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AN
INQUIRY
Into the LEGALITY of
PENSIONS
ON THE
IRISH ESTABLISHMENT.

By ALEXANDER Mc. AULAY Esq;
One of his Majesty's Counsel at Law for the
Kingdom of IRELAND.

June 1st, 1763.



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THE late extraordinary Increase of Pensions on the Irish Establishment, demands an Inquiry of this Kind at this Time.

THIS Paper is published in London ; because Britain is deeply interested in the Subject ; and, without her Aid, Ireland can not hope for Redress. It is published so long before the usual Time of the Meeting of Parliament ; that the Subject may, before next Session, be considered in both Kingdoms, with that Attention which its Importance to Both requires.

MEN, whose Interest leads them to pursue Measures hurtful to the Public, easily find anonymous Writers, with Talents fitted to puzzle and mislead by Sophistry and Declamation ; which a Man of Reputation would be ashamed to avow

or contend with. This induced me to insert my Name in the Title-Page; and will, I hope, justify me in declaring that I shall consider an anonymous Answer as unworthy of a Reply.

THE Subject, at first Sight, seems delicate: But, on a closer Inspection, it appears otherwise. Enlarging the Power or Permanent Property of the Crown beyond their true Bounds, being equally hurtful to the inseparable Interests of the Crown and Nation; the Love of my Country and my Duty to the Crown, both concur in moving me to speak my Sentiments upon this Occasion without Reserve.

INDEED, Freedom of Speech, upon this Subject, must appear absolutely necessary to every Man who knows, that more than a 20th Part of the Load of Pensions, now subsisting on the Irish Establishment, has been imposed in the last two Months; and that an unlimited Power of granting Pensions, on that Establishment, to the full Amount of the Irish Hereditary Revenue, is claimed by Ministers on Behalf of the Crown. If this Claim be just; Ireland's Existence, as a Country of Liberty and Property, is at an End.

THE clear Income of the Hereditary Revenue of Ireland, at a Medium of three Years, ending at Lady Day 1761, amounts to four hundred and eleven thousand five hundred and fifteen Pounds *per Annum*. The Danger to Ireland, from an unlimited Power in the Crown over this Revenue (one Year's Income whereof, is not much less than one half of the whole circulating Money in that Kingdom) I shall not enlarge on. How far, a Power to apply an Irish Fund, which already, in the Infancy of Irish Trade, amounts to so much; and may amount to double, perhaps treble that Sum, if Ireland lives to Maturity; how far, a Power to apply so large a Fund in Pensions

Pensions calculated for extending Ministerial Influence, might, in its Consequences, affect Great Britain ; let Britons Judge.

THE Revenue of the Crown is two-fold ; a Public Revenue, limited to Public Uses ; therefore, unalienable ; and a private Revenue, not limited to any Uses ; but alienable or applicable as the Crown thinks fit : In the latter, the Crown has a private Property ; the same absolute, unlimited Property, that a private Person has in his Estate : But, in the former, the Crown is a Trustee for the Public ; and therefore has no Right to dispose of it, to any other than Public Uses. The old Opinion of some speculative Men, that the Crown is a Trustee for the Public, of all its Property, is long exploded ; nor had it ever any solid Foundation. A Trustee has a limited Property ; he can not alien ; and must dispose of the Profits, according to the Purposes of the Trust : But the Right of the Crown to alien what it had by common Law (its antient Demefne-Lands, Forfeitures for Treason and Felony, &c.) was never disputed in a Court of Justice. 'Tis true, many Grants of this Kind have been set aside by Acts of Parliament ; as being improperly obtained : But the making of these Acts clearly shews, that the Grants were valid in Law ; otherwise there would have been no Occasion for Acts of Parliament to annul them.

HERE, it may be proper to observe ; that applying to any private Use, in the Way of Pension or otherwise, any Part of the Profits or Income of a Revenue, is, for so much, an Alienation. If the Crown has a Right to grant, out of any Revenue, a Pension to continue for a single Year, or determinable at Pleasure ; it has a Right to grant the same Pension in Perpetuity ; if the Revenue be perpetual : And if it has a Right to grant out

of any Revenue, the smallest Pension in Perpetuity; it has a Right to grant Pensions in Perpetuity, to the full Amount of the Revenue; and an equal Right to sell the Inheritance of the Revenue all at once, and apply the Purchase-money to any private Uses.

It is not pretended, that the Crown has any other than a Public, unalienable Property in the Irish Temporary Duties; Nor, indeed, can there be any Pretence for a Claim of private Property therein; it appearing by express Words in the Preambles of such of these temporary Grants as are not appropriated to particular Uses, that they are all intended for Support of Government. There will appear as little Pretence for a Claim of private, alienable Property in the Irish Hereditary Duties, which are granted by Act of Parliament; when the Acts, granting these Duties, are considered.

HERE, it may be not improper to premise; that the Intention of the Legislature, by the settled Principles of Law, is always to prevail in the Construction of Acts of Parliament; whether the Intention appears from the Words of the Act, or from the Nature and Circumstances of the Case.

THE Grant of Excise clearly appears, from the Words of the Preamble, to be intended for Public Uses——“ *For Pay of the Army, and defraying other Public Charges in Defence and Preservation of this Kingdom.*”

It is equally clear, from the Words of the Preamble, in the Act of Tunnage and additional Poundage, that these Branches of the Revenue are also intended for Public Uses——“ *For protecting the Trade of this Kingdom at Sea, and augmenting the Public Revenue.*”

THE Hearth-Money also appears, by express Words in the Preamble, to be intended as a “ *Public Revenue, for Public Charges and Expences.*”

ALTHOUGH

ALTHOUGH this Preamble sufficiently excludes all Claim of private Property in this Branch of the Irish Revenue : Yet, as it was granted in Lieu of the Irish Court of Wards, then abolished, wherein the Crown had a private Property ; and, as the Pensions which had been charged on the Profits of that Court were very considerable ; and as it might have been reasonably apprehended, that the Persons who had lost their Pensions by the abolishing of that Court, would endeavour to obtain Recompence out of this new Revenue ; therefore, for the more effectual preventing of all such Attempts, the Legislature, not content that Pensions out of this Revenue should be only *voidable* by a Law-Suit, added a Clause expressly enacting that all such Pensions should be *void* ; and empowering the Court of Exchequer, in a summary Way, to issue Process for compelling the Grantee to repay all the Money that should be received on Pretence of any such Grant ; and inflicting a Forfeiture of double Value, on every Person who should accept of such a Pension.

THE ACT, granting the Revenue of Ale-Licences, hath no Preamble mentioning the Uses for which it was granted. The Legislature, therefore, in order to obviate all Pretence of private Property in this Branch of the Revenue, inserted a Clause restraining the Crown from charging it with Pensions.

THE ACT, granting the Revenue of Strong Waters and Wine Licences, being principally intended for regulating the Retail of these Liquors ; and the Income that could be expected from it, being inconsiderable ; no Preamble was thought of, to signify the Uses of this Grant ; nor any Clause inserted, to guard it against Pensions : But, as there is nothing in this Act, to denote an

Intention of private Property ; the Construction of the Act, in this Particular, must be governed by the usual Intention of such Grants. This appears from the common Case of Marriage-Articles, agreeing that the intended Husband's Estate shall be settled upon him and the Heirs of his Body by that Marriage. Although the Words of the Articles make him Tenant in Tail ; yet, when the Articles come to be carried into Execution in a Court of Justice, he is always made Tenant for Life ; with Remainders to the Issue ; on a Presumption that such was the Intention of the Parties ; the Intention being usually so, in such Cases.

THIS way of reasoning will not be objected to, by any Man who knows, what is generally known and acknowledged, that the Intention is not less regarded in the Construction of Acts of Parliament, than it is in the Construction of Articles. Gentlemen of the Law know, that it is more regarded in the Former, than in the Latter.

THE Old Poundage of Hen. the 7th, from the antecedent Grants of this Tax, appears clearly intended for Public Uses. In Davis's Reports, Pag. 11, a Book of undoubted Authority, We have the following History of it.

AN Act was made in the 14th, of Edwd. the 4th, erecting a Military Corporation, called the Fraternity of St. George, and granting to them and their successors, a Duty of twelve pence in the Pound, on Exports and Imports, for maintaining a Military Force, in Defence of the English Pale against Rebels. In the 10th, of Hen. 7th, an Act was made which recites, that this Tax had been converted by the Fraternity of St. George to *private* Uses, and not in Discharge of the *Public* Service ; and, *therefore*, grants it to the

the Crown for a Term of five years. On the expiration of this Term, in the 15th, of Hen. 7th, the present Subsisting Act of Poundage made this Tax perpetual.

THE Irish Quit-Rents and Crown-Rents being reserved on Grants of Lands, wherein the Crown had a private Property; these Rents were originally the private Property of the Crown: But by the English Act of 11. and 12 W. 3. it is enacted, that these Rents “*shall for ever hereafter remain and be for the Support and Maintenance of the Government of Ireland; and that all Pensions since the 13th of February 1688 charged, or hereafter to be charged thereon, shall be void.*”

ALTHOUGH the former part of this Clause, limiting this Revenue to the Support and Maintenance of Government, clearly excluded Pensions; the latter part, concerning Pensions, was proper for two purposes: The one was, to make Pensions void, which would otherwise have been only voidable; and the other was, to annul Pensions that were granted between the 13th of February 1688 and the time of making the Act; which might otherwise have been deem'd valid.

THUS, it most evidently appears, that not only the Irish temporary Duties, but also the Irish Quit-Rents and Crown-Rents and the Irish Hereditary Duties which are granted by Act of Parliament, are all, the Public, unalienable Revenue of the Crown, limited to Public Uses.

THERE are but three Branches of the Irish Revenue, which remain to be considered; Prifage on Wines, Light-House-Duties and the Casual Revenue. I cannot find any Acts of Parliament, granting the two former: If there be none; the Crown is to be considered as intitled to them by Common Law; and, consequently, as having a private Property therein. The Crown has also

a private Property in a small part of the Casual Revenue, belonging to it by Common Law; which is not distinguished in the Public Accounts, from such parts of this Branch of the Revenue, as are granted by Acts of Parliament.

I do not find that the clear Income of these three Branches (Prisage on Wines, Light-House-Duties and the Casual Revenue) has ever amounted, in any one year to £ 15000. If it be so; the private Revenue of the Crown in Ireland, (the only Revenue, in it's nature chargeable with Pensions) has never amounted to £ 15000 in any year, since the Irish Quit and Crown-Rents were added to the Public Revenue: As I am inform'd, it has never amounted to half that Sum; and so would appear, were the several parts of the Casual Revenue distinguish'd in the Public Accounts,

THE Matter, then, stands thus. The Revenue of the Crown in Ireland, which can legally be charged with Pensions, does not amount to fifteen thousands Pounds *per. Ann.* probably, not to Seven. And the Pensions on that Establishment (exclusive of the French Pensions, the Military Pensions and the Pensions to Widows of Military Officers) amounted to £ 64127 *per. Ann.* at Lady-day 1761. That they are, since, greatly increas'd, is certain; although the exact Amount of this Increase is to remain a Secret, until next Session of the Irish Parliament: But it is no Secret that an unlimited Power of increasing them, for Ministerial Purposes in either Kingdom, is asserted and insisted on.

THE Facts mention'd in this Paper, are indisputable: The reasoning seems grounded on establish'd Principles of Law and Common Sense. If it be erroneous; the Errors, no doubt, will speedily be expos'd to Public View; and I shall
not

not be ashamed to acknowledge Conviction: If it be just, the Consequence is obvious—Not a single Pension on the Irish Establishment, warranted by Law—All, clearly illegal. 'Tis true, the Crown has an undoubted Right to charge its private Revenue with Pensions of any kind, for any Term, or in Perpetuity, to the full amount of this Revenue: But it is equally true that the Grant of any Pension, not chargeable in Law on the Public Revenue, and yet charged in Fact on the Revenue at large (comprehending as well the Public as the Private Revenue of the Crown) is clearly against Law: The Crown is deceived in the Grant; and, therefore, not bound by it.

If this Deception be, in its Consequences, hurtful to both Kingdoms; his Majesty, no doubt, may properly be informed of it by the Grand National Council of Either. Supposing Britain disinterested; a Matter of such Importance to her Offspring, cou'd not but attract some share of her Attention. As far as an inviolable Attachment to the Protestant Succession, can endear the Descendants of Britain to their Parent-Country; so far, Ireland stands intitled to her warmest Regards.

AUGMENTING Salaries annexed to Public Offices, whether Civil or Military, in Proportion as Money falls in value, has, at different Periods of time, become requisite for the better Support and Maintenance of Government, and the Defence and Preservation of the Kingdom. A reasonable Increase of Salaries annexed to Offices of real Public Use, is, in reality, part of the *Publick Charges and Expences*; as the Hearth-Money-Act expresses it: But it cannot be said, that a Pension of any kind is to be considered in this Light; whether it be granted as a generous Reward for past Services done to the Public, or from any other Motive.

The

THE Sense of the Legislature of Ireland upon this Point, clearly appears in the Hearth-Money-Act. Although this Revenue, by the Preamble of the Act, is to be applied to Public Uses, *the Public Charges and Expences*; Yet the Clause therein, annulling Pensions, contains no Exception in favour of Pensions granted as Rewards for Public Services. This clearly shews, that the Legislature did not consider such Pensions, as any part of the Public Charges: If they did; the Act would be inconsistent in itself.

WE have also the Sense of the English Legislature, to the same Effect. The Act of 11. 12. W. 3. before-mentioned, after converting the private Property of the Crown, in the Irish Quit and Crown-Rents, into public Property, for public Uses; adds a Clause annulling all Pensions, without Exception, charged or to be charged thereon.

NOTHING can more evidently shew, that Pensions of all Kinds were intended by both Legislatures to be excluded from the Uses, to which the Public Revenue of Ireland stands limited. They wisely foresaw how any Exception, in favour of Pensions grounded on public Merit, might be abused by Servants of the Crown and Misleaders of the People.

THIS may suffice to obviate an Objection, much relied on; *That expending a competent Part of the Public Revenue in Pensions, from a Principle of Charity or Generosity, adds to the Dignity of the Crown; and is, therefore, useful to the Public.*— Perhaps the granting of Pensions may dignify the Crown, in the Estimation of some People: But, be that Matter as it may, the foregoing Observations upon the Irish Hearth-money-Act, and the English Act of 11. and 12. W. 3. clearly shew, that

that charging the public Revenue of Ireland with Pensions, is contrary to the Intention of both Legislatures; that is to say, in other Words, contrary to Law.

HERE it is observable, that a certain Modern Species of Irish Pensions stands condemned by this Objection. If the granting of Pensions be useful, for maintaining the Dignity of the Crown; Pensions granted for Lives or Years, whether in Possession or Reversion, tend to lessen the Dignity of the Crown, in succeeding Reigns; and are therefore injurious to the Royal Successors, to the Nation of Ireland, and to every Nation in the British Dominions. Some new Kind of Sophistry must be invented, to frame a plausible Apology for the Advisers and Acceptors of such Pensions.

ALTHOUGH the Wisdom of our Ancestors excluded Pensions of all Kinds; as before observed; Yet this universal Exclusion may, now, perhaps, admit of some Exceptions; by a new Law, to be made for this Purpose; enabling his Majesty to charge the Public Revenue of Ireland with certain Pensions, under proper Limitations.

THE granting of reasonable Pensions to Widows of Military Officers, being useful to the Public; it seems clear, that such Pensions ought to be confirmed by Act of Parliament; and his Majesty, enabled to grant the like Pensions for the Future, out of the Public Revenue. Pensions to Civil Officers, really Superannuated, seem to fall within the same Reason. And it may be a Matter worthy of Parliamentary Consideration; whether reasonable Pensions, which have been granted on Principles of Charity, should not be confirmed in like Manner. It would at least be cruel, perhaps unjust, to resume them. Pensioners of this Class, relying on their Pensions as legal, might probably have

have been thereby diverted from seeking out other Means of living.

As to the Pensions granted on the Irish Establishment, to any Branches of the Royal Family; I shall only in general say; There can be no Doubt that the Protestants of Ireland (animated by Principles of Gratitude, Justice and Honour) will, upon every Occasion, to the Utmost of their Ability, promote the Interest and Dignity of a Family which not only rescued, but preserves them from the Fangs, the bloody Fangs of Popery.

SURELY this Family (in itself so amiable, to the Protestant Interest so essential) must ever maintain the warmest Place in every Protestant Heart; notwithstanding all possible Errors of Administration.

HAVING taken the Liberty to point out the several Kinds of Pensions on the Irish Establishment, that seem worthy of Parliamentary Confirmation; I shall crave a little further Indulgence to add.——If any Pensions have been obtained on that Establishment, to serve the corrupt Purposes of ambitious Men.——If his Majesty's Revenues of Ireland have been employed in Pensions, to debauch his Majesty's Subjects of both Kingdoms.——If the Treasure of Ireland has been expended in Pensions; for corrupting Men of that Kingdom to betray their Country; and Men of the neighbouring Kingdom, to betray Both.——If Irish Pensions have been procured, to support Gamesters and Gaming Houses; promoting a Vice which threatens national Ruin.——If Irish Pensions have been pilfered from the Crown, to raise and maintain an unnatural Power against the Crown's Vicegerent.——If Pensions have been purloined out of the National Treasure of Ireland, under the Mask of Salaries annexed to public Offices,

Offices, useless to the Nation; newly invented, for the Purposes of Corruption.——If Ireland, just beginning to recover from the Devastations of Massacre and Rebellion, be obstructed in the Progress of her Cure by Swarms of Pensionary Vultures, preying on her Vitals.——If, by squandering the National Substance [of Ireland, in a licentious, unbounded Profusion of Pensions; instead of employing it in nourishing and improving her Infant-Agriculture, Trade and Manufactures; or in enlightening and reforming her poor, ignorant, deluded, miserable Natives (by Nature most amiable, most valuable, most worthy of Public Attention)---If, by such Abuse of the National Substance, Sloth and Nastiness, Cold and Hunger, Nakedness and Wretchedness, Popery, Depopulation and Barbarism still maintain their Ground; still deform a Country, abounding with all the Riches of Nature; yet, hitherto destined to Beggary.——If such Pensions be found on the Irish Establishment; let such be cut off: And let the perfidious Advisers be branded with indelible Characters of Public Infamy; adequate, if possible, to the Dishonour of their Crime.

F I N I S.

Other, alike to the Nation, newly injured,
for the purpose of Corruption, — Ireland,
not remaining to recover from the Disasters
of the late and Rebellion, be obstructed in the
progress of her Cure by elements of Repugnancy
which, proper on her Vitals — It, by
fostering the National Substrates for Ireland, in
a lifetime, unbounded Prohibition of Persons;
instead of employing it in nourishing and im-
proving her latent Agriculture, Trade and Arts;
instead of in enlightening and reforming her
poor, ignorant, degraded, and wretched Slaves, by
Nature most valuable, most valuable, most worthy
of Public Attention — It, by such Abuse of the
National Substrates, Spirit and National, Cold
and Hunger, Wretchedness and Wretchedness, To-
day, Degeneration and Barbarism still maintain
their Ground; still deny a Country, abounding
with all the Riches of Nature; yet, hitherto de-
voted to Beggary. — If these Persons be found
on the Irish Establishment; let such be cut off;
And let the perfidious Adversaries be branded with
indelible Characters of Public Infamy; adequate,
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