



Bodleian Libraries

UNIVERSITY OF OXFORD

This book is part of the collection held by the Bodleian Libraries and scanned by Google, Inc. for the Google Books Library Project.

For more information see:

<http://www.bodleian.ox.ac.uk/dbooks>



This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.0 UK: England & Wales (CC BY-NC-SA 2.0) licence.

A
L E T T E R

TO

The People of Scotland.

[PRICE HALF-A-CROWN.]

ENTERED IN THE HALL-BOOK
OF THE
Company of Stationers.

*Edmond Malone Esq:
from his very sincere friend
The Author.*

A
L E T T E R
TO THE
PEOPLE OF SCOTLAND,
ON THE
ALARMING ATTEMPT
TO INFRINGE THE
ARTICLES OF THE UNION,
AND INTRODUCE A
MOST PERNICIOUS INNOVATION,
BY DIMINISHING THE NUMBER OF THE
L O R D S O F S E S S I O N .

By *JAMES BOSWELL*, Esq.

Remember, O my friends ! the laws, the rights,
The generous plan of power delivered down,
From age to age, by your renowned forefathers !
O ! let it never perish in your hands,
But piously transmit it to your children !

ADDISON.

L O N D O N :
PRINTED FOR CHARLES DILLY, IN THE POULTRY.
MDCCLXXXV.



A
L E T T E R
T O T H E
P E O P L E O F S C O T L A N D.

WHEN I presumed to write to my countrymen last year, to rouse their spirit against Mr. *Fox's East-India bill*, I had the happiness to find my letter received not only with indulgence, but with a generous warmth of heart which I can never forget, but to the latest moment of my life shall most gratefully remember. The fire of loyalty was kindled. It flew through our counties and our
B boroughs.

boroughs. The King was addressed: the constitution was saved. I was proud to have been able thus *citere viros*; prouder still than of receiving the applause of the *minister of the CROWN*, which he was pleased to convey to me in a very handsome letter; upon which, however, I set a high value, considering not only the minister, but the man; and accordingly it shall be preserved in the archives of my family.

I now feel myself called upon to write to them again, upon a subject of less magnitude indeed, but of most interesting concern. The crown is not in danger every day: God forbid it should.

As if Misfortune made the throne her seat,
And none could be unhappy but the great.

But

But what is the crown without subjects? and what are subjects without a good administration of justice? A rage for *innovation* has gone forth; and that rage, seconded by avarice and inordinate love of power, in different parties, according to their different interests, hath lately threatened, and still threatens, us with a violent shock to our civil judicature, by reducing the number of the lords of session from fifteen to ten, that ten may have larger salaries. This “comes home to our business and bosoms.” It is a very serious alarm indeed. As to the barons of Exchequer, I shall say nothing: It is but a modern court; and we are told a person of high office in the law said, they were not so much judges as revenue officers.

But the *Court of Session* has a vast jurisdiction. It was formed by James V. of Scotland, *anno* 1532, after the model of the *Parliament of Paris*. It consisted originally of seven churchmen, seven laymen, and a prelate as president. This was altered. They are now all laymen; and none can be appointed but who have been five years advocates or principal clerks of court, or ten years clerks to his majesty's signet; but advocates are almost always appointed. Their gowns are of purple cloth and crimson velvet, very gracefully disposed, and they still retain the sacerdotal badge of a cawl or pouch, which hangs on their shoulders, as a part of the gown, like that of the capuchins. Its jurisdiction is not only supreme, in Scotland,

over all causes civil and consistorial, (that is to say, causes of the nature of the ecclesiastical causes in England, with this amazing difference, that they have a power to give a sentence of divorce equivalent to an act of parliament) but has also a considerable extent in criminal cases. And let me add, that it has acquired a kind of undefined arbitrary jurisdiction, called its *nobile officium*, for a full and bold account of which I refer you to Dr. *Gilbert Stuart*.

I cannot but complain of the secret and sudden mode of framing and bringing forward this momentous bill.—What! shall the supreme civil court of a country be diminished one third?—Shall an establishment, sanc-
tified

tified by the acquiescence of ages, be pulled to pieces without any communication whatever with the subjects of that country, high or low ; nay, without ever consulting the bar, the *faculty of advocates*, that learned body who are guardians of the law—*antifites justitiæ*. But *scandal* says, Mr. *Henry Dundas* has been applied to by some of the judges, who, after feasting at *Bayll's* French tavern, and raising their spirits high with wine, have formed the lofty wish of reverently paying their court to *Regina Pecunia* ;—and Mr. *Henry Dundas* (sometimes called *Harry the Ninth*) very willing to oblige those senators, and make them his devoted humble servants, has nodded assent. *Egregiam sane laudem, et spolia ampla refertis.*

fertis. But Mr. Dundas, not being *sure* that the people of Scotland are yet *entirely tame*, has been too wise to commit *himself* in this desperate business, but has only given instructions; and then Mr. *Ilay Campbell*, the present lord advocate of Scotland, whom his brethren did the honour to elect their vice dean, rises in the house of commons with this same pretty little bill, cut and dry, and thinks he may at once kill his five men, and in triumph call out, “Off with their heads!”---So much for *Lords of Session*. But let him beware! he will find them “rise with gashes on their crowns, to push him, and others too, perhaps, from their stools.” Like the vision in Mr. *Glover’s* celebrated ballad of *Hosier’s Ghost*, “A sad troop
“ will

“ will appear, all shrowded in dreary
 “ robes, as winding sheets, and frown-
 “ ing on a hostile band.”

But indeed, indeed, our country is at a miserable ebb, when its great and good families are totally indifferent about every public concern, and have so little spirit, even as to their private concerns, that they never advance, like men, to the fountain head of government, but indolently or timidly suffer all to be done by some person or other who for the time is brought forward, or who puts himself forward, as a *minister for Scotland*. They are afraid to let their *natural voice* be heard by administration, but must convey their wishes through a speaking trumpet, which, I will tell them, may

may be pointed high or low, as he who holds it may think proper. But if the Stuarts, the Hamiltons, the Erskines, the Craufurds, the Montgomeries, the Douglasses, the Grahams, the Somervilles, the Cathcarts, the Kennedies, in short, all the men of blood and of property, who ought to be men of consequence, hang back, are we to be surprized that administration appoints a *locum tenens*, an agent, or by whatever name he may be called; or that some able and ardent politician takes their place. I remember *Archibald* duke of *Argyll*—I remember *Stuart Mackenzie*—I remember *Gilmour*, all in their turn, bowed to, and bringing the people of Scotland to St. James's and the Treasury, as a salesman drives black

C cattle

cattle to Smithfield. Poor dumb beasts ! why should they not walk up themselves, and bellow as they may incline ?

I'll bellow out for Rome, and for my country,
And mouth at Cæsar till I shake the Senate.

Then came Mr. *Henry Dundas*, who has made a distinguished figure at more markets than one—whether at *Oxford* market with Lord *North*, or *Leadenball* market with Mr. *Pitt*.

There was a time when we were flattered there was to be no monopoly—when that TITUS, that *Deliciæ humani generis*, the Duke of *Portland* (I give his Grace as Mr. Burke gave him me, not having the good fortune to be known to him) when *He* presided.—O, then ! all was to go well
with

with Scotland!—There was to be no go-between—nobody to keep back the individuals of that distant part of the island from fairly asserting their pretensions, whether from birth, wealth, or merit. But, alas! we soon found there was only a *change of Dundases*. Instead of Mr. *Henry Dundas*, we got Sir *Thomas Dundas*; and now we have Mr. *Henry Dundas* again.

Mr. Dundas is of a great law race. The family of *Arniston* has for four successive generations been judges in our supreme civil court, and for these two last been at the head of it as President.—A very extraordinary instance, in modern times, where it can be said, *per fasces numerat avos*. Why then, O why! Mr. Dundas,

C 2 should

Should *you* attempt to injure this ancient institution? Are you not afraid that the shades of your ancestors may disturb your pillow? “Be not too bold,” I intreat you! There are some things which we will bear, and some things which we will *not* bear. Think, O think of

“Vaulting Ambition, which o’erleaps itself!”

Befides, Sir, you are the Dean of the Faculty of Advocates. We have placed you in the chair where LOCKHART sat: we expect you will not betray us.

But, that I may now speak to my countrymen in plain, and, I flatter myself, convincing argument, let us consider the peculiar form and constitution of the Court of Session. It
will

will hardly be believed, in *England*, that we have no juries in civil causes; still more strange will it seem, that we once had that inestimable privilege, and lost it—nobody can tell how. But Lord *Kames* has proved it.—That a country should, in the progress of civilization in every other respect, become more barbarous in its executive jurisprudence, is a wonderful and a disgraceful phenomenon. Nay, we have no grand jury in Scotland. There is no such thing as finding a bill by the country: all criminal prosecutions are by *information* of the first crown lawyer, or by immediate indictment at the suit of private persons, with his concurrence; so that there is neither the security against unjust prosecutions which the verdict of our peers would afford,

afford, nor is there a certainty that crimes which *ought* to be prosecuted *will* be prosecuted. All is left to the will and pleasure of *His Majesty's Advocate*, the Attorney-General of Scotland, that anomalous personage whose *status* puzzles the House of Commons; who is a *lord*, but yet not *noble*, and to-morrow may descend to be only the honourable, or ascend to be the right honourable, *gentleman*.

Plac'd on this isthmus of a middle state,
A being darkly wise, and rudely great.

The Lord Advocate of Scotland has the whole power of a grand jury in his person. The fat Mr. *Edward Bright*, of Malden, whose print is in all our inns to amuse the weary traveller, is nothing to the *learned lord*. — *He* could button seven men in his waist-

waistcoat ; but the learned lord comprehends hundreds : the grand juries of thirty counties are packed within his little circumference.

The Court of Session then is not only a body of *judges*, but, like the Parliament of Paris, it is a standing *jury* for all Scotland. And will it be seriously maintained, that *fifteen* is too large a number, when that is considered? My amiable and honourable friend *Dempster*, that *rara avis* of the Scottish breed, who has sat in parliament almost as long as our present most gracious Sovereign has sat upon the throne, and has shewn himself uniformly independent, uniformly benevolent, when I talked to him upon this subject, exclaimed, “ Fif-
“ teen

“teen too few! I would rather have
 “fifty. They talk of there being
 “only twelve judges in England: I
 “say there are twenty thousand—the
 “juries—by whom almost every
 “thing is decided; and our fifteen
 “Lords of Session are all we have
 “for a jury in civil causes.”—Nobly
 said! There *are* twenty thousand
 judges in England—*judges of law as*
well as of fact—and I hope in God
 there ever shall be, notwithstanding
 all that the old Conjuror or any of
 his pupils can do. While a *Loft* and
 a *Towers* can write, and a *Lee* and
 an *Erskine* plead, that sacred palla-
 dium will be preserved.

If the British Parliament will give
 us a grand jury, and juries in civil

causes (for both of which, if I am ever thought worthy of being sent into the House of Commons as an independent gentleman, I shall certainly move for leave to bring in a bill) I will answer for it that the people of Scotland (when deliberately consulted—as they ought to be, in justice, in propriety, and in common decency) will cheerfully agree to have the number of the Lords of Session diminished, because they would *then* have something better than their ancient aristocratical court. And with exultation I can tell, that, so far as the people of Scotland *can*—in the limited privilege of Juries which they have—they do now exercise their constitutional right in its full extent. We have a *Smellie*, who has, with a

D calm

calm but an undaunted spirit, pointed it out to his fellow citizens in a well written discourse; and a few months ago *William Spence*, a young matross, for whom I was counsel, was indicted by the Lord Advocate for felonious *fire-raising*. He was prosecuted by his lordship in person, with all his address; and the Lord Justice Clerk, the Vice President, of the High Court of Justiciary, gave a charge, with all his his ability, to find him guilty. But a respectable jury acquitted him; and, *as I hope for mercy from the Judge of all the earth*, had I been one of their number, I should have been clear to join in the verdict. I will give up my own opinion to no human authority.

In

In the present form and constitution of the Court of Session, there is occasion for at least the full number of judges which were at first appointed, and which has remained undiminished now for *two hundred and fifty three years*. It is remarkable that when James V. instituted the court, the number of the judges was thought small. Take the words of *Buchanan Hist.* lib. 14, cap. 32. “*Joannes Dux Albinus, a pontifice Romano impetravit, ut summa pecuniæ annua quanta satis esset ad paucorum judicum salarium solvendum imperaretur ecclesiastico ordini universo, a singulisque pro modò, census exigeretur.*” He tells us, it was difficult to obtain money for salaries even to those *few*; so much

stronger *then* too was the love of money than the love of justice—and he sternly delivers his opinion that the institution did not produce the good that was expected from it: “*Omnium*
 “ *civium bona quindecim hominum*
 “ *arbitrio sunt commissa, quibus et*
 “ *perpetua est potestas, et imperium*
 “ *plane tyrannicum.*”

The *perpetua potestas* is the grievance of a *standing jury*; and the *imperium plane tyrannicum* must, in the nature of things, reside in a body of men who possess at once the province of judge and of jury; nay of common law judges and equity judges; who are both King's Bench and Chancery, and whose decisions therefore may be a compound of law and of fact and of equity,

equity, as its members may be differently moved.

It is this which makes it of infinite consequence to us to preserve all the judges we have, as long as the court retains the same constitution ; for it has been found in practice, that, notwithstanding the staggering objections to it in theory, this same court of fifteen has been so balanced and mixed, and tempered and mellowed, by the workings of various qualities, in the course of time, that upon the whole it has done very well.

There may, to be sure, come a DOUGLAS CAUSE, which is too vast an object for the throw of such a complicated die. *Non nostrum est tantas componere lites.* That is not much ;
because

because for great causes we have an appeal to that august tribunal, the House of Lords. But, as the expence of an appeal is more than the value of almost every cause that the court of session decides, the right of appeal is nothing to the greatest number of our suitors.—We are therefore concerned that *Innovation* should be prevented, as we may fear, but cannot foresee its effects, and as the *imperium* of the court would be still more *tyrannicum* in ten than in fifteen, as spirits have more force as they are more compressed by distillation.

Our ancestors took care to have it solemnly stipulated in the 19th article of the Union, “ That the Court of
 5 “ *Session,*

“ *Session*, or College of Justice, do,
 “ after the Union, and notwithstanding
 “ ing thereof, *remain in all time*
 “ *coming*, within Scotland, *as it is*
 “ *now constituted* by the laws of that
 “ kingdom, and with the same au-
 “ thority and privileges as before the
 “ Union, subject nevertheless to such
 “ *regulations, for the better admini-*
 “ *stration of Justice*, as shall be made
 “ by the Parliament of Great-Britain.

Is it possible, think you, by any
 artifice of words, by any little quirk
 of any sort, to explain away this ar-
 ticle, and to maintain that the ex-
 cepted power to *make regulations for*
the better administration of justice, in a
court which is to remain in all time
coming as now constituted, shall be
 understood

understood to give a licence to destroy that very court itself, by *changing* its *constitution*? Is a court of *ten* the same with a court of *fifteen*? Is a *two-legged* animal the same with a *four-legged* animal? I know nobody who will gravely defend that proposition, except one grotesque philosopher, whom ludicrous *fable* represents as going about avowing his hunger, and wagging his tail, fain to become cannibal, and eat his deceased brethren. It is *clear*, that the *substance* must be preserved, though the *accidents* may be varied. The *Court of Session*, the *Quindecim Homines*, must remain, unless by *consent of the people of Scotland themselves*, though the proceedings of the court, the modes of administering justice by those *fifteen*, may
 be

be regulated occasionally, as the British Parliament, in its great wisdom, shall see fit. If any man can entertain a doubt of *this*, if he is capable of having his understanding so perverted, I cannot argue with him.

Is it a light matter then to infringe the *Articles of the Union*?—My countrymen, hear me! I accost you with a warning voice.—Have a care!—I myself do fairly acknowledge that I venerate and love the ancient Hierarchy, though, like *Whitefield*, of whose pious and animated society I had some share, I can communicate with all sincere Christians. But you in general think differently, and your *kirk*, your Presbyterian establishment, stands just upon the same ground of security

E

that

that the Court of Session does. No doubt it may be abolished by universal consent, or by consent of a majority of *the people of Scotland*; for that is my firm opinion of the import of the articles of the Union. But the *British Parliament* cannot abolish it; for the British Parliament *sits under those very articles*, and is limited by them. But, once yield the *principle*, were it in the smallest iota, and there is an end of your security.

I shall take leave to press upon you the apprehension of what I believe we shall all agree in resisting; I mean that, if the articles of Union should be infringed, there might then most probably be a prodigious *innovation* in our *land-tax*. And this concerns

not *Scotland* alone.—My lords and gentlemen of the *English* counties, where the land-tax is low, *on you I call*. If Innovation is thus to stride at large, the *equalizing system* may be extended : and let me tell you, it is not *you* that can prevent it. You are too few. It is to *Scotland* you owe your safety. Government at present *dare* not equalize the land-tax. *Scotland* would rise to a man, and assert the articles of the Union. But the *præfervidum ingenium Scotorum* may be subdued. —There is a melancholy gradation in the old song of *Waly, waly, up the bank* :

I leane'd my back unto an oak,
 I thought it had been a trusty tree ;
 But first it *bowed*, and then it *brake*,
 And so did my true love to me.

Let not the Scottish spirit be bowed. Let LOWTHER come forth, and support us! We are his neighbours. *Paries proximus ardet.* We all know what HE can do: HE upon whom the thousands of *Whitehaven* depend for three of the elements: HE whose soul is all great—whose resentment is terrible; but whose liberality is boundless. I know that he is dignified, by having hosts of enemies. But I have fixed his character in my mind upon no slight inquiry. I have traversed *Cumberland* and *Westmoreland*: I have sojourned at *Carlisle* and at *Kendal*: I know of the LONSDALE CLUB at *Lancaster*.—LOWTHER! be kindly intreated!—“*Come over to Macedonia, and help us!*”

Innovation

Innovation is, in my mind, a very perilous experiment. I respect the ancient Barons for their *Nolumus leges Angliæ mutari*; and now that *Dr. Johnson* is gone to a better world, I bow the intellectual knee to *Lord Thurlow*, who, with inflexible wisdom, stops the tide of fashionable reform. It was *Johnson* who confirmed me in my opinion of that mighty Sage of the law and the constitution. Before his promotion to the high office, for which he seems to have been formed on purpose, the Doctor said of him, “ I honour *Thurlow*, Sir.—*Thurlow* is a fine fellow ! “ He fairly puts his mind to your’s.”— Long, long may he put his mind against those who would take even one stone out of that venerable
fabrick,

fabrick, which is the wonder of the world!

Mistake me not, my countrymen, as if I had changed my opinion against the *nominal and fictitious votes* in our counties! *These* are no part of our old constitution: They are modern tricks, invented by cunning lawyers, to cheat the *real Freeholders*. These will, I hope—these *shall* be abolished! While I would sacredly guard the constitution, I would sweep from it the cobwebs, with all their vermin.

Innovation frightens me, because I never can be sure what will come next. “Hitherto shalt thou come, but no further; and here shall thy proud waves be stayed!” is not for
 mortals

mortals to say. My Lord *Marchmont* did me the honour of a visit a few years ago, and made a remark, which still vibrates in my ear: “ Sir, “ this country has been governed by “ wise men; and we have had no “ notion what mischief fools could “ do.”—At another time, talking of this very subject of lessening the number of judges in Scotland, which has been formerly mooted, his lordship said, “ No. It must not be. “ Scotland is far from the fun of “ government, and must be lighted “ by many lustres!”—

“ There the bright flame was shot through *Marchmont*’s soul!”

The present attempt puts me in mind of one of the many good stories
which

which I have heard my father tell.—
 An Earl of *Seafortb* took it into his
 head that he would pull down *Bran*
 castle, the ancient seat of his family.
 The *clan* was alarmed. The *caper-*
fey (the deer's head, the crest of the
 Mackenzie's) was displayed. The
 brave *Mackenzies* took fire, assembled,
 and came to him in a body. “ My
 “ lord, this shall not be! Wiser men
 “ than you built this castle! You
 “ shall not demolish it!”—*There* was
 the true spirit of clanship: not a
 slavish subjection to an individual;
 but a voluntary attachment to their
 patriarchal father and lord—to the fa-
 mily—to the throne.

I abhor annihilation—and five of
 our judges shall not perish, if I can
 prevent

prevent it.—What, in the name of goodness, is the motive to this violent measure? Does the country complain that there are too many judges? No.—Do the judges themselves complain? I trust, No.—For what, I pray you, is the Court of Session? Why, it is an aggregate of *fourteen* separate and distinct subordinate courts, and one Court of Appeal. There are fourteen *ordinary lords*: Each of these has his own roll of causes, in one half of which his judgement is allowed to be final. The Court of Appeal is the whole body of those *Lord Ordinaries*, with the Lord President at their head; and this Court of Appeal sits five days in the week to review judgments of the *Ordinaries*.—Now let us con-

F

sider

sider how business is done in this court, or, more properly speaking, in these courts. It is done chiefly in writing, and most voluminous writing it is: there are *minutes, representations, answers, replies, duplies, triplies, memorials hinc inde—cum multis aliis, que nunc* perscribere longum est; so that each *process* (as the papers in a suit are called) makes a thick bundle, which is carried to the judge's house; and this he must peruse, and afterwards put his *interlocutor* upon it in writing, and authenticate it by his subscription. Now I *know*, and every man acquainted with the court knows, and *it can be proved by all the members of the College of Justice*, that it is with the utmost difficulty that even the fourteen judges whom we have, can

can get through the business with reasonable dispatch. How is it possible then that it can be done by a third fewer people, be they ever so laborious? Nine Dukes of *Richmond* could not do it.

I could see some meaning in diminishing the *Court of Review*, and letting only the *ten* senior judges, or perhaps the *five* senior judges, sit in the *Inner House*, that the Court of Review might move quicker, by being less unwieldy, and the other judges might have more time to ripen and decide causes in the first instance, which is the most laborious part of the business. That I could understand, as coming within the power conceded, in the articles of Union, to

make *regulations*. But to make “ the
 “ labourers few, when the harvest
 “ truly is great,” seems to me to be
 very strange policy.

And here I have an *argumentum
 ad homines*. I will not believe that
 the Lords of Session themselves are so
 unconscientious as to approve of this
 measure, though *Rumour*, with all
 her tongues, has wantonly said they
 are for it. My argument is this:—
 There is not one of them who has
 not, again and again, said, what I
 have just now stated, that the duty
 of his office is very great, and that in
 session-time he is quite harrassed, he
 has so much to do.—Will they then
 undertake to do more, that they may
 get a little more money? I hope not.

As

As it must be *sure* that they are *perfectly innocent* of so heavy a charge, I may put it in strong words—“ Either
 “ they *have* been *liars*; or, They
 “ *mean* to be *cheats*.” That is the infamous charge which their approbation of lessening their number, without lessening or shortening the business of the court, would involve.—I beg ten thousand pardons for even uttering such coarse epithets; but my indignation is roused, that any creature whatever should have the audacity to impute to the judges of my country so abominable an alternative.

*Quid non mortalia pectora cogis auri
 sacra fames?* is an exclamation which keeps pace with mankind, from age to age. But, surely, we ought to

suppose judges have learnt better things, and have extirpated from their hallowed breasts, “*the root of all evil.*” — How injurious is it to imagine they will be like some impudent fluts, who, for more wages, will undertake to be both cookmaid and chambermaid — *Delicate coalition!* — The Lords of Session are, or should be, Gentlemen. Shall we make them a parcel of *Scrubs?* — “Of a Monday I drive the coach; of a Tuesday I drive the plough; on a Wednesday I follow the hounds; — a Thursday I dun the tenants; on Friday I go to market; on Saturday I draw warrants; and a Sunday I draw beer.”

Suppose it should be thought right to increase the salaries of the Lords of Session;

Session ; is there no way of doing it but making two-thirds of them devour the rest, like Pharaoh's lean and fat kine? Is the state so poor, that we must adopt a measure similar to the barbarous permission in China and Otaheite, to murder their children, lest they should not have food enough? Six thousand pounds a year would make them up £1000 each ; and cannot that miserable sum be spared off some corner of the sinecure establishment? I persuade myself that the people of Scotland themselves would submit to a *census*, in order to ransom their court. If the Judges are poor, let them hold out *the Mendicant pouch*, and receive our *benevolence* ! I, for one, would cheerfully pay my *quota*, rather than suffer
 so

so dangerous an amputation to be botchingly performed upon our old judicial body.

But is it quite clear that there should be an augmentation of their salaries? The Lord President has already £1400 a year: every Ordinary Lord has better than *six hundred guineas*; and six of their number are also Lords of Justiciary, of whom the Lord Justice Clerk has £400 a year, and each of the other five has £200 a year. Besides, every one of those six is allowed £300 a year for circuit expences; and now that they have obtained an act of Parliament, allowing them to stay only three days at each assize-town instead of six, as they were formerly obliged to do (*while the same*

same allowance for expences is quietly continued) they have, upon my word, very comfortable provisions. The Justiciary gown is an excellent object of ambition, and an encouragement for laudable exertion to the Ordinary Lords. But even without that, they have a very decent premium from the state, and may live very well in *Scotland*, as judges should live; “not in rioting and drunkenness,” indeed, but in grave abstraction, as becomes their office. Dr. *South's* pulpit joke, upon the wages of sin being death—“Poor wages, that a man cannot live by”—will not, in my opinion, apply to *all* offices. The state, in many cases, is only to help a man to live; not wholly to support him. The state should enable him fully to de-

fray the additional expence occasioned by the office which he holds: but he is a hungry hound indeed, who comes into an office of respect and experience, such as that of a judge, with nothing at all of his own, neither family estate, nor fortune acquired by practice. I own I should think a man in such circumstances ought not to be made a judge: either his birth must be mean—his abilities small— or his conduct imprudent.

Were there a difficulty to find men of merit willing to be made Lords of Session, by reason of the salary being too small, I could understand this *procrustian* expedient: but let us at least wait till that is the case, which, well Mr. *Dundas* knows, it is not as
 4 yet,

yet, by any means. Will he tell me that the salary of that office is not sufficiently considerable, for which Mr. *Alexander Gordon*, brother to the Earl of Aberdeen, uncle to the Duke of Gordon, and a man of good understanding, experience, and integrity, solicited for years, and—*pudet hæc opprobria!* might perhaps have been soliciting still, had not a political wave, in the tempest of last year, thrown him into port.—An office desired by Mr. *John Maclaurin* (*filius Colini fama super æthera noti*, and a son of no common talents).—An office which would be accepted by Mr. *William Nairne*, our Vice-Dean, whose character truly exhibits a heaven-born judge.—An office which would comfort, which would satisfy, Mr. *George*

Wallace, whose knowledge, application, and honesty, none will deny; whom Lord *Mansfield* has praised, but not promoted. *Laudatur et alget.*

I could with pleasure give a long list of my deserving brethren. To us, it is *not fair*. It is *unjust* to lessen the number of prizes after the lottery has begun drawing; after we, by an expensive education, and much time and labour, have purchased our tickets, in the faith that our chance for a prize is to be what it ever has been. As for myself, I do most certainly believe that I am now writing from pure motives, because I have at present no wish for the serious and important office of a Lord of Session. I have a confidence

dence (perhaps too great a confidence) in my abilities ; and therefore will try my fortune, for some time at least, in a wider sphere. But this I declare, that though the situation seems to me too confined, I never thought the salary too small.

Let us be cautious of augmenting the salaries of our judges. Judges, like men of genius and learning, *nutriendi sunt non saginandi*.—A gown in Scotland should not be too good a *place*, lest it become altogether an object of political preferment. We have already several noble lords who are of the Faculty of Advocates, and who might perhaps condescend to take such a loaf. Lord *Salton* might think it a *snug thing*. My cousin,
 Lord

Lord *Cathcart*, might see it to be *better than a regiment*. Lord *Stair* might *add* it to his *finances*. Lord *Cassillis* might chuse it by way of *otium cum dignitate*.—And the gentlemen whom I have mentioned, with an *Erskine*, a *Blair*, an *Abercrombie*, a *Grant*, a *Cullen*, and all the rest who have honourably borne the heat of the day, might languish and die, without ever obtaining that rank to which they will in justice be entitled.

Take the Scottish Bench as it is now endowed—take it in a pecuniary view: It is a *tontine* for our sons. In no country in Europe, but Scotland, is the profession of the law an *etat*, a rank. Many a gentleman with us enters advocate merely to have a feather

ther

ther in his cap. The prime society of Edinburgh, is lawyers. *They* give the tone, as, *arbitri elegantiarum*, *they* rule the theatre. *They* make balls for the ladies ; and once (I suppose to shew the prodigious extent of their power) they let the nation know that they could proscribe even a beautiful Duchess, the very soul of gay festivity. *Black, law black*, is the common dress of the gentlemen of Edinburgh, by choice, as at Geneva and Lucca, by an œconomical regulation of the state, a sumptuary law : and hence, when *Foot*e was amongst us, he used to call *black* the *Edinburgh hunt*. It exalts our gentlemen to think they may be judges, as, by calculation, it has been found that there are two

vacancies

vacancies for every three years. They are continually looking upwards.

Os homini sublime dedit, cœlumque tueri
Jussit, et erectos ad sidera tollere vultus.

I must speak plain, and say, that I fear this crude scheme of diminishing the number of the Lords of Session has something in it more dangerous than you are aware of. "More is meant than meets the ear." A politician's lust of power is exorbitant. If he can but have the supreme tribunal of Scotland of his own forming, what may he not do? To say nothing of our *property*, it is now very well understood that the whole *political interest* of Scotland is in the hands of the Lords of Session; for they ascertain the validity of all the votes, whether

bers, must ever be paramount to the jurisdiction of particular subordinate courts.—I am sorry, Mr. *George Byng*, that I cannot appeal to you, at present, as a Member of Parliament, for the truth of what I am maintaining : For though I differ from you, in my political creed, as far as the east is from the west, I think you an useful and active watchman of the state. And I am never unmindful of your civility to me, as a counsel, when you sat Chairman of the Ayrshire Committee. But you may tell your friends who are in parliament ; and Messieurs *Dudley Long, Praed, Bankes, Duncombe*, and several more who were of that committee, will remember the piteous tale.

I should oppose any diminution whatever of the number of the Lords of Session, because it would make "the law's delay" be more grievously felt: but, above all, I dislike this particular plot, to revive the *Decemviri*. It is *ominous*. In the words of *Livy* I will say, "*Non placere nomen; periculosum libertati esse.*"

Who seconded the King's Advocate's motion for leave to bring in this bill—this odious bill of pains and penalties?—It was Sir *Adam Ferguson*; a man who has vexed me not a little, by his political success in our county, against my wishes. He is one whom Mr. Dundas has selected to hold up as an instance of the plentitude of his power.

Do any of you want to be informed of Mr. Henry Dundas's power? I dare say not. Care is taken that its full extent shall be proclaimed as far as *Orkney*. Yet let us contemplate a striking instance; it would make a picture for the exhibition, or a scene at *Astley's*. Behold him in your Metropolis, which the death of Sir *Lawrence Dundas* left open to him.—With his *right* hand he has moved the LORD PROVOST, *Hunter Blair* (gold chain and all) from his political base.—With his *left*, he has thrust in as *representative of the citizens of Edinburgh*—Whom?—a respectable merchant? No.—A prosperous tradesman? No.—A *Coutts*, the father of the great establishment in the Strand, London? No.—A *Kerr*,
whom

whom *Pelham* loved? No.—A citizen of any sort, good, bad, or indifferent? No. No. No.—Whom then? Why Sir *Adam Fergusson*, *advocate*, the *late* member for the *county of Ayr*! Sir Adam Fergusson wrote a circular letter against peers interfering in our county election, and several very worthy gentlemen joined the standard of *independency*, as they imagined, which he erected. Carrying them along with him, and yet “having his peers as well as we,” he contrived to possess, for two parliaments, the representation of *Ayrshire*, by means of *those superiority votes*, which that county has declared to be *nominal and fictitious*, while the REAL INTEREST was unrepresented. Sir Adam Fergusson last year, *as we are told*, made overtures to the *Earl*

of *Eglintoune*, and formed a *coalition* with his lordship. That he was *not elected*, we know; that he *voted for his former opponent*, we know; and *it is said* he supports the earl's friend for one parliament, and the earl is to make him member next parliament*

—*if*

* When the report of this curious agreement burst upon the county, like a bomb, and stunned men of all parties, I made the following Bellman's rhimes, to usher in my friend Colonel Hugh Montgomerie as our representative:

Adam, too long you've kept your feat,
 With little for your pains;
 Trust me, *you'll* never make ends meet,
 Computing loss and gains.

Surrender then to gallant Hugh;
 It truly will be best!
 Bring your mock votes along with you,
 And laugh at all the rest.

Thus Ayrshire yet may prosperous be,
 With such a brave Commander:
 And if *you're* pleased *our* joy to see,
That will, *indeed*, be *candour*.

THE REAL INTEREST.

—*if he can.* I have never heard his lordship say that this report is true: but if it is, the noble earl must not take it amiss, if some of the best friends of his family should disdain what they think degrading to him, and feel obnoxious to themselves. Amongst those friends, I myself am one of the warmest, both as an enthusiast for ancient feudal attachments, and as having the honour and happiness to be married to his lordship's relation, a true *Montgomerie*, whom I esteem, whom I love, after fifteen years, as on the day when she gave me her hand.— But I have an objection to Sir Adam Fergusson, on account of a paltry money question, which being now under the arbitration of three of our Lords of Session, I forbear to exhibit
it,

it, till the result is known.—Mr. *Macadam*, of *Craigengillan*, as able and as spirited a man as any in his Majesty's dominions, and Sir *John Whitefoord*, who is honour itself, both gentlemen of extensive interest in Ayrshire, have also objections to him, which they have stated to me, and will tell any body who thinks it worth while to ask them.—In these circumstances, the House of Eglington can hardly expect that the great county of Ayr, the Yorkshire of Scotland, will be brought implicitly to wheel, and vote for sir Adam Ferguson, merely that a bargain, which should never have been made, may be fulfilled. • I myself have reason to hope, that many of the real freeholders of Ayrshire will support me
at

at the election for next parliament, against which I have declared myself a candidate. Colonel *Montgomerie* has had the great honour of being chosen by the real Freeholders. May I not have it in my turn? *Ed anche Io son pittore.* By the time this parliament is over, he may be content to be "*Vejanius, armis Herculis ad postem fixis.*"—I shall certainly stand, upon the substantial interest of the gentlemen of landed property; and if, upon a fair trial, I should not succeed in "that object of ambition, which I "have most ardently at heart," I have resources enough to prevent me from being discontented or fretful. Perhaps Sir Adam Ferguson may support me. Why should he not? I know of no objection the honourable baronet can
I have

have to me, though I am sorry that I have an objection to the honourable baronet. I have asked his vote and interest by a letter. His answer has neither granted nor refused my application. He waves it on the common civil ground, that it is too soon to decide. In the mean time, I shall endeavour to deserve the support of the real freeholders, by exerting myself, as much as I possibly can, to serve either the county in general, or individuals of it; and when a man does the best, he can, he may perhaps, have his reward. But this country-city member has led me off from Edinburgh, to which I now return; and I do say, that, if issuing an effectual *congé d'elire*, by which Sir Adam Fergusson is made member for the
capital

capital of Scotland, be not power with a witness, I am at a loss to conceive what power is.

As to all this power assumed by Mr. Dundas, I must say *miror!* But I certainly do not blame *him*. As *Cato* says, when his gallant son *Marcus* is brought in *dead*, “Who would not be that youth?”—The proverb says, “A living dog is better than a dead lion.” What then must a living lion be? But under what *genus*, under what *species*, are they to be ranked, whose pusillanimity is the cause that this lion alone domineers in the forest? Our late and present situation brings to my remembrance some verses in an old poem, which I have heard my father repeat: they are a kind of im-

I 2 precation,

precation, applicable to a *coalition* which in the last age took place in *Scotland*.

* May eke thae men o' mony wimples,
 Sir James and Sir John Dalrymples,
 † Wi' their new allies, the Dundases,
 Rule ‡ aw our lords and lairds like asses!

Yet I will do Mr. Dundas the justice to declare, that, large as his power is, he has not much abused it. He has, indeed, taken very good care of his relations! And why should he not? Though, to be sure, flesh and blood must feel his having put his young nephew over the heads of I know not how many of us, as Solicitor General. But I do not believe that he has been cruel, oppressive, or vindictive. I know but of two wrong things

* May also these men of many wiles. *Ambages*.

† With. ‡ All.

things that he has done. One was attacking Sir Lawrence Dundas in the county of Orkney, “ in his own manour, where he was a father to the people ;” as that hospitable, that splendid, that imperial baronet, said to me, with tears in his eyes. The other was persuading my honoured father, a venerable judge, in the decline of his life, to embark in county politicks, from which he had ceased for twenty years, and make a parcel of unsubstantial votes, which he abhorred, in order to support Sir Adam Fergusson in Ayrshire, against the old and the real interest of the county. But both these instances were the effects of *politicks* which I see to be *poison to the mind*. I have therefore no more objection to Mr. Dundas’s
being

being sole *Protector* of Scotland, than any other man, if we *must* be so ruled. Nay, I have an *interest* that *he* should be the person. For there is an hereditary friendship between our families. We were at college together. We have oft enjoyed

—— The “happier hour
“Of social pleasure.”——

And I trust to the generosity of his feelings, that, as he *knows* he once did me a severe injury, which I have from my heart forgiven, he will be anxious to make me full amends, if ever it shall be in his power. The desire of elevation is as keen in me as in himself; though I am not so well fitted for party exploits,

As

As *Nero* wished that the people of Rome had but one neck, that he might, if he pleased, cut them off at a single stroke.—So a deep, an artful politician, will be desirous to contract the body which he wishes to command. It is easier driving four horses in hand than six. Besides, while there are *fifteen* judges, the danger that they may not be all tractable is proportionally multiplied, when compared with the number *ten*. There may be a proud, an eloquent *Alemoor*, who will watch like a dragon;—a sturdy *Ellick*, who will not bend;—a firm *Stonefield*, who not only has a will of his own, but if one in high place, trusting that he is sheltered in his situation, presumes to be coarsely insolent, can tell it him in
his

his ear, aye, and to his beard ;
 —an honourable *Rockville*, who being of higher rank than any of them, before he became a judge, will not stoop—will not truckle—will not be led—but will deliver his own honest good sense with the mild dignity that becomes him.

It is very agreeable to consider, that one bad judge cannot contaminate a number who are good, yet, when we take the converse of the proposition, we shall find one good judge can prevent the evil of many bad ones. He can hold up truth and justice so conspicuously, that bad judges have not hardiness enough to turn aside from them ; and, if they should, he can alarm the country,

When a man of probity and spirit, a Lord *Newball*, whose character is ably drawn in prose by the late Lord President *Arniston*, father of the Treasurer of the Navy, and elegantly in verse by Mr. *Hamilton* of *Bangour*—when such a man sits among our judges, should they be disposed to do wrong, he can make them hear and tremble. My honoured father told me, that Sir *Walter Pringle* “spoke as one having authority,” even when he was at the bar. “He would cram a “decision down their throats.”

Duncan Forbes of *Culloden*, when Lord President of the Court, gave every day as a toast, at his table, “Here’s to every Lord of Session
“who does not deserve to be hanged!”

K

Lord

Lord *Auchinleck* and Lord *Monboddo*, both judges, but *since his time*, are my authority for this. I do not say that the toast was very delicate, or even quite decent ; but it may give some notion what sort of judges there *may* be. It is well known that *Forbes*, by the single weight of his character, assiduouly and boldly urged, made a very great alteration to the better upon the court, and shewed *Unum Hominem pluris valuisse quam Civitatem*.

A number of judges, taken from different parts of the country, diffuses and divides that private and imperceptible influence which must ever be in a narrow country. One prejudice is checked and counterbalanced by another.

another. A judge from the north of the Tay is corrected by a judge from the south of the Tay, and is again corrected by him, in his turn.—I solemnly declare, I mean no reflection against the Lords of Session, farther than that they are not exempted from the frailties incident to man—that human nature is human nature every where, and in a narrow country is more liable than in a great country, to what I shall call—honest bias.

With a plausible appearance, it has been propagated from company to company, that, were there fewer Lords of Session, there would be more security from their responsibility; as disgrace, which is light when shared amongst a number, falls heavy upon

a few.—But against this you shall have an unanswerable argument.—

“ If they are honest and honourable
 “ men, they will not be the less so
 “ that they are *fifteen*. If they are
 “ not, and mean to do wrong, a junto
 “ of *ten* can do it with more facility.”

Non meus hic sermo est : I owe it to Lord *Palmerston*, from whose conversation there is always something to be borrowed. I humbly thank his lordship for it, and beg he may pardon my imperfect report of it. He gave it me at Lord *Ossory's*. I cannot refrain from mentioning the *place* ; because I am very vain to sit at the table of FITZPATRICK : the respect for whose ancient and noble blood is not lessened, but increased, by the character of its present representative ;
 which,

which, as I feel, is saying a great deal. I flatter myself FITZPATRICK was convinced. If he was—I'll answer for it, all the world shall not make him flinch.

And now, my countrymen, let me intreat you to assemble again in your counties, and boroughs, and corporations, and publick bodies of every kind, and *petition Parliament* against diminishing the number of the Lords of Session; unless Parliament will totally alter the judicial procedure of Scotland, upon some wise plan, *after it has received your approbation.* I would also have you to address the KING against so alarming a measure. It is the glory of the reign of GEORGE III. that he has given inde-

4

pendency

pendency to his judges. His Majesty will graciously listen to what you humbly and honestly tell him, relative to what he has much at heart—the good administration of justice in his dominions.

Do not despond, and imagine that *English* Members of Parliament will be totally inattentive to what so much concerns you. My old classical companion, *Wilkes*, (with whom I pray you to excuse my keeping company, he is so pleasant) did indeed once tell me, when I asked him to attend a Scottish contest in the House of Commons, “No, no! Damn it! Not I! I’ll have nothing to do with it! I care not which prevails! It is only *God* against *God*!”—But he is now
an

an older member of the great council of the nation, and I hope will not grudge to take a little trouble for you, by way of *doing penance* for his *biting* and *scratching* in the *North Briton*.

You may hope for aid from the Lord Rector of the university of Glasgow, Mr. *Burke*, who dislikes and dreads reform in parliament; who spoke this very session against it like an angel, and whose benignant heart will feel for your just anxiety. To Mr. *Burke* I was much obliged when he was in power; and it grieved me that he embraced, what in all sincerity I thought such a measure as justified his removal from office;—for his interest is dear to me as my own. By his removal, the King's administration

stration was deprived of the assistance of that affluent mind, which is so universally rich, that, as long as British literature and British politicks shall endure, it will be said of *Edmund Burke*, “*Regum equabat opes animis.*”

You will be listened to by my gallant Colonel *James Wortley Stuart*, who, for sterling good sense, information, discernment, honour and honesty, and spirit, is not exceeded by any of them. As diminishing the number of our judges would diminish the influence of the Crown, he probably will not like it.

You will be listened to by that brave *Irishman*,* *Captain Macbride*, the
cousin

* I have always stood up for the Irish, in whose fine country I have been hospitably and jovially

cousin of my Wife, and the friend of my heart; a man whose valour has refounded in so many parts of the ocean, and whose feat in parliament has not been purchased by bribery or

jovially entertained, and with whom I feel myself to be much congenial. In my *Tour to Corsica*, after relating, from General Paoli, a remarkable instance of bravery in Carew, an Irish Officer, at the siege of Tortona, I thus do generous justice to the Irish, in opposition to the English and Scots—"It is with pleasure that I record an anecdote so much to the honour of a gentleman of that nation, on which illiberal reflections are too often thrown, by those of whom it little deserves them. Whatever may be the rough jokes of *wealthy Insolence*, or the envious sarcasms of *needy Jealousy*, the Irish have ever been, and will continue to be, highly regarded upon the continent."—My book was first published in 1768. The Irish were then still under a cloud. What a glorious day has burst upon them now! *Quod felix faustumque sit!*

L

or fervility, but given him by a *free election*. He has come into the House of Commons, borne upon the swelling bosoms of the worthy electors of *Plymouth*, who, knowing him best, are the best judges of his merit, and have been most eager to reward it, by a triumphant testimony, such as heroes were honoured with in old Rome.

I think you may also depend upon Mr. *Lee*, with whom my intimacy has been chiefly formed since I made him dangle at the end of a rope, as Attorney General, in my East-India letter. —(What liberality of mind must he have!)—Though he is not such a *bigot* as I am, and would be glad to have *some* reform in Parliament, yet I
I
dare

dare say, when he is made acquainted with the state of this case, he will manfully oppose the attempt. I love Mr. *Lee* exceedingly, though I believe there are not any two specifick propositions, of any sort, in which we exactly agree. But the general mass of sense and sociality, literature and religion, in each of us, produces two given quantities, which unite and effervesce wonderfully well. To his great reputation, as a barrister, my voice can add nothing; but he has kindly enabled me to bear testimony to his private worth. I know few men I would go farther to serve, than *Jack Lee*.

Have confidence in Sir *Matthew White Ridley*; that stately, that pleas-

ing Northumbrian, who exhibits an instance of, what it is strange should be rare,—independent opulence!—He was a General in the late tumultuous parliament army. He fought, he encouraged, and he cheered,—with a “Fight on, my merry men all!”—till his wisdom, and his tendernefs for his country, prevailed over his pride; and he was the first to fall back, and give the signal for retreat. If my sanguine hope has not deceived me, Sir *Matthew* will be for us.

I even think it possible that you may be protected by the MAN—I will not say *of the People*—for I am too much in earnest to fill my mouth with party cant:

Away,

Away, away with blue and buff,
 And all such wretched foolish stuff!
 The time's "pale cast," which "**sicklies*" you,
 Demands a grave---a solemn hue.

But I will say, the man of great, of extraordinary abilities,—of most extensive, of infinite political knowledge—who *can* do much good, if he *will*; and we may hope he *shall*, when the adjustment of circumstances above my reach will let him:—
 Yes, my friends, Mr. *Fox* may protect you. His clear understanding can at once distinguish between a Reform, which promises some beneficial consequence, and a Demolition, which it is demonstrated must be ruinous.

And

* JOHNSON, in his Dictionary, has "To *SICKLY*, *v. a.* (from the adjective) To make diseased; to taint with the hue of disease. "Not in use." But it *shall* be in use. It is a word of power. We cannot do without it.

And shall we be so unjust to the *Minister of the Crown*, to the second WILLIAM PITT, as to apprehend that HE will not hear us? HE who first took, HE who still holds the reins of government, with the hearty concurrence, the generous applause, of an admiring nation! HE whose nobleness of soul has so remarkably shewn how open he is to conviction! I can have no doubt that, when he has made himself master of the subject, sees that the articles of the Union would be infringed, and knows how very unpopular this bill is—I can have no doubt that he will send for *the Minister for Scotland*, and tell him, in a determined tone, “*Dundas! Dundas for*”
 “*shame! Here is a rock upon which*”
 “*we might have split, as Fox did*”
 “*upon*

“ upon his *India bill*. I’ll hear no
 “ more of this Court of Session job !
 “ It is a monstrous measure ! Let it
 “ be quashed ! ”

GREAT SIR ! forgive my thus presumptuously, thus rashly, attempting, for a moment, to forge your thunder ! But I conjure you—in the name of GOD and the KING I conjure you—to announce, in your own lofty language, that there shall be a stop put to this conspiracy, which, I fear, might have the effect of springing a mine that would blow up your administration. Believe me sincere, when I now tell you, that, although I, with all deference, cannot join you in one point—a reform in parliament,—for the reasons I have given,—such

is

is my confidence in your talents and virtues, such my sense of the good you have done, and my hope of the good you are yet to do, that, though not blest with high heroick blood, but rather, I think, troubled with a natural timidity of personal danger; which it costs me some philosophy to overcome, I am persuaded I have so much real patriotism in my breast, that I should not hesitate to draw my sword in your defence. It is the **ROYAL CAUSE**. I tremble at the recollection of that parliamentary anarchy from which your magnanimity delivered us. A return of such confusion would be now a more dreadful calamity; we should be forced, in wild dismay, to exclaim, "*Chaos is come again!*"

My

My countrymen! have I not heartened you somewhat, by pointing out to you so many eminent men, to whom we may fly for refuge, and obtain it?

Sir *George Saville*, whose name, though he be dead, is enough to rouse every dormant spark of public spirit, had a political maxim which is striking, and, I believe, will be found true: He said, that, in whatever way any nation was governed for any considerable time, it *ought* to be governed in that manner. It was proved, by experience, that that kind of government was adapted to that people. If they maintained their freedom, they ought to be free: if they submitted to slavery, they ought to

M

be

be slaves*. Do not, I beseech you, my countrymen, allow prescription to run against you! Do not let your equity of redemption be foreclosed!

What says our own *Fletcher of Saltoun*? "There is not, perhaps,
" in

* This letter was printed thus far (14 May, 1785) when I had the honour to dine in company with Mr. *Justice Willes* (to whom I am indebted for many civilities) at the court holden at the Old Bailey, London. And he told us, from his father, my Lord *Chief Justice Willes*, that when his father was no more than a *King's Counsel*, he visited *John Duke of Argyll*, at his seat at *Adderbury*. He found him sitting in his great chair, and a number of the nobility and gentry of *Scotland* standing round him (*Vulgi stante corona*---the *great vulgar* are certainly worse than the *small*). The Duke said, "My dear *Willes!* won't you have a chair?" And Mr. *Willes* was accordingly seated. But not one of those nobility and gentry presumed to sit in his GRACE'S presence. He was the *Minister for Scotland*.---O! *servum pecus!*

“ in human affairs, any thing so
 “ unaccountable, as the indignity
 “ and cruelty with which mankind
 “ suffer themselves to be used, under
 “ *pretence of Government.*”

When Peter the Great, Czar of *Muscovy*, was in England, he wished to see the punishment of *keel-bailing*. He asked the King to shew it him. “ Sir, (said he) I cannot, unless a man
 “ be found who deserves it.”—“ That
 “ shall be no objection (said the Czar).
 “ Take one of my fellows.”—The King of *England* nobly replied,
 “ Know, Sir, that when a man, of
 “ any nation whatever, has set his
 “ foot upon *English* ground, he is a
 “ free-man : he is entitled to the pro-
 “ tection of the laws of this country.”

The application of this illustrious anecdote, to the protection which the *People of Scotland* may expect from *English* Members of Parliament, is very obvious. We are now one people, though “a river here, there an “ideal line,” divides what once were only sister kingdoms. Are not *we*, then, on the north of the Tweed, to participate of British moderation in government, as well as those on the south of the Tweed? And are any despots of our own land to be permitted to oppress us? I hope not.—We may then say to the *English* Members, in the strong language of Dr. *Young*, in one of his tragedies—
 “O guard us from ourselves!”

It will be in vain to attempt hurry and evasion, and cajoling;—it will
 be

be in vain to employ what powers of lively ridicule our task-masters possess, and to represent this alarm to be similar to the absurd hue-and-cry against the change of the *style*, which *Hogarth* so exquisitely burlesques: “ Give us
 “ our eleven days! ”—“ Give us our
 “ five Lords of Session! ”—Believe me, it is no joke, and it cannot be made like a joke. A *violation of the articles of the Union*, and an *extinction of one third of our judicial relief*, which is, even now, inadequate to the wants of our country, are serious things; or else “ there’s nothing serious in mortality.” Shall *one* of the *troubles of life* (which make the pensive *Hamlet* balance, whether one ought to throw off the burthen of it) be augmented by *another*? Shall
 “ the

“ the law’s delay ” be rendered still more tedious, by stretching “ the insolence of office ? ”

In my zeal to prevent, what appears to me a most pernicious innovation, I may have been somewhat intemperate in my expression. I hope allowance will be made for it. For, though agitated and indignant, I am free from rancour. I write for both sides of the Tweed. Though my warning letter goes *directly* to *Scotland*, I mean that it should *reverberate* on *England*. But it would hurt me very much, if, by any misapprehension, it could possibly be thought that *any extensive severity in this pamphlet* (for *pauca macula* there will ever be in all human institutions) is *point-*

ed against the honourable judges who at present compose the Court of Session, under the authority of which I have practised the law, lo! these nineteen years.

“ Most potent, grave, and reverend signors,
 “ My very noble and approved good masters.”

And therefore (though I can scarcely for a moment suppose it necessary) *I do now, in most explicit terms, disavow an intention so injurious.* I have argued *hypothetically*; and we all know that an *hypothesis*, referable to a distant and imagined period, which I trust shall never arrive, may be formed as strongly, and even extravagantly, as imagination can figure.

But the *permanency* of the *constitution* of the court, as fixed by article

19 of the Treaty of Union, is *not imaginary*. For, in corroboration of the passage which I have already transcribed, I beg leave to add, that, after specifying the qualifications then requisite for Lords of Session, that same article of the Treaty says, “ yet
 “ so as the *qualifications* made, or to
 “ be made, for capacitating persons to
 “ be named Ordinary Lords of Ses-
 “ sion, *may be altered by the Parlia-*
 “ *ment of Great-Britain.*” Does not this make it perfectly clear that the *constitution* of the court may *not* be altered? *Exceptio firmat regulam, in casibus non exceptis.*

In a former part of this letter I suggested, as a *regulation of improvement* upon the administration of
 justice

justice in our *unalterable Court of Session*, that the *ten* senior judges, or only the *five* senior judges, should sit in the *inner house* as the Court of Review. But it now occurs to me, that it is not always certain that the oldest judges will be the wisest ; and therefore I would rather have them to sit *seven* and *seven* alternately, with the President (four with him, or a presiding judge in his room, to make a quorum) to review the separate decisions of the Ordinary Lords. Let the suitors have time to make their election of either of those Courts of Seven. Let the President deliver his opinion, but have no vote, unless where there happens to be an equality of voices. And as at present no decree is final, till after two consecutive judgements

N

of

of the *inner house*, let there, for the second judgement, be a privilege to obtain a new trial before the whole *fifteen*, as at present, upon cause shewn; and let the whole fifteen sit one week in each month for rejecting or receiving such applications, and deciding upon them. My suggestions are offered with great diffidence: but they are all *legal*: they do not infringe the sacred constitution of the College of Justice.

I have one other circumstance to communicate; but it is of the highest value. I communicate it with a mixture of awe and fondness.—That Great Personage, who is allowed by all to have the best *memory* of any man *born a Briton*, and is known, by those
 who

who know him best, to have a very sound understanding, and a very humane heart, may probably *recollect*, that, in a conversation with *one of the most zealous Royalists of the age*, he was graciously pleased to give General *Paoli* the just praise of “ putting law into a people who were lawless.”

What barbarous oppression, what political guilt would it be, in part to extinguish law amongst a brave people, who have long enjoyed it, and who agreed to the abolition of their own government upon the faith of unalterable articles of Union, in consequence of which they are now at a great distance from the seat of government, to which it is not easy for their voice to extend.

This letter, hastily written upon the spur of the occasion, is already too long. Yet allow me, my friends and countrymen, while I with honest zeal maintain *your* cause—allow me to indulge a little more my *own* *egotism* and *vanity*. They are the indigenous plants of my mind: they distinguish it. I may prune their luxuriancy; but I must not entirely clear it of them; For then I should be no longer “as I am;” and perhaps there might be something not so good. *Virtus laudata crescit.*—*Sume superbiam quesitam meritis.* I last year claimed the credit of being no *time-server*; I think I am giving pretty good proof that I am not so this year neither. Though ambitious, I am uncorrupted; and I envy not
high

high situations which are attained by the want of publick virtue, in men born without it; or by the prostitution of publick virtue, in men born with it. Though power and wealth, and magnificence, may at first dazzle, and are, I think, most desfireable; no wise man will, upon sober reflection, envy a situation which he feels he could not enjoy. My Friend (my *Mæcenas Atavis edite regibus*) Lord *Mountstuart*, flattered me once very highly, without intending it.—“ I
 “ would do any thing for you (said he)
 “ but bring you into parliament; for
 “ I could not be sure but you might
 “ oppose me in something the very
 “ next day.”—His lordship judged well. Though I should consider, with much attention, the opinion of such

a friend—before taking my resolution ;
 —most certainly I should oppose him,
 in any measure which I was satisfied
 ought to be opposed. I cannot exist
 with pleasure, if I have not an honest
 independence of mind and of con-
 duct ; for though no man loves good
 eating and drinking, simply considered,
 better than I do—I prefer the broiled
 blade-bone of mutton and humble
 port of “down-right *Shippen*,” to all
 the luxury of all the statesmen who
 play the political game all through.

It is my system to regard, in a
 publick capacity—measures, and not
 men ; in a private capacity—men,
 and not measures. I can discuss
 topicks of literature, or any other
 topicks, with mitred *St. Asaph*,
 with

with *Wyndham* of *Norfolk*, with *Capel Loft*, with *Dr. Kippis*, with *Dr. Price*, with the Reverend *Mr. John Palmer*; yet there are points of government in some of them, and points of faith in others, as to which, had I any thing to do in the administration of this country, I should “withstand them to the face.” I can drink, I can laugh, I can converse in, perfect good humour, with Whigs, with Republicans, with Dissenters, with Independents, with Quakers, with Moravians, with Jews. They can do me no harm. My mind is made up. My principles are fixed. But I would vote with Tories, and pray with a Dean and Chapter.

While I arraign what strikes me as very wrong in *Mr. Henry Dundas*,
and

and the Lord Advocate, in their publick conduct, I am ready to meet them on friendly, but equal terms, in private. To the Lord Advocate I am most willing to allow all his merit. He has risen to the head of our bar. No man, with us, ever pushed the business of a lawyer to that extent that he has done. He has made it a Peruvian profession: yet he is free from the fordidness which sometimes attends those who get a great deal of money by laborious employment; upon every occasion that I have known him tried, he was generous. And he is a very friendly man. I should be exceedingly ungrateful if I did not acknowledge it.

That Mr. Dundas and he should think of attempting such a bill as this, must

must make us wonder, and, for a moment, shew us how weak the ablest men are, upon some occasions. I may, without offence, account for it, by using the very expression of Mr. Dundas himself, when attacking, at the bar of the House of Lords, a decree of the Court of Session, in the case of a schoolmaster, where I was counsel on the other side. I can swear to the phrase.—“ They have “ been seized with some *infatuation*.”

I cannot allow myself to imagine that Mr. *Dundas* means to make poor *Scotland* the scape-goat to be sacrificed on the altar of *Reform*; and to please the Minister with a *small* one, because he has been disappointed of a *great*, he shall have a *reform of the Court of*
 O *Session,*

Session, since he cannot have a *Reform of Parliament* (to which, by the bye, I did not know till t'other day that Mr. Dundas himself, notwithstanding appearances, has always been a friend). —No, no. This cannot be! WILLIAM PITT would despise such pitiful game. *Aut Cæsar, aut nihil*, is HIS motto.

“ Poor is the triumph o'er the timorous hare.”

We must go to the *Æneid* for HIS prototype :

*At puer Ascanius mediis in vallibus acri
Gaudet equo ; jamque bos cursu, jam superat illos.
Spumantemque dari pecora inter inertia votis
Optat aprum, aut fulvum descendere monte lionem.*

The suspicion of such a sacrifice could be hatched only in *Scotland*, where, before the *heretable jurisdictions* were abolished, a man was tried

for his life in the court of one of the chieftains. The jury were going to bring him in not guilty: but somebody whispered them, that “the young *Laird* had never seen an execution;” upon which their verdict was—*Death*; and the man was hanged.—Though our young Minister has not yet seen a reform, I hope the Court of Session shall be spared.

Then trust me, Percy, pity it were,
 And great offence to kill
 Any of these our harmless men,
 For they have done no ill.

I exhort you, my friends and countrymen, in the words of my departed *Goldsmith*, who gave me many *noctes atticæ*, and gave me a jewel of the finest water—the acquaintance of Sir *Joshua Reynolds*;—I again exhort
 you

you to “ fly from petty tyrants to the
 “ Throne!” Apply to the KING,
 the fountain of law, justice, and ju-
 risdiction! your application will not
 be in vain.—My ingenious friend,
 Mr. *Tyers*, in his admirable *Political*
Conferences, makes Lord *Strafford*
 (defending to *Pym* his attachment to
Charles I.) express the very thoughts
 in my breast.—“ In my highest flights,
 “ whilst a commoner, my heart was
 “ never averse to monarchy. I was
 “ then neither a Puritan nor an Ar-
 “ minian. *The more opportunities I*
 “ *possess of knowing the King, the*
 “ *more strongly am I attached to his*
 “ *person and authority.* A King of
 “ England is not to be reduced to
 “ the insignificance of a Doge of
 “ Venice. Since the murder of *Buck-*
 “ *ingham,*

“ *ingham*, who ruled, I confess,
 “ with a very high hand, the King
 “ has *no favourite*. He has taken
 “ upon him the task of being *more his*
 “ *own Minister*; and therefore you
 “ have not so much reason to appre-
 “ hend any violation of popular
 “ rights.”

My much respected great grandfa-
 ther, that “worthy gentleman” *David*
*Boswell of Auchinleck**, a true heart
 of

* *Thomas Boswell* was the first *Laird of Auchin-*
leck (pronounced *Affleck*) Ayrshire, after the
 estate had fallen to the Crown by the forfeiture
 of the very ancient family of *that ilk* (*i. e.* of the
same name) there being no record nor tradition
 of any other family having it. I am told the
Afflecks of England are the heirs of the forfeited
 family. I am proud of the *connection*; but should
 be unwilling to resign to them the *estate*, of
 which

of oak, with a vigorous mind and a robust body, secured our male succession.

which they have now no need. *Thomas Boswell* was a descendant of the family of *Balmuto*, in *Fife*, whose estate was purchased in this century by a younger son of my family. The wife of *Thomas Boswell* was a daughter of *Campbell* of *Loudoun*, and a grand-daughter of the forfeited *Affleck*. He was honoured, in 1504, with a charter from James IV. of Scotland, “*Dilecto familiaris nostro---pro bono et fideli servitio nobis prestito.*” He was killed with his King at the fatal field of *Flodden*, in 1513, fighting against the *English*, though he was himself of old *Yorkshire* extraction, being descended of the respectable family of *Bosville* or *Boswell* (for both they and we have spelt it both ways at different times) of *Gunthwait*, in the *West Riding*. After a separation for ages, I united our branch in cordial friendship with the *Stock*, our Chief the late *Godfrey Bosville*, Esq. as honest a man, as perfect an example of “the noblest work of God,” as ever breathed. That friendship is continued with his son *William Bosville*, Esq. who,

cession. His uncle, though he had four daughters, the eldest of whom was married to Lord *Cathcart* (who would have been glad to have had our *old rock*) was feudal enough to give him the estate. That *Laird* used to say, "He never saw a man in his life that he did not think himself his master." I, *pejor avis,*

who, with his father's honest heart, has the curiosity of *Ulysses*, which he has gratified very extensively. He is to let me have a freehold in Yorkshire, a small bit of the old manour, which will connect us from generation to generation. ---If it should be asked, What has this note to do here? I answer---to illustrate the authour of the text. And to "pour out all myself as old *Montaigne*," I wish all this to be known; and you who censure it, have read it, and *must* therefore know it. I am at home in Yorkshire; and I last year assisted at that glorious meeting, where loyalty and liberty united in addressing his Majesty.

avis, cannot say so much. But this I will say, that “ I call no man “ master,” without reserve. When I have fixed my opinion upon an important question, I maintain it, as a point of conscience, as a point of honour ; and the SOVEREIGN himself would find me *tenacem propositi*, as I humbly, but firmly was, upon the subject of the American war. I am a *Tory* ; but not a *Slave*.—I am possessed of an essay, dictated to me by Dr. *Johnson*, on the distinction between a *Whig* and a *Tory*, in which it is shewn, by the wonderful powers of that illustrious mind, that there is but a shade of difference between a moderate *Whig* and a spirited *Tory* —between reasonable men of each party. Much would I yield, rather than

than shake the reverence due to Majesty by opposition: But there may come an enterprize of great moment, as to which it would be deeply culpable to conceal my sentiments—as to which I may think myself obliged to be a faithful, an intrepid, an inflexible monitor.

Let me conclude with *eclat*—with one of the finest passages of *John Home's* noble and elegant Tragedy of *Douglas*:

To the liege Lord of my dear native land
I owe a subject's homage: but even Him,
And his high arbitration I'd reject:
Within my bosom reigns another lord,
Honour, sole judge and umpire of itself!

I have the honour to remain,
My friends and countrymen,
Your very faithful humble servant,

London,
May 1785.

JAMES BOSWELL.

P

POST-

P O S T S C R I P T.

SINCE this Letter was finished, I have read “*The Rights of Juries vindicated, in the case of the Dean of St. Asaph, in the King’s Bench,*” where Mr. *Erskine* added so much to the lustre of his professional character; and, inconsiderable as my approbation may be, I cannot refrain from saying, that Mr. *Welch’s* speech upon that occasion appears to me, for legal knowledge, acute reasoning, and true constitutional spirit, to be a masterly performance, and to establish, beyond question, that the Juries of *England* are judges of law as well as of fact, in *many civil*, and in *all criminal* trials. Let me be also permitted to add one to the number of his Majesty’s subjects who heartily honour Mr. *Justice Willes*, for his clear, free, yet temperate doctrine, delivered as a judge not unworthy to have been one at the trial of the Seven Bishops.—That my principles of *resistance* may not be misapprehended, any more than my principles of *submission*, I protest that I should be the last man in the world to encourage juries to contradict, rashly, wantonly, or perversely, the opinion of the judges. On the contrary, I would have them listen respectfully to the advice they receive from the Bench, by

which

which they may often be well directed in forming their own opinion; which, "and not another's," is the opinion they are to return upon their oaths. But where, after due attention to all that the judge has said, they are decidedly of a different opinion from him, they have not only a *power* and a *right*, but they are *bound in conscience*, to bring in a verdict accordingly. Thus it was in the late case of *Spence*, at Edinburgh, which I have mentioned. The jury, with every bias for the security of their own property and peace, with every disposition, as good citizens, to check a desperate rage of mobbing, were nevertheless satisfied that that young soldier, my client, then the prisoner at the bar, (upon the *general issue*, "*compounded of law and of fact*," to use the ever-memorable words of Baron *Eyre*, in Colonel *Gordon's* trial) was not guilty of the felonious *fire-raising*, or *arson*, with which he was charged; and therefore they acquitted him, at which my heart rebounded. It is but justice to add, that we have at Edinburgh a most respectable gentleman, Sir *William Forbes of Pitligo*, who, when sitting as a jurymen, and hearing one of the judges mutter audibly, that "the law must be left to the court!" rose in his place, and, with a proper courage, asserted the *full right* of himself and his bretheren; which had a very good effect.

*In the Press, and speedily will be published,
in one Volume Octavo,*

Printed for CHARLES DILLY, LONDON;

THE JOURNAL of a TOUR to the HEBRIDES
with SAMUEL JOHNSON, L. L. D.

By *JAMES BOSWELL*, Esq.

O! while along the Stream of Time, thy Name
Expanded flies, and gathers all its Fame;
Say, shall my little Bark attendant sail,
Pursue the Triumph, and partake the Gale?

POPE.

This Journal, which was read and liked by Dr. JOHNSON, will faithfully and minutely exhibit what he said was the pleasantest part of his life; and, while it gives the remarks which Mr. *Boswell* himself was able to make, during a very curious journey, it will convey a specimen of that conversation, in which Wisdom and Wit were equally conspicuous.