can be worth defending, whoſe character is to be maintained by proſecutions for libels. The conduct of no body of men in the kingdom ought to be more open to a full and free inveſtigation than that of the houſe of commons. The character of the repreſentatives of the people ſhould be maintained by their integrity, by their independence on miniſters of ſtate, and their faithful diſcharge of their duty to their conſtituents; and not by applications to the crown for informations EX OFFICIO by the attorney-general: a mode of proſecution, which ſhould never receive the leaſt countenance from any man, who makes the leaſt pretenſions to an attachment to the intereſts of public freedom.

As the greateſt part of what is now called the law of libels has been made or introduced by the judges; ſo they have declared themſelves to be the ſole interpreters

of it; and they are alſo to inflict puniſh-
ments for the breach of it at their diſcre-
tion. No pretended independence of the
judges can be a ſufficient ſecurity to the
ſubject in ſuch a ſtate of things. No con-
ſtitutional queſtion of more conſequence has
been agitated ſince the Revolution, than
that of the right of juries to determine the
law, as well as the fact, in criminal proſe-
cutions. It has been juſtly obſerved by
Mr. Erſkine, that the nation in general
are not ſufficiently aware of the importance
of this great queſtion. That freedom of
the preſs, to which this country owes much
of its reputation among foreign nations,
muſt be for ever abandoned, it will be
eventually given up, if the Star-chamber
doctrines concerning libels are ſuffered to
prevail, and if juries, in trials for libels, are
confined to the mere fact of publication,
and deprived of the right of determining
the

the innocence, or criminality, of thoſe books or papers which may be denominated libels.

THE queſtion has never yet been put to the twelve judges, reſpecting the power of juries in trials for libels; and ſhould it ever be put to them, I cannot believe that they would determine, that juries are confined to the mere fact of publication, and to filling up the blanks. But ſhould they ever come to ſuch a determination, if there be a caſe, in which even the opinion of the judges collectively is not implicitly to be ſubmitted to, this is that caſe. It is a caſe in which they are parties, the point in conteſt being the extent of their own juriſdiction. They cannot be properly poſſeſſed of the power that is claimed, unleſs it can be proved to be a part of the antient common law of the land, or unleſs it has been granted to them by the legiſlature. The

former cannot be proved; and as to the latter, there are not the leaſt traces of its having been granted to them, at any period, by the legiſlature; nor will it ever be conferred upon them by any legiſlature, that has any juſt regard to the rights of the ſubject, or to the freedom of the preſs.

If twelve men, aſſiſted by the opinion of the judge, and the pleadings of the counſel, cannot find out that a book, or paper, the writer, printer, or publiſher of which they are appointed to try, really contains any thing criminal; if they do not find that it is entitled to the deſcription given of it in the information or indictment; they ought, in every ſuch caſe, to acquit the defendant. No book can be publickly pernicious which a jury cannot comprehend, and of which they cannot diſcern the criminality. If it be ſo dark and myſterious, that a jury cannot underſtand it, it can be productive of little miſchief.

chief [87]. If the judge does not chooſe to give any opinion upon the ſubject, it is, notwithſtanding, the duty of the jury to determine for themſelves, and to find that man NOT GUILTY, of whoſe criminality they are not convinced. And if the judge does venture to give his opinion, and to pronounce of any book or paper that it is libellous, the jury have ſtill a right to determine for themſelves, and to acquit the defendant, if no evidence has been produced that is ſatisfactory to their own minds, that the defendant has been guilty of ſome criminal action, or of a breach of ſome known and poſitive law. As to the mere facts of writing, printing, or publiſhing, theſe are actions as perfectly innocent and indifferent

[87] Even ſerjeant Hawkins ſays, 'It is a ridiculous 'abſurdity to ſay, that a writing, which is underſtood 'by every the meaneſt capacity, cannot poſſibly be 'underſtood by a judge and jury.' Pleas of the Crown, p. 194.

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as riding or walking; and if nothing elſe be proved to a jury, it is extremely unjuſt, and abſurd, in them, to pronounce a fellow-citizen Guilty, in any form of words whatever. It is certainly contrary to the dictates of reaſon and juſtice, that it ſhould be taken for granted by a jury, that any book or paper is a libel, without ſome ſatisfactory evidence to them that it is ſo. NULLUM INIQUUM IN JURE PRÆSUMENDUM EST, is an antient maxim of the law of England. No injurious thing is to be preſumed in the law. Nor ſhould any jury find any man guilty of having publiſhed a libel, till they are not only convinced of the fact of publication, but alſo of the criminality of the production.

A JURY has an undoubted right to bring in a general verdict, nor can they be compelled to explain upon what grounds their verdict is founded. If, therefore, they are appre-

apprehenſive of being entrapped by the court, or of affording ſome pretence for a new trial, and if they are convinced in their own minds, that the perſon accuſed has not publiſhed any thing really criminal, they have a right to bring in a general verdict of NOT GUILTY. And by ſuch a verdict, they do not neceſſarily find upon their oaths, as ſome have ſuppoſed, that the party accuſed has not written, printed, or publiſhed ſuch a book or paper, but that he is not guilty of the crime laid in the information or indictment; that he has not written, printed, or publiſhed, a falſe, ſcandalous, and ſeditious libel; or that whatever he has written, printed, or publiſhed, has not been done maliciouſly, or with an evil or wicked deſign. In ſhort, that he is not guilty, in MANNER AND FORM, as laid in the information or indictment.

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IT ſeems reaſonable that juries, in trials for libels, ſhould inſiſt on reading themſelves, and deliberately, the information, or indictment, as was done in the caſe of the ſeven biſhops. In that caſe, they had the copy of the information, as well as the pretended libel, out with them for that purpoſe. A jury ſhould carefully examine, whether all the ſubſtantial parts of the charge againſt the defendant have been proved to them; and if not, they ought to acquit him. It is their duty to inquire for themſelves; they are ſworn WELL AND TRULY TO TRY the cauſe on which iſſue is joined; and they ought not to bring in their verdict from an implicit acquieſcence in the opinion of the judge. 'A man 'cannot ſee,' ſays ſir John Vaughan, 'by 'another's eye, nor hear by another's ear; 'no more can a man conclude, or infer 'the thing to be reſolved, by another's under-

' underſtanding or reaſoning; and though
' the verdict be right the jury give, yet
' they being not aſſured it is ſo from their
' own underſtanding, are forſworn, at leaſt
' IN FORO CONSCIENTIÆ [88].'

ADMITTING juries to be judges of the law, as well as of the fact, in matter of libel, any man who is charged with writing, printing, or publiſhing, a libel againſt the government, may, if a jury, from a conviction of the criminality of the publication, find him guilty, be puniſhed at the diſcretion of the court. Any private individual, againſt whom any thing libellous has been publiſhed, has a right to bring his action againſt the party offending, and to recover ſuch damages as ſhall be given him by a jury. Theſe reſtraints upon the preſs are ſurely amply ſufficient, and all that ought to be ſubmitted to in a free country. Far-

[88] Vaughan's Reports, p. 148.

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ther reſtraints would be inconſiſtent with the liberty of the preſs, and highly detrimental to the public.

THERE can be no reaſon for aſſerting, that juries are ſo partial to the liberty of the preſs, that they will wantonly acquit thoſe perſons in whoſe publications there ſhall be evident criminality, or what may appear to them to be ſo. Even in the caſe of Mr. WILKES, popular as that gentleman was, he was found guilty by a jury, both for the North Briton, No. 45, and for the Eſſay on Woman. And in the late caſe of the dean of St. Aſaph, though the jury were avowedly not convinced, that the Dialogue, with the publication of which that gentleman was charged, was a libel, they yet declined to bring in a clear verdict of acquittal. There can, therefore, be no reaſon whatever for depriving the ſubject of the protection of a jury, in the caſe of libels, any

any more than in other caſes; and he is in fact deprived of it, if the jury determine only the point of publication, which is ſeldom a matter of much doubt, and leave the innocence or criminality of what is publiſhed wholly to the determination of the court.

In truth, the great fault of juries has always been, not a propenſity to bring in verdicts, without reaſon, againſt the directions or opinions of the judges; but too much obſequiouſneſs to the court, too great a readineſs to comply implicitly with its directions, and too little firmneſs and ſpirit in aſſerting their own rights. It is alſo a great public evil, that perſons in good circumſtances, and of ſome education, are ſo apt to decline ſerving on juries, eſpecially on what is called the PETIT JURY, though they are the moſt likely to diſcharge the duties of the office with propriety and integrity.

tegrity. The PETIT JURY is the moſt important jury, that by which matters of life and death, and ſome of the moſt important concerns of men in civil ſociety, are finally determined. The mode of trial by jury would be rendered ſtill more beneficial than it is, if thoſe men who are the fitteſt for the office were more ready to engage in it. Such men would not be brow-beaten by the court, but would feel the weight that the conſtitution has given them, and would firmly maintain their rights. Men of property, and perſons of education and knowledge, ought not to decline ſerving on juries in their turn, unleſs prevented by ſome real impediment. Thoſe men are unworthy of the privileges of Engliſhmen, and of the ſecurity of a free conſtitution, who will not take their part in thoſe public offices that are neceſſary for their ſupport and preſervation.

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The right of trial by jury is of infinite importance to the liberty of the ſubject. It cannot be guarded with too much vigilance, nor defended with too much ardour. No part of the power of juries ſhould be given up to the claims, or uſurpations, of any body of men whatever. The *rights* of jurymen ſhould in all caſes be reſolutely aſſerted, whether they be attacked by open violence, or whether the arts of legal chicane be adopted, in order to render them uſeleſs and nugatory. But if juries ſhould ever be tame and ſenſeleſs enough to give up the right of determining the law, as well as the fact, in libel cauſes, the liberty of the preſs is then wholly at the diſcretion of the judges.

Blackstone ſays of the mode of trial by jury, that it ‘ was always ſo highly ‘ eſteemed and valued by the people, that ‘ no conqueſt, no change of government,

'could ever prevail to abolish it;' and that 'in Magna Charta it is more than once 'insisted on as the principal bulwark of 'our liberties [89].' He also says, that 'it is 'the most transcendent privilege which 'any subject can enjoy, or wish for, that 'he cannot be affected either in his pro-'perty, his liberty, or his person, but by 'the unanimous consent of twelve of his 'neighbours and equals [90].' But if juries are ignorant of their own rights, and timid in the exercise of those powers that the constitution has given them, the value of this great privilege is exceedingly diminished. There can, however, be no ground for timidity in juries, in the upright discharge of the duties of their office: for, since the famous determination in Bushel's case, juries are in no danger of being fined

[89] Commentaries, Book III. ch. 23.

[90] Id. Ibid.

or impriſoned, or ſuffering any other penalty, in conſequence of their verdicts, however contrary they may be to the direction of the court.

No parliament of this country has ever conferred upon the judges a power of determining the matter of law in trials for libels, or the criminality or innocence of publications, independently of a jury. No evidence can be produced, that this is any part of the antient common law of England. We may, therefore, venture to affirm, that it is not the law of the land; but is a mere aſſumption of ſome of the judges, calculated for the extenſion of their own juriſdiction, to the prejudice of that of juries, to the prejudice of the ſubject, and to the ſubverſion of the freedom of the preſs.

It is manifeſt, that if the Star-chamber doctrines concerning libels are ſuffered to

prevail, if juries are reſtrained from entering into the merits of ſuch publications as are termed libels, and if proſecutions for them are frequent, there will be a total end to the freedom of the preſs in this country. Whether the people of England, after the blood and treaſure that have been expended for the eſtabliſhment of national liberty, will ſuffer themſelves to be deprived of it by the tricks, the arts, and the chicanery of law, is a point to be determined by themſelves. If they ſurrender up the freedom of the preſs, and the rights of juries, either to open violence, or to legal ſubtilty and craft, their other rights will inevitably follow. They will no longer hold their preſent rank among the nations of the world; and muſt bid an eternal farewel to the honour, the dignity, and the felicity of public freedom.

APPENDIX.

THE right of Juries to determine the law, as well as the fact, in trials for libels, has always appeared to me ſo important, that ſo long back as the year 1764 I publiſhed a pamphlet, but without my name, entitled, "An Enquiry into the "queſtion, Whether Juries are, or are "not, Judges of Law, as well as of "Fact; with a particular reference to the "caſe of Libels;" and in which I maintained the affirmative of the queſtion. This was reprinted ſome years after, but without my knowledge or direction, and from an imperfect copy; and the tract,

which I have now reprinted, firſt appeared in the year 1784. This laſt has alſo been reprinted, as I have been informed, both in Ireland, and in America. And though the law upon the ſubject, ſo far as regards the rights of juries, has now been certainly decided, by what is frequently termed Mr. Fox's Libel Bill, 'I have reprinted this tract in this Collection, as it contains a variety of facts and obſervations relative to crown proſecutions for libels, as well as remarks on the duty of juries, and tends to throw light on the hiſtory of the law of libels; a ſpecies of law of which abundantly too much is yet remaining.

It was in the year 1791, that Mr. Fox, who, on a variety of occaſions, has employed great abilities, and great eloquence, in defending the rights of the people, and promoting the real intereſts of the nation,

brought

brought in his bill "for removing doubts "respecting the functions of Juries in "cases of Libel." It met with great oppoſition, and was much injured in paſſing through the two houſes, under the pretence of improving it. In the houſe of commons, it was zealouſly ſupported, not only by Mr. Fox, but by Mr. Erſkine and Mr. Sheridan, and other gentlemen. But, in the houſe of peers, lord Kenyon, chief juſtice of the King's Bench, very ſtrenuouſly argued againſt the bill. Lord Thurlow alſo, who has exhibited great ſtrength of voice, and conſiderable energy of mind, but who has never much promoted the rights of the people, or the national intereſt, and whoſe ſervices to the community cannot be highly eſtimated, very ſtrongly oppoſed the bill. Perhaps few men, with ſuch talents as thoſe of lord Thurlow, have had the good fortune

to be ſo frequently in the wrong. But deviations from rectitude of ſentiment, or from rectitude of conduct, do not prevent men from the attainment of wealth, or of titles. On this occaſion lord Thurlow very firmly, for timidity is not his fault, maintained the profeſſional abſurdities of his predeceſſors. The bill was zealouſly ſupported by earl Stanhope, lord Loughborough, and lord Camden. The latter nobleman, at the bar, as chief juſtice of the common pleas, and as chancellor, ſuſtained a very reſpectable character; and was always a defender of the rights of juries. But, in the latter years of his life, his character was ſomewhat tarniſhed, by too cloſe a connection with an adminiſtration, from which he derived conſiderable profit, but from which he could not poſſibly derive any honour. After great oppoſition, Mr. Fox's bill at length paſſed

paſſed both houſes; but, on account of the impediments that were thrown in its way, not till the year 1792. In the courſe of the proceedings reſpecting it ſeven queſtions were put to the judges, for the information of the houſe of peers upon the ſubject. But the anſwers of theſe reverend ſages were drawn up in ſuch technical phraſeology, and with ſuch a happy obſcurity, that they were ſuppoſed to be almoſt wholly unintelligible to ſuch of the lords, as had not been previouſly initiated in legal myſteries. It would be difficult, perhaps, to point out a piece of writing, in which perſpicuity has been more ſucceſsfully avoided [91]. After the bill had paſſed, a proteſt againſt it was entered, ſigned by lord Thurlow, who was then chancellor, by earl Bathurſt and

[91] Vid. the Anſwers at length in Debrett's Parliamentary Regiſter, vol. XXXIII. p. 405—414.

lord

lord Kenyon, and by two lay lords and one biſhop. By this bill it was enacted, that "on the trial of an indictment or in-
" formation for the making or publiſhing
" any libel, the jury may give a general
" verdict of Guilty, or Not Guilty, upon
" the whole matter put in iſſue upon ſuch
" indictment or information; and ſhall
" not be required or directed, by the
" court or judge before whom ſuch in-
" dictment or information ſhall be tried,
" to find the defendant or defendants
" Guilty, merely on the proof of the pub-
" lication, and of the ſenſe aſcribed to it
" in the indictment or information."

If juries had in general poſſeſſed ſufficient ſpirit and underſtanding to have aſſerted their rights, and diſcharged their duty to their country, Mr. Fox's bill would have been unneceſſary. But even ſince the paſſing of this bill, ſome juries appear

appear to have paid by much too implicit a deference to the opinions of judges in libel cauſes. For in this act there is a proviſo, that in every trial for a libel, "the court or judge before whom ſuch "indictment or information ſhall be tried, "ſhall, according to their or his diſ-"cretion, give their or his opinion and "directions to the jury, on the matter in "iſſue between the king and the de-"fendant or defendants, in like manner "as in other criminal caſes." This proviſo is ſo worded, that it may lead ſome juries to ſuppoſe, that they are under a greater obligation to comply with the opinions or directions of the judges, than is agreeable either to reaſon or to juſtice. Juries, unqueſtionably, ſince the paſſing of the late law, ought not to find any man guilty of publiſhing a libel, (nor indeed ought they ever to have done ſo even before

before that period,) merely becauſe the judge gives it as his opinion that the publication is a libel, unleſs they are fully convinced in their own minds, that the publication is libellous; that it is juſtly entitled to the epithets ſtated in the information or indictment. If they are in the leaſt doubtful, they ought certainly to acquit the defendant. Long experience has ſhewn, that juries ought to be extremely on their guard againſt that partiality, which judges have ſo frequently manifeſted, in cauſes between the crown and the ſubject. Their partiality, in trials for public libels, has been often ſo ſtrikingly exhibited, as to be even diſgraceful to the profeſſion of the law. However high the commendations which have frequently been beſtowed on the late lord Mansfield, his conduct was entitled to no applauſe in cauſes in which the crown was concerned. His partiality,

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on ſuch occaſions, was often apparent even to the moſt inattentive obſerver. It is, indeed, aſtoniſhing, that men holding ſo ſacred an office as that of judge, and therefore of courſe pretending to ſome decency of character, ſhould ſo frequently exhibit ſuch groſs partiality in crown cauſes, as has been manifeſted in a variety of occaſions, and of which many inſtances may be found in the State Trials. But what ſecurity is the ſubject to expect, if men are made judges, as has ſometimes been the caſe, not for any evidence of talents or of integrity, but becauſe they have manifeſted that they were ready to do any buſineſs, however diſhonourable, or however injurious to the rights of the people, for the miniſter for the time being.

THE men who, at different periods, have been proſecuted for libels, and upon whom

whom rigorous and unjuſt ſentences have been paſſed, have ſometimes been men of great merit, and ſuch as might juſtly be ranked among the moſt meritorious members of the community. And, indeed, a readineſs to proſecute for public libels, is one of the ſtrongeſt preſumptions, if not a full demonſtration, of the evil deſigns of any adminiſtration. No virtuous adminiſtration need be alarmed, or will ever be overturned, by the freedom of the preſs. But it is always an object of averſion to profligate and wicked miniſters; to thoſe who are ready to ſacrifice the moſt important intereſts of their country, whenever it ſhall be neceſſary for the promotion of their own private views, and for the gratification of their avarice or ambition.

A

LETTER

TO THE

REV. DR. NOWELL,

PRINCIPAL OF ST. MARY HALL,
KING'S PROFESSOR OF MODERN HISTORY,
AND PUBLIC ORATOR IN THE UNIVERSITY
OF OXFORD:

OCCASIONED BY

HIS VERY EXTRAORDINARY SERMON,

PREACHED BEFORE

THE HOUSE OF COMMONS

ON THE THIRTIETH OF JANUARY,

M.DCC.LXXII.

[FIRST PUBLISHED IN THE YEAR 1772.]

REV. SIR,

THE rank which you hold in so respectable an University as that of OXFORD, together with that eminence as a Divine which has occasioned your being appointed to preach before the House of Commons, have induced me to pay a degree of attention to your late sermon, which would not have been excited by an ordinary composition of that kind. But the discourse of so learned a preacher, addressed to an audience of so much dignity, seemed to

claim more than common regard; and I therefore gave it a very careful perusal. I muſt, however, confeſs, that when I had perufed it, the ſentiments which I felt for the preacher were very different from thoſe of reſpect. I found that your ſermon contained paſſages of ſo pernicious a tendency, and ſo inconſiſtent with the principles of that free conſtitution, which has been eſtabliſhed in this country, as to merit the ſevereſt cenſure. This conſideration has induced me to addreſs you in this public manner, and to make ſome animadverſions upon a ſermon, which appears calculated for no other purpoſe but to propagate the moſt ſlaviſh principles of government, and to vindicate the moſt odious exertions of deſpotic power.

In the remarks which I propoſe to make on your diſcourſe, I do not think it neceſſary to inquire, whether there was any

very

very exact reſemblance between the civil war in the laſt century, and the rebellion of Korah, Dathan, and Abiram, to which your text refers, and in the puniſhment of which the Supreme Being miraculouſly interpoſed. Should it appear, that the text is in no reſpect applicable to the purpoſe for which it was produced, it would not be a matter of any great conſequence. It would not be the firſt time that a learned divine had adopted a text, which had no connexion with the ſubject of his ſermon. But my accuſation againſt you is of a higher and more important nature. I charge you with having proſtituted your talents, by a ſolemn defence of tyranny before a Britiſh Houſe of Commons; and with having advanced ſuch ſentiments and aſſertions on that occaſion, as were unworthy of the meaneſt Engliſhman, inconſiſtent with the principles of our conſtitution, and an open

inſult to thoſe repreſentatives of the people, to whom your diſcourſe was delivered.

In truth, I am ſurprized, that any divine, in this age, ſhould have the effrontery to preach ſuch a ſermon before a Britiſh houſe of commons; but ſtill more aſtoniſhed, that they ſhould hear ſuch ſentiments without expreſſing their indignation. But what muſt be the aſtoniſhment of every intelligent Engliſhman, when he ſees prefixed to this ſermon, the thanks of the repreſentatives of the people! It is reported, indeed, that they are ſince ſorry for having teſtified any approbation of ſo extraordinary a performance; and undoubtedly they have ſufficient reaſon for repentance. It may be ſaid, perhaps, that few of them were preſent; and this was probably the caſe. But ſurely the ſpeaker, and a few members, muſt have been preſent; and I ſhould imagine that even Sir Fletcher Norton, if he

he were awake during the time it was pronounced, muſt have been aſhamed of ſuch a ſermon '.

In a conſiderable part of your diſcourſe, you have taken abundant pains to vindicate the character and conduct of king Charles the Firſt, and to throw out the bittereſt reflections againſt thoſe illuſtrious patriots, by whom his deſpotic adminiſtration was oppoſed. An extract or two will ſerve to ſhew the ſpirit of your performance. Speaking of the civil war (Serm. p. 21.) you ſay,

' The object of conteſt was no leſs than
' the preſervation or abolition of epiſcopacy
' and monarchy; the conflict was long and
' doubtful; the event fatal; fatal to THE
' BEST OF PRINCES, who fell a victim to
' the rage of his REBELLIOUS SUBJECTS;

' The Houſe of Commons afterwards reſolved, that their vote of thanks to Dr. Nowell, for his ſermon on this occaſion, ſhould be expunged out of their Journals.

' fatal to the GUILTY NATION; whose
' proud triumph, ſtained with the blood
' of their Sovereign, brought ſwift de-
' ſtruction upon themſelves, and laſting
' INFAMY upon their poſterity.' You alſo
ſay, p. 19, ' It has indeed been frequently
' aſſerted, that this tempeſt was raiſed by
' other cauſes; that the deſpotic diſpoſition,
' the arbitrary proceedings, and the tyran-
' nical government of the king, after num-
' berleſs oppreſſions patiently ſubmitted to,
' rouſed at length the ſpirit of an injured
' people in defence of their liberty and laws;
' that they had frequently applied for re-
' dreſs of grievances; had often petitioned
' for their rights; had uſed every method
' of perſuaſion and remonſtrance without
' ſucceſs, before they had recourſe to thoſe
' meaſures, which a ſenſe of their injuries
' inſpired, and neceſſity ſufficiently juſti-
' fied. But to every unprejudiced perſon
' this

'this APOLOGY FOR REBELLION will ap-
'pear as groundleſs as it is BASE.'

I will not, however, be too profuſe in my quotations, leſt I ſhould injure the ſale of ſo curious a performance. But I will enquire a little into the conduct of the ROYAL MARTYR, as you are pleaſed to ſtyle him; and then we ſhall be enabled to judge, whether the imputation of BASENESS properly belongs to the aſſertors of national liberty, or to the reverend advocate for tyranny at Oxford. A ſhort view of ſome of the principal tranſactions of Charles's reign, will render it eaſy for any man to form a deciſive judgment upon this ſubject.

KING CHARLES I. ſucceeded his father James in March, 1625. He called a parliament in June, the ſame year, who voted him two ſubſidies; but becauſe they were unwilling to grant any more ſupplies, till they had obtained redreſs for ſome con-

ſiderable national grievances, he diſſolved them when they had not been aſſembled quite two months. And to prevent ſome of thoſe gentlemen, who had been active in diſcharging their duty to their conſtituents, from being elected to ſerve in the next parliament, he cauſed them to be appointed ſheriffs; particularly that celebrated lawyer Sir Edward Coke, though he had been lord chief-juſtice of the court of Common Pleas, and of the King's Bench. In February, 1620, Charles called another parliament; but gave great offence to the houſe of peers, by arbitrarily committing the earl of Arundel to the Tower without any legal cauſe, while the parliament was ſitting. The lords exclaimed loudly againſt this deſpotic behaviour of the king; but he at firſt paid no regard to their remonſtrances, though he did at length willingly ſet the earl at liberty. Neither could

could his majeſty agree with the houſe of commons; but becauſe they had impeached his inſolent and over-grown favourite, the duke of Buckingham, and had remonſtrated againſt his levying tonnage and poundage without parliamentary authority, he diſſolved the parliament before they had paſſed a ſingle act.

AFTER the diſſolution of his ſecond parliament, Charles being unwilling to call another, had recourſe to very unwarrantable and unjuſt methods of raiſing ſupplies. Among other unjuſtifiable expedients, an illegal loan was exacted from the people; and many gentlemen of fortune, who refuſed to comply with this unconſtitutional impoſition, were committed to priſon; and perſons of inferior condition, who refuſed to ſubmit, were preſſed into the land and ſea-ſervice. But as the king found theſe irregular practices were vehemently oppoſed,

poſed, and did not produce ſo much money as he expected, in March, 1628, he aſſembled his third parliament. And as in the period between this parliament and the preceding, the liberty of the ſubject had been violated in a variety of inſtances, the commons were deſirous of ſome new law for better ſecuring their rights. For this purpoſe the PETITION OF RIGHT was framed; which was ſo termed, "as implying that it contained a corroboration "or explanation of the antient conſtitu-"tion, not any infringement of regal pre-"rogative, or acquiſition of new liberties."

Charles was extremely unwilling to paſs this bill into a law, and made uſe of a variety of artifices to avoid it. But being deſirous of obtaining ſome ſupplies, which the commons were wiſe enough to withhold, till they had obtained ſome ſecurity for the preſervation of their own rights, and

thoſe

thoſe of their conſtituents, he agreed to give his aſſent to the bill. He did this, however, in a very unuſual form, apparently with the view of rendering it the more eaſy for him to evade it. But both the lords and commons declaring their diſſatisfaction at this, he at length paſſed the Petition of Right in the uſual form. After this they granted the king five ſubſidies; but as they proceeded after this to remonſtrate againſt tonnage and poundage being levied without parliamentary authority, he prorogued them for four months. He continued this prorogation to January 1629, when the parliament again aſſembled; but finding the houſe of commons ſtill diſpoſed to attend to the grievances of the ſubject, he diſſolved the parliament without a ſingle act being paſſed during the ſeſſion.

THUS

THUS ended Charles's third parliament; and as he had found that thoſe national aſſemblies would endeavour to maintain the rights of the people, and not merely be the inſtruments of his will and pleaſure, he reſolved to govern without any parliament. Accordingly he iſſued a proclamation, in which he declared, that he ſhould account it preſumption in any to preſcribe to him the time for calling a parliament. And about the ſame time, ſome of thoſe members of the houſe of commons, who had the moſt diſtinguiſhed themſelves in ſupporting the liberties of the ſubject, were in a moſt arbitrary and illegal manner committed priſoners to the Tower, merely on account of their parliamentary conduct; particuliarly, Sir John Elliot, Sir Miles Hobart, Sir Peter Hayman, Denzil Hollis, William Coriton, Walter Long, William Stroud,

Stroud, Benjamin Valentine, and the great and learned John Selden.

FROM this time Charles called no parliament for upwards of eleven years, and during that whole period his government was little better than one continued violation of the rights of the people. The payment of ſhip-money was exacted; and ſuch other methods of extorting money for the crown adopted, as were in the higheſt degree oppreſſive and illegal. Tonnage and poundage continued to be levied by the royal authority alone; and upwards of thirty knights, and great numbers of other gentlemen, were impriſoned for refuſing to ſubſcribe to an illegal loan. In the court of Star-chamber, the high commiſſion court, and other arbitrary tribunals, the people were grievouſly oppreſſed; and the moſt ſevere, cruel, and unjuſt ſentences, were paſſed on men for very inconſider-

conſiderable offences, and on very trifling charges. In particular, the barbarous ſentences paſſed on Prynne, Burton, Dr. Baſtwick, Dr. Leighton, and John Lilburne, were contrary to every principle of law and juſtice, and repugnant to every ſentiment of humanity. Under his majeſty's two great favourites, the earl of STRAFFORD and archbiſhop LAUD, the people felt all the rigours of civil and eccleſiaſtical tyranny. In England, as Lord Preſident of the Court and Council of the North, STRAFFORD trampled on the moſt important rights of the people; and in Ireland, as lord-lieutenant of that kingdom, he incenſed almoſt the whole nation againſt him by his arbitrary conduct. LAUD, in the mean while, exerciſed ſo much unjuſt ſeverity againſt thoſe whoſe religious ſentiments and mode of worſhip were not exactly conformable to the eſtabliſhed hierarchy,

chy, that great numbers of worthy and conſcientious perſons quitted their native country for ever, rather than be ſubjected to ſuch groſs oppreſſion.

In this ſhort ſketch of ſome of the principal tranſactions of the bleſſed reign of the Royal Martyr, tranſactions which in the event brought him to the block, I have mentioned no facts but ſuch as are of the moſt public and unqueſtionable nature. Other very criminal charges have been brought againſt Charles the Firſt, but I did not chuſe to introduce any queſtionable facts. And thoſe which I have produced, I will venture to ſay, even you, Sir, though His Majeſty's Profeſſor of Modern Hiſtory, are utterly unable to diſprove. And what I have offered, is, I apprehend, ſufficient to demonſtrate, that the charge of baseness, which you have brought againſt the defenders of the oppo-

ſition

fition to Charles the Firſt, can reflect diſhonour only on yourſelf; and that, when you aſſert that Charles I. was THE BEST OF PRINCES, you have been guilty of a groſs violation of truth; or the neceſſary conſequence muſt be, that, from the firſt eſtabliſhment of the regal office to the preſent hour, there never yet was a prince, who deſerved the crown of which he was in poſſeſſion.

You intimate, that you do not mean to vindicate every meaſure taken by Charles and his miniſters; though it is evident that you labour to defend them to the utmoſt. But, you ſay, p. 19, 20, 'To 'ſuppoſe that they were exempt from the 'common paſſions, infirmities, or errors 'of human nature, would be to forget 'that they were men; to pretend that in 'thoſe difficult and perplexing conjunc-'tures they exactly regulated every mo-'tion

'tion by the even hand of juſtice and
'prudence, would be in effect to attribute
'to them a degree of perfection far be-
'yond the reach of human wiſdom, or
'virtue, to attain.' But, unfortunately, the charge againſt Charles the Firſt, and his miniſters and favourites, is, not that their adminiſtration was not completely perfect, but that it was in a very high degree criminal. Charles might certainly have avoided trampling on the rights of his ſubjects, and injuring and oppreſſing them in the manner that he evidently did; and yet have been far enough from ſuch a degree of perfection as is "beyond the reach "of human wiſdom, or virtue, to attain." As to your intimation, that his unjuſtifiable proceedings aroſe from the Houſe of Commons refuſing the ſupplies he wanted: ſurely their declining to grant thoſe large ſupplies which he might wiſh for, or his

extravagant courtiers think needful, could not give him a right to over-turn the conſtitution, or to act in diametric oppoſition to the rules of law and juſtice. The very idea is abſurd. Unhappily, parliaments, in later times, have been too ready to grant the moſt exorbitant ſupplies, without making the neceſſary inquiries whether ſuch ſums have been properly applied, and whether the people on whom they were levied were able to bear ſuch burthens: and ſuch parliaments have undoubtedly been guilty of a groſs and ſhameful breach of truſt.

SPEAKING of the calamities occaſioned by the civil war, p. 15. you ſay, 'In vain 'ſhall we look for the beginning of theſe 'evils from any real or pretended griev-'ances, from any undue ſtretches of pre-'rogative, from any abuſe of royal power, 'thoſe favourite topics upon which the 'ENEMIES OF OUR CONSTITUTION ſo ve-'hemently

'hemently declaim.' I apprehend, that I have ſufficiently ſhewn, that the people laboured under ſuch a variety of grievances in the reign of Charles the Firſt, as are fully ſufficient to account for the oppoſition that was made to him, without having recourſe to any other cauſe; and that the civil war may juſtly be attributed to the REAL GRIEVANCES which then exiſted, to UNDUE STRETCHES OF PREROGATIVE, and to THE ABUSE OF ROYAL POWER. But I ſhould be glad to be informed, what it is you mean by the phraſe ENEMIES OF OUR CONSTITUTION. Is it really your opinion, Sir, that the conſtitution of the Engliſh government is deſpotic, and that none but tame and paſſive ſlaves, and the votaries of tyranny, are friends to the conſtitution? If the conſtitution of England be a free, legal, limited government, I can ſcarcely form an idea of greater enemies of our conſtitution, than

thoſe who have adopted ſuch principles as are avowed by Dr. NOWELL.

You obſerve, p. 22. that when Charles's 'private inſtructions to his miniſters and 'agents, his correſpondence with his ſe-'cretaries, his boſom ſentiments commu-'nicated without reſerve to his moſt fami-'liar friends, and faithful ſervants, ſhall 'be laid before the public, they will have 'abundant reaſon to admire his abilities, 'to applaud his integrity, to praiſe his 'conſtancy and patience, to celebrate his 'unſhaken attachment to true religion; to 'deplore his death, and REVERENCE HIS 'MEMORY.' You inform us, that theſe important papers are now printing at Oxford, and will make their appearance in the ſecond volume of State Papers ſpeedily to be publiſhed. But, be aſſured, my good doctor, that in whatever pomp theſe precious relics may iſſue from the Clarendon Preſs,

Preſs, they will not produce thoſe ſurpriz-ing effects you ſeem to apprehend from them. Unleſs the ACTIONS of your ROYAL MARTYR can be blotted from the re-cords of Hiſtory, no publication of PAPERS will ever be ſufficient to vindicate his cha-racter. Charles ſometimes talked and wrote ſmoothly and plauſibly; but the admi-niſtration of this BEST OF PRINCES proved him to be a tyrant, and an oppreſſor of the people whom he was ſworn to protect.

HOWEVER unwilling I may be to divert your attention from "the contemplation "of thoſe DIVINE VIRTUES, which ſhone "forth in the life and death of the ROYAL "MARTYR," as you excellently expreſs yourſelf, p. 21, I muſt take the liberty to obſerve, that there is a very obvious reaſon why the memory of Charles the Firſt is ſo exceedingly dear to ſome ambitious Church-men. This BEST OF PRINCES was very

ready to ſupport the extravagant claims of the Church; and the Clergy, in their turn, were equally ready to ſupport whatever degrees of civil power his majeſty might think proper to aſſume, however tyrannical, and however oppreſſive to the ſubject. So that between the King and the Clergy, the People were very ſufficiently enſlaved. His majeſty would not ſuffer them to be maſters of their own perſons and property; nor did the Clergy chuſe to leave them to the dictates of their own conſciences, or to the exerciſe of their own underſtandings.

You are pleaſed to obſerve of king Charles, p. 21, that 'the tongue of ſlander has been able to caſt no reflection upon his ROYAL VIRTUES, but what time and an impartial examination have already in a great meaſure obviated.' Whether the ROYAL VIRTUES of Charles have ſuffered

ſuffered any injury from "the tongue of "ſlander," I will not take upon me to determine: this, however, I think appears certain, that his ROYAL VIRTUES appear in no very advantageous point of view in the pages of impartial hiſtory. And the pernicious effects of his majeſty's ROYAL VICES, have reflected ſo much diſhonour upon his character, that all the eloquence even of the preſent Public Orator of the Univerſity of Oxford, will never be able to remove it.

IT is evident, from the moſt impartial examination of the reign of Charles I. that his government was unjuſt, oppreſſive, and tyrannical; and that it deſerved to be oppoſed by all men, who had ſpirit enough to diſdain a ſervile ſubmiſſion to lawleſs and deſpotic power. And ſuch an adminiſtration as that of Charles, cannot be defended by any man, but one who is an enemy to the liberties of Engliſhmen, and