

*J. P. Howard*  
*Wakefield*

# DEFENCE OF USURY;

SHEWING THE IMPOLICY OF THE

PRESENT LEGAL RESTRAINTS

ON THE TERMS OF

## PECUNIARY BARGAINS;

IN

*Letters to a Friend.*

TO WHICH IS ADDED,

### A LETTER

TO

## ADAM SMITH, Esq. LL. D.

ON THE DISCOURAGEMENTS OPPOSED BY THE ABOVE  
RESTRAINTS TO THE PROGRESS OF

### *INVENTIVE INDUSTRY.*

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THE THIRD EDITION.

---

AND TO WHICH IS ALSO ADDED,

SECOND EDITION,

### A PROTEST AGAINST LAW TAXES.

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By JEREMY BENTHAM, Esq.

OF LINCOLN'S INN.

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# DEFENCE OF USURY.

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## LETTER I.

### *Introduction.*

*Crichoff, in White Russia, January, 1787.*

AMONG the various species or modifications of liberty, of which on different occasions we have heard so much in England, I do not recollect ever seeing any thing yet offered in behalf of the *liberty of making one's own terms in money-bargains*. From so general and universal a neglect, it is an old notion of mine, as you well know, that this meek and unassuming species of liberty has been suffering much injustice.

B

A fancy

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A fancy has taken me, just now, to trouble you with my reasons: which, if you think them capable of answering any good purpose, you may forward to the press: or in the other case, what will give you less trouble, to the fire.

In a word, the proposition I have been accustomed to lay down to myself on this subject is the following one, viz. that *no man of ripe years and of sound mind, acting freely, and with his eyes open, ought to be hindered, with a view to his advantage, from making such bargain, in the way of obtaining money, as he thinks fit: nor, (what is a necessary consequence) any body hindered from supplying him, upon any terms he thinks proper to accede to.*

This proposition, were it to be received, would level, you see, at one stroke, all the barriers which law,  
either



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either statute or common, have in their united wisdom set up, either against the crying sin of Usury, or against the hard-named and little-heard-of practice of Champerty; to which we must also add a portion of the multifarious, and as little-heard-of offence, of Maintenance.

On this occasion, were it any individual antagonist I had to deal with, my part would be a smooth and easy one. “ You, who fetter contracts; “ you, who lay restraints on the liberty of man, it is for you” (I should say) “ to assign a reason for your doing so.” That contracts in general ought to be observed, is a rule, the propriety of which, no man was ever yet found wrong-headed enough to deny: if this case is one of the exceptions (for some doubtless there are) which the safety and welfare of every

B 2

society

4      LETT. I. *Introduction.*

society require should be taken out of that general rule, in this case, as in all those others, it lies upon him, who alledges the necessity of the exception, to produce a reason for it.

This, I say, would be a short and very easy method with an individual: but, as the world has no mouth of its own to plead by, no certain attorney by which it can “come and defend this force and injury,” I must even find arguments for it at a venture, and ransack my own imagination for such phantoms as I can find to fight with.

In favour of the restraints opposed to the species of liberty I contend for, I can imagine but five arguments.

1. Prevention of usury.
2. Prevention of prodigality.
3. Protection of indigence against extortion.

4. Re-

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4. Repression of the temerity of projectors.

5. Protection of simplicity against imposition..

Of all these in their order.

6 LETT. II. *Reasons for Restraint.*

LETTER II.

*Reasons for Restraint.—Prevention of Usury.*

**I** Will begin with the *prevention* of *usury*: because in the sound of the word *usury* lies, I take it, the main strength of the argument: or, to speak strictly, of what is of more importance than all argument, of the hold which the opinion I am combating has obtained on the imaginations and passions of mankind.

Usury is a bad thing, and as such ought to be prevented: usurers are a bad sort of men, a very bad sort of men, and as such ought to be punished and suppressed. These are among  
the

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the string of propositions which every man finds handed down to him from his progenitors: which most men are disposed to accede to without examination, and indeed not unnaturally nor even unreasonably disposed, for it is impossible the bulk of mankind should find leisure, had they the ability, to examine into the grounds of an hundredth part of the rules and maxims, which they find themselves obliged to act upon. Very good apology this for John Trot: but a little more inquisitiveness may be required of legislators.

You, my friend, by whom the true force of words is so well understood, have, I am sure, gone before me in perceiving, that to say usury is a thing to be prevented, is neither more nor less than begging the matter in question. I know of but two definitions

8 LETT. II. *Reasons for Restraint.*

definitions that can possibly be given of usury: one is, the taking of a greater interest than the law allows of: this may be styled the *political* or *legal* definition. The other is the taking of a greater interest than it is usual for men to give and take: this may be styled the *moral* one: and this, where the law has not interfered, is plainly enough the only one. It is plain, that in order for usury to be prohibited by law, a positive description must have been found for it by law, fixing, or rather superseding, the moral one. To say then that usury is a thing that ought to be prevented, is saying neither more nor less, than that the utmost rate of interest which shall be taken ought to be fixed; and that fixation enforced by penalties, or such other means, if any, as may answer the purpose of preventing

*Prevention of Usury.*

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preventing the breach of it. A law punishing usury supposes, therefore, a law fixing the allowed legal rate of interest: and the propriety of the penal law must depend upon the propriety of the simply-prohibitive, or, if you please, declaratory one.

One thing then is plain; that, antecedently to custom growing from convention, there can be no such thing as usury: for what rate of interest is there that can naturally be more proper than another? what natural fixed price can there be for the use of money more than for the use of any other thing? Were it not then for custom, usury, considered in a moral view, would not then so much as admit of a definition: so far from having existence, it would not so much as be conceivable: nor therefore could the law, in the definition

10 LETT. II. *Reasons for Restraint.*

it took upon itself to give of such offence, have so much as a guide to steer by. Custom therefore is the sole basis, which, either the moralist in his rules and precepts, or the legislator in his injunctions, can have to build upon. But what basis can be more weak or unwarrantable, as a ground for coercive measures, than custom resulting from free choice? My neighbours, being at liberty, have happened to concur among themselves in dealing at a certain rate of interest. I, who have money to lend, and Titius, who wants to borrow it of me, would be glad, the one of us to accept, the other to give, an interest somewhat higher than theirs: why is the liberty they exercise to be made a pretence for depriving me and Titius of ours?

Nor



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Nor has blind custom, thus made the sole and arbitrary guide, any thing of steadiness or uniformity in its decisions: it has varied, from age to age, in the same country: it varies, from country to country, in the same age: and the legal rate has varied along with it: and indeed, with regard to times past, it is from the legal rate, more readily than from any other source, that we collect the customary. Among the Romans, till the time of Justinian, we find it as high as 12 per cent.: in England, so late as the time of Henry VIII., we find it at 10 per cent.: succeeding statutes reduced it to 8, then to 6, and lastly to 5, where it stands at present. Even at present in Ireland it is at 6 per cent.; and in the West-Indies at 8 per cent.; and in Hindostan, where there is no rate limited  
by

12 LETT. II. *Reasons for Restraint.*

by law, the lowest customary rate is 10 or 12. At Constantinople, in certain cases, as I have been well informed, thirty per cent. is a common rate. Now, of all these widely different rates, what one is there, that is intrinsically more proper than another? What is it that evidences this propriety in each instance? what but the mutual convenience of the parties, as manifested by their consent? It is convenience then that has produced whatever there has been of custom in the matter: What can there then be in custom, to make it a better guide than the convenience which gave it birth? and what is there in convenience, that should make it a worse guide in one case than in another? It would be convenient to me to give 6 per cent. for money: I wish to do so. "No," (says the law).  
"you

*Prevention of Usury.* · 13

“you shan’t.”—Why so? “Because  
“it is not convenient to your neigh-  
“bour to give above 5 for it.” Can  
any thing be more absurd than such  
a reason?

Much has not been done, I think,  
by legislators as yet in the way of fix-  
ing the price of other commodities:  
and, in what little has been done,  
the probity of the intention has, I  
believe, in general, been rather more  
unquestionable than the rectitude of  
the principle, or the felicity of the  
result. Putting money out at interest,  
is exchanging present money for fu-  
ture: but why a policy, which, as  
applied to exchanges in general,  
would be generally deemed absurd  
and mischievous, should be deemed  
necessary in the instance of this par-  
ticular kind of exchange, mankind  
are as yet to learn. For him who  
takes

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takes as much as he can get for the use of any other sort of thing, an house for instance, there is no particular appellation, nor any mark of disrepute: nobody is ashamed of doing so, nor is it usual so much as to profess to do otherwise. Why a man who takes as much as he can get, be it six, or seven, or eight, or ten per cent. for the use of a sum of money, should be called usurer, should be loaded with an opprobrious name, any more than if he had bought an house with it, and made a proportionable profit by the house, is more than I can see.

Another thing I would also wish to learn, is, why the legislator should be more anxious to limit the rate of interest one way, than the other? why he should set his face against the owners of that species of property  
more

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more than of any other? why he should make it his business to prevent their getting *more* than a certain price for the use of it, rather than to prevent their getting *less*? why, in short, he should not take means for making it penal to offer less, for example, than 5 per cent. as well as to accept more? Let any one that can, find an answer to these questions; it is more than I can do: I except always the distant and imperceptible advantage, of sinking the price of goods of all kinds; and, in that remote way, multiplying the future enjoyments of individuals. But this was a consideration by far too distant and refined, to have been the original ground for confining the limitation to this side.

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LETTER III.

*Reasons for Restraint.—Prevention of  
Prodigality.*

HAVING done with sounds, I come gladly to propositions; which, as far as they are true in point of fact, may deserve the name of reasons. And first, as to the efficacy of such restrictive laws with regard to the *prevention of Prodigality.*

That prodigality is a bad thing, and that the prevention of it is a proper object for the legislator to propose to himself, so long as he confines himself to, what I look upon as, proper measures, I have no objection to allow, at least for the purpose of the argument;

*Prevention of Prodigality.* 17

ment ; though, were this the principal question, I should look upon it as incumbent on me to place in a fair light the reasons there may be for doubting, how far, with regard to a person arrived at the age of discretion, third persons may be competent judges ; which of two pains may be of greater force and value to him, the present pain of restraining his present desires, or the future contingent pain he may be exposed to suffer from the want to which the expense of gratifying these desires may hereafter have reduced him. To prevent our doing mischief to one another, it is but too necessary to put bridles into all our mouths : it is necessary to the tranquillity and very being of society : but that the tacking of leading-strings upon the backs of grown persons, in order to prevent their doing themselves a mischief, is not

18 LETT. III. *Reasons for Restraint.*

not necessary either to the being or tranquillity of society, however conducive to its well-being, I think cannot be disputed. Such paternal, or, if you please, maternal, care, may be a good work, but it certainly is but a work of supererogation.

For my own part, I must confess, that so long as such methods only are employed, as to me appear proper ones, and such there are, I should not feel myself disinclined to see some measures taken for the restraining of prodigality: but this I cannot look upon as being of the number. My reasons I will now endeavour to lay before you.

In the first place, I take it, that it is neither natural nor usual for prodigals, as such, to betake themselves to this method, I mean, that of giving a rate of interest above the ordinary one, to supply their wants.

In



*Prevention of Prodigality.* 19

In the first place, no man, I hope you will allow, prodigal or not prodigal, ever thinks of borrowing money to spend, so long as he has *ready money* of his own, or effects which he can turn into ready money without loss. And this deduction strikes off what, I suppose, you will look upon as the greatest proportion of the persons subject, at any given time, to the imputation of prodigality.

In the next place, no man, in such a country as Great Britain at least, has occasion, nor is at all likely, to take up money at an extraordinary rate of interest, who has *security* to give, equal to that upon which money is commonly to be had at the highest ordinary rate. While so many advertise, as are to be seen every day advertising, money to be lent at five per cent. what should possess a man, who

20 LETT. III. *Reasons for Restraint.*

who has any thing to offer that can be called a security, to give, for example, six per cent. is more than I can conceive.

You may say, perhaps, that a man who wishes to lend his money out upon security, wishes to have his interest punctually, and that without the expense, and hazard, and trouble, and odium of going to law ; and that, on this account, it is better to have a sober man to deal with than a prodigal. So far I allow you ; but were you to add, that on this account it would be necessary for a prodigal to offer more than another man, there I should disagree with you. In the first place, it is not so easy a thing, nor, I take it, a common thing, for the lender upon security to be able to judge, or even to form any attempt to judge, whether the conduct of  
one

*Prevention of Prodigality.* 21

one who offers to borrow his money is or is not of such a cast, as to bring him under this description. The question, prodigal or not prodigal, depends upon two pieces of information; neither of which, in general, is very easy to come at: on the one hand, the amount of his means and reasonable expectations; on the other hand, the amount of his expenditure. The goodness or badness of the security is a question of a very different nature: upon this head, every man has a known and ready means of obtaining that sort of information, which is the most satisfactory the nature of things affords, by going to his lawyer. It is accordingly, I take it, on their lawyer's opinion, that lenders in general found their determination in these cases, and not upon any calculations they may have formed,

ed,

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ed, concerning the receipt and expenditure of the borrower. But even supposing a man's disposition to prodigality to be ever so well known, there are always enough to be found, to whom such a disposition would be rather an inducement than an objection, so long as they were satisfied with the security. Every body knows the advantage to be made in case of mortgage, by foreclosing or forcing a sale: and that this advantage is not uncommonly looked out for, will, I believe, hardly be doubted by any one, who has had any occasion to observe the course of business in the court of Chancery.

In short, so long as a prodigal has any thing to pledge, or to dispose of, whether in possession, or even in reversion, whether of a certain or even of a contingent nature, I see not, how

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how he can receive the smallest benefit, from any laws that are, or can be made to fix the rate of interest. For, suppose the law to be efficacious as far as it goes, and that the prodigal can find none of those monsters called usurers to deal with him, does he lie quiet? No such thing: he goes on and gets the money he wants, by selling his interest instead of borrowing. He goes on, I say: for if he has prudence enough to stop him anywhere, he is not that sort of man, whom it can be worth while for the law to attempt stopping by such means. It is plain enough then, that to a prodigal thus circumstanced, the law cannot be of any service; on the contrary, it may, and in many cases must, be of disservice to him, by denying him the option of a resource, which, how disadvantageous soever, could  
not

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not well have proved more so, but would naturally have proved less so, than those which it leaves still open to him. But of this hereafter.

I now come to the only remaining class of prodigals, viz. those who have nothing that can be called a security to offer. These, I should think, are not more likely to get money upon an extraordinary rate of interest, than an ordinary one. Persons who either feel, or find reasons for pretending to feel, a friendship for the borrower, can not take of him more than the ordinary rate of interest: persons who have no such motive for lending him, will not lend him at all. If they know him for what he is, that will prevent them of course: and even though they should know nothing of him by any other circumstance, the very circumstance of his not being able to find a friend

*Prevention of Prodigality.* 25

friend to trust him at the highest ordinary rate, will be sufficient reason to a stranger for looking upon him as a man, who, in the judgment of his friends, is not likely to pay.

The way that prodigals run into debt, after they have spent their substance, is, I take it, by borrowing of their friends and acquaintance, at ordinary interest, or more commonly at no interest, small sums, such as each man may be content to lose, or be ashamed to ask real security for; and as prodigals have generally an extensive acquaintance (extensive acquaintance being at once the cause and effect of prodigality), the sum total of the money a man may thus find means to squander, may be considerable, tho' each sum borrowed may, relatively to the circumstances of the lender, have been inconsiderable. This I take to

26 LETT. III. *Reasons for Restraint.*

be the race which prodigals, who have spent their all, run at present, under the present system of restraining laws: and this, and no other, I take it, would be the race they would run, were those laws out of the way.

Another consideration there is, I think, which will compleat your conviction, if it was not compleat before, of the inefficacy of these laws, as to the putting any sort of restraint upon prodigality. This is, that there is another set of people from whom prodigals get what they want, and always will get it, so long as credit lasts, in spite of all laws against high interest; and, should they find it necessary, at an expense more than equal to an excess of interest they might otherwise have to give. I mean the tradesmen who deal in the goods they want. Every body knows it is much easier



*Prevention of Prodigality.* 27

easier to get goods than money. People trust goods upon much slenderer security than they do money: it is very natural they should do so: ordinary profit of trade upon the whole capital employed in a man's trade, even after the expense of warehouse-rent, journeymen's wages, and other such general charges, are taken into the account, and set against it, is at least equal to double interest; say 10 per cent. Ordinary profit upon any particular parcel of goods must therefore be a great deal more, say at least triple interest, 15 per cent.: in the way of trading, then, a man can afford to be at least three times as adventurous, as he can in the way of lending, and with equal prudence. So long, then, as a man is looked upon as one who will pay, he can much easier get the goods he wants,

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than

28 LETT. III. *Reasons for Restraint.*

than he could the money to buy them with, though he were content to give for it twice, or even thrice the ordinary rate of interest.

Supposing any body, for the sake of extraordinary gain, to be willing to run the risk of supplying him, although they did not look upon his personal security to be equal to that of another man, and for the sake of the extraordinary profit to run the extraordinary risk; in the trader, in short in every sort of trader whom he was accustomed to deal with in his solvent days, he sees a person who may accept of any rate of profit, without the smallest danger from any laws that are, or can be made against usury. How idle, then, to think of stopping a man from making six, or seven, or eight per cent. interest, when, if he chuses to run a risk proportionable,

*Prevention of Prodigality.*      29

portionable, he may in this way make thirty or forty per cent. or any rate you please. And as to the prodigal, if he cannot get what he wants upon these terms, what chance is there of his getting it upon any terms, supposing the laws against usury to be away? This then is another way, in which, instead of serving, it injures him, by narrowing his option, and driving him from a market which might have proved less disadvantageous, to a more disadvantageous one.

As far as prodigality, then, is concerned, I must confess, I cannot see the use of stopping the current of expenditure in this way at the fosset, when there are so many unpreventable ways of letting it run out at the bung-hole.

Whether any harm is done to society, upon the whole, by letting so  
much

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much money drop at once out of the pockets of the prodigal, who would have gone on wasting it, into the till of the frugal tradesman, who will lay it up, is not worth the inquiry for the present purpose: what is plain is, that, so far as the saving the prodigal from paying at an extraordinary rate for what he gets to spend, is the object of the law, that object is not at all promoted, by fixing the rate of interest upon money borrowed. On the contrary, if the law has any effect, it runs counter to that object: since, were he to borrow, it would only be, in as far as he could borrow at a rate inferior to that at which otherwise he would be obliged to buy. Preventing his borrowing at an extra-rate, may have the effect of increasing his distress, but cannot have the effect of lessening it: allowing his borrowing  
at

*Prevention of Prodigality.*      31

at such a rate, might have the effect of lessening his distress, but could not have the effect of increasing it.

To put a stop to prodigality, if indeed it be worth while, I know but of one effectual course that can be taken, in addition to the incomplete and insufficient courses at present practicable, and that is, to put the convicted prodigal under an *interdict*, as was practised formerly among the Romans, and is still practised among the French, and other nations who have taken the Roman law for the ground-work of their own. But to discuss the expediency, or sketch out the details of such an institution, belongs not to the present purpose.

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LETTER IV.

*Reasons for Restraint.—Protection of  
Indigence.*

**B**ESIDES prodigals, there are three other classes of persons, and but three, for whose security I can conceive these restrictive laws to have been designed. I mean the indigent, the rashly enterprizing, and the simple: those whose pecuniary necessities may dispose them to give an interest above the ordinary rate, rather than not have it, and those who, from rashness, may be disposed to venture upon giving such a rate, or from carelessness combined with ignorance, may be disposed to acquiesce in it.

In

*Protection of Indigence.* 33

In speaking of these three different classes of persons, I must beg leave to consider one of them at a time : and accordingly, in speaking of the indigent, I must consider indigence in the first place as untinged with simplicity. On this occasion, I may suppose, and ought to suppose, no particular defect in a man's judgment, or his temper, that should mislead him, more than the ordinary run of men. He knows what is his interest as well as they do, and is as well disposed and able to pursue it as they are.

I have already intimated, what I think is undeniable, that there are no one or two or other limited number of rates of interest, that can be equally suited to the unlimited number of situations, in respect of the degree of *exigency*, in which a man is liable to find himself : insomuch that

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to the situation of a man, who by the use of money can make for example 11 per cent., six per cent. is as well adapted, as 5 per cent. is to the situation of him who can make but 10; to that of him who can make 12 per cent. seven, and so on. So, in the case of his wanting it to save himself from a loss, (which is that which is most likely to be in view under the name of *exigency*) if that loss would amount to 11 per cent. 6 per cent. is as well adapted to his situation, as 5 per cent. would be to the situation of him, who had but a loss amounting to ten per cent. to save himself from by the like means. And in any case, though, in proportion to the amount of the loss, the rate of interest were even so great, as that the clear saving should not amount to more than one per cent. or any fraction per cent. yet



*Protection of Indigence.* 35

so long as it amounted to any thing, he would be just so much the better for borrowing, even on such comparatively disadvantageous terms. If, instead of gain, we put any other kind of benefit or advantage—if, instead of loss, we put any other kind of mischief or inconvenience, of equal value, the result will be the same.

A man is in one of these situations, suppose, in which it would be for his advantage to borrow. But his circumstances are such, that it would not be worth any body's while to lend him, at the highest rate which it is proposed the law should allow; in short, he cannot get it at that rate. If he thought he *could* get it at that rate, most surely he would not give a higher: he may be trusted for that: for by the supposition he has nothing defective in his understanding. But the

36 LETT. IV. *Reasons for Restraint.*

the fact is, he cannot get it at that lower rate. At a higher rate, however, he could get it : and at that rate, though higher, it would be worth his while to get it : so he judges, who has nothing to hinder him from judging right ; who has every motive and every means for forming a right judgment ; who has every motive and every means for informing himself of the circumstances, upon which rectitude of judgment, in the case in question, depends. The legislator, who knows nothing, nor can know any thing, of any one of all these circumstances, who knows nothing at all about the matter, comes and says to him—“ It signifies nothing ; you shall not have the money : for it would be doing you a mischief to let you borrow it upon such terms.”—

And

*Protection of Indigence.* 37

And this out of prudence and loving-kindness!—There may be worse cruelty: but can there be greater folly?

The folly of those who persist, as is supposed, without reason, in not taking advice, has been much expatiated upon. But the folly of those who persist, without reason, in forcing their advice upon others, has been but little dwelt upon, though it is, perhaps, the more frequent, and the more flagrant of the two. It is not often that one man is a better judge for another, than that other is for himself, even in cases where the adviser will take the trouble to make himself master of as many of the materials for judging, as are within the reach of the person to be advised. But the legislator is not, can not be, in the possession of any one of these materials

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materials.—What private, can be equal to such public folly?

I should now speak of the *enterprising* class of borrowers: those, who, when characterized by a single term, are distinguished by the unfavourable appellation of *projectors*: but in what I shall have to say of them, Dr. Smith, I begin to foresee, will bear so material a part, that when I come to enter upon that subject, I think to take my leave of you, and address myself to him.

*Protection of Simplicity.* 39

## LETTER V.

*Reasons for Restraint.—Protection of Simplicity.*

**I** Come, lastly, to the case of the simple. Here, in the first place, I think I am by this time entitled to observe, that no simplicity, short of absolute idiotism, can cause the individual to make a more groundless judgment than the legislator, who in the circumstances above stated, should pretend to confine him to any given rate of interest, would have made for him.

Another consideration, equally conclusive, is, that were the legislator's judgment ever so much superior to the individual's, how weak soever  
that

40 LETT. V. *Reasons for Restraint.*

that may be, the exertion of it on this occasion can never be any otherwise than useless, so long as there are so many similar occasions, as there ever must be, where the simplicity of the individual is equally likely to make him a sufferer, and on which the legislator cannot interpose with effect, nor has ever so much as thought of interposing.

Buying goods with money, or upon credit, is the business of every day: borrowing money is the business, only, of some particular exigency, which, in comparison, can occur but seldom. Regulating the prices of goods in general would be an endless task, and no legislator has ever been weak enough to think of attempting it. And supposing he were to regulate the prices, what would that signify for the protection of simplicity, unless he were  
to

*Protection of Simplicity.* 41

to regulate also the quantum of what each man should buy? Such quantum is indeed regulated, or rather means are taken to prevent buying altogether; but in what cases? In those only where the weakness is adjudged to have arrived at such a pitch, as to render a man utterly unqualified for the management of his affairs: in short, when it has arrived at the length of idiocy.

But in what degree soever a man's weakness may expose him to imposition, he stands much more exposed to it, in the way of buying goods, than in the way of borrowing money. To be informed, beforehand, of the ordinary prices of all the sorts of things, a man may have occasion to buy, may be a task of considerable variety and extent. To be informed of the ordinary rate of interest, is to be

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be informed of one single fact, too interesting not to have attracted attention, and too simple to have escaped the memory. A few per cent. enhancement upon the price of goods, is a matter that may easily enough pass unheeded; but a single per cent. beyond the ordinary interest of money, is a stride more conspicuous and startling, than many per cent. upon the price of any kind of goods.

Even in regard to subjects, which, by their importance would, if any, justify a regulation of their price, such as for instance land, I question whether there ever was an instance where, without some such ground as, on the one side fraud, or suppression of facts necessary to form a judgment of the value, or at least ignorance of such facts, on the other, a bargain was rescinded, merely because a man had  
sold



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sold too cheap, or bought too dear. Were I to take a fancy to give a hundred years purchase instead of thirty, for a piece of land, rather than not have it, I don't think there is any court in England, or indeed any where else, that would interpose to hinder me, much less to punish the seller with the loss of three times the purchase money, as in the case of usury. Yet when I had got my piece of land, and paid my money, repentance, were the law ever so well disposed to assist me, might be unavailing: for the seller might have spent the money, or gone off with it. But, in the case of borrowing money, it is the borrower always, who, according to the indefinite, or short term for which money is lent, is on the safe side: any imprudence he may have committed with regard to the rate  
of

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of interest, may be corrected at any time: if I find I have given too high an interest to one man, I have no more to do than to borrow of another at a lower rate, and pay off the first: if I cannot find any body to lend me at a lower, there cannot be a more certain proof that the first was not in reality too high. But of this hereafter.

*Mischiefs of anti-usurious Laws.* 45

LETTER VI.

*Mischiefs of the anti-usurious Laws.*

**I**N the preceding Letters, I have examined all the modes I can think of, in which the restraints, imposed by the laws against usury, can have been fancied to be of service.

I hope it appears by this time, that there are no ways in which those laws can do any good. But there are several, in which they can not but do mischief.

The first I shall mention, is that of precluding so many people, altogether, from the getting the money they stand in need of, to answer their respective exigencies. Think what a  
distress

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distress it would produce, were the liberty of borrowing denied to every body: denied to those who have such security to offer, as renders the rate of interest, they have to offer, a sufficient inducement, for a man who has money, to trust them with it. Just that same sort of distress is produced, by denying that liberty to so many people, whose security, though, if they were permitted to add something to that rate, it would be sufficient, is rendered insufficient by their being denied that liberty. Why the misfortune, of not being possessed of that arbitrarily exacted degree of security, should be made a ground for subjecting a man to a hardship, which is not imposed on those who are free from that misfortune, is more than I can see. To discriminate the former class from the latter, I can see but  
this

this one circumstance, viz. that their necessity is greater. This it is by the very supposition: for were it not, they could not be, what they are supposed to be, willing to give more to be relieved from it. In this point of view then, the sole tendency of the law is, to heap distress upon distress.

A second mischief is, that of rendering the terms so much the worse, to a multitude of those, whose circumstances exempt them from being precluded altogether from getting the money they have occasion for. In this case, the mischief, though necessarily less intense than in the other, is much more palpable and conspicuous. Those who cannot borrow may get what they want, so long as they have any thing to sell. But while, out of loving-kindness, or whatsoever other motive, the law precludes a man from  
*borrowing,*

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*barrowing*, upon terms which it deems too disadvantageous, it does not preclude him from *selling*, upon any terms, howsoever disadvantageous. Every body knows that forced sales are attended with a loss: and, to this loss, what would be deemed a most extravagant interest bears in general no proportion. When a man's moveables are taken in execution, they are, I believe, pretty well sold, if, after all expenses paid, the produce amounts to two-thirds of what it would cost to replace them. In this way the providence and loving-kindness of the law costs him 33 per cent. and no more, supposing, what is seldom the case, that no more of the effects are taken than what is barely necessary to make up the money due. If, in her negligence and weakness, she were to suffer him to offer 11 per cent.

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cent. per annum for forbearance, it would be three years before he paid what he is charged with, in the first instance, by her wisdom.

Such being the kindness done by the law to the owner of moveables, let us see how it fares with him who has an interest in immovables. Before the late war, 30 years purchase for land might be reckoned, I think it is pretty well agreed, a medium price. During the distress produced by the war, lands, which it was necessary should be sold, were sold at 20, 18, nay, I believe, in some instances, even so low as 15 years purchase. If I do not misrecollect, I remember instances of lands put up to public auction, for which nobody bid so high as fifteen. In many instances, villas, which had been bought before the war, or at the beginning of it, and, in

50 LETT. VI. *Mischiefs of the*

the interval, had been improved rather than impaired, sold for less than half, or even the quarter, of what they had been bought for. I dare not here for my part pretend to be exact: but on this passage, were it worth their notice, Mr. Skinner, or Mr. Christie, could furnish very instructive notes. Twenty years purchase, instead of thirty, I may be allowed to take, at least for illustration. An estate then of 100l. a year, clear of taxes, was devised to a man, charged, suppose, with 1500l. with interest till the money should be paid. Five per cent. interest, the utmost which could be accepted from the owner, did not answer the incumbrancer's purpose: he chose to have the money. But 6 per cent. perhaps, would have answered his purpose, if not, most certainly it would have answered the purpose of somebody else:  
for



for multitudes there all along were, whose purposes were answered by five per cent. The war lasted, I think, seven years: the depreciation of the value of land did not take place immediately: but as, on the other hand, neither did it immediately recover its former price upon the peace, if indeed it has even yet recovered it, we may put seven years for the time, during which it would be more advantageous to pay this extraordinary rate of interest than sell the land, and during which, accordingly, this extraordinary rate of interest would have had to run. One per cent. for seven years, is not quite of equal worth to seven per cent. the first year; say, however, that it is. The estate, which before the war was worth thirty years purchase, that is 3000l. and which the devisor had given to the devisee for that value,

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being put up to sale, fetched but 20 years purchase, 2000l. At the end of that period it would have fetched its original value, 3000l. Compare, then, the situation of the devisee at the 7 years end, under the law, with what it would have been, without the law. In the former case, the land selling for 20 years purchase, i. e. 2000l. what he would have, after paying the 1500l. is 500l.; which, with the interest of that sum, at 5 per cent. for seven years, viz. 175l. makes, at the end of that seven years, 675l. In the other case, paying 6 per cent. on the 1500l. that is 90l. a year, and receiving all that time the rent of the land, viz. 100l. he would have had, at the seven years end, the amount of the remaining ten pound during that period, that is 70l. in addition to his 1000l.—675. subtracted

ed

ed from 1070l. leaves 395l. This 395l. then, is what he loses out of 1070l. almost 37 per cent. of his capital, by the loving-kindness of the law. Make the calculations, and you will find, that, by preventing him from borrowing the money at 6 per cent. interest, it makes him nearly as much a sufferer as if he had borrowed it at ten.

What I have said hitherto is confined to the case of those who have present value to give, for the money they stand in need of. If they have no such value, then, if they succeed in purchasing assistance upon any terms, it must be in breach of the law; their lenders exposing themselves to its vengeance; for I speak not here of the accidental case, of its being so constructed as to be liable to evasion. But, even in this case, the mischievous influence of the law still pursues them; aggravating

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vating the very mischief it pretends to remedy. Though it be inefficacious in the way in which the legislator wishes to see it efficacious, it is efficacious in the way opposite to that in which he would wish to see it so. The effect of it is, to raise the rate of interest, higher than it would be otherwise, and that in two ways. In the first place, a man must, in common prudence, as Dr. Smith observes, make a point of being indemnified, not only for whatsoever extraordinary risk it is that he runs, independently of the law, but for the very risk occasioned by the law: he must be *insured*, as it were, against the law. This cause would operate, were there even as many persons ready to lend upon the illegal rate, as upon the legal. But this is not the case: a great number of persons are, of course, driven out of this competition,

petition, by the danger of the business, and another great number, by the disrepute which, under cover of these prohibitory laws or otherwise, has fastened itself upon the name of usurer. So many persons, therefore, being driven out of the trade, it happens in this branch, as it must necessarily in every other, that those who remain have the less to withhold them from advancing their terms; and without confederating (for it must be allowed that confederacy in such a case is plainly impossible) each one will find it easier to push his advantage up to any given degree of exorbitancy, than he would, if there were a greater number of persons of the same stamp to resort to.

As to the case, where the law is so worded as to be liable to be evaded, in this case it is partly inefficacious  
and

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and nugatory, and partly mischievous. It is nugatory, as to all such, whose confidence of its being so is perfect: it is mischievous, as before, in regard to all such who fail of possessing that perfect confidence. If the borrower can find nobody at all who has confidence enough to take advantage of the flaw, he stands precluded from all assistance, as before: and, though he should, yet the lender's terms must necessarily run the higher, in proportion to what his confidence wants of being perfect. It is not likely that it should be perfect: it is still less likely that he should acknowledge it so to be: it is not likely, at least as matters stand in England, that the worst-penned law made for this purpose should be altogether destitute of effect: and while it has any, that effect, we see, must be in one way or other mischievous.

I have already hinted at the disrepute, the ignominy, the reproach, which prejudice, the cause and the effect of these restrictive laws, has heaped upon that perfectly innocent and even meritorious class of men, who, not more for their own advantage than to the relief of the distresses of their neighbour, may have ventured to break through these restraints. It is certainly not a matter of indifference, that a class of persons, who, in every point of view in which their conduct can be placed, whether in relation to their own interest, or in relation to that of the persons whom they have to deal with, as well on the score of prudence, as on that of beneficence, (and of what use is even benevolence, but in as far as it is productive of beneficence?) deserve praise rather than censure, should be

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classed with the abandoned and profligate, and loaded with a degree of infamy, which is due to those only whose conduct is in its tendency the most opposite to their own.

“ This suffering,” it may be said, “ having already been taken account of, is not to be brought to account a second time : they are aware, as you yourself observe, of this inconvenience, and have taken care to get such amends for it, as they themselves look upon as sufficient.” True : but is it sure that the compensation, such as it is, will always, in the event, have proved a sufficient one ? Is there no room here for miscalculation ? May there not be unexpected, unlooked-for incidents, sufficient to turn into bitterness the utmost satisfaction which the difference of pecuniary emolument could afford ? For who  
can



can see to the end of that inexhaustible train of consequences that are liable to ensue from the loss of reputation? Who can fathom the abyss of infamy? At any rate, this article of mischief, if not an addition in its quantity to the others above-noticed, is at least distinct from them in its nature, and as such ought not to be overlooked.

Nor is the event of the execution of the law by any means an unexampled one: several such, at different times, have fallen within my notice. Then comes absolute perdition: loss of character, and forfeiture, not of three times the extra-interest, which formed the profit of the offence, but of three times the principal, which gave occasion to it\*.

\* See Introduction to the Principles of Morals and Legislation, 4to. 1789. Ch. 14. On the proportion between punishments and offences.

60 LETT. VI. *Mischiefs of the*

The last article I have to mention in the account of mischief, is, the corruptive influence, exercised by these laws, on the morals of the people; by the pains they take, and cannot but take, to give birth to treachery and ingratitude. To purchase a possibility of being enforced, the law neither has found, nor, what is very material, must it ever hope to find, in this case, any other expedient, than that of hiring a man to break his engagement, and to crush the hand that has been reached out to help him. In the case of informers in general, there has been no troth plighted, nor benefit received. In the case of real criminals invited by rewards to inform against accomplices, it is by such *breach* of faith that society is held together, as in other cases by the *observance* of it. In the case of real crimes,

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crimes, in proportion as their mischievousness is apparent, what can not but be manifest even to the criminal, is, that it is by the adherence to his engagement that he would do an injury to society, and, that by the breach of such engagement, instead of doing mischief he is doing good: in the case of usury this is what no man can know, and what one can scarcely think it possible for any man, who, in the character of the borrower, has been concerned in such a transaction, to imagine. He knew that, even in his own judgment, the engagement was a beneficial one to himself, or he would not have entered into it: and nobody else but the lender is affected by it.

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## LETTER VII.

*Efficacy of anti-usurious Laws.*

BEFORE I quit altogether the consideration of the case in which a law, made for the purpose of limiting the rate of interest, may be inefficacious with regard to that end, I cannot forbear taking some further notice of a passage already alluded to of Dr. Smith's : because, to my apprehension, that passage seems to throw upon the subject a degree of obscurity, which I could wish to see cleared up, in a future edition of that valuable work.

“ No law,” says he\*, “ can reduce  
 “ the common rate of interest below  
 “ the

\* B. ii. c. 10. vol. ii. p. 45. edit. 8vo. 1784.

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“ the lowest ordinary market rate, at  
“ the time when that law was made.  
“ Notwithstanding the edict of 1766,  
“ by which the French king at-  
“ tempted to reduce the rate of inte-  
“ rest from five to four per cent., mo-  
“ ney continued to be lent in France  
“ at five per cent. the law being evaded  
“ in several different ways.”

As to the general position, if so it be, so much, according to me, the better: but I must confess I do not see why this should be the case. It is for the purpose of proving the truth of this general position, that the fact of the inefficacy of this attempt seems to be adduced: for no other proof is adduced but this. But, taking the fact for granted, I do not see how it can be sufficient to support the inference. The law, we are told at the same time, was evaded: but we are not  
not

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not told how it came to be open to evasion. It might be owing to a particular defect in the penning of that particular law : or, what comes to the same thing, in the provisions made for carrying it into execution. In either case, it affords no support to the general position : nor can that position be a just one, unless it were so in the case where every provision had been made, that could be made, for giving efficacy to the law. For the position to be true, the case must be, that the law would still be broken, even after every means of what can properly be called *evasion* had been removed. True or untrue, the position is certainly not self-evident enough to be received without proof : yet nothing is adduced in proof of it, but the fact above-noticed, which we see amounts to no such thing. What  
is

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is more, I should not expect to find it capable of proof. I do not see, what it is, that should render the law incapable of “reducing the common rate of interest below the lowest ordinary market rate,” but such a state of things, such a combination of circumstances, as should afford obstacles equally powerful, or nearly so, to the efficacy of the law against all higher rates. For destroying the law’s efficacy altogether, I know of nothing that could serve, but a resolution on the part of all persons any way privy not to inform : but by such a resolution any higher rate is just as effectually protected as any lower one. Suppose the resolution, strictly speaking, universal, and the law must in all instances be equally inefficacious ; all rates of interest equally free ; and the state of men’s dealings in this way  
just

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just what it would be, were there no law at all upon the subject. But in this case, the position, in as far as it limits the inefficacy of the law to those rates which are below the "lowest ordinary market rate," is not true. For my part, I cannot conceive how any such universal resolution could have been maintained, or could ever be maintained, without an open concert, and as open a rebellion against government; nothing of which sort appears to have taken place: and, as to any particular confederacies, they are as capable of protecting any higher rates against the prohibition, as any lower ones.

Thus much indeed must be admitted, that the low rate in question, viz. that which was the lowest ordinary market rate immediately before the making of the law, is likely to come

in



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in for the protection of the public against the law, more frequently than any other rate. That must be the case on two accounts: first, because by being of the number of the ordinary rates, it was, by the supposition, more frequent than any extraordinary ones: secondly, because the disrepute annexed to the idea of usury, a force which might have more or less efficacy in excluding, from the protection above spoken of, such extraordinary rates, cannot well be supposed to apply itself, or at least not in equal degree, to this low and ordinary rate. A lender has certainly less to stop him from taking a rate, which may be taken without disrepute, than from taking one, which a man could not take without subjecting himself to that inconvenience: nor is it likely, that men's imaginations and sentiments

ments should testify so sudden an obsequiousness to the law, as to stamp disrepute to-day, upon a rate of interest to which no such accompaniment had stood annexed the day before.

Were I to be asked how I imagined the case stood in the particular instance referred to by Dr. Smith: judging from his account of it; assisted by general probabilities, I should answer thus:—The law, I should suppose, was not so penned as to be altogether proof against evasion. In many instances, of which it is impossible any account should have been taken, it was indeed conformed to: in some of those instances, people who would have lent otherwise, abstained from lending altogether; in others of those instances, people lent their money at the reduced legal rate. In other instances again, the law was broken:

broken: the lenders trusting, partly to expedients resorted to for evading it, partly to the good faith and honour of those whom they had to deal with: in this class of instances it was natural, for the two reasons above suggested, that those where the old legal rate was adhered to, should have been the most numerous. From the circumstance, not only of their number, but of their more direct repugnancy to the particular recent law in question, they would naturally be the most taken notice of. And this, I should suppose, was the foundation in point of fact for the Doctor's general position above-mentioned, that "no law can reduce the common rate of interest below the lowest ordinary market rate, at the time when that law was made."

In England, as far as I can trust  
my

70      LETT. VII. *Efficacy of*

my judgment and imperfect general recollection of the purport of the laws relative to this matter, I should not suppose that the above position would prove true. That there is no such thing as any palpable and universally-notorious, as well as universally-practicable receipt for that purpose, is manifest from the examples which, as I have already mentioned, every now and then occur, of convictions upon these statutes. Two such receipts, indeed, I shall have occasion to touch upon presently: but they are either not obvious enough in their nature, or too troublesome or not extensive enough in their application, to have despoiled the law altogether of its terrors or of its preventive efficacy.

In the country in which I am writing, the whole system of laws on this subject

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subject is perfectly, and very happily, inefficacious. The rate fixed by law is 5 per cent.: many people lend money; and nobody at that rate: the lowest ordinary rate, upon the very best real security, is 8 per cent.; 9, and even 10, upon such security, are common. Six or seven may have place, now and then, between relations or other particular friends: because, now and then, a man may choose to make a present of one or two per cent. to a person whom he means to favour. The contract is renewed from year to year: for a thousand roubles, the borrower, in his written contract, obliges himself to pay at the end of the year one thousand and fifty. Before witnesses, he receives his thousand roubles; and, without witnesses, he immediately pays back his 30 roubles, or his 40 roubles,

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roubles, or whatever the sum may be, that is necessary to bring the real rate of interest to the rate verbally agreed on.

This contrivance, I take it, would not do in England: but why it would not, is a question which it would be in vain for me to pretend, at this distance from all authorities, to discuss.

LETT. VIII. *Virtual Usury allowed.* 73

LETTER VIII.

*Virtual Usury allowed.*

HAVING proved, as I hope, by this time, the utter impropriety of the law's limiting the rate of interest, in every case that can be conceived, it may be rather matter of curiosity, than any thing else, to inquire, how far the law, on this head, is consistent with itself, and with any principles upon which it can have built.

1. *Drawing and re-drawing* is a practice, which it will be sufficient here to hint at. It is perfectly well known to all merchants, and may be so to all who are not merchants, by consulting Dr. Smith. In this way,

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he

74      LETT. VIII. *Virtual*

he has shewn how money may be, and has been, taken up, at so high a rate, as 13 or 14 per cent.; a rate nearly three times as high as the utmost which the law professes to allow. The extra interest is in this case masked under the names of *commission*, and price of *exchange*. The commission is but small upon each loan, not more, I think, than one half per cent.: custom having stretched so far but no farther, it might be thought dangerous, perhaps, to venture upon any higher allowance under that name. The charge, being repeated a number of times in the course of the year, makes up in frequency what it wants in weight. The transaction is by this shift rendered more troublesome, indeed, but not less practicable, to such parties as are agreed about it. But if usury is good for merchants, I don't very well see what



what should make it bad for every body else.

2. At this distance from all the fountains of legal knowledge, I will not pretend to say, whether the practice of *selling accepted bills* at an under value, would hold good against all attacks. It strikes my recollection as a pretty common one, and I think it could not be brought under any of the penal statutes against usury. The adequateness of the consideration might, for ought I know, be attacked with success, in a court of equity; or, perhaps, if there were sufficient evidence (which the agreement of the parties might easily prevent) by an action at common law, for money had and received. If the practice be really proof against all attacks, it seems to afford an effectual, and pretty commodious method of evading the re-

76      LETT. VIII. *Virtual*

strictive laws. The only restraint is, that it requires the assistance of a third person, a friend of the borrower's, as for instance: *B*, the real borrower, wants 100l. and finds *U*, a usurer, who is willing to lend it to him, at 10 per cent. *B*. has *F*, a friend, who has not the money himself to lend him, but is willing to stand security for him to that amount. *B*. therefore draws upon *F*, and *F*. accepts, a bill of 100l. at 5 per cent. interest, payable at the end of a twelvemonth from the date. *F*. draws a like bill upon *B*.: each sells his bill to *U*. for fifty pound; and it is endorsed to *U*. accordingly. The 50l. that *F*. receives, he delivers over without any consideration to *B*. This transaction, if it be a valid one, and if a man can find such a friend, is evidently much less troublesome than the practice of drawing

*Usury allowed.* 77

drawing and re-drawing. And this, if it be practicable at all, may be practised by persons of any description concerned or not in trade. Should the effect of this page be to suggest an expedient, and that a safe and commodious one, for evading the laws against usury, to some, to whom such an expedient might not otherwise have occurred, it will not lie very heavy upon my conscience. The prayers of usurers, whatever efficacy they may have in lightening the burthen, I hope I may lay some claim to. And I think you will not now wonder at my saying, that in the efficacy of such prayers I have not a whit less confidence, than in that of the prayers of any other class of men.

One apology I shall have to plead at any rate, that in pointing out these flaws, to the individual who may be disposed

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disposed to creep out at them, I point them out at the same time to the legislator, in whose power it is to stop them up, if in his opinion they require it. If, notwithstanding such opinion, he should omit to do so, the blame will lie, not on my industry, but on his negligence.

These, it may be said, should they even be secure and effectual evasions, are still but evasions, and, if chargeable upon the law at all, are chargeable not as inconsistencies but as oversights. Be it so. Setting these aside, then, as expedients practised or practicable, only behind its back, I will beg leave to remind you of two others, practised from the day of its birth, under its protection and before its face.

The first I shall mention is *pawn-broking*. In this case there is the less  
pretence

*Usury allowed.*

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pretence for more than ordinary interest, inasmuch as the security is, in this case, not only equal to, but better than, what it can be in any other: to wit, the present possession of a moveable thing, of easy sale, on which the creditor has the power, and certainly does not want the inclination, to set such price as is most for his advantage. If there be a case in which the allowing of such extraordinary interest is attended with more danger than another, it must be this: which is so particularly adapted to the situation of the lowest poor, that is, of those who, on the score of indigence or simplicity, or both, are most open to imposition. This trade however the law, by regulating, avowedly protects. What the rate of interest is, which it allows to be taken in this way, I can not take upon me to

80      LETT. VIII. *Virtual*

to remember: but I am much deceived, if it amounts to less than 12 per cent. in the year, and I believe it amounts to a good deal more. Whether it were 12 per cent. or 1200, I believe would make in practice but little difference. What *commission* is in the business of drawing and re-drawing, *warehouse-room* is, in that of pawnbroking. Whatever limits then are set to the profits of this trade, are set, I take it, not by the vigilancy of the law, but, as in the case of other trades, by the competition amongst the traders. Of the other regulations contained in the acts relative to this subject, I recollect no reason to doubt the use.

The other instance is that of *bottomry* and *respondentia*: for the two transactions, being so nearly related, may be spoken of together. Bottomry is the usury of pawnbroking: respondentia

*Usury allowed.* 81

dentia is usury at large, but combined in a manner with insurance, and employed in the assistance of a trade carried on by sea. If any species of usury is to be condemned, I see not on what grounds this particular species can be screened from the condemnation. “Oh but” (says sir William Blackstone, or any body else who takes upon himself the task of finding a reason for the law) “this is  
 “ a maritime country, and the trade,  
 “ which it carries on by sea, is the  
 “ great bulwark of its defence.” It is not necessary I should here inquire, whether that branch, which, as Dr. Smith has shewn, is, in every view but the mere one of defence, less beneficial to a nation, than two others out of the four branches which comprehend all trade, has any claim to be preferred to them in this or any other way. I  
 E 3 admit,

82      LETT. VIII. *Virtual*

admit, that the liberty which this branch of trade enjoys, is no more than what it is perfectly right it should enjoy. What I want to know is, what there is in the class of men, embarked in this trade, that should render beneficial to them, a liberty, which would be ruinous to every body else. Is it that sea adventures have less hazard on them than land adventures? or that the sea teaches those, who have to deal with it, a degree of forecast and reflection which has been denied to landmen?

It were easy enough to give farther and farther extension to this charge of inconsistency, by bringing under it the liberty given to insurance in all its branches, to the purchase and sale of annuities, and of *post-obits*, in a word to all cases where a man is permitted to take upon himself an unlimited



*Usury allowed.*

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mitted degree of risk, receiving for so doing an unlimited compensation. Indeed I know not where the want of instances would stop me: for in what part of the magazine of events, about which human transactions are conversant, is certainty to be found? But to this head of argument, this argument *ad hominem*, as it may be called, the use of which is but subsidiary, and which has more of confutation in it than of persuasion or instruction, I willingly put an end.

84 LETT. IX. *Blackstone considered.*

LETTER IX.

*Blackstone considered.*

I Hope you are, by this time, at least, pretty much of my opinion, that there is just the same sort of harm, and no other, in making the best terms one can for one's self in a money loan, as there is in any other sort of bargain. If you are not, Blackstone however is, whose opinion I hope you will allow to be worth something. In speaking of the rate of interest\*, he starts a parallel between a bargain for the loan of money, and a bargain about a horse, and pronounces, without hesitation, that the harm of making too good a

\* B. ii. ch. 30.

bargain,

LETT. IX. *Blackstone considered.* 85

bargain, is just as great in the one case, as in the other. As money-lending, and not horse-dealing, was, what you lawyers call, the *principal case*, he drops the horse-business, as soon as it has answered the purpose of illustration, which it was brought to serve. But as, in my conception, as well the reasoning by which he supports the decision, as that by which any body else could have supported it, is just as applicable to the one sort of bargain as to the other, I will carry on the parallel a little farther, and give the same extent to the reasoning, as to the position which it is made use of to support. This extension will not be without its use; for if the position, when thus extended, should be found just, a practical inference will arise; which is, that the benefits of these restraints ought to be extended from  
the

86 LETT. IX. *Blackstone considered.*

the money-trade to the horse-trade.

That my own opinion is not favourable to such restraints in either case, has been sufficiently declared; but if more respectable opinions than mine are still to prevail, they will not be the less respectable for being consistent.

The sort of bargain which the learned commentator has happened to pitch upon for the illustration, is indeed, in the case illustrating, as in the case illustrated, a loan: but as, to my apprehension, loan or sale makes, in point of reasoning, no sort of difference, and as the utility of the conclusion will, in the latter case, be more extensive, I shall adapt the reasoning to the more important business of selling horses, instead of the less important one of lending them.

A circumstance; that would render the extension of these restraints to the  
horse-

LETT. IX. *Blackstone considered.* 87

horse-trade more smooth and easy, is, that in the one track, as well as in the other, the public has already got the length of calling names. *Jockey-ship*, a term of reproach not less frequently applied to the arts of those who sell horses than to the arts of those who ride them, sounds, I take it, to the ear of many a worthy gentleman, nearly as bad as *usury*: and it is well known to all those who put their trust in proverbs, and not less to those who put their trust in party, that when we have got a dog to hang, who is troublesome and keeps us at bay, whoever can contrive to fasten a bad name to his tail, has gained more than half the battle. I now proceed with my application. The words in *italics* are my own: all the rest are Sir William Blackstone's: and I restore, at bottom,

§8 LETT. IX. *Blackstone considered.*

tom, the words I was obliged to discard, in order to make room for mine.

“ To demand an exorbitant price  
 “ is equally contrary to conscience,  
 “ for the loan of a horse, or for the  
 “ loan of a sum of money : but a rea-  
 “ sonable equivalent for the tempo-  
 “ rary inconvenience, which the own-  
 “ er may feel by the want of it, and  
 “ for the hazard of his losing it en-  
 “ tirely, is not more immoral in one  
 “ case than in the other. \* \* \* \*

“ *As to selling horses, a capital dis-*  
 “ *tinction must be made, between a*  
 “ *moderate and an exorbitant profit :*  
 “ *to the former of which we give the*  
 “ *name of horse-dealing\**, to the latter  
 “ *the truly odious appellation of jock-*  
 “ *key-ship† : the former is necessary*  
 “ *in every civil state, if it were but to*

\* interest.

† usury.

“ exclude

LETT. IX. *Blackstone considered.* 89

“ exclude the latter. For, as the whole  
 “ of this matter is well summed up  
 “ by Grotius, if the compensation  
 “ allowed by law does not exceed  
 “ the proportion of the *inconvenience*  
 “ *which it is to the seller of the horse to*  
 “ *part with it\**, or the want *which the*  
 “ *buyer has of it†*, its allowance is  
 “ neither repugnant to the revealed  
 “ law, nor to the natural law: but  
 “ if it exceeds these bounds, it is  
 “ then an oppressive *jockey-ship‡*: and  
 “ though the municipal laws may give  
 “ it impunity, they never can make it  
 “ just.

“ We see, that the exorbitance or  
 “ moderation of *the price given for a*  
 “ *horse§* depends upon two circum-  
 “ stances: upon the inconvenience of

\* hazard run. † felt by the loan. ‡ usury.

§ interest for the money lent.

“ parting.

90 LETT. IX. *Blackstone considered.*

“ parting with *the horse one has\**, and  
 “ the hazard of not *being able to meet*  
 “ *with such another†*. The inconveni-  
 “ ence to individual *sellers of horses‡*,  
 “ can never be estimated by laws; the  
 “ *general price for horses§* must depend  
 “ therefore upon the usual or general  
 “ inconvenience. This results entirely  
 “ from the quantity of *horses||* in the  
 “ kingdom: for the more *horses¶* there  
 “ are *running about\*\** in any nation,  
 “ the greater superfluity there will be  
 “ beyond what is necessary to carry on  
 “ the business of the *mail coaches††* and  
 “ the common concerns of life. In  
 “ every nation or public community  
 “ there is a certain quantity of *horses‡‡*  
 “ then necessary, which a person well  
 “ skilled in political arithmetic might

\* it for the present. † losing it entirely.  
 ‡ lenders. § rate of general interest. || money.  
 ¶ specie. \*\* circulating. †† exchange.  
 ‡‡ money.

“ perhaps



LETT. IX. *Blackstone considered.* 91

“ perhaps calculate as exactly as a pri-  
 “ vate *horse-dealer* \* can the demand  
 “ for running *horses* in his own *stables* † :  
 “ all above this necessary quantity  
 “ may be spared, or lent, or sold, with-  
 “ out much inconvenience to the re-  
 “ spective lenders or sellers : and the  
 “ greater the national superfluity is,  
 “ the more numerous will be the *sell-*  
 “ *ers* ‡, and the lower ought the *na-*  
 “ *tional price of horse-flesh* § to be :  
 “ but where there are not enough, or  
 “ barely enough *spare horses* || to an-  
 “ swer the ordinary uses of the pub-  
 “ lic, *horse-flesh* ¶ will be proportion-  
 “ ably high : for *sellers* \*\* will be  
 “ but few, as few can submit to the in-  
 “ convenience of *selling* ††.”—So far  
 the learned commentator.

\* banker. † cash in his own shop. ‡ lenders.  
 § the rate of the national interest.  
 || circulating cash. ¶ interest. \*\* lenders.  
 †† lending.

I hope

92 LETT. IX. *Blackstone considered.*

I hope by this time you are worked up to a proper pitch of indignation, at the neglect and inconsistency betrayed by the law, in not suppressing this species of jockey-ship, which it would be so easy to do, only by fixing the price of horses. Nobody is less disposed than I am, to be uncharitable: but when one thinks of the 1500l. taken for Eclipse, and 2000l. for Rockingham, and so on, who can avoid being shocked, to think how little regard those who took such enormous prices must have had for “the law of revelation and the law of nature?” Whoever it is that is to move for the municipal law, not long ago talked of, for reducing the rate of interest, whenever that motion is made, then would be the time for one of the Yorkshire members to get up, and move, by way of addition, for

LETT. IX. *Blackstone considered.* 93

for a clause for fixing and reducing the price of horses. I need not expatiate on the usefulness of that valuable species of cattle, which might have been as cheap as asses before now, if our lawgivers had been as mindful of their duty in the suppression of *jockeyship*, as they have been in the suppression of *usury*.

It may be said, against fixing the price of horse-flesh, that different horses may be of different values. I answer—and I think I shall shew you as much, when I come to touch upon the subject of champerty—not more different than the values which the use of the same sum of money may be of to different persons, on different occasions.

## LETTER X.

*Grounds of the Prejudices against Usury.*

**I**T is one thing, to find reasons why it is *fit* a law *should* have been made: it is another to find the reasons why it *was* made: in other words, it is one thing to justify a law: it is another thing to account for its existence. In the present instance, the former task, if the observations I have been troubling you with are just, is an impossible one. The other, though not necessary for conviction, may contribute something perhaps in the way of satisfaction. To trace an error to its fountain head, says lord Coke, is to refute

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refute it; and many men there are who, till they have received this satisfaction, be the error what it may, cannot prevail upon themselves to part with it. “ If our ancestors have been all along “ under a mistake, how came they to “ have fallen into it ?” is a question that naturally presents itself upon all such occasions. The case is, that in matters of law more especially, such is the dominion of authority over our minds, and such the prejudice it creates in favour of whatever institution it has taken under its wing, that, after all manner of reasons that can be thought of, in favour of the institution, have been shewn to be insufficient, we still cannot forbear looking to some unassignable and latent reason for its efficient cause. But if, instead of any such reason, we can find a cause for it in some notion, of the erroneousness of which

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which we are already satisfied, then at last we are content to give it up without further struggle; and then, and not till then, our satisfaction is complete.

In the conceptions of the more considerable part of those through whom our religion has been handed down to us, virtue, or rather godliness, which was an improved substitute for virtue, consisted in self-denial: not in self-denial for the sake of society, but of self-denial for its own sake. One pretty general rule served for most occasions: not to do what you had a mind to do; or, in other words, not to do what would be for your advantage. By this of course was meant temporal advantage: to which spiritual advantage was understood to be in constant and diametrical opposition. For, the proof of a resolution, on the part of a being  
of

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of perfect power and benevolence, to make his few favourites happy in a state in which they *were to be*, was his determined pleasure, that they should keep themselves as much strangers to happiness as possible, in the state in which they *were*. Now to get money is what most men have a mind to do : because he who has money gets, as far as it goes, most other things that he has a mind for. Of course nobody was to get money : indeed why should he, when he was not so much as to keep what he had got already ? To lend money at interest, is to get money, or at least to try to get it : of course it was a bad thing to lend money upon such terms. The better the terms, the worse it was to lend upon them : but it was bad to lend upon any terms, by which any thing could

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be

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be got. What made it much the worse was, that it was acting like a Jew : for though all Christians at first were Jews, and continued to do as Jews did, after they had become Christians, yet, in process of time, it came to be discovered, that the distance between the mother and the daughter church could not be too wide.

By degrees, as old conceits gave place to new, nature so far prevailed, that the objections to getting money in general, were pretty well over-ruled : but still this Jewish way of getting it, was too odious to be endured. Christians were too intent upon plaguing Jews, to listen to the suggestion of doing as Jews did, even though money were to be got by it. Indeed the easier method, and a method pretty much in vogue, was, to let the Jews  
get



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get the money any how they could, and then squeeze it out of them as it was wanted.

In process of time, as questions of all sorts came under discussion, and this, not the least interesting, among the rest, the anti-Jewish side of it found no unopportune support in a passage of Aristotle : that celebrated heathen, who, in all matters wherein heathenism did not destroy his competence, had established a despotic empire over the Christian world. As fate would have it, that great philosopher, with all his industry, and all his penetration, notwithstanding the great number of pieces of money that had passed through his hands (more perhaps than ever passed through the hands of philosopher before or since), and notwithstanding the uncommon pains he had bestowed on the subject of ge-  
F 2                      neration,

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neration, had never been able to discover, in any one piece of money, any organs for generating any other such piece. Emboldened by so strong a body of negative proof, he ventured at last to usher into the world the result of his observations, in the form of an universal proposition, *that all money is in its nature barren.* You, my friend, to whose cast of mind sound reason is much more congenial than ancient philosophy, you have, I dare to say, gone before me in remarking, that the practical inference from this shrewd observation, if it afforded any, should have been, that it would be to no purpose for a man to try to get five per cent. out of money—not, that if he could contrive to get so much, there would be any harm in it. But the sages of those days did not view the matter in that light.

A con-

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A consideration that did not happen to present itself to that great philosopher, but which had it happened to present itself, might not have been altogether unworthy of his notice, is, that though a *daric* would not beget another *daric*, any more than it would a ram, or an ewe, yet for a *daric* which a man borrowed, he might get a ram and a couple of ewes, and that the ewes, were the ram left with them a certain time, would probably not be barren. That then, at the end of the year, he would find himself master of his three sheep, together with two, if not three, lambs; and that, if he sold his sheep again to pay back his *daric*, and gave one of his lambs for the use of it in the mean time, he would be two lambs, or at least one lamb, richer than if he had made no such bargain.

These

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These theological and philosophical conceits, the offspring of the day, were not ill seconded by principles of a more permanent complexion.

The business of a money-lender, though only among Christians, and in Christian times, a proscribed profession, has no where, nor at any time, been a popular one. Those who have the resolution to sacrifice the present to future, are natural objects of envy to those who have sacrificed the future to the present. The children who have eat their cake are the natural enemies of the children who have theirs. While the money is hoped for, and for a short time after it has been received, he who lends it is a friend and benefactor: by the time the money is spent, and the evil hour of reckoning is come, the benefactor is found to have changed his nature, and to have  
put

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put on the tyrant and the oppressor. It is an oppression for a man to reclaim his own money : it is none to keep it from him. Among the inconsiderate, that is among the great mass of mankind, selfish affections conspire with the social in treasuring up all favour for the man of dissipation, and in refusing justice to the man of thrift who has supplied him. In some shape or other that favour attends the chosen object of it, through every stage of his career. But, in no stage of *his* career, can the man of thrift come in for any share of it. It is the general interest of those with whom a man lives, that his expense should be at least as great as his circumstances will bear : because there are few expenses which a man can launch into, but what the benefit of it is shared, in some proportion or other, by those with whom he lives.

In

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In that circle originates a standing law, forbidding every man, on pain of infamy, to confine his expenses within what is adjudged to be the measure of his means, saving always the power of exceeding that limit, as much as he thinks proper: and the means assigned him by that law may be ever so much beyond his real means, but are sure never to fall short of them. So close is the combination thus formed between the idea of merit and the idea of expenditure, that a disposition to spend finds favour in the eyes even of those who know that a man's circumstances do not entitle him to the means: and an upstart, whose chief recommendation is this disposition, shall find himself to have purchased a permanent fund of respect, to the prejudice of the very persons at whose expense he has been gratifying his appetites and his pride.

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pride. The lustre, which the display of borrowed wealth has diffused over his character, awes men, during the season of his prosperity, into a submission to his insolence: and when the hand of adversity has overtaken him at last, the recollection of the height, from which he has fallen, throws the veil of compassion over his injustice.

The condition of the man of thrift is the reverse. His lasting opulence procures him a share, at least, of the same envy, that attends the prodigal's transient display: but the use he makes of it procures him no part of the favour which attends the prodigal. In the satisfactions he derives from that use, the pleasure of possession, and the idea of enjoying, at some distant period, which may never arrive, nobody comes in for any share. In the midst of his opulence he is regarded as a

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kind

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kind of insolvent, who refuses to honour the bills, which their rapacity would draw upon him, and who is by so much the more criminal than other insolvents, as not having the plea of inability for an excuse.

Could there be any doubt of the disfavour which attends the cause of the money-lender, in his competition with the borrower, and of the disposition of the public judgment to sacrifice the interest of the former to that of the latter, the stage would afford a compendious, but a pretty conclusive proof of it. It is the business of the dramatist to study, and to conform to, the humours and passions of those, on the pleasing of whom he depends for his success: it is the course which reflection must suggest to every man, and which a man would naturally fall into, though he were not to think about it.

He



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He may, and very frequently does, make magnificent pretences, of giving the law to them : but woe be to him that attempts to give them any other law than what they are disposed already to receive. If he would attempt to lead them one inch, it must be with great caution, and not without suffering himself to be led by them at least a dozen. Now, I question, whether, among all the instances in which a borrower and a lender of money have been brought together upon the stage, from the days of Thespis to the present, there ever was one, in which the former was not recommended to favour in some shape or other, either to admiration, or to love, or to pity, or to all three ; and the other, the man of thrift, consigned to infamy.

Hence

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Hence it is that, in reviewing and adjusting the interests of these apparently rival parties, the advantage made by the borrower is so apt to slip out of sight, and that made by the lender to appear in so exaggerated a point of view. Hence it is, that though prejudice is so far softened as to acquiesce in the lender's making some advantage, lest the borrower should lose altogether the benefit of his assistance, yet still the borrower is to have all the favour, and the lender's advantage is for ever to be clipped, and pared down, as low as it will bear. First it was to be confined to ten per cent. then to eight, then to six, then to five, and now lately there was a report of its being to be brought down to four; with constant liberty to sink as much lower as it would. The bur-  
then

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then of these restraints, of course, has been intended exclusively for the lender: in reality, as I think you have seen, it presses much more heavily upon the borrower: I mean him who either becomes, or in vain wishes to become so. But the presents directed by prejudice, Dr. Smith will tell us, are not always delivered according to their address. It was thus that the mill-stone designed for the necks of those vermin, as they have been called, the dealers in corn, was found to fall upon the heads of the consumers. It is thus—but further examples would lead me further from the purpose.

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## LETTER XI.

*Compound Interest.*

A Word or two I must trouble you with, concerning *compound interest*; for compound interest is discountenanced by the law; I suppose, as a sort of usury. That, without an express stipulation, the law never gives it, I well remember: whether, in case of an express stipulation, the law allows it to be taken, I am not absolutely certain. I should suppose it might: remembering covenants in mortgages that interest should become principal. At any rate, I think the law cannot well punish it under the name of usury.

If

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If the discountenance shewn to this arrangement be grounded on the horror of the sin of usury, the impropriety of such discountenance follows of course, from the arguments which shew the un-“*sinfulness of that sin.*”

Other argument against it, I believe, was never attempted, unless it were the giving to such an arrangement the epithet of a *hard* one: in doing which, something more like a reason is given, than one gets in ordinary from the common law.

If that consistency were to be found in the common law, which has never yet been found in man's conduct, and which perhaps is hardly in man's nature, compound interest never could have been denied.

The views which suggested this denial, were, I dare to say, very good :  
the

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the effects of it are, I am certain, very pernicious.

If the borrower pays the interest at the day, if he performs his engagement, that very engagement to which the law pretends to oblige him to conform, the lender, who receives that interest, makes compound interest of course, by lending it out again, unless he chooses rather to expend it: he expects to receive it at the day, or what meant the engagement? if he fails of receiving it, he is by so much a loser. The borrower, by paying it at the day, is no loser: if he does not pay it at the day, he is by so much a gainer: a pain of disappointment takes place in the case of the one, while no such pain takes place in the case of the other. The cause of him whose contention is to *catch a gain*, is thus preferred

LETT. XI. *Compound Interest.* 113

ferred to that of him whose contention is to avoid a loss: contrary to the reasonable and useful maxim of that branch of the common law which has acquired the name of equity. The gain, which the law in its tenderness thus bestows on the defaulter, is an encouragement, a reward, which it holds out for breach of faith, for iniquity, for indolence, for negligence.

The loss, which it thus throws upon the forbearing lender, is a punishment which it inflicts on him for his forbearance: the power which it gives him of avoiding that loss, by prosecuting the borrower upon the instant of failure, is thus converted into a reward which it holds out to him for his hard-heartedness and rigour. Man is not quite so good as it were to be wished he were; but he would be bad indeed,

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indeed, were he bad on all the occasions where the law, as far as depends on her, has made it his interest so to be.

It may be impossible, say you, it often is impossible, for the borrower to pay the interest at the day: and you say truly. What is the inference? That the creditor should *not* have it in his power to ruin the debtor for not paying at the day, and that he *should* receive a compensation for the loss occasioned by such *failure*.—He *has* it in his power to ruin him, and he has it *not* in his power to obtain such compensation. The judge, were it possible for an arrested debtor to find his way into a judge's chamber instead of a spunging-house, might award a proper respite, suited to the circumstances of the parties. It is not possible: but a respite is purchased, proper

or



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or not proper, perhaps at ten times, perhaps at a hundred times the expense of compound interest, by putting in bail, and fighting the creditor through all the windings of mischievous and unnecessary delay. Of the satisfaction due either for the original failure, or for the subsequent vexation by which it has been aggravated, no part is ever received by the injured creditor: but the instruments of the law receive, perhaps at his expense, perhaps at the debtor's, perhaps ten times, perhaps a hundred times the amount of that satisfaction. Such is the result of this tenderness of the law.

It is in consequence of such tenderness that on so many occasions a man, though ever so able, would find himself a loser by paying his just debts: those very debts of which the law has  
recognized

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recognized the justice. The man who obeys the dictates of common honesty, the man who does what the law pretends to bid him, is wanting to himself. Hence your regular and securely profitable writs of error in the house of lords: hence your random and vindictive costs of one hundred pounds, and two hundred pounds, now and then given in that house. It is natural, and it is something, to find, in a company of lords, a zeal for justice: it is not natural, to find, in such a company, a disposition to bend down to the toil of calculation.

LETT. XII. *Maintenance, &c.* 117

LETTER XII.

*Maintenance and Champerty.*

HAVING in the preceding letters had occasion to lay down, and, as I flatter myself, to make good, the general principle, that *no man of ripe years, and of sound mind, ought, out of loving kindness to him, to be hindered from making such bargain, in the way of obtaining money, as, acting with his eyes open, he deems conducive to his interest,* I will take your leave for pushing it a little farther, and extending the application of it to another class of regulations still less defensible. I mean the  
antique

118 LETT. XII. *Maintenance*

antique laws against what are called Maintenance and Champerty.

To the head of *Maintenance*, I think you refer, besides other offences which are not to the present purpose, that of purchasing, upon any terms, any claim, which it requires a suit at law, or in equity, to enforce.

Champerty, which is but a particular modification of this sin of Maintenance, is, I think, the furnishing a man who has such a claim, with regard to a real estate, such money as he may have occasion for, to carry on such claim, upon the terms of receiving a part of the estate in case of success.

What the penalties are for these offences I do not recollect, nor do I think it worth while hunting for them, though I have Blackstone at my elbow. They are at any rate, sufficiently severe

vere to answer the purpose, the rather as the bargain is made void.

To illustrate the mischievousness of the laws by which they have been created, give me leave to tell you a story, which is but too true an one, and which happened to fall within my own observation.

A gentleman of my acquaintance had succeeded, during his minority, to an estate of about 3000l. a year: I won't say where. His guardian, concealing from him the value of the estate, which circumstances rendered it easy for him to do, got a conveyance of it from him, during his non-age, for a trifle. Immediately upon the ward's coming of age, the guardian, keeping him still in darkness, found means to get the conveyance confirmed. Some years afterwards, the ward discovered the value of the inheritance  
he

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he had been throwing away. Private representations proving, as it may be imagined, ineffectual, he applied to a court of equity. The suit was in some forwardness: the opinion of the ablest counsel highly encouraging: but money there remained none. We all know but too well, that, in spite of the unimpeachable integrity of the bench, that branch of justice, which is particularly dignified with the name of equity, is only for those who can afford to throw away one fortune for the chance of recovering another. Two persons, however, were found, who, between them, were content to defray the expense of the ticket for this lottery, on condition of receiving half the prize. The prospect now became encouraging: when unfortunately one of the adventurers, in exploring the recesses of the bottomless pit, happen-

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*and Champerty.*

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ed to dig up one of the old statutes against Champerty. This blew up the whole project: however the defendant, understanding that, some how or other, his antagonist had found support, had thought fit in the mean time to propose terms, which the plaintiff, after his support had thus dropped from under him, was very glad to close with. He received, I think it was, 3000l.; and for that he gave up the estate, which was worth about as much yearly, together with the arrears, which were worth about as much as the estate.

Whether, in the barbarous age which gave birth to these barbarous precautions, whether, even under the zenith of feudal anarchy, such fettering regulations could have had reason on their side, is a question of curiosity rather than use. My notion is, that

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there

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there never was a time, that there never could have been, or can be a time, when the pushing of suitors away from court with one hand, while they are beckoned into it with another, would not be a policy equally faithless, inconsistent, and absurd. But, what every body must acknowledge, is, that, to the times which called forth these laws, and in which alone they could have started up, the present are as opposite as light to darkness. A mischief, in those times, it seems, but too common, though a mischief not to be cured by such laws, was, that a man would buy a weak claim, in hopes that power might convert it into a strong one, and that the sword of a baron, stalking into court with a rabble of retainers at his heels, might strike terror into the eyes of a judge upon the bench. At present, what  
cares



cares an English judge for the swords of an hundred barons?—Neither fearing nor hoping, hating nor loving, the judge of our days is ready with equal phlegm to administer, upon all occasions, that system, whatever it be, of justice, or injustice, which the law has put into his hands. A disposition so consonant to duty could not have then been hoped for: one more consonant is hardly to be wished. Wealth has indeed the monopoly of justice against poverty: and such monopoly it is the direct tendency and necessary effect of regulations like these to strengthen and confirm. But with this monopoly no judge that lives now is at all chargeable. The law created this monopoly: the law, when ever it pleases, may dissolve it.

I will not however so far wander from my subject as to inquire what

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measure might have been necessary to afford a full relief to the case of that unfortunate gentleman, any more than to the cases of so many other gentlemen who might be found, as unfortunate as he. I will not insist upon so strange and so inconceivable an arrangement, as that of the judge's seeing both parties face to face in the first instance, observing what the facts are in dispute, and declaring, that as the facts should turn out this way or that way, such or such would be his decree. At present, I confine myself to the removal of such part of the mischief, as may arise from the general conceit of keeping men out of difficulties, by cutting them off from such means of relief as each man's situation may afford. A sponge in this, as in so many other cases, is the only needful, and only availing remedy : one stroke of  
it

*and Champerty.*

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it for the musty laws against maintenance and champerty : another for the more recent ones against usury. Consider, for example, what would have respectively been the effect of two such strokes, in the case of the unfortunate gentlemen I have been speaking of. By the first, if what is called equity has any claim to confidence, he would have got, even after paying off his champerty-usurers, 1500l. a year in land, and about as much in money : instead of getting, and that only by an accident, 3000l. once told. By the other, there is no saying to what a degree he might have been benefited. May I be allowed to stretch so far in favour of the law as to suppose, that so small a sum as 500l. would have carried him through his suit, in the course of about three years ? I am sensible, that may be thought but a short sum,

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sum, and this but a short term, for a suit in equity: but, for the purpose of illustration, it may serve as well as a longer. Suppose he had sought this necessary sum in the way of borrowing; and had been so fortunate, or, as the laws against the sin of usury would style it, so unfortunate, as to get it at 200 per cent. He would then have purchased his 6000l. a year at the price of half as much once paid, viz. 3000l.; instead of selling it at that price. Whether, if no such laws against usury had been in being, he could have got the money, even at that rate, I will not pretend to say: perhaps he might not have got it under ten times that rate, perhaps he might have got it at the tenth part of that rate. Thus far, I think, we may say, that he might, and probably would, have been the better for the repeal of those laws: but thus far

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far we must say, that it is impossible he should have been the worse. The terms, upon which he met with adventurers willing to relieve him, though they come not within that scanty field, which the law, in the narrowness of its views, calls usury, do, in the present case, at twenty years purchase of the 3000l. a year he was content to have sacrificed for such assistance, amount, in effect, to 4000 per cent. Whether it was likely that any man, who was disposed to venture his money, at all, upon such a chance, would have thought of insisting upon such a rate of interest, I will leave you to imagine: but thus much may be said with confidence, because the fact demonstrates it, that, at a rate not exceeding this, the sum would actually have been supplied. Whatever becomes then of the laws against maintenance and champerty,

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champerty, the example in question, when applied to the laws against usury, ought, I think, to be sufficient to convince us, that so long as the expense of seeking relief at law stands on its present footing, the purpose of seeking that relief will, of itself, independently of every other, afford a sufficient ground for allowing any man, or every man, to borrow money on any terms on which he can obtain it.

*Crichoff,*  
*in White Russia,*  
*March, 1787.*

LETT. XIII. *To Dr. Smith.* 129

LETTER XIII.

*To Dr. Smith, on Projects in Arts, &c.*

SIR,

I Forget what son of controversy it was, among the Greeks, who having put himself to school to a professor of eminence, to learn what, in those days, went by the name of wisdom, chose an attack upon his master for the first public specimen of his proficiency. This specimen, whatever entertainment it might have afforded to the audience, afforded, it may be supposed, no great satisfaction to the master: for the thesis was, that the pupil

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owed him nothing for his pains. For my part, being about to shew myself in one respect as ungrateful as the Greek, it may be a matter of prudence for me to look out for something like candour, by way of covering to my ingratitude: instead therefore of pretending to owe you nothing, I shall begin with acknowledging, that, as far as your track coincides with mine, I should come much nearer the truth, were I to say I owed you every thing. Should it be my fortune to gain any advantage over you, it must be with weapons which you have taught me to wield, and with which you yourself have furnished me: for, as all the great standards of truth, which can be appealed to in this line, owe, as far as I can understand, their establishment to you, I can see scarce any other way of convicting you of any error or oversight,



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sight, than by judging you out of your own mouth.

In the series of letters to which this will form a sequel, I had travelled nearly thus far in my researches into the policy of the laws fixing the rate of interest, combating such arguments as fancy rather than observation had suggested to my view, when, on a sudden, recollection presented me with your formidable image, bestriding the ground over which I was travelling pretty much at my ease, and opposing the shield of your authority to any arguments I could produce.

It was a reflection mentioned by Cicero as affording him some comfort, that the employment his talents till that time had met with, had been chiefly on the defending side. How little soever blest, on any occasion, with any portion of his eloquence, I  
may,

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may, on the present occasion, however, indulge myself with a portion of what constituted his comfort: for, if I presume to contend with you, it is only in defence of what I look upon as, not only an innocent, but a most meritorious race of men, who are so unfortunate as to have fallen under the rod of your displeasure. I mean *projectors*: under which invidious name I understand you to comprehend, in particular, all such persons as, in the pursuit of wealth, strike out into any new channel, and more especially into any channel of invention.

It is with the professed view of checking, or rather of crushing, these adventurous spirits, whom you rank with “prodigals,” that you approve of the laws which limit the rate of interest, grounding yourself on the tendency, they appear to you to have, to  
keep

keep the capital of the country out of two such different sets of hands.

The passage, I am speaking of, is in the fourth chapter of your second book, volume the second of the 8vo. edition of 1784. “The legal rate” (you say) “it is to be observed, though “it ought to be somewhat above, “ought not to be much above, the “lowest market rate. If the legal rate “of interest in Great Britain, for ex- “ample, was fixed so high as eight or “ten per cent. the greater part of the “money which was to be lent, would “be lent to prodigals and projectors, “who alone would be willing to give “this high interest. Sober people, “who will give for the use of money “no more than a part of what they “are likely to make by the use of it, “would not venture into the compe- “tition. A great part of the capital  
“ of

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“ of the country would thus be kept  
“ out of the hands which were most  
“ likely to make a profitable and ad-  
“ vantageous use of it, and thrown  
“ into those which were most likely to  
“ waste and destroy it. Where the  
“ legal interest on the contrary, is  
“ fixed but a very little above the  
“ lowest market rate, sober people are  
“ universally preferred as borrowers,  
“ to prodigals and projectors. The  
“ person who lends money, gets near-  
“ ly as much interest from the former,  
“ as he dares to take from the latter,  
“ and his money is much safer in the  
“ hands of the one set of people than  
“ in those of the other. A great part  
“ of the capital of the country is thus  
“ thrown into the hands in which it  
“ is most likely to be employed with  
“ advantage.”

It happens fortunately for the side  
you

you appear to have taken, and as unfortunately for mine, that the appellative, which the custom of the language has authorised you, and which the poverty and perversity of the language has in a manner forced you, to make use of, is one, which, along with the idea of the sort of persons in question, conveys the idea of reprobation, as indiscriminately and deservedly applied to them. With what justice or consistency, or by the influence of what causes, this stamp of indiscriminate reprobation has been thus affixed, it is not immediately necessary to inquire. But, that it does stand thus affixed, you and every body else, I imagine, will be ready enough to allow. This being the case, the question stands already decided, in the first instance at least, if not irrevocably, in the judgments of all those, who, unable or unwilling

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willing to be at the pains of analysing their ideas, suffer their minds to be led captive by the tyranny of sounds: that is, I doubt, of by far the greater proportion of those whom we are likely to have to judge us. In the conceptions of all such persons, to ask whether it be fit to restrain projects and projectors, will be as much as to ask, whether it be fit to restrain rashness, and folly, and absurdity, and knavery, and waste.

Of prodigals I shall say no more at present. I have already stated my reasons for thinking, that it is not among them that we are to look for the natural customers for money at high rates of interest. As far as those reasons are conclusive, it will follow, that, of the two sorts of men you mention as proper objects of the burthen of these restraints, prodigals and projectors,

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ors, that burthen falls exclusively on the latter. As to these, what your definition is of projectors, and what descriptions of persons you meant to include under the censure conveyed by that name, might be material for the purpose of judging of the propriety of that censure, but makes no difference in judging of the propriety of the law, which that censure is employed to justify. Whether you yourself, were the several classes of persons made to pass before you in review, would be disposed to pick out this or that class, or this and that individual, in order to exempt them from such censure, is what for that purpose we have no need to inquire. The law, it is certain, makes no such distinctions: it falls with equal weight, and with all its weight, upon all those persons, without distinction, to whom the term *projectors*, in the most impartial and extensive

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extensive signification of which it is capable, can be applied. It falls at any rate (to repeat some of the words of my former definition), upon all such persons, as, in the pursuit of wealth, or even of any other object, endeavour, by the assistance of wealth, to strike into any channel of invention. It falls upon all such persons, as, in the cultivation of any of those arts which have been by way of eminence termed *useful*, direct their endeavours to any of those departments in which their utility shines most conspicuous and indubitable; upon all such persons as, in the line of any of their pursuits, aim at any thing that can be called *improvement*; whether it consist in the production of any new article adapted to man's use, or in the meliorating the quality, or diminishing the expense, of any of those which are already known to us. It falls, in short,



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short, upon every application of the human powers, in which ingenuity stands in need of wealth for its assistant.

High and extraordinary rates of interest, how little soever adapted to the situation of the prodigal, are certainly, as you very justly observe, particularly adapted to the situation of the projector: not however to that of the imprudent projector only, nor even to his case more than another's, but to that of the prudent and well-grounded projector, if the existence of such a being were to be supposed. Whatever be the prudence or other qualities of the project, in whatever circumstance the novelty of it may lie, it has this circumstance against it, viz. that it is new. But the rates of interest, the highest rates allowed, are, as you expressly say they are, and as you would have them to be, adjusted to the situation

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tion which the sort of trader is in, whose trade runs in the old channels, and to the best security which such channels can afford. But in the nature of things, no new trade, no trade carried on in any new channel, can afford a security equal to that which may be afforded by a trade carried on in any of the old ones: in whatever light the matter might appear to perfect intelligence, in the eye of every prudent person, exerting the best powers of judging which the fallible condition of the human faculties affords, the novelty of any commercial adventure will oppose a chance of ill success, superadded to every one which could attend the same, or any other, adventure, already tried, and proved to be profitable by experience.

The limitation of the profit that is to be made, by lending money to persons

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sons embarked in trade, will render the monied man more anxious, you may say, about the goodness of his security, and accordingly more anxious to satisfy himself respecting the prudence of a project in the carrying on of which the money is to be employed, than he would be otherwise: and in this way it may be thought that these laws *have* a tendency to pick out the good projects from the bad, and favour the former at the expense of the latter. The first of these positions I admit: but I can never admit the consequence to follow. A prudent man, (I mean nothing more than a man of ordinary prudence) a prudent man acting under the sole governance of prudential motives, I still say, will not, in these circumstances, pick out the good projects from the bad, for he will not meddle with projects at all. He will pick out old-established

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established trades from all sorts of projects, good and bad; for with a new project, be it ever so promising, he never will have any thing to do. By every man that has money, five per cent. or whatever be the highest legal rate, is at all times, and always will be, to be had upon the very best security, that the best and most prosperous old-established trade can afford. Traders in general, I believe, it is commonly understood, are well enough inclined to enlarge their capital, as far as all the money they can borrow at the highest legal rate, while that rate is so low as 5 per cent. will enlarge it. How it is possible therefore for a project, be it ever so promising, to afford, to a lender at any such rate of interest, terms equally advantageous, upon the whole, with those he might be sure of obtaining from an old-established business, is  
more

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more than I can conceive. Loans of money may certainly chance, now and then, to find their way into the pockets of projectors as well as of other men : but when this happens, it must be through incautiousness, or friendship, or the expectation of some collateral benefit, and not through any idea of the advantageousness of the transaction, in the light of a pecuniary bargain.

I should not expect to see it alleged, that there is any thing, that should render the number of well-grounded projects, in comparison of the ill-grounded, less in time future, than it has been in time past. I am sure at least that I know of no reasons why it should be so, though I know of some reasons, which I shall beg leave to submit to you by and by, which appear to  
me

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me pretty good ones, why the advantage should be on the side of futurity. But, unless the stock of well-grounded projects is already spent, and the whole stock of ill-grounded projects that ever were possible, are to be looked for exclusively in the time to come, the censure you have passed on projectors, measuring still the extent of it by that of the operation of the laws in the defence of which it is employed, looks as far backward as forward: it condemns as rash and ill-grounded, all those projects, by which our species have been successively advanced from that state in which acorns were their food, and raw hides their cloathing, to the state in which it stands at present: for think, Sir, let me beg of you, whether whatever is now the *routine* of trade was not, at its commencement,

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ment, *project*? whether whatever is now *establishment*, was not, at one time, innovation?

How it is that the tribe of well-grounded projects, and of prudent projectors (if by this time I may have your leave for applying this epithet to some at least among the projectors of time past), have managed to struggle through the obstacles which the laws in question have been holding in their way, it is neither easy to know, nor necessary to inquire. Manifest enough, I think, it must be by this time, that difficulties, and those not inconsiderable ones, those laws must have been holding up, in the way of projects of all sorts, of improvement (if I may say so) in every line, so long as they have had existence: reasonable therefore it must be to conclude, that, had it not been for these discouragements, pro-  
 II projects

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jects of all sorts, well-grounded and successful ones, as well as others, would have been more numerous than they have been: and that accordingly, on the other hand, as soon, if ever, as these discouragements shall be removed, projects of all sorts, and among the rest, well-grounded and successful ones, will be more numerous than they would otherwise have been: in short, that, as, without these discouragements, the progress of mankind in the career of prosperity, would have been greater than it has been under them in time past; so, were they to be removed, it would be at least proportionably greater in time future.

That I had done you no injustice, in assigning to your idea of projectors so great a latitude, and that the unfavourable opinion you have professed to entertain of them is not confined to  
the



the above passage, might be made, I think, pretty apparent, if it be material, by another passage in the tenth chapter of your first book\*. “The  
 “ establishment of any new manufac-  
 “ ture, of any new branch of com-  
 “ merce, or of any new practice in  
 “ agriculture,” all these you compre-  
 hend by name under the list of “ *pro-*  
 “ *jects:*” of every one of them you ob-  
 serve, that “ it is a speculation from  
 “ which the *projector* promises himself  
 “ extraordinary profits. These pro-  
 “ fits (you add) are sometimes *very*  
 “ *great*, and sometimes, *more frequently*  
 “ *perhaps*, they are *quite otherwise*: but  
 “ in general they bear no regular pro-  
 “ portion to those of other old trades  
 “ in the neighbourhood. If the pro-  
 “ ject succeeds, they are commonly

\* Edit. 1784, 8vo .p. 177.

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“ at first very high. When the trade  
“ or practice becomes thoroughly es-  
“ tablished and well known, the com-  
“ petition reduces them to the level of  
“ other trades.” But on this head I  
forbear to insist; nor should I have  
taken this liberty of giving you back  
your own words, but in the hope of  
seeing some alteration made in them in  
your next edition, should I be fortunate  
enough to find my sentiments confirm-  
ed by your’s. In other respects, what  
is essential to the public, is, what the  
error is in the sentiments entertained,  
not who it is that entertains them.

I know not whether the observations  
which I have been troubling you with,  
will be thought to need, or whether  
they will be thought to receive,  
any additional support from those  
comfortable positions, of which you  
have made such good and such fre-  
quent

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quent use, concerning the constant tendency of mankind to get forward in the career of prosperity, the prevalence of prudence over imprudence, in the sum of private conduct at least, and the superior fitness of individuals for managing their own pecuniary concerns, of which they know the particulars and the circumstances, in comparison of the legislator, who can have no such knowledge. I will make the experiment: for, so long as I have the mortification to see you on the opposite side, I can never think the ground I have taken strong enough, while any thing remains that appears capable of rendering it still stronger.

“ With regard to misconduct, the  
 “ number of prudent and successful  
 “ undertakings” (you observe\*) “ is

\* B. II. ch. iii. edit. 8vo. 1784, vol. ii. p. 20.

“ every

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“ every where much greater than that  
 “ of injudicious and unsuccessful ones.  
 “ After all our complaints of the fre-  
 “ quency of bankruptcies, the unhap-  
 “ py men who fall into this misfor-  
 “ tune make but a very small part of  
 “ the whole number engaged in trade,  
 “ and all other sorts of business; not  
 “ much more perhaps than one in a  
 “ thousand.”

'Tis in support of this position that  
 you appeal to history for the constant  
 and uninterrupted progress of man-  
 kind, in our island at least, in the ca-  
 reer of prosperity: calling upon any  
 one who should entertain a doubt of  
 the fact, to divide the history into any  
 number of periods, from the time of  
 Cæsar's visit down to the present: pro-  
 posing for instance the respective æras  
 of the Restoration, the Accession of  
 Elizabeth, that of Henry VII. the  
 Norman

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Norman Conquest, and the Heptarchy; and putting it to the sceptic to find out, if he can, among all these periods, any one at which the condition of the country was not more prosperous than at the period immediately preceding it: spite of so many wars, and fires, and plagues, and all other public calamities, with which it has been at different times afflicted, whether by the hand of God, or by the misconduct of the sovereign. No very easy task, I believe: the fact is too manifest for the most jaundiced eye to escape seeing it:—But what and whom are we to thank for it, but projects, and projectors?

“No,” I think I hear you saying,  
 “I will not thank projectors for it, I  
 “will rather thank the laws, which  
 “by fixing the rates of interest, have  
 “been exercising their vigilance in  
 “repressing

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“ repressing the temerity of projectors,  
“ and preventing their imprudence  
“ from making those defalcations from  
“ the sum of national prosperity, which  
“ it would not have failed to make,  
“ had it been left free. If, during all  
“ these periods, that adventurous race  
“ of men had been left at liberty by  
“ the laws to give full scope to their  
“ rash enterprizes, the increase of  
“ national prosperity during these  
“ periods might have afforded some  
“ ground for regarding them in a  
“ more favourable point of view. But  
“ the fact is, that their activity has  
“ had these laws to check it; without  
“ which checks you must give me  
“ leave to suppose, that the current  
“ of prosperity, if not totally stopt, or  
“ turned the other way, would at any  
“ rate have been more or less retard-  
“ ed. Here then” (you conclude)  
“ lies

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“ lies the difference between us. What  
 “ you look upon as the cause of the  
 “ increase about which we are both  
 “ agreed, I look upon as an obstacle  
 “ to it: and what you look upon as the  
 “ obstacle, I look upon as the cause.”

Instead of starting this as a sort of plea that might be urged by you, I ought, perhaps, rather to have mentioned it as what might be urged by some people in your place: for as I do not imagine your penetration would suffer you to rest satisfied with it, still less can I suppose that, if you were not, your candour would allow you to make use of it as if you were.

To prevent your resting satisfied with it, the following considerations would, I think, be sufficient.

In the first place, of the seven periods which you have pitched upon, as so many stages for the eye to rest

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at in viewing the progress of prosperity, it is only during the three last, that the country has had the benefit, if such we are to call it, of these laws: for it is to the reign of Henry VIII. that we owe the first of them.

Here a multitude of questions might be started: Whether the curbing of projectors formed any part of the design of that first statute, or whether the views of it were not wholly confined to the reducing the gains of that obnoxious and envied class of men, the money-lenders? Whether projectors have been most abundant before that statute, or since that statute? And whether the nation has suffered, as you might say—benefited, as I should say, most by them, upon the whole, during the former period or the latter? All these discussions, and many more that might be started, I decline engaging

ing



ing in, as more likely to retard, than to forward, our coming to any agreement concerning the main question.

In the next place, I must here take the liberty of referring you to the proof, which I think I have already given, of the proposition, that the restraints in question could never have had the effect, in any degree, of lessening the proportion of bad projects to good ones, but only of diminishing, as far as their influence may have extended, the total number of projects, good and bad together. Whatever therefore was the general tendency of the projecting spirit previously to the first of these laws, such it must have remained ever since, for any effect which they could have had in purifying and correcting it.

But what may appear more satisfactory perhaps than both the above considerations,

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siderations, and may afford us the best help towards extricating ourselves from the perplexity, which the plea I have been combating (and which I thought it necessary to bring to view, as the best that could be urged) seems much better calculated to plunge us into, than bring us out of, is, the consideration of the small effect which the greatest waste that can be conceived to have been made within any compass of time, by injudicious projects, can have had on the sum of prosperity, even in the estimation of those whose opinion is most unfavourable to projectors, in comparison of the effect which within the same compass of time must have been produced by *prodigality*.

Of the two causes, and only two causes, which you mention, as contributing to retard the accumulation of national wealth, as far as the conduct  
of

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of individuals is concerned, projecting, as I observed before, is the one, and prodigality is the other: but the detriment, which society can receive even from the concurrent efficacy of both these causes, you represent on several occasions, as inconsiderable; and, if I do not misapprehend you, too inconsiderable, either to need, or to warrant, the interposition of government to oppose it. Be this as it may with regard to projecting and prodigality taken together, with regard to prodigality at least, I am certain I do not misapprehend you. On this subject you ride triumphant, and chastise the “impertinence and presumption of kings and ministers,” with a tone of authority, which it required a courage like your’s to venture upon, and a genius like your’s  
to

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to warrant a man to assume\*. After drawing the parallel between private thrift and public profusion, “ It is ” (you conclude) “ the highest imper-  
 “ tinance and presumption therefore  
 “ in kings and ministers *to pretend to*  
 “ *watch over the economy of private*  
 “ *people*, and to restrain their expense,  
 “ either by sumptuary laws, or by  
 “ prohibiting the importation of fo-  
 “ reign luxuries. They are themselves  
 “ always, and without exception, the  
 “ greatest spendthrifts in the society.  
 “ Let them look well after their own  
 “ expense, and they may safely trust  
 “ private people with theirs. If their  
 “ own extravagance does not ruin the  
 “ state, that of their subjects never  
 “ will.”

B. II. ch. iii. vol. ii. p. 27. edit. 8vo. 1784.

That

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That the employing the expedients you mention for restraining prodigality, is indeed generally, perhaps even without exception, improper, and in many cases even ridiculous. I agree with you : nor will I here step aside from my subject to defend from that imputation another mode suggested in a former part of these papers. But however presumptuous and impertinent it may be for the sovereign to attempt in any way to check by legal restraints the *prodigality* of individuals, to attempt to check their *bad management* by such restraints, seems abundantly more so. To err in the way of prodigality is the lot, though, as you well observe, not of *many* men, in comparison of the whole mass of mankind, yet at least of *any* man: the stuff fit to make a prodigal of is to be found in every alehouse, and under every hedge.

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hedge. But even to *err* in the way of projecting is the lot only of the privileged few. Prodigality, though not so common as to make any very material drain from the general mass of wealth, is however too common to be regarded as a mark of distinction or as a singularity. But the stepping aside from any of the beaten paths of traffic, *is* regarded as a singularity, as serving to distinguish a man from other men. Even where it requires no genius, no peculiarity of talent, as where it consists in nothing more than the finding out a new market to buy or sell in, it requires however at least a degree of courage, which is not to be found in the common herd of men. What shall we say of it, where, in addition to the vulgar quality of courage, it requires the rare endowment of genius, as in the instance of all those  
successive

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successive enterprises by which arts and manufactures have been brought from their original nothing to their present splendour? Think how small a part of the community these must make, in comparison of the race of prodigals; of that very race, which, were it only on account of the smallness of its number, would appear too inconsiderable to you to deserve attention. Yet prodigality is essentially and necessarily hurtful, as far as it goes, to the opulence of the state: projecting, only by accident. Every prodigal, without exception, impairs, by the very supposition impairs, if he does not annihilate, his fortune. But it certainly is not every projector that impairs his: it is not every projector that would have done so, had there been none of those wise laws to hinder him: for the fabric of national opulence,

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opulence, that fabric of which you proclaim, with so generous an exultation, the continual increase, that fabric, in every apartment of which, innumerable as they are, it required the reprobated hand of a projector to lay the first stone, has required some hands at least to be employed, and successfully employed. When in comparison of the number of prodigals, which is too inconsiderable to deserve notice, the number of projectors of all kinds is so much more inconsiderable—and when from this inconsiderable number, must be deducted, the not inconsiderable proportion of successful projectors—and from this remainder again, all those who can carry on their projects without need of borrowing—think whether it be possible, that this last remainder could afford a multitude, the reducing of which  
would



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would be an object, deserving the interposition of government by its magnitude, even taking for granted that it were an object proper in its nature?

If it be still a question, whether it be worth while for government, by its *reason*, to attempt to controul the conduct of men visibly and undeniably under the dominion of *passion*, and acting under that dominion, contrary to the dictates of their own reason; in short, to effect what is acknowledged to be their better judgment, against what every body, even themselves, would acknowledge to be their worse: is it endurable that the legislator should by violence substitute his own pretended reason, the result of a momentary and scornful glance, the offspring of wantonness and arrogance, much rather than of social anxiety and  
study,

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study, in the place of the humble reason of individuals, binding itself down with all its force to that very object which he pretends to have in view?—Nor let it be forgotten, that, on the side of the individual in this strange competition, there is the most perfect and minute knowledge and information, which interest, the whole interest of a man's reputation and fortune, can ensure: on the side of the legislator, the most perfect ignorance. All that he knows, all that he can know, is, that the enterprize is a *project*, which, merely because it is susceptible of that obnoxious name, he looks upon as a sort of cock, for him, in childish wantonness, to shie at.—Shall the blind lead the blind? is a question that has been put of old to indicate the height of folly: but what then shall we say of him who, being necessarily blind, insists

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sists on leading, in paths he never trod in, those who can see?

It must be by some distinction too fine for my conception, if you clear yourself from the having taken, on another occasion, but on the very point in question, the side, on which it would be my ambition to see you fix.

“ What is the species of domestic  
 “ industry which his capital can em-  
 “ ploy, and of which the produce is  
 “ likely to be of the greatest value,  
 “ every individual” (you say\*), “ it  
 “ is evident, can, in his local situation,  
 “ judge much better than any states-  
 “ man or lawgiver can do for him.  
 “ The statesman, who should attempt  
 “ to direct private people in what  
 “ manner they ought to employ their

\* B. IV. ch. ii. vol. ii. p. 182, edit. 8vo.

“ capitals,

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“ capitals, would not only load him-  
 “ self with a most unnecessary atten-  
 “ tion, but assume an authority which  
 “ could safely be trusted, not only to  
 “ no single person, but to no council  
 “ or senate whatsoever, and which  
 “ would no where be so dangerous as  
 “ in the hands of a man who had folly  
 “ and presumption enough to fancy  
 “ himself fit to exercise it.

“ To give the monopoly of the  
 “ home market to the produce of do-  
 “ mestic industry, in any particular  
 “ art or manufacture, is in some mea-  
 “ sure to direct private people in what  
 “ manner they ought to employ their  
 “ capitals, and must in almost all cases  
 “ be either a useless or a hurtful regu-  
 “ lation.”—Thus far you: and I add,  
 to limit the legal interest to a rate at  
 which the carriers on of the oldest and  
 best-established and least hazardous  
 trades

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trades are always glad to borrow, is to give the monopoly of the money-market to those traders, as against the projectors of new-imagined trades, not one of which but, were it only from the circumstance of its novelty, must, as I have already observed, appear more hazardous than the old.

These, in comparison are but inconclusive topics. I touched upon them merely as affording, what appeared to me the only shadow of a plea, that could be brought, in defence of the policy I am contending against. I come back therefore to my first ground, and beg you once more to consider, whether, of all that host of manufactures, which we both exult in as the causes and ingredients of national prosperity, there be a single one, that could have existed at first but in the shape of a project. But, if a regulation,

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gulation, the tendency and effect of which is merely to check projects, in as far as they are projects, without any sort of tendency, as I have shewn, to weed out the bad ones, is defensible in its present state of imperfect efficacy, it should not only have been defensible, but much more worthy of our approbation, could the efficacy of it have been so far strengthened and compleated as to have opposed, from the beginning, an unsurmountable bar to all sorts of projects whatsoever: that is to say, if, stretching forth its hand over the first rudiments of society, it had confined us, from the beginning, to mud for our habitations, to skins for our cloathing, and to acorns for our food.

I hope you may by this time be disposed to allow me, that we have not been ill served by the projects of  
time

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time past. I have already intimated, that I could not see any reason why we should apprehend our being worse served by the projects of time future. I will now venture to add, that I think I do see reason, why we should expect to be still better and better served by these projects, than by those. I mean better upon the whole, in virtue of the reduction which experience, if experience be worth any thing, should make in the proportion of the number of the ill-grounded and unsuccessful, to that of the well-grounded and successful ones.

The career of art, the great road which receives the footsteps of projectors, may be considered as a vast, and perhaps unbounded, plain, bestrewed with gulphs, such as Curtius was swallowed up in. Each requires

I

an

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an human victim to fall into it ere it can close; but when it once closes, it closes to open no more, and so much of the path is safe to those who follow. If the want of perfect information of former miscarriages renders the reality of human life less happy than this picture, still the similitude must be acknowledged: and we see at once the only plain and effectual method for bringing that similitude still nearer and nearer to perfection; I mean, the framing the history of the projects of time past, and (what may be executed in much greater perfection, were but a finger held up by the hand of government) the making provision for recording, and collecting, and publishing as they are brought forth, the race of those with which the womb of futurity is still pregnant. But to pursue  
this



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this idea, the execution of which is not within my competence, would lead me too far from the purpose.

Comfortable it is to reflect, that this state of continually-improving security, is the natural state not only of the road to opulence, but of every other track of human life. In the war which industry and ingenuity maintain with fortune, past ages of ignorance and barbarism form the forlorn hope, which has been detached in advance, and made a sacrifice of for the sake of future. The golden age, it is but too true, is not the lot of the generation in which we live: but, if it is to be found in any part of the track marked out for human existence, it will be found, I trust, not in any part which is past, but in some part which is to come.

But to return to the laws against

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usury, and their restraining influence on projectors. I have made it, I hope, pretty apparent, that these restraints have no power or tendency to pick out bad projects from the good. Is it worth while to add, which I think I may do with some truth, that the tendency of them is rather to pick the good out from the bad? Thus much at least may be said, and it comes to the same thing, that there is one case in which, be the project what it may, they may have the effect of checking it, and another in which they can have no such effect; and that the first has for its accompaniment, and that a necessary one, a circumstance which has a strong tendency to separate and discard every project of the injudicious stamp, but which is wanting in the other case. I mean, in a word, the *benefit of discussion*.

It

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It is evident enough, that upon all such projects, whatever be their nature, as find funds sufficient to carry them on, in the hands of him whose invention gave them birth, these laws are perfectly, and if by this time you will allow me to say so, very happily, without power. But for these there has not necessarily been any other judge, prior to experience, than the inventor's own partial affection. It is not only not necessary that they should have had, but it is natural enough that they should not have had, any such judge : since in most cases the advantage to be expected from the project depends upon the exclusive property in it, and consequently upon the concealment of the principle. Think, on the other hand, how different is the lot of that enterprize which depends upon the good opinion  
of

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of another man; that other, a man possessed of the wealth which the projector wants, and before whom necessity forces him to appear in the character of a suppliant at least: happy if, in the imagination of his judge, he adds not to that degrading character, that of a visionary enthusiast or an impostor! At any rate, there are, in this case, two wits, set to sift into the merits of the project, for one, which was employed upon that same task in the other case: and of these two there is one, whose prejudices are certainly not most likely to be on the favourable side. True it is, that in the jumble of occurrences, an over-sanguine projector may stumble upon a patron as over-sanguine as himself; and the wishes may bribe the judgment of the one, as they did of the other. The opposite case, however, you will allow, I think, to be by  
much

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much the more natural. Whatever a man's wishes may be for the success of an enterprize not yet his own, his fears are likely to be still stronger. That same pretty generally implanted principle of vanity and self-conceit, which disposes most of us to over-value each of us his own conceptions, disposes us, in a proportionable degree, to under-value those of other men.

Is it worth adding, though it be undeniably true, that could it even be proved, by ever so uncontrovertible evidence, that, from the beginning of time to the present day, there never was a project that did not terminate in the ruin of its author; not even from such a fact as this, could the legislator derive any sufficient warrant, so much as for wishing to see the spirit of projects in any degree repressed?—The discouraging motto, *Sic vos non vobis*,  
may

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may be matter of serious consideration to the individual, but what is it to the legislator? What general, let him attack with ever so superior an army, but knows that hundreds, or perhaps thousands, must perish at the first onset? Shall he, for that consideration alone, lie inactive in his lines? “Every man for himself—but God,” adds the proverb (and it might have added the general, and the legislator, and all other public servants), “for us all.” Those sacrifices of individual to general welfare, which, on so many occasions, are made by third persons against men’s wills, shall the parties themselves be restrained from making, when they do it of their own choice? To tie men neck and heels, and throw them into the gulphs I have been speaking of, is altogether out of the question: but if at every gulph a Curtius stands  
mounted

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mounted and caparisoned, ready to take the leap, is it for the legislator, in a fit of old-womanish tenderness, to pull him away? Laying even public interest out of the question, and considering nothing but the feelings of the individuals immediately concerned, a legislator would scarcely do so, who knew the value of hope, “the most precious gift of heaven.”

Consider, Sir, that it is not with the invention-lottery (that great branch of the project lottery, for the sake of which I am defending the whole, and must continue so to do until you or somebody else can shew me how to defend it on better terms), it is not I say with the invention-lottery, as with the mine-lottery, the privateering-lottery, and so many other lotteries, which you speak of, and in no instance, I think, very much to their advantage.

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In these lines, success does not, as in this, arise out of the embers of ill success, and thence propagate itself, by a happy contagion, perhaps to all eternity. Let Titius have found a mine, it is not the more easy, but by so much the less easy, for Sempronius to find one too: let Titius have made a capture, it is not the more easy, but by so much the less easy, for Sempronius to do the like. But let Titius have found out a new dye, more brilliant or more durable than those in use, let him have invented a new and more convenient machine, or a new and more profitable mode of husbandry; a thousand dyers, ten thousand mechanics, a hundred thousand husbandmen, may repeat and multiply his success: and then, what is it to the public, though the fortune of Titius, or of his usurer, should



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should have sunk under the experiment?

Birmingham and Sheffield are pitched upon by you as examples, the one of a projecting town, the other of an unprojecting one\*. Can you forgive my saying, I rather wonder that this comparison of your own choosing, did not suggest some suspicions of the justice of the conceptions you had taken up, to the disadvantage of projectors. Sheffield is an old oak: Birmingham, but a mushroom. What if we should find the mushroom still vaster and more vigorous than the oak? Not but the one as well as the other, at what time soever planted, must equally have been planted by projectors: for though Tubal Cain himself were to

\* B. I. ch. x. vol. i. p. 176. edit. 8vo. 1784.

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be brought post from Armenia to plant Sheffield, Tubal Cain himself was as arrant a projector in his day, as ever Sir Thomas Lombe was, or bishop Blaise: but Birmingham, it seems, claims in common parlance the title of a projecting town, to the exclusion of the other, because, being but of yesterday, the spirit of project smells fresher and stronger there than elsewhere.

When the odious sound of the word *projector* no longer tingles in your ears, the race of men thus stigmatized do not always find you their enemy. Projects, even under the name of “dangerous and expensive experiments,” are represented as not unfit to be encouraged, even though monopoly be the means: and the monopoly is defended in that instance, by its similarity

milarity to other instances in which the like means are employed to the like purpose.

“ When a company of merchants  
 “ undertake at their own risk and ex-  
 “ pense to establish a new trade with  
 “ some remote and barbarous nation,  
 “ it may not be unreasonable” (you  
 observe) “ to incorporate them into  
 “ a joint-stock company, and to grant  
 “ them, in case of their success, a  
 “ monopoly of the trade for a certain  
 “ number of years. It is the easiest  
 “ and most natural way, in which the  
 “ state can recompense them, for ha-  
 “ zarding a dangerous and expensive  
 “ experiment, of which the public is  
 “ afterwards to reap the benefit. A  
 “ temporary monopoly of this kind  
 “ may be vindicated, upon the same  
 “ principles, upon which a like mon-  
 “ opoly of a new machine is granted to  
 “ its

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“ its inventor, and that of a new book  
 “ to-its author.”

Private respect must not stop me from embracing this occasion of giving a warning, which is so much needed by mankind. If so original and independent a spirit has not been always able to save itself from being drawn aside by the fascination of sounds, into the paths of vulgar prejudice, how strict a watch ought not men of common mould to set over their judgments, to save themselves from being led astray by similar delusions?

I have sometimes been tempted to think, that were it in the power of laws to put *words* under proscription, as it is to put *men*, the cause of inventive industry might perhaps derive scarcely less assistance from a bill of attainder against the words *project* and *projectors*,  
 than

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than it has derived from the act authorizing the grant of patents. I should add, however, for a time: for even then the envy, and vanity, and wounded pride, of the uningenious herd, would sooner or later infuse their venom into some other word, and set it up as a new tyrant, to hover, like its predecessor, over the birth of infant genius, and crush it in its cradle.

Will not you accuse me of pushing malice beyond all bounds, if I bring down against you so numerous and respectable a body of men, as the members of the *Society for the Encouragement of Arts*? I do not, must not, care: for you command too much respect to have any claim to mercy. At least you will not accuse me of spiriting up against you barbarian enemies,  
and

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and devoting you to the vengeance of Cherokees and Chicasaws.

Of that popular institution, the very professed and capital object is the encouragement of projects, and the propagating of that obnoxious breed, the crushing of which you commend as a fit exercise for the arm of power. But if it be right to crush the acting malefactors, it would be downright inconsistency not to crush, at the same time, or rather not to begin with crushing, these their hirers and abettors. Thank then their inadvertence, or their generosity, or their prudence, if their beadle has not yet received orders to burn in ceremony, as a libel on the society, a book that does honour to the age.

After having had the boldness to accuse so great a master of having  
fallen

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fallen unawares into an error, may I take the still farther liberty, of setting conjecture to work to account for it? Scarce any man, perhaps no man, can push the work of creation, in any line, to such a pitch of compleatness, as to have gone through the task of examining with his own eyes into the grounds of every position, without exception, which he has had occasion to employ. You heard the public voice, strengthened by that of law, proclaiming all round you, that usury was a sad thing, and usurers a wicked and pernicious set of men: you heard from one at least of those quarters, that projectors were either a foolish and contemptible race, or a knavish and destructive one: Hurried away by the throng, and taking, very naturally, for granted, that what every body said must have some ground for it, you have joined the cry,  
and

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and added your suffrage to the rest. Possibly too, among the crowd of projectors which the lottery of occurrences happened to present to your observation, the prejudicial sort may have borne such a proportion to the beneficial, or shewn themselves in so much stronger colours, as to have given the popular notion a firmer hold in your judgment, than it would have had, had the contrary proportion happened to present itself to your notice. To allow no more weight to examples that fall close under our eyes, than to those which have fallen at ever so great a distance—to suffer the judgment on no occasion to indulge itself in the licence of a too hasty and extensive generalization—not to give any proposition footing there, till after all such defalcations have been made, as are necessary to reduce it within the limits of  
rigid



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rigid truth—these are laws, the compleat observance whereof forms the ultimate, and hitherto, perhaps for ever, ideal term of human wisdom.

You have defended against unmerited obloquy two classes of men, the one innocent at least, the other highly useful; the spreaders of English arts in foreign climes\*, and those whose industry exerts itself in distributing that necessary commodity which is called by the way of eminence the staff of life. May I flatter myself with having succeeded at last in my endeavours, to recommend to the same powerful protection, two other highly useful and equally persecuted sets of men, usurers and projectors.—Yes—I will, for the moment at least, indulge so

\* B. IV. ch. viii. vol. ii. p. 514. *et alibi*, edit. 8vo. 1784.

flattering

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flattering an idea : and, in pursuance of it, leaving usurers, for whom I have said enough already, I will consider myself as joined now with you in the same commission, and thinking with you of the best means of relieving the projector from the load of discouragement laid on him by these laws, in so far as the pressure of them falls particularly upon him. In my own view of the matter, indeed, no temperament, no middle course, is either necessary or proper : the only perfectly effectual, is the only perfectly proper remedy,—a sponge. But, as nothing is more common with mankind, than to give opposite receptions, to conclusions flowing with equal necessity from the same principle, let us accommodate our views to that contingency.

According to this idea, the object,  
as

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as far as confined to the present case, should be, to provide, in favour of projectors only, a dispensation from the rigour of the anti-usurious laws: such, for instance, as is enjoyed by persons engaged in the carrying trade, in virtue of the indulgence given to loans made on the footing of *respondentia* or bottomry. As to abuse, I see not why the danger of it should be greater in this case than in those. Whether a sum of money be embarked, or not embarked, in such or such a new manufacture on land, should not, in its own nature, be a fact much more difficult to ascertain, than whether it be embarked, or not embarked, in such or such a trading adventure by sea: and, in the one case as in the other, the payment of the interest, as well as the repayment of the principal, might be made to depend upon the success  
of

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of the adventure. To confine the indulgence to new undertakings, the having obtained a patent for some invention, and the continuance of the term of the patent, might be made conditions of the allowance given to the bargain: to this might be added affidavits, expressive of the intended application, and bonds, with sureties, conditioned for the performance of the intention so declared; to be registered in one of the patent-offices, or elsewhere. After this, affidavits once a year, or oftener, during the subsistence of the contract, declaring what has been done in execution of it.

If the leading-string is not yet thought tight enough, boards of controul might be instituted to draw it tighter. Then opens a scene of vexation and intrigue: waste of time consumed in courting the favour of the  
members

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members of the board: waste of time, in opening their understandings, clenched perhaps by ignorance, at any rate by disdain and self-sufficiency, and vanity, and pride: the favour (for pride will make it a favour) granted to skill in the arts of self-recommendation and cabal, devoid of inventive merit, and refused to naked merit unadorned by practice in those arts: waste of time on the part of the persons themselves engaged in this impertinent inquiry: waste of somebody's money in paying them for this waste of time. All these may be necessary evils, where the money to be bestowed is public money: how idle where it is the party's own!—I will not plague you, nor myself, with enquiring of whom shall be composed this board of nurses to grown gentlemen: were it only to cut the matter short, one might name  
at

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at once the committees of the Society of Arts. There you have a body of men ready trained in the conduct of inquiries, which resemble that in question, in every circumstance, but that which renders it ridiculous: the members or representatives of this democratic body would be as likely, I take it, to discharge such a trust with fidelity and skill, as any aristocracy that could be substituted in their room.

*Crichoff,*  
*in White Russia,*  
*March, 1787.*

# LETTERS

IN

## DEFENCE OF USURY, &c.

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F I N I S.

*A PROTEST*  
AGAINST  
**LAW TAXES,**  
SHEWING THE  
PECULIAR MISCHIEVOUSNESS  
OF  
ALL SUCH IMPOSITIONS  
AS ADD TO  
*THE EXPENSE*  
OF  
APPEAL TO JUSTICE.

---

*By JEREMY BENTHAM,*  
OF LINCOLN'S INN, ESQ.

A PROTEST  
AGAINST  
LAW - TAXES.



TAXES on law-proceedings constitute in many, and perhaps in all nations, a part of the resources of the state. They do so in Great Britain: they do so in Ireland. In Great Britain, an extension of them is to be found among the latest productions of the budget: in Ireland, a further extension of them is among the measures of the day. It is this impending extension that calls forth the publication of the present sheets, the substance  
of

4 *To Contributors,*

of which has lain upon the shelf these many years.

It is a well-known parliamentary saying, that he who reprobates a tax ought to have a better in his hand.\* A juster condition never was imposed. I fulfil it at the first word. My better tax is——any other that can be named.

The people, when considered with a view to the manner in which they are affected by a tax of this description, may be distinguished into two classes: those who in each instance of requisition have wherewithal to pay, and those who have not: to the former, we shall find it more grievous than

\* It confines itself of course to public men, or what comes to the same thing, private men speaking in the character of public. As for individuals aggrieved, they have performed their part when they have stated their own grievance.

any

*A Tax upon Distress.* 5

any other kind of tax, to the latter a still more cruel grievance.

Taxes on consumption cannot fall but where there is some fund to pay them : of poll taxes, and taxes on unproductive property, the great imperfection is, that they may chance to bear where such ability may be wanting. Taxes upon law-proceedings fall upon a man just at the time when the likelihood of his wanting that ability is at the utmost. When a man sees more or less of his property unjustly withholden from him, then is the time taken to call upon him for an extraordinary contribution. When the back of the innocent has been worn raw by the yoke of the oppressor, then is the time which the appointed guardians of innocence have thus pitched upon for loading him with an extraordinary



6                    *To Contributors,*

ordinary burthen.\* Most taxes are, as all taxes ought to be, taxes upon affluence: it is the characteristic property of this to be a *tax upon distress*.

A tax on bread, though a tax on consumption, would hardly be reckoned a good tax; bread being reckoned in most countries where it is used, among the necessaries of life. A tax on bread, however, would not be near so bad a tax as one on law-proceedings: A man who pays to a tax on bread, may, indeed, by reason of such payment, be unable to get so much bread as he wants, but he will always get some bread, and in proportion as he pays more and more to the tax, he

\* Even in the instance of a defendant, or when the wrong is not pecuniary, the hardship of a double yoke does not cease: for the natural expense of litigation is a burthen which this artificial one finds pressing on him in any case.

will

*A Tax upon Distress.* 7

will get more and more bread. Of a tax upon justice, the effect may be, that after he has paid the tax, he may, without getting justice by the payment, lose bread by it: bread, the whole quantity on which he depended for the subsistence of himself and his family for the season, may, as well as any thing else, be the very thing for which he is obliged to apply to justice. Were a three-penny stamp to be put upon every three-penny loaf, a man who had but three-pence to spend in bread, could no longer indeed get a three-penny loaf, but an obliging baker could cut him out the half of one. A tax on justice admits of no such retrenchment. The most obliging stationer could not cut a man out half a *latitat* nor half a *declaration*. Half justice, where it is to be had, is better than no justice: but without  
buying

§ *To Contributors,*

buying the whole weight of paper, there is no getting a grain of justice.

A tax on necessaries is a tax on this or that article, of the commodities which happen to be numbered among necessaries: a tax on justice is a tax on all necessaries put together. A tax on a necessary of life can only lessen a man's share of that particular sort of article: a tax on justice may deprive a man, and that in any proportion, of all sorts of necessaries.

This is not yet the worst. It is not only a burthen that comes in the train of distress, but a burthen against which no provision can be made.

All other taxes may be either foreseen as to the time, or at any rate provided for, where general ability is not wanting: in the instance of this tax, it is impossible to foresee the moment of exaction, it is equally impossible to provide

*A Tax upon Distress.* 9

provide a fund for it. A tax to be paid upon the loss of a husband, or of a father on whose industry the family depended, a tax upon those who have suffered by fire or inundation would seem hard, and I know not that in fact any such modes of taxation have ever been made choice of: but a tax on law-proceedings is harder than any of these. Against all those misfortunes, provision may be made; it is actually made in different ways by insurance: and, were a tax added to them, pay so much more, and you might ensure yourself against the tax. Against the misfortune of being called upon to institute or defend one's self against a suit at law, there neither is, nor can be, any *office of insurance*.\*

\* I say there never can be: in those other instances the event insured against is always some very simple event, such as the death of a person,  
which

10            *To Non-Contributors,*

Such is the cruelty of this species of tax, to those who have wherewithal to pay, and do pay to it accordingly. To those who do not, it is much more cruel: it is neither more or less than *a denial of justice.*

Justice is the security which the law

which in the ordinary course of things is not open to dispute. Here the incident which calls for contribution, is not only disputable, but by the supposition is actually in dispute. Nothing less than litigation can ascertain legally, whether litigation has been necessary. Have you engaged with a man for his paying you a sum of money whenever it shall become necessary for you to institute or defend yourself against a law-suit?—wait till the suit is at an end, and you will know whether he ought to pay you. A society indeed, and a very laudable one, has been established for purposes which come under this head: but the relief it affords is confined not only to criminal cases, but to a certain description of criminal cases; nor could it be rendered any thing like co-extensive with the grievance.

provides

*A Denial of Justice.* 11

provides us with, or professes to provide us with, for every thing we value, or ought to value: for property, for liberty, for honour, and for life. It is that possession which is worth all others put together: for it includes all others. A denial of justice is the very quintessence of injury, the sum and substance of all sorts of injuries. It is not robbery only, enslavement only, insult only, homicide only: it is robbery, enslavement, insult, homicide, all in one.

The statesman who contributes to put justice out of reach, the financier who comes into the house with a law-tax in his hand, is an accessory after the fact to every crime: every villain may hail him brother, every malefactor may boast of him as an accomplice. To apply this to intentions would be calumny and extravagance.

I.

But

12            *To Non-Contributors,*

But as far as consequences only are concerned, clear of criminal consciousness and bad motives, it is incontrovertible and naked truth.

*Outlawry* is the engine applied by the law, as an instrument of compulsion to those who fly from civil justice. Outlawry is the engine employed as an instrument of punishment, against the most atrocious of malefactors. This self-same load of mischief, the financier with perfect heedlessness, but with unerring certainty, heaps on the head of unsuspected innocence. Besides outlawry, which in the cases where the offender could not otherwise be affected, comes in as subsidiary in lieu of other punishment, there are certain offences for which a man is subjected, expressly and in the first instance, to a similar punishment, under the name of *forfeiture of the protection*

*A Denial of Justice.* 13

*tection of the law.* The same fate attends a man thus at different periods, according to his merits. If guilty, it lays hold of him after conviction, for a particular cause, and without excluding the hope of pardon: if innocent, and poor, and injured—before conviction, and without conviction, and for no cause at all, and as long as he continues poor, that is, as long as he lives.

What a contrast! What inconsistency! The judge and the legislator, deliberating with all gravity, each in his separate sphere, whether to inflict or not this heavy punishment, on this or that guilty individual, or narrow description of guilty individuals. The legislator on the other hand, merely to get a little money which he could better get from any other source whatever, heaping the same  
I. 2                      doom



14      *To Non-Contributors,*

doom upon thousands, not to say millions, of innocent and injured subjects, without consideration or remorse.

Mark well, that of all sorts of men, it is the poor, and they the more certainly in proportion to their poverty, that are despoiled in this way of the protection of the law : the protection of the law, that inestimable jewel, which in the language of that very law is defined the citizen's universal and best birth-right : the poor and him that has none to help him, these are they to whom the help of the law is thus unfeelingly refused. The rich, were it from them that this great safeguard were withholden, have shields of their own to ward off the attacks of injury : the natural influence of wealth, the influence of situation, the power of connexion, the advantages of education and intelligence, which go  
hand

*A Denial of Justice.*

15

hand in hand with wealth. The poor has but one strong hold, the protection of the law: and out of this the financier drives him without vouchsafing him a thought, in company with the herd of malefactors.

The poor, on account of the ignorance and intellectual incapacity inseparably attached to poverty, are debarred generally, as perhaps it is necessary, were it only for their own sake, they should be universally, from the sweets of political power: but are not so many unavoidable inequalities enough, without being added to by unnecessary injustice?

Such is the description of those from whom this sum total of all rights is torn away with one hand, while tendered with the other: what are their numbers in proportion to the sum total of subjects? I fear to say—perhaps

two

16            *To Non-Contributors,*

two thirds, perhaps four fifths, perhaps nine tenths: but at the lowest computation a vast majority.\*

A third

\* In England, the expense of carrying through a common action, cannot be less than about 24l. at the lowest rate, on the plaintiff's side alone. [See Schieffer on Costs, 1792.] The average expense of civil suits of all sorts, taking equity causes into the account, can surely not be rated at less than double that amount, on that one side. The average expenditure of an English subject, infants and adults, rich as well as poor, taken together, has been computed by Davenant (as quoted on this occasion somewhere by Adam Smith) at 8l. a year. Six years income then is what a man must have in advance, before he can be admitted to take his chance for justice. Of many estimates which Dr. Anderson had met with, 20l. was the highest, and he takes but ten pounds. [Interest of Great Britain with regard to her colonies, London, 1792.] No man then we may say at any rate, can have the benefit of justice, in the ordinary way, either in making good a just claim, or saving himself from an un-  
just

*A Denial of Justice.* 17

A third description of persons may yet be distinguished, whose condition under the system of law taxes is still more deplorable than that of either of the other two. I mean those, who having wherewithal to pay the imposition at the commencement of the suit, and during more or less of its progress, see their substance swallowed up by the taxes before the termination of it. The two preceding modifications of abuse, either of them bad enough, are thus put together, and compounded into a third.

Considered with a view to the treatment given to persons of this descrip-

just one, who cannot find, for this purpose alone, a sum equal to several years of a man's income. From this statement it needs not much study to perceive, that for the bulk of the community, as far as ordinary cases of the civil kind are concerned, *justice* is but an empty name.

tion,

18      *They even deny Justice,*

tion, a court of justice is converted into exactly the same sort of place, as the shop of a baker would be, who having ranged his loaves along his window in goodly shew to invite customers, should, instead of selling them the bread they asked for, first rob them of their money, and then turn them out of doors. To an unprejudiced imagination, the alliance between justice and finance, presents on this occasion a picture almost too near the truth to be termed an apologue. At the door of a house more predatory than any of those that are called houses of ill fame, the *Judge* in his robes presenting to unsuspecting passengers a belt to prick in; the *Lord High Treasurer* in the back ground with his staff, lying in wait, ready as soon as the victims are fairly housed, and the money on the table, to knock

*where they have taxed Distress.* 19

them down and run away with it. The difference is, that any man may choose whether he will prick in the belt of the unlicensed sharper, nor are any but the rawest louts to be so deluded: whereas the wisest men may be inveigled in, as well as the stoutest dragged in, by the exalted and commissioned plunderers——so much surer is their game.—For were the list of law taxes ever so familiar, and ever so easy to be understood, it is impossible for a man to know before hand, whether he has wherewithal to pay the bill, because it is impossible for him to know what incidents may intervene to lengthen it. Were a man even to sit down, and form a resolution to submit to every injury which he could not afford to prosecute for, and to plead guilty to every accusation which he could not afford to defend himself

20      *They even deny Justice,*

against, even at this price he could not save himself from the hardship of paying for justice, aggravated by the still greater hardship of not getting it.

If in all cases the practice is wicked, in some it is more particularly preposterous. In civil causes, and other causes where the injury to individuals affords a natural interest to prosecute, artificial expenses are cruelty and breach of faith: in a large class of penal causes, in which for want of such natural interest, prosecutors must be engaged by factitious inducements, or the law be a dead letter, the cruelty and treachery are crowned by blunder and inconsistency. Beckoned into court with one hand, men are driven away with the other. But, costly as the attractive power frequently is, the repulsive force is apt to be much stronger. Reward is subsequent, distant, uncertain, and dependent upon success.

Trouble

*where they have taxed Distress.* 21

Trouble, expense, and odium, are certain and precedent.\*

In favour of this species of imposi-

\* This species of tax would stand absolutely alone in point of depravity, were it not for the tax on drugs, as far as it extends to those used in medicine. This, as being also a tax upon distress, is so far in specie the same, but is nothing to it in degree. To recover a shilling in the way of justice, it will cost you at least 24l. of which a good part in taxes: but to be admitted to buy a shilling's worth of medicine for a shilling, it does not cost you threepence. Hospitals for the sick are not uncommon: there are none for harassed and impoverished suitors. There are *Lady Bountifuls* that relieve the sick from the tax on medicines, and the price of them into the bargain: but a *Lady Bountiful* must be bountiful indeed, to take the place of attorney and counsel, as well as of physician and apothecary, and supply a poor man with as many pounds worth of *latitats* and *pleas*, as he must have to recover a shilling. A man cannot, as we have seen, insure himself against law suits: but a man may insure himself, and many thousands actually do insure themselves, against sickness. But these reliefs are neither certain nor  
general:



22 *They throw the Burthen,*

tion, I have seen two arguments produced.

One is, that in this case as in others, the burthen of an establishment ought to lie on those by whom the benefit is reaped. The principle is incontrovertible: the matter of fact supposed by the application of it is not true.

The argument, were it just, would not extend beyond so much of the produce of the tax as is requisite for defraying the charge of this part of the national establishment. Whether it be confined or no within these bounds, was perhaps never thought worth en-

general: and after all, a tax on him who has had a leg or an arm broken, a tax on him who has had a fit of the ague, gout, rheumatism, or stone, will be the worst possible species of tax, next to a tax on justice.

N. B. The tax on quack medicines, that is, on unknown and unapproved medicines, leaving all known and approved ones untouched, falls in a less degree, if at all, under this censure.

quiring

*where there is least Benefit.* 23

quiring into, in any country where this tax was imposed. It certainly extends much beyond them in England; and it seems to be resorted to from time to time, with as little scruple, as an extension of the customs or excise. But let this pass.

As to the notion of a connexion in this case betwixt the benefit and the burthen, it has been countenanced by an authority too respectable, not to deserve the most serious notice :\* but come it from whom it will, it is a mere illusion. The persons on whom the whole of the burthen is cast, are precisely those, who have the least enjoyment of the benefit: the security which other people enjoy for nothing, without interruption, and every moment of their lives, they who are so unfortunate as to be obliged to go to

\* Dr. Adam Smith, Wealth of Nations.

24 *They throw the Burthen,*

law for it, are forced to purchase at an expense of time and trouble, in addition to what pecuniary expense may be naturally unavoidable. Mean time, which is of most value? which most worth paying for?—a possession thus cruelly disturbed, or the same possession free from all disturbance?—So far then from being made thus wantonly to pay an extra price, a man who stands in this unfortunate predicament, ought rather to receive an indemnification at the public expense, for his time and trouble: and the danger of insidious or collusive contests, in the view of obtaining such an indemnity, is the only objection I can see, though perhaps a conclusive one, against the granting it.

Litigation may in this point of view be compared to war in sober sadness, as war has been to litigation in  
the

*where there is least Benefit.*      25

the way of pleasantry. The suitor is the forlorn hope in this forensic warfare. To throw upon the suitor the expense of administering justice, in addition to the trouble and the risk of suing for it, is as if, in case of an invasion, you were to take the inhabitants of the frontier, and force them, not only to serve for nothing, but to defray of themselves the whole expenditure of the war.

What in our times is become inveterate practice, is stigmatized as a species of iniquity without a precedent, by Saint Paul. "*Who is there,*" demands the Apostle, "*who is there that ever goes to war at his own charge ?*"—"*Alas !*" cries the poor suitor, "*I do.*"

The other argument in favour of a set of taxes of this kind, is, that they are a *check to litigation*.

*Litigation* is a term not altogether  
free

26 *No Check to Litigiousness,*

free from ambiguity. It is used sometimes in a *neutral* sense, to denote the prosecuting or defending a suit, though perhaps more frequently in a bad one. In its neutral sense, it expresses the irreproachable exercise of an essential right: in a bad sense a species of misconduct practised under the notion of exercising such a right.

In the first sense, taxes can never have been recommended by any man as a check to litigation: in this sense, an avowed desire of checking litigation, would be neither more nor less than an avowed desire of denying justice.

In a bad sense again, the word is used on two different occasions: where the suit, whatever be the importance of the matter in dispute, is on the part of the person spoken of as maintaining it, a *groundless* one: and where

*but an Encouragement.*      27 .

where the suit, however well grounded on his part in point of title, is on account of the supposed unimportance of the matter in dispute, deemed a *frivolous*, a *trifling*, a *trivial* one: and in either case, it is of course applicable to the situation of either plaintiff or defendant; though it is apt to fix in the first instance and most readily upon the situation of the plaintiff, as being the party, who by taking the first step on the commencement of the suit, exhibits himself as the author of it.

On either side, litigation, when *groundless*, may be accompanied or not, with what the lawyers call *in genere malitia*, meaning *consciousness of misdoing*, and in this particular case *mala fides*, *consciousness of the groundlessness of the action or defence*, *consciousness of the want of merits*.

Where merits are wanting, but  
there

28      *No Check to Litigiousness,*

there exists no consciousness of the want, taxes on law-proceedings do, it must be confessed, operate as a check to litigation ; and that as well on the side where it is groundless as on that where it is well grounded, and in the same degree. Indeed as both of two contending parties cannot in point of law be actually in the right, though either or both may think themselves so, the impediment cannot operate to the denial of justice, but it must operate to the prevention of groundless litigation at the same time. Prevent him who is in the right from instituting a suit, you prevent him who is in the wrong from defending one. But neither is litigation prevented, any further than as justice is denied. So far then as this case extends, it is still but the other side of the same effect, the *denial of justice*.

Have

*but an Encouragement.*      29

Have they then any peculiar tendency to operate as a check to litigation, when it is not only groundless, but accompanied with a consciousness of its being so?—to *malitious*, or as it might with more propriety be termed, *anti-conscientious* litigation? On the contrary, their direct tendency and sure effect is to produce it.

They produce it on the part of the *plaintiff*.—Were proceedings at law attended with no expense nor other inconvenience, till the suit were heard and at an end, a plaintiff who had no merits, could do a defendant man no harm by suing him: he could give him no motive for submitting to an unfounded claim: malice would have no weapons: oppression would have no instrument. When proceedings are attended with expense, the heavier that expense, the greater of  
course



### 30     *No Check to Litigiousness,*

course is the mischief which a man who has no merits is enabled to do: the sharper the weapon thus put into the hand of malice, the more coercive the instrument put into the hand of the oppressor.

They produce it on the part of the *defendant*. Were proceedings at law attended with no expense, a defendant who knew he had no merits, a defendant who was conscious that the demand upon him was a just one, would be deprived of what is in some cases his best chance for eluding justice, in others the absolute certainty of so doing: he would lose the strongest incentive he has to make the attempt. A defendant who means not to do justice unless compelled, and who knows that the plaintiff cannot compel him without having advanced a certain sum; such a defendant, if he  
thinks

*but an Encouragement.* 31

thinks his adversary cannot raise that sum, will persevere in refusal till a suit is commenced, and in litigation afterwards.

Whether they make the litigation, or whether they find it ready made, they shew most favour to the side on which anti-conscientious litigation is most likely to be found. By attaching on the commencement of the suit, they bear hardest upon the plaintiff, or him who, if they would have suffered him, would have become plaintiff. In so doing they favour in the same degree the defendant, or him who, if the party conceiving himself injured, could have got a hearing, would have been called upon to defend himself. But it is on the defendant's side that anti-conscientious practice is most likely to be found. Setting expense out of the question, an evil of which these

32 *No Check to Litigiousness,*

these laws are thus far the sole cause, setting out of the question the imperfections of the judicial system, and the hope of seeing evidence perish, or the guilty view of fabricating it, a man will find no motive for instituting a suit for an ordinary pecuniary demand, without believing himself to be in the right: for if he is in the wrong, disappointment, waste of time, fruitless trouble, and so much expense as is naturally unavoidable, are by the supposition what he knows must be his fate. Whereas, on the other hand, a man upon whom a demand of that kind is made, may, although he knows himself to be in the wrong, find inducement enough to stand a suit from a thousand other considerations: from the hope of a deficiency in point of evidence on the part of the plaintiff, not to mention,  
as

*but an Encouragement.* 33

as before, the rare and criminal enterprise of fabricating evidence on his own part: from the hope of tiring the plaintiff out, or taking advantage of casual incidents, such as the death of witnesses or parties: from the temporary difficulty or inconvenience of satisfying the demand, or (to conclude with the case which the weakness of human nature renders by far the most frequent) from the mere unwillingness to satisfy it.

In a word, they give a partial advantage to conscious guilt, on whichever side it is found: and that advantage is most partial to the defendant's side, on which side consciousness of guilt, as we see, is most likely to be found.

Better, says a law maxim subscribed to by every body, better that *ten* criminals should escape, than one innocent

cent

### 34 *No Check to Litigiousness,*

cent person should suffer : and this in case even of the deepest guilt. For *ten*, some read a *hundred*, some a *thousand*. Whichever reading be the best, an expedient of procedure, the effect of which were to cause ten innocent persons to suffer for every ten guilty ones, would be acknowledged to be no very eligible ingredient in the system. What shall we say of an institution, which for one culpable person whom it causes to suffer, involves in equal suffering perhaps ten blameless ones.

Thus much for *groundless* suits : there remains the plea of its tendency to check what are deemed *trivial* suits.

I know what a *groundless* suit means — I know of no such thing as a *frivolous* one. No wrong that I know of can be a trivial one, which to him to whom it is done appears a serious one, serious to such a degree, as to make it worth his while to demand

*but an Encouragement.* 35

mand redress at the hand of justice.—  
 Conduct is the test of feeling. I know  
 of no right I have to set up any  
 feelings of my own as the standard of  
 those of my neighbour, in contradic-  
 tion to a declaration of his, the truth  
 of which is evidenced by his own  
 conduct. What to one man again is  
 trivial, to another man may be of high  
 importance. In the account of wrong  
 too must be included, not only the  
 individual wrong taken by itself, but  
 its effects in the way of encourage-  
 ment to repetition, and its effects in  
 the way of example. I know of no  
 wrong so slight, that by multiplica-  
 tion may not become intolerable.  
 Give me but a licence to do to any  
 person at pleasure the minutest wrong  
 conceivable—I need no more, that  
 person is my slave. Allow me to rob  
 him, though it be but of a farthing,  
 M farthing

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farthing by farthing, I will find the bottom of his purse. Allow me but to let fall a drop of water upon his head — *gutta cavat lapidem*, the power of striking his head off would be less susceptible of abuse.

In pecuniary cases, the smaller the sum in dispute, the less reserve is used in branding the conduct of the parties with the charge of litigation, of which in such cases the reproach is apt to fall principally, if not exclusively, to the plaintiff's share. But the importance of the sum is altogether governed by the circumstances of the parties: the amount of it in pounds, shillings, and pence, shows nothing. One man's income may be a hundred, a thousand, four thousand times as great as that of another. In England there are men whose income exceeds 60,000l. a year. 15l. a year is as much  
much

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much as falls to the lot of perhaps the greater number of the whole body of the people. Without a particular caution, a legislator or a judge will naturally enough, like any other man, take the relation of the sum in dispute to his own feelings, that is, its ratio to its own circumstances, for the measure of importance: but by this standard he will be sure to be deceived, as often as the circumstances of the parties, or either of them, are materially different from his own. Fifty pound, for example, will be apt to appear in his eyes an object of considerable importance: an object of which a tenth or a twentieth part, or less, might be of importance sufficient to justify from the charge of litigation, the maintenance of a suit. A shilling would be almost sure to appear to him an object altogether trifling; an object by no means



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of magnitude enough to warrant the maintenance of a suit. Fifty pound is however a sum of less importance to a Duke of Marlborough or Bedford, than a single shilling (viz. than a four thousandth part of 50l.) to many a man, in truth to probably the majority of men in the kingdom. It is therefore more unjust, more tyrannical, to refuse to hear the demand of an ordinary working man to the amount of a shilling, than it would be to refuse to hear the demand of a Duke of Marlborough or Bedford, to the amount of 50l. The legislator, who on the plea of checking litigation, or on any other plea, exacts of a working man as a preliminary to his obtaining justice, what that working man is unable to pay, does refuse to him a hearing, does in a word refuse him justice, and that as effectually  
and

*but an Encouragement.* 39

and completely, as it is possible to refuse it.

That all men should have *equal rights*, not only would be politically pernicious, but is naturally impossible: but I hope this will not be said of *equal justice*.

Trivial causes require no such factitious checks: to such causes were all expenses struck off that can be struck off, there are natural checks in abundance, that are unavoidable. There is the pain of disappointment: there is expense, of which a certain measure will every now and then be absolutely unavoidable: there is consumption of time, which to the working classes, that is, to the great majority of the people, is expense.

But even let the cause be trivial, and that to such a degree as to render the act of commencing the litigation

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tion blamable, the blame is never so great on the side of the party most favoured by the tax, as on the side of the party most oppressed by it. The party most oppressed is the complainant: the party who having suffered the injury, such as it is, claims or would claim satisfaction for it at the hands of justice. But, so as there does but exist the smallest particle of an injury, the party who claims satisfaction for it can never be so much in the wrong for doing so, but that he who refuses satisfaction must be still more so. If the demand be just, why did not he comply with it? If just, but trifling, why does he contest it? In this case then you cannot punish in this way the misconduct of one party, without rewarding the still greater misconduct of the other. If the tax applies a check where there is blame,  
it

*but an Encouragement.* 41

it affords protection and encouragement where there is still greater blame.

Another injustice.—The poorer a man is, the more exposed he is to the oppression of which this supposed remedy against litigation is the instrument. But the poorer a man is, the less likely he is to be litigious. The less time a man has to spare, and the less a man can afford to expend his time (not to speak of money) without being paid for it, the less likely is he to expose himself to such a consumption of his time.

The rich man, the man who has time and money at command, he surely, if any, is the man to consume it litigiously and frivolously. No wonder however, if to a superficial glance, the poor should appear more litigious than he. There are more of the poor  
than

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than of the rich : and to the eye of unreflecting opulence, the causes of the poor are all trivial ones.

We think of the poor in the way of charity, for to deal out charity gratifies not only benevolence, but pride. We think much of them in the way of charity, but we think little of them in the way of justice. Justice, however, ranks before charity : and they would need less charity, if they had more justice.

What contributes more than any thing to the indignation excited by suits that are deemed trivial and, on account of the triviality *vexatious*, is the excessive ratio of the expense of the suit to the value of the matter in dispute : especially when, the matter in dispute being pecuniary, its minuteness is more conspicuous and defined. But to what is this expensive-

ness

*but an Encouragement.* 43

ness owing?—As far at least as these taxes are in question, to the legislator himself.—Mark then the iniquity. He is himself the author of the wrong, and he punishes for it the innocent and the injured.

To exclude the poor from *justice* was not enough:—they must be excluded also from *mercy*. Forty shillings is the tax imposed on pardons, by a statute of King William (5. W. c. 21. § 3.) forty shillings more by another, no more than five years afterwards. (9 and 10. W. c. 25. § 3, 50.) Together, 4l.:—half a year's income of a British subject, according to Davenant's computation above quoted. What is called *mercy*, let it be remembered, is in many cases, no more than *justice*: in all cases where the ground of pardon is the persuasion of innocence, entertained either notwithstand-

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ing the verdict, or in consequence of evidence brought to light after the verdict.\* All punishments are accordingly irremissible, to him who has not to the amount of half a year's income in store or credit: all fines to that amount or under, absolutely irremissible.†

Taxes on law-proceedings, so far then from being a check to litigation, are an encouragement to it: an encouragement to it in every sense in which it is mischievous

\* For instance, the case of Mr. Atkinson.

† It would be curious enough to know what profit the treasury may have drawn from that time to the present, from so extraordinary a fund: certainly not enough to pay the salary of one of the Lord's Commissioners: probably not enough to pay that of his valet de chambre.

These are busy statutes. By the prohibition and sale of Justice, they run counter to Magna Charta:—by the prohibition of Mercy, they break the Coronation Oath.

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*but an Encouragement.* 45

and blamable. Would you really check litigation, and check it on both sides?—the simple course would be a sure one. When men are in earnest about preventing misconduct in any line, they annex punishment to misconduct in that line and to that only: a species of misconduct which cannot be practised but as it were under the eye of the court, is of all others the easiest to cope with in the way of law. Deal with misconduct that displays itself under the eye of the court as you deal by delinquency at large, and you may be sure of succeeding to a still superior degree. Discriminate misconduct then from innocence: lay the burthen on misconduct and misconduct only, leaving innocence unoppressed. Keep back punishment, till guilt is ascertained. Keep back costs, as much as possible, till the last stage  
of



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of procedure ; keep off from both parties every thing of expense that is not absolutely unavoidable, where litigation is on both sides without blame : at that last stage if there be found blame, throw whatever expense of which you allow the necessity to subsist beyond what is absolutely unavoidable, throw it on that side, and on that side only, where there has been blame. If on both, then if circumstances require, punish it on both sides, by fine for instance to the profit of the public.

Litigation, though eventually it prove groundless, litigation, like any other course of conduct of which mischief is the result, is not therefore blamable : and where it is blamable, there is a wide difference whether it is accompanied with temerity only, or with consciousness of its own injustice. The countenance shewn to the parties  
by

*but an Encouragement.*      47

by the law ought to be governed, and governed uniformly and proportionally, by these important differences.—So much in point of utility:—how stands establishment?—Taxes heaped on in all stages from the first to the last without distinction:—all costs given or no costs, no medium:—costs scarce ever complete, and nothing beyond costs.—No mitigation, or enhancement, in consideration of pecuniary circumstances. No shades of punishment in this way correspondent to shades of blame:—in most cases no difference so much as between consciousness of injustice and simple temerity, nor so much as betwixt either and innocence. The power of adjudging as between costs and no costs, seldom discretionary:—that of apportioning, never:—nor that of fining beyond the amount of costs:—consequently nor that

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that of punishing both parties where both have been to blame. Were a power to be given by statute to impose, on a litigious suitor convicted of litigation, a fine to an amount not exceeding what the losing party pays now, whether he be blamable or blameless, it would be cried out against perhaps as a great power, too great to be given to judges without juries.\*

*Justice*

\* The distinction between temerity and consciousness of blame, a distinction pervading human nature, and applicable to every species of misbehaviour, is scarce so much as known to the English law. There are scarce words for it in the language. *Temerity* is taken from the Roman law. *Malice*, the term by which English Lawyers seem in some instances to have had in view the expressing consciousness of blame, presents a wrong idea, since in common language it implies *hatred*, an affection which in many instances of conscious guilt, may be altogether wanting:—

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*Justice shall be denied to no man, justice shall be sold to no man, says the first of*

wanting:—instance offences of mere rapacity, such as theft, robbery, and homicide for lucre.

The legislator ?—he talk of vexation ?—He does every thing to create the evil, he does nothing to remove it.

I happened once to fall into conversation with a man who, from an Attorney, had been made Judge of one of the provinces in America. Justice, I understood from him, was on a very bad footing there: it might be had almost for nothing: the people were very litigious: he found them very troublesome. A summons cost—I forget whether it was three and sixpence, or half a crown. Whom the half crown went to I do not know: one may be pretty certain not to the Judge.—Seeing no prospect of our agreeing, I did not push the conversation far. The half crown seemed to him too little: to me it seemed all too much. The pleasant thing would have been to have enjoyed the salary in peace and quietness, without being plagued with a parcel of low people. Justice would then have been upon the best footing possible.

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of statutes, *Magna Charta*. How is it under these later ones?—Denied, as we have seen, to nine-tenths of the people, sold to the other tenth at an unconscionable price. It was a conceit among the old lawyers, reported if not adopted by Lord Coke, that a statute made contrary to *Magna Charta*, though made in all the forms; would be a void law. God forbid, that by all the lawyers in the world, or for the purpose of any argument, I should ever suffer myself to be betrayed into any such extravagance: in a subject it would be sedition, in a judge it would be usurpation, in any body it would be nonsense. But after all it must be acknowledged, to be in some degree unfortu-

nate,

*but an Encouragement.* 51

nate, as well as altogether singular, that, of an instrument deemed the foundation of all liberty, and magnified as such even still, to a degree of fanaticism, a passage by far the most important, and almost the only one that has any application now a days, should be thus habitually trodden under foot, without remorse or reclamation.\*

\* Let us not for the purpose of any argument, give rise or countenance to injurious imputations. Though justice is partly denied, and partly sold, the difference is certainly immense, betwixt selling it for the personal benefit of the king or of a judge, and selling it for the benefit of the public :—betwixt selling it by auction, and selling it at a fixed price :—betwixt denying it for the sake of forcing the sale of it, or denying it to a few obnoxious individuals, and denying it indiscriminately to the great majority of the people. In point of moral guilt, there is certainly no comparison : but in point of political effect, it may not be altogether easy in every  
part

A tax so impolitic and so grievous, a tax thus demonstrated to be the worst of taxes, how comes it ever to have been made choice of, and when made choice of, acquiesced in?—These are not questions of mere curiosity: for acquiescence under a tax, and that so general, forms at first glance no inconsiderable presumption in its favour. A presumption it does form: but when demonstration has shewn itself, presumptions are at an end.

How comes the tax to have been made choice of?—One cause we have seen already in another shape; the unscrutinized notion of its supposed tendency to check *litigation*: litigation, which where it stands for mischief, is the very mischief which the part of the parallel, to say which mode of abuse is most extensively pernicious.

species

*and acquiesced under.* 53

species of tax in question contributes with all its power to promote.

Another cause may possibly be, the tendency which this sort of tax has to be confounded in the eye of an incurious observer, with other sorts, which are either the best of all, or next to the best. The best of all are taxes on consumption, because not only do they fall no where without finding some ability to pay them ; but where necessaries are out of the question, they fall on nobody who has not the option of not paying them if he does not choose it. Taxes on property, and those on transfer of property, such as those on contracts relative to property, are the next best : because though they are not optional like the former, they may be so selected as never to call for money but where there is ability, nay even ample ability,



lity, to pay them. Now of these two most supportable classes of taxes, the second are all of them levied by means of *stamps*: taxes on consumption too, in many instances, such as those on cards, dice, gloves, and perfumery, show to the eye as stamp-duties. But all these are very good taxes. Stamp-duties therefore are good taxes: and taxes on justice are all stamp-duties.—Thinking men look to consequences; they look to the feelings of the individuals affected: acting men look to the stamp: taxes on justice, taxes on property, taxes on consumption, are accordingly one and the same object to the optics of finance. Stamp-duties too have another most convenient property, they execute themselves, and law taxes beyond all others: in short they exclude all smuggling.\*

\* Law paper might be forged: but the difficulty would be to issue it.

They

*and acquiesced under.* 55

They heap distress indeed upon distress: but the distress is not worth minding, as there is no escaping it.

But the great cause of all is the prospect of acquiescence: a prospect first presented by hope, since realized over and over again by experience. It is too much to expect of a man of finance, that he should anticipate the feelings of unknown individuals: it is a great deal if he will listen to their cries. Taxes on consumption fall on bodies of men: the most inconsiderable one when touched will make the whole country ring again. The oppressed and ruined objects of the taxes on justice, weep in holes and corners, as rats die: no one voice finds any other to join with it.

A tax on shops, a tax on tobacco, falls upon a man, if at all, immediately, and presses on him constantly: every man knows whether he keeps or  
means

means to keep a shop, whether he means to sell or to use tobacco. A tax on justice falls upon a man only occasionally : it is like a thunder-stroke, which a man never looks for till he is destroyed by it. He does not know when it will fall on him, or whether it ever will : nor even whether, when it does fall, it will press upon *him* most, or upon his adversary. He knows not what it will amount to : he has no *data* from which to calculate it : it comes lumped to him in the general mass of law charges : a heap of items among which no vulgar eye can ever hope to discriminate : an object on which investigation would be thrown away, as comprehension is impossible. Calamities that are not to be averted by thought, are little thought of, and it is best not to think of them. When is the time for complaint? Before the thunder-bolt is fallen

*and acquiesced under.* 57

fallen, it would be too soon: when fallen, it is too late. Shopkeepers, tobacconists, glovers, are compact bodies: they can arm counsel: they come in force to the House of Commons. Suitors for justice have no common cause, and scarce a common name: they are every body and nobody: their business being every body's is nobody's. Who are suitors? where are they? what does a Chancellor of the Exchequer care for them? what can they do to help him? what can they do to hurt him? So far from having a common interest, they have repugnant interests: to crush the injured, is to befriend the injurer.

May not ignorance with regard to the quantum and the source of the grievance, have contributed something to patience?—Unable to pierce the veil of darkness, that guards from  
vulgar

vulgar eyes the avenues of justice, men know not how much of the difficulty of the approach is to be ascribed to art, and how much to nature. As the consumers of tobacco confound the tax on that commodity with the price, so those who borrow or would have wished to borrow the hand of justice, confound the artificial with the natural expense of hiring it. But if the whole of the grievance be natural, it may be all inevitable and incurable, and at any rate it may be no more the fault of lawyers or law makers, than gout and stone are of physicians.—Happy ignorance!—if blindness to the cause of a malady could blunt the pain of it!

There want not apologists-general and talkers in the air, to prove to us that this as well as every thing else, is as it should be. The expense, the delay, and all the other grievances, which

*and acquiesced under.* 59

which activity has heaped up, or negligence suffered to accumulate, are the prices which, according to Montesquieu, we must be content to pay for liberty and justice. A penny is the price men pay for a penny loaf: therefore why not two-pence? and, if three-pence, there would be no harm done, since the loaf would be worth so much the more.

May not a sort of instinctive fellow-feeling among the wealthy have contributed something, if not to the imposition, at least to the acquiescence? It is the wealthy alone, that either by fortune, situation, education, intelligence, or influence, are qualified to take the lead in legislation: and the characteristic property of this tax, is to be favourable to the wealthy, and that in proportion to their wealth. Other taxes afford a man no indemnification for the wealth they take from

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him: this gives him power in exchange. The power of keeping down those who are to be kept down, the power of doing wrong, and the more generous pride of abstaining from the wrong which it is in our power to do; advantages such as these, are too precious not to be grasped at with avidity by human weakness: and, as in a country of political liberty, and under a system of justice in other respects impartial, they can only be obtained by a blind and indirect route such as this, the inconvenience of travelling in it, finds on the part of those who are well equipped for it, the more patient an acquiescence.

Will it be said that abolishing the taxes on justice would not answer the purpose, for that supposing them all abolished, justice would still remain inaccessible to the body of the people? —This would be to justify one abuse  
by

*and acquiesced under.* 61

by another. The other obstacles by which the avenues to justice have been blocked up, constitute a separate head of abuse, from which I gladly turn aside, as being foreign to the present purpose. Take off law taxes all together, the number of those to whom justice will still remain inaccessible, would still, it must be confessed, be but too great. It would however not be so great, as it is at present under the pressure of those taxes. Though you could not tell exactly to how many you would open the doors of justice, you might be sure you opened them to some. Though you would still leave the burthen but too heavy, you would at any rate make it proportionably more supportable.

If by taking off these taxes, you reduced the expense of a common action from 25l. to 20l., you might open the door, suppose, to one in five of those



those against whom it is shut at present. Even this would be something: at any rate whatever were the remaining quantum of abuse, which you still suffered to subsist, you would have the consolation at least of not being actively instrumental in producing it. To reform *in toto* a system of procedure is a work of time and difficulty, and would require a rare union of legal knowledge with genius:—repealing a tax may require discernment, candour, philanthropy, and fortitude; but is a work of no difficulty, requires no extraordinary measure of science, nor even so much time as the imposing of one.

But by whatever plea the continuance of the subsisting taxes of this kind may be apologized for, nothing can be said in favour of any new addition to the burthen. The subsisting ones, it may be said, have been acquiesced in, and men are used to them:

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*and acquiesced under.*      63

in this respect at least they have the advantage of any new ones which could be substituted in the room of them. But even this immoral plea, which puts bad and good upon a level, effacing all distinction but that between *established* and not *established*, even this faint plea is mute against any augmentation of this worst of evils.

To conclude—Either I am much mistaken, or it has been proved—that a law tax is the worst of all taxes, actual or possible:—that for the most part it is a denial of justice, that at the best, it is a tax upon distress:—that it lays the burthen, not where there is most, but where there is least, benefit:—that it co-operates with every injury, and with every crime:—that the persons on whom it bears hardest, are those on whom a burthen of any kind lies heaviest, and that they compose the great majority of

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of the people:—that so far from being a check, it is an encouragement to litigation: and that it operates in direct breach of Magna Charta, that venerable monument, commonly regarded as the foundation of English liberty.

The statesman who cares not what mischief he does, so he does it without disturbance, may lay on law taxes without end: he who makes a conscience to abstain from mischief will abstain from adding to them: he whose ambition it is to extirpate mischief, will repeal them.

*General error makes law*, says a maxim in use among lawyers. It makes at any rate an apology for law: but when the error is pointed out, the apology is gone.

## NOTES

TO THE

### SECOND EDITION.

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*Mem.*—Anno, 1796. At a dinner at Mr. M. P.'s, in ——— Street, Mr. R. in the presence of Mr. William Pitt, (then Minister) took me aside, and told me that they had read my Pamphlet on Law Taxes; that the reasons against them were unanswerable, and it was determined there should be no more of them.

Anno, 1804, July 10, 12, 14, 18.—This being in the number of Mr. Addington's Taxes, Mr. Pitt, upon returning to office, took up all those Taxes in the lump. On the above days, this Tax was opposed in the House of Commons: and Mr. Wyndham, according to the report in the *Times*, on one of those days, spoke of this Pamphlet as containing complete information on the subject; observing at the same time, that it was out of print. On behalf of administration, nothing like an answer to any of the objections was attempted: only the Attorney-General (Percival) said, that  
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the addition proposed to those Taxes, was no more than equal to the depreciation of money.

Mr. Addington, before this, had recourse to the Tax on Medicine here spoken of, (p. 22.) So that, in the course of his short administration, if the representation here given be correct, he had had the misfortune to find out and impose the two worst species of taxation possible. Compare this with Denmark, and its courts of *Natural Procedure*, called *Reconciliation Courts*.

26th February, 1816.—Unalleviated by any adequate hope of use, too painful would be the task, of hunting out, and holding up to view, the subsequent additions, which this worst of oppressions has, in this interval of twenty years, been receiving.

Money, it is said, must be had, and no other taxes can be found. The justification being conclusive, the tax receives its increase: next year, from the same hand, flow others in abundance.

Grievous enough is the *Income Tax*, called, lest it should be thought to be what it is, the *Property Tax*.—Grievous that tax is, whatever be its name; yet, sum for sum, compared with this tax, it is a blessing. Instead of 10 per cent. suppose it 80 per cent. Less bad would it be to add yet another 10 per cent. than a tax to an equal amount upon justice.

Grievous

Grievous have been the additions, so lately and repeatedly made, to the taxes on *Conveyances* and *Agreements*. Extensive the prohibitory part of the effect, though the pressure,—confined as usual to the poor, i. e. the great majority of the community, who have none to speak for them,—is scarcely complained of by the rich. Yet, were all law-taxes taken off, and the amount thrown upon *Conveyances* and *Agreements*, this—even this—would in reality be an indulgence.

Whether the oppression be more or less grievous, is never worth a thought. Will it be submitted to?—This is the only question. Charity is kicked out of doors. Hope is fled. Faith and Piety remain, and atone for every thing.

For a list of about twenty-eight other sources of factitious delay, vexation, and expense, and thence of denial of justice, produced by the judges of former times, for the augmentation of lawyers' profit, their own included,—together with a list and summary account of the *devices* by which these burthens have been imposed, and by which *Technical* stands distinguished from *Natural Procedure*,—see by the same author, *Scotch Reform*, &c. printed for Ridgway, Piccadilly.

## ADDITION BY A LEARNED FRIEND.

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IN the court of Chancery, two cases have recently occurred, which may serve as an illustration of the extent in which the taxes upon law proceedings may operate as a denial of justice. In one case—*Roe v. Gudgeon*—the Defendant, in his answer to the Plaintiff's bill, submitted that he ought not to be compelled to set out certain accounts which had been required by the bill, as the expense of taking what is called an office copy of them,—a necessary preliminary to any further proceeding on the part of the Plaintiff in the cause,—would amount to the sum of 29,000*l.*: an expense almost wholly arising from the Stamps on the Paper, on which the office copy of the answer is compulsorily made. In this case the court determined, that it was not necessary these accounts should be set out: but in coming to this conclusion, how far the court was determined by the nature of the particular case, or by the magnitude

tude of the expense that would thus be occasioned;—or whether if, without any such objection, the Defendant had actually set out these accounts, the Plaintiff could have been relieved from pursuing the regular mode of procuring a copy of them, and thus incurring the above expense;—or whether, if the expense had been instead of 29,000*l.* only 28 or 27 thousand pounds, such an objection would have been listened to;—it is extremely difficult to say.

The other case alluded to, is one in which from peculiar circumstances, it is not thought proper to mention the names of the parties. It is optional with a man to be a Plaintiff in a cause, it is not altogether so optional with him to be a Defendant. The preceding case shews that it is not always safe for a man to become a Plaintiff, without 28,000*l.* at least in his pocket, to begin with, over and above what is necessary for his maintenance.—The following case shews that a man may not be always able to resist a demand, however unjust it may be, without being able to support an outlay of at least 800*l.* In the case in question, the writer of this has been assured,—and from authority, which he has peculiar reason for relying upon,—that the expense of merely putting in an answer by *one* of the Defendants to a bill in Equity, amounted to the  
above



above sum of 800l. : what part of this expense was occasioned by the tax on law proceedings cannot be accurately ascertained, but it assuredly constituted a very considerable proportion of that sum.

FINIS.