

CONSIDERATIONS

*is the production of*

ON THE

*Director Gen<sup>l</sup> Sir G. Scott*

ESTABLISHMENT

OF

A R E G E N C Y.

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# CONSIDERATIONS,

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**N**O public sentiment has ever been more strongly expressed, than that general consternation and grief, which his Majesty's affecting situation has excited in the minds of a dutiful and loyal people. Such a calamity must at all times have been severely felt; but there are many circumstances which have rendered it peculiarly distressing in the present moment. It has come upon us suddenly, and without preparation; interrupting a course of the most unexampled prosperity, and disturbing that confidence in our public situation which had taken fresh root and vigour in the opinions of mankind. Our former quiet and security have by this event been changed to uncertainty and alarm; we are deprived by it of the inestimable advantages

of a settled form and order of government, and involved in all the difficulties of a case nearly unprecedented in our annals, and wholly unprovided for by any positive regulation of our laws.

Unless some favourable turn should take place with respect to his Majesty's disorder, there may soon exist an unavoidable necessity of doing that, which must be painful to the feelings of every man—of making some temporary provision for administering the executive power, during the suspension of its exercise in those hands in which the constitution of our country has lodged it. The public attention of this free community must therefore be directed to the discussion of this subject, although it be of such delicacy as is exceeded only by its importance; and although, even from the discussion of it, many evils are to be apprehended.

It is however the part of a good citizen, neither to be dispirited by the misfortunes, nor intimidated by the dangers, of his country; but rather to be animated by both, to the discharge of that duty, which he

he may feel incumbent upon him under such circumstances. This is a point, in the decision of which we are all highly concerned. Every Englishman is, therefore, bound to examine it with care and diligence, to form his opinion upon it deliberately and conscientiously, and to support that opinion by all legal and constitutional means, according to the measure of his abilities, and the situation of life in which he is placed.

In the discussions to which this subject leads, some reference will naturally be made to the history of former times, and to those precedents which may be thought to bear a resemblance to our present situation. But whatever respect is due to the information derived from those sources, the only rational use which can be made of it for our present purpose, is to examine what were the leading principles on which our ancestors proceeded in those cases; and to enquire how far, and in what manner, those principles apply to the present crisis, under all the changes which the revolution of so many ages has produced. Nor ought we to go beyond this, in our adherence to precedents, or to follow now  
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the practice of former ages, in points where the reason of that practice has ceased to operate.

The objects to be attended to in our present proceedings, will best be collected from a consideration of the circumstances of that emergency by which we may be compelled to act. We are to establish such an intermediate form of administration as may be best adapted for carrying on the public business, during his Majesty's illness, with the necessary dispatch and energy; and for securing, as far as human wisdom can secure it, that whenever it shall please God to remove this heavy visitation from us, the Sovereign to whom we have sworn allegiance, and for whom we feel as one man the strongest sentiments of veneration, attachment, and gratitude, shall be effectually restored, not to the possession only, but to the exercise of his undoubted rights, which he enjoys for the benefit of his subjects, and of which he cannot be deprived, without an injury done to ourselves.

An idea has indeed been thrown out, which, if it were founded in truth, would render

render any further reasoning upon these points useless and improper : It has been said by some, that, in a case such as the present, the whole power, authority, and prerogative of the King, devolve immediately and of right to the person next in succession to the Crown, in the same manner as in the unfortunate event of a demise. The slightest acquaintance either with English history or with English law, is sufficient for enabling us to reject at once this notion, equally unwarranted and unjust. No trace of such a right can be found upon the records of Parliament, nor has any such opinion been cited from the works of any writer upon the British constitution. On the contrary we shall find, that even in periods infinitely less favourable than the present for the assertion of the true principles of our Government, every interruption in the exercise of royal authority has uniformly been provided for in Parliament. The principle on which this practice has been grounded, is obvious and unquestionable. The order of hereditary succession to the throne of these realms, has been established among us, not for the advantage of any individual family, however

ever entitled to our gratitude and veneration, but for the benefit of the nation, and for the security and happiness of millions: and undoubtedly it is a great blessing to us, that on the death of our Sovereigns, their Crown should descend, by a fundamental law of the State, in a known and settled course of succession;—but beyond this case, neither the law itself, nor the reason of the law, extend. During the life of a British King, no man can claim an *hereditary* right to the exercise of royal power, *nemo est hæres viventis*. This is the known and acknowledged maxim of our laws, applying with equal force to every description of right or property, and to every rank and condition of men; and it is particularly to be observed, that at the æra of the Revolution, when the Commons appointed a Committee to maintain, in a conference with the other House, the true principles of that transaction, the great lawyers chosen for this important trust relied much on this very rule of law, which they then cited as applying to the case of the Crown, and as forming a material branch of their argument, in support

port of that vote which laid the foundation of all the subsequent proceedings.

If then this principle be true, that the hereditary right to the Crown, like every other right of inheritance, attaches only in the case of the death of the person in possession, the consequence cannot be disputed. In those extraordinary and unforeseen emergencies, when an interruption arises from other causes in the administration of this sovereign trust, it remains with the people to exercise a power which they have reserved, and to provide a remedy adapted to the occasion which requires it. Such a right, if it were supposed to vest in the whole body of the inhabitants of a country, so as to be exercised by each of them individually, might justly be considered as one merely speculative. But in a free and well-ordered government, like ours, a regular channel is provided, through which the rights of the people may be exerted, according to the different orders of society established amongst us. The same mode, therefore, by which the nobility and commonalty

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of this realm exercise their share in the Legislature of their country, is naturally pointed out to us, as that by which they are also to perform the still more important function, of supplying the occasional deficiencies in the remaining branch of the constitution, and of providing for the discharge of the duties of executive government.

In earlier periods of our history, when the comparative importance of the Commons was less than at present; and when their share in the legislative acts of our government was at least not so distinctly expressed, the Lords sometimes appear to have taken a more forward and leading part in such transactions as bear a resemblance to the present crisis. But even then, the consent of the Commons is almost always stated on our records, and probably was always given: and, upon the whole, this leading principle appears to have been invariably adhered to, that on any failure in the exercise of the royal authority during the life of the King, the deficiency could only be supplied by that body,

body, in whom, conjointly with the King, the legislative power had resided.

The same principle applies with greater force to the present times, when the institutions of our government have been more developed, and are more distinctly understood. It is in Parliament that the people of Great Britain exercise their share of the government. It is on Parliament that the care of providing for this emergency does unquestionably devolve; and that degree of authority, which it may be necessary to grant for this purpose, cannot be claimed as a right, but must be conferred as a trust, under such restrictions as may be judged advantageous to the people at large.

The proceedings in every case that can be found in our annals, bearing either resemblance or analogy to the present, have all been regulated in conformity to the maxims above stated. Sometimes the British Crown has descended on the heads of minors. The guardianship, both of the Sovereign and of his kingdoms, has in such case been granted under the sanction of Parliament, either by a previous

authority given for that purpose by statute to the preceding King; or, in default of such provision, by actual nomination immediately after the demise. It is by no means true, that the person named to this important trust has always been the next in succession to the Crown, or indeed that any general rule has obtained to limit the discretion of Parliament. In one case\*, where no previous parliamentary provision had been made, a claim of right was indeed urged by one of the relations of the King to the Regency of the kingdom during his minority. This claim was formally examined and disallowed by Parliament, who, "after long  
 " and great deliberation and advice, searching precedents of the government of  
 " the land in similar times and cases,  
 " when the Kings of this land have been  
 " of tender age, and taking information  
 " of the laws of the land from such  
 " persons as were learned therein, finally  
 " found the said desire not grounded in  
 " precedent, nor in the law of the land."

\* See Rolls of Parliament, vol. iv. page 171. 1 Hen. 6. See also *ibid.* p. 326. 6 Hen. 6.

They afterwards, however, granted to the same person a more limited power\*, subject to the controul of a Council, and held under a title, conceived to be of less dignity than that of Regent; and upon these terms the office so granted was accepted and exercised by him, and again resigned at the requisition of the same authority.

In another instance†, the Monarch was alleged to be disqualified by disease from the exercise of his power. A Protector ‡ was chosen by the Lords at the request of the Commons; and his power was, in like manner as in the preceding case, limited by Parliament, at whose pleasure his commission was made revoc-

\* Rolls of Parl. vol. v. p. 407, 408, &c. 5 H. 6.

† Rolls of Parl. vol. v. p. 239 to 242. 31 & 32 H. 6.

‡ It is remarkable, that the Duke of York, in accepting his office, delivered in a paper to the Lords, in which he desires that it should be declared by the authority of Parliament, that they, “of their free and mere disposition,” had named him to that office, and that he did not take it upon him from any presumption of himself, but in obedience to the King and to the peerage of the land; “in whom, by the occasion of the infirmity of our  
“said sovereign Lord, rests the exercise of his authority.”  
Rolls. Parl. vol. 3. p. 2.

able, and by whom it was afterwards repealed§.

At other periods of our history, our Sovereigns have been deposed for real or alleged misconduct. It is hardly necessary to say, that these cases are cited as bearing on the present question in one point only; namely, in shewing the power of Parliament in every case where the exercise of royal authority is suspended, and not as by any means resembling it, either in the particular occasion on which this power is to exercise, or in the nature or extent of the measures to be adopted.— But in all these instances, whatever has been done, has proceeded from Parliament alone: particularly in 1688, so far were Parliament from admitting that, by the abdication of James the Second, the exercise of royal power devolved to his next heir, that they vested it in King William alone; giving to Queen Mary herself only the title of Queen, without

§ The proceedings in these two cases, as they appear on the Rolls of Parliament, are so curious and interesting, that an abstract of them, with copies or translations of some of the most material parts, is inserted at the end of this Pamphlet, as an Appendix to it.

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annexing any authority to it\*, and even postponing the succession of the Princess Anne to the Crown till after his death. And this is a precedent, which, for the solemnity of the occasion, the regularity of the proceedings, and the happy consequences which have resulted from them, may, as far as it applies to the present case, be justly considered as affording the surest foundation for any measures which must now be taken.

The several particulars in which this last case, as well as those before cited, differ from the circumstances of the present situation, are sufficiently obvious. The principle has, however, been the same throughout, that the right of hereditary succession attaches only on the death of our Sovereigns, but that every other interruption in the exercise of royal authority must be especially provided for by Parliament. And if this has been done in the case of Monarchs who were adjudged to

\* This was so distinctly done, that when King William went over to Ireland, an Act of Parliament was necessary to enable the Queen to exercise royal authority during his absence. See Statute W. & M. c.

have forfeited their claim to the allegiance of their subjects, and who could therefore never be restored to their authority, how much more must Parliament feel it incumbent upon them to take into their own hands the measures which are now to be pursued ; having, in addition to the duty of providing for the intermediate administration of the government, so important a trust to discharge, as the preservation of the rights of a Sovereign, so justly dear to the hearts of all his subjects, and who may, at any moment, be again in a situation to re-assume the exercise of his power, for the advantage and happiness of his people.

I have dwelt the longer upon this point, because the opinions which I have combated have been spread with confidence and industry ; and because they are said, tho' with little probability, to have received the sanction of some legal authority. I am persuaded, however, that the discussion is, and always has been, wholly unnecessary ; and that the illustrious Person to whom it principally relates, has too just a regard to the rights of Parliament, and to the laws and constitution of his country, to

to have listened for a moment to such suggestions, if any such can have been made to him.

If then the right of Parliament to provide for this emergency be clearly established, the next question would naturally be, in what hands they ought to place that portion of executive authority which they may judge necessary for carrying on the government without prejudice to the rights of the King. On this subject two ideas naturally present themselves. The confiding this degree of authority to the hands of a single person, aided only by a Council of his own appointment, and subject to dismissal by him; or the vesting it in a Council of Regency, to be appointed by Parliament, and to be removed only with the consent of a majority of their own body. All the precedents, or almost all that can be found on the records of Parliament, incline to the latter of these two modes. If any subject in this country has ever exercised royal authority, without being subject to the controul of a fixed and permanent Council, it has been in times of such confusion and anarchy, that no argument

can be drawn from it to any regulation of settled government. While on the other hand, the principle of such a Council has been adopted in the most recent, and therefore the best, instances that we can resort to for the establishment of Regencies. I mean the provision made in the time of Queen Anne \* for the absence of her successor from his dominions, at the period of his accession, and the bills passed in the reigns of his † late and present Majesty ‡, to provide for the case of a minority,

Yet, notwithstanding these considerations, there are circumstances which seem to make it desirable, supposing it can be done consistently with the important objects which have been stated, to lodge the trust now to be created, rather in the hands of a single person, and that person the Heir Apparent to the Crown, than in those of any Council to be named by Parliament. A constitution such as ours is, has always some tendency, on the one side or the other, to principles unfavourable to

\* See Stat. 6 Anne, 6, 7. c. 11.

† See Stat. 24 Geo. 2. c. 24.

‡ See Stat. 5 Geo. 3. c. 27.

its continuance; and it is only by a minute attention to the least inclination of the scale, that its balance can be maintained. We have seen within a few years, at the period immediately preceding the dissolution of the Parliament in 1784, a struggle on the part of a powerful aristocracy to usurp to themselves, by a cabal in Parliament, the most unquestionable, and perhaps the most important branch of the royal prerogative, the nomination to the offices of executive government. And we all remember, that this attempt could no otherwise have been defeated, than by the fortunate union of the two other parts of our constitution, the legal power of the monarchy, and the prevailing voice and weight of the people. The present occasion is, certainly, in many respects, widely different from that which has been alluded to. There is now a temporary suspension of all monarchical authority; and the nomination of a Council by Parliament under these circumstances, would be at least a legal exercise of the power which has thus devolved to them, instead of being a direct infringement of the acknowledged rights of the Sovereign. But it should be

the particular object of those who love the true constitution of their country, to guard, with the utmost jealousy, against the renewal of that principle which they have already combated with success.

We should remember, that the claim then set up against the Crown, although condemned at the time by the unanimous decision of the country, is nevertheless still maintained and defended by a considerable body of public men. At some future period it may be revived, even if the circumstances of the present moment render its supporters less anxious to bring it forward to public view. We cannot therefore be too careful that nothing should be done, especially at such a moment as the present, which might hereafter give countenance and support to a principle destructive of the very frame of the British constitution. And, notwithstanding the great difference in the present case, it is impossible not to see that such a conclusion might be drawn from this precedent, if Parliament should, on any other grounds than that of the most urgent necessity, proceed to name a permanent

manent Council, although composed of men in whom the Sovereign and the people might best confide.

The danger is indeed so great, of suffering any individuals, of whatever description, to monopolize, directly or indirectly, the administration of public affairs, that nothing but the utmost exigency could render it justifiable. In addition to this we are to observe, that if, in the establishment of such a Council, the precedent of any former regency should be followed, the system so established, though strong for the ends of personal interest and ambition, would be weak and insufficient to any purpose of good government. The executive Officers of the Crown would almost inevitably be at variance with the Person representing the sovereign authority; and this would happen at a time, when, on the one hand, his great natural weight and influence as Heir Apparent to the Throne would be much increased by his actual situation; and when, on the other, the tenure by which they held their authority would enable them to retain a permanent possession of all

all the most important offices in the administration of public affairs. The consequences must be, those of a confused and distracted government, wholly occupied with domestic intrigues and animosities, and incapable of attending, either to the maintenance of our internal prosperity, or to the preservation of our system of foreign policy, the foundations of which have so recently been laid. Whatever therefore may be the wishes of the Public, that the government may continue in the hands of his Majesty's present Ministers, this can be done with safety to the country by regular and constitutional means alone. By the concurrence of the Regent, both in the declared sentiments of the King, whose authority will be committed to him by a temporary delegation ; and in the wishes of the people, from whose hands he will have received so important a trust. Whether there is any reason or not to expect such a concurrence, the principle is equally binding. No attempt ought to be made, and we may hope that none will be made, by the present ministers, to continue themselves in the possession of their offices by  
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the appointment of Parliament, and independently of whatever may be established as the executive power. They came into office on different grounds ; nor can they, in the present moment, better consult their own characters, or more effectually discharge what honour, gratitude, and duty require of them, than by providing every security for the preservation of the King's authority,—by providing none for the preservation of their own power.

The necessity of making a stand with respect to the former of these two objects, is indeed a point which cannot be too strongly insisted upon ; and this the rather, because, however important and indispensable a duty, it is nevertheless liable to misrepresentations, which every one would wish to avoid. It is easy to see with what advantages such a principle may be opposed, by adverting to considerations of personal character, and by making use of names which can never be mentioned or received but with respect and deference. But let no man on such grounds as these deceive himself, or be deceived by others into a neglect of that duty which  
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he owes to his *Sovereign* and to his *Country*. It is the very first principle of legislation in a free country, that those points which are essential to the advantage or security of the community, should rest on a more solid basis than that of personal confidence. We require even of our Kings, when they receive the homage of their subjects, that they should bind themselves by an oath to maintain our liberties, and to observe our laws. Not certainly that we mean, at such a moment as that, to express to our new Sovereign a distrust of his personal character ; but because we think it our duty to remind him of the nature of the trust which he undertakes, and, at the same time, to give additional security and sanction to that constitution which we are bound to maintain inviolate. Suppose that any man, at the beginning of a new reign, should desire us to dispense with this oath as implying jealousy and distrust ; or, should advise us to repeal the statutes which secure our liberties because the character of the new Prince might justly claim the confidence of his people——with how much reason would the author of such a proposal incur our indignation, for infusing into the mind of

of his Sovereign a distrust of the affections of his people ; and for setting the laws of his country at variance with the personal character of the Monarch ? In what respect will the conduct of those men be less exceptionable, who shall tell us, that no security can be necessary for preserving the rights of his Majesty, because no attempt against them can be suspected to proceed from the Prince ? We may all, as individuals, feel ourselves persuaded, that his Royal Highness is incapable of forming such a design. We may believe that he has penetration to discover, and firmness to resist the attempts of any party to mislead him into measures calculated either to establish *his* power in the place of his father's, or to establish *their own* power in the place of both. But as a legislative body, owing allegiance to their Sovereign and duty to their fellow-subjects, the two Houses of Parliament are bound,—not to suspect his Royal Highness, God forbid they should !—but to suspect and to guard against those who may become his advisers. They are no more at liberty to surrender at discretion, and on grounds of personal confidence, the authority of the King, and

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the interest which the people have in its preservation, than to yield up in the same manner the securities we enjoy for any other of our rights, for the trial by juries, or for our personal freedom.

If, then, we lay aside the apprehension of such unworthy imputations, and apply ourselves to examine this case as a point of history, or as a question of abstract reasoning, we must see that there is in the present instance a stronger necessity than in any former one, for securing with jealous attention the rights of the Sovereign. The more strongly it is contended, that the person now to be placed at the head of the Government should not, like every other Regent, be limited by the control of any permanent Council; so much the more is Parliament bound to look with jealousy to the manner in which the Counsellors whom he employs may advise him to exercise his power. Nor can that caution be deemed injurious now, which has not been deemed so in former ages, and in the case of so many illustrious persons, entrusted only with concurrent, and not with sole authority. It has indeed been said, that the object in those cases

cases was to provide a security for the rights of the person who was, at the expiration of the Regency, to enter upon the exercise of the Sovereign authority : but that here the caution would be unnecessary, because the power would reside in the hands of the Heir Apparent to the Crown. This reasoning can be valid only in the opinion of those who call a temporary indisposition by the inauspicious name of a demise. It can be of no weight with the people of England, who look with confidence to better hopes, to the prospect of the King's health being restored within as short a period as has been known in almost innumerable instances of private persons who have suffered for a time from similar attacks. If there were only a *possibility* that the prayers of the kingdom would be successful, even that possibility must destroy such an argument as that referred to. How much less shall we be inclined to give credit to it, when common experience shews, that the most probable event of the present case is that which every Englishman earnestly desires.

It is therefore the indispensable duty of Parliament, in providing for the present

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exigency,

exigency, to allow no degree of authority to be exercised, which shall be incompatible with maintaining the King in the possession of his rights, and enabling him to re-assume the exercise of them whenever his health shall allow it. The provisions requisite for this purpose are indeed so far from being inconsistent with the objects to which we should look in establishing an intermediate Government, that they form an indispensable part of any system of permanency and tranquillity in the country. If this point were unprovided for, and the case should afterwards occur, can any man believe that the people of this country would submit patiently to the consequences of such a neglect?—And might we not, on the contrary, by these means, instead of a strong Government, which is the language of some men, have secured to ourselves, in an event neither improbable nor perhaps distant, the certainty of confusion and tumult? It follows therefore, not only that it would be unjustifiable, for the sake of strength and energy to the intermediate Government, to neglect making full provision for the preservation of his Majesty's

ty's rights ; but that no strength or energy can exist in any such Government, unless the country feels that this essential object is secured.

With respect to the particular form and mode in which the Regent's power should be established according to these considerations, this is an object which might require a more detailed investigation than is consistent with the nature of this enquiry. The principles, however, which result from what has already been said, are sufficiently obvious, and it cannot be difficult to apply them to the several questions which may be expected to arise.

It will, in the first place, be clear, that whatever authority is necessary for carrying on the ordinary business of executive administration, must be granted to the person in whom we vest the intermediate Government, unless it can be shewn to be incompatible with the preservation of the King's authority. It will be equally evident, that no power ought to be so given, which is not necessary for the purpose above stated, even though it should not be

be injurious to the rights of the Sovereign; because the grant of any power whatever, in the present case, being entirely grounded on the necessity which calls for it, such a grant ought, on the one hand, to be made as nearly as possible co-extensive with that necessity; but should not, on the other hand, be suffered to reach beyond the foundation on which it rests.

In cases where these principles might appear to clash, and where the necessity of carrying on a present government might interfere with the duty of reserving to the King the full power to re-assume the exercise of his rights, the decision must be made according to the importance of the effects which might be produced on either side. But it may be said with confidence, that although this decision may in a few particular instances appear embarrassing; yet that, generally speaking, the two objects are far from being incompatible; and that the providing for both, is the only way to secure the tranquillity and good government of the country.

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In addition to what has been stated, there is one incontestible maxim, to which the utmost regard is to be paid. The powers of an intermediate, temporary, and delegated authority, ought not to bind that which is primary, permanent, and original, except with regard to those acts only which are of the most absolute necessity, and which are in their own nature final and conclusive. Such, for instance, are the negotiations with foreign powers ; such are also the nominations of judges, and of a few other officers who must by law be appointed during good behaviour.—We may safely admit these exceptions, without prejudice to the general rule, and in the fullest confidence, that his Majesty will in no case regret the consequence of a principle to which he himself gave additional force and efficacy in the very first moments of his reign\*, by further securing the independence of the judges. But with these exceptions it may safely be asserted, that no power can with propriety be given to the Regent, in the present instance, to do any one act which the Sovereign may not revoke whenever he shall return to the exercise of his authority.

\* See Stat. 1. G. 3. p. 23.

The force and evidence of these principles cannot be resisted by any just or solid argument. If they can at all be combated, it must be by opposing to them some general topics of the advantages of a strong Government. Such a mode of reasoning, if followed up to its true conclusion, would apply not only to overthrow the precautions which we may think necessary in this particular instance, but to destroy at once every security that has ever been established, in any Government, against the extent or the possible abuse of power. There is no doubt, that absolute and uncontrouled authority, not restrained by any laws, nor checked by any councils, nor liable to be questioned in any tribunals, would be to many purposes the strongest Government that could be devised. But the evils of this form are so intolerable, that there is hardly any country where it has not been found necessary to destroy something of the energy that would result from such a system, in order to provide for the more important ends, of the security of those who are governed, and the stability of those who govern. It is, therefore, now held in almost every

every country in Europe, that the Sovereign must at least be bound by the laws which he has himself established. In these kingdoms, happily for us, we have proceeded a great deal further: we have provided, not only that the King shall be bound by the law, but that the law shall no otherwise be established, altered, or repealed, than by the whole body of the people acting in conjunction with the Sovereign, through the medium of their great national Assembly. No man can doubt, that by these provisions the energy of the British Government is, in many respects, very considerably weakened; although this inconvenience is much more than counterbalanced by innumerable advantages. This then is the principle of every Government, but more especially of ours, that its energy should not alone be considered, but that in any question relating to it, the benefits to arise on that account should be contrasted with the dangers to be apprehended on other grounds; and that on this comparison the decision should be formed. In the ordinary course of our Government this balance has already been

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examined,

examined, and the machine regulated according to it. If, in providing for an unforeseen emergency like the present, we should find, that an additional ground of danger arises from the very nature of our remedy, and that it is, perhaps, attended also with additional inducements to the abuse of power, the consequence unavoidably follows, that we must secure ourselves against these mischiefs, even at the hazard of destroying some degree of energy ; in the same manner as our ancestors have secured us against many others, by a similar sacrifice.

We are then to observe, that in the present case, besides the provisions necessary for the preservation of the liberties of the people against the executive power, and against the attempts of powerful individuals in the country, we are to secure the executive power itself, in those hands in which it is permanently vested, against the mischiefs that might result to it from the unrestrained exercise of an intermediate authority, should such exercise unfortunately be influenced by the counsels of interested and designing men.

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We are to do this, not merely for the sake of the Sovereign individually (though to him we have sworn allegiance and owe a positive duty), but for the sake of the people at large, whose security, whose tranquillity, and whose liberties, are interested in preserving *his* rights inviolate and unimpaired.

If, for this purpose, it should be necessary in some degree to weaken the energy of the temporary government, we may regret this as a part of the calamity under which we are fallen, but we cannot certainly consider it as an object to which we ought to sacrifice so many interests infinitely more important. We may observe, in estimating the amount of this inconvenience, how much less it is, than the mischief of a similar nature to which Parliament has thought it would be prudent to submit in the case of other Regencies, in order to provide for the very object which we are now anxious to secure. We may consider, that in this instance a sole Regent would be appointed, unrestrained by any council of Regency; that the Administration acting under the

illustrious person on whom the choice of Parliament will naturally fall, would possess, under such circumstances as the present, many sources of weight and influence which do not belong to the Government even of the Sovereign himself. We should also reflect, that even if under all these circumstances it should be the effect of the principles here stated to lessen in some degree the energy of Government, yet that the inconvenience of doing so is much less in such a moment as the present than at any other period. In times of difficulty or danger there exists a greater necessity for vigour and exertion; but in a state of tranquillity, of domestic harmony, and of general prosperity, there can be no sufficient grounds for neglecting on this account the duties of allegiance and of justice, and thereby incurring a risk, such as has already been mentioned, and which, if it should turn against us, would at once destroy every favourable circumstance in our present situation.

These reasonings apply for the most part to any form of Government. But there is an additional consideration, which arises

arises from the peculiar nature of our constitution, and which is therefore entitled to our particular attention.

The reasons have already been stated, which prove, that a permanency of power in the hands of any individuals in this country, to be held against the executive authority, is dangerous to the public welfare. If these apply even in such a case as the present, and induce us to render it at least possible that his Majesty may on his recovery find the Administration of his affairs in other hands than those to which he had confided them; they certainly are much more conclusive against allowing any other body of men to avail themselves of the interval, as against him, and to establish themselves in such a manner as might hereafter be prejudicial to his authority. Many of the means which might occur for this purpose would fall under the last of the principles above stated. But if there should be any others peculiarly applicable to our constitution, and capable of producing any such effect, it is to be hoped that the wisdom of the two legislative bodies, to whom we look on this occasion, will watch over these with a more than ordinary

dinary degree of caution ; it should be remembered, with how much difficulty an attempt to establish the power of a confederacy in Parliament was defeated by our present Sovereign, in the full exercise of his authority, and supported by the almost unanimous voice of his people. Whatever measures may appear on full consideration to be necessary to prevent a repetition of this evil, at a period so much more dangerous, cannot but meet the fullest assent, approbation, and support of every true Englishman.

There are some other points to be attended to, fully equal to the former in their importance, but perhaps less likely to be contested. Parliament must undoubtedly provide some regular channel of information, to the intent that whenever it shall please God to restore his Majesty to the wishes of his people, the progress of his recovery may be known, and the interesting period ascertained at which we are to be again placed under his paternal care. Provision must also now be made for whatever solemnity such an occasion may be thought to require, and for the consequent cessation

cessation of all intermediate authority. It will also be the duty of Parliament, to secure and regulate the services of those whom his Majesty had before chosen to attend him ; as well as to give the necessary aid and sanction to that affectionate care of his Majesty's person, which is so justly to be expected from HER, whose conduct has afforded the brightest example of domestic union and attachment.

These, however, are topics on which it is not necessary to enlarge. It is indeed much to be wished, that a respectful silence could have been observed with regard to the whole subject to which these considerations relate. Nor should they have ever been submitted to the Public in this form, if by avoiding the discussion of such questions, it had been possible to avoid the necessity of deciding upon them ; or if the forbearance of one individual could have restrained the eagerness of many. But as this subject has been daily brought forward into public view ; and attempts have been made to prejudice the minds of the people upon it, in favour of opinions contrary to the first principles of truth and justice ;

justice ; it seems a point of duty, that some suggestions of a different nature should be submitted to the consideration of the country. This could no otherwise have been done, than with that freedom with which an Englishman accustoms himself to examine questions of great national importance : but it is hoped, that it has been done with moderation, decency, and temper ; and above all, that nothing has been said repugnant either to those feelings which our common calamity has impressed on all our minds, or to those sentiments of personal respect, submission, and deference, which are due to all the branches of that illustrious family, under whose auspicious Government we have enjoyed a greater degree of prosperity than has fallen to the lot of any other nation in the annals of Mankind.—The object of these pages will have been completely answered, if they should at all contribute to settle, on constitutional principles, a transaction which is interesting to our present happiness, and which must form an important æra in our future history ; or if they should be the means of preventing any step, which might hereafter

after occasion one painful sensation in the heart of a Sovereign, whose return to the exercise of his power we must all wish to be attended with as much ease to himself, as it will diffuse satisfaction and joy through every part of his dominions.

Houses of the Oireachtas

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# A P P E N D I X.

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No. 1.

Proceedings relative to settling the Form of Government during the Minority of Henry VI.

Rot. Parl. Vol. iv. Page 171. 1 Henry VI.

No. 12. **R**ECITES, that at the death of Henry V. considering the tender age of the present King, several Lords Spiritual and Temporal met for the imminent necessity of the kingdom; that, by their advice, several commissions were issued under the Great Seal of the King to divers officers; and also writs for summoning the Parliament; to the intent that by the common assembly of all the Estates of the Kingdom, and their wise council and discretion, the government of the person and dominions of the King might be provided for in the said Parliament. The Parliament approved and confirmed the said commissions and writs.

Ibid. p. 174. No. 24.—The Duke of Bedford, then out of the kingdom, is ordained and constituted, by letters patent of the King in Parliament, Protector, Defender, and Principal Councillor of the kingdom of England; and in his absence, the Duke of Gloucester.

Ibid. p. 175. No. 25.—All offices relating to the King's forests, parks, warrens, and all benefices below a certain value, *ultra viginti usque ad triginta marcas*, are to be given, as often as they shall become vacant, at the discretion of the Protector: but all other offices and benefices by the Protector and other Lords of the King's Council.

Ibid. No. 26.—Certain persons constituted by name in Parliament to be Assistant Counsellors to the Government, who accepted the same under certain articles; in which it is expressly stated, that the nomination to all offices (with the exceptions mentioned in No. 25.), and the disposal of all wards, marriages, farms, and other casualties of the Crown, should be in the Council.

Ibid. 2 Henry VI. p. 291. No. 15.—At divers particular requests of the Commons of the realm, and by the advice and assent of the Lords Spiritual and Temporal, certain persons were chosen and constituted Assistant Councillors to the Government under certain further articles; by which it is provided, that no matters of importance should be determined or transacted, but by the approbation of the majority of the Council.

Rot. Parl. Vol. v. 5 Henry VI. p. 407, 408. No. 6. States the names of the persons appointed to

to constitute the King's Council, and the several articles agreed to and subscribed by them, In these it is stated, that neither the Protector, nor any member of the Council, shall determine upon any suit, or shew any further favour than the procuring it to be read in council. That in case of a difference of opinion in the Council, if the Protector be in the minority, the matter shall stand over to the next day, when it shall be determined according to the majority; the Protector to have the casting vote, when the numbers are equal. In case of vacancies happening in offices and benefices belonging to the King, those that have been servants to the King's father, or his grandfather, or those who serve the King himself, to be preferred. In case of matters being brought before the Council, respecting the King's prerogative on the one side, and the rights of his subjects on the other, the opinions of the judges to be taken and entered on record.

These, and several other articles, relating to different subjects, were signed by the Protector and the other Lords of the Council.

No. 7. p. 409 and 410, contain the protestation of the Lords of the Council, respecting their obedience unto the King.

“ Item, that the said Lords have a King, whom  
“ they acknowledge, and none other; and al-  
“ ways, so long as it shall please God to grant  
“ him life, will, and ought to acknowledge, un-  
“ der God, for their Sovereign here on earth.  
“ Moreover, they understand that all others who  
“ be in or of this land, from the highest unto the  
“ lowest,

“ lowest, of whatever estate, condition, or degree, they be, are his liegemen and his subjects, and ought to obey him and his laws.

“ Item, The said Lords understand, that although the King is now of tender age, yet nevertheless the same authority resteth, and is, at this day, in his person, that shall be in him at any time hereafter, when he shall come, by God's grace, to years of discretion.

“ Item, That forasmuch as the King is now of such tenderness of age, that by possibility of nature he may not indeed rule or govern in his own person, and that neither God nor reason require that this land shall be without government. For so much of the execution of the King's authority as relates to the politic rule and government of his land, and to the observance and keeping of his laws, belongs to the Lords Spiritual and Temporal of his land, at such time as they be assembled in Parliament, or in great Council: and otherwise, when they are not so assembled, unto the Lords chosen and named to be of his continual Council; of the which my Lord of Bedford is chief, as long as he is in this land, and in his absence, my Lord of Gloucester, if he be therein: the which Council, the King being of such tenderness of age, represent his person as toward execution of the same politic rule and government of his land, and observance and keeping of his said laws, *and that no other person may or ought to ascribe to himself the said rule and government.* Saving always unto my said Lord of Bedford, and of Gloucester, what is especially reserved  
“ and

“and applied to them by *Act of Parliament*,”  
&c. &c.

The above articles being shewn to the Duke of Bedford, by certain Lords of the Council deputed for that purpose, and his answer required;—he replied, “That he had well heard, and understood, the matters abovesaid; and that he thanked them with all his heart for sending to him; and informed them, that it was to him one of the greatest gladness that ever fell to his heart, to see the King standing in this tenderness of age to have so sedate, so substantial, and true a Council—That he acknowledged the King for his Sovereign Lord, and himself for his liegeman, and subject to him and to his laws, according to that which was before rehearsed; although God had, by way of birth, made him nearer the King than any other: and that in all things which belong unto the rule of the land, and to the observance of the King’s laws, and generally in all things that belong to the King, and to his estate, he would be advised, directed, and ruled by the Lords of the Council, and obey the King, and them as for the King, as lowly as the least and poorest subject that the King had in his land.”

“And if he did, or attempted to do, any thing contrary thereto, he would at all times, with as good heart and will, be reformed and amended by them as any man should; knowing this for his duty, and that he ought so to do.”

The above articles were subscribed to by the Duke of Bedford, who also voluntarily took an oath to truly observe and keep them. In like manner the Duke of Gloucester, as Protector in the absence of the Duke of Bedford, subscribed to the same, in the same words.

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No. 2.

Proceedings relative to settling the Form of Government during the King's being disqualified by Infirmities.

Rot. Parl. Vol. v. 32 Henry VI.

P. 239. No. 24 **L**ETTERS patent empowering the Duke of York, in the King's absence, with the assent of the King's Council, to call or dissolve Parliament, and transact all business therein as the King might do.

P. 240. No. 30.—The Commons request the Duke of York, as the King's Lieutenant, and the other Lords in Parliament, that a permanent Council may be established to administer justice and equity.

Ibid. No. 31.—Certain Lords sent to the King at Windsor, to acquaint him of the death of the Archbishop of Canterbury, Chancellor of England;

land; and to be informed whom the King intends to appoint to those stations—Also to state, that the King had, during the Parliament held at Reading, informed the Commons of his gracious intent to ordain and establish a discreet and sedate Council to conduct the affairs of Government—That the Commons had made two requests to the King's Lieutenant and the Lords on that head; they therefore requested to know the King's pleasure respecting the nomination of the members of the said Council.

P. 241. No. 32.—The Lords who were sent to the King, on their return, report that they could obtain no answer from him to any of their requests.

P. 242. No. 33.—The Lords Spiritual and Temporal in Parliament assembled, for certain causes moving them thereto, elect and nominate Richard Duke of York Protector and Defender of the kingdom of England during the King's pleasure; the next day the Duke delivered in a paper containing several articles which he requested might be enacted in Parliament.

No. 34.—The Duke of York states, that he accepts of the Protectorship at the desire of Parliament.—“ I desire and pray you, that in this  
“ present Parliament, and by authority thereof,  
“ it be enacted, that *of yourselves, and of your*  
“ *free and mere disposition, ye desire, name, and call*  
“ *me to the said name and charge, and that I take*  
“ *them not upon me of any presumption of myself,*  
“ but only of the due and humble obedience that  
“ I ought to do unto the King, our most dread  
G “ and

“and sovereign Lord, and to you the Peerage of  
 “this land, in whom, by the occasion of the in-  
 “firmity of our said sovereign Lord, rests the  
 “exercise of his authority, whose noble com-  
 “mands I am as ready to perform and obey as any  
 “liegeman alive; and that at such time as it shall  
 “please our blessed Creator to restore his most no-  
 “ble person to healthful disposition, it shall please  
 “you to declare and notify to his good grace.”

The Lords agree to the propriety of the Duke's request, and think that for their discharge in this behalf there should be such an Act made for them in this Parliament, according to an Act made in the tender age of the King, by which, in a similar case of necessity, they were compelled to chuse and name a Protector and Defender.

No. 36.—The Duke requests to be informed of the extent of his power, and that it be enacted, ratified, and confirmed, by the authority of Parliament.

The Lords answer, that he is chief of the King's Council, and therefore they have devised him a name (Protector and Defender) different from other Counsellors, but which imports no authority of governance of the land, only a personal duty of attendance to its actual defence.—That he is so to hold this office during the King's pleasure, so that it be without prejudice to the Prince; and thereupon an Act to be made by authority of Parliament.

Ibid. No 38.—Letters patent, stating the King's infirm state of health, his inability to attend to  
 the

the business of his kingdom; and appointing with the assent and advice of the Lords, and the assent of the Commons in Parliament assembled, the Duke of York Protector, Defender, and Principal Counsellor of the Realm during the King's pleasure. The office of Protector to be exercised by Edward, the King's eldest son, when he should arrive at years of discretion.

P. 243. No 39.—Letters patent, to the same purport as the above, conferring the office of Protector, &c. on Prince Edward, when he should arrive at years of discretion, provided that he should chuse to take it upon him.

No. 40.—An Act, conferring on Prince Edward, when he should arrive at years of discretion, and have taken the office of Protector, &c. and on the Duke of York, who then possessed that office, the privilege of appointing to all offices relating to forests, parks, and warrens belonging to the Crown, as often as they should become vacant, and to all benefices of a certain value. All other offices and benefices, as they become vacant, to be disposed of by the advice of the Protector and the other Lords of the Council.

This Act is expressed in nearly the same words as that in Vol iv. p. 175.

Rolls. Parl. Vol. v. 33 Henry VI. p. 280, 281, 282. No. 18. to 24.—After the battle of St. Alban's, the King, by the advice and assent of his Parliament, declares the Duke of York, and the Earls of Warwick and Salisbury, and their party,

to be his true and faithful liegemen. The instrument recites the letters written by them to the King before the battle, and grants them full pardon for any thing supposed to have been done against his person, crown, or dignity.

Ibid. No. 25.—Contains the oath taken by them and the other Lords Spiritual and Temporal.

P. 284. No. 30.—Letters patent, empowering the Duke of York to call a Parliament, &c. the same as No. 24. p. 239.

Ibid. No. 31.—In consequence of the Duke of York being appointed, by the above, the King's Lieutenant in Parliament, the Commons recommend to him and the Lords, that the King, by their advice, should appoint a Protector and Defender of the land, to act in the place of the King during his absence; stating the necessity of such an appointment.

P. 285. No. 32.—The Commons repeat their request, &c.

Ibid. No. 33.—The request of the Commons, stated by the Chancellor to the Lords, and informing them, that the Commons will not proceed in matters of Parliament till they receive an answer. The Lords agree to the propriety of their request, and, "*every Lord severally giving his voice and assent,*" they elect the Duke of York Protector, &c. on the same conditions as he held the office before.

Ibid,

Ibid. No. 34.—The Commons repeat their request, &c.

P. 286. No. 35.—The Lords acquaint the Commons, that the King, by their advice and assent, had appointed the Duke of York to the office of Protector, &c.

Ibid. No. 36.—The Duke of York proposes certain articles to be enacted by the authority of Parliament, respecting his accepting the office of Protector.

Part of these articles is to the same effect as that stated in p. 242. No. 34.

In Art. 4. He requests the Lords “to ordain, appoint, name, and establish in the said Parliament, and by authority thereof, a sufficient and convenient number of Lords Spiritual and Temporal, to be of the said Council\*.”

P. 287. No. 37.—The Chancellor states to all the Lords, the articles on which the Duke of York has accepted the Protectorship; to which they agree, and ordain, that he shall have the same power as before, with the following alteration in the patent: “And whereas, in his last power were these words, *Quamdiu nobis placuerit* (during the King’s pleasure), should now be in his power these words, *Quosque idem consanguineus noster de occupatione sive onere et nomine*

\* In Art. I. The King’s “Privy Council, to whose advice, council, and assent, I will obey and apply myself, as I know it accordeth with my duty to do.”

“ *hujusmodi per nos in Parlamento de avisamento et*  
 “ *assensu Dominorum Spiritualium et Temporalium*  
 “ *in Parlamento existen', emoneretur*” (until our  
 said kinsman be discharged from that office by  
 the King in Parliament, with the advice and as-  
 sent of the Lords Spiritual and Temporal in  
 Parliament assembled.)

No. 38.—The Commons confer with the Chan-  
 cellor and Duke of York, and desire and pray  
 the Duke to take upon him the name and charge  
 of Protector, &c. to which he assents.

No. 39.—Letters patent to the same effect as  
 those stated in p. 242. No. 38. appointing the  
 Duke of York Protector, &c. with the alteration  
 in the words, as above in No. 37. and with a pre-  
 amble, stating, that it was at the request of the  
 Commons that the appointment was made. Also  
 Letters patent to the same effect, appointing Ed-  
 ward, the King's eldest son, Protector, &c. when  
 he should arrive at years of discretion, under the  
 same conditions.

P. 289. No. 40.—An Act exactly to the same  
 purport as that in p. 243. No. 40.

P. 289. No. 41.—The King considering that  
 the diligence and actual labour appertaining to the  
 government and rule of the realm would be te-  
 dious to his person, &c. ordains and grants  
 “ *that his Council shall provide, commune, ordain,*  
 “ *speed, and conclude, all such matters as touch*  
 “ *and concern the good and polite rule and govern-*  
 “ *ment of his land; reserving, that in all such*  
 “ *matters*

“ matters as touch the honour, worship, and surety of  
“ his person, they shall let him know what direction  
“ they take in them; desiring his said Council, for  
“ the welfare and ease of his said person, and keep-  
“ ing and bearing up his royal estate, to take this  
“ his will and ordinance upon them. The Lords  
“ take the above duties upon them, protesting that  
“ the high prerogative, pre-eminence, and autho-  
“ rity of his Majesty Royal, and also the sovereignty  
“ of them and all this land, is, and always must  
“ rest, and shall rest, in his most excellent Person.”

Ibid. p. 321. No. 50.—The King in Parlia-  
ment, by the advice and assent of the Lords Spi-  
ritual and Temporal, and the assent of the Com-  
mons in Parliament assembled, exonerates and  
discharges the Duke of York from the office,  
duty, and name of Protector, Defender, and  
principal Councillor of the Realm.

F I N I S.

APPENDIX No. 1

THE HOUSES OF THE OIREACHTAS