ſooner: and it can never be right to begin an act much before that time, the due performance of which is an exertion of all the powers of body and ſoul. The iſſue of an imperfect animal muſt in the nature of the thing be imperfect. A woman may bear children before the age of perfection: but it has been obſerved by good judges, that it robs her of the nutriment neceſſary to give firmneſs to her whole habit, and is particularly injurious to certain parts. Thus by having

having one or two, and thoſe puny things, too early, a fine conſtitution is often ſpoiled; which with prudent management might have bleſſed mankind with half a dozen, or half a ſcore, chopping children. The ſame although not quite ſo obviouſly holds as to men: for ſo exſtatick and tranſporting is the conjugal careſs, that human nature in its moſt vigorous ſtate can but juſt bear it. To perform this command effectually, one man and one woman ought to be content with and to have the whole of each other; for it has been found by experience that the allowing a plurality of wives, or having women in common, did not do this: but in order to conſtancy it is quite neceſſary, that the perſons and manners of the pair who engage in a ſtate of cohabitation ſhould be agreeable to each other. So far from being able to form any judgment of that of another, very few know their own temper till at leaſt twenty one: and as to outward perfections, the improvement in theſe is ſo great between the ages of ſixteen and twenty one, that he or ſhe who was tolerable at the former, muſt at the latter be deſirable. Other things are neceſſary thereto, but no one thing imports ſo much to the conſtancy of a married couple,

as

as the convincing each other at firſt ſetting out of their ability to give and fondneſs to receive the perfect pleaſure. What has been ſaid of learning may with a very ſmall alteration be applied to this:

A little pleaſure is a dangerous thing,
Drink deep or taſte not of th' *Hymenean* ſpring.

Between a lad of ſeventeen and a girl of fifteen it is but a loveleſs, joyleſs, unſatisfactory affair: nor vigour being neceſſary can it be otherways till the age of vigour comes on. Indifference to each other follows, and with it its never failing companion inclination to change. This command alſo, as it ſtands connected with others of training up and providing for children, muſt ſuppoſe the objects of it capable of thoſe duties. It would anſwer no good purpoſe that children be born, unleſs they be taken care of and have good principles inſtilled into them: but can a young fellow before he has fitted himſelf for any profeſſion or buſineſs, ſo as to be independent for ſupport on his own parents, do the former; and ſome experience in the world as well as ripeneſs of judgment is ſurely requiſite to the latter. It may be allowed, that the duties of the mother are not

ſo

ſo extenſive as thoſe of the father: it cannot however be pretended that a girl of ſixteen, or ſeventeen, is equal to the management of a houſe and care of a family. If ſuch misfortunes to particulars follow from the Marriages of minors, they fall with collected force on the publick; for a ſociety can never flouriſh, unleſs it be compoſed of well-conſtituted and proſperous families: and as the avoiding all theſe does not interfere with the fulfilling that command, it would be abſurd to ſuppoſe them implied in it.

HAVING before ſuppoſed the right of marrying as ſoon as nature urges to be in children independently of their parents, the Doctor ſays: "[s] The free uſe of this right may "be as neceſſary to ſecure a man's virtues, "as the liberty to eat and drink as he finds "moſt convenient, may be to the preſerva- "tion of health and life; or the liberty of "worſhiping God in the way he moſt ap- "proves may be to the ſafety of his conſci- "ence. If you want authority for this, I "will give you the higheſt. It is the autho- "rity of CHRIST himſelf, *Matth.* xix. 11. "*All men cannot receive this ſaying ſave they* "*to whom it is given.* Be pleaſed to look

[s] *E.* p. 12.

"into

" into the context, and you will ſee what " this ſaying means. But St. *Paul* explains " it. 1 *Cor.* vii. 8, 9. *I ſay to the unmarri-* " *ed,* — *if they cannot contain, let them mar-* " *ry: for it is better to marry than to burn.* " Which power of continence is here alſo " expreſsly mentioned as a proper gift of " GOD." His guarded manner of expreſſion, may be as neceſſary, betrays a ſuſpicion in the Doctor himſelf of its being really ſo; and the authority which I allow to be the higheſt proves no ſuch thing. Continence is one inſtance of keeping our paſſions ſubject to reaſon, which laſt being the gift of GOD, *St. Paul* in his figurative way of expreſſing things calls it the gift of GOD: but if his explanation is ſuppoſed to imply that continence is not in a man's power, it does not agree with the explanation of CHRIST himſelf who muſt beſt know his own meaning. In the verſe next following he ſays: *For there are ſome eunuchs which were ſo born from their mothers womb, and there are ſome eunuchs which were made eunuchs of men: and there be eunuchs which have made themſelves eunuchs for the kingdom of heaven's ſake. He that is able to receive it, let him receive it.* If he had intended to convey to us

us the notion that ſome are eunuchs by any ſupernatural influence, would he when reckoning up the ways of becoming eunuchs have omitted that? The very expreſſion, that ſome have made themſelves eunuchs for the kingdom of heaven's ſake, plainly ſhows that they could do this; and if it be not in a man's power to abſtain from women, it was quite nugatory and unworthy of him to ſay, he that is able to receive it let him receive it. If as this paſſage ſuppoſes a man can, by the proper uſe of his faculties, ſubdue this paſſion through all the vigorous part of life, *a fortiori* a minor may do this for a few years. To ſay that continence is not in a man's power would be ſaying that adultery and fornication are not ſins: for it might be eaſily ſhown that a perſon cannot always marry when he pleaſes, and that abſences muſt frequently be between thoſe who married; and as eaſily that a juſt being cannot be angry with, or puniſh his creature, for doing what he could not refrain from. It is ſaid a little further. "[h] If you yet doubt pray tell me what you "think of vows of celibacy, as practiſed in "the Church of *Rome*. I ſuppoſe myſelf "writing to Proteſtants: and as a Proteſtant

[h] *E.* p. 13.

" you muſt anſwer that they are unlawful " and null *ab initio*. But why are they un- " lawful? but becauſe they are a renuncia- " tion of the means appointed by God for " the preſervation of chaſtity." This practice, whatſoever uſe may have been ſince made of it, ſeems to have been founded on a laudable one of the primitive Church. In the early and perſecuting ages of Chriſtianity ſome men abſtained from all commerce with women, that their zeal for the propagation of its doctrines might not be thereby diverted, and that, being unconnected with wives and children, they might be ready to give up their lives as a teſtimony of their ſincerity. A notion being hereon built, that if all in orders would do this they might devote themſelves more entirely to ſpiritual things, the vow of celibacy was impoſed on the clergy. This is certainly unlawful; for as they are fleſh and blood as well as other men, it is not to be ſuppoſed they ſhould in general keep it: but it by no means follows that, becauſe it is wrong to prohibit a numerous body of men from marrying during their whole lives, minors ought to marry as ſoon as they pleaſe. It is not only in the power of every one to keep the

paſſion

paſſion for women within proper bounds: but it is of the utmoſt conſequence to every one that this be done. This paſſion may be compared to a high mettled colt, which if at firſt well broke affords his maſter many delightful rides: but for want of this is all his life long unruly, vicious, and dangerous. A degree of continence is neceſſary even in matrimony; for, if equality of years, and perſonable agreeableneſs are ever ſo well attended to in the conſtruction of a match, deſire may not be and often is not equal. When this happens, if the party in whom it is ſtrongeſt does not check it ſo as to be ſatisfied with the other: but on a ſuppoſition that the urging of nature is incontrollable gives way to it, the conſequence muſt be fatal to the happineſs of the married couple. Abſences and other accidents which prevent enjoyment muſt alſo frequently happen; yet will any one ſay the parties may on ſuch occaſions provide for the indulgence of this paſſion? If continence then be in the power of thoſe who have taſted the *paphian* pleaſure, it is ſurely much eaſier for ſuch who have not done this to abſtain. Upon the whole it ſeems neceſſary, that a habit of ſubjecting this paſſion to diſcretion and rea-

ſon be ſometime acquired; and if this be ſo it muſt be allowed, that it is eaſier to do this when it firſt affects young perſons, than when by being indulged it has acquired ſtrength.

The Doctor ſays in one place, that he wants ſome aſſiſtance to ſee the connection between a minor's Marriage and the publick good; and in another his words are: "[i] Theſe gentlemen ſeem to me to miſtake "the matter. They treat the Marriage of a "child without the parents conſent as if it "were an offence againſt the ſtate, and not "as it really is an offence againſt a private "family only." Without tiring the reader with any thing already ſaid, which may be applied to this point, I will add three or four of the many reaſons which might be given, to ſhow that ſuch Marriages are prejudicial to and conſequently an offence againſt the ſtate. If it be proper that in a community reſpect be ſhown to elders, and ſuperiors, and eſpecially to governors, every method of inculcating this on young minds ought to be practiſed. Now can any one ſo proper be thought of, as the compelling obedience to the parental power? if children

[i] P. 54.

are

are to be ſet looſe from this where will they ſtop? Will magiſtrates meet with reſpect, when parents who are on ſo many accounts entitled to it do not? At leaſt three in four of thoſe, whoſe crimes bring them to a ſhameful end, confeſs that diſobedience to parents was the firſt ſtep in their wicked courſe. As civil authority was never ſo much deſpiſed and trampled upon as in theſe degenerate days, there ſeems to be no way ſo likely to reſtore its weight and dignity, as to enforce the parental power which is the foundation of all other. Inconveniences may follow from its being now and then abuſed: but theſe are trifling if compared with what muſt enſue from children being in general freed from it. Beſides this particular one of reverencing elders and particularly governors, it concerns the publick that the minds of children be formed to every other kind of virtue. There may be ſome inſtances where the judgment is ripe enough at ſixteen or ſeventeen to do this: but as general rules always provide againſt the greater miſchiefs, it is better that theſe ſhould be left to parental diſcretion, than to give all minors liberty to marry before they are capable of inſtructing and ſetting a good example to children. It

is alſo of importance to a ſtate to prevent all actions, by which individuals may be reduced from affluence, or a near and almoſt certain proſpect of it, to neceſſitous circumſtances; leſt ſuch changes ſhould drive them into deſpair or put them on ſome deſperate action. On this principal all laws againſt exceſſive gaming are founded: for the publick loſes nothing by the ſudden tranſition of property from one to another, except from the effect it may have on the parties concerned. Now if, as the Doctor allows, parents may diſinherit children for marrying without their conſent, it concerns the ſtate, whoſe province it is to prevent the wretchedneſs of its members, to hinder their doing ſo: for it can never be right for them to do this, and for parents to ruin them for ſo doing. He indeed ſays, "[k] That "every perſon who is of age to marry is of "age to work, and may be compelled to "maintain himſelf and family, ſo far as his "own labour and induſtry will go. But if "this is not ſufficient, he ſtands for the reſt, "as an object of the charitable aſſiſtance of "thoſe who abound." No law can compel impoſſibilities; and very few, if brought up

[k] *E.* p. 19.

to

to it, have ſo learned to work at any trade or buſineſs, at the age of ſixteen or ſeventeen, as to be able to maintain a family; but what work is the ſon or daughter of a gentleman, who has been brought with an expectation of never being obliged to do any, able to do at that age? the latter of theſe is for many reaſons moſt liable to be ſeduced into ſuch a match, and, which makes it the worſe, he who ſeduces her is uſually in bad circumſtances: for a man of fortune has no occaſion and ſeldom does it. A perſon ſcarce ever does this; but with a view of gratifying his luſt at the expence of ruining an innocent girl, or of bettering his circumſtances. The former is a villainous motive, the latter an ungenerous and a hazardous one; and if it fails he in all probability deſerts, and leaves her ſhiftleſs as ſhe is to take care of one or two helpleſs babes. She is indeed told for her comfort, but it is a very cold one, that the pariſh is bound to find her: for as to the being an object of the charitable aſſiſtance of thoſe who abound, it is ſo uncertain an affair that no dependence can be had on it. To fall thus! from the pinnacle of happineſs to the loweſt pit of miſery! is it not enough to drive the unhappy wretch to madneſs! or

to

to do ſome violence on her own undutiful head! This is not all: for the publick is perhaps alſo robbed of an induſtrious pair, and their family of an indulgent father and tender mother. Only they who have had children, can tell what parents feel on thoſe occaſions. Such is the compunction, which ariſes from the conſideration of the villainy of the betrayer, of the ingratitude of the daughter, of the diſgrace brought on themſelves and the wretchedneſs on her, that they muſt be endued with uncommon fortitude of mind to ſtand the ſhock; and if this be done, it preys on their vitals and for the moſt part brings them to a grave.

THE hard fate of the woman and children, in caſe a minor marries without conſent, is more than once lamented by the Doctor. "[k] The man, he ſays, may deſert her as a "ſtrumpet, and turn her and her baſtard "children (for ſuch they will be deemed in "law) out to the wide world." In another place his words are. "[l] A nullity goes a "great deal further than a diſheriſon. It "reaches to the fruits of the ſon's labour and "induſtry, which the iſſue cannot claim by "inheritance (as by the natural law they

[k] p. 53. [l] p. 31.

"may)

" may) but ſtand in the rank of ſtrangers." That a man may deſert a woman, if the directions of this act are not purſued, is true; and this very thing ſhows the propriety of the act, which is to prevent Marriage from improper motives: for the doing ſo proves he never loved her, and conſequently that he ought not to have married her. A woman cannot hereafter be ignorant that ſuch a Marriage will be null; and that to cohabit with a man in conſequence of it is the ſame thing as to cohabit with him without being married. If a woman then will truſt to the honour or conſcience of a man, ſhe ought to blame herſelf if he deſerts her: at leaſt ſhe cannot expect that the laws of her country, which ſhe has violated by living openly in a ſtate of fornication, will give her any redreſs. It is no new diſcovery that children born out of wedlock are baſtards: but it is quite a new thought to imagine that this act not only goes to the diſheriſon of the minor, but reaches to the fruit of his own labour and induſtry. It prevents him from conveying ſome kind of eſtate to his children: but it does not hinder his taking any thing. All eſtate that is not in his father's power will deſcend to him juſt as if this act had never been made; and as to

what is abſolutely in his father, he may as he always could diſpoſe of it where he pleaſes. The iſſue of the minor cannot indeed take as heirs: but he may give them not only all that he acquires by his own labour and induſtry, but all the perſonal and all the real eſtate in fee, or which can by him be converted into a fee, that deſcends to him from his anceſtors. The hardſhips however, although not ſo great as repreſented, are it muſt be confeſſed very great: yet were they greater than they are on the few who offend againſt this law, for it cannot be ſuppoſed that many will lay their children under ſuch diſabilities, they are by no means equal to the inconveniences ariſing from a general diſobedience to parents. In this, as in all caſes, children are involved in the difficulties which the follies and vices of parents bring on families: which being the conſtant courſe of things, there is no more reaſon to complain here than on other occaſions.

ANOTHER objection is, that the bad conſequences of ſuch Marriages cannot be at all prevented by parents. The Doctor's words are: "[a] In vain will they expect help from "their parents, who cannot, by any after "conſent, make that act good which the "law hath annulled. As the law ſtood before,

[a] P. 53.

" before, when parents were reconciled to a " ſtolen match, all was well. The man " had his wife, and the woman her huſband, " and many happy Marriages have ariſen from " ſuch unfavourable beginnings. I ſhould not " have thought it a fault, if this law had al- " lowed (to parents at leaſt) the liberty of " an after reflection, for I could never enter " into the ſentiments of thoſe who ſay, that " of all perſons, the parents are moſt unfit to " be truſted in ſuch caſes." If this was ſo the parental power would in ſome meaſure be abridged, but whatever ſome perſons may fancy the fact is otherways: for the parent has, as he had in a ſtate of nature, the power of confirming the Marriage contract of a minor by an after conſent. This act indeed makes a Marriage without conſent void: but it does not hinder the parents from conſenting to a marriage between the ſame parties; which as the firſt ſtands for nothing may be celebrated at any time. Something of the nature of fornication may, in conſequence of the ſham Marriage, have paſſed between the parties which cannot be undone; yet they muſt be very rigid caſuiſts to ſay, that if the legal Marriage does not quite cure the fornication, it ſhall be looked upon by the eye of conſcience as a deadly

ſin. Whenever this is conſented to the huſband and wife are entitled to all the privileges of the married ſtate; and the children born afterwards are free from the diſabilities of this act. Parents then have the liberty of an after reflection, and it cannot be doubted that they will go, their motives ſo to do being of the moſt intereſting kind, as far as prudence will admit: but it does not follow as the Doctor would have it, [b] that getting them married in the legal way is the only thing to be done. For inſtance. An artful fellow having inſinuated himſelf into the good graces of an inconſiderate young lady, he on a preſumption the father will in the end conſent proceeds to an illegal marriage. If there be ſtrong reaſon to conclude that the proſpect of a fortune was the chief inducement, and that he is of an extravagant turn, it is certainly better for the parents to take back their daughter at firſt, with all the ſhame upon her, than to do this when all is waſted and ſhe has beſides ſeveral children. Happineſs there is no probability of; and ſhe has thus the chance of being leſs wretched. A few inſtances of this becoming reſolution in parents will put a ſtop to the infamous attempts of

[b] p. 49.

daughter

daughter or rather fortuneſtealers. There is here and there an inſtance where a ſtolen match has done well: but, if a man means to be happy, it is ſurely a wrong ſtep to perſuade a girl to be undutiful to her parents; for it may be expected, that ſhe, who pays no regard to the filial duties, will but ill perform thoſe of a wife.

It is ſaid, "[e] if children are to be ruined, "(as ruined they may be in ſpite of all that "parents can do to prevent it)better it be done "in their own way, than in ours, who in ſuch "a caſe, ſhall have nothing to charge upon "ourſelves from the event, and who ſhould "bear ſuch diſappointments with patience as "we bear (or ought to bear) all other evils of "God's ſending." And a little lower, "One "family riſes and another falls. Such is the "ſovereign will of God; and unequal mat-"ches are one amongſt the variety of inſtru-"ments, which he uſes to bring about the "purpoſes of his providence. We are to "guard againſt theſe things ſo far as juſtice "will permit, and as prudence ſhall direct: "but it were a vain thought (in which we "ſhall always find ourſelves diſappointed) "to pretend to make that ſtrait which God "hath made crooked. Conſider the work of

[e] *E. p. 9.*

"God,

" God *, and before him let all the earth " be ſilent." Children will certainly be ſometimes ruined in ſpite of all parents can do to prevent it; yet the latter ought to prevent it as far as they can, and if their endeavours are not ſufficient, it will be a conſolation to them under the misfortune that they did their duty. If they are, as undoubtedly they be, by the appointment or work of God the directors of children till they arrive at a fit age to conduct themſelves, it ſeems a ſtrange doctrine to hold that parents ſhould let them have their own way. To ſay it may not be effectual is ſaying nothing: for, if it be the indiſpenſable duty of parents to exerciſe this power on all proper occaſions, they ought to do it and leave the event to Providence. No one, who has made the leaſt obſervation, can be ignorant of the inſcrutability of the deſigns of Providence, and of the uncertainty of all human events: yet it concerns parents to ſave, as far as human foreſight can, their children from ruin. To comply with the untoward diſpoſition of one child will in all probability do him no good, and it is an act of great injuſtice to other children, who behave well, to be put upon an equality with him. If it conſiſts with the juſtice of the father of all things, to make the difference of heaven and hell between

* Eccleſ. vii. 13.

good

good and wicked men, it cannot be inconſiſtent with human juſtice, when a parent diſtributes the goods of this life in proportion to the merit or demerit of his children. Too much rigor is bad: but ſo is too much unity; for if a child will, in defiance of the laws of God, nature, and ſociety, act for itſelf in an affair of the utmoſt conſequence, it ought to ſuffer the conſequences of its impiety and raſhneſs. This may deter others; and when an undutiful child has learned in the ſchool of affliction what is due to parents, and ſhows manifeſt ſigns of repentance for what is paſt, there is no doubt but they will forgive, and as far as diſcretion allows retake into favour. It may be ſaid that this law puniſhes the children of diſobedient children, and why ſhould it not be ſo here as well as in felony or treaſon? Rebellion to parents is of all rebellions the moſt unnatural, and mediately ſtrikes not only at all government but at all order: ſo that if a ſociety would preſerve itſelf, it muſt guard the parental power and make it reſpectable.

The Doctor hints in more than one place, that parents and guardians cannot judge of affection; and that they ſeldom regard any thing but the equality of fortune. If they cannot, who can? for it cannot be ſaid that

the minor can. How ſhould the inexperience of a young girl over head and ears in love, which has in all ages been deſcribed and painted as blind, be able to judge of the reality of the perſon's paſſion ſhe would marry? A parent or guardian muſt be better qualified to do this; and, as the happineſs of one and reputation of the other is concerned in the ſucceſs of the Marriage, there is no room to ſuſpect their ſhowing a due regard to it. A ſtrong perſonal affection is ſo eſſential to conjugal felicity, that one cannot be without the other: but it is likewiſe neceſſary that there be a well grounded proſpect of living comfortably. There is no aſcertaining what is ſufficient for this; but it may be ſaid that a perſon does not live comfortably, unleſs ſhe lives as ſhe has been brought up with an expectation of living. In order to this, and that children, which are in general to be ſuppoſed, may be provided for, there ſhould be ſomething near an equality of fortune. Too great exactneſs in this may be wrong, and a proper allowance ought always to be made for ſituation and proſpects in life; but experience ſhews that matches where the inequality is not great uſually ſucceed beſt. Parity of fortune is beſides one proof and a very convincing one of ſincerity; for it

removes

removes all ſuſpicion of the fortune on one ſide being the object of paſſion on the other. This ſhould not be the only one: but, ſince it is not in mortals to pry into the heart, it cannot be denied, that it is one good rule for parents and guardians to be guided in judging of affection.

After ſome reflections on the difficulty of diſcharging the duty of a guardian, the Doctor goes on [a], "How much more difficult muſt be ſuch a truſt now, when in a matter of mere prudence a perſon may be called upon to ſit as judge to determine the fate of a whole family? That bad men may find their account in ſuch a truſt is obvious enough: but good ones can get nothing but ill will. It is true the minor has an appeal to chancery; and it may therefore be preſumed that no guardian will refuſe his conſent to a match, unleſs there be that diſparity in point of fortune, as will yield a good preſumption that the court will confirm his judgment. Yet on the other hand it may be ſuppoſed that the minor will not make the appeal without ſome reaſonable plea, though there be not that equality of fortune which a ſtiff guardian may require. So that the ſhorteſt

[a] p. 15. I "way

" way will be, as Chancery challenges the " laſt reſort, to let it have the firſt too, " where children will be in ſafe hands, and " the judgment leſs liable to envy." The duty of a guardian is indeed troubleſome enough: yet as in the nature of the thing orphans muſt frequently be, it is to be hoped that, if it was much more ſo, there will never be wanting a relation or friend to take care of them. Bad men cannot, an appeal being given, find their account under this act, nor is there any thing in it to diſcourage good ones. The difficulty aſſigned is that of ſitting judge on the fate of a family: but where is the mighty difficulty for one appointed thereto by his deceaſed friend or relation to determine according to the beſt of his judgment? If the minor, or any on his behalf, accuſes the guardian of treachery or cruelty in with-holding his conſent, this act furniſhes him with a ready and ſuitable anſwer: *viz. in my opinion this is not a proper match: but if my ward thinks otherwiſe let him apply to the court of Chancery.* To talk of this court's challenging the right of being appealed to is a little unintelligible. An appeal ſomewhere was neceſſary, otherways the whole power, which ſo great an advocate as the

Doctor is for minors could never approve of, might be in the breaſt of a deſigning guardian; and it has been thought proper, by the legiſlative power, that it ſhould be to the court of Chancery. Wherever there is a truſt it may be abuſed: but into what ſafer hands could this affair of minors be put, than into thoſe to which other affairs of the greateſt conſequence to the publick are truſted. In a note on this paſſage the Doctor expreſſes himſelf in the following manner. "[b] There "is certainly another exception againſt the "propriety of a Marriage, which a wiſe and "good man would lay more ſtreſs upon, than "a defect in point of fortunes; and that is "*a bad moral character.* But whether a "*court of Chancery* would *attend* to ſuch an "exception, or whether it may be ſafe to "offer it, the learned in the law muſt de-"termine." It requires no great learning to determine, that the inſinuation herein contained is to ſay no worſe of it quite unbecoming: and as it would at all times have been improper, it is much more ſo at this, when the dignity of preſiding in that court is poſſeſſed by a man, whoſe abilities and application in his profeſſion have been very ſeldom equalled, and whoſe de-

[b] P. 52. Note [y]

crees

crees have, during the length of time he has ſat there, given as univerſal ſatisfaction as thoſe of any of his predeceſſors.

At the end of the Enquiry, the Doctor has collected the whole of the arguments there made uſe of into five queſtions. In this he acts like an experienced general, who after ſkirmiſhing for ſome time draws up all his forces into battle array, that by one deciſive ſtroke a compleat victory may be obtained. Order and ſituation are of vaſt conſequence: but the ſucceſs of an army muſt, if it comes to cloſe quarters, depend on the firmneſs of individuals. So here however formidable theſe thus ranged appear, they have every one a weak ſide, and if properly attacked ſoon give way.

Queſt. 1. Is not ſociety a mutual league for the defence and protection of all natural rights, and therefore of the natural right of Marriage?

Anſw. If ſociety be a mutual league for the defence and protection of all natural rights, the parental power being one of theſe ought to be protected.

Queſt. 2. If the natural right of Marriage in all perſons who are in a capacity to contract ſubſiſts as well in ſociety as out of ſociety;

ciety; are not all perſons, under that capacity, entitled to the protection of ſociety, if in purſuance of ſuch right they ſhall think fit to contract Marriage?

Anſw. Yes: but minors not being in a capacity to contract Marriage without the conſent of parents or guardians, they are not entitled to the protection of the ſtate, if in defiance of the laws of GOD, nature, and ſociety they ſhall think fit to do ſo.

Queſt. 3. Can any perſons entitle themſelves to the legal rights of the married ſtate, unleſs they be married in the legal form?

Anſw. No.

Queſt. 4. Ought not then the legal form of contracting Marriage to be left open to the uſe of all who are in capacity to contract Marriage; and will not the blocking up the uſe of ſuch legal form againſt numbers who are in ſuch capacity, be a denial of natural juſtice, and a breach of the fundamental law of ſociety?

Anſw. It ought: yet, as minors are not in a capacity to contract Marriage without conſent of parents or guardians, the blocking it up to them is no denial of natural juſtice, nor any breach of the fundamental law of ſociety.

Queſt.

Queſt. 5. Which is worſt? to put thoſe aſunder whom God hath joined? or to forbid Marriage to thoſe who by the law of God and nature are permitted, and may be obliged, to marry?

Anſw. Both theſe are bad enough: but the annulling the Marriages of minors, made without the conſent of parents or guardians, is doing neither.

Having thus conſidered all, or every thing material, that is advanced by the Doctor againſt this branch of the parental power, it remains only to make a ſhort recapitulation of the whole. The queſtion between us is, whether the conſent of parents or guardians is neceſſary to the validity of a minor's Marriage? In order to ſhow that it is not, the Doctor has endeavoured to prove that the conſent of parents was not neceſſary in a ſtate of nature: that the poſitive law of God has not made it ſo: and that ſociety cannot make it ſo. In this vindication my buſineſs has been to ſhow, that the Doctor has not made out either of the two firſt points. Till the firſt of theſe is made out all his arguments on the third ſtand for nothing, the ſum of them being to prove, that children, whom he ſuppoſes to have had in a ſtate of nature a right of marrying

when

when nature urges, have not given this right up, and that ſociety cannot take it from them. As there is a wide difference between confirming a natural right to parents, and taking away one from children, it ſeemed to me quite improper to be going into other very extenſive queſtions, as whether this right was or could expreſsly or tacitly be given up by children, or by their parents for them on entering into ſociety? or whether ſociety could take it for them? for if the Doctor has, as it appears to me he has, failed in proving that they had in a ſtate of nature ſuch a right, there is an end of theſe queſtions. The reſt of this vindication is taken up in conſidering the Doctor's objections to the fitneſs of ſuch a parental power. Whether on the whole his notion or mine be beſt founded is of no great conſequence to either of us: but it is of vaſt importance to the publick, that the queſtion, *whether parents ought to have ſuch a power?* be well ſettled. If what I have done be in itſelf, or by putting ſome one better qualified on the conſideration thereof, in the leaſt conducive to the doing this, it will be a pleaſure to me.

FINIS.

Page 16. line 24. *read* the obligation to theſe.