THE

CRISIS,

OR

REFLECTIONS

ON THE

PROPOSED SETTLEMENT

OF THE

BRITISH GOVERNMENT.

DUBLIN:

PRINTED BY P. BYRNE, No. 108, GRAFTON-STREET.

M,DCC,LXXXIX.

Houses of the Oireachtas

Houses of the Oireachtas

THE

CRISIS, &c.

IN this ſtrange and eventful juncture, when ſubjects of the moſt anxious importance ſeize the general mind, and new queſtions of the greateſt magnitude, and moſt alarming conſequence, ſolicit our attention; I flatter myſelf I ſhall be excuſed for treſpaſſing on the public, with ſome reflections on the preſent ſtate of the *Britiſh* government, chiefly calculated for the meridian of this country. Whether a ſincere regard and tender attachment to our gracious ſovereign, or an outrageous ambition, and inſatiable thirſt of power has urged forward the conſideration of abſtract propoſitions, teeming with heat, and violence, and unreaſonable contention, it is not for me to ſay,

but of this I am confident, that were his Majeſty, with the eye of returning intellect to look abroad, for a moment, and ſee the wound which has been inflicted on the royal prerogative, and the daring blow which has been aimed at the title, by the lineal deſcent of the crown, in his auguſt line; he would ſhrink back with ſurprize and abhorrence; but ſhould he perceive that this was done under the ſpecious pretence of affection to his perſon, and zeal for his intereſts and thoſe of the conſtitution, how would his indignation riſe againſt the boldneſs and hypocriſy of ſuch an attempt.

Speculative queſtions and abſtract propoſitions, whether in religion or politics, are obſerved to irritate and inflame men's paſſions the moſt violently, and excite the moſt rancorous diſputes, and outrageous animoſities; a recent proof of this we may find, in the heats which at this day are excited, if I am not miſinformed, in the ſiſter kingdom, by the diſcuſſion of propoſitions important indeed, moſt highly important in their ſubject, but abſtract in their nature. It were to be wiſhed for the ſake of the *Engliſh nation*, that this diſcuſſion had not been obtruded on the public; however as they are now brought forward, and thrown before the people, it is become

neceſſary

neceſſary to conſider them, and if conſidered at all, they ſhould be conſidered with a diligent, even with a ſolicitous and anxious attention. The conſideration of theſe queſtions embraces the whole form of the Britiſh conſtitution, and may produce the moſt deciſive effects on the general repoſe and harmony, and permanency of the preſent eſtabliſhed government.

A little learning is a dangerous thing. I am no more a friend to a haſty, jejune, and popular diſcuſſion of great political queſtions, than I would be to a ſimilar examination of the tenets and myſteries of our religion; the reſult in both caſes, will be errors in principle and in practice. I have converſed with many perſons on the momentous ſubjects, which now ſolicit our attention, and been ſurprized to find among the generality, not excepting thoſe whoſe profeſſional purſuits might lead them to form clear and decided notions, on points of conſtitutional law, the utmoſt confuſion and inconſiſtency; violent prejudices taking place of principles, and ſtrong aſſertions ſubſtituted for arguments. If the public prints do not miſrepreſent the debates on ſome late occaſions, the caſe is much the ſame in *England*, every man is more ready to pronounce than to enquire, and the form of the conſtitution is loſt and diſappears amidſt the ſmoak and miſt ariſing from party heat. That this

ſhould

ſhould happen at ſuch a juncture, and when each individual is liable to be called on to give an account of the faith which is in him, is much to be lamented. I flatter myſelf he will not ſeem to deſerve ill of his fellow citizens, who ſhall offer to their conſideration ſuch reflections and ſentiments on the great national queſtions before us, as a moderate attention to conſtitutional principles, may ſuggeſt to a very humble capacity; after which I ſhall beg leave to add a few remarks, which I think peculiarly offer themſelves to the the conſideration of *Iriſhmen.*

I proceed now, to conſider Mr. Pitt's ſecond Reſolution.——That it is the right and duty of the Lords ſpiritual and temporal, and commons of Great Britain now aſſembled, and lawfully repreſenting all the eſtates of the people of this realm; to provide the means of ſupplying the defect of the perſonal exerciſe of the royal authority, ariſing from his Majeſty's ſaid indiſpoſition, in ſuch manner as the exigencies of the caſe may require. I quote the reſolution verbatim, becauſe I think almoſt every word of it is material, and requires ſome animadverſions. In the firſt place, I think there is a ſort of technical craft, a kind of artifice of ſpecial pleading in the deſcription of the aſſembly whoſe right is to be declared; it is not ſimply the Lords and Commons of Great Britain; nor the two eſtates of parliament:

expreſſions

experſſions which as the framer of the reſolution knew would not ſerve the turn, but *Lords and Commons now* aſſembled and repreſenting all *the eſtates of the people of this Realm;* words that ſuppreſs the real ſtate of the fact, namely, that the two eſtates of Parliament did ſimply meet purſuant to a prorogation by the *King*, while in health; and hold out the *magnificent* but *unfounded*, and *deluſive idea*, of a *great National Convention*, *now* aſſembled, in ſome extraordinary manner, to anſwer the purpoſe of the preſent emergency. I appeal to any man of common candour, whether this be not the obvious ſenſe of the words; and whether there is not here a ſuppreſſion of truth, a ſort of artifice and miſtating highly unworthy of the awful occaſion, and of the ſolemnity of national counſels. In the next place this reſolution takes for granted a propoſition which is not founded in fact, or at leaſt which ought to have been proved before it was aſſumed as a corner ſtone on which to found a legiſlative act. That the two Houſes of Parliament, the Lords and Commons of Great Britain, do *fully* repreſent all the eſtates of the people of the Realm—It is eaſier to aſſert than prove this propoſition, as I ſhall obſerve hereafter. Mr. Pitt found it neceſſary to the deluſive idea of a convention, the principal ſupport of the Reſolution before us; and being well aware that it was queſtionable

queſtionable, ſlides it in artfully enough as part of a deſcription: I ſhall laſtly obſerve on the words, *in ſuch manner as the exigencies of the caſe may require*, that they are much too lax and comprehenſive in their meaning to be defended on conſtitutional grounds. In a Propoſition of ſuch vaſt magnitude, and in a caſe ſo new, there ſhould have been the utmoſt accuracy and preciſion in the terms which were to declare a great and perhaps an eventful right; inſtead of which, we have either a groſs inattention, or a ſtudied and dangerous uncertainty. The words now before us, in their natural conſtruction, and obvious import, make the two branches of the legiſlature, in caſe of the King's indiſpoſition, arrogate to themſelves an arbitrary diſcretion, and unlimited authority, not merely to elect or appoint a Regent to fill up the chaſm, but abſolutely to diſpoſe of the executive power, to provide *ne quid detrimenti capiat reſpublica*. So that under this Propoſition, worded as it is, and literally taken, the two eſtates would be warranted to ſuperſede the King entirely, and to ſubſtitute for *Kingly*, any other form of government they might think proper. I muſt add, that this Propoſition makes the *Houſe of Commons* pronounce on the power of the *Houſe of Lords*.

So much for the form of Mr. Pitt's ſecond Reſolution; but to proceed to the real eſ-

ſence,

ſence, the aſſertion that in caſe of diſability through ſickneſs of a King of *Great Britain*, who has an Heir Apparent of full age to govern and liable to no objection; the two remaining eſtates of Parliament, have a right to elect any perſon they may think proper, as Regent during that diſability, in prejudice to the claim of the Heir Apparent; or as it has been more ſtrongly and conciſely expreſt, THAT THE PRINCE OF WALES HAS NO MORE RIGHT TO THE REGENCY THAN ANY OTHER SUBJECT IN THE KINGDOM; I hope to be able to demonſtrate, that this Propoſition has no foundation in *law* or any conſtitutional principle; that it is not declaratory of any actual *exiſting right*, there being none ſuch; but is a change in the form of government, a *democratic innovation*, by arrogating to the two eſtates of Parliament, newly created and before unheard of, powers.

I muſt premiſe, that technical reaſonings founded on our municipal law, and arguments drawn from analogy to the caſe of private property, do not apply to the ſubject before us. Conſtitutional caſes muſt be governed by conſtitutional principles; a certain vital ſpirit of ſocial union, an informing eſſential purſuit of the public good, as the road to that is pointed out and defined by certain land marks or forms of political aſ-

 ſociation;

ſociation. For inſtance, the deſcent of the Britiſh crown is hereditary; the Heir Ap parent ſucceeds as of right on the demiſe of his predeceſſor; yet is he but a truſtee for his ſubjects, the hereditary deſcent of power is ſubject to certain principles of conſtitution; a tacit compact is underſtood, that the Prince ſhall employ his power for the good of his ſubjects, and if he violates the truſt he forfeits his crown. Now in the deſcent of private property, there is no tacit compact underſtood; the inheritor is not a truſtee for his tenants; he is under a moral obligation indeed, but no poſitive one, to promote their good, nor will it, ſhould he neglect or refuſe to do ſo, work a forfeiture of his eſtate. A private individual it is ſaid, can only become civilly dead in, two ways; a prince may become politically dead in as many ways as there are poſſible violations of the original compact. No attainder of the heir of the crown, will bar the ſucceſſion to the throne, as it doth the deſcent to a private perſon; the very deſcent, by order of birth, will take away any ſuch defect.

I proceed now to enquire, whether the two Houſes of Lords and Commons, in caſe of a temporary diſability of the King, have, under the conſtitution, an inherent right of appointing a Regent, to act in the name and

on

on the behalf of their ſovereign, during his diſability; and ſhall afterwards offer ſome arguments, to ſhow, that it muſt, under our conſtitution, be incident to the ſtation and rights of the Heir Apparent in caſe of ſuch diſability.

If the Lords and Commons, of the two Houſes of the Engliſh Parliament, do really poſſeſs the power declared in the foregoing reſolution, they muſt be inveſted with it, as a national convention, vertually comprehending the whole body of the people, all orders of the State; or elſe it muſt be their right, as the two deliberate members of a legiſlature, in which the executive power has a conſtitutional aſſent and diſſent.

I need not uſe many words, to prove that the Lords and Commons, in the two Houſes of Parliament, are not a national convention. A *national convention* is either an aſſembly of the whole aggregate of the people; or if their numbers render that impoſſible, a full and adequate repreſentation, freely and impartially choſen, ſo that every individual in the kingdom may give his ſentiments directly, or indirectly, on the ſubject of the meeting. But it will be not contended, that the Houſes of Parliament do fully and freely repreſent all the orders of the State. Mr. *Pitt* himſelf will not maintain this poſition; he who (though he was an enemy to that meaſure in *Ireland*) ſupported the plan for a parliamentary reform in *England*, and

thereby tacitly acknowledged, that the preſent Houſe of Commons as it is now elected, is not a full, fair, adequate repreſentation of the people.

Now to examine this claim of power, in the ſecond point of view propoſed. As power flows from the people, it muſt purſue the channels, it muſt preſerve the form and diſtinction marked out by the people. By them alone the conſtitution may be recalled, or cancelled; by them alone it can be altered and modified. If any one member of the State could itſelf aſſume a new power, or eſtabliſh an excluſive right, of defining and interpreting thoſe already in exiſtence, there would be a power in the conſtitution not derived from the people. The two Houſes of Parliament, under the conſtitution, have no power of legiſlation either diſtinct or conjointly; they poſſeſs it only jointly, with each other, and with the King, the bond that holds them together is the King alone: they then form, as it were, a ſtructure, where each part leans on each, and the whole is maintained, and upheld by a mutual preſſure. They are a machine compoſed of different wheels, each neceſſary to a perfect and regular motion; and if one be taken away the whole muſt ſtop or go wrong. But were the two Houſes of Parliament, in themſelves, to poſſeſs a right of ſupplying the deficiency of the third Eſtate,

that

that would imply a power of legiſlation. If they appoint a certain power in the State, they muſt arm that power properly, they muſt ordain and enact a deference to its authority, elſe their appointment would be nugatory; and to do this they muſt poſſeſs a legiſlative authority. Mr. *Pitt* allows ſuch an appointment to be an act of legiſlation; for he ſays, it muſt be done by bill; and he allows, that the two Houſes of Parliament are incompetent to legiſlate of themſelves; for he is obliged to reſort to a fiction, and ſet up a Pageant of Royalty, to give the act of thoſe aſſemblies the form and validity of law; ſo that his plan of proceeding is a refutation of his principle.

Every writer on *Engliſh* law, who has treated this ſubject, lays it down, that there can be no beginning of a Parliament, unleſs the King meets it either in perſon or by repreſentation; and that the aſſent of King, Lords and Commons, is neceſſary to every Act of Parliament. A poſition ſolemnly recognized by the Act of the 13th of Car. 2, which declares that the Acts and Ordinances of the two Houſes, ſhall not have the force of laws. Theſe reſtrictions and limitations the conſtitution hath wiſely ordained, to preſerve the executive power from the encroachments of the legiſlative; and prevent the eſtabliſhment of tyranny by the union of both in the ſame hands. "When (ſays "*Monteſquieu*,

" *Monteſquieu,*)* when the legiſlative and " executive powers are united in the ſame " perſon, or ſame body of magiſtrates, there " can be no liberty, becauſe apprehenſions " may ariſe, leſt the ſame monarch or ſe- " nate ſhould enact tyrannical laws, to ex- " ecute them in a tyrannical manner."—And again. " But if there were no monarch, " and the executive power ſhould be com- " mitted to a certain number of perſons ſe- " lected from the legiſlative body, there " would be an end then of liberty; by reaſon, " the two powers would be united, as the " ſame perſon would ſometimes poſſeſs, and " would be always able to poſſeſs a ſhare " in both;—Were the executive power not " to have a right to reſtrain the encroach- " ments of the legiſlative, the latter would " become deſpotic; for as it might arrogate " to itſelf what authority it pleaſed, it " would ſoon deſtroy the other powers."

Theſe principles of Monteſquieu are adopted and enforced by Sir *William Blackſtone.* The King, ſays he, is the only branch of the legiſlature that has a ſeparate exiſtence, or is capable of performing any act when no Parliament is in being. Yet, by Mr. *Pitt's* plan the other two branches of the legiſlature are declared to have a ſepa-

* See Coke, 4 Inſt. Hale of Parliaments, 1 Black. Com. 153, Spirit of Laws, vol. 1. p. 221.

rate

rate exiſtence, are enabled to perform acts, and thoſe of the utmoſt moment. *" It is " highly neceſſary for preſerving the ba- " lance of the conſtitution, that the execu- " tive power ſhould be a branch, though not " the whole of the legiſlature. The total " union of them would be productive of " tyranny: the total disjunction of them " for the preſent, would in the end, produce " the ſame effects, by cauſing that tyranny " againſt which it ſeems to provide. The " legiſlature would ſoon become tyran- " nical, by making continual encroachments, " and gradually aſſuming to itſelf the rights " of the executive power. Thus the long " Parliament of Charles the Firſt, while it " acted in a conſtitutional manner, with the " royal concurrence, redreſſed many heavy " grievances, and eſtabliſhed many ſalutary " laws; but when the two Houſes aſſumed " the power of legiſlation in excluſion of the " royal authority, they ſoon after aſſumed " likewiſe the reins of adminiſtration, and " in conſequence of theſe united powers, " overturned both Church and State, and " eſtabliſhed a worſe oppreſſion than any " they pretended to remedy". If any en- croachments of the two Houſes of Par- liament, by ſhaking off that conſtitutional controul, excluding the royal *negative*, which

* 1 vol. p. 229, Com. 1. vol. p. 154.

like

like the *Veto* of *Roman* Tribunes, had not any power of doing wrong, but only of preventing wrong being done, and preſuming to legiſlate without the concurrence of the crown, be ſo formidable; muſt it not be doubly formidable, as leading by a direct and brief road to tyranny; when the propoſed act of legiſlation, in which the crown is to have no ſhare, no power of rejection, purports no leſs, than to confer the poſſeſſion, modify the form, and preſcribe the extent of the executive power.

In whatſoever point of view we conſider the reſolution before us, it is irreconcileable to the principles of the conſtitution. If the rights of Parliament are to be protected, on the one hand, the King is equally a part of the conſtitutional government, the lineal deſcent of the crown is equally neceſſary to the public good, and therefore is equally eſtabliſhed by law; and the authority and prerogatives of the Sovereign, and the regular ſucceſſion to the throne of the reigning family, are to be guarded and maintained on the other hand; but the power attributed to the two eſtates of Parliament is inconſiſtent with the former, and may fatally endanger the latter.

If in caſe of an indiſpoſition of the King, abſenting him (as I may ſay) from his place in the ſtate, the heir apparent to the crown has no more right to the Regency than any

other

other ſubject, and the two Houſes of Parliament have an excluſive right to ſupply the deficiency of the perſonal exerciſe of the royal authority; they muſt judge of the diſability, they muſt abſolutely decide on the circumſtance which ſuſpends the perſonal exerciſe of royal authority; they alone will thus have an arbitrary power of declaring that there is a deficieney of the executive power, that is to ſay of ſuperſeding the King, accompanied by an arbitrary power of filling up the vacancy, by appointing a Regency or or any other form of government in his place, according as the exigency of the caſe, of which exigency they themſelves are to be the ſole judges, may demand. Thus will the King become a tenant at will, wholly dependent on the two Houſes of Parliament, and owe his exiſtence and political ſtability, not to the principles of the conſtitution, but to the curteſy and forbearance of his legiſlative maſters.

But ſuppoſing that the two branches of the legiſlative power have an excluſive right to provide for the deficiency of the executive as they ſhall think meet: who ſhall compel them to exerciſe their function? if they refuſe to do ſo, muſt the executive power become extinct? ſuppoſe this deficiency to happen, at a time when the lower Houſe of Parliament is not in being, when a diſſolution has taken place, and no writs have yet

been iſſued to call together a new Houſe of Commons; is the executive power to be ſuſpended and anarchy to prevail during the period of a long diſability? Perhaps the courſe of a long life? but the two Houſes of Parliament have a right of providing for the event, as they think proper, according to the exigencies of the caſe; ſuppoſe they ſhould vote that the exigencies of the caſe require that they ſhould aſſume it to themſelves, and ſo eſtabliſh an ariſtocracy, or ſome other Republican form of government.

If the Britiſh crown was made hereditary, it was not for the honour of a particular family or individual, it was from motives of convenience and public utility. The ſame principle, the ſame regard to the general weal demands that the perſonal exerciſe of the royal power ſhould be hereditary. Every argument drawn from a proſpect of the violent diſorders, from an apprehenſion of the civil diſcord, the furious commotions and fatal anarchy, that vex and debilitate States, when an elective monarchy prevails, may be applied to the caſe of a Regency. Indeed the principles of the reſolution before us, if duly followed up, ought to make the crown itſelf elective; for if the two Houſes of Parliament poſſeſſed the ſuppoſed right where the King is removed for a time only by indiſpoſition; ought they not, by a parity of reaſoning, to poſſeſs it, where the King

King is wholly removed by a demiſe? I own I cannot ſee any reaſon, why they ſhould be inveſted with it, in the one caſe, and want it, in the other. It may be ſaid the ſucceſſion is fixed by ſtatute; ſo that my argument does not apply: but ſo is the power of the two Houſes of Parliament fixed and defined by ſtatute; but what are ſtatutes oppoſed to venerable precedents! the precedent of an elective Regency may very eaſily be applied at a future day, to authoriſe an elective monarchy, and as the Houſes aſſume to themſelves the power of legiſlation, though a ſtatute has declared that their acts ſhall not have the authority of law; ſo they may arrogate to themſelves the power of appointing a King; though a ſtatute has ſettled the ſucceſſion of the crown.

I know not, in political efficacy, the difference between an elective monarchy, and an elective executive power; and the two Houſes of Parliament, judging of the diſability, and excluſively competent to ſupply the deficiency of their King, might find it expedient to ſuperſede his authority, and appoint elective Regents from father to ſon in *Secula Seculorum.* The very *Sanity* of the King under this reſolution becomes the ſubject of party: he will derive the continuance of his intellects, not from God and nature, but from the ſufferance of popular demagogues and parliamentary leaders. A

factious miniſter, with the two Houſes of Lords and Commons at his devotion, may tyranize over his maſters houſe, may incapicitate his ſovereign, ſupply the perſonal exerciſe of his authority with creatures of his own, in excluſion of the heir apparent; may continue the diſability through a long life, and thus, under the name of a Regency, revive in *England* the antient government of the *Mayors de Palais* of *France*, during ſuch an *interregnum*, for ſo I may call it. An ambitious ſubject, conſpiring with the two legiſlative bodies, and aided by the influence of the crown, might fortify himſelf in his poſt of eminence, might take ſuch meaſures, as would render the return of the rightful heir to the throne of his anceſtors arduous or impoſſible. Nor let this be thought a viſionary fear; our anceſtors would have thought an apprehenſion of what is paſſing before our eyes, at this moment, equally viſionary.

Abſtracted from theſe well-grounded fears; obſerve what monſtrous abſurdities muſt flow, from the doctrine, which thus makes the office of Regent elective. The appointment is to be made by Lords and Commons, ſays Mr. *Pitt*: but who ſhall oblige the Lords and Commons to co-operate, and concur in the deſignation of a perſon, or the deſcription of his powers? they differed at the time of the revolution, and the Lords were with difficulty induced to yield to

the

the Commons. Each aſſembly is independent of the other; they have no connection, no political unity in the abſence of the King; he is the great luminary that harmonizes their courſes, and holds them together in one ſyſtem. In their preſent ſituation the Lords have no more connection, no more political co-exiſtence with the Commons of Parliament, than with the Common Council of London. If the Lords and Commons differ, which ſhall predominate? to what moderator of their diſputes, what arbiter of their difference ſhall they appeal? There may be one Regent for England appointed by the Lords, another by the Commons: their act will not, on any principle that I know of, be binding on *Scotland*, ſo a third Regent may be choſen by the ſtates of that kingdom. The act of the *Britiſh Lords* and Commons has no force or validity to bind *Ireland*; each of the two Houſes of Parliament here, may chooſe a Regent: thus will there be no leſs that *five Regents* of the Britiſh Empire, all independent of each other; co-ordinate and conſtitutional. And, to add to the melancholy of ſuch an event, as the indiſpoſition of the Sovereign; the country may be torn with diſcord, and every appointment of a Regent be a trial of party ſtrength.

All the advocates for the reſolutions under our conſideration, have been guilty of an

an unpardonable fallacy, a fallacy, which is no leſs than treaſon againſt the conſtitution, and wholly confounds and outrages all our legal ideas of kingly power, on the one hand, and the rights of the people, on the other. They have affected to conſider the Lords and Commons, of the two Houſes of Parliament, as the people, as the whole body of the nation; and dared to apply to them the precedents of the Convention Parliaments, and the principles of the *reſtoration* and *glorious revolution*. And the reſolution, as I have already obſerved, is very artfully couched in terms borrowed from the bill of rights, that are applicable to the whole body of the people, and calculated to miſlead us, by the deluſive notion.

Moſt of the arguments advanced in ſupport of theſe reſolutions would be incontrovertible, if applied to the nation at large, or to a National Convention, and not to the two Houſes of Parliament. They apply to caſes where the neceſſity is ſuch as ſuperſedes the forms of the Conſtitution, not ſuch, as may be provided for, under the forms of the Conſtitution.

The power of the repreſentatives and the people are widely different, and ought ever to be kept diſtinct; if we mean to preſerve the power of the crown, and the rights of the people. It will lead to the moſt fatal conſequences, if we apply to the two *Houſes of Parliament*,

liament, the maxims and principles, which are true only, with regard to the great body of the people. The power of the PEOPLE is paramount to the Conſtitution, and ſuppoſes a ſuſpenſion of it. The power of *repreſentatives* is according to the *conſtitution*, and ſuppoſes it exiſting. The power of the PEOPLE ſuperſedes, regenerates, or creates the law. The power of *repreſentatives* is derived from, ſubordinate to, maintained and defined by the law. The power of the PEOPLE is primary and abſolute; that of repreſentatives delegated and circumſcribed. The power of the PEOPLE ſuppoſes a deficiency of the crown, a vacancy of the throne, from whatever cauſe. The power of *repreſentatives* implies a King filling the throne, exerciſing the power, and performing the functions of royalty. Let it no more be ſaid therefore that Mr. *Pitt* aſſerts the cauſe of liberty, that he vindicates the rights of the people. Such opinions can only originate with a profound ignorance of the Conſtitution. Mr. *Pitt*'s doctrines have the direct oppoſite tendency; they would go to *annihilate the rights of the people, and abſorb them in the devouring claims of an ariſtocracy.*

The friends of Mr. Pitt's Reſolutions will tell us, that precedents have been laid before them, to warrant the claim of the two eſtates of Parliament, to a right of appointing the Regent, on ſuch melancholy occaſions

caſions as the preſent. Were any thing wanting to ſtigmatize the weakneſs of their cauſe, it would be their production of ſuch precedents, and reliance on them as an authority. They have not been aſhamed to reſort to times of barbarity and confuſion, to the ſanguinary and miſerable periods that ſtain the page of hiſtory, and while we read, make us ſhrink back with abhorrence, and bluſh to think we are men. What ſhall we ſay of the cauſe, that can reſort for a juſtification to the examples of the bold uſurpation of the line of *Lancaſter*, or the vindictive fury of the houſe of *York?* What ſhall we ſay of thoſe who will quit the ſteady lights of law and conſtitution, to guide themſelves by the faint dawning, and twilight of thoſe days when mens minds were rude and unformed as the conſtitution, when *the ſtill voice of law and reaſon was unheard*;* violence was the meaſure of right, and every uſurper came to the Senate Houſe reeking with blood, and there found an obſequious Parliament waiting to give the form and ſanctions of law to the deciſions of the ſword! "The ancient hiſtory of England "(ſays Hume)† is nothing, but a catalogue "of reverſals and attainders; every thing is "in fluctuation and movement, one faction "is perpetually undoing, what was eſtab-"liſhed by another; and the multiplied

* See Foſter's Crown Law, 398. Diſcourſe 4th.
† Vol. iii, pa. 29.

"oaths,

' oaths, that each party required for the ' ſecurity of the preſent acts, betray a per- ' petual conſcioufneſs of their inſtability." The learned judge *Foſter* obſerves, " that " our hiſtory furniſhes inſtances, more than " enough, of an unwarrantable revenge taken " by the prevailing faction; that none of " the attainders of thoſe times, ought to be " conſidered as caſes from which the prin- " ciples of the law can be deduced," and adds from lord Hale,† " that Parliaments " have always been obſequeous enough to " the victor, and ready to paſs attainders " for his ſafety and their own."

Shall then the precedents of thoſe times, which in the opinion of our beſt legal writers, cannot furniſh principles of law; be ſufficient to eſtabliſh, what is ſtill more important, principles of the conſtitution? Municipal law is a leſs complex thing than conſtitution, the bulwarks of civil liberty, and the bounds of perſonal ſecurity are the firſt object; they are in ſome degree underſtood and fixed, before the functions of the legiſlature are defined, the balance of the different orders of the ſtate adjuſted. Yet in thoſe days even law and juriſprudence were imperfect, the precedents of the time would

* If the reader has any doubt on this ſubject, he may ſatisfy himſelf by conſulting the hiſtory of thoſe times; and he will find inſtances enough in Hale's hiſtory of the Pleas of the Crown; where he treats of treaſon.

not now be received in our courts of juſtice; and leaſt of all would be precedents of parliamentary attainders. If then the precedents of Parliament would be of no authority, or weight, where a ſingle individual of the meaneſt rank ſtood upon his trial; are they to be deciſive, in a meaſure that involves the dignity, the welfare, perhaps the peace and ſecurity of a whole Empire?

We may judge what the parliamentary precedents of thoſe days are, ſince we find, in the reign of Edward II. and others ſubſequent, the King perpetually iſſuing his ordinances, and iſſuing them in vain, againſt the illegal practice, which prevailed univerſally among the great Barons, of coming to Parliament, attended by large bodies of armed men;* and we find, in *Ryley*, a precedent of ſolemn treaty of peace, under the mediation of the Pope's legate, between King Edward II. and ſome of his rebellious ſubjects.

To illuſtrate the foregoing general obſervations, by a few brief references to the hiſtory of the time. In the reign of Edward II. from whence the firſt precedent is taken, the Barons having come to Parliament in defiance of the laws and the King's prohibition, with a numerous retinue of armed

* See ſeveral inſtances of theſe ordinances, in Ryley's Placita Parliamentaria. Pla. Par. 538.

followers;

followers; that unhappy prince was obliged to ſign a commiſſion, empowering the Prelates and Barons to elect twelve perſons, with authority (which was to continue irrevocable till Michaelmas next) to enact ordinances for the government of the kingdom, and regulation of the King's houſhold, which ſhould have all the force of laws and ſtatutes.

We find the *Spenſers* attainted, that attainder reverſed, and again renewed by the Parliament of that time; we find thoſe noblemen condemned to an ignominious death by the rebellious Barons, without even the form of a legal trial; we find that Parliament proceeded to try and depoſe their ſovereign, and renounced their allegiance to him by a ſolemn deputation; we find the King in the power of his rebellious ſubjects, compelled by Dureſs, to ſign a reſignation of the crown, and afterwards cruelly murdered by his own ſervants at the inſtigation of his neareſt connexions. What weight or credit is given to the precedent of Parliament appointing a council of Regency to aſſiſt the young King? is it of more validity, than that by which *Mortimer* was condemned unheard, and which was afterwards reverſt as illegal by a ſubſequent Parliament? The precedents of thoſe times would prove too much, we cannot pick and chuſe from among them, they muſt either

be received in *toto*, or all together reprobated.

Should we reſort to the reign of Richard II. we ſhall find a precedent to ſhew that the Houſe of Lords alone poſſeſt the excluſive power of appointing perſons to exerciſe the executive power, in caſe of infancy or incapacity of the King. The Commons apply by petition, (which is remarkable) to the Lords, and requeſt them to appoint a Council to manage public buſineſs; and the Lords do accordingly of their own mere authority appoint, not indeed a Regency, but a Council of nine But what Principles can be collected from the tranſactions of a reign that ſets all principles legal or conſtitutional at defiance? A Council of fourteen was appointed by the factious Barons, the commiſſion to thoſe perſons, ratified by Parliament, all the power executive and legiſlative transferred to them for a year, and the King himſelf by violence compelled to ſign this commiſſion, and ſwear to the obſervance of it. Five great lords accuſed or (as it was then called) appealed the King's Miniſters before Parliament, and Parliament, who ought to have been the judges, bound all their members, by an oath, to live and die, with the lords appellants, and defend them with their lives and fortunes. We find Parliament condemning numbers of their own body, without trial or examination,

on, to gratify the turbulent *Glouceſter* and his faction; we find them condemning one of their own members to die as *a traitor*, to gratify the King, and this for no greater offence, than uſing the privilege of Parliament, and complaining in a debate among themſelves, that the King's court was crouded with *Biſhops and Ladies.** In this reign the *Judges* of the land declared it as the law, "That the King hath the governance, and "may appoint what ſhall be firſt handled, "and ſo gradually what next in all matters "to be treated of in Parliament, even to "the end of the Parliament: and if any "perſon ſhall act contrary to the King's "pleaſure made known herein, they are to "be puniſhed as traitors." And that the Lords and Commons cannot, without the will of the King, impeach in Parliament, any of his judges or officers, for any of their offences; and if any one ſhould ſo do, he is to be puniſhed as a traitor. At the next Parliament (ſays Foſter) a cenſure ſufficiently ſevere and not warranted by any known rule of law did paſs upon them, their own meaſure was meted out to them; but in the 21ſt of the King theſe queſtions with the judges anſwers, having been read in full Parliament, it was demanded of all the eſtates

* One Haxey who propoſed ſome Petitions on the ſtate of the nation.

of

of Parliament, how they thought of the anſwers aforeſaid; and they ſaid, "*they thought* "*the ſaid juſtices made and gave their anſwers,* "*as good and lawful liege people of the King* "*ought to do.*" "A Parliament (ſays Foſter)* "that could ſolemnly adopt principles, ſo "contrary to the whole tenor of the ſtatute "of treaſons, anti-conſtitutional in every "point of view, ſubverſive of the undoubted rights of Parliament, and of all freedom of debate in either Houſe, ſuch a "Parliament muſt, unleſs under actual force, "be the willing tools of deſpotic power, and "in either caſe its opinion deſerves no manner of regard." This Parliament annulled, for ever, the commiſſion which had been ratified by a former Parliament, and declared it treaſonable to attempt, in future, to revive a ſimilar commiſſion; abrogated the acts that attainted the King's miniſters, declared the general pardon granted by the King invalidas, extorted by force, and attainted the Barons who had oppoſed the King, and reverſed the attainder of *Treſilian* and the other judges: but, what is very remarkable, this Parliament elected twelve Lords and ſix Commons to finiſh all buſineſs which had been laid before *Parliament* and not concluded, a proceeding which alone ſhould be deciſive to ſhew what cre-

* Foſter's C. L. 396.

dit

dit is due to the parliamentary precedents of this time.*

Come we now to the precedent of the acceſſion of Henry IV: a precedent anulled by the act of Edward IV. revived by the 1ſt of Henry VII. and which was more relied on than it deſerved in the debates of the convention in 1688. The Duke of *Lancaſter* called a Parliament in the King's name, he extorted a reſignation of the crown from *Richard*, but unwilling to truſt to that, he determined to have him ſolemnly depoſed in Parliament; he drew up a charge of thirty-three articles againſt him, and preſented it, to that body; it was not canvaſſed, nor examined, nor diſputed, in either Houſe, but ſeemed to be received with univerſal approbation. One man alone, the Biſhop of *Carliſle*, had the courage to appear in defence of his unhappy maſter; and he was ſeized and impriſoned, by order of the Duke of Lancaſter, for only delivering his ſentiments in his place. Thus, we find Parliament claiming mighty powers, yet wanting every thing neceſſary to them, even common freedom of debate. Thirty-three long articles of charge were at one meeting voted unanimouſly againſt *Richard* by the ſame Peers and

* In the reign of Edward III. there is a ſtrange tranſaction; the trial of Sir Thomas Berkley in Parliament by a petty jury. Foſter's C. L. 387.

Prelates,

Prelates, who, but a little before, had voluntarily and unanimouſly authoriſed thoſe very acts of violence, of which they now complained; and the throne being vacant by the depoſition of *Richard*, *Henry* claimed it in the name of Father, Son, and Holy Ghoſt, by the jumbled and inexplicable title of Conqueſt and Decent conjointly. He did not reſort to Parliament, as having the power of appointing, but only of rocognizing the Sovereign; he became King, nobody could tell why or how, (except by force) and the title of the Houſe of *March*, which had formerly been recognized by Parliament, was neither invalidated nor repealed, but paſt over in total ſilence.*

But ſuppoſing the precedents of the depoſition of Edward II. and Richard II. were conſtitutional and legal; they proceeded, on a principle, which ſurely does not apply to the caſe before us; on the principle of ſelf-defence, and a violation of the original compact. Both theſe unhappy Princes were ſuperſeded for incapacity and malverſation; the principle was right, though the particular applications of it might be villainous. If the charges were well founded, the conſtitution was ſubverted, the power had returned to the people; and they were entitled to interfere by the ſame right of ſelf-defence,

* See Hume's Hiſt. England.

which

which nature gives, to nations as well as individuals, in caſes of neceſſity.

Parliament, it is true, on the acceſſion of Henry the 6th, which is the next precedent, took upon themſelves to ſet aſide the deſignation of his father, who had by will, (which ſhews that theſe excluſive claims of Parliament were not then recognized) appointed the Duke of *Bedford* Regent of France, the Duke of *Glouceſter* Regent of *England*, and committed the cuſtody of the King's perſon to the Earl of *Warwick*; Parliament declined the name of Regent altogether, and appointed the Duke of *Bedford* Protector or Guardian of the kingdom, a title which they ſuppoſed to imply leſs authority; they inveſted the Duke of *Glouceſter* with the ſame dignity, during the abſence of his eldeſt brother; in order to limit the power of both theſe Princes, they appointed a Council of Regency; and committed the cuſtody of the infant King's perſon to his great uncle *Beaufort*, Biſhop of Wincheſter, who, as his family could never have any pretenſions to the crown, might ſafely, they thought, be entruſted with that important charge. This precedent, if it proves any thing, proves too much; but it proves nothing; it paſt *ſub ſilentio* through the moderation of the King's uncles, who acquieſced in what they probably did not approve. They were alone aggrieved, alone compe-

tent to call in queſtion, what had been done; they knew the title of their nephew was diſputed, they ſaw the country involved in the greateſt war in which ſhe ever had been engaged; and ſubmitted, from prudential motives, to what they knew at the time to be a uſurpation, but knew alſo to be dictated by zeal for the King's perſon and government.

We come now to the other precedent of this reign, on which Mr. *Pitt*, and the advocates for his reſolutions, have ſo ſtrongly relied; although they, and every body who looks into the hiſtory of that period, muſt be ſenſible, that this very Parliament, would inſtead of appointing York protector with limitted powers, have placed the crown at once on his head, had he been diſpoſed to take ſuch a decided ſtep. It is not in the principles of the conſtitution, as they were underſtood and laid down at that time; in the powers of Parliament as they were then defined; or in the Duke of *York's* ſuppoſed deference to them; that we are to look for a key to the precedent before us; but in the peculiar character of *Richard*, and the nice and peculiar circumſtances in which he ſtood. *York* was as much deficient in political, as he excelled in perſonal courage: though the crown was perpetually within his graſp, he feared to ſeize, what he wiſhed to poſſeſs. The Houſe of *York* had the beſt title, but

Henry

Henry the 6th had been in poſſeſſion of the crown almoſt forty years by lineal deſcent, and under a parliamentary ſettlement, in which the whole nation had acquieſced, and his title was ſupported by a numerous and powerful party. Theſe conſideration intimidated *Richard*, and threw an appearance of inconſiſtency over the reſolves of thoſe Parliaments, which were at his devotion. *York* demands redreſs of grievances at the Head of 10,000 men; he diſbands his army and flies, he returns, and the King being ſeized with an indiſpoſition, the Queen and Council are obliged to appoint him Lieutenant of the kingdom with power to ſummon a Parliament; and that Parliament appointed him Protector during pleaſure. Here is a precedent of the Queen and Council of themſelves diſpoſing of the ſupreme executive power, during the indiſpoſition of the King. Whether the name is Regent or Lieutenant the thing is the ſame.

But it is ſaid Parliament impoſed reſtrictions on *York*, and therefore, here is a precedent of the power of Parliament. No, we muſt look for theſe reſtrictions in the exceſſive caution of *York*, not in the power of Parliament; he himſelf, not Parliament impoſed them; a Parliament which entruſted the royal authority to a man, who had appeared in arms againſt his Sovereign, and had ſuch ſtrong adverſe pretenſions to the

crown, could not be averſe from his taking poſſeſſion of it. Immediately after this boaſted precedent, we find the Houſe of Peers alone aſſuming to themſelves the ſame powers, and actually exerciſing the ſame functions, which, it is contended, the preceding tranſaction gives to the *two Eſtates of Parliament*. The Houſe of Lords alone annul the former appointment, and declare the King to be reinſtated in his authority. Can we find the ſeeds of the conſtitution? Can we diſcover any rule of legal conduct in ſuch precedents as theſe? No, we find only the rude viciſſitudes of faction, and the blind ſubmiſſion of Parliament, that common engine of violence and wrong, to the prevailing party.

After gaining the battle of *Northampton*, and when the crown was within his graſp, *York*, inſtead of putting it on his head at once, laid his title before the Houſe of Peers; appealed to them as judges, and demanded the Sovereign authority as his right from their judicial determination. The Peers take, as their aſſeſſors, ſome of the Commons; and with that uſual regard to law and common ſenſe, which marks the precedents of thoſe times, recognize the title of *Richard*; but decree, that, as *Henry* had ſo long uſurped the name of King, he ſhould retain it during his life, while *York* ſhould poſſeſs the whole exerciſe of the executive power; that

that the latter ſhould be acknowledged heir to the crown; that every one ſhould ſwear to maintain his ſucceſſion; and that it ſhould be treaſon to attempt his life.

The acceſſion of *Edward* the 4th to the crown is an inſtance of a military election. The army was aſſembled, the croud being aſked whether they would have *Henry* for King rejected him, the young Duke of *York* being then propoſed to them, was received with loud acclamations; a number of Lords, Biſhops, and Magiſtrates were next aſſembled, at Baynard's Caſtle; they ratified the popular election; and ſo *Edward* became King. The firſt Parliament called by him, declared all the Parliaments held under the Houſe of *Lancaſter* illegal; and attainted King Henry the 6th, his Queen, and their adherents. About ten years after, that Pageant of a King *Henry* the 6th was reſtored; all the Acts made in the Parliaments of *Edward* the 4th were repealed; the Duke of *York* was declared an uſurper; he and his adherents attainted; and the attainders of the *Lancaſter* party reverſed. But, a few months after, *Edward* prevailed over his enemies; and a Parliament was ſummoned, which ratified, as uſual, all the acts of the victor, and recognized his authority.*

* Martial law was introduced at this time, and many of the nobility executed under it. The Conſtable of England was authorized by his Commiſſion, to proceed ſummarie, and de plano, ſine reſpectu and figura juſtitie ſola facti veritate conſpecta.

A precedent

A precedent was quoted, in debate, by Lord *Camden*, and with ſome appearance of triumph; but ſurely it need only be ſtated, to ſhew, that it does not apply to the preſent caſe. It was a determination of the *Lords Spiritual and Temporal* on a *Point* of *Law*; not an interference of the *two Houſes* to appoint a *Regent*; and they decided the point of law properly. The point was this, the Duke of *Glouceſter*, uncle to Henry the 6th, claimed, a right to *be Regent*, during the minority of his nephew, and in the abſence of the Duke of *Bedford* his elder brother, who was nearer to the Throne; and they declare, that ſuch deſire was not cauſed nor grounded in precedent, nor in the law of the land. But is this an authority, to ſhew that the *Heir Apparent to the crown being of full age and ability, to govern, and preſent on the ſpot, has no more right to be appointed Regent than any other ſubject.* Precedents to ſhew, that the *preſumptive* heir, has no right to the *Regency*, do not apply to the caſe of an *Heir Apparent.* Though Lord *Camden* will not ſuffer himſelf to ſuppoſe any difference between them, the law of *England* makes a wide one. The Heir Apparent who carries on the lineal ſucceſſion, is more dignified, more highly favoured, in conſideration of law. For proof of this, I ſhall only refer you to the Statute of Treaſon, [25 Edw. III.] which guards his perſon, with

the

the ſame eaſe, as that of the King; and is equally ſolicitous to preſerve the purity of his marriage-bed; a ſolicitude which is not extended to the heir preſumptive.

The conventions which reſtored Charles the Second, and effected the glorious Revolution of 1688, do not furniſh any precedent to juſtify the claim of the Lords and Commons to appoint a Regent. The power of thoſe aſſemblies ſtood on the peculiar circumſtances of the time, their interference was warranted by ſtrong neceſſity. We cannot reaſon from that interference, unleſs we are able to ſhew that a like neceſſity exiſts at this day.

The true principles of thoſe two great events are put in ſo clear a light by an admirable man and ſincere friend of the conſtitution, *Sir Joſeph Jekyl*, who was one of the managers for the Commons at *Sacheverell*'s trial, that I ſhall tranſcribe ſome of his words.——"It is far from the intent of "the Commons to ſtate the limits and "bounds of the ſubject's ſubmiſſion to the "ſovereign; that which the law hath been "wiſely ſilent in, the Commons deſire to be "ſilent in too; nor will they put any caſe "of a juſtifiable reſiſtance but that of the "Revolution only." And again, "To make "out the juſtice of the Revolution, it may "be laid down, that as the law is the only "meaſure of the Prince's authority and the "people's

" people's ſubjection, ſo the law derives its
" being and efficacy from common conſent;
" and to place it on any other foundation,
" is to take away the obligation: this notion
" of common conſent impoſes on both prince
" and people, to obſerve the laws."—" No-
" thing is plainer, than that the people have
" a right to the laws and the conſtitution;
" this right the nation hath aſſerted, and
" recovered out of the hands of them who
" had diſpoſſeſſed them of it, at ſeveral
" times. There are of this two famous in-
" ſtances, I mean the *Reſtauration*, and the
" *Revolution*; in both theſe great events,
" were the regal power and the rights of the
" people recovered."—" That the conſtitu-
" tion was wholly loſt, and recovered, at the
" Reſtauration, is known to all. And be-
" fore the Revolution, it is known how
" Popery and arbitrary power had invaded
" the conſtitution. The royal ſupremacy, of
" ſuch abſolute neceſſity to preſerve the peace
" of the kingdom, was diſclaimed; the pa-
" pal ſupremacy, by a ſolemn embaſſy to
" Rome, acknowledged. At that time the
" popular rights in almoſt all the ſpecies
" were invaded; that great privilege of the
" people, on which all others depend, that
" of giving their conſent to the making
" new or repealing old laws was invaded;
" and a diſpenſing power, which rendered
" all our laws precarious, and at the will of
" the

" the Prince, exerciſed. Theſe and a great " many other acts of abſolute power, are " mentioned in that act of Parliament called " the *Bill of Rights.*"—" And as the nation " joined, in their judgment of their diſeaſe, " ſo they did in the remedy. They ſaw " there was no remedy left but the laſt, and " when that remedy took place, the whole " frame of the government was reſtored en- " tire and unhurt." †

The Parliament which reſtored Charles, being ſummoned without the King's conſent, received at firſt only the title of *Convention.* And it was not, till the King paſſed an act for that purpoſe, that they were called by the appellation of *Parliament.*

What was done by the Convention of 1688, if duly conſidered, will be found a precedent, that inſtead of ſupporting the claims of the Convention of 1788, militates againſt them. The Peers and Biſhops had addreſſed the *Prince* of *Orange*, deſiring him to ſummon a *Convention*, by circular letters; and to aſſume in the mean time the management of public affairs. All the members, who had ſat in the Houſe of Commons during any Parliament of Charles the Second, (the only Parliaments whoſe election was regarded as free) were invited to meet; and to them were added the mayor, and fifty of

† State Trials, V. 5. p. 667, 668.

the common council. This (ſays Hume †) was regarded as the moſt proper repreſentative of the people, which could be ſummoned during the preſent emergence. They unanimouſly voted the ſame addreſs, with the Lords; and the Prince, being thus ſupported by all the legal authority, which could poſſibly be obtained in this critical juncture, wrote circular letters to the counties and corporations of *England*; and his orders were univerſally complied with.——A *Convention* ſummoned in this extraordinary way, and returned by the people, in full contemplation of the great Revolution then depending, and with full powers, and for the expreſs purpoſe, of ſettling the government, cannot ſurely be compared, with the Houſe of Commons returned under the King's writ, and meeting, at a certain day, under the King's prorogation; any more, than a temporary indiſpoſition of the chief magiſtrate, can be compared with a total ſubverſion of law and conſtitution. Amidſt all the violence of party, amidſt the wildneſs of ſpeculation, which might have be enexcuſable at ſuch an extraordinary criſis, the *Convention* never dreamed of ſuch claims, as have been advanced on a late occaſion. Amidſt a convulſion, which ſhook the ſtate to its baſe, they, with a pious hand, collected and preſerved the ſeeds of

† Hiſt of Eng. V. 8. p. 245.

the

the conſtitution, from amongſt the ruins.—Even the moſt zealous *Whigs* deprecated the idea of making the Crown elective. They grounded themſelves entirely on neceſſity; they conſidered the caſe of the Revolution as ſingle and iſolated. They reſolve, "That "the King, by having endeavoured to ſub-"vert the conſtitution; by violating the ori-"ginal compact, between the King and Peo-"ple; and having violated the fundamen-"tal laws, and withdrawn himſelf from the "kingdom, had abdicated the government." They ſtate all their grievances, and the enormities of King *James*, as their juſtification; and conclude, "Having therefore an entire "confidence that the *Prince* of *Orange* will "perfect the deliverance ſo far advanced by "him, and will ſtill preſerve them from the "violation of their rights, which they have "here aſſerted, and from all other attempts "upon their religion, rights, and liberties." They reſolve, "that the *Prince* and *Princeſs* "of *Orange* be, and be declared King and "Queen, *&c.* and pray them to accept the "Crown."——In the act for declaring the rights and liberties of the ſubject [2d. Seſſ. 1ſt W. & M.] notice is taken, that the late King *James* did endeavour to ſubvert and extirpate the Proteſtant religion, and the laws and liberties of the kingdom; and the particular inſtances are ſet forth. It then declares, that that unhappy Prince had abdi-

cated the government; and " that it pleaſed " Almighty God, to make the *Prince* of *Orange* " the glorious inſtrument, of delivering the " kingdom from popery and arbitrary power." By another act a particular form of prayer is appointed, to thank God for this deliverance; and an act for preventing vexatious ſuits againſt ſuch as acted in order to the bringing in their Majeſties, or for their ſervice, [1ſt W. & M. 2d Seſſ.] takes notice, " that " at the time of his Majeſty's glorious enter- " prize for delivering this kingdom from " Popery and arbitrary power, divers Lords " and Gentlemen, *&c.* did act as lieutenants, " *&c.* tho' not ſufficiently authoriſed there- " unto; and did apprehend and put in cuſ- " tody divers criminous and ſuſpected per- " ſons; and did ſeize and uſe divers horſes, " arms, and other things; and enter the " houſes and poſſeſſions of ſeveral perſons, " and did quarter and cauſe to be quartered " ſoldiers and others there; which proceed- " ings *in times of peace and common ſafety would* " *not have been warrantable;*"—yet that act declares, " they were neceſſary, in regard " of the exigence of public affairs, and ought " to be juſtified."

The proclamation which iſſued on the acceptance of the crown by *William* and *Mary*, is ſo remarkable, that I cannot paſs it over in ſilence. " Whereas it hath pleaſed Al- " mighty God, in his great mercy to this " king-

" kingdom, to vouchſafe us *miraculous deli-*
" *verance* from Popery and arbitrary power;
" and that our preſervation is due, next un-
" der God, to the reſolution and conduct of
" his Highneſs the Prince of *Orange*, whom
" God hath choſen to be the glorious inſtru-
" ment, of ſuch ineſtimable happineſs, to
" us and our poſterity, &c. We therefore,
" the Lords ſpiritual and temporal, and
" Commons, *together with the Lord Mayor*
" *and Citizens of London, and others of the*
" *Commons of this realm, do with* a full
" conſent publiſh and declare, &c. &c."

From theſe quotations two inferences do moſt plainly follow: firſt, that the Convention of 1688 grounded their authority, and juſtified their interference, not on any uſual powers incident to *Parliament*, in the common courſe of the conſtitution; but, as I have already ſaid, and cannot too often repeat, on the peculiar neceſſity of the Criſis, on the violation of the original compact between the King and the people. Second, that the Convention did not claim their rights of interfering, to fill the vacant throne, as being the two *eſtates of Parliament*, merely, but, as being the beſt form of a *National Convention*, which the ſhortneſs of the time would allow, or could be got together, on the ſpur of the occaſion; and this I think, is manifeſt from their wording of the proclamation, and joining with themſelves the

Lord

Lord Mayor, and Citizens of London, and others of the Commons of England. I hope I ſhall be excuſed, for dwelling ſo long on this ſubject, conſidering how much the principles of the *Revolution* have been diſtorted, and the precedent miſapplied.

Under the uſual forms, in the ordinary courſe of the conſtitution, the two Houſes of Parliament have no right to diſpoſe of the executive power; neither abſtract legal reaſoning, nor antient precedent ſupports the claim. An extraordinary interference, then, can only be juſtified by neceſſity, which reſolves government to its elements, and turns back the ſtream of power to the people. A neceſſity paramount the conſtitution can never be alledged, while the conſtitution remains. Is the conſtitution deſtroyed, the execution of the laws ſuſpended, the eſtabliſhed religion endangered by the indiſpoſition of his Majeſty?—But ſuppoſing that ſuch a neceſſity did exiſt, and that, by any means, the throne were vacant; not the two Houſes of *Parliament*, but a National Convention alone will ſatisfy the ſpirits of the maxim, which derives all power from the people.

But I will ſuppoſe it poſſible, that a neceſſity might authoriſe the interference of the legiſlative body, without diſſolving the conſtitution. That neceſſity muſt be either the impoſſibility of providing for the emergency, by any other mode; or the miſchief

attending

attending the propoſed alternative. Where an option remains no neceſſity can properly be ſaid to exiſt. If we can provide for the emergence of the King's diſability, under the forms of the conſtitution; it is not free and open for us to reſort to the plea of neceſſity, for an unconſtitutional interference of the legiſlative body. All violent and extraordinary modes of proceeding ſhould, like *draſtic* medicines, be reſerved for an extremity; for they always exhauſt and weaken the conſtitution, cauſe agonizing convulſions, and often death.

How then has the conſtitution provided for the melancholy event before us? I ſay by an obvious analogy between this diſability, which is a temporary political death, and the actual demiſe of the Sovereign: and as his Heir Apparent ſucceeds of courſe on his actual demiſe, and is King before coronation, the next moment after the death of his anceſtor, becauſe by *the law of England there is no interregnum, and coronation is but an ornament or ſolemnity of honour;** ſo by a parity of ſtate reaſon, and conſtitutional principle, in order to avoid the anarchy and diſcord that are to be apprehended, when there is a competition for the ſupreme power, the weakneſs and party rage incident to an effective Government; the Heir Apparent

* Coke 3d. inſt. Ch. i. p. 7. Hale, P. C. vol. i. p. 101.

ought

ought to ſucceed to the functions of the Sovereign; ſhould the exerciſe of the ſupreme power be ſuſpended, by ſickneſs. Is there in this any thing difficult, abſurd, or repugnant to any one principle of law or conſtitution? The doctrine of lineal hereditary ſucceſſion implies it; the Britiſh conſtitution requires it; for it abhors any chaſm or ceſſation of the executive power, any interpoſition of extraneous authority. The maxim, that *the King never dies*, means that none of thoſe caſualties, which are incident to human nature, ſuſpend for a moment the functions of the chief magiſtrate; but that they are inſtantly ſupplied by the next in right of ſucceſſion, and the ſpirit of the maxim applies to a *political* as well as *actual* demiſe.

Mr. *Pitt*, while he in terms aſſerts, *that any other ſubject has an equal right to the Regency, with the Prince of Wales;* does in fact admit, that he, and he alone, as Heir Apparent, has an excluſive and indefeaſible right to the exerciſe of the executive power; for he does admit him to be the moſt proper perſon to be appointed *Regent*.—But how moſt proper?—not, certainly from his character and talents; elſe, why the baſe and unworthy jealouſy? why the libellous and unconſtitutional reſtrictions.—It muſt be then ſome thing reſulting from his ſtation and place; ſomething incident to his birth. It muſt be his quality of Heir Apparent, giving him

an

an original, inherent right, which the two Houſes of Parliament may *recognize*, but can neither *give or take away*. Here we confeſs the ſacred voice of truth, forcing its way, through all the ſimulation and deceit, of intereſt and ambition; amidſt the wild abſurdities of faction, this confeſſion is extorted *that the Prince of Wales is the moſt proper perſon to be Regent;* Words which uttered by thoſe who grieve to ſee, and have done their utmoſt to defeat his title, can only mean, that he has an *excluſive right to be Regent.*

But we are told *Nemo eſt Heres viventis*, a technical rule reſulting from the feudal origin of our laws, and ſuperſeded frequently even in the diſpoſition of private property, by the liberality of modern determinations. This maxim cannot be applied on this occaſion, without confounding the perſon, with the political character.

The King of England has an heir during his life. The law recognizes him, the ſtatute of treaſons (25 E. III) holds him forth to view as the object of peculiar veneration, marked out by the Conſtitution, diſtinguiſhed from other ſubjects by peculiar privileges; his exiſtence is conſidered as inſeparably connected with the welfare of the State, and the compaſſing his death is made equally criminal, with the compaſſing that of the King: and why? becauſe, though not actually inveſted with the executive power,

he is conceived to ſtand ſo immediately near it, that the moment the King is removed, it reſts on him without pauſe or chaſm. He accompanies the King in the orb of his miniſtry; an inferior luminary indeed, but inſeparably connected, and forming a part of the ſyſtem, ſhining with a portion of the light of Majeſty, aſſociated in the gratitude and adoration of thoſe who are warmed and cheared by its influence: and the moment the great luminary declines ſucceeding to his ſtation and diſpenſing his light.

But perhaps ſuch miſchiefs would reſult from this doctrine, were it followed up in practice, that it becomes neceſſary for the legiſlative body by, an extraordinary interference, to diſpoſe of the executive power. What are the apprehended miſchiefs? They can only relate to the rights and prerogatives of the Sovereign, to the power and principles of Parliament, or to the rights of the people. Of the former, I ſhall ſpeak, when I come to conſider the propoſed limitations. As to the latter, it might be urged, with equal reaſon, that the two eſtates of Parliament ought to interfere on the actual demiſe of the King, to hold the royal functions ſuſpended, to ſcrutinize the claim of his ſucceſſor, circumſcribe his authority, and fetter him with conditions. Even ſuppoſing the *Heir Apparent* were immediately to aſſume the exerciſe of the executive power,

on

on the diſability of the Sovereign, *that*, would no more trench on any of the conſtitutional rights and powers in the State, than his immediate ſucceſſion in caſe of an actual demiſe. The power of a Regency is naturally feeble; there is little danger therefore, to fear encroachments on the Conſtitution, from its adminiſtration of the executive power. Should any ſuch thing be attempted, the legiſlative body have the ſame remedy againſt a *Regent*, that they have againſt the *King* himſelf. The remedy is not by confounding the *legiſlative*, with the *executive*; nor by appointing or controuling the chief magiſtrate of the State; but, by precluding or correcting the abuſe of his authority, in the mode which the Conſtitution has pointed out; by the power of impeaching his ſervants and adviſers; and by withholding the ſupplies. Thoſe, who would ſeek for any other ſecurity of our rights, ſeek what is unknown to the *Britiſh Conſtitution*, and overthrow what they would ſeem moſt zealous to maintain.

Nothing which has been here advanced, militates with the Statute of Anne 6. c. 7, or inſinuates a doubt of the power of the *whole legiſlature* co-jointly, to limit and alter ſucceſſion. I look on the line of hereditary ſucceſſion, not as a thing unchangeable and indefeaſible, but as a great rule of political convenience, founded in conſummate wiſ-

dom, and ſanctified by uniform practice with a few deviations, which rather ſtrengthen the rule. I would hold it ſacred, I would not allow myſelf to ſuppoſe in ſpeculation the poſſibility of breaking through it, inaſmuch as any departure from it, is ſo dangerous, and can only be juſtified by ſome invincible neceſſity; no leſs, indeed, than the preſervation, or perdition of our preſent happy Conſtitution.

Enough has already been ſaid on this particular point, to ſatisfy any man of common ſenſe. But the form of the Conſtitution has been ſo diſguiſed; ſuch falſe and pernicious doctrines have gone abroad, ſuch groundleſs clamours have been raiſed, the public mind ſo poiſoned by illegal notions, diligently inſtilled by a deſperate and diſhoneſt faction, and greedily ſwallowed by a deluded populace; that one cannot be too ſolicitous, to reſcue and vindicate the truth, and place the right of the Heir Apparent on its true Conſtitutional baſe.

There is a point of view, in which, if we conſider this ſubject, the right of the Heir Apparent to the perſonal exerciſe of the executive power, on the diſability by indiſpoſition of the reigning Sovereign, muſt appear unqueſtionable. The ſupreme executive power can never be annihilated, or ſuſpended; it is co-exiſtent with the laws of nature, and the rights of man; with the

principles

principles of ſelf-preſervation, and the exerciſe of free will. The people cannot ceaſe to deſire their own good; and forms of government are but modes of purſuing the common good agreed on by the people. The executive power muſt then be ſomewhere, it is the inherent endeavour of the community at ſelf-preſervation. It muſt be either in the King—in his regal line—in the legiſlative body—or in the body of the people at large. It is not in the King, *that* is acknowledged.—It cannot be in the *legiſlative* body, the law and Conſtitution of England forbids, while it precludes an union of the executive and legiſlative power. Is it then, in the body of the people at large? There is an unerring teſt, by which it may be known and aſcertained, whether the power has reverted to its original ſource—the people; the people, who are paramount the forms of the Conſtitution, might direct it into other channels, alter its form and deſignation, in other words, new-model the Conſtitution. But will any one maintain the enormous poſition, that in caſe of a temporary indiſpoſition of the Sovereign, it is free for, or competent to the people, to alter the Conſtitution? The power, then, is not in the King—it is not in the legiſlative body—it is not in the people. Where ſhall we look for it? The ſettlement of the crown, which gave the executive power to

the

the firſt King of the reigning family, his heirs, and ſucceſſors, will tell us ;—in them it muſt remain, until ſome event ſhall happen, ſuch as an extinction, (which God forbid) of the whole illuſtrious line, and all that are entitled after them, in order of ſucceſſion, or what is equally improbable, a violation of the original compact ; to reveſt the power in the people.

If then, the perſonal exerciſe of the executive power, is prevented in the King himſelf, by any cauſe ; if it cannot be interrupted for a moment ; if it is an eſſential element of government, and like the elements of nature, may be altered and tranſferred, but cannot be deſtroyed ; if it cannot reſt in the *legiſlative* ; if it is manifeſt, that it has not reverted to the people, it follows, by an inevitable conſequence, that it muſt reſide in the *Heir of the Crown, and in him alone.* This ſeems to be a very plain, and uncontrovertible truth, yet on the denial of it, plain as it is, Mr. *Pitt*, ſuch is the force of popular deluſion, builds a name as champion of the Conſtitution.

I come now, to Mr. Pitt's 3d. reſolution, and waving all critical obſervations, on the looſe ambiguous manner in which, this, as well as the preceding one, is worded ; I muſt obſerve, that this reſolution is not ſupported by the 2d ; for though it might (which I deny) be conceded, that it is the *right* and *duty* of

of the *Lords* and *Commons*, to provide for the deficiencies of the executive power; it does not follow, that the mode here alluded to, is legal or conſtitutional.

And firſt, I deny, that in order to preſerve the King's authority entire, it is *neceſſary* for the two eſtates of Parliament, to interfere. Next I affirm, that ſuch an interference, as is propoſed, ſo far from preſerving, would ſubvert the King's authority.

The King's authority, in the *legal*, and that ſhould be the only *parliamentary* ſenſe of the words, means not the authority of the *individual*, but of the crown; not of *Caius* or *Lucius*, but of the chief magiſtrate. The law of *England* knows not the King, his people know him not, as an *individual* acting for his private emolument; they know him, as, at once the *father* and the *creature* of his people, acting only for the public good. Every attempt, to conſider the *man*, as contra diſtinguiſhed from the *King*, is treaſon againſt the Conſtitution; and can only be urged, at this time of day, by thoſe who would invade the neceſſary conſtitutional prerogatives, and inherent functions and powers of the crown; under the thin pretence of ſecuring the poſſeſſion of them to his majeſty. To preſerve entire the authority of the King; the two Houſes of Parliament are to take it entirely to themſelves; the influence of the crown is to be turned againſt itſelf;

itſelf; and a miniſter's gratitude to his maſter, ſhown in outrage to his family.

" It is neceſſary (ſays this reſolution) that " the Lords and Commons ſhould determine, on the means whereby the royal " aſſent may be given to bills, reſpecting " the exerciſe of the powers and authorities " of the crown, in the name, and on the " behalf of the King, during his Majeſty's " indiſpoſition." Is not this an exerciſe of both legiſlative and executive power at once, by two eſtates of Parliament, under cover of the moſt wretched fiction that ever inſulted the underſtandings of the people. The Lords and Commons determine on certain acts; and to give theſe acts the form of law, without the ſubſtance, the ſanction of the third eſtate; they ſet up an airy phantom, a Pageant created by themſelves, to perſonate the King; they agree that it ſhall be called the third eſtate, and give the royal aſſent, in a manner dictated by themſelves, to acts framed by themſelves. A rare device, which followed up to its principle would lead to the eſtabliſhment of a tyranny in *England*; while, by a political legerdemain, by the faetious uſe of two or three figures in maſquerade, a *Convention* transfers to itſelf, all the authority of the Sovereign.

The ſhadow which is ſet up, to perſonate the King, and give the royal aſſent to acts or ordinances of the two Houſes of Parliament,

ment, is irreconcileable with the letter, and the ſpirit of the law, it will virtually repeal this declaratory act of Charles II. † It wants the conſtitutional controul, the negative, in which the ſafety of the executive power conſiſts. The circumſtance, and the only circumſtance, for which the concurrence of the King is required, to give validity to acts of Parliament, is free-will, the power of pronouncing thoſe emphatic words, LE ROI S'AVISERA. If the King himſelf were always obliged to aſſent to the acts of the two Houſes, his appearance in Parliament would be a very ſilly pageant; his concurrence in acts of legiſlation, a very idle ceremony.

The object, too, for which the fiction is adopted, is ſuch, as renders the precedent truly formidable.——It is for the profeſſed purpoſe, of paſſing bills reſpecting the power and authority of the crown. "The legiſla-
"tive (ſays Blackſtone) cannot abridge the
"executive of any rights which it now has
"by law, without its own conſent. Since
"the law muſt perpetually ſtand as it now
"does unleſs all the powers will agree to
"alter it."* By means of the fiction before

† That ſtatute did not introduce any new law; it did not declare any new principle; it only ſolemnly recognized an old maxim of law and conſtitution. It was enacted then, as a ſort of *amendi honorable* of Parliament for its tranſgreſſion; a memorial of their repentance of a frantic uſurpation.

* Comm. v. i.

us, the two Houſes of Parliament, not only legiſlate, without the concurrence of the executive power; but the very executive power itſelf is to be the ſubject of their legiſlation; the victim rather of their uſurpation; while they arrogate to themſelves a right of declaring and defining the extent, and preſcribing the exerciſe of the powers and authorities of the Crown. The words of this reſolution are broad and general indeed.—Under it, the two Houſes of *Parliament* may new-model the conſtitution; abridge or reſtrain the powers of the Crown; or transfer them wholly to themſelves. All theſe acts may come under the deſcription of bills reſpecting the power and authority of the Crown.

Lord Coke has been quoted * as an authority in this caſe; where, in 4th Inſt. he lays it down, that the King may be repreſented by commiſſion under the great ſeal of *England*, to certain Lords of Parliament, he being within the realm, by reaſon of SOME INFIRMITY. But this muſt be underſtood of ſome infirmity, which leaves the King the uſe of his faculties, the power of volition; not a profeſſed diſability. Shall a decided incapacity to govern be eſtabliſhed by proofs; and yet, ſhall he be ſuppoſed to do an act which neceſſarily implies in him a full capacity?—

* See 4 Inſt. 6. and the precedents there quoted from the Parliament-roll. 24 Edw. III. 25 Edw. III. 3. Edw. IV. and like patent to E. of Warwick, ſame Parliament.—So 28 Eliz.

How

How groſs an abſurdity! The King's ſign manual is requiſite, as an authority for making out ſuch a commiſſion; and in all the precedents, the particular cauſes that occur to prevent the King's attendance, are ſtated; the King, ſpeaking in his proper perſon, recites them. Conformably then to all the precedents, the King muſt ſpeak in his own perſon, he muſt recite the cauſe of his abſence—ſhall he miſtate the fact? That would be error and invalidate the inſtrument. Shall he ſtate his own diſability? His own derangement of mind inducing an incapacity? *That*, no man is competent to do, ſays the law of the land. His Majeſty's infirmity has been compared to the caſe of infancy; what is the precedent from the reign of Henry VI.? An act of indemnity was thought neceſſary for the ſafety of thoſe who adviſed the putting of the great ſeal into the hands of an infant King. Tho' the act was the appointment of a Regent, a neceſſary meaſure.

But theſe commiſſioners will differ widely, from any that we find, in any precedent. The commiſſioners, in all the precedents, are to ſpeak the ſenſe of the King to his Parliament; the commiſſioners here, are to *eccho* back to a parliamentary *convention their own ſenſe*. But what authority have the commiſſioners under ſuch a commiſſion? Surely a delegated one; Can the ſtream riſe above its ſource? Can the delegated authority riſe

above its original? Can the King communicate a power which he himſelf does not poſſeſs? But the King himſelf has no power; it is confeſſed he has not. The want of it is the very foundation of the interference of the Lords and Commons. Does the affixing of the great ſeal to their commiſſion convey to them any additional authority? by no means. The affixing of the great ſeal is not the appointment; the appointment muſt be by the King. The great ſeal is only affixed, in evidence of that appointment, and the authority for affixing it is the King's ſignature. So that, either the King muſt be competent to act, and then the commiſſion is unneceſſary; or incompetent, and then the commiſſion is illegal and invalid.

But the authority of Parliament will give to this inſtrument that validity, which it ought to derive from the appointment of the King. Obſerve here, I beſeech you, how the *convention* of Parliament not only reaſons, but acts, in a circle, and ends where it begun. It acts, to legiſlate, and legiſlates to act. It confeſſes itſelf incompetent to the work of legiſlation, becauſe of the deficiency of the executive power; and yet, the means which it adopts to ſupply that deficiency, are a very ſtrong and marked act of legiſlation; an attempt to avoid the ſemblance, by uſurping the reality. The impowering certain perſons to do certain acts reſpecting

ſpecting the community; the impowering certain perſons to act in the name, and on behalf of the King, in matters vitally affecting his prerogative; the directing a certain uſe to be made of the great ſeal; ſurely, theſe are acts of *legiſlation* of the moſt decided kind; and the only uſe of proceeding in this circuitous and complicated manner, is to dazzle and perplex the vulgar, ever ready to admire what they do not underſtand; that they may not ſee the enormity of the precedent before them.

The Solicitor General of *England*, tells us, this is a ſubject perplexed with difficulties, and involved in labyrinths. It is only ſo, to thoſe who delight in crooked ways, and bewilder themſelves, in labyrinths of their own making. And what a clue does he offer us! We *are to be governed by the ſubtleties of metaphyſical Lawyers.* We are to believe in a tranſubſtantiation more extraordinary than any thing of Lord *Peter*'s in the Tale of a Tub, and this faith is to ſave the ſoul of the conſtitution alive; but we have not ſo learned the conſtitution. The conſtitution is founded in the common ſenſe, and common feelings of mankind—its great truths are ſimple and obvious, that he that runs may read. Its proceedings are conformable to its maxims; direct, dignified, and intelligible.

Mr

The Solicitor General of England, with the narrow technical reading of his profeſſion, has adverted to legal fictions. But where are thoſe fictions admitted? In the practice of the courts; in the offices of clerks in thoſe courts; in the transfer of private property; and the forms and titles of judicial proceedings. Legal fictions there are, but where will he find a precedent of a conſtitutional fiction. Legal fictions are ſometimes admitted, not of neceſſity, but merely from a religious veneration for antient forms. Thus the King is at this day ſuppoſed to be perſonally preſent in the Court of King's Bench, which in antient times was actually the caſe. Sometimes they are adopted, to further juſtice; by amplifying the juriſdiction of courts, giving the party a more efficacious remedy, or the choice of tribunals; thus are perſons ſuppoſed to be in the cuſtody of the marſhal, to give juriſdiction to the King's Bench; and ſuch is the ſtring of fictions, on which the modern proceedings in ejectment are founded; ſometimes they are employed in conveyance; thus a *recovery*, under the form of an adverſe ſuit, becomes one of the common aſſurances of the land; ſometimes they are introduced for the ſake of preſerving uniformity of ſtyle in the public acts and records; thus, though the King may be an

infant,

infant, the public acts, writs, letters patent, and commiſſions run in his name; and he is in that reſpect ſuppoſed competent to all the functions of his royal ſtation; but this is to avoid the infinite perplexity, and confuſion, which would be introduced into public tranſactions if their titles were to be perpetually varying. In fact, legal fictions exiſt only in the modes and accidents; they cannot be admitted in the ſubſtances; that is to ſay, they cannot alter the nature of things; though they may vary and regulate the manner of proceeding with reſpect to them. Legal fictions therefore cannot be legal titles. They cannot in themſelves found a right or confer a property; though they may be inſtrumental, in the hands of the law, to defend or purſue that right; to recover or transfer that property. Legal fictions are the ſubſervient creatures of the law, liable to be controuled, examined, ſuſpended, or wholly ſuperſeded by it for the ſake of ſubſtantial juſtice. For it is a maxim of the law that legal fictions cannot work a wrong. Fictions of law, therefore, can never be above the law, by which they are examinable; therefore they never can be the grounds of legiſlation; for then, they would be above the law. But by the mode of argument before us a legal fiction, would aſcend from mere forms (its proper ſphere) to ſubſtance. It would create a right, the moſt important, the right of legiſlation;

giſlation; it would repeal not only the law, but the Conſtitution of the land. It would annul one of the orders of the State, and transfer all the powers to another.

It is ſaid letters patent, and public acts paſſed even in the reign of a baby King, bear his name, and appear throughout, as if they owed their exiſtence ſolely to him. This only ſhows that the *Britiſh* law abhors the appearance of any chaſm, in the ſupreme executive power; and rather than ſuppoſe any ſuch thing adopts a fiction. But in truth, as I already obſerved, this fiction is only in recitals and words, confined to a department merely official and clerical, and admitted only, for the ſake of uniformity in ſtyle. It is no argument, to prove, that the baby King can be made to perform any kingly function, or exerciſe any act of himſelf, or that his royal powers and authorities may be transferred to the two Houſes of Parliament by a fiction. The fiction is authoriſed, by the King's actual functions being performed by a Regent; but a fiction cannot give the power of appointing one. And this is confirmed by the precedent from the reign of Henry VI. Strange! that a fiction which was only admitted to preſerve entire the royal functions and authority, ſhould be uſed as an argument to ſubvert them.

The

The fallacy ariſes from confounding the twofold exiſtence of the King. He has a political exiſtence, in which the law ſees in him, no diſability, no infirmity, no mortality; and a perſonal exiſtence. It is to his political exiſtence, that fictions in law apply. Thus it is ſaid the King never dies, the King can do no wrong. The ſtyle of the court of King's Bench, is, *before us at Weſtminſter*; *before us at Dublin*: for though he cannot be in two places at once; and it would be highly improper, and interrupt the due adminiſtration of juſtice, ſhould the King be actually and perſonally in court, at the determination of any cauſe, particularly on the crown ſide; yet he is politically preſent by his judges. But there are certain exertions of the ſupreme executive power, which are perſonal; certain functions, in which the King muſt come forward, in his natural capacity; becauſe he muſt deliberate; he muſt judge for himſelf, he muſt exerciſe free-will. Such is the giving the royal aſſent, or diſſent, to acts of the two houſes; the paſſing of commiſſions, letters patent, grants and pardons under the great ſeal. In all ſuch caſes, the King's concurrence muſt be ſignified by ſome corporeal act; and if the Sovereign, from whatever cauſe, is incompetent to ſuch corporeal acts of Sovereignty; the perſonal exerciſe of the ſupreme executive power, muſt be performed

by a ſubſtitute; but no fiction of law can make the King himſelf appoint that ſubſtitute, and ſupply the deficiency of his own free-will, by an actual exerciſe of it. No omnipotence of Parliament can make the people believe, at one and the ſame inſtant, the actual ability and diſability of the Sovereign.

But it is ſaid the mere affixing of the great ſeal to the commiſſion, will give it the authority of a record, and legalize all ſubſequent proceedings. I muſt beg leave, to controvert this poſition. The authority given to inſtruments under the great ſeal, is from their coming in the ordinary courſe of the Conſtitution, according to certain eſtabliſhed forms, and attended with the ſanction of thoſe, who are inveſted with legal official powers to iſſue them, and give them validity. It is not, becauſe ſuch, or ſuch an inſtrument happens to have the great ſeal affixed to it, that it has the authority of a record. The great ſeal muſt be affixed, by thoſe who have a legal right to the cuſtody of it; it muſt be affixed according to legal forms, and the import of the inſtrument muſt be legal and conſtitutional. Before we admit, that the great ſeal affixed by the command of a *Convention* of Parliament, to a certain inſtrument appointing ſubſtitutes for the King, to meet the ſaid Convention; and in his name, and on his behalf to aſſent to their acts, will have the

authority

authority of a record, and legalize all ſubſequent proceedings; we muſt eſtabliſh, firſt the authority of the Lords and Commons, to direct ſuch an application of the great ſeal, without the authority of the King's ſign manual; and next the legality of ſuch an inſtrument.

According to the argument, in ſupport of the propoſed fiction, if any man, no matter how, becomes poſſeſſed of the great ſeal, and affixes it to any inſtrument, that inſtrument can no longer be queſtioned; though it were a pardon to himſelf of the very offence of ſtealing it. Suppoſe *Blood*, inſtead of the crown, had taken the great ſeal, or that the thieves who robbed the preſent Lord Chancellor of *England*, had ſtolen the ſeal, and affixed it to the grant of ſome patent employment, or crown lands; would the validity of ſuch a grant be unqueſtionable?

If the Lords and Commons have a right to direct the great ſeal, to be affixed to any inſtrument; they muſt, of courſe, have a right to grant the cuſtody of it; the former would be nugatory without the latter; for the perſon having the cuſtody of it, might refuſe to obey them, and if they have a right to appoint a Lord Keeper, or put the great in commiſſion, by a parity of reaſoning they muſt have a right to appoint all the other officers of State. A right inconſiſtent with the known prerogatives of the crown.

But ſuppoſe the great ſeal legally affixed; does that preclude all further examination, ſo as to ſanctify, at once, what is illegal and erroneous? ſuppoſe it were poſſible, for a commiſſion to paſs the great ſeal empowering certain perſons, to kill all the travellers, who ſhould take a certain road; would that legalize all ſubſequent proceedings? Even when the King's patents have paſt the great ſeal, in the due courſe of law, and according to the forms of the Conſtitution; they may be examined and avoided; if any perſon is wronged by them; if the ſubject matter of them is illegal; if they are founded on any falſe recital, or miſrepreſentation of fact. For in ſuch caſes the law preſumes that the King was deceived in his grant. The court of Chancery has juriſdiction, to hold plea of *ſcire facias*, for the repeal of letters patent, at the ſuit of a former patentee, when they are granted to ſeveral perſons, for one and the ſame thing. But when they are againſt law, or founded on a falſe ſuggeſtion, the King may have a Scire Facias to repeal his own grant, by letters patent. * [See c. 18, H. VI. c. 1, 3. Ed. VI. c. 4, 13 Eliz. c. 6, Eng. ſtat.] And the Chancellor is ſuppoſed by ſome antiquarians, to derive his name from cancelling letters patent. Thus we ſee, that, on legal principles; the affixing

* 4 Inſt. 79, 81, 82, 87, 88.

of

of the great ſeal, leaves the matter juſt where it was. Tis a ſolemn evidence, of the King's concurrence in certain acts, but cannot ſuperſede the neceſſity of referring to, and conſulting the King, by becoming that concurrence itſelf.

I proceed now to conſider the propoſed reſtrictions, on the power of the Regent. The ſpeculative doctrines contained in Mr. *Pitt's* propoſitions were brought forward, not as mere declarations of a naked right; but as the baſis of a ſyſtem, as a prelude to the propoſed limitations. Unleſs it were firſt eſtabliſhed that Parliament had a right to appoint a Regent it could not be maintained that they had a right to limit and preſcribe his powers; ſo that the world will judge, with what fairneſs and candour Mr. *Pitt* aſſerted that the diſcuſſion of this neceſſary poſtulate of his own doctrine was rendered neceſſary, by ſuppoſed declarations of the Prince's friends; declarations which were afterwards poſitively diſavowed.

If the claim of the right to appoint a Regent by a Parliamentary Convention, is alarming and dangerous to the Conſtitution; much more ſo is it, when enforced and extended, by the exerciſe of a controul over his actions. That indeed, will render the executive power no longer the colleague but the pupil or ſervant of Parliament; and quickly veſt a complete tyranny in the *Lords* and

Commons.

Commons. The Regent ſtands in the place of King, and repreſents his power; by the Conſtitution the two characters cannot be diſtinguiſhed. Every argument, that would now beſtow on a *Convention* the power, of impoſing limitations on a Regent, may be applied, at a future day, to the caſe of the King himſelf. There might at ſome time or other, be more plauſible arguments adduced, for ſuch an interference in the caſe of a King, than any that could be applied to that of a Regent; for inſtance, the uncertainty of a King's health; the probability of a ſudden relapſe into ſome violent malady; ſuch an event would be as poſſible and as fatal to the intereſts of the ſtate, as any uſurpation that could be apprehended from a Regent.

But this claim becomes yet more alarming when we conſider the new and unprecedented language, the bold, and diſreſpectful inſinuations, which when honeſtly interpreted, however, mean but this; that the Heir Apparent of the crown ſhall be inſulted, ſhall be deprived of his Birth-right, ſhall ſee the prerogatives of the crown violated, its rights invaded, and the very ſecurity of his family on the throne aſſailed; unleſs he will ſurrender at diſcretion, and throw himſelf on the mercy of a faction. In addition to the injuſtice, I ſhall barely obſerve the impropriety of ſhowing any want of confidence

in

in the Prince, at the very moment, when all parties are agreed that he and he only ought, and ſhould become the ſubſtitute for his royal Father; and ſurely the admirable conduct and temper of his Royal Highneſs on the preſent trying juncture, ſhew him worthy of the utmoſt confidence of the people.

A Regent during a temporary indiſpoſition cannot be formidable; the probability of his Majeſty's ſpeedy recovery, which has been urged as an argument for limiting the power of the Regent, goes ſtrongly to ſhew, that all limitation is wholly unneceſſary. The ſhorter time the Regency is likely to continue, the leſs danger is to be apprehended from any abuſe of his powers by the Regent. He will not have time to entrench and fortify himſelf in the poſſeſſion of his authority. He will look forward to the day, when he ſhall return into the maſs of the people; and will not be very anxious for the extenſion of a power which is ſo ſoon to terminate. Beſides, there will be a diviſion of intereſts; a number of people will look onward, to the expiration of his authority; to a courſe of things in their former channels. Should any innovation take place, the day is at hand when his miniſters and adviſers ſhall ſtand before the tribunal of Parliament. Should any thing not meet the approbation of the Sovereign, it may eaſily be rectified

rectified when he comes to reaſſume his power.

But the argument againſt intruſting the Prince with the power neceſſary for the due adminiſtration of government, becauſe peradventure he may abuſe them, ſcarcely deſerves a ſerious anſwer. Such a mode of reaſoning, if reaſoning it can be called, would go to deprive us of whatever is moſt uſeful in nature, and eſtimable in ſociety. The moſt nouriſhing aliments, the moſt wholeſome beverages, may be converted to poiſon when taken in exceſs. Even the beſt and moſt perfect forms of government have been abuſed and made the engines of violence and wrong. The liberties of the people have degenerated into licentiouſneſs. The pureſt ſyſtems of religion, the diſpenſations of Deity itſelf have been made the pretext of perſecution and cruelty. Yet, ſhall we, for this, ſubvert civil order, aboliſh liberty, and blaſpheme Heaven?

The authority of a Regent is too often feeble; his conduct is generally marked by caution and diffidence. He has not the ſame power of extending his influence, and attaching followers, as a King. His condeſcenſions are leſs flattering, his favours leſs ennobling, his reſentments leſs awful. Such, in general, is the condition of a Regent.—Now when a ſtrong adminiſtration is required, when the affairs of *Europe* are in ſuch a complicated

complicated ſituation, and *Britain* in the greateſt danger of being involved in a war. Is this a time to enfeeble inſtead of ſtrengthing the hands of the executive power.

Do thoſe who would deprive government of its vital force and energy, fetter the genuis, and cramp the reſources, proſtrate the dignity, and perhaps endanger the ſalvation of the *Britiſh* Empire, to gratify their own ſpleen, or provide for themſelves a return to ſtation and emolument; do they deſerve the applauſes which have been laviſhed on them by the multitude?

It cannot be thought or ſuppoſed, and therefore would not, I ſhould hope, be inſinuated, that any particular interference of Parliament is neceſſary, to ſecure to his Majeſty the full exerciſe of his royal authority, whenever his indiſpoſition ſhall happily be removed. The ſuppoſition of any ſuch neceſſity is an atrocious libel on his Royal Highneſs the *Prince of Wales*. It does no leſs, than call in queſtion the filial Duty, the Loyalty, the Patriotiſm, the Juſtice, and the good ſenſe of that exalted Perſonage. *Is not the King's eldeſt ſon, the Heir Apparent of his kingdom,* (as is juſtly expreſt in that admirable letter of a great Perſonage) *the perſon moſt bound to the maintenance of his Majeſty's juſt prerogatives and authority, as well as moſt intereſted in the happineſs, the proſperity, and the glory of his people?* Let us

 hear

hear no more of a foul inſinuation, too abſurd and groundleſs to be ſwallowed by the meaneſt of the rabble.

A ſolicitude perſonal to his Majeſty is profeſt, a deſire of ſparing his feelings, by preſerving every thing in the ſame ſtate; ſo that on his recovery from the preſent malady, there may exiſt as few circumſtances, as poſſible, to mark the exiſtence of his illneſs, or recall it to his mind. Such language is unprecedented in the Engliſh conſtitution. What bold individual ſhall dare to ſeparate the intereſts of the King from the intereſts of the community? ſhall profeſs himſelf influenced by private gratitude, in a great public tranſaction; and avow, without the fear of puniſhment, that the private gratification of the King, and not the well-being of the ſtate, ſhall be the rule of his conduct? And ſhall the wretched deluded people call the factious individual, who does ſo, the friend of the conſtitution?

But ſuppoſing this delicacy might be commendable were it real, or what it profeſſes feaſible, but yet Majeſty will, of neceſſity, find many things altered during his abſence, as I may call it; the exigencies of government will require it. It is paying ſo good a King but a bad compliment, to ſuppoſe that he could be gratified by finding the intereſts of his people ſacrificed to ſuch a

point

point of delicacy; that he would be pleaſed, to find public affairs ill adminiſtered, the vigour and ſtrength of government relaxed, and every thing thrown into diſorder, under pretence of keeping things in the ſame ſtate his Majeſty left them.

I appeal to the common ſenſe of every man—has Mr. *Pitt*'s conduct been anſwerable to his profeſſions? Will things be found in the ſame ſtate; ſhould providence grant his Majeſty's recovery, to the prayers of his people? ſurely no. He will find an aſſumption of very great powers to the Houſes of Lords and Commons; ſtrong deciſions on abſtract queſtions, that materially affect his prerogatives, and the rights of his auguſt houſe; and a ſignal and violent precedent of an interference of the legiſlative branches, unknown to the Conſtitution. It is eaſy to judge, whether his Majeſty's feelings will be leſs wounded at all this, than at ſome alterations induced by a mere exerciſe of the executive power, and regular prerogative; in the grant of offices, the creation of peers, or the diſſolution of Parliament.

Let us now conſider the propoſed limitations of the power of the Regent; comprehending a reſtriction as to the grant of penſions, and offices, for life, or in reverſion; and the creation of peers; for with them only, I mean to trouble my readers.

The power of appointing his ſervants, and rewarding their ſervices, ſeems to be neceſſarily and inſeparably inherent in the character of chief magiſtrate; as being abſolutely requiſite to the due performance of the functions. A reſtitution in this point would very nearly approach the uſurpation of the long Parliament, when they drove Charles the firſt, to the laſt extremity, by claiming the appointment of the King's offices. Can a requeſt thus reſtricted, expect to be ſerved zealouſly or affectionately? But ſuppoſing he ſhould find in the attachment and fidelity of his miniſters thoſe reſources, which are denied by the limitation of his powers; is it juſt? is it conſiſtent with the honour of a great nation, to ſeal up the functions of public bounty, for an unlimited time, againſt merit, however diſtinguiſhed? to ſay to thoſe who ſhall ſpend their talents, their fortunes, their health, and their lives, in the ſervice of the State; you muſt not hope, when you ſink to reſt after your honourable labours, any ſupport for your families from that country which you have ſerved, perhaps ſaved by your exertions? We know, that the offſpring of the moſt ſplendid and diſintereſted ſtateſman *England* ever ſaw, muſt have felt the ſtings of penury, had not the gratitude of their country interfered to ſnatch them from diſtreſs. As to the grant of reverſionary employments, there is in

that,

that, a ſaving to the public, a political economy ; inaſmuch, as the families of thoſe who have deſerved well, may be provided for, by means of them, without burthening the nation, by an encreaſe of the penſion liſt.

Titles of honour have ever been the proper rewards of diſtinguiſhed merit, in the cabinet or the field. Many of the noble Lords in the Britiſh Houſe of Peers, are living memorials of the high deſerts, and eminent ſervices, of their parents, and anceſtors. The creation of Peers, is an undoubted flower of the crown, which cannot without disfiguring and diſgracing it, be torn away. Such a meaſure at the ſame time, that it would be a great diſcouragement to virtuous actions, to learning and induſtry, and detrimental to the Houſe of Peers itſelf, by preventing ſuch frequent ſupplies from going into it, as the nature of ſuch a body requires ; might be a means of changing the Conſtitution into an *ariſtocracy*, one of the worſt ſorts of ſlavery. Conſider, I beſeech you, to what a ſtate the Regent may eventually be reduced by the propoſed reſtriction. The Regency may by poſſibility continue a long time ; ſo that the power of creating peers may be expended during twenty, thirty, or forty years. And during all this time, an ariſtocracy may be maintained by the confederacy of two, or three great families,

families, which would form ſuch a body among the Lords, as the crown would not be able to controul. And this would be facilitated by the diminution of number in the efflux of time. But there is a more immediate and preſſing danger to be apprehended; at leaſt, the caſe, which I ſhall put, is poſſible. Suppoſe a majority of the Houſe of Peers, at the devotion of an ambitious ſubject, a turbulent and diſcontented ſpirit; thwarting the wiſeſt counſels, impeding the moſt neceſſary meaſures, and conſpiring to render *government difficult if not impracticable, in the hands of the perſon deſtined to repreſent the King's authority. Suppoſe*, a large revenue withdrawn from the interference of the Regent, and a number of offices of emolument and honour, made independent of him, and ſubjected to the ſole and excluſive controul of another perſon; and ſuppoſe all the power and influence, thus withdrawn from the ſubſtitute of royalty; ſuppoſe it conferred on a man ſuch as I have deſcribed, and turned by him againſt the executive power; in vain ſhall the chief magiſtrate look for aid to the wiſdom and virtue of the *Commons*; a firm *phalanx*, will be oppoſed to him in the Lords, which ſhall fruſtrate his beſt intentions, and *render it impoſſible to carry on the executive government of the country.* It may be ſaid, this is a degree of improbable criminality, a viſionary phantom, of atrocious

atrocious ambition; but the proſpect of the preſent.—" *A project for introducing weakneſs,* " *diſorder, and inſecurity in every branch of* " *the adminiſtration of affairs;—a project for* " *dividing the Royal Family; for ſeparating* " *the Court from the State, and thereby disjoin-* " *ing government from its accuſtomed ſupport.*" All this has been perpetrated already, and may well juſtify our apprehenſions for the future.

I forbear to enlarge on the two other reſtrictions; they muſt fill every friend of the Conſtitution, with indignation and ſorrow, as a precedent of an outrageous tearing aſunder the ſupreme executive power; that power, which, in contemplation of law and conſtitution, is *one, entire,* and *indiviſible.* But they are not likely to be the ſubject of much diſcuſſion, in this kingdom, for the meridian of which I chiefly write; and this pamphlet has already grown upon me, to an immoderate length; perhaps many things in it might have been retrenched, many compreſt; but I write on the ſpur of the occaſion, and haſte is generally the parent of prolixity. During the delay of correction, the moment of being uſeful would paſs away, to return no more.

I proceed to ſome reflections, which peculiarly ſuggeſt themſelves to the people of *Ireland.* This country ſtands in a predicament different from that of any colonial or aſſociated

aſſociated ſtate which antient or modern hiſtory can produce. It is connected with *Great Britain*, not by an union of incorporation; not by an union of ſubjection and dependence, *that* we have happily diſclaimed; nor yet by an expreſs fœderal union, no monument of ſuch a compact exiſts; but by the unity of the executive power alone. As the executive binds together the two aſſemblies of Lords and Commons of the ſame kingdom, in one Parliament; ſo it connects two independent kingdoms in one empire. *Ireland* and *Britain* are members of the ſame body; one cannot be torn from the other, without diſfiguring the exquiſite beauty, perhaps endangering the vital exiſtence of the whole.

Why are we told that we muſt lean and hearken after the example of *Britain*; we muſt adopt what has been done in the two Houſes of the Engliſh Parliament?—If the *Engliſh* Parliament, on the diſcuſſion of queſtions which affect the very vitals of the conſtitution, acts conformably to law, and the true ſpirit of that conſtitution, as declared and eſtabliſhed in 1688; we may, not literally copy them, we may, not blindly follow them; but we ſhall certainly meet and coincide with them; not as looking to what they may have done but adopting, I may ſay, kindred notions not lineally derivative, but collateral from a common ſtock.

It

It is impoſſible, indeed, that what is done in *England* ſhould be a ſtrict rule, to be ſervilely and literally adopted by *Ireland*. The ſituation of this country being very peculiar, as I have obſerved; peculiar intereſts and duties will ariſe out of that ſituation, and ſuggeſt peculiar maxims of political conduct to the people. The ſame rule, muſt govern like, not diſſimilar caſes; and as this country differs ſo widely from *Britain* in her circumſtances; it may be neceſſary, even though what was done in *Britain* might have been right, as reſpecting *Britain*, to vary from it here, when we come to conſider what the exigencies and circumſtauces of this country may ſuggeſt or demand.

There are two events of which *Iriſhmen* ſhould never loſe ſight;—The *glorious Revolution* of 1688, which finally and fully eſtabliſhed the *Britiſh* conſtitution; and the no leſs glorious *Revolution* of 1782, which made that conſtitution our own, and inveſted us with full powers not only to enjoy, but to cheriſh, to protect, and to maintain it inviolate. Theſe ſhould be the landmarks of their conduct, the one gives the end, the other the means; the one makes them men, the other freemen.——Three great objects, then, offer themſelves to the regards of *Iriſhmen*; objects which they are bound to hold faſt as their exiſtence, and defend with their beſt blood.—The connexion of this country with

Great Britain;—the independency of the legiſlature of Ireland;—and the maintenance of the *Britiſh* conſtitution. The two firſt are peculiar to ourſelves; the laſt is in common to us with every ſubject of the empire; but our mode of purſuing it, may be varied by our ſituation.

Of the mode of purſuing thoſe objects, and the means to be employed, we alone are competent to judge. *Britain* being the more ſtrong and powerful part of the empire, her interference to point out the means, or preſcribe the mode, would totally deſtroy the ſubſtance. The greateſt miſchiefs may reſult to us from her meddling in our deliberations, on points of conſtitution; whereas, none can redound to her, from our keeping them free and unbiaſſed by dictation or controul. Let us diveſt ourſelves therefore of all ſilly notions, that it is neceſſary to *copy here*, what has been done in *England*; notions which originate in a concealed treaſon againſt this country, in a lurking dereliction of the rights of *Ireland*. The mode and form of what has been done will I think be found impoſſible to be adopted in *Ireland*, and the ſubſtance inexpedient.

Every friend to the laws, the religion, the welfare of this country, muſt hold dear the connexion with *Great Britain*. Joined with her *we purſue the triumph, and partake the gale*;—diſjoined we ſhould become ſmall among

among the nations. Our manners, our language, the ties of blood, and the vicinity of ſoil all point us out as parts of the ſame great empire. We form as it were a mighty arch, on which the auguſt forms of Juſtice, Liberty, Commerce, Opulence, and Renown ſtand alcft and conſpicuous to the eyes of the world. Of this arch the King the common Sovereign is the key ſtone, that binds the whole together; but the pledge of union is not the name, but the reality of King; the actual common exerciſe of the executive power, giving a communication of councils and a co-operation of national force. Power diſtinct from the perſonal exerciſe of it is nonſenſe; a King, diſtinct from the exerciſe of his prerogative and authority, is a contradiction; a King incapable of governing is a creature which the conſtitution knows not, ſuch an incapacity therefore muſt be a political death. It is no matter whether the executive power is in the hands of King or Regent; we are bound together within the circle of the ſame imperial crown; it is the unity of the Chief Magiſtrate, and that alone, which connects the two kingdoms. Mr. *Pitt*'s doctrine, which inveſts the two Houſes of Parliament, in caſe of the King's indiſpoſition, with a general diſcretion of appointing any perſon in the kingdom Regent, tends directly to ſeparate the perſonal exerciſe of the executive power in the two countries;

and wears away and attenuates the band of mutual aſſociation. Every meaſure, which renders leſs ſecure the lineal ſucceſſion; which threatens to make the throne elective; threatens alſo a diſſolution of the empire into its component parts.

The two Houſes of Lords and Commons are equally independent, have equal rights and powers, in *Ireland*, with thoſe which the correſpondent aſſemblies poſſeſs in *England*: Now, if we copy the example of *England*, and entertain the abſtract queſtion, our declarations muſt be equally ſtrong, or we ſhall be traitors to ourſelves. It will be incumbent on us to declare, that it is the right and duty of the Lords and Commons of *Ireland*, to provide for the perſonal exerciſe of the executive power; but how ſhall we reconcile this with the ſolemn act of the legiſlature of this country, the act of *Recognition* of the *4th of William* and *Mary*, which ſolemnly declares, that the executive power in the two countries ſhall be one and the ſame; and that *Ireland* ſhall be for *ever* annexed and united to the imperial crown of *England*?—How ſhall we avoid this dilemma?—The way is obvious;—by declining the diſcuſſion, of abſtract queſtions big with ſuch difficulties and miſchiefs; and purſuing the ſimple, the legal, and conſtitutional mode of *addreſſing his Royal Highneſs the Prtnce of Wales, and praying him to aſſume the Government of this Realm.*

If

If the two Houſes of Lords and Commons in this kingdom, either do not poſſeſs, or would be unwiſe in aſſerting the power of appointing a *Regent*; it follows, as a neceſſary conſequence, that they cannot entertain any plan of reſtrictions or limitations of the power of the Regent; for the declaration of the abſtract right is a poſtulate, a corner ſtone, on which the whole ſyſtem of reſtrictions is founded; and if you take *that* away the fabric muſt fall to the ground. Beſides, the profeſſed object of the reſtrictions in *England* being to ſecure to his Majeſty the immediate exerciſe of the Royal Authority, when it ſhall pleaſe God to remove his indiſpoſition; they are wholly unneceſſary here; his Majeſty is already perfectly ſecured; for, by the act of recognition above mentioned, on his reſuming the adminiſtration of affairs in *England*, he will immediately, and *ipſo facto*, become inveſted with the executive power in *Ireland*.

Now, with reſpect to the independence of the legiſlature of this country. In addition to the jealouſy, which the ſubjects, in any limited monarchy, muſt entertain of the influence of the crown; the people muſt be poſſeſt with a well grounded apprehenſion, for it is grounded on long and ſad experience, of the power, the claims, and uſurpations of the *Britiſh Parliament*. That precious boon, which we reſcued with difficulty

ficulty from the reluctant graſp of oppreſſion, we are bound to tranſmit ſacred and entire to our poſterity. We are not to contend merely with the ambition of a monarch, or the corruption of his miniſters; theſe are lighter miſchiefs; their progreſs is ſlow, the forms of the conſtitution remain, and preſerve in themſelves the principles of purification. Our conteſt is with enemies, that require our utmoſt vigilance, and threaten to overwhelm the conſtitution at a blow;—with the pride and prejudices of the *Britiſh* nation; with the wakeful jealouſy of commerce; the cruel ſpirit of monopoly, the illiberal intolerance of manufacture, and inveterate habits of unjuſt domination. The *Britiſh Parliament*, rankling from our late victory, and armed with a ſtring of precedents to juſtify uſurpation, waits to ſeize the moment of our weakneſs and inattention, and renew claims, which they ſo reluctantly abandoned.—What mound or barrier ſhall we oppoſe to the current, which has long ſet in againſt the wealth, the independence and general proſperity of this Kingdom? What, but the paternal care and affection of the common ſovereign, the wiſdom and firmneſs of his miniſters?

We ſhould be cautious, therefore, as we wiſh well to the *Independence of Ireland*, of admitting the principle, that the example of the *Britiſh Parliament* has any binding force,

or

or authority in this country; inſtead of copying, we ſhould be proud to diſſent from their conduct. Firſt, becauſe what has been done by them is *wrong in itſelf*; next, becauſe here is a ſolemn occaſion of diſclaiming the controul of the *Britiſh Parliament*. By diſſenting from them, in this inſtance, we ſhall give a memorial of our independence to the lateſt poſterity; an aſſertion of the right, by an exerciſe of the power, decided, unequivocal, and ſtrong, beyond a thouſand oral or written declarations.

Would it be wiſe, ye friends of *Ireland*, to ſacrifice the golden advantages of ſuch a declaration of our independence, and yield to the ſuggeſtions of intereſted men, who would drive us into a diſcuſſion of abſtract queſtions? the diſcuſſion of abſtract queſtions in *England* has been a ſtruggle for power, a trial of party ſtrength, at the expence of the conſtitution. What have we to do with the parties of *England?* we have only one party, to purſue the good of our country. And the good of our country requires, that we ſhould confer the executive power *free and unfettered on the Heir Apparent of the Crown.*

Why ſhould we conſpire to exalt the authority of the *Britiſh Parliament*, the great object of our fears, on the ruins of the executive power, the great ſource of our protection? What can we expect, when the claims of

of the *Britiſh Legiſlature* ſhall have ſwallowed up the legal powers, and conſtitutional prerogatives of the crown; but the poor favour of being the laſt devoured?——We have now ſuch an opportunity, as ſeldom occurs, given us by the ſtrange and unconſtitutional conduct of Mr. *Pitt's* party in *England*; we have an opportunity of conciliating the affections of the Heir Apparent of the crown, by an aſſertion of our own rights. Let us ſeize the occaſion; we may frequently be driven to throw ourſelves on the affection, and good offices of our ſovereign; let us now purchaſe them before hand; by throwing *Ireland* into the ſcale of his influence; and as far as in us lies reſcuing the executive, from the encroachments of the legiſlative power.

It was thus the Commons of *England* roſe to conſideration and greatneſs; the King looked about for aid, to protect him againſt the overweening power and rude encroachments of his Barons: He drew forth the third eſtate of the people, from the depths of the loweſt obſcurity; he gave them a weight and influence in the community, and the Commons repaid with intereſt, that ſtrength, ſecurity, and conſequence which they derived from the crown.—Who knows but ſomething ſimilar may happen with reſpect to *Ireland*, from a ſimilar reiprocation of good offices?

I come

I come now to the third great object in the conſideration of *Iriſhmen*, *that*, to which the two former are ſubordinate and ancillary, the maintenance of the *Britiſh Conſtitution*, of which we are now made partakers. And on Conſtitutional principles, it is manifeſt, that we cannot poſſibly adopt Mr. *Pitt*'s plan of providing for the temporary vacancy of the *Throne*. To give, is to legiſlate, to appoint a Regent is an act of legiſlation. But it is confeſt that the Parliament of this kingdom wants the third component part, which is neceſſary to give it legiſlative validity. Mr. *Pitt*'s *plan*, is to appoint the Regent by bill. It is impoſſible on Mr. *Pitt*'s principles, to give the royal aſſent to ſuch a bill; without aſſenting a controul, of the *Britiſh* over the *Iriſh Parliament*; for the Regent, according to him, being merely the creature of the Parliament, deriving the authority, not from any thing inherent in himſelf, but ſolely from their appointment, his authority is, in fact, the authority of Parliament; and thus muſt the *Britiſh* Parliament, on Mr. *Pitt*'s principles, have an affirmative, or negative, on the acts of the *Iriſh* Parliament, with reſpect to the Regency.

And when we ſpeak of Conſtitution; can it be forgotten under whoſe auſpices this land was emancipated? Through whom are we enabled to debate the high and momentous

mentous ſubjects of the preſent? Is it not through the miniſtration of thoſe men, who now ſhare the councils, and enjoy the confidence of his Royal Highneſs the Prince of Wales? Through them, are we placed in our preſent ſituation of independence: and a proud and dignified ſituation it is,

Quod optanti nemo promittere Divum auederet,
Valveuda Dies en attulit ultro.

What the utmoſt ſtretch of enthuſiaſtic ſpeculation could not dare to promiſe to the champions of *Iriſh* independence, the chance of the day has brought within our graſp. We now can pay to Great Britain the full price of the boon, which we demanded from her. At this awful criſis of her fate, her Genius looks up to us with reverential anxiety, though with ſiſterly confidence; ſhe calls upon Ireland to defend that Conſtitution which ſhe had built up for us, and the bleſſings of which ſhe has ſhared with us, againſt a deſperate faction, which has extinquiſhed all her energy, and cruſhed her adherents. At ſuch a moment, can we be inſenſible of our own importance? Shall we not know our own value, or refuſe to be juſt to ourſelves, and to the truſt which we have aſſumed, and ſworn as at the altar, to tranſmit to our deſcendants.

gain

To value any bleſſing aright, we muſt firſt underſtand it; What did *Iriſhmen* obtain by the Revolution of 1782? What did we gain by the eloquence of our public leaders, the firmneſs of Parliament, and the exertions of the people? Was it a ſhare of faction? Was it a moiety of civil diſcord, a ſiſter's portion of cabal and anarchy? No; God forbid. It was a participation in that happy Conſtitution, which is the conſummate work of ages, and the boaſt of human wiſdom. Was the nation pledged? Did we ſo boldly paſs the *Rubicon*? to win the poor privilege of being the retainers of an *Engliſh* party, the ſatellites of an aſpiring Miniſter—the humble inſtruments of his ambition, to be wielded at the diſcretion of a ſervile delegate? No: we demanded, and we obtained a Conſtitution, as it was ſettled by the *bill of rights*; a Conſtitution where King, Lords, and Commons, balance, controul, and ſupport each other. A Conſtitution which we pledged ourſelves to defend, on the principles, on which we found it ſeated, while we ſecured to ourſelves the power of ſtanding to our pledges, and fulfilling our engagements. I cannot place this great and glorious truth in too many different lights; we are not only the guardians of our own liberties, but the guarantees of thoſe of *Britain*: the *Britiſh Conſtitution* cannot be invaded, without ſapping the foundation of our

Conſtitution, and every aſſertion of our rights, muſt lend a new ſecurity to thoſe of *Engliſhmen*.

Where then ſhall we find any man, or ſet of men, hardy enough to call upon us to concur in violating the Conſtitution, in transferring the rights of the Sovereign to the two remaining eſtates of Parliament, and confounding the executive power with the legiſlative? If a Convention in *Great Britain* hath been guilty of ſuch a violence, we will ſhew our attachment to that country, by diſſenting from her example—we will all ſtand forth, as one man, to oppoſe a barrier to the invaſion; and the vital ſpirits, and the warm blood of the Conſtitution having circulated through *Ireland*, as an extremity, will return, to warm and cheriſh *Britain*, as the heart.

The anſwer, therefore, which we have to make to thoſe who tell us, that we muſt follow the example of Britain—we *muſt* adopt what has been done in the two Houſes of the *Britiſh* Parliament, is this—" If the *Britiſh* Parliament loſe ſight of Conſtitutional principles; if it have recourſe to new maxims, and eſtabliſh principles deſtructive of thoſe, on which the Conſtitution we obtained from *Britain* was founded; we will defend them againſt her Parliament; we will read a leſſon of Conſtitution to the parent country, and,

awake

awake her drooping ſpirit, into a recollection of thoſe days, when other councils, and other men miniſtered to her under unforeſeen emergencies."

No, my Countrymen, in our demand of a free Conſtitution, we were not candidates for our diſgrace. If we do not uſe that Conſtitution wiſely, better were it that we had never obtained it. If it is to be mangled and diſfigured, better were it to have remained paſſive and ſubſervient; to be ſtill exiled from our Birth-right, that we might now view the unhallowed ſpectacle, at a diſtance, inſtead of joining in the tragedy. But we will, I know we will, uſe that Conſtitution wiſely and tenderly; we will yield her an aſylum, when expelled from Britain. We will ſnatch her to our hearts. We will cheriſh her in our boſoms. We will verify the words of our illuſtrious countryman and patriot, in ſuch a degree, that they ſhall ſeem to have been dictated by the immediate influence of a patriotic ſpirit. "Admit us at once, (ſaid he, addreſſing "himſelf to England) into the poſſeſſion of "our birth-right, the vigour of our youth "will be the prop of your old age; give us "the power, and the moſt glorious ſervice "in which it will be our pride to employ it, "will be in ſupporting the crazy frame of "your Conſtitution." We are put in poſ-

ſeſſion

ſeſſion of the birth-right, we enjoy the power; let us ſhew the ſame ſpirit that actuated us when the prophecy was uttered, and let our *power* be exerted in defending the *rights* which this ſpirit ſecured to us in the day of our triumph.

FINIS.

Houses of the Oireachtas