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THE
BOOK OF SCOTLAND.

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THE
BOOK OF SCOTLAND.

BY
WILLIAM CHAMBERS.

Relate what Latium was,
Declare the past and present state of things.
DRYDEN'S Virgil.

EDINBURGH :

**ROBERT BUCHANAN, 26, GEORGE STREET;
WILLIAM HUNTER, 23, HANOVER STREET; AND
LONGMAN, REES, ORME, BROWN, & GREEN,
LONDON.**

MDCCCXXX.



BOOK OF SCOTLAND.

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WILLIAM CHAMBERS.

Printed and Published by
 W. & A. CHAMBERS, 10, North-
 umberland Street, Edinburgh.

: PUBLISHED :

By the Author, at the
 Edinburgh Office, 10, North-
 umberland Street, Edinburgh.

CHAMBERS.

PREFACE.

THE volume now introduced to public notice, has been compiled with the view of furnishing for the first time to strangers and others, a connected comprehensive delineation of the chief Institutions in Scotland, as well as the more prominent and peculiar laws and usages by which this northern kingdom is still distinguished from the other portions of the British empire, and more especially from England; and, as such, to form a useful companion to the PICTURE OF SCOTLAND. While the latter publication adheres principally to a description of things of a tangible nature, the present may be best depicted as an attempt to expose the mechanism regulating society in its public relations. In other words, while the one presents a luminous picture of the *body* of the country, the other aspires to exhibit the *soul* with which it has been endowed.

Among the splendid array of works of living and dead authors, whose talents have been devoted to an illustration of the history, the topography, the statistics, and other interesting peculiarities of Scotland, it is somewhat surprising that no one is found wholly or even partially dedicated to the exposition of its Institutions, which, in many instances, differ as much from those of the sister country, as the mountainous and romantic regions of the north differ from the broad luxuriant meadows of the south, and are fully as much entitled to attract the curiosity and inquiry of the stranger. While the heights of hills—the appearance of “the outsides of the best houses”—and the number of pillars giving dignity and support to public buildings,

have been detailed with a sufficient regard to correctness, few, very few, seem to have troubled themselves with the invisible controlling principles of human action, or cared much for the anatomization of those Institutions, for the reception of which the said edifices were reared; and which, not unfrequently, have as little resemblance to the corresponding usages of England as to those of France or the Netherlands. To fill up a chasm of so obvious a nature, and in some measure to give a form and resting-place to the flickering characteristics of a nation, whose individuality it may in one sense be regretted is fast melting away, the present writer has been induced to venture into the arena of literature in quest of public favour.

In gathering together materials for the work, which, but for the industrious Chamberlayne's *Magnæ Britanniae Notitia*, published upwards of seventy years since, and now quite antiquated, might be termed entirely original in design, a degree of labour has been encountered which nothing but a natural love of inquiry, and that species of dogged resolution to persevere, which Johnson alleged to be competent to overcome all want of genius, could have surmounted. A cursory glance at the variety of the contents may, indeed, convince any one of the difficulties which lie in the way of a single individual—who has other avocations than those of authorcraft—accomplishing that, which, to be well done, would require the united efforts of a body of encyclopedists, or at least of several persons long trained to examine and ponder on the appearance and results of the various arrangements instituted to govern the social compact. Under such circumstances, it cannot be expected, with justice, that the volume now brought into existence can be any thing like a perfect work, or that it should be free of many little errors, which, in spite of a scrupulous attention to accuracy, must have escaped the author in the anxieties consequent on the concentration and arrangement of so many minute matters of fact of a various character.

It may be necessary to state, that the line of procedure adopted in gleanings information, has been different from that usually pursued in making compilations. Unless it has been to the works of a few erudite lawyers, among whom Blackstone, that glorious pattern of style and sentiment, stands pre-eminent, scarcely any reference has been had to the evidence of printed books, and, except when absolutely necessary, oral and visual testimony have been used in preference. Thus abandoning the safe and easy, but hacknied and dissatisfactory, process of dressing up old descriptions and opinions in a modern guise, recourse has been doubly made to living sources of intelligence. At the risk of being accused as one in the habitual commission of the serious misdemeanour of "holding persons by the button," the author has allowed no opportunity to escape, of personally tasking the memory and good nature of professional and other friends, both in England and Scotland, and to whom he now conveys his very sincere thanks. By expiscating intelligence in this way, and simply using his own humble powers of observation, he has brought together a mass of *fresh* information on a number of topics, which, though sometimes partaking as much of the hue of fireside gossip, as of the discussions of an institutional annotator, may, nevertheless, be not only amusing, but beneficial in illuminating the main subjects under review. At any rate, the actual condition and value of Institutions have been thereby procured, to an extent which otherwise could not have been satisfactorily obtained.

For the better appreciation of certain Institutions and usages, they have been occasionally contrasted with their parallels in England; and, as there are many changes in progress, such a course may not only be serviceable in shewing what both nations have to expect by an amalgamation or interchange of customs, but in presenting to members of Parliament, officers of state, and law-givers in general, a striking and faithful delineation of those peculiarities in the local administration of the northern division of the island, of

which, in many instances, in recent times, they have betrayed an ignorance, only excusable from the total want of some such compendium as is now brought within their reach.

In accordance with the taste of the age, which has reduced instruction in the sciences to games round a winter hearth, and cozened the child into the swallowing of knowledge, in much the same way that a judicious mama administers a doze of physic concealed amidst the sweets of a comfit, the subject matter has been intentionally treated more in a popular, than a grave and didactic style. Particular care has also been taken to reject the use of those technicalities which too often discourage inquisition into legal practiques; and, in all cases, the main object has been to be plain and intelligible at whatever sacrifice. Some fastidious persons may perhaps be of opinion, that the familiarity of the author has been misplaced, in the portraying of certain serious Institutions with the vivacity usually employed in works of fiction; but he begs to remind them, that inasmuch as the laws of Charondas were successfully expounded by the aid of poetry and music, so may the laws and institutional usages of the Scotch not be the worse for being explained in the language of every day life.

It was originally intended that the *BOOK OF SCOTLAND* should have comprehended articles on the amusements, holidays, fairs, superstitions, dialects, and other equally distinguishing peculiarities of the Scotch, so as better to fulfil the meaning of such an imposing title; but for want of room in a single volume, and other reasons, they are for the present withdrawn. In a number of instances, the official lists of the *Edinburgh Almanack*—or *Red Book of Scotland*—have answered both as texts from whence to diverge into disquisitions respecting the duties of public functionaries, and as references in sparing the insertion of dry details.

EDINBURGH, *July 1, 1830.*

THE
BOOK OF SCOTLAND.

GOVERNMENT BEFORE THE UNION—THE ALTERATION
WHICH THEREUPON TOOK PLACE.

“The scepter'd heralds call
To council in the city gate: anon
Grey-headed men and grave, with warriors mix'd,
Assemble, and harangues are heard.”

MILTON.

IN entering upon a series of sketches, delineatory of a few of the peculiar moral characteristics and institutions incidental to the northern portion of the empire, we are naturally led by the importance of the subject, to bring first under the observation of the stranger, an outline of the local political management of the country, which in many respects bears little resemblance to the administration of England. In attempting, however, to shadow forth the various ramifications of the state management in Scotland, there arise many difficulties, in respect of the singular intangibility of the subject, which at a first view could scarcely be taken into account.

In order to arrive at any thing like a satisfactory notice of the present mutilated, but still well conduct-

ed official details of the local administration of the country,—some of which are very curious,—it will be absolutely necessary that we set out with a sketch of the ancient and independent government, previous to the Union; for upon a thorough understanding of this, rests a comprehension of the present state officers, and many of the Scottish municipal institutions.

The ancient government of Scotland, was nominally a restricted monarchy, and was composed of a king, a privy council, and a parliament or convention of representatives of all the different ranks in society. But notwithstanding of this apparently free system of mixed interests, the people did not possess that which is now understood by a constitution; and the subjects, though in the enjoyment of some good and temperate laws, were for the most part at the mercy of either the king or the nobility. The latter, indeed, are known to have almost at all times exercised a great sway over the nation, and even frequently to have unscrupulously incarcerated and intimidated the person of majesty. Acting from the strongest feelings of feudalism, the king of Scotland was nevertheless ever considered as the first chieftain in the country, and the lineal descendant of him who first conquered the soil, and first led his adherents to victory. Being thus estimated as the father of his people, and the dispenser of offices, lands, and honours, to his inferiors and children, he was in a great measure an object of veneration and attachment.

It was seldom, however, that the sovereign had any real will of his own. He was closely hemmed in by a select body of favourite noblemen, and state functionaries, who overruled his inclinations, and swayed him to their purposes. This body of influential statesmen, who more frequently consulted their own aggrandizement than the honour of their master, or the benefit of the community, were collectively designated the Privy Council, or Secret Council, for by both of these terms are they called in history. They formed the Scottish cabinet, and in number averaged about

fifty members, of which there were about twelve, who, in virtue of their individual offices in the state, enjoyed a seat in this assembly. The others, who stood in the light of supernumeraries, and were only called upon to deliberate on particular emergencies, were elected at the pleasure of the king, although subject to the dispute of parliament, which was often at variance with the council.

So long as Scotland retained a king in the country, the authority of the privy council was restricted within moderate bounds, as he had always the negative power of dispossessing obnoxious members, and of paying a kind of personal attention to the sentiments of the people; but no sooner did he remove to a richer inheritance, than, becoming engrossed in entirely new occupations, which almost shut out his view from the kingdom he had left, he necessarily permitted this council of the state to exercise a very extensive controul. In these times, there being no regularly diffused system of juridical institutions, and no distinct charter of liberty, the privy council assumed to itself the power of a criminal court, as well as of a deliberative assembly, and in doing so, often caused state policy to take the place of true justice. It seized, incarcerated, liberated, and condemned at pleasure; and as, by a process which remains to be mentioned, it had in general the power of quashing popular discussion in parliament, besides enjoying the unqualified command of the king's ear, Scotland at this period was kept in a state of real thralldom.

As the component parts of the privy council of Scotland are now a matter of interesting enquiry, and as a definition of the powers of the individual acting members, will be illustrative of this dark period of Scotland's history, as well as explanatory of the duties of some of the present remaining state officers, we here introduce them to the reader.

At the head of the whole council, and bearing somewhat the character of our prime minister, stood the **LORD CHANCELLOR**. It does not appear that this officer

possessed the responsibility which is now attached to the first minister of the crown, this being a fiction not then sufficiently comprehended, and consequently the king himself was ever alternately the object of esteem or execration, as it pleased the subjects to view the conduct of his officers. This person, however, was the king's most intimate adviser, in regard to new enactments, or the abolition of injudicious laws; and to execute this office more effectually, he sat as Speaker in Parliament. He was understood to be principally influential in administering places connected with the higher branches of the state, and to be chiefly instrumental in dispensing honours and heritages. He was Keeper of the Great Seal of the kingdom, which, without his sanction, could not be appended to any document; by which means he always had it in his power to *cancel*, or to expedite important deeds, or other national papers referring to treaties with foreign powers, and other important transactions. We learn that the total amount of the salary of this functionary, did not exceed £ 1600 Sterling.

Next to the above influential minister, was the LORD PRIVY SEAL, whose duties, though in some respects they were of an equally public nature, were of lesser importance. Besides assisting in the deliberations of the council, it was his duty, on being warranted by the king, to attach his seal to papers which were intended to be passed under the Great Seal of the Chancellor. This preliminary step was not, however, on all occasions indispensable. This lesser seal was likewise a sufficient guarantee to papers of an inferior order, such as those regarding gifts of office, pensions, escheat, ward, benefices, military commissions, and others of a like nature: In all of which characteristics, it resembled the present Privy Seal of England.

After the Lord Privy Seal there stood, in respect of honorary rank, the LORD TREASURER. He was appointed to preside over the Scottish Exchequer, to devise modes of levying public taxes, to regulate disbursements, and to examine the district accounts of

sheriffs, and other subsidiary officers of government. He had a supervisory power over the royal manors, which he preserved from abuse; watched the king's interest with respect to intestate persons; and in a general sense, he seems to have been the minister of ways and means.

The SECRETARY OF STATE occupied the next station in the council. It was the peculiar duty of this officer, to be at all times near the person of the king, in order that he might be the recipient of memorials, papers, petitions, or other documents referring to public business, to which he had to frame answers. The proclamations of the crown were always subscribed by this person, and his signature in this respect, was of equal value with that of the king himself. His office remained until the year 1746, when it was abolished, and the power of the British Secretary extended over this country.

Next to be mentioned, is the LORD CLERK REGISTER, whose public duty consisted in the preserving with the utmost care, all the public archives, which, from the various local authorities, came pouring into his office. He was likewise the principal clerk of Parliament, where he was always in attendance, in order to ingross minutes, and read out the verdicts. It was his duty to issue warrants for the calling of new members, and it appears that, on the opening of the house every morning, he had appointed to him the duty of calling over the roll. He was also considered the head clerk of the Privy Council, and of the various supreme courts, and acting in this capacity, he had the appointment and controul of all the clerks of Session.

The LORD JUSTICE GENERAL.—The duties of this person were of an extremely ancient character, and resembling in some measure those of the Lord Chief Justice of England. As his name implies, he was at the head of all matters connected with either law or justice, and in his administration, he was assisted by a court and Lord Justice Clerk. At the institution of

the High Court of Justiciary in 1671, his active duties as a Justiciar ceased ; and from that period, he merely remained as a stipendiary and privy councillor of the king.

The LORD HIGH ADMIRAL was an officer, who, like the same person in England, or like the board of Commissioners of the Admiralty, was entrusted with the administration of all affairs connected with the navy and the seas.

After this officer, there was a privy councillor who at one time enjoyed some very odious powers, entitled the LORD CHAMBERLAIN. Originally it was the duty of this person (or persons, for there were sometimes several chamberlains,) to collect the revenue ; but when that became the prerogative of the Treasurer of the Exchequer, there devolved upon him the exercise of a certain supervisory authority over inferior judicatories. This consisted in perambulating the country at stated seasons, and holding courts of review, at which the judgments of the burgh magistrates could be reversed upon complaints of injustice. These courts were designated Chamberlain Aires. He also regulated the prices of provisions, and workmen's wages ; and if we are to believe historians, in the exercise of these duties, his decrees were too often of a very oppressive character. His salary was only £ 200 a-year ; but he derived a large contingent revenue from fines, fees of escheated property, customs, and other matters. This office was abolished, we believe, ten or eleven years previous to the Union, when the chamberlain's judicial authority was conferred upon the Court of Session, and his other powers were either abrogated altogether, or conveyed over to the convention of the magistrates of royal burghs.

The LORD HIGH STEWARD, who was next in official dignity, was judge over all the other officers of the king's household, and his judgment was summary and final in every thing relative to their quarrels, etiquette, or service. In the 13th century this office was held

heritably by a family, who, in virtue of their occupation, assumed the surname of Stewart; and it is remarkable, that, though thus originally servants of the crown, they at last became, by alliance, its possessors.

The next office of state was the LORD HIGH CONSTABLE, or commander-in-chief of the Scottish army while in the field. He was the keeper of the king's sword, which was delivered to him naked. By virtue, also, of this emblem of authority, he was the conservator of the peace within a limited district of several leagues around the residence of the king; but this authority was latterly limited to the period of the sitting of parliament. On his approach, therefore, in the retinue of the king, the local authorities ceased to act, except under his warrant or dispensation.

Superior in rank, in a certain sense, to the above officer, was the EARL or KNIGHT MARSHALL, to whom there was deputed the command of the horse and artillery. His duty also extended to the procuring of camp-equipage and quarters for his majesty and the troops. He possessed a baton of office, which, we understand, is still preserved.

The last, though not the least powerful officer of the crown, was the LORD ADVOCATE, of whom we shall afterwards have occasion to make mention. He was the Attorney-General of Scotland, and in all civil and criminal cases acted for the king's interest. Of such state officers, exclusive of the supernumerary members, so far as it can now be ascertained, was composed the Privy Council of Scotland. Towards the latter end of the seventeenth century, when all the branches of the administration became unsettled, it underwent some alterations, and the Lord Justice Clerk was likewise, in virtue of his office, created a Privy Councillor. Latterly, the authority of the members merged in a great measure into the hands of the most factious and ambitious of the body; and, previous to the Union, the Lord Chancellor, the Lord Justice General, the Lord Privy Seal, the Lord Ad-

vocate, and the Lord Justice Clerk, possessed nearly the whole powers of government. *

Connected with the royal establishment of Scotland, there were moreover many officers, who, without taking an active share in the administration, supported the dignity of the crown, and assisted the state machine in its movements. Of this description were the Judges of the Supreme Courts, the Lord Lyon, the officers of the Mint, Deans, Chaplains, keepers of palaces and forts, and other servants of similar rank, which it would be profitless to particularize.

When Scotland came to be left without the presence of monarchy, there was appointed by the king, a person to act as his commissioner or representative in the Scottish parliament, a duty which was little better than ministerial, for he only acted under the directions of the English cabinet. It appears, nevertheless, from historians, that this personage frequently entered deeply into the management of state affairs; and if we have to draw our conclusions from the actions done through his instrumentality, we have to look upon him as having been almost an acknowledged viceroy, or lord-lieutenant in the country. There was bestowed upon him much of the adulation lavished on princes; and he received, on all occasions, the most assiduous attention from the inferior persons about the government. Frequently this office of commissioner was exceedingly ill filled. During the reign of Charles the Second, the commissioner (Middleton) was often unable to keep his seat on the throne in the Parliament House, by reason of drunkenness; a thing in which he was not by any means singular, for at this epoch the most open debauchery prevailed among almost all those

* The Privy Council sat in a room adjacent to the Parliament House, on the south side of the square, and next door to the old Royal Exchange. The latter was burnt down in 1824, but the ancient door-way, with the words "Royal Exchange" engraved in relief on the lintel, remained standing in ruins five years, and is now in the course of being removed, to make way for the splendid modern erections.

pertaining to the court. The commissioner was allowed a salary of L. 50 Sterling *per diem*, upon which sum it was understood he should keep an open table for the hangers-on of the government. Lauderdale felt this sum so inadequate to support the expenses of the office, that he petitioned to have it reduced to L. 10, free of the burthen of feeding all comers ; which was granted.

We have now to describe the Parliament of Scotland, both as regarding its component parts, and its judicial authority.

This assemblage of representatives is always mentioned in history under the title of "the Estates," from the circumstance, that it was composed of persons belonging to all the various ranks of society or estates in the kingdom. It remains, to this day, a disputed point between writers, what was in reality the precise number of these estates, each reasoning, according to his political bias, whether the king in person, or the nobility, formed the first estate. But this is now a matter of extreme indifference ; and, for the sake of perspicuity, we may mention, that the king occupied that station which is now conceded to the sovereign of Great Britain. He formed, in this manner, the first estate ; and, except in the time of the civil war, when the members of the house chose to act without regal authority, it required his assent to render the deeds of the other estates valid. The second estate consisted of the nobility, who in general amounted to the number of one hundred and fifty or sixty. The third was composed of the twelve bishops, and other spiritual lords ; but these, at the abolition of the apostolic church, and the institution of a parity in the clerical office, were expelled, and in their stead were introduced a certain number of what were in these times called "the lesser Barons," or persons who would now receive the name of lairds, or gentlemen of landed property. The fourth was formed of two knights or commissioners from each of the

thirty-three counties, and a representative from each of the sixty-six royal burghs. With regard, however, to this latter, the number of commissioners from the counties was increased by an addition of twenty-six members after the revolution, in order to counterbalance the creation of peers by king William. Altogether, including the officers of state, who had each a seat in virtue of their office, the number of members composing the Scottish estates, amounted to three hundred, or at particular times, three hundred and thirty persons.

Previous to the seventeenth century, it does not appear that there was any settled place in the country for the convocation of the estates. They were called by the king to attend him at different parts of the kingdom, where their advice and assent were considered necessary. Thus the Scottish parliament has been held at Musselburgh, Linlithgow, Stirling, Perth, and many other places. Finally, when the city of Edinburgh became the chief place of residence of the court, it commenced to hold its regular sittings in a magnificent antique building in the heart of the city, now much modernized and impaired in appearance, and appropriated to the use of the supreme law courts. The anecdote of James VI. while a boy, having noticed a broken part in the roof of the house in which the estates had assembled, and remarking that he observed "a hole in the parliament," would lead us to imagine that that august body was not at times nice in the choice of a place of meeting. This idea may be said to be corroborated by a curious passage in Balfour's *Annales* of parliamentary proceedings at Perth, in these words:—"Dec. 4. 1650. This euning, candells being lighted in the housse, a great stock oule muttit on the top of the croune, which, with the sword and sceptre, lay on a table ouer against the throne."

It is now almost impossible to say distinctly how this large body of representatives of the nation were chosen. Judging from hints thrown out in history, it would seem that, with regard to the county and

burgh elections, the members, though apparently returned by the free-holders and magistracy, were often nominated in reality by the privy council; at least, in no instance was there a free parliament of the people called together; the burgh magistracy being then, as they still continue to be, always ready to humour the inclinations of the party in power, of whatsoever principles that party might be. Before the reign of Charles the First, the duration of the estates was placed on no regular footing. Sometimes the parliament was called annually, and at other times it sat for years, as it suited the designs of the government. In 1641, when Charles the First was under the necessity of abandoning most of his prerogatives in Scotland, for the sake of strengthening his hands in England against the encroachments of the long parliament, he conceded that the estates should be chosen triennially, a measure which was hailed with enthusiasm by the puritans, and which was the first attempt in British history to institute regularly recurring parliaments. The first of the triennial parliaments took place in 1644; but the covenanters had, in the preceding year, called an illegal convention, at the suggestion of their leader, Sir Thomas Hope, to manage the business of the solemn league and covenant. The parliament of 1644 met without the king's sanction or call, but in pretended accordance with the general agreement to that effect, granted in 1641. From this time, and during the whole of the troubles until Cromwell put it down, the Scottish parliament was the supreme authority of the nation, though it almost divided the glory with the general assembly of the kirk, without which nothing could be done. The parliaments in the time of Charles the Second, were of the most unworthy description; and if possible, they were still worse in the reign of James the Seventh.

So unsettled at one time was the principle on which parliaments could be called, that there were occasionally, in times of trouble, two different parliaments in Edinburgh, which sat at opposite corners of the

town, mutually denouncing each other.* It was not until after the revolution, when the estates, as they continued to be called, were turned into "a parliament," by order of king William, that even free discussion was permitted in the house.

Unlike the system now pursued by the British houses of lords and commons, the Scottish estates sat in one apartment, in one undivided body, ranged according to their different degrees of rank, on benches parallel with the walls of the house, and rising gradually like an amphitheatre, from the floor. At the southern end, near the entrance to the curtained chambers now occupied by the Lords Ordinary in the Court of Session, and immediately beneath the large painted window, stood the throne, an erection of considerable altitude. Opposite to the throne, and beyond the seats of the members, was the bar, at which criminals or others were placed.† Immediately behind the bar, and without the enclosed area, at that part of the floor opposite the door-way of the "outer-house," there was placed a low pulpit, for the use of the clergymen, who lectured to the members daily during sessions. At the north end of the apartment, which still maintains its ancient outlines, there was an area partitioned off, for the use of strangers who attended to hear the sermons, or witness the deliberations of the estates. In the centre of the house, and almost reaching from the throne to the outward ends of the benches, was a long table, at which sat the Lord Clerk Register and his assistants, taking minutes, and reading the decisions as delivered

* "There was a parliament sat in William Cookie's house, in the Chanongait, neire St John's crosse, under the regent, or king's authority, and another for the queen, [then in confinement at Lochleven,] in the tolbooth; and each forfaulted the other." *Bal. Ann.* 1571. This was paralleled in England in the reign of Charles the First.

† We are not aware that there was any absolute bar, as in the present House of Commons. Criminals and others seem to have been brought to the foot of the table, a place which may have obtained the name of the bar. During the reading of a sentence by the house, the accused had to kneel. It was in this debased posture that the gallant Marquis of Montrose received his condemnation from the puritanic convention.

to them by the chancellor or president. At the upper end of the table lay the crown, sceptre, and sword, or "the honours," as they are collectively entitled by the old authors. These emblems of royalty lay, whether the estates were called by the king, or sat of their own accord; and on the passing of every resolution in either case, it was the custom to *touch* the record with the sceptre, as expressive of the consent of the sovereign. The various places occupied by the different estates are not mentioned; but we are informed that at the head of the area, at the foot of the throne, there were placed cross benches for the use of the Lords of the Privy Council, and other officers of state. On a stool by himself, at one corner of the throne, sat the Lord Lyon, whose duty consisted in administering the oaths to the king, and to the nobility, (the swearing in of the inferior estates being left to one of the clerks), in reading important communications to the house, and in calling silence.

In the seventeenth century, to which our observations mostly refer, the estates, when pressed by business, met at a very early hour in the morning. The hour at which they proceeded to business, was nine, and sometimes ten o'clock; but at whichever hour they took their seats, they invariably met an hour sooner in separate chambers, in order to collect and devise schemes of procedure. Having thus spent an hour in arranging themselves, on the tolling of the great bell of St Giles,* the different doors of communication were thrown open, and each of the estates in procession walked with solemn gravity towards its respective benches. This was unquestionably a matter of strict observance; for we find that members, on entering the house in an irregular manner, after the estates

* About the middle of the seventeenth century, when preaching was as necessary every morning to the citizens of Edinburgh as breakfast is in modern times, the estates ordered the ministers of Edinburgh to have their daily morning sermons finished by 9 o'clock, when the bell of the cathedral was tolled for the meeting of the parliament.

had met, were often subjected to an admonition and a fine, which, if not promptly settled, by placing the money on the table, an order was given to take the refractory member into custody, and an increased exaction made. On one occasion, the Earl of Tweeddale was fined, for this cause, eighteen shillings Scots, that is, eighteen pence Sterling, which being contumaciously resisted, it was increased to twenty merks, under the penalty of having "to enter his person in ward to the governor of Edinburgh castle." The circumstance of a nobleman refusing to pay such a miserable sum as eighteen pence, agreeable to rules possibly framed by himself, presents us with an amusing idea of the Scottish peerage two hundred years since.

At the opening of the regularly constituted parliaments, there was practised a public ceremonial of a very imposing character, which was the delight of the lower and middling ranks of society; and the want of which after the union, was a matter of serious regret to many of the trades in the city. This ceremony was called "the Riding of the Parliament," a pageant which still forms the subject of legendary reminiscence. It was enacted, in a style of extraordinary splendour, in the reign of Charles the First, when that unfortunate monarch was on a visit to the Scottish metropolis; the procession took place in this manner:—The whole of the members belonging to each of the estates, according to prescribed usage, met at the palace of Holyroodhouse, in order to wait on the king, and afterwards convey him in honourable procession to the parliament house. Each was dressed in his appropriate official robes, and mounted on horseback, with a serving man on foot, leading the richly caparisoned animal by the bridle-reins. After being drawn up in the palace yard, according to the etiquette of the period, by the Lord Lyon, King at Arms, and his subalterns, or marischal's men, they proceeded, in a slow and solemn cavalcade, accompanied with the clanging music of kettle-drums and trumpets along the

ascending narrow line of street, towards the place of meeting. A distinguished military officer, and a party of soldiers, led the van, who were succeeded by the commissioners of burghs * and shires, two and two. Next came the barons, after whom the peerage in the same manner, according to priority of rank and title. The Lord Lyon, with his pursuivants, heralds, and trumpeters, preceded the crown, sceptre, and sword of state, carried by the proper officers.

“ On prancing steeds they forward press’d,
 With scarlet mantle, azure vest ;
 Each at his trump a banner wore,
 Which Scotland’s royal scutcheon bore :
 Heralds and pursuivants, by name,
 Bute, Islay, Marchmont, Rothesay, came,
 In painted tabards, proudly showing,
 Gules, argent, or, and azure glowing,
 Attendant on a king at arms ;
 Whose hand the armorial truncheon held,
 That feudal strife had often quelled,
 When wildest its alarms.”

After these came the king, supported by several young pages of noble family, and his guards. The procession closed with the chamberlain, master of the horse, and other officers of state. On arriving at the parliament square, or close, as it was called up to a recent period, the party dismounted, and, in a particular order, entered the house. After the king was duly placed in the throne, prayer was said, and the roll called by the lord clerk register, after which the estates proceeded to some preliminary business. A speech from the chancellor closed the proceedings that took place ; and after a sermon was delivered by some favourite preacher, the house rose, and the members again remounting their steeds, which were carefully

* It is the tradition of the burgh of Inverkeithing in Fife, that the provost of that town had the honour of riding side by side with the provost of Edinburgh, in the last and most honourable rank. This was probably on account of the jurisdiction of Inverkeithing, which was formerly very extensive, marching with that of Edinburgh in the middle of the Frith of Forth.

ranked up in the square, the procession returned in much the same manner to Holyroodhouse. *

Generally, the first two days of every parliament were occupied by the swearing in of the members, and the choosing of a committee of a very remarkable nature, for the expediting of public business. A description of this peculiarity in the Scottish parliament, will give the reader an idea how parliamentary business was then transacted.

At present, bills are brought before the notice of the house of commons, for the most part by means of a preliminary understanding with the ministers of state, and by the liberty to bring them for a first reading, sanctioned by a majority of members. Although, from a variety of causes, the ministry have it almost always in their power to quash any bill which they conceive injurious, still, by means of the opposition members, there is kept up a considerable check on all arbitrary measures, and as the voice of the whole body of the people can be roused through the instrumentality of the press, it may now be said to be placed beyond the power of the cabinet to force improper laws on the community. Previous to the year 1690, the very reverse of these salutary checks prevailed in Scotland. Under the pretence or belief, that the unwieldiness of a body composed of three hundred members, was inimical to the furtherance of public business, or the quick progress of petty bills, it was the business of the estates, on the first or second day of their meeting, to choose a committee composed of delegates from the different ranks in the house, designated the Lords of the Articles. This body of members, which formed the real acting parliament, amounted generally in number to twenty-seven members, which number was divided into three distinct committees of nine. Each committee of nine, was again composed of three peers,

* For a more detailed account of the riding of the Scots Parliament, see a work entitled the Scots Compendium, or Pocket Peerage, in 2 vols. published in 1826.

three bishops or lesser barons, and three commoners. The authority which was conferred upon these lords of the Articles, was of the most important character ; but each division of the triune body had assigned to it particular duties. The first was invested with the most unlimited authority regarding the admission of public or private bills into the House, which it could either permit to enter or totally reject. The second committee had deputed to it the powers of the Estates, with respect to the trial of criminals. The third committee acted as a court in civil cases. It does not appear, however, that these two latter committees transacted business as regularly constituted courts. They were rather courts of review, and in this respect bore a resemblance to the sittings of the present Chancellor in the House of Lords.*

In consequence of the erection of the first description of Lords of the Articles, who are more frequently alluded to in history than the rest, it will easily be comprehended, that at that period the people of Scotland did not virtually possess the right of petition. Neither had any individual member of the Estates the liberty of introducing any measure favourable to the rights of the people, but derogatory to the prerogatives of the crown, without first receiving the encouragement of this powerful junto ; and as most of the Lords either secretly owed their elevation to the court, or had held out to them the prospect of preferment on furthering the views of the Privy Council, the committee acted as a barrier to all free discussion or liberal policy. This form of process in regard to the passing of bills through the Scottish Estates, was possibly one of the most effectual systems ever established by a government pretending to be formed upon the representative system, for smothering the voice of the nation, and reducing

* Edward the Third, we find, established a tribunal of a similar description, consisting of one prelate, two earls, and two barons, who were chosen from every new parliament, to hear complaints of grievances and delays of justice in the King's courts. It has long since been disused.

the parliament to a mere Cabinet Council. Immediately after the Revolution, in 1690, the Lords of the Articles and their mischievous powers were abrogated. It may be mentioned, that, during the civil wars, there was always a standing committee of Parliament, which, like the staff of a regiment, remained on duty during the recesses, and on emergencies had the power of calling up the members.

So undefined were the regulations which governed the Scottish Estates, with regard to the passing of bills, and so insufficient was the general constitution of the country for the protection of private rights, that the most flagrant acts of injustice were sometimes committed in the House, while only a number of packed members were present. In 1649, when the Parliament had loosened itself from royal authority, the Privy Council and nobility leagued together for their own views, and produced a flagrant instance of this malpractice. On a bill being brought before the puritanic convention, in order to have the legal interest of money changed from ten to six per cent. the "burrowes," or the commissioners of shires and burghs, many of whom had, some time previously, lent the state considerable sums to carry on the war against the king, on the faith of receiving ten per cent., protested against the proceedings, and retired in a body headed by the Lord Provost of Edinburgh. After they had gone forth under protestation of the injustice of the act, the Earl of Cassillis stood up, and said that "they could now vote the act, as well without as with them, [the burghs,] as they had often done many more, without either a king or a commissioner." Which harangue was conclusive.

During the years between the Revolution and the Union, some of the worst features of the foregoing system of state-management were modified, and there were enacted some of the best laws which Scotland now possesses; still there could be nothing more awkward than the way in which the affairs of the country were conducted. In almost every respect, the

nation was checked in its measures for improving its condition, by the English ministry; and as the only real bond of sympathy which existed between the two governments, consisted in the circumstance of possessing the same sovereign, it now appears evident, that about the time in which a union was effected, either such a measure or a total separation must have taken place.

With regard to the national state of Scotland at the beginning of the eighteenth century, it was in a situation much resembling that of Ireland a hundred years later. While the Privy Council, the Parliament, and the General Assembly, alternately, and sometimes conjunctly, domineered at will over the people in the higher branches of the administration, the community possessed for their protection almost none of those juridical institutions which are now ramified through the country. There were no officials possessing the precise powers which Justices of the Peace now exercise. The magistrates were then, as they still in many cases are, weak and inutile. The country was, in some districts, divided among powerful barons and chieftains, who disregarded all regular laws or honest means of subsistence. There were almost no roads cut,—no effectual communication from place to place. The press only teemed with religious tracts, breathing the most ludicrous intolerance, and more of a controversial than pious nature. Over the whole of the Lowlands and the Highlands, there prowled bands of daring freebooters, gypsies, and sturdy beggars, disbanded military, and wretched foreigners. There were no manufactures beyond the most homely stuffs; no foreign trade worthy of the name, and neither capital nor industry. With the exception of the landed gentry and the nobility, the people lived in a manner now only resorted to by the lowest class. The bulk of the community were poor, subject to continual famines, and eaten up with the most senseless fanaticism. Upon the whole, no unbiassed person can peruse the chronicles of these times of Scotland's de-

gradation and independence, without experiencing feelings of the utmost commiseration.

The wisest legislators of both England and Scotland, ever since the accession of James to the English crown, and the consequent absence of the king from his northern dominions, had perceived that nothing but a confederating union of the nations could improve the country, for it was obvious that in every thing which regarded foreign connexions or export trade, the Scotch would perpetually be overborne by their more powerful neighbours, while they had it not in their power to make reprisals, from the circumstance of the sovereign being leagued with their oppressors. James, in 1604, made strenuous attempts to have a confederating union instituted, as may be seen from the numerous private letters written by his own hand to influential English and Scottish noblemen. A series of articles were also drawn up by his special directions, and submitted to the two legislatures; but it seems the various jealousies and warlike feelings of the multitude in either country, destroyed his hopes of a thorough amalgamation. A union was afterwards attempted by Charles the First, who had the same opinions as his father on the subject, but it was also blighted, more by the untractable and unreasonable character of the Scotch at the time, than any opposition offered by the other country. Almost the whole of this unfortunate monarch's life was spent, as our readers already know, in trying to bring about an assimilation of the English with the Scotch customs and institutions, all of which attempts were invariably repelled with acrimony and abuse. To persons curious in these rejected treaties and articles, we could scarcely recommend a work more worthy of inspection, than that drawn up by order of the House of Commons, on the business of the Irish Union being proposed, when all the documents were collected, in the State-Paper Office, regarding both the unsuccessful unions, and that which was ultimately fixed upon between England and Scotland. We believe there is only one copy in Scotland, which is to be found in the

Library of the Faculty of Advocates, to whom it was presented by the Duke of Portland. This private work shews, in a very clear manner, the good feelings of the above two princes of the House of Stuart towards the Scotch.

We need hardly remind our readers, that, during the supremacy of the long Parliament, and the Protectorate of Cromwell, Scotland was, for seven years, almost thoroughly united to England. At this period the country was excellently managed, and it is now very much to be regretted, that the Scotch did not see it their interest, at the Restoration, to maintain the connexion undisturbed.

When the final and successful attempt was made for a Union by Queen Anne, it is worth while to notice the misunderstandings which still existed regarding a treaty of that nature. Notwithstanding of the unfortunate state of affairs in which the country was placed, the Scotch fought hard to withstand a union with England, but in this they were not singular, for the people of both countries seem to have mutually entertained nearly the same derogatory notions of each other. The English expected that they would be eaten up by the Scotch, whom they expected to overrun their country like locusts. The Scotch, in their turn, were frightened at the prospect of the English intruding themselves, and changing the character of the nation. The bench of bishops were terrified for the contagious influence of puritanism, and the covenants; and the commission of the General Assembly of the kirk, were so much alarmed at the idea of prelates legislating for a Presbyterian country, as to propose that the *reformation* should be carried across the borders. In consequence of these, and a thousand other senseless clamours, it was only by the aid of a few influential public characters on both sides, among whom the queen took a prominent part, that the Union was brought about. They wisely foresaw, that the salvation of one, and probably both kingdoms, depended on this connexion, and that without it, Scotland, at the best as an ally of England,

could never make head against the powerful interests in that country.

The carrying through of the preliminaries of the Union in the Scottish Parliament, was a matter conducted in profound secrecy, and was only at last carried by a sort of *coup de main*. The most violent opposition was made to it by some of the nobility, a class which in reality have been the only sufferers by the transaction, who thought they beheld in its approach the most deplorable debasement. With the exception, however, of a few of the peers, most of those in the estates who at first were opponents to the proposition, were brought over by the judicious distribution of a large sum of money from the English treasury. The peers likewise, in addition, had bestowed upon them the privilege of a protection from personal arrest in civil process.

After much unprofitable discussion, on the twenty-first day of March 1707, the old Scottish Parliament met for the last time, and having finally adjusted the Articles of Union, it was for ever dissolved by the king's commissioner, the Duke of Queensberry. On the first day of the succeeding May, after the Articles had been signed by a certain number of commissioners from both kingdoms, Scotland became united to the British Empire. Upon the articles taking effect, "it is now to be observed," says Blackstone, "that the two kingdoms are now so inseparably united, that nothing can ever disunite them again, except the mutual consent of both, or the successful resistance of either, upon apprehending an infringement of those points which, when they were separate and independent nations, it was mutually stipulated should be fundamental and essential conditions of Union." *

There were two copies of this important treaty signed by the commissioners appointed by either kingdom, one of which was deposited in London, and the other in Edinburgh. The latter of these, now a document

* For Articles of Union, see Appendix.

of great interest to Scotchmen, is lodged in the Register House at Edinburgh, along with a copy of the Act of Ratification, under the safe custody of the Lord Clerk-Register. These occupy several leaves of a large size, on fine vellum, bound up in a volume, and highly ornamented with a miniature in colours, of Queen Anne, at the beginning of the first paragraph, on the first page, along with various devices. The collateral columns of the signatures of English and Scotch noblemen, are peculiarly worthy of inspection. While the names of the English commissioners were appended with sufficient deliberation, most of those of the Scotch were written in a hurried manner, as if the writers had dreaded personal violence; and of this the characters bear some slight trace. Some of the commissioners affixed their names in a private summer-house in the garden of the nobleman who was chiefly instrumental in bringing over the disaffected, namely, the Earl of Seafield. This garden and summer-house, situated in the Canon-gate, and appertaining to a mansion-house formerly occupied by the Earls of Moray, still remain in almost their original condition. Being interrupted by the infuriated mob, even in this retirement, the remaining commissioners are said to have attached their signatures, under cloud of night, in a private cellar opposite the Tron Church, in the High Street. This place was long afterwards known by the name of the "Union cellar." It is now a coach-office. While the Scotch have very carefully preserved their copy of this important treaty, it is rumoured that the duplicate left in London has recently been missing!

By reason of the extreme opposition which was made to this salutary measure, and the consequent hurry used in bringing it about on any terms, the Union was not so complete as it ought to have been. It was little else than a confederacy of two separate states, instead of being a complete incorporation. It abolished the Scottish Parliament, and carried away the supreme management from the country; but it left

still a separate jurisdiction, and much of the old local government was suffered to remain.

No sooner was the Union effected, which thus confederated, without absolutely incorporating, Scotland with England, than an instantaneous change took place in the relative situations of the officers of state and other functionaries. The estates of parliament, which had so frequently stood their ground against all attempts at forcible subversion, were totally abolished: The Privy Council, collectively, remained for about a year in the enjoyment of a sort of nominal power, and was then abrogated for ever: The King's Commissioner, who had been like a viceroy at the head of Scottish affairs, was withdrawn: The General Assembly of the kirk sunk down into a quiet convocation of ecclesiastical laymen, tacitly compromising its love of the covenants in terror of the Jacobites: The duties of the different officers of state, only remained so far as they could be serviceable in the new situation in which the country was placed.

The Lord Chancellor ceased to act in any other capacity, than as simply the custodier of the great seal; his office still remains, under the title of the Keeper of the Great Seal, with the addition of a deputy and substitute. The Lord Privy Seal was disposed of in the same manner, the office of keeper remaining as a complete sinecure for the benefit of poor noblemen, or favourites of the government, and the active duties being performed by a deputy and substitute. The office of Lord Treasurer was likewise given up, and the duties committed to the Barons of Exchequer, who now superintend the collection of the revenue, with an accessary officer denominated King's Remembrancer, whose duty it is to secure fines payable to the king, and other property falling to the crown as *ultimus hæres*. The Secretary of State remained for thirty-nine years after the Union, when his duties devolved upon the Lord Advocate, and the British Secretary of State for the home department. The Lord Clerk-Register was suffered to continue, in order to take charge of all na-

tional documents, registers, records, and juridical decrees ; which duty he still performs, by the aid of a deputy and assistants. He has also deputed to him the sole management of the returns to the House of Lords of the sixteen Scottish Peers, in which branch of his office he is assisted by the clerks of Session, who are still considered as his subaltern officers. The office of Lord Justice General being hereditary in the family of Argyle, it continued as such till the abolition of the heritable jurisdictions, when it was most incomprehensibly allowed to remain in the gift of the crown ; and to this day, the office is a complete sinecure. The office of Lord High Admiral was necessarily abolished ; but in his place there was appointed a Vice-Admiral, who has, as far as we can learn, no other duty than the nomination of the Judges of the High Court of Admiralty,—a jurisdiction partly of a civil, and partly of a criminal nature, which recognizes only cases referring to Scotland. The office of Lord High Steward was very properly abolished. The offices of Lord High Constable, and Earl or Knight Marischal, continue in the possession of two noble families ; but the offices are merely honorary. The Lord Chamberlain ceased to act eleven years previous to the Union, when his authority was conferred upon the properly constituted courts of the country. As soon as this partial dissolution of the old government was accomplished, the crown, sword, and sceptre of royalty, which had so long lain on the table of the Parliament House, were removed to the Castle of Edinburgh, where these ancient “honours” are now open to the inspection of visitors. The royal palaces had previously been abandoned to the charge of hereditary keepers, by whom they are still preserved in order.

In order to satisfy the discontented nobility, and pacify the Scottish people, who, though divested of the substance, still were anxious to possess the shadow of a court, there were suffered to remain various honorary and stipendiary officers of the old royal household, already alluded to, though very few of them

have any real duties to perform. For instance, the principal functionaries of the Scottish mint were allowed to remain, although coining in this country was abolished. The Lord Lyon, his deputies, pursuivants, heralds, and officers, still continue in the practice of some ancient duties and ceremonies. He orders state proclamations to be made, confers armorial bearings, and takes an active part in the management of state processions and ceremonials.

In the course of the last hundred years, various trifling modifications have taken place with regard to the mutilated remains of the old Scottish government, but there still continues much to be amended and abrogated. Any duties which most of the preceding officers are reckoned as performing, are in reality executed by certain clerks in the Register House of Edinburgh, an institution which may be esteemed as now the government-house of Scotland. All matters referring to the political management of the country emanate from the British cabinet, and it is principally in the administration of the laws and the religion of Scotland, that the Scottish officers of state are nominally called upon to interfere. So much is this now felt to be the case, that for some years it has been the intention of the ministry to allow some of the most useless offices to drop into desuetude, which, on the occurrence of some deaths, has been already acted upon. In this proceeding it is impossible not to concur, when we consider the needless expense to which Great Britain has been put, in order to keep up situations of no real value to the community. We could not here condescend on the precise sum which is still paid out of the Exchequer annually to Scottish sinecurists; but, taken at the lowest computation, it has not been less than L. 12,000 Sterling, every year since the Union. The Edinburgh Almanack furnishes a list of all the officers connected with the state and crown in Scotland. Some of their salaries are particularized.

Previous to the Union, the revenue of Scotland was L. 110,694; a sum at least a third higher than that which

half a century before that period had been raised by the state; but the revenue, great as it appeared to the Scotch, was considered by the English as far too mean to entitle it to rank with their highly taxed country: an additional impost of L. 49,306 was thereupon imposed, thus causing the total revenue to be exactly L. 160,000. Flattering as were the prospects of the Scottish traders for the extension of their commerce, neither these nor the other members of the community, could tamely brook this apparently exorbitant increase of taxation. To appease the nation, therefore, and gild the noxious pill it was obliged to swallow, the English government bribed its nobility and others, by payment of the sum of L. 398,000. This bribe, for it was nothing else, obtained the gentle name of "the equivalent," inasmuch as part of it was dedicated to the remunerating of persons who had suffered by the Darien expedition, which had been ruined by the interference of King William; and another portion given for the purpose of liquidating some small debts due by the Scottish government. After executing these purposes, almost each of the Scottish noblemen received a sum equivalent to the share he had taken in furthering the Union. The individual sums thus received by the Scottish peers as the price of their independence, were in some instances so paltry, that they must have received them with a very bad grace. Some were so mean as to take the limited sum of L. 11, or thereby, a circumstance which will be deemed almost inconceivable by the modern Englishman.

The equivalent was not all paid at once. Many years elapsed before it was finally consigned over by convenient instalments. Latterly, a considerable part of it was dedicated to the erection of an institution, to be noticed in its proper place, for the encouragement of the arts and manufactures in Scotland, the success of which has not been one of the least of the great benefits to this country springing from the Union.

It may be here remarked, that the Scotch, except in times of war and disaster, had rarely any national

debt. The king and courtiers were supported by the crown lands; and the other functionaries of the government, including a small standing army of horse and foot, were paid from the produce of a light land-tax, and the customs. In general, the state, as was the case in England before the days of King William, contrived to keep its expenditure within the bounds of its income,—a circumstance well worthy of commemoration. Duties, leviable in the shape of excise on luxuries, were hitherto so trifling, or so little known, that, as it was principally by the imposition of this abominable species of tax from which the additional revenue of the country was proposed to be derived, a ferment was created which neither the soothing character of the equivalent, nor all the coaxings of the English cabinet, could at first allay. An import and export tax or custom had already been known by the people, with a sort of nominal excise; but the restrictions on the inland manufacture and consumpt of spirituous liquors, &c. were felt as in the highest degree tyrannical and oppressive. The Scotch had nevertheless nothing to oppose but clamour, which could not relieve them from this original invention of Cromwell to raise the national funds. They submitted with an intention to resist on the first opportunity, and the accession of great numbers of the middling and lower classes, to the frustrated attempts of the Stuarts to recover their ancient possessions, can be traced to no other source than a desire to break the Union, and free themselves from the operation of the new excise laws; to both of which measures, the son of James II. willingly promised to accede.

In consequence of the arrangements made at the Union, for raising the above revenue, boards of excise and customs were instituted on a separate establishment from those in London. These continued to act independently until within these few years, when on account of the scrutinies instituted by various sharp-sighted members of the House of Commons, in order to abolish all useless offices, a revolution took place. Both the boards of customs and excise are now altogether

abrogated, and the business, we believe, is principally managed by orders from the English commissioners, through one or two collectors in Edinburgh. In the mode of doing business, there has also arisen a new era, any thing but satisfactory to the people. In this and other departments of the government, almost every office is now filled by Englishmen, who have no interest in softening the rigour of the statutes. As the excise laws, moreover, are drawn up by men who seem to have little knowledge of the manners, feelings, or customs of Scotland, till this day they are the subject of endless vexation, if not direct oppression; indeed, we have no hesitation in saying, that as these laws are framed and executed in Scotland, there is as much real uncalled for severity practised on the Scotch, as could almost be paralleled in any of the Turkish pashalicks.

After Scotland had thus been admitted at the Union of 1707 to a participation of the liberties of England, the Scotch still laboured under the influence of much arbitrary power, incidental to their separate condition, as we shall shortly more fully explain; but none of the means which had been adopted since the revolution, to elevate the character of the freedom of the Scotch, was so beneficial or so completely felt by society as the abolition of what were termed the heritable jurisdictions; a measure which was effected by the British parliament in 1748, partly in terror of the power which had been brought into operation by the nobility and chieftains in the insurrection of 1745. These jurisdictions amounted to upwards of an hundred in number, and consisted of hereditary sheriffships, stewartries, constabularies, but principally of regalities, baileries of royalty, and royal baileries, with some clerkships for life. One of the most important, however, was the office of Lord Justice General, and the lordship of Argyle and the isles, both belonging to the family of Argyle. It would here be needless to explain the distinct peculiarities of the above species of jurisdictions; it is sufficient to state, that their claimants and possessors had

such extensive arbitrary power over the vassals within the bounds of their jurisdiction, by whatever name it was called, that they could, on very frivolous pretences, punish them by heavy fines, scourge or incarcerate them in dungeons, and even put them to death, without being liable to the interference of the common law. Singular as it may now appear, so languid was the desire of liberty among the Scotch, that they did not, in the slightest degree, urge the propriety of abolishing such pernicious privileges; and the act was finally passed as much against as with their free will. These jurisdictions were not wrested from the possessors by violence. They were paid for, agreeable to a scale drawn up by the Court of Session. Argyle alone received L. 21,000, as an indemnity for the loss he had sustained; and altogether there were paid by government L. 152,037, 12s. 2d. In some instances, a very restricted civil and criminal power was left in the hands of the barons and other claimants, who still, as we shall notice under the head of civic authorities, possess a right of nominating bailies who govern certain little districts of the country.

It is remarkable, that even after this truly beneficial destruction of those ancient feudal practices, by which the chieftains collaterally lost their hold over their clans, there were still left in Scotland a very palpable shred of slavery and barbarism. All those who were employed as colliers, and makers of salt, were held as serfs to the lord of the soil, and could be disposed of as such. The manumission of these hitherto unfortunate beings formed the work of a subsequent Act of Parliament, which brought the Scotch another step towards the liberties of the English, and assisted considerably in furthering the prosperity of the country.

In spite of all those evil anticipations of the Scotch regarding their connexion with the English, their affairs prospered every day after the Union, and especially from the date of the transactions just alluded to. The wonderful increase of the public revenue from the year 1707, to the year 1813, points this out

in a luminous manner. From L. 110,694 at the Union, it had risen to L. 4,843,229, 12s. 11d, from which, if we deduct the expense of management, and the monies paid as drawbacks, jointly amounting to L. 639,132, 5s. 2d, the nett revenue contributed to the treasury will be L. 4,204,097, 7s. 9d, being an increase of L. 4,044,097 7s. 9d, since the Union. It is impossible to mention the actual revenue in the present or recent years, as by some new arrangements a great proportion of the taxes are now sent direct from the collectors to the treasury, instead of passing as formerly through the Scottish Exchequer.

The expense of management in Scotland, as it is now constituted, must be on an extremely moderate scale, and can only consist in the payment of collectors and other civil officers. Since the proclamation of peace in 1815, except during the riotous proceedings in the west in 1819, there has not occurred the slightest necessity for the interference of military of any kind in preserving the peace of the country. On an average, since the first mentioned period, there have been maintained in Scotland fifteen hundred troops ; but they are literally of no use whatever, for the civil power is sufficiently competent to quell all disturbances ; and therefore they can only be esteemed serviceable in so far as they preserve the forts and barracks from falling into an unprofitable state of decay.

If Scotland has thus for many years derived little or no benefit from the regular soldiers in the kingdom, it has derived fully as little from the militias or yeomanry cavalry. Since the period of anticipated invasion of the French, any corps or troops of these descriptions of soldiers, remaining undissolved, have never been placed on any duty of a strictly useful nature. The institution of local militia in Scotland, was not fixed on the people without creating great disturbances, and in some places the balloting was opposed by force. To pacify these discontents, a boon was conceded to the Scotch militias by Act of Parliament, namely, that they should be exempted from being

drilled on Sundays, a judicious expedient, in consonance with the religious feelings of the nation.

At present there remain no civilian military undisciplined but a few troops of yeomanry cavalry, principally pertaining to the Edinburgh and Glasgow districts. Practically they do not seem to be of any use to the state. A list of their officers will be found at the end of the Almanack.

There now remain to be explained, the exchange which Scotland made with regard to its representation, and the system on which this branch of its affairs is now conducted.

From upwards of three hundred members, of which the old estates were composed, the number of representatives was reduced, much against the will of the country, to sixteen peers, and forty-five commoners, a reduction which has often been denounced by Scottish patriots as infamous, and inadequate to the due representation of the people. There were in these times about one hundred and fifty-four noblemen, who had all seats in Parliament, but this number, by forfeiture, natural extinction, and other casualties, is now circumscribed to eighty-six, of whom, including the King, as Duke of Rothesay, there are thirty-one who have been created British peers. Therefore, reckoning that these thirty (excluding his Majesty,) are influenced by national considerations, along with the sixteen elected Scotch peers, there are in reality forty-six members whom Scotland contributes to the House of Lords. Hence, with the forty-five commoners, there are in all ninety-one representatives,—a number, which, it may be assumed, is sufficiently adequate to express the wishes, and protect the interests of the country. If there be any impropriety in respect to the representative system of Scotland, it in truth does not lie in the apparent smallness of the number of members; for the country, in its population and means of support, is scarcely larger than a couple of the best English counties. The mischief complained of, consists in the mode in which a considerable number of these representatives are

chosen, a peculiarity which does not seem to have been contemplated by the framers of the Articles of Union.

On the recurrence of every new Parliament, or on the death of one of the sixteen representative peers, or when a member is raised to the British peerage, by virtue of a writ issued by the crown, a proclamation is made at Edinburgh, and the head burgh of every shire, ordaining a meeting of the nobility to take place at the appointed place in the palace of Holyroodhouse, in order to choose a representative or representatives in parliament. This proclamation must be made twenty-five days previous to the election. The business of the meeting is opened by an extempore prayer by one of the King's chaplains, after which the roll is called, the oaths of members are taken, and the signed lists of those who wish to vote by proxy are examined.

Until recent amendments were made in the qualifying oaths to be taken on occasions of this kind, some of the most singular restrictions were imposed. The most ludicrous of these consisted of its being imperative on the part of voters to swear, that they had not twice attended an episcopal chapel within twelve months, where the king was not prayed for by name. This, as well as the oath of abjuration, is now abrogated. In voting by commission, a peer can only be a proxy, and he can only be such for two peers. It has ever been a disputed point, whether the Scottish peers, becoming peers of Great Britain, are entitled to vote for representatives as formerly; but at present it is the practice to allow their votes. Hence, a British peer has both a seat in the House of Lords and the power of electing a Scottish member, a prerogative which is greater than that enjoyed by any other description of noblemen. The sixteen peers are elected by a majority of votes; but should there be an equality, the peers have no right to put in a casting vote. The case is remitted to the House of Lords for their decision. The return of the names elected, is made up by the Clerk Register, and transmitted to Chancery. The ceremonial altogether, though inte-

resting from ancient recollections, is by no means of an imposing character, and as often a great number of the peers employ proxies, it is attended with little bustle or parade. The transactions close with another prayer from one of the chaplains. It is a meeting open to the public by means of tickets, which are freely dispersed some days previously.

At the meetings of the peers for the foregoing purpose, they are prohibited from discussing any matter whatever. This restriction is so complete, that on a nobleman appearing, whose title has never been made up, or who may claim the privilege as next of kin, they have not the liberty of rejecting his vote. They can enter protests against it, and in case of dispute, it can only be referred to the House of Lords. As it is seldom the case that some of the families of the Scotch peerage are not dormant, and the title under dispute, there are few elections at which there does not appear one of these impoverished claimants.

The Scottish bishops having been legally expelled from the church at the revolution, on the occurrence of the Union, the Kirk which was established having no dignitaries of any description, it was not conceived necessary to permit its representation in either of the Houses of Parliament. This, we conceive, was not doing justice to the General Assembly, which had been so useful in secular affairs in the preceding century; and as a matter of political right, it ought to have been allowed to have one or two members for the purpose of expressing its sentiments, and defending itself against any attack from the English prelates. However, it is needless now to reason on this subject; and we may just mention, that the Kirk of Scotland to this day possesses no direct representation in Parliament. It is also remarkable, that none of the five colleges in Scotland have any representatives.

Of the forty-five commoners which Scotland contributes to the Lower House of Parliament, there are thirty who stand in the light of delegates from the shires, and fifteen from the royal burghs.

With regard to the first of these classes, the members are chosen by the respective freeholders of lands within the counties, on principles peculiar to this country. Agreeable to the feudal law, it being recognized in the statutes, that the whole of the lands and herediments within the country are the property of the king, whose progenitor conquered the soil, and who has by deed of gift conferred such in portions upon his friends and adherents, it is ordained, that all those who can shew that they hold these lands free or *blanche* from the crown, unconnected with any intermediate nominal proprietor, productive of L. 400 Scots, or L. 33, 6s. 8d. Sterling of annual rent, or who shall possess a piece of ground or any herediment to the extent of a forty shilling freehold, according to a very ancient computation, (which computation is known by having recourse to old records,) shall be deemed eligible either as a member of Parliament for the shires, or as a voter for such.* This is a very concise and rough outline of the qualifications of members and voters; but for the sake of being easily comprehended, we do not choose to enter into the minutiae of the law on the subject. In most instances, freeholders receive their qualifications from the first-mentioned holding of lands from the crown. It is an extremely curious circumstance, and one which could not be anticipated, that by the latest calculation, there are no more than two thousand nine hundred and eighty-seven persons who possess these qualifications in Scotland; a great part of the country being in the hands of noblemen, who are not considered as freeholders, and of large proprietors, who, notwithstanding the extent of their territories, possess only a single vote. Many of the estates, and most of the small properties,—indeed we may almost say the whole of them,—being held off su-

* In England, knights of the shires must possess tangible estates to the value of L. 600 Sterling of yearly rental; but it is not ordained that they shall hold these lands free off the crown. They may be feudatories. Members for the burghs must draw in the same manner a yearly rental of L. 300.

periors or immediate possessors ; this also circumscribes the number of freehold proprietors.

This limited number of voters is gradually, however, on the increase, and were the system of entails broken up, it is probable, that in a few years they would be increased to double the number. The law permits a disruption of the freehold qualification from the real possession of the soil, and by a legal process of an intricate nature, the nominal *blanche* holding from the crown, can be purchased by one person, and the soil by another, who becomes his feudatory or vassal. In like manner, a freehold proprietor can retain his freehold, and sell his estate. Unencumbered freehold estates may also be parted in lots, and each lot, if it draw the requisite rent, can carry a freehold qualification to its owner. Freehold qualifications, on account of this peculiarity in the law, are very frequently the object of sale in Scotland, and they are sometimes eagerly purchased by persons desirous of political influence. They have been sold from L. 200 to L. 1500, according to the fierceness of political contest, or to local situations. The liberty of voting at elections of members for the shires, is thus often to be found in the possession of wealthy traders and merchants residing in cities ; and in whichever situation the qualification rests, it is almost invariably in the hands of persons of either real property or good circumstances ; by which means *wealth*, by many designated as the safeguard of the constitution, becomes in one sense sufficiently represented. As this qualification can at all times be bought for money, it has likewise another beneficial effect, it incites the industry of those who wish to have a voice in the legislation of the country, or who are ambitious of occupying a higher station in society.

The rolls of the freeholders are made up every year at the Michaelmas head court, by orders of the sheriff ; and all disputes relative to the right of freehold qualification which may there occur, are settled by a petition to the Court of Session. On receiving a writ

from the clerk of the crown for the election of a member, the sheriff, within six days, publishes at the market-cross of the head burgh of the shire, a request for the attendance of the freeholders on a particular day. The time and place of meeting are likewise proclaimed in all the parish churches. On the appointed day, the meeting takes place in the county court-room, or in some other equally public place, and the writ being read, the business commences by the reading of the statutory regulations for elections, the examination of the qualification of voters, and the appointment of a clerk and preses. The oaths are then administered, and after the other necessary arrangements have been made, the votes of the electors are received. In case of an equality in the votes, the preses, who is always, if possible, nominated by the former representative, has a casting vote. The successful candidate is then duly declared to be elected, and the necessary return being made up by the clerk, and put into the hands of the sheriff, in order to be transmitted back to the crown-office, the assembly is dissolved. There is no law which can compel the attendance of electors, and a single member can form a quorum; though the statutes regulating elections are exceedingly strict, and the business must be enacted with the greatest formality and caution.

There are in all thirty-three counties in Scotland, but three of these being small and inconsiderable in population, they merge into other three, among which the vote is taken alternately, so that thirty members are only thus elected. The Zetland islands, by a neglect at the Union, have no representative, a mistake which has never been remedied, though often attempted.

At these elections of members for the shires, there is no outward bustle or clamour; and but for the subsequent announcement in the newspapers of the successful member, few would be aware that such a transaction had taken place. It is, we believe, customary for the "county gentlemen" to dine together, after the

business of the day is over, at the expense of their new representatives, and the evening is thus passed with much good-natured hilarity.

We confess ourselves partial to the system of the election of "knights" for the shires, and but for some peculiarities in regard to only allowing the votes of those landholders who hold estates *free* of the crown, the practice, we conceive, would be perfect. As it is, the system acts in the light of a real representation of the landed interest; and it is only to be wished that the mode pursued in regard to the elections of the members for the representation of the trading and mercantile classes was as incorrupt, and as complete.

The system of burgh elections in Scotland now requires explanation. In England, agreeable to very ancient usages, the qualifications of voters for members for both the shires and the burghs,—except in the case of what are known by the name of rotten burghs,—are exceedingly moderate; in the one case, it being only necessary to possess a small piece of ground, or any other species of heritable property, to the value of a rental of forty shillings, held free of the crown; and in the other, to be a freeman of twelve months standing. This is, without doubt, judging from its effects, far too low an estimate. It has had the effect of splitting the land into too many minute portions, and causing too great a depreciation in the character of landed proprietors. It has also had another effect: it causes an immense part of the country to be literally wasted by enclosures, and lost to the community. Taking these petty freeholders and the electors in the burghs together, with few exceptions, the system is certainly improper, and might, with very little trouble, be much amended. Still, evil as it in reality is, and though placing power in the hands of uneducated men, and men who have no stake in the country beyond a bare subsistence, it nevertheless leads to some good results. The elections taking place by an open polling, and at a great expense, it brings men forward as candidates, who possess a strong force of character and consi-

derable wealth,—two necessary requisites to form a proper representative for a country in the situation of Great Britain. The Scotch, as we have shewn, have successfully provided against mischiefs springing from such a system of lowering the tone of freeholders with regard to the election of knights for the shires; but in respect to the election of representatives for the burghs, they have fallen into the most melancholy error, and one which far outstrips the evils produced by any species of English elections.

In Scotland, the right of election of these commissioners rests entirely with the magistracy and town councils of the royal burghs, a class of individuals possibly the very worst calculated to express a judicious opinion on a subject of such vital importance. There being sixty-six royal burghs, and only fifteen representatives, these towns are ranked up in clusters or districts, though often not locally connected, of threes, fours, fives, or sixes,—the city of Edinburgh only being by itself,—and at every revolving parliament, each burgh in the district sends its delegate to meet with his brethren. These delegates then declare for a particular member, and a casting vote is invariably taken in rotation by each of the burghs. In this way, it sometimes happens that a particular town only comes into political consequence once in twenty or more years. The town council of Edinburgh returns its single member by a majority of votes in the council. The mode of sending and returning the writ from the crown office to and from the sheriff for these elections, is the same as in the elections for the shires; and the laws are very explicit with respect to the choosing and commissioning of delegates, the votes of the councillors, and the prevention of bribery.

It is not necessary that the representative should be a landowner, or freeholder. He must be a burgess in any of the royal burghs,—a qualification very easily to be obtained. While the sons of English peers may be members of parliament for any of the English or Scottish burghs, this may not be in Scotland. The

sons of Scottish peers are prohibited from being members for either English or Scottish burghs.

The above mode of electing these fifteen members, is strongly characteristic of the ancient constitution of the Scottish nation, by which all political movements were carefully hid from the eyes of the public. The system, on account of its long endurance, has even engrafted on the genius of the people, a dormancy of feeling in regard to political privileges. If it has not been the direct means, it has been undeniably instrumental in engendering a wonderful callousness in viewing the actions of men in power. It has so far withdrawn the community from any interference in political movements, that public expressions of sentiment or public declamation on any topic but those of an eleemosynary or pious nature, are only beginning to be heard. These are, however, only negative evils, and it is only under certain modifications that we would desire to see a little more political restiveness shewn by the Scotch. The direct injury resulting from such a form of procedure in elections, is of a different nature. It is the means of introducing into parliament men who too frequently possess a small share of public spirit or talent, and who are in most instances willing to be driven in any direction in which they are bid by the ministry. It is a circumstance which cannot be questioned, that virtually, the interests of Scotland are not supported in parliament so much by members for Scotland, as by Scotchmen who have been returned by English freeholders.

Loud remonstrances have been heard from various quarters on the injustice and cruelty of enhancing the qualification of Irish freeholders, from forty shillings to ten pounds; but had a boon of this or a similar nature been conferred on Scottish tenants, either of land or houses, how differently would it have been appreciated, and with what enthusiastic feelings of patriotism would such a concession have been acted upon! At present, they have no political influence of any kind, and have consequently sunk into a state of

apathy, unparalleled in any other part of the British empire.

Whether it may be traced to the peculiarly secret and pernicious manner in which Scottish members for the burghs are returned, and the absence of all right to interfere in the system of representation endured by the mass of the community,—in which we include all private gentlemen, householders, though paying the highest taxes, unincorporated tradesmen and merchants, clergymen, lawyers, all other professional persons, and the whole of the lower orders, the remarkable apathy of the Scotch, in general, regarding the assertion of their political privileges, is a circumstance worthy of the notice of strangers. Those who have carefully observed the conduct and outward bearing of the English in this respect, and unprejudicedly compared it with that of the Scotch, will not have failed to remark this national characteristic. In Scotland there is not that heartiness of political enthusiasm displayed so forcibly in England on all occasions. The people still appear to wear about them the idea, that they dare not openly assert their independence. This singular national idiosyncrasy, arising from a mixture in their character of false shame, caution, and a dread of giving offence, has been undoubtedly cherished and fixed in a great measure by the influence of the local administration, the nature of which we shall soon describe. By reason of its vigilance, and the arbitrary power it is at liberty to exercise, there could scarcely take place in Scotland those public assemblies in the open air for political purposes, so often seen in England; neither could the same freedom of discussion, the same severe animadversions on the government, the same fearless system of dragging into light the erroneous practices of magistrates or judges, every day freely exercised in England by the public prints, be long practised in Scotland; at least, so has experience shewn. If the summary warrant of the Lord Advocate was not enforced to put a judicial stop to such discussions, the civic magistracy, if they acted ac-

according to former usages, would in all probability join secretly in harassing, if they could, all who had the evil fortune to be connected with the publication of sentiments inimical to the system they pursued. It is to this we have to attribute much of that dormancy of regard for the maintenance of political privileges so evidently connected with the Scottish character. Though often allowed as individuals to participate in the operations of government, in a national and collective sense they do not feel as if the Union had fully effected their amalgamation with the English. To this day they feel as if they were a distinct people, and foreigners to the supreme government. They seldom or never speak of *our* King, *our* Parliament, *our* troops, *our* navy, or *our* government. They in general mention them in the third person; and this is because they imagine they could not do otherwise with propriety, although by the Articles of Union, they would be fully entitled to use these phrases; and it is to this scarcely defined feeling that they are as much a subdued as a confederated people, that the Scotch often submit without a murmur to laws infringing on the treaty of 1707; indeed, reasoning from what they have already submitted to, they could, we think, with extremely little trouble be brought to see the piece-meal dismemberment of their separate local system, provided the church was not endangered, without breaking out into a tumult of honest indignation, or noticing the circumstance further than by tame paragraphs in the public journals, or a few equally timid remonstrative petitions to the Houses of Parliament. At present, notwithstanding of their strong love of nationality, they scarcely observe, that it has evidently for many years been the intention of the government to impair their separate institutions, and reduce the country to the character of an English province. It hardly requires to be noticed, that owing to the complete want of sympathy between the Scottish members of Parliament and the people, to whom they ought to be protectors, they do not feel inclined, in

opposition to the will of ministers, to retard voluntarily this march of Anglicism.

Although many improvements have been effected, it can admit of no question, that the civil liberties of Scotland are still of a much lower tone than those of England. We are aware that this will hardly be allowed by our countrymen, but a studious examination of the representative system, and some of those institutions immediately to be described, is only required to place it beyond the possibility of a doubt.

The Scotch, it may be said without partiality, in the same ratio, enjoy fully less freedom of action in religious matters than the English; a circumstance which will not have escaped the notice of all who are any way intimate with the manners of the two countries. Although the Kirk of Scotland has long since dropped all interference in the general affairs of the country, still it has left among the people a species of terror of its authority, which has not been meliorated by subsequent events. In some parts of the country its ministers still subject the inhabitants to a personal scrutiny of an inquisitorial nature, which is neither experienced, nor would be permitted by the English. Free religious discussion is likewise at a far lower ebb in Scotland than in England; and it is very seldom that writers can be found so daring as to attack boldly either the governmental or doctrinal positions taken up by the Kirk, or scrutinize severely the practices of its clergy. Not but that such might be done with perfect impunity; but the singular national idiosyncrasy above commented on hangs about the people in religious as well as civil matters, whereby very fallacious propositions have been suffered to remain unchallenged ever since the turbulence of Melville introduced the system of religion into Scotland which at present exists. While the Church of England in no case interferes with the domestic privacy of the people, and may be characterised as the most liberal communion in the great Christian family, it has for centuries been subjected to the most merciless and mali-

cious criticisms, without bestirring itself either to notice or punish those who were discontented with its government, or who endeavoured so openly to bring its canons into contempt. The calm dignified bearing of the Church of England in the midst of a thousand daily attacks, and the extreme *touchiness* of the Kirk of Scotland and its adherents, present a wide field for discussion, in comparing and judging of the degree of liberty of thought and action, separately enjoyed in the nineteenth century by the English and the Scotch. The elaboration of this interesting point is likewise left till the appropriate institution comes under review.

This peculiarity of sentiment in Scotland, springing from the national character of the people, which has been often misapprehended by historical writers, and partly from the effect of the national institutions, as well as the difficult junctures in which the country has occasionally been placed, subsisted with much greater force than at present, previous to the publication of the *Edinburgh Review*. This eminent political journal considerably heightened the tone of public speaking and writing on subjects connected with the supreme and local government; but although it exposed with daring temerity some of the mischiefs in the municipal institutions necessary to be corrected, it had little palpable effect on the country at large. Up till within the last thirteen or fourteen years, whatever might be the sentiments of individuals, the Scottish diurnal press lent no aid in the cause of reform. Except during the agitation caused by the French revolution, when one or two newspapers conducted on professedly democratic principles, suffered a short existence to suit the mania of the period, an opposition print was unknown. Observations tending to injure antiquated prejudices, or expose disagreeable truths on political topics, were rarely made, unless in a timorous manner, and it is to this time might be referred, with greater justice, the above comments on the interference of the civil authorities to quash animadversions opposed to their interests. The publication of the *Scotsman*, or

the first respectable and talented opposition print, in 1817, produced a perceptible alteration on that dormancy of feeling we allude to. While it was hailed with enthusiasm by those who adhered to whig principles, it was received by the moderate independent party as a gratifying commencement of a greater latitude in disquisition on every useful subject. Since this event, the novel spirit of enquiry and expression then introduced, has gradually spread over Scotland; yet it is observable, that even the most spirited editors are seldom the most successful, and that it is difficult for the press to persist in a course not warmly appreciated by the body of the people.

It is the opinion of those who have studied closely the past and the present character of Scottish political freedom, that no measure would be so effective in elevating it to that pitch, so observable in every "free-born Englishman," as an improvement primarily in the constitution of the burghs, and consequently in the system of parliamentary representation. Until a decided sympathetic principle be created and disseminated among the people, the magistracy, and the members for the burghs, and until some constitutional check be placed on the arbitrary powers of the local authorities, the liberty of the Scotch will continue, for a considerable period, it is feared, in that cramped condition we have pointed out.

THE LOCAL ADMINISTRATION IN SCOTLAND—
MUNICIPAL INSTITUTIONS.

———Remains of rude magnificence.

SCOTT.

Here is the scroll of every man's name, which is thought fit through all Athens to play in our interlude.

SHAKESPEARE.

HAD the Scotch at the Union been less tenacious of their own peculiar laws and local institutions, and suffered all or the most inessential distinctions to cease, the mutilated fragments of the old government would have been profitably removed; and the people, instead of seeing their old establishments melting away inch by inch as they are now doing, would have fallen under, not the yoke, as was then imagined, but the full influence of the British constitution, in so far as it is enjoyed by the English. This, however, not being done, it thence became in some measure necessary to institute, or at least to acquiesce in the establishment of an officer of the crown, who should exercise a slight supervisory authority over the inferior separate judicatories, and likewise serve as a channel through which the will of his Majesty's council could be communicated to this part of the nation. The only officer pertaining to the former system, who was left to exercise functions of this nature, was the Se-

cretary of State for Scotland ; but for some reasons which are now unknown, this officer, as we have said, was withdrawn about forty years after the Union, and the authority of the Secretary of State for the home department extended over Scotland. On the abolition of this useful office, it therefore became necessary on the part of the government to look about for some one in whom could be reposed a species of viceregal power. The minister who was pitched upon to exercise the duties of a local secretary, was the LORD ADVOCATE.

When we come to explain the peculiar system which is pursued in Scotland in criminal prosecutions, we shall mention at large the duties of this important functionary. We may here, however, proceed so far as to say, that, agreeable to the legal institutions of the country, no private prosecution is permissible in criminal processes ; it is this individual who in almost all cases of this nature assumes to himself the prerogative of bringing the offender to justice. Grand juries being likewise not considered essential in the just administration of the criminal law, it is the duty of this officer of the crown to prepare criminal indictments. In the execution of those conjoined powers, the Lord Advocate of Scotland has an authority almost unlimited, and greater than that of any functionary in the British empire.* He is not obliged to wait till a complaint is preferred against any individual before he brings him to trial. He has the liberty of seizing on bare suspicion or from caprice, any person residing in the country, without being necessitated to mention his informer, or to give the secret reasons for such arbitrary conduct ; and though obliged by the laws to bring prisoners to trial within a certain period, he can either set them free from jail previous to trial, or drop the prosecution entirely after the accused has been brought into court. After a verdict of " guilty " has been given by the assize, he can likewise restrict the judges to a sentence of a mitigated description. All

* Edinburgh Review, *passim*.

of which powers he possesses uncontrouled, except by the voice of the public, and can execute freely without being subject to a counter prosecution for damages where the accusation is groundless.

Singular as it may appear to those who consider arbitrary authority in most cases dangerous to freedom, there are not recorded many instances in Scottish history in which these powers of molestation have been decidedly prostituted. Indeed, such *now* is the force of public opinion, that it is impossible such could be practised with impunity; and were the Lord Advocate either to commence a prosecution obviously of an oppressive character, or to drop the prosecution of a malefactor already obnoxious to public infamy, except he were backed by strong political interest, he could not retain his situation any length of time; for he is always subject to an impeachment in the House of Commons, and to be overhauled by the Secretary of State. In all ordinary cases of robbery, murder, or any other felony, the alert movements of this fiscal officer have been indisputably worthy of the highest commendation. If in some instances he has failed to procure a conviction of desperate offenders, this has to be attributed more to the nature of the particular cases than to a lack of evidence through his means; and it is at least apparent that private prosecution would have been equally inefficacious. With reference, however, to those cases which have come in contact with the political principles of those in power, or the direct interests of the government, it is generally felt, that the Lord Advocate of Scotland has very frequently acted more zealously as the servant of the crown than as protector to the people. In the execution of his authority in times of political ferment, he has often done actions which would not have been tolerated a moment in England, where the liberties of the subject are more clearly defined; and yet which the Scotch had no power to withstand. Although it may be considered questionable whether these discretionary powers could be again used to an extent so injurious to the rights

of individuals, it is, we think, nevertheless, advisable that a constitutional and definite check should be instituted to restrain them within proper limits.

Such is the functionary on whom the guardianship of this northern portion of the empire was conferred, after the abolition of the office of the Scottish Secretary of State. By the absence of the court, and the relinquishment of the active duties of the other state officers, he has come to be, by implication rather than by any express warrant, the only visible protector of the local institutions. He is understood to be the applier of the laws; the adviser with the crown, and the supreme and inferior judges; the minister of the interior; the head of the police; the virtual commander of the regular and local troops in times of ferment; and the mainspring of the whole executive in the country: moreover, according to the definition of the duties of a Lord Advocate, given by one of these officers many years ago in the House of Commons, it is his high and important duty to quell rebellious or seditious meetings; to preserve the peace of this part of his Majesty's dominions at all hazards; and to have an ever sleepless and watchful eye over all popular movements or secret measures inimical to the preservation of the laws, the religion, or the morality of the kingdom. The warrants of the Lord Advocate are supreme over the whole of Scotland, and supersede every species of criminal diligence. But although he may quash criminal process in any of its early stages, he possesses no dispensatory power of pardoning criminals after condemnation, or even of granting a respite from the slightest punishment; all his authority ceasing as soon as judgment is pronounced.

Notwithstanding of those extensive arbitrary powers, which seem to raise the Lord Advocate of Scotland considerably above the other personages connected with the administration of civil and criminal jurisprudence, it may be mentioned, that he is invested with no outward shew of superiority. While he acts the part of a Lord Lieutenant of Scotland, unlike the Viceroy of Ireland, or the Governor of a British colony,

he passes his life in comparative privacy, and only officially comes into public view on the occurrence of criminal trials. The salary which he is allowed is even less than a moiety of that which is paid to the highest criminal judge; but as he is permitted to retain his private profession as an advocate at the bar of the supreme courts, he may thereby double his fixed income. The Lord Advocate is always chosen from the body of barristers, designated the Faculty of Advocates, among whom he must have been of a certain number of years standing. Besides being thus by profession a gentleman and a scholar, he is in general chosen from some of the Scottish families of rank and influence; and is therefore considered to be removed from the temptation of stooping to the adoption of petty measures of a personal or vindictive character.* That he should possess, above all subsidiary attributes, a strong natural understanding, and an appreciation of human character, with a perfect knowledge of the laws, and a firm but finely-tempered disposition, will be readily supposed. It is hence to be anticipated, that, in future, talents of this description will be kept more in view in the nomination of this officer than mere family connexion.

The Lord Advocate is not by any means entitled, from the situation which he holds, to have a seat in either the House of Lords or Commons; but it is deemed absolutely necessary that he should become a member of the latter body at all risks; because there frequently exists a necessity of calling upon him for explanations relative to the separate Scottish establishment, or with regard to the sentiments of the country upon the enactment of some new law. In these respects he answers the purpose of a representative from the legal authorities in Scotland. Should he there-

* The present Lord Advocate, Sir William Rae of St Catherine's, Baronet, cannot be charged with a vitiation of the extraordinary functions of his office. He has, on the contrary, been ever foremost in endeavours for the reform and improvement of the national jurisprudence, and in his judicial character has in all instances leaned to the side of mercy.

fore be unsuccessful as a candidate for one or other of the Scottish burghs,—a circumstance which, on account of political differences, has already occurred—we believe it is imperative on the part of the ministry to find him a seat, as a representative of one of those convenient English burghs which they always have at their command.

To lighten the burden of his fiscal duties, the Lord Advocate can impart a portion of his powers to others, for whom he becomes responsible. In this way there are generally three or four “Advocates Depute,” who act in the absence of their superior, assist him while at home, or proceed in the train of the Circuit Courts. They are usually talented young advocates rising in their profession.

While the Lord Advocate, with the occasional concurrence in emergencies of some of the supreme court, serves as the organ of the supreme government, and directs the inferior details in matters connected with the state, the country is governed in its minute divisions by a class of functionaries differing in many respects from those found in England.

The administration of every county is entrusted to certain officers, appointed by the crown, or through its influence, as follows:—The functionary who is found in the Almanack to be placed at the head of the county rolls of freeholders, is designated the Lord Lieutenant. This is the military commander of the district, and in his duties corresponds with the officer of that name in England, and the Governor of sections in Ireland. As lieutenant of his Majesty, who is assumed to be the Generalissimo of Great Britain, he is placed over every shire as his direct deputy. His express duty consists in protecting that part of the kingdom from civil war and foreign invasion. At the command of the Secretary of State, he causes lists to be drawn up of all able-bodied men of particular qualifications, who are capable of bearing arms. He constructs regiments of volunteers, local militia, and yeomanry cavalry; negotiates their pay, clothing, and stores; and

calls them up when he sees sufficient cause, or when he is desired by the civil magistrate.

In consequence of the quiet state of Scotland, the duties of Lord Lieutenant are almost nominal; moreover, he possesses a deputy or Vice Lieutenant, who transacts the heavy part of the business. In most cases he is a nobleman, and his deputy is a baronet or independent country gentleman. In the county of Mid-Lothian, which contains the capital and some populous districts, there are a Lord Lieutenant, two Vice Lieutenants, and six Deputy Lieutenants, all of whom are appointed to departments and sub-divisions of the county.

These officers take precedence at all county meetings, inasmuch as they are considered as belonging to the military profession: they have a particular uniform, and are permitted by the Lord Lyon to place cockades in the hats of their retainers. They are admissible into the United Service clubs of London and Edinburgh. The Lord Provost of Edinburgh, being the Lord Lieutenant of the city, is entitled to the same privileges.

The person in whom is reposed the greatest degree of power in the Scotch counties is the Sheriff, an officer whose duties are of a more extensive nature than they are in England. In that country there are High Sheriffs and Under Sheriffs, but the first is almost an honorary title, and the other is understood to be an officer who, though having a species of arbitrary controul over a county, is more the servant of the justices than a judge in his own right.

The Sovereign in person is by a legal fiction presumed to be the High Sheriff of the counties in Scotland, and devolving his power on a subaltern or sheriff-depute. This is nevertheless not invariably the case, for in a few of the shires, there are noblemen who enjoy the office of High Sheriff by an hereditary right, the names of whom will be found at the head of the county rolls in the Almanack. However, in whomsoever is the dignity of the office, practically they take no active management of the civil or criminal concerns of

the county. The real sheriff is therefore the sheriff-depute.

The duties of this officer of the government are of great antiquity, appearing to be coeval with the subdivision of the kingdom into shires, as is signified by his title, which means the *shire-reave*, or governor of a shire, or piece of ground cut off. In Scotland there are no *borough-reaves*.

The office of a sheriff-depute in this country is of a very complicated description; being both a judge in himself, and the servant of higher judges, at one and the same time. His authority extends likewise over both civil and criminal matters. In his civil jurisdiction he can hold courts for the hearing and determining of actions of debt, bond, contract, or other personal obligations; and settle disputes relative to moveable property, whatever be the amount; and in the exercise of this authority, he stands in the place of the Quarter Sessions in England. His judgments are reversible by the Supreme Courts. In his criminal jurisdiction, he can try all crimes except those which infer death or banishment; although at one time he possessed these prerogatives. Practically his criminal authority extends over all cases of theft, fraud, assault, rioting, shop-lifting, robbery from dwelling-houses, when force is not employed, or any personal injury. He can punish by fine, imprisonment for twelve months, or deportation from the bounds of the county. He is likewise commissary or consistory judge within his district, a power exercised by the bishops in England.

He is further bound to pursue and seize all rebels, murderers, felons, or other delinquents, and commit them to jail for trial at a higher tribunal. His warrants extend only to the verge of his own shire, and in order to be valued in any other county, they must be backed by the sheriff of that place. He has the charge of taking precognitions, or the examinations in writing of criminals; is answerable for the accuracy of indictments served on prisoners; has the charge of what is termed in Scotland the *Porteous roll*, or catalogue of

criminals brought before the Circuit Courts; and is bound to attend on the judges to answer to any complaints that may be made against him there. In the exercise of these multifarious functions, the Scottish Sheriffs have a vast deal of discretionary power, not very well defined; for which reason they require to be gentlemen of very extensive knowledge, and moderate sentiments.

In his ministerial capacity, the sheriff-depute is the servant of the Supreme Courts, and of the State officers. He must serve the summons, arrest, and imprison; call juries, and see executions put in force, though it extend to death, even should he have to do it by his own hands. He is also subsidiary to the Court of Exchequer, and is a species of King's Remembrancer within the limits of his jurisdiction. In this capacity he takes charge of all estates, duties, fines, escheats, strays, or wrecks, which by right belong to the crown. In virtue of warrants from the crown office, he issues writs for the election of members of parliament; watches over the proceedings, and makes his proper returns.

The sheriff-depute is, in fine, a very important functionary within his district. He is always chosen from among the Faculty of Advocates, of whom he must be of four years standing, whereby he is generally a man of respectable professional qualifications, and of a finished legal education. In strictness he is required to reside four months every year at least upon his sheriffdom; but this we believe is very seldom the case, for the salary which he is allowed being inadequate to the support of an establishment of the first, or even of a secondary rank in the county, he is necessitated to reside almost constantly in Edinburgh, where he may pursue his lucrative professional career at the bar. He therefore mostly visits his sheriffdom only now and then in the course of the recesses of the law courts. This is felt in many parts of the country to be a serious evil, on account of the accumulation of

litigations which must await his leisure for determination.

The more ordinary part of the business of the Scottish sheriffs is done by a substitute, who is bound to reside constantly on the spot. It is he who expedes all the necessary warrants, preserves the peace of the county, and leaves little to be done by the depute beyond the settlement of the intricate law cases. These gentlemen must likewise have been advocates, or entered attornies, or solicitors before the inferior courts of at least three years' practice. They must also be certified by the Lord President, and Lord Justice Clerk, to be duly qualified. In general, they are men of very respectable acquirements. Both the depute and the substitute preserve their situations for life, or during good behaviour.

We have heard it reported, that some alteration is contemplated with regard to the office of sheriff in Scotland. It is extremely obvious that the present mode of conducting matters is not the best which could be devised. By raising the salaries, and enforcing a closer residence of the depute, much benefit would accrue to the country.

Some of the Scottish counties are called stewartries, with Steward Deputes and Substitutes. This difference of the name arises from the circumstance of those parts of the kingdom being originally royal property, and governed by King's Stewards, instead of Earls, as the other shires commonly were at first. The only difference between a sheriffdom and a stewartry in the present day, is in name.

In France there is a state functionary with the title of *Procureur du Roi*, whose duties very much resemble those of an officer of government found in Scotland. This personage is here designated the Procurator Fiscal, or Procurator to the crown—a title derived from the name of an officer under the Roman Emperors, who was sometimes called *Procurator Cæsaris*. The duties of a Scottish Procurator Fiscal are intimately connected with the ancient constitution of the

kingdom, where there was much left to the management of arbitrary officials. These duties are nevertheless of the most useful nature, and so beneficial are they for the furtherance of public justice, that we are somewhat puzzled in comprehending how the general affairs of the other portions of the British Empire are conducted, without the existence of such an officer.

We have said that it is the duty of every sheriff to pursue and seize criminals attempting to elude punishment; but in this branch of his administration, he is powerfully assisted by the Fiscal, an indispensable adjunct to the local government of every county, of every royal burgh, and of every criminal court.

The Procurator Fiscal is a person who may best be described as a little Lord Advocate within his bounds. His task, which is naturally invidious if he pursue it conscientiously, leads him to be ever on the watch to detect offenders. He must be an individual, who, moving in the middle ranks of society, knows every body, and every body's business; and while the breath of suspicion has scarcely been emitted to sully the reputation of a victim, he must be ready to pounce upon his unsuspecting prey: He is the terrier of the Scotch criminal law, and the jackall of Justice. In order to be really useful to the community, he must possess the finest tact in worming out intelligence regarding supposed crimes, for which reason he must be in the enjoyment of a moral scent, sharpened in the highest degree by shrewd natural common sense and legal education. No sooner is there raised in country town, city, or village, a whisper respecting the commission of a misdemeanour of the lightest nature, or a crime of the deepest dye, than it is the bounden duty of this useful officer to institute a search, or raise a hue and cry after the delinquent. When a burglary, a robbery, or a murder has been committed, on the instant that the intelligence transpires, or is communicated to him, he must send out scouts in all directions to ferret out the guilty persons; and as soon as he has fastened

upon them, it is his immediate duty to bring them before his master the sheriff, or the magistrates. His task does not, however, terminate here. Throughout the whole criminal investigation and subsequent trial, he, or the Supreme Procurator Fiscal, the Lord Advocate, to whom as the case may be, he relinquishes his powers, stands in the place of the person or persons who have sustained the injury, and in his own name, as substituted for them, carries forward the prosecution at the expence of the crown.

In our detail regarding the mode of criminal prosecution in Scotland, we shall more fully explain the peculiar duties of this active officer, by whose exertions the most happy results have been effected in society. From what we have here narrated, it is possible that strangers may be led to suppose, that the possession of such inquisitorial powers would be injurious to the peace of the community, as well as be the means of subjecting the possessor to individual reprobation. But this, we are happy to say, is far from being the case. The Fiscal is generally an attorney or writer, and is placed on a parity of rank with the sheriff-substitute; being hence removed from the desire to institute trifling or vexatious proceedings, from a vindictive motive. Indeed, were he to do so by commencing a false or improbable accusation, there would be nothing which could screen him from the contempt and the degradation which he merited. Thus the Fiscal is always one of the most respectable members of Scottish society. The institution of this very useful office in Ireland, in place of the common mode there practised of permitting private prosecution, which is too often vitiated, we think, could hardly fail to be attended with the very best effects in that distracted country.

As there is no coroner or "searcher" in Scotland, the duties of these officials fall to the lot of the Fiscal. It is legally his duty to take cognizance of sudden or suspicious death; nevertheless, and we say it advisedly—he in no instance interferes—not even in

the case of supposed suicide—except there be raised a public scandal. Although, in cases of this nature, the Fiscal is, in reality, the only officer in Scotland whose duty it is to examine corpses, yet, if there be no outward suspicion of murder having been committed, he is not bound to give any attention to the circumstance. This may appear to be a laxity on the part of the national magistracy; still we are convinced that it leads to no practical evil, and is highly complimentary to the habits of the people. The visit of a coroner, a searcher, or any other officer, to the house of any person in this country wherein had died a relative, would be felt as an intolerable nuisance, if not a flagrant outrage on the feelings of the afflicted family. The institution of a coroner's jury would hence meet with warm opposition from the Scotch, and even if it were put in operation, as some have not hesitated to say it should be, it is extremely doubtful if it would be of the least advantage in arresting those murders, which under the very best government will occasionally take place in secret.

The next class of county magistrates falling to be noticed, are the Scottish Justices of the Peace, whose duties and qualifications differ somewhat from those found in England and Ireland.

In England Justices of the Peace have existed from the days of Edward the Third, who, at the usurpation of his father's throne, when the country was in danger of going into a ferment and rebellion, created officers of this nature to preserve the peace of the country. In Scotland their institution is of a more recent date, the first Justices having been appointed by James the Sixth about the period of his accession to the throne of England, after many previous attempts to introduce the system had been frustrated by the opposition of the hereditary jurisdictions, and by the intractable spirit of the nation at large. Up to the reign of Queen Anne, the Scottish Justices differed considerably in their powers from their brethren in England; but by

an Act of Parliament in the reign of that princess, they were more nearly assimilated.

They receive a commission from the sovereign, who is considered the chief conservator of the peace, passed under the great seal, which empowers them "to inquire the truth, according to the law and custom of the land, regarding all manner of felonies, of capital crimes, poisonings, *enchancements*, *sorceries*, *arts*, *magic*, trespasses, forestallings, regratings, engrossings, and extortions whatsoever, and of all and singular other crimes and offences."

In respect of criminal jurisdiction, the justices are confined strictly to the simple preservation of peace and quietness within their bounds, and enjoined in the case of higher crimes, to hand over the offender to the sheriff. Should they exercise this authority harshly, or with malice, they are amenable to an action of damages in the supreme civil courts, and punishment by the High Court of Justiciary; but in this country, it very rarely occurs that a justice renders himself liable to a *premunire*.

In their civil jurisdiction, they are competent to try all cases for the making effectual any demand not exceeding £. 5, as we shall shortly more fully explain. In the country districts they are found to be very useful in the suppression of poaching, illicit trade, and in determining disputes between dealers and the boards of customs and excise. In Edinburgh, and other cities, there are a number of merchants and other gentlemen "in the commission," who are exceedingly useful in taking oaths of verity, and expediting affairs of a similar nature. They seldom interfere in a criminal capacity. The powers of justices extend only over the county in which they are situated.

The Scotch Justices of the Peace are empowered by Act of Parliament to meet four times every year at the county-town, where they can review and alter the judgments of the single justices. Here quarter-sessions, as they are called in the Almanack, bear no resemblance to the English courts of the same name.

They take place on the first Tuesday of May, August, and March, and the last Tuesday of October, with a power of adjournment.

While in England and Ireland particular qualifications are necessary to enable a person to accept the office of justice, in this country there are no limitations with regard to rank or fortune, any intelligent individual being eligible. They are notwithstanding always gentlemen in easy circumstances, who have time to spare on their official duties. All that is strictly required on induction, is the swearing of the usual oaths of allegiance, &c. There is one peculiarity connected with the character of Scotch justices worthy of notice. On account of the number of resident gentry in the country, there will scarcely be found any of the justices belonging to the clerical profession. Where there are such, it is only in very deserted situations. This is not alone beneficial to the dispensation of impartial justice; it prevents the occurrence of quarrels between clergymen and their flocks, which ever must be the case in those places where the ministers of religion are at the same time the ministers of civil and criminal jurisprudence.*

Not as coming under the head of judicial characters, but still as exercising considerable authority over the affairs of the separate counties in Scotland, we have to bring under the notice of strangers, a class of functionaries called commissioners of supply. These are certain county gentlemen, generally on the roll of freeholders, whose duties are of a double nature, consisting of a superintendence of the collection of the revenue or supply to his Majesty, and the supervision of

* In England, where many of the clergy are justices of the peace, the church suffers very severely. We remember of once forming part of a congregation of *two* individuals in a parish church in one of the most populous rural counties. On expressing our surprise at the *thinness* of the congregation, it was explained that the incumbent was a Justice of Peace, and had estranged the good will of his parishioners by prosecuting poachers! Luckily for the Kirk of Scotland nothing of this kind happens in this country.

the general highways, bridges, and fences. That branch of the public revenue which the commissioners are especially called on to superintend, is the land-tax fixed on Scotland at the Union. In the raising of the sum thus allocated, every county has fixed upon it a certain quota, which is again split and laid upon certain estates and houses. It may, however, be bought up by landlords from the government at so many years purchase, and then their properties are said to be *redeemed*, and rendered of course more valuable.

As every particle of unredeemed property in the country is subject to this burden, were there to be no alteration in the proprietaries of the land, the raising of this tax would be attended with no more difficulty than the gathering of the money. But property does not only exchange possessors, but fluctuates in quantity, and assumes every year new boundaries; there exists therefore a necessity of spreading the impost thinner and thinner over the whole shire. This is the duty of the commissioners of supply, who regulate the tax in the landward districts; in royal burghs, the same office is performed by men appointed by the magistracy, designated *stent-masters*, who apportion this and every other impost within the royalty. It is the tenants on whom this land-tax is chargeable. In the exercise of their powers, the commissioners are liable to the review of the Court of Session.

In their capacity of surveyors of highways and thoroughfares, the duties of the commissioners are of that description which, in many parts of England, are exercised by an exceedingly unwieldy complication of officers from the commissioners of sewers down to the parish officers. We would here wish it to be understood, that in Scotland there are no districts knit together under the name of townships, and that in the parishes there is necessarily no board of officers for the special superintendence of the roads, or the preservation of order in other respects. The whole of the roads of every county are placed under the cognizance of the commissioners of supply, except where they are spe-

cially managed by Trustees under distinct Acts of Parliament. By means of this extensive system the thoroughfares are kept in a uniform state of repair, and all the parishes are taxed alike.

In the execution of these complex duties, the commissioners are assisted by the Justices of Peace. They have two meetings annually. At the first the land-tax is regulated; the other takes place on the day of the Michaelmas head court. They are empowered to levy "road money" from householders, and to call up the farmers a certain number of days every year, for the repair of the highways and byeways. In general this statute labour is commuted into a money payment. The expense of the thoroughfares is further defrayed by the erection of toll bars, under their auspices. When husbands are balloted into the militia, the commissioners have to settle the aliment payable to their families.

The qualification necessary to constitute a commissioner, is the possession of heritable property to the value of L. 100 Scots, or L. 8 : 6 : 8, according to the old valuation. Before admission the candidate must take the usual oaths to government. The commissioners of supply for the county of Edinburgh only, are mentioned in the Almanacks.

Having thus presented an outline of the scattered authorities in the country districts of Scotland, it is now necessary to give the stranger some general idea of another and quite a distinct description of local jurisdictions, namely the magistracy of royal burghs.

In the course of our elucidatory remarks upon the institutions of Scotland, we have had occasion to hold up with pride the existence of certain officers, on account of the efficiency of their administration, and their general usefulness. It is only to be desired that we could rank the institution now coming under notice in the list of those which do honour to the genius of the nation. Scrupulous impartiality, however, compels us to mention, that the system of local government, as practised in the Scottish royal burghs, is perhaps the

worst constituted of all branches of the legislature throughout the British empire. From its nature it is one that, while mostly all others under the controul of his Majesty have been going on in improvement towards perfection, and gradually adapting themselves to the necessities and feelings of the age, remains in its pristine uncouthness, and may be said to be assuredly sinking under the increasing contempt of every new generation.

It has been said, that there are sixty-six royal burghs in Scotland returning members to Parliament; but it must be comprehended that these by no means form the bulk of the Scottish towns; for upon an average there are precisely two for every county, which besides contain many thriving populous towns and villages, possessing no elective franchise, or any privilege whatever. The royal burghs of Scotland are, in many instances, those towns which, having existed longest, and outlived the moving causes of their creation, stand as monuments to the passing traveller of the old and feeble constitution of the nation. Being placed under the controul of a cramping and searing authority, unchanging in its features, they remain to this hour—except where some great energetic and neutral principle has been brought into active operation—in nearly the same stagnating and unimproved condition which distinguished them fifty, an hundred, or five hundred years since. Situated in immediate contiguity with other prosperous towns, divested of the same peculiarities of internal government, they have been left far behind in the race of common improvement, and have apparently settled themselves down in a hopeless state of decay.

In travelling athwart this northern kingdom, the stranger will hardly fail to be amused in marking the distinctive peculiarities of many of those antiquely-fashioned country towns. They are easily to be distinguished by their long, and almost empty single street; their total absence of trade and commercial bustle; the stealthy and demure pace of their few inhabitants; their startling silence; the continual pre-

sence on the causeway of two or three of the *conscripti patres* of the place, in close confidential discussion upon "town matters;" by a fragile and impure gaol; and, if the place be maritime, by the choaked up harbour, full of sludge and decayed boats, and altogether oblivious of "shipping" since about the period of the Darien expedition; by the dilapidated pier, patched, mended, and half washed away, yet forming a prolific source of employment to a "trades counsellor;" and above all, by the agonizing proximity of some vulgarly wealthy "port," blessed by the absence of all civic government, cruelly thriving on the other's ruins, by its foolish unconstitutional admission of vessels at the natural and proper rates. Such the stranger will find to be the prevailing insignia of a great proportion of the Scottish royal burghs.

These curious old towns were, for the most part, erected into royal burghs by the kings of Scotland, several centuries prior to the Union; but were, with few exceptions, subjected to the revision of the last of the Jameses, who, for many years previous to his accession to the English crown, appears to have occupied a great part of his time in the framing of improved constitutions to his "faithful boroughs." In this interesting occupation, James fell upon the ingenious device of rendering the *setts*, or constitutions, as complicated and incomprehensible as it was possible to make them; conceiving, possibly, that, the more intricate and mysterious the *setts* were made, they had the greater chance of being compactly constructed, and of being less subject to go wrong in the working. The king's propensity to meddling, therefore, though well meant, has sadly confused the *setts* of the Scottish burghs, and rendered them exceedingly difficult of comprehension.

The principal reasons adduced for the conveyance of such extensive privileges to the royal burghs, lay in the desire of the king to raise up a distinct class of society from among the people, who should stand by him in his disputes with the rude aristocracy of the country, and assist him in his reiterated struggles on

the borders. Being mostly created for these objects, or for some other similar purpose, and having undergone a levelling from James, their constitutions, though in no two cases, we believe, exactly alike, bear a very intimate resemblance to each other. They each possess a board of magistrates, with a council of burgesses, and differ only in regard to the precise number of these officials, in their designations, and in the duration of their functions. In one respect they all agree, namely, in choosing their own successors. The following may be assumed as engrossing the distinguishing characteristics of the Scotch burgh system.

In every town, a number of the inhabitants are called freemen or burgesses, and form the basework on which the superstructure of the magistracy is reared. In virtue of this qualification, obtained by payment of a fixed sum, by having served an apprenticeship to certain crafts, by propinquity to former burgesses, or by presentation, the possessor is entitled to carry on trade within the precincts, and eligible as a councillor or magistrate. The price of the diploma or burgess ticket varies according to circumstances. In some towns it may be obtained almost gratuitously. In Edinburgh, it costs a stranger L. 16, 9s. if in right of father or wife L. 6 : 5 : 6, and if in right of apprenticeship to a freeman L. 8, exclusive of fee for recording indenture.

The next class of tradesmen within the town, is the guildry. This is a certain confederated body of burgesses, composed of merchants and artizans, endowed by their charter with very important powers, some of which, when judiciously exercised, are decidedly of a beneficial nature. They are presided over by an officer with the title of the Dean of Guild. In Edinburgh this officer is distinguished by the title of Lord Dean of Guild, who, along with two merchants and three trades councillors, form a court empowered with an authority to prohibit persons who are not burgesses from carrying on business until they enter themselves as such. It is further the important prerogative of the court to oblige the plans and elevations of proposed

buildings, within their jurisdiction, to be laid before them for inspection, and the erections cannot be made without their sanction ; to inspect all tenements within the royalty supposed to be dangerous from age, and all proposed alterations in the fabric of houses ; to protect the public ways from private encroachments ; and to try cases by juries, or otherwise, upon all real or alleged nuisances. These duties are commonly executed with much praise-worthy discrimination, and by reason of the diligence of this court, the public are protected at little expence from many evils, to which, without its aid, they would be otherwise subjected. This branch of the Scotch civic administration might be profitably introduced into the management of English towns, where the parish officers are not so well calculated to exercise the duties of inspectors as regularly-bred tradesmen certainly are. The Dean of Guild has likewise the inspection of weights and measures. He has, moreover, a seat in the council, and a right of holding courts of civil jurisprudence for determining claims to any amount, but this privilege is now in desuetude. To become a guild-brother in Edinburgh, the same sums are charged as in the case of burgesses ; but to carry on trade, or even to qualify for a magistrate, the burgess ticket is only requisite. The only privileges consequent on becoming a guild-brother are exemptions from part of the shore dues at Leith ; a qualification to be a member of the merchant company, shortly to be noticed ; and a right to have his children admitted into the public hospitals. The privileges and constitution of the guildry vary in different towns.

The last description of privileged persons within every royal burgh, are the incorporated trades, from whose constitution there emanates the most noxious influence. The number of these incorporations varies in every town, from one to fourteen separate bodies. Each is possessed of a distinct charter, called " the seal of cause," conveying the sole right to members of working at their professions within the burgh, and of prohibiting unincorporated persons from exer-

cising their trades within the bounds of the royalty. In order to become a member of one of these incorporations, it is customary, in Scotland, to serve seven years as an apprentice. The right, however, can also be obtained by hereditary acquisition under the imposition of a small fine, proportioned to the degree of propinquity to the deceased incumbent. It is likewise made the object of sale, when the price is regulated by the supposed value of the privilege. When the charge is high, amounting to upwards of an hundred pounds, a plan has been resorted to of taking a species of annual rent for the liberty of working at a profession, which in some incorporations is about L. 10 Sterling, varying according to the extent of business carried on, as well as the nature of the profession.

The original cause of the institution of corporated bodies of tradesmen, was the creation of warlike bands for defence of the royal prerogative; a remuneration for burgh services, such as watching and warding; the encouragement of manufactures; and the protection of the public from articles made by ill-educated artizans. But the first of these objects is now entirely forgotten, and the latter, in consequence of the public being sufficient judges of all kinds of work, has ceased to be of any import. As their members have the chartered right of supplying the citizens with certain articles, this monopoly injures the spirit of improvement, and is otherwise mischievous in its effect. It is nevertheless to be remarked, that in cities which have increased in magnitude, these immunities are now of little avail, inasmuch as the corporations are almost completely circumvented by tradesmen without the liberties. The central parts of these towns are abandoned principally to the lower classes, and they are left in the possession of privileges scarcely worthy of being exercised.*

* The metropolitan incorporations are still excessively strict. They have been left the inheritance of that part of the city, now shunned as a residence by all but the lowest and a few of the middle classes; and on this account they are anxious to make

While these exclusive privileges of the incorporated crafts have suffered from a variety of causes, their members only adhere together for mutual support in old age; for the granting of aid to orphans and widows; and as political clubs, to furnish candidates for the town-council. In the former of these capacities, the incorporations of Edinburgh are generally in a very flourishing condition, and should any reformation of their privileges be contemplated, it is hoped that this part of their chartered rights will not be molested.

Each of these Scottish incorporations has a right to elect office-bearers, and enact bye-laws, which are binding, agreeable to the king's patent, act of parliament, or seal of cause. The president or principal office-bearer of each is designated "the Deacon" of the craft, a title having now no reference to the clerical profession. The deacons of the different incorporations, form a convention called "the convenery," and one of them is chosen Deacon Convener, who is generally a member of the ordinary council, and therefore the office is one of ambitious attainment. This committee of the crafts meets to regulate matters which affect the interests of the whole.

The burgesses, guild brethren, and incorporated tradesmen, are all linked together by the charter of the

the most of their chartered rights. No carpenter or other tradesman is permitted to be called into the ancient city to do even the smallest piece of work, without paying a fine in proportion to the extent of "the job." Shoes are allowed to be introduced for sale on market and fair days, generally after a certain hour. In some places the hour is one o'clock, which is marked by the ringing of what is called "the shoemakers' bell." At one time the corporation of shoemakers of Edinburgh, strictly prohibited the introduction of shoes into the town, except on market days, from the little burgh of barony of Portsburgh, unless the unfreed artizans of that place conveyed them in to their customers *hid beneath their aprons*. Prior to the Reformation, each of the incorporations had an altar in the Church of St Giles, dedicated to the service of their patron saint, for the expense of which the members were taxed.

burgh, and form the raw militia from whence the town council and magistrates are annually or biennially draughted. The mode of election of these persons in Edinburgh, and most of the burghs, is after this manner. Each of the incorporations chooses six members from its body, any one of whom is considered worthy of being nominated. These lists of six, being then handed to the magistracy and town-council for the time existent, is by them reduced one half, and remitted back to the corporated bodies from whom they were sent. The list of six is technically called the *long leet*, and the mutilated list of three receives the name of the *short leet*. This process is called "shortening the leets." On the short leet coming back to the corporation, one of the three is chosen as delegate. These delegates, along with a portion of the old council, who do not retire, form the new council, from which the magistrates are elected. In some places the magistrates are nominated by the members of the new council; at others they are elected by the council going out; and in a few towns they are appointed partly by both; but in whichever way it is, the whole transaction is managed by themselves, and the public have no check on their proceedings.

The number of magistrates varies in different towns. In some places there are four bailies, and no provost. In others there is a provost, with two or more bailies, and in almost each there is a slight difference. The Scottish title of *provost* agrees with that of mayor in England, and *bailie* with that of alderman. The chief magistrates of Edinburgh, and Glasgow, and Perth, are designated by the title of "the right honourable."*

* The two latter have it, we believe, only by courtesy. As this point has been occasionally misunderstood, it may be mentioned, that Fountainhall, in his Diary, alludes to the circumstance in these words: "Sir Alexander Ramsay got a letter from the king, [Charles II.] in 1667, that he, as provost of Edinburgh, should have the same precedence that the mayor of London had, and that no other provost should be called Lord Provost but he." *Diary*, p. 159. Previous to the Union, the Lord Pro-

When sitting in full conclave, the town-council and magistracy of Scottish burghs amount frequently to upwards of thirty members ; besides extra-judicial officers nominated by them as treasurers, clerks, procurators fiscal, keepers of records, assessors, inspectors of public works, and other accessaries. In the Almanack a complete list is furnished of the office-bearers connected with the city of Edinburgh, which presents a more extensive scale of arrangement than that pertaining to the smaller burghs. The elections of these civic functionaries, and all the various changes affecting the deaconry and guildry, take place at or near Michaelmas ; but for many months previous, private arrangements are made, and expectations excited regarding the coming alterations. After the elections, the old and new deacons generally dine together. The new members are much interested in having a number of adherents on these occasions, and such meetings are usually termed on that account the *shewing of faces*.

The authority of the burgh magistracy is of three kinds, judicial, ministerial, and legislative. They are sheriffs within their bounds, and are empowered to preserve the peace upon the streets, by seizing offenders, and punishing them by imprisonment, fine, or banishment from the place. They can judge in cases of petty felony, or any subordinate crime. The magistrates of some of the royal burghs, and especially those of Stirling, Perth, and Edinburgh, have what is termed a jurisdiction in *blood wits*. This signifies a right of trying cases in which blood is spilled or murder committed within the royalty, and of adjudging the delinquents to death for the crime. This part of their practice is however a dead letter in the jurisprudence of the country ; all misdeameanours of such an atrocious

vost of Edinburgh had a seat in the Scottish Estates. For a minute account of the complex burgh system of Edinburgh, and much collateral information of an interesting nature, we refer our readers to a recently published work, entitled "the Constitution of the City of Edinburgh."

character being submitted to the Courts of Justiciary.* Acting under this or some other similar privileges, the magistrates of Edinburgh a few years since revived a criminal court for the trial of minor felonies, chiefly with a view to relieve the High Court of Justiciary of its press of this description of business. They now, as occasion requires, hold an assize in one of the rooms of the Town House. In this criminal court they act with extreme caution, employing advocates as their assessors, to examine evidence, and explain the legal technicalities. These advocates, who are virtually the holders of the court, sum up the evidence—a task which can only be done by a finished lawyer—address the jury of citizens, and dictate the sentence. Indeed, the only duty performed by the magistrates on the bench, is to read the sentence of the court, and give it effect by their signature. The cases coming before this civic tribunal relate ordinarily to petty larcenies. We understand that latterly juries have in most cases been discontinued; it having been found that the magistrates can competently judge and decide without the aid of an assize! As this, we have been told, arises from the expense consequent on jury trials, the magistrates cannot be blamed for a procedure fraught with such dangerous consequences. The measure at once shews the necessity for a re-modelling of the civic jurisdictions.

The magistrates of all the royal burghs have very

* We never heard of above two or three cases in which the magistrates of the above burghs put their authority in force to the extent of a capital punishment. One of these was the celebrated case of Chislie of Dalry,—a gentleman who was summarily tried, tortured, condemned, and executed by the magistrates of Edinburgh, for the assassination of the President (Lockhart) of the Court of Session on the public street. The murder was perpetrated Sunday, March 31, 1689, and bore a close resemblance to the case of Bellingham and Mr Perceval. Another was that of a tutor who murdered his pupil in revenge for a supposed indignity, on a spot of ground now occupied by a narrow lane leading from the back of the General Register House, called Gabriel's Road. The deed was seen from the old town, and the murderer was seized and executed almost immediately. A third happened at Perth.

considerable powers as judges in civil causes ; in virtue of which they can either hold small courts for the summary determination of claims not above L.5 in value, a privilege which they possess by being *ex officio* in the commission of the peace, or courts of record, where claims to any extent may be discussed. From the influence of certain causes incidental to the diffusion of justices of peace, and the belief that the sheriff's court and court of session are better adapted for the dispensation of justice, the judicial powers of the magistracy in civil jurisprudence, except in towns of remote situation, are almost extinct. In Edinburgh, the judicial powers of the magistrates are still in daily use. In reality their duties are a drudgery, and their office is the reverse of sinecural. It cannot be laid to the charge of the Scotch magistrates, that they ever knowingly commit injustice in their decisions ; but to give them the exercise of judicial functions, is to call upon them to perform too much. They have received no legal education ; and it is now fully comprehended that an unpaid magistracy, formed of merchants and tradesmen, cannot be placed in competition with the services of paid professional gentlemen.

The ministerial duties of the magistrates are similar to those of the sheriffs. They are bound to put in execution the warrants of the Supreme Courts, and writs issuing from the crown office.

If many of the important privileges of the Scottish magistracy have been in the course of time gliding from their grasp, they are amply indemnified for the neglect they thereby suffer by falling back on the next branch of their administration, which is more pleasing, and a great deal more profitable. This consists of their powers of enacting regulations for the government of the burghs, and of raising annual levies, founded on acts of parliament, from the inhabitants to support the expenditure. Their accounts may be checked by the committee of burgesses, who are appointed to audit their expenditure ; but this in common practice is of little essential service, for these burgesses may be

expectants of office; and whether from this or other causes, they very rarely demur at the charges, however preposterous they may be. By this means the magistrates and town-councils have the liberty of directing the funds in any way they see proper, and of borrowing sums of money on the credit of the town to any amount, in a very unqualified manner. Every year a summary of the state of the funds of the city of Edinburgh is published for the use of the citizens; and the books of that and every other royal burgh are now by law exposed to the inspection of the burgesses; but neither of these circumstances has a palpable effect in meliorating the system of expenditure. The consequences of such a state of affairs are too well known. Some burghs are deeply involved in debt, from which situation it is to be feared they will never have the good fortune to extricate themselves. Some have already their affairs under a bankrupt sequestration. And others, by reason of their disbursements continually surmounting their revenues, have before them the prospect of arriving at the same crisis. We are fully sensible of the injury which the funds of most royal burghs have sustained on account of the expenses to which the towns have been put in the maintenance of jails and poor prisoners, while the counties have been very remiss in liquidating their proper share of such necessary expenses; still the greater proportion of their debts have been incurred either on works of little public utility, or by lavish entertainments to strangers and others, quite uncalled for. The late act of parliament, brought in by Sir William Rae, present Lord Advocate, affords greater control to the burgesses; and public opinion is now capable of checking profusion in part; but the mischief being already accomplished, the burghs must every succeeding year find it the more difficult to extricate themselves.

It would be an exceedingly disagreeable task were we to picture to the traveller the petty turmoils and vexations which are daily seen and felt in many of these burghs, in consequence of the ill-organized constitu-

tions under which they labour. In the vain attempt of delivering themselves from the meshes into which they too easily have fallen, local taxations of a very grievous nature are imposed. In the city of Edinburgh, including the ancient and extended royalty, to which we once more refer as a sample of the Scottish burgh system, the local burdens imposed by the magistracy,—and having no reference to any useful object, such as watching, lighting, and cleaning, which form the subject of a separate police tax, actually amount to more than those laid on by the state ! Were it possible to be jocular on such a bitter subject of cogitation, some mirthful sensations might be indulged, with respect to the remarkable ingenuity displayed by the magistrates in planning their budget of ways and means. A receipt for the civic taxations paid annually in this city would indeed be a real curiosity in London, where local burdens are, by the way, heavy enough. It might be placed in the British Museum as a document, illustrative to foreigners, Englishmen, and future generations, of the singularly peculiar taxes payable in the Scotch metropolis in the nineteenth century. One of these leys is imposed for the privilege of drinking wine, or some such immunity, and the tax is directed indiscriminately against both houses and shops ; it being sapiently assumed, that all indulge in this propensity. Another is a tax to pay the clergy, without reference to the religion of the householder ; and what is worse, the payment, which conveys no right to a seat in church, is also taken from shopkeepers and householders, so that it may be said many individuals are preached to in both capacities. The latter tax is very heavy, and its existence does little credit to the consistency of the Scotch, who are perpetually challenging a competition in cheap religion. This subject we promise to lay open in a subsequent part of our work. The existence of the local burdens, altogether, in their present state, is a disgrace to the citizens of Edinburgh, who should long before this period have petitioned in a body, and absolutely insisted on a revision and ge-

neralization of the assessments. The college of justice, which comprehends nearly all the lawyers in the city and liberties, and who, in most instances, occupy the best houses, are exempt from the leys of the magistrates, in consequence of ancient acts of parliament, granted in the reigns of the Jameses, to induce them to reside and hold their courts in the metropolis. The citizens of Edinburgh must have been very supine at the time when the act was procured for the extension of the royalty; for, had a stand then been made, parliament could not have sanctioned the continuance and extension of such absurd privileges, evidently so oppressive and unjust to the rest of the community. The only local taxes which they pay, are chiefly the cess or land tax, which goes to the state, the police tax, and the tax for the improvements; having very creditably waived their chartered rights in favour of the two latter. They are not even charged with assessments for the poor. As a specimen of the financial management of the burgh, it may be noticed that the cess is collected at an expense of not less than 25 per cent. on its amount; some years since it was 50 per cent. In the Canongate it is nearly 100 per cent. In some better conducted towns, it is as low as 3 per cent. Were the members of the college of justice to be subjected to the imposts, and the time is now come when their exemption is cruel and inexpedient, the individual payments of the other householders would be reduced to *one half* of what they at present disburse annually. Nothing could give us so much pleasure as a knowledge that these observations had tended to arouse a spirit of resistance among the intelligent inhabitants of this venerable and too long abused city.

Repeated attempts have been made to amend the system of burgh management in this country, through the medium of petitions to the House of Commons; but except in one or two instances they have almost uniformly been frustrated, on the ground that a remodelling of the burgh privileges would lead to other alterations imaginarily supposed to be of a dangerous tendency. Were the contemplated reform only to af-

fect the civic government of the burghs, it is understood that no effective opposition would be made. In the event of the election of the town-council being constituted on a broader scale of representation of the citizens, a direct change would take place in the nomination of the members of parliament for the burghs, and this seems to be a species of reform which the majority of the house of commons dread to countenance. Many of the Scottish magistrates, as individuals, are anxious to have the burgh system renovated, and the opposition offered to reform would be more on the side of certain families of rank, who possess a sort of hereditary claim to be members, than by the magisterial incumbents for the time being. That the present very imperfect constitutions can proceed with comfort any great length of time, is altogether impossible. The burghal administrations are already far behind the other institutions of the country in point of internal excellence, and if some energetic measures be not applied to restore them to public confidence, they will assuredly fall of themselves to pieces, and crumble into insignificance before the increasing intelligence of the age.

The Scottish royal burghs have a general convention of delegates, which assembles annually in Edinburgh; the Lord Provost of that city acting as president. This association was instituted in 1487, for the purpose of encouraging trade and manufactures, regulating the weights and measures, and settling customs,—duties at one time performed by the Lord Chamberlain of Scotland. The convention now meets, as an old usage, for the purpose of keeping up a confederation of interests in burgh politics, and regulating some minor affairs of little public interest. One of the duties which the convention is thus called upon occasionally to perform, is the apportioning among the burghs the amount of the land-tax, fixed upon them at the Union. When, by reason of the prodigious declension in wealth and consequence which some of them have undergone, they feel themselves unable to pay their proportions, they crave a mitigation, the overplus to be laid on

some other burghs more able to bear it. The last great apportioning was about the beginning of this century ; and as an instance of the alteration we mention, at that time the payment made by the burgh of Peebles was commuted from about L. 33 to L. 7, or thereby. Thriving burghs thus very properly suffer for the poverty of those falling into decay. Each of the burghs contributes a small sum for the support of the convention.

The royal burghs of Scotland possess a privilege which may not perhaps be very generally known ; namely, the right of entering into contracts with the governments of foreign countries, in relation to the furtherance of trade and commerce. This is an immunity obtained in the sixteenth century, when the trading powers of the city of Edinburgh were placed in their hand, and which originated in the laxity of spirit displayed by private merchants in former times. The subsequent acts of the British Parliament, which now regulate these matters for the nation in general, have been the means of curtailing these privileges of the Scotch burghs ; but it is still worthy of remark, that the convention continues to operate on one of those ancient immunities regarding the Scottish foreign trade, which stamped a character on the commerce of the country previous to the Union.

By reference to the Almanack, it will appear that the convention of royal burghs has an officer attached to its body with the title of " Conservator of the Scottish privileges at Campvere," and an explanation of this person's duties leads us to notice this trading institution.

The Scotch at one time had a considerable intercourse with Holland and the other northern countries of Europe, extending from the mouth of the Rhine to the Baltic. The principal traffic carried on between the Scottish and the foreign merchants was the exportation of raw materials, such as hides, tallow, minerals, wool, and hemp,—thus reversing the order in the present day,—and the importation of fine cloths, warlike accoutrements, stained leather, luxuries of differ-

ent kinds, almost all kinds of works of art in metal, wax candles for the Romish chapels, steeple bells, clocks, &c. The ports of entry and export were generally Leith in this country, and Vere or Campvere, Middleburg, or Flushing, on the continent. As early as the year 1407, we find this species of commerce in full operation. As the advantages lay mostly on the side of the Dutch, who had the manufacturing of goods for Scottish consumpt, they gave every facility to traders, and there exist innumerable treaties of free trade between the two countries, which, for the good sense in which they are expressed, might possibly serve as models for similar contracts to the board of trade in the present day. So anxious were the industrious inhabitants of the continental sea-ports for the extension of the Scotch trade to their own towns, that, we observe, for three hundred years there were continual broils among the petty principalities, who should secure the commerce exclusively to themselves. After various removals from place to place, the principal continental port for the Scotch trade was finally, during the government of William, Prince of Orange, fixed at Campvere.

In 1690-97 and 1748, the articles of treaty between the "bailliews, burgomasters, scheepers, and councillors of the town of Vere," and the convention of royal burghs, were extremely explicit regarding the privileges we have mentioned. It was agreed by the Dutch authorities, that in future, as had been the case formerly, the utmost liberty should be given to the settlement of Scottish factors in that place; that they should be under the government of their own laws,—exercise their own religious worship,—have a burying-ground for their own use,—that their ships should be allowed to enter free of duty of any kind,—or as they quaintly express it, "exempt of the paught of all vivers,"—that fish, salt, &c. should be permitted to enter on the same terms,—that Scots ships driven by stress of weather into any part of the seven united provinces, should not be liable in duties,—that the legal authorities should

assist to enforce the orders of the conservator and his accessaries,—and it was further settled that the conservator, who was in the appointment of the “burrows,” should be paid his salary from the funds of the town-council of Vere. Nothing can shew a greater degree of anxiety for the comfort of the establishment than these, and all the other articles of treaty offered by the Dutch and accepted by the conservator.

The remarkable fluctuations of trade and manufactures since the year 1748, and the effect of political changes, have very much deranged this international compact; but still it remains to a certain extent, and the peculiar judicial authority of the head officer of the little colony continues unimpaired. The conservator is still a magistrate recognized by the Supreme Courts in Scotland, and the Legislature. His deliverances on civil or criminal actions are liable, like those of any inferior judge in the country, to be reviewed by the Court of Session on an appeal being made. The civil and criminal warrants of the Scotch Supreme Judges can moreover be put in force in Campvere, the same as if that town were situated on the coast of the Lothians instead of the land-board of Holland.*

The magistrates of the royal burghs, except in a few instances, have not any robes of office or particular costume in their garments. Those of Edinburgh, when engaged in their duties and while walking in processions, wear ample gowns of red velvet; that of the lord provost being distinguished by a cape and facings of white ermine. The lord provost, bailies, lord dean of Guild, and treasurer, wear unadorned cocked hats, and double gold chains and medals around the neck. The councillors and deacons are indulged with black silk gowns, that of the convener, by way of distinction, being faced with ermine. Although there be few towns where the magistrates possess these badges of office, the officers who execute their orders are uniformly dressed in antique garments, of the fashions of the dif-

* Erskine's Institutes—Maitland's Edinburgh.

ferent reigns, embroidered with heraldic devices. They always walk to church, and on every other occasion, when their masters have cause to appear in a body in public, at a respectful distance in front of the procession, like an advanced guard, carrying upright old-fashioned halberts or spears. In the metropolis a mace and sword are added to these instruments.

In Scotland it is seldom any salaries are attached to the office of Bailies or Provost. In Edinburgh the lord provost has L. 1000, in order to keep up the dignity of his rank, and a becoming hospitality. Agreeable to a very ancient practice, some small sums are also dispensed as annual honorariums. The lord provost receives L. 1 : 11 : 6 ; the four bailies 10s. 6d. each, and 10s. in addition for sheriff gloves, (used, we presume, at executions); the dean of guild and treasurer, each 10s. 6d.; and the remaining ten merchant, and sixteen trades, councillors, 3s. 6d. each. In no instance is there any domestic and public residence appointed for the provosts, as is the case in different places in England. Neither is there any state or city carriages appropriated to their use.

Besides the royal burghs, there are two other descriptions of burghs in Scotland, namely, the burghs of regality, and the burghs of barony, the apparent distinctions between which are very trifling. The former were primarily erected in favour of the abbots of monasteries and of nobility who received grants of church lands, and were hence called lords of regality. The burghs of barony have been from the commencement under the supremacy of laymen, who have feued parts of their estates to retainers and others, and acquired a seignorial authority over their feudatories. The charters of the house proprietors in the towns, so originating, are upon the terms of the common feudal holdings, and express that in return for the protection which the *vassals* receive from the lord of the manor, they shall be ever ready to mount and ride at his call. The title-deeds of all the houses in the burgh to this day distinctly state these terms. In general there is no chief

rent or feu taken from the proprietors, at least it is all but nominal, and may be mentioned at perhaps a farthing per annum, or a small contribution in *kind*. However, a fine of a few pounds or shillings is usually imposed, according to the dimensions of the property, at the incoming of a new heir, when the charters are all renewed, much to the satisfaction of the law agent of the baron, and the distress of the feudatories.

These minor burghs are governed by bailies appointed by the baron, and sometimes by the inhabitants. Previous to the destruction of the heritable jurisdictions, as already mentioned, many of these petty bailies possessed the powers of torturing and hanging criminals caught in the commission of offences, without the aid of an assize. When these improper privileges were abolished, their powers were very much curtailed, and since that period they act the part of useful magistrates within their districts. They can punish delinquents by confinement in the stocks, or incarceration in the *black hole* of the little town. They are likewise empowered to hold courts for the determination of civil causes arising within the bounds, if not to a greater amount than L. 2. The whole process is verbal, and conducted at the most trifling expence. These powers are generally further extended by the baron bailies being at the same time named in a commission of the peace. They are for the most part country writers or attornies. The town of Musselburgh, in the neighbourhood of Edinburgh, is a burgh of regality, which before the reformation was under the jurisdiction of the abbot of Dunfermline. Instances have occurred in recent times, of towns procuring civic constitutions from parliament, to the extent of electing bailies for their judicial government; among others may be noticed that of Bathgate, a thriving little town lying on the road betwixt Edinburgh and Glasgow.

As if debts, taxes, and mismanagement, were only to be found in connexion with town councils, it has to be remarked, that these jurisdictions are totally free of

such incumbrances. The extra-judicial internal government of these towns is intrusted to a committee of the inhabitants, all of whom willingly contribute a trifling sum annually to defray necessary expenses; this is even in many cases not required, as the refuse gathered from the streets liquidates all necessary outlays. By the absence of burgh politics, which distract the peace of a community wheresoever they exist, these burghs are often in more flourishing circumstances, and under a better system of efficient police, than the burghs-royal in their immediate neighbourhood.

Like the burghs of Southwark, Finsbury, and others, which have been gradually swallowed up in the extension of London, and now only remembered by the names they have bequeathed to the streets and squares occupying their former sites, there are, or rather were, several old-fashioned minor burghs in the immediate neighbourhood of the Scottish metropolis, now in a great measure merged in the supreme civic economy. The suburbs of Leith, Canongate, Easter and Wester Portsburgh, Calton, and Broughton, were at one time little burghs with their own baronial jurisdictions; however, in the course of time, by purchase, grants, or other means of acquisition, they became the feudatories of the great head burgh, and are now governed by baron bailies annually appointed by the town council out of their own body, and who are generally retiring, or, as they are styled, *old* bailies. The duties of those persons are nevertheless little better than nominal, as *resident* bailies, likewise appointed by the council, discharge the necessary duties. The resident magistrates of Leith are chosen by the town council from a leet presented by those bailies retiring, as well as all those who have formerly been bailies, and by the masters of the incorporations, agreeable to a recent act of parliament. It may be mentioned, that the burgh of Broughton, (now extinct, having fallen into the hands of the crown,) was given up to the magistrates of Edinburgh, as trustees of George Heriot's

Hospital, in payment of certain jewels furnished by Heriot to Charles I. when he went to Spain, in 1623.

The Canongate and Easter and Wester Portsburgh have still their subordinate bailies, and deacons of incorporated trades; but the burghs of Calton and Broughton have long since dropped all official dignity, and are now, by the overflow of new streets, physically, as well as morally, non-existent. The circumstance of the office-bearers of the incorporated trades of Calton being noticed in the Almanack, is the only observable sign of the former separate jurisdiction of the burgh. Year after year the antique edifices of those little towns, embellished with entablatures and pious scriptural quotations, have been crumbling into ruins before the influence of modern innovation. Their romantic arbours and gardens, laid out in the fashion of the seventeenth century, have been desecrated by the inroads of prosaic stately streets; their bailies have been long in the dust beneath moss-grown *throuchs*; and there only remain to tell the tale of by-gone splendour a few scattered and squalid ruins, which ere long will follow the fate of those already gone before them.

In the Almanack a list of office-bearers will be found of an incorporated body in Edinburgh, under the title of the Merchant Company. This society, the transactions of which will often meet the eye of the stranger in the public prints, was constituted by a charter granted by Charles the Second in 1681, purely as a benefit society for the relief of such of its members as may fall into decay, and the support of indigent widows and orphans. It composes a numerous body of the most respectable merchants, bankers, and traders in the metropolis, and is presided over by a *master* and twelve *assistants*. It has occasional meetings, at which mercantile topics are discussed, and it serves to concentrate the sentiments of an influential class of individuals on subjects of general and public interest. It does not possess any political privileges, notwithstanding the efforts it has made to have the nomination from its own body of some of the merchant town

councillors. This has been hitherto opposed by the magistrates on the principle of inexpediency, and of their impotency in altering the constitution or *set* of the burgh. From being an inconsiderable body, it has increased in importance, and now consists of 481 members. Its original charter was confirmed by the Scottish parliament, 1693, and ratified by a royal charter of Geo. III. in 1777, with increased powers. An act of parliament was also procured, 38 Geo. III. authorising the master and assistants to levy additional monies to make better provisions for widows, and in May 1827, 8 Geo. IV. another act was passed, providing more amply for their necessities, and specifying the sums payable by each member, according to age, &c. The entry-money to the widows' fund is at present L. 63, and a future annual payment for six years of L. 10 : 10s. The annuity payable to widows is L. 25, which will be augmented as the funds increase. The master and assistants are the principal governors of George Watson's and the Merchant Maiden Hospital, in which the male and female children and grand-children of deceased members, and of those who are in reduced circumstances, are boarded and educated. There is, besides, a separate fund for the support of decayed members.

As a foil to the foregoing injudiciously constructed municipal authorities of Scotland, we feel pleasure in now introducing to the stranger another species of institution of a highly beneficial and promising nature. We allude to local establishments of police. It is somewhat worthy of remark, that the Scotch have set the example to the English with regard to the system of city government now coming under review. In most of the towns in England, the process has too often been acted upon, of leaving each parish to regulate its own police. Even in London, until the amendments recently made through the exertions of Mr Peel, there was no comprehensive and general system of police. The city was divided into wards, each of

which managed its own internal affairs, without regard to uniformity of principle. The evils of this mode of government are so apparent as to require no comment.

The parliamentary erection of boards of city police, is not of older date in Scotland than about the beginning of the present century; and though the institutions, which have undergone many alterations since that time, dictated by the pressure of circumstances, are still far from being perfect, in comparison with the ancient public police of the magistrates, or the parochial system of England, they are highly worthy of commendation. Within the last twenty years, the principal towns of the country have become possessed of these local establishments. They are to be found in the cities and towns of Edinburgh, Leith, Glasgow, Dumfries, Paisley, Dundee, Aberdeen, and some others, and as far as we have been able to ascertain, are all constituted on principles of nearly the same nature.*

These police institutions are all, strictly speaking, committees of the householders, to whom there is given cumulatively with the local magistracy, a certain judicial and legislative authority. Some are constituted more democratically than others; in some cases, the magistrates, and in others the inhabitants, having the preponderance of power. On this account we

* Most of those towns wanting regular parliamentary boards of police, are watched during the night by those inhabitants who are constables, two or more taking the duty in rotation, or finding substitutes. In much the same way most of the church yards are now regularly watched in Scotland, to prevent the attempts of resurrectionists. In the execution of this latter duty, all classes are particularly zealous, almost every one from the parish minister downwards taking his turn. As it is arranged that the watchers do not know when they are to be called out by the committee or managers, till a few hours previous, there can hardly be a collusion between parties. The improper zeal of magistrates in the sea-port towns in seizing imported cargoes of bodies, has rendered this measure necessary, and has been the means of introducing the most atrocious crimes into society. The opening of the ports for the admission of such a species of goods, it is well known, would at once cure the dearth of dead subjects, and relieve the country of its present discomfort.

cannot instance any generalized description of the Scotch burgh police system, but shall confine ourselves to the process pursued in the metropolis, which may be assumed as a tolerably fair standard of government.

The broad ground-work of the establishment consists of the whole inhabitants, or householders, male and female, within the city and suburbs, who pay annual rents to a specified amount. These are entitled to nominate representatives, who, when deputed, form a committee of management, under the title of the Board of Commissioners of Police. In furtherance of this plan, the city and environs are divided into thirty departments, or wards; and the inhabitants of each ward possess the right of voting for one *general* and two *resident* commissioners. The amount of valued rent entitling the inhabitant to vote, is L. 10 or upwards. The qualification for being elected a general or resident commissioner differs in some of the wards, according to the species of domiciles therein situated. In eleven of the wards (situated in the new town) L. 30 is the qualifying sum, and in nineteen it is only L. 20. By an excellent regulation, no one is allowed to vote or be elected who is in arrears of his police assessments.

It is the duty of the commissioners to act as local guardians of their districts. They are head constables in their wards, and it is their prerogative to keep an eye over the conduct of the day and night watchmen; interfere to quell mischievous movements, and controul all improprieties; take cognizance of, and means for, suppressing improper houses; sign certificates of character, to entitle victualers to procure licenses; and collect the sentiments of the inhabitants upon particular cases of interest.—They are generally active and intelligent tradesmen, who have an interest in the welfare and comfort of the ward. It is the peculiar duty of the general commissioners to act as delegates. They form a deliberative assembly, and hold special and regular statutory meetings, at which all public measures affecting the lighting, the cleaning,

and the watching of the town are discussed. They appoint officers; regulate salaries; levy assessments in terms of the act of parliament; and in them are deposited the whole springs of the executive. This body of representatives is increased in number, by the addition of the Lord Provost, the four bailies, dean of Guild, treasurer of the city, deacon convener of the trades, sheriff depute and substitute of the county, the senior resident bailie of Canongate, deputy keeper of his Majesty's signet, the preses of the solicitors before the supreme courts, the master of the merchant company, and the convener of the southern districts,—all for the time being. The principal business is transacted by committees, which are mostly formed of members who have been more than one year in office, and who have had time to acquire a knowledge of details.

The elections of the commissioners take place every year on the last Monday of June, at a specified place in every ward,—a shop, or the lobby of a church for instance—where a clerk sits with books to receive signatures. No one is allowed to vote by proxy. Personal presence is necessary. If there be only one person put in nomination within an hour after the books are opened, the poll is closed; but if there be a competition, the business of voting is protracted for four days, when, at a certain hour, the votes are counted, and the successful candidate declared. This process is gone through with the most becoming propriety; and we believe, there could not be adduced an instance of a purer and more unbiassed system of representation in the world. In Dundee, there are two general commissioners for each of the wards, who are also chosen annually. In Glasgow, the commissioners are in office two years, which is perhaps the better mode, and every town has thus some trifling distinction.

The executive of the metropolitan police is thus arranged:—There is a superintendent, whose salary is fixed not to exceed L. 500 or be below L. 250, who is the Procurator Fiscal, or instrument of prosecution on all occasions. He is the captain of the establishment,

and is assisted by three lieutenants, sergeants, and other officers, who are in general, extremely active men in the pursuit and detection of criminals, and whose appointment or removal he is vested with. There is an inspector of lighting and cleaning, a surgeon, a master of fire engines, and several clerks. There are five district offices where complaints are lodged, and culprits detained till transmitted to the head office. The plan has not yet been fallen upon, of instituting a horse patrol on the various public roads round the city, a measure becoming every year more necessary.

A criminal court is held every lawful day at the head office, on the plan of the Bow Street and other London offices, at which one of the four bailies and four old bailies acts as sitting magistrate; each taking six weeks in rotation. The trial of notorious street walkers, pickpockets, those guilty of placing nuisances on the streets, and other petty offenders, forms the general tenor of the business transacted. The expence of a summons to attend the court, is one shilling and sixpence. Fines can be imposed to the extent of L. 10, and damages to that of L. 5, incarceration ordered for 60 days in the city and county Bridewell, or banishment from the bounds of police for six months. The sheriff, also, every alternate day, holds a criminal police court for the trial of offences committed beyond the bounds of the royalty. When crimes are of a description requiring a more severe punishment, the offenders are either conveyed over to the jurisdiction of the magistrates in their own peculiar court, or taken cognizance of by the higher criminal courts. As the police court is regulated, it is of great use to the community.

In the foregoing Edinburgh system of police, no peculiarity is so worthy of observation as the efficiency of the commissioners, who may be said to possess the character of ubiquity and omniscience. They are scrupulous in inspecting the whole of the details of the establishment, both as regards the situation of pri-

soners, and the dispensation of the funds. They visit the head and subsidiary watch-houses at all hours of the night and day, and are rigorous in exacting the proper execution of the duties of the officers. No abuse can escape their vigilance, and by this means they possess the genuine good-will of their constituents. The whole expence of the establishment is liquidated by a per-centage on the rents of houses, to the amount of one shilling and twopence a pound. It is confidently anticipated that this tax will undergo gradual diminution, as the debt incurred for various items, requiring no renewal, is paid off; but, under the most rigid economy, it is not likely that it can be reduced below 8d. a pound. Houses below L. 5 pay no tax.*

The Edinburgh establishment has been examined as a model of imitation by some English towns, and it might be adopted with salutary effects; but besides this, without a determination on the part of commissioners to be rigid in their examinations of the executive, no good will be derived, and the whole system will fall into abuse. It is to be regretted that the laws of England do not permit the complete introduction of the office of Procurator Fiscal.

In conclusion we may mention, that by the vigorous regulations of the metropolitan police, the city may *now* be reckoned as the cleanliest in Great Britain. This virtue has partly to be attributed to a system pursued, whereby private as well as public streets are placed under the supervision of the police. The board

* The police revenue for the year ending Whitsunday 1829, amounted to L. 25,345 : 4 : 11 ; the expenditure to L. 23,077, 8s. 2d. The amount of debts due by the establishment at the same period was L. 15,957 : 19 : 2½, under deduction of an overplus fund in hand of L. 6,818 : 10 : 5¾. The items of assessment were 8½d. for watching—5d. for lighting, and ½d. for cleaning, per pound. The number of sergeants and criminal officers is 19—of day watchmen 27—night watchmen 180—scavengers 88—and lamplighters 42. The number of gas lamps on the streets, generally placed at about 25 yards asunder on both sides, is 5,300, which will shortly be increased to 6,000.

orders proprietors of houses to repair the private ways, and likewise obliges the magistracy to keep the public thoroughfares in order. This device has escaped the framers of police bills in some of the English towns, and the consequence is, that nearly all the back streets in these places lie in a state which Edinburgh would have been ashamed of a hundred years since. No nuisance is now allowed to be laid on the streets of Edinburgh for removal, which at one time was the case. To the credit of the commissioners for 1828, they ordained an entirely new plan of carrying off the *debris* of the city in carts and waggons, whereby the utmost cleanliness is preserved. No private dunghills are permitted in the metropolis on any account. The refuse of every house, on being brought out, becomes at once public property, and dare not be smuggled away. A certain purity in the air of the town is thereby preserved, which under the old lax system was not attended to, and the amount of money procured by the sale of the dung goes far towards liquidating the expenses of the establishment. Previous to the introduction of the present well organized plan, the town was burthened with an expense for carrying away the refuse of the streets, (!) and its unseemly condition excited the comment of most strangers.

Such is the police establishment of Edinburgh, which may be estimated as superior to that of any other town except Glasgow, which has long been deservedly pre-eminent. The comparative perfection of the institution has not been attained without calling forth the determined resolution of the commissioners, at different times, in opposing the continuance or introduction of abusive measures on the part of certain officers of the crown in Scotland, as well as the burgh magistracy. In the various struggles between irresponsible functionaries, and the representatives of the people, the latter have been luckily triumphant; and experience incontestibly proves, that in proportion as extra-judicial regulations have been left to the management of the commissioners, efficiency and economy

have been substituted for carelessness and prodigality of funds. Police institutions have in most instances obviated, only in a small degree, the hurtfulness of magisterial government; but by their erection, an engine has been brought into operation, which will not rest until it revolutionize the present intricate and inexpedient civic economy of large towns. By the existing intermixture of old and new authorities, public comfort is too frequently forgotten in the conflict of jurisdictions. The powers of the sheriff, the magistrates, the justices of peace, the commissioners of police, the trustees of roads, and others, often come into collision, which, by a new and comprehensive arrangement of parts, adapted to the necessities of the age, might very satisfactorily be avoided. In the renovation of city government, which must assuredly take place at no distant date—provided the inhabitants be earnest in desiring it—it is not difficult to predict, that, except the elections of the magistrates be made dependant on the votes of the householders, these functionaries must, as the mere lumber of society, be removed from the roll of national authorities altogether; and that the commissioners of police, conjoined with a sub-sheriff in some measure under their controul, will become the absolute managers of cities in all their financial and other departments. The business habits, common sense views, and desire of giving satisfaction to constituents, displayed by these persons in the investigation and cure of abuses—many of which are of too disagreeable a quality to be examined by officers who fill situations more of a dignified than popular nature—point them out as such. Judging from the manner in which the inhabitants of Edinburgh, and some other large towns, have begun to appreciate their powers of delegation, there is little chance of the institution falling again into decay; yet the necessity of adhering staunchly to their privileges as electors, cannot be too urgently impressed on their minds, for attention in this matter will lead to many important improvements not only in local but national government.

Having now gone down the scale of public functionaries, the no less necessary instruments of civil law, or officers employed in the execution of diligence, remain to be described. In Scotland there is a number of these adjuncts of office, possessing different qualifications, and standing in different grades of respectability, according to the dignity of the court to which they belong. Occupying the first degree of rank, are those who receive the title of messengers-at-arms. It has been mentioned, that the Lord Lyon of Scotland possesses jurisdiction in cases relative to matters of ceremony and heraldic bearings, and that he has to assist him a variety of pursuivants and attendants. Besides these, he is supposed to require an extensive train of subordinate officers, necessary in the execution of his warrants, receiving the title of messengers. Before they are entitled to act as the executors of writs, emanating from the court of their immediate master, or those judicatures to whom he is subservient, they have to become bound in high securities for their intromissions and good behaviour, as well as be men of unimpeachable character. Their fees of admission are likewise considerable. On the withdrawal of cautionaries, they are immediately suspended from office, and the public are made aware of the fact by means of advertisements. The proper management of these functionaries, now forms a prominent part of the duty of the Lord Lyon, or rather of his deputies.*

* The office of Lord Lyon is an entire sinecure ; and attached to his court—which, by the way, exists only by name in the pages of the Almanack—are a number of officials, whose duties consist of little else than the trouble of taking their salaries. The fees charged for patents of arms are now the same in Scotland as those taken by the college of arms in England. Arms without supporters cost L. 52, 10s. and with supporters L. 84 ; but if the patent be granted as a *favour*, L. 115, 10s. is the price. The Lord Lyon receives a share of the fees to the amount of about L. 700 a year ; and, altogether, his office may produce L. 1300 annually. The title of *Lyon* has been assumed from the circumstance of that animal forming the armorial bearing of the kings of Scotland, and being carried on his robes.

Messengers-at-arms, of whom there are about three hundred in Scotland, have consigned to them the execution of all writs, summonses, or diligence, issuing from the crown or from the supreme courts, but from no inferior authorities. Many of these officers at the same time exercise the professions of notary-public, and agent or procurator in some of the inferior courts.

In England, the sheriffs have officers for the execution of their own writs, and those of higher functionaries, receiving the designation of Bailiffs or Bound Bailiffs, from the circumstance that they are taken bound in securities for the honest execution of their duties; and who are likewise humorously called Tipstaves, and other names still more homely. In Scotland neither the word Bailiff nor Tipstaff is used; the individuals exercising such duties being only known by the descriptive appellation of Sheriff's officers.

While messengers-at-arms, as representatives of the Lord Lyon, are limited to the execution of writs issuing from the supreme courts, the officers of the sheriff have appointed to them the execution of all orders proceeding from the sheriff or his court. In order to increase the consequence and fees of office of particular persons, it sometimes happens that individuals are to be found in the service of both the Lord Lyon and the sheriff, whereby they execute indiscriminately all writs except those of the justices or the magistrates.

To each justice of peace court is attached a number of officials for the execution of summonses and warrants; and in like manner the magistrates of the royal burghs have officers to attend on their persons, and execute the diligence issued by their courts. In the execution of warrants, whatever be the species of officer, there generally attend two or three inferior indefinite characters who are ever to be found loitering about the outskirts of the law, with no exact title to be considered as servants of the crown. When accompanying their masters, the matriculated officers, they are called concurrents, inasmuch as they act either as witnesses or instruments of force.

By the law of Scotland, the deforcement of any of these officers of justice, is followed by very serious penalties. Messengers-at-arms, when on duty, carry with them a blazon or heraldic document, shewing their power; and the officers of the sheriff are in possession of a small ebony baton mounted in silver, and encompassed with a moveable ring; either of which vouchers being exhibited, serves as a fair warning to all contumacious recusants. It is believed by some, that until once the officer has touched the body with the baton, every means may be taken to elude seizure, under the assumption that the person is not bound to know that the appearance of the officer is not a trick. But this idea is founded in error. In Scotland, when any of these functionaries demand admittance upon proclaiming their errand and mentioning their powers, every door must open before them, and all resistance must cease, whether the diligence be of a civil or criminal nature. When absolutely deforced, that is, when threatened with violence, or when they sustain a personal injury, by the sliding of the ring along the baton of office, they take an emblematic sort of protest against the proceedings; upon which they can immediately ground an action of damages before the Court of Session. By the statutes, any principals or accessaries deforcing an officer, are not only liable to a prosecution for the debt, expenses, and damages, but may be indicted as criminals at the instance of the Lord Advocate, and sentenced to death, with escheat of moveables. In consequence of this highly proper strictness of the law in the protection of its officers, instances of individuals either resisting or escaping under such circumstances are seldom heard of.

In all the chief and most of the minor towns, there are found bodies of men with the title of constables, who are sworn in by the sheriff or magistrates as preservers of the peace and assistants in cases of tumult, and differ in some respects from the same class of functionaries in England. Batons of office are en-

trusted to them as significant of their authority. In and about the metropolis the constables of the different jurisdictions are numerous, and belong principally to the trading professions.* The most prominent of these bodies is the society of High Constables of the city, elected by the town-council, the members of which must have been burgesses and in business three years before entering. Each has a certain portion of the town placed under his charge, and as nearly as possible, it is that in which he resides. They can only remain three years in office unless chosen as office-bearers in the course of the last year, when they continue another year. The office-bearers, who are elected by the body, consist of a president—styled moderator, a treasurer, secretary, and chaplain, with a committee of eight members. On retiring, each constable has the privilege of sending in a *leet* or list of three names to the office-bearers, from which to choose his successor, who mark at the top the person they desire, and remit the leet to the town-council, who generally elect the person so nominated. The society is, we believe, of ancient institution. Its preserved records reach to about 1681. Allan Ramsay, author of “the Gentle Shepherd,” and bookseller in Edinburgh, was a member. The magistrates allow the body L. 50 per annum to liquidate expences incurred for printing, &c.; which sum was originally conferred to provide a supper to the members on the night of

* The office of Constable is of French origin: The name is supposed, by most writers, to be derived from the Saxon words *koning stapel*, to support the king; others deduce it, and among the rest, Blackstone, from *comes stabuli*; the name given to the officer who regulated tilts, tournaments, and other feats of arms. It will be remarked, that the constitution of government in Scotland does not require the exercise of several constabulary duties performed in England by the high and petty constables; the functions of head borough, tithing-man, and bursholder being unknown, or merged in the office of other persons. In both countries the fiscal powers of constables are alike, in relation to the pursuit and seizure of criminals, and the prerogative of compelling common subjects to assist in case of need.

the king's birth-day, as a remuneration, we suppose, for the services of the members during the turmoils on the streets on these occasions. The society, which is now composed of sixty members, has an annual and other convivial meetings, at which period its name comes more prominently before the public than at almost any other time. Now that there are no lists of militia to be made up, the duties of these constables are very light. Their presence in mobs, or interference in quelling disturbances, is, nevertheless, found at all times to be of great moral utility, and more effective than the physical force of watchmen. Neglect of attendance, when summoned by the magistrates to appear at a certain place and hour, subjects the party failing to a fine of a Guinea,—which is rigidly enforced by the society, and thus the magistracy can at all times depend upon their services in cases of emergency. They received the appellation of *High Constables* from the magistrates, in order to distinguish them from common police officers, or another body employed in similar capacities, with the title of *Extraordinary Constables*, who are mostly retired *High Constables*. Since they acquired this designation, we understand that the constables of Canongate, Leith, and other burghs, have assumed the same title.*

* An instance has occurred in which the Moderator of the society of *High Constables* of Edinburgh has acted as the highest, if not the only, civic officer in the city. At Michaelmas 1745, the election of magistrates not having taken place in consequence of the town being in possession of the army under Prince Charles Edward, the burghal jurisdiction ceased until a new election in January 1747. During the interval of about fifteen months, the *High Constables* were continued in office, for the comfort and security of the public, pursuant to a warrant of the Lord Justice Clerk, and other Lords of Justiciary, in their capacity of Justices of the Peace,—the Moderator thereby becoming the supreme magistrate, who governed the town throughout its troubles, and presided at the civic entertainment given in honour of his Majesty's birth-day, in the parliament house. The restoration of the magistrates was accomplished by means of a royal warrant, empowering the burgesses to make a new election by a poll.—*Constitution of Edinburgh*, p. xlii.

COURTS OF CIVIL AND CRIMINAL JUDICATURE IN
SCOTLAND, PARTLY IN CONTRAST WITH
THOSE IN ENGLAND.

The rules of government and justice are so different in one place from what they are in another, so party-coloured and contradictory, that one would think the species of men altered according to their climates.

COLLIER.

SCOTLAND is fortunate in possessing an admirable arrangement of civil and criminal courts of judicature, in which—with the exception of a few partial blemishes, the result of former usages, in the course of progressive amendment—there is altogether displayed a healthful unity of design, highly creditable to the genius of the nation, and more especially to its able lawyers, through whose liberal exertions the most beneficial improvements are continually taking place. While in England, up to the present moment, there exists too great a complexity of design in the various courts, most of which are wrapt up in the inexplicable usages of a rude period, and in reality where a reformation in legal matters has still to be accomplished; in Scotland, we are happy to say, that this reformation has been already wrought, and that the courts of justice are now, in most respects, in their constitutions and forms, eminently calculated to suit the practices of the nineteenth century, and to serve as a model in some measure for the revision of those in England.

The Scottish courts are few, well ordered, and comparatively rapid in their evolutions. They are judi-

ciously contrived to hinge on each other ; all working on nearly the same principles towards one general end. When placed in contrast with the jurisprudential institutions of England, these appear to be still more the distinguishing features of their character ; and if both were made the subject of patient discussion, we doubt not that the scale would preponderate in favour of those of the northern kingdom. The courts of this country, in our opinion, nearly realize the beautiful theory in which the patriotic Blackstone indulged with reference to the connecting links between the various courts of his own country. " The great policy of our ancient constitution," says that distinguished man, " as regulated and established by the great Alfred, was to bring justice home to every man's door, by constituting as many courts of judicature as there are manors and townships in the kingdom, wherein injuries were redressed in an easy and expeditious manner, by the suffrage of neighbours and friends. These little courts, however, communicated with others of a larger jurisdiction, and these with others of a still greater power ; ascending gradually from the lowest to the supreme courts, which were respectively constituted to correct the errors of the inferior ones ; and to determine such causes as, by reason of their weight and difficulty, demanded a more solemn discussion : The course of justice flowing in large streams from the king as the fountain, to his supreme courts of record, and being then sub-divided into smaller channels, until the whole and every part of the kingdom were plentifully watered and refreshed."

Were it here our object to write a dissertation on the courts of the two countries, it is possible that occasion might be had to point out the inefficacy of the above systematic arrangements, in consequence of the state of disrepair into which many of the English courts have fallen through the lapse of ages, and how the stream of justice, instead of flowing in a rapid and clear current from the fountain-head through its devious windings, is now perverted, obstructed, soiled, and

too often lost amid labryinths and dismal swamps; when the very ramifications and counterchecks which the great English lawyer in his day considered as the essence of human wisdom, are now discovered to be the fertile causes of the most serious mischief.

Whether consistent with usefulness or not, there is nothing more peculiar about the courts of England, than their want of uniformity. Proceeding upon the foregoing disseminating and minute principle, there still exists all over the country a variety of courts, not of general application, but constituted to suit the necessities and feelings of the inhabitants of particular districts, probably many centuries ago. Almost every town and hamlet has some minor court of an ancient character, the origin of which may be referred to a very early age, and supported in its rights by subsequent grants of the crown, or the mere force of immemorial usage. There are in this way peculiar courts in one country which are not known and were never heard of in the next. In the cinque ports there are jurisdictions which have no connexion with those in other maritime places. In those parts of the country, at one time overspread with forests, there were, and in some cases there are still, peculiar laws and courts applicable to the rights of forestry and the chase. In the university towns of Oxford and Cambridge, there are courts, over which no control is exercised by the courts of Westminster. In the city of London, there are also several courts bearing no resemblance to those of other places; owing their institutions to the Saxon and Norman dynasties, and upheld by the pertinacity of the citizens, or the inattention of the legislature. From the pressing solicitations of certain trading towns, there are therein erected courts for the recovery of small debts, under the designation of courts of conscience; in other places, equally requiring them, these are not erected. Unconnected with particular places, there are likewise certain indefinite courts, which apply to the necessities of markets, fairs, and such like meetings. There are baron courts, courts

of hundreds, courts of *pie-poudre*—a name significant of the *dusty feet* of the litigants, market clerk, sheriff-town, county-leet, and many others, where are decided trivial cases of debt, damage, or petty theft.

While towns, districts, hamlets, and occasional seasons, have these many singular courts, erected all at different periods with very little unity of design, and several of which, by reason of the fictions introduced into law proceedings, are now twisted to other purposes than those for which they were instituted; the most striking instance of that want of uniformity necessary for the general dispensation of justice, is to be found in the palatine counties of Durham and Lancaster. From no other cause than old custom, there remain in these populous counties the wrecks of those regal powers incidental to the petty sovereigns of these appanages of the English crown. Each has its peculiar courts, peculiar forms of process, with certain immunities not enjoyed by those in any other part of England.

We now proceed to notice the routine of civil and criminal courts in this country, with others of a mixed nature. The magistrates of the royal burghs of Scotland may, as has already been stated, hold courts at convenient periods, for the discussion of claims to a small amount. Such courts, however, only recognizing debts due by persons within their limited jurisdictions, and as those jurisdictions generally occupy only a portion of large towns—thence leading to many impediments in the proper execution of justice, as well as from the superior adroitness of the justices of the peace, they have of late years very much declined in their popularity. Besides their ancient juridical powers, these local magistracy are entitled, agreeable to the act relative to the erection of the under-mentioned courts of the justices, to hold sittings for the discussion of simple claims to the extent of L. 5. In Edinburgh and Glasgow, where the claims are multifarious within the royalties, the magistrates hold dis-

inct courts on different days of the week. In the former city, the bailies hold a court for the summary determination of claims not exceeding *ten merks* Scots, or 11s. 1½d. sterling. It, however, recognizes suits for the recovery of the wages of servants to any amount.

As being in every respect more efficacious in its jurisdiction, the Small Debt Court, or as it is as often called the Justice of Peace Court, receives the great flow of trivial cases. The constitution and plan of operation of this species of court, which was first instituted in virtue of the act 35 Geo. III. c. 123, in the year 1795, render it by far the most useful inferior court in the country. It corresponds with the English courts of conscience and requests, and like these, wheresoever it has been erected, it has almost uniformly swallowed up much of that business which was formerly transacted by the magistracy and the sheriffs, and has likewise been the means of making effectual many demands which otherwise would have remained unsettled. The justices of the peace in every county are empowered

* The magistrates of burghs, and justices of the peace, up till the year 1813, had the extraordinary power of settling the wages of out-of-door and household labourers or servants, and of fixing the sale prices of provisions, such as of meal, bread, and other articles of native produce. At one time this authority was rigorously exercised on the complaints of masters, especially with regard to reapers in harvest; and numerous are the instances on record, wherein the magistracy imprisoned individuals until willing to work at the legalized wages. Latterly, those powers fell into contempt and disuse, except in so far as the magistrates, with an assize, fixed the price of the quartern loaf. By a rescissory act, 53 Geo. III., the people of Scotland were freed of such embargoes on free trade and free will, though not without a proportion of that opposition which usually attends the abrogation of absurd laws of a long standing. The late acts of parliament, relative to the sale of bread, do not affect Scotland. The old quartern loaf is still that which forms the standard. The weight and quality of this and inferior sizes of loaves is, however, cognizable by the local authorities, agreeable to the Act 3 Geo. III. c. 11., and the price is regulated by the bakers according to the fluctuations of the market. In most of the small towns the price is governed by that fixed in the nearest city.



to hold sittings at certain towns in their district, for the purpose of determining causes to the amount of L. 5 ; two form a quorum. They are, in the language of the act, " to hear and determine, agreeable to equity and good conscience, all causes concerning the recovery of debts, or the making effectual any demand, which shall not exceed the value of Five Pounds Sterling, exclusive of costs." These justices, who act gratuitously, upon a summary process of complaint, issued by the clerk at the instance of the pursuer, and served on the defender by an officer, examine on the appointed day the contending parties *viva voce* ; neither writings nor the attendance of lawyers being admissible. Between the time of entering the claim and the first hearing, a week must elapse. Should the debtor not appear after the summons has been given to him personally, judgment will be pronounced in absence ; but if it appear, which it does by the report of the officer entered in the book lying before the justice, that the summons was only delivered at the domicile, a new summons is ordered to be expedited. After this no further delay takes place, and the case is finally determined next court-day, which it is ordained " shall not be sooner than three days from the date of the first." Generally the whole process occupies three weeks, and not more than a month, if in a city district, while the expenses up to the incarceration of the defender may be estimated at about ten shillings. But as cases are not unfrequently settled by payment shortly after the first citation is served, there is seldom paid more than four or five shillings, and often not more than half-a-crown. Three shillings and a penny is the amount in three fourths of the cases.

It is provided, that no claims shall be heard relative to gaming debts, or spirituous liquors. Neither are cases in connexion with any testamentary legacy, written lease, or contract, admitted into this court.

In the country districts, courts of this description are held in all the principal towns, at least once a month. In some places they are held once a fortnight ; but in

Edinburgh the justices give attendance every Monday. Here also, for the greater dispatch of business, there is a gentleman of the law who acts as a permanent presiding judge. At this place there is weekly expedited a very great number of cases, nine-tenths of which refer to the recovery of petty house-rents, and servants' wages. It is said that there are not less than 5000 pleas summarily decided at this tribunal in a year, or about 100 per diem, the most of which are dispatched with such celerity, that the proverbial tediousness of the law is reversed, and the complaint is now, that too little time is taken to consider the merits of the various claims.*

The acts of parliament are very decisive with regard to maintaining the powers of these courts; and it is ordained, that no appeal can be carried to the supreme court except on the plea of malice of the judges. There are quarterly meetings of the justices of the counties to which appeals can be brought; but it is observable, of cases thus advocated, that very few are reversed.

If we here compare the steady, the cheap, and the satisfactory manner in which claims of small amount are made good over the whole of Scotland, with the nugatory procedure in civil actions of a similar nature in England, before the sessions or any court of record, whereby demands of debts of a few shillings are swelled by a tedious process of litigation to sometimes many pounds, we shall have reason to be surprised, that Jus-

* We cannot pass from a notice of this tribunal, without attempting to draw the attention of the promoters of reform in law proceedings, to the manner in which business is here transacted. By sitting only one day in the week, the greater part of the cases are hurried over with a rapidity any thing but commendable. From this and other causes, the court is not popular among the respectable classes, few of whom would indeed be seen within its precincts either as defenders or pursuers. Sitings twice or thrice a week, if such an alteration could produce a little more deliberation in judging of the merits of cases, are much to be desired.

tice of Peace, or small debt courts, are not instituted in that country. In this kingdom, by the general erection of such simple tribunals, claims are now enforced with readiness at the lowest possible expense, without the intervention of legal practitioners or written pleadings. It is possible that injustice is often committed in these courts, by not taking sufficient time to examine cases in detail; but it is unquestionably more expedient that such should occasionally occur from haste or inadvertence, than that processes for the recovery of L. 5 should be bandied about from court to court for years at the expense of probably L. 30. If ever there was an instance of salutary speed, with yet a certain degree of deliberation, and an absolute certainty in law procedure, being useful to a people, it is here fully exemplified in Scotland.

Some years ago it began to be felt, that the maximum of L. 5 was too limited, and that it would be advantageous to extend the benefit of the acts of parliament to L. 8, exclusive of expenses. This was accordingly accomplished by an act, 6 Geo. IV. c. 24. passed in 1825, when it was ordained, that the sheriff-depute or his substitute might hear and determine claims to that amount, and that the form of process should be of the same nature as that pertaining to the small debt court,—a scheme which has been attended with results equally beneficial.

For both of the above courts, and likewise the small debt courts of the magistrates, printed tables of fees are prescribed. These are constructed on such a proper scale of economy, that the payments barely liquidate the salaries of the clerks, and other expenses for paper, books, &c. None of the steps of process are taxed, and the document which empowers the imprisonment of a debtor, is issued at little more than the price of paper and print. We may remark, that the judges are empowered, if they see occasion, to order debts to be paid by instalments adapted to the capacities of the defenders, with this qualification, that if two payments be neglected, the usual warrant to seize will be put in

force. This has been felt to be a very useful as well as benevolent modification of the enforcement of claims upon people in humble circumstances.

According to the statutes, all judges of the supreme courts, and other members of the college of justice, are entitled to enjoy what is called their *jus banci*, or the immunity of not being subjected to the jurisdictions of inferior courts; but such a privilege is rescinded so far as regards the foregoing small debt courts.

With the foregoing exceptions, all other courts in Scotland are courts of record, the different varieties of which now demand elucidation. The magistrates of each of the royal burghs may hold such courts, as formerly noticed, and with the assistance of their assessors, who are mostly the town clerks or petty attornies, they can determine claims to any amount, provided the defender reside within their jurisdiction. The Deans of Guild can likewise hold civil courts on the same terms, and the bailies of several inferior burghs, (among others, Leith and Musselburgh,) have the like privileges. Though these courts still occupy a place in the list of Scottish judicatories, with a few exceptions, they are practically extinct. The civil court of the Dean of Guild has been long in entire abeyance. The impropriety of allowing the continuance of these burghal jurisdictions has been often represented; and it is probable that their extirpation will soon be accomplished. At present they are only sustained by local procurators, and meet with no respect from the people.

When claims are above L. 8, or when they are of such a nature as to be precluded from the jurisdiction of the justices, they are generally carried at once to the court of record held by the sheriff. This court, which has no resemblance to the sheriff's courts of England, is held in every county town once a week; but in the metropolis, where the litigations are numerous, it sits daily during the terms of the Court of Session; beginning a little earlier and continuing somewhat

later than that court. In the Almanack the precise days of sitting of this and the other courts of the shires will be found. The sheriff, as we formerly stated, or his substitute, is the Judge Ordinary of these courts. In general, the cases are first decided by the substitute, who is resident, and, if desirable, appealed to the depute, who, when absent from his sheriffdom, as is commonly the case, has the papers transmitted to him for judgment, on the payment of a small fee to the clerk, sufficient to pay their carriage to and fro. All civil causes are here brought to an issue, except such as refer to claims of heritable property. This is an exceedingly useful court in the country, and dispatches frequently a great deal of business, at a moderate rate of fees. The process of suits is conducted by inferior attorneys, entitled procurators or solicitors at law, who expedite the case in all its stages. There is no oral pleading at the bar, the whole of the defences and answers being placed in writing before the judge. At one time litigations might have been very much protracted at the sheriff courts; but this evil has been remedied to a considerable extent.

This court is not definite in its judgments. Appeals can be made to the Court of Session in two ways, namely, by a bill of *advocation* during the dependance of the suit, or before the decree has been extracted, by giving security for the expenses already incurred in the lower, and which may be incurred in the higher court,—or by a bill of *suspension* after the decree has been extracted, whereupon diligence can be, or is, raised, by giving security not only for the payment of these expenses, but for the sum in litigation, should the supreme court not sustain the appeal. No *advocation* is competent unless the sum in dispute exceeds L. 12; and when above L. 40, if an order for a proof is pronounced, either party may advocate to the Court of Session, without the necessity of finding security. The powers of the court are likewise limited in another sense. It can only grant a warrant to seize

the moveable effects of the debtor within the county; and when the person, or the goods situated not within the shire are wanted, an application must be made to the Court of Session in a way shortly to be described. The determination of civil causes by a jury in the sheriff court, though by many considered desirable, has been hitherto delayed to be introduced, partly, we believe, from the cause that the people generally are not deemed competent to act as jurors, or are unwilling to do so, on account of the trouble and expense to which they would be put. As the Scottish counties are generally small in comparison with those in England, the distance of litigants from the county town is seldom felt as inconvenient.

The Court of Session is the highest civil court in Scotland, and occupies that degree of rank which is commonly attached to the Court of King's Bench in England. It is exceedingly comprehensive in its jurisdiction; partaking of all those peculiar powers exercised in England by the courts of Chancery, the Rolls, King's Bench, Common Pleas, Chancery, and others. It is thus both a court of law and equity; besides which, it possesses a species of authority entirely peculiar to itself, of a very transcendent and arbitrary nature, which is called a *nobile officium*, in virtue of which it can give judgment in cases not hitherto contemplated in common law; and hence creating laws for its own direction under a discretionary power, not incidental to English judicatures.

The Court of Session deduces its origin from the days of James the Fifth (1532), when it was modelled out of two older jurisdictions, entitled "the Session," and "the Daily Council," from whence the judges to the present day are designated, "the Lords of Council and Session." When James erected the court for the readier dispensation of justice, he collaterally instituted a College of Justice, the members of which were persons connected with the court, and of which the judges were declared to be Senators. This incorpo-

rated body possessed at one time some valuable privileges, the most prominent, if not the most profitable of which now remaining, consists of an exemption from local taxations in Edinburgh, which is felt as a serious injury to the community. The immunity was originally conceded by the magistracy, in order to procure the sitting of the court in the metropolis. The College of Justice comprehends the Judges, the Faculty of Advocates, Writers to the Signet, Advocates first clerks, Clerks of the Judges, Extractors, keepers of the different departments, and, in a general sense, may be said to engross the principal legal gentlemen in Edinburgh.

The constitution of the Court of Session, during its continuance of three hundred years, has undergone many alterations. Originally it consisted of seven lay and seven clerical judges, with a president, and some supernumerary judges. This formation has been long abrogated, and now the fifteen judges are all laymen, while the supernumeraries are discontinued. Previous to the Restoration, the nomination of these judges lay with the Scottish Estates; but since that period, it has been solely vested in the crown. When a vacancy occurs, a letter from the Secretary of State points out the successor, with a courteous requisition to the judges that they will make trial of his qualifications. Twenty-five is the lowest age at which a person can become a Senator; and he must either have been an Advocate of five years, or a Writer to the Signet for ten. Generally the judges are men who have arrived at celebrity in their practice at the bar of the Court; and they are seldom appointed until they be far advanced in life.

Up to a comparatively recent period, the whole of the judges of this venerable bench sat in one body, and, as "Poor Peter Peebles" has it, "it was truly a grand thing to be ta'en afore the hale fifteen." But this concentration of so many judges, however imposing on the senses of the distracted litigant, is now modified as unwieldy, and the solitary court has been

broken up into nine smaller courts, which are found to be more efficacious in answering the ends of justice.

The device of cutting the old Court of Session into sections, has left it in this condition. The fifteen Lords have, in the first place, been parted into two divisions. These go by the names of the First and Second Divisions, and are two distinct courts, which, except on particular occasions, have no common connexion with each other. Both possess the same powers, and are on a parity of rank. At the head of the First Division sits the Lord President, who is, in every respect, the principal civil judge in Scotland, and who may be considered as possessing an official resemblance to the Lord Chief Justice of the King's Bench. At the head of the Second Division sits the Lord Justice Clerk, a title which he owes to the circumstance of his being co-ordinately the presiding judge in the High Court of Justiciary.

In popular phraseology, these two courts receive the collective title of the "Inner House," on account of their meetings being held in certain inner apartments leading from the "Outer House," or that ancient and very magnificent oblong chamber, once dignified by the presence of the Scottish Parliament, and now the Westminster Hall of this northern kingdom.

From each of the above Divisions, there is next detached three judges, each of whom is entitled Lord Ordinary, with the power of holding a distinct court of his own. This process of excision leaves one of the main courts with four judges, and another with five judges, when, from that which has the greater number, there is detached one judge, who has likewise a separate jurisdiction of a peculiar nature, and is designated the Lord Ordinary upon the bills. Thus there are altogether seven courts of *one* and two courts of *four* judges.

The courts of the Lord Ordinary occupy an inferior station in the general system; it being to one or other of these to which almost all causes in the first instance proceed; and whence, if dissatisfaction be expressed

with their decisions, the pleas can be appealed into the inner house. In raising actions before the Court of Session, they can be entered on the rolls of either one of the Ordinaries of the First or of the Second division,—a free choice being permitted; but to whatsoever judge is given the preference, in that division to which he belongs must the case, if need be, go through all its ulterior steps of procedure. The inner houses are for the purpose of hearing appeals from the Ordinaries; and it is only in certain instances that a division receives a case not in the shape of an appeal. Such are the peculiarities in the situations of the Lords Ordinary. They occupy recesses in the outer hall of the Parliament House, where, holding their little courts, they dispatch in a quick manner many actions which do not require the conjoined knowledge of a bench of judges; as well as, at the same time, paving the way, in some serious cases, for a more lengthened discussion.

With regard to the Lord Ordinary upon the bills, he is a personage endowed with many remarkable powers, quite peculiar to his own office. His duties are of two distinct kinds, bearing scarcely any relation to each other, yet both exercising an influence, equal often to that of the whole court, over the administration of justice and the welfare of the community. The most prominent of these characteristics, consists in his being in his own person, a concentration or complete representative of the whole Court of Session, the powers of which he wields when emergencies call upon their exercise. Like a national magistrate, on whom is dependant the exercise of much discretionary power, in order that the machinery of the commonwealth may not be a moment impeded, he is daily called upon to exert his arbitrary authority upon cases demanding peculiar dispatch, which cannot be tampered with or delayed.

During terms, the Lord Ordinary upon the bills holds an open court in the Parliament House like his brethren, at which are called all the cases relating to

the annulling of Decrees, Deeds, &c.; but the principal business falling under his department is negotiated at either his own house, or at an office designated the Bill Chamber,* situated in the General Register House. However, be he where he may, he acts in a great measure the part of a Lord Chancellor, or Supreme Civil Magistrate of Scotland; awarding, suspending, ordering, decreeing, or interdicting in civil matters as the case may require; and this is not only done while the court is sitting,—it being every day in the year, whether in term or recess.

It being indispensable by the law of the country, that mostly all warrants, in order to be effective, must receive the orders of majesty, conveyed by the symbol of the royal seal; and that this impress can only be done by the assent of the Court of Session; petitions craving such warrants, technically denominated Bills, are therefore brought to receive the sanction of this particular Lord Ordinary, whose signature is reckoned equivalent to that of the whole court. He grants summary warrants or interdicts, to arrest the judgments of the inferior courts; to prohibit the surreptitious publications of copy-right works; and to stop the erection of buildings on improper sites. Petitions to be sequestrated under the Bankrupt act, (during recess only) and every other simple documentary proceeding requiring the instant intervention of the Court, pass under his review, or is expedited at his office.

In certain specified cases, the propriety of granting the prayer of the bills, such as in the craving of diligence on dishonoured promissory notes and so forth,† is so obvious, that the signature of the clerk in the bill chamber is sufficient. At other times the petitions are taken into a reasonable degree of consideration by the Ordinary; and he may order written pleadings to be

* The Bill Chamber of Scotland bears a resemblance to the "Bail Court" in Sergeant's Inn, where the judges, as they may be appointed, are said "to do business at Chambers."

† *Diligence* is a technical law phrase in Scotland, signifying the ultimate execution of warrants in civil process.

given in, or the attendance of counsel to be made, before he awards his decree. Of course, his lordship's judgments are subject to alteration, either by the Court or by the House of Lords.

The other peculiarity in the office of the Lord Ordinary upon the bills, consists in his being the medium through which all appeals from the inferior civil judicatures must find their way into the Court of Session. Not but that appeals can be forced into the court in spite of his opposition; still by his situation he is placed as a species of "Lord of the Articles," and has the power of throwing back many of those cases which are attempted to be brought for reviewal from the courts of the sheriff and other magistrates. He possesses no power to prohibit the entrance of bills of *advocation*, which are suffered to pass as a matter of course; but with regard to *suspensions*, he can impede their introduction, and this distinction rests on the principle, that the complaining party should have advocated his suit before it arrived at this crisis, and that the attempt to stop diligence is, in all probability, only for the purpose of delay. When suspensions are refused to be sustained, they can still be brought into the court by a petition to either of the divisions of the inner house, praying that the decision of the Ordinary on the bills may be altered; but this incurs delay, and in the meantime the diligence may be going on. Though apparently the exercise of this function is of an arbitrary and offensive nature, it is really of a salutary influence upon the steady administration of the laws; for it may well be imagined, that if those who were nonsuited in inferior courts had the unchecked power of carrying their pleas at once into the supreme courts, litigations would be endless, and increased to a prodigious and dangerous extent. This judge is hence placed as a guardian at the threshold of the parliament house, to repel the entrance of evidently improper cases of appeal, and to secure the attention of the judges to those matters deserving of consideration. During the recess of the

court, the duties of this Ordinary are taken weekly by each of the lords in succession.

Appeals from the decrees of the sheriff courts, and from the courts of the burgh magistrates, (like as in the case of the writs of *pone* and *certiorari* in the English form of process,) are brought before the Court of Session in the above manner, from all parts of Scotland, merely by a consignment of the process to the bill chamber, where the business is negotiated by a practitioner before the supreme courts.

The forms of process before this Supreme Court bear extremely little resemblance to those measures pursued by litigants before the Courts of Westminster. The first step taken in a remedial process for the recovery of debt, damages, or any other loss which may have been sustained, consists in the sending of a "summons" to attend in a court on a particular day. This is called raising an action. In bringing actions before the Court of Session, these summonses are carefully written documents in the English language, and passed under his Majesty's signet, wherein is set forth "in explicit terms, the nature, extent, and grounds of the complaint." A copy of this is delivered to the defender by the proper officers, and the original summons and subsequent papers are lodged with a clerk of the court. On receiving this citation, if the defender does not wish judgment to go in absence—he employs an agent and counsel to conduct his defences.

According to express regulations on this subject, these defences, which must be given in or "boxed," (*i. e.* put into boxes belonging to the judges in the parliament house,) by a certain day, must be drawn up in a clear, succinct manner. A defender may state objections which may at once be the means of throwing the summons out of court, on the head of informality, &c. If such objections be stated, as they are vital to the cause, the lord Ordinary hears parties on their import, and if sustained, the action may be dismissed; but in this case, an amendment of the summons is generally

allowed. When no informality exists, or when it has been rectified, the parties may close the record upon their summons and defences given in, as containing a full statement of facts and pleas in law, or they may crave a condescendence and answers, which amounts to the giving mutual explanations in an explicit manner. The facts and pleas in law being at length fully stated, the record is finally closed, and the respective counsel must subscribe a minute to the effect *that nothing new will be afterwards advanced*. This excellent contrivance, which is only of recent institution, brings both parties to their last averments, and puts it out of the power of either to protract the litigation.* The Lord Ordinary then orders the case to be debated, and having heard counsel *viva voce*, he decides the cause; or, if it be a case of difficulty, he may either verbally report it to the inner house for their opinion, or order *cases* to himself, or to the inner house, in which the various points are fully argued in writing.

Should one of the parties be dissatisfied with the decision of the Ordinary, he can bring it under the review of the inner house; but in doing so, he is not permitted to state new facts, except he can prove that such were formerly unknown to him. Should the Division consider the case to be of an intricate or very important nature, it has the power of calling to its aid the other division. On some occasions it is necessary to have the whole fifteen judges present. Formerly it was allowable for both the Ordinaries and the Divisions to review their own interlocutors, by which means there was almost no end to litigations; but this vicious practice is now abrogated. Upon an average the divisions *adhere* to three-fourths of the Ordinary's interlocutors.

It may happen in the course of the action, that much or the whole depends on the evidence of witnesses. In cases of this kind the court remits the pro-

* The forms of process in the civil courts of the sheriffs, and in the consistorial courts, are now modelled on the above plan, or as nearly as may be.

cess to the Jury Court, a jurisdiction intimately connected with the Court of Session, which is in some respects equivalent to taking a *rule Nisi* at the English bar.

Such is a very superficial outline of the course of procedure in the Court of Session, in which the English stranger will remark many excellent peculiarities. Although there are still many amendments necessary, which can only be made gradually, as experience shall dictate, taking the form of process all in all, it is placed on a more efficient and less expensive footing than that of any other jurisdiction in Europe. When we consider that cases precisely similar to those which are here satisfactorily discussed in a few months, or at most in a year or thereby, sometimes occupy a period of ten, twelve, if not twenty years, in the Court of Chancery, at the expense of a fortune, the Scotch have the utmost reason to be thankful that they possess such an authoritative tribunal with so few faults.*

Appeals can be carried from the Court of Session to the House of Lords, which has come in the place of the old Scottish parliament. In this branch of the Scotch Law administration there probably lie some evils worthy of remedy. It has often been remarked, that the Chancellor and his assistants can hardly be competent judges on cases involving niceties in Scottish jurisprudence, and often hinging on the common customs of the country. This frequently causes the reversal of appealed cases, when it is obvious that the Scottish Supreme Court could not have consistently given the same deliverance.

The powers of this Court are partly of a criminal nature; but practically it adheres to the trial of civil causes alone; only inflicting the pains of incarceration, fine, or pillory upon fraudulent bankrupts, those

* Pleas cannot be brought before the Court of Session, *in the first instance*, for the recovery of sums below L. 25. To carry a case the length of getting a decree in favour of the pursuer, when there is no defence given in, about L. 7 of expenses will be incurred.

convicted of perjury, and similar offenders. It hears and determines all pleas relative to moveable or heritable property, personal damage, the disputes of merchants, frauds in trade, forging of deeds, bankruptcy, insolvency; and, like the Court of King's Bench, it is the protector of the people against the unjust or arbitrary measures of the magistracy. It is also the guardian of unprotected minors and idiots, to whose affairs it appoints curators.

On account of the mixed character and duties of the Court of Session, it is not only governed in its decisions by the Scottish and British laws, as well as the rules of equity, but it is much influenced by statutes, or acts of sederunt of its own enactment. It is further considerably biassed by previous decisions, of which there are very voluminous digests, and to which periodical additions are continually making.

There are three principal clerks of Session; three assistants; three deputies, and three assistants to the deputies, belonging to the First Division. A like number is attached to the Second. These sit below the bench, and record interlocutors of the judges; a duty requiring a clear understanding, as well as an extensive knowledge of legal forms and phraseology. They are likewise the custodiers of all the papers employed in the processes. The Almanack furnishes a list of the officers connected with the court, along with their particular duties. These receive payment of their salaries from a fund formed by the fees exigible on every paper used in the suits brought before the Court, which fees are felt as a severe tax on litigations, and it has often been proposed to petition Parliament for their removal; but if such was accomplished, the payment of the salaries would fall on the Treasury, and it therefore remains to be decided whether the country at large, or those who must necessarily resort to the judgment of the court, ought to be the sufferers.

At present the salaries of the judges, which amount to L. 2000 each, with the exception of the Lord Presi-

dent who receives L. 4300, are paid out of the public purse. Many unsuccessful attempts have been made to procure an augmentation of these sums, which are complained of as being too small. In opposing claims so often pressed on the notice of the legislature; it has been distinctly alleged that the judges are sufficiently remunerated, considering the lightness of their duty. They only sit five days a week for four or five hours a day, during a winter session of four, and a summer session of two, months. Hence they are not employed in court more than one hundred and sixty-two days a year. Those who act as commissioners of justiciary on the Mondays during terms, and for a few days on the circuits during the vacations, are paid extra. To this course of duty must be added the studying of papers at home, which is attended with no small degree of trouble to conscientious judges, and in reality forms the severest part of their duty.

Mostly all papers coming before the Court of Session must be printed on a large legible type on quarto paper. As a sufficient number is always printed for distribution among the judges, lawyers, and litigants, every client may exactly know at what stage his process rests. When suits are wound up, all the papers connected with the processes from first to last are consigned by the agents to certain functionaries, who deposit them in the recesses of the General Register House, from whence they may be drawn for inspection at any future period, however distant. A number of extractors are also engaged to engross abridgements of every process thus consigned, by which means the judges or others, when they find it necessary, may have recourse to the bearings of cases an hundred or more years since, at a very short notice.

The civil jurisprudence of Scotland, now brought into operation, is of a very different description from that which was generally acted upon sixty years since, and were the ghosts of Pleydell and his cotemporaries to revisit "the floor of the house" in the nineteenth century, they would be fully as much surprised at the quality of the processes, as the comparative rapidity

with which they were dispatched. On account of the increase of commerce and manufactures, much of the business to be settled is now of that character, which requires a knowledge of the mercantile law and the practice of the English Courts.

It is generally supposed that a considerable change will soon be again effected on this judicature. While we now write, the Jury Court, erected on English principles in the year 1816, for the exposition of facts, still exists ; but agreeable to act of parliament, its privileges expire in 1830, and when this is accomplished, the trial of civil actions by a jury of twelve men will be more closely connected with the Court of Session. Among the other projected alterations, the principal seem to be the reduction of the number of judges from fifteen to thirteen.*

It is a circumstance worthy of remark, that the present jury court has never been popular, either while sitting at Edinburgh, or perambulating the country like similar courts in England. This has not been owing to any imperfection in its practice ; it is referable to another cause. The truth is, that the uses of trial by jury are not yet sufficiently comprehended or appreciated ; and, what we fear is still worse, the country is not yet ripe for the complete introduction of so excellent a safeguard of personal rights. Nothing can shew more clearly the meagreness of public spirit in Scotland than this fact. While almost every disputed fact in England has been long settled by juries, however trivial the matter litigated may have appeared, such procedure has hitherto been altogether unknown and undesired by the people of this country ; and the trial of civil cases by assizes, so far as it has gone, has been instituted more from the wishes of the ministry

* The Court of Session is furnished with a seal, which is employed in sealing particular papers issued under its authority. It possesses also silver maces ; and the judges, when on the bench, wear robes of blue velvet, with capes and cuffs of a red colour. That of the lord president is distinguished by a cape of white ermine spotted with black.

and some spirited lawyers, than by the requisition of the general community.

Such a disregard to trial by jury by the Scotch has been of much disservice to the cause of civil liberty, and has assuredly protracted the existence of certain authorities which would otherwise have long since been extinguished. Whether the settlement of particular facts be more just when affirmed by a jury than by one or two judges, is of little consequence in this question. It has never been alleged that judgments of a very erroneous nature have proceeded from the latter form of process. The secret and often the real use of an assize is the confidence which ordinary members of society thereby acquire in their own importance. When they feel that they can neither be ruined by a civil law suit, nor punished in a criminal sense, without the intervention of their peers, they begin to slacken in their dread of justiciars, and live without any fear of oppression. No small proportion of that independence and fearlessness in the English character may be deduced from this institution. The perpetual recurrence of jury trial in England, brings every class of the community except the lowest, and in some cases even it is indulged in this respect—into continual and immediate contact. Noblemen, merchants, farmers, and shopkeepers, all mingle freely together, and express their opinions to each other, by which ingenious and excellent scheme, the different ranks of society are reduced to a level, and a vivid impression of individual privileges is thus simply preserved. Unfortunately for the Scotch, none of their institutions has the same tendency. There are no parish meetings—no inquests of coroners—and no approach to an intermixture of ranks, (excluding the occasional trial by jury in criminal cases.) Each class still stands aloof, and when so disjoined, and prevented from discussing topics of mutual benefit, bad measures, bad laws, and other mischiefs injurious to the public interest can easily be introduced, or at least many improvements may be prevented.

Though the better organization of jury trial is hence to be desiderated, the process cannot be instituted

with sufficient caution. In cities, and populous and wealthy parts of the country, it would be at once appreciated, and acted upon with pleasure; but in other places the draughting of juries from distant quarters would be considered troublesome, if not oppressive. Besides, it has to be discussed, whether a vast number of the people, who though educated in a small degree, and possessing the natural common sense of the Scotch, are really capable of being impartial jury-men. The bonds of clan-ship, cousin-ship, vassalage, rural servitude, dependence, religious consanguinity, poverty, and other elements of that antiquated freedom so much lauded by poets and historians, is yet far from having disappeared from sequestered and distant districts; and such must be either dispelled or considerably modified before trial by jury can be widely disseminated with safety and usefulness.

Every alternate Wednesday, and every Monday, during terms, the outer and inner house assume quite an altered appearance; and a complete revolution then takes place in the nature of the business transacted in the court.

Every alternate Wednesday during the winter and summer session, the whole of the six lords Ordinary, quitting the discharge of their duties in the recesses and curtained debating chambers attached to the outer house—the lord Ordinary on the bills leaving his place of business—and the two divisions coalescing—there is thence formed a bench of fifteen judges, who are by parliamentary enactment invested with the office of commissioners of teinds, and form the teind court of Scotland. We may here explain to the stranger, that the tithes or teinds payable to the clergy of the established church in this country are levied in certain proportions from the land-holders in money, agreeable to a standard erected by Charles the First, and the commissioners appointed by the royal authority. These proportions depend, in a general sense, on the share which each land-holder is supposed to possess of the tithes of the church prior to the reformation, and

the stipends of the present clergy are susceptible of a periodical increase every nineteen years, until they amount to the exact value of those tithes which were taken by the land-holders from the Romish establishment. This subject, which is of so important a nature, will be fully explained in its proper place, and we are anxious it should obtain the careful examination of the stranger; it may here only be stated, that in the course of the proceedings for paying the clergy, there often occur disputes requiring settlement between them and the land proprietors. This, therefore, is the court appointed to determine all pleas referring to this branch of the affairs of the church. It orders increases of stipends to ministers when requisite; orders churches and school-houses to be built and repaired, and regulates all other kirk matters touching on civil polity, on representation being made from the church courts requiring its interference.*

The court has a distinct establishment of clerks and officers. The commissioners have no additional salary for executing these duties. The Lord Ordinary upon the bills is also Lord Ordinary on the teinds, and as such grants summary warrants on ecclesiastical affairs, and prepares cases for the determination of the court when it assembles.

Of the different species of judicatories in Scotland, instituted for the purpose of hearing and determining criminal charges, there are few varieties, and these may very easily be described. Apart from the jurisdictions of the civic magistracy, by whom few delinquents are now punished, but those who have committed subordinate offences, the only criminal courts

* At one time, this court met oftener; but the business coming before it having undergone a gradual diminution,—as the tithes in the hands of the landholders became *exhausted*, after arriving at which crisis no further augmentation of stipend can take place,—the meetings have settled down into once a fortnight. Shortly, they may occur only once a month; and finally, the principal business regarding augmentations will terminate, when the court will almost cease to operate.

in the country, are those of the sheriffs, and that of the High Court of Justiciary. In the landward counties of Scotland, each sberiff or his substitute may hold an occasional criminal court, either with or without the assistance of a jury. In the principal towns, it is common to hold a court of the first description on one day, at which only petty offences are discussed, and to hold one of the other at a different time, where more daring delinquents are tried, and subjected to penalties of a severer nature.

At these jury courts of the sheriffs, the cases most commonly to be determined, are such as refer to personal damage, trespasses, poaching, stealing, house-breaking, shop-lifting, and other larcenies. The sheriff or judge ordinary, according to his own discretion, may inflict punishments to the extent of imprisonment for twelve months, fines to the amount of L. 50, and banishment from the county for life. It is often alleged, that these powers are too extensive, and may be rendered injurious to the community; but it must also be remembered, that very many of the cases to which the heaviest of these punishments is applied, but for compassion to the perpetrators, would frequently be remitted to the High Court of Justiciary, where, in all likelihood, they would be more severely dealt with. On account of the prodigious increase of juvenile delinquency in Scotland within these few years, whereby the High Court of Justiciary is often burdened with the trial of mere children, a necessity exists for enlarging instead of diminishing the authority of the sheriff's criminal courts. It is seldom that the sheriff ventures on trying any but the most venial offenders, until he has communicated the case to the Lord Advocate, who either desires him to proceed by a jury or otherwise, or takes charge of the prosecution himself before the Court of Justiciary. Appeals can be made from the decrees of this and all other inferior criminal judicatures to the courts of Justiciary, in much the same manner that bills of suspension in civil process are brought under the cognizance of the Court of Session.

The High Court of Justiciary, instituted 1672, is the supreme criminal judicatory in Scotland. It is composed of six commissioners of justiciary, who are always at the same time judges in the Court of Session, five of whom are equal in authority, and the sixth acts as a president or chief justice, under the title of Lord Justice Clerk. It still appears by the Almanack, that the supreme judge of this court is the Lord Justice General; but, as already mentioned, the office is entirely sinecure, as the nobleman who holds the situation never appears on the bench.*

The court in general sits every Monday during Session, and its attention is closely directed to the business of "jail delivery," or trial of criminals. In the vacations of the Court of Session, the different commissioners perambulate the country, forming at various stations circuit courts of Justiciary, on principles the same as those pursued in England by the judges on the assizes, with this difference, that while the English judges on these expeditions must be empowered by fresh commissions every season, the judges in Scotland regulate their own motions, without any communication from the crown. The judges on the circuits are likewise authorized to hear and determine appeals of civil causes from the sheriffs' and commissary courts, when the sums claimed are not higher than L. 25.

The High Court of Justiciary, by the aid of assizes, has the power of investigating and determining all

* An officer is mentioned in the Almanack as pertaining to this court with the title of *Solicitor General*, but this is scarcely correct. That officer is the advocate for the crown in civil cases before the court of Exchequer, or any other judicatory in which the crown is a party contending, and in virtue of which function he receives the designation of Solicitor General. When he appears in the courts of Justiciary in an official capacity, it is in the character of a depute to the Lord Advocate. Like the serjeants at law in Westminster, he is the only pleader who is permitted to sit within the bar. He frequently succeeds to the office of Lord Advocate. His engagements as an officer of the crown do not preclude him from acting as an advocate or counsel to private persons in ordinary civil actions.

misdeemeanours and crimes whatsoever, except that of high treason, which, according to the common law of Britain, introduced into Scotland at the Union, must be tried by a specially appointed court of *oyer and terminer*. A trial for a crime of this description is so rare, and so much out of the common practice of Scottish lawyers, that when it occurs, barristers from Westminster are generally retained to conduct the proceedings, as more intimately acquainted with the law on points at issue. From the High Court of Justiciary, no appeal can be made to parliament, or any other jurisdiction. For further particulars regarding this court, we refer to the article under the head of criminal prosecution in Scotland. *

It has already been stated, that many of the jurisdictions in England, by reason of their antiquity, and the want of adaptation to the necessities of a community differing entirely from that existing at the period of their institution, are exceedingly ill calculated for the speedy dispensation of justice on uniform and easy terms. If any thing were wanting to prove our assertions on this point, we have only to point to the jurisdictions which the clergy of that country still possess over the temporal affairs of the people. Here the superiority of the system established in Scotland, for the accomplishment of the same ends, stands prominently in relief.

The great change from Roman Catholicism to Protestantism which took place in England, having been more in the character of a gradual and natural arrangement than that of a violent revolution, many of the pe-

* The commissioners of justiciary have salaries of L. 600 each, and, besides, all the travelling expenses on the circuits are paid by the Treasury. The Lord Justice Clerk has a salary of L. 2000, which, with his income of L. 2000 as a lord of session, places him nearly on a par with the Lord President. The court is furnished with a heavy mace of polished iron, significant of the inflexible and stern character of the jurisdiction. Strangers, on ordinary occasions, will find easy and free admittance to the High Court of Justiciary, which is mostly held in the court-house of the second division of the Court of Session.

culiarities of the former church were suffered to remain unmolested, as much for the purpose of conciliating the disaffected, as because any further alteration could be attended with no special benefit. As public opinion has never been sufficiently strong since this eventful epoch, to eradicate abuses, which almost every one is willing to allow continue to exist in connexion with the church, to this day the Protestant establishment of England possesses distinctions and privileges which its best friends have to deplore are not effaced, and which furnish its enemies with a continual cause of triumph. The principal immunities thus so anomalously sustained are the powers that certain dignitaries in the church are authorized to wield relative to civil matters, which could far more advantageously be reposed in certain lay judges, learned in the points at issue, receiving their commissions from the crown. Of the judicatories instituted on principles of this nature, we may instance the Bishops' courts for hearing appeals from the archdeacon's spiritual jurisdictions, and for determining all disputes relative to administrations, testaments, legacies, &c. occurring within the diocese: The courts of Arches, of which there is one belonging to each of the archbishops, to which appeals are brought from the bishops' courts, and where other cases occurring in the district immediately under the charge of the archbishops are tried: The Prerogative court, also belonging to the archbishops, where those cases are heard which interfere with the jurisdictions of two or more dioceses, and where the validity of wills, &c. are settled of persons dying abroad; and another description of archbishops' court, called the court of Peculiars, where cases originating in those segregated portions of parishes lying in different parts of the province are determined. From all these courts appeals can be made to the court of Delegates in London, which is conducted by "three law sergeants, and half a dozen doctors," who, as Brougham remarks, are appointed because they are young men, with little or no business, and "form the greatest mockery of a

court in the world." It is but justice to state, that as each of the foregoing courts are not conducted by the ecclesiastics themselves, but by lay chancellors, the civil liberties of the people are no way trenched upon ; and therefore the only real evils arising from the continuance of the ecclesiastical jurisdictions, is the intricacy and cumbersomeness of the forms, and the *appearance* of domination by the clergy in civil actions, a circumstance which all churches wishing either to be useful or popular should sedulously avoid.

The origin of these half civil half ecclesiastical courts, forms a subject of interesting inquiry in the history of jurisprudence. Erskine, in his dissertations, speaks of them in these words :—

“ From the great confidence that was in the first ages of Christianity reposed in churchmen, dying persons frequently committed to them the care of their estates, and their orphan children ; but these were simply rights of trust, not of jurisdiction. The clergy soon had the address to establish themselves a proper jurisdiction, not confined to ecclesiastical right, but extending to questions that had no concern with the church. They judged not only in teinds, patronages, testaments, breaches of vow, scandal, &c. but in questions of marriage and divorce, because marriage was a sacrament ; in tochers, because they were given in consideration of marriage ; in all cases where an oath intervened, on pretence that oaths were a part of religious worship ; and in the deprivation of notaries, and in the trial of those who used false instruments. As churchmen came by means of this extensive jurisdiction to be diverted from their proper functions, they committed the exercise of it to their officials or commissaries. Hence the commissary court was called the bishop's court, or the consistorial court, from *consistory*, a name first given to the court of appeals of the Roman emperors, and afterwards to the courts of judicature held by the Romish clergy.”

While thus, unfortunately for the purity of the church of England, it remained tainted with the pos-

session of a power, which we are convinced its greatest prelates have often been desirous of having conveyed to civil jurisdictions, the circumstances under which the consistorial courts of Scotland were placed by the reformation, were of an entirely opposite character. Almost every vestige of the former religious establishment was swept away; and although this blind demolition has now to be deeply lamented on various accounts, the reformers are deserving of the thanks of their country, for being the means of abolishing the mixed and improper jurisdictions of the clergy.

Before the new system of religion had been well planted in the wilderness caused by such a dreadful convulsion, measures were taken to institute jurisdictions in place of those so rudely dispossessed. All appeals from the old consistorial courts were withdrawn from the court of last resort at Rome, and consigned to the Court of Session; and shortly afterwards, in 1563, new consistory courts were erected on entirely secular foundations by order of Queen Mary; which judicatures, with some occasional and necessary modifications, still remain unchanged in their constitution. Another salutary amendment was made. A complete and final separation took place between the lay and the ecclesiastical courts; the latter, to be described in connexion with the religious establishment now in Scotland, having only a jurisdiction over those persons belonging to the parish churches, with reference to spiritual matters, together with authority over the clergy necessary for the well-being of the kirk. The subsequent erection of the teind court has added a third jurisdiction equally useful. Thus, the consistory or commissary courts engross all the business relative to administrations, testaments, &c. The teind court settles all disputes relative to the secularities of benefices. And the church courts only remain possessed of a definite authority in things spiritual.

The head commissary court of Scotland is held at Edinburgh under the management of four commissioners or lay judges, appointed by the crown. They

must be advocates of a certain number of years standing, but their avocation as judges does not preclude them from practising at the bar of the supreme courts. They receive salaries of L. 600 a year each. This court recognizes all pleas relative to marriage, divorce, bastardy, and seduction. It grants separate maintenances, imposes fines, determines the administration of defunct persons, confirms heirs and executors, and, like the Prerogative court of the Archbishop of Canterbury, settles all disputes relative to the property of persons dying abroad, or in Scotland without a fixed place of residence. It has a special jurisdiction over the counties contiguous to Edinburgh.

Within these few years Scotland was divided into several provincial commissariats, governed by local commissaries; but as these institutions were very ill conducted, were attended with a needless expense, and the business coming before them not being of a heavy nature, they were very properly abolished, and the authorities of the commissaries conveyed over to the sheriffs and their substitutes. Every sheriff, therefore, now holds a consistorial court, as occasion may require, at which matters relative to confirmations to moveable property lying within the shire, form the principal business. It takes cognizance of the effects of strangers or intestate persons, and obliges heirs to pay the legacy duty. It is not competent to declare the validity of contested marriages or to grant divorces. Appeals from these inferior commissary courts can be carried to the head court at Edinburgh, from whence cases may be advocated into the Court of Session, and then finally appealed to the House of Lords. It is only very important cases that undergo such a course of litigation; but in general they do not rest till they have been determined by the Court of Session. The oath ordered to be taken in the commissary courts differs materially from that commonly used, and is of a more imprecatory nature. When administered, the witness must kneel upon his knees. This is the only fragment of Roman Catholicism pertaining to the

process, and as such it has been objected to by those of "tender consciences."*

Until lately, it was competent to carry civil causes into the commissary courts for the recovery of debts to the amount of £.3:6:8. This was done by a fiction of law, whereby the pursuer pretended to be an orphan, a widow, or some other person requiring the aid of the court. This process, which is now very properly eradicated, will remind our English readers of the fiction still daily used with respect to bringing actions before the court of Exchequer, for the recovery of civil debts, where it is explicitly set forth in the complaint (or writ of *Quare impedit*,) of the pursuer, that except he recover the debt alleged to be due, he will inevitably become a defaulter to his Majesty's revenue from an inability to pay his taxes! As there is no court in England corresponding to the Teind court of Scotland, those clergymen who prosecute for recovery of the temporalities of their benefices, resort to this judicature; but in doing so, they must invariably have recourse to the disingenuous artifice we mention.

It is, we believe, almost settled upon by his Majesty's ministers and parliament, that the preceding head consistory court of Scotland shall be considerably reduced in the number of its judges, and in the quality of the processes to be brought before it. The number of judges, it is understood, will be limited to only one, whose duties will principally consist in expediting appeals from the inferior commissaries to the Court of Session, which will hereafter be the proper

* While kneeling, the witness must lay his left hand on an open Bible, and hold up his right. The words he is made to repeat, we believe, are as follows: "I hereby renounce all the blessings contained in this Holy Book, and may all the curses therein contained be my portion for ever, if I do not tell the truth; and I swear by Almighty God, as I shall answer to God at the great day of judgment, that I will tell the truth, the whole truth, and nothing but the truth, so far as I shall know or be asked at me."

judicature to which the above specified actions, relative to marriage, divorce, &c. will be carried. If the jurisdiction is to be altered at all, in our opinion, it should be completely incorporated with that of the civil court.

The Admiralty court, now to be mentioned, is a jurisdiction of a mixed nature; being partly supreme in its authority, and partly liable to the review of the Court of Session. Since the abrogation of the authority of the Lord High Admiral of Scotland, it has been placed under the superintendence of a Vice-Admiral; yet the situation of this individual is somewhat anomalous, if not useless, as he only nominates the Judge Admiral, to whom is committed all the judicial management. This latter officer, therefore, with his clerks and a procurator fiscal, form the constituent members of the court.

There are brought hither all cases pertaining to maritime affairs, whether civil or criminal,—“as in questions in charter parties, freights, salvages, wrecks, bottomries, policies of insurance, the recovery of goods which have been sent by sea from one port to another.” There is likewise here tried the crime of murder, piracy, and mutiny on ship-board. The authority of the judge reaches over the whole of the seas, creeks, harbours and estuaries within high-water mark, or the lowest bridge. In criminal cases, the court impanels a jury, and proceeds after the manner of the High Court of Justiciary. Its decrees for punishing malefactors with death, are put into execution within the mark of the highest tide.

There are, in various sea port towns, inferior courts of admiralty, under the management of local judges, appointed by the head judicature. Their interlocutors are reversible by the Judge Admiral. The principal court has the power likewise, we think very erroneously, of reviewing and reversing its own judgments; and these again can be brought by appeal before the Court of Session and Court of Justiciary.

The complete extinction of the Admiralty Court of Scotland has been long anticipated, and it is apprehended, that the incorporation of its jurisdiction with the High Court of Justiciary and Court of Session, will take place by the provisions of the new reformatory judicature act. Whether the alteration be beneficial to the country, remains to be proved. By the process, which is about to be instituted, of concentrating the most opposite varieties of cases in the Court of Session, that tribunal will undoubtedly have sufficient employment of a mixed nature to engage its serious attention. The coming changes will most likely have the effect at least of injuring the admiralty and commissary procurators, whose practice will benefit the Solicitors before the Supreme Courts. Though some saving will accrue to the treasury on the reduction of the number of officials in the courts, we question if the measures in contemplation be altogether desirable. The present constitution and arrangements of the courts, we have noticed, are in general excellent, and do not lie under those objections urged with propriety against the Welsh judicatures, or the still more clumsy and inefficient routine of English ecclesiastical courts. A little salutary excision of needless excrescences, it is justly conceived, would better answer the ends of a desire for reformation, than the root and branch destruction of those hitherto useful and well managed judicatures it is proposed to molest.

It has already been casually remarked, on noticing the changes incidental to the institution of local authorities at the Union, that the office of Treasurer was abolished, and that the revenue department was assigned to the management of certain judges or barons, with a king's remembrancer.* It has now to be farther

* The barons of the Scottish Exchequer are not necessarily noblemen or barons. They are merely judges of ordinary rank, who are invested with this title in order to assimilate them with the barons of the English Exchequer. The designation, which is now honorary

explained, that the old Scottish Exchequer establishment was at this period considerably augmented, and its judicial authority much improved by acts of the British parliament. The institution was arranged in two departments, both under the command of the barons. These judges, four in number, of whom there is one with the title of lord chief baron, form a court for the purpose of hearing and determining all cases connected with the revenue, brought before them at the instance of the solicitors of taxes, customs, excise, stamps, general post office, &c.* This court sits at Edinburgh, where the whole establishment is situated, during four terms annually, each of about three weeks in duration. The practice of the judicature is entirely on the English model, and the juries who are employed are composed of twelve men only. Certain peculiar regulations are likewise enacted relative to the qualifications of advocates entitled to act as counsel at the bar.

Besides thus acting as judges, the barons have a very extensive authority with respect to property falling to the crown by reason of bastardy, escheat, or otherwise, which they have the power of conveying gratuitously to those claiming to be nearest of kin. It is but justice to state that an instance never occurs where the barons refuse the prayer of petitions of this nature, when properly grounded, even at a certain loss to the private revenue of his Majesty.

The second division of the establishment consists of a very extensive ramification of offices for conducting the business connected with the various descriptions of revenue drawn from the country, passing through the

in both cases, is derived from the ancient custom of employing nobody but barons to superintend the collection of the royal revenues. The ordinary barons of the Scottish Exchequer have each salaries to the amount of L. 2000, the Lord Chief Baron has L. 4000.

* The General Post Office of Scotland, and the office for distribution of stamps, are both subsidiary to the boards in London. A list of their officers, which is undergoing continual alterations, will be found in the Almanack. The former of these establishments is now probably the best managed of any government office in Britain.

Exchequer. Besides the king's remembrancer, already noticed, there are several solicitors, attornies, receivers of the king's rents, a receiver of bishops' rents, a clerk of the pipe, an auditor, with deputies, clerks, assistants, ushers, macers, and keepers. The duties of most of these officers may be easily comprehended. Under the direction of the barons, they check and pass the accounts of tax collectors, sheriffs, commissioners of supply, and others engaged in gathering the public revenue. It will be remarked, that his Majesty, in virtue of hereditary right, still receives a considerable sum from his private property in Scotland; but, by a wish to conciliate, or from a feeling of liberality, it is gratifying to notice that much of the money thus collected for his own use is dispensed in charitable donations to public bodies, and others having a claim on the royal bounty. As far as we can learn, most of the public income now collected in Scotland is sent direct to the treasury, instead of being lodged as formerly in this intermediate establishment. This new arrangement has very much lessened the consequence of the institution, and though accounts continue to be docketed in the old form, this, as a matter of expediency, must also soon be abrogated, when the duties of the officers so employed will be incorporated with those of the functionaries of the supreme government. Among other projected alterations in the Scottish courts, it is intended that the number of the barons is to be reduced, on account of the lightness of the business coming before the court. This alteration, in all probability, is only a preliminary step to the final abrogation of the judicature, which is perceptibly waning towards its dissolution.*

* In the church of St Giles at Edinburgh, a kirk formed out of the choir of the ancient cathedral,—standing adjacent to the parliament house, there are pews along the front of the gallery, appropriated to the use of the Barons of Exchequer, the Lords of Session, and the magistrates of Edinburgh, with an enthroned chair for his majesty's commissioner, or legate, to the General Assembly of the Kirk of Scotland. During terms, these legal

ther collaterally with the alterations of this nature any change will take place in the judicial appointments of the head members of the court, is not as yet conjectured. It is extremely probable, that the establishment will be subjected to a revision, and that the number of barons will be gradually reduced.

The existence of this venerable institution has hitherto been one of the most prominent characteristics of an ancient order of things in Scotland, and when the time arrives that it shall be extinguished, the people will have lost what at one period their forefathers would have fought to maintain. Its removal will only be another act in that singular political tragedy now acting in Scotland under the auspices of the Secretary of State, who seems to have an intention of remedying the defects in the treaty of Union, whereby a confederation of general interests, instead of an entire incorporation of institutions, was accomplished. Although sorry for the injuries which the country, and especially Edinburgh, must suffer for a season in consequence of the silent but not unobserved emigrations of Scottish institutions connected with the State, we are in some measure glad that a greater intimacy with England is drawing closer and closer; for it requires little philosophy to discover that Scotland would have been a much more wealthy country, and a vast deal more free of local oppression, had the amalgamation of its interests been effected with those of its neighbour on the day

dignitaries attend divine service every Sunday in their robes of office, preceded by their officers and macers. Besides being furnished with a huge bible and psalm book, the Barons of Exchequer have each laid before them, during the seasons of summer and autumn, a nosegay of flowers, and sweet scented herbs, which shed a pleasing perfume through the antique aisles. This custom resembles that which obtains with regard to the Lord Chancellor, who has a nosegay placed before him of the largest possible dimensions. Agreeable to a very ancient practice in Scotland, it is also customary to lay bunches of flowers on the benches of the deacons of the crafts and their adherents on the first Sunday after their election.

on which James I. ascended the English throne. It is nevertheless worthy of remark, that this is not the general sentiment of the nation, who still insist on maintaining an individuality in the empire, though, by an inconsistency, they would not interfere to arrest the progress of its decay.

Most of the separate government establishments in Scotland, including the Scottish Exchequer, were much in need of a reformation of some kind, in consequence of the little attention paid to them by the ministry since the Union, and also by reason of the flagitious manner in which they were filled with sinecurial officers, through the influence of Scotch noblemen at the helm of affairs. Though the institution just alluded to cannot be charged with the commission of any improprieties of a nature so derogatory to the integrity of the country as some others, the existence of a separate purse has been decidedly injurious to the common revenue. It may possibly not be known to the stranger, that besides the needless expenditure in support of a numerous train of officers of state, officers of the crown, officers of the household, continued since the Union, few of whom have any actual duties, the Exchequer has attached to it a species of “civil list,” containing the names of probably five hundred individuals, whom it annually supports by the payment of pensions. This bead-roll of paupers is composed principally of females, many of whom are impoverished ladies of quality left in destitute circumstances; but whatever may now be the precise privileges, conveying a title to draw eleemosynary stipends of this nature, it is an undeniable fact, that at one period the bounty was often bestowed on very improper objects. The Scotch, who seldom lose an opportunity of applying nicknames as a satire on vanity or vice, deformity or misfortune, designate these pensioners “Exchequer ladies.” The list is not inserted in the Almanack, or any other publication.

The Scotch have adopted a very beneficial practice in relation to the judicial system worthy of imitation

by their neighbours. With the exception of the sittings of the Exchequer court, which are regulated by quarterly festivals, the terms of the whole courts in Scotland, as well as those of colleges, &c., are regulated by fixed days of meeting entirely unconnected with religious observances. This is a benefit to society attributable to the abrogation of festivals by the Scottish kirk and estates, and it is desirable that such a simple expedient, by which a consultation of the moon's age or of calendars is unnecessary, might be carried into effect by the English Courts. The Court of Session has a recess of three weeks at Christmas, and it does not commence its winter session till the November or half-yearly sacrament of the communion at Edinburgh is dispensed; yet an earlier period of meeting could not trench on this holy observance, which being supposed by the Scotch unattached to particular seasons, might be sooner attended to. Even were this not the case, the sitting of the court with a recess of three days, would not be disadvantageous.

The total expense of the judicial management of Scotland amounts in round numbers to L. 180,000 per annum. This includes the salaries of all descriptions of judges and court officials, sheriffs, and others; outlays on the circuits, clerks, &c. This is paid by the Exchequer under the deduction of the money realized by the fee-fund, which may be stated at about L. 15,000 annually. The revenue paid from Scotland, drawn for stamps and other charges on law deeds and proceedings, is very nearly equal to the sum of L. 180,000, and in this manner the judicial establishment of the country may be said to pay itself. Altogether there are now upwards of L. 600,000 levied from Scotland on stamps. The attorney tax also produces L. 15,000. This cess has been loudly exclaimed against; but its uses in preserving the profession respectable are too worthy of appreciation to allow of its abrogation.

To those sketches of the various judicatures at present established in Scotland, we may add, for the bene-

fit of the stranger, a short notice of the different descriptions of lawyers who are engaged in expediting processes before the courts.

The lowest person whom the law recognizes as eligible to practise before any court of record, is simply an attorney or proctor. He must be a person who has served a regular apprenticeship, and been passed under the examination of a specially appointed committee of the profession. By entering his name in the sheriffs' books, and taking out a certificate from the commissioners (of stamps) for attorneys' licences, for which he pays L. 12 annually, he then becomes, according to the tenor of his licence, "a solicitor, attorney, proctor, agent, or procurator." Those who possess these qualifications are officially the same in both countries, although locally their designations are different. While in England the name of attorney is selected, in Scotland they receive more commonly the title of "writer," or Solicitor at Law. In Aberdeen, they are designated "advocates," and they are as commonly in some places called procurators. Nevertheless, their duties are nearly the same over the whole of Britain.

In Scotland, these solicitors enjoy the sole privilege of conducting cases before the magistrates, the sheriffs, the commissaries, and the admiralty courts, whether on civil or criminal process. They take down the grounds of complaint, prepare papers, expedite the summons, give in written pleadings, take out diligence, instruct officers, and, in short, manage the whole case from its entry until its termination. All strangers, therefore, having cases which fall under the above jurisdictions, must employ writers or solicitors at law. There are no procurators in Scotland belonging distinctly to the church or commissary courts.

The next stage in the legal profession is that of a Notary-Public. This is a person, who, upon a similar examination, is entitled to act as a legal tester of public documents. He is qualified to draw up contracts of marriage—indentures—the title deeds of landed property—to convey estates from a seller to a buyer—and

write out other deeds and bonds of a similar nature. It may be mentioned, that the law by no means forces private persons to have their deeds drawn out by a notary-public, or by any lawyer whatever. But as these gentlemen are regularly educated, and thoroughly competent to construct a paper with perfect legal accuracy, they enjoy to the exclusion of all others this branch of business. At one time many of the ministers of the Kirk of Scotland were in the practice of drawing out the testaments and other documents of their parishioners, a custom resulting undoubtedly from their attendance on the sick, and their natural desire to serve them, by giving their wishes an appearance of accuracy in language. This old practice is now, however, abated, as much from the more general diffusion of educated notaries, as from the circumstance that the wills thus drawn out have often been litigated and reduced.

The other department of the notary's duties consists in his being the person properly qualified to *note* bills or take protests. By attaching his signature to a bill, it is esteemed a legal voucher that it has been offered for payment and rejected. It is frequently the case in Scotland that the business of a notary is joined to that of solicitor, and that of messenger at arms; neither of these being considered complete in their qualifications until they have the properties of a notary. Indeed, we believe that the profession of a notary or conveyancer, apart from that of a legal practitioner, is almost unknown in this country, except in the case of banker's clerks, who are sometimes invested with these powers in order to expedite the general business of the establishment. Legal practitioners may act as conveyancers without being notaries; but in doing so they must employ these functionaries to *test* certain deeds or records of transactions requiring that attestation prescribed by law. Attornies pay no additional tax for being notaries; but those acting solely as notaries pay the same tax as legal practitioners.

After the solicitor at law is the Solicitor before the Supreme Courts. This is a person who enjoys every way a far higher station in society. He must have served a long apprenticeship, and paid to his employers a heavy fee of entry. He has to undergo a routine of study in Scottish law at the universities, in order to render him perfect in passing his examinations. It is here to be observed, that while young men intended for the legal profession in England, receive an education at the various inns of court, where there goes forward a regular course of probation, in Scotland this practice does not obtain,—a single professor at the principal colleges, being deemed sufficient for conveying legal instruction. The professors, at least those of Edinburgh, are generally lawyers of eminent abilities.*

These Solicitors before the Supreme Courts, who pay the usual attorney tax, after being admitted members of the corporation, conduct cases of every description before the Court of Session, Justiciary Court, Jury Court, and Teind Court. The body is of comparatively recent erection, having been only incorporated by royal charter in 1797. It has appointed office-bearers, a hall of meeting, and a library. The members while on duty in the "House" may wear a gown of black stuff.

Standing upon a level with the above respectable body, yet reaching numerically much higher, is the Society of "Writers to the Signet." This is not an incorporated body; any attempt which has been made to

* For medical jurisprudence there is unfortunately no taste in Scotland. Lawyers do not consider its study necessary, and few physicians deem it essential to their practice. It is thus shamefully neglected; and the only comfort is, that in England still less attention is paid to such a useful branch of legal education. The French, whose peculiarities furnish a theme for sneering on all occasions, shame the British in this, and many other departments of sciences. The College of Edinburgh possesses an eminent professor of medical jurisprudence; but he has very few pupils.

obtain a charter of incorporation, with the privileges of that distinction, having been frustrated. It is nevertheless an ancient and honourable body of gentlemen, who are qualified to act as law agents, or as they are sometimes called in Scotland, "men of business, or doers." In this capacity, they differ nothing from the Solicitors before the Supreme Courts, over whom they have a slight superiority on account of their possessing the sole right of expediting or passing papers under the signet or seal of his Majesty, which is a source of very profitable employment.

This society has also office-bearers, and a valuable library adjacent to the court-house. They are entitled to wear black silk gowns, and claim precedence of the solicitors,—an honorary privilege, by the way, which the latter are not very willing to acknowledge. The Writers to the Signet and Advocates have benches or pews set apart for them in the inner house, which is a recognized distinction over all other practitioners.

The expense of educating a young man in this branch of the legal profession is very considerable; an apprenticeship for five years, for which a premium of two hundred guineas is paid, and a course of tuition in the Roman and Scottish law being necessary, besides fees of entry after examination. The total expense, including outlay for books, &c. and deducting what may be earned during the term of apprenticeship, we understand to be not less than L. 800. To carry on business as a Writer to the Signet or Solicitor, a large capital is required, on account of the number of ready-money disbursements made for litigants. The profession is at present very precarious.

There is another class of law functionaries who are entitled to carry on processes in the Court of Session, namely, the first or head clerks of the Advocates, who are admitted to such a privilege upon undergoing an examination and paying the attorney tax. The body is not numerous, and many clerks do not take advantage of their rights.

At the head of the profession in both kingdoms, is the Advocate or barrister. From all that we can learn, there does not exist much real difference between these professional gentlemen, further than this, that while the barrister of Westminster more immediately receives his brief from the hands of the suitor, the advocate in Edinburgh indirectly has it through the medium of a law agent. The advocate, we presume, is also a personage who more frequently enjoys a wider knowledge in regard to every subject pertaining to his profession. This arises from the condensed nature of our courts, and the scope which is thereby afforded of haranguing both on points of law and equity. On account of the law of the country permitting the speeches of advocates in favour of criminals on their trial, they must likewise be obliged to study criminal jurisprudence, and, what must be equally paramount, the art of appealing to the feelings of the court and jurors. Hence, it will be obvious that Scottish barristers have set before them a far more extensive field on which to make a display of their talents than their brethren in England. We do not require to notice, that for many years the Scottish bar has been eminently distinguished by individuals of the highest literary and forensic attainments.

The title of sergeants-at-law—*servientes ad legem*—is unknown among the Advocates of Edinburgh. The body collectively is designated the Faculty of Advocates, and it is presided over by one of the most distinguished of the society, chosen by vote, entitled "the Dean," whose office is considered as exceedingly honourable. The society possesses no charter of incorporation, and it cannot reject any candidate for admission, provided he be capable of undergoing several examinations on the Roman and the Scottish law, and have published and defended a Latin thesis on a title of the Pandects of Justinian. At one time, none but those of noble or gentle families were permitted to enter the sacred pale of the Faculty of Advocates; but this very invidious and unjust principle of exclu-

sion has been destroyed for at least thirty years, and the profession is now open to young men of talents, of whatsoever parentage they may happen to be.*

The Faculty of Advocates is a very large and influential body in the metropolis, and its members have unquestionably been instrumental in giving to the society of Edinburgh that tone of intellectuality and taste for literature for which it has invariably been characterized. The Scotch in general have much reason to be deeply indebted to this society of gentlemen, for the indefatigable zeal with which they are continually animated, in protecting the liberty of the subject. Though it may probably be as often attributed to a desire of gaining personal distinction as to motives of a more disinterested nature, it is still extremely fortunate that so many men of talent are ever found ready to volunteer their services in guarding the interests of prisoners brought to trial, when no pecuniary recompense can be expected for their exertions. In this respect, the Scottish Advocates are, in reality, the self-constituted guardians of public liberty; serving, in no small degree, to neutralize the occasional bad effects arising out of the arbitrary authority of the local administration, as well as to mitigate the tendency of a very indistinct code of criminal laws.

At present there are between three and four hundred advocates; but of these, nearly one half, from old age, retirement, or change of occupation, do not take an active share in the business of the courts, and, indeed, in many cases, merely enjoy the title; for it is by no means uncommon for the sons of gentlemen to qualify and enter themselves as advocates, who have no real intentions of pursuing the profession. Of the remaining portion, there are about eighty who enjoy permanent situations at the disposal of the crown, or of the local authorities; such as judges of the supreme

* It is understood that the old principle of exclusion was brought to a termination by a *duel*. The incident is a matter of tradition in Edinburgh.

courts, sheriffs, clerks of Session and jury court, law professors, counsel for the Excise, assessors, &c. By these means, there are offices to the extent of nearly one for every third person, eligible from his standing to occupy it. There are four situations worth L. 4000 each *per annum*,—three of L. 3000,—three of L. 2500,—fourteen of L. 2000,—four of L. 1000,—eight of L. 500,—thirty-four of L. 300,—and eight of about L. 250.* No profession in Scotland, therefore, holds out, independent of private practice, such an advantageous prospect of settled and lucrative employment as that of the bar.

The fees or honoraria payable to advocates, which are always, if possible, in guinea notes, are very high; being generally from two to ten guineas for the writing of papers on legal cases, and for debating thereon. Occasionally they amount to fifty guineas. By a business of this nature, it is possible to realize the sum of L. 4000 *per annum*, though few actually receive more than the fourth part of this sum.†

The Faculty of Advocates possess a library of a very extensive description, situated contiguous to the court-houses. From its national importance, it will form the subject of a separate notice among other similar institutions.

* Edin. Rev. vol. xxxix.

† The custom of wearing wigs is now falling into disuse among the advocates; but they all still wear the ancient toga of the profession.

PROMINENT AND PECULIAR LAWS AND USAGES IN
SCOTLAND.

NATURE OF SCOTCH LAW—PROCESSES FOR THE RECOVERY
OF DEBTS—SEIZURE OF THE PERSON AND MOVEABLE PRO-
PERTY—SCOTCH JAILS—ARRESTMENTS OF FOREIGNERS
AND STRANGERS—ATTACHMENT OF HERITABLE PROPERTY.

If he his ample palm
Should haply on ill-fated shoulder lay
Of debtor, strait his body, to the touch
Obsequious, as whilom knights were wont,
To some enchanted castle is convey'd.

PHILIPS.

It may be remarked, that by no peculiarity in the institutions of a people,—the instrumental part of religion excepted,—is their genius and character so prominently developed as the contexture of their civil and criminal jurisprudence. The truth of this proposition is distinctly exemplified by the sympathy subsisting between the laws of Scotland and its inhabitants. It is now very generally understood among those indefatigable antiquaries, who delight in exploring the origin of customs and national institutions, that at one period the laws of England and Scotland, if not exactly uniform, bore a great resemblance to each other. But with regard to how this similarity originated, or by whom it was effected, there still exist great doubts. If such a parity in legal usages ever actually existed, it has long ceased to be observable. In the present

day, only a few faint traces of a former consanguinity can be distinguished. The principles of the two codes of jurisprudence are often alike; but in their practical influence on society, or the forms by which they are set in motion, there is seldom any common points of similitude. Each law has in the course of centuries been gradually adapting itself to the circumstances, the manners, and the feelings of the people among whom it acts. The vast increase of commerce, wealth, and population, with the corresponding elevation of the middle ranks of society, have caused the institution of innumerable new statutes, and have been the consequent means of obscuring the old written law in England, while the long impoverished and depressed state of Scotland, its want of industry or spirit, and its religious distractions, tended to preserve the old laws in almost their original constitution. The abrogation of some of the most inefficacious usages since the Union, and the introduction of British statutes since that event, has amended, but by no means revolutionized the system, and therefore the Scottish law may be adduced as still one of the most prominent national institutions.

The foundation upon which the superstructure of our law is reared, is a very ancient work entitled the "*Regiam Majestatem*." Almost no point in history has been so warmly canvassed as the authorship of this production; one party asserting it to be a compilation dictated by David I. of Scotland, and another, with equal feasibility, declaring it to be a work digested by order of Edward I. of England, and introduced by him into this country for the purpose of assimilating the Scotch with the English law. Leaving this to be cleared up by the researches of historians, it may be mentioned, that whether Edward was the patron of the *Regiam* or not, it is at least very certain, that on conquering the northern part of the island, he was anxious to engraft upon it the institutions of his own kingdom. While he and his successor were in Scotland, the Court of King's Bench sat at Roxburgh,

where cases were determined on equal terms from all parts of Britain.*

The work which has thus been made the object of the keenest controversy, whether a copy of the treatise of Ranulph de Glanville or the reverse, is a compilation of a very extraordinary nature. It has evidently been the production of a man of profound abilities as a scholar. He must have had an extensive knowledge of sacred and profane history, and of the languages, laws, manners, and customs of Europe, and especially those of this country. He has extracted and incorporated the substance of the Justinian Pandects or Roman law;† as much of the Levitical and Canon law

* Blackstone.

† The Pandects of Justinian, or the civil law which had been in use among the Romans, were lost for many centuries after the overthrow of the empire by the barbarians, and they were not discovered till the year 1137, by which time the whole of the nations of Europe were lying in the lowest pitch of degradation. A copy, which had escaped the general destruction of Roman literature, it is said, was discovered accidentally in the town of Amalfi in Italy; and no sooner was the fact promulgated, than the Romish ecclesiastics addressed themselves warmly to the task of disseminating its contents throughout the different states in which they happened to be. Each country thus became indebted to Roman law for a portion of its legal institutes. Some adopted and preserved the use of it more than others; but none seems to have retained the Roman usages so completely as the Scotch. They have done so by means of statutory and consuetudinary laws enforcing attention to particular heads. As we are of opinion that little is popularly known of the origin of that mighty exertion of genius, the Pandects of Justinian, we beg to offer the following explanation in the words of Banckton: "The Emperor Justinian, [A. D. 533,] having, by his great victories, restored to the Roman empire the several vast provinces which had been dismembered from it in the times of his predecessors, by the Goths, Vandals, and other foreign nations, and enjoying perfect tranquillity, undertook the noble but difficult enterprise of reducing their laws to order, which, by their immense bulk, had fallen into great confusion; and in the first place he caused compile the code, consisting of the constitutions of the emperors from Adrian's time till his own, collected out

as suited his purpose ; the Decretals of popes and their councils ; made selections from the known laws of mo-

of the Gregorian, Hermogenian, and Theodosian codes. Next, he caused digest what was proper to have the sanction of laws of the writings of the Roman lawyers, that flourished either in times of the commonwealth, or under the emperors till the emperor Gordian, under whom Modestinus the last of those illustrious lawyers lived. These consisted of no less than two thousand volumes, all which were perused by the learned persons commissioned for that purpose, who excerpted such portions as they thought fit for the design, and composed them into fifty books, called the Pandects and Digests, which the emperor authorized for laws, and advised the same to be published. And the very same year he advised the Institutions, as the elements of the civil law, to be composed ; these are contained in four books, to which he likewise gave the imperial sanction. He afterwards added new laws or Novels, and the whole being joined together, the greatest magazine of knowledge was thus formed that ever the world was favoured with."

The benefits which have accrued to the modern world by the promulgation of the Roman law in the twelfth century, are now incalculable. Had the church of Rome stifled the publication of the Pandects, which it could easily have done, it is extremely probable that civilization would have been now scarcely dawning on Europe ; there assuredly would have been as yet no reformation in religion, and Christianity itself might have been lost, or only remembered as a curious tradition. The original copy of the Pandects was deposited at Florence 1411, where, says Brenckman—an enthusiastic Dutch lawyer, who undertook a pilgrimage to study one of the manuscripts, and has left a learned work on the subject—it is esteemed as the most valuable literary curiosity in existence, being preserved in purple velvet in a rich casket, and shown to travellers by the monks and magistrates bareheaded, and with lighted tapers. Modern tourists are silent respecting the present condition of the Pandects, but we believe they are lodged among other rare books and manuscripts in the principal Florentine library or Magliabechina. The lawyers of Holland have written many ponderous volumes of commentaries on the Roman law, and to these monuments of learning and industry, Scottish advocates frequently find occasion to refer in their papers and pleadings. There have been several splendid editions of the Pandects ; that commonly used is from the Dutch press, and resembles a thick octavo bible, closely printed in double columns. The word *Pandect* is from the Greek, and literally signifies *all the words*, or, by a free interpretation, *all the wise sayings*.

dern European nations; engrossed the dictates of British kings, probably from some records now lost; and taken some of the laws originating in feudalism; all of which he has woven into one general book of edicts, simple and distinct in their character, and adjusted to the necessities of the age, as well as the peculiar manners of the people. No authorities are given; and but for the obvious origin of the institutes, the work bears all the appearance of entire originality.

This remarkable compilation of laws was the only written law of the kingdom, until James I. attempted to superadd the enactments of parliament, and introduce the civilized usages of the English government. The acts of the Scottish parliament were for several ages of little force in a country so turbulent as Scotland; but at length, as the people became more amenable, they came into complete operation. Though these statutes were ultimately the cause of dispossessing the *Regiam*, that work was not neglected. The new laws were constituted on the model therein presented, and thus the principles of the Roman, and the other legal usages of a foreign character, have formed the basis on which almost all our municipal laws are founded.

Lawyers now divide the common law into two departments,—the written law, or that part of our jurisprudence derived from Scottish and British Statutes; and the unwritten or consuetudinary law, founded on customs and usages of great antiquity, and only known by the writings of modern authors. To these there might be added a third or minor branch, composed of acts of sederunt of the Court of Session, a judicature possessing very extensive powers in the interpretation of old statutes, in the regulation of its own forms, and in the enactment of a species of bye-laws, not infringing on British acts of parliament, but calculated to supply what may have been left unprovided for in the written or unwritten law. In the exercise of a discretionary power of this description, the Court of Session generally acts with very commendable prudence; and it is fortunate for the liberties of the sub-

ject that such is the case. The old written law, or acts of the Scottish estates, are often very tyrannical, and at least vexatious. And as there is no precise summary of abrogated and unabrogated enactments, it becomes thence the prerogative of the supreme judicatures to apply them as appears most consonant with justice and humanity. The Scotch acts are in many instances of the most inestimable character, reflecting credit on those who were the instruments of their construction; however, this excellence is considerably abated by institutes of a very frivolous and oppressive nature, significant of a narrow-minded age, and often partaking more of the semblance of regulations instituted by an officious coterie of village inquisitors than a respectable national assembly. Having often little business of importance to attract their attention, the estates, instigated by the General Assembly, legislated on every subject, however trivial. Modes of speaking, styles of dressing, ordinary domestic arrangements, public and private amusements, religious opinions, &c. were all duly regulated. Luckily the statutes which thus at one time interfered with the private affairs of individuals, if not actually rescinded or fallen into desuetude, are now exercised so temperately that little or no injury is sustained from their protracted existence.

Much of the indistinctness of the civil and criminal jurisprudence of Scotland, arising from the circumstance above quoted, has been obviated by compilations of legal institutes. The works of Mackenzie, Erskine, Stair, Hume, Bell, and other writers on the principles and forms of law, with the decisions of the courts on all kinds of cases, have considerably simplified the judicial code, and, in defiance of the apocryphal acts, have rendered it more explicit and intelligible than that of England. Except as regards cases bearing principally on mercantile law, which is only beginning to be forced on the attention of Scottish lawyers, it apparently suits every purpose required, to the complete satisfaction of the nation. Sometimes it is severe, but more ordinarily it is temperate, and gene-

rally mild and equitable. Considering the vicissitudes through which it has come, and the prejudices of many of its constructors, it is in reality a matter of surprise how it should be so steady, efficient, and humane. Now, when modified and improved by British statutes, it requires only to be administered by active and prudent judges, to be every way worthy of permanent support. Beneficial as the progressive introduction of English institutions may be, any molestation of the common law, the *lex loci*, in favour of parallel usages from England, (until these usages have been primarily purified,) would be a serious error in international government. Should the legislature ever contemplate the abrogation of such an important national institution, it is desirable, that in the first place, our jurisprudence be patiently studied; and if a reciprocity of laws be ultimately found expedient, that the Scotch may at least have the gratification of contributing their due proportion to the imperial code.

With this very brief explanation of the origin and formation of Scottish law, which, though partly of an old-fashioned quality, is not less deserving of illustration, we pass to a popular sketch of those prominent peculiarities in the general system, useful to be known by strangers whose business or inclinations may lead them to visit or have any connexion with this country. Independent of the instruction it has been our wish to convey in as simple a manner as possible, on a subject hitherto obscured by technicalities, it is trusted that a knowledge of the institutes and forms of process, selected for their adaptation to the purposes of this work, will aid in elucidating the habits and opinions of a people whose character has already engaged the attention of so many eminent writers of facts and fiction.

In consideration of the momentous nature of the subject, and the comparative want of information among English merchants regarding legal usages wherein they often happen to be concerned, we bring first under examination those forms of procedure suited for the recovery of debts. To render the good points

of the Scotch law on this topic the more conspicuous, we here adopt the plan of contrasting the English with the Scotch usages.

The principal singularity in the English law relative to the forms instituted for the recovery of common debts is the existence of *mesne process*, which is incorporated with almost every part of the system. The literal meaning of this phrase is a process raised in the middle or in the interim between the beginning and ending of another process; but popularly its signification is entirely different. It is the application of a summary warrant to seize the body or the goods of a debtor, before he be aware of such a procedure being instituted. Until some recent alterations were made, *mesne process* could be put in force in order to recover debts of the smallest amount: Now, L. 20 is the lowest sum for which it can be used. Previous to the eighteenth century, it was not necessary to *swear the debt* was just, the payment of the office fees being sufficient. To raise a process of this nature, and to apply to other modes of executing civil warrants, a *writ* must be procured on oath, from the court of King's Bench, adapted to the exigency of the case or the desires of the creditor. Of these writs there are various kinds, all possessing distinct properties. We select five for our purpose.

The first and most important writ is designated a *capias*, or *capias ad satisfaciendum*, (to capture for satisfaction) which can only be applied to imprison the person of the debtor. So great an evil is incarceration supposed according to the law of England, that if once a debtor be put in jail by a *capias*, all his property moveable and heritable is protected; and it is from this cause that the anomaly is often seen of a rich landed proprietor being confined for life, until "dice can be made of his bones," while the poor creditor is possibly ruined. The *capias* is more frequently used in the shape of a summons to attend a court on a particular day, than to distress the debtor; yet this is under the provision that bail be given for his

appearance. When it is therefore executed by an officer on the debtor, the debt must either be liquidated or bail given, and as one or both of these conditions are at first sometimes attended with difficulties, in cases of this nature he is carried to the house of the bailiff, where arrangements may be made for his liberation. After a short confinement, should he be still unable or unwilling to enter into terms of surrender, he is carried to jail, there to await the day of trial. Whether he give bail or not, on the day arriving for the judicial discussion, if he wish to litigate the suit, *special bail* must be given, that should judgment go against him, the amount of the debt will be paid. In most cases, the first description of bail can easily be procured, though in the case of the debtor's non-appearance on the "return-day" in court, the bail is answerable for the debt to the sheriff, who in all cases of bail is the person responsible to the creditor. Special bail is more difficult to be obtained, as it is a guarantee for the payment of the sum demanded. Those who become security, therefore, in this sense, have a considerable power over the personal liberty of the debtor, whom, on suspicion of fugitation, they can secure in a summary manner, even though it were on a Sunday. The sheriff's fees for granting bail are necessarily very exorbitant.

The extreme ease with which this writ can be applied, is calculated to be the means of often securing debts, which, in places of dense population like London, could not be recovered by a more indulgent mode of operation; but taken in a general sense, it is too precipitate, and gives the creditor at all seasons too much power over his debtor. The English law, which is full of contrarieties, would appear to enter into this sentiment, for, as if ashamed of sanctioning a process of so dangerous a tendency, it very materially neutralizes its own works, by allowing the person against whom the *capias* is issued to barricade himself in his own house, and defy the approach of the officers of justice! According to Blackstone, until the bailiff has actually

touched his victim, he possesses no authority to enforce his abandonment of his premises. Every man's house, by the old law of England, says he, is considered to be "his castle of defence and sure asylum, wherein he should suffer no violence. Which principle is carried so far in the civil law, that not even a common summons, much less an arrest, can be executed upon a man within his own walls." An officer may enter the *outer* door peaceably, and then break open an inner door; but if the house or tenement be divided into separate dwelling-houses, the doors of these rooms, or flats, are considered to be outer doors, and therefore inviolable. In this case, officers with writs may try all expedients to gain admittance on easy terms; which strange peculiarity in the English law, some of our readers may probably remember, was the cause of many humorous seizures and escapes, as delineated by Smollett and other novelists of last century.

Should execution be required to be enforced on an unpaid bill, the procedure is nearly the same as if upon an open account.

When it occurs that the seizure of the goods of a debtor would be more conducive to payment than his incarceration, a writ, known by the name of *fieri facias* (to cause to be made,) is procured in the same manner as the *capias*. When laid as an "execution," as it is popularly designated, on the property in a house, shop, or warehouse, it acts as a sequestration, and if the debt be not liquidated or bail given, a sale can be made of the whole, or as much as is necessary, at the end of three days, during which period the officer remains on the spot to see that the articles are not embezzled. This harshness of the execution, however, as in the case of the *capias*, is much softened by the circumstance that the doors may be barricaded and the bailiff nonplussed. If it be possible, this is a still more severe process than the foregoing, and in any case, injurious to the rights of other claimants, who, on account of the rapidity of its application, may be

defrauded out of a share of the property. How often, in allusion to this exercise of power, do we read passages of this nature in the lighter works of English writers:— “ On lady Emily coming home in the carriage, she conjectured from the significant looks of the servants that something strange had occurred in her absence; and, lo! on entering the drawing-room, she found to her consternation, an execution was in the house for no less than the sum of three thousand pounds,” &c. or this, “ I had scarce entered, when a sheriffs’ officer appeared at the door, and bolting in, laid an execution on the shop for eighty-five pounds, odd shillings, at the suit of Mr. Hardgrave the cambric and lace merchant.” This is *mesne process*.

The third writ is suited for the seizure of goods and profits of lands, comprehending all species of produce, animals on the ground, and so forth. It is now little used; having merged into the next writ, designated an *elegit*, which gives a power of seizing every description of moveables, including landed produce, and even the land itself. It however can only be issued after a court of justice has decided the claim. When laid upon the land, it is seldom that the property is taken absolutely. The more common mode, we believe, is to sequester a part or the whole for a limited period, until the debt be liquidated by the rents or produce. Should the lands not be touched, and the produce only taken, a *capias* to seize the person can also be procured; but if put to its utmost extent, it supersedes that writ, and therefore the person of the debtor is for ever secured from imprisonment. An *elegit* cannot be laid on lands held off a subject-superior, and this accounts for the choice made by some creditors in imprisoning the persons of land-owners instead of attaching their estates.

The fifth and last writ to be noticed, is divided into two kinds. The first is known by the name of *Statute-staple*, which is applied to make debts good, contracted in an open market (*estaple*,) and the second by that of *Statute-Merchant*, which proceeds on a written

contract having been made between the parties, to which the seal of a magistrate has been attached to give it effect. Both these writs can attach the person and the moveable and heritable property of a debtor; but they are issued under some very rigorous regulations, as each has been liable to great abuses.*

By the foregoing modes of recovery of debts, great complexity exists with respect to the exact properties of the various writs. In some cases, the person and the goods can be taken, and in others this is impossible. In one case, the land is protected at the expense of the person, and *vice versa*. In every instance there are inconsistencies of a very remarkable character. The elusory circumstance of shutting a door may perplex a creditor: The opening of it incautiously may at once ruin a debtor for ever. Sometimes it is the creditors, and at others the debtors, who have the law in their favour. In all these peculiar qualifications of the process, there is a mixture of harshness and good feeling quite characteristic of the English, and it is we think obvious, that in no other country than England, where wealth is so diffused, or the people so commercially inclined, could such summary measures be instituted.

In Scotland, a more impartial balance of immunities is established between the pursuing and the contending parties; *mesne process* is here unknown, and the writ which is procured and enforced on debtors, bears no resemblance to those used in England. As the law is constituted, neither the person nor the moveables, neither the rural produce nor the landed property, can be touched as satisfaction for debts, until they have been substantiated in a court of justice, or until a bill or promissory note has been dishonoured. To this general rule there is only one exception, arising out of a particular exigency, shortly to be explained. While

* Blackstone's Commentaries—Tomlin's Law Dictionary—Gifford's English Lawyer, *passim*.

the English law seems ever to proceed on the principle that a debtor should at all times be amenable to the demands of a creditor, whether the claim be correct or dishonest, the Scotch law more considerately supposes, that in almost all cases there may be reasons for the debt having remained unpaid, and even though granting that the claim be just, as a matter of courtesy and common humanity, that it is but fair that the debtor should be apprized of the nature of the demand, before he be compelled to pay it on the instant. Like the British criminal law, which presupposes that all persons are innocent until the contrary has been *proven*, so the Scottish law conceives that until the nature of the debt has been discussed and its actual existence determined, no such debt is owing. By this code of jurisprudence, moreover, it is not contemplated that, in ordinary actions of debt, the person sued will not abide the course of procedure, still when the contrary is forced under its notice, a greater degree of severity will be used, and, if necessary, a writ as summary as a *capias* can be applied.

The first step almost invariably taken to recover a debt judicially in Scotland, is to procure and send "a summons" to the debtor to appear in court on a certain day, in the hour of cause. The action must be raised in the district in which the debtor resides, or before a Supreme Court at Edinburgh. These summonses, or royal mandates, are issued by the clerks of the various courts at the instance of the plaintiff or pursuer. The process pursued in expediting them, differs somewhat according to the practice of the particular court; and the ultimate diligence raised thereon likewise differs according to the amount or nature of the demand. Of these varieties there are three kinds, to be noticed separately.

When a decree, awarding payment, has been issued by a justice of peace court, or by the burgh magistrates in their capacity of justices, or by the sheriffs in their small-debt court, the mode pursued in applying execution is exceedingly simple. The *decret* or

judgement is first extracted, and a copy of it served upon the defender. It is an order to seize his person or moveable property on the expiry of six days, if the debt therein mentioned be not previously settled. Should this not be done, on the seventh day, the officer may put the law in force without any other warrant than the extract of the decret. A choice is generally made between the person and the goods, though, if necessary, they can be both taken.

The second process is entirely peculiar to the jurisdiction of the magistrates of royal burghs, in their courts of record. It is designated "an act of warding," and somewhat resembles the preceding. Its authority, however, is limited, as it can only be applied to the seizure of the person or property within the royalty. Should the defender leave the bounds, application must be made to the Court of Session for "letters of horning," the properties of which writ are immediately to be mentioned.

At one period the people of Scotland, like their English neighbours, might have secured themselves within their premises as in a fortified castle, and defied the authority of civil officers. But this was found to be injurious in its consequences, and the law at length remedied the evil by instituting a fiction in the process, whereby the debtor was placed in the light of a *rebel*, and hence could be taken and imprisoned as a criminal. By this absurdity debtors were in many cases subjected to very severe treatment, and the fiction was often prostituted to such an extent that escheat of property followed on its application. Instances of this nature occurred in Scotland as late as the reign of George II. Since that time the fiction has been so harmless, that its excision would be of no importance. The writ or process in which this whimsical idea is incorporated, is designated by Scotch lawyers "letters of horning," and is expedited by the Court of Session only. If the diligence is to be raised upon the decree of a sheriff or any inferior judge, an extract is procured from the books of the court, and

carried to the bill chamber in the General Register House in Edinburgh, accompanied by a short petition or bill, craving letters of horning on the decree. The officiating clerk having examined these documents, writes the words "*sic fiat ut petitur*," (so let it be done as craved,) on the back of the bill. This indorsement is supposed to be the assent of the Court of Session; the clerk being a substitute for the Lord Ordinary on the bills, who is the essence of that judicature in his own person. On this order being exhibited in the contiguous apartment called the "signet office," the letters of horning (already written out and prepared by the agent,) stamped with the seal of his Majesty, are given. The first judicial intelligence the debtor receives of the procedure thus instituted, is by the reception of a copy of the letters, or as it is called "a charge," wherein are recited the decree of the court, and the amount of the debt, with the command of the king to pay the same within fifteen days, or be proclaimed as a rebel to the will of the sovereign. If no attention be paid to this gentle warning before the termination of the prescribed period, the officer makes out a certificate that the debtor has been actually proclaimed a rebel by three blasts of a horn at the market cross of the head town in the shire, before certain witnesses. This written falsehood being brought to the bill chamber along with a petition, craving "letters of caption," the clerk, as formerly, gives his warrant, and the requisite seal of the sovereign is attached to the caption prepared for the purpose. When this is accomplished, the diligence, composed of the two documents, letters of horning, and letters of caption, is made up. The writ is complete.*

If the above writ is to be raised upon a decree of the Court of Session, the order at the bill chamber is

* The expense of this process varies according to circumstances, but may be averaged at L. 2, 10s. The fiction of the horning forms an item of only *one shilling and sixpence* in this estimate.

unnecessary, inasmuch as the court has already given its assent to the attachment of the royal signet. Twenty-one days must elapse before diligence can be raised on a sentence of this court.

By act of parliament, the registered and extracted protest on an unpaid bill or promissory note, acts precisely the part of an extract of the decree of a judge. The only difference in the process is, that six instead of fifteen days are allowed between the giving of the charge and the application of the writ. This is a preferable procedure to that in England, where execution may be delayed for three months; thus protracting payment to a distant date. Should diligence be instituted as above on bills not onerous, or liable to objection in payment, the acceptors or indorsers may suspend it by a summary application to the Lord Ordinary. If the plea set forth be good, and the answers of the drawers or pursuers be considered insufficient, the proceedings are stopped; but if the plea be trifling or inapplicable, diligence is allowed to go on. In the case of procuring an arrestment of diligence, the acceptors or indorsers turn on the pursuers, and bring the suit into the Court of Session by "letters of suspension," which answer the purpose of a summons. In this manner bills are more peremptory in Scotland than in England, where payment can be delayed till the day of the return of the writ, even although the plea of non-payment be frivolous.

When the diligence is thus made up, it forms a writ of greater civil power than any other in Great Britain. It incorporates within itself the properties of four of the English writs. It authorises the seizure and imprisonment of the person; the arrestment of the debtor's property in the possession of a neutral party; the attachment of his moveable goods, money, rural produce, agricultural implements, rents, either simultaneously or otherwise, as circumstances or the wish of the creditor may direct. The debtor, moreover, being considered as a criminal, it does not recognize his right to repel the attacks of the civil officers. It con-

tains a clause enjoining all civil authorities to hunt out and seize the contumacious rebel, wheresoever he may lurk, and place him in close confinement, "ay and until he fulfil and obey the letters of horning." In its execution, the officer and his concurrents may break open all outer and inner doors, tear down impediments of every description, and should force be employed against them, "letters of fire and sword" will be issued to give additional strength to the warrant, whereby a party of military can be called in to aid the civil power.

The process used in capturing a debtor or seizing his effects, may be characterized as slow in its operations. Three weeks or a month may elapse from the date of the interlocutor before diligence can be executed; but it will be remarked, that when the vigorous hand of the law is at last compelled to be used, it falls with a solemn and fearful vengeance. By the steadiness and systematic plan of its operations, it is put beyond the power or caprice of a bailiff to molest a debtor until the very moment prescribed by the statute; and in the interim from the raising of the letters, means may be taken to pay the debt, or to sue out a sequestration, in order that one creditor may not injure the rights of others.

It has been stated above, that there is an exception to the usual process pursued in recovering debts. This may now be explained. When a creditor has just and valid reasons of the strongest nature for concluding that his debtor is planning an escape, or is in the act of absconding, by which means an ordinary summons would be ineffectual,—or in the case of the summons being given, whereby the letters of horning would be too late of being issued,—he can procure a "*meditatio fugæ*" warrant for his summary apprehension. This writ, which differs very slightly from a *capias*, is only enforced to secure the person of the debtor until the case be litigated, for on giving bail that he will appear in the court (*judicio sisti*), he is immediately liberated. If necessary, when he does

make his appearance, special bail, according to the English phrase, can be demanded (*judicatione solvi*) in security for the debt. The warrant for apprehension can be executed on Sunday, and no sanctuary can screen the refugee from its power. While the *fugæ warrant* thus bears a marked resemblance to *mesne process*, it entirely differs from it in one particular, which must not be lost sight of. If the debtor can prove that the allegation of meditated flight is groundless, he has the liberty of raising an action of damages on the pursuer, on the score of libel or wrongous imprisonment; and can even render the magistrate who issued the warrant amenable in the process. By reason of this extreme nicety in the law, few are willing to issue so dangerous a writ, without receiving the most satisfactory evidence of the flight. No suppositions will be listened to. An appearance of packing up a trunk, the ordering of a chaise, or similar circumstantial proofs of the intention to abscond, have been known to be of no avail. In general, the only evidence considered to be sufficiently strong, is the deposition of two witnesses on oath, that they heard the debtor say he was going to elope. It can be used against persons who are leaving the place, though it be not with a criminal intention; and it has likewise been found competent to be put in force against foreigners and strangers having no settled residence. From whatever cause it may proceed, *fugæ warrants* are very rarely resorted to in Scotland.

Sheriffs and other magistrates on the Scotch side of the border have the power of issuing "border warrants" for the apprehension of persons in a summary manner, on either side of the line of demarcation, contemplating flight. They possess the same properties otherwise as the warrants issued against individuals in *meditatione fugæ*. Strangers may be arrested in royal burghs in Scotland on summary warrants, raised at the instance of burgesses for the payment of lodgings, meat, horse's keep, clothes, and other articles, for which no security has been given.

"Spunging houses," or the houses of bailiffs used as places of temporary imprisonment until bail be procured, are unknown in Scotland; being unnecessary on account of the slow movements of the writ. The officers, nevertheless, in general extend the limits of their disagreeable duty, by giving the debtor, if he desire it, a liberty of adjourning to a tavern or private house, where they will wait upon him for a day or longer, until a settlement or compromise is effected. Should the debtor escape while thus favoured, or on his way to the jail, the officers are liable for the debt, except it can be proven that elopement was made by violence. On lodging the debtor in jail, a copy of the caption must at the same time be deposited with the jailor, as his warrant for compelling his residence; the name of the individual is also entered in the jail books with the sum opposite for which incarceration has been made. It was at one time customary to detain the prisoner, even though he liquidated the debt, until "letters of suspension" were procured from the Court of Session. These letters acted on the principle of removing the stain of rebellion; but this being at length discovered to cause a useless and expensive delay, the debtor is now permitted to depart, without undergoing such a formula, on consigning the money to the jailor.

The law of Scotland, as now constituted, has some beneficent peculiarities relative to the alimentering of debtors during the term of their incarceration. Previous to the year 1696, all persons put in jail, whether as debtors or criminals, were either obliged to support themselves, or be a burden on the funds of the royal burghs, as no law compelled creditors to provide aliment. The burghs at last in this year made a strenuous resistance on account of their disbursements—for where the law was silent, the humanity of creditors was deaf to the voice of the prisoner—and procured a bill to be passed in the Scottish parliament, now known by the title of the Act of Grace. This statute was calculated to remove the burden of alimentering debtors

from the burghs to the incarcerating creditor, yet the relief was only provisional, as the act prescribed ten days to elapse before the payment could be made compulsory, under the penalty of granting liberation. It, therefore, often happened that the burghs had still to aliment debtors during this period, at the termination of which, the creditor, rather than consign any sum of money, allowed the prisoner to be set at liberty. This deficiency has been now completely remedied by a recent act of parliament, whereby, on placing the debtor in prison at first, an aliment for ten days, or 10s. must be deposited in the jailor's hands, otherwise the person will not be received; and, if another similar deposit be not made on or before the tenth day, the debtor can insist on being liberated at 12 o'clock midnight. These aliments are regulated according to the rank in life of the prisoner, and vary from eight pence to three shillings per diem. Merchants generally receive one shilling and sixpence. Persons confined for debts due to the public revenue are seldom allowed more than sixpence a-day. No spirituous liquors are allowed to be introduced into Scotch jails; though "strong ale," or beer, may be openly sold and used in such places. A military centinel was some years since convicted of smuggling whisky into the jail of Edinburgh, and since that time, by a general order, all such guardians are now disused in Scotland.

If it be conceded that imprisonment for debt is the more beneficial mode of wresting payment, the Scotch law does all in its power to mitigate the rigour of such a serious affliction. By making aliments compulsory, the incarceration of thousands of miserable objects is prevented, while others who are subjected to its influence, are spared from depending on hard wrung charity for their support. Since the law thus became so tenacious, a greater caution has been used in giving credits, which is the natural mode of curing the evil of imprisonment.

Confinement in Scotch jails is not now of that calamitous nature in other respects as formerly. These

receptacles were at one time proverbially impure and unwholesome,—a peculiarity arising fully as much from the design of the law to frighten debtors into payment by the *squalor carceris*, as from the former uncleanly habits of the nation. Motives of humanity have been the means of causing every jail to be now kept in a less objectionable manner. In some towns the prisons are excellent; but the greater proportion of county and burgh jails, and those in small towns, are still little better than cold superterraneous dungeons. Sometimes they consist of only two apartments dedicated to the use of all comers. In a few instances, a single den littered with straw is employed. The jails of some of the royal burghs are so infirm that the magistrates often decline receiving debtors or criminals, especially the former; recommending the officers to carry them to the next secure prison. In the north of Scotland, some of the jails do not seem to be able to detain criminals, if they choose to operate on the feeble walls. Rewards for the apprehension of absconded prisoners are therefore frequent in that quarter.

Up to the period we now write, no prison-house has been erected solely for debtors. This is not the case even in Edinburgh, a place of refinement and intelligence; but the experiment is *soon* to be tried there under the auspices of parliamentary commissioners. All descriptions of prisoners, (not excluding condemned malefactors,) every where in Scotland are thus confined in one tenement, though ordinarily in distinct cells. Airing grounds are, we believe, unknown except at the recently erected criminal jail at Edinburgh. The jail of Glasgow, which is the largest in Scotland, has been built after English models, without reference to utility or classification of individuals, and would require to be re-arranged. The disgraceful state of Scotch prisons some years since attracted the attention of the House of Commons, when reports were ordered from every county and town in Scotland, regarding their places of incarceration. A bill has been

founded thereon, which will shortly be passed, ordaining very considerable amendments.* It appears that the burghs are exonerated from the blame attachable for the present state of the jails. The evil has been principally owing to the perverseness of the county inhabitants and landowners, who have almost invariably resisted all attempts to cause them to contribute funds for the humane object of keeping the jails in repair, though in justice they ought to be equally liable.

By the decisions upon processes instituted by jailors to recover fees from debtors for room-rent, it is now settled that all such charges are illegal, and that the magistrates are bound "to keep up a free jail." The practice is, however, still common; premiums being often given to secure the best accommodation the houses afford. Should an incarcerated debtor be sick, on presenting a petition to the magistrates, accompanied by the certificate of a physician or surgeon, he will be immediately liberated. The magistrate, however, may insist on his residing in a certain place along with an officer as guardian, or demand bail to be given. It is seldom that these alternatives are resorted to. In most cases the debtor enjoys free enlargement on a species of parole of honour, and this takes place even though the magistrates are bound to the creditor for his safe custody. We are convinced that many civic authorities permit inordinate abuses in relation to "sick bills."

As the letters of horning possess those versatile properties above noticed, no fresh writs are required to seize moveable property, either collaterally with the person, or otherwise. Being also endowed with the qualification of sequestrating the wealth or commodities of debtors while in the possession of third parties, it may easily be conceived to be a writ by no means feeble in its application. When employed to seize moveables of any kind, the entrance and execution of officers must not be obstructed, under the penalties formerly mentioned. In this applying the letters as a

* It is from the printed reports our information is drawn.

writ of *feri facias*, the law of Scotland, with its characteristic gentleness, does not permit the bailiffs to remain on the grounds, or in the house, while "the execution" exists. An officer attended by an appraiser takes an inventory of the goods, and after mentioning to their former proprietors that they are now sequestered, leaves them until a report is made to a magistrate that the seizure has been effected. In the interim the articles are quite at the mercy of the debtor. It is seldom that an order to sell is issued for several days, and probably for a week or fortnight after the sequestration, but it rarely occurs that any one takes advantage of the temperateness of the law by abstracting a part or the whole of the goods. This can only be done at the risk of paying double for every article carried away, and of being subjected to a rigorous criminal prosecution at the instance of the procurator fiscal. It appears to us that the seizure of moveables in Scotland, as just described, is in point of fact far less frequent than the imprisonment of debtors. This is owing to the liability of pursuers to pay (to the extent of the value of the goods taken) the rents, taxes, and servant's wages of debtors, in case of making a seizure wherefrom there is not sufficient property left to liquidate these imperative claims.

It has been said, that the letters of horning are capable of seizing property in the possession of neutral parties. It is, however, necessary to explain, that this process can be pursued, not only before the letters are procured, but as soon as a summons has been issued. This is a distinct peculiarity in the legal usages of this country, necessary to be known by merchants and others, strangers to our laws. A creditor can at any time procure and apply a summary warrant called "an arrestment," possessing the power of sequestering the property of debtors lying in the hands of a third party or parties, whereby it is completely secured from abduction until the process, which is simultaneously raised, be terminated. The writ can be applied even on suspicion that there is property *in transitu*, and

the sum sequestrated may be stated at any amount, although the debt be only to the extent of a few pounds. Money, rents, stipends, salaries, annuities, (soldiers' pay excepted,) wages, &c. may be thus secured with impunity, either for contingent or liquid debts.

This is perhaps the most severe law in Scottish civil jurisprudence, and is decidedly at variance with the principles of justice or humanity. Were each creditor to have the liberty of securing only as much as would cover his own claim, or be restricted to a moderate addition to pay the expense of litigation, the process might be characterized as honest; but by giving an unconditional power of locking up probably all the funds of a debtor, it may very likely be the cause of producing premature bankruptcy. This harshness is partly obviated by the circumstance, that if the debtor give bail or security for his debts, the sequestration will be removed. However, there is generally a cruelty in the transaction, for the news of a single arrestment becoming at once general, sometimes there will be twelve creditors, all hurrying who may soonest lay on similar restrictions. In these cases the law allows preference of claims, except a bankruptcy ensue, when all arresting within sixty days of the sequestration rank on equal terms.

When the property of a debtor is thus placed beyond his reach, and he wishes to litigate the claim, he can insist on the creditor bringing the action into court for immediate settlement. This receives the name of an action of *forthcoming*. Should this be neglected by the debtor, the holder of the property can institute a process of *multiplepoinding* against the competing creditors, wherein he wishes it to be determined to whom and in what proportions he is to disburden himself of the effects.

If the property of natives be thus protected from summary legal interference, it has to be remarked, that the same privilege does not extend to that belonging to foreigners and strangers. The Scotch law here resorts to a fiction in order to accomplish its de-

signs. It is pretended by a supreme civil judicature, that it possesses no authority to touch the persons or the moveables of foreigners and others not naturalized, because, according to a common law of nations, every debtor must be pursued in civil actions before the jurisdictions of his own country, or his own district. To evade this, however, the law allows the court to naturalize the debtor by taking his person or his property under its charge. It is, therefore, by this process, called in law *jurisdictionis fundandæ causa*, that the person or property of a foreigner can be summarily sequestered by a creditor. It may occur that the object of this prosecution is in the country at the time, wherefore a common summons is sent to him, and a suit will proceed to issue; but it more frequently occurs that he is abroad, and hence his property is only attached. In order to make him aware of such a calamity, a method of communicating intelligence is adopted by the court worthy of being made known.

When foreign or native debtors are out of the kingdom, or appear to have no fixed place of business or residence, they are summoned by "edictal citations," a species of warning to attend judicial process, directed equally to civil and criminal absentees. Until some very recent amendments were made in the procedure, it was customary to proclaim these citations at the cross of Edinburgh, and the pier and shore of Leith, after which public intimation, copies were laid down on the street, and cast into the sea.* It is now the legal usage to deposit the citations in a box placed in the lobby of the General Register House, from whence

* These places have been from "time immemorial" the legal and accredited stations for publishing proclamations of war, peace, the accession of kings to the throne, meetings of parliament, and the citations of judicatures. Puggie Orrock, a sheriff's officer introduced into the "ANTIQUARY," has sagaciously given it as his opinion, that the king speaks with such a loud voice on these occasions, that though debtors were at the opposite end of

they are transferred to the walls of the parliament house, where they are exposed for a few days.

Having thus stated the measures possible to institute, with reference to the amenability of the body, or the moveables of a debtor, we now proceed to state the peculiarities of the process for recovery of debt, when directed against heritable property. The letters of horning have no authority to attach or interfere with houses or lands. When a debtor has used his utmost means to recover payment by the foregoing procedure, or when he is inclined to direct his attention to the heritable estate of his debtor, he must institute a distinct process in the Court of Session, called an action of Adjudication. He causes a summons to be issued to the defender, wherein he states how his debt has been already legally constituted, (or if it be not constituted by a previous process, prays the court that it may now be established,) and craves that, in satisfaction for the amount, either the whole or a part of the lands may be conveyed over to him by a *special* or a *general* adjudication. When this is done, intimation of the suit is placed on the walls of the parliament house, where it remains twenty days; and all who are desirous of competing, give in their claims before the termination of this period, and are conjoined in one process. Those who are tardy, or do not thus come forward, must therefore institute separate processes at a greater expense; but still, if they do so within a year and a day, they rank equally with others. Those

the earth, they would be able to hear his summons “on the deafest side of their head.” Puggie, who may be ranked an exceedingly high authority in such matters, is unfortunately silent respecting the tendency of consigning copies of the proclamation to the waves. There was an air of dramatic romance, hallowed by antiquity, in this practice, which it is a pity the court has thought fit to destroy. In the modern process of publishing edictal citations, there is, however, still a shade of the marvellous, characteristic of the olden times, which we, as well as Puggie Orrock, and every well-affected messenger, would be sorry to see exchanged for the services of a printed advertisement!

who do not exhibit their demands till after a year and a day be expired, can only have a share of what may be left after the previous competitors are served.

During the course of these proceedings, the debtor is not molested on his property, for, until the court gives judgment against him, it possesses no power to interfere. A defect so evident has nevertheless been provided against. Simultaneously with the action of adjudication, a creditor may institute another process called an inhibition, whereby summary diligence is executed upon the debtor, prohibiting him from disposing of or alienating any part of his lands, contracting debts, granting leases, or other deeds which may affect the property. It also warns the public from being a party in any such transaction. This inhibition is proclaimed at the head town in the burgh of the shire wherein the lands are situated, and a registration of the transaction is ordered to take place within forty days, either in the books of the county or general register of inhibitions at Edinburgh. Should any person therefore purchase and pay for the lands after this diligence has been executed, they may be taken from him, and he can only have recourse on the person, or other property, of the seller. Although a purchase was made on a mortgage effected before the expiry of the forty days, the transaction would not stand; because, by a remarkable qualification in the law, known by the name of *litigiosity*, property can be recovered from a purchaser if it have been transferred after the beginning and before the ending of a process, on the principle of retrospective attachment. So much attention is thus paid to secure the rights of creditors, that it seldom or never happens that the meaning of the law is invaded. All purchasers of property take care to examine the registers of inhibitions, or to institute minute enquiries regarding the commencement of such processes, before they pay the price to the sellers. When decrees of adjudication are pronounced, the interlocutors must be engrossed in the proper registers of abbreviates of adjudications within sixty days, other-

wise the previous proceedings are null. This gives further publicity to the proceedings.

The routine of a process of adjudication is desultory, and difficult of concise elucidation. Innumerable points have generally to be contested, if the debtor litigate the individual suits. He has conceded to him the right of choosing whether the case shall be tried on the principle of a special or a general adjudication. By the first of these, the debtor agrees to produce the titles of the landed property sought to be adjudged, and give to the creditor so much thereof as corresponds to the debt, interest, and the expense of entry and infeftment, with a fifth more, on account of the inconvenience to which the creditor is put by being obliged to take land instead of money. The value of the land to be ascertained by a proof of the rental, or profit. When adjudged in this manner, the debtor can redeem his rights at any time within five years, by simply paying the debt and other expenses. If he do not redeem the property at this period, he and his successors lose all ulterior recourse. When the debtor does not accord with the terms of the special adjudication, by reason probably of his incapacity, or the number of competing creditors, a process of *general* adjudication is then pursued, whereby the pursuer, or pursuers, denude the debtor of all his rights on the property to whatsoever amount, and the period of redemption is protracted to ten years; and when this period has expired, the adjudgers have a right to pursue an action, called a *declarator of the expiry of the legal*, in order to secure their rights. If they do not do so, the right of redemption remains open to the debtor for forty years.

If it should happen that the rents of the debtor's landed estate are insufficient to defray the interest of his debts, it can be taken from him at once by his creditors, and disposed of for their joint behoof, under the authority and superintendence of the Court of Session. The process by which this is effected, is named an action of *ranking and sale*.

This is an exceedingly rough sketch of the manner in which debts can be made effectual over landed property. Nevertheless, it may present an idea of the cautiousness of the Scotch law in molesting the rights of possessors. At an early period, the procedure, as in England, was conducted principally by sheriffs, and consequently by ignorant bailiffs. The Court of Session is now fortunately the rigorous guardian of heritable property, and no writ can be directed against it by inferior tribunals. This has been attended with the most beneficial results. It is scarcely possible now for a single creditor to injure his competitors actual or contingent. The slowness of the process permits all to come forward; and when the sales are made, the utmost publicity is given by ordinary advertisements. By these, and all the other characteristics of the process, justice is administered with impartiality to the creditors, the debtor, and the public at large.

Adjudications, whether special or general, are now unfrequent; but sixty years since, and in earlier times, they were very common. It is not from thence to be inferred, that land-owners are now more able to pay their debts than formerly. The more genuine cause of the alteration is the increase of entailed properties, and the ease with which money can be borrowed over heritages. The debtors likewise institute extra-judicial trusteeships of their estates for the behoof of their creditors, a line of procedure little followed by ancient proprietors.

Such are the processes for recovery of debt in Scotland, the general merits of which will be easily comprehended. They are less precipitate than those used in England, but in most instances, they are more sure, and calculated to be in unison with the habits and feelings of the people. English merchants sometimes complain of the tardiness of the forms, and of the *impossibility* of securing payments without writs. Yet it is worthy of comment, that no such objection was ever brought forward by native tradesmen, and the allegation can only be reconciled with truth on the

principle of too indiscriminate credit having been given. Taking the aggregate of processes in England and Scotland, it will be found that recoveries are more frequent in the latter country. The expenses of diligence are also much lower in Scotland, on account of the precise methodical management of the process, which cannot be obscured and enhanced in price by fictions, the doublings of pettifogging lawyers, or the caprices of bailiffs.* To those unfortunate persons who are actually incapacitated from any payment of their debts, through the force of particular circumstances, the Scotch law has moreover provided remedies equally moderate and resolute, now to be the subject of illustration.

* Since writing the above, we have heard that a bill is in progress to limit the application of *mesne process* to L. 100 and upwards. Not to swell out our expositions, or confuse the reader, we have touched very slightly on the abusive forms of process in England, and have altogether abstained from noticing the practice of "collusive arrests," which, with other peculiarities of the system, are at once a curse upon, and a reproach to, the nation. So deplorable is the present condition of the law forms in England, and so obnoxious are they to reform, that they cannot stand a moment in comparison with the legal usages in Scotland, liable as these may be to a revision. Some years since it was elicited in evidence before the House of Commons, that a debtor in England, by an outlay of L. 30 : 7 : 6, might harass his pursuing creditor, and actually put him to the expense of L. 341. On hearing such a deposition, the committee turned to an eminent Scottish practitioner in attendance, and enquired if any thing of that sort could be done by the law of Scotland.—"No," said he, "I never heard of such a thing: I cannot comprehend it: It is quite unintelligible to me." After this, who will challenge the delay and expense of the letters of horning?—*Minutes of evidence on insolvent debtors.*

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

INSOLVENCY—CESSIO—TRUST-DEED—SEQUESTRATION—
PRIVILEGE OF SANCTUARY.

He fled to Beverley, where he, and divers of his companions, registered themselves sanctuary men.—BACON'S HENRY VII.

AN outline having been presented of the different modes of recourse in the recovery of debts in Scotland, it is necessary to close the subject with a short exposition of certain usages in cases of insolvency.

It may be said that there are three ways of undergoing the ordeal of a process of bankruptcy in this country, though it be to only one of these the term is strictly applied. The first, and we believe the most ancient, in general use, consists in the expediting of a *cessio*. The old Scottish law, in the regulation of the process, resembled that of Normandy and other countries only partially emerged from the practice of barbaric customs. The principle of its action consisted in ordaining the person found guilty of pecuniary impotency, to be stripped of all his effects, which was to be divided among his creditors, and in case of an insufficiency of funds, to be punished by the infliction of a very degrading mark of infamy. The debtor was put in a public pillory at the market cross, dressed in specified party-coloured garments, resembling those composing the habit of the *knave* in a pack of cards.

Here he was stationed a certain number of days, and for a stated period, he was not allowed to appear at any other time in public, but in the same fantastic guise. The name of a *dyvour* was fastened upon him, from the divers hues of his apparel; he lost caste in general estimation, and, as we suppose, was too often left a mere wreck on society.

The law dictating such harsh measures, remains still entire. It continues to act on its original principles; but, in all cases, the court dispenses with the wearing of the habit, on an application being made for that purpose, and the pillorying has been long disused. Since thus modified in practice, the subjection to bankruptcy by the process now to be mentioned, is the very reverse of being oppressive, and in comparison with the procedure in clearing out the jails at occasional intervals, so long practised in England in relation to insolvent debtors, it is certainly superior. So beneficial was it considered, that it was taken as a model in the institution of the insolvent debtors' act, recently brought into operation in that country. The process of *Cessio*, or *cessio bonorum*—the rendition of goods, may be described in a few words.

The debtor who wishes to take the benefit of a *Cessio*, must, as a necessary preliminary, have been confined in jail for debt thirty days, at the termination of which period he is entitled to commence his action. He may have been liberated on the plea of ill health by the magistrates during the whole or a portion of this term of nominal incarceration, but this circumstance makes no difference. He opens the suit by assuming the position of a pursuer; placing his creditors in the light of defenders. He causes a summons to be issued in the usual mode of raising an action before the Court of Session, copies of which are served upon every real or alleged creditor. This summons, the style of which is a great curiosity, recites the day of his incarceration—the amount of the debt—the name of the imprisoning creditors, and, complaining to the court, that being in danger of being detained in

jail by the person to whom the summons is addressed, and others, desires to be liberated on rendering up all his goods, citing the creditor to appear in court, to say why liberation on such terms should not take place.

The plea being thus commenced, the case is called in court before one of the Lords Ordinary, who remits it to the inner house, (this being an inner house action); on which, the complainant or pursuer is ordered to lodge a condescendence, describing the misfortunes which have brought him to this crisis, accompanied with an inventory of the whole of his moveable and heritable property. These orders being acceded to, if no creditor offer opposition, as a matter of course, the court grants liberation, and takes his property under its protection, to be divided among the creditors. The deliverance also screens his person from diligence on any of the debts of which he is thus in a certain sense freed; but his property, should he subsequently acquire any, is always liable to seizure.

With very few exceptions, actions of Cessio terminate in this summary manner. Creditors rarely offer any opposition on any grounds whatsoever. When they wish to do so, their agent borrows the condescendence, and if it seem fit, lodges answers. The case is then subjected to a regular course of litigation, before final judgment is pronounced. We believe that the expenses which defenders may incur by opposing the Cessio, ought to be paid by the pursuer, still, from whence is the money to come? In general, the expense of an action of Cessio amounts to about L. 15, which the pursuer must pay.

It would be needless to give any further explanation regarding the course of a process of Cessio, or to say how that branch of it is managed touching on the rendition and the division of the property of the debtor, for, with hardly an exception, the whole process is a mere form, and only resorted to by persons who have nothing to render. In most cases, the reception of a summons, or, as it is popularly called, a

Cessio letter, by its emission in that form, is considered by creditors as equivalent to their discharge. As soon as they receive it, they give themselves no further concern with the debt. As for their chance of subsequent payment by seizure of effects, that is entirely lost, by the debtor having recourse to certain expedients too well known to require notice.

A more useful and more compassionate, yet a more abused, legal institute, we are convinced, does not exist. The integrity of Scottish traders, and the shame of appearing as men of broken fortune, or the expectation of recovering a firm footing, frequently tempt individuals to continue paying the most urgent duns, thereby injuring creditors in the aggregate, long after they should have made a declaration of insolvency; and when, from such causes, or the common misfortunes of trade, debtors find a necessity for expediting Cessios, the principle upon which the action proceeds, and the usual deliverance granting liberation, cannot be reprehended. But it is generally observed, that the reasons inducing actions of Cessio are too commonly very different and less creditable. On account of the perfect ease with which the ablutionary process can be carried through, the law at present actually holds out an indemnity to planned systems of spoliation, or at least to the reckless abuse of the property of confiding creditors. We are aware, that the amendment of the form of process is a task of no ordinary difficulty, for, in remedying the laxity of the law, the opposite evil of too much severity might be produced, still it is worthy of an effort. It appears to us, that the main source of the evil lies in the difficulty and expense of putting in opposition to the deliverance of the court. An agent and an advocate must be employed to state the most simple objections, and at least, the condescendence and inventory cannot be seen without having recourse to a lawyer. On the contrary, were the condescendence and inventory ordered to be exposed for a certain number of days on a table in the Outer House, free to the inspection of all con-

cerned, and the creditors permitted to appear in person before the court to state objections, or to speak as to the previous habits of the pursuer, a prodigious improvement would be effected. If it be alleged that the affairs of the debtor would be thus too much laid open to the public, an exhibition of the documents only to those who could shew their summons would completely obviate such a hypercritical objection. Until this, or something else, be done to allow creditors to offer opposition in *an inexpensive way*, the court, in the eyes of merchants, stands accused of countenancing the unfair absolution of traders from their just debts.

Merchants or others, possessing a moderate or large residue of effects, seldom or never resort to Cessios in order to procure a settlement with their creditors. When a private proposal to compound for debt is rejected, they, in general, either execute a trust conveyance of their whole property, in the way now to be noticed, or embrace the alternative of a sequestration, which, if the property be valuable, is preferable to any other mode of operation.

The execution of a trust deed is an extra-judicial mode of settling the claims of creditors, and may be conducted with very little publicity or depreciation of character. While the Cessio is mostly resorted to by small dealers, and others who are often possessed of no more wealth than the exact sum capable of expediting their process, this is suitable to respectable merchants, shop-keepers, stipendiaries, and gentlemen of landed property. The deed is a simple consignment of the effects, rents, or salaries, (or part of them,) to a particular person therein named, for division among and behoof of creditors. The trustee singled out, is frequently the highest, or most active, creditor. When the trustee is thus empowered, he executes another deed, called the deed of accession. It is a declaration of the subscribers, that they will abide by the division made by the trustee, and relinquish all

ulterior recourse on the debtor. The lawyer who manages the transaction, either sends it round for signatures, or advertises that it lies at his chambers for that purpose. The trustee, in the meanwhile, enters into possession of the stock, collects the debts, and takes the most advantageous measures to form the whole into a fund, out of which he pays the dividend. In the case of incomes under trust, he draws the money, and distributes it according to a scheme of division. If there be any outstanding creditors, they can have recourse at all times on the debtor.

Trust dispositions are more frequently made by landed proprietors than any other class of persons. They often fall into difficulties, and become insolvent by means of bad tenants, bad crops, expensive families, or other similar misfortunes, and their creditors being willing to enter on terms of compromise, rather than pursue actions of inhibition or adjudication, accede to the deeds of accession of the trustees, and allow the debtors a limited annuity out of the profits of the ground. Occasionally, persons whose affairs are under trust, are their own trustees, which would appear anomalous. They give their creditors security for intromissions, and thereby act in a double capacity.

Provided that the trustee be a conscientious and active man, the above mode of action, under the difficulties of insolvency, is invariably the most profitable to the creditors, and the most satisfactory to debtors. All the ends which the best constructed bankrupt law could recognize, are simply and cheaply completed. A fair division of funds is made; no time is lost in closing the transaction; and the bankrupt is divested of his all, and left to commence his exertions for subsistence afresh. The most nicely constructed statute could accomplish no more. Yet, notwithstanding of the excellence of this process of bankruptcy, it is comparatively little used. In almost every case of insolvency there are refractory creditors, to whom all human reasoning would be of no avail; and this being the case, the last alternative is resolved upon.

Mercantile sequestrations in Scotland are expedited by the Court of Session, which, in this matter, acts the part of the Lord Chancellor or his commissioners, and from the beginning to the termination of the transaction, is guardian of the effects of the bankrupt, and the interests of the creditors.

Sequestrations can only be sued out in relation to persons lately or at present carrying on certain businesses, distinctly specified. Merchants, traders, manufacturers, or company firms, a married woman carrying on separate trade, holders of shares in any company—except chartered banking companies, companies of insurance, British fisheries, or inland navigation companies,—lime burners, ironstone-workers, coal-masters, wood-contractors, builders, innkeepers, cattle dealers, &c. are liable. Share-holders in public funds, or East India stock, or land holders and farmers, are exempt. When, therefore, persons not actually possessing such qualifications are sequestrated, it is under one of these titles. Before any one is liable to sequestration, he must be under diligence, be in jail, have taken refuge in the sanctuary of Holyroodhouse, have absconded, or have forcibly defended himself from a messenger. The sequestration can be sued out without his concurrence by one creditor of L. 100 in value—two of L. 150—or three of L. 200, but the debts must be veritable, and not contingent. The petition for sequestration is accompanied with the affidavit of the debtor's liability and grounds of the debt. A deliverance on the petition is generally granted immediately by the court, or by the Ordinary on the bills during vacations. It sequesters the debtor's whole estate, heritable and moveable, appoints the time and place of meeting to choose an interim factor, also the time of meeting to choose a trustee, and gives a commission to a sheriff or justice of peace to attend first meeting. The bankruptcy is then completed by advertisement in the next Edinburgh and London gazettes.* Be-

* The unnoticed existence of the Edinburgh Gazette is a remarkable circumstance in this age of outcry for retrenchment in

tween the date of sequestration and the first meeting, any one creditor may apply to the sheriff, or to the Court of Session, to have goods stopped *in transitu*, to sell goods of a perishable nature, or to avert any great incidental evil. A contingent creditor may vote on all questions at the different meetings, except for the election of an interim factor, or trustee, and all creditors, if in the British isles, must give their own oath to the verity of their claims. The oath of an agent will not do, unless the principal be abroad, or be a minor. A creditor under L. 20 is not reckoned in number, but only in value.

When the first general meeting takes place, which is commonly in less than three weeks from the act of bankruptcy, the petitioning creditor points out what has been done, and the magistrate who attends, nominates a clerk to write out the minute of procedure, in which the names of the creditors and their claims are marked; the magistrate receiving the oaths. When the vote for an interim factor is put, a majority in value decides. If no interim factor be elected, or if no one will accept of the situation, the office devolves on the sheriff clerk. The interim factor, when so elected, must find caution to a specified extent; but the sheriff clerk is not similarly bound. Directions are then given to the interim factor how he ought to proceed, the names of the banks are settled, into which all monies are to be deposited, and it is decided upon whether the

the government expenditure. Its continuance, as a separate print, is a real absurdity. It has no circulation among the public generally, is seen only by a very few, and any intelligence which it pretends to communicate, might, with far greater advantage, and much less expense, be given in an appointed Edinburgh newspaper. In the list of state officers in the Almanack, a functionary is mentioned under the title of *Gazette writer*; but the office is one of the most shameful sinecures. We have heard that it was instituted by the whig or Fox administration, merely for the purpose of giving a post to one of its Scotch partizans. At present it is held jointly by two individuals, the sons of the late incumbent. The salary attached to the office is, we believe, L. 800.

debtor is to have a personal protection. Four-fifths in number and value decide.

The interim factor, or temporary trustee, now becomes the manager of the whole affairs of the bankruptcy, taking possession of his estate and effects, bonds, bills, notes, vouchers, title-deeds, books and papers; gets powers of attorney from him, if required to send abroad; causes him to make up states of his affairs; draws rents, and removes tenants; demands payment of bills when due, and grants receipts; raises actions and diligence; and pays rents, taxes, wages, carriages, &c. His business is, however, only of a conservatory nature; it being his duty to preserve, not to dispose of, the stock. At the second general meeting, the bankrupt is requested to appear and expose a state of his affairs, an inventory of his property, and, in a general sense, shew his capabilities of paying his debts. A trustee is now chosen, and the election is decided by a majority in value. This trustee is frequently the interim factor, who is continued under a new title. In case of refusal to accept of the office, it is ordained that the function shall be performed by the sheriff clerk; but this is rarely the case, trusteeships being considered as lucrative posts, and often made the object of much strife and emulation. The trustee also finds caution, and he receives, in general, five per cent. on the realized proceeds of the stock for his trouble. Sometimes two or more trustees are chosen, but one only acts at a time. The trustee must be confirmed as such by the court, and to procure this act of confirmation, a regular routine by petition to the court, which is "printed, marked, signed, fee-funded, and boxed," must be gone through, and documents at the same time lodged, such as the bond of caution, the approval of the creditors, &c. When the estate is heritable, the court pronounces a decree of adjudication simultaneously with the order of confirmation. Within six days thereafter, the trustee applies to the sheriff to fix two diets for examination of the bankrupt, which being fixed, advertisement is made in

the London and Edinburgh gazettes, mentioning the confirmation as trustee, the days of examination, the days of meeting, and requiring the lodgement of debts, &c. The first examination of the debtor, which is not less than fourteen, nor more than twenty-one, days from the date of the application, now takes place in the sheriff court house, or any other place pointed out by the sheriff. He is interrogated in relation to the causes of his bankruptcy, and every care is taken to elicit the truth. In case of obduracy or refusal to answer a question, he can be committed to prison by the sheriff, till he declare himself willing to do so. When necessary, the family, or others connected with the bankrupt, are also examined. His second examination occurs not sooner than two, and not later than three, weeks after the first. Fourteen days after the second examination, the third general meeting takes place, at which three creditors are chosen as commissioners, or as a standing committee, to examine and superintend the procedure of the trustee. A majority in value decides. It is also put to the vote at this meeting, whether the bankrupt is to be allowed an aliment, which is settled by a majority of four-fifths in number and value. Neither a trustee nor a commissioner can purchase the estate of the bankrupt, at least so says the act, though the rule is often eluded by employing a third person to do so. A commissioner may call a meeting, when he thinks proper, on giving fourteen days notice in the Edinburgh gazette.

The duties of the trustee consist in auditing the accounts of the interim factor, and fixing his allowance; he obtains conveyances from the bankrupt, divesting himself of his estates; collects and realizes the funds in every possible way; keeps a regular account, open to the inspection of all the creditors; makes up a state of affairs every three months; calls meetings; gets renewed protections for the bankrupt if he think fit; ranks the claims, and prepares every thing for the consideration of the creditors, &c. He is bound to

lodge all monies in the bank specified by the creditors, or in one of the chartered banks, when amounting to L. 50, which sum he cannot retain above ten days.

Ten months having elapsed from the date of the bankruptcy, in ten days thereafter the commissioners, or a majority of their number, meet to audit the trustee's accounts—to fix his fee—and to name the divisible funds. The trustee then proceeds to make up a scheme of division—a state of the money in the bank—and a state of the funds still outstanding, announcing in the Edinburgh gazette, that these statements lie for inspection at a certain place, and that the first dividend will be paid on a day notified, (or that there is no dividend.) Besides this advertisement, the trustee sends similar intimation by post to every qualified creditor. By this time eleven months are consumed, and on the first lawful day after the year elapses, the first dividend is payable. At the expiry of the eighteenth month, the second dividend becomes payable, and in the same way, at the end of every six months, another is paid, till the whole funds are exhausted. In no case whatever can the first dividend be paid sooner than in six months from the date of the sequestration.

Outstanding debts must be sold by auction eighteen months after sequestration, and it must be sanctioned by a meeting called at fourteen days notice. The sale cannot take place sooner than in two months thereafter. Supposing that the business is now closed, the trustee winds up the sequestration by making up a full statement of all the proceedings, and, with the concurrence of the creditors, petitions the court for his discharge from office. This petition, after going through the usual routine, is followed by an act awarding discharge, when the trustee gets back his bond of caution, and the matter is terminated. The business may not be wound up for three years; but it would be tedious to follow it that length. A sederunt-book or minute of proceedings is kept and used throughout.

The bankrupt himself, in the meanwhile, may be

in jail,—in the sanctuary, or be at large. In most cases a protection is given to him by the court, with the sanction of the creditors. The protections generally extend to three months, and are renewed till the end of eighteen months, when they will not be renewed unless a cause be shewn for delay in making a final dividend. During this period he commonly receives an aliment, which cannot exceed L. 2, 2s. per week. His application to the court for a discharge must meet with the concurrence of the trustee, and four-fifths in number and value of the creditors. An advertisement of his intention must be made. When the court awards an ‘act and discharge,’ it operates to liberate the bankrupt from jail should he be incarcerated, and discharges him of all his debts under the sequestration. Should the bankrupt be desirous of offering a composition after the sequestration has been effected, he cannot do so till the third general meeting. It must be accepted by nine-tenths of the whole creditors in number and value. When rejected, the offer cannot be renewed. If accepted, the proposal must be equally supported at the next meeting appointed for the purpose. The discharge is then awarded, on security being found for payment of the composition—which is mostly done by instalments, and the expenses of sequestration.*

The course of procedure under a mercantile sequestration, which has been above partially unfolded, possesses some excellent peculiarities, but is still liable

* We would refer to Bell on the bankrupt law for minute information on this topic. The bankrupt statute for Scotland—54 Geo. III. c. 137—which can be obtained from his Majesty’s printers at Edinburgh, is, however, the safest guide in cases of difficulty. The most comprehensive and explanatory work on the subject, is the Tabular Synopsis of the whole procedure in a sequestration, drawn up by a member of the society of solicitors before the supreme courts, published as a pamphlet in 1826. It has been principally from this excellent little manual, that we have drawn the above exposition, and we would advise it to be purchased by all persons connected with sequestrations.

to several serious objections. While it is eminently calculated to secure the property of the bankrupt from abuse, as well as to preserve the rights of the creditors, who are treated with the utmost impartiality, it seems to have been contrived too much with a view to large properties or estates, the affairs of which require the most elaborate exposition. To small estates it is entirely inapplicable. The slowness and steadiness of the administration, which in the one case are of great benefit, in the other are of the most objectionable character. The expense consequent on the steps which must be taken, forms indeed a barrier to the sequestration of any but estates of considerable value. By the ordinary tedious routine, the sale of the stock is certainly made to more advantage than if it were hurried on, and the debts are collected at comparatively little loss; but, nevertheless, the delay is very often of an evil tendency, it being a well known axiom among traders, that almost no ulterior benefit can compensate the want of immediate settlement, or at least a payment of some kind when it has been reckoned upon. The mode of communication to and from the court, is to the last degree clumsy and expensive, when in many instances a rapid and cheap method of sequestration by the interposition of the sheriff would be preferable.

In cases of sequestration it is imperative that discretionary power should be lodged in the hands of some accredited person, and perhaps the institution of a trustee by the creditors, is the most judicious mode of creating a serviceable authority; still, as the law operates, this functionary has too unlimited privileges. With regard to those creditors who act in the name of commissioners, though intended as checks on the conduct of the trustee, they in very many instances fall short of their expressed line of duty. The trustee, in short, becomes nearly total master of the affairs; he has practically the power of protracting dividends; and in most cases, though the office be troublesome, he makes a very lucrative job of the transaction. The fundamental error in

Scottish sequestrations is the delay, which leads to all the others. At present numerous cases of sequestrations are never wound up, and final dividends never paid; the adroitness of the trustee, and the worn-out patience and carelessness of the creditors, conducing to protract a settlement, until at length the process falls into complete oblivion. With exceptions of this nature, the course of bankrupt sequestration in this country may be taken as a model of perfection.

It has been remarked a few pages back, that if debtors take refuge in the sanctuary of Holyroodhouse, it is construed, as it in reality should be, into an act of bankruptcy by the law of Scotland. The continued existence of this very peculiar privilege is one of the most remarkable circumstances connected with the institutions of the country, and may be deemed worthy of explanation.

The civil diligence in Scotland, as already noticed, though somewhat tardy in ultimate execution, is more severe and unswerving in the seizure of the person and the property of debtors than that of England, where the permission to oppose the application of writs by the shutting out of officers, acts so as to nullify the intentions of justice. Though the Scottish law does not tolerate such an abuse, the privilege it sustains of allowing debtors to flee to a certain limited district in the metropolis, amounts to a qualification not very dissimilar. In this manner, both the laws of England and Scotland act with inconsistency, and tolerate measures obviously calculated to impede the due execution of warrants. However, if examined separately, the two immunities have little real resemblance; for the Scottish sanctuary only protects the person, and from a variety of circumstances to be pointed out, the benefit, great as it appears in the abstract, is so seldom embraced, that it is not entitled to be described as a nuisance.

The original design and real nature of sanctuaries, were by no means mischievous. Their institution was

indeed of great use. Almost every nation with which we are made acquainted by means of ancient and modern history, has had its places of refuge; such being a necessary consequence of that imperfection in the administration of justice, endured by all nations at certain stages of civilization. The first people who found it imperative to institute sanctuaries, were the Jews. We are told in the fourth chapter of Deuteronomy, that Moses set apart three cities or places of refuge for those who had killed their neighbours "unwittingly." It was also permissible by the Levitical law, that criminals might claim protection from pursuit in the temples, by clinging to the horns of the altar. On the introduction of Christianity among the Gentile nations, the Judaic usage, like many others, incorporated itself with the ceremonial of religion, by which means the worshipping places of the converted pagans became possessed of the like or similar immunities.

In some instances, it was not even necessary to introduce the practice. Whether previously borrowed from the Jews or otherwise, the Greeks endowed their idolatrous altars with the privilege of sanctuary, reverencing in a particular manner, that which was situated on Mars' hill at Athens, entitled the *altar of mercy*, and inscribed to the *unknown god*, which it will be remembered excited the angry comments of St Paul, (Acts xvii.) The Romans also by this time had instituted sanctuaries or *asyla*, which were in an especial manner intended to give temporary protection to slaves fleeing thither in terror of the deadly and hot passions of their masters. In the reign of Justinian, the privilege came to be extended for the first time to debtors, a measure which had never been contemplated by the Judaical law, or countenanced by the principle on which the immunity was founded.

Hitherto the benefit of sanctuary had not been prostituted to any extent worthy of notice. The ordinary or municipal laws for the preservation of peace, and the suppression of strife, were of little real use in

Judea, Rome, or Greece, when placed in opposition to the implacable and roused feelings of a private enemy. Each man, if in his power, took rapid and deadly revenge, often for light offences, and the executive government, though willing to bring the offender to justice, could only look on in apathy or impotency. Perhaps the murderer was one of the highest in office, and could browbeat his compeers, or he was probably a poor man who had become a homicide in a state of irritation under the most cruel persecution. In such a state of things, when there was no national police, and no regular justice, the institution of sanctuary, by which refugees could be protected from personal violence until their cases were calmly investigated, was eminently useful.*

When the church of Rome became the predominant power in Italy, and shared the supreme authority with monarchs in other countries, it sedulously addressed itself to the cultivation of sanctuary privileges. All its churches, shrines, altars, and consecrated grounds, were ordained to be held sacred, and therefore capable of screening malefactors and debtors. The most execrable offenders were received on paying fines, and it was only in very particular instances that the clergy refused, or were declared unable to shelter criminals. The classes of offenders who were denied protection, were chiefly those who committed crimes while in the sanctuary, and those notorious robbers that were not satiated with private spoliation, but went the length of laying waste and depopulating whole countries. The

* Privileges similar to those of sanctuary are not unknown in Mahomedan countries in the present day, which renders it obvious, that the more barbarous the people, the greater necessity is there for the institution of such a check. In the hall of the divan at Algiers, a chain hangs from the roof, which, if gained and seized by a culprit while in the act of being carried off to execution,—he at the same time calling out for mercy,—entitles him to be brought before the Dey for a deliberate investigation into his case.—*Information from a Christian merchant, lately resident in Algiers.*

murder of a priest was another of those crimes for which no glimpse of mercy could be shewn.

It would be uncharitable to suppose that an immunity like the above was countenanced by the ecclesiastics on all occasions only from mercenary and aggrandizing motives. Throughout the desolating violence of the middle ages, and from the seventh to the eleventh century in particular, the most savage usages prevailed; the stronger ruled the weaker with a sceptre of iron; and, as for laws, they were entirely lost sight of. Private strife, homicide, murder, and robbery, were every day occurrences in the nations of Europe, and had it not been for the dextrously wielded authority of the Romish church, which always met with respect, and served as a barrier to human passions, the world would have presented the appearance of one immense slaughter-house.

Under circumstances like these, it was fortunate for the human race that a corporation of men was suffered to exist, endowed with the beneficent privilege of exercising humanity, and of interposing its arm to shelter the unfortunate. There, however, at length arrived a period when its mediatory office was little required, and when, had it acted wisely, it would have rescinded its canons referring to sanctuaries, and conveyed over to the political government all right to pursue criminal cases.

The discovery and application of the Roman law entirely changed the face of affairs, and before the fifteenth century, courts of jurisprudence came to be instituted under authoritative justiciars, and consequently the privilege of sanctuary, though not abolished, was much modified. It had been the custom to give shelter for only forty days at most, when a compromise or a regular trial by combat, ordeal, or judicial hearing, took place; but this provision was often disregarded by the clergy, who, in its stead, took fines from criminals, and either altogether absolved them from their offences, or dressed them in the garb of pilgrims, and dispatched them with a safe-conduct to some distant or

foreign shrine, there by prayers and penances to expiate their guilt. While on their route to these sacred places, they were protected from all violence by the passports which they carried; and it was only when they left the proper and direct path that they could be seized with impunity by the civil power, or by private enemies. The authority of the sovereigns, assisted by their parliaments, checked such a vitiation of justice. It became an established law in Britain, that no thief could be screened by a sanctuary until he had rendered up the articles he was accused of having stolen, and that persons charged with murder were bound to offer themselves for trial at the circuit assizes on the first opportunity.

In England, there were a variety of sanctuaries of more or less potency, though none seems to have arrived at such a pitch of popularity, as that of the Saxon Abbey of Frodston in Yorkshire. The minster in the city of York and its precincts, were also held in great estimation by pilgrims. The clergy of this pre-eminent cathedral received a present from the Pope of a chalice or goblet, with an inscription upon it, to the effect that all who drunk out of it should receive remission of their sins. This drinking cup became consequently at once an object of veneration to the people, and of emolument to the ecclesiastics. We believe it is still shown to visitors among the other curiosities of the minster. The ecclesiastical establishment of St Martin-le-Grand in London was another celebrated sanctuary, and that of Whitefriars, which may be better known by the name of Alsatia, near Temple-bar, was of no mean reputation. Along with some others, it was suffered to exist after the reformation, notwithstanding of general rescissory statutes, and the privilege of sanctuary was not in effect abolished in England, till an express act was passed for their suppression, Ja. I. c. 18. If a refugee was, after this period, protected in the district of Whitefriars, it was only by reason of the weakness of the civil power, and the

audacity of "duke Hildebrode," and his wassail retainers.

The kingdom of Scotland possessed likewise its sanctuaries of more or less notoriety. Every great monastic institution gave protection to civil and criminal refugees, and the existence, till this day, of *girth-gaits*, or roads to and from sanctuaries, gives evidence of the concourse of sinners and criminals who flocked thither.

The most remarkable of the various sanctuaries at one time existing in Scotland, was that which was formed on what the old chroniclers term the *law of Macduff*. The place of refuge was at a certain spot on the march between the county of Fife and the district of Stratherne in Perthshire, about two miles to the eastward of Abernethy. It was distinguished by an ancient monumental stone cross, covered with explanatory sentences in a variety of languages, which reared its sacred form over the neighbouring country until the period of the reformation, when, having offended the zeal of the followers of Knox, it was savagely demolished, and the block of stone in which it was fixed, and the surrounding tumuli, alone remain to point out its exact locality.

The origin and qualifications of the sanctuary of Macduff's cross, for by that name was it known, will be best described in the language of Sir Walter Scott, who thus notices it in his *Minstrelsy of the Scottish Border*. "When the revolution was accomplished, in which Macbeth was dethroned and slain, Malcolm, sensible of the high services of the thane of Fife, is said by our historians to have promised to grant the first three requests he should make. Macduff accordingly demanded, and obtained, first, that he and his successors, lords of Fife, should place the crown on the king's head at his coronation; secondly, that they should lead the vanguard of the army, whenever the royal banner was displayed; and, lastly, this privilege of clan Macduff, whereby any person, being related to Macduff within the ninth degree, and having committed homi-

cide in *chaude melle*, (in hot blood, without premeditation,) should, upon flying to Macduff's cross, and paying a certain fine, obtain remission of his guilt. Such, at least, is the account given of the law by all our historians. Nevertheless, there seems ground to suspect, that the privilege did not amount to an actual and total remission of the crime, but only to a right of being exempted from all other courts of jurisdiction, except that of the lord of Fife. But the privilege of being answerable only to the chief of their own clan, was, to the descendants of Macduff, almost equivalent to an absolute indemnity. The cross was dedicated to St Macgeders. The tumuli around the pedestal are said to be the graves of those, who, having claimed the privilege of the law, failed in proving their consanguinity to the thane of Fife. Such persons were instantly executed. The people of Newburgh believe, that the spectres of these criminals still haunt the ruined cross, and claim that mercy for their souls, which they had failed to obtain - their mortal existence. Fordoun and Wintoun state, that the fine to be paid by the person taking sanctuary, was twenty merks for a gentleman, and twelve for a yeoman. The late lord Hailes gives it as his opinion, that the indulgence was only to last till the tenth generation from Macduff."

At what precise period the law of Macduff ceased to be recognized is not known. Having been only of partial application, it is not alluded to by our institutional writers in the most distant manner. From several concurring circumstances, we have reason to believe that it fell into desuetude by the reign of James II. of Scotland. That it should have been sustained for such a length of time, more by the authority of the earls of Fife than of the ecclesiastical power, is no way surprising, considering the degree of might which distinguished their family. The Macduffs, who were entitled maormars or thanes, exercised in some respects the prerogatives of sovereigns within their dominions.

Their country was a palatinate in the midst of the other shires, and their ancient power is sufficiently testified by the popular quaint title of the "kingdom of Fife," which continues to be bestowed upon that portion of Scotland.

So long as the privileges of sanctuary continued to be supported by the power of the church, a violation of the law was esteemed one of the most heinous offences. Regardless of the character of the place, Bruce stabbed his enemy and rival the Red Cummin, in the church of the Greyfriars at Dumfries; but the readers of Scottish history will remember that it was with the utmost difficulty he could procure remission of the sin from the church. Notwithstanding of his sovereign power, his penitence, and his penances, the crime hung about him, and weighed him down during the remainder of his existence. The murder could have been easily wiped out; but the staining of the sanctuary with blood was thought too horrible to meet with pardon. Ideas of this nature being cultivated by the clergy, the violation of sanctuary was a rare offence.

The reformation at last acted as the besom of destruction to every sanctuary in the country. Yet, as one power declined, another rose upon its ruins. Ecclesiastical sanctuaries were abolished, but the residence of the king became endowed with an immunity of nearly a similar nature; and this was on the principle that the monarch, while holding his court, should not be deprived of the assistance or advice of his subjects, on any misfortune befalling them from a civil cause.* Of the different royal palaces in Scotland, none partook of this immunity but that of Holyrood at Edinburgh, which was the chief residence of the sovereign after the reformation. Neither did the privilege extend to the king's forts or castles. We have, nevertheless, the strongest grounds for concluding that the privilege of sanctuary was not stationary,

* Erskine's Institutes.

but travelled with the court; and it is well known, that it was also extended over the residences and precincts of offices belonging to the state or royal household, though at a distance from the palace.

The places which came in this manner to be considered as sanctuaries, though only for debtors, were for a long period three in number, all of which were in and about the metropolis. The first was that of King's stables, now forming part of a wretched suburb towards the west from the Grassmarket, and immediately without the city wall at the West Port. However homely may be the appearance of this squalid district, and however degraded may now be the gross of its inhabitants, at one time, when royalty took up its residence in the castle, which rises on its northern quarter to the height of more than two hundred feet, it was the scene of many a revel rout and feat of arms. The low piece of level ground on which the houses of the very lowest classes, and every species of pollution now rest was then a charming spot, on which the eye could dwell with pleasure. It was one of the two, and most favourite, tilting grounds of the courtiers in the environs of the city; the other having been on that equally hollow spot of ground at the north base of the Calton Hill, now partly covered by the houses of Blenheim Place, and partly by some tin and brass manufactories. The stables or mews for the steeds and hawking establishment of the king and his suit, were situated at the eastern extremity of the ground, which was terminated in this direction by the chapel of our Lady, the vestigia of which still remain, and give the name to a narrow close. On the south, the lists were commanded by the sloping gardens of Portsburgh, then a rural village; and on the north, the steep ascending bank of the castle gave the utmost accommodation to the fair spectators of the amusements going on at their feet; overhead, the royal family and household occupied projecting bartizans and battlements hung with rich velvets and carpets for the occasion; and when all the various groups of per-

sous of high and low degree had taken up their positions, and the smooth green place of combat exhibited the various mailed knights, and marshals of the field, there was altogether formed a scene of so much beauty, grandeur, and romance, that in the nineteenth century we are almost compelled to sigh over the depreciated and forgotten glories of chivalry.

It was not till past the middle of the last century, that the ancient appearance of King's stables and the tilting ground were destroyed by the inroads of leather and other manufactories. Maitland describes the lists as being in his time "a pleasant green" of about a hundred and fifty yards in length by fifty in breadth, "wherein martial exercises and feats of arms had been performed by the brave." He, as well as every other writer, is however silent respecting its privilege of sanctuary, which may have originally been enhanced by the proximity of the chapel of the Virgin; and it is only by minute enquiry among the aged denizens of Portsburgh that we have discovered that it continued to give refuge to debtors, for twenty-four hours, as far up as the year 1805. From about this time, no one in the place remembers of a debtor having fled thither. The last who was seen was a horse dealer, who eluded a messenger and his concurrents in the Grassmarket, and, with them in hot pursuit, gained the precincts ere they could lay hands upon him.

The second sanctuary to be noticed was that of the Scottish mint, whose privileges were precisely similar. The suit of buildings composing the offices of the mint stood, and still stands, at the foot of one of the principal alleys from the High Street to the Cowgate. The chief edifice is bounded on the south by the last mentioned mean thoroughfare; and on the north side it faces a small court yard, surrounded with paltry sheds and workshops. This obscure place of residence, in virtue of its connexion with the state, became possessed of the privilege of giving refuge to debtors, likewise for the space of twenty-four hours. At the Union of 1707, the officers of the establishment having been retained,

the immunity of sanctuary, through carelessness, was not rescinded, and it continued in operation, as far as we can learn, for at least a hundred years. The Court of Session at last abolished, and ceased to recognize, the right of sanctuary, although, as arising out of a consuetudinary law, we question the right or power by which the judges did so. But it is now needless to disturb the acts of sederunt on such a point. The crown has sold the edifices as of no use; the officers of the establishment are suffered to become extinct, to meet the exigencies of the public purse; and the privilege, as a matter of course, has been extinguished.

The only remaining sanctuary therefore in Scotland, is that of the abbey and palace of Holyroodhouse, with the adjacent grounds. The *termini sanctorum* of this ancient royal residence, which are so well described in every topographical work as to require a very superficial notice here, remained possessed of their privileges on the departure of James to England; and since that period, they have continued to be kept up in full force, without any attempt on the part of the legislature or the courts of law to call them in question. The precincts are extensive, and of a varied character; being partly within and partly without the outworks of the metropolis, and abounding in some of the most sequestered rural haunts in hill and dale, in the county of Mid-Lothian. The girth of the sanctuary includes the flat piece of meadow land around and to the east of the royal mansion, the domain of St Anne's Yard, some pleasant gardens and shrubberies, the romantic precipitous cliffs of Salisbury Crag (or cliffs,) and the adjacent hill of Arthur's Seat, with a fringe of pasture land to the south, reaching to the margin of Duddingstone Loch. Altogether the verge of the sanctuary may describe a circle of four miles, the greater part of which is walled, with convenient stiles for the thoroughfare of foot passengers.

The principal residences of the householders and refugees are huddled into a clustre within a hundred yards of the front of the palace, and only separated

from the burgh of Canongate, on the west, by a strand or paved gutter, which, since the removal of the *girth cross*, which stood near this spot, has been constituted the line of demarcation to debtors in this direction. The dwellings, which at one period were the residences of courtiers and retainers of the household, are mean and inconvenient in their internal structure. It is only a few years since a nauseous dunghill and cow-house were stationed not three steps from one of the side door-ways of the palace. Such gross nuisances are now removed to a greater distance; but the building is still hemmed in with objects of disgust, and the whole precincts wear an air of desolation, neglect, and impoverished grandeur, characteristic of the altered state of the country in its political relations.

This little palatinate, comprising possibly five hundred souls, is under the jurisdiction of a bailie appointed by the heritable keeper of the palace, who holds a court every Monday, at which all internal feuds and civil claims are discussed. He, or the legal deputy whom he commissions, can award punishment by incarceration in the Abbey jail,—a place consisting of a dungeon and single light apartment; or make seizure of effects. This judicature applies indiscriminately to refugees who may have contracted debts in the sanctuary, and to the general inhabitants.

Those who flee to this privileged spot, as soon as they gain the inner side of the girth, are free from pursuit; but before twenty-four hours elapse they must enter their names in the books of the bailie, lying at a small caverned office near the barrier. On this a printed form of protection is given for a consideration of twenty shillings, whereby the applicant is screened from all civil diligence on debts contracted prior to the date of his registration. As long as the person resides within the bounds, the certificate requires no renewal; but should he leave the sanctuary for fifteen clear days, he cannot be again protected on the same score. He can only be sheltered a second time from the diligence raised on those debts he may have contracted since

the date of his first protection. This may be supposed to neutralize the bad effects of the sanctuary, but we are doubtful if it do so, as it must be next to impossible for creditors or officers of justice to procure authentic intelligence of the outgoings and incomings of refugees. No protection can be given to crown debtors, or those convicted of, or charged with fraud. If it can be sworn that refugees meditate flight from the country, they can be secured and put in confinement, the same as other debtors, until they find caution that they will remain. The Court of Session can order the presence of refugees as witnesses in any trial, under a guarantee of safe-conduct for a specified number of days. Debtors have liberty to leave the sanctuary from twelve o'clock on Saturday night for the space of twenty-four hours. No species of property can be protected by the privilege.

Neither the Court of Session, nor other Scottish judicatures, lay any stress on the act of a debtor taking the benefit of sanctuary, nor visit him with any mark of infamy beyond the consideration that he is simply a bankrupt. The local authorities look upon the refugee as if he were in a foreign country, where they could have no recourse upon him. No civil warrant can break in upon his retirement; and, in a certain sense, he is dead to the world. Great as exemptions of this description may be deemed by persons unacquainted with the practical effects of the privilege, in reality the immunity is scarcely worthy of acceptance. Refugees labour under innumerable disadvantages. There is no organized society within the precincts, to which an individual of the middle or upper classes can resort for solace in his retirement. If the "sanctuary man," or the "abbey laird," as he is familiarly termed in Edinburgh, be an accustomed reveller, he may possibly find a few persons equally willing to assist in drowning care in the bowl, of an evening, or to discuss libations of raw whisky and small beer in the forenoon, and entertain him with interminable and edifying disquisitions on the properties of the *cessio*,

the hard-heartedness of creditors, and every minute particular of their own flight. But if he be a sober-minded man, his case is very pitiable. There are no club, billiard, nor reading rooms; no out-of-doors amusements; and delicate-minded debtors will even be disinclined to stir out of their miserable lodging rooms, in dread of being stared at by any known acquaintance or townsman who may chance to be passing through the parks. The ordinary resource of reading becomes tiresome, and, besides, proper books are difficult to be procured. The ennuyée may stroll by the way of "St Anton's well" to the top of the neighbouring hill, where he is greeted with a very extensive prospect, and, like Robinson Crusoe, when anxiously looking for the coming or departure of the savages, he may lay himself down and count the vessels on the Forth, and remark them as they come into sight, or gradually sink beneath the visible horizon; but all this will not "minister to a mind diseased," and in all likelihood, it will only add torment to the already disconsolate debtor. The worst peculiarity of the place, consists in the very heavy expense which attends a residence. The apartments let out by the householders, and every other requisite for the existence of debtors, are dear, and generally of a bad quality. Instead of being supported upon aliment, as in jail, the outlay is enormous, and it is only those who possess any considerable means who can endure a residence for more than a short period. As this circumstance is well known, the absconding of a debtor to the sanctuary, and his wilful residence there, in most cases exasperates creditors; it being shrewdly conjectured that he must have kept up money to enable him to do so.

Thus, few Scottish traders or others take the benefit of sanctuary, unless it be for the space of one or two days, for the purpose of securing their persons until a sequestration be sued out, or a compromise be made with all the creditors. In times of the severest mercantile calamities, the number of refugees has been known to amount to fifty; but this was only for a few

days, and it is seldom there are more than eight or ten. Occasionally the sanctuary is resorted to by debtors from England, as it gives protection to persons from all nations. In a few cases such have been known to live for years, and at last die, in the precincts. Recently it happened that there were three baronets resident in the sanctuary at one time; and it is sometimes the case that the sons of noblemen are to be found enjoying the privilege. These personages, in most instances, procure lodgings in the palace by the favour of the keeper; a fact of the most degrading nature, which would hardly be credited, were it not placed beyond all possibility of dispute. It is not long since one of these scions of a Scottish peer induced a respectable upholsterer in the city to furnish his apartments, and afterwards refused either to pay for the articles or render them up. The case came to be litigated; but the King, then Prince Regent, and the Lord Advocate, having sustained the transaction, on pretence that the seizure would trench upon the royal prerogative, the courts found themselves impotent, and the pursuer was nonsuited. There could not be instanced a more infamous, and injudiciously supported, case of kingly prerogative, since the reign of James VII. than this. Why it was not brought before parliament, we are unable to explain. It excited neither comment from the people nor observation from the diurnal press; after which exposure of indifference to the *prerogative of the subject*, the Scotch, we think, should be for ever silent respecting the arbitrary measures of the Stuarts.*

* This very remarkable case, which we are sorry we have not room to introduce, will be found at length in the Scots Law Chronicle, No. 4.—an exceedingly useful, and very spirited periodical, issuing quarterly from the Edinburgh press. The result of the plea decides, that goods in the palace cannot be seized for debt, and therefore traders should be cautious of permitting their property to be carried thither.

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

LANDLORD AND TENANT—HOUSE-LETTING—MASTER AND
SERVANT.

It was once a generous pleasure in a landlord to love to see all his tenants look fat, sleek, and contented. CLARISSA.

THE laws regulating the connexion between landlord and tenant in Scotland do not vary in principle from those in England, though there are some local usages, a knowledge of which may possibly be of use to a stranger.

While, in the adjacent country, houses and lands are for the greater part taken in leases for a lengthened period, or specified number of years, the rents of which are ordinarily payable quarterly at Lady-day, Midsummer, Michaelmas, and Christmas; in Scotland, it is mostly lands which are let for protracted periods. These are almost always formed on contracts of seven, eleven, thirteen, and nineteen years; an odd term being usual, from nothing else than an old notion regarding the luck of odd numbers. In very many cases, a lease of one, two, or three nineteen years' is instituted; such of these limits of time, according to old ideas, forming a round of all kinds of weathers. The progress of the vicious custom of entailing lands, by which long leases are sometimes prohibited, or otherwise impeded, is lessening the duration of such contracts, and in many instances, farms are only let from year to year, and consequently are exhausted.

By the law of Scotland, no verbal contract is binding, if for more than one year; and the oath of either party would not be received as evidence of a lease for a longer date.* All leases, or *tacks*, as they are here called, for two or more years, must be written on stamped paper, agreeable to a legal form; and this being registered, legal diligence may be thereafter instituted. A lease written in an informal manner on plain paper is equally binding, if followed by possession. In the taking of lands, the former custom prevails; but with regard to house property, leases, if not for more than five or seven years, are written in the shape of an offering and accepting letter. It is now usual to make a provision in the contract, whereby the tenant has a power of breaking it at the end of a specified number of years; which the landlord considers to be better than a right of subletting, and the tenant prefers it on his part, as he can abandon the premises should he feel inclined. As the benefit is supposed to be on the side of the latter, he usually pays a premium for the indulgence.

The entry to lands depends on agreement; though commonly it is at Martinmas. Houses are let very generally in Scotland at one distinct period of the year, namely, Candlemas, or from that day until the ensuing Whitsunday; three months being thus allowed for the exhibition of *tickets*. Strangers desirous of residences, should make enquiries about this time.

By a local statute, the term of Whitsunday and Martinmas are fixed to be the 15th day of May, and the 11th day of November, (or, if on a Sunday, the Monday following.) Of these, the first is that on which all removals should take place, when the agreement is in allusion to such dates; but so powerful is still the influence of old usages, that Whitsunday, old style,

* In taking houses, it used to be a custom, which is not yet abrogated, to give the landlord, *hirels*, *erels*, or earnest of rent, by means of a copper, or other small, coin. This clenches the unwritten bargain, and will found a plea in law to oblige implement of contract.

or the 25th day of May, is scrupulously adhered to.* In some towns the 25th, and in others, the 27th day, are the accredited periods of removing.† On these days all, or nearly all, Whitsunday removals take place; and as it is only at other periods of the year that entry is made to houses which have been left untaken, on this occasion, some towns exhibit a general moving of household furniture; and were a stranger to visit such places while the people were in a confusion of this description, he would be inclined to suppose that the approach of an enemy was anticipated.

Though the *auld term* is thus the grand *flitting* occasion, the payment of rent, which is uniformly taken half-yearly in Scotland for both lands and houses,‡ is ordinarily demanded on the legal term day, the 15th, but except there appear serious grounds to suspect elopement of the tenant, it is not pressed till the 25th, when it is expected a removal is to take place. A considerable degree of courtesy is mostly exercised by the landlord, and the interval of ten days at the one term, and eleven at the other, forms a debateable ground on which there is room to employ finesse and skirmishing. The cases are very rare of landlords attaching furniture for rent on the first day, as the law allows them to do, unless among poor persons, and for this purpose the interval assists the legal usages, which are more tardy than those in England. Forty years since it was customary to give at least three months credit on house rents, when the tenants were "sitting." The period has since that time been

* Old style is still used to mark festivals by many persons in Scotland. It is staunchly adhered to by coal-miners and other working persons in the country; and proximity to cities seems to have no power to introduce newer customs. Many societies and clubs have also their annual meetings and convivial parties on their patron saints' days, old style; the fashion being supposed useful in keeping up associations of ideas with the manners of a former age.

† Edinburgh keeps the 25th day—Glasgow the 27th.

‡ All government taxes, local assessments, and poor leys, are payable in Scotland only once a-year.

gradually decreasing, and from appearances, it is probable that at length payment on the legal term-day will be deemed proper, as it is commonly in England. Rents of houses in Edinburgh and other places were at an unnatural and high rate, some years since. They are at present rapidly declining into a proper remunerative price.

Seizures for rent in England are made by means of the writ *fieri facias*, formerly noticed, which, on these occasions, receives the name of "a distress," (or *distingas*,) and answers the purpose of carrying the goods to *pound*, after the usual process has been expedited, from whence they can be recovered by a *replevin*, and payment of the rent, within a few days. In having recourse to such harsh measures in Scotland, the landlord applies for, and receives, a summary warrant from the judge ordinary of the district, after a short warning has been given, which sequesters the goods, and they may either remain on the premises, or be carried to some place of safety. Parish pounds are quite unknown in this country. In practice, the Scotch law is administered cautiously, and even when the articles are brought out for sale, a species of respite for an hour or two takes place, to give every opportunity of negotiating a settlement. As in the common law for securing payment of debt in Scotland, both goods and person can be taken for rent, which is the reverse of the English practice, by which a choice must be made, or where, if the goods be preferred, but the person be afterwards supposed more advantageous, the former may be abandoned, and the latter taken, by a writ of *cessi corpus*, (giving up the body.) The English law is here evidently favourable to the tenant.

The right of landlords' *hypothec* is strong in this country. It is a power which he at all times possesses over the crop or moveables of his tenant, in security for the rent of the current year. He has no hypothec over these articles for bygone years, though the claim subsists three months after removal to a new residence,

when they become liable to the hypothec of the new landlord. The right extends over the property of sub-tenants for the rent of their immediate superior; and thus the moveables of a lodger are liable for the arrears of a householder. Tenants on farms are removable when refractory, by a warrant of ejection from the Court of Session, issued forty days prior to the termination of the lease. House tenants are warned to remove in a more simple and primitive manner. A town or sheriff's officer is employed to *chalk the door* forty days before the legal, or other, term of the removal. A decree of the magistrate founded on this transaction can eject the tenant at the end of six days. No force can be employed to resist the mandates of the law. Should either of these warnings be neglected, the tenant may resist removal by a legal action. In practice, door-chalking is almost abandoned; as there are few who would pretend to remain on premises on the frivolous excuse that such was not done.*

Servants are hired in Scotland by half years, and their terms are the same as those used in house-taking and entering. They are contracted with, by means of *erels* or earnest money. The Scotch law is exceedingly defective in the want of distinct information on the duties and rights of masters and servants; unless the inapplicable regulations of the feudal ages be considered of import. The justice of peace courts, which settle disputes arising perpetually out of these relationships, have each their own law on the subject. Scotch servants are draughted out of the working classes, and, having received no idea of domestic cleanliness or housewifery, they are, in general, an endless source of private jarring. English families wishing to settle in Scotland, should, if possible, import servants from England.

* We have heard that in England landlords often find a difficulty in dispossessing tenants when they choose to insist on remaining in the premises. Whether such be the case or no, nothing of the kind can take place in Scotland.

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

INFORMATION TO STRANGERS REGARDING THE GAME LAWS
OF SCOTLAND.

We have had pastimes here, and pleasing game.
SHAKESPEARE.

THE law in force in Scotland, regulating the killing and sale of game, differ so materially from those of England, that strangers may be desirous of possessing some information on the subject. First, as regards the qualifications of a sportsman. It is ordained that no person shall hunt or hawk, which signifies the shooting or killing of game (foxes included), in all possible ways, unless he possess a plough-gate of land in heritage, under a penalty of L. 8 : 6 : 8. It is not easy to understand the exact extent of a plough-gate of land ; but it may be assumed as being a very small piece of ground. However, this is of no moment, for practically—and this is all that troubles a man fond of field sports—no such qualification is required. Any person having the appearance of a gentleman will be endowed with a licence to shoot game for a year, on paying the sum of L. 3 : 13 : 6 to the comptroller of taxes for Scotland. His office is in Edinburgh, and may be easily found out. A game-keeper pays only a guinea for a similar privilege, provided he also pays the tax as an assessed servant ;—if he be not an assessed servant, he pays the full duty of L. 3 : 13 : 6. The licence gives no liberty to trespass on the grounds of any

land proprietor. A freedom to shoot must collaterally be procured, otherwise the immunity is of no avail ; for, although it would be very possible for sportsmen to find fields and hill sides on which to commence operations with their dog and gun without the ceremony of asking permission, they would be frequently liable to surprisals, and might ultimately have to pay dear for their intrusion. When permission is received, intruders are nevertheless liable in damages to farmers, should injury be sustained by crops. Landlords, except it be otherwise arranged, are subject to the same penalties to their own farmers. Tenants cannot shoot or kill game on their farms, even though licensed, except they procure the permission of their landlord.—All permissions should be in writing.

The law prescribes that unlicensed persons are disallowed from having game in their possession, or from conveying it from place to place, unless by the consent of a qualified person. This is under a penalty of 20s. for the first, and 40s. for every other offence ; failing payment of which within ten days ; imprisonment for six weeks for the first, and three months for every other offence. Hares, partridges, pheasants, muir-fowl, ptarmigans, heathfowl, snipes or quails, are here comprehended ; yet so loose, so undefined, or so senseless are the statutes regulating the possession of game, that, *in practice*, few or no fines or committals are imposed or made on such frivolous grounds. All kinds of dead game in Scotland pass from the country to the town, and from place to place, without exciting any comment. It can be presented by friends to each other, whether the receiver be qualified or not. It may be seen in the house of the commonest person, and no inquiry is instituted, unless it be very obvious that the family lives by poaching. It may be transmitted to dealers in town, who expose it for sale in the open market ; and its price is quoted in the public prints like that of mutton or beef. A free contraband exportation of game may also take place. If packed in deal boxes, it is never overhauled either by skippers, or coach proprietors ; but when it crosses the border,

or lands in England, its carriers are of course liable to the English game laws, and it may be seized by an officer of justice, and carried as a treat to the inhabitants of the work-house.

The proper seasons for killing or having game in possession are rigorously observed in Scotland; as also the periods for salmon fishing. These seasons are so often varied, that we prefer referring the stranger to the calendar in the Almanack for the running year, for the freshest information on this subject.

When poachers or persons, though licensed, but not having permission to shoot, are challenged while engaged in fowling or shooting, they have a right to preserve their dogs and gun inviolable; but they must not do so to the extent of shooting the challenger on the plea of self-defence. A person who shot the Earl of Eglinton many years since, on this principle, was adjudged to death for the crime, and only escaped the ignominy of the scaffold by suicide. The person challenged may be secured till he give his name and address; and he can only be punished and mulcted of his accoutrements by a common action at law. He has also a right to retain the game he may have killed. Poachers found in inclosures with intent to kill game or rabbits during the night—the intention being presumed by the possession of fire-arms, or other offensive weapons, nets, &c. may be taken and prosecuted criminally. The law of Scotland here coincides with that of England, in making transportation for seven years the penalty of such conduct; but if we reduce the procedure in this country to practice, it will be discovered that transportation, or any punishment beyond three months' imprisonment, is altogether unknown. The absence of poor rates to the extent of those in England, whereby the families of poor men convicted of poaching would be left in a state of destitution, were transportation to be inflicted, is the most probable cause of this *leniency*. The odium which would follow the justice of peace who attempted to draw the statute to its utmost limits, also tends

to the same end. The great proportion of uninclosed hills and dales in Scotland, which differ so much in character from the preserves and intersected inclosures in most of the English counties, is moreover a chief cause of so few prosecutions for poaching. No existing law applicable to Scotland prohibits persons of any degree from having fire arms in their house, or from freely shooting wild animals not reckoned as game. The act against the use of spring guns extends to Scotland.

It is now becoming very customary for land proprietors in Scotland, especially those having heathy estates, to let their lands or a right of shooting over them during the appropriate seasons. And to further this excellent mode of making unproductive wastes a source of profit, they generally provide a furnished residence for their temporary tenants. Most of the estates thus farmed, lie in the shires of Inverness, Ross, Caithness, Perth, Forfar, and Stirling; and the best method of procuring intelligence on this point is to consult the pages of the *Edinburgh Courant*, or the *North British Advertiser*. Files of those papers may be seen in London, or at the offices in Edinburgh. It is very necessary that sportsmen apply for information in this manner, whether they have or have not permission to shoot over certain grounds; for advertisements of prohibition are very numerous, and it is often the case that proprietors recal their permissions in this public manner.

The game laws of Scotland, it will be remarked, are established on very liberal principles in comparison with those in England, where the killing, the selling, or the actual using of game, are considered crimes of a very heinous nature, and where every species of real crime arises out of the commitments and prosecutions under the statutes. As the Scotch law operates, it is only liable to censure on the broad principle, that every land owner and farmer should exercise his natural right to make free with what he finds on his own property, without the intervention of a license or permission asked: Thus re-

ducing the law to a hindrance of trespassing. Yet as a license is easily acquired at a moderate price, and a permission is in general not difficult to be procured, the former qualification only acts as a source of public revenue, and as such is the object of a very unobjectionable tax.

NOTE.—Statutes prohibitive of public or private gaming by lottery, betting, and otherwise, extend to Scotland. Besides, there still exists an old Scottish act of the year 1621, which gives magistrates a power of interfering to prevent gaming by cards or dice either in a public or private house. The penalty is L. 3 : 6 : 8, but when the master of the private house takes a hand in the game, no challenge can be made. This is one of those ridiculous old Scotch acts, which, of course, is never put in force.

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

MARRIAGE—BASTARDY—DIVORCE.

What, shall the curate controul me? Tell him that he shall marry the couple himself.—GAY's *What d'ye call it*.

FEW of the laws of Great Britain require to be so much revised and equalized in some degree over both kingdoms, as those relative to the subject now coming under our notice. While the statutes of England possess several peculiarities of a nature not consonant with justice or expediency, and of a strictness which injures society, those of Scotland are liable to objections of a somewhat contrary description, and are discreditable on account of their looseness.

The Scotch law, following the spirit of Roman jurisprudence, considers matrimony purely a civil contract, implying certain conditions on either party, which may be reduced to the expedient principles of perpetual cohabitation and protection of children. Though the law gives the church the management of the ceremonial of union, all idea of a spiritual relationship is excluded; and the contract may be binding without such a practice. The English statute law recognizes similar principles; but unfortunately they are obscured, and in practice no law appears so remarkable for its contradictions.

The Scotch have fallen into the error of making the negotiation of a matrimonial union too simple and indistinct. The process has been rendered so intangible and flimsy, that a word spoken in jest may form the basis of an action to enforce cohabitation. The following are the written provisions of the law on the subject. A marriage may be constituted between males of fourteen and females of twelve years of age; neither guardians nor parents having the power of preventing it in a legal manner. The ceremony may be performed by the church, in a manner immediately to be described; by an interchange of missive letters, or by a letter from the male to the female, if followed or preceded by cohabitation,—by living together under the reputation of married persons,—by the acknowledgement of a man to the clergyman who baptized his child, that he was the husband of the mother, if strengthened by other circumstantial evidence,—and by confession of parties before witnesses. These are the most prominent pleas in law for certifying that marriage exists; but so widely can presumptions be stretched, that almost every new case before the courts constitutes another dogma for its establishment. It is generally supposed that justices of the peace in Scotland can celebrate matrimony, which is a mistaken notion, only based on the consideration that a justice of peace may act the part of a common witness, that a declaration of marriage has been made in his presence. By causing a justice to subscribe a confession of this nature, a hue of legal accuracy is given to the transaction.

Marriage being thus of easy accomplishment, it acts retrospectively, and if acknowledged at any distance of time after cohabitation, it renders all the children legitimate,—it being presumed that matrimony was contemplated from the first, and that certain private reasons only prevented its publication. This dangerous but humane provision is of great consequence to children born under those circumstances. However, their legitimacy will be refused, if the father desert

their mother before declaring his marriage—marry another woman, and at her death, revert to the first ; the intention of marriage being supposed never to have existed. By reason of this very benevolent construction of the law, it does not infrequently happen that the father of illegitimate children declares his marriage to their mother before witnesses on his death-bed. Should the mother die before the confession, no marriage can take place ; her assent being necessary.* The principles of the marriage of parties at Greytna, Coldstream, or any other accessible point on the borders, will be at once comprehended from the above : The priest, blacksmith, or whatsoever person acts the part of clergyman, only doing so on the grounds of being a *witness* of the confession. The reading of prayers, or the service of the church, is only thrown in to give the ceremony the air of an English marriage, without which the lady might raise objections. Any two persons, therefore, whom the parties should meet after passing the boundary line, are competent to act the part of a clergyman in the same manner. All attempts to put down irregular marriage ceremonies at the fashionable resorts of eloping parties from England, have consequently proved unsuccessful.

Strangers, reasoning abstractly on these peculiarities in the configuration of the law of marriage in Scotland, might be led to imagine, that in most instances no regular clerical ceremony would be used, and that all arrangements regarding the matrimonial connexion would be settled by the simple confession of parties. On examining daily usages, he would, however, find that very few marriages were thus established. No penalty is attached to the subscribing of witnes-

* There is a common traditionary prejudice among the people, that when retrospective marriages are celebrated, the mother, during the ceremony or confession, must gather all her children beneath her apron ; and that for this purpose a *very large* apron is procured. Though, from the prevalence of the legend, it is likely such a custom has once been acted upon, no practice of the kind is now necessary.

ses, nor does the law interfere to impede the transaction in any way whatever; still, as such marriages are always liable to litigation by one of the parties, and may have a chance of reduction after decease, to the injury of children, a wish for security as well as respectability induces parties to undergo a regular marriage ceremony. The church may also censure its adherents for irregularity, and this, likewise, checks the practice. Irregular matrimonial transactions obtain the popular name of *half-merk marriages*, that sum in Scots money being the usual charge at one time made for enacting the part of priest on the occasion. They are also known by the name of *ower bogie marriages*.

A regular marriage is expedited in Scotland the same as in England, by proclamation in the parish church, and the interference of an established clergyman. The law on this point is, nevertheless, remarkably lax, and in almost every instance its provisions are abused with impunity. The proclamation of banns ought to take place on three several Sundays in the parish church, in an audible voice, in presence of the congregation. In general, this duty is huddled up into three several mutterings in one day, while nobody is present but the old women who usually take up their station on the pulpit stairs. These mutterings are made by the precentor, and he is ordinarily feed in proportion to the expedition he uses. When one of the parties is an Episcopalian, the proclamation must also be made in the chapel he attends, provided he is to be married by the clergyman of that place. If he be to be married by the parish minister, this is not requisite; and we are rather of opinion, that this provision is never now acted upon in any case. If the parties live in different parishes, the proclamation must be made in the church of both. Six weeks give a settlement.

On an extract being procured of the proclamations, it is carried as a warrant to the parish clergyman, who is bound to unite the parties gratuitously. The law distinctly prescribes that no clergyman but those pertaining to the kirk or the Episcopal church shall celebrate matrimony, and these not without an extract of true proclamations, under the penalty of deportation

from Scotland. But on this point the law has gone into total confusion. It is now customary for every species of preacher in dissenting congregations, Roman Catholic clergymen included, to officiate when the *lines* are produced. A result of this nature is not injurious to the validity of the marriage, and it would possibly be better for England that the law was as accomodating. By taking the business out of the hands of the established church, it has however partly produced an evil worthy of immediate correction. Every minister, when he has finished the ceremony, docquets the lines by a certificate that such have been implemented. The certificate being then given back to the parties, ought to be registered in the parish books as a finished transaction; but from carelessness, this is very often neglected, and as clergymen keep no chapel-records of marriages, (Episcopalians excepted,) there is no evidence but that of a circumstantial nature to prove the deed. It is generally understood that an amendment of the law is here contemplated, by obliging all ministers to keep registers. Some clergymen already take in hand to have the ceremony certified in the parish books; and the present parish clerk of St Cuthbert's in Edinburgh, is a model of exactness in urging post-matrimonial registration. Marriages in Scotland only take place in churches or chapels when the parties are of the Romish or Episcopal churches, and wish it to be done. The standards of the kirk prescribe that marriages shall be celebrated in church, and lay down a form or liturgy to be used; however, like many of the "standards" of the establishment, these have long since gone into disuse.

If marriage be easily accomplished in Scotland, it is fortunate that it can be more easily dissolved than in most other countries. The law permits three pleas for divorce, either of which, when substantiated, produce the desired end:—adultery, impotency, and wilful desertion for four years at least.

In respect of the first of these causes, it seems still an undecided point, whether it be essential that the complainer be not liable to a retort. Recent law

writers, founding on certain decisions, have remarked that it is essential, or, in other words, that the pursuer must enter court with clean hands; but this, we think, will depend chiefly on circumstances. It is at least certain, that should the pursuer have cohabited with the defender after the date of the alleged indiscretion, no plea will be sustained. Bad usage leads to separate maintenances, but will not serve for a divorce.*

To found a plea for divorce on the score of desertion, the absentee must be excommunicated in church at the end of the first year at soonest, which forms the groundwork of an action in the commissary court, when other three years have expired. The deserter must be warned of these transactions, if in the country, and summoned edictally, when abroad, or when his place of residence is unknown. Judicial banishment and imprisonment, are not reckoned wilful abandonment. There must be no collusion in any of the pleas, and this is ascertained by a solemn oath.

Processes of divorce are rare in Scotland, considering the comparative ease and cheapness of carrying them through, a circumstance complimentary to the habits of the people; and we never heard of a case which was frustrated by the discovery of collusion. In practice, therefore, the law of divorce in this country is equitable, and consistent with common sense and expediency. Its mildness is seldom or never abused by natives. Parties from England occasionally attempt to procure divorces after gaining a settlement of sixty days, but it is rarely they succeed; the court supposing, mostly with justice, that collusion exists; and it may now be considered almost a settled point, that English marriages cannot be dissolved in Scotland. A long residence in the country might, however, affect the case.

* Separate maintenances are not easily procured by wives in Scotland, unless the husbands flatly refuse to support them. There prevails a curious traditionary opinion on this subject, to the effect, that if a husband, whose wife has left him on any pretence whatever, order a plate, knife, fork, and chair, to be placed every day for her at dinner, she can neither complain of misusage, nor sue for a separate maintenance.

It is, not the divorce but the marriage, law of Scotland which is defective. As it now operates, actions for declaring the validity of contested marriages are frequently in court. They are, in almost every instance, instituted by women in the lower ranks of life, and especially house servants, against men in better circumstances,—such as their masters, or sons of their masters, either on the plea of verbal or written promises, or what they suppose may be construed into promises of marriage; and we consider the ease with which they generally establish their point as very injurious, by inducing an abandonment of virtuous habits on the part of females, in the prospect of trepanning men into the condition of husbands. In palliation of the loose principles of the law on this matter, it has been said by eminent counsel, that idle words spoken in jest, or frivolous actions, such as the owning of a woman for a wife in a jocular way before a company, cannot be subsequently used to the disadvantage of the man who did so. But to arguments like this, it is only necessary to point to the result of most of those actions brought into court by women of easy virtue for the last half century. It is a notorious fact, that the law here is far too favourable to the woman, who, if she do not accomplish her purpose through the aid of lawyers who are willing to take up her case, is at least sure of putting the man to much inconvenience and expense. Some may plead, that since such is the ticklishness of the Scottish law on the subject of marriage, a corresponding caution will be exercised by men in making advances to females; but though this be partly true, we are satisfied that it does not counterbalance the mischief we describe.

Husbands in Scotland may protect themselves from the future debts of their wives, by expediting a simple process in the Court of Session, called an Inhibition, which is recorded, and published in the newspapers. A husband can do so on the day after his marriage, if he chooses, and he is not obliged to state the reasons for such a harsh and discreditable procedure.

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

MANAGEMENT OF THE POOR IN SCOTLAND.

My men are of the poorest,
But poverty could never drive them from me.
SHAKESPEARE.

THE present condition and prospects of the poor in Scotland, may partly be compared to what they were in England in the seventeenth century, before the application of funds derived from compulsory assessments had wrought that demoralizing influence in society now so observable wheresoever they have been used on a great scale. To prevent a period arriving when expediency compels a contribution on the part of the rich to support the poor, seems either impossible, or has hitherto not interested the intelligent part of the community sufficiently to retard its advance. Almost all nations, confined in limits, and progressing in civilization after the European fashion of manners, appear destined to arrive at a crisis, when society sheds off into the most opposite extremities of overgrown wealth and the direst poverty. The chief cause of this seemingly natural consequence is now no secret. It is the accumulation of money, or the representation of wealth, in masses, which, when once begun to be concentrated, generates at such a rate of progression, that in the course of events the resources of a great proportion of

the community are drained to supply matter for its increase. A great, a very general, and a continual industry, acting so as to create a corresponding quantity of the material desiderated and fill up the loss, has been declared as competent to preserve the balance of society; but the present situation of Great Britain shews, that even when industry has been pushed to its utmost verge, when the most severe labour is practised by all, no result of this description can be traced. In despite of all improvements in science and art, whereby machinery has been brought to do the work of a hundred millions of human beings, and the land tortured into the utmost stretch of its productive powers, the melancholy fact still strikes our observation, that the poor are not only still the poor, but that their number is prodigiously increased, and their poverty dreadfully enhanced. Whatsoever may be the specious doctrines of certain writers, this palpable truth bursts through all impediments, and stands confessed as the basis on which compulsory assessments for the support of the degraded portion of the community must be put in operation. Until some novel and judicious plan—which has hitherto baffled the ingenuity of mankind—can be devised to check and cure the evil, it must go on in its aggressions. Nothing as yet projected in modern times, has been at all able to arrest the mischief. As society is now constructed, its approach may be as surely calculated on as the recurrence of the seasons. The Indian who is cajoled into the relinquishment of his independent barbarism, and the adoption of the usages of civilized life, makes his first unconscious step to the poor-house.

It is not our duty to digress on a subject affording so much scope for comment to the political economist. A short and comprehensive view of the rise, progress, and present state of pauperism, and its usual remedies in Scotland, for the information of the stranger, is our more simple task.

The institution of poor laws was almost coeval in England and Scotland, though the necessity for their

introduction was more decided in the former country. The first enactment compelling the poor to be assisted in this kingdom, was in 1535, from which period till 1696, the laws were at different times amended, and subsequent deliverances of the supreme courts have completed the code. In spirit, they do not differ materially from those in England; for, as it is recognized that "no one shall starve," all in desperation can insist on support from their parish. Yet in practice, on account of the peculiar character of the people, and the carefulness of the administrators, it can hardly be said that compulsion can be used in applying to the poor funds. The original regulations only refer to the relief of those who are impotent, or infirm by old age, sickness, or idiocy,* but the meaning of the law has been stretched of necessity, and the destitute of all descriptions may at least make application. Abject as the condition of the Scotch was, up to the middle of the last century, the poor laws were little acted upon. A nobility of principle governed those subjected to impoverishment, actuating them to try every possible endeavour for subsistence by industry, before making their wants known, or craving aid from the funds appropriated to the use of the poor. So long as feelings of this honourable stamp were prevalent, and so long as the upper classes interested themselves in the fate of their poor neighbours and dependants, it was held as almost disgraceful to seek parochial assistance. In such a primitive state of society, the actual poor were subsisted nearly altogether by voluntary contributions, and as, besides, mendicity was permitted

* It is a very remarkable fact, that idiots are more numerous in Scotland than in any other nation in the world. The proportion of the number of such individuals to the rest of the people, is considerably above that in England or Wales. Every country town has one or more of these impotent beings, who are almost invariably allowed to go at large. The lower Scotch have an idea, that good luck always follows the family having an idiot or *natural*. Poor living, religious dulness, and often the improper marriage of persons of weak intellect, partly account for the circumstance.

freely, there was little occasion for introducing that deleterious system of parochial assessments ; which, in proportion as they are made, are always found to superinduce a recklessness of behaviour among that class of the community liable to fall into extreme poverty.

Until comparatively recent times, such was the constitution of society in Scotland, that all, except the really impotent and friendless, were provided for, through their own exertions for subsistence, or, if that were unavailing, by the charitable and kindly feelings of relations and neighbours. In few cases was necessity published to the world, and as there was a scrupulous inquisition into private conduct, all were in a certain sense placed on their good behaviour, and lived in a way as if they might come by misfortune to seek relief from those around them. Thrift and prudence were the governing principles of this golden age of the community ; and as pride, or rather that silly vanity for the enjoyment of finery, or certain modes of living beyond pecuniary capacity, was suppressed or unacquired, some excellent restraints existed for checking the advances of poverty, or that depth of distress warranting the calling in of extraneous aid. The aged parent, instead of being abandoned in his or her infirmities to the bitter support and gruff manners of a work-house, was provided for, as a matter not involving a moment's consideration, by descendants who, though little themselves above the inroads of want, were in general too happy to bestow a shelter, food, and attention, on beings whom they beheld with reverence and dutiful affection. Young persons too, with a prudence which cannot be highly enough commended, were cautious of forming matrimonial connexions until able to do so with perfect security, and a prospect of a competency by industry. The idea of marrying, in order that wages, or a certain weekly aliment, might be obtained from the parish, would have been deemed a monstrous creation of the brain—which indeed, we are happy to say, is still unknown—and in any case, a prospective dependence on the poor funds

was entirely in abeyance. A knowledge even of such funds, or the existence of laws which, in the occurrence of emergency, could oblige the wealthy to contribute money for the support of the poor, we venture to declare, was not even understood. All the inferior classes, in contemplating the possibilities of pauperism, invested it in the garb of mendicity: To stay at home in the place of their nativity, and be supported by public charity, while they subjected themselves to the sneers, or, what was worse, the pity, of their former associates, could not be endured as practicable. They could only calculate on removal to another sphere of action, where, failing all virtuous measures for subsistence, the *meal pocks*, or bags for the reception of alms from good Christians—always or mostly given in meal of different kinds—was to be their last resource. Feelings of this honourable quality are very far from being obliterated in Scotland. They are all, less or more, still kept in action in all grades of society, especially in country places, but it may be the subject of just lamentation, that their animation has been growing weaker and weaker every few years. The desire of self-dependence has been decreasing in vigour; and a relaxation of the long unbending traits of character above described, is now very observable.* But,

* Many persons in Scotland could relate interesting anecdotes illustrative of the virtuous poverty of poor neighbours, which, it is to be regretted, is now on the decline. An exceedingly honourable case has fallen under our own notice. A very industrious, sober, and honest man, a diaper weaver by profession, in a country town, having many years since, by a variety of unforeseen misfortunes, fallen into poverty, and what he considered worse, into insolvency, when upwards of sixty years of age, enlisted into a militia regiment, purely for the purpose of paying his debts, at a time when the army gave high hounties, and was not scrupulous in accepting of men. With the bounty-money in his hand, he commenced paying at the one end of the town, and did not leave off at the other, till all claimants were satisfied, and his own heart lightened. This truly honest man had been a dragoon in his youth, and altogether served his Majesty as a soldier with extreme credit for about twenty years; yet, in his old days, after receiving his last discharge, when no longer fit for service,

why is this? Must it be the penalty of a progress in civilization, that nobility of sentiment shall be quenched? Already compulsory assessments for the support of the poor have been introduced into half of the parishes in Scotland, and as these are by far the most populous, a very small portion remain untainted with their influences. The reasons for the advancement of assessments are very obvious to calm lookers-on of the working of the social compact. We need scarcely detail what have latterly been the chief causes of that extraordinary degradation of the working classes in Britain, or Scotland in particular. They are already well known to be nearly altogether referable to the enormity of taxations, fastened on the present generation by its improvident predecessors,—the resumption of cash payments, which enhanced the amount of those burdens at least twenty-five per cent.—the abolition of the paper currency (in England), which still further increased them in weight, and which, along with other

he received no pension, and till lately continued to support himself decently by the work of his hands. Even this source of living gradually dried up, and though more than once urged to stay in the place of his birth, and allow his name to be put on the poor roll, he spurned the suggestion, and now, at the advanced age of seventy-eight, along with a sister nearly as old as himself, has sailed for the United States of America, where he has some relatives, and where, when no longer able to sit on the loom or handle an axe, according to his own words, “he will at least have a good chance of succeeding by the *meal pocks*, because, as there’s nae beggars in that country as yet, the first that begins will hae the best luck.” When things have come to such a pass, that persons of this stamp, whom it should be the glory of Britain to possess, have to leave their country for lack of honest bread, there must certainly be “a rotten plank in the constitution,” as Trunnion says, “which should be hove down and repaired.” Fully as gratifying an instance of self-dependence occurred a few years since at Greenock. An industrious carter in that place, having had the misfortune to lose his horse by death, was unable to raise funds to purchase another, and the minister of the parish meeting him one day after he had been necessitated to dispose of his cart, suggested to him the propriety of applying to the parish for relief.—“Na, sir,” said he, “I have still the four *shoon* and the hide to the fore, and maybe something may cast up before they are dune.”

bad measures, have reduced the wages of labour to a moiety of their former extent,—the bolstering up of monopolies on the consumption of the necessaries of life, entirely for the purpose of benefiting certain classes on the ruin of others,—the long misusage of Ireland, which has made that unhappy country the generator of paupers for Britain, and whose immigration has barbarized every town or district of city in which they have found a lodgement,—the alternate prosperity and adversity of commerce and manufactures, which act as changes in the seasons, and like the showers of spring, bring into existence so many (human) tadpoles to be scorched into extinction by the droughts of autumn. Such are the more prominent general causes of British pauperism. In Scotland, the wretchedness of the lower classes is accounted for in the same way, or nearly so ; and we have only to add what have been the collateral local causes for the depression of the lower orders.

It has been generally imagined, that in former times the rich kept themselves aloof from the poor, whom they tyrannized over, and bent to their purposes. Such ideas of the bygone contexture of society are partly erroneous. In what are generally called the “good old times,” there was much individual misery produced by the unchecked and arbitrary will of superiors. The rights of different classes were either ill defined, or defined to the disadvantage of the least powerful. The strong ruled the weak, and the vassal was but the spaniel of his master. Yet, wretched as this system was, it had its good points, which we can only regret cannot be engrafted on the modern constitution. In these “good old times,” the seigniors of the land, though capricious, were ordinarily careful of their retainers, tenants, or those neighbours whose interests were connected with their own, or whose wants excited compassion.

The “good old times,” according to our calculation, wore to a close towards the third quarter of the last century. Up till that period, bad as the condition of

Scotland was, the attachments between the upper and lower classes were not snapt. The one grade gave countenance and encouragement; the other, in return, gave respect and deference. The landlord, however dignified in rank, mingled with his farmers, labourers, or peasantry. The farmers, again, were in constant juxtaposition with their menials; superintended their moral conduct; and directed them in their little concerns. In every town all knew their neighbours; and that propriety in manners now known as stinginess or superciliousness, was not acted upon in the way it now is. A duke did not consider himself the less a duke because he stopped one of his peasantry to inquire how his sick wife did; nor did a gentleman suppose that he fell in the scale of his gentility, by doing an act of frank kindness to a poorer man than himself. With much peculiar quaint stiffness of outward bearing, banished in modern days as an excess of ceremony, there was thus in reality a great degree of familiarity among all ranks seventy or more years since in Scotland. By these means the pride of maintaining an unblemished character for sobriety and providence was very much encouraged, and though poverty was then sufficiently felt by many, it was an honourable poverty which was generally contrived to be got over by temporary assistance.

In a general sense, the refinements of a new order of things which began to work their effect on the upper classes, and the accumulation of wealth—which has a certain searing influence on the human heart—towards the year 1770 or thereby, operated disadvantageously to the poor, whose acquaintance, in short, the higher orders thought it proper to relinquish. But the great breaking up of the kindly old fashions was not transacted in secret; it took place in a very singular manner, and is worthy of notice, inasmuch as it has, we think, escaped the remark of commentators on the causes of modern pauperism in Scotland.

The withdrawal of the rich from the poor can be referred in this country with great accuracy to the in-

vention of building new towns at certain convenient distances from the old. The practice was little known eighty years since ; and the fashion seems to have been led by the citizens of Edinburgh, towards the year 1770. Strangers and others who have seen this splendid and romantic town, are mostly struck with the contrast between the old town, occupying a central ridge of ground, and the new and new-new towns, lying at easy distances across the ravines, on its north and southern quarters. Before these latter places of residence were built for the accommodation of the upper and nearly all the middle ranks, the whole population, then amounting to 60,000 persons, was crowded into the ancient city. All degrees of rank were thus as a matter of necessity placed in the immediate proximity of each other, and a state of society was produced of a very peculiar nature. Like the tenements in Paris and most of the towns in the Italian states, the *lands* or fabrics of houses were divided into flats or separate dwellings, with their individual outer doors to the lands or landing-places on the stair, which was common to all parties. As is the practice still in the above foreign towns, each flat had its distinct degree of respectability ; and the rank of the tenant was lowered in quality in proportion to his distance from the ground floor. Peers, lords of session, clergymen, advocates, attornies, shopkeepers, dancing-masters, artizans, and others in a still lower grade, occupied flats and half flats from the first to the eighth storey. The cellar was moreover dedicated to the use of a cobbler, chimney sweep, or water carrier, with a shop constructed on the street-level, when the land faced a great thoroughfare ; each tenement thus exhibiting a specimen of the chief component parts of a little town. And as nearly all the houses partook of the same character, both on the main street and in the alleys or closes, it will be perceived, that the society of the place must have been formed in adaptation to the tangible peculiarities of the town.

There arose much of what would now be reckoned

as uncomfortable, from a residence in such hampered situations; but allowing this to be true, the system of all classes congregating in the immediate proximity of each other, had an excellent effect in keeping the number of poor within bounds, and in preventing the introduction of assessments. The rich took an interest in their "poor neighbours," (that being, let it be remarked, the appellation of the destitute and poor at the time of which we write,) and these in return paid them by condescendence and real respect. All was so well arranged, that each mutually conferred a benefit on the other. When a humble and apparently very honest family, known to the neighbourhood, lost its chief support by the sudden death of a parent—when sickness and want had entered their dwelling—or when any minor misfortune overtook the poor inhabitants of the stair, the whole *land* was interested, and the intelligence spread by means of an understream of communication, at all times current through the medium of gossips, servants, or hair-dressers, the latter of whom then acted as a species of morning newspapers to the upper classes.

"Well Cleri.," said the lord president one morning to the caxton, who, regularly as eight was chappit by the hammers of St Giles, arrived to smooth the face, and trim the periwig which sailed up the close in an hour afterward to the parliament house, "ony news this morning." "Indeed, ma lord," replied the garrulous old man, "I've learned naething as yet to speak o', as I cam along; but I heard a sough at the fit o' the stair, that the wife o' a puir playactor, that's no at hame to look after her, has just lain in at the tap o' the land, and that the cratur hasna sae muckle as a morsel to pit i' her mouth, nor a spunk of fire in the house." "Say ye sae? that must be instantly looked to, Cleri.," said his lordship, with an emphasis and a look of benevolence, which would have charmed my uncle Toby into tears. The small silver hand-bell was immediately rung; and "the lass" was in a few minutes dispatched to the attics with a supply of fuel and

necessaries. The deed of charity did not terminate here. All became interested in the fate of the sufferer, who was assisted by the best advice under the pressure of circumstances, and furnished with little necessities until her husband arrived in town with a supply of money.*

From this incident an idea may be entertained of what daily and hourly took place in the old town of Edinburgh. The character of lady Lovat, who resided in a stair at the head of Blackfriars' Wynd, and was so attentive to the necessitous, both in a physical and moral sense, had a parallel on a smaller scale in every alley, every court, and every stair in the royalty. All who remember what the metropolis once was, will doubtless assent to the truth of this observation. In many cases buffets were given along with the supplies—that being a habit of the Scotch in alms-giving—consequently generosity was seldom trespassed on. Notwithstanding of the mingling of classes, the utmost deference to rank was maintained. Those in humble circumstances saw and felt that their rich neighbours did, and could, confer many benefits upon them. They therefore, unless entirely abandoned to vicious practices, were grateful for the favours they received, and lived continually in a way intended to gain esteem. Laying donations out of the question, the perpetual supervision of the conduct of the poor, by educated and respectable persons, was of extensive benefit. The thoroughfare of well-clad persons acted as an efficient moral police, of greater use in checking bad propensities than a modern officer and lantern. A single glance in passing of the Lord Justice Clerk, was worth a month at the treadmill.

The erection of a new city, at first gradually, and

* The above is no fiction: it was told to us by a lady once resident in the old town. The player, she adds, on knowing the manner in which his wife had been treated, went round every family in the stair, and, with the most heartfelt gratitude, thanked them for their kindness.

latterly altogether, dissevered the connexion existing so long between the higher and lower classes in the metropolis. From interesting themselves in the fate of the poor, or in paying attention to their habits or appearance, the higher classes came to shun that part of the town left to their disposal, and acquiring a progressive hatred of the lower orders, as wealth and refined feelings rose into predominance, they have at length brought society into that calamitous scrape, out of which, it may be conjectured, it will not emerge without a struggle. These remarks apply strictly to Edinburgh, but, in degree, they are referable to every thriving Scotch town. In Glasgow, the same custom has been acted upon with the same results, though the manufacturing character of that place, and the consequent tadpolling process, account in another way for the separation of ranks, and the degradation of the poor.

To the above great cause of the introduction of poor rates might be joined many others. In the country, the landlords have tried various modes to get quit of peasantry and small farmers. Wheresoever it has been possible, or at all feasible, cottagers have been ejected from their dwellings, mostly all of whom have emigrated to the provincial towns or the metropolis. We do not blame the owners of lands for a procedure of this nature, as the less expense at which produce can be raised, and the comparative freedom of the country from a loitering or idle population, might probably lead to ultimate good, if followed up by other measures. In the meanwhile, however, while this somewhat harsh method of weeding the landward parishes is going rapidly on, much distress is brought upon landholders and heritors in the towns and villages, by the pouring in of a class of persons, who in many cases can neither work nor want. They insidiously acquire settlements; lose their primitive careful or virtuous habits; and often put the town to much serious inconvenience. The weeding process has therefore its evils; and, as it is observed that the poor never die out, but rather in-

crease with the nurture bestowed upon them, it may be in reality questioned whether the nation in general has been benefited in most cases by the expulsion of "poor neighbours" and labourers from their former quarters.

The rich having thus defended themselves from a contagion with the poor, both in town and country, and declined their supervision, as well as procured laws to be passed prohibiting public begging, which, when applied to Scotland, means little else than the obligation to stay at home and starve; it cannot be deemed surprising when we mention that the ancient kindly feelings exercised by landlord and tenant, master and servant, and high and low, towards each other, are undergoing a quick demolition, and have in many places become utterly extinct. In all the small towns a great coolness has crept in among the comfortable classes towards the poorer ranks, for a spirit of imitation has been here busily engaged; and in cities, by reason of the causes above noticed, the great increase of population, and another reason immediately to be brought forward, little or no attention is paid by any class to those classes beneath it in the scale of respectability. In such a case a wide gulph is now created between the highest and lowest rank in society. Respect and condescension by the latter are considered by them as long since abrogated, and plain civility as scarcely to be expected. In spite of every attempt, they often find themselves unable to satisfy the meanest wants, and as it has been the invariable practice of all great communities of poor to refer their miseries to the conduct of the rich—whether justly or not—a disregard of the countenance of the wealthy has not only been fostered, but a secret rancorous hatred has been cultivated, the distant fruits of which, if no change take place, we shudder to contemplate. Neglected poverty has already carried punishments along with it, which it is remarkable very little pains are taken to check. To this cause alone we ascribe every particle of that superabundance of crime and juvenile delinquency, so

often commented on from the bench. Like the lands of Moray, from whence every Highlander might have taken his prey, the houses and the persons of the rich are supposed to form a good field on which to carry on a justifiable war. Crime, if committed on the wealthy, is not considered criminal; it is reckoned only the taking back by force or cunning what has been acquired by finesse of a different kind.

The prodigious increase in the amount of disease can likewise be distinctly traced to neglected poverty. Uncleanliness, want, and the tainted atmosphere of densely populated neighbourhoods, are perpetually fostering disease of all complexions. The very proper institution of dispensaries, and the gratuitous attendance of philanthropic physicians, certainly keep down, but never cure the evil, which often, eluding all attempts to restrict its influence, travels disrespectfully to the dwellings of the richer citizens, and seizes its victims in the very penetralia of their fortifications.

The visible separation of ranks, which all thinking persons must lament, has not been alone the work of the upper classes. The poor themselves have hurried it on. We do not here allude to the nauseous habits of the lower Scotch, who have progressed very slowly in habits of cleanliness or desire for comfort, thereby often disgusting those who would be inclined to advance their happiness. A reference has to be made to the unprofitable spirit of petty religious schisms. In this respect, the nation has no resemblance to Ireland, where two great factions are continually at war regarding the peculiarities of Christianity. To an outward observer, religion goes smoothly on in Scotland; but if narrowly examined, it will be discovered that no country in the world is so much broken up into parties. If, on the institution of a very popular form of ecclesiastical polity, unanimity was calculated on, it has failed; for after a fair trial of a hundred and forty years, the community has shed off into about seven minute divisions, most of whom could not probably describe their original cause of difference; or three

very distinct classes, having no communion with each other. The upper ranks either now attend Episcopal places of worship, where the service of the Church of England is used, or go to fashionable presbyterian kirks, into which no poor can gain an entrance*—the middle ranks adhere to the establishment, (though in many instances they have also abandoned it,)—and the lower have become rigid dissenters. It is not here desired to interfere with the invaluable privilege of liberty of thought; but it is our duty to state the broad fact, that a great breach has been made by schism in the connexion between the higher and lower orders. The kirk, when it stands still in the refinement of its services or dogmas, loses the former; when it does not do so, it is abandoned by the latter, who would consider the introduction of a new air in singing a psalm as a proper cause for fleeing from the church and the companionship of the more intelligent classes. Next to the daily overseeing of the poor and illiterate by the rich and educated, in producing virtuous habits, is the weekly meeting together upon an equality in one place of worship. The kirk is a species of mason lodge, where the poor are allowed to occupy the same station as the very highest, and where all arrogance is smoothed down into one beneficial communion of feeling. Excellent, however, as such an arrangement once was, it is now gone, never to return in our times; and as society is now constructed, the rank of the individual in Scotland could be told with tolerable accuracy by the bare naming of his place of public worship.

The distant results of dissenterism, *quoad* the poor, are perhaps not very lucidly comprehended; but their

* In Scotch towns the kirks are mostly in the hands of the magistracy, who, to raise funds, extort heavy seat rents, without reference to the payment of the clergy. We consider this procedure as atrocious in the highest degree; for it banishes all the poor in cities from places of worship. The subject is noticed under the appropriate head of religious institutions.

immediate effect is very perceptible. This will be best described by mentioning how the poor are supported in unassessed parishes.

The funds in such primitive parishes are raised principally by collections made at the doors of the kirks, by the interest of small mortifications of money or pecuniary endowments, by fees gathered for recording births and marriages, by fines imposed by the kirk-sessions in lieu of excommunication or personal penance for certain misdemeanours, by small sums received for the lending of mortcloths (palls) and hearses, and occasionally by extracting money for liberty to bury in the church-yard, as well as the sale of green turfs to place on the graves. As all these means are precarious except that of the collections, it therefore follows as a consequence, that when the kirk loses two out of the three ranks, the deposits must be considerably diminished. In some kirks, where the minister is a poor preacher, or labours under some equally unfortunate point of character, all the three ranks are lost, and from two or three pounds sterling weekly, the collection has been known in such cases to subside to half a crown. It may be here remarked, that the collections have in all instances been made indiscriminately by rich and poor in Scotland. None but actual paupers ever enter the church door without throwing in their mite; and so strongly has the custom been fixed in the national character, that the people would feel ashamed to pass *the plates* unnoticed; and children could not be coaxed into attendance at church unless they were enabled to contribute their half-penny.*

* The institution of pewter trenchers, placed on a tripod at the church doors, is a custom of comparatively recent introduction. The collections were formerly gathered by means of long wooden ladders or boxed shovels, which were pushed up every pew after service. In some places this practice still prevails, as it is by far the most profitable, though disagreeable and impudent. When parishes reach a certain stage in *gentility*, the ladder is abrogated in favour of the *brode* or plate; but it is seldom without a struggle with the elders that the congregations accomplish the end. In one case, which we hap-

Since all thus charitably contributed to the funds for the support of the poor, a reliance on them for support would have been deemed next to the acceptance of alms on the street, and very different from the receiving of allowances from regular legal assessments. The abandonment of the kirk has destroyed this beneficial process ; and so confident are we of the truth of our averment regarding such a sure effect of schism, that if it were demanded of the kirk sessions, what were the chief and proximate causes of the necessity for introducing compulsory assessments, they would nearly all declare that it originated in the erection of dissenting meeting-houses. These chapels, taking advantage of the national habit of giving alms on entering parish churches, likewise institute plates for collections ; but as the produce is generally devoted to the payment of the preacher, or the liquidation of the debt incurred in building the house, the poor are not benefited. The managers of these chapels commonly give occasional assistance to poor hearers ; and those of the Independent persuasion are exceedingly charitable to the poor of their communion, over whom they keep a strict surveillance. With these exceptions, the parishes wholly aid paupers of every denomination of Christians. We are nevertheless of belief, from what we have observed, that those paupers who sacrifice their love of titilating sermons to their attachment to the kirk, are better off than dissenters ; as the giving of donations to them is considered by the elders partly in the light of furnishing an enemy with ammunition.

When, from the above or other causes, in which may be reckoned the great increase of poor population in towns, the voluntary contributions and small

pen to know, the inhabitants having acquired a hatred of the ladle-system, and taken a fancy to the plate, petitioned that it might be forthwith adopted, which was granted ; but the result of the experiment speedily caused the restitution of the shovel ; the weekly revenue having sunk in one day from the maximum of half a guinea to fifteen pence.

fees are unable to meet the demands on the poor box, the parish so circumstanced is compelled to resort to the infliction of assessments, according to the expression of the statutes. The heritors or landowners, along with the minister and elders, form a jurisdiction, competent to calculate and allocate the rates necessary to be raised; and, indeed, we should mention that the heritors are in all cases, in landward parishes, co-ordinate in the dispensation of funds, and action upon mortifications. So long as the assessments are not brought on, the elders are left to regulate all matters connected with the poor; and whether introduced or no, they are invariably the persons who act as overseers and dispensers. In assessing parishes, it is customary for the court so composed to meet half yearly, after public advertisement in the kirk or newspapers. All the members are equal in power. A quorum may consist of any number, however small, and may be composed of either heritors or elders, there being no obligation to attend. At these meetings the poor roll is exhibited; claims for the enrolment are offered and discussed; and amount of assessments declared. These assessments are paid jointly by the landlord and tenant, which lessens the burden. At first the ley is very small, and is seldom objected to; but as it goes on increasing in amount, it soon becomes troublesome. The ley now charged in the parish of St Cuthbert's, which incorporates a great section of the city of Edinburgh, is 1s. 3d. per pound on the rental.

The poor are managed differently in burghs, the magistrates being there constituted the directors of the leys, and the dispensers of the funds. Some towns, especially the smaller, are not governed according to such a plan, in consequence of the civic authorities declining to interfere with the affairs of the poor; but in the larger, where assessments have become necessary, they have been in some manner compelled to act upon their privileges. The first notice of leys being imposed in burgh parishes, generally produces a great outcry in the district. As the

parishes extend beyond the bounds of the royalty, it becomes a contested point by the heritors out of the bounds, whether they can be assessed by local magistrates, especially when all the poor are settled in the town. As the consuetudinary law of Scotland gives great latitude for litigation, in consequence of permitting *use and wont* sometimes to overcome every other consideration, a squabble often ensues in allocating the assessments, which, we rather believe, is commonly made up by compromise. Whatsoever may be the exact law on this question, it requires a small share of common sense to distinguish what *ought* to be the law. The proposal to assess the landowners or house-proprietors within the single burgh parish, is too modest. As the towns have been overcrowded by the measures of the very persons who make the outcry, as well as most others within the shire, the assessments ought to be allocated, in proportions according to circumstances, over the whole county or district. And as this might induce a carelessness in supervising the poor in the town by the local authorities, the institution of an infinitude of resident and general commissioners, appointed by the ley-payers, would correct the contingent mischief.

In cities, such as Edinburgh and Glasgow, the management of the poor is placed on as bad a footing as could almost be devised. The whole of the parishes are joined together under only one board of control, to which the collections at all the church-doors are confided for distribution. This is owing to the system of magisterial management in burghs. In the city and suburbs of Edinburgh, there are three great jurisdictions in relation to the poor—that of the city—of the Canongate—and of the parish of St Cuthbert's. Each has its collections, assessments, poor house and out-pensioners; by which arrangement, in the case of the city parishes, one manager and a few assistants have the sole superintendence of probably 70,000 people, a great number of which are poor. There are often jars among these jurisdictions on account of the ill-

defined state of the boundaries, all information upon which is generally denied by the insolence and arrogance of office, and instances could be at present pointed out, where two out of the three wards charge the same individuals with assessments! Other points in the system are defective, the lawyers are released from paying rates, even though, by an inconsistency, they are permitted to regulate the management.

This mode of incorporating parishes has been very injurious. The opposite plan ought to be pursued, of breaking up the metropolis and other towns into an immense number of fractional parts, each headed by commissioners nominated by the householders, who would keep up a sharp supervision of the poor. The institution of free schools in all directions, and the dissemination of religious instruction on a broad scale in every neighbourhood, ought of course to follow. As the districts are now constituted, all such checks are wanting: Many closes have double the number of inhabitants of country towns making a figure in the world with their ramifications of functionaries, which possess no superintendence whatever, beyond what is conferred in the sauntering perambulations of a watchman. Their poor inhabitants are often in great want; they are practically denied admission to kirks, and they are rarely visited by clergymen; they have no schools, and are allowed to nestle and go on in any way they think proper, provided they do not subject themselves to the visits of officers of justice. What a lampoon is the condition of the lower classes in Scottish cities on the vaunted intelligence of the age!

Settlements are gained in Scotland by a residence for three years, partly industrial. In removing to towns, some draw support partly from the place they have left, and partly from the place to which they have come. Failing the impossibility of gaining a settlement, relief must be procured from the place of nativity. In these particulars, the law is about to be amended by the bill of Lord Napier, and we decline going into a minute exposition.

The average annual payment to enrolled paupers, by the latest computation, was L. 2 : 11 : 8d. or about a shilling sterling per week. This sum is not increasing very fast ; but the number who receive it is undergoing a rapid extension. In cities, 1s. 6d. and 2s. are the more common weekly payments. Often, as much temporary as regular assistance is given to needy persons, after an examination into character. At sacramental occasions, the extraordinary collections—or offertories—are divided in sums of perhaps five shillings each to infirm persons not on the roll. In cases of depression in trade, and starvation of artizans and their families, the heritors, in order to stave off their reliance on the poor funds, generally make voluntary contributions to employ them at low wages in some public work calculated to beautify or improve the neighbourhood. In severe winters, several wealthy landowners make presents of coal, meal, and money to the poorest persons in the towns ; and on other occasions, when necessity becomes appalling, balls are got up to gather a few pounds. By these devices, heritors and others procrastinate the laying on of assessments, or lighten their burden.

By reason of the meagreness of the funds for the poor, and the care taken by the ecclesiastical overseers to keep back improper objects, we are of opinion, that the suffering of really deserving individuals is often excessive. The most palpable signs that starvation is in progress must be manifest, in many instances, before the hand of relief will be reluctantly extended. The kirk sessions, likewise, exact what is often considered a severe penalty for the acceptance of their aliment, which, by the way, has been missed over by the adulators of the Scotch for their disinterestedness in declining parochial aid. By giving a place on the roll, the kirk sessions become heirs of the paupers, and acquire a *post mortem* right to their moveables, which they seize on their decease, and bring to public auction, on the principle, it is understood, that the aliment and funeral expenses stand as a debt incurred to the

poor fund. As the law is silent on such a practice, we are strongly inclined to believe it is illegal. Nevertheless, being common, it intimidates many feeble persons from enrolling their names, even though their stock of furniture be slender. They are shocked by the desecration of the goods of their poor neighbours, and wishing perhaps to bequeath their own articles, however mean, to some daughter at service, they relinquish all claim on the poor funds, retire into themselves, bury their sufferings in their own breast, shut out the world from all knowledge of their fate, rely on the cheering promises of religion alone for future happiness beyond the grave, to which they are at length carried with the character of persons who were an honour to the parish and their species. In some cases, we learn, that when the funeral expenses of paupers are paid by relatives, their furniture is not touched.*

No where in Scotland are the poor found in such circumstances of destitution as in the highlands. The new mode of farming has driven the former cottagers and small farmers from their grounds, and they have, in most cases, resorted to hovel villages on the sea shores, where they pick up a very scanty subsistence from shell, or other, fish they can procure, along with boiled weeds, or occasionally a very slender supply of potatoes. The condition of these ill used highlanders is inferior to that of the Irish peasantry. They neither seek nor receive aid from parish funds, and it is only in a few instances they have received any assistance from their old landlords, or chieftains. Their number is yearly diminishing by emigration to Prince Edward's Island, and Canada. They accomplish their passage

* The burial of a pauper in Scotland costs about twelve shillings ; a six shilling coffin (made by estimate), an eighteen pence bottle of whisky—to drink at the lifting, with a loaf of white bread, and a three or four shilling grave, compose the items. An old pall, which is always considered indispensable in Scottish funerals, is lent gratuitously. The poor are invariably conveyed to the grave on spokes, agreeable to a very ancient custom, described in the "Antiquary," as taking place at the burial of Steenie Mucklebackit.

by giving up all they possess, and becoming bound to repay their freight in a specified number of years.

Of the internal economy of Scotch poor houses, we had prepared some information, but want of room compels us to close our article without laying it before our readers. Of the three Edinburgh houses, we consider that of the city as under the best system of management, as regards the cleanliness of the lodgings, and other arrangements. Its superiority may be in a great measure attributed to the attentions of its house director and chaplain, the Rev. Robert Bowie. The mode of living is poor, but nourishing, and we have no doubt that, to a sensitive person, it would seem offensive; but all who visit Scottish charity work-houses must bear in mind, that the inmates have rarely been accustomed to better. Boarders paying small sums annually, receive superior accommodation. The average expense of each individual, so immured, is very nearly L. 9 *per annum*, including the expense of management. L. 11,000 annually—L. 2000 of which are derived from collections at church doors—are expended on the poor in the city parishes. Six hundred persons are supported in the poor house, 1000 individuals receive regular aid, to others temporary relief is given; and 130 children, or thereby, are kept at nurse. The linen required in the establishment is spun by those female inmates who are able to do so. An orphan hospital is supported on a separate endowment and donations; for a notice of which, and other similar institutions, we refer to the "Histories" and "Pictures" of Edinburgh.

Many of the minor towns have now poor houses, conducted on similar principles. The most rigid economy in food, and a plentiful supply of religious instruction, characterize the whole. In towns where poor houses have not yet been introduced, the infirm and destitute poor are often boarded at the expense of the parish, with other poor persons willing to take care of them.

If strictly examined, it will be found that those poor, who have originally belonged to the lower classes, are

fully better off than that class of persons who have gone down the scale of misfortune, and are placed in circumstances of destitution, to which their previous habits have not adapted them. The poor roll, or the poor house, to such individuals would be worse than death. And as there are exceedingly few endowments for their support, the utmost unseen misery is therefore produced. In glancing at the condition of these objects of compassion, the victims of fortune, how bitterly have the Scotch to bewail the spoliation of the numerous endowments for pious and charitable purposes at the reformation! In this matter, Scotland may be held up as a spectacle for ridicule to the other nations of Europe.

"Before the reformation, there were various hospitals, or houses for the support of the poor, which, although not properly religious houses, were under the management of the church, and were understood to fall under the description of ecclesiastical benefices. The lands and revenues belonging to those, under the name of hospitals, or *maison dieus*, were excepted from the act of annexation (of James VI. whereby he procured to the crown the benefices of the popish bishops); and that in favour of the poor and needy.*" This Christian action of James was, in some instances, too late of application, and in others, was not attended to; but in whatsoever way the matter was arranged during that troublesome period, the result now is, that there is hardly such a thing as one of these *maison dieus* in the country. What became of the revenues so piously set apart for the sustenance of persons falling into poor circumstances, the records of town council proceedings, and the register of sasines (or seizures) of the Scottish nobility, can best explain.

As far as we can learn, the only hospital existing in the present day, established prior to the reformation, and continuing to act on something like its original constitution, is a *maison dieu* at Edinburgh, founded by

* Connel on Parishes.

Mary of Gueldres, consort of James II. of Scotland, 1461, and dedicated to the service of the Holy Trinity. Its revenues, nevertheless, did not escape untouched at the reformation. They were confiscated, but afterwards, in a qualm of generosity, given by the regent Murray to the provost of Edinburgh, who very conscientiously re-dedicated them to the use of the poor. On his death, they were again distracted into private inheritance, but from the person who succeeded to them, the town council bought, and finally constituted, them as an endowment on decayed persons, which act was ratified by James VI. 1587. For this charitable conduct of the town council, that body is by no means to be thanked: The town was enriched by both Mary and James with almost all the petty religious endowments in and about the metropolis; and out of so many, it could easily spare one to the poor. Considering that the magistrates of the city have been the perpetual guardians of the Trinity hospital, since so re-constituted, it appears remarkable that the house and revenues have come down to our own time in a flourishing condition. At present the establishment is excellently managed. Its original funds, derived from house property, and money in bonds, have been enhanced by different mortifications from private persons, and trading corporations, for which the right is acquired of making presentations to decayed persons. Some names are preferred by orders of such endowers. The ordinary qualification is, that the claimant shall have been a burghess, or the wife or child of such. In general, forty inmates of both sexes, and a hundred out-pensioners, are on the endowment. The former are well lodged, clothed, and attended to in point of living; the latter receive, we believe, on an average L.6 each *per annum*. Nothing can exceed the comfort and happy state of repose enjoyed by the residents in the house, and the arrangements present a model for instituting hospitals of this nature.

There is another hospital in Edinburgh, founded by a wealthy shop-keeper in the city, named Gilles-

pie, intended for the refuge of poor persons, without regard to civic distinction. Its domestic economy is more, however, on the scale of a poor house than any thing else, the inmates being stinted of many little comforts; and it bears no comparison with that delightful conventual institution, the hospital of the Holy Trinity. It is at all times difficult to procure a settlement in either house, much interest in the town, and a large share of patience in waiting for the gift, being generally required.

In Glasgow there are similar establishments; but in all Scottish endowed hospitals—the Trinity excepted—the great error is committed of rearing fine houses, with an outside show of magnificence, while the inmates are subjected to the want of some small, but often very necessary, luxuries.

Scotland is almost barren of what may be termed private endowments, or the mortification of lands for the payment of annuities to decayed persons. The mortifications to parishes are in general very slender, though often appearing very imposing when written in Scots money. A recent mortification of the lands of Craigcrook, under the guidance of the presbytery of Edinburgh, two advocates, and two writers to the signet, is, we believe, the highest in Scotland. It provides annuities of L. 8 to decayed persons.

The extreme difficulty of receiving relief from hospital or private endowments, on account of the number of candidates, and the repugnance to accept of parochial aid, drive innumerable persons in decayed circumstances to various shifts for gaining a livelihood. The grand resource of impoverished persons is the keeping of small huckster or grocery shops. This is a distinct peculiarity in the habits of the Scotch. In every city, town, village, or hamlet, especially the three latter, there is a vast over-proportion of shops. Their increase has been particularly observable within the last twenty years. In that brief space, there have arisen in many places twelve for one. In some towns, having almost no population in the vicinity, there will

be found a small shop for every four families. They are instituted on various grades of capacity, and in a number of cases the product adds but a very trifling pitance to the means of family support. They are kept mostly by widows or women in fallen-back circumstances, who are known by the designation of *sma' wives*, or dealers in small articles.

The Almanack exhibits the names and uses of the charitable institutions in Edinburgh. Of these the strangers' friend society; the society for relief of destitute sick; the asylums for the deaf and dumb, and blind; the royal and district dispensaries, from whence medicines and advice are given to the poor, deserve just commendation, and reflect no small degree of honour on the faculty of physicians and body of surgeons. The above and most others are supported principally by voluntary subscriptions and collections at church doors.

It was calculated some years since, that there were about 55,000 persons in Scotland reduced to depend on parochial aid, and if to these be added 10,000 as regular mendicants,—it will appear that a fortieth part of the whole population are paupers. As this does not embrace those who are in destitute circumstances, but denied relief from parishes, or who are unwilling to apply, the proportion of paupers is too small. We are rather inclined to think that a thirty-fifth part of the community is in a state of destitution.

A hundred and twenty years since, it was computed that there were 100,000 common beggars in Scotland. These were composed principally of tinkers or gipsies, who roved about in bands, often taking lodgings and meat by force from the farmers. This remarkable class of beings is now nearly extinguished in Scotland, and they are only to be found in wandering parties on the Teviot, the lower parts of Tweed, and the borders. They still keep together in hordes, and attend fairs for the purpose of selling crockery, and exercising their ancient profession of tinkers. They possess horses and carts, and in general pitch their encampment, while from home, on the fields. At St Boswell's fair

in Roxburghshire, their temporary *kraal* of huts on the green, formed by their *whomled* carts and straw bedding, with the ensigns of their trades scattered around, form a scene of great interest. Their propensity to thieving is now much suppressed. Another class of beggars, now extinct, were old infirm women and men, who were carried about from door to door on hand barrows. These persons, among whom, we are of opinion, there were a number of impostors, used a sort of privileged insolence, sometimes compelling the inhabitants to carry them, and supply their wants. Meal was their common *amous*. The farmers sent them gratuitously in carts from one town to another. *Blue-gown* beggars have been so well described by the author of *Waverley*, as to require no notice. All these and every other class of mendicants have, as above stated, been suppressed to a tenth of their former amount; but it is not to be imagined that the sum of poverty is thereby lessened. What was once exposed is now hid, or suppressed by judicial interference.

From the preceding remarks on the state of the poor in Scotland, the observant stranger will perceive that the country is in such a situation, relative to assessments, that, by the application of certain efficient measures, the increase of rates might not only be checked, but their amount very much lessened. Some statistical writers have asserted that means might safely be adopted to abolish assessments altogether, and that the nation could, with little trouble, be brought to its original happy condition. Dr Chalmers has given it as his opinion, that the division of towns into sections, in a way already hinted at, under local superintendencies, and the collateral institution of schools, with a sufficiency of religious instruction, would be nearly all that would be required. But while assenting to such propositions, it is impossible not to see that the state must simultaneously revise many of its laws, at present tending to subvert the attempts of local beneficiary systems, before any actual good can be expected. First

of all, Irish immigration must be stopped, otherwise every expedient must decidedly go for nothing. The laws relative to the sale of spiritous liquors must also be amended, else we fear little change will take place in the prospects of the poor. So far as regards local measures, a total revision of the civic and ecclesiastical economy of large towns should go foremost. So long as the magisterial and clerical system at present working goes on, little can be done satisfactorily. We are not so sanguine, however, as to expect that any thorough and proper remedial measures will be adopted. There are too many persons whose interest it is that the present bad system should continue, for any alteration of consequence to be made. All experience shows that it has been the misfortune of Great Britain to be governed by supreme and local authorities, who, by not identifying themselves with the people, have ever been the last to see the propriety of taking active and sound measures to cure mischiefs before they become too overwhelming for their management. Writers have in vain admonished them of the consequences. Lessons which might be drawn from the struggles between an overgrown wealthy class of persons, and one sunk in pauperism or overloaded with burdens, as exhibited in the history of mankind, are despised. No experience—no reasoning, will induce the institution of timely correctives.

The dreadful situation and prospects of the poor in cities, such as Edinburgh, might excite the liveliest emotions of philanthropy, and quicken the activity of those who had any latent desire to be foremost in accomplishing the great work of reformation. On the occurrence of sudden violent outbreaks of crime, the rich, the educated, and the comfortable classes are startled from their complacency, and go the length of holding public meetings for the discussion of what ought to be done to arrest the evils, arising so obviously from an excess of neglected pauperism. Sometimes the institution of a single school is condescended upon, but more ordinarily nothing is really done worthy of being men-

tioned. This is an age of words, both in speaking and writing, more than of actions. The philanthropy of the community too often evaporates in prayers, speeches, compliments, and grimace, and the great cause of the poor, after being talked about and paragraphed to pieces in newspapers, dies away for a season, until a similar outbreak of vice induces the same procedure to be again enacted.*

It would be tiresome to expatiate further on this momentous subject, the minutiae of which too many are acquainted with. The historian of the first quarter of the nineteenth century, in after times, will be amazed by the present peculiarity in national character. Were it possible to convey a whisper to him through the intermediate vista of ages, we would bid him describe how a little well-timed activity might have saved the country from ruin ; but that such was the remarkable inconsistency in the charities of the people, that while they zealously devoted millions of pounds sterling, with much mental disquietude and bodily fatigue, to the comforting and cultivation of savages at the most distant quarter of the globe, they were almost stoically blind to the encouragement of virtue at home, and left their nearest neighbours in worse than the lowest heathen depravity and misery.

* In cases of great emergency, collections of money by means of subscriptions are made, whereby soup kitchens are set on foot, which give much temporary relief to the destitute. We do not condemn these expedients ; but we argue the propriety of doing away with the necessity for having recourse to such humiliating remedies.

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

THE LICENSING SYSTEM.

Daughter of chaos and eternal night,
Fate in their dotage this fair idiot gave.

POPE's *Dunciad*.

By way of corollary to the foregoing observations on the poor laws of Scotland, it will be very appropriate to introduce here a word of explanation on one of the observable causes of poverty and misery, namely, the abuse of ardent spirits. The legislature, by abrogating the duties on beer, and slightly enhancing those on spiritous liquors, may be allowed to have done a little, and but a very little, to remove the temptation to deep drinking by the lower classes. It is incumbent upon it, if it would wish to repress demoralizing habits, to go much farther. Without in any way increasing the duties, and consequently the prices of British spirits, which, besides encouraging an extensive system of illicit distillation and smuggling, would injure the home manufacturer in favour of a foreign distiller, it ought to attain its object by entirely changing the present process of licensing publicans.

In England, the restrictions under which this class of traders are laid, are severe and frequently tyrannical, but when placed in comparison with those in this country, they are perfection itself. Between the laws

of the two countries, in application to licensing, there is hardly any resemblance. The one code is vigorous to the last degree, and supports a stern monopoly in trade: the other is far more injurious by the absence of these distinctions; and while it encourages the most infamous abuses, it is not divested of that portion of cruelty which has uniformly characterized every act in conjunction with the excise laws. To sum up in a single sentence, the prominent distinctions of the two systems:—In England, no person will be licensed to retail liquors unless it is clearly seen that the district or city in which the proposed settlement is to be made, requires the establishment of a house of the kind, and the project otherwise meet with the approval of the justices; while in Scotland, any poor creature who can pay the license fee—which can be got at all prices, will be privileged to sell liquors, always providing that he or she be of good character, and the justices be satisfied of the propriety of the measure.

The process followed in Scotland in securing licenses, it baffles us to unfold. There prevails some remarkable and unintelligible connexion between, and yet separation of, ale and spirit licenses; and to get the complete license from the excise, a certain ceremony of application must be gone through *six months before*, by order of the magistrates. We believe this formula has a reference to exhibiting certificates of character, and that the piece of paper which is then got, expressing the authority of the justice to license, is kept and shewn to the excise; but why the certification and approval of character should be expedited six months prior to the time they are to be used, it would defy the three estates in the British constitution, and all the civic authorities in Scotland to boot, to explain satisfactorily. The annual licenses are moreover issued at a very inexpedient period of the year. The great season of removals and entry upon houses is Whitsunday in Scotland, while the licenses are not issued till October, and the inconvenience resulting from this practice is beyond all description. But it would be fatiguing

to single out the erroneous usages in connexion with the excise laws. When applied practically to the licensing and regulating of public houses, they are beyond all measure ridiculous. To make them worse than they really are, they have been long administered in a most tormenting and frivolous manner. A year or two ago, nearly the whole of the publicans in one town became liable to the want of licenses, and to fines for neglecting some fresh regulation of which they never heard, and which when they did hear, they could not comprehend. The matter, after an enormous degree of trouble, vexation, and expense, was patched up. The removal of the local board of excise may perhaps tend to put the affairs of this department of government in a better train; but it admits of no doubt that the provisions of the statutes must be revised.

In a case of reformation being contemplated, the most prominent alteration should consist in the abrogating of licenses to poor persons or small dealers in towns and cities. At present, in some towns almost every door is that of a public house, or spirit shop, where drams are sold. In some particular districts in cities, such as Edinburgh, seven out of every ten shops could be counted to be those of spirit-dealers. The price of the license varies in amount from about L. 2, 2s. to L. 22, or thereby, according to the house rent, and nature of the liquors sold. As these prices operate, those who inhabit dear houses have no fair chance with dealers next door, in a house of small rent. This is a certain evil falling upon respectable victuallers, which has never been adverted to. The great public evils, however, produced by an infinitude of taverns, is the encouragement thereby given to indulgence in intoxicating liquors. In spite of the most vigorous local enactments, publicans are found who will allow debauchery in drinking at all hours of the night, and often on Sunday, by which means working men are lured to spend their weekly gains to the ruin of their health, and the sure suffering of their families. At a late period, when deep drinking was fashionable among the upper

classes in Scotland, it was not unusual to see a lord of session or even a clergyman dozing homewards in the morning long after the sun had risen. Now, the vice is shifted to the dregs of the community, who have neither prudence nor money to allow of such indulgences, and the consequence is, that at all hours on Sunday, men are discovered on the streets in a state of the most nauseous intoxication, and who, it is but too evident, have been carousing through the previous night. Much of the debasement which has taken place in the condition of the poor within these few years in Scotland, can be easily referred to this iniquitous system of indiscriminate licensing of public houses. We say indiscriminate, for in defiance of the process of certifying character, and the wisdom of the justices, who have now the same right of rejecting candidates as their brethren in England, there seems to be no efficient check.

The writer of an able article on the malt and beer duties in a recent number of the *Journal of Agriculture*, thus illustrates the present ill-advised usages we complain of: "The effects which a strict licensing system produces on the condition of those employed in trade, may perhaps be illustrated by comparing the state of the lower classes of public houses in Scotland and in England. The contrast is too remarkable to have escaped the notice of any one who has visited the two countries. In one, we find a certain appearance of neatness and comfort; in the other, the most wretched pictures of disorder, filth, and poverty. In the cities of the one we see, at reasonable distances, respectable, bustling, business-like houses; in those of the other we are disgusted by the sight of drunkards issuing from the doors of innumerable licensed hovels in every corner. In England, a publican is generally a man who may be said to have been brought up to his business; in Scotland, the trade is the last resource of bankrupts, of idle half-working servants and labourers. Nothing can be more deplorable than the circumstances of the families of the lower publicans in Scotland in all their relations; and nothing can be

more pernicious than the facilities which the innumerable little licensed tap-rooms in every street give to the encouragement of dishonesty and bad conduct among the servants of every family in every town in Scotland. A man, then, who becomes a publican, does not sit down to make a business-calculation of profit and loss, like a man who becomes a meal-dealer, a haberdasher, or any other trader. The general history of almost every one of them is so much alike, that an example will suffice for the purpose. A labouring man has a liking for whisky and good fellowship, and he bethinks himself of combining the trade of publican with his other pursuits; he removes his wife and family to some little shop suitable for the purpose; he goes to a spirit merchant, and purchases a gallon of whisky, and a few dozens of ale and porter, amounting in all to perhaps 20s. with which, after paying a small sum for a license, which he easily obtains, he is ready to begin the business. This is forthwith given over in charge to the wife during the hours of his work; and mine host in the evening presides as the entertainer of all visitors who may require his services. He soon finds, however, that public housekeeping and hard labour but ill agree; that it is difficult to sit both late at night, and rise early in the morning; and he accordingly restricts himself to half work. Even this he soon finds to be irksome, and he then becomes publican only. It seldom happens, however, that a business thus hastily taken up, under the auspices perhaps of a few of his fellow-workmen, is found to answer the purpose of the maintenance of his family; so that in a very short time he is a bankrupt. By this time all relish for hard work has been lost, while his family has perhaps been driven to less creditable courses, for supporting the failing finances of the "rising sun;" so that, to return to his former mode of life, he finds to be impossible. He changes his shop, by commencing business again in another part of the town, with a new name, and with a new sign; but this trick is generally as unsuccessful

as the original speculation, till at length his family is dispersed, he becomes a wandering vagabond, without home and without friends, a fitting subject for the prison and the treadmill.

“That this history of a great proportion of the lower publicans in Scotland, owes nothing to the imagination, we can safely assure such of our English readers as may be groaning over the fancied evils of licensed public-houses, and the brewers’ monopoly. There are, no doubt, many sober and decent people among the publicans of Scotland; but these form the exceptions, and suffer in common with the community in the evils which the unnatural overflow of competition, arising from circumstances which do not exist in any other business, necessarily inflicts. When we consider the proportion which these public houses in many towns and districts bears to the number of inhabitants, being, in some cases, one for every twenty people, and that the publicans themselves generally stand in a certain relation of companionship to the working classes, and thus very naturally exert all their influence among their former friends for support in business, can it be doubted that this has the effect of inducing drunkenness, and promoting habits all but consistent with the true happiness of the people? We are far, indeed, from wishing to interfere with the little enjoyments of the poor, to which they have as good a right as the most wealthy; but we cannot see how we should be doing so by giving them comfortable places of resort, or by their being supplied with spirits and beer by a better and a more respectable class of dealers. These small publicans, from the state of their credit, always pay a high price for the very worst of articles; so that the practical truth is, that their customers must be, and are, supplied with liquor of the worst quality, and charged at the highest price.”

This embodies so faithful a picture of what is endured by the present vicious arrangements of the excise laws, that nothing further need be said. If the

house of commons has a grain of common sense, it must see the necessity for a reformation in this particular ; and should the subject excite serious parliamentary examination, we sincerely trust that the opinions of practical men, such as the commissioners of local police, will be asked before any alteration be made ; for without this, in all likelihood, the house will not amend, though it may legislate on, the abuses of the licensing system.

One of the provisions of the statutes, regulating ale and victualling-houses in England, makes it punishable for the landlord of one of these latter places refusing to permit strangers in travelling to lodge in the house, if there be accommodation ; and admission must be granted at all hours. In Scotland, there are several laws precisely the same in principle, of some hundreds of years standing ; but they have fallen into desuetude, and are not mentioned by any law writer as applicable in the present day. We therefore believe strangers could not enforce admission into inns in this country ; though there is still a faint traditional feeling lurking among the people, that such could be done.

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

CUSTOMS IN CONNEXION WITH SUCCESSION TO HERITABLE
AND MOVEABLE PROPERTY—INFESTMENTS—SELLING
OF ESTATES BY AUCTION.

"Well, have you carried through your law-business?"—With a wet finger; got our youngster's special service returned into Chancery. We had him served heir before the macers. "Macers? who are they?"—"Why, it is a kind of judicial saturnalia. You must know that one of the requisites to be a macer or officer in attendance upon our supreme court, is that they shall be men of no knowledge. Now, our Scottish legislature, for the joke's sake, I suppose, have constituted those men of no knowledge into a peculiar court for trying questions of relationship and descent, which often involve the most nice and complicated questions of evidence." "The devil they have? I should think that rather inconvenient." O, we have a practical remedy for the theoretical absurdity. One or two of the judges act upon such occasions as prompters and assessors to their own door-keepers. However, this saturnalian court has done our business; and a glorious batch of claret we had afterwards at Walker's. Macmorlin will stare when he sees the bill."—*Guy Mannering*.

THE laws regulating successions to moveable and heritable property in Scotland, possess several distinguishing characteristics worthy of notice by those not intimately acquainted with the institutions of the country. With the laws of England on the same subject, they have only a partial resemblance; and as a want of attention to those customs relative to *post mortem* conveyances, often injures the property of inexperienced persons, we conceive a short exposition of their peculiarities may here be advantageously introduced.

While there continue in England, agreeable to the protracted existence of several antiquated statutes of only local application, several different laws for the regulation of successions, whereby the inhabitants of particular provinces are subject to various customs, often irreconcilable with expediency and common sense ; and while, by their operation, the families of certain privileged persons are entitled to benefits not enjoyed by others less fortunate, the laws of Scotland in this delicate matter are one and indivisible. Every district is placed on an equal footing, and the widows of bondmen and free-men, of noblemen or peasants, are all liable to a uniform usage not known so perfectly in the neighbouring nation.*

In England, a deed disposing of a landed estate to take effect after the death of the grantee, may be executed at any time previous to his decease, if he be sufficiently endowed with strength to append his signature to the deed in the presence of three witnesses. Nay, should he die while about to sign his name, the deed will be held valid, if it can be proven that he heard it read, and shewed an inclination to attach his subscription. The document, moreover, does not require to be stamped previously,—it being sufficient if that operation be done afterwards ;—neither does it require to be written by a notary, a conveyancer, or any legal practitioner : It may likewise be technically informal, and words may be missing in the construction of the sentences : It may further be written in any dead or living language, and any species of figures may be used ; yet if the sense can be plainly gathered, the testament will be sufficiently valid.

This liberality, though apparently beneficial, is exceedingly injurious in the aggregate of cases, and gives occasion to innumerable suits at law. In Scotland,

* The customs of the provinces of York and London are here alluded to in an especial manner ; but besides these, there are a variety of local usages injurious to the uniform influence of the laws, and their general respectability.

the law affecting will-making is of a very different character. "Our law," says Erskine, "from its jealousy of the weakness of mankind while under sickness, and of the importunity of friends in that conjuncture, has declared that all deeds affecting heritage, if they be granted by a person on a death-bed, to the damage of the heir [at law], are ineffectual, except where the debts of the grantee have laid him under the necessity to alien his lands." The Scottish law therefore enjoins, that a "deed of settlement" be written on paper already stamped, and drawn out by a legal practitioner; that it must be signed in presence of two witnesses; and above all, that it shall have been completed at least sixty days previous to dissolution; or, what is equally strict, that the deceased walked to and from the kirk—or chapel—and market (any place of public business,) unsupported, after the date of the deed regulating his succession. In these points, the law is excessively strict, and a disregard of such customs has frequently been the cause of the reduction of settlements. It hence becomes more imperative on Scottish than English land-owners to avoid inconvenient delays on a matter of so great importance; for it will be observed, that an expression of the will verbally, or holograph on plain paper, while *in extremis*, will not be held of the slightest value.*

By reason of this provision of the law, those indecorous and frivolous settlements so common among the English, never occur in this country. A will endowing "a cat," or a favourite litter of spaniels, a brood of white chickens, or a suit of domestic parasites, is never executed by the most superannuated bachelor, or the most morbidly sick old maid; and a case wherein an individual was appointed residuary legatee, under provision that he drew the coffin to the church-yard by a flock of geese, and dressed himself as a mounte-

* The attachment of seals to mostly every description of deeds, is customary and necessary in England; but in Scotland, this form is not required on any occasion. In all cases, signatures alone are substituted, except in the deeds of some judicatories.

bank for the occasion, is entirely unheard of. The proverbial caution of the Scotch is fully exemplified in the making of testaments.

It may here be necessary to explain, that a person in Scotland, in making a deed of settlement, can convey the landed property, which he may chance to possess at his decease, over and above that which is specifically mentioned as in his present possession. In England, the law does not allow this; but as it permits death-bed settlement, such a provision is partly unnecessary. A mortgage over landed property in Scotland, by reason of an infestment—which will shortly be explained—being taken, is, in the eye of the law, *real* property. It cannot be bequeathed by a common will, and if an individual lend money on an estate or house, he must go through the form of devising it by a deed of settlement. A want of proper information on this point, has sometimes put the heirs of English capitalists, or lenders of money on Scotch property, to inconvenience and loss.

The mode of taking possession of heritable property in Scotland is so peculiar, that it may be mentioned. The first step taken by the heir, whether he succeed by a deed of settlement, or as heir-at-law, is to have himself “served heir.” To be served heir in right of conquest, provision, or heir-at-law, an application must be made to the Chancery of Scotland,* from whence a brieve is issued for the purpose. This is an order in his Majesty’s name to the sheriff of the coun-

* The Scottish Chancery bears little analogy to the Chancery of England. It is merely an office situated in the General Register House, in which are preserved all returns of brieves of service, and writs relative to gifts of crown lands, with other documents requiring the attachment of some of the state seals now in use in Scotland. Of these seals, there are three—the Great—the Privy—and the Quarter, which were remodelled at the Union. There being now no Chancellor, the business is conducted by a Director and Deputies. Patents for inventions, applying to Scotland only, are expedited at this office; and caveats can be lodged in order to prevent patents from being procured for the same inventions, until the first inventor find it advisable to negotiate his patent.

ty in which the heritage is placed, directing him to enclose an assize of fifteen men to decide upon the rights of the person named. It is written in an antique hand, in the Latin language, on a piece of vellum about the size of a man's hand. A proclamation being made (a fiction, we believe,) to bring forward competitors, the sheriff encloses a jury after fifteen days have elapsed. The jurors may be bystanders; no qualification being necessary. Proofs being adduced of the propinquity, and witnesses examined, the decision of the majority determines the case. The verdict, if affirmative, which it almost always is, is then marked on the brieve by the sheriff, and returned to the place from whence it emanated. Here it is preserved and recorded, and a "retour," or a certification of the right of the application, is given out. This may either be kept as a voucher of the consanguinity of the holder to the person to whom he has been served heir, or it may be immediately operated upon. A process of this nature is invariably requisite before a person can sue for heritable property, and the retour is generally the basis of his action. When property is held free from the crown, and its possession is required, on the retour being brought back to the Chancery office, a precept is issued to the sheriff, commanding him to infest the heir. When held from a subject superior, the retour is first recorded in the Chancery, and the precept sent to him, from whom an order to the sheriff to infest is issued. When the infestment, or corporal seisin, follows upon either of these forms of process, and is duly recorded in the register of seisins, in the language of the law, "the titles are made up." The sheriff of Edinburgh receives and returns the brieve when the property lies in different counties; and when within royal burghs, it is the magistrates who manage the transaction.

The circumstance of the sheriff of the county of Edinburgh being the proper person to summon an assize for the disposal of cases of the above description, is only of recent institution. A few years since, the

briefe was directed to the Court of Session ; but the lords, conceiving that the business was of such a simple nature, that no learning or knowledge was required to discover by evidence that a young man was the son of his father, or nearest of kin to a deceased relative, deputed their macers by commission to make the return, while two of the judges sat as assessors.

In almost every case of service of an heir, the proceedings are little else than a farce; the grand object of the assize being an entertainment at the expense of the heir, after the retour has been made. Formerly the ceremony possessed more of these pleasing anticipations than at present, when many of the kindly old usages are hooted at and modified ; and we can scarcely help moralizing on the changes which have been effected in this particular custom, so injurious to the feelings of the venerable attendants of the court, who, in bygone times, exchanged seats with their masters, and for the space of an afternoon, played at judges. It was one of those delightfully silly old customs so significant of a primitive state of things, when barons and judges bandied good-humoured witticisms with the lackies who attended their chairs, and where the serving man might contribute his laugh to the general cachinnation with impunity. The serving of an heir by the macers, who, in the circle in which they moved, were considered lawyers of great ability, was to these old men a transaction pregnant with associations equally agreeable to their intellectual capacities and their physical taste, and rivalling in lustre the day which was "marked by a dinner" on the rising of session. It was associated in their minds with the largest room in the Archers' Hall, or Walker's Tavern, and a simicircular table, quaintly designated, in the harmlessness of their wit, the bench of the fifteen, yet which, unlike that place of judicial cogitation, was decorated with smoking dishes and sparkling decanters, instead of papers and inkhorns. How they chuckled with uncounterfeited glee, like a company of merry

undertakers and escutcheon-makers, over the prospect of the speedy demise of some old Scottish peer or laird of noble descent ! How they saw before their mind's eye, as a moving speck at the end of a long dim vista, the brieve issuing from Chancery to serve the promising "young lad" heir to his ancestor ! When the great day of trial at length arrived, with what nicety they arranged their white neck-cloths judge-wise, and with what perfection did they imitate the composure and sleepy-like gravity of their superiors ! With what alacrity of understanding did they comprehend the bearings of the case ! They saw through it at once—nothing could be more clear—the young gentleman's face spoke for itself ; and with what a judicious mixture of regard for the decorum of their assumed office, and unwillingness to keep the factor, "honest man," waiting to pilot them to the scene of their evening saturnalia, did they vacate their seats ! How they struggled by the nearest route to the bench of the fifteen, ate, drank, cracked jokes with their filberts, discussed kittle points in the practiques, toasted the young heir, sung the last new songs learned from the young advocates at the circuit dinners ; and after seeing the factor and his attendants in a state of ebriosity beneath the table, struggled home "far on in the mornin'," closely enveloped in faded duffle spencers. These were the joyous occasions of the macers ; alas, now how altered ! The saturnalian court now finds no place in the judicial institutions of the country. Along with the convivialities of a former age, it has melted away before the raillery and the common-place usages of the nineteenth century, and the brightest days of a macer are gone for ever.

In the case of a landed proprietor dying intestate, his real property descends by right of primogeniture to the eldest son, or nearest male heir ; but by the eldest son entering on possession, he loses all claim on the moveable wealth—a few articles of furniture excepted. He is therefore at liberty to allow the real

property to go into the common stock, and *collate* with his brothers and sisters. In England, this is not the case; the elder brother having there a right to the whole heritable and a share of the moveable property.

The law of the two nations differs very materially in regard to the devising of moveable or personal property. In England, the father of a family may leave his whole wealth to whomsoever he chooses, to the prejudice of his widow and children, whom he may "cut off with a shilling." In Scotland this cannot be done. While in life, a father may convey away his whole substance in any way he pleases, without the law interfering to prevent him, as it is proper that every man should have the total management of his own property; but he cannot do so by a testament to take effect after his decease. The law here steps in to protect the widow and children from being left a burden on society. It has divided the moveable wealth into three equal shares; one of which belongs to the husband, another to the wife, and the last to the children; which partition, though not recognized while the husband is in life, becomes at once visible at his death. He can thus only bequeath a third, or his own part, of the wealth of the family. On his decease, the wife and children take their shares by a mutual arrangement; and to do so they require to go through no legal form, for they only take what is already their own. When the husband has left no will devising away his third, it is also divided among the children. When there are children but no widow, the husband can carry a half from them. When a widow is left and no child, she is likewise entitled to a half—the other half going to the nearest of kin to the deceased, or his appointed heirs. Though neither widow nor children require to "confirm" to their own proper shares, they must do so to those to which they fall heir otherwise.

In the case of the executors being appointed, legal confirmation is requisite. Should there be debts of the deceased unliquidated, they fall to be paid out of the whole property left; yet creditors cannot touch the

personal ornaments, or those articles called paraphernalia of the wife. In England this is otherwise arranged. Creditors cannot meddle with the property of a deceased debtor until they confirm as administrators, and as this process is both troublesome and expensive, the effects of insolvent debtors sometimes escape.

Should a wife in Scotland predecease her husband, the law in some cases operates very severely on the property of the widower. If she die within a year and a day, (and hours are counted,) of her marriage, and has had no living child, her relations or heirs can only claim that part of the goods in communion which she brought with her; but if she die beyond the year and day, having had no living child, or living child to which the husband has not constituted himself heir, her heirs either at law or by will can seize exactly one half of all the moveables, money, &c. belonging to the husband at the time. When the husband has served himself heir to the child, these heirs have no claim. This provision in Scots law has been the means of instituting contracts of marriage to a great extent, whereby the husband can supersede the influence of the statutes by a regulation of his own. The occurrence of some hard cases lately, where the relations of dowerless women have come in for a half of a widower's property, has raised an alarm, and contracts are now coming into more general use than formerly.*

When a family becomes possessed of the moveables of a deceased parent, and has reason to suppose that there are debts to act as a lien on the property, they generally observe the precaution of taking the effects after they are regularly inventoried by two appraisers. They are hence in future only accountable for debts to the appraised amount. Executors follow the same cus-

* A law prevails in the Isle of Man, by which a wife can bequeath one half of her husband's heritable property to his prejudice, whether she brought a dowry or no, on the principle, which is partly recognized by the Scotch law, that wives are instrumental by their industry and activity in making a part of the wealth in communion.

tom when they make their confirmation. When they petition the commissioners to be confirmed in the property, they give in at the same time an inventory of the property with which they are desirous to intromit. The commissary or commissaries thereupon order a notice of the application to be published by a messenger-at-arms, at the church door of the parish in which the deceased lived. Nine days after this proclamation has been made,—which, by the way, nobody hears,—if there be no opposing claims, and if caution be given, the commissary issues a decree giving the applicant a right to take possession of the property. The cost of this process, including the expense of stamps, may be stated at about L. 15,—a sum by far too high. It very frequently operates to produce a relinquishment of liens over small properties, and it cannot be too soon reduced to a natural and proper charge. The process, nevertheless, is preferable in some respects to that pursued in England, through the intervention of the Bishops' Courts. When properties are not seized almost immediately in this manner, they often melt away, and creditors in such cases are completely non-plussed. Afterwards, all recourse is vain; for it is one of the most difficult points in law to prove who is the real intromitter with the property or representative of the deceased.

It is not necessary that testaments bequeathing moveables should be written in any particular manner. A letter in the hand-writing of the deceased is the best and surest testament. It may also be drawn up while on death-bed. A notary must sign the name when the testator is unable to do so. In such a case two witnesses are necessary. Verbal testaments are held valid in England to the extent of L. 30. In Scotland, they are not binding beyond the sum of L. 6: 8: 6. Proper neutral witnesses are required in both cases.

The process instituted by the old Scottish law, by which possession of real property is acquired, whether founded on deed of purchase or bequeathment, is so remarkable that it requires a short notice. Corporal seisin,

or the delivery of a part of the particular heritage conveyed, is still in full operation ; though its speedy abrogation is now contemplated. The practice is called taking an infestment. Infestments are made by sheriffs, magistrates or their mandatories, and notaries-public, with an air of solemn foolery. If the property be a landed estate—handfuls of earth and stone are given ; if houses—stone and lime ; if tithes—a sheaf of corn ; if a church patronage—a psalm book and the keys of the kirk ; if a right of fishing—a net and boat ; and if a mill—a clap and hopper.* These deliveries being

* These usages have come down unadulterated from an age of pure barbarism, and their existence may be considered a satire on the common sense of our own times. The elegant historian of the Decline and Fall of the Roman Empire, thus accounts for their origin in his usual felicitous manner : “ Among savage nations, the want of letters is imperfectly supplied by visible signs, which awaken attention, and perpetuate the remembrance of any public or private transaction. The jurisprudence of the Romans exhibited the scenes of a pantomime ; the words were adapted to the gestures, and the slightest error or neglect in the *forms* of proceeding was sufficient to annul the *substance* of the fairest claim. The communion of the marriage life was denoted by the necessary elements of fire and water ; and the divorced wife resigned the bunch of keys, by the delivery of which she had been invested with the government of a family. The manumission of a son, or a slave, was performed by turning him round with a gentle blow on the cheek ; a work was prohibited by the casting of a stone ; prescription was interrupted by the breaking of a branch ; the clenched fist was the symbol of a pledge or deposit ; the right hand was the gift of faith and confidence. The indenture of covenants was a broken straw ; weights and scales were introduced into every payment ; and the heir who accepted a testament was sometimes obliged to snap his fingers, to cast away his garments, and to leap and dance with an affected transport. If a citizen pursued any stolen goods into a neighbour’s house, he concealed his nakedness with a linen towel, and hid his face with a mask or basin, lest he should encounter the eyes of a virgin or matron. In a civil action, the plaintiff touched the ear of his witness, seized his reluctant adversary by the neck, and implored in solemn lamentation the aid of his fellow citizens. The two competitors grasped each other’s hand as if they stood prepared for combat before the tribunal of the pretor ; he commanded them to produce the object of dispute ; they went, they returned with measured steps, and a clod of earth was cast at his feet to represent the field for which they contended,” &c. The

made on the spot in the presence of witnesses ; the transaction is recorded in the general or particular registers of sasines, when the acquirer becomes complete owner. Should estates or other heritages be purchased and paid for, and this latter process of registration be neglected, the acquirer is at the mercy of the seller ; for until a registry has been made, the law is not bound to suppose that any change has been effected. In mortgaging money on property, unless infestment and registry be made, a similar danger is incurred. The seller or borrower having it in his power to re-seller or re-borrow to the injury of the purchaser or lender. A certain number of days are allowed to have this transaction completed. In mortgaging property for different sums to different or the same persons, the first bond has a preference, and so on. It is contemplated to abolish the process of corporal seizure, and

symbolic usages practised by the North American Indians, of smoking the pipe and planting the tree, of peace, and burying the hatchet, are precisely akin to these primitive customs. Among the common orders of people in Scotland, until a recent period there were also certain figurative actions in use which attested particular negotiations, and in some districts they are not altogether abandoned. We have seen the hucksters who attend fairs take possession of stations on the streets by chalking and spitting on a stone in the causeway, which they covered up with another stone. This is to the effect that they have built their house there, from which they cannot be ejected : on the eve of the fair, a town officer attends to see such *corporal seisins* properly executed, and to receive the fees or customs consequent thereupon. It is scarcely necessary to allude to the practice of still giving *erels* or earnest-money, on hiring servants or taking houses, which is a very simple and extremely useful custom. Shaking of hands is to this day expressive of a bargain being struck, but this we suspect to be a custom of English extraction. The genuine and ancient Scottish usage on concluding a bargain, consisted in the two parties wetting their thumbs with the saliva of the tongue, and striking them together. Perhaps this practice is not yet entirely abrogated, as we have seen the ceremony performed not many years since in the south of Scotland. In reference to this rude mode of plighting troth, we may recal to the reader's remembrance, the burden of one of Ramsay's Scottish songs :—

“ There's my thumb, I'll ne'er beguile thee.”

enter the registry of the acquirement on the deed of settlement or disposition. This would save both trouble and expense, and be equally beneficial.

The laws of Scotland prescribe no peculiar form in the auctioning of property. Both countries are liable to the same statutes on this point; but as there prevail certain local customs which the stranger may be unaware of, it is essential that such be particularized. Unless advertisements of sales of estates distinctly specify that the auctions are to be on the English plan,—which does not occur in one of ten thousand—the mode of sale is this: The property is knocked down to the highest bidder, who, if he do not lay down the money, is immediately obliged or taken bound that he will grant a bond, with security, within a certain number of days, for the price, the interest, and a penalty of a fifth of the sum offered, in case of failure, or desire to draw back. Should he find it impossible or be unwilling to implement the purchase, he must pay the penalty, and the seller has it in his option either to put the property again up to auction, or to let it fall on the shoulders of the next highest bidder. He is then bound to go through the same process; and, as the case may be, the property can be shifted in succession down to each bidder, to the very lowest.

It is worth while to compare this custom with that of the English. In England, the estate is knocked down to the highest bidder; but before the offer is recorded, he must lay down ten per cent. on the purchase. If he will not or cannot do so, the hammer is once more lifted; the sale proceeds or stands still, until a new offer is made, wherein the offerer is capable of fulfilling the regulation. Should the deposit of ten per cent. be made, and the remainder be not paid by a specified day, the money so deposited is forfeited. The superiority of the latter procedure is very observable. In the Scotch method, the seller is often a loser in spite of all the care he can take. No offer can be refused but at the risk of the agent, therefore any person, however poor, may become the purchaser.

Should he fail to implement the contract in any way, the seller falls on the next bidder, who having offered possibly several hundreds of pounds less, the overplus of auction duty has then to be disbursed by the disposer. It is a monstrous grievance, too, that the next highest bidder should be compelled, at any distance of time, to implement a bargain he had ceased to remember, and for the acquisition of which he has possibly incapacitated himself by the purchase of another property. The circumstance of terms being propounded at the sale, is no proper answer to such an objectionable peculiarity.*

Sales of heritable property by auction in Scotland are seldom so successful as they are in England, and this is in a great measure owing to the practice we mention, as well as the ill-advised mode of offering estates at a stated upset price, which being reduced year after year, when they are not sold, purchasers hang back so long that they at last give up any idea of buying. A power of buying-in would be preferable. Strangers not acquainted with these rules of selling estates in Scotland, and desirous of purchasing, should be cautious in making offers unless the property has been long in the market, as great allowance is made at first for afterwards coming down in price.

* Gibson on Law of Sale.

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

SCOTCH ENTAILS.

Men will always be mending, and when a lawyer ventures to tamper with the laws of nature, he hazards much mischief. We have a pregnant instance above of an attempt to mend the laws of God in many absurd regulations for the poor; and that the law authorizing entails is another instance of the same kind, will be evident from what follows.

HENRY HOME of Kames.

ALL nations have had and still have their hobbies, for which they sometimes acquire so great an attachment by reason of long acquaintanceship, that it often occurs that neither the most sober advice nor the keenest ridicule is at all capable of breaking the charm which mysteriously binds their affections; it generally happening that they do not part with these ambling follies until they have received some painful kicks, and tolerably severe falls in the course of the connexion. Of all the absurd hobbies of mankind, almost none seems to have been so generally caressed as a passion for founding families. Not contented with toiling for a certain amount of wealth, sufficient for their comfortable subsistence, or that of their immediate descendants, men torture themselves to procure the means of enriching all of their race that have to come after them. They take an interest in the welfare of the child who is to be born a thousand years after their

bones have mouldered into dust; and to see that this little infant be not subjected to the chance of destitution, they torment themselves in the invention of schemes for bequeathing their property uninjured for its use. But all will not do.

The practice of devising real property to a series of born and unborn heirs, or entailing, as it is called, for objects of the above nature, is not of modern origin. It is on the contrary of great antiquity. The Jews, by their agrarian commonwealth, took care to prevent its injurious consequences. The Romans, also, long kept it down, but latterly allowed it to the extent of fixing the proprietary for four generations. Most modern nations have, however, been bit by the mania to an extraordinary degree, and nearly all after a fair trial, have wholly or partly abandoned the custom as injurious and utterly impracticable in permanent establishment. The device is sooner or later discovered to be a puny attempt to cheat nature of her immutable designs, by which she has intelligibly prescribed that each generation of beings shall subsist only by the exercise of their own capabilities, and the base endeavour is seldom long in being unmasked and frustrated. In some instances, as in the case of Poland, the fraud leads to disgrace, and severe national chastisement; and the examples of its mischievous results are so numerous, that nothing but a determination to shut out instruction can account for its existence in any nation laying claim to education, or an understanding of the philosophy of history.

The process of entailing property to its utmost extent has, either by compulsion or free will, been given up by every people except the Scotch. While the French and others have been striving to break up large landed estates into smaller possessions, the owners of lands in this kingdom have been acting on opposite principles, and their conduct in this respect is well worthy of being held up to the reprobation of Europe. Were their entails of a modified nature like those in England, no objection could be urged against

them with any warmth, in regard to their prospective consequence; but they are in most cases of the most rigorous nature, and the subject therefore assumes a character requiring the most serious consideration of the country, before it is too late to do so.

Entails were known in England long before they appeared in Scotland; and by the reign of Edward I. they had attained the highest perfection, when, as Bacon mentions, "the owners of the land were not fearful to commit murders, felonies, treasons, and manslaughters, as they knew none of these acts could hurt the heirs of their inheritance." The sovereigns of the country, however, were not friends to settlements which had the effect of raising and keeping up so dangerous an aristocracy, much to their discomfort; and various schemes were attempted at different times by the crown, to break up a system pregnant with such mischievous consequences. But it was not till the reign of the fourth Edward, that the king at length made a palpable impression on the settlements of his barons, by the device of making the escheat or recovery of landed property, consequent on the commission of treasonable practices. At this period of English history, it will be recollected, that the powers of the aristocracy began to decline before the increasing consequence of the commons, who were often abetted by the monarch for the accomplishment of his own views; and when Henry VII. had the reins of government put into his hands, he had the temerity to go some steps beyond his predecessors in encroachments on the nobility, and broke down considerably their power of entailing. What was begun by this prince was finished by his son Henry VIII. who gave the last blow to processes of entail, and placed the law of settlement in that condition it has maintained, with very slight modifications, till the present times.

The benefits accruing to the kingdom by the demolition of entails, nearly about the same period in which the reformation took place, were soon manifest. A race of needy but proud landed proprietors, who could

neither sell nor improve their estates, was divested of its strongholds. They were seized by creditors whom they had formerly set at defiance, or sold for money to wealthy commoners, and the general confidence and spirit which were thereby given to commerce, laid the foundation of that greatness to which England afterwards attained. It will easily be imagined, that that class of persons whose minds were pent up in the distinctions of family, did not then or subsequently quietly put up with the restrictions imposed on their desires. Since the sixteenth century, repeated endeavours have been made to re-introduce deeds of settlement, devising properties to an expressed series of generations; but to the credit of English judges and juries, they have invariably repelled the authority of such documents when litigated, and in despite of every subterfuge of lawyers to hind up property beyond what the statute allows, the law of entail remains simple and by no means injurious.

The law of England only gives a land proprietor, be he a peer or commoner, the right of settling his estate on a person in existence at the time, or his son, or other heir, until he be twenty-one years of age; who may then *dock* the entail, and dispose of the property, or re-entail it. The debts of the entailers, moreover, affect the property, to the complete security of creditors, and they can only grant leases binding for twenty-one years after their decease. This species of entail, which is hardly deserving of the name, throws innumerable estates into the market, and causes a continued change of owners, each of whom generally leaves his land in better condition than when he entered upon it. Yet, on the other hand, it is remarkable that the selling of lands in England is not carried to that extent which might at first be expected. Such is the providence, pride of birth, or riches of many families, that, without the aid of strict entail, it is by no means uncommon to find properties in a line of heritage unbroken since the conquest, or even the invasion of the Saxons. The impediments, how-

ever, which the law of England throws in the way of creditors, in recovering debts by the seizure of lands, powerfully assist in maintaining family succession, and on this point the law of the country requires considerable revision.

A mode of entailing was in use in Scotland previous to the seventeenth century; but it was not till the year 1685, that a distinct and very lengthy statute was enacted for the regulation of the process, and this act of the Scottish estates continues to be the great charter of entails. The zeal with which the landowners adopted the provisions of the statute, after the process had been exploded in England for nearly two centuries, is attributable partly to family vanity, and partly to the insecurity of property at the period; it being one of the favourite practices of that abominable faction the Privy Council, to accuse and punish noblemen and lairds on the most frivolous pretences, merely that they might confiscate their estates. The wish, too, which the Scottish barons frequently had for joining in conspiracies and rebellions, induced them to be anxious to institute a law capable of protecting the rights of descendants, or nominated heirs of entail, in case of their own failure. This scheme, nevertheless, did not always serve their purposes. The court had it in its power to attain the blood and lineage of rebels; and hence in the insurrections of 1715 and 1745, fathers and sons, with commendable discretion, individually followed the standards of the two opposing parties, on the principle expressed by Dryden, that

———'Tis policy
For son and father to take different sides;
Then lands and tenements commit no treason.

As soon as the law of 1685 became fully known, and was followed by the revolution, which gave additional confidence to landowners, entails became very frequent. They gradually increased from the beginning to shortly after the middle of last century, when their multiplication became accelerated till the begin-

ning of the present century, from which period they have gone on at an amazing rate of progression,—each year surmounting its predecessor in number, and within a short time their increase has been out of all proportion. Whole parishes, and nearly whole counties, have little by little fallen under their influence; and it is now calculated that nearly two thirds, or fully more than a half, of all the lands in Scotland are fixed in this manner, in which there are about two thousand separate deeds of entail. In this number, several petty properties are to be found, the annual-rent of which is not more than twenty pounds sterling; but yet which have been devised by entail, in order that there may be always at least one gentleman in every generation of the family!

The statute of 1685 is very explicit in its provisions. It gives the most complete authority to possessors of lands to fix their destination in whichever way they choose. The processes are expedited under the supervision of the Court of Session. They can select male or female, or general descendants, relations by blood in different degrees of consanguinity, and even lay down certain rules for the management of the property, the extent and kind of house in which the heir by entail shall reside, and the style of living and dressing he shall indulge in, for a thousand years to come. Moreover, to provide against the possibility of the precise will of the bequeather being frustrated, care is taken to introduce irritant clauses in the deed, to the effect that if certain rules be not attended to by the possessor, he shall abdicate the property, and it shall then go to the next or substitute heir mentioned on the list in the deed of entail. In practice, some properties are entailed on a male line of succession, and others on female, or male and female, as the chance may be, however nearly always upon the rule of keeping the name of the family in possession the same. Some entails are more loose than others, according to the whim of the entailer. Occasionally a possessor by entail, and his nearest successor, may

break the deed of inheritance, and sell or mortgage the whole or part of the property ; but this is mostly when irritant clauses are not well laid down, for were it otherwise, a third person who was next heir, might at once come in and dispossess the other two. In general, the distant or contingent, or substitute heirs, (the latter being the technical phrase,) have the power of keeping the heir who is in possession in his expressed line of duty, in order that the estate be not wasted ; and in most cases, these substitutes, to the most distant degree, are perpetually on the watch to discover when the heir in possession incurs an irritancy. In many entails there are clauses granting or withholding the power of cutting and selling timber ; and in the same way prohibiting or permitting the digging of mines or quarrying of stones. The entailer can also lay down a law for the granting of leases to farmers, and whatsoever may be the utmost extent of lease prescribed ; the heir in possession cannot do otherwise than attend to it. The result of the celebrated and long contested litigation, respecting the leases of the late duke of Queensberry's tenants, has now settled that no heir of entail shall take fines or *grassums* in granting leases, as such a practice, it may well be suspected, tends to injure the rents of the succeeding heirs.

The pernicious consequences flowing from the institution of entails on their present footing, are so multifarious, that their recapitulation would only serve as a list of truisms with which all are acquainted. Some, however, of the most prominent demand insertion, as the public cannot be sufficiently made aware of their evil properties. One of the most preposterous, if not criminal, provisions of the Scottish law in sustaining entails, is the non-liability of entailed lands for debts incurred by a possessor or a previous heir. When a proprietor of entailed property falls into debt, his creditors may insist on drawing the rents or profits of the houses or lands ; but they cannot seize these heritages, which, on the death of the debtor, go free to the next heir. Bad as this is, it is the perfection of honesty

when compared with another provision,—whereby a possessor of landed property may entail his estates on *himself* and others, by which means the lands so bound up are only liable to be seized for those debts incurred prior to the registration of the deed of entail. In this way a landowner can legally negotiate a transaction directly subversive of the rights of his creditors. He secures his property in such a manner, that he himself cannot even break the deed which he has so curiously formed. To a property of so dangerous a nature, it may perhaps be attempted to be explained, that as the entailer registers his procedure in the public records, all may know, if they choose, whether such a transaction has taken place. But this reply is very insufficient. Merchants, shop-keepers, or traders in general, have no ready means of ascertaining if such entries be made, and they suffer accordingly.* It is incalculable the distress which is felt in Scotland by the fraudulent peculiarities of the entail law as we describe it. As it operates, heirs of entail have every temptation to be improvident and reckless in abusing the confidence of creditors, many of whom suffer severely from ignorance and liberality in dealing.

As differing from an entail, but yet possessing so much of the vicious quality above stated, we may with propriety here episodically introduce a notice of a process of law, often pursued in Scotland. This is what is termed *giving infestment* of moveable or heritable property to a wife or other person. It amounts to this. An individual purchases a house, into the proprietary of which he infests his wife, (after a mode formerly stated,) and this act is held so infrangible in law, that should the individual become afterwards insolvent, his wife's right cannot be disturbed, and the family, if they please, may keep the property in spite of the creditors. The

* We would recommend that the Almanack in future should contain a list of entailed properties, with the names of their present owners.

furniture of a house, or the goods in a shop, or a landed estate, may be secured in the same way. In many instances, such transactions take place, because the property so secured is purchased with the dower of the wife, or money bequeathed to her after she is married, and this is chiefly done to prevent her or her children from suffering by the misfortunes or spendthrift qualities of the husband. The deed can be done without the husband's consent, and he cannot break it, even though done by himself. It is understood, that when husbands or others infest property in this way, they are at the time solvent; but we are fully of opinion, that such is often not the case, and it is not easy to ascertain facts on such a delicate point. It is at least very certain, that tradesmen and others frequently fall into bankrupt circumstances after these very questionable proceedings are negociated, and when such occurs, it is not always that their wives are willing to abandon their rights. There are registers of infestments kept; but these, like all other records, are only accessible to lawyers on paying heavy fees, and the public, whose convenience is seldom consulted where any government office is concerned, reap no benefit therefrom. Without abolishing this legal process, which is prostituted to a glaring extent, almost all the mischief accruing from it to society might be neutralized by a thorough publication of registers. The reduction of infestments may take place by order of the Court of Session, when fraud is shewn to have been used; but it is difficult to prove allegations of this nature. Wives occasionally allow their infestments to be broken to soothe the creditors of their husbands in bad cases of insolvency.

Farther, with regard to the evils of entails, it will easily be imagined, that when the proprietor of lands feels himself only endowed with a life-rent interest in the property, and bound down by certain rules for the management of his estate, agreeable, very likely, to some old-fashioned usage, the estate will go gradually to wreck for lack of improvement; it being highly im-

probable that a person, granting he has the power to do so, will lay out vast sums in improving soil or planting trees, when the profit therefrom is perhaps to be reaped by a distant relative whom he never saw. Results of this kind, as a matter of course, have followed Scotch entails. About the middle of last century, notwithstanding that entails were increasing, the sensible part of the community began to awake to this evil ; and by the year 1770, the mischief became so monstrous, that parliament had to interfere to relax the fetters of entails.

This year a bill was passed giving possessors a right to sequestrate the rents of their estates for six years after their decease, to pay for improvements made in the lands, houses, and offices. The passing of such an act was a significant demonstration that the principle on which entails are founded is erroneous. It remedied the evil against which it was levelled, and the lands in most instances felt the full influence of proper cultivation ; but it was a serious blow to the incomes of substitute heirs. Many became heirs to properties which could produce them no benefit for six years, unless they chose to struggle on by paying the interest of the outlay ; and in any case they were constrained to fill the station of landed gentry on limited incomes.

One calamity having been thus provided against, other miseries came to require a similar correction from the legislature. Bills were passed at different times to benefit either the proprietors or the public, or both. By one of these, heirs of entailed properties can burden successions for outlays on jails, churches, roads, bridges, or other public works requiring the support of landowners. Another empowers them to sell as much of their estates as will redeem the land tax, that is, buy up from the Exchequer the right of levying the cess,—a measure arising out of the exigency of the revenue during the late war. But the most important of the remedial acts, is that passed so late as the year 1824, known by the title of Lord Aberdeen's act, which entitles heirs of entailed properties to burden their suc-

cessors with the payment of a third part of the rents to their widows so long as they exist, and two and three years' rents on three or more children. When these assessments are joined with those above mentioned, the next heir is often subjected to very straitened circumstances. It seems that, whatever be the extent of the burdens laid on by his predecessor, he can insist on keeping a third part of the rents for his own use, by allowing the sum to hang as a debt over the property, of which he only pays the interest. Still, in spite of every subterfuge to keep up a face of respectability on measures so well calculated, as it is supposed, to meet the dilemmas arising on all hands out of entails, it very frequently happens that the heirs get into a maze of difficulties, which the continual attention of lawyers cannot prevent. Should the heirs die out quickly, though not so rapidly but that they may have married and had families to leave as burdens on the properties, a scrape ensues, as ludicrous as it is pitiable. What with aliments to widows and children, interest on improvements, interest on outlays for jails, &c. the interest of money borrowed, (if it can be got,) to set him agoing on his estate, and other taxes and disbursements not coming under the name of family expenses, the person who, in such a case, becomes the possessor of an entailed estate, has next to nothing whereupon he can live. He is more to be pitied than envied; and is the unfortunate victim whose comfort must be sacrificed to sustain a certain family name and honour, agreeable to the desires of a vain ancestor, who died probably a century ago.

Since these are the unavoidable consequences of entails, the general degradation of landowners is but too perceptible. Every year the aristocracy and squirearchy of the country are sinking deeper and more irretrievably in debt and poverty. The high rents and prices procured during the late war, generated and confirmed an extravagance in living, and freedom of spending, which being impossible to restrain when lavishness is no longer prudent, the greater propor-

tion of landowners, and especially those under entails, have fallen into the most serious exigencies. Common land proprietors contrive to free themselves from embarrassments by sales and mortgages; but as heirs of entail cannot do so, their estates in all directions are falling under the guardianship of legal factors and trustees, who manage the properties, and try to dispense equal justice to the nominal owners, the stipendiaries, and the creditors; and if entailing be not stopped, the time may arrive when the whole of Scotland shall be conducted like a led farm. As it is, the country swarms with poor lairds who are pensioned off on a pittance, and are enabled only to shine as stars of a third magnitude in some petty watering place, while their entailed properties are in a course of nursing, and their family mansions given up to be jointly inhabited by families of rooks and swallows. Such is too often the result of a deed of entail, and it could be wished that the example thus given might deter proprietors from falling into the folly of destining their lands in this way.

Among the other injuries flowing from entails, that of the improper independence of sons while under the guardianship of their fathers, stands very prominent. The knowledge that a father cannot disinherit a son induces too often rebellion and recklessness of behaviour, and this moral evil alone is worthy of inducing an alteration. When it happens that estates are entailed on a male line, while a present possessor has daughters only, another serious injury ensues. In these cases it frequently occurs that tenderly brought up females are reduced in a moment from affluence to beggary, or at least stinted means, while perhaps a ploughman at the opposite end of the country, who is happier as he is, is suddenly elevated to the condition of a wealthy landowner. Instances of these revolutions in fortune are far from being rare in Scotland, on account of this improper mode of devising heritable properties.

Every Scottish writer has condemned tailzies, and it is worthy of remark, that the prophecies of last cen-

tury authors, regarding their dangerous results, are now in the course of being completely verified. The supporters of entails seventy years since, seem to have looked forward with dread to the period when the whole of the lands would be locked up from purchasers, yet it is curious enough, they did not actively discourage the institution of such processes. Others, and among the rest Lord Kames, never ceased lamenting the mania which possessed the Scotch; but all their opposition, written or spoken, was of no account. Latterly, the subject has again come into vogue as a standard topic of disquisition. Some contend for the total abolition of entails, either gradually or by a summary act, while the opposite party—who are fond of old institutions, whether they be beneficial or mischievous, merely because they are old—insist most vehemently, that by demolishing, or even meddling with, entails, the whole fabric of society will totter to its ruin.

One of the chief objections raised against a revision or a considerable alteration in entails by the latter class of persons in Scotland, rests in the postulate, that entails foster a numerous and respectable body of resident landowners in the country, whose possessions being taken out of the market, a barrier is opposed to the extension of the estates of wealthy noblemen and commoners, who, but for this circumstance, might soon engross the whole of the lands into their own hands, thereby extinguishing small proprietors. Were this dogma correct, nothing could be said to extenuate processes of entail, but it is so flimsy a sophism, that a school-boy might shew its fallacy. It is forgotten, that if entails be limited in their duration, or altogether rescinded, the estates of these great landowners will be as liable to dismemberment as those of their less rich neighbours, for it is not attempted to be shewn that improvidence is the attribute of one class of men only.

The allusion to this strange doctrine leads us to remark, that at present the effect of entails is decidedly to lessen the number of country gentlemen, and

to increase the amount of large properties. It is a well-known fact, and one so glaring that all now remark it, that the lands in Scotland are rapidly coalescing into large estates, and passing fast into the hands of a few wealthy proprietors. When small properties are advertised for sale, and are conveniently situated in proximity to large estates, they are ordinarily bought up by the proprietors of the latter, who, at once, fix them by entail; and thus it is evident, that if such a practice be not discouraged, the great proprietors must in the end swallow up all the lesser, and thence leave nothing but farmers and peasants on the soil. In the outset of the commonwealth of Rome, ere its territory had extended to that size which it afterwards did, it was a municipal law, that no Roman could possess more than a certain amount of landed property. Some such statute might now be advantageously copied in Scotland, which is a small territory, and cannot afford to lose its respectable holders of small estates in favour of one or two dukes, marquises, and rich commoners, who despise a country residence, and in many cases squander their incomes abroad.

Another argument made in favour of entailing, and the only other one which we shall care about demolishing, rests in the assertion, that since the law permits men to entail lands in favour of their sons and descendants, who, it is gratifying to think, will thereby continue a race of gentlemen, a spirit of industry is kept at work in order to accomplish the desired object of founding a family. Now, this proposition is sillier than the other, if that can well be. Is it not obvious to the meanest reasoner, that this spirit of industry, which is so highly prized, can only be found in the first or *founding* generation? All the others, having nothing to win, and as little to lose, find no occasion for pursuing industrious courses; and when the time shall come that all the landed estates in the country are settled on heirs of entail, and put, as the lawyers term it, *extra commercium*, or beyond the reach of purchasers, what will then become of the spirit of industry? It will have no object, and stagnation will ensue.

The consequences of that rage for entailing, which has for the last hundred and forty years possessed the Scotch, have not escaped the notice of the legislature. Since the year 1827, the subject has been kept in agitation in parliament; and a bill with amendments, suggested in the last session of 1829, is at present nearly ready to be brought forward for discussion. Having carefully examined the provisions of the proposed statute, which is generally known by the name of Mr Kennedy's bill, on the whole they appear very inadequate to place the system of entailing on a proper footing. Among other alterations, it is intended that the entails of peers shall not be liable to erasure, but that the Court of Session shall have a power of limiting their extent, which is certainly an excellent arrangement; that the possessors of entailed estates, with the consent of the next heir who has attained majority, but who was not in life at the time at which the entail was made, and the consent of all other substitute heirs who are of age, may reduce the deed of entail, and hold by a fee-simple tenure; that the acts relative to the payment of annuities to widows and others, shall be rescinded, yet not so as to injure those already receiving annuities; and that creditors shall not be empowered to compel possessors to break the entail, or in other words, that the present regulations, by which the heirs of entailed properties can defraud creditors, shall remain in force.

As it is extremely probable that some of these, and other provisions in the proposed bill, will be modified and corrected in principle, it would be needless to go into a studied examination of their merits. It strikes us that the bill is strangely calculated both to support and abrogate entails. It is very contradictory, and by no means suited to effect a palpable reformation. If it pass into law, it will only be the half way stage to the final destruction of entails. It can never be expected to work well, for the simple reason, that unless substitute heirs be compelled to abandon their rights, they will never give them up. The proper

steps to be taken to place the system on the right road to reform, should consist in the instantaneous arresting of entails, and a liberty simultaneously given to oblige the nearest substitute heirs to part with their claims on a valuation of their worth, and a calculation of their chance of heirship. Either this, or an arrangement to let entailed properties be sold, bit by bit, by succeeding heirs, till all be exhausted, must take place, otherwise the prosperity and happiness of the country have every chance of being sacrificed.

The bulk of Scottish lawyers—a class of men who have generally been among the first to desire and further the improvements in the institutions of the country,—though profiting by the present destructive qualities of entails, to their eternal honour, have advocated the gradual but final abolition of these nuisances, so far as those of commoners are concerned. All other persons of intelligence in the kingdom, who are accustomed to ponder on the effects of certain institutions, are of the same mind. No one is found to say a single word in favour of the present inordinate abuses, but captious old lairds, interested substitute heirs, and the usual proportion of that barking class of individuals, who are enemies to reform upon principle, and are not capable of expressing a judicious opinion on any subject whatever.

We wait anxiously for the revision of the laws regulating entails. The matter is intimately connected with the condition of the poor, and the suffering classes in Scotland. Overgrown and ill-managed estates must be broken down into their natural sizes. Family mansions, now cold and comfortless, must be again inhabited by human beings. Dilapidation must give way to improvement. Absentees must be recalled, and the poor, on whom so many aggravated evils have lighted, must be again encouraged and supported by the presence of masters and employers.*

* For a perfect exposition of Scotch entails, we refer to the excellent work of Sandford, and the Edinburgh Review, vol. 40, and 43.

PROMINENT AND PECULIAR LAWS AND USAGES
CONTINUED.

SCOTTISH SYSTEM OF REGISTRATION—USES OF THE GENERAL REGISTER HOUSE OF SCOTLAND—NATIONAL ARCHIVES—PARISH REGISTERS.

The Roman emperors registered their most remarkable buildings, as well as actions.

ADDISON.

IN no country in the world are the rights of real property so well defined, or so judiciously confirmed, as in Scotland. In this the provisions in our law stand prominently superior to those in England, and of no municipal custom have the people so much reason to be justly proud as that we are about to explain.

In England, two counties excepted, the rights of heritable property are in a precarious and confused condition. The title to a landed or house property is established only by the exhibition of the deed of conveyance, which is subject to many dangers in the course of its existence. In some instances, the change of owners is recorded in court books, but on no systematic plan. When mortgages are effected on property, the transaction is only known to the immediate parties concerned. A legal deed is generally the only voucher of the lien. No publication takes place declaratory of the process; and the owner of the property may borrow money over it, if he choose, to ten times its value. Lenders are thus in a perpetual dread of losing their money, for they can only obtain very imperfect information regarding previous mortgages; and conse-

quently, they often take heavy premiums besides the legal interest of their vested capital. The nation at large has so long dragged on under this imperfect system, that the circumstance has ceased to be an object of inquiry.

Judge Blackstone saw and suggested a remedy for this loose mode of preserving the rights of real property. While writing on the subject of conveyances, he remarks, that "there is certainly one palpable defect, the want of sufficient notoriety; so that purchasers or creditors cannot know with any absolute certainty, what the estate and title to it in reality are, upon which they are to lay out or lend their money. In the ancient feudal method of conveyance, (by giving corporal seizin of the land,) this notoriety was in some measure answered; but all the advantages resulting from thence are now totally defeated by death-bed devises, and secret conveyances: and there has never been yet any sufficient guard provided against fraudulent charges and incumbrances, since the disuse of the old Saxon custom of transacting all conveyances at the county court, and entering a memorial of them in the chartulary or leger-book of some adjacent monastery; and the failure of the General Register established by King Richard the First, for the starres or mortgages made by the Jews, in the *capitula de Judeis*, of which Hoveden preserved a copy.* How far the establishment of a like general register for deeds, and wills, and other acts affecting real property, would remedy the inconvenience, deserves to be well considered. *In Scotland, every act and event, regarding the transmission of property, is regularly entered on record.* And some of our own provincial divisions, particularly the extended county of York, and the populous county of Middlesex, have prevailed with the legislature to erect such registers in their several districts."

The foregoing passing notice of a general register

* Hence the origin of the Star Chamber, which was the place anciently appropriated to transactions of the above nature.

in Scotland, corroborative of our observations, scarcely elucidates the extensive arrangements instituted in this country for the preservation of the rights of property. By express enactments, every alteration, however minute, which occurs in the propriety of lands and houses, must be made sufficiently obvious to the community by insertion of the transaction in particular books set apart for the purpose by the state. Heritable acquisitions, purchases, mortifications—alienations by gift for pious uses, mortgages, or incumbrances, attachments by adjudications, entailments, exchanges, and escheats, if security be consulted, are all properly recorded according to set form in national registers.

It is very pleasing to describe the nicety of the method adopted to render this branch of legal institutions perfect in its details. The state places the process under the control of the Lord Clerk Register; but the active duties of this officer are performed by a deputy, who closely superintends the proceedings of the subordinate registrars. He sends forth annually to the sheriff of every county, blank paper ledgers of certain dimensions and internal divisions. Each book is formed of paper manufactured and moulded for the express purpose, with particular water marks, and of a regular strength and appearance. Every page is ruled with a specified number of lines, and it is ordered that every line shall contain a certain number of words only. At the foot of every page, the initials of the Deputy register are signed, and every tenth page exhibits his name at full length. Last of all, mention is made at the end of the volume of the number of leaves it contains, along with general directions for engrossing the various records. This docquet is likewise signed by the Deputy register, and also by the Lord register's legal substitute. By these means every attempt to cancel or interpolate leaves is rendered absolutely impossible. In order to compel a regular return of these books, no new volume is issued until the former has been sent back. The business of recording is mostly the duty of the sheriff.

clerk; and to prevent any attempt at improper conduct on the part of this official, or any other person so engaged, a supervising officer is constantly employed in travelling from town to town, who corrects any abuses into which the system would be liable to fall.

The royal burghs have also registers of a similar nature, applicable to property within their precincts. They are in the superintendence of town clerks; but being managed on no regularly organized plan, and under no proper control, they do not merit that approbation bestowed on others. We believe it is in agitation to extend the influence of the county registers over such places; because not being transmitted to the great repository of such books at Edinburgh, much trouble and expense is often incurred in having them explored. In the case of this amendment being made, it is recommendatory that duplicates remain with the burghs.

Under deduction of these local registers, the whole of the records of property are periodically collected, and being arranged in chronological order, stand ready to be consulted by all who feel interested in exploring them. The benefits of such a course of procedure require no eulogium. The registration of the acquisition of heritages gives the utmost security to the owners, who, although the deeds of conveyance be lost, still point to this place, where their imperishable charter perpetually lies. If they wish to borrow money over their possessions, they refer to these "dooms-day books" for the state of their rights. Creditors here can discover the situation of their debtors' affairs. Money lenders, on examination, feel safe in making mortgages. The capacity of every pretended landowner is exposed. The share-holders in banks have their qualifications as men of heritable property, made plain to the receivers of their paper. And the registers serve as a fountain-head of knowledge from whence innumerable facts in suits at law for the recovery of property may at all times be drawn. In most countries laying claim to enlightened usages, this mode of

registration is less or more acted upon ; but no where is the system so properly, or so extensively organized as in this small and sometimes despised kingdom.*

The notice of this pre-eminently useful custom introduces, in an appropriate manner, a slight delineation of the establishment where the registers rest, and which has been occasionally named in the preceding pages.

The General Register House of Scotland is situated in the metropolis, where it occupies one of the most advantageous sites at the centre of the city. It was designed and partly built fifty years since, and was only completed a few years ago. The expense of its erection has been defrayed by the private munificence of George III. and by grants of money from parliament. It combines very great architectural beauty, of a simple order, with the utmost internal usefulness. It consists of a hollow square building, enclosing a circular structure, fifty feet in diameter, which joins the interior quadrangle on the four sides, just leaving sufficient room at the angles for the admission of light into the inner side of the outer edifice. Outwardly from the street, it presents to the eye of the passenger a compact building two hundred feet in length, by one hundred and fifty in breadth, possessing an elegant front of smooth ashler work, with pilasters above the main entrance. Each of the corners is surmounted by a small circular turret, with a clock and vane. From the centre rises the dome of the inner structure. The building is two visible stories in height, with a sunk area flat level with the street, and screened by an enclosing parapet, broken in the middle by a double flight of steps.

The chastened architectural beauty of this unpre-

* The Greeks appreciated the system of publishing the changes in the right of property. Land-owners mortgaging part of their properties were compelled by law to put up a board on the estate, describing the nature of the transaction, by which means lenders and buyers were protected. This practice, though rude, was very beneficial.

tending edifice is the least of its merits. Its interior arrangements are equally admirable. On entering the main lobby, the first object observed by the stranger, is a handsome iron door of florid constructure, leading into the circular centre tower, which is open from top to bottom, and lighted from above. This is the principal library, and presents a panoramic view of books ranged in circling shelves from the ground to the roof, with a surface unbroken, except where it is traversed by a hanging railed gallery or passage, round the middle. From the bottom, and from this gallery, there diverge twenty-three subsidiary rooms fitted up as repositories for volumes and papers, any one of which, by a process of ticketing and numbering, can be brought forth at a moment's notice. The outer building is dedicated to the use of clerks and officers connected with the collection of national records, and the different supreme courts. Each department has a separate office with its appropriate title marked on the door, and the whole of the rooms on both flats are approached by long winding corridors, and flights of steps. The utmost order and cleanliness prevail, and by means of stoves and flues a warmth is disseminated throughout, which preserves the records from any danger of damp. The whole building is rendered fire-proof. All the rooms are arched, and surrounded with mason work, and the quantity of wood in use on the premises is very trifling. Besides the small official rooms, there are some large chambers set apart for the preservation of records, more intimately connected with the state and other purposes. Some binders and repairers of manuscripts are in constant employment securing documents from decay; and in short, no pains are spared by the Deputy register to have this establishment in the most perfect state of preservation. It is supported by an annual payment from the treasury.

Every accommodation is given in the exhibition of the registers. Some apartments are engaged for this purpose alone, under the management of distinct officers of the institution; and professional gentlemen

and other persons may be here daily seen anxiously expiscating the register of entails, sasines, mortgages, and other deeds affecting the proprietary of estates for perhaps two centuries back.*

Besides the immense additions which have recently been made by the immission of documents and books referring to the business of the old consistorial courts, and other public institutions, there are here stored up the following records, whose enumeration, abridged as it is, will convey to the stranger some slight notion of the comprehensiveness of the establishment :—

“The records of the Scottish parliament from the year 1210 to 1707, 37 volumes: The records of the Privy Seal from 1499 to 1774, about 170 volumes: The records of the Great Seal from about 1318 to 1788, 12 rolls, and more than 150 extremely large volumes: Some records of Privy Council, from 1545 to 1644: The books of record of the general Register of sasines, from 1617 to 1800, more than 700 volumes: The books of record of the particular Register of sasines,—a few of which commence in 1600, but by far the greater part in 1617—up to the present time.—They consist of (now upwards of) 1200 volumes, many of which are of a large size: The books of record of the general register of hornings and inhibitions, from 1602 to 1780; more than 1200 volumes: The books of record of the particular registers of hornings

* It is a pity that a regard for candour compels us to break the charm raised by this really excellent arrangement. For a perusal of a particular description of records for the space of one year, of one county only, five shillings are charged by those in attendance; and were a person to examine forty such registers in a day, or to examine in point of fact every volume of records in the house, the same sum would be demanded for a look of each. The exhibitors, we believe, are paid by the fees alone, nevertheless, this is a glaring and a disgraceful evil, deserving of instant remedy. We would not wish to see the books thrown gratuitously open to the inspection of every idler; but it is very desirable that only a moderate charge should be made. At present, these fees are felt as a serious hindrance to just inquiry, and they very much swell out the list of charges in many actions at law.

and inhibitions, from about 1580 to different periods ; more than 600 volumes : The books of record of the allowance of appraisings and abbreviates of adjudications, from 1636 till 1785 ; 128 volumes : The record books of deeds registered in the books of session, from 1554 to 1789 ; consisting of 1390 volumes, some of which are exceedingly large. The books of record of the representative peers of Scotland to sit in the house of lords of the parliament of Great Britain, from 1707 to 1798 : Records of these elections, from the 5th of May 1761 : Many papers relative to the visitations of the universities : Records of conventions of estates : Various papers relative to tithes : Records of cautionaries in confirmed testaments : Records of cautionaries for keeping law-burrows : * Records of cautionaries for loosing arrestments : Records of several sheriffs' courts : Records of a few burghs : About fifty protocol books of notaries : Registers of forfeitures : Records relative to ecclesiastical business : Original charters : And royal proclamations." Also registers of every description of legal contracts, such as those relative to marriages, leases, &c. registers of infeftments or assumptions of moveable property ; with a complete series of abridged registrations of summonses before the supreme courts. To this list might be added the names of many other descriptions of legal documents ; but the above will sufficiently serve to shew the nature and uses of the establishment, without which it would be impossible for the nation to go on in peace. By here storing up vouchers, as we may call them, of every important

* To the stranger, this Scottish law phrase requires explanation. The literal meaning of the word *law-burrows*, is caution to the law. It is applied to name a process whereby any individual, fearing the damage of his person or property by another, obliges the latter to find security to a certain amount, that he will not commit the supposed outrages ; and if this security be not found, imprisonment will follow. The oath of the complainer is necessary to expedite such a process, which, it will be remarked, is parallel with that of "entering into recognizances" to keep the peace in England.

transaction taking place between man and man, endless jars in society are prevented, and the just rights of every individual are preserved without the most distant possibility of violation, at least, so long as the conservatory properties of this beautifully organized institution are not demolished by the savage irruption of a revolutionary mob, which Heaven avert.

Besides papers and registers of the foregoing description, the General Register House contains several valuable ancient deeds referring to the constitution of the country. Among these we may allude to the original parchment deed confirming the throne to Robert Bruce by the barons and abbots, some of whose names are still legible, with fragments of their seals attached by tags. This exceedingly interesting document, which is black and tattered, and bears manifest signs of its troubled progress through several centuries, is exhibited in a glass case, and, with the original duplicate of the Articles of Union, formerly noticed, forms the chief curiosity exhibited to strangers.

Valuable as the collection of archives is acknowledged to be, it would have been still more so, but for the disasters into which the nation fell at different periods—the want of proper attention—and accidental losses. After Edward I. had conquered this portion of Britain, he carried off all the records of its former independence which he could well secure; and it is more than probable, that many of these national annals might be recovered from the state repositories of England at this day, if their transference from obscurity in London to an equal state of hiding in Edinburgh could serve any good purpose. What Edward missed, and what accumulated till the middle of the seventeenth century, were similarly carried off by orders of Oliver Cromwell. After the restoration, a restitution of the papers taken by the protector was made, but unfortunately they were transmitted by sea, and one of the vessels having on board a moiety of the literary treasure was wrecked off Dunbar, and none of its cargo

was saved. Another disaster befel the Scottish records. Before the above-mentioned General Register House was built, they were preserved in the room below the parliament house, and on the occasion of the great fire of 1700, which destroyed most of the south side of the parliament square, including the old royal exchange, and which threatened to immolate the state offices and courts, the records were hauled out in confusion, and a great number were lost. For a hundred years after this event, little or no care was taken of what papers had escaped these misfortunes; and it has only been of late years that they have been arranged and put in a proper condition for being exhibited.

Though from these untoward circumstances, the state papers of Scotland, and other documents having a connexion with the chief institutions in the country, are of a modern date in comparison with the records which slumber in the repositories of the Tower, the Roll's court, the state paper office, or either of the two English universities, they might nevertheless be of immense advantage if freely exposed to the examination of historians and others whose literary tastes lead them to search for authentic information among materials so pregnant with matter for amusement and instruction. At present none but very favoured individuals are permitted to mine in such a rich quarry. The fountain of knowledge is shut; little else is exhibited of the books but their backs; and but for the empty boast that the nation possesses the archives we mention, they might almost as well be not in existence. While those records applying to private property are laid open for money, those referring to governmental policy or similar subjects are preserved in dignified seclusion. Why this is the case we do not know. The reason why the public papers in the different offices, both in England and Scotland, (those in the British Museum excepted,) have from first to last been locked up, and only shewn to their owners by way of conferring an immense favour, has puzzled and damped the ardour of almost every institutional writer. It could be wish-

ed that a parliamentary inquiry should be instituted on this momentous subject, as the custodiers of the papers are perhaps not to blame in at present acting as they do. The French government furnishes an example of splendid generosity, or rather justice, in permitting the freest unpaid investigation into archives and books suited to the purposes of literature; and it is a pity that in this country the rights of the people, *quoad* public establishments, are still so undefined.

In concluding the subject of registration, from whence so many benefits accrue to the country, and which, but for certain ill-advised usages, might be deemed immaculate, we are led to lament that there are still several transactions affecting the comfort of the community, which have been placed under no precise system of record. The important particulars of births, marriages, and deaths, are here principally signified. At present, the session-clerk, who is generally the parochial schoolmaster and precentor, is the functionary appointed by the kirk, to take charge of the entry of births and proclamation of marriages; and as for deaths, no record at all is kept of them, any further than what may take place by the notice of burials in church-yards, made by the session-clerks, or by certain antiquated officials called Recorders, who manage the affairs of burying grounds in cities, and who seem to serve no definable purpose, but to exact enormous charges on funeral occasions.

In most parishes, (and probably in all,) there are distinct charges prescribed by the kirk sessions, which their servant the clerk shall make on entering or giving an extract of births or proclamations of marriage. But whatever may be the precise nominal fee, that is generally of little real consequence. In reading over the proceedings of kirk sessions a hundred years back, or earlier, we perceive that these fees were very light. The sum of 4d. sterling for a birth, and perhaps 1s. for a marriage, were the utmost charged, and we believe,

that in some primitive-minded parishes, the fees are still nearly as moderate. In practice, the whole machinery of registration has gone wrong. In very many instances the entries are not only made defectively, but the fees are preposterously high. As formerly noticed, it is only the entry of the proclamation of marriage which is made, not the attestation of the marriage itself. A few clerks take an interest in procuring the names of the officiating clergymen, with the time and place of the ceremony, which they also enter ; but the law dictates no such procedure. The worst peculiarities, however, in the present usages, are the want of any regular mode of registration, and the very great carelessness displayed in keeping the records. The kirk, which has hitherto been the only supervening authority in parish registers, can, on this matter, be warrantably accused of carelessness. We have seen parish registers kicked about a country school-room among the rubbish of out-written copy books, hanging in tatters, and wanting leaves, and have sometimes observed them in private houses more than thirty miles from their parish ; lent probably to give amusement to a circle of idle village gossips, with no security for their safe return, and in some cases we know that they were never returned. In consideration of the frequent appeals made to such documents, and the amount of property occasionally staked on the discovery of a single line, it is melancholy to observe such a palpable laxity in the government of parish registers.

Next, as regards the enormity of the fees. The public suffer by the extortions of a variety of authoritative functionaries, but hardly in any case are they so severely mulcted as in procuring certificates of proclamation of marriage. The nominal amount of the prescribed fees is generally of no moment ; the price to be paid depending in a great measure on the greed of the clerks. In most towns a certificate or copy of the lines, as it is technically phrased, costs half-a-guinea, but if the " best man," or the person who negotiates

the transaction be simple, he may perhaps pay double, triple, quadruple, sextuple, or even octuple that sum.*

We have already commented on the absurd practices pursued in relation to the latter topic, and it would be tiresome to go into more extended illustrations. The whole process of parochial registrations is bad, and must be amended. A bill is now in active preparation, by which we are given to understand, that a very great reformation is to be effected; and whatever may be its provisions, they can scarcely be more injurious, and certainly not so flagitious as the present practices. It is to be trusted, that among other regulations, the charges of entries will be defined and enforced, and that especially the fees of registering births may be abrogated, for we have it as the opinion of the best statistical writers, that the sums, however small, taken on these occasions, altogether debar thousands of poor families from entering the births of their children. We need scarcely add, that in every case a double set of books, for the distinct registration of births, marriages, and deaths, should be used, one of which to remain always in the parish, and the other to be transmitted at regular intervals to the General Register House at Edinburgh.† Without some such improvement, there can be no proper bills of mortality in Scotland exhibited; and the community must continue to submit to much distress and inconvenience.

* We here refer chiefly to the system pursued in Edinburgh, where the business of all the city parishes is managed at an office under the authority of the magistrates, who seem to allow greater abuses than the kirk in this matter.

† Among other amendments in the new bill, it is proposed to constitute a sort of lay court as guardians of the registers in every parish in conjunction with the church. This, as well as some other provision, has been warmly objected to by the established clergy, but their arguments have had no weight in altering our opinion, as above expressed. They have decidedly laid themselves open to censure, for at the best they should have been the first to see, and to cure, the pernicious abuses which are acknowledged to exist.

PROMINENT AND PECULIAR LAWS AND USAGES
CONCLUDED.

CRIMINAL LAW—MODE OF PROSECUTION AND TRIAL—
EXECUTIONS.

He pleaded still not guilty.
The king's attorney, on the contrary,
Urged on examinations, proofs, confessions,
Of diverse witnesses.

SHAKESPEARE.

THE application of Scottish law to the inquisition and punishment of crime, is almost as opposite to that of England, as light is to darkness. On this point, there is a distinct and palpable dissimilarity. The reason of such a peculiarity may be comprehended from the previous short observations on the nature of the entire law of Scotland. Statutes particularly applicable to this country, as well as general, in regard to the three kingdoms, have been instituted since the Union, to cause the suppression of certain crimes; but these form only a small share of criminal jurisprudence; and the old Scotch laws and usages are here brought more prominently into view than in civil actions. The English is known by the name of the statute—the Scotch, by that of the common, law; and both are the boast of their respective nations. The difference between these two codes may be reduced in general terms to the circumstance, that by the former, every possible crime hitherto known, has been met by a statute for

its future prevention and punishment; while, by the latter, crimes are more commonly dealt with on general principles, and the perpetration is judged of and punished from a knowledge of concurrent circumstances. The first renders every man aware of his danger, when under temptation, to commit a misdemeanour, and may induce him to go to the very verge of crime with impunity. The second produces caution for the opposite reason, and makes him wary of entering an enclosure in which he may be suddenly snapt. The elements of both are characteristic of the people among whom they operate; and we have no doubt the attempt to institute an amalgamation would be met with great dissatisfaction.

To judge of a subject so intricate and comprehensive, it would be necessary to bring both codes into view collaterally with the other institutions of the country; for by doing so, it would be found that the mischiefs of a too scrupulous regard to statutes on the one side, and an apparent danger in the dispensation of general law on the other, were in a great measure neutralized by minute provisions, not seen until the forms are nearly examined. This is more observable in the Scotch than the English law, and a comparison of their merits would incline us to prefer the former, on the score of not only vigour but humanity. The criminal statute law of England is allowed to be sanguinary, and, we are afraid, it is very elusory. Besides, even granting that its alleged minuteness might be beneficial, its unintelligibility, from a concourse of enactments, many hundreds of which have been rescinded, extended in their meaning, or obscured by others more recent, render the whole one of the most contradictory and useless codes of jurisprudence in the world.

The most obvious mischief in the statute law, is the permission it gives to commit new offences, as well as an allowance to go within a hair-breadth of an actual infraction of old ones; thereby confusing ideas of right and wrong. Hume, a popular Scotch writer on criminal law, points out the superiority of the common, over

the statute, law in these words:—An incipient desire to commit crime in Scotland “is repressed in its beginning, and more effectually than it can ever be by any statute, because all statutes are liable to be partial and defective in their description of offences; and thus the transgressor finds the means of eluding the sanction, and the law itself falls into contempt. But it is also a merciful course to the offender; because the crime being censured on its first appearance, and before it has become flagrant or alarming to the community, is restrained at that season by far milder correctives than are afterwards necessary to be applied to it, when the growing evil has come to require the passing of an express law in its behalf. Thus in England, the sending of incendiary or threatening letters is punished with death, in virtue of certain statutes which passed at a time when this sort of wickedness prevailed. But our judges punished the first offender of this sort, (whose trial was within these fifty years,) with transportation; and it has never been found necessary to seek authority of any higher or more rigorous punishment. The same is true with regard to the corruption or alterations of bills, promissory notes, and the like, to the prejudice of the acceptor, which by certain statutes is felony without benefit of clergy in England, and is punishable with us at common law with transportation. Many other examples might be given. In short, if things are to be judged of upon the testimony of experience, and not according to the fallacious conjectures of human wisdom before the event, the inhabitants of Scotland have no reason to envy the condition, with respect to the administration of criminal justice, of any other part of Europe.”

Though this eulogium on the superiority of Scotch criminal law be correct, in so far that in many cases a leniency is exercised in Scotland, which would not have taken place in England under like circumstances, it is but justice to say, that there could likewise be produced evidence where undue severity, according to the caprice of judges, has been inflicted. The supposed

excellence of a generalization of laws is diminished by the power of discriminating false from true crimes being reposed in only six commissioners of Justiciary, who, in this matter, act almost as a legislative body, and possess that species of authority generally considered as the prerogative of parliament alone. The decrees of the court, moreover, not being liable to review or reversal, it is warrantable to conclude that an authority so extensive and so undefined, linked with the very extraordinary powers of the public prosecutor, form an institution of which no country laying claim to the possession of civil liberty has much reason to be proud. Nevertheless, if we examine the conduct of judges in recent times, and bring to remembrance some particular subsidiary checks which frustrate the malignity of prosecution, we have not much to regret, that the criminal law is so ill defined in its properties. It is confessed, that at one period, and that too not of a distant date, the will of judges, aided by the dependent character of juries, and the secret, though not fictitious, trammels under which the press laboured, tended to lower the respectability of our criminal jurisprudence; but we are strongly inclined to think, that a very different line of procedure would in the present time be adopted. While juries are growing daily more independent of the bench,*

* There prevailed at one time in Scotland, a base practice of intimidating juries, by threats of instituting *assizes of wilful error*, in case they did not find verdicts agreeable to the craving of the Lord Advocate. The custom was made illegal by the estates 1689; but four years afterwards, it appears, that on the trial of Charles Lord Forbes, for proclaiming King James, and drinking treasonable healths upon the cross of Edinburgh, the Lord Advocate endeavoured without success to browbeat the jury, with the threat of an assize of error. Latterly, the practice of intimidating juries, or scowling them into particular opinions, became unavailing, and was dropped; but so late as 1755, we find that on the trial of a Scottish episcopal clergyman, from a distant part in the Highlands, for celebrating marriages, the jury were told from the bench not so much to find a verdict of guilty, by reason of the actual guilt of the culprit, in reference to the *crimes* libelled, as because he was supposed to be a person dangerous to the present happy establishment; which had the desired effect.

the press is hourly shaking itself free of that timorousness which so long disgraced it; and public opinion is now of such a healthy nature, that on that account alone it would be dangerous for the court of Justiciary to prostitute its legislative properties, for the purpose of oppressing any subject, however mean.

Whatsoever may be the expression of the statutes in reference to particular crimes, it is a certain fact, that in almost all cases of misdemeanour or infraction of the laws, the character of the culprit sways both the public prosecutor and the minds of the judges. On many occasions, neither have it in their power to do otherwise than apply the exact punishment, or to divert the regular course of justice, leaving the mitigation of the penalty to his Majesty; but more ordinarily they have it in their power to modify the asperity of the law, according to circumstances. The chief guiding legal principle in a Scottish criminal prosecution, is the strict attention which is paid to the former good or bad character of the accused. The English statute law in some instances provides a higher degree of punishment for the commission of a crime for the second time; but in bringing an individual to trial, it does not rest any plea upon his having been simply a bad character, either supposed or established; and this acts as a slight check to the general severity of the law. In being subjected to a criminal prosecution in Scotland, the law acts very differently. When an accusation is laid for a specified crime, accompanied with the charge of being "habit and repute" an evil-doer, the indictment rises prodigiously in value, and the punishment is inflicted with a rigour, which in a case without such an aggravation would be entirely unknown. To be habit and repute a thief or other felon, was at one time a most dangerous property. It could have formed the sole ground of indictment; and if proved, might have been punished by scourging, imprisonment, and even transportation from the kingdom. It has long since been disused on

these unduly severe terms, and now acts only as an aggravation of the special charges.*

The law of habit and repute has been denounced by various writers as ungenerous, and the mention of such a singular mode of making up a charge may perhaps excite the contempt of a stranger; but really, though apparently mischievous at first view, it seems on all occasions to be used to great advantage in clearing society of only its worst characters. In no case is it stretched to the extent of depressing a criminal, who may have in former times been known to live a course of iniquity, and after betaking himself to an honest mode of life for some years, again relapsed into crime. It is only applied to those who are caught in the midst of their career of wickedness, and have been a torment to society. It has the incalculably beneficent effect of raising a distinction between the hardened ruffian, and the unfortunate poverty-propelled infringer of the laws for the first time,† although both be charged with the commission of nominally the same crime.

English criminal statutes are often very explicit in regard to the penalty to be incurred by stealing articles of a particular value,—raising the punishment in proportion as the price rises in amount. The law of Scotland makes little or no difference in the degree of punishment it inflicts on this score. When a larceny is committed to the extent of thirty shillings, the penalty will be as severe as if it were to the amount of forty shillings, or forty pounds. On this account, that species of ridiculous straining of counsel in England, to

* Hume.

† There was once a curious merciful peculiarity in the Scottish law, by which any person in a famishing condition, or in a state of general destitution, could steal with impunity as much food as he could carry away on his back; and which usage is noticed by institutional writers under the name of the law of *burdinseck* or *burthyn-sack*. It has been long completely in desuetude, but it is nevertheless remarkable, that many of the lower orders of people have still an idea that persons dying for lack of food may help themselves from the store of others by force, without incurring a judicial penalty.

make it appear on trial that the value of goods stolen was beneath a certain amount, is never witnessed in this country. It is the characteristic of habit and repute, which here as every where else regulates the penalty; and it may often have occurred, that while one man, who has been charged with stealing forty shillings' worth of goods, has been only doomed to three months imprisonment; another, for a larceny of two-pence, has been transported or even hanged. The charge of stealing a pair of old shoes, of three pence in value, as a witty writer notices, and with being at the same time habit and repute a thief, if proved, would bring the prisoner by law to the gallows, when without this qualification a very modified degree of punishment, such as a few days imprisonment, would be inflicted.* In practice, such cruelty is avoided by the temperate and adroit management of the public prosecutor, who uses his discretion in restricting the penalty; and so happily is this generally done, that in Scotland, none but the most debased criminals, in whom no redeeming property can be discovered, are put to death on the scaffold.

By far the most beautiful peculiarity in the course of judicial procedure, relative to the punishment of criminals, is the institution of a public prosecutor, or prosecutors, who release the injured party from all trouble or expense in bringing the malefactor to trial.

At one period, the Scottish code of law—following that of the Jewish, in taking an eye for an eye, and a tooth for a tooth, and in the exaction of pecuniary damages for certain injuries—allowed criminal prosecutions by private parties, such as is still practised in England. In the course of time, however, the custom became liable to many serious abuses, as it must have been among a rude people, little alive to the weal of the commonwealth; the criminals frequently compounding for felonies to the injury of public justice. To amend such a vitiation of the common law, the sovereign at

* Arnot's Criminal Trials.

length instituted a new procedure hitherto unknown in Britain, whereby one or more of his judicial officers were caused to take up the prosecution of those cases which, to all appearance, the private sufferers would have neglected through indolence, pecuniary indemnification, or perhaps fear.* In this manner, the duties of a public prosecutor originated; but for a considerable period, the office was only subsidiary to that of private prosecutor. At first no particular person was appointed for the execution of so important a duty; the Lord Justice Clerk, or some other equally responsible officer, being occasionally nominated. Finally, the king's legal counsel, under the appellation of Lord Advocate, was fixed as the proper functionary.

The precise period of history at which this officer began to possess the distinct powers which he now exercises as a representative of the injured party in criminal prosecutions, is not exactly ascertained; but reasoning from the notice which is taken of his duties in different records, it may be concluded, that the office has existed about three hundred years.† By the

* During the domination of the Stuarts, or rather the Privy Council, in Scotland, numbers of real and alleged criminals were brought to trial by means of private informations, which, under penalty of death, in cases of treason or sedition, were obliged to be divulged. To lodge information was called to *dilait*. *Ex. gr.* "Archibald Cornwall, town officer, [of Edinburgh,] *dilait*ed of the ignominiously dishonouring and defaming of his Majesty, [James VI.] in taking of his portrait, and laying of the same, and setting thereof to the stoops and up-bearers of the gibbet,—by a nail infixit in the said gibbet," &c. For this crime, which was the transgression of no law, the said Archibald was doomed to be hanged on the gallows which he had so tried to adorn, with "ane paper on his forehead," describing his misdeameanour. *Rec. of Jus.* 25th April 1601.—In these times there existed a statutory crime, called *leasing-making*, which was very undefined, and gave great scope to the system of *dilaiting*. It meant not only the uttering of lies against the king, or any species of seditious discourse; but the hearing of the same without instantly communicating the circumstance to the council. We believe it was not abolished, as capital, till Queen Anne's reign, since which period *leasing making*, though still noticed among living misdemeanours, has merged into the general crime of sedition.

† Hume.

institution of a public prosecutor, the right of private prosecution was not by any means abolished. Criminal charges were long made in the name of both the Lord Advocate for his majesty's interest, and that of the person who had sustained the injury. At length the latter relinquished his right of *concourse*, as of no essential benefit, and the custom fell into disuse. The right of the private prosecutor to pursue the offender, nevertheless, was not abrogated; and till this day, when the Lord Advocate declines to prosecute, the injured party, or his representative, has the power of indicting and bringing the accused to trial. Yet, in doing so, he lays himself open to a counter-prosecution for damages, if he do not procure a verdict of guilty, while the unconvicted criminal can in no case pursue the public prosecutor on the same plea. By reason of the alacrity of the head fiscal officer in taking up criminal prosecutions, and his unwearied exertions to elicit evidence of a criminatory nature, private criminal prosecutions are of extremely rare occurrence.

Deodands,* or forfeits of those instruments, machines, or cattle, proximately the cause of culpable homicide or murder, are not recognized in Scottish law, but the representatives of persons killed have a right to bring civil actions of assythment, or recovery of damages, against those publicly convicted of the crime, or allowed to escape punishment. And in order that they might have an opportunity of doing so, criminals who were pardoned were at one time kept forty days in jail after receiving a remission of their sentence. So rigorous was the law on this point, that when the action was successful, and the accused failed to give security or payment, he could be put to death at the end of the forty days. Hume mentions, that one instance has occurred of a person being executed for this reason.

* Signifying *devoted to God*. They were originally meant as offerings to the souls of the deceased. The coroner and his jury in England settle the amount of deodands, which are often almost nominal.

Actions of assythment or trover, though still legal, are seldom instituted. The only modern plea, which was dismissed as incompetent, was that of the mother of a poor idiot lad against Hare, one of his murderers, who had been admitted to be king's evidence, in the infamous case of Burke in 1828.

The form of public prosecution, in which all expenses are liquidated by the crown, has never the effect of preventing the injured from coming forward as an accuser, in dread of the trouble and costs. Though the counties are understood to defray the charges in these matters in England, yet the vexation and annoyance of pursuing a criminal case are often very great; and without doubt, cause many one to put up with injuries rather than seek redress. The efficacy and simplicity of the Scottish form of procedure, are here very distinguishable; and we are surprised that something of the same kind has not been long since introduced into the English judicial process. Public prosecution is in many respects superior to a pursuit by private individuals. It removes the odium of appearing to prosecute for vindictive motives, and gives the proceedings the character of a plea to punish an infringement of particular regulations,—not to revenge an act of personal injury.

The mode of searching out facts and evidence in criminal accusations, in order to found indictments, is worthy of notice. When the case comes under the cognizance of the sheriff or a magistrate, a number of inquests are held, or "precognitions," as they are technically called. At these private examinations, a clerk attends and writes down a record of all that is spoken. The first thing done is to examine the person accused, and the sitting magistrate does all in his power to induce him to emit a "declaration" of all he knows regarding the circumstances of the crime, for the commission of which he is charged, accompanied with a confession of his guilt or innocence. A number of questions are also put to him, and the whole being reduced to a regular record, he is required to subscribe the same, after

which the magistrates and witnesses attach their signature. A similar course is adopted with all the witnesses who can be procured. None of the emissions are made on oath, and the prisoner, if he chooses, may refuse to speak. It is the duty of the magistrate to inform him at the very first, that the declaration he makes will be used on his trial, should such be required. The prisoner becomes thus aware of his danger, yet in most cases declarations of some kind are made, as all expect that what they may say will have an effect in mitigating the rigour of the law, or in accomplishing their release. From all that we can learn on this point, it appears to us that the Scottish law here acts with much meanness, if not duplicity. The precognitions of accused persons in Scotland, in our estimation, have a wonderful resemblance to the examinations of the Inquisition. They are transacted in secret, and we are afraid that the agitated feelings of the accused are often taken the advantage of. Although, by law, no one has a right to criminate himself, it is a very certain fact, that many one has been brought to the gallows in Scotland, purely through his simplicity in emitting a criminatory declaration. The practice has, in all likelihood, its great uses in bringing offenders to justice; but it is ungenerous, and in many instances fastens the accused to a particular line of defence, and otherwise impedes their escape in a way not desired by the principles of common law.

The number of precognitions varies according to the necessity for having complete information. The accused may be examined several times, and witnesses be again and again called. At last, when the charge appears to have a good chance of being made out, the accused is kept in confinement on a criminal warrant, distinctly expressing the charges laid against him; and the papers connected with the case being remitted to the Lord Advocate for his consideration, he has the discretionary power of indicting the prisoner for trial, or of dropping the prosecution altogether.*

* The Porteous roll, or list of criminals furnished at one time by

Here the public prosecutor acts as a national grand jury, as formerly alluded to, and possesses an authority quite unparalleled in its nature with any in Britain. Unfavourable as we are to many of this officer's powers, we do not consider his functions as practically injurious in modern times. It is observed that he invariably leans to the side of mercy; and it is our opinion, that the institution of a grand jury to relieve him of part of his power, would serve no good purpose, except in the case of crimes of a seditious nature, when it is natural to conclude, that in the capacity of a servant of the crown, he would forget to be moderate, in his excess of zeal for the interest of his master.

The laws of *habeas corpus* do not extend to Scotland; but there exists a statute of the Scottish parliament, called "the act of 1701," intended as its substitute, and which, by some writers, is supposed to be better calculated to preserve the liberty of the subject. On this latter point we profess scepticism, though, judging from appearances in the present day, it certainly seems to answer every useful purpose. It lays down regulations for the seizure, examination, period of incarceration, indictment, and trial of the accused persons: Also prescribes the nature of evidence to be accepted, the amount of bail to be taken, the penalties incurred for refusing bail; and contains other provisions for guarding the community against the oppression of judicial functionaries. In one respect, the act of 1701 is defective. It is so ambiguous as to leave it undecided whether the accused can insist on being brought to trial before the expiry of a hundred or a hundred and forty days. It moreover lays the prosecutor under no obligation to bring the cases of

sheriffs to the circuit judges, is now abrogated, and all criminal prosecution is managed by the judiciary clerks. The origin of the Porteous, or properly Portuous, roll has attracted our curiosity. It seems to have been instituted as early as the reign of Alexander II., and its name, in all probability, is derived from the practice of delivering to the judges, lists of criminals for trials, *in portu*, or in the gateway, as they entered the various towns on their circuit ayres.

prisoners forward for trial, leaving it to the ingenuity of the accused to put the prosecutor in remembrance of his incarceration, and to have recourse to the Court of Justiciary for liberation. In theory, therefore, the act is too loose in its provisions. In practice, however, it cannot be said that the slightest injury is sustained by the indistinctness of the statute, as every criminal lodged in jail for trial is subjected to a regular course of procedure. When he supposes that the prosecutor is remiss in allowing him to remain in jail beyond a proper length of time, he may petition the Court of Justiciary either to be liberated or brought to trial, in which case the Court, according to circumstances, orders liberation, or ordains the prosecutor to bring him up for trial. The petitioning of a prisoner is called "running his letters," and the expense of doing so lies with himself; yet we are led to suppose, that in no case are prisoners put to the smallest pecuniary outlay in bringing forward their trial, as there are at all times a number of counsel who are anxious for their own sake to act gratuitously and zealously for the behoof of poor prisoners.

The indictment of the accused must be issued to him fifteen days at least before trial. When he is at large, or cannot be found, the indictment is in the shape of what are called "criminal letters," which form substantially an indictment, and only differ from that instrument in so far as they are conceived in the style of a summons.

An indictment before a Justiciary Court in Scotland, is in the character of a complaint at the instance of the Lord Advocate, as prosecutor, and sets forth two principal clauses, called the major and minor propositions. As for instance—that whereas the crime of murder, by this and every well-governed realm, is a crime of a heinous nature, &c. yet, that you the said A. B. did commit the said crime, &c. The precise crime must thus be specifically mentioned, and the accused is further charged to appear in court on a certain day, or continuance of days, there to be tried. Along with

this indictment or citation, he receives a list of the witnesses to be brought against him, with the names of all the jurors summoned on the assize; whereupon he prepares his defences, if that be not already done, causes his agent to cite his exculpatory witnesses, and makes his arrangements with his legal advisers. Should he be poor, and incapable of feeing agents and counsel, the court, on petition, grants him such official assistants free of cost; but, as above mentioned, it is seldom he requires to demand assistance, there being no lack of young lawyers, who are continually on the watch to pick up "pretty cases" in criminal law, whereon their talents may be displayed to advantage.

On comparing the amazing beneficence and humanity of the criminal law of Scotland, in thus giving prisoners lists of inculpatory witnesses and catalogues of jurors so long before trial, as well as the free use of active agents and advocates, with the exceedingly relentless form of process in England, where the accused receives no legal information whatever on these heads till he enters the court, and has no gratuitous assistance of any kind, the contingent injuries arising out of a possible vitiation of justice, through the indistinctness of the law, are distinguished as of minor importance. As these advocates, besides advising, have a liberty to speak in court in defence of their clients—a privilege only conceded to persons accused of treason in England—and moreover of speaking last, the humane character of the Scotch law, notwithstanding of its errors, must deservedly attract commendation. It has often been alleged—and we own with some justice—that the sophistry of advocates has been occasionally the means of liberating prisoners who were really guilty; still this is an untenable objection to the practice; for it now happens that, in almost every case, prisoners are quite incapable of arranging their defences, and, by their ignorance, as well as diffidence, are incompetent to the task of addressing either the bench or the jury in their own exculpation. By the provisions above noticed, they are therefore furnished

with instruments to work out, if they can, their absolute release, or a proper modification of punishment; and as the prosecutor has every thing in his favour, the custom places both on equal terms in the field of judicial combat. Occasionally advocates in high practice, presuming on their elevated forensic character, impugn the verdicts of juries in intemperate terms. As this is highly derogatory to the functions of jurors, and quite illegal, we trust to see such a custom reprobated in future in a proper manner by the bench.

The routine of a criminal trial in Scotland is composed and deliberate. Every step is slow and solemn; and the judges or officials never appear to betray an anxiety to hurry on its progress. Whatsoever be the number of cases requiring determination, each is treated just as it ought to be, when the life of a fellow creature is known to be at stake. Trials which would be hurried over at the Old Bailey in fifteen minutes, would thus occupy half a day in the High Court of Justiciary.

On the prisoner being brought into court—where he is known by the designation of the pannel*—it is his prerogative to state his objections to the execution of the summons, if he have any, when, should he not do so, or should his objections be repelled, the judge calls on him to listen to the reading of his indictment, and then asks whether he be guilty or not guilty. (The order to lift up his hand, which Blackstone informs us is done in order that the prisoner may not be confounded

* From an English word, signifying a certain kind of carpenter-work. The *pannel* seems at one time to have meant what is called the *dock* in England. In old trials, the prisoner is said to be *placed in pannel*, or his bones or body *presented on pannel*: *Ex. gr.* "The warrant [of James VI. 1600,] required the court [of Justiciary,] to pronounce sentence on the deceased Francis Mowbray, *now presented on pannel*, to be dismembered as a traitor, his body to be hanged on a gibbet," &c. *Arnol's Crim. Trials*, p. 65.—This unfortunate man had been killed in clambering down the rocks of Edinburgh castle, in which he had been confined for "horrible and detestable points of treason." Thus, the pannel, from being the name of the box in which the prisoner was stationed, at last was transferred to the prisoner himself, in which sense it is still technically used.

with persons beside him, and the enquiry by whom he wishes to be tried, are not followed in Scotland.) If the pannel plead to the former, he is not condemned till a jury has been enclosed, and delivered a verdict in terms of his confession.

Until a jury be impanneled, the prosecutor, on proper cause shewn, may "desert the diet *pro loco et tempore*," that is, put off the trial, and serve the pannel with a new citation; or he may desert the diet *simpli-citer*, in which case the prisoner is allowed to walk away. But should the libel be read, and the jury sworn, and the prosecutor discover some reason why the trial cannot go on to a conviction, he cannot stop the proceedings, and bring on a fresh trial. Should the counsel of the accused make it appear at the outset that the indictment is incorrectly drawn or irrelevant, his arguments can only have the effect of causing the prisoner to submit to a new trial at a future day; but when the relevancy is sustained or suffered to pass unquestioned, a controversy on the merits of the indictment cannot be subsequently started. We need hardly say, that in the case of an acquittal after trial, the party accused can on no account be again tried for the same crime, as it is a principle in law that no man shall "thole an assize twice."

The number of jurors summoned in Scotland on criminal cases is forty-five, each of whom must be between the ages of 21 and 60. This number comprizes two classes of persons in certain proportions. The first are distinguished as *special*, the second as *general*, jurors. Special jurors are persons who pay cess, or land tax, upon L. 100 of valued rent or upwards, or assessed taxes on a house rented at L. 30 sterling yearly, or upwards. General jurors must be infeft in heritable property, in fee simple, or life-rent, productive of the annual rent of L. 5 or upward, or possessed of moveable property to the extent of at least L. 200. These are the more prominent distinctions of the two kinds of jurors, and though the provisions are not the best which might have been devised, they have certain-

ly the effect of calling together men of different ranks of society on the same assize. The names and qualifications of jurors used to be made up by high constables, or other persons of a similar official capacity, when such had a certain discretionary power of judging of the qualifications of householders. Now, the business is managed otherwise; schedules being delivered by orders of the sheriff, and filled up by householders themselves; a duty which they often pay little regard to. Rolls of qualified persons being made up from the returned schedules, from these all lists of assizes must be made up in gradation, as the names stand in the books. The custom of pricking is now unknown in Scotland. A third part of the forty-five must be special, and the remainder general, jurors. By this usage, as well as by taking a certain proportion of names from the different districts within the jurisdiction of the circuit, agreeable to a specified plan, it can never happen that a packed jury is formed. The duty of serving as a juror is generalized over the whole male population of a proper description, and the accused has nothing to fear on the score of caprice of the sheriff. There are certain specialties and exemptions in relation to the serving of jurors, which do not require particular notice. Among the rest, all clergymen, officers in the army, and officers under government in a civil capacity, are exempted.

From the forty-five who attend, fifteen are chosen as the actual jurors, a majority, by the usages of Scotland, being esteemed preferable to unanimity. It would appear, that from the very earliest times, this constitution has been used in this country in preference to having an even number of jurors. Formerly, seven, nine, eleven, seventeen, or nineteen, were as commonly used on assizes as fifteen, at which they latterly became stationary by act of parliament. English writers have condemned this mode of constituting juries, whereby a majority, though of one, may bring a fellow creature to death; but it is very doubtful if it be inferior in point of efficacy, expediency, or humanity, to that practised in England, where an attempt to procure

unanimity frequently produces serious inconvenience. It has at least never been ascertained, that a majority on either side was adverse to the dispensation of justice. Being so constituted, it is seldom that more than a few hours are occupied in coming to a proper decision regarding a verdict. In general, the majorities are great on either side.

The names of the fifteen jurors, who are to sit as the assize, are fixed by ballot, and following the above rule, one third of these are special. On being drawn forth of the ballot-box, the prosecutor and the accused have a right to challenge five general, and two special, jurors, without assigning a cause, and of challenging an unlimited number, on showing sufficient reasons for doing so. The same jury may sit on successive trials, provided the names of the individuals composing it were in the list of assize given to the prisoner.

At one period the oath taken by jurors in Scotland, was in a sort of gingling rime, and ran in these words:—

We shall leil suith say,
And na suith conceal, for na thing we may,
So far as we are charged upon this assize,
Be God himsel, and be our pairt of Paradise;
And as we will answer to God, upon
The dreadful day of Dome.

The style is little altered in modern times, being as follows: “In the name of the Almighty God, and as I shall answer to God at the great day of judgment, I will truth say, and no truth conceal, in so far as I am to pass upon this assize.” This oath, and that of witnesses—which follows the tenor of that in England—are made with the right hand uplifted, and no book is used except the party be a Roman Catholic.* The

* Kissing the sign of the cross on the boards of a Bible or New Testament, is only a conventional usage among ignorant members of the church of Rome, which that communion does not enjoin. All nations seem to have attached a sanctity to particular ceremonials while uttering the words of an oath.

judges are invariably the administrators, a practice of more value than all extrinsic ceremonial. The oath is made in a solemn and imprecatory tone, in a manner calculated to arrest the feelings of all but the most hardened. Some Scottish judges have been celebrated for their accomplishment in administering oaths from the bench, among whom may be instanced Lord President Forbes, whose statue in marble, adorning the walls of the parliament house, in the attitude of swearing a witness, attests the attention he paid to this important part of his duty.

Witnesses are first beard for the prosecution, and afterwards for the defence. Two are necessary to criminate in Scotland; but one witness and substantial evidence will be equally tenable. In some instances, circumstantial evidence, alone, is accepted. One witness is sufficient to convict in England. After evidence is closed, the court is addressed by the Solicitor General, or other advocate for the crown, and next by the advocates of the pannel, who, as we have said, are entitled to make their impression last. It is then the duty of the presiding judge to sum up the evidence in a harangue to the jury, in which he takes occasion to comment on the value or insufficiency of the depositions, the presumptions in favour, or against, the accused; with the expression of the law on the subject. The addresses which are made often reflect great credit on the acumen and judicial knowledge of the Scottish judges, whose wits must unavoidably be sharpened by the necessity of frequently unwarping the fallacious arguments of the prisoner's counsel, and placing the case in its true light before the jury. There prevails an absurd practice of causing the jury to stand up while the judge addresses them. When the address is lengthy, this is felt to be a serious grievance.

In many cases the jury comes so speedily to a decision, that it does not require to retire, and in such a case the verdict may now be delivered by the foreman *viva voce*. At other times the jury seeks to withdraw, in which case, if time for consideration is required, a

chancellor and clerk are elected by vote, and the opinion of every individual being heard, the clerk makes up a return, which is signed by the chancellor and clerk, sealed up, and handed to the judge. It is seldom that the court has to re-assemble to hear the verdict delivered.

When the verdict is *not proven*, or *not guilty*, the prisoner is instantly dismissed, though possibly not without an admonition as to his future behaviour; but when the reverse, and the crime libelled infers a capital punishment, while the prosecutor does not move for a mitigation of the sentence, which he is fully empowered to do, and which is technically called "restricting the libel to an arbitrary punishment," judgment is pronounced. Sentence of death is first pronounced by the presiding judge, when, on being recorded and read by the clerk of justiciary, it is subscribed by each of the judges on the bench. Prior to the year 1773, according to an old barbarous usage, sentence of death was first read by the clerk from the engrossed record, and repeated by the macer, after which it was uttered in discordant tones by the doomsman or executioner,* who was brought out from a retired

* From this circumstance, judicial executioners are still known in Scotland by the appellation of doomsman, deemster, or dempster, (*demo, dempsi.*) The hangman of Edinburgh, though now banished from the court, is still in one sense a member of the college of justice. He receives a salary from the exchequer, of about L. 5 yearly, in virtue of this connexion, and is otherwise supported by the local magistrates, from whom he has a free house, and 12s. per week, with a fee of two guineas every time he operates on the scaffold. These fees from the town are chiefly in lieu of the legal exactions, which were at one time made by executioners in Scotland, to the extent of taking a *lock* or handful, and a *gowpen* or double handful of meal from the mouth of every sack brought to market. The farmer of the town customs still acts on the old law; but instead of meal takes a small pecuniary fine. Every circuit town should keep an executioner, but it is not always that the whole offices are filled, as it is very difficult to procure persons who understand the profession, or are steady to their *line* of duty; it therefore very often occurs that towns are necessitated to borrow one another's executioners. In some in-

part of the court for the purpose, on the ringing of a hand bell placed on the desk of the judge.*

That species of communication which takes place between the judicial and executive departments regarding the execution of criminals, is of a more elaborate nature in Scotland than in England, where the abbreviated words *sus. per col.* on the margin of a schedule delivered to the sheriff, we believe, is the more common mode of giving intimation of sentence of death. A writ known by the popular name of the "death warrant," is made out by one of the clerks, containing an extract of the doom of the court, and expressing the exact day and hour of execution. It is subscribed by the judges, and is delivered along with the prisoner to the magistracy, by whom it must be safely preserved, like the permit accompanying exciseable goods. In exchange, the town clerk gives a receipt to the clerk of court. From this time, the criminal is supported at the expense of the county, from a fund collected by assessments on the land-holders, under the title of "Rogue money," which is equally intended for the sustenance of all species of criminals either before or after sentence.

If no secretary of state's warrant arrive to super-

stances, criminals have been pardoned, as an inducement to accept of the situation. The reader will remember the case of *daddy Rat*, or *Ratcliffe*, in the story of the "Heart of Mid-Lothian."

* The above usage was abrogated in March 1773, by an order of the court. Lord Justice Clerk Eskgrove, (David Rae, father of the present Sir William Rae, Lord Advocate,) introduced the custom of putting on a hat or black cap in delivering sentence of death, in imitation of that very ancient ceremony in England. In the Isle of Man, the character of the coming sentence is known by another circumstance. The bishop and clergy have a seat on the bench; and the foreman of the jury, on returning with the verdict, is asked by the presiding judge, "whether those who serve at the altar may remain." If the answer be affirmative, it is significant of the harmlessness of the punishment, and they continue seated; but if in the negative, it is expressive of the deadly character of the verdict; in which case the ecclesiastics retire, as their hands may not be polluted with blood.

sede the execution—and it almost never does so, except application be made for mercy, with sanction of the court and jury—it takes place under the superintendence of two of the town bailies, and civil officers. They bring, or ought to bring, the death warrant of the court in their pocket, otherwise the criminal has a right to refuse compliance. In Edinburgh, the town clerk usually carries it to the place of execution. When the prisoner has to be conveyed from one jurisdiction to another, each magistrate, on resigning the custody of his person, receives a receipt from the other. Should a condemned criminal barricade himself in his cell, or resist the legal power in any other way, to prevent his execution within the hours specified by the sentence, the magistracy can drag him out by force, and put him to death, although beyond the period. This has occurred twice in Edinburgh. But when the execution is delayed through neglect or design of the authorities, they have no power to touch him after the date at which he should have been brought to the scaffold. He can demand instant liberation, which if refused, he may petition the court to be set free; and this the judges dare not refuse, for in reality it is the case of a person being confined without a warrant. An instance of this kind once occurred, where the magistrates, of their own accord, put off the execution on account of its falling on a *fast day*. The criminal was of course liberated by the court. Magistrates are bound to take care that criminals do not escape while under sentence of death; for though they were re-captured, the old warrant would be ineffectual, as it becomes a question if the persons secured are those who absconded. A case occurred in Edinburgh about twelve years since, where a criminal, whose execution was ill conducted, was cut down prematurely by a gentleman who jumped on the scaffold, and dragged him out of sight in the crowd; but the circumstances occurring only from motives of humanity, and there being no concert, his person was pursued, and seized by the civil officers. This man had been only half dead, and after being re-

stored to animation, (!) was again carried forth, rehung, and put to death under a military guard. There could be no doubt of the criminal's identity in this case; but, strictly speaking, his final execution was illegal.

While prisoners are under sentence of death in Scotland, they are secured in a small, but strongly built room, sometimes lined with bars of iron like a cage, and attached to a rod of iron a few inches from the floor, by a ring round one leg, and another round the *gad*, which, by means of a swivel, allows them to traverse the apartment. They are only allowed support by bread and water, by law; but in all cases they receive better sustenance.

Until the beginning of the eighteenth century, no prescribed time was mentioned for the incarceration of criminals between judgment and execution; the period being either dictated by the court, or left to the discretion of the magistrates; and on some occasions, especially during the reigns of Charles II. and James VII., the criminal, when tried at Edinburgh, was led from the court-house to the scaffold, which stood almost continually ready at the cross. In the reigns of George I. and II., this improper laxity was amended, and it was regulated by acts of Parliament, that the period should be thirty days if south of the Forth, and forty if north of that estuary: minor punishments to take place in eight and twelve days at soonest, according to the same local distinctions. In most instances, forty days are allowed in Edinburgh; and no difference is made, whether the crime be murder, or any ordinary felony. This period allows sufficient time to apply for, and receive, remissions of sentence. The court has a power of adjourning the day of execution, but it is only on the most urgent grounds; as, for instance, if the day specified turns out to be a day appointed for a public fast or rejoicing, or if a respite is expected, but supposed to be delayed by the state of the roads in winter. Some years since, a pardon arrived from his Majesty,

when an execution had been fortunately delayed for this last reason.

We are told by Arnot, in his singularly piquant production—the history of Edinburgh, that such a prolongation of the period during which criminals shall remain under sentence of death, was not ordained originally from any motive of humanity, but only that the government might have it always in its power to save the lives of its favourites. The law “was enacted,” says he, “upon an occasion sufficiently humiliating for the country. After the accession of the house of Hanover, the northern counties of Scotland were reckoned to be exceedingly disaffected to government, and numerous bodies of the military were quartered among them, to check and overawe them. As the officers looked upon the inhabitants as enemies to the king, these military gentlemen indulged themselves in an insolence of demeanour, now rarely to be met with among that respectable body; and when their irregularities were even of such a nature as to fall within cognizance of the law, it was thought proper to connive at them, or to suspend its executions. In the year 1723, an officer went into a dancing-school at Perth, and used indecent familiarities with a young girl. The dancing-master resenting the insult to his pupil with equal spirit and propriety, seized the officer by the neck, and turned him out of the room; and, as the officer was muttering vengeance, the dancing-master assured him, that, should they happen to meet, he would not find him unprovided with a sword. In a few days, accordingly, they met by accident; the officer drew, the dancing-master drew also. He parried the thrusts of the former, and could, it is said, easily have put him to death. But a sergeant, who attended the officer, came behind the dancing-master, and pinioned him, upon which the officer run him through the body, and he died upon the spot. The public were enraged at so foul a murder; they were bent on vengeance; they foresaw an interposition of the crown, and were resolved to prevent it. The Provost of Perth [acting

upon his burgal jurisdiction in *blood-wits*, formerly noticed as pertaining to this magistrate,] sat in judgment upon the officer. He was convicted by a jury, and was sentenced to be hanged within three suns. He dispatched an express to London, applying for a pardon, which was granted; but he was hanged ere the pardon arrived, upon which the act already mentioned was passed. Although the view of the legislature was to prevent the law from laying hold on the friends of government, yet, in effect, it has been the means of saving the lives of subjects, when affected by iniquitous judgments, in violation of law."

However beneficent the law may be in extending the period of incarceration in Scotland as now described, it is questionable if it do not nullify the meaning of the punishment of death on the scaffold, which all allow is chiefly inflicted as an example to deter others. To procure such an interpretation from the gross of the people, the infliction of punishment ought to follow rapidly on the conviction. As at present regulated, the crimes of the malefactor are often forgot, or have lost their impression, before the criminal is brought forth for execution; and he not infrequently assumes the character of a suffering martyr. Being generally dressed up for the occasion, and being led out in the odour of sanctity in the company of magistrates, clergymen, and amateur attenders, he appears as a saintly gentleman in distress, instead of an individual whose career has been marked by murder, robbery, and every species of iniquity.

Some persons have been led to imagine that the Scotch have the merit of being the inventors of two of the most popular instruments of judicial execution,—the guillotine, and the drop or falling table. Though circumstances would seem to countenance such an idea, it is certainly incorrect; the nation, in this matter, having been rather a humble imitator of the fashions of other countries. Strangers are perhaps not aware, that during the latter part of the sixteenth and the seventeenth century, a machine of nearly the same

properties and construction as the French guillotine was in active operation in this country. It has been in disuse since about the period of the revolution of 1688, but is still preserved as a curiosity in Edinburgh. This Scottish guillotine, or maiden, as it was called, is much smaller in size, and more clumsy than that of the French, but in its mode of operation it is precisely similar; and it is very reasonable to conclude, that having come to the knowledge of the unfortunate Guillot, it had suggested the invention and introduction of this now commonly used instrument. The following sketch of the history of the Scottish guillotine, from the Edinburgh Advertiser, comprehends all that need here be said to illustrate the subject.

“The common tradition about the maiden in Scotland is, that it was introduced from some other country by the Earl of Morton, (regent from 1573 to 1581,) and that nobleman happened himself to be the first man who suffered by it. The truth of this has been endeavoured to be discovered by exploring the records of the city of Edinburgh—but in vain. There has been found, however, a testimony so confirmatory of the tradition, in Frazer’s *Divine Providences*, a manuscript of the reign of Charles II. which is preserved in the Advocates’ Library. It is there stated, that the Earl of Morton was curious in many inventions—that he brought from Italy, where he had been on his travels, an instrument which is used there for executions, but which is very rare; the said instrument lay unused till he was about to suffer death for his concern in the murder of Lord Darnley, when it was erected for his own use; and the populace then called it the maiden, from the circumstance of his having been the first who yielded himself to its horrible embraces. The manuscript which details these circumstances, having been written within ninety years of the fact, and by a clergyman of the church of Scotland, there is little reason to doubt its truth, more especially as tradition still gives substantially the same account. Certain circumstances induce the present writer to sus-

pect, that it must have been in consequence of Morton's express request, that the instrument was used at his own execution. It is at least evident from contemporary annalists, that he gained a degree of favour from the king before his execution, on account of his confessions regarding the murder of Darnley; and it is probable, that he employed his favour in procuring his own favourite engine to be used for his death, instead of the less dignified and expeditious process of the rope.

"The Earl of Gowrie in 1584, father of the celebrated conspirator, seems to have been the only man who suffered by the maiden between the period of Morton's death, and the time of the civil war. Hanging and burning were the favourite modes of execution during the intermediate age. It appears to have been again brought into use in 1646, when the Scotch Parliament found an opportunity of wreaking their vengeance upon Sir Robert Spottiswood, the distinguished royalist, who had been taken prisoner at the battle of Philiphaugh. Sir Robert's crime was simply that of being son to Archbishop Spottiswood; it could not be alleged against him that he had borne arms among the royalists, unless, he said, his walking-cane could be so designated. The estates were at that time sitting at St Andrews, on account of the plague which raged in Edinburgh; and they determined, with the meanness of soul which characterized all their actions, to have their iniquitous sentence carried into execution in that town, from an idea that the seat of his father's aggrandizement was an appropriate scene for his own degradation. They accordingly issued the following warrant, to have the maiden brought to St Andrews from Dundee, in which town, from some reason unknown, it happened to be at that time.

"*Decimo sexto Januarii, 1646,*—38 die Parl. St Andrews. The estates of parliament give hereby warrand to transport the maiden from Dundee to St Androis, and ordanes the magistrates of Dundee

to delyver the maiden to sic as sal be sent from the town of St Androis for transporting thereof. Quhair-anent thir presents sal be ane warrand."

"It was accordingly used for the execution of this venerable gentleman—one of those rash and vindictive proceedings on the part of the Scottish *liberalists* of that age, which were only expiated in the succeeding reign, by the oppressions and persecutions to which they were in their turn subjected by the royalists. Two or three other prisoners taken at Philiphaugh were executed by the maiden.

"The next personage who fell a sacrifice to it was the Marquis of Huntly in 1649. About this period, and for some years later, it was used to execute almost all kinds of criminals. We have observed from a manuscript abridgement of the books of Justiciary in the Advocates' Library, that even women guilty of child-murder were executed by it. Perhaps it was as a peculiarly ignominious distinction, that the Marquis of Montrose, in 1650, was hanged. A return to the disgrace of the rope, in his case, might be looked upon as not the least severe part of a punishment intended to comprehend every possible severity.

"After the Restoration, if less actively employed, the maiden was still continued in use. It was brought into play at the execution of the Marquis of Argyle in 1661, as also that of his son the Earl in 1685; the latter, in kneeling to submit his neck to the axe, embraced the instrument in his arms, and said it was the sweetest maiden he had ever kissed. After this time, there occurs no notice of its ever having been employed. It seems to have been resigned at that period to the obscurity of a cellar under the Parliament House, which was also devoted, as we are informed by Maitland, to the keeping the trappings which had been used at the ridings of the Scottish parliament. From that dungeon, it was rescued within the last few years, by the Antiquarian Society, and placed in their museum."

The drop, or table which falls from beneath the feet of malefactors when put to death on the gallows, did not come into use in Great Britain till about the year 1784. In that year, we believe, it was first used at Newgate, on that place becoming the scene of execution after removal from Tyburn, where the driving away of the cart from under the culprit served as the drop. The first time such a device was resorted to in Scotland, was on April 20. 1785, on the execution of a young man of the name of Stewart, for house-breaking, at the west end of the tolbooth at Edinburgh. Previously, the place of execution in the metropolis was in the Grassmarket; where the double ladder was used, to the very last. It is a very common belief, that the inventor of the drop was William Brodie, a master carpenter in Edinburgh, and a deacon of the incorporation of hammermen, who was himself the first who suffered by it. But this is a very inaccurate supposition. Brodie and his companion Smith were executed for robbing the office of excise, October 1, 1788, more than three years after the introduction of the falling table. They were, however, hanged with a new drop, from a fresh gallows, and such may have been the cause of the very common belief, that Brodie was the first person who was executed in the new mode.

Most of our Edinburgh readers will remember that there projected a modern low building from the west end of the old tolbooth, on which executions took place till the whole fabric was taken down some years since. Originally, this edifice or wing had a slanting roof attached to the end wall of the jail. Some weeks before the above-mentioned Stewart was executed, the magistrates of the city ordered a door to be broke out,* opening upon this roof, and a small scaffold to be erected thereupon the width of the door. A single beam of wood being fixed in the wall above, the whole machinery of a scaffold was completed. For three years the erection stood in this way, until it happened

* Council Records, 1785.

that no fewer than four individuals were doomed to be executed all on the same day, namely, Brodie, Smith, and two unfortunate, and as it afterwards appeared, innocent men, who had been accused and convicted by perjury, of robbing a bank in Dundee. These two latter persons, a few days before the day of execution, were reprieved, (but subsequently executed,) though not until the magistrates had been obliged to level the whole of the slanting roof, and erect a more substantial gallows with a strong cruciform beam, having four hooks to which to attach the ropes. The alterations consequent on these erections were made a short time before the execution of Brodie, who, while under sentence, complained of the noise made by the carpenters. As it is thus tolerably evident, that the Scotch drop was a copy from that at Newgate, and as it cannot be discovered that Brodie had any concern in the introduction or erection of either the first or the second scaffold at the tolbooth, the very common tradition that he was the inventor, and the first who suffered by such a contrivance, is altogether incorrect.

Inferior corporal punishments are now almost never inflicted. Public scourging, once so common, is practically abrogated; and punishment by pillory is entirely unknown. The old Scottish pillory, known in history by the title of the *Collistriguum*, or neck stretcher, is utterly forgot. By this instrument a very savage punishment was inflicted. The culprit being placed on a low scaffold, in a standing position, his neck was encased in a wooden collar or board, not so closely as to provoke suffocation; but being elevated to such a height as just to allow the tip of the toes to barely touch the ground; the weight of the body on the chin and back of the head produced a painful sensation. The thumbikens, or small iron vice, which squeezed the thumb to extort confession, and the iron boot and wedge, are already so well understood as to require no description. They were principally used on the trial of rebels in the reign of Charles II. Nailing the *luggs*

to the trone, (a post at the market place at which goods were weighed,) was a very common punishment in Scotland, prior to the eighteenth century. It was latterly only applied to gipsies or tinkers, who could be so used merely for being habit and repute "Egyptians."

Another very usual punishment at one period, was the chaining of evil-doers to the gateways of the parish churches, by an iron collar fastened with a padlock. This infamous and brutal punishment was more frequently administered at the instance of kirk sessions than of civil authorities. Sometimes the culprits were dressed in sackcloth, and passengers had a liberty of spitting upon individuals so unfortunately condemned to this species of pillory. The collars used on these occasions were called the "joug," (from *jugum*, a yoke,) and answered the same purpose as the stocks in England. Joug are now entirely abrogated; but fragments of the chains and collars are often to be seen at the doors of country kirks, where they remain as palpable evidence of that rigour exercised in former times by the Scottish clergy and their elders, in their outrageous zeal for purity in morals, which was dictated as much from mistaken views of the pastoral office as ignorance of human nature. One of these instruments may be seen, almost entire, at the entrance to Duddingstone church, within a mile of Edinburgh.

unv

at Duddingstone

SCOTTISH BANKING INSTITUTIONS.

Let us alone.

SHAKESPEARE.

THE Scotch have been deservedly celebrated as the most ingenious and successful bankers in the world ; and a sketch of the principles upon which their institutions in this branch of business are conducted, as well as a delineation of the causes of their continued prosperity, ought certainly to find a place among other distinguishing peculiarities in the moral topography of the country. That they have arrived at an astonishing degree of eminence in the process of banking, all must be willing to allow. They have unquestionably reared by far the most perfect and rational system of a paper currency ever invented ; and their institutions, strengthened by the experience of nearly a century and a half, while they command respect, attract the admiration and imitative faculties of all nations aiming at prosperity through the aid of representative paper money.

Most of the peculiar institutions of the Scotch have been generated from the force of particular circumstances, and it is very possible that they have sometimes succeeded in the ends of their establishment, when the same result would not follow their erection in many other territories. The nature and size of the country, the reflecting habits of the people, but above all, the poverty of the nation, have given a decided turn to the modes of action of the inhabitants, who have a

way of thinking and doing, which no other people have. Their great aim especially is to sustain the character of being wealthy, while perhaps they are labouring under serious difficulties; and the nation in its corporate capacity has precisely the same feeling. In the absence of real wealth, therefore, it has been driven to various honest expedients to keep on a level with its more wealthy neighbour; and to this cause alone have we to attribute in a great measure its success in processes of banking. Nevertheless, it is obvious that the measures which have been judiciously resorted to, for the purpose of accomplishing a thorough paper currency in Scotland, may be adopted with propriety by other nations; but before they attempt to do so, we would recommend a patient investigation into some other accessory institutions in the country, which contribute to give strength and stability to the system of banking.

Prior to the year 1695, there were no banks in Scotland. The business of storing, exchanging, and lending money, was transacted by a few rich and responsible tradesmen belonging principally to Edinburgh. The working goldsmiths, by their connexion with the precious metals, naturally took a prominent part in negotiations of this description; and among whom, George Heriot furnishes a notable example. The booths of these individuals were, in general, either situated in the Parliament Square, or in and about the dark eddy corners of the West Bow; and such shops were the daily resort of persons desirous of exchanging Scots for foreign coins, or of borrowers and lenders. These money merchants took high per-centages on their accommodations, and in many instances, laid the foundation of wealthy and noble families; the necessities of the Stuarts often compelling them to sell patents of peerage and baronetage to men who had the vanity to desire, and the money to purchase, titles. The transactions of such rude bankers, were, however, on no regular plan, and were quite incapable of meeting the demands of traders, when commerce began to vivify shortly after the revolution. The nation—at least the

sensible part of it—saw, and appreciated the dawn of prosperity; and, in the absence of real capital, be-thought it of the device of erecting a national bank.

The project of a bank, to supersede the dear and irregular loans of the private bankers, as well as to afford security in depositing, was hailed with acclamation by the most patriotic land-owners and citizens; and, in 1695, the scheme of its constitution being submitted to William, Prince of Orange, then on the throne, and the Scottish parliament, it was sanctioned by both, and the bank was instituted by a charter of incorporation, under the designation of the Bank of Scotland. The capital of the bank was named at L. 1,200,000 Scots, or L. 100,000 Sterling,—which would be reckoned a very small sum in modern times. The amount was raised by shares differing in extent, from L. 1000 Scots, or L. 83:6:8 Sterling, to L. 20,000 Scots. In 1774, the amount of stock was extended to L. 200,000 Sterling. Now it is raised to a million and a half sterling, and it will shortly be raised to two millions. The shares still remain at L. 83:6:8. This bank did not issue notes for nine years after its institution; the first appearing in 1704.

The Bank of Scotland continued to be the only bank worthy of notice in the country, till the year 1727, when a new establishment was constituted, under the title of the Royal Bank of Scotland. The chief moving cause of the new institution was this:—A great part of the money, called the equivalent, which had been paid by the English government at the Union to the Scotch, as a compensation for the loss they were supposed to sustain by their connexion with the English, to the amount of L. 248,550, was entrusted to a body of men, for appropriation to beneficial purposes, who were incorporated into a company. The members of this association, considering that the institution of a new bank would be serviceable both to the public and themselves, petitioned for, and received, another charter, constituting them into a body-corporate under the above designation. It seems that the whole of the

equivalent-money they had in their possession at the time, was not deposited as stock; the capital which the bank began with being no more than L. 111,000, and which was, in 1738, limited to L. 150,000: nevertheless, by having the command of money at the time, and being possessed by an unaccountable animosity against the Bank of Scotland, or the *auld bank*, as it was familiarly termed, this young and fresh association began by taking the most active means to ruin its unoffending neighbour. It purchased its notes wheresoever they could be found, and brought it into such a state of perplexity, that, in 1730, it was compelled to issue new L. 5 notes, payable on demand, or six months after being presented, with interest at five per cent. In 1732, it issued L. 1 notes on the same terms. Such a course of procedure led to much discord at the time. In the meanwhile, there had sprung up many private banking companies having no capital, who issued notes for very small sums, and who adopted the same expedient, of withholding payment for six months, at their own option; and but for some timely correctives, much mischief would have ensued. All unfair opposition was at length quashed between the two chartered companies; and by subsequent grants, the capital of the Royal Bank has been extended to the same as that of the Bank of Scotland; and it is understood that it will also soon be increased to two millions.

These two establishments engrossed all the respectable banking business in the country, till the year 1746, when a new association was formed, and incorporated by royal charter, with the title of the British Linen Company. The peculiarity in the designation of this banking house deserves a word of explanation. Hitherto every species of manufactures in Scotland had been at a very low ebb, notwithstanding of the efforts of the trustees for their encouragement; and in an especial manner, the manufacture of linens, for which the country was well adapted, was hardly understood. While the useful arts were thus in a low condition, the people had not capital to embark in trade; and

what was fully as unfortunate, they had not a taste for industry. Between brooding over the exploits of their forefathers, and the disturbances caused by more recent political turmoils, they had not much time to spare for active employment. The government and many wealthy personages saw, and were sorry for, such a state of affairs, and endeavoured to rouse the nation from its unprofitable torpor. In order to encourage the manufacture of linen, which was deemed the best article to begin with, a number of gentlemen were incorporated under the afore-mentioned title, with power to raise a capital by shares, to the extent of L. 100,000. The company itself did not take a part in the manufacturing of cloth; it only promoted it by others, through the aid of loans. Its salutary advances in this way, soon wrought a great change among the working classes, and powerfully assisted to raise the character of Scottish linens to that pitch they have now acquired. By and bye, the company gradually fell into the course of common banking business, and now occupies a station at the head of these institutions. From L. 100,000, the capital of this bank has been raised to L. 500,000, where it has long remained stationary. Why it should continue so comparatively small, we have never heard explained. By very adroit management, it carries on a very great deal of business, and possesses the highest credit of any bank in Scotland. It is understood to have been exceedingly fortunate in purchasing government stock at very fortunate periods,—a practice which, it is well known, has often injured other less wise, or less fortunate, Scottish banks. For many years its stock has been of a much higher value than that of any other company in the kingdom.*

* One of the most daring robberies and murders ever committed in Scotland, was perpetrated on the person of a porter of this bank. Early in the month of November 1806, this unfortunate individual, named William Begbie, while loaded with a bag, containing bank notes to the amount of L. 5000, which he was bringing from an agency in Leith; and while going through the entry from the street to the office, then in Tweeddale's court, foot of the High Street, and

These are still the only chartered banks ; and they, in general, are allowed to take precedence of others erected in the subsequent part of last, and in the present, century, either in Edinburgh or in the provinces. Of the unchartered banks, there are two kinds : one constituted by an extensive co-partnery of share-holders, on the principles of joint-stock companies ; and another, composed of only a few wealthy partners. Among these, the bank of Sir William Forbes and Company stands prominent for its age and respectability. Of the former description, there are at present thirty-two ; but the institution of a new bank at Glasgow adds another to the number : and of the latter, there are five. All the banks issue notes, with the exception of three of the last named, which act more as bill-broking institutions than banking-houses.

The constitution and internal arrangements of the different Scottish banks are by no means alike ; yet in general features they are the same, and in many cases the only difference lies in the official designations of the functionaries. All the chief banks, whether chartered or not, have a governor, deputy-governor, a body of ordinary and extraordinary directors, a treasurer, or manager, a secretary, cashiers, and other subordinate officers, distinct lists of whom will be found in the almanack. Besides these, in the share-holding banks, agreeable to bond of co-partnery, there are, in

on the verge of a great thoroughfare, was, in an instant of time, stabbed to the heart, and robbed of the money he was carrying. Never was there an assassination so rapidly and secretly accomplished. In defiance of every effort taken to discover the murderer, till this hour it is a matter of conjecture who did the deed. So careful had he been to prevent detection from any marks of blood on his clothes, that between the blade and the haft of the knife, he had fixed a broad piece of thick paper as a shield, and the instrument was not withdrawn from the wound. An event of so mysterious and so atrocious a nature, created a dreadful sensation at the time in and about Edinburgh, and is yet far from being forgot. Part of the money was in large notes, which the robber having been afraid to pass, he deposited them in the hole of an old wall at the foot of Broughton Street, where they were afterwards found.

most instances, four officials, with the title and duties of trustees, in whose name purchases are made, and other matters of moment transacted. All functionaries of a directorial capacity, are nominated by the holders of shares, and they generally retire in rotation; the inferior officers are in the nomination of the directors and managers.* We need hardly explain, that the office of governor and deputy-governor are little else than honorary, these being ordinarily peers or baronets, whose names give the institutions a dignified look; and who, by being share-holders to a specified extent, are bound to promote the interests of the associations in any way it may be found necessary.

The number of partners in these institutions is very variable, and depends generally on the price of the

* Directors are paid daily fees for attendance, and their office is often keenly contested. Parties of six or more meet by rotation, and sit as diurnal councils on the affairs of the bank. It is generally arranged that those who attend divide the fees on the table by a certain hour. As most of the directors are retired merchants, the duties are not felt burdensome. An anecdote is related of the late Lord *****, one of the senators of the college of justice, who was so zealous a director in one of the banks, that he seldom lost an opportunity of being present at the board on his appointed days, and has frequently been known to stop his judicial proceedings in the court, throw aside his official robes, and step across the way to the banking-house, where he generally contrived to be present by the critical hour of division. This haunting of the bank about one o'clock, at last settled into a mania, and it would have been almost as impossible to lock up a ghost at cock-crowing, as to keep his lordship from breaking away to the bank, as soon as the quarter signal was struck by the clock of St Giles. On one occasion he had to attend a funeral from the western part of the new town, to one of the burying-grounds in the southern part of the city, which, though unfortunately interfering with his bank duties, he was necessitated to countenance with his presence. He, however, ingeniously contrived to save both his character and his fees at the same time. As the procession moved slowly down Prince's Street, he ordered his coachman to extricate his carriage from the press; and then, driving along the mound to the bank, he stepped into the council-room, where luckily no other director had appeared,—signed the minute,—swept the whole of the fees into his pocket,—drove off,—and with the utmost gravity, fell again into the line of procession as it crossed the High Street on its way to the south.

shares. It sometimes occurs, that a provision is made that one person shall hold only a limited number of shares, and the votes of holders are regulated by a graduated scale. It is very difficult to say what may be the exact number of share-holders in any of the banks, as it must vary continually by the transfer of stock from one to many hands, or the reverse. It may give an idea of the number, however, when we state, that some time ago there were 1238 partners in the National Bank,—500 in the Commercial Bank,—446 in the Aberdeen Town and County Bank,—and that in three of the remaining banks, the number exceeded 100,—in six it varied from 20 to 100,—and in seventeen was below 20. The number, we have said, depends generally on the value of the shares; but this is scarcely correct, as it hinges more upon the sum demanded at first on each share.

It seems to have been a principle in Scottish banking from the very first, to institute shares of a certain amount, and only to call up portions of the same as is felt to be necessary or convenient. In the Bank of Scotland, and the other two chartered banks, the whole amount of the shares is paid up. But this is far from being the case with most others. With respect to the Commercial Bank, in which the nominal value of the shares is L. 500, a fifth part or L. 100 per share is paid in; and of the National Bank shares of L. 100 each, L. 10 is only paid. The amount of paid-in capital, in general, bears no feasible proportion to the nominal capital. It hence follows that, but for some subsidiary checks, a danger would ensue of lowering the respectability of the holders of shares. In the new Union Bank at Glasgow, the capital is two millions, raised by shares of L. 200 in value; and it is a provision, that every person taking a share shall in the first instance pay up L. 50.

In the greater proportion of Scottish banking institutions, the shares have risen much beyond par. The *original* holders of stock, therefore, or their successors by inheritance, draw large profits from their shares;

and in many instances, they gain from seven to nine per cent. on their sunk capital. When shares have been acquired by purchase in recent times, the percentage, by reason of the heavy premiums paid, may be stated at three and a half per cent. or thereby. The amount of premium paid in purchasing shares has been known to be immense. In 1825, when the mania for holding shares in companies was at its height, the L. 100 shares of the British Linen Company sold for no less than L. 325,—the L. 83: 6: 8 shares of the Bank of Scotland for L. 240,—the L. 100 (paid in) shares of the Commercial Bank for L. 227,—and the L. 100 shares of the Royal Bank for L. 235. The extravagant prices thus paid for Scottish bank stock, then and at other times, may be chiefly ascribed to public caprice, and a spirit of speculation, in the same way as we account for the rise and fall in the government funds, for it is not always that purchasers are correct in imagining that the banks are particularly prosperous at certain times. At present, the premiums paid are much lower than those just quoted. By the latest list of the prices of Scottish stock, it appears that the British Linen Company shares are selling for L. 240,—those of the Bank of Scotland for L. 165,—those of the Commercial Bank, (instituted 1810,) for L. 180,—and those of the Royal Bank for L. 195. The L. 10 (paid in) shares of the National Bank, (instituted 1824,) have advanced to L. 14 or thereby.*

Dividends of the profits of Scottish banks are paid twice a year, after public advertisement has been made. But besides these half-yearly percentages, the partners

* For the freshest information relative to the prices of Scottish bank, and other joint company, stock, we refer to the accredited list of Messrs. French and Company, stock-brokers, Edinburgh, published monthly in one of the metropolitan newspapers, as well as subjoined to Wettenhall's list, stock exchange, London. The business of a stock broker originated in this city in the latter part of 1824, and there are now four offices where business of this kind is daily transacted. Out of thirty-one Scottish joint stock companies of 1824-5, only five or six have succeeded.

or share-holders in most banks receive bonuses at intervals of from seven to ten years, generally to the amount of from L. 10 to L. 20 per share. Such monies are raised by the accumulation of a sinking fund, laid apart after the interest or percentage has been declared annually, in order to meet runs should such occur; and as it is rarely that these funds are acted upon, they are, of course, dissipated either in whole or part at approved periods. We believe new sinking funds are always a certain length advanced before the old ones are molested. It is deemed a knack on the part of merchants and others, to be so well acquainted with the signs of the times as to know when these emissions are to take place, for the purpose of buying in, provided they will be allowed to do so. The directors are the only persons, who, by regulating these bonuses, know when they are to be given, and have therefore better opportunities of making good purchases than others.

No share-holders in any bank can dispose of his stock until it has been first offered to the bank in its corporate capacity, as represented by the trustees. The broker employed to sell shares must in all cases primarily offer them to the bank, and if it do not accept of them at the market price, the broker is told that he may dispose of them otherwise, which, when he does, the transfer is not complete until the name of the new owner is registered in the bank books. It may perhaps be apprehended, that such a procedure would have the effect of concentrating shares in the hands of a small number of holders; but it is not perceived that that follows, for if the bank be desirous of keeping good credit with the public, it must act on fair business principles. The real use of a provision of this nature, is for the sake of security against injury by the seller. To make this sufficiently understood, it has to be explained, that it is customary in forming new banks in Scotland, to offer subscribers for shares a liberty of borrowing money by cash account to the extent of a half or third of the capital they pay in;

and there is at the same time a sort of implied promise, that they will get bills occasionally discounted to the amount of the remainder.

It is extremely probable that many are led to buy shares in banking institutions who could not well spare the whole price for any length of time ; but it has the effect of procuring at once a number of good customers, who take care to keep the notes which are produced, in circulation. Besides, the bank never can lose by lending these people money, because it has their paid-in stock in security, and on this account, when they wish to sell out, by being made aware of their intention, it can thereby refuse to permit the sale till all debts which may be due are paid to the establishment. Before the license is given to sell, all their accounts must be balanced, and every bill they have had negotiated by the bank, as drawers, acceptors, or indorsers, must be honoured.

The business done by the Scottish banking-houses, is prodigiously increased by the institution of branches in the provincial and country towns. From those banks already noticed, which are situated in Edinburgh, and from two or three of the chief provincial banks, there were altogether deputed not long since about one hundred and forty branches, and this number is undergoing a regular increase. These subsidiary establishments are to be found in every town of any note, from the borders to the most northern point of Scotland. They are conducted by resident wealthy or responsible merchants and others, who give securities for intromissions, and are subjected to a very rigorous supervision by inspectors who are continually travelling about for this purpose. By a mutual agreement between the Bank of Scotland and the Royal Bank, rivalry is prevented in agencies, by the former being conceded the minor towns, while the latter takes the city of Glasgow. The branch of the Royal Bank at that place, it has been long understood, does much more business than the parent establishment ; but there can be little doubt that the institution of the

Union Bank there will greatly injure its issues in that quarter. The number of branches belonging to different houses, varies according to the enterprise or capital of the companies. The Bank of Scotland has seventeen; the British Linen Company twenty-eight; the Commercial Bank thirty; and the National Bank eighteen. The conductors of the branch banks give no loans or negotiate any heavy transactions without consulting with their masters. They keep beside them at all times a competent supply of notes, with which, on most occasions, they may discount bills freely, according to their own judgment. The branches of the Edinburgh banks in Leith, we believe, send their bills daily to Edinburgh to be examined by the directors. In many of those towns in which the banks have no branches, they have appointed agents on whom bills are negotiated, and therefore the ramification of bank business is on a very extended scale.

The expressed value of the notes put forth by the Scottish banks, is for the greater part L. 1, and though notes for five, ten, twenty, and a hundred pounds are issued, they are seldom long in circulation, and are far less frequently seen. The notes of the Commercial Bank, the National Bank, the Bank of Scotland, the Royal Bank, the British Linen Company, and Sir William Forbes and Company, enjoy the greatest circulation, and in a greater relative proportion, we would suppose, to their priority in the above order. They are dissipated over every county; and it is seldom that the notes of provincial banks are taken so readily from their place of issuing: Provincial bank notes are at least not common in the metropolis, and their circulation is for the most part of a local nature; the community at large preferring the notes of Edinburgh Bankers. All notes, (with the exception of those of one provincial bank, which are made payable at the office or in London,) are declared to be payable *on demand* at the office from whence they are issued. It is not expressed, that though issued by the branches, they will be cashed there; yet, in practice, the agents take them in, and

we never heard of an instance of the public having suffered by this provision, which is not commonly adverted to. It is ordained, that Scottish bank notes shall not be re-issued after they are three years old, but such a regulation cannot be said to be acted upon, for it would appear, that they are sent out as long as they are decently clean in appearance.* Each of the one pound notes costs about eight-pence, five pence of which sum go for the stamp. Almost all the modern notes are produced from plates of hardened steel, and of such peculiar and intricate devices, that forgery cannot be attempted with success, or remain long undetected. So little is forgery known, and in general so readily can it be recognized by the inferiority of workmanship, that nobody is imposed upon but very simple or careless persons. In this respect, the Scotch have great confidence in notes of their own country; while, from the difficulty of knowing good from bad Bank of England notes, and the number of forgeries thereon, they have a great repugnance to accept of them in payments. Guinea notes were some time since common. They are now undergoing a gradual suppression. They are troublesome to the public, and have only been kept in circulation as fees for professional persons. Pound notes or sovereigns will, in all probability, soon be considered as equivalent in such payments.

The business done at the Scottish banks is of different kinds. They receive deposits of money in as low sums as L.10, for which they give a stated interest, which at present is two per cent.; discount bills at a per cent. and a half higher than the interest they

* Scottish bank notes for L.1, are often long in circulation before they are brought back to the offices. Notes ten years old are far from being uncommon. Sometimes, when hoarded, they will remain fifty years out, to the great advantage of the bank. Such aged notes are mostly those of the Bank of Scotland. Occasionally very old Scottish bank notes are brought from America, whither they had been unluckily carried by settlers half a century ago, and carefully preserved till they could be sent home with perfect safety.

pay; lend money occasionally on house property; advance large sums at interest for the promotion of great public works; sell bills of exchange on London and other places;* and negotiate cash accounts: of these various departments none are peculiar to Scotland, or worthy of exposition, but the last mentioned.

By a cash account is signified a process, whereby an individual, on entering into an arrangement with a bank, is entitled to draw out sums as required to a stipulated amount; and by an implied condition to make deposits at his convenience towards the liquidation of the same. Practices of this nature arose out of the wants of tradesmen, and the general impoverished condition of the country. Some of our readers may perhaps remember of a scheme projected by Benjamin Franklin, for the institution of a process of giving small loans to industrious but indigent young men beginning business, with the obligation to pay them back at stated times with interest. This philanthropic idea, which arose in the mind of the American philosopher, from his own wants in the outset of his career as a printer, has been in some measure acted upon in Scotland. The process was in existence for more than half a century prior to the period at which Franklin wrote, though he certainly was not aware of the fact, otherwise he would have warmly patronized its introduction into Philadelphia, and other American towns.

It is now a hundred and one years since the first cash credit was instituted; and it is related that the

* All the chief Scotch banks have large deposits in the hands of London bankers, (or money in the funds on which these bankers can operate,) to meet the draughts they make upon them. At present, the exchange is against Scotland, as it always has been less or more; and in remitting money by bill to London, the interest of twenty days at four per cent. is charged as exchange, independent of the stamp. The stamp may be saved by depositing the money, and ordering the banker to communicate intelligence to his agent. The amount of exchange against Scotland is undergoing a gradual and steady diminution, which is a sure sign of the increasing prosperity of the country.

custom arose in the following accidental manner. A metropolitan shopkeeper, in the year 1729, found himself at times in the possession of more than a sufficient supply of ready money to carry on his trade, the overplus of which he consigned to the care of the neighbouring bank. But on other occasions, by reason of the length of the credits given to his customers, his money became so scarce, that after exhausting his bank deposits, he still felt himself in difficulties. Several dilemmas of this kind having occurred, and being averse to resort to the insecure practice of accommodation bills, he was prompted to make a proposal of a novel nature to the bank; to the effect that, if it would accommodate him in straits with small loans, he would always shortly afterwards make up such debits, and that the parties should come to a balancing of accounts at periodical intervals. It seems this novel plan was acceded to. A cash credit, or liberty to draw to a certain extent, was instituted under securities; and thus originated a system which has been of immense benefit to bankers and traders, and is now followed over the whole of Scotland.

Cash credits are guaranteed by two sufficient securities, or the applicants give infestment to heritable property in caution of the *contingent* debt—a special act of parliament having been passed to allow this to be done—and when any such debt is liquidated the deed is cancelled. The expense of expediting a cash credit varies according to the amount of the desired loan. One for L. 500 may be stated at about L. 15. The deed requires no renewal; and although attended with a heavy outlay at first, the price is perhaps not more than what would soon be swallowed up by stamps for bills. Besides, this mode of borrowing is every way more secure than the discounting of bills; while the circumstance of commanding ready money to a certain extent at all times, gives a trader a great advantage in settling for his purchases. At the end of every six, and in some cases twelve, months, calculations are made of entries and debits; the interest for

and against the bank—the one being a per cent. higher than the other—is added and balanced, and an account being then rendered, the balance, if in favour of the bank, is either paid up, or remains against the debtor at interest to his new account. In these cash credits, the borrower is always at the mercy of the bank, which can call upon him at any time to balance his account, or by his failing to do so, have recourse upon his securities.

In making inquiries into these matters, we have been told by bankers that they never propose to furnish *all* the capital required in starting businesses, and that they endeavour to exercise a degree of discrimination in trusting young men or others with loans in the way we describe. It is their desire, say they, only to assist insufficient capitals; and it is wished that the borrower should be continually taking out and putting in money, by which means the notes of other establishments are received, and those of their own pushed forth. The nature of the businesses of persons desiring cash credits, are, it is said, likewise taken into consideration; a preference being generally given to those who have opportunities of disseminating one pound notes as widely as possible. The character, too, of the applicant, it has been understood, will influence the institution of the credit.

It appears to us that these allegations are partly erroneous. Nobody can be so unwise as seriously to imagine, that any thing like philanthropy or patriotism governs the actions of bankers as well as of other tradesmen. We take it that the character of the applicant, or the nature of his business, has very little to do with these negotiations. The business of Scottish banks is conducted on very plain and exceedingly secure principles; and like every other trade, is entirely regulated by a pure selfishness, and the prospect of profits. It may therefore be stated, that if the offered securities be good, and the bank be inclined to extend its issues at the time, it is seldom that objections will be started on other grounds, and only in this respect

would the system of cash credits have been disapproved of by Franklin. The belief that banks give cash credits partly from what are called friendly motives, may have been fostered by the circumstance of Scottish bankers frequently aiding farmers and others in the country with loans over house property, and assistance in other modes, in order, as it is guessed, to gain political and local ascendancies. In this way, some bankers have nearly whole burgh towns, directly or indirectly under bond; and were majorities in elections, and influence in county matters anatomized, no small share of their elementary properties would, in many cases, we are convinced, be to be traced to bank loans. Yet though, in reference to political freedom, such measures be injurious, it is very certain that the credits have done much good to country places, and any mischief arising from this source, will necessarily decrease in virulence as the kingdom progresses in the acquisition of solid wealth.

Since 1729, cash credits have increased to an extent hardly credible. In 1826, it was computed that there were TEN THOUSAND in Scotland, varying in amount from L.100 to L.5000 each; but averaging from L.200 to L.500. Though originally designed for mercantile persons, they are now operated upon by farmers, manufacturers, house builders, miners, lawyers, and all classes of traders and shopkeepers. From 1826, it is extremely probable, that, instead of decreasing, they have increased a thousand or two more.

The remarkable fact of so many persons trading on borrowed capital, in such a limited country as Scotland, can give but an inadequate notion of the superficiality of wealth, and the hollowness of the apparent riches, or easy circumstances, of many individuals in this country. It is one of the distinguishing characteristics of the Scotch, that they seldom follow the trading occupations of their fathers, however profitable they may have been. All look towards higher professions, and the consequence is, that those who set

out in any given business, generally do so on slender means, and often entirely without capital of their own. As the nation settles down into commercial pursuits, such a peculiar practice may die away; but in the mean time it is vivid, and there is therefore a universal struggle to rise in worldly circumstances or appearances. For this and other reasons, the number of those who must depend on credits, either of money or goods, is beyond all power of calculation. Computing those who have cash accounts; who wholly or partly depend on the discount of bills or long running credits; who are obliged to mortgage house and landed property; who are driven to the expedient of borrowing money on policies of insurance; who are insolvent from the want of these aids; together with those who are actual paupers; and remembering the indirect support given by loans to workmen and their families, on whom again small shopkeepers and their families have mostly to depend; it is not going too far to say, that at least one half of the whole population in Scotland is indebted to extraneous aid for daily bread. This may be an unpalatable truth; but it is one which is the better for being told, and shews the urgent necessity for supporting the banking institutions. So complicated is the curious mechanism of credit, which is interwoven throughout the whole fabric of society, that were the thick veil torn aside, which is at present thrown over its various workings, a scene of spectral pecuniary capacity would be exhibited, which, while it would alarm the political economist, would horrify and astonish those who usually look no deeper than the surface of affairs. But though paper money has been decidedly the moving cause of such a result, it must nevertheless not be viewed in the light of an instrument of evil; and we have no doubt, that by adhering to a certain mode of management, the banks will eventually be the means of instituting a solid for a specious wealth.

No one can have a just conception of the extraordinary degree of stability of the Scottish banks, and the

collateral security of the public against the danger of paper issues, unless he be made acquainted with the provisions of the law relative to banking. Previous to the year 1765, the banks were bound by no regular statutes, and their mode of management resembled that in England a few years since. In that year an act of parliament was passed, which is still considered the magna charta of Scottish banking. Subsequent acts, especially that of Geo. IV. c. 57, as well as deliverances of the supreme courts, have strengthened and extended the code. Among other prominent provisions of the statutes, it is ordained, that all notes shall be payable on demand, and their circulation is not limited to any district. It is defined, that share-holders in chartered companies are only responsible in case of deficiencies to the amount of their stock; and that the stock of such companies cannot be enlarged without a royal or parliamentary charter. As it is understood that such associations do not issue beyond what they can readily retire by their capital, little danger can be anticipated from the limited responsibility of the partners. With relation to joint stock and other companies, a very different law prevails. As these associations can state their capital at any sum, and increase it at any time it may be found essential to do so, the share-holders are not only bound to make up deficiencies to the amount of their stock, but are liable to the last farthing of their fortune. Nay, more, should the company become bankrupt, the property of any individual partner may be singled out and seized by the holders of the paper. The managers, it is true, are the functionaries against whom are laid the prosecutions against the banks, and who are also the prosecutors for their interest; but this is only a conventional arrangement, which may be only legally correct in minor matters, for in the event of a bank becoming insolvent, the heritable and moveable properties, and persons of the partners, conjunctly and severally, become subject to sequestration and seizure till the last note be cashed. Although, by a provision of this na-

ture, the share-holders of unchartered companies appear to stand in a more dangerous situation than those who are incorporated, still, in practice, they are nearly as safe ; because, among these joint stock associations, it is generally a regulation that the copartnery shall be dissolved when it is discovered that it is not clearing a certain profit, and especially when it has the appearance of losing ground.

It cannot be alleged, that the share-holders in modern banking associations are all, or even to any considerable extent, proprietors of heritable estates, which in Great Britain is considered the only species of secure property, yet a great number of them are landowners, and should failures take place, no ultimate disadvantage would accrue to the public. As long as the laws of England, touching the rights of heritable property, and especially the system of registration, remain unaltered for the better, it would be quite in vain to institute banks in that country, with the expectation of giving them that degree of security so characteristic of Scottish banking associations. In this country, as formerly mentioned, all unentailed heritable property, whether freehold or copy-hold, can be taken in satisfaction for debt, simultaneously with the moveable property and person of the debtor ; but in England, creditors have no such powers. Further, by having the rights and mortgages of the said heritable property registered in books at Edinburgh, it can soon be discovered who is a real, and who is only an apparent, landowner. On this account, the community is never duped by the institution of banks, by men of no real property. It is allowed that the laws of strict entail very much lessen the security offered by men of landed property, though it has never been found in banking that any actual injury has been sustained from these absurd restrictions ; and as it is understood that such will soon be removed, no fear need be entertained on that score.

Other causes, not of a legal character, conspire to render the system of Scottish banking perfect. A

great share of the extraordinary success of the banks, and a preservation of the value of their notes, can, we think, be traced to the circumscribed limits of the country. A kingdom is often the better for being small, and may be ruined by extending its boundaries. When not of large extent, its internal government can be lucidly and easily conducted, and its institutions brought to perfection in their arrangements. Besides, being a small compact kingdom, and obnoxious to these advantages, Scotland has been lucky in not being tormented with the toils and schemes of a supreme government for a hundred and fifty years, but has been left to mature its local peculiar institutions in a way deemed most advantageous to the country. In no respect is the truth of this observation more perceptible than when applied to banking.

By reason of this condensed nature of Scotland, a ramification of intelligence is created and preserved throughout the whole of society, altogether unknown in England, whereby the character, the wealth, and the conduct of the partners or directors of each bank, are fully made known to the rest. All seek, and all find, a knowledge of the management of each other. All are mutually on the watch; and symptoms of over issues or other improprieties are noticed, and spread with amazing celerity. Moreover, the notes of the metropolitan, and in some cases of the provincial banks, by finding their way into banks to which they do not belong, and an arrangement of a convenient nature being entered into, exchanges of the notes of each other are regularly made between the banks once or twice a-week. These interchanges are on a very systematic plan, and as country banks have agents in cities, and *vice versa*, notes are thus passed regularly back to their owners. When the interchange is against one of the parties, the deficiency is made up by cash, bank of England notes, draughts on London agents, or credit at interest.*

* Strangers or others will at all times receive gold for notes at

It has occasionally been alleged by the enemies of the paper currency of Scotland, that the stability of the banks in past times is not to be attributed so much to those salutary regulations, which we have endeavoured to describe, as to a certain spirit which actuates the whole to support each other in the case of runs; and that by such procedure they may push their issues too far, and yet be able to withstand the effects of public panics. To assertions of this nature, we would not be so disingenuous as to deny, that there exists throughout the whole of the banks a strong *esprit du corps*, which undoubtedly binds them to sustain the general good faith reposed in their transactions. Yet, it cannot with propriety be maintained that this is a dangerous characteristic. It is surely for the public benefit, in the case of runs, that the banks should assist each other with the loan of their own notes, or with cash. In one or two instances, such aid has been given with advantage to all parties. As no human reasoning can prevent the community from sometimes acting from a groundless alarm, this peculiarity neutralizes its influence. No bank ever kept or will keep ready cash to retire *all* its notes, if presented in a lump. In the event, therefore, of a run on a certain bank, the immediate aid which is given by a neighbour at once quashes the panic, and the public confidence is re-confirmed. It is exceedingly proper that the banks should assist each other on an emergency in this way, for if aid in time of need can be calculated on, they will be permitted to keep only a small stock of dead cash on hand, and be consequently enabled to do business on easier terms, as well as give better profits to proprietors. Such mutual aid only

any of the banks; but they will not so easily procure Bank of England notes, which, if freely given, the sale of bills on London would be injured. None of the banks keep a large stock of gold, as this would serve no good purpose. Its transit from London is expensive, and that alone forms a good reason why it cannot be well adopted as the circulating medium of Scotland. It may here be noticed, that the Scottish banks adhere to the same holidays as those in England.

gives the banks, which are run upon, a short time in which to call up their unpaid-in capital, or to sell out their government stock, or to take other necessary measures to fortify their credit.

As for the possibility of this mutual assistance becoming injurious, on that great scale anticipated by alarmists, it is not worthy of deliberate refutation. Those who urge such a plea, we are inclined to think, must be ignorant of the secret qualities of the individual banking institutions. Notwithstanding of the very vigorous *esprit du corps*, which induces a coalition of bankers when the general interests of their community are attacked, the various banking houses, as above mentioned, maintain too beneficial a jealousy of the conduct and affairs of each other to wink at mutual improprieties. It is perhaps not adverted to, or comprehended by strangers to those institutions, that most of the banks in Scotland have distinct strongly marked characters. There are banks in the proprietary of, and chiefly engaged in transacting business with, the aristocracy or landed gentry, while others are more in connexion with the mercantile and trading classes. In one bank will be seen the bustle of a retail shop, and in another the quiescence of a drawing room. While the functionaries of one institution are gruff and unaccommodating, in another they have the manners and polish of gentlemen. Some houses are liberal, both in payment of officials, and in doing business with the public, and others in these respects are narrow-minded and mean.* Occasionally banks have a political bias, according to the tone of mind of the proprietors. One is a fierce tory, and on the slightest commotion in the country, the whole of its functionaries, from the partners, down to the porter who sweeps out the office, will fly to arms and uniforms, out of zeal for the safety of the constitution. In others there is less of this spirit, and in some there is a very distinguishable leaven of whiggism. There is, in short, no end to the peculiar traits of character, and modes

* The custom of giving Christmas boxes to bankers' clerks, so common in London, is unknown in Scotland.

of doing business in Scottish banks. Between most of the houses, there is a separation of interests, and a fair competition in trade. Unless, therefore, when called upon to act defensively in a body, they do not appear to be possessed of that species of amity which the opponents of the paper currency have frequently alluded to.

Sir Walter Scott, under the fictitious designation of Sir Malachi Malagrowther, in his letters on the currency, describes the practice of weekly exchanges as one of the most beautiful peculiarities in Scottish banking. That distinguished writer, however, lays rather too much stress on that usage, and gives occasion for sneering to the opponents of the system. Excellent as exchanges are, such practices are not peculiarly Scottish; and they have not much influence on the issues: The interchange of notes has, as we have found on investigation, been always in use in England, even in parts of the country which suffered most by paper money; and it is very obvious that the custom, beneficial as it is in some respects, is no check whatever upon over issues in the aggregate. It only restrains an over issue by particular establishments, and keeps all on a tolerably fair level; because, if all, or the principal, banks go on simultaneously in their issues—as they in general must do from the effects of trade—the custom of exchanging is of no avail; as it amounts only to the giving and taking of each other's notes.

The inquisition kept up by the banks on the conduct of each other, is paralleled by a similar degree of jealousy on the part of the public, whose scrutinies are more than overmatched by the incessant re-acting vigilance of the banks. The directorial managements are diligent in procuring authentic information regarding the credit, the connexions, or the behaviour of private persons in trade; and here again the existence of registers of heritable property is of great use. The banks do not communicate intelligence to each other, as that would be injurious both to themselves and the public; but they individually resort to means, by

which they become very seldom liable to a dead loss. As each establishment knows its own customers, and observes how payments are made, by referring to the bill book, and book of deposits, an understanding is gained of the degree of trust-worthiness of almost every individual. In cases of uncertainty, the banks—like merchants under similar circumstances—institute immediate inquiries in the neighbourhood or acquaintanceship of acceptors, indorsers, or drawers of bills. By these and other means, assisted by that power of discriminating character possessed so largely by the lowland Scotch, a system of espionage in all possible shapes is erected in the country, of which no one can have the slightest idea unless he devoted many years to its developement. For all these reasons, we question if banking in England could ever be brought to that perfection it has reached in Scotland. The density of population, the extent of the country, and the consequent ignorance which must obtain, in respect of the species of intelligence first pourtrayed, lead us to think it would not. To arrive at a resemblance in banking, and procure a similarly secure paper currency, England would at least require to be portioned into districts, which it is unlikely will ever be done.* Scotland was in a worse condition than Ireland now is, when it set up banking, and were the latter country not its own worst enemy, it would assiduously endeavour to follow its example so far as the nature of the country would permit.

Many inquirers into modes of banking in Scotland have had reason to be surprised how the establishments could possibly carry on so much business on so little paid-in capital. Herein consists one of the beauties in the system. It is an axiom in trade, that the more business which a single individual can transact

* The district bank recently instituted at Manchester in imitation of the Scotch banks, and placed under the management of a Scottish banker, approaches the nearest in its principles of action to those in this country.

on a small capital, the more profit is it to himself, and the more deserving is he of being characterized as an expert merchant. The same rule applies to banking. It is the merit of the Scottish banks, that though the amount of their paid-in capital be only half a million, they can safely trade or issue notes to the extent of their nominal capital, which may be three or four millions; because, in case of great emergencies, whose approach is always known, they can instantaneously call up the unpaid-up stock. Yet, this only half explains the circumstance. By offering interest for money lodged with them, they are made the depositaries of nearly all the money in the country not absolutely required to keep up the circulating medium. As soon as any one accumulates ten pounds, which are not required for immediate use, they are dispatched to a bank. No shop keeper retains money beside him, above that sum, for a single day, and among the higher classes it is uncommon to have large sums lying useless, and in danger of spoliation. By the institution of Savings Banks, which have met with much encouragement in Scotland, and are well suited to the habits of the people, many of the very lowest classes contribute their mite to swell out the quantity of money constantly flowing into the banks in the form of deposits or loans. Instead, therefore, of trading on their own stock, beyond what may be necessary to give steadiness to the balance of banking business, the banks very wisely use the deposits so made, which, with a very small exception, they can do at one and a half per cent. lower rate of interest than that which they would have to give to the shareholders for their unpaid-up stock.

Scottish bankers in this way become agents between lenders and borrowers, with this distinction, that they transmute the money they receive into their own paper, before giving it out, thereby securing two profits at once. By a procedure of this nature, the banks act as very serviceable money brokers. Were it not for the interest and the security they offer in becoming the

custodiers of money, it is more than probable, that persons who were overstocked with riches could not know where to place them to advantage. They might be disinclined to interfere in agricultural operations, or to sink their capital in trade, and as they might hesitate to buy government stock, their money would, in most cases, be laid past in profitless repose. But by lending it to a banker, who may be described as being endowed with the faculty of selecting those borrowers who are to make the best use of capital, the otherwise useless money is perhaps laid out in cultivating and sowing a field with grain, the produce of which in a few months will enable the borrower to pay the sum back with an interest both to the banker and original lender; and yet leave to himself five times as much more for the reward of his enterprize. By the inducements so held out to lenders and borrowers by the banks, who would act very differently if they were not allowed to transmute the money as it passed through their hands, a system of national usury is instituted, so complete in all its parts, that nothing is wanting to make it perfect.

The coalescing of wealth in heaps, as noticed under a former head, has been, and ever will be, the scourge of every nation advancing in civilization, and Scotland has not escaped such an unhappy occurrence. But it is very plain that banking operations, as here delineated, have retarded and very much modified so great an evil. The banks have been unquestionably active agents for behoof of those of the lower classes, who are struggling upwards. They have broken down, without diminishing, (*tanto uberius*,) the masses of wealth belonging to the higher classes, and scattered them abroad among the industrious poor, who have thence become rich in their turn, and capable of being equally serviceable to those who come after them in the race of prosperity. The Scotch have, in reality, reduced to practice that which was only dreamt of by Law and other projectors. They have caused inert masses of matter, such as landed estates, to be re-

presented by bits of paper, and made them to pass from hand to hand like shillings and sixpences, or to be carried about in a purse like a coin. Industry, skill, good faith, and every thing else known as the elements of a nation's wealth, have been personified in notes, and made to act in every possible manner for the national advantage. After accomplishing so extraordinary an action, he would certainly be of an atrabilious temperament, who would refuse to give the Scotch credit for their ingenuity. While the French, the English, and even the Americans, who boast of being trammelled by no old pernicious laws, have attempted, and failed, to rear a permanent and secure paper currency, the Scotch, aided by one or two statutes, have done so with ease. Yet, after all, they do not pretend to have been indebted to magic in the accomplishment of their designs. While most other nations, with the blind permission of their legislatures, have made their paper money the representative of nothing, or a shadowy vision of wealth, they have pursued a less daring, but a more honest and secure course, in simply investing their notes with the vicarious character of representatives of solid riches.

In comparing Scottish banking institutions with those in England, and considering the different manner in which paper money has been guided by the two nations, the uniform security of the former appears almost miraculous. From the first issue of the bank notes in 1704, to the year 1830, a single panic or general run has not occurred in Scotland, although, during at least two thirds of the intervening period, paper money has been used to the almost total exclusion of a gold currency. During the insurrections of 1715-45, and during the panic in England of 1793-97, and 1825, no perceptible difference took place in the demand of specie for notes. When the Bank of England was reduced to the miserable expedient of protracting cash payments by laying down sixpences, none of the banks in this country experienced any excess of demand for gold or silver. Partial and very

temporary runs have assuredly been felt from the effects of short-lived slander or mistaken notions, which have invariably been readily quashed; but in the course of a hundred and twenty-six years, there have only been two cases of banks failing to pay twenty shillings a pound, (they paid 10s.) and four, in which, after a short suspension of payments, all demands were liquidated. In two of the latter the notes were accepted almost immediately at other banks of the highest credit. These banks were all provincial, and had been injured by mismanagement. Their failure or stoppage, with the exceptions we mention, did not put the public to any loss, but this was on the ruin of the shareholders, many of whom were reduced from affluence to poverty.

It may safely be asserted, that the above cases of insolvency of Scottish banks, have not in the smallest degree shaken the public confidence in the good character of a paper currency, and can found no plea for traducing the institutions now under review. At this present moment, the community feels, as it always has felt, that a bank note is merely a convenient representative of its expressed value; and that this value can at all times be procured on demand. When such are the conventional ideas of paper money, and when the supposition of its real value is just, the exchange of notes for gold ceases to be an object of any consequence. In as far as the greater part of mankind have come to an understanding that a piece of yellow metal is worth a certain price, so have the Scotch come to an agreement to consider a bit of paper, of a particular kind, capable of bringing a price fully as high; and it is difficult to see why such a notion should be disconcerted; for there is as much rationality in the one idea as the other. The note in Scotland is even liked better than a sovereign, which, when offered, is sometimes looked upon with suspicion as to its quality. A good metropolitan bank note is always preferred: It is easier carried or sent by letter; and in case of loss, can more easily be recovered than a gold piece.

The propriety of permitting the existence of notes of so low a value as one pound in Scotland, has been often canvassed by ministers, who, in judging of the effects of the most recent panics, were actuated by no good will to the continuance of paper money. In 1826, some of the more intelligent Scottish bankers were examined before a committee of the house of commons,* and the result of the inquiries then made was, that the bank issues should remain unmolested in this country. Few questions, so resolvable by experience, have been so keenly agitated as this; and it has been deemed by many an act of injustice to permit a free paper issue in Scotland, while the English are prohibited from having recourse to the like expedient to raise capital. With respect to the abrogation of one pound bank notes in England, the Scotch have never wished to interfere. Parliamentary enactments in favour of the monopoly of the Bank of England, for particular state reasons; the want of those regulating principles observable in connexion with the Scottish institutions; with the collateral ignorance of the lower classes, who seem easily incited to panics; were the distant and proximate causes of the ruin of too many of the English banks. But as in Scotland no such abuses can be said to have operated, no sufficient reason can be adduced for the recal of paper money, unless on the principle of a want of uniformity, and the dread of a prospective overtrading; for a doubt of the potency of the banks to retire their notes on presentation, can only be maintained by those who are ignorant of the system on which they act.

It is not going too far to say, that without bank notes, Scotland at this day would have been very little advanced in any of the useful or elegant arts. Divested of such important auxiliaries, the poverty of the nation could in no respect have called into existence that quantity of solid wealth it is now possessed of.

* It is from the parliamentary papers on this subject we have drawn some of our information.

Unaided by paper money, it would have been altogether out of the power of the nation to compete with its neighbours, or act as a financial accessory in times of war or exigency; and even with its assistance, it is surprising how it has been able to pay its fair proportion of taxes. Looking back on the low condition of this northern kingdom for many years after the Union, and remembering the character of the soil and climate, it is obvious, that but for the help thrown out by banks to agriculturists and artizans, the country—scarcely cheered by English capital—must have continued long in a withering and gloomy condition. It required at that period little else than the temporary aid of money loans to commence on its career of prosperity, or to give the first impetus towards improvement. In the absence, therefore, of the precious metals, the dissemination of paper as the representative of that species of national wealth, which from its nature was not susceptible of being put in circulation, was one of the most creditable, and eventually the most successful, devices ever fallen upon by any people to better their circumstances. It was not without much trouble, and a lapse of many years, that the system put in operation was perfected; but when the law at length interposed to secure the public, as well as the bankers, from contingent excesses, and defined the powers of lenders and borrowers, the triumph of the Scottish bank notes was completed. It is more the task of a historian than the writer of these bumble sketches, to describe methodically what has been accomplished by their judicious administration: A recitation of their achievements would involve the history of nearly all that has been transacted in Scotland since the revolution. Until they made their gladdening appearance, the footmarks of the strife of past ages remained unobliterated on the soil. Before their influence, agriculture, domestic and foreign trade and commerce, and every species of improvement in the arts, have been instituted and supported. Almost whole towns have been erected and tripled in size by their services, and

the sea has been covered by them with vessels, which would otherwise have been growing in their native woods. In a word, nearly all that a stranger has to contemplate in Scotland, wherein art has been employed; every thing he sees around him, beyond things the most indifferent, has been directly or indirectly created and reared by the transcendant powers of paper money.

We do not withhold a just expression of the truth on this subject, whatever may be the opinion of others, but the same candour which has actuated our comments, would incline us to remark, that unless very cautious measures be pursued, the blessings brought on the country by paper money may easily be changed into the most dreadful evils. The Scotch notes were issued only as a succedaneum, until a certain quantity of solid wealth was generated, and the question thence arises, whether the nation has yet arrived at that precise epoch when their services can be dispensed with. This is an exceedingly nice point of inquiry, but we do not despair of answering it satisfactorily. Judging dispassionately of the present condition and prospects of the nation, we are satisfied that the time has *not* come when the Scotch could do without notes; but we are equally convinced, that the extension of their issues may be attended with great danger. The country now enjoys a sufficiency of real and representative capital fit for all useful purposes. It is confessed by every one, that all kinds of goods are overstocked; and that there is no lack of money, artizans, or materials, to keep a regular supply without monopoly. But were any thing wanting to shew the necessity for instituting a check to the limitation of issues, the simple but surprising fact, that the gross amount of stock subscribed for in existing joint stock associations, including banking companies, in Edinburgh alone, is now not less than forty-five millions of pounds sterling, of which about a third is paid up, may alone form a good reason why, before any further new issues be made, some definite measures should be adopted for the purpose of having it declared, that the amount of paper

money is not outrunning the value of the wealth it is supposed to represent. Under these circumstances, we would look upon the extension of cash credits ; the institution of new banks, not absolutely requisite to modify monopolies ; or the increase of discounts, as more of a dangerous than beneficial nature ; and that not so much because the notes, so put forth, are less of a representative quality than those already issued, as that they may be productive of the most injurious overtrading, or calculated to encourage that unwholesome excess of thirst for luxuries and finery so manifest in the present day. Yet, with this concession, it must be owned, that the very act of instituting a check to the further issue of notes, if not done with the utmost delicacy, would be of itself productive of great evil, by shaking public credit. In ordaining a law to this effect, a very long warning would be necessarily required before it could with safety be brought to bear on the currency ; and it is to be trusted, that in the case of any alteration being desiderated in the system, this will be the first step taken by the legislature.

The limitation of paper issues within just and natural bounds does not, however, infer a necessity for the extinction of notes. That would, indeed, superinduce a dreadful calamity. The wealth which has been created and disseminated by means of paper money is yet thinly spread ; and as we have said, it is often very hollow. It is so weak that it still demands continual nourishment, and so infirm that it requires to be propped by the instruments of its existence. What the consequences would be were the one pound notes withdrawn, we dread to contemplate. Taxes, rents, wages of labour, and the price of every commodity have been settled, as well as debts incurred, under their dynasty, and a sudden obligation to renounce their services, and pay in gold, would produce a commotion, the like of which has not been witnessed in Scotland these many centuries. An instantaneous stoppage of credits could be almost calculated on. So ramified is the dependence on loans, as already stated,

and so far have a vast proportion of the community to live prospectively on their incomes, in order to maintain appearances, that nothing short of a general insolvency could be anticipated of an immediate recal of bank notes. So different are the circumstances in which England and Scotland have been placed, with relation to banking affairs, that the injury which would be sustained by the latter country on the withdrawal of paper money, would not stand in comparison, in the violence of its effects, with that acknowledged to have been suffered by the resumption of cash payments, and the abolition of the one pound notes in England.

It is perhaps idle to talk in a serious manner of what would be the result of a recal of Scottish bank notes, for it is to be hoped that no minister or parliament will be so far possessed with a demoniacal desire to sacrifice practical for theoretic good, as to alter the currency of the country. All that the most sober legislator can do with safety, is to prohibit the issues from progressing beyond a specified amount, leaving that quantity of paper money already created to work out its own ends. That an epoch is steadily and gradually advancing, when the money-broking operations of Scottish bankers will cease to be of moment, no one who is acquainted with the increasing accumulation of wealth will be able to deny. The banks have, in the course of years, been reducing the rate of interest they offer for money, just as it is becoming more plentiful; and such a procedure tells very explicitly, that ere long monied men will more frequently lay out their capital on speculations of their own, than lend it to others to do so through the intervention of banks. At present, the interest of two per cent. will gradually sink to one, then to a half per cent. and finally to nothing. When it reaches this point, it will be a pregnant proof that the wealth of Scotland is on a tolerably secure footing, and that the notes have nearly realized the intention of their creation. Their abrogation even then may, however, be disadvantageous, and it will become the duty of political economists of after times, to conde-

scend on the propriety of their protracted existence. In the meanwhile, it is very certain that the time has not come when they could be recalled with comfort to the people, or security to the government; and we therefore would bid the Scotch be perpetually on the watch over their interests in this matter. Let them be ever on their guard against the crude schemes of ministers in reference to a subject which, in whatever way it is viewed, involves the means of their very existence; and be at all times ready to resist, in a firm constitutional manner, any measure which may be calculated to tamper with the credit of their paper money, and the perpetuation of their banking institutions.

EDUCATIONAL INSTITUTIONS IN SCOTLAND.

Every parish should keep a petty schoolmaster, which should bring up children in the first elements of letters.

SPENSER.

THE desire of instilling a knowledge of the rudiments of scholastic learning into the minds of the young, is a primary and creditable trait in the character of the Scotch, which is now established as one of the governing principles of the nation. That species of education for which the people have become celebrated, is, however, of a very limited nature. It is the very general diffusion of letters on a meagre, though certainly useful, scale, and is only calculated to advance the pupil, at the very farthest, half way on the road to profound scholarship. The merits of the Scottish educational system are founded on the institution and preservation of that class of schools desiderated by Spenser in the above quotation. Its parish and grammar schools, in their constitution and mode of tuition, might serve as models for the imitation of every civilized people: Its colleges are such as few countries would be desirous of possessing.

Knox and other reformers comprehended the institution of schools, as well as kirks, in their general scheme of renovation; but except as regarded the tuition of young men for the clerical profession, they did not influence the progress of learning to an extent worth naming. The erection of a school in every parish capable of supporting it, was first projected and

ordained by the Scottish privy council of James VI. in 1616, while episcopacy was the established form of religion; and the decree was ratified, and endeavoured to be made obligatory, by an act of the estates at the instance of Charles I. 1633. These designs of the Stuarts, like many of the rest of their beneficent intentions for the welfare of the country, were coldly treated by the landholders and others on whom the payment of the salaries of the masters would have fallen; and the proper institution of parish schools was not effected till 1646, when the convention passed a law compelling those parishes not provided, to erect schools for giving instruction in the first elements of letters, and ordaining two-thirds of the stipends of the teachers to be paid by the landlords, and a third by the tenants. From this epoch might have been dated the general establishment of schools, had not the restoration intervened. When Charles II. ascended the throne, all the acts of the convention were rescinded, and among others that regarding education. From this time all was confusion in Scotland. There was no law instituted hindering education; and therefore the crown can only be charged with carelessness in not enforcing the continuance of endowed schools. Until the revolution parish schools decayed, and their cause was sunk beneath the conflict of religious sentiment. In the meanwhile, the colleges, which had been depressed during the domination of the puritans, being under the will of the bishops, many of whom were men of great erudition, gave manifest symptoms of revival. The face of affairs was altogether changed, in many respects for the better, at the revolution. The old laws relative to parish schools were discussed, and in 1696, an act of the parliament under William was passed, ordaining the appointment of a school in every parish in Scotland, and compelling the salaries of the masters and other expenses to be liquidated by the heritors. The new presbyterian clergy having been given the power of supervising the schools, by a previous act of 1693, warmly espoused this enactment, and to their

fostering and persevering care the country is much indebted for the continued existence of such beneficial institutions.

It was enacted, that the heritors should jointly contribute a sum to be paid annually to the teacher, not under 100, and not above 200, merks Scots, (a merk is $1\frac{1}{3}$ d. sterling,) according to the circumstances of the parish. The heritors and ministers were appointed the sole regulators of these salaries; and they had also the power of naming the fees to be paid by scholars. Besides these emoluments, the heritors were obliged to give a free house and garden of certain dimensions to the teacher; but this was often commuted; and for a long period, these very useful men were indifferently lodged. The amount of fees was very small; one shilling per quarter being mostly taken for reading, and one shilling and sixpence for the addition of writing and arithmetic. Two shillings and sixpence were usually charged for instruction in Latin; but it was only certain masters who were able to convey a knowledge of that language. These fees must have been considered high, and at least sufficient; for, fifty years earlier, we find from records, that *twal pennies* Scots, i. e. one penny sterling, was in many instances the quarterly charge for instruction in English, or Scots, as it was called at that period; the teacher having at the same time "ane chalmer" for his residence.

Acts of parliament since 1696, have considerably enlarged the salaries of the parochial schoolmasters in Scotland. In 1784, they made strenuous exertions to attract the attention of the legislature to their impoverished and ill-requited condition.* And in 1803, the act Geo. III. c. 54, materially improved their circumstances. Three and four hundred merks were ordained the minimum and maximum, dependant on the *fiar* prices of corn, to be settled every twenty-five years by an officer in the Scottish exchequer. The salaries, therefore, now vary from L. 18 to L. 35 per

* Scots Magazine, vol. 46. p. 2.

annum ; and each master is entitled to a house specified to consist of two apartments, with a garden attached, competent to serve a small family. The superintendence of the schools still remains the duty of the heritor and ministers ; but, in practice, nearly all authority in this matter rests with the clergy individually, and collectively in presbyteries.

School fees have similarly advanced, though not in that ratio observable in every other article since 1696. Being dependant on the will of the presbyteries and teachers, in adaptation to the capacity of the residents in the parish, no precise standard can be exhibited of the charges. The fee for reading is now in general two shillings and three pence—writing about a shilling additional—and these, included with arithmetic, three shillings and sixpence—a quarter. If algebra or practical mathematics be added, another small charge is made ; but these branches are more usually taught to young men in the evening, who have left the day-school. A very usual charge for instruction in Latin is now five shillings, and French the same sum, per quarter ; a knowledge of these languages, as well as that of Greek, is, however, only occasionally found in parish schoolmasters. In some places it is imperative. Schoolmasters may thus double and sometimes triple their salaries ; and their condition is often considerably enhanced by their acting as session clerks, precentors in the kirks, and enrollers of the names of men for the militia. A number also teach psalmody. A few take boarders, whose education they expedite ; but this is, in general, when they have been educated for the pulpit ; only doing so till a living casts up. Geography and the use of the globes have come partly into vogue in parochial schools, which bring an addition of small fees. What are called the fine arts, do not form a department in the general system.

Within these few years, greater attention has been paid to the choosing of schoolmasters than formerly ; greater erudition and general knowledge being required. In all cases a good moral character is of pri-

mary importance; and elections are made at competitions of candidates before the heritors and ministers. The successful person must sign the Confession of Faith, and be confirmed by the presbytery of the district. Though a necessity may have once existed to repose a power of supervision in the church courts, it is now becoming apparent, on account of the laity outstripping the clergy in acquirements, that the authority of these ecclesiastical judicatures over schoolmasters is injurious. A modification of their powers is at least desirable. They can reprimand or dismiss at pleasure, without a chance of appeal, except it can be proved, that they have not proceeded agreeable to statutory rules! They can interfere otherwise, by regulating the hours of tuition, length of vacation, books necessary to be used, &c. Some instances of oppression have already occurred, and we are glad to remark, that the Court of Session by no means bears these clerical rulers out in their measures. It appears curious, that notwithstanding of the unpretending character of the Scottish kirk, it possesses an authority over the educational institutions of the people paralleled no where but in countries subjected to the management of the Romish church.

Such is the situation in which education is placed in the country parishes of Scotland, where, by the aid of endowments, the acquisition of a certain portion of learning is brought within the reach of all who feel inclined to accept of the blessing. According to Dr Chalmers, in his very excellent work on endowments,—"education is visibly obtruded on the notice of every little vicinity; and had it not been for this aggression upon them from without, the people would have felt no impulse towards education from within, and so would have stood fast in their primeval ignorance. It is the scholastic establishment of our land that has called its people out of their quiescence and lethargy in which every people are by nature so firmly imbedded. It has drawn them forth of their strong-hold; and awoke from their dull imprisonment those higher and greater

faculties, which lie so profoundly asleep among a people, who, till addressed by some such influence, are wholly engrossed with animal wants and animal enjoyments. In other words, it is to a great national endowment that our national character is beholden."

To those who are not intimate with the character of the Scottish people in their own country, it would be difficult to convey an adequate idea of that burning desire which almost every parent has, to see his children educated; superinduced, as above stated, by the protrusion of schools into their vicinities. It is not confined to persons in easy circumstances; it descends to the meanest of the peasantry, and will be found mingling with the every-day feelings of the poorest family in the land. To accomplish the object of such a passionate desire, families will strip themselves of what they may be pleased to suppose supererogatory luxuries; but which others would reckon as the essentials of existence. Widows, in the humble ranks of society, "left" with a family of sons and daughters, and only her own hands to aid in the support of her offspring, will find means to devote a portion of her hard-won earnings to give them the elements of a plain education, fitting to their prospects in life. She will toil in the summer, harvest, and winter, for this laudatory purpose, never ceasing till she has accomplished what she has invariably considered her duty as a Christian mother. Sometimes the poorer people in country places,—where the feeling is always strongest,—will contrive to carry on the education of all their children, or probably two or three at once, at the expense incurred for one only. They do so by sending them to school on alternate days, and causing them to labour while at home, to keep pace with their more fortunate schoolmates. We have often witnessed this in the south of Scotland. When the masters will not accept pupils on such terms, they are sent alternate months or quarters. In some cases, when contributions for fuel in winter are demanded, the levy is not made of money. Each scholar brings with him his

proportion of *peats*, at stated intervals, to heat up the little school-houses ; and though the assertion may appear ludicrous, we could point out men who have arrived at an eminence at the Scottish bar, who, in their juvenile days, strung up a peat with their books, and scudded across the bleak wastes with them to school.

The parochial schoolmasters of Scotland form a valuable and respectable body of men, who, in consideration of their toils, are very inadequately provided for. They are, in almost every instance, drawn from the lower ranks of the people, and have been pushed forward, at some little expense to their parents, and often of themselves ; as teaching is frequently an after-thought, arising from physical incapacity, or a desire to rise above the common ranks. In many instances the profession is hereditary. As latent intentions of becoming clergymen are felt as inimical to the welfare of schools, those who wish to accept of masterships, until they be ready for livings, are now generally rejected ; which is an exceedingly proper arrangement. The burgh and parochial schoolmasters of Scotland were incorporated by an Act of Parliament, 1807.

While the country parishes are generally well provided with schools, it is very unfortunate that in cities like Edinburgh, there are no institutions placed on similar endowments. This is a want of which too much cannot be said ; and it argues little credit to the general inhabitants of such places, that so glaring a deficiency should have been so long slurred over. One of the ministers of the metropolis, in his statement in the recent reports of the Scottish clergy to Parliament, regarding the schools, alludes to this subject in these words :—" Some legislative provision in burghs and large manufacturing towns, corresponding to the schools in the landward parishes of Scotland, and adequate to the cheap education of the poorer inhabitants, has become indispensably necessary to uphold the character and prosperity of the country. To this subject the magistrates have in general been commendably attentive ; but the expenditure required has in many cases

overgrown their means, and the wisdom of the legislature can alone supply the defect." To this deposition we give a cordial assent. The principal towns in Scotland, by a singular inconsistency, have hitherto been devoid of endowed schools on the parochial plan; and the direct consequence of such a state of affairs is, that in some places of dense population, there are thousands of the young of both sexes, who must either go without education altogether, or proceed to private schools, where fees are charged which they can very ill afford.

From the reports of the Edinburgh ministers it appears, that in 1826, there were about 150 private schools of different descriptions in the eleven city parishes and the Canongate, which were attended by pupils from the number of 30 to 300. The number of schools, it may be supposed, have considerably increased within these few years. The kirk-sessions of the different established churches in the metropolis, have been so far convinced of the mischief springing from the absence of parish schools, at which the children of the poorer classes might be educated, that they jointly support an institution designated the Sessional School, where about 500 young scholars are in constant attendance. They pay a fee of 6d. per month. This school, which was instituted in 1812, with the view of repressing juvenile delinquency, has been of great benefit in the city; and shews what might ultimately be accomplished by the general erection of similarly conducted establishments in this and every other large town. Much of the success of this useful school has to be attributed to the indefatigable exertions of John Wood, Esq. sheriff of Peebles-shire, whose constant attention to its interests is deserving of the warmest commendation. In consequence of the want of parochial endowed schools, a considerable number of children in the metropolis are educated by voluntary contributions, and small endowments. Religious communions, public bodies, and private subscribers, have instituted, and partly or wholly support, schools adapted to the elementary tuition of boys and girls.

Among others may be instanced a very large school, on modified Lancasterian principles, for children of both sexes, under the auspices of a Society for encouragement of education; the Roman Catholic school, conducted on liberal principles; two episcopal free schools; schools sustained by the congregations of Grayfriars, St George's, and St Mary's churches; schools or rather hospitals for the deaf, dumb, and blind; and hospitals for the board and education of the daughters of merchants and incorporated tradesmen. Recently an infant school was instituted, which has given great satisfaction, and promises to be of much benefit. Useful as all these well organized schools certainly are, they fall short of causing a thorough dissemination of education among the lower classes on easy or perfectly accessible terms, and nothing will accomplish this but assessments answering the purpose of endowments. Were the town relieved of some of the trashy and unmeaning taxes of the magistrates, and these levied in their stead, what a difference would soon be observable in the condition and sentiments of the lower classes! We would fain hope that this subject will be pressed on the notice of parliament, in connexion with the prospective alterations in university institutions.

The class books of the parish schools, until recent years, possessed little or no talent. The schoolmasters have now instituted a series of books deserving of commendation. The Bible is read in the whole, and instruction in the catechisms of the kirk is an object on which great stress is laid. At one period the Shorter Catechism was the universal primer in Scotland. It is still printed in its old form, with the alphabet at the beginning; but, except in the north, it is entirely abandoned as a first book. The mode of conveying instruction has been recently much improved. Strict Lancasterian practices are now discarded; but the system by monitors is partly acted upon in the principal schools.

A lasting committee of the General Assembly of the

kirk of Scotland, is appointed to take proper measures for increasing the means of education and religious instruction in the Highlands and islands. Funds are raised by collections at church doors, contributions from private persons and societies, and small school fees. About 80 schools planted at proper stations are in constant operation, and the number of scholars in all may be estimated at 7000. English, Gaelic, writing, arithmetic, book-keeping, Latin, geography, and mensuration, are taught. Each of the schools has a small library attached for the use of scholars. These schools, which are on the increase, have been of immense advantage, and reflect great credit on their patrons. The number of Gaelic school-books issued from the Committee's depository during the last year is 14,309; of English school-books 15,288; of Gaelic catechisms 8626; of English bibles 434; of Gaelic bibles 400; of Gaelic testaments 200; and of a Gaelic collection 700.

The next class of schools are those erected in most burgh towns, under the patronage of the magistracy, for giving instruction in the classical languages, and other branches of education. The masters are supported partly by salaries from the town funds, and partly by fees. These grammar schools, by which title they are idiomatically known, are resorted to by pupils who have finished their elementary education at the parish schools; and are attended by boys boarded with the masters. All are taught together, and by this means a very beneficial intermixture takes place of boys who have been sent from cities and foreign places, and the natives of the towns and country districts. Friendships are thus perpetually forming among different classes of society which only terminate with existence, and associations are created in the mind of young men relative to their early haunts and acquaintance, which rarely wear out, though the business of life may compel their emigration to the most distant quarters of the globe.

No description of schools have been so carefully attended to, and improved as occasion required, as these

institutions. The payment of salaries by the towns has had the effect of lowering the price of education considerably. As a specimen, Latin is usually taught for at most 7s. 6d. a quarter. Boarders pay for the whole routine of study according to age and other circumstances. The general charge, including board and education, varies from L. 35 to L. 40 per annum. The fees for day scholars being so moderate, the very general knowledge of the lower classics, manifested by most Scotchmen in the middling ranks of society, is at once accounted for. At present, there is an obvious competition of grammar schools throughout the country. As many of the burgh towns have little or no trade, they are excellently adapted, from their retired characters, for the possession of such establishments; and attention being given to this circumstance, every endeavour is made to bring them individually before the public in a favourable manner. Among so many deserving competitors, it would be invidious to instance any as particularly worthy of notice; besides, strangers will have no difficulty in procuring their character and terms, on a very superficial inquiry.

Examinations are made once a year, (generally in August,) by a number of the clergy of different persuasions, the magistrates, and gentlemen invited for the occasion. Prizes in classical books are given, and the vacation which follows mostly lasts for a month. Further than this, a few days at Christmas, and a half holiday on Saturdays, no holidays are allowed. The schools are always open to visitors. *Fagging* is unknown in Scotland in any of the boarding or other schools.

After these country burgh schools, we may notice those established under the name of Academies or High Schools, in some of the principal towns, such as Edinburgh, Perth, Dundee, Glasgow, and Ayr. They are placed under the governance of masters of different branches of education, headed by a rector, and like the burgh schools, are erected and patronized by the magistracy. We regret much that our limits prevent us

from laying before strangers, the outlines of the various courses of study and modes of management we have collected on this subject, as they do great credit to the national character. We can only afford to make a reference to the systems pursued in Edinburgh, which are considered to be very complete.

Besides numerous private schools of an elevated nature, there are two chief establishments, rivals, in many respects, to each other, the one designated the High School, under the charge of the magistrates, the other entitled the Edinburgh Academy, erected and patronized by an association of persons, principally of the higher classes. The objects of both are alike, namely, the preparation of young men for a course of college education, or the conveyance of a sufficient knowledge of the classics to those who do not intend following the learned professions. The first has been instituted since the year 1578; the second was only founded in October 1824.

The High School, which is chiefly attended by the sons of citizens, has four masters and a rector. Each of the masters carries through a class for four years, commencing again with the rudiments. On passing through this course, boys pass into the head or rector's class, where they remain one year at least, and three at most. The rector likewise pays weekly visits to all the inferior classes. Seven hundred boys are generally in attendance, the ages of whom vary from 8 to 14.

At this school the course for the *first year* is—

1. Latin.—Ruddiman's Rudiments—High School Vocabulary—Sententiae Selectae—Corderius—Grammatical Exercises.
2. General Knowledge—embracing English Grammar—Roman History to the Close of the Republic—Outline of Modern Geography—Murray's English Grammar—Goldsmith's larger Roman History—Mylne's Geography.
3. FRENCH—Hallard's Grammar—Chambaud's Fables.

For the *second year*—

1. LATIN.—Adam's Grammar—Grammatical Exercises—Phaedrus—Cornelius Nepos.
2. GENERAL KNOWLEDGE—English Grammar—Roman History

to the Close of the Empire—Outline of Ancient Geography—Murray's Grammar—Goldsmith's Roman History—Mylne's Geography.

3. FRENCH.—Hallard's Grammar—Chambaud's Fables—Scot's Recueil—*Rollin*.

For the *third year*—

1. LATIN.—Adam's Grammar—Mair's Introduction—Cæsar—Ovid—Latin Testament—Latin Version twice a-week.
2. GREEK, (to commence 1st April.)—Moore's Greek Grammar by Tate—High School Greek Vocabulary—Greek Testament.
3. GENERAL KNOWLEDGE.—English Composition—History of Greece to the end of the Peloponnesian War—Particular Geography of Europe and Asia—Murray's Grammar—Robertson's History of Greece—Mylne's Geography.
4. FRENCH.—Hallard's Grammar—Scot's Recueil, *Fenelon*, *Le Sage*.

For the *fourth year*—

1. LATIN.—Adam's Grammar—Mair's Introduction—Sallust—Virgil—Buchanan's Psalms—Latin Version or Theme thrice a week—Antiquities.
2. GREEK.—Grammar—Vocabulary—Testament—Dalzel's *Collectanea Minora*.
3. GENERAL KNOWLEDGE.—English Literature and Composition—History of Greece till it became a Roman Province—Particular Geography of Africa and America—Murray's Grammar—Robertson's History of Greece—Mylne's Geography.
4. FRENCH.—Hallard's Grammar and Exercises—Scot's Recueil, *Marmontel*, *Voltaire*, *Picard*, *Perrin*, *Raynal*, *l'Abbe de Lille*, *Boileau*, *La Fontaine*, *Rousseau*, and *Racine*.

For the *fifth, sixth, and seventh year* in the rector's class—

The Higher Greek and Latin Classics—Antiquities—Ancient Geography—Composition in Prose and Verse, in the Greek, Latin, and English Languages.

LATIN.—Mair's Introduction—Carson on the Construction of the Relative—Adam's Roman Antiquities—Virgil—Horace—*Anthologia Latina*, containing Extracts from Terence, Juvenal, Plautus, Tibullus, Propertius, and Lucretius—Livy—Cicero—Tacitus.

GREEK.—Greek Exercises—Greek Testament—Xenophon—Herodotus—Thucydides—Demosthenes—Homer—Aeschylus—Sophocles—Euripides.

The parts of the Authors to be read each Year will be mentioned in the Class.

The Young Gentlemen attending the Rector's Class, and the Fourth, have the use of the High School Library. The Works most suitable to be read in History, Biography, Voyages, Travels, Belles

Lettres, &c. will be pointed out in the Class; and on the Books being returned, questions will be put by the Master, to ascertain that they have been carefully read.

The Scriptures are read in all the Classes.

The fees for the four Junior classes are 15s. a quarter. General knowledge is 5s. and French 2s. 6d. but attendance is optional. The fees of the Rector's class are 16s. a quarter: Greek per annum is L. 1, 1s. Geography is the same; however, both are optional. Writing is given one hour a day, at 7s. 6d. a quarter; two hours 10s. 6d. Arithmetic one hour a day is 7s. 6d.; two hours, 10s. 6d.; and the elements of mathematics, one hour a day, 10s. 6d. These are all optional. An additional charge is made of 5s. a year, which includes all minor dues, for janitor, cleaning, library, maps, &c.

During the whole of the foregoing course of instruction, Latin and Greek are pronounced according to the mode in common use all over Scotland. This pronunciation differs so very materially from that pursued in England at the schools and universities, that two persons speaking together, in the two different ways, could scarcely comprehend each other. The English speak these languages according to the rules for pronouncing their own tongues, by which means the tones of their voice are not injured by resorting to a lower key, and their previous ideas of the character of the letters of the alphabet not distracted. The Scotch have rejected this expedient for preserving the purity in tone of the English language, and still pronounce Latin and Greek in what they are pleased to call the broad original manner, though of this there is no certainty; and the consequence is, that, without reaping any benefit from their adherence, they circumscribe their chance of promotion in England,—lay themselves under unnecessary embarrassment, when they enter learned society in that country,—and decidedly prevent themselves from almost ever arriving at a perfect and fluent pronunciation of the English language. The broad tones of their Latin confirm the deep Scotch accentuation of the vernacular tongue, and preserve distinctions, which it is now desirable should be eradicated. It is considered proper to state this, lest English parents should not be aware of the remarkable na-

tional distinction we allude to. Many of the masters of this ancient and respectable school have been, and still are, known as men eminent in classical acquirements. We need only allude to the names of Adam, Pillans, and Carson.

We now turn to the Edinburgh Academy, which will be best described in the words of a public statement put forth by its patrons, and which we here introduce in an abridged form.

"This institution is a public day school for boys from eight or nine to fifteen or sixteen years of age, where all the branches of knowledge are taught with which those who receive a liberal education are usually occupied during that period of life, viz. the English, Latin, Greek, and French Languages; Geography, Arithmetic, Algebra, Geometry, and Writing. The capital, L. 12,900, which may be augmented to L. 16,000, was raised by proprietary shares of L. 50 each; and the superintendence of the establishment is vested in fifteen directors, chosen by the proprietors from their own body. The directors are in constant communication with the Rector in all that relates to the general plans, and attend the examinations, which are held at stated periods in the course of the year. The practical details of the teaching in all the Classes are under the direction and superintendence of the Rector, who makes a quarterly report to the Directors.—The Session commences on the 1st day of October, and terminates on the 31st of July; the full course of study occupying seven years.

When a boy commences his Classical Studies at the Academy, he enters the First or Junior Class. He continues to be taught exclusively by the same master (in the classical department) for four years, during which time he belongs to the First, Second, Third, and Fourth Class, in succession. At the commencement of the fifth year he comes under the immediate tuition of the Rector, assisted by the same Master under whom he passed the first four years, and is also under the Rector and that Master during the sixth and seventh years. The several branches of instruction are taught according to the following course:—

FIRST CLASS.—*Latin*—The Academy Rudiments (upon the plan of Ruddiman)—Valpy's Delectus. *English*—History of Scotland. *Modern Geography*—*Writing*.

By *English* is not meant elementary instructions in that language; it is presumed that those who enter the first class are able to read it with fluency, and that they have some acquaintance with grammar. The object of this department of the Academy is to improve the pupil's knowledge of English by keeping his attention directed to it throughout the greater part of his continuance at school. More than this cannot be accomplished, because the time which can be devoted

to English is necessarily short ; but an important end is attained by the habit of reading with care, by attention to orthography, by English grammar being kept in view, while the pupil is learning the grammars of the Latin and Greek tongues, and by occasional practice in composition and recitation. The books from which the English lesson is given, during the first four years, have been selected with the view of conveying at the same time an outline of English, Roman, and Grecian history. In the higher classes Milton and Shakespeare are chiefly used.

SECOND CLASS.—*Latin*—The Academy Rudiments—Grammatical Exercises, Phædrus, Cornelius Nepos. *English*—History of England. *Modern Geography*—*Writing*.

THIRD CLASS.—*Latin*—Grammatical Exercises, Mair's Introduction to Syntax, Cæsar's Gallic War, Ovidii Electa (Eton edition). *Greek*—Academy Greek Rudiments, and in the latter part of the year, the Academy Greek Extracts. *English*—The History of Rome. *Modern* and parts of *Ancient Geography*. *Writing*—*Arithmetic*.

FOURTH CLASS.—*Latin*—Mair's Introduction to Syntax—Salust—Virgil—Composition in Prose, and in Hexameter and Pentameter Verse. *Greek*—Academy Greek Rudiments and Extracts—Sandford's Introduction to the Writing of Greek. *English*—History of Greece. *Geography*, *Ancient* and *Modern*—*Arithmetic*—*Writing*.

FIFTH CLASS.—*Latin*—Virgil—Livy—Horace, the odes chiefly—Compositions in Prose and Verse, and Recitations—Roman Antiquities. *Greek*—Sandford's Introduction—Xenophon's Anabasis—and Homer or Euripides. *English*—Milton or Shakespeare, and Composition. *Geography*, *Arithmetic*, *First Book of Euclid*—*Writing*.

SIXTH CLASS.—*Latin*—Virgil—Horace—Livy—Compositions in Prose and Verse—Recitations—Antiquities. *Greek*—Xenophon's Anabasis—Homer and Sophocles—Composition in Prose. *English*—Milton or Shakespeare—and Composition. *Arithmetic*, as far as the Extraction of the Square and Cube Roots. *Algebra*, as far as Quadratic Equations. *Geometry*—The First Three books of Euclid. *Geography*—Ancient and Modern. *French*—Elementary instruction in Grammar, and reading an easy author.

SEVENTH CLASS.—*Latin*—Virgil—Horace—Tacitus—Cicero—and Selections from Juvenal—Composition in Prose and Verse—Recitations—Antiquities. *Greek*—Herodotus—Homer—Æschylus—and Composition in Prose and Verse—Recitations—Antiquities. *French*—Reading Prose and Verse, and Recitations. *Mathematics*—The First Six Books of Euclid—Plane and Spherical Trigonometry—Conic Sections—Algebra, as far as contained in our most approved Treatises.

The English mode of pronouncing Latin is adopted in the Four Senior Classes, and Greek is pronounced after the English method in

all the Classes. The hours of attendance are from nine in the morning to three, with short intervals. As a contrary practice exists in most of the public Schools of Scotland, it is proper to state, that at the Academy it is imperative upon all the pupils to attend the Classes for the different branches in the order here described, and they cannot be permitted to omit any of them, unless leave for that purpose be obtained from the Rector, who has power to grant exemption under special circumstances of ill health. More is not required from the pupils than it has been found can be easily accomplished by them, if they are in ordinary good health. Boys are permitted to enter that class for which they are qualified by previous attainments.—By following the above course with a reasonable degree of diligence, the pupil will leave the Academy as well instructed in all the elementary branches of knowledge, as to enable him to enter upon his studies at the University with great advantages.

The whole expense of the School each session, for all the branches of instruction above enumerated, is as follows: there are no other payments for any purpose whatever, nor are any presents or gratuities by the pupils permitted:—

First Class L. 7.—Second do. L. 9.—Third do. L. 11.—Fourth do. L. 11, 10s.—Fifth do. L. 11, 10s.—Sixth do. L. 11, 10s.—Seventh do. L. 11, 10s. These sums are payable by two equal instalments, on the 1st of October and 1st of March, to the Clerk, at the Academy.

The Vacation lasts the whole of the months of August and September. There is also a Vacation of a week at Christmas; but there are no holidays throughout the year, except occasionally for a single day. The School does not meet for four days in the months of November and May, at the time appointed by the Church of Scotland for the administration of the Sacrament. There are large and commodious rooms for each class, with a hall for occasional meetings and public exhibition of the whole school. There are about three acres of play-ground, surrounded by a wall, in the centre of which the building is situated, and the gates are locked from nine to three o'clock. There are libraries in the third and senior classes, consisting of books of instruction and amusement, suited to the age of the boys in the different classes. These books are lent out weekly to the pupils, at the discretion of the Master, as a reward for good conduct. The School books used at the Academy are sold upon the premises, by authority of the Directors, somewhat under the regular retail prices; and the profit is applied to the maintenance of the Class Libraries. The number of boys in each class is limited to 110. The children and grand-children of Proprietors have a preference, provided their names be given in to the Secretary three months before the Annual Meeting of the School on the 1st of October. In all other cases, all that is necessary is to enter the boy's name in the Secretary's book, and he is admitted in the order of application. There are no board-

ing-houses *attached* to the Academy. Some of the Masters receive boarders at their houses, and there are several highly respectable boarding-houses in the neighbourhood, of which a register is kept at the Janitor's house at the Academy. Information on this subject may be obtained by application to the Clerk to the Directors at the Academy. Instructions in fencing and gymnastic exercises are given at the Academy, where a room is appropriated for that purpose, but the attendance on this class is quite optional."

The annual examinations at the Academy are understood to be of a rigid nature, and prizes are given only to those possessing real merit. The examinations last several days, and are attended by a very select company of gentlemen, having a knowledge of the classics. The expense of education at this seminary, it will be seen, is higher than at the High School. But though the fees might have been lower without injury to the school, they are, we believe, intentionally high, in order to cause a more select collection of boys belonging to the higher ranks in the city. Many young men at this excellent academy have private tutors to assist in their lessons, by which means, and by the judicious length of the course of study, this seminary is preferable as a preparatory gymnasium for the English Universities. The masters are all gentlemen of tried abilities. Several of them are from England, and have been educated at Oxford and Cambridge. The Rev. John Williams of Baliol College, Oxford, is at present the Rector, and his well known talents as a philologist have in no small degree contributed to the success of the establishment.

In the list of educational institutions may be noticed those hospitals for the board and education of boys. At Edinburgh there are three of this description, namely, that of George Heriot, George Watson, and John Watson. The last has been only recently erected. They are supported by endowments of landed property and funded money. Heriot's hospital is on a munificent foundation. The boys on leaving it are bestowed premiums to serve as apprentice fees, or they are supported at college if their talents and inclinations lead that way. Entrants must be the sons of bur-

gesses in the city ; those of George Watson's house are generally the sons of merchants ; and those of John Watson's foundation are selected on account of the impoverished circumstances of parents in the middling classes. The curators of Heriot's hospital are principally the magistrates ; those of George Watson's, the Master and Assistants of the Merchant Company ; and those of John Watson's establishment are the society of writers to the signet, and their conduct as conservators of the endowment cannot be sufficiently praised. In some of the other towns there are similar institutions.

At Dollar, in Clackmannanshire, a school or academy was endowed in 1819 by a London merchant, named Macnab, a person who had realized a large fortune by furnishing transports to government, though so illiterate that he was unable to subscribe his own name. The branches of education taught, and names of masters, are in the Almanack. Unluckily the minister and kirk session of the parish were nominated as curators. From this or some other circumstance, the institution, after a short glimpse of popularity, has, we understand, gradually declined. The endowment has been directed only to a modification of the usual school fees.

It was originally intended to present in this work a perfect account of the system of Scottish University education, but on coming this length, it has been deemed more prudent to remain nearly silent on such a topic. On account of the disrepair into which the various college institutions have fallen, a royal commission was recently appointed to examine into, and correct improprieties ; and as it is likely that the curriculum of tuition will be soon revised, and other amendments made, a very superficial outline is only presented.

In Scotland there are at present four Universities, in which are comprehended six halls or colleges. Of these latter four were erected prior to the Reformation, and the whole, with only one exception, originated through the anxious desire of prelates for the increase of classical learning in this country. They, moreover, were

not only thus founded by churchmen, but these pious individuals, in many instances, imparted to them sufficient revenues for their support out of the fruits of their private benefices, at the same time instigating others to assist in the same excellent work. What was wanting on the part of these ecclesiastics, was supplied by the care of the second, fourth, fifth, and sixth James of Scotland.

The first college founded in this northern kingdom was that of St Salvador at St Andrews, primarily begun in 1412, but not properly constituted till 1455; the second was that of Glasgow in 1454; the third that of King's, Old Aberdeen, in 1494; the fourth that of St Leonard's, St Andrews, in 1512; the fifth that of St Mary's in the same place, in 1538; the sixth that of Edinburgh in 1582; and the seventh that of Marischal, Aberdeen, about 1594. Of these seven, six only remain,—St Salvador's and St Leonard's having been joined together in 1748. The constitutions of these colleges are not alike, but they have a resemblance to each other. With the exception of Edinburgh University,* and the college of St Mary at St Andrews, which is little else than a school of divinity, they have each a chancellor who stands at the head of the list of office-bearers. These chancellors are invariably Scottish noblemen, who are understood to act as patrons and protectors of the institutions under their charge. The next and more apparent governor, is the Rector. This officer is chosen annually by delegates from the students, and by the professors, and there is reposed in him considerable trust. He has the complete supervision of the college functionaries, and can hold civil and criminal courts of a limited nature, applying to the college only, in which respect he answers to the idea of the Vice Chancellor of Oxford or Cambridge; but unlike the judicial powers of that officer, his authority does not extend over the circumjacent towns in

* The college of Edinburgh differs considerably in its constitution from the others, on account that, at the period of its erection, the metropolis was not the seat of a bishop.

which the colleges are situated. This Lord Rector is frequently, if not always, chosen on account of his popularity as an author, a statesman, or a person of general attainments, without reference to his capacity as a conservator of academical privileges, or the possibility of his residing near his charge. For this reason, it is quite common for Rectors to appear only on the days of their installation, and reside the remainder of the year in London. The Lord Provost of Edinburgh, in virtue of his office, is Rector of the University.

Both the Chancellor and Rector being thus non-residentiaries, the whole stress of the establishment lies upon the Principal. This officer is always a doctor in divinity, and sometimes is the professor of that class. According to some ancient rule, we believe that he should always be so, but this practice is not imperative. This very reverend officer calls and presides over public and private meetings of the professors, who corporately receive the designation of the *Senatus Academicus*, and is the person who invests students with degrees after they have been examined by the Faculties to which they belong. The principal* has reposed in him vice-regal powers from the Chancellor, in virtue of which, he can reprimand students guilty of infractions of the college rules, and even expel them. He, however, holds no regular or occasional court, and his judicial powers are rarely called into action; as the young men, on account of their ex-collegiate mode of living, are removed from under the immediate notice of the academic authorities; and there are no proctors, as at the English Universities, whose duty it is to watch directly over their movements. Were expulsion or rustication nevertheless inflicted, little injury would accrue to the individual so situated, there being no express law—if we except an order of the Scotch Privy Council, now forgotten—to prohibit the student from entering himself at another college, or from entering

* Principals are styled by courtesy, "very reverend," which is the only instance of a superiority in title over the common designation of *reverend* in Scotland.

into any office of rank in his Majesty's service. Between the practice of the English and the Scotch Universities, there is here a remarkable difference. From the circumstance of Scottish students at college being placed more in the character of day scholars, than members of a great separate system, there is no necessity for the institution of that numerous body of functionaries found at Cambridge, or Oxford, as accessaries to the corporation.

Agreeable to the custom of Foreign Universities, it is the practice at the greater number of the colleges, to divide the students into classes or *nations*. These nations, the members of which are ranked according to the district of the country from whence they are drawn, are four in number, each of whom chooses a delegate for the election of a rector. In case of the votes of the delegates being even, the choice of the late rector will preponderate. In the college of Edinburgh there is no classification of this kind, and it is the only college in Scotland at which the students have no peculiar academic dress; those at the other universities being distinguished by red cloth gowns without sleeves. At the united college of St Andrews, there is a small distinction made in the gowns of the students on the same principle that obtains at the English universities, whereby those paying high fees are entitled to wear a greater proportion of ornaments. A list of the inferior officers connected with these institutions, may be obtained by reference to the Almanack under the head of Universities.

Simple as the mode of government in the Scottish colleges may be, it has not been found to be successful in furthering the general interests of education, or in preventing the concerns of the colleges from falling into a state of decay. A prominent evil worthy of emendation lies in the absence of an efficient supervisory authority, at once removed from the toils of a professorship, and not too dignified to become a sinecurist. Ever since the removal of the bishops, who acted as chancellors, and felt an interest in the prosperity of

the colleges within their charge, there has been no real activity displayed in the government of such institutions. The chancellors have, from that period, been mostly noblemen resident in England or abroad; and the rectors have been placed in nearly the same circumstances, by reason of the want of salaries to remunerate them for their trouble in office. In the case of the college of Edinburgh, it has prospered more from the force of adventitious circumstances, than from internal arrangements. Since the Presbyterian Kirk became predominant in the country, it has done extremely little for the encouragement of the higher literary and scientific branches of education, and has not taken measures to improve the mode of tuition. Indeed, had the colleges been left to the management of the presbyteries, in the room of the bishops, it can scarcely be questioned, that by this time instruction in any thing except theology would have been well nigh extinct. Neither the supreme government, nor the local jurisdictions, take any steps to preserve the colleges from decay, and the mass of the people seems to have little interest in their condition.

There are ninety-four professors and principals attached to various colleges in Scotland, and of these the crown has the patronage of at least a third. The rest are in the nomination of the *Senatus Academicus*, the town-council of Edinburgh, and private gentlemen, whose ancestors endowed the chairs. The incomes of the professors are made up partly by fixed salaries from college endowments, or town-funds, and partly by fees. The degrees given are those of D. D., M. D., L. L. D., and A. M. A public examination is only required for that of M. D. Three years study is required for that of A. M.; but that and the other two are often given when no public appearance is demanded.

The Scottish colleges have no endowments, and scarcely any patronage of benefices, which can be offered to entice students to pursue classical learning to its attic retreats. This is a matter of just regret, and the more so, because it is now next to irreparable.

The only species of *scholarships* or *exhibitions* the universities possess, consists of a number of bursaries or annual payments of small sums to poor scholars, which are in the gifts of the universities, the magistracy, public institutions, and private families. If we except those of recent institution, the greater part are derived from the confiscation of petty religious endowments at the reformation, such as altarages, chaplainries, &c. The parliament put them under the tutelage of laymen to whose lands they were attached, or to town-councils, whose revenue was increased by their seizure, or to universities. Originally, the number of these bursaries, as they came to be called, was prodigious, but from a variety of causes, the principal of which is the want of a curator of mortifications and endowments, who would enforce their application, their number is now very much diminished.

The histories of the different universities furnish only rude lists of their bursaries, and nothing but a regular judicial enquiry could settle their precise amount. In general terms, each college possesses from fifty to a hundred and fifty bursaries, varying in amount from L. 2 to L. 140 each, though chiefly they are from L. 10 to L. 20. In all, there may be five hundred in active operation. It most unfortunately happens, that the greater proportion of these bursaries are in the hands of town-councils, or professors, who seem to labour under no distinct necessity to give them to boys who distinguish themselves by their abilities. Here, as in most cases where patronage is used in Scotland, the sons of clergymen, and persons in civil offices, have always the best chance of promotion. We are of opinion, that on the whole, the country would be better to remit these petty bursaries, which at the best only induce a needless abundance of poor students, who, having no fellowship to look forward to, and little chance of rising by professional pursuits, become frequently a burden on society. The coalition of bursaries into a few fellowships, would possibly serve a better purpose.

If there be little temptation to follow up education to its highest pitch in Scotland, the fees for tuition, and the general expense of living during the academical sessions, will not act as barriers. The fees payable for separate classes, vary from L. 1:11:6 to L. 4, at the different colleges; and the total expense of what is considered a course of education in Latin, Greek, Logic, Mathematics, Ethics, and Physics, does not amount at most to L. 30. At Aberdeen, it is indeed not more than eleven guineas, and at Glasgow and St Andrews, it is about sixteen guineas. This is for two sessions at the Greek and Latin, and one at the other branches. It has hitherto been the practice at the Scottish colleges to charge nothing for education in theology. This has had an evil effect in bringing forward too many probationers, and of giving no incitement to the professors, on account of the want of fees. Since the introduction of Dr Chalmers into the chair of divinity at Edinburgh, a change has been made in this ancient practice, and at the university of this place, a fee of two guineas is now very properly taken.

The expense of living in furnished lodgings in the different university towns, differs considerably; but at none is the expense so heavy as at Edinburgh. Twelve pounds sterling may be mentioned as the sum most commonly expended in this way in the course of a session of from four to five months. So poor are many of the students, that even this limited sum is obtained from their parents with difficulty; and it is a very common practice for them to teach small private schools during the summer vacation, or to hire themselves as rustic labourers, in order to raise a pittance for their support in the winter. This is oftener the case with divinity students than any of the others. If we compare these expenses with those of students at either of the English universities, where the outlay of a commoner, not on the foundation as a scholar or sizar, is not less than three hundred pounds per annum, we shall not have reason to be surprised at the universality of college education in this northern kingdom.

The curriculum of study differs slightly at each of the colleges, and generally lasts for four years. At St Andrews, Glasgow, and Edinburgh, Logic either accompanies or follows the study of Greek. Logic is succeeded by Ethics or Moral Philosophy, which is succeeded by Physics or Natural Philosophy. This was anciently considered the best mode of arranging the course of collegiate study; but now that the syllogistic art, as Dugald Stewart observes, has lost its reputation, it should be revolutionized, and the Logic transferred to the termination of the studies. At Aberdeen, the same error does not exist. The course at Marischal college dictates that Mathematics and Natural Philosophy shall succeed the Natural Philosophy classes, a plan adopted at Cambridge and Trinity College, Dublin.

In hardly any branch of study have the Scottish colleges acquired a character of pre-eminence, except that of medicine and surgery, for instruction in which, the university of Edinburgh has for a century enjoyed a very high and well-merited reputation, through the exertions of its Munros, Gregorys, and Cullens. In this line of study, it has been very much indebted in our own times to the abilities of private lecturers, among whom, Barclay and Knox stand conspicuous. The University of Edinburgh has possessed at different times men eminent in literature and science. Robertson, Hume, Blair, Dugald Stewart, and others belonging to it, have shed a lustre over its history. In the present day, its professors are nearly all men of high attainments, but it is needless to particularize qualifications which most persons are acquainted with. Glasgow has been also for some time regarded as a tolerably good school for Greek literature. At the other universities, the study of Greek is comparatively neglected. In several, the rudiments of that elegant language have to be put into the hands of the students; thus reducing the professors to the drudgery of schoolmasters. From this stage, the student progresses into the easiest readings in the New Testament, Lucian's

Dialogues, *Æsop's Fables*, and perhaps *Homer*. This is chiefly done at the northern colleges, where, in some instances, there are no schools for tuition in Greek. Even in the best view it can be placed, the course of tuition in Greek literature is very deficient in Scotland. A Scottish professor has said, that as there are not ten situations in the country requiring an extensive or even a moderate knowledge of Greek, there is little occasion for entering on its elaborate exposition; which is in all likelihood correct, as the kirk does not oblige its clergy to exhibit a perfect acquaintanceship with that tongue. It is therefore left comparatively uncultivated by churchmen, and is only insufficiently learnt as a matter of form by the higher orders of laymen.

The mode of instruction pursued at the Scottish colleges, bears no analogy to the process ordained by the English universities, where there are two sets of masters, namely, the professors, moderators or examiners, and the tutors. In Scotland, the whole course of instruction is in the shape of lecturing, except where the professors have to act the part of schoolmasters. Such a defective mode of instilling knowledge is remedied by some young men, who place themselves collaterally under the care of masters resident in the towns. In respect of examinations into acquirements, the system is very deficient. The professors occasionally, at distant intervals, call up young men; but this is on a very superficial plan, and it is very possible to pursue a course of study, be sent forth as a finished scholar, and yet be scarcely known to the professors. In Glasgow, the periodical examinations are upon an excellent and efficient scale. In Edinburgh, there are no examinations at all; and we have here known students procure the title of Master of Arts, merely on asking for it from the professors, when they chanced to meet them on the street, without any previous inquisition into abilities. At one or two of the colleges, a few prizes are given for the best essays on particular subjects; but these have no analogy with the lectureships, preacherships, fellowships, medals, and prizes of all

kinds held out at Cambridge, to incite the industry of scholars. In most cases, the essays delivered are little else than the themes of school-boys, and when one appears particularly talented, it is hailed as a sort of national triumph.

Placing the system of Scottish college education in a comprehensive point of view, it appears to be adapted only to a country in a backward state of intellectual cultivation. The greater proportion of students are mere boys, from fourteen to eighteen years of age, who pass through no gymnasias, after leaving the forms of their respective schools. In many instances, the professorships have degenerated not only into downright sinecures, but into a species of hereditary property. In all, there exists the most urgent necessity for reformation. At present, the course and period of study cannot be expected to produce men well versed in the higher departments of philological and philosophical science; and therefore it is with the more pleasure we have to mention, that the Commission now making its inquiries is expected to induce a very thorough alteration for the better.

In concluding, we may remark, that by the laws of Scotland, all professors and others accepting of master-ships in schools, are obligated on installation to subscribe the Confession of Faith of the Scottish Kirk. As the universities could not be supplied by a sufficient number of presbyterian professors, episcopalians have been admitted without their subscription being exacted. We believe the Commission is desirous of abrogating this practice in favour of a subscription to the confession of Knox, which is of a general nature. If the kirk permit this to be done, it will virtually acknowledge the defectiveness of its standards. If it prevent it, the professors belonging to the episcopal church may perhaps have to retire, and the country will find itself unable to procure talented individuals of the national religion to fill their chairs. In either case, the kirk is in a disagreeable scrape, out of which it will be difficult to rise with consistency.

RELIGIOUS INSTITUTIONS IN SCOTLAND.

CONSTITUTION AND SETTLEMENT OF THE KIRK OF SCOTLAND—DISSENTING BODIES.

THE religious history of Scotland, which remains still to be written, would form a remarkable chapter in the records of human sentiment. The sudden and almost miraculous change from an old to a new form of worship and belief; the turbulence which ensued in struggles between the royal and popular power; the alternate successes and reverses of either party; the final establishment of the presbyterian form of church government; and the gradual dismemberment and decay of the fortunate party into factions, schisms, and dissensions, would furnish a theme of no ordinary import to the writer who has the opportunity and desire of studying the actions of mankind in connexion with their metaphysical constitution. It is a matter of deep regret, that the nature and comprehensiveness of our design, in portraying only the prominent and peculiar qualities of our national institutions, preclude the possibility of descending to a minute exposition of the history and properties of the Scottish system of religion. The delineation of some of the most striking characteristics is all that can with satisfaction be brought forward.

The machinery of religion, as it has been occasionally called, is of a very peculiar construction in Scotland. It differs from that found in all other nations

in Christendom, a few minute states on the continent of Europe excepted. The most prominent distinction in the constitution of the established kirk and all its dissenting bodies, is the want of an apostolic ordination,—a property deemed absolutely essential for the valid constitution of a priesthood, by all churches deducing their origin from the times of the Apostles, and the Fathers, their successors. At the reformation of religion in Scotland, 1560, by an ebullition of popular fury, and the management of a body of noblemen, as much interested by covetous as honourable motives, the old church establishment was dismembered, its powers of consecration contemned, and a fresh dynasty of priests or presbyters (the words being synonymous) instituted out of the laity. At first no form of consecration was used, and an ordination by the imposition of hands was not practised for many years afterwards; though it would be difficult to see wherein could lie the use of this rite, seeing that the new clergy did not pretend to have any connexion with those bishops through whose priestly order the line of apostolic succession had been sustained for nearly sixteen centuries. The inconsistency of such a procedure, and the want of the qualification we allude to, may afterwards come to be commented on; in the meanwhile we need only say, that in this manner the presbyterian form of church-polity, now in existence, was founded.

The whole country was purified of the Romish clergy, at least to the extent of allowing them to interfere in religious matters, for, in spite of all opposition, several dignitaries kept their benefices for years, and were a sore torment to the reforming party. The institution of an efficient parochial clergy was long in being effected. The nation was poor in learned men, not churchmen; and to meet the exigency of the period, a class of readers, or men whose duty consisted only in reading chapters of the scriptures and common prayers, was created. The system of church government was of a singular nature. Like as in the apos-

tolic churches, there were three orders of priests. There were lay bishops, or superintendents, presbyters, and elders. The first had a restricted, but still a very sufficient, authority over dioceses, of which there were ten in the country. The second were the ordinary parish clergy. The third were nominally laymen, who acted as assistants to the second class, and were chosen from among the most sober of the people.

Such a constitution of government was the suggestion of Knox, who, like Luther, Melancthon, Beza, and Calvin, was not inimical to an episcopacy, it being his opinion that parity only "breedeth contempt." At first, the nation had no cause to reject an ecclesiastical establishment of this nature. The church, so erected, was in general well conducted. The superintendents, two of whom had previously been Popish bishops, were zealous, and, besides acting as overseers, were indefatigable in preaching. To these superintendents was committed, moreover, the power of ordaining their presbyters. At this time, and afterwards, the tenets of the new church were settled by canons, called the First and Second Books of Discipline, and a Confession of Faith, drawn up, it is understood, by Knox. The services of the church were copied from those of the English church at Geneva, and resembled those of Edward VI. as set forth in the Book of Common Prayer, still in use in the church of England; the only essential difference between the two rituals, being the power which was given to the Scottish ministers to introduce passages into the prayers adapted to particular occasions. Copies of these books of common prayer, which were introduced by Knox, are now so very rare, that many have an idea that they never had an existence. In many things, the two British churches resembled each other after the reformation. While, however, the English communion retained some of those fasts and festivals which were proven to have been attended to by the first Christians before the church of Rome had interfered to superadd unnecessary and improper holidays in honour of suppositious

saints, the kirk in Scotland was more zealous, and abolished festivals altogether, though, at the same time, it sanctioned new fast-days to an amount fully as absurd and troublesome. The vestments of priests were also abrogated out of hatred to papistical usages, yet, by an inconsistency which we find connected with every Scottish ecclesiastical arrangement, the clergy, who first were ordered to lay aside all priestly garments, soon assumed a fashion of wearing black gowns and bands, which they still retain, and which, as far as we can comprehend, have as little "sure warrant in scripture," as the white and coloured robes of the episcopal clergy.

The kirk continued for about eighteen years in this semi-episcopal constitution, when a new and more violent reformer than any who had gone before him, appeared as its destroying angel. This was Andrew Melville, who has obtained the evil distinction of having been mainly instrumental in demolishing nearly all that had been done to settle a moderate, and comparatively a very excellent, system of church polity. From less to more, the order of superintendents was abrogated, and instead of the common prayers, a process of extempore praying and preaching was instituted. The bonds of discipline were drawn to the utmost verge of human sufferance. The nation was roused into the most fanatical enthusiasm. Intolerance of the most rigid description prevailed by law, and freedom of opinion was denounced as heretical.

Hitherto the church, besides being governed by superintendents, was managed by synodal meetings and General Assemblies. Dioceses were now abolished; and in 1580 the country began to be divided into presbyteries or smaller sections; that of Edinburgh being first constituted. Henceforth the parochial clergy, and their inferiors, the elders, became their own governors by a system of mutual co-operation and jurisdiction, which will soon be properly explained. From this period till the year 1690, there was one continued spiritual and physical war in the kingdom betwixt the

three last monarchs of the House of Stuart and the people. Episcopacy and presbyterianism were pitted against each other, and the champions of both were characterized by the same intolerant properties when chance placed them uppermost.

In the course of these hundred and ten years, there had occurred some very stirring transactions, which biassed the constitution and faith of the presbyterian party. For a short time, England was subjected to a presbyterial rule, and in the age of puritanism, an agreement was entered into by all the presbyterians in the island, to support each other at all risks, to extirpate prelacy, and to sustain a universal presbyterianism over the three kingdoms. This remarkable bond of affinity was called the Solemn League and Covenant. About the same time, in order to assimilate the forms and tenets of the English and Scottish kirks, a general convention of ministers sat at Westminster, when an elaborate Confession of Faith, pregnant with the most explicit Calvinistic doctrines, and incorporating the above Covenant, was concocted, and ordered to be the future national ecclesiastical canon of faith. By orders of this convocation, as well as "that unhappy Parliament," which sat down 1640, a new version of the Psalms of David in metre was likewise published, for the use of all presbyterian congregations.* The English nation soon fell from presbyterianism, and by a consequence, the Confession of Faith, the Covenant, and the new version of the psalms; but the Scotch were tenacious in maintaining them, and till this day they are retained by the kirk;

* The author of this version was Francis Ross, a native of Halton in Cornwall. In early life, he studied as a lawyer, but afterwards being tainted with violent republican principles, he had himself elected a member of the rump parliament, in which he had an opportunity of abusing the royal and episcopal prerogative. He subsequently assisted Cromwell to supreme authority, and after a life of political and spiritual strife, died 1658, and was buried at Eaton College. After the restoration, his place of interment was desecrated. Besides the version of the psalms, he was the author of some controversial works, now forgot.

having superseded the more moderate Confession of Knox.

During the domination of Cromwell, he instituted a very praise-worthy toleration in Scotland, much to the dissatisfaction of the presbyterians, whose church courts were broken up by the Protector as seditious meetings. At the restoration, Charles once more introduced bishops, who had received an English ordination. His episcopacy was, however, to the last degree moderate ; the bishops being only empowered to ordain presbyters, and to act as perpetual moderators of church courts. No attempt was made to introduce the liturgical service, and we have it by tradition, that there was only one copy of the Book of Common Prayer used as a matter of choice in Scotland. As an order was likewise given for the presbyters of the kirk to come in to receive apostolic ordination, otherwise to leave their benefices, this bred much disturbance. Four hundred refused to accede to the regulation, and were consequently ejected. Many, however, accepted of livings on these terms. The vacant livings were filled by young men mostly from the northern universities, who went by the name of the "curates," and were in many instances very unfit for their office. These and some subsequent harsh measures of the court, threw a part of the nation into a rebellion, and from this period till the revolution, the country was desolated by a religious civil war.

Toward the year 1688, the Scotch became wearied of the strife of parties, and in general they ardently sought repose. The Covenant, which had impelled so many to flee to the wilderness, rather than submit to a royal and episcopal authority, was now considered as too sweeping in its declarations ; and the wiser part of the people, seeing the impropriety of insisting too minutely on its provisions, were anxious for the restoration of a simple presbyterian polity in Scotland only. The moderate ministers, therefore, and others, entered into terms with William, before and after his landing in Britain ; and the bishops

being unwilling to offer him allegiance, he abrogated episcopacy in Scotland, and placed the kirk in that position it had enjoyed prior to the introduction of the bishops. Since this epoch it has remained unmolested till our own times.

By far the most remarkable circumstance connected with the revolution in Scotland, was the manner in which the unfortunate and staunch adherents of the Covenant were treated. Those men who had stood up in spiritual and physical array against defections of all kinds, were now consigned to neglect. They denounced the revolution settlement, whereby episcopacy was established in England and Ireland, as sinful and criminal. They railed at the apathy of those clergy who could accept of benefices in opposition to those standards and covenants, which they still allowed to subsist as part of the Confession of Faith. It admits of no question that these persons were not well treated by the nation at large, and this more especially, if the Scotch be correct in their assertions, that it is to these persecuted individuals we owe a large share of that civil and religious liberty now in existence.

The injury sustained by the covenanters was made the more vexatious by the desertion of their ministers, who all went over to the kirk as settled by William, whereby they were left entirely without pastors. In this desolate condition they remained for sixteen years, when, in 1706, they were joined by the Rev. John M'Millan, a minister of the kirk, who left his living, and became their religious director. From this circumstance they came to be designated M'Millanites, though they were still better known by the name of Cameronians, from Richard Cameron, one of their preachers, who was slain fighting for the cause of the party at Aird's Moss, 1680.

The tenets of this sect are the same as those of the other strict presbyterians, and they now only differ by adhering to the coarse style of public worship and preaching common in the seventeenth century. Though originally dissenting on political motives, we are of

opinion, that few of the members now uphold the same ideas of the revolution, and it is more than probable, that very few in the present day know exactly what they want. They have long since desisted from praying for judgments on the land, for the sins of former times. The west of Scotland is still their strong hold, and in all places, so far as we have noticed, the members appear to be of the lowest, the most bigoted, and most ignorant of the country. Their ministers are generally mild and intelligent men, and very different from the Kettledrummels, and others, who brought down the just sarcasms of fanciful writers on the party. In all there are about thirty congregations. It assumes the title of the Reformed Presbyterian Synod.

For thirty-six years after the revolution, the kirk continued free of any other dissent. The principles of a great schism were however fermenting. At this time there arose a sort of continued contest betwixt a severe and moderate party in the establishment, which at length arrived at a crisis. In 1727, a minor and preliminary schism was effected by a person of the name of Glass, a kirk minister, who began to teach doctrines subversive of the presbyterial, or any other than the independent, system of church government. For this breach of duty, he was suspended, and ultimately expelled from his living, after which he retired to Dundee, where he set up a sect on his own principles. The church, in 1739, offered to restore him, providing he renounced his errors, but this he would not do. In a short time, the new party, or Glassites, were joined by a Mr Robert Sandeman, and they are thence sometimes known by his name. The most prominent characteristic of the Glassites is, that they have no clergyman to direct their doctrines. Each congregation has elders and deacons, who are admitted by the imposition of hands! They have also deaconesses, or decent old matrons, who act as patterns to the female part of the congregation. They are rigid in instituting inquiries into the conduct of members. Every Sunday they have *love feasts*, or dinner parties,

the expenses of which are defrayed by the more wealthy members. They also celebrate the holy communion weekly. They are not Calvinists, and we believe hold that *belief*, in its simplest sense, in the sacrifice of Christ, will convey salvation. From their outset, the party has been very small, and is little heard of.

These two separations from the establishment were trivial in their effects in comparison of that which took place shortly after the deposition of Mr Glass. In 1732, a considerable degree of dissatisfaction arose in the country, with the proceedings of the General Assembly. It was alleged, that that court was commencing a system of enacting laws repugnant to the spirit of presbyterianism. The most prominent cause of discontent, was an act which it passed, ordaining, that when patrons of livings did not present an incumbent within the time prescribed, the right of doing so should devolve upon the heritors and elders of the parish, provided the said heritors were only protestants. In opposition to this law, it was held, that if these heritors were Episcopalians or Jacobites, they should have no right to use this privilege. Such was the ostensible ground of a very serious quarrel, which now broke out in the kingdom; but there were other causes conspiring to work a division of parties. The Assembly had, for instance, offended many by enacting, that in future there should be no protests allowed from its decisions; which was undoubtedly a judicious regulation, inasmuch as the practice of reviewing or reversing judgments by the same court, may be described as a curse wheresoever it exists in jurisprudence. Besides this, it is obvious that the kirk was then emerging from the gloomy fanaticism which had formerly characterized it, and relaxing some of the bonds of that extravagant discipline which at one time constituted it a species of Inquisition. In this state of affairs, when one party wished to go forward, and another to stand still, a division very naturally occurred.

On the promulgation of the above acts of Assembly,

petitions opposing the measures in view were poured in from ministers and people, and many of the clergy and laity were not scrupulous in accusing the church of selling the religion of the country. The person whom history mentions as having been most earnest in his declamations against the proceedings of the Assembly was Mr Ebenezer Erskine, minister at Stirling. This zealous man, in preaching before the Synod of Perth and Stirling, lavished the utmost abuse on the Assembly, for which the Synod subjected him to public censure. According to the laws of the kirk, he appealed from this interlocutor to the Assembly; but that court, seeing his errors in the same light, sustained its decision. Ebenezer was not however to be damped. He protested again on the principle, that ministers had a right to call in question the improper decisions of the church courts, or any other errors falling under their notice,—a proposition which, if sanctioned, would establish that every subject could capriciously refuse acquiescence to the common acts of Parliament. Other three of the parochial clergy joined Erskine in his protest, and the whole were in a short time suspended from their ministry. Some time afterwards they were formally deposed, whereupon they formed themselves into a Secession Communion, under the title of the Associate Presbytery, and published a declaration of their principles.

In their declaration of independence, or "Testimony," they freely accuse the kirk of trampling on the fundamental laws of Presbytery, and of tyrannizing over those ministers who will not give way to prevailing defections. Among other failings of the kirk which are raked up, the writers specifically charge the Assembly of remissness in not having censured, with sufficient severity, Professor Simson of Glasgow college, who had taught his pupils, among other errors, that the Son is not God equal with the Father; and that they had not censured at all Professor Campbell of St Andrews, who taught, "that the sole and universal motive to virtuous actions is self-love, interest, or plea-

sure ;—that men, without revelation, cannot by their natural powers find out that there is a God ;—and that the laws of nature are, in themselves, a certain and sufficient rule to direct rational minds to happiness.”

The General Assembly repenting afterwards of proceeding to such extremities against Erskine and the other protesters, ordered the censures to be removed, and offered to receive them again into communion ; but as these individuals did not see that the kirk intended to retract any of its arrogant decrees, they declined the proffered grace, and proceeded to act as an independent sect. Finding themselves free of the church courts, they drew congregations around them, who sympathised in their sufferings. They received accessions in great numbers in different parts of the country, but especially in and about Stirling, Dunfermline, and the adjacent parts of Fifeshire. They made a profession of adhering strictly to the old standards of the kirk in its purest times, and renewed among them the practice of subscribing copies of the Covenant. In 1738 the Secession received a large accession of members, in consequence of the ministers of the establishment reading from their pulpits a proclamation offering a reward for the discovery of the murderers of Captain Porteous ; such being considered, not only a profanation of the Sabbath, but an improper interference on the part of the state with the duties of the clergy.

The harmony of the Secession church was of no long duration. The faction was composed of too untempered materials to remain long in quietude. It soon split into two divisions, which became more violently the enemies of each other, than of their general foe the kirk. The cause of this discord was curious. In 1745, an oath was imposed on all those who wished to become burgesses in royal burghs, for the purpose of excluding Jacobites and Roman Catholics. The spirit of the oath was unobjectionable in one sense, and no opposition was raised against its general bearing. It was only one of the words upon which an altercation

was raised. The following are the exact words of the oath: "I protest before God and your Lordships, that I profess, and allow with my heart, the true religion presently professed within this realm, and authorized by the laws thereof: I shall abide thereat, and defend the same to my life's end; renouncing the Roman religion, called Papistry."

We could defy ordinary protestants to discover any improper word in this simple declaration. The keensighted Scottish dissenters were more ingenious in picking out an ambiguous expression. The word at issue, was *presently*. One party maintained that the oath might be taken with safety, because, although they asserted that the established kirk was not the same pure presbyterian church as formerly, still, though in error, it professed the true religion. Ebenezer Erskine, and his brother Ralph, and Fisher, one of the original protesters, were of this opinion. The other party were less liberal: They said the swearing of the oath was sinful, for it sanctioned the kirk establishment, *presently* in existence, and that, for that reason, it gained their Testimony. The subject came under cognizance of their church courts, and a virulent controversy thereupon lasted for two years, about the end of which period, a general synod came to the determination, that the oath was improper. The minority immediately protested; but this, as well as much subsequent discussion, in regard to whether an accession to the decision of the court should in future be a term of communion, produced no amicable result. Each party charged the other with informality, which is a very common accusation in Scottish ecclesiastical judicatures. Open war was at length proclaimed between the two factions, and the dominant party, which assumed the name of Antiburghers, went the length of excommunicating the other, which came now to be called the Burghers. In proportion to the nicety of the matter in dispute, a degree of pertinacious obstinacy and animosity was superinduced, only to be paralleled by the discord which once raged betwixt the party of Jansen-

ists and Jesuits. They sedulously avoided one another's meeting houses, and on one occasion we perceive, that one of the Erskines was reprimanded by his associates in open court for praying in the family of a minister of the opposite sect.

The name of the Antiburghers in their corporate capacity, was the General Associate Synod, and that of the others was the Burgher Associate Synod, of which the former was the more rigorous in discipline and doctrine. It denounced the promiscuous dancing of males and females; upheld the propriety of prosecuting for witchcraft; and committed many other absurdities, of which the dissenters would now be ashamed. From 1747, when the schism broke out, till 1795, things remained in this condition, when a new quarrel began to agitate the Secession. Hitherto the subsidiary canon of the Antiburghers had been the Judicial Act and Testimony of 1736, shewing the general terms of dissent. Some now began to allege, that some of its provisions were too illiberal. One clause, especially, met with reprehension, wherein the toleration of the public worship of Episcopalians in Scotland is denounced as sinful, and should not be permitted. (Here is a specimen of the amiable covenanting doctrines.) Some Antiburghers were now ashamed of this, and other equally absurd paragraphs, and were desirous of drawing up a new bond of union, in which such should be rescinded, and some other improvements made.

Several years were occupied in the framing of this new canon, and at last, in 1799, it was published under the title of the Narrative and Testimony, with the above alterations. To this step towards improvement in cultivated sentiment, four ministers dissented; and as nothing would reconcile them to the majority, they some years afterwards instituted a new sect, under the designation of the Constitutional Associate Synod. This little party became henceforth the very quintessence of puritanism. In the meanwhile, a similar dispute arose among the Burghers, upon points equally peevish, and they likewise separated themselves into

two divisions. One assumed the name of the Original Associate Synod; the other retained the title of the Burgher Associate. By all these various names, which shewed at least a meagreness in nomenclature, they were not known in the country; nicknames being more generally used in speaking of them. The two latter parties came in this way to be known as the Old Light and the New Light Burghers, by which profane designations they are noticed in the satirical effusions of Burns. In the course of these changes, one of the greatest causes of division, the Burgess oath, was abrogated; nevertheless this concession to sectarian prejudices did not effect any reconciliation.

Time is the grand smoother down of all differences. The first generation in the nineteenth century had not the same notions as the adherents of the Erskines. By the year 1819, a general feeling of charity towards each other was manifested by the sectaries. Overtures were made by various congregations, praying for a union of churches, and committees were appointed to take the subject into consideration, and to draw up a Basis of Union. Out of four sects, two, and these the more numerous, subscribed the Basis, and instituted one great body under the title of the United Associate Synod of the Secession church. The Original Associate, and the Constitutional Associate, declined interfering. Of the two who coalesced, there was a minority of nine ministers belonging to the General Associate, who protested against the Basis, and set up a new sect under the name of the Associate Synod, lately the General Associate Synod; by which measure, there remained four parties as formerly.

This small body last mentioned has published a Testimony in vindication of its conduct, and the lustration of its doctrines. The arguments used are to the last degree hypercritical. It is alleged, the Basis was executed too hastily—that it goes on the assumption that the revolution settlement was faultless—that it forbears to make the subscription of the covenants a requisite in

the church—that it does not contend against public backslidings—and that it hushes up the questions which first caused the dissent from the kirk. It is perceivable that the whole is a declamation in favour of the wretched intolerant principles of 1638. The Union of England with Scotland, and that of Great Britain with Ireland, are described as sinful, because the prior bond of the covenant was kept out of sight, which means, in plain English, that it was wrong for the Scotch at these epochs to *permit* the continuance of prelacy in England and Ireland. People holding such extravagant opinions in the present day can only be pitied, and left to follow up the whim of signing copies of the covenant annually. We understand that within a recent period, the Associate has joined with the Constitutional Associate, and hence the number of sectarian bodies is one less.

There are now three distinct classes of the above species of dissenters, which are like the three degrees of comparison. The chief body, or Secession Church, approaches very nearly to the kirk, in outward semblance, and other characteristics. The sect formed by the above coalition, is made of sterner stuff, and the third faction, or Cameronians, are professedly worse still. The next junction which may occur, is likely to be betwixt the two latter parties, but there exists no prospect of a union of one or all with the kirk, which by many members is considered little better than a prelacy; so much is it connected with the state.

The stranger has now to be made acquainted with another numerous body of dissenters, though of a very different character from any already delineated. This is the Relief Kirk, which is composed of persons who have left the established church, for no other reason than that they cannot choose their own ministers. The name is significant of the *relief* from the burden of patronage. The sect originated in 1752. A clergyman of the name of Richardson, having been imposed upon the parish of Inverkeithing, contrary to the wishes of

the parishioners, they opposed his settlement, in which procedure they were countenanced by some clergymen in the district. The General Assembly being irritated by this conduct, ordained that every minister in the presbytery should attend the induction of Richardson. There was an inconsistency in this decree; for, some years before, the assembly had passed an act, shewing that no minister should be intruded into any church contrary to the will of the congregation; nevertheless, the ceremony took place, but a minister named Gillespie and five others refused to attend. For this contumacy, Gillespie was deposed, and the others suspended. The whole transaction was hurried over in a week, and gave great dissatisfaction.

A new sect, like a new religion, requires only a beginning to meet with adherents. Gillespie left the church, and preached to his congregation in the fields. Shortly afterwards, a minister named Boston, who had been refused the kirk at Jedburgh, though a majority of the congregation was in his favour, opened a place of public worship on the same grounds of dissent as Gillespie, with whom he entered into connexion. Some persons in Colinsburgh in Fife, being about the same period disaffected towards the parish clergyman, they likewise left the establishment, and invited a Mr Collier, who had been a minister among the dissenters in England, to become their pastor. These three now coalesced, and formed a presbytery of relief. In doctrine, forms of worship, or church discipline, the relief does not differ from the kirk; its only distinction being the nomination of ministers by votes of the congregation. It is even more liberal than the kirk in some matters. It dispenses with the subscription of the clergy to the twenty-third, and part of the thirty-first chapters of the Confession of Faith, and admits Roman Catholics, Episcopalians, or others, to the communion, provided they simply assent to the broad principles of Christianity.

It is one of the peculiarities of presbyterianism, that it cannot keep itself free of schism. Like as in the case of the other dissenters, this sect has also had its

disputes and separation into parties. The cause of quarrel is so remarkable, that we are bound to notice it. In the beginning of the year 1829, the congregation of the relief chapel, Roxburgh Place, Edinburgh, which, as far as we can discover, appears to be considerably in advance of ordinary presbyterians, as regards religious intelligence and freedom from bigoted notions, with the consent of its pastor, the Rev. John Johnston, a gentleman whose abilities would reflect credit on any communion, caused an organ to be erected in the chapel to aid and direct the psalmody. As this was the first attempt made to introduce instrumental music into presbyterian places of worship in Scotland, it roused the prejudices of one part of the community, and was hailed with enthusiasm as the dawn of a new era in the history of religion by another. The introduction of any kind of music into dissenting meeting-houses in England, or any other part of the world, but this singularly-minded country, would have been esteemed of no moment. Here, such an event was considered as one of prodigious importance. As might have been anticipated, it gave the utmost offence to almost every one of the relief congregations in Edinburgh and other places; who on this occasion forgot the liberality of their canons, and took certain measures to effect the destruction of the instrument, or the exclusion of the devoted congregation and minister from the pale of the sect.

We do not here require to describe the various measures adopted to accomplish this purpose, and as the instigators of the quarrel are in all probability by this time ashamed of their behaviour, we pass it by in silence, and only mention, that when the case came before the synodal court of the party, it was decreed by a majority of that body, that the organ should either be pulled down, or the name of Mr Johnston erased from the roll. Such a dictatorial mandate having been submitted by Mr Johnston to his congregation, the members pledged themselves to support him under the difficulties of his situation, and declared that they would on no account be brow-

beat out of their design of retaining their instrumental music. On this firm expression of sentiment, Mr Johnston solemnly declared himself free of the jurisdiction of the relief body, and he subsequently gave in his resignation to the synod. Throughout the whole affair, the conduct of the congregation and its pastor was characterized by a consistent firmness and moderation, which is seldom witnessed among presbyterian dissenters, while the procedure of the presbytery and synod was tinged by the usual attributes of informality and intolerance.

This remarkable cause of schism elicited several smart pamphlets vindictory of the organ, containing many pertinent remarks, which it would be well for the people of Scotland to consider dispassionately. The arguments used by the anti-organists in the public prints, were weak and illogical, and such as might have been expected from persons whose views were confined to the little circle in which they moved. As far as we can judge of the bearing of these propositions, it appeared there was an insane terror of the gradual introduction of the *other* attributes of an Episcopal or Romish ritual, without consideration that an organ has no more relation to these churches than it has to the presbyterian; and that in England and elsewhere, it is only used by some of the more wealthy congregations, who wish to please themselves in the harmless luxury of a superior kind of church music. Be this as it may, the organ has been the means of causing a schism in the relief kirk, and it requires no spirit of prophecy to say, that in a short time Mr Johnston will be joined by other clergymen for the same reasons. The presbytery may perhaps make an overture to receive this gentleman back into the communion, but we comprehend that that would not be reckoned of any import to himself or his congregation.

Each body of dissenters has one or more professors of divinity, who are at the same time ministers. The stipends of the clergy, and the building of the meeting-houses, are paid by the price of the sittings, and by collections.

We have thus given a very brief outline of the distinctions of presbyterian sectaries in Scotland, and we can only add, that, judging from what we see every day around us, the operating cause of nine-tenths of the dissent is the law of patronage. Beside this, all others sink into insignificance, and but for it, they would soon be forgot. When dissent broke out, the kirk viewed the rearing of meeting-houses with much jealousy, but now it cares little about the number of persons who attend them, and in most places, the clergy of all the various communions are on intimate terms. It has been hinted that the kirk would be inclined to hold out a treaty of union with the more civilized sects; but it is not to be expected that any junction will soon take place, unless the dissenters are guaranteed, not only the choosing of their own ministers, but the power of being co-ordinate in the jurisdiction of the church courts, which will certainly not be conceded.

The other classes of dissenters in Scotland, not being peculiar to the country, require no regular exposition. There is a large and respectable body of Independents who form a congregational union, and who are not on the increase; a party of Baptists, who are less numerous; and a small sect called Bereans, who resemble Glassites in some respects, and take their name from a desire to follow the example of those good individuals who read the Scriptures daily. The sect originated in 1773, and many of its members have been characterized by the profession of bold political principles. There is also a congregation in Edinburgh which follows the opinions of Emmanuel Swedenborg. Roman Catholicism is progressing fast in Scotland, chiefly by the immigration of Irish, and the conversion of presbyterian outlying Highlanders. The Roman Catholics have now some remarkably fine chapels, and the clergy are universally known as quiet and unobtrusive men. The Roman Catholicism of Scotland, is, on the whole, of a very mild kind, and

has little or no resemblance to that found to work such melancholy effects in the sister island. Neither Methodism nor Quakerism seems to have been successful in Scotland; of Methodists there are several scattered congregations, principally composed of the dregs of the population of large towns; of the Society of Friends there is only one association at Edinburgh, formed by some of the most respectable and wealthy citizens. The sect which is making the most perceptible progress after the Roman Catholics, is the Unitarians. The chief rallying place of the party is in the west of Scotland, where the Socinian doctrine meets with a ready support from the operative manufacturers. We are, however, of opinion, that the number of professing Unitarians gives a very imperfect idea of the actual amount of this species of belief, which, it is to be feared, is now spreading its influence among all classes of presbyterians. It is a fact too remarkable not to be generally known, that this thinly veiled theo-philanthropism has succeeded always best in countries once imbued with the most rigid Calvinistic doctrines. It has, at least, well nigh finished Christianity in most of the German states and New England, and has now to work out its ends in this portion of Great Britain. The want of a liturgical service in the kirk, whereby the first principles of a sound orthodox faith are constantly exhibited and repeated, and the clergyman prohibited from leading his flock astray by wild harangues of his own, as well as the want of apostolic ordination, which obliges every clergyman so constituted to refer his commission to a divine head, are supposed by many to effect results of this nature. While we now write, the kirk is assailed on all sides by the outpouring of novel or improper dogmas, even by some of its clerical members, and we sincerely trust, for the peace of society, that it will proceed with firmness and caution to maintain the dignity of the religion it has long so temperately professed.

RELIGIOUS INSTITUTIONS CONTINUED.

QUALIFICATIONS OF SCOTTISH CLERGY—APPOINTMENTS TO
LIVINGS—PATRONAGE—THE CHURCH COURTS.

THE manner in which ministers are inducted to livings, and some other characteristics of the Church of Scotland, require a little explanation. The education of the candidate for holy orders being completed, he first applies to a presbytery for a licence to preach, at the same time exhibiting certificates of character from some of the settled clergy. If possible, the application must be made to the presbytery of the native district of the candidate. On an appointed day thereafter, he is subjected to a public examination on his theological learning, his classical acquirements, and his knowledge of church history. He is likewise appointed to deliver in private to the presbytery a homily on some specified text, and an exegesis in Latin on a doctrinal point. He is also bound to defend his propositions against two or three of the members. After these or similar examinations, he is appointed to preach in the parish church. As the case may be, he is shortly afterwards invested with a licence to preach the gospel within the bounds of the presbytery,—a liberty which, we understand, will in general extend to other districts, on the exhibition of his licence.

The examinations or "trials" of divinity students are generally of a gentle nature, and quite in accordance with Scottish university education. Very few, if any, are ever examined in their knowledge of He-

brew ; indeed, until the current year, it has not been a law in the church that students should make themselves acquainted with that language. They are now bound to study it for one session of five months. It is expected that they will be better read in Greek literature, but examination on this head goes scarcely further than an order to read a few verses of the New Testament, and generally of the gospel of St John. In Latin, all the students are well versed. The whole amount of inquisition into classical acquirements, is such as could be easily borne by Westminster scholars of the fifth or sixth form. On this account, there is only a mere superficiality of learning in the Scottish kirk, which has been from the very first, and is at present, very barren of profound scholars. A few rise above their compeers, and these generally relinquish their benefices for chairs in the universities, which appears to be the only species of promotion for churchmen in this country.

When a young man receives a licence to preach, his next object is to procure a presentation to a living, and until he receives this, he is not put in orders, but remains in a rank somewhat akin to that of a deacon in the episcopal church. The regulation regarding the age of licentiates is not so rigorous as that relative to deacons. There are instances of students beneath twenty-one years of age being licensed, and they are not compelled to remain any length of time as neophytes ; being eligible for orders as soon as inducted to a living.

The right of presentation in Scotland generally belongs to one or other of the heritors, who have the payment of the stipend. There are nearly a thousand livings in the kirk, one fourth of which are in the gift of the crown. In a few cases, the heads of families have this prerogative. When a vacancy occurs in a parish where the crown has the benefice in its gift, the Secretary of State is biassed frequently by the solicitations of influential noblemen and gentlemen ; and when this is not the case, he concedes the presentation

to the heritors. Some years since, certain "leaders" in the kirk had much influence in this respect, and by their countenancing government measures, had considerable power in the nomination of clergymen; but recent changes in politics have deranged this species of patronage.

Patronage is esteemed by many in this country as a grievous evil. The First Book of Discipline does not allow it, and the General Assembly has often attempted, sometimes with success, to throw it off. It was finally organized as it now operates in the reign of Queen Anne. It is unquestionable, that evils spring from a system of patronage, but it is at the same time observable, that congregations, when left to their own choice, in many cases divide in opinion, and their condition is not meliorated. Besides, it is doubtful if mere "hearers" be competent judges of the talents of a pastor. At present, there is a society of laymen and clergymen formed for the purpose of agitating this question, and of acquiring contributions, with which they propose to buy up the presentations, and convey them to the heads of families. As they are unable to purchase one in the year,—for some of them are worth a thousand pounds—it will hence take at least a thousand years to wipe out this usage from the church. Some writers have not scrupled to declare, that the presentations should be wrested from the hands of their present proprietors; but this is an act of injustice not to be endured. If the evil be as it is mentioned, the kirk ministers who accept of livings, should be compelled by a legislative enactment, to dedicate a portion of their stipends to a liquidation of the price of their advowsons; and this would eradicate the mischief in a few years. As we must always bear in remembrance, that the clergy are supported by endowments, and not by compulsory assessment,—those in the city of Edinburgh excepted,—it is the immediate curators of these endowments to whom, by right, the presentation belongs, and therefore the congregations of the establishment have no claim to be heard. Should, moreover, these congregations pay seat rents to ma-

gistrates, they only do so by reason of their own simplicity in not investigating their privileges; consequently they have still no cause to murmur. There is another view of this case: The person who presents the living does not do so in reality. He only *suggests* to the presbytery a fit candidate. The members of this court are therefore the nominators, and if they be not scrupulous in examining licentiates, on them should fall the vituperation of the laity. Further, why are not objections lodged in "moderating the call?"

On the reception of the presentation to a living, it is transmitted by the licentiate to the presbytery of the district in which the parish is situated. The candidate then goes through another course of examination as to character and abilities, though of a more superficial nature than the preceding. Should the court be satisfied, one of the members is appointed to "moderate the call." This is done by preaching in the vacant church; reading the edict of the presbytery sustaining the presentation; and desiring all who have any pertinent objections to state, to come forward and lodge them. Nobody, as a matter of course, offering any opposition, a day is fixed for induction and ordination. On this day occurring, another sermon is preached by some particular clergyman, who has been appointed to "preside on the occasion," in presence of the congregation and members of presbytery. After service, this clergyman calls on the candidate to answer some questions respecting his desire for entering the holy office, and his submissiveness to the discipline of the presbyterial government. On answering these questions satisfactorily, he is then desired to kneel in the most conspicuous place in the church, where he receives his ordination by the laying on of the hands of all the clergy at the same time, or of as many as can conveniently advance. A prayer for the descent of the Holy Spirit on the new minister is now offered up, and the ceremony closes by his rising up and shaking hands with all around. Three ministers may ordain on particular occasions, but it is enacted that,

if possible, there be seven. Nearly the same forms are gone through in the case of translations, with the exception that there is no re-ordination.

In settling clergymen among dissenting presbyterians, the same routine of procedure takes place, only that, instead of the presentation, the candidate is nominated by a "call" from a congregation, which, when unanimous, is termed a "harmonious call." When vacancies occur by death, or otherwise, the presbyteries of the establishment furnish preachers, to conduct the Sunday services till a new minister is placed. Among dissenters in such cases, or when a number of persons wish to form a new congregation in connexion with a particular dissenting kirk, the congregation in question commonly makes application for "a supply of sermon," or, in other words, they crave to have a preacher to conduct their devotions. Petitions for supplies of sermon will often meet the eye of strangers in the Scottish public prints, and the phrase may perhaps have excited their curiosity.

Although the presbyterian dissenting clergy have received the same species of education, and submitted to an ordination from their own presbyteries equally as valid as that of the members of the establishment, yet they are not held as eligible to accept of parish livings; the kirk here taking up a stronger position than the church of England, in relation to the dissenters, who are occasionally admitted by being subjected to episcopal ordination. This is a remarkable peculiarity in the Scottish ecclesiastical polity. The present regulation of the kirk on such a point is the safest for itself; for were it to permit a dissenting minister to come into the church, it would be obliged to recognize the validity of his previous ordination, or to re-ordain him; and such a transaction would amount to an acknowledgment, that it possessed a spiritual power which could not be procured by dissenters, or by a party of laymen. We consider it as a matter of surprise, that this arrangement of the kirk has attracted so little attention. The dissenters themselves are less

scrupulous in admitting ministers from other communions; and at present instances could be pointed out, wherein clergymen in dissenting congregations were admitted without any ordination whatever, although they had previously been only the self-constituted ministers of Independent congregations.

The number of divinity students and licentiates belonging to the kirk, is at all times very great. It was lately computed, that there were about 700 licensed preachers ready for parish livings, while the vacancies only amount to thirty or thereby every year; and if we at the same time reckon that there is fully as numerous a body of assistants for dissenting pulpits, an idea may be formed of the proneness to the clerical profession manifested by the Scotch. Very few of these individuals depend for immediate support on their relations, or private fortunes. Nearly the whole are engaged as tutors in gentlemen's families, which occupation frequently leads to a presentation, and as teachers of public and private schools. Though many of them, as is usually the case, have been originally mechanics, shepherds, or labourers, who toiled in summer and autumn for the means of procuring college instruction in the winter and spring, yet, on procuring a licence, they never descend again to such homely, or indeed to any secular, pursuits, with the exception of teaching.

By reason of the mean origin, the course of education, and the vicissitudes which are the lot of the greater number of divinity students, the Scottish clergy as a body, are quite of a different stamp from the churchmen in England. The privations of various kinds which they in general must submit to in the days of their noviciate, too often engrafts on their character a penurious idiosyncrasy, any thing but pleasing. Notwithstanding of this failing, which is certainly undeniable, they fulfil the idea of ministers of religion with credit to themselves, and benefit to their flocks. By being compelled to reside on their benefice, they are removed from worldly temptations; and

even were they inclined to be reckless in their behaviour, they could not be so with impunity. Every presbyterian minister, whether in the kirk or not, is watched attentively by his flock and neighbours, both as regards domestic character and doctrinal capacity, and in most instances, their sermons (which form the chief part of public worship) are subjected to the most unmerciful criticisms.

Scotland is now divided ecclesiastically into 893 parishes, 78 presbyteries, and 15 synods; all of which lie under one supreme jurisdiction, entitled the General Assembly. As there are in all thirty-three counties, there are thence on an average twenty-seven parishes, and rather more than two presbyteries, in every shire. In the same way it requires two counties, and a fractional part, to form a Synod.

The distinctions of perpetual curacies, rectories, and vicarages, are not known in Scotland. Agreeable to the very beneficial mode of parochial church settlement at the reformation, it is ordained that each parish shall be provided with a single minister, and this presbyter is not known by any other title. Each is bound to reside on his benefice, and to execute the duties of his office in person. No pretence will be available for non-residence or non-execution of the clerical functions, and no excuse, but very evident and certified bad health, or the infirmity of old age, will procure a remission; if then they are so incapacitated, an assistant is allowed with concurrence of the presbytery. Sometimes they request an assistant, who is to succeed them in the benefice, and when such is assented to by the patron and presbytery, a portion of the stipend—generally to the amount of a third part—is imparted to the junior member. In no case are pluralities allowed, wherefore there is not in Scotland one idle beneficed clergyman. In cities such as Edinburgh, a few of the churches are collegiate, that is, they have two ministers, who take the public services alternately. It is understood, that this is owing to the large extent of the parishes; but in reality, the custom is absurd, and

should be abrogated. As the practice of visiting parishioners is now nearly unknown, except among dissenters, by whom it is rigidly adhered to, and as certificates in towns are mostly given by civil authorities, the only duty of the ministers is preaching, which could be performed twice, as well as once, every Sunday by collegiate ministers; such being easily accomplished by all other ministers in the kirks. The practice, therefore, only leads to enormous needless expense, and should consequently be abandoned.

On account of the increase of population in some places, chapels of Ease have been constituted, though not to that extent which is necessary. The constitutions of these places of worship are anomalous. The chapels have no share in the parish endowments. The minister is paid by the price of the sittings. The expense of building the house is sometimes defrayed by subscription, occasionally by collections, and, as in the case of a number of such chapels in the Highlands, by money from government. The minister is in some instances chosen by the session of the parent kirk, and at other times by the votes of sitters; but, in either case, he nor his own elders, have any share in the jurisdiction of the church courts, which is a most unadvised peculiarity; because, had the church erected chapels on a free principle as population advanced,—giving the sitters invariably the power of nominating ministers, and these ministers the liberty of sitting in church courts, there would now have been very little presbyterian schism in the country. The church of England has fallen into a similar error. It is yet not too late to remedy this evil, if it be of any moment to the general purposes of religion.

The routine of church courts now demand exposition. The lowest court is that of the elders, attached to every congregation governed on the presbyterial model. New elders are elected by the session from among the most pious and grave members of the flock. Among dissenters, they are chosen by votes of the congregation. They must be men of unimpeachable character. It is seldom they are chosen for their wealth; still,

we have observed, that they are among the most opulent of the middling classes. Personal abilities, in very few instances, govern the selection. There is not of necessity any particular number; that being regulated by the population of the parish, or the quantity of business to be done. In most instances, there are from six to nine, and it is rarely that there are fewer than three. In the extensive parish of St Cuthbert's, Edinburgh, to which are attached three chapels of Ease, we believe there are at least seventy. They serve without emolument, and can refuse or relinquish the duty at pleasure. They are admitted by shaking hands with their brethren, and by prayer. Objections can be stated against their admission, but this rarely occurs.

These elders form collectively the chapter of the presbyter, who acts as president of their court. One has the title and functions of ruling elder, who is elected by his brethren as their representative in the presbytery. At one time an elder was constituted or entitled Deacon, and he superintended the poor. Now this office is abrogated; the ruling or some other elder acting in this capacity. The court so composed, takes order respecting all matters connected with the religious comfort and security of the parish, or congregation. It cannot interfere with the jurisdiction of other sessions, further than in mentioning their improper conduct to a superior court. These sessions are more especially called upon to watch over the life and conversation of individual members of their places of worship, in which species of jurisdiction, they in former days committed some of the most base and unjustifiable actions. They used to sit weekly, to hear and decide on all petty scandals occurring within the bounds, a duty they were well adapted to perform, as they and their families could with ease pick up every piece of floating news touching on the behaviour of parishioners. In the absence of other authorities, they became the terror of their little districts, and punished in their own peculiar way, those whom they convicted

of breaches of the commandments. On examining the records of some country parishes, we have been amazed by the extent of power which these petty courts assumed prior to the eighteenth century. They directed their fury chiefly against infractions of the seventh command,—which seem to have obtained to a degree, far beyond what is supposed to exist in the present day,—but other misdemeanours were nearly as much the objects of their wrath. We have discovered instances, wherein persons were rebuked on their bare knees in church, for dining on a previous Sunday during the period of divine service,—for having been seen walking out on Sunday,—and for having been heard to hound a dog after sheep on Sunday, though such was done by a shepherd, and was perhaps unavoidable. Being known to play games of any kind on any day of the week, or to indulge in any pastime however innocent, led to similar penalties. Latterly, the session courts became more temperate, and rebuking on the “*cutty stool*,” or stool of repentance, for incontinence, was almost the only way in which they interfered. After standing a certain number of rebukes, the culprit was “absolved from his sin,” as the record has it, and was again admitted to communion.

So modified is the spirit of presbyterianism, that unless it be in the most rigid congregations of the dissenters, nothing of this kind is now known. Excommunication is now rarely resorted to; a circumstance not arising so much from leniency of the sessions, as that it would be useless, for it would not debar the person so expelled, from being in all likelihood received into communion by one or other of the dissenting bodies. The duties of elders altogether are now much in desuetude; the beneficent custom of visiting and praying with the sick, once in use to a great extent, having unhappily given way in many places. In not a few instances, therefore, the duties of elders are little else than nominal. They come more prominently into view, in watching the collections at the church doors, and in assisting the clergyman on sacramental occa-

sions. They hand about the elements, but they do not speak to the communicants. In every church they have a seat specially appropriated to their use, which is generally that next the pulpit. They do not wear any garb of office. In their deliberations upon church affairs, they have nearly as much power as the minister. They approach so near him, indeed, that they are in reality clergymen in every thing but in the liberty of preaching. It will be thence remarked, that they execute many of those duties consigned to curates and church-wardens in England. In the absence of civil functionaries, their signatures to affidavits are sometimes considered of equal value. In general, all petitions of an eleemosynary nature, are certified by their subscriptions. Each session has a "kirk officer," who acts as door-keeper and executor of mandates.

The interference of elders in clerical matters, does not end with the kirk sessions. They depute a delegate out of their body, to represent them in the presbytery, and the presbytery in turn elects representatives to the synod and General Assembly. By this practice, uneducated men are frequently found sitting as judges in the highest church court, and giving their opinion and vote on very important subjects. It will not pass unobserved, that such a custom must invariably cause the kirk of Scotland to move backward or forward, exactly in accordance with the sentiments of the age; a property which may serve many useful purposes, but be attended with a corresponding danger. The privilege which elders possess of sitting in the higher courts, has in numerous instances been made subservient to political and ambitious views. It is now customary for noblemen, gentlemen, lawyers, and members of town councils, to have themselves constituted elders of kirks, and then elected delegates, entirely for the purpose of having liberty of speech, and voting in questions coming before the head judicature. This form of procedure, can in a great measure be compared to the sending in of ministerial members to parliament, through the channel of certain serviceable corporations. Both serve the crown,

and the kirk of Scotland could probably no more go on without the aid of rotten sessions and presbyteries, than the parliament could without the assistance of rotten burghs. These dignified functionaries, seldom or never take any share in the petty local business of their sessions. Sometimes they reside in the metropolis, while their cure is in the Highlands; and what is still more ridiculous, they are often Episcopalians. This prostitution of the office should immediately be remedied.

The court next in superiority, is that of the presbytery. The jurisdiction of this judicature, resembles that of a bishop. Like a diocese, the presbytery is composed of a cluster of parishes lying contiguous to each other, though, from the limited extent of the bounds, it has no resemblance to the extensive dioceses found in England. The parochial clergy, and ruling elders of these districts, meet regularly once a month at least, besides occasionally for particular purposes. The meeting in general, takes place in an inn in the head town of the shire. At this presbytery court, the whole members who are present are of equal authority, with the exception of one clergyman, who is chosen by a majority of votes to be moderator or president. He is elected once every six months, and while the court is not sitting, he can expedite letters for its convocation. He does not vote on discussions in the presbytery court, unless it be to give a casting vote in cases of equality. He generally propounds the business of the meeting, and preserves order to the best of his power among the members. He signs the decrees of the court to give them effect, like the head officer in a corporation, though it has recently been agitated whether these courts be absolutely incorporated bodies.

The business coming before these courts is frequently light and uninteresting. It refers mainly to the examination, admission, and censuring of clergymen. Complaints are heard from kirk sessions and ministers, relative to the improper behaviour of particular clergymen, as regards the preaching of heterodox opinions

or personal conduct. By the act of Assembly 1707, the court has to determine on all crimes, such as "incest, adultery, trilapse of fornication, murder, atheism, idolatry, witchcraft, charming, heresy, and all errors vented publicly." In practice, however, not one of these forms the ground of debate in the present day, except the case be connected with a member of court, the sheriff having very properly assumed the jurisdiction in such matters over the public. The last execution for witchcraft in Scotland, was in 1721. It was that of a poor old woman in the county of Caithness, who, when brought out to the stake, was in such a pitiable state of impotency, cold, and wretchedness, as to sit down and warm herself at the fire, while it was preparing for her immolation. Since about this period, the kirk has abstained from insisting on the judicial punishment of old women for this imaginary crime, or urging disquisitions in the presbytery courts on such preposterous subjects. The business of the presbytery courts is conducted nearly free of expense. In most cases, all the members dine together after the court has broke up.

The court next in superiority to the above, is that of the provincial synod. It consists of clerical and lay delegates, from all the presbyteries in the district. It is constituted with a moderator and clerk, in much the same manner as that of the presbytery. It sits in general once every three months, at the head town in the province. It acts only as a court to hear appeals. The deliberations of this and the former court, seldom extend beyond six hours. Both are open to the public.

The highest ecclesiastical judicature in Scotland, is entitled the General Assembly. This is a court coeval with the institution of presbytery, and which has continued throughout the various changes of episcopacy and presbytery, with little difference in its constitution. Previous to the union of the kingdoms, as will be gathered from some of the preceding pages, it exercised a wide and influential control over the people. It obtained in some respects, the character of a distinct es-

tate in the civil government, inasmuch as it at times arrogated a right of negating the enactments of the king or parliament, when not accordant with its humour. After the union, it fell prodigiously in consequence, and when purged of some of its most fiery members on the erection of the Secession Church, it declined into that tame church judicature, for which it has been now long signalized.

It is at present composed of about 370 members, lay and clerical, who are chosen in this manner:—Presbyteries consisting of 12 parishes, or under that number, send two ministers and one elder. Presbyteries having from 12 to 18 parishes, send three ministers and one elder. If they have from 18 to 24 parishes, they send four ministers and two elders. When of from 24 to 30 parishes, five ministers and two elders. And if of above 30 parishes, six ministers and three elders. Churches having two clergymen, are considered as two parishes. Each of the royal burghs, has a right to send an elder as delegate. The city of Edinburgh sends two. Each of the five colleges can also send an elder. By the regulations of the church, the burghs or colleges may give their commission to a minister, provided he be not in the exercise of clerical duties; an unbeneficed minister being here held in the light of an elder. On this account, the proportion of clerical to lay members is greater than would otherwise be the case. The East India Company having sanctioned the erection of some Scottish chapels in India, and placed them under the government of the kirk, these send a minister and elder as delegates to the Assembly. The kirk of Scotland having no shadow of power over the presbyterians of any other country or colony, though such has often been insidiously attempted to be procured, and especially as regards the Canadas,—this is the only foreign representative to be found in the body, and it is the opinion of many one in the church, that even his right is subject to be questioned.

This great body of representatives of the kirk, assembles at Edinburgh once every year, in the month

of May, and sits in one of the divisions of the ancient cathedral of St Giles. The lay and clerical members all sit in one chamber (though in separate seats.) In the same manner as in the other church courts, the assembly is presided over by a moderator, who is elected once a-year. But besides this person, there is another president, whose functions are less definable. This is the person of Majesty as represented by a Commissioner, specially appointed to the office. The practice of placing a commissioner in this situation, commenced in the year 1580, when the king became jealous of the proceedings of the court, and took this mode of overawing those who were seditiously inclined. Since that time, the assembly, notwithstanding of the most strenuous efforts, has been unable to shake off this state officer. Instances are on record, wherein disagreements having taken place between the civil and spiritual authority, the latter proceeded to sit in spite of the direct will of the sovereign; but these would not now form precedents to be followed with safety. For a hundred years or more, the assembly has submitted with a good grace to be overruled in this matter; and it may be considered as a question still unsettled, whether the judicature would be valid without the sanction of the crown. Be this as it may, in the present order of things, the Commissioner sits as the double of the moderator. He is placed in an elevated enthroned chair, from which exalted situation he apparently watches over the proceedings of the court. He, however, takes no part in the debates or votes, and the general business proceeds as unconcernedly in his presence, as if he only acted the part of a mace slung from one of the pillars of the cathedral.

Between the acting and the honorary president, a private understanding exists, by which the opening and closing of the assembly is propounded by both in concert. The spiritual moderator first opens the court in the name of Jesus Christ, after which, the other does so in the name of the sovereign. The commis-

sioner, in thus constituting the court, reads a letter from the crown, concurring in the purposes of the meeting. The court sits about twelve free days, after which it is closed in a similar style, both proroguing the meeting till the same specified day next year. This interference of the state with the kirk, which can neither be concealed nor repelled, is a serious stumbling-block in the way of the more rigid presbyterian divines. Practically, it does neither good nor harm, and it would be of no moment were it abrogated.

The business coming before this supreme ecclesiastical court, consists of the determination, or at least discussion, of disputes brought by appeal from the presbytery and synodal courts,—of overtures of new laws, and of the passing of the same, after they have been submitted to the revision of the clergy at large, for twelve months,—of the settlement of ministers as missionaries in the Highlands and islands,—of the hearing of reports regarding schools and universities,—of overhauling the books of presbyteries, synods, and the undermentioned Commission,—of the regulation of the studies of divinity students,—and of discussing and settling other points touching on kirk polity, which require no exposition. It frequently occurs, that only one case of any import comes on for trial, or one in which the public have any reason to feel interested. The first day is always occupied by the preaching of a sermon, by the last moderator, and the opening of the court, with the reading over the roll of members. Ministers are likewise specified, who are to preach before the commissioner on the Sundays during session. During the period of sitting of the court, the ministers of Edinburgh relinquish their pulpits to country clergymen; and should any of them infringe this regulation, it is understood they subject themselves to a *fine of a Magnum of claret at the first presbytery dinner*.

On account of the shortness of the session of the assembly, and for other considerations, many of the cases are referred to committees appointed by vote; and when neither the court nor the committees can finish

the business in time, the overplus is consigned to the jurisdiction of a large body of the members, called the Commission of the General Assembly. This body is a little assembly in itself, which, like the staff of a regiment, remains on permanent duty throughout the year. It is a committee of the most acute members, who are left to watch over the interests of the church during the long vacation. It meets only occasionally, and acts merely as a court for the settlement of remits.

The meeting of the General Assembly always creates a certain stir in the metropolis, corresponding in degree with the popularity of the Commissioner. This personage, who is always a Scottish nobleman, holds a levée every morning before the daily meeting, which is attended by all the dignitaries in the city, who may choose to appear in honour of the representative of their sovereign. The Commissioner always appears in a court dress, and often many of his suite. From the place of preliminary ceremonial, a procession on foot takes place to the house of assembly, which, by the aid of the military stationed at Edinburgh, sheds a temporary gleam of splendour over the area of that magnificent street, once so often dignified by royal and parliamentary pageants. During last century, ladies in full court costume, used to grace these processions with their attendance. Now, the train of his Grace the Commissioner is formed by magistrates, judges, military officers on or off duty, moderators of former assemblies, (which functionaries adopt the fashion of wearing cocked instead of round hats on the occasion,) some ministers, professors, and others.

During the sitting of the assembly, the Commissioner resides at a fashionable hotel, where he keeps a dinner table open to nearly all members of court. His salary, which is now L. 2000 annually, it is understood, hardly liquidates his expenses. The moderator, in a similar manner, keeps a breakfast table for clerical and lay brethren.

The official executive connected with the General Assembly, or the kirk of Scotland in a collective sense,

with the annual expense at which it is conducted, are nearly as follows :—

The moderator, who has a salary of L.100. A principal clerk, who takes down the minutes and decrees of the court, L.123: A sub-clerk, L.104: 16: 8,—these are both clergymen. A procurator, who is the law adviser, and civil advocate of the church, L.158. A clerk of this officer, L.16: 13: 4. An agent in Edinburgh, who expedes the secular mandates of the Assembly, issues orders for meetings, examines the commissions of delegates, enters their names in the roll, and executes many other necessary duties, L.104: 16: 8. Another agent for law proceedings, L.100. An agent in London, L.21. Several beadies, among whom L.32 are distributed. And a printer, whose account may be about L.70. Altogether the expenses of the Assembly amount to L.900, or thereby, exclusive of interest for a small debt, which is below L.1000.

To meet these disbursements, the kirk has no funded capital. The ministers are asked for subscriptions, but the sum they contribute in the aggregate is so small, that it would not be creditable to notice it. In this state of impoverishment, the Assembly is supported by a donation from the crown, which is nearly L.1000 annually. Computing this sum with the L.2000 paid to the Commissioner, and L.10,000 given to eke out stipends, the kirk of Scotland draws L.13,000 annually from the public purse. It may thence be judged with what propriety the king is designated "the nursing father of this Zion." The above sum being barely capable of defraying the expenses incurred for the most necessary functionaries, &c. the kirk has no means wherewith to institute legal proceedings before any of the civil courts, and here it bears a parallel resemblance to the church of England. Clergymen or others, may employ advocates to state or defend their cases in the General Assembly.

The ecclesiastical government based on the foregoing

routine of courts, though in minor cases of sufficient strength, in all matters of an important nature, is feeble and inefficacious. Such a circumstance is owing both to its republican character, and to the want of a regular code, or book of canons. Though presbyterianism has been now long predominant in Scotland, and though there have arisen all kinds of difficulties, and all varieties of cases, little seems to be settled relative to forms or modes of action. This defect is now notorious. At almost every presbyterial, synodal, or sitting of the supreme court, a great portion of time is destroyed in canvassing the propriety in the steps of procedure. Skilful men can therefore protract litigations to any length. A point of form may supersede the most momentous affair. It may be battled from court to court, and protract the discussions to such a length, that both the public and the sensible part of the clergy are nauseated of the case, before its merits can actually be brought forward. Other serious evils exist in the mode of judicial action. One of these, is the apparent unmeasured liberty of taking protests against decisions, and of carrying appeals. The stranger will perhaps be surprised when we mention, that instances are not uncommon, where ministers, against whom prosecutions are laid, and who are decidedly obnoxious to punishment, appeal from forty to fifty times against the decisions of their presbyteries and synods; and as it would, in all likelihood, occupy the General Assembly a whole day to discuss, and set aside, one appeal, an idea may thence be obtained how inefficacious this species of jurisdiction occasionally is. Independent of such hampering peculiarities, another may be cited, now found to be of a serious nature; this lies in the frequent impossibility of getting private cases printed for distribution among members of court; and except this be done, in all probability, the greater proportion of members will be carried along by the factitious oratory of a few of the chief speakers, who alone are furnished with manuscript copies of the suits at length. —Whether it arises from these, or other errors with

which we are not acquainted, the fact is indisputable, that the kirk, to all appearance, cannot now settle a case of any moment in less than several years; and instances are on record, where ministers have defied the ecclesiastical authority for not less than five, ten, and even eighteen, years. In consequence of this pitiable weakness, a practice, we perceive, has recently come into use, of quashing or hushing up bad cases altogether, where such can be done with a good grace.

The jurisdiction of the sectarian courts,—which only differ in their constitutions from those of the establishment, in so far as they cannot call in the civil power to enforce their warrants, and can therefore only punish by expulsion from the sect,—is still more lamentably feeble. The elders, who form a component part of the courts, are, in their case, in many instances, uneducated mechanics, or peasants, who, nevertheless, are called upon to decide on the most grave theological questions, in intricate metaphysical points, or the qualifications of students. To expect a judicious and dispassionate administration from such persons, would be as ludicrous as to suppose the settlement of canons by a consistory of church-wardens, vergers, and door-keepers. The style of conducting business in these courts of the dissenters, would amuse a person accustomed to associate decorum with the routine of judicial procedure. The speeches of members are often vague, windy, and interlarded with the meanest witticisms; as if ridicule, and not sober argument, was the proper weapon to employ in a court of justice. Opponents frequently engage in hot disputes, in defiance of all order. They pour out torrents of abuse on each other; and often a scene of confusion ensues, which the moderator finds it impossible to quell. In all the presbyterian church courts, there are two parties, called the *high flyers*, the evangelicals, or the saints, and the *moderates*. Each of these factions has “leaders,” as they are technically named, though, from their power over their brethren, they might, with as much propriety, be called “drivers.” These, and

a few other audacious men, in general bring forward, and engross, the greater part of the discussions.

Judging from a concurrence of circumstances, we are compelled to acknowledge that there is a radical error in the constitution of these courts. In striving to erect a free republican form of government, arbitrary authority has been so far cast away, that its absence has created an evil, not at first adverted to. It has been invariably discovered, that republican governments have been necessitated sooner or later to receive an infusion of arbitrary power, in order to prevent their dissolution; and we are of opinion, that the kirk of Scotland has well nigh arrived at that stage, when it will feel the usual craving for the amalgamation of a firm, and, in some measure a discretionary, executive. It must either strengthen the hands of its moderators, or endow clergy with the character of superintendents, agreeable to the form of church government settled in the time of Knox, but eradicated by Melville; because unless it do so, or take some other equally sure method of consolidating and quickening its forms of process, it will assuredly become every year more and more the object of criticism and disrespect.

It is considered that any regular explanation of the forms of worship of the Scotch presbyterians would be supererogatory; inasmuch as all, strangers not excepted, must be acquainted with them. The public service consists of only a certain arrangement of (studied) extempore prayers, reading chapters of the scriptures, a sermon, and the singing of psalms, in which every devotional attitude is discarded, and in which the congregation take no part, except in the singing. The kirk only dispenses one of the sacraments, namely, baptism, in private, when required. Why it does not administer the other also in private houses in exigent cases, it defies us to explain, and we crave to be enlightened on such a subject. The apostolic rite of confirmation is not used. The sacrament of the holy communion is dispensed usually twice a year. A *fast*, or a day of

humiliation and prayer, as it is termed, is kept, and the churches opened on the previous Thursdays. These are the only close holidays in Scotland, sanctioned by the kirk, but all the public offices also keep the English holidays, and the University of Edinburgh now very *considerately* keeps Good Friday, which is a practice it cannot well avoid, as a number of its professors are Episcopalians. Each parish selects its own sacramental occasion with consent of presbyteries. A list of all the fast Thursdays will be found in the Almanack. A preparation sermon is preached on the Saturday afternoon before, and a thanksgiving sermon on the Monday forenoon after, the sacrament Sunday, at which times business is also suspended. In cities, these holidays are now days of mischief and debauchery as much as anything else, and it would be a real benefit to society were they abolished, or modified to the extent of not being interruptions to business. All the clergy in the establishment wear black gowns and bands when in the pulpit. We observe that most of the dissenting clergy now use the same official dress,—a custom which would have been denounced as sinful to the last degree, by the Erskines, but above all by the covenanters, and which, to say the least of it, is very inconsistent with profession. The Scottish clergy do not wear in common any peculiar garments, except that they are black,—a colour, by the way, having no “scripture warrant.” A few of the metropolitan clergy are beginning to sidle into the fashion of wearing shovel-shaped hats, in imitation of those used by the clergy in England. It is gratifying to notice such symptoms of the abrogation of prejudices, which must be abandoned sooner or later; but we have to tell these daring individuals, that they run the chance of incurring a premunire, for that the turning up of the beaver behind has a suspicious look, and may, by many, be construed into a wish to introduce other Episcopal usages.

Very witty!

The various anti- Presbyterianism throughout the whole of the foregoing Chap. is so palpable that it shows the author to be quite as illiberal as the parties against whom he pours out his unmerciful remarks.

RELIGIOUS INSTITUTIONS CONTINUED.

MODE OF PAYING THE CLERGY OF THE ESTABLISHED KIRK.
—SEATS IN CHURCHES.

OF the various peculiar Scottish institutions noticed in this volume, some of which, for their excellence, certainly deserve to be held up as a pattern to the English, few are so worthy of praise or imitation as that now to be mentioned. We here refer to the mode adopted to pay the stipends of the clergy of the established kirk. It is a fact no less remarkable than true, that in the aggregate, the Scottish kirk derives as great a proportion of revenue from the country as the church of England, yet so excellently is the system organized in exacting the levies from the community, that we venture to assert, that hundreds and thousands of the Scotch are of opinion that the kirk costs them nothing; and at least, so covertly are the payments made, that the subject is one which never attracts the slightest attention.

If it be conceded that there must of necessity be an *established* church, the proper way to support such a corporation is by endowed lands, which then become as much the property of the clergy as the estates of the nobility are theirs. This practice of setting apart lands for the clergy was invariably resorted to before the reformation; but besides being supported by lands so appropriated, the secular clergy in these times were empowered by an old Judaic usage, to draw the tenths of the produce of the soil. In all this, the people suf-

ferred nothing. At the reformation in England, a very great proportion of the endowments were seized by the crown, on the ejection of the inmates of monastic institutions. A part of them also became the property of the higher orders of the reformed clergy, whose spiritual successors still retain them. As for the tenths or tithes, they continued to be levied, with this difference in their destination, that only about two thirds went to the clergy, while the other third was taken by greedy noblemen and gentlemen, who were hence called lay impropietors; and curious as it may seem, the descendants or assigns of these persons still draw a third part of all the tithes in England, thus distracting the funds of the church to their own use, and furnishing much reason for national discontent.

In Scotland, the monastic and the parochial clergy were sustained in precisely the same manner. Endowed lands were set apart for their use, and they had also the right of drawing tithes. Some years before the outbreak of the reformation, the secular affairs of the church in Scotland fell into great disrepair. Out of terror of the spread of reforming sentiments, the church endeavoured to bribe the court and the nobility to remain quiescent, by dispossessing itself of portions of its patrimony. The bishops likewise countenanced laymen to draw the tithes, and refuse payment to the inferior clergy. The feudatories of the church, that is, men who lived as a species of vassals or tenants on the church lands, were also freed from annual rents, and, in short, by a variety of processes towards the reformation, the working clergy were reduced to real indigence.

The gifting away of the property of the church to barons and gentry, did more harm than good. It gave the recipients a taste for spoil, and in place of thanking the ecclesiastics for their liberality, they itched to plunder them of all their remaining wealth. In this they were ultimately successful. The reformation was effected, and a scramble took place for church lands, tithes, rents, feus, and moveable wealth, which, while

it attests that this revolution was very far from being brought about on lofty principles of pure Christianity, stamps the ringleaders of the tumults of 1560 as absolute robbers. A minute account of the infamous proceedings at the Scotch reformation is here unnecessary. It is sufficient to state, that nearly the *whole* of the church patrimony was confiscated by the crown, or secretly plundered. By confiscation to the crown, may be meant, appropriation to friends and "flatterers" of the reigning power; but it is really difficult to say how these appropriations took place, for there hangs a thick veil over the dark doings of the period, which writers in the present day find it difficult to penetrate. The result of all this spoliation was, that when Knox instituted a new priesthood, he found nothing for their support. By his own account, he felt himself completely outwitted. In a number of instances, the old Romish dignitaries were permitted to possess the temporalities of their benefices. Some of them, probably glad of the alteration, by interest with the court, got themselves confirmed as absolute proprietors of their endowments, and these were hence called commendators. When James came to the throne, he erected these church lands into temporal baronies, calling the barons lords of erection. The descendants of these lords are now mixed up with the other members of the Scottish peerage, but their original designation is dropped. The feuars of church property were similarly confirmed in their usurped rights, by which means, from tenants, they became landlords of their properties.

By a seizure of church patrimony, in the way we describe it, the lower classes, the peasantry, and the farmers, were not in the slightest degree benefited. In the same manner as a third part of the tithes in England were secured by lay impropriators, the whole of the Scottish tithes were taken by laymen. These laymen, by being entitled to draw the tithes annually, came to be called *titulars of the teinds*, the word teind being equivalent to that of tithe or tenth. These

teinds continued therefore to be drawn in kind every year from the cultivators of the land and others, to the benefit of laymen, who were not compelled to give a single farthing towards the support of the humble clergy of the newly instituted church. The different regents, Queen Mary, and latterly King James, at different times interested themselves in the impoverished condition of the superintendents and ministers. Laws were occasionally ordained to oblige the above titulars to give up small portions of the tithes to the kirk, but so imbecile was the civil power, and so contumacious were the lay improPRIETORS, that almost nothing was done worthy of notice. It appears that Queen Mary rescued some of the endowments which had been forcibly detained by certain abbots and prelates at the reformation, out of which she caused small stipends to be paid to the clergy. The minimum of these stipends was L. 5 : 1 : 6 ; the maximum three times that sum. Superintendents had larger salaries.

This mode of payment by no means pleased the clergy. "The ministers," says the author of Knox's History of the Reformation, "even in the beginning of public sermons, opposed themselves to such corruption : for they foresaw the purposes of the devil, and clearly understood the butt whereat the queen and her flatterers shot ; and so in the chair of Edinburgh, John Knox said, 'well, if the end of this order, pretended to be taken for sustentation of the ministers, be happy, my judgment fails me, for I am assured that the Spirit of God is not the author of it ; for first, I see two parts freely given to the devil, and the third must be divided between God and the devil.' 'Well, said he, bear witness to me, that this day I said it, Ere it be long, the devil shall have three parts of the third ; and judge you then what God's portion will be.' This was an unsavoury saying in the ears of many ; some were not ashamed to affirm,—'That the ministers being sustained, the queen will not get at the year's end [enough] to buy her a pair of new shoes.'"

In this matter, the great reformer proved a correct

prophet. So ill was the law enforced in these times, that in spite of the grant made by Mary, the diligent and working clergy never received any regular support. Through mismanagement, the public revenue either hardly received any accessions by the confiscations, which were eluded by fraud, or voluntarily abandoned by the crown. When the "brethren" complained of the non-reception of their petty stipends, they seldom received any redress. In this ill-regulated condition, the kirk continued throughout all the regencies, and the reign of James. For the first sixty-five years, indeed, after the reformation, the clergy received their livings as much in the shape of charitable contributions as in that of their legal rights.

James appointed commissioners to modify stipends out of the teinds, and did a little towards the melioration of the condition of presbyters ; but as his attention was chiefly directed to the rearing of an Episcopal church, the institution of revenues for the payment of the bishops he had created, was his main object. He imparted to them the rents of certain lands, the property of the crown, which had formerly been part of the patrimony of the Romish church ; and these rents, till the year 1690, continued to be drawn by the bishops or the lord chamberlain, just as episcopacy or presbytery had the ascendant. When the latter form of church government was finally established in 1691, the rents of the bishops were annexed by parliament to the crown, and placed under the charge of the barons of the Scottish exchequer, who still appoint an officer to collect this branch of the king's private revenue. We believe, that many of the charitable donations of his Majesty to public bodies in Scotland, as well as impoverished scions of the nobility, are drawn from this source. Still, as the rents of the bishops are actually drawn from the country, though in the character of royal feu-duties, it is curious to reflect, that in this sense Scotland has saved nothing by throwing off episcopacy ; the stipends of the bishops created by James, being as regularly levied from the community,

as if these functionaries still presided over their dioceses.

The first person who had the good sense to see the impropriety of the foregoing lax mode of sustaining an established clergy, and the nervousness of character to attempt its revolution, was Charles I. When this truly great man ascended the throne in 1625, at which time episcopacy was the predominant form of church government in Scotland, he found the royal revenues in this part of the island, almost annihilated by the acts of his grandmother Mary, the regents and his father, all of whom, through fear or favour, had allowed to be taken or given away the wealth and temporalities originally belonging to the popish regular and secular clergy. He found the splendid endowments of the church in the grasp of avaricious noblemen and gentlemen, and of royal burghs, and the presbyters the while in a state approaching to destitution. Charles was not a man to submit patiently to this shameful state of things. He at once formed a wise, though an exceedingly dangerous, resolution, the accomplishment of which reflects the highest honour on his character. He resolved on causing a complete rendition to the crown, of the whole of the endowments, benefices, tithes, and emoluments, embezzled or procured since the very dawn of the reformation. But this measure was not dictated so much from a desire to enrich the crown, as to place the established clergy in a state of comfort and security.

On such an intention being made known, a dissatisfaction broke out in the country, which may be more easily conceived than described. It was touching the Scotch on a sore point. It had little effect on the multitude, for it did not affect their interests; the poor being still the poor, throughout all national vicissitudes. It is very probable, that many cultivators of the soil vented their satisfaction on such a step, for instead of being ruled and tithed by harmless slipshod monks, they were domineered over and tithed by the armed followers of barons. Like the frogs in the fable, they had exchanged an inanimate for a devouring superior.

No outcry was therefore fortunately raised by the lower and middling classes ; but among the holders of church property, the tumult was excessive, and the proposal no doubt laid the foundation of that hatred of the king, which never rested till it had driven him to acts of desperation, and carried him to the scaffold. In this conjuncture, Charles proceeded with much tact and delicacy. He began by interesting the gentry or landowners, and the clergy, in his behalf. He held out to the former, the inducement of being entitled to buy up the right which the titulars of the teinds had to tithe them ; and he promised to the latter, liberal fixed stipends.

Having secured the good will of many of the landowners and clergy, Charles proceeded to execute his purpose. He instituted an authoritative commission, to treat concerning the valuation of tithing, and the provision to ministers, as well as to take into consideration what should be done to restore the lands held by lords of erection and others. The first sitting of the commission, was on March 1, 1627. On the 29th of June following, it pronounced a decree to the effect, that all superiorities of erections,—that means the acquired rights over church property—should be resigned unprovisionally to the king, who should determine what consideration should be allowed to the holders for the loss they would sustain ; and that the valuation and sale of rights of tithing, should be adjusted by decreets arbitral from his Majesty. Finally, it ordered that all concerned should, as the simplest mode of procedure, give in voluntary renunciations of their property and emoluments. It being in vain to contend, four several “submissions” were executed. The first was made by the lords of erection, and other holders of church lands ; the second by the bishops and presbyters ; the third by the royal burghs ; and the fourth by the titulars of the teinds, or tithe-drawers.

As a matter of course, Charles accepted of these submissions, and at a blow every particle of the lands and revenues formerly belonging to the Romish church,

was in the possession of the crown. Had Charles, at this auspicious period, been inclined to enrich his coffers by an act of questionable injustice, he might now have reduced the half of Scotland to pauperism ; or had he, by prescience, been aware of the subsequent ingratitude of the nation in selling him to his enemies, and had chosen to sacrifice his nobility of spirit to his latent exigencies, he might with little trouble have secured a prodigious quantity of wealth. Luckily for the purity of his honour, his views did not go the length of taking church property without remuneration to the holders, many of whom were innocent of the crimes of their predecessors. On the 29th day of September 1629, he pronounced four decreets arbitral of a very temperate and judicious nature.

With respect to church lands held by lords of erection, royal burghs, and others, the king decreed that he could retain them, or take them at a future period convenient to the crown, on paying a certain fine, which fine was to be regulated by the extent of their produce.

It does not appear, that the crown ever acted strictly on this decret arbitral. No estates were seized violently, and in general terms, the provision ended only in rendering the estates liable in feu-duties, which could very well be paid. The right of the crown, however, still continued in force, and it was not till the union of 1707, that a law was passed, declaring that it had lost the power of redemption. It is of more importance here to know, how the teinding system was arranged. The decret on this point bears, " that it is necessary and expedient for the public weal and peace of the kingdom, and for the better providing of kirks and ministers' stipends, and for the establishment of schools and other pious uses, that each heritor have and enjoy his own teinds." This signifies, that in place of the old practice of titulars drawing tithes from lands, that the owners or heritors, as the Scotch call them, should in future have the power of buying up from the titulars their right of exacting tithes. This was rather

a complicated deliverance, because it happened that many of the titulars were at the same time heritors. However, this was properly arranged.

It was enacted, that in the case of tithes being drawn by a titular not an heritor, these tithes should be valued by a proved statement of the amount yearly drawn; and that when these tithes were possessed along with the stock, they should be valued by a proof of the total rent which the land was worth. If the former was the case, it was ordained that the heritor should be allowed to buy up the right of tithing at *nine years purchase*, i. e. nine years tithing. In respect of the latter, it was decreed that a fifth part of the annual free rent, deducting all burdens, should be considered as the amount of teind. It was then settled, that in paying up the value of the tithes, a certain proportion of the price should be withheld, so as to meet the obligation on each of the heritors to contribute a specified sum as stipend to the clergyman of the parish, and a small annuity to the king. By this process, the levying of tithes in kind was for ever abolished.*

These decreets of Charles, were afterwards ratified by parliament; and commissioners, and sub-commissioners, were at different times appointed to sit in each district of the country, to value and ordain the price of the teinds. One of the peculiarities in the new mode of paying the clergy, so brought about, consisted of a regulation whereby the ministers should receive stipends corresponding to the value of the teinds at the time, and that the increase of cultivated land and produce should be no plea for claiming rises in salary. This has been an excellent provision for the country, but in many cases it has deeply injured the clergy. It gives landowners encouragement to adopt improved modes of agriculture, and to sink capital on rural speculations in general, without the dread of having to impart a tenth to the minister of the parish. It, however, has the effect of leaving a clergyman in a mean condi-

* Connel and others.

tion as regards worldly riches, in the midst of a thriving and wealthy district. Such a result has long since been felt, and in some measure remedied by a process immediately to be noticed.

The commissioners for the valuation and sale of teinds, continued to exercise their functions throughout the stormy period of the civil wars and commonwealth, and they were re-appointed to remain on duty after the restoration. Their valuations, however, had been ill preserved. Many of the papers were lost, and in consequence the business of valuing had to be protracted. So slow have been the operations of the commissioners, that till this day the teinds of some places are not properly valued, though this is in the course of amendment. The powers of the commissioners were vested in the judges of the Court of Session at the union, who now delegate sub-commissioners to value the teinds of such parishes, and the court fixes the stipend payable therefrom to the ministers.

By this process of valuing and purchasing teinds, it was not established that ministers should receive stipends to the precise amount of teinds in their parishes. They were, therefore, frequently put off with only a moiety of the valued teinds. It was enacted in 1633, that the lowest possible stipend for ministers should be eight chalders of victual, 16 bolls to the chalder, or 800 merks Scots. But it was also ordained, that so long as they received a stipend lower in amount than the value of the teinds, they should have the liberty of prosecuting the heritors and titulars at the end of every nineteen years for an increase, and that an enlargement could be made until the stipend amounted to the value of the teinds, but no farther. Such a provision is constantly leading to legal actions before the commissioners of teinds. When a minister feels himself labouring under a deficiency of income, while he knows that there are still unappropriated teinds, and when it is nineteen years since the last advance, he raises an action in the teind court, in which the titulars, heritors, and all others concerned, are sued for an increase. If he prove

to the satisfaction of the judges that there are free teinds, they generally award an augmentation, and arrangements are made for allocating the just proportion of the increase on the defenders. Advertisements calling on titulars and others to come forward in such cases, will be noticed daily in the Scottish public prints. When all the teinds become *exhausted*, or appropriated to the reformed clergy, all actions of this nature will consequently cease.

Only one difficulty now remains to be got over, in this explanation of the Scottish titling system; this is as regards the payment of the stipends by chalders of victual. The amount of all stipends in country parishes is nominally paid in grain; we say nominally, for in reality the stipend is paid in money, or in a sum equivalent to what the stipulated quantity of grain would bring in market. The payments, however, very much depend on what species of grain grew in the district when the teinds were valued. If wheat grew in a parish at the date of the valuation, the minister of that parish gets so many chalders of wheat, so many of oats, so many of barley, and so much money for communion elements, according to the size of the congregation. If no wheat grew in the parish, he gets so many chalders of oats, or meal and barley. In some cases, he gets half grain half money. The *present* produce of the parish does not influence the payment, but the present price of that grain which grew at the date of the valuation is adhered to, in turning the said grain into money. The original produce of the parish being known, as well as the number of chalders to be allowed, the quantity is converted into its value in money according to the *fiar prices* * of the county for the time

* The word *fiar* is a term purely Scotch, from the Latin verb *facere*, to be made, &c. It is applied only as a technical, in mentioning the average value of victual in certain districts. The sheriff of every county in Scotland, is empowered to summon an assize annually at the beginning of March, for the purpose of having these averages determined. The court is composed of fifteen intelligent men, and their duty is called striking the fiars. Lists of these *fiar prices* are always

being, and the minister receives from the respective heritors and titulars, their exact allocated proportions. The stipends are generally paid in May, and in most instances, they are consigned by the law agents of the land-owners in Edinburgh.

Such is the manner in which that very important part of a nation's affairs, the payment of an established clergy, was instituted and regulated; and considering the harmony enjoyed by the community at large by the general excellence of such an institution, what a debt of gratitude do the Scotch owe to the too often abused Charles I. who by one of his decreets arbitral has done more to secure the permanence and comfort of an established church, whether episcopalian or presbyterian, than all the kings, all the parliaments, and all the prime ministers, since the middle of the sixteenth century. He accomplished in Scotland in 1633, what is only now beginning to be attempted in England by prelates and statesmen. And surely such a magnanimous deed, should go far towards softening the hatred of those persons to Charles, who, in seeking for evil traits in his character, too often pass over those of an amiable and praise-worthy nature. In the usual histories of the Stuarts, and especially of this accomplished prince, scarcely any notice is taken of the event we now record,—a silence which is probably as much attributable to the ignorance of most writers on the subject herein specified, as a design not to mention anything militating against the principles they adopt.

Subsequent acts of parliament have very much improved the condition of the Scottish clergy. Besides a stipend, each is entitled to have a comfortable house, suitable for a family rather above the middling ranks

published in the Almanack at full length. Besides the usefulness of the custom, as regards the payment of clergymen, whose stipends very properly fluctuate with the rise and fall in the prices of food, it is serviceable in regulating the salaries of schoolmasters, and readily furnishes a scale of prices of grain and other produce, for the use of those farmers who take their lands by an agreement to pay a rent according to the prices they are supposed to receive for victual, &c.

of life; a glebe of a few acres, capable of feeding a horse and cow at least; and an excellent garden. In many instances, the ministers let out these glebes to farmers, and in a few cases, they have vastly increased their stipends, by feuing them to house-builders. We calculate, that on an average, the yearly value of the manse, garden, and glebe, is L. 40; and this sum is considerably enhanced by the circumstance that the heritors are bound to keep the whole in repair, as well as the church, and church-yard, which is not the case in England. It is arranged, that if a minister enter on his parochial duties prior to Whitsunday, he has at that term the stipend of the whole year. If he enters between Whitsunday and Michaelmas, he has half, and his predecessor, if translated or deposed, has the other half. But if his predecessor serve till after Michaelmas, he has the whole of that year's stipend. The widow, children, and nearest of kin to a defunct clergyman, has a right to an annate, that is, half a year's stipend over and above what was due for incumbency. So, if he die between Whitsunday and Michaelmas, half is due for incumbency, and half for annate. If after Michaelmas, there is a whole year's stipend for incumbency, and half the next year's stipend for annate. The annate is equally divided between the widow and children, and in default of both, it goes to the nearest of kin. It cannot be seized for debts, and cannot be devised by will.*

Excellent as the arrangement of Charles I. is allowed to be, it is faulty. It does not make a proper provision for the sustaining of city clergy. On this account, the system of national religion is certainly not well organized in large towns, whose populations have long since outgrown church accommodation. In a few instances, the clergy of such places have been constituted their own titulars, or tithe-drawers. This is especially the case with the minister of North Leith, who is chiefly supported by the tithe of fish landed at

* Chamberlayne.

the port, or beach. He enjoys this valuable privilege, as having come in the place of the Abbot of Holyrood. The tithe is farmed, and the levy is always commuted into a money payment. The ministers of Edinburgh have a right to levy dues off goods landed at Leith, which considerably augments their stipends. These stipends are payable by the magistracy from the city funds, though to meet such a disbursement, the inhabitants are taxed very severely in virtue of a statute of Charles II. This tax is called Annuity, and it is taken at the rate of six per cent. on the rental of the city. To make it the more insufferable, it is charged on both houses and shops. By a late statement of city finances, it appears that the amount of Annuity money, for one year, was L. 8408. The allowance made to eighteen ministers, is L. 520 each, in virtue of this tax, which, along with what is received from the Leith dues, raises the stipends to about L. 800. The Edinburgh ministers have no glebes or manses, and they may live at any part of the city most convenient to themselves. At the reformation, there was only one parish church in the city, one of the incumbents of which was John Knox. Since that time, the number of parishes has been extended to thirteen, five of which are collegiate.

About twenty years ago, a very great proportion of the parochial teinds were found to be exhausted in those places where their amount had been very small, and the clergymen were therefore obliged to put up with rather inadequate stipends. It was represented to parliament, that there were 172 livings, the stipends of which were not individually above L. 100, and that many of these were far below that sum. This matter being successfully pressed on the consideration of the legislature, an act was passed, 1810, giving a grant of L. 10,000 a year, so as to raise these and other stipends to L. 150. By this arrangement, the situations of the Scottish clergy in the aggregate, as regards worldly circumstances, is superior to that of any priesthood in the world. Including chapels of Ease, and double charges, it may be estimated, that there are now 1000

livings in the church, the value of which will be comprehended from the following summary :

172	benefices	at	L. 150	each,	.	.	.	L. 25,800
200	do.	at	200	do.	.	.	.	40,000
150	do.	at	230	do.	.	.	.	34,500
150	do.	at	250	do.	.	.	.	37,500
150	do.	at	300	do.	.	.	.	45,000
80	do.	at	325	do.	.	.	.	28,000
30	do.	at	350	do.	.	.	.	3,500
28	do.	at	400	do.	.	.	.	11,200
10	do.	at	500	do.	.	.	.	5,000
10	do.	at	600	do.	.	.	.	6,000
20	do.	at	800	do.	.	.	.	16,000
<hr/>								
1000								252,500
Say that 950 of these have manse and glebes, at L. 40 each,								38,000
<hr/>								
Total revenue of the church of Scotland,								L. 290,500

This statement is unavoidably very imperfect, as the stipends vary every year according to the *fiars*, but if even correct in a general aspect, it shews that the average living is nearly as good as that of benefices in England, which we believe is L. 303. Reckoning all things, the Scottish clergy are much better off in general, than those of the Church of England. The expense of a preparatory education is comparatively trifling in this country. The price of living is also much lower ; and it is not expected that a clergyman will compete with families in the first or second ranks. The widows and children of Scottish clergymen are likewise better attended to after their decease than they are in England.* While the clergy in England are necessitated to accept of offerings and fees, no-

* The Scottish established clergy have a benefit society suited to pay annuities to widows. There are also societies for assisting their sons and daughters. Dissenting ministers have coalesced, and formed an association for similar purposes.

thing of this kind is known among the Scottish established clergy, by whom every office is performed as a part of ordinary duty, free of clerks' and surplice fees. In several instances, the dissenting Scottish clergy, who are supported by their flocks, enjoy livings scarcely inferior to those in the established kirk. They are in general enabled to have neat little manses in the country towns, vying in comfort and seclusion with those in the legal church; and in the aggregate, they receive stipends varying in amount from L. 100 to L. 200, besides presents. In cities, some of them have salaries varying from L. 400 to L. 500.

When it is explained, that the Scottish clergy are supported by valued teinds and assessments; that the churches and manses are built and kept in repair by heritors; that the expense incurred for communion elements, the precentor, &c, is similarly liquidated; and that no fees are exigible,—the deduction thence to be drawn is, that the community are entirely freed from making any outlay on the services of religion. Such should undoubtedly be the natural deduction, but we are here called upon to remember, that the best institutions are often abused by subsidiary and often contemptible arrangements. This is particularly the case with the present distinguished institution. The system above delineated is depreciated, we may say prostituted, by a most nefarious practice of charging rents for seats in the churches. This usage has been so long in existence, that it has ceased to be remarked as injurious, though on patient examination, no practice will appear more absurd or mischievous. How the process originated of letting out seats in churches, is, we suspect, seldom adverted to.

Prior to the reformation, no money was exacted for liberty to take up a position in a place of public worship. All chapels or monastic institutions, parish churches, altarages, and confessionals, were in general open night and day, as is still the case in Roman Catholic countries. In these times, there were no fixed

seats in places of public worship. The congregation said their prayers on their knees on the bare pavement, and when called on to listen to the harangue of a preacher, they heard him standing, or in case of infirmity, sat on low seats carried to church for the purpose. This was possibly a rude and inconvenient arrangement, but it had its good points. It allowed a perfect mixture of rich and poor, and placed all on an equality. The reformation finished this system. The chief part of the new mode of worship consisting of preaching, and that too for hours at a time, the areas of the churches had to be covered with fixed benches. The erection of seats, though in itself innocent, put all appearance of equality to flight, and was a serious injury to the rights of the poor. These seats were reared by the heritors, who appropriated certain pews to their own use, and distributed others to their tenants and residents in the parish. So thin is still the population in landward parishes, and such is the quantity of dissent, that in the kirks in these places, there is still a sufficiency of free seating for parishioners.

In most of the royal burghs and cities, a somewhat similar mode was adopted of filling the churches with seats, but unfortunately it was clogged with a contrivance, which has turned out to be very detrimental. In some towns, the heritors were the erectors of the seats, and in others they only put up a certain portion; leaving the magistracy and certain incorporations to rear additional seats and galleries, which thence became their own property. Many of those seats erected by heritors, became by traditionary right, like places of burial in church-yards, the property of house proprietors and families in the burgh towns, and their descendants or assigns still possess them; in this matter, a right of sale having actually been countenanced. Those seats erected by magistracy from town funds, and those erected by corporations, are used partly by the members of those bodies, and partly let as a source of revenue. In the scheme of division, the public at large have been altogether forgot, and the poor have

only in some instances been provided with free sittings to a limited extent. In no case are the seats in the areas of the churches in Scotland opened to the free immission of the working classes, or indeed any class, as in England. Whatsoever may have been the line of procedure in erecting and appropriating seats, the result is, that in all the town, and especially the city, churches, in which the magistrates have become nearly sole proprietors of seats, a system prevails, whereby neither the poor, nor that part of the community which is indifferently provided for, have free seats.

In Edinburgh and Glasgow, this has become a monstrous evil. Notwithstanding that the metropolitan clergy are sustained by assessments and endowments, the very householders who pay the stipends, are taxed for sittings, to an extent as heavy as if the ministers had to depend for their salaries on the amount drawn as the annual rent of the pews. It is a cause of just surprise, that this palpable and inexcusable evil should not long ago have excited the serious inquiry and clamour of a people who are proverbially alive to their own interests. The true way to remedy the mischievous perversion of the endowments, would be to oblige the magistrates of these cities, to abandon their mercenary curatorship of the churches, which is undeniably working a dreadful, and we are afraid, an almost incurable abandonment of every virtuous and religious principle among the lower orders. It is at least beseeched, that something be done in earnest to restore the rights of the poor, as far as is convenient; for independent of the injury sustained by this portion of the community, by being expelled from the churches, what a subject of triumph must our present procedure furnish, to the advocates of that communion put away by the reformation!

RELIGIOUS INSTITUTIONS CONCLUDED.

THE EPISCOPAL CHURCH OF SCOTLAND.

HAVING thus presented a sketch of the settlement and peculiarities of the established presbyterian kirk and its dissenters, we have now to introduce the stranger to a religious communion of an entirely different character : We mean the Episcopal Church of Scotland, which was deposed at the revolution for its adherence to the cause of the Stuarts. The history of this humble body of Christians for the last hundred and forty years, would furnish ample scope for a lengthened memoir, calculated to interest the feelings in no ordinary degree. From affluence and the support of the state, it was plunged into a series of misfortunes, almost as unsupportable as those visited upon the covenanters, which lasted till near the end of last century, and from which it is only now beginning to rear itself.

On the contumelious deposition of the bishops and their clergy, in the year 1690, they retired without any remonstrance to obscure chapels and houses in the cities and different parts of the country, where they carried on in quietness their religious occupations, and drew around them those persons who were disinclined to the revolution settlement. At this time, and for fifty years after, there was a numerous class of Jacobites in Scotland, principally among the higher classes, who, during all this period, had sanguine hopes of the restoration of the royal family. Many of them

had witnessed the turmoils of the great rebellion and the commonwealth, with the subsequent restoration of the hereditary prince, and from thence flattered themselves with the idea, that in all likelihood the *rebellion* or revolution of 1688, would terminate after a few years in a similar manner. On this account, it was only after several unsuccessful attempts to restore the family of James, that the political hopes of a vast number of the Scotch and English were utterly extinguished. No class of the community was so decidedly possessed of these idle expectations, as the clergy of the Scottish Episcopal church. They took no active measures to further the views of the Jacobite party, but their actions shewed that they were well inclined to any change that could be made in favour of the Stuarts.

On being released from the thralldom of the prejudices of the people against the liturgical services, in order to assimilate themselves to the English church, they, at the beginning of the eighteenth century, introduced the Book of Common Prayer into their public worship; a circumstance which was also hastened, by the communion receiving a present of a number of these devotional works from a charitably disposed society in England. In the course of their prayers, they however invariably forbore to mention the name of either William or his successors. They prayed for "the royal family," which was an expression so ambiguous, that each worshipper might interpret it in his own way.

Innocent as the measure may be now supposed, it is altogether inconceivable the ferment which was created in Edinburgh and other parts of Scotland, by the poor ejected Episcopalians introducing the liturgy into their private and public services. The nation, on hearing of the circumstance, was almost as much enraged, as if the book of common prayer had been read from the pulpits of the presbyterian kirks; and petitions were made to the Commission of the General Assembly, requesting that body to interfere to suppress the noxious liturgy, the introduction of which was supposed to savour of a too intimate connexion being about to be

formed between the English and Scottish episcopalians. This the Commission was not long in attending to, and the result was, an application by the spiritual courts to the civil power, craving its authority to render the delinquent clergy amenable to their jurisdiction. It seems the principal offender pitched on by the presbyterians, was an episcopal minister in Edinburgh, who was dragged by the magistrates from his humble meeting-house to the cross, and otherwise abused, merely because he had received his orders from a Scottish bishop, and read the English liturgy to his flock.

Among the alterations which took place in the situation of these deposed Episcopalians, or *Nonjurors*, as they came to be called in consequence of their reluctance to give their oaths of allegiance to William, there occurred many remarkable changes of circumstances, illustrative of the fickleness of all earthly things. Many of them became private chaplains to families of rank; but some of the bishops fared worse, and were made to depend for their existence on the proceeds of very limited and often poor congregations.

The mere circumstance of being obliged to depend on the voluntary contributions of their congregations, instead of the endowments for their support, and the humiliation to which they were subjected as a dissenting body, would not have formed a complication of evils worthy of remark. They were ordained to commence in a short time a series of more grievous trials. They were only permitted to exercise the functions of their office for about four years. Their chapels were described as being nurseries of sedition, and the government, in order to appease the popular clamour, caused a law to be passed, whereby the clergy were prohibited from baptizing children or solemnizing matrimony, under pain of imprisonment and banishment out of the kingdom. Why the law, on the same principle, did not reach the length of prohibiting the church service, is beyond our comprehension. It had, however, an effect of this nature, and many of the chapels were abandoned.

From this time until the reign of Queen Anne, the Episcopal clergy laboured under these restrictions, but that amiable princess, being of high church principles, rescinded the disqualifying act, and again gave them the free exercise of their functions. This liberty was not of long continuance. When the uproars took place in Scotland, and more especially in Edinburgh, respecting the union, in which the Presbyterian ministers and the populace pretended to foresee a demolition of their religious establishment, in consequence of the affairs of the country passing under the management of the English, the legislature, for their pacification, hurriedly passed another law, commanding every Episcopal chapel in the country to be shut up without reserve. This was an exceedingly vexatious enactment, and had it been levelled at almost any other communion, its clergy and its lay members would have become obstreperous, and very probably have fled to the hills, where they would have lifted up their voice against such a tyrannical measure. The Episcopal church was, however, quite of a different nature. The clergy without a murmur closed the doors of their little chapels until more auspicious times, and quietly retired into the bosom of society. They mingled with, and lived among their flocks, some of whom were in good circumstances; at this time, and for forty years later, the Presbyterian kirks being attended mostly by the lower and middling classes.

For five or six years after the union, the Episcopal clergy were in a situation as deplorable as their bitterest enemies could have desired. Although they were suffered to exist as individuals among the lay members of their communion, their clerical functions had to be performed in secret at the risk of personal prosecution.

By the year 1712, the fears of the Presbyterians having worn off, and their alarms regarding an understanding between the church of England and the Episcopal church of Scotland having proved groundless, an act of toleration was again passed by Queen Anne, giving full permission to the clergy to re-open their

chaplains, and resume their clerical functions. The mob also was prohibited from interfering to disturb the Sunday services, under severe penalties,—this having been a favourite amusement among the lower orders ever since the revolution.

This indulgence was only of temporary duration. In 1714, the family of Hanover ascended the throne in the person of George the First, upon which there was a law passed, directed against papists, non-jurors, and all other persons supposed to be disaffected to the Elector's government. This act not being very explicit regarding Episcopacy, the clergy were not molested in those places where the better informed classes resided. Some chapels were again closed, and others remained open by connivance of the magistracy, many of whom were secretly Jacobites.

The above law of George the First being needlessly severe, helped considerably to hasten the premature landing of James in 1715. The prelates, considering this now to be the dawn of that restoration which was to release them from the oppressions of the Hanoverians, with a steady but temperate loyalty, sent an address to the unfortunate king, congratulating him on his arrival. It is well known how this badly managed rising of the Jacobites terminated. They were scattered, and many of them put to death. The chevalier retired abroad, and the Episcopal clergy sunk back in despair into their depressed situation. This interference of the bishops, which was ultimately detrimental to their cause, we may now characterize as imprudent, still we conceive them to have acted quite conscientiously in doing so. They were not bound by a single tie of gratitude to the revolution government. With slight exceptions, it had grossly misunderstood and abused them, and they were therefore perfectly justifiable in the course they pursued. Their loyalty was, moreover, of a pure and lofty nature. "No cold-hearted doubtings" or calculations seized them; they fearlessly welcomed him whom they considered their true king to his inheritance, without pausing on the

consequences. Under such circumstances, it may well be supposed that the government was not slow to visit on their heads some species of retributive oppression.

In 1719 an act of parliament was passed, decreeing that any Episcopal clergyman in Scotland, performing divine service without having taken the oath to government, and praying for king George and the royal family, should be imprisoned for six months. Nine persons were declared as constituting a congregation. Curious as it may appear, this law did not quench the zeal of the non-juring clergy for the house of Stuart, or stop them from exercising the functions of their office. All those chapels not already closed, were now shut up, and the clergy performed the services of religion in private. They went from house to house on Sundays, performing the simple services of their religion, sometimes twenty times in one day, to small families of devout Episcopalians. In a few places north of the Tay, where neither the covenants nor Presbyterianism had ever been very popular, the penal statutes were not so harshly applied; and we believe that, in the course of a few years, they were suffered to gather together congregations on a more extensive scale than the law exactly allowed. In this condition they remained for about twenty-seven years, towards the end of which period they were more openly countenanced, and the state gradually began to lose sight of them.

The insurrection of 1745-6 now broke out with a vivacity that startled the British government, which directed its views towards the Scottish Episcopal clergy, who were supposed to have been some how or other connected with the civil war. The lowest and the most outrageously loyal of the people joined in this opinion, and before any legal measures were directed against the Episcopalians, their chapels were every where burnt, desecrated, or sealed up. It was now enacted, that no Episcopal clergymen, except those who registered their letters of orders, and took all the prescribed oaths to government, should be allowed to continue

in the exercise of their profession in any way whatsoever, under the penalty of transportation to the colonies; and it was also declared, that if more than five persons should meet together and use the liturgical service, they should be liable to fine and imprisonment. By this act, peers were disabled from voting or being chosen at elections of the sixteen Scottish noblemen for the House of Lords, who should be convicted of having been twice at one of these illegal meetings within the year. Commoners were likewise disallowed from voting for, or being elected as members of parliament, who should be similarly circumstanced.

This was the best contrived act which had yet been promulgated for the extermination of the Episcopal church, because it was calculated to dis sever the connection which had hitherto existed between the clergy and the laity. It was, nevertheless, an act which was drawn up without a due knowledge of the character of the clergy against whom it was directed, and fell far short of those ends which it was expected it would accomplish. The alternative held out, acted as a test of political feeling, and brought the politics and the religious sentiments of the clergy to a complete issue.

It will here be remarked by readers conversant in Scottish church history, that at this precise period there was a strong resemblance between the fate of the Episcopal church and the Presbyterian kirk, or covenanters, shortly after the restoration. The Presbyterian ministers in 1661 were offered a continuance in their benefices and mode of worship, if they would acknowledge Episcopal superiors, and the validity of the government of Charles the Second. The Episcopal ministers in 1746 were offered the liberty of keeping dissenting chapels, if they would acknowledge the validity of the government of George the Second. There is hardly the least difference between the two cases. The Presbyterians, it is true, had to suffer a very small alteration in their church government; but for this balance in their favour, they were offered en-

dowments. Both of these churches acted in the same way on the spur of the moment. A considerable number of the Presbyterians embraced the terms of Charles, took the tests, and remained in their parish livings. So also did many of the Episcopalians at once swear allegiance to the government of George, and were suffered to open their chapels. Those who did so were mostly young men who had more recently been introduced into the church, and were not thence moved by the same considerations as the old non-jurors.

Here the parallel drawn between the case of the two communions ceases; and if there be any applause due to those who suffered the greatest degree of needless oppression, it is to be placed to the Episcopal church. All the severities which had been directed against the members of this body, were as nothing in comparison to what followed. When the above decree was issued, the state had no idea that a single clergyman would have acceded to the terms of the act, and it was much astonished to find that the often-abused non-jurors were mostly inclined to relinquish their Jacobitical opinions. It now appeared that this conduct was by no means acceptable to the creatures in the management of public affairs, and that it was secretly the *religion*, and not the *politics*, of the Episcopalians at which the apparently liberal decree was levelled. Finding, therefore, in the course of a very short time, that the clergy commenced tendering their allegiance, and entering into all the other provisions of the statute, in two years at farthest from the date of the bill, another act of parliament was passed, calculated to tear up the Scottish Episcopal church by the very roots. By this truly infamous bill it was enacted, that the swearing of allegiance, and the registration of orders, would in future be of no avail, unless these orders had been received from some of the bishops of England or Ireland; that is to say, except the clergy who took the oaths had been ordained in these countries. This was the final blow to Scottish Episcopacy, and rivalled in

ferocity any penal statutes ever directed against religion in Great Britain. It stamps the statesmen of the period, and their prompters, with an indelible infamy, which their apologists have been quite unable to wipe out. In former measures of annoyance, the government had always some grounds of excuse, on account of the political tendency of the non-jurors; but here it was incontestibly proven, that it was a rancorous hatred of their religion which animated it. The operations of the act closed the door of mercy against the Episcopal clergy, and excluded them from making an overture towards "political repentance." To the honour of the English bishops, this exclusion bill of 1748 was warmly opposed by them, and it was only carried by means of various interested lay members in both houses. The established kirk did not, as far as we can learn, interfere either to arrest or hasten the abominable decree.

No sooner did this act come into operation, than many of the Episcopal clergy fled to America for refuge; but the bulk of them remained in Scotland, still determined to bear up against the great evil in the best way they could. Everywhere all semblance of public worship was avoided, and the old system was re-commenced of visiting families in private, where a few faithful followers met to celebrate the rites of the church in secrecy and darkness. They were very careful of avoiding all outward appearance of congregating together. Sometimes, during the dark age of Episcopacy which followed, they had little chapels, if such they can be called, in the recesses of narrow closes or alleys in the towns and cities, where a few members met with caution and by stealth. Frequently these secluded places of worship were in the lofts of ruined stables and cow-houses, and were only approachable by moveable ladders and trap doors, placed under the charge of some judicious and careful member. At no time for many years did they dare to let such places of retirement be known, but to those on whom the strongest reliance could be placed. At the

present day in Scotland, in the same way that the caves and places of retreat of the heroes of the Covenant are shewn, as connected with times of fearful tumult, so, in many of the towns north of Edinburgh, are still exhibited the rude garrets and antiquated apartments, in which, at one period, there met a few lonely worshippers belonging to the Episcopal church.

In the midst of these obscurities and real sufferings, it is pleasing to remark that the humiliated Episcopal clergy never abandoned those temperate feelings which had been their constant attendants through so many vicissitudes. They suffered in patience and quietude, and in no case vilified the arm which had struck them to the earth. Drawing their comfort from the mild doctrines of Christianity, they did not consider themselves entitled to enlist the passions of their lay members in their behalf, or to stand in physical opposition to the civil government. Resembling the primitive apostles and fathers, whose successors they conceived themselves to be, they travelled about doing good, and carefully watching over the spiritual welfare of "those few sheep" which had been committed to their charge. Like these apostles, the bishops too were careful in preserving among them unimpaired that divinely instituted ordination, without which bond of union they would, long ere now, have been wrecked and foundered. For this purpose they secretly met at appointed places, instituting successors in the apostolic office, and examining and ordaining young men who were hardy enough to enter into their proscribed association.

It is this mildness of behaviour which so much distinguished the Episcopalian from the Covenanting clergy, while both were under similar circumstances; and the only reason that military execution was not directed against the one as well as the other, lay in the Episcopalians not breaking out into that open resistance, which the others thought fit to do. By this means, the Episcopal church cannot shew that cloud of "martyrs" which its neighbours possess, but this:

still does not invalidate its claims, if it supposed it creditable to put them forth.

It reflects little credit on the government of Great Britain, that it should have proceeded to such extremities with any body of protestants so late as the latter part of the last century. The Episcopal clergy were in the endurance of these vexations for no less a period than forty-two years, and though in several places their chapels were opened for divine service, yet it was at the risk of a criminal prosecution. The position of public affairs at length became very much altered. Prince Charles Stuart died in 1788, and with him any hopes which might have been lingering in the minds of the dejected clergy. After this they prayed for King George by name. A great change had also been made in public sentiment. The effects of the American war, and the Revolution in France, operated in terrifying the government into terms of conciliation with all classes of the community.

The bishops now made a forcible representation to the ministry on the scandalous impropriety of any longer withholding them from the open exercise of their religion, and at the same time tendering their undivided allegiance to the house of Hanover. In this appeal they were seconded by the English bishops, and a bill which was brought into parliament rescinding the penal statutes, was finally passed in 1792.

By the provisions of this toleration bill, the most complete freedom was given to the exercise of the worship of the Scottish Episcopalians, and the continuance of their church government by bishops. The penalties also for attending their chapels were abolished. In bestowing freedom on the church, the bill possessed a clause which is still a matter of regret to the communion. It was provided, that after the passing of the act, a complete separation should be kept up between the Episcopal church of Scotland, and the Episcopal church of England, in so far as that no English bishop should have the power of permitting any Scottish Episcopal deacon or priest to receive an Eng-

lish benefice, or even to do duty in any church belonging to the English establishment. By the meaning of the act, clergymen who have been educated at either of the English universities, but have received their ordination from the Scottish bishops, cannot return to England, and there enjoy a living. It is not attempted to be shewn, that the English discredit the spiritual authenticity of the Scottish ordination, for it is precisely the same as their own. The law has only taken this precaution, it would appear, to preserve the inviolability of the Church of England; for it is imagined, that if Scottish "orders" were recognized in England, on account of the cheapness of university education in this country, the church would soon be overrun with Scotchmen. This was doubtless the reason for the insertion of the restrictive clause, for the removal of which, the Scottish episcopalians are exceedingly anxious. They do not claim the abolition as a matter of right, but as a matter of courtesy. They wish to press it on the notice of the legislature, that already Roman Catholic clergy are eligible to livings in England, merely on subscribing the thirty-nine articles; and that presbyterian clergy are also eligible, on being ordained by the English bishops. They, therefore, are desirous of admission to English benefices, on subjecting themselves to as rigorous an examination regarding qualifications as the bishops deem necessary. It is generally understood, that some of the most influential English prelates are favourable to the removal of the disabilities. Should this, therefore, be eventually done, a great boon will be granted both to Scotland and the Episcopal church.

Previous to the passing of the memorable decree, a new species of communion of Christians had arisen out of the necessities of the times. As the non-juring clergy were rendered incompetent to conduct the public worship in their old chapels with their congregations, and as these congregations did not in consequence abandon their predilection for a liturgical service, by joining the ranks of the presbyterians, an

expedient was devised to remedy the evil. In different places, and more especially in the north of Scotland and in the metropolis, several congregations invited clergymen from England, having an English ordination, to settle among them. Under the particular patronage of wealthy members, many of these English divines also opened chapels, which were attended by those individuals who were not intimately associated by recollections with the deposed functionaries. These congregations used the book of common prayer in their church services; but the ministers being governed by no spiritual superior, and there being no systematic church discipline, they were in reality Independents. Under such circumstances, the junior members were never confirmed, except when the families of the upper classes were carried into England, to receive this apostolic rite from the bishop of Carlisle. It is remarkable, that during the debates on the toleration bill, so little did some of the members know with regard to the legal jurisdiction of the church of England, that they proposed, instead of giving liberty to the non-jurors, to extend the powers of the English bishops over Scotland. As this was directly opposed to the provisions of the act of union, which hemmed in the authority of each church to its own portion of the island, it was at once negatived.

When the Episcopal church was thus freed from legal penalties, it soon emerged from its obscurity, and daily gained in strength. Between it, however, and the Independent congregations, there was a degree of jealousy of not a very pleasing nature, and the bishops resolved, if possible, on bringing them under their jurisdiction. Negotiations were hence set on foot, and after much unprofitable delay, a coalition was accomplished, principally through the instrumentality of the late Dr Sandford, one of the English clergymen, who was thence ordained a bishop. To this very judicious union, there were only three or four dissentient congregations, and these, curious and unaccountable as it may seem, still maintain their state of independency.

Considering the privations endured by the Scottish Episcopal church, with very little intermission up to the beginning of this century, it is a matter of surprise, that it should have survived the stormy period of its history ; but, like the Vaudois or Waldenses, it seems to have possessed a lofty conservative principle, which it was impossible to quench amidst a thousand dangers and difficulties. That it has been kept free of schism through such a course of vicissitudes, is also worthy of remark. From its deposition in 1688 to the present time, there has not occurred a single dispute in the ecclesiastical management, which has not been at once settled without injury to the unity of the body, or the peace of the community. Placed in a country highly predisposed to another form of church government and worship, it is scarcely credible the progress which it has made within the last quarter of a century. It possesses now upwards of an hundred congregations, among which are to be found about a half of the landed proprietors, and a vast proportion of the educated and upper classes.

Originally, there were twelve bishoprics in Scotland, two of which—Glasgow and St Andrews—were archi-episcopal sees. The number is now reduced to six more comprehensive bishoprics, and one of the bishops receives the title of Primus. His duties resemble those of an archbishop, inasmuch as he acts as perpetual moderator of the Episcopal conventions, which are called together by his mandate. The bishops are chosen by vote of their diocesan clergy. Every diocese has likewise officers, under the title of Deans and Archdeacons, but their situations in the present state of the church, are little more than honorary.

The inferior clergy are, with few exceptions, nominated by the managers or members of the vestries of the particular chapels. It is rarely the case that they are chosen by the whole of the members of the congregations. Wheresoever that has been the mode of election, there has been almost invariably dispeace. In a few instances, they are appointed by patrons who have

built and endowed the chapels. In whatsoever of these ways the constitution of any given chapel is regulated, on the nominators conferring the incumbency on a clergyman, the bishop inducts him after the regular examinations.

By the general constitution of the church, which may be taken as the purest model of the primitive episcopacy at present in existence, (that of the Waldenses perhaps excepted,) the bishops have a very restricted power over the clergy or their flocks. They examine and ordain ministers, and superintend their conduct. In the case of a clergyman committing an infraction of the canons, or being liable to censure or a heavier penalty, the bishop cannot of his own will judge and depose him from his office. He has only the right of suspending him for a short time, till he be tried by a synodal meeting. By thus mingling in the ecclesiastical executive, the powers of a sheriff with that of a jury of compeers and superiors, there never occur those protracted and entangled cases which baffle the energies of the presbyterial courts, and often cause them to relinquish flagrant cases in despair.

In each of the six dioceses an annual synod is held, composed of the clergy, and presided over by the bishop. Reports are here made relative to church matters, and an address is delivered by the bishop, or some one appointed by him, wherein the ministers are charged to pursue a particular course of duty adapted to the necessities of the period. An annual convocation is likewise held at Edinburgh, or some other convenient place. It is composed of six bishops, six deans, and six delegates from the clergy, with the professor of divinity as an ex-officio member. In this supreme court, the bishops form the first chamber, and the others form the second. The first chamber is presided over by the Primus, and the other by one of the members called to the chair by vote. In 1828, this assembly of the church drew up and published a body of canons, worthy of the inspection of

those curious in such matters. The general business coming before the court is of a very light nature, and is conducted with great decorum.

The Scottish bishops do not outwardly maintain any superior rank. Besides acting as superintendents of their extensive dioceses, almost each acts as the minister of a particular congregation, and only one or two have chaplains to assist them. Once every year they visit different stations in their dioceses, for the purpose of confirming young members. Before exercising this duty, which is generally towards the end of Lent, they preach for some time in exposition of the principles of Christianity, and the doctrines more particularly bearing on this important rite.

The clergy of this church, including the bishops, are paid by their congregations, and the salaries thence derived, are in some cases extremely small. At different times they have received a *regium donum* of L. 1000 a year out of the privy purse, which did much to meliorate the condition of the poorer presbyters. At present this gift is withdrawn, probably more from a desire of economy in the royal revenue, than the invidious clamour raised against the measure by some members of the church establishment. It is perhaps better that this communion should not receive any aid from the government, whose donations will always impair the character of any body, however pure the motives may be which dictate the measure. The slender stipends of some of the Episcopal clergy are increased by an allowance from the Episcopal fund. This is a fund formed by endowments from private persons, subscriptions, &c. It is governed and administered by trustees, who are chiefly lay Episcopalians of rank and influence. A general meeting is held only once in twenty years. A professor of theology (who happens at present to be Dr Walker, bishop of the united diocese of Edinburgh, Glasgow, and Fife,) is partly supported by a salary drawn from a special endowment made for the purpose some years since. He resides in Edinburgh, and edu-

cates young men gratuitously for the church. These students must be recommended by a bishop or clergyman, and we believe, that in general, they are allowed a sum sufficient to pay the expense of board during the session. Bishop Walker at present also educates young men in theology, intended for the Episcopal church in India and the colonies; and we understand that the archbishop of Tuam has recently expressed his willingness to ordain Gaelic ministers for the church in Ireland, who have been instructed by the same eminent professor. Young graduates of Oxford and Cambridge, are likewise in occasional attendance. It is at present in contemplation to open these valuable lectures to students of all denominations. To do so properly, a hall is required; and a fund is already formed to liquidate the expense of rearing a building sufficiently large to contain a library and lecturing room. When this is done, it is intended that lectures on biblical criticism and church history, shall be also instituted on a general and efficient plan.

The tenets of the Scottish Episcopalians are precisely the same as those of the church of England. They adhere to the thirty-nine articles, and their public worship is the same as that pursued in the parochial churches in England. The sacrament of the eucharist is dispensed, according to the rubric, on the first Sunday of every month, and on Christmas and Easterday. Besides Christmas day and Good Friday, the chapels are opened for public worship on perhaps other six holidays throughout the year. The vestments used by the bishops and presbyters are the same as those in use in England. At their ordination, a magistrate attends to administer the oaths of allegiance.

In Edinburgh, and some other places, the chapels of the Scottish Episcopalians are handsome Gothic edifices, built at considerable expense by private subscriptions, and rivalling the plain unadorned edifices of the presbyterians. With few exceptions, they are all possessed of organs; but this is not made a subject of ecclesiastical interference. A compilation of hymns

and portions of psalms adapted to public praise in the Episcopal chapels, is now under review of the clergy. An Episcopal congregation was recently formed in Glasgow, by whom the services are performed in Gaelic. It is aided by the Society for promoting Christian knowledge. We have learned that a Gaelic chapel will soon be similarly instituted in Edinburgh, through the active exertions of Dr Low, the present truly patriotic bishop of Ross and Argyle, on account of the number of Episcopal Highlanders in the metropolis.

At the present day, there is a numerous body of protestant Episcopalians in the Highland districts, many of whom have occasionally been either ignorantly or wilfully described as Roman Catholics. On the visitations of the bishops to these remote parts of Scotland, they are uniformly hailed with unfeigned warmth of attachment by the hardy mountaineers, whether in the upper or lower classes; and the gratifying scene is sometimes witnessed, of these venerable prelates performing the services of the church, and the ordinances of religion, in the open air beneath the rocks. The inflexible loyalty of these Highlanders in the first place to their true sovereign, so long as such could be maintained with consistency or usefulness, and their subsequent adherence to the faith and religious practices of their forefathers under many disadvantages, cannot be sufficiently eulogized.

Notwithstanding of the small number of clergy in the Episcopal church, it has ever possessed names distinguished in theological, historical, and classical attainments. Spottiswood, Sage, Scougal, the Forbesees, Falconer, Rattray, and Skinner, have left behind them a fame not confined to Scotland; and in the nineteenth century, besides Gleig, Alison, Jolly, Sandford, Walker, and Russel, there are others whose names could be mentioned as reflecting honour on the body to which they belong. As preachers, the Episcopal clergy are now beginning to exert their pulpit eloquence, in adaptation to the taste of the age; and as such, several enjoy a well-merited reputation.

The ordination of the North American Episcopal communion was first derived through the Episcopal church of Scotland. Dr Seabury of Connecticut, having been sent to England shortly after the assertion of independence, in order to procure Episcopal ordination, it could not be given to him by the church, on account of a law prohibiting such to be done; but with the warm concurrence of the Archbishop of Canterbury, he was introduced to the Scottish bishops, and was ordained by them at Aberdeen, from whence he carried across the Atlantic that mysterious and ancient heritage of the apostolic succession, which has come down on the stream of eighteen centuries, a pure and undying memorial of the divine institution of the church. It is a fact, which is perhaps not generally known, that John Wesley also applied to the Scottish bishops to grant the ordination of a bishop to himself, and some of his coadjutors. Luckily for the security of the church of England, this request was negatived. We have heard that he afterwards applied to the Greek church, by means of a bishop of that communion at the time in London, which attempt to gain apostolic authority was similarly frustrated. He then disregarded what he could not acquire, and founded his church with lay ordination.

Jacobitically inclined as this communion once was, it cannot be said that any feeling of this nature now pertains to it. Few of those clerical or lay members remain who remember of the period of its prescription, and a new race has sprung up with modern associations and sentiments. As a refutation of those calumnies which have unscrupulously been directed against it, as respects its opposition as an episcopacy to civil and religious liberty, it may be mentioned, that it possesses many members who would yield to no covenanter or presbyterian in the avowal of firm constitutional principles, and who would not lag behind in the assertion of civil and religious freedom. The chief peculiarity of the whole body of Scottish Episcopalians is, however, a desire to pursue a career involving no contro-

versy, and provoking no exacerbation of sentiment. The communion is humble, we might say, almost to a fault; for it suffers indignities with such meekness that many might be tempted to suppose that it was actually deserving of such contumely. The Christian virtue of charity seems indeed to be deeply imbued in its constitution. It pursues a serene and temperate course, disturbing the complacency of no one, and fulfilling the idea of a simple, yet efficient ecclesiastical institution. It seems to have prayed with success to be delivered "from all false doctrine, heresy, and schism, and contempt of His word and commandment,"—for few communities of Christians trouble society so little with their internal or external arrangements. Within its sacred pale no jars or heresies are ever known to fester or break out. By the constant use of an orthodox liturgy and creeds, and the daily reading of those parts of scripture comprehending the plain principles of a true religion, no new dogma of belief can be started; and its adherents would lay no stress on the declamations of pulpit orators, if at variance with the doctrines therein set forth and fixed. There is a completeness about this communion which must strike every one who examines it. Its constitution and forms require little or no amendment. Its creed is one and unchangeable. It does not consider Christianity a science susceptible of improvement every generation. It lays claim to no occult power of discovering new meanings or readings in the verses of the sacred volume. By reason of this continuity of principle, this stedfastness in belief, the Episcopal church of Scotland is perhaps destined to stand as an impregnable bulwark of orthodoxy in the land; and should it be the fate of the kirk and its dissenting bodies, to be frittered away by the conceits of erring and shortsighted men, this poor, this oft contemned, but this unchanging communion, may be the means of still keeping alive, and handing down unimpaired to the latest posterity, that pure and beneficent faith "once delivered to the saints."

RELIGIOUS SUMMARY.

The population of Scotland by the census of 1821, was 2,093,456. It may be assumed, that that number is now increased to about 2,600,000, and calculating by the usual proportion, 600,000 of these are under ten years of age. Of the remaining two millions, the following table, founded on official lists and minute personal investigation, may be taken as presenting a tolerably accurate summary in round figures, of the number of individuals belonging to different classes of religionists, with the number of congregations.

	Congregations.	Total of Congregations.	Souls.
<i>Under the Church Courts of the Establishment.</i>			
Parish churches,	893		
Chapels of Ease,	58		
Missionaries employed in the Highlands and Islands, by a Committee of the General Assembly for managing the Royal Bounty of £2000 annually,	30		
Missionaries employed in the Highlands and Islands, by the Society for Propagating Christian Knowledge,	7		
Chapels in the Highlands supported by Parliamentary grants,	31		
	—	1019	900,000
<i>Note.</i> —The Kirk assumes a spiritual power over several presbyterian congregations in England, Holland, and one or two of the colonies.			
<i>Presbyterian Dissenters.</i>			
Reformed Presbyterian Synod, or Cameronians,	32		
United Associate Synod of the Secession Church,	300		
Associate Synod and Constitutional Presbytery, now joined under the title of Associate Synod of Original Seceders,	32		
Original Burgher Associate Synod,	45		
Relief Synod,	87		
Relief Congregation of Rev. John Johnston,	1		
	—	497	330,000
<i>Note.</i> —Some of these sects assume a spiritual power over several presbyterian congregations in England and Ireland.			
<i>Miscellaneous Sectaries.</i>			
Independents and Baptists,	96		
Bereans and Glassites,	7		
Swedenborgians, (Edinburgh,)	1		
New Sects, with no distinct title,	6		
	—	110	90,000
Friends or Quakers,	1		600
Methodists, (9 stations, and only 2609 communicants,)	60		10,000
Jews, (Edinburgh,)	1		300
<i>Apostolic Churches.</i>			
Roman Catholics, 55 clergymen,		81	100,000
Episcopallians,		100	55,000
Congregations using the Liturgy and forms of the Episcopalians, but under no bishop, and those individual members of the Church of England resident in Scotland,		4	5,000
		—	1490,900
Unitarians; those holding Socinian opinions; pure disbelievers; and those who attend no place of public worship of any description, either from want of seats or want of will, though generally baptized Christians, and of presbyterian lineage,			509,100
		1873	2,000,000

MINOR NATIONAL INSTITUTIONS IN SCOTLAND.

HIGHLAND SOCIETY OF SCOTLAND.

IN each of the three kingdoms, there is an institution erected to accomplish similar ends in reference to the encouragement of Agriculture, and other departments of the rural menage. There is the Board of Agriculture of London, the Agricultural Society of Dublin, and the Highland Society in Edinburgh. Of the effects which the two first of these associations have had in their respective countries, it is not our duty to speak. The latter certainly deserves exposition. The Highland Society of Scotland is of no earlier origin than the year 1784, when a number of landed and professional gentlemen, being influenced with an anxious desire to further the agricultural improvement of the Highlands of Scotland, until then in lowly condition, associated themselves into a society to accomplish such a patriotic design. Most of these gentlemen were either natives of, or some way connected with, that part of the country they intended to benefit by their patronage. In 1787 they obtained a royal charter of incorporation, and the young institution received an impetus towards success at the outset, by a grant of L. 3000 from government, out of those monies paid for the forfeited estates of noblemen and gentlemen, attainted on the insurrection of 1745. In 1789 it was also so fortunate as to receive the first of an annuity of L. 800 from the public purse.

This beneficial society commenced operations at a very auspicious period. The American war and revolution had just given the first decisive blow to an ancient, and certainly a bad, order of things, and the nation then seriously began to think of putting its hands to the plough. The gradual introduction of the use of lime, manure, and draining, which took place about this period, opened up new sources of wealth, and a society to assist and direct industry was eminently desiderated. The Highland Society commenced in its career, by holding out the incentive of premiums in the shape of medals and sums of money for improvements in Agricultural instruments; cattle, ploughing, taking in waste lands, planting trees, &c. The value of these measures was soon manifested. Almost immediately, district and similar institutions sprung up in all directions, and powerfully tended to disabuse the peasantry and small farmers of their prejudices, and vivify the spirit of improvement. In a short time after its erection, the Highland Society extended its patronage over the whole of Scotland.

The agricultural board in London, was instituted in 1793, and heartily co-operated in the designs of the Highland Society. From whatever cause it may proceed, no comparison can be properly made of the effects of these two kindred societies, the latter having been of far greater benefit to Scotland, than the other has been in England. In this, like some few things else, the Scottish institution is fortunate in having a small country to exercise itself upon, and over which it can preserve a thorough supervision. Along with many subsidiary causes of agricultural activity, this Society has wrought almost miracles on the surface of this rude northern land. Instead of clumsy wooden ploughs, dragged with difficulty by three or four horses, or bullocks, and guided by two or more men, there are now handsome iron instruments of the most scientific construction, (that of the lamented and hardly well requited Finlayson in particular,) which can be drawn with ease by two horses through the most benty soils,

laying the sward down in a way to please the most fastidious eye, and managed by only one man or lad. Instead of a wretched system of winnowing and thrashing by manual labour, these operations are now performed by machines, calculated to do the work of a numerous body of loitering peasantry. Instead of clumsy sleds and other vehicles, light and serviceable carts have been instituted. Instead of bleak wastes, covered with rushes, swamps, whins, heath, and every thing else betokening an unproductive unwholesome wilderness, there are now large verdant rich fields, with a population much improved in condition, and a freedom from those nauseous diseases, once the scourge and reproach of the nation. One of the best practices introduced by the Society, has been ploughing matches, which are now carried to a great height. From these and other causes, (among which the tax on foreign corn is one,) the agriculture of this country, and especially that of East Lothian and Berwickshire, stands unrivalled; and it can admit of no dispute, that the Scotch in general have now outstript the English, or any other people, in the great art of cultivating land, not only in the best style, but on the cheapest and simplest terms. By directing education to accomplish the desired ends, and receiving countenance and support from the various institutions now under review, the Scotland of the present day is not the Scotland of the middle of last century. Its green and corn fields, numerous fences, gardens, orchards, excellent roads, comfortable houses, greatly meliorated climate, and its industrious citizens, all attest that a grand revolution has been successfully made; and even with what it has attained, that it has as yet only received the earnest of that wealth and comfort which it is destined to possess, provided it follow that line of procedure necessary for its welfare.

Within these few years, this beneficial institution has increased prodigiously, both as regards the number of its members, and its visible effects on the country. By the latest published list of its members, it appears

that the number is seventeen hundred and nineteen, which, with recent additions, may be now increased to fifty more. Members are admitted by ballot, and by the payment of a life subscription of twelve guineas, or by agreeing to pay the sum of L. 1 : 3 : 6 annually. It is governed by a president, four vice presidents, thirty ordinary directors, ten extraordinary directors, besides subordinate officers. There are meetings of committees, and of office-bearers and other members at stated intervals, for the dispatch of business. There is likewise one great annual general meeting and dinner. The society has a public office in Edinburgh. Six volumes have already been published of its transactions, which incorporate a great variety of interesting and useful papers. In future, the prize essays and transactions will be published in a more popular form in the *Quarterly Journal of Agriculture*. Catalogues of premiums, and objects of competition, are published annually in the newspapers, and occupy several columns. The aggregate amount of premiums offered, as near as we can calculate, is upwards of L. 1200 annually, besides a variety of gold and silver medals. Some individual premiums rise as high as L. 50. The encouragement of a new branch of manufacture in Scotland, to wit, straw plait, the breeding of horses, black cattle, swine, sheep, &c.; improvements in the management of dairy produce, such as the making of cheese, salting of butter, &c.; and the writing of essays on the best kinds of agricultural instruments, are distinguished as the chief objects of the premiums. Rewards are now likewise offered to villagers in certain districts, who can shew the neatest and cleanliest cottages throughout the year, which is a measure that cannot be too highly commended.

Every year the society has a large cattle show, which takes place at a specified town the centre of its district, and by this plan its usefulness is diffused equally over the kingdom. Edinburgh, Glasgow, Dumfries, Perth, and Inverness, have been and will be the places of such meetings. So anxious are the country gentle-

men of these districts for the holding of shows in their own vicinities, which they are conscious do a vast deal of good to the place, that they often offer to contribute a considerable sum to enhance the premiums, if brought to act on or near their estates. Committees of gentlemen of known abilities act as arbitrators, along with a selection of office-bearers. The affairs of the Society are now in the most flourishing condition, and it numbers among its members a great proportion of the rank, influence, and talent in Scotland, as well as many Scotchmen and others in England and foreign countries.

THE BOARD OF TRUSTEES.

This is an institution which does not make much noise in the country, but it is one which has been of immense benefit to society. The establishment is composed of a board of trustees, instituted by government for the encouragement of manufactures, arts, &c. It was erected by letters patent in 1727, for the purpose of encouraging the manufacture of linen and woollen cloth, spinning of yarn, and other similar objects, and was ordained to be supported by the interest of a capital of L. 3800, with an annuity of L. 2000,—both of which sums, were in lieu of certain monies due to Scotland at the union. The management and distribution of these funds were vested in twenty-one trustees, (now increased to twenty-eight,) who are in general peers, judges in the supreme courts, the lord advocate, bankers, and gentlemen of property, all of whom give attendance gratis. Vacancies are filled up by his Majesty. Five members form a quorum. There are meetings for the furtherance of business once a-week, or once a fortnight, throughout the whole year. A cashier and secretary, accountant and principal clerk, take a more active share in the official details.

The original design of the institution embraced the encouragement of the fisheries, but it was soon found

necessary for government to patronize an institution specially for that object, which is still in operation, though languid, and perhaps of little avail. The board, however, up till 1821, continued to encourage the cod, ling, and other white fisheries. Since this time, it has confined its attention to the manufacturing department, and the fine arts. To acquire a just notion of the undertakings of this hitherto valuable institution, a perusal of the Parliamentary returns would be necessary. From the first, it has been going on furnishing ingenious and industrious, though poor, artizans—with mill machinery for dressing flax, heckles to flax dressers, utensils to thread makers, wheels, reels, weaving reeds, and looms of particular constructions for weaving certain kinds of diapers and other linens. It has paid salaries to numbers of adepts in manufacturing to instruct weavers, spinners, bleachers, and others; and has offered, and continues to offer, premiums for producing the finest kinds of wool. A show of woollen and linen cloths is held in Edinburgh every year under its patronage, and premiums are dispensed to the most deserving manufacturers. It likewise appoints officers to examine all kinds of flax seeds imported, so as to prevent imposition by a deleterious article, and adopts other means of securing the character of Scotch linens from depreciation. To such an unrivalled pitch of excellence has this establishment as well as other institutions been the means of bringing our strong and fine linen fabrics, and so thoroughly is capital disseminated by the aid of our paper currency, together with a spirit of private industry, that the time, we think, has now almost arrived, when the Board of Trustees might be safely dissolved as having accomplished all the ends of its institution, or its attention directed to some new object. It is probable that this is also the opinion of some of the members of the establishment. For many years the Board has been aiming at the encouragement of the arts of sculpture, drawing, and painting. It supports an Academy at Edinburgh on a liberal principle, for the education of

talented young men in these branches. The pupils are instructed chiefly in drawing from sculpture and other models, so as to cultivate a high and correct taste for such pursuits, and to supply artists for drawing patterns for calico printers, shawl weavers, plans of architects, and other objects of a similar nature. To excite the talents of young men in these arts, no pains or expense have been spared. One of the large side upper galleries of the new Grecian building on the earthen Mound—dedicated to the use of various societies, some of which we are noticing—has recently been fitted up for the accommodation of this very useful department of the trustees' office. It is furnished with casts in stucco of most of those exquisite ancient sculptures, the pride and glory of Greece and Italy, which have been purchased and imported at an enormous expense. It likewise contains figures by Canova, and other modern masters. It is fortunate in possessing a cast of the Venus attempting to conceal herself in drapery, of that eminent artist, presented by himself in compliment to the institution, and vying with that of the Venus de Medicis, of which there is also a cast. The collections at the Vatican, Florence, and some other places in Italy, have yielded casts of their most rare and valuable sculptures to this establishment, on the solicitation of his Majesty, and other influential personages equally patriotic. Besides these, there are a few good casts of Egyptian antiquities from the Elgin marbles.

We have for some years considered it a discreditable fact, that hardly any thing is known of the institution on which we are now writing, and that so very few are aware of the superior character of the collection of imitative sculptures just noticed, which, in all likelihood, few of our readers ever heard of. There can scarcely be any thing more productive of refinement in sentiment to those susceptible of being aroused by the exhibition of works illustrative of the greatness of human genius, than a visit to this academic grove, which would perhaps bring the tourist in remembrance of one

of the halls in the Palazzo Vecchio, or other Tuscan collections. Here is ranged up in tasteful confusion, under the best possible lights, the exact personifications of those imperishable works of art, with the names of which every ordinary reader is acquainted. The Fighting and Dying Gladiator, Germanicus, the Apollo Belvidere, the reclining dead Saviour, the Laocoon, a Diana, Antinous, Castor and Pollux, and many other figures equally beautiful, are all here grouped together in a cold and silent combination of excellence, forming a truly classic shade, and conveying an unspeakable feeling of subdued delight to the virtuoso, who is so fortunate as gain an entrée. For reasons requiring no explanation, the gallery is only open to persons having orders from office-bearers.

This branch of the institution has been of signal benefit in improving the cultivation of the fine arts in Scotland. It has educated and dispersed hundreds of talented artists, most of whom have succeeded in the line of study their taste led them to pursue, and many of whom (including Wilkie and Allan) have risen to the highest eminence as historical and portrait painters.

Of late years, the revenue of the Board has been greatly augmented. Besides the L. 2000 already mentioned, it receives annually L. 225 as the interest of some savings, with L. 900 as the interest of the price paid by the city of Edinburgh for certain grounds which at one time belonged to the Board at the village of Picardy,* near the city. It has also at its disposal the fund granted by parliament in the reign of George III. for promoting the growth of flax, amounting to L. 2956 : 15 : 8 ; and likewise the small sum of L. 80 allowed annually by the convention of royal burghs

* This village, now no more, stood on a piece of ground covered at present by the eastern part of the new town, and whose locality can be pointed out by a spacious new street called *Picardy Place*. This village was reared for, and inhabited by, linen and cambric weavers, who had come to this country from Picardy in France. They were protestants, and many of them had been men in opulent circumstances, but the revocation of the edict of Nantes at once determined them

towards defraying the expense of management. Altogether, according to the Parliamentary report of 1822, the annual revenue was then L. 7961 : 13 : 8.

ANTIQUARIAN SOCIETY OF SCOTLAND.

This association has been in existence since the year 1780. Previous to the date of its origin, a taste for the investigation of the antiquities of the country had begun to manifest itself; and many of the private Scottish gentry were in the habit of amusing themselves by researches into the nature and uses of curiosities of this description, which were daily coming into notice. The idea of associating a number of these individuals into a corporate body was first started by the late Earl of Buchan, a nobleman, who, with many singularities of character, was a warm friend to the prosperity of the fine arts in this end of the island. He collected about him by invitation those whom he conceived would be most favourable to the scheme, and read a discourse touching the meaning of the proposed institution, which was at once keenly advocated.

After canvassing the measure privately, and one or two public meetings, the members formed themselves into a society on the 18th of December 1780, and shortly afterwards obtained his Majesty's letters under the great seal, constituting them a corporate body, with all the privileges of such a compact. By the deed of corporation, the KING constituted himself as patron of the establishment, which honour is still conferred by his present Majesty, George the Fourth, who has

to embrace poverty and exile to save their lives and religion. They were courteously treated by the British, who have more than once been indebted for a knowledge of useful arts to helpless foreigners whom they encouraged to settle among them, and some were invited to come to Edinburgh by the Board of Trustees, which gave them both a home and employment. Their little colony has been now long since scattered, but several of their descendants still reside in the metropolis, and are among the most respected of its citizens.

seldom suffered an opportunity to pass of furthering the views of such institutions.

The original statutes and bye-laws of the Society remain still in force, with few modifications, and the following may be taken as the most prominent. The officers are to consist of a president, a first, second, and third vice-president, a council of nine members, two secretaries, and a secretary for foreign correspondence, a treasurer, with a curator of the museum, and an assistant, all of whom are elected in the same manner as ordinary members. There are also four censors, who are employed to revise and report on papers presented to the Society. The vice-presidents and council examine the accounts and funds of the Society, and transact all the ordinary business. Three form a quorum. Each candidate for admission as an ordinary member must be recommended by three members, and his election is made by ballot. A majority of two-thirds of the members shall entitle the candidate to admission. Eighteen members must be present both at the announcing and balloting of members. Nine members constitute an ordinary meeting. Correspondent members are chosen in the same manner. The fee of admission is two guineas, and one guinea annually. A payment of twelve guineas will exempt from annual payments. During the sitting of the Court of Session, meetings take place every Tuesday, and in the vacations they occur only once every alternate Tuesday. The principal or annual meeting is held on St Andrew's day, the 30th of November, or the first Tuesday thereafter.

Correspondent members pay no annual fee; and we believe it has now become customary to elect honorary members in compliment to their abilities, without obliging them to pay any fee whatever.

On its institution, the Society of Scottish Antiquaries immediately gathered together all the private museums of those members who were willing to encourage the establishment, and thus formed at the very outset, a comprehensive collection of many rare

Scottish historical antiquities. Since that time, the Society has progressed to a wonderful degree in this species of wealth. It possesses a suit of handsome apartments in the Royal Institution buildings, Edinburgh, adapted both for meetings and as a museum. By a very unfortunate arrangement, the most remarkable Scottish and British antiquities, which, in reality, are the only things worthy of examination, are either kept mostly out of sight, or smothered amidst what are called Indian and Foreign antiquities, but which might better be described as the rubbish of the most common place museum. A volume of transactions has been published, and essays of that peculiar character, for which the laird of Monkbarns is said to have shewn a passion as a writer, are given in and read at the meetings.

THE BANNATYNE CLUB.

This Society, which in a certain sense is national, was instituted at Edinburgh in 1823, by a number of Scottish gentlemen possessed with that species of bibliomania displayed by the Roxburghe club of London, and named their association from George Bannatyne, a merchant in Edinburgh, who flourished at the end of the sixteenth century, and was one of the chief collectors of national poetry in that age: his memoirs have been written by Sir Walter Scott, for the use of the club. The direct object of this establishment is the reprinting *for private use* valuable and scarce old books, or curious and rare manuscripts, illustrative of the history, literature, and antiquities of Scotland. At first, the number of members was limited to thirty; now it extends to a hundred. Each pays an annual fee of five guineas, which form a fund for liquidating the expense of paper and printing. Each member receives a copy of the book printed, and only a few more are thrown off for presentation to the Advocates' library, the Bodleian, the British Museum, and one or two other pub-

lic libraries, from whose stores originals are sometimes procured. Each member is also expected to be at the expense of printing a single book for the use of the club in the same way. Nearly fifty quarto volumes have been printed altogether, about six of which have been executed by the funds. Most of these books, and indeed the whole, are curious, and of great value in making researches into historical records. From its exclusive character, and the non-issuing of the books to the public on any terms, it can never, however, attain the title of a thoroughly useful national institution. There is a club instituted in Glasgow, designated the Maitland club, consisting of fifty members, which has similar objects in view. It takes its name from Sir Richard Maitland of Lethington, an officer of state during the minority of James VI., and a person who, like Bannatyne, did much service to Scottish literature, by compiling nearly all the poetry of the nation then in existence. This club has printed only two or three volumes.

THE ADVOCATES' LIBRARY.

Scotland receives five out of the eleven copies of every work published in Great Britain, and entered at Stationers' Hall. The entering of books at Stationers' Hall, which amounts to a registry of the name of the publisher and date of publication, so as to prevent altercation regarding the expiry of copy right, is compulsory on every publisher, who, besides the fee of entry, must consign eleven copies for distribution, agreeable to an act of Parliament of Queen Anne's reign. This is found by publishers (or in reality by authors) to be a severe tax, though it is highly necessary for purposes of national literature. The most absurd part of the arrangement is the giving of five out of the eleven copies to this country. Such an error would be of less amount, were a proper method pursued of exhibiting the books. As it happens, four out of the five copies are locked up by uni-

versities, where they remain as little better than private property, and to which, at all times, it is difficult to gain access. The fifth copy is given to that institution now before us, and the public are served by it in a very different manner. The exceeding liberality and courteousness of the Faculty of Advocates at Edinburgh, and the official executive in their library, when compared with the conduct of university curators, excite our boundless admiration and gratitude. All other libraries in the kingdom—and some of them are not contemptible—sink into nothing before that of the Faculty of Advocates, which is the only one in the country deserving the name of a truly national institution. This library, though instituted exclusively for the advantage of Advocates, is, with much politeness, daily opened to the researches of all classes of literary redacteurs. The advantages of this beneficent measure are incalculable. We may perhaps astonish some readers, who do not inquire minutely into the ways and means employed by authors in compiling matter for their works, that a great proportion of the matter-of-fact books published in Edinburgh during the last fifty years, have been compiled from information stored up in this transcendent repository; and we are safe in stating, that without its aid there would have been few modern books of a historical nature issued from the Scottish press.

The advocates' library was founded in 1682, at the instance of Sir George Mackenzie, who was at the time Dean of Faculty, and the plan was carried into execution on a small scale, by a fund which had been forming of the fines of members. At the outset, the Faculty advertised that they wished to purchase rare books, and they thus formed a small collection of volumes. In 1695, a few years after, the infant library received a large and valuable accession, by a presentation from William, first Duke of Queensberry, of the library of his deceased son, Lord George Douglas. At this time, the books were lodged in the flat of a house in the Parliament Square, which by an unfortunate ac-

cident took fire, and it was with difficulty that a part of the library could be saved. Next year, the books were removed to a suit of nine small and somewhat dingy apartments, and one large light room, beneath the parliament house, where they still remain; but at present, a large new building is in preparation for their reception. The books of an historical nature, are lodged in a long handsome apartment above the library of the writers to the signet, in the contiguous new range of buildings. The advocates' library is one of the principal *lions* in the metropolis to which strangers are carried by their town friends. When Dr Johnson visited Edinburgh, he was taken to see it by Boswell, "where," says he, "I was pleased to behold him rolling about in this old magazine of antiquities."

Since the period of its institution, the advocates' library has progressively increased to upwards of a hundred thousand printed volumes, besides a large collection of valuable manuscripts. The acquisition of books from Stationers' Hall, is not the sole cause of increase. About L. 1000 are disbursed annually by the Faculty, in purchasing other useful or rare books, and copies are likewise procured of every printed bill brought into and passing the house of commons. It is to this collection of the statutes at large, to which we have been occasionally necessitated to apply for authentic intelligence on particular points, and really without some such accessible collection of acts of parliament, Scottish statistical writers would often be at a complete stand in seeking out the information they require.

Using the words of the author of the *Walks in Edinburgh*,—"the library contains many valuable manuscripts, and other articles of *vertú*; but, of course, it is only a selection of the most curious which can be conveniently submitted to the eyes of strangers. We may particularize, among other things, a manuscript bible of St Jerome's translation, believed to have been written in the eleventh century, and which is known to have been used as the conventual copy of the scriptures in the abbey of Dunfermline,—a complete copy, in two

volumes, of the first bible printed (by Faust and Gutenberg),—a set of the gospel, written in the Tamul language, upon dried weeds or leaves, and arranged in a case,—the original Solemn League and Covenant, drawn out in 1580, and bearing a beautiful autograph signature of James VI. besides those of his courtiers,—six distinct manuscript copies of the covenant of 1638, bearing the original signatures of all the eminent men of that time, the name of Montrose appearing conspicuous among all, with those of Argyll, Loudon, Lenox, Balmerino, &c. and one of them being beautifully written and illuminated, with spaces round the border, for the signatures of the commissioners of counties and burghs,—some letters of Marie,—a collection of coins and medals,—the Wodrow MSS.,—a mummy, presented by the Earl of Morton in 1748,—a valuable collection of the cartularies of various religious houses,—and a few ancient manuscripts of the classics. To this enumeration may be added, the splendid collection of letters and state papers by Sir James Balfour, Lord Lyon king at arms to Charles I. whose own “*Annales of Scotland*” were lately published, in a very handsome and correct style from the MSS. (also preserved here,) by one of the assistant librarians. This collection, which was purchased by the Faculty at the recommendation of the Lords of Session, in 1698, is comprised in a numerous assortment of vellum-bound folios, which are kept with the rest of the manuscripts in a fire proof room.” The collection of Scottish, English, and Foreign law, and historical works in the advocates’ library, is very complete. Every class of books is kept in separate departments or presses, and can be easily referred to.

The Faculty appoint curators out of their body to superintend the affairs of the library, which is placed under the immediate management of a keeper, and two or three assistants. The keepers for a considerable length of time, have been men who happened to be eminent in letters. David Hume, and Thomas Ruddiman, filled the office, and at present David Irving, L.L. D.

author of the lives of Scottish poets and of Buchanan, is the incumbent. Among the present assistants, the Messrs. James and David Haig deserve particular commendation, and the public thanks of literary men, for their unvarying attention.

SOCIETIES FOR PROMOTION OF THE FINE ARTS.

Within the last twelve years, the character of Scotland in regard to the production of historical and portrait painters, has risen prodigiously. In 1819, an institution was formed under the patronage of the king, for the encouragement of the fine arts, and its members were at the same time incorporated by royal charter. This Royal Institution, as it is termed, is composed chiefly of noblemen and gentlemen of taste and influence, and has a set of office-bearers. It proposes to exhibit the paintings of Scottish artists annually, and to form a fund by the proceeds of the money gathered for admission at the doors. The funds, however, formed by this plan, have been greatly augmented by an annual donation from the Board of trustees, and by an endowment from a gentleman named Spalding, who bequeathed a large sum, part of which was to be appropriated to the support of decayed and superannuated associated artists, belonging to the Institution. Besides giving encouragement in this way to artists, the Institution occasionally buys pictures of great merit, towards forming a large collection. Exhibitions are made annually of the pictures of modern artists, and occasionally the Institution, by great exertions and expense, collects or borrows pictures done by eminent ancient masters, which form a public exhibition of no small use to students. This institution has never been popular. It is generally considered of too dignified and supercilious a nature to please the greater proportion of painters. On this account, for these several years back, the painting world of Scotland has been torn into factions, and devoured by jealousies. A great number

of artists in 1826, gave up the patronage of the Royal Institution altogether, and founded what they called the Scottish Academy of Painting, Sculpture, and Architecture, and in 1829, they were joined by nearly all the remaining protégées of the Institution. At present nothing can be said satisfactorily of the condition and prospects of the two rival associations. One has a deed of incorporation and an endowment; the other, in defiance of every endeavour, has been refused such a necessary bond, and has no funds except what are raised by the admission of associates, and the money gathered at the public exhibitions. Each exhibits pictures annually, which is at least a great error in arrangement, as nearly all the painters must work hard at portraits for subsistence throughout the year, and have little time to spare on subjects of interest. The consequence of all this has been, that from the very first the exhibitions have been overcrowded with mere portraits, and it is exceedingly apparent, that unless the exhibitions be made only once in three years—as in Paris, for instance—the public will soon be tired of attending, and the arts be advanced at a slower rate. It is to be regretted, that an amicable union of all parties is not made on patriotic liberal principles. At some of the provincial towns, exhibitions of paintings are now occasionally made.

ANDERSONIAN INSTITUTION, GLASGOW.

This being an institution, which in a great measure is only of local interest, it would hardly suit the purposes of this work, were it not at the same time fully deserving of being brought prominently into view as the first erected of those modern establishments, suited to the dispensation of scientific knowledge to the working classes. It was founded, says Cleland, in his History of Glasgow, in 1795, by Mr John Anderson, professor of natural philosophy, and endowed by him with valuable philosophical apparatus, a museum and library.

It is placed under the curatory of eighty-one trustees, consisting of nine different classes of citizens in equal proportions. The views of the founder comprehended a complete circle of liberal education, but circumstances have limited the plan to instruction in Natural Philosophy, Chemistry, Materia Medica, Pharmacy, Mathematics, and Geography. By this excellent institution, education in these branches in the character of popular lectures, is delivered by a professor, to about 500 operative mechanics, free of all expense. Its first professor was Dr Garnet, who taught till 1799, when his abilities led him to be promoted to the professorship of Experimental Philosophy, Mechanics, and Chemistry, in the Royal Institution, London, which was formed on the model of the one he had left. He was succeeded in office by Dr Birkbeck, a man of great scientific knowledge, who was similarly called away to London in 1804. Dr Ure has since been the professor, and he has written some valuable treatises, which have met with public approbation. So much benefit was found to be derived from the lectures in the Andersonian Institution, that it suggested many years afterwards, the idea of erecting establishments in different parts of the country, called

SCHOOLS OF ARTS.

Edinburgh took the lead in institutions of this nature. In this city one was formed in 1821, and it took its rise from an accidental circumstance. One day in March 1821, in the course of a conversation in the shop of Mr Bryson, watchmaker, a question was put, whether young men brought up to the trade of watch-making received any mathematical education; and Mr Bryson having replied that it was seldom, if ever the case, and that they daily experienced this want of instruction, it was immediately projected to institute a School of Arts, where instruction in the useful branches of science might be given to young tradesmen. The

plan so started, soon met with warm approbation from master and working artizans, and a committee of persons interested in the measure being appointed, a prospectus was issued. On Tuesday, October 16. 1821, the school was opened by the Lord Provost, accompanied by some distinguished citizens. It was proposed to combine lecturing as at the Andersonian Institution, with an immediate tuition of individual students, and to charge small fees for attendance. At the opening 292 tickets were sold, and the number has now increased to 500 annually at 10s. each. The students are young men belonging to every mechanical and trading profession in the town. There are junior and senior classes. The system of instruction has been considerably improved since the commencement. Lectures are given, and instruction conferred by the exhibition of diagrams and models, every evening from eight to nine o'clock. The session is from October to April. Every evening the lectures are on different subjects. Arithmetic, Algebra, Mathematics, and Geometry, occupy attention one night; Chemistry another; and Mechanical Philosophy another. Next session, it is proposed to dedicate an evening to lectures on the manifestations of a Divine Agency in the structure of the universe, and the intimations of the will of the Author of nature, afforded by the study of physical science; and also lectures on political economy. There are occasional lectures on architecture and classes for drawing. Examinations are made of students who voluntarily offer themselves, and prizes are now distributed by the aid of an annuity of ten pounds, from a society of Scottish gentlemen in Cambridge. The general arrangements of the institution, which is under the patronage of a large body of respectable citizens, are excellent, and every succeeding year it is found to be of more use to society. It is governed by regular office-bearers, among whom Leonard Horner, Esq. now warden of the London University, has been distinguished for his exertions in its favour. The students are under the guidance of several talented regu-

lar lecturers, and they are occasionally instructed by other gentlemen, whose experience in practical chemistry and general knowledge, render their services of value. The institution possesses a small, but select and useful library, and collection of apparatus and models. Hitherto the lectures have been delivered in the Masons' Hall, but it is proposed to erect a special hall of meeting, among other new edifices now on the eve of erection in the metropolis, which shall be dedicated as a monument to the ingenious Watt.

Institutions similar to the above, have been since erected in every town in Scotland of any importance from its size, and they have all been found of equal use to the operative mechanics, and young men in general in these places. They have also spread into England, though not to any great extent as yet. What with such means of bringing down a knowledge of science to the capacities of the unlearned, and the dissemination of intelligence by means of society public libraries, now established, not in large towns alone, but in every burgh, village, and hamlet, from the borders of England to Zetland, a process of instruction in useful knowledge is going on, and reaching the innermost core of society, which no one can but anticipate will lead to the happiest results.

THE SOCIETY OF ARTS FOR SCOTLAND.

This is an institution, the origin of which is intimately connected with the establishment of the School of Arts, to which it is, in a great measure, a very beneficial accessory. It was begun in 1821 by a number of gentlemen in Edinburgh friendly to the improvement of arts as applied to trade and manufactures. It now comprises about 200 ordinary, besides honorary and associate, members, with a number of office-bearers, and an ordinary council. The ordinary members pay either L. 1, 1s. on entry, and the same sum annually, or L. 10, 10s. at once. The main object

of this association, is to offer premiums and medals to persons who successfully invent improvements in those machines more immediately connected with manufactures; to make discoveries in Chemistry, bearing on the useful arts; and to discover valuable facts connected with the natural productions of Scotland. On such objects about L. 80 is now expended annually. Besides fortnightly meetings throughout the year, at which communications are read, a general meeting is held every year in February, at which the prizes are distributed to successful competitors. The genius of artists is in general directed to particular objects by published lists, shewing the nature of the inventions, essays, &c. wanted. The Society is as yet only in its infancy, and it promises to become one of our most useful national institutions.

CALEDONIAN HORTICULTURAL SOCIETY.

The Scotch have been long known as the first gardeners in the world, a peculiarity in character derived as much from the troublesomeness of our climate, and poorness of our soil, which induce a perpetual activity, as from the intelligence and elementary education of the peasantry. To encourage and sustain such a favourable name, numerous societies of gardeners and horticulturists are instituted in Edinburgh and elsewhere. Of these, none is of so prominent a character as the Caledonian Horticultural Society. It was instituted in 1809 by the sale of shares of twenty guineas in price, and is supported by annual guinea fees of members. Its honorary, ordinary, and corresponding members, are now numerous, and in general they are gentlemen distinguished by a passion for horticultural pursuits. The direct object of the institution is to promote improvement in the cultivation of the best kinds of fruits, of the most choice flowers, and of those vegetables useful in the kitchen. In 1817, several gentlemen were deputed to visit the principal gardens

in the Low Countries and France, who brought back much interesting intelligence regarding the state of horticulture. It possesses an experimental garden, which, being under proper superintendence, is of great use in furnishing buds, grafts, roots, and seeds, to members and their friends, and thus disseminating over the country what must every year become of more value to public and private gardeners. The garden is now in a very excellent condition. This institution owes much of its celebrity and excellence to Patrick Neill, an enthusiastic and scientific horticulturist. We may here notice, that Edinburgh possesses a Botanic garden, supported chiefly by a *regium donum*, and now one of the first in Britain. It possesses elegant suits of hot and green houses, with a large lecturing room for the University professor of Botany, who is at present Dr Robert Graham, a gentleman eminent for his abilities in this interesting department of science. The collection of native and exotic shrubs and plants is now very complete, and the garden is large and commodious for the use of students. Both of these gardens are situated in Inverleith row, north of the city, and are well worthy of the inspection of strangers.

ASTRONOMICAL INSTITUTION.

England has two of these institutions, and Scotland has one. It is situated at Edinburgh, and occupies an old and new building on the Calton hill. Prior to the year 1812, there was a very inferior kind of observatory at this place, but in that year a number of spirited gentlemen associated themselves into a society for the purpose of erecting a proper building for apparatus suited to astronomical observation. The association comprises two classes of subscribers, namely, those who pay twenty-five guineas for shares, and those who give annual fees. It is governed by a council and office-bearers. The society possesses all the instruments required for making the nicest astronomical ob-

servations, large and small telescopes, globes, maps, atlases, charts, books of nautical and geographical science, and meteorological apparatus; also a mural circle of five feet in diameter, and a transit instrument of $10\frac{1}{2}$ feet, all purchased at an enormous expense, and preserved in the best order. Another and smaller transit instrument and astronomical clock has been erected by the magistrates at the same place for furnishing authentic information of the exact mean time daily to watchmakers and public clock keepers. A very excellent Camera Obscura belongs to this very serviceable institution, and is one of the most delightful things which a stranger can be taken to visit. Visitors are admitted by orders from subscribers. The lately lamented and justly celebrated Professor Playfair was an early patron of this astronomical institution. There being no astronomical class in the University, the observatory is of less use than it otherwise might be; and it could be wished that this noble science was more earnestly investigated.

ROYAL SOCIETY OF EDINBURGH.

This is an association of persons having a taste for discussions on philosophical subjects, which was formed by a species of charter from the magistracy in 1783. It has published several volumes of transactions; but (like its prototype in London) on the whole, it seems to do very little service to the cause of knowledge or philosophic study.

THE WERNERIAN NATURAL HISTORY SOCIETY

Was instituted in 1808, and derived its title from Werner, the eminent naturalist and mineralogist of Freyberg. Professor Jameson was its first president. The intention of the society is to excite a taste in Scotland for subjects connected with na-

tural history, in which it has been decidedly successful. It numbers among its members many distinguished foreigners who contribute curiosities in natural history, which, along with other articles of a like nature, are stored up in the museum of the college of Edinburgh,—an institution owing its rise and progress principally to the indefatigable and generous exertions of Professor Jameson. Since the erection of this institution, another has been begun with similar objects in view, designated the Plinian Society.

THE HIGHLAND CLUB.

This is an institution very different in its nature from the preceding. It is an association of gentlemen, most of whom are natives of the Highlands, embodied for the purpose of sustaining, rather than promoting, the existence of the Highland garb, language, music, and martial exercises. It patronizes a public olympic fete every year, at which prizes are offered to successful candidates in shooting, wrestling, throwing the stone and hammer, leaping, running, &c. This meeting is usually held on the island of Inchkeith in the Frith of Forth. It also pays the school fees of the children of poor Highlanders in the metropolis. There are at present about 400 members, who pay one guinea annually. Since the institution of this society, associations for similar objects have sprung up in different parts of the country.

MASONIC INSTITUTIONS.

It has been alleged by some writers, that masonry was known in England in the fourth century, but of this there seems little certainty. It is more probable that it only came into vogue when the Roman Catholic church assumed those powers which were ultimately the cause of its destruction. It is ascertained that the

first band of free-masons settled in Scotland in the year 1140, at Kilwinning in Ayrshire; from which circumstance, the lodge of that place is still known as the parent of the whole. The order of masonry, which was thus brought to Scotland, was that of St John. The origin and meaning of associations of this nature, it is scarcely our duty to expound. From the earliest times, such societies were neither more nor less than combinations of the master spirits of the age—men whose views in politics, science, art, civil law, and religion, were centuries in advance of those of the populace out of doors, and who met on one common level of rank to express their opinions. The craft of masonry, or the art of building, being almost the only one then in existence, served as a bond of union. When the Romish church rose in power and splendour, it gave great encouragement to artificers in stone. Popes, sovereigns, barons, and pious wealthy persons, invited them to minister to their sumptuary wishes, and thus were reared nearly all those inimitable works of art, some of which are still the glory of Britain. To preserve a monopoly in trade, as well as to exclude the vulgar from a knowledge of sentiments, for which their unlettered minds were not adapted, from the first, the masons instituted mysteries and ceremonies to act as tests of brotherhood. In the twelfth century, they travelled about in bands like little armies, and where-soever they went they were well received. They were everywhere endowed with great privileges. They were allowed to live under their own peculiar laws and customs, and be governed by officers of their own choosing, on which account, they came to assume the title of *free* masons. They lived in camps, and in their march carried all the instruments of their noble profession along with them. In this way they became one of the greatest, and certainly one of the most remarkable, associations the world ever produced. Various Scottish monarchs, prelates, monks, soldiers of rank, and Knights Templars, curious as it may appear, all pressed as members into this wonderful body. That

those men, who actually lived by the ignorance and the feuds of their neighbours and vassals, should have thus voluntarily abandoned their superiority for even the brief space of a single night, and levelled themselves with mere working, but intelligent, men, is one of the most amazing facts in the history of the human race.

One of the Jameses first instituted the office of Grand Master, and conferred it on William St Clair, Baron of Roslin, builder of the beautiful gothic chapel at that place, and made it hereditary in his family. The successors of this nobleman filled the office till 1736, when William Sinclair, Esq. of Roslin, very generously resigned his post, and cancelled the claim of the family. He was then created grand master elect, and since this time the office is filled by vote every two years. At this period, the first Grand Lodge of Scotland was instituted, on the model of the Grand Lodge of England, which was a very necessary measure for the preservation of the order. Its authority was instantly recognized by nearly all the provincial lodges, which now tendered their subserviency to its authority, and received charters of institution. This Grand Lodge is composed of office-bearers and wardens, or their proxies delegated from all other lodges. It is situated at Edinburgh, and has one head meeting on St Andrew's day, November 30, besides quarterly and occasional meetings. It appoints provincial Grand Masters, and has a power of making inquisitory visitations to its lodges. Every person entered a mason in any of the lodges thus under its government, contributes 5s. 6d. as a due to its funds. The funds raised by this and other means, are principally appropriated to the use of destitute masons, their widows, or families, at a quarterly distribution. Sometimes L. 150 are paid out in this way at one of these disbursements. At present there are 328 lodges on the roll of the Grand Lodge, about sixteen of which are in Edinburgh. The king has been long patron of this institution, and the Grand Master is generally a Scottish nobleman. The Grand

Lodge maintains a friendly connexion with the Grand Lodges of England and Ireland.

The order of St John's masonry in Scotland, is reckoned the most pure and ancient of any order in existence, and as such, it is highly esteemed on the continent. It embraces only the three first, and most material, gradations of apprentice, fellow-craft or journeyman, and master mason. Besides this national order of masonry, there are, however, other orders of a more transcendant and romantic nature, pertaining to certain lodges, not under the Grand Lodge, and which that institution is not fond of recognizing or allowing to be correct. Among these, the most curious is that of the Knights Templars, of whom there are between thirty and forty *encampments*, headed by a supreme conclave and grand master at Edinburgh, who is at present Alexander Deuchar, Esq. a gentleman eminent for his skill in the mysteries of the craft. The conclave, which acts as a grand lodge to its subordinate lodges, was only instituted, or rather re-instituted, in 1810, by the exertions of Mr Deuchar, in order to preserve the encampments from falling into decay. It has a charter of institution from the late Duke of Kent, who, while in life, acted as its patron. This remarkable species of masonry deduces its origin from the order of Knights Templars, who, when suppressed for their licentiousness, by Pope Clement V. 1312, did not entirely disband themselves, but continued to meet in secret to celebrate peculiar rites which they dared no longer to practise openly. The lands of the fraternity, which were scattered all over Europe, having been given to the Knights Hospitallers of St John of Jerusalem, this body adopted also some of the masonic rites of their predecessors, and when they came to be abrogated by the reformation, they similarly met in secret for the purpose of keeping alive the remembrance of their former glories. This latter association came afterwards to be known as the order of Malta. These very peculiar masonic bodies were severely treated at the reformation, not only in Scot-

land, but in every other reformed country ; it being very naturally supposed that they continued in existence only as societies for plotting the restoration of papal supremacy. An alarm of this nature was very general, and to do away with such unfounded impressions, a convocation of nearly all the masonic institutions in Christendom was held in France, whither a delegate was sent by the ancient lodge of Edinburgh, (now of Mary's chapel,) as also from London. A manifesto, shewing the inoffensiveness of masonic meetings, was then put forth, which was signed by Melancthon, Coligny, and others. It appears from the books and records of Scottish masonic bodies, that the whole underwent a sort of revolution shortly after the reformation, and were re-constituted with new charters and regulations.

There is another exalted class of masons in Scotland, called the Supreme Grand Royal Arch chapter. Of this order, there are at present about fifty chapters in the kingdom, which are under the jurisdiction of the supreme chapter.

The next order to be noticed is the highest of all, and comprehends, as we are told, nearly all the usages of the different masonic bodies in the world. It is called the order of Mizraim, and was instituted in the course of this century in France, by an association of enthusiastic masons, who bethought themselves of gathering together all the fragments of ancient masonry in existence. For this end, they sent delegates into different countries in Asia, Africa, and obscure parts of Europe, to search out, and bring home, a knowledge of every kind of masonry they could pick up in the proper quarters. In a short time, they thus embodied no fewer than eighty degrees, in which St John's and nearly all others were comprehended, and named the order after the celebrated Mizraim. About eight years ago, it was introduced into Scotland, and being in its infancy, it has only a supreme conclave, and two subordinate chapters. The number of its members is very limited.

The last of these pre-eminent orders, is called the Royal Order. It was first instituted by Robert Bruce, and has three grades, two of which are the same as those in the order of Mizraim, and are evidently of an Eastern origin; having been most probably introduced by the crusaders from Palestine. It has no subsidiary lodges in Scotland, but possesses a parental authority over some societies in France. Its place of meeting is also at Edinburgh.

The free-masonry of Scotland has never been prostituted to seditious or irreligious purposes, as has indisputably, and very naturally, been the case with the various classes of Carbonari, the Rosicrucians, the Illuminati, and other secret bodies in Germany, Spain, Italy, and other ill-governed continental nations; and while the lodges in England, from their political tendency, fell under the ban of the state, about the period of the French revolution, the Scottish lodges were complimented by his Majesty's government for the innocency of their meetings. With all other British lodges, they were, however, (at their own request,) placed under similar restrictions as to the notices to be given to magistrates, of the times and places of meeting, and the swearing of two members of each association, that the intents of the bodies to which they belonged were not in relation to politics. These regulations are still in force. The only instance of a persecution of masonry in this country in modern times, was in a case wherein a body of presbyterian dissenters (whose name we forbear to mention out of pity to the descendants of the sect) about the year 1757, in their ductile intolerance, commenced a crusade against masonry in general, and a persecution of members of its own persuasion who were masons in particular, whom they conceived to be in too close a correspondence with the powers of darkness. After various disputes, and the excitement of no small degree of ridicule, they ceased insisting on members divulging the mysteries of the craft, and subsided into their ordinary state of stolidity.

APPENDIX.

ARTICLES of UNION agreed on the twenty-second day of July, in the fifth year of the reign of her most excellent Majesty, Anne, by the grace of God, Queen of Scotland, England, France, and Ireland, Defender of the Faith, &c. and in the year of our Lord one thousand seven hundred and six, by the commissioners nominated on behalf of the kingdom of Scotland, under her Majesty's Great Seal of Scotland, bearing date the twenty-seventh day of February last past; in pursuance of the fourth Act of the third session of her Majesty's current Parliament of Scotland, in the fourth year of her Majesty's reign; and the commissioners nominated on behalf of the kingdom of England, under her Majesty's Great Seal of England, bearing date at Westminster the tenth day of April last past; in pursuance of an Act of Parliament made in England, the third year of her Majesty's reign, to treat of, and concerning an Union of the said kingdoms: Which Articles are in all humility to be presented to the Queen's most excellent Majesty, and offered to the consideration of the respective Parliaments of both kingdoms, pursuant to the said Acts and Commissions.

I. **THAT** the two kingdoms of Scotland and England shall, upon the first day of May next ensuing the date hereof, and for ever after, be united into one kingdom, by the name of **GREAT BRITAIN**; and that the ensigns armorial of the said united kingdom be such as her Majesty shall appoint, and the crosses of St Andrew and St George be conjoined in such manner as her Majesty shall think fit, and used in all flags, banners, standards, and ensigns, both at sea and land.

II. That the succession to the monarchy of the united kingdom of Great Britain, and of the dominions thereunto belonging,

after her most Sacred Majesty, and in default of issue of her Majesty, be, remain, and continue to the most excellent Princess SOPHIA, electoress and dutchess dowager of Hanover, and the heirs of her body, being protestants, upon whom the crown of England is settled, by an Act of Parliament made in England, in the twelfth year of the reign of his late Majesty King William the Third, entitled, an Act for the further limitation of the crown, and better securing the rights and liberties of the subject: and that all papists, and persons marrying papists, shall be excluded from, and for ever incapable to inherit, possess, or enjoy the imperial crown of Great Britain, and the dominions thereunto belonging, or any part thereof: and in every such case, the crown and government shall from time to time descend to, and be enjoyed by such person, being a protestant, as should have inherited and enjoyed the same, in case such papist, or person marrying a papist was naturally dead, according to the provision for the descent of the crown of England, made by another Act of Parliament in England, in the first year of the reign of their late Majesties King William and Queen Mary, entitled, an Act declaring the rights and liberties of the subject, and settling the succession of the crown.

III. That the united kingdom of Great Britain be represented by one and the same Parliament, to be stiled the Parliament of Great Britain.

IV. That all the subjects of the united kingdom of Great Britain shall, from and after the Union, have full freedom and intercourse of trade and navigation, to and from any port or place within the said united kingdom, and the dominions and plantations thereto belonging; and that there be a communication of all other rights, privileges, and advantages, which do, or may belong to the subjects of either kingdom, except where it is otherwise expressly agreed in these Articles.

V. That all ships belonging to her Majesty's subjects of Scotland, at the time of signing this treaty for the union of the two kingdoms, though foreign built, shall be deem'd, and pass as ships of the built of Great Britain, the owner, or where there are more owners, one or more of the owners, within twelve months after the Union, making oath, that at the time of signing the said treaty, the same did belong to him or them, or to some other subject or subjects of Scotland, to be particularly named, with the places of their respective abodes, and that the same doth then belong to him or them, and that no foreigner, directly or indirectly, hath any share, part or interest therein: which oath shall be made before the chief officer or officers of the customs in the port next to the abode of the said owner or owners: and the said officer, or officers, shall be empowered to administer the said oath; and the oath being so administered, shall be attested by the

officer or officers who administered the same: and being registered by the said officer, or officers, shall be delivered to the master of the ship, for security of her navigation, and a duplicate thereof shall be transmitted by the said officer, or officers, to the chief officer or officers of the customs in the port of Edinburgh, to be there entered in a register, and from thence to be sent to the port of London, to be there entered in the general register of all trading ships belonging to Great Britain.

VI. That all parts of the united kingdom for ever, from and after the Union, shall have the same allowances and encouragements, and be under the same prohibitions, restrictions, and regulations of trade, and liable to the same customs and duties on import and export: and that the allowances, encouragements, prohibitions, restrictions, and regulations of trade, and the customs and duties of import and export settled in England, when the Union commences, shall, from and after the Union, take place throughout the whole united kingdom.

VII. That all parts of the united kingdom be for ever, from and after the Union, liable to the same excises upon all exciseable liquors: and that the excise settled in England on such liquors, when the Union commences, take place throughout the whole united kingdom.

VIII. That, from and after the Union, all foreign salt which shall be imported into Scotland, shall be charged, at the importation there, with the same duties as the like salt is now charged with, being imported into England, and to be levied and secured in the same manner. But Scotland shall, for the space of seven years from the said Union, be exempted from the paying in Scotland for salt made there, the duty or excise now payable for salt made in England; but, from the expiration of the said seven years, shall be subject and liable to the same duties for salt made in Scotland, as shall be then payable for salt made in England, to be levied and secured in the same manner, and with the like draw-backs and allowances as in England. And during the said seven years, there shall be payed in England for all salt made in Scotland, and imported from thence into England, the same duties upon the importation, as shall be payable for salt made in England, to be levied and secured in the same manner as the duties on foreign salt are, to be levied and secured in England; and that, during the said seven years, no salt whatsoever be brought from Scotland to England by land in any manner, under the penalty of forfeiting the salt, and the cattle and carriages made use of in bringing the same, and paying twenty shillings for every bushel of such salt, and proportionably for a greater or lesser quantity, for which the carrier, as well as the owner, shall be liable jointly and severally; and the persons bringing, or carrying the same, to be imprisoned by any one justice of the

peace by the space of six months without bail, and until the penalty be paid ; and that, during the said seven years, all salted flesh, or fish, exported from Scotland to England, or made use of for victualling of ships in Scotland, and all flesh, put on board in Scotland, to be exported to parts beyond the seas, which shall be salted with Scots salt, or any mixture therewith, shall be forfeited, and may be seized ; and that from and after the Union, the laws and Acts of Parliament in Scotland, for pineing, curing, and packing of herrings, white fish, and salmon for exportation, with foreign salt only, and for preventing of frauds in curing and packing of fish, be continued in force in Scotland, subject to such alterations as shall be made by the Parliament of Great Britain ; and that all fish exported from Scotland to parts beyond the seas, which shall be cured with foreign salt only, shall have the same easements, premiums and draw-backs, as are, or shall be allowed to such persons as export the like fish from England : And if any matters or fraud relating to the said duties on salt, shall hereafter appear, which are not sufficiently provided against by this article, the same shall be subject to such further provisions, as shall be thought fit by the Parliament of Great Britain.

IX. That whenever the sum of one million nine hundred ninety seven thousand, seven hundred and sixty three pounds, eight shillings and four pence half-penny, shall be enacted by the Parliament of Great Britain, to be raised in that part of the united kingdom, now called England, on land and other things usually charged in Acts of Parliament there, for granting an aid to the crown by a land-tax ; that part of the united kingdom, now called Scotland, shall be charged by the same Act, with a further sum of forty eight thousand pounds free of all charges, as the quota of Scotland to such tax, and so proportionably for any greater or lesser sum raised in England, by any tax on land, and other things usually charged, together with the land ; and that such quota for Scotland, in the cases aforesaid, be raised and collected in the same manner as the cess now is in Scotland, but subject to such regulations in the manner of collecting, as shall be made by the Parliament of Great Britain.

X. That during the continuance of the respective duties on stamped paper, velum and parchment, by the several Acts now in force in England, Scotland shall not be charged with the same respective duties.

XI. That during the continuance of the duties payable in England on windows and lights, which determines on the first day of August, 1710, Scotland shall not be charged with the same duties.

XII. That during the continuance of the duties payable in England on coals, culm and cynders, which determines the 30th day of September, 1710, Scotland shall not be charged therewith

for coals, culm and cynders consumed there, but shall be charged with the same duties as in England for all coal, culm and cynders not consumed in Scotland.

XIII. That during the continuance of the duty payable on malt, which determines the 24th day of June, 1707, Scotland shall not be charged with that duty.

XIV. That the kingdom of Scotland be not charged with any other duties laid on by the Parliament of England before the Union, except those consented to in this treaty: in regard it is agreed, That all necessary provision shall be made by the Parliament of Scotland, for the publick charge and service of that kingdom for the year 1707. Provided nevertheless, that if the Parliament of England shall think fit to lay any further impositions by way of customs, or such excises, with which, by virtue of this treaty, Scotland is to be charged equally with England; in such case, Scotland shall be liable to the same customs and excises, and have an equivalent to be settled by the Parliament of Great Britain. And seeing it cannot be suppos'd, that the Parliament of Great Britain will ever lay any sorts of burthens upon the united kingdom, but what they shall find of necessity at that time for the preservation and good of the whole, and with due regard to the circumstances and abilities of every part of the united kingdom; therefore, it is agreed, that there be no further exemption insisted on for any part of the united kingdom, but that the consideration of any exemptions beyond what are already agreed on in this treaty, shall be left to the determination of the Parliament of Great Britain.

XV. Whereas by the terms of this treaty, the subjects of Scotland, for preserving an equality of trade throughout the united kingdom, will be liable to several customs and excises now payable in England, which will be applicable towards payment of the debts of England, contracted before the Union; it is agreed, that Scotland shall have an equivalent for what the subjects thereof shall be so charged towards payment of the said debts of England; in all particulars whatsoever, in manner following, viz. that before the Union of the said kingdoms, the sum of three hundred, ninety eight thousand, and eighty five pounds ten shillings, be granted to her Majesty by the Parliament of England, for the uses after-mentioned, being the equivalent, to be answered to Scotland, for such parts of the said customs and excises upon all exciseable liquors, with which that kingdom is to be charg'd upon the Union, as will be applicable to the payment of the said debts of England, according to the proportions which the present customs in Scotland, being thirty thousand pounds per annum, do bear to the customs in England, computed at one million, three hundred forty one thousand, five hundred and fifty nine pounds per annum: and which the present excises on exciseable

liquors in Scotland, being thirty three thousand and five hundred pounds per annum, do bear to the excises on exciseable liquors in England, computed at nine hundred, forty seven thousand, six hundred and two pounds per annum; which sum of three hundred, ninety eight thousand, eighty five pounds, ten shillings, shall be due and payable from the time of the Union: and in regard, that after the Union, Scotland becoming liable to the same customs and duties payable on import and export, and to the same excises on all exciseable liquors as in England, as well upon that account, as upon the account of the increase of trade and people, (which will be the happy consequence of the Union) the said revenues will much improve beyond the before-mentioned annual values thereof, of which no present estimate can be made; yet nevertheless, for the reasons aforesaid, there ought to be a proportionable equivalent answered to Scotland; it is agreed, that, after the Union, there shall be an account kept of the said duties arising in Scotland, to the end it may appear, what ought to be answer'd to Scotland, as an equivalent for such proportion of the said increase, as shall be applicable to the payment of the debts of England. And for the further and more effectual answering the several ends hereafter-mentioned, it is agreed, that, from and after the Union, the whole increase of the revenues of customs, and duties on import and export, and excise upon exciseable liquors in Scotland, over and above the annual produce of the said respective duties, as above stated, shall go and be apply'd, for the term of seven years, to the uses hereafter-mentioned; and that, upon the said account, there shall be answered to Scotland annually, from the end of seven years after the Union, an equivalent in proportion to such part of the said increase, as shall be applicable to the debts of England.

And whereas, from the expiration of seven years after the Union, Scotland is to be liable to the same duties for salt made in Scotland, as shall be then payable for salt made in England; It is agreed, That when such duties take place there, an equivalent shall be answered to Scotland for such part thereof, as shall be applied towards payment of the debts of England; of which duties, an account shall be kept, to the end it may appear, what is to be answered to Scotland as the said equivalent. And generally, that an equivalent shall be answered to Scotland, for such parts of the English debts, as Scotland may hereafter become liable to pay by reason of the Union, other than such for which appropriations have been made by Parliament in England of the customs, or other duties on export and import, excises on all exciseable liquors, or salt, in respect of which debts, equivalents are herein before provided. And as for the uses, to which the said sum of three hundred, ninety eight thousand, eighty five pounds, ten shillings, to be granted as aforesaid, and all

other monies which are to be answered or allowed to Scotland as aforesaid, it is agreed, that out of the said sum of three hundred, ninety eight thousand, eighty five pounds, ten shillings, all the public debts of the kingdom of Scotland, and also the capital stock, or fund of the African and Indian Company of Scotland advanced, together with the interest for the said capital stock, after the rate of five pounds per cent. per annum, from the respective times of the payment thereof, shall be payed. Upon payment of which capital stock and interest, it is agreed, the said Company be dissolved and cease, and also, that from the time of passing the Act of Parliament in England, for raising the said sum of three hundred, ninety eight thousand, eighty five pounds, ten shillings, the said Company shall neither trade, nor grant licence to trade. And as to the overplus of the said sum of three hundred, ninety eight thousand, eighty five pounds, ten shillings, after the payment of the said debts of the kingdom of Scotland, and the said capital stock and interest, and also the whole encrease of the said revenues of customs, duties, and excises, above the present value, which shall arise in Scotland, during the said term of seven years, together with the equivalent which shall become due, upon account of the improvement thereof in Scotland after the said term: And also, as to all other sums, which, according to the agreements aforesaid, may become payable to Scotland by way of equivalent, for what that kingdom shall hereafter become liable towards payments of the debts of England; it is agreed, that the same may be applied in manner following, viz. That out of the same, what considerations shall be found necessary to be had for any losses which private persons may sustain, by reducing the coin of Scotland to the standard and value of the coin of England, may be made good: And afterwards the same shall be wholly applied towards encouraging and promoting the fisheries, and such other Manufactories and Improvements in Scotland, as may most conduce to the general good of the united kingdom. And it is agreed, that her majesty be impowered to appoint commissioners, who shall be accountable to the Parliament of Great Britain, for disposing the said sum of three hundred, ninety eight thousand, eighty five pounds, ten shillings, and all other monies which shall arise to Scotland, upon the agreements aforesaid, to the purposes before-mentioned: Which commissioners shall be impowered to call for, receive, and dispose of the said monies in manner aforesaid, and to inspect the books of the several collectors of the said revenues, and of all other duties, from whence an equivalent may arise: And that the collectors and managers of the said revenues and duties be obliged to give to the said commissioners, subscribed authentic abbreviates of the produce of such revenues and duties arising in their respective districts: And that the

said commissioners shall have their office within the limits of Scotland, and shall, in such office, keep books, containing accounts of the amount of the equivalents, and how the same shall have been disposed of from time to time, which may be inspected by any of the subjects who shall desire the same.

XVI. That from and after the Union, the coin shall be of the same standard and value throughout the united kingdom, as now in England, and a mint shall be continued in Scotland under the same rules as the mint in England, subject to such regulations as her Majesty, her heirs or successors, or the Parliament of Great Britain shall think fit.

XVII. That from and after the Union, the same weights and measures shall be used throughout the united kingdom, as are now established in England; and standards of weights and measures shall be kept by those burghs in Scotland, to whom the keeping the standards of weights and measures, now in use there, does of special right belong. All which standards shall be sent down to such respective burghs from the standards kept in the exchequer at Westminster, subject nevertheless to such regulations as the Parliament of Great Britain shall think fit.

XVIII. That the laws concerning regulation of trade, customs, and such excises, to which Scotland is, by virtue of this treaty, to be liable, be the same in Scotland, from and after the Union, as in England; and that all other laws in use within the kingdom of Scotland, do after the Union, and notwithstanding thereof, remain in the same force as before, (except such as are contrary to, or inconsistent with the terms of this treaty) but alterable by the Parliament of Great Britain, with this difference betwixt the laws concerning public right, policy, and civil government, and those which concern private right; that the laws which concern the public right, policy, and civil government, may be made the same throughout the whole united kingdom; but that no alteration be made in laws which concern private right, except for evident utility of the subjects within Scotland.

XIX. That the Court of Session, or College of Justice, do after the Union, and notwithstanding thereof, remain in all time coming within Scotland, as it is now constituted by the laws of that kingdom, and with the same authority and privileges as before the Union, subject nevertheless to such regulations for the better administration of justice, as shall be made by the Parliament of Great Britain; and that the Court of Justiciary do also after the Union, and notwithstanding thereof, remain in all time coming within Scotland, as it is now constituted by the laws of that kingdom, and with the same authority and privileges as before the Union, subject nevertheless to such regulations as shall be made by the Parliament of Great Britain, and with-

out prejudice of other rights of Justiciary; and that all admiralty jurisdictions be under the Lord High Admiral or Commissioners for the Admiralty of Great Britain for the time being; and that the Court of Admiralty now established in Scotland be continued, and that all reviews, reductions, or suspensions, of the sentences in maritime cases competent to the jurisdiction of that Court, remain in the same manner after the Union, as now in Scotland, until the Parliament of Great Britain shall make such regulations and alterations, as shall be judged expedient for the whole united kingdom, so as there be always continued in Scotland a Court of Admiralty, such as is in England, for determination of all maritime cases relating to private rights in Scotland, competent to the jurisdiction of the Admiralty Court, subject nevertheless to such regulations and alterations, as shall be thought proper to be made by the Parliament of Great Britain; and that the heritable rights of Admiralty and Vice-Admiralties in Scotland be reserved to the respective proprietors as rights of property, subject nevertheless, as to the manner of exercising such heritable rights, to such regulations and alterations, as shall be thought proper to be made by the Parliament of Great Britain; and that all other Courts now in being within the kingdom of Scotland do remain, but subject to alterations by the Parliament of Great Britain; and that all inferior Courts within the said limits do remain subordinate, as they are now to the Supreme Courts of Justice within the same in all time coming; and that no causes in Scotland be cognoscable by the Courts of Chancery, Queen's Bench, Common Pleas, or any other Court in Westminster-Hall; and that the said Courts, or any other of the like nature, after the Union, shall have no power to cognosce, review, or alter the acts or sentences of the judicatures within Scotland, or stop the execution of the same; and that there be a Court of Exchequer in Scotland after the Union, for deciding questions concerning the revenues of customs and excises there, having the same power and authority in such cases, as the Court of Exchequer has in England; and that the said Court of Exchequer in Scotland have power of passing signatures, gifts, tutories, and in other things, as the Court of Exchequer at present in Scotland hath; and that the Court of Exchequer that now is in Scotland do remain, until a new Court of Exchequer be settled by the Parliament of Great Britain in Scotland after the Union; and that, after the Union, the Queen's Majesty, and her royal successors, may continue a privy council in Scotland, for preserving of public peace and order, until the Parliament of Great Britain shall think fit to alter it, or establish any other effectual method for that end.

XX. That all heritable offices, heritable jurisdictions, offices for life, and jurisdictions for life, be reserved to the owner there-

of, as rights of property, in the same manner as they are now enjoyed by the laws of Scotland, notwithstanding of this treaty.

XXI. That the rights and privileges of the royal burroughs in Scotland as they now are, do remain entire after the Union, and notwithstanding thereof.

XXII. That by virtue of this treaty of the peers of Scotland at the time of the Union, sixteen shall be the number to sit and vote in the House of Lords, and forty-five the number of the representatives of Scotland in the House of Commons of the Parliament of Great Britain; and that when her Majesty, her heirs or successors, shall declare her or their pleasure, for holding the first or any subsequent Parliament of Great Britain, until the Parliament of Great Britain shall make further provision therein, a writ do issue under the Great Seal of the united kingdom, directed to the Privy Council of Scotland, commanding them to cause sixteen peers, who are to sit in the House of Lords, to be summoned to Parliament, and forty-five members to be elected to sit in the House of Commons of the Parliament of Great Britain, according to the agreement in this treaty, in such manner as by the Parliament of Scotland shall be settled before the Union: and that the names of the persons so summoned and elected shall be returned by the Privy Council of Scotland, into the court from whence the writ did issue. And that if her Majesty, on or before the first day of May next, on which day the Union is to take place, shall declare under the Great Seal of England, that it is expedient, that the Lords of the Parliament of England, and Commons of the present Parliament of England, should be the members of the respective houses of the first Parliament of Great Britain, for and on the part of England, then the said Lords of Parliament of England, and Commons of the present Parliament of England, shall be the members of the respective houses of the first Parliament of Great Britain, for and on the part of England. And her Majesty may by her royal proclamation, under the Great Seal of Great Britain, appoint the said first Parliament of Great Britain, to meet at such time and place as her Majesty shall think fit, which time shall not be less than fifty days after the date of such proclamation; and the time and place of the meeting of such Parliament being so appointed, a writ shall be immediately issued under the Great Seal of Great Britain, directed to the Privy Council of Scotland, for the summoning the sixteen peers, and for electing forty-five members, by whom Scotland is to be represented in the Parliament of Great Britain; and the Lords of Parliament of England, and the sixteen peers of Scotland, such sixteen peers being summoned and returned in the manner agreed in this treaty; and the members of the House of Commons of the said Parliament of England, and the forty-five members for Scotland, such forty-five

members being elected and returned in the manner agreed in this treaty, shall assemble and meet respectively in their respective houses of the Parliament of Great Britain, at such time and place as shall be so appointed by her Majesty, and shall be the two houses of the first Parliament of Great Britain, and that Parliament may continue for such time only, as the present Parliament of England might have continued, if the Union of the two kingdoms had not been made, unless sooner dissolved by her Majesty; and that every one of the lords of Parliament of Great Britain, and every member of the House of Commons of the Parliament of Great Britain in the first, and all succeeding Parliaments of Great Britain, until the Parliament of Great Britain shall otherwise direct, shall take the respective oaths appointed to be taken instead of the oaths of allegiance and supremacy, by an Act of Parliament made in England, in the first year of the reign of the late King William and Queen Mary, entitled an Act for the abrogating of the oaths of supremacy and allegiance, and appointing other oaths, and make, subscribe, and audibly repeat the declaration mentioned in an Act of Parliament made in England in the thirtieth year of the reign of King Charles the Second, entitled, an Act for the more effectual preserving the King's person and government, by disabling papists from sitting in either House of Parliament, and shall take and subscribe the oath mentioned in an Act of Parliament made in England, in the first year of her Majesty's reign, entitled, an Act to declare the alterations in the oath appointed to be taken by the Act, entitled, an Act for the further security of his Majesty's person, and the succession of the crown in the Protestant line, and for extinguishing the hopes of the pretended Prince of Wales, and all other pretenders, and their open and secret abettors, and for declaring the association to be determined at such a time, and in such manner, as the Members of both Houses of Parliament of England are, by the said respective Acts, directed to take, make and subscribe the same, upon the penalties and disabilities in the said respective Acts contained. And it is declared and agreed, that these words, this realm, the crown of this realm, and the Queen of this realm, mentioned in the oaths and declaration contained in the aforesaid Acts, which were intended to signify the crown and realm of England, shall be understood of the crown and realm of Great Britain; and that, in that sense, the said oaths and declarations be taken and subscribed by the Members of both Houses of the Parliament of Great Britain.

XXIII. That the foresaid sixteen peers of Scotland, mentioned in the last preceding Article, to sit in the House of Lords of the Parliament of Great Britain, shall have all Privileges of Parliament, which the Peers of England now have, and which they, or any Peers of Great Britain, shall have after the Union; and particularly the right of sitting upon the tryals of peers: and in

case of the tryal of any peer, in time of adjournment or prorogation of Parliament, the said sixteen peers shall be summoned in the same manner, and have the same powers and privileges at such tryal, as any other peers of Great Britain; and that, in case any tryals of peers shall hereafter happen, when there is no Parliament in being, the sixteen peers of Scotland, who sat in the last preceding Parliament, shall be summoned in the same manner, and have the same powers and privileges at such tryals, as any other peers of Great Britain; and that all peers of Scotland, and their successors to their honours and dignities, shall, from and after the Union, be peers of Great Britain, and have rank and precedency next, and immediately after the peers of the like orders and degrees in England at the time of the Union, and before all peers of Great Britain, of the like orders and degrees who may be created after the Union, and shall be tried as peers of Great Britain, and shall enjoy all privileges of peers as fully as the peers of England do now, or as they or any other peers of Great Britain may hereafter enjoy the same, except the right and privilege of sitting in the House of Lords, and the privileges depending thereon, and particularly the right of sitting upon the tryals of peers.

XXIV. That from and after the Union, there be one great seal for the united kingdom of Great Britain, which shall be different from the Great Seal now used in either kingdom; and that the quartering the arms as may best sute the Union, be left to her Majesty; and that in the mean time, the Great Seal of England be used as the Great Seal of the united kingdom; and that the Great Seal of the united kingdom, be used for sealing writs to elect and summon the Parliament of Great Britain, and for sealing all treaties with Foreign Princes and states, and all public Acts, instruments and orders of states, which concern the whole united kingdom, and in all other matters relating to England, as the Great Seal of England is now used; and that a Seal in Scotland after the Union be always kept, and made use of in all things relating to private rights or grants, which have usually passed the great seal of Scotland, and which only concern offices, grants, commissions, and private rights within that kingdom; and that, until such seal shall be appointed by her Majesty, the present seal of Scotland shall be used for such purposes; and that the privy-seal, signet, casset, signet of the Justiciary Court, Quarter Seal, and Seals of Courts now used in Scotland be continued; but that the said Seals be altered and adapted to the state of the Union, as her Majesty shall think fit; and the said Seals, and all of them, and keepers of them, shall be subject to such regulations, as the Parliament of Great Britain shall hereafter make.

XXV. That all laws and statutes in either kingdom, so far as they are contrary to, or inconsistent with the terms of these Ar-

ticles, or any of them, shall, from and after the Union, cease and become void, and shall be so declared to be, by the respective Parliaments of the said kingdoms.

In Testimony whereof, the Commissioners for the respective kingdoms, impowered as aforesaid, have set their hands and seals to these Articles, contained in this, and the twenty-five foregoing pages, at Westminster, the day and year first above-written.

Seafeld Cancellar.
Queensberry C. P. S.
Mar S.
London S.
Sutherland.
Morton.
Wemyss.
Leven.
Stair.
Roseberie.
Glasgow.
Arch. Campbell.
Dupplin.
Rosse.
Hew Dalrymple.
Ad. Cockburne.
F. Montgomerie.
David Dalrymple.
Patr. Johnston.
Ja. Smollet.
W. Morison,
Alexander Grant.
W. Seton.
John Clerk.
Dan. Stewart.
Daniel Campbell.

Tho. Cantuar.
Wm. Couper C. S.
Godolphin.
Pembroke P.
Newcastle C. P. S.
Devonshire.
Somerset.
Bolton.
Kingston.
Sunderland.
Orford.
Townsend.
Twharton.
Ponlett.
Somers.
J. Smith.
Hartington.
Granby.
C. Hedges.
Ro. Harley.
H. Boyle.
J. Holt.
Tho. Trevor.
Edw. Northey.
Sym. Harcourt.
J. Cooke.
Stephen Waller.

EXCERPT from Act securing the perpetual establishment of the Churches of Scotland and England.

OUR Sovereign Lady, and the estates of Parliament, considering, that, by the late Act of Parliament for a treaty with England, for an Union of both kingdoms, it is provided, that the Commissioners for that treaty should not treat of or concerning any alteration of the worship, discipline, and government of the church of this kingdom, as now by law established, which treaty being now reported to the Parliament, and it being reasonable

and necessary, that the true Protestant religion, as presently professed within this kingdom, with the worship, discipline, and government of this church, should be effectually and unalterably secured ; therefore her Majesty, with advice and consent of the said estates of Parliament, doth hereby establish and confirm the said true Protestant religion, and the worship, discipline, and government of this Church, to continue without any alteration to the people of this land in all succeeding generations ; and more especially, her Majesty, with advice and consent aforesaid, ratifies, approves, and for ever confirms, the fifth Act of the first Parliament of King William and Queen Mary, intituled, " Act ratifying the Confession of Faith, and settling Presbyterian church government," with all other Acts of Parliament relating thereto, in prosecution of the declaration of the estates of this kingdom, containing the claim of right, bearing date the eleventh of April, one thousand six hundred and eighty-nine ; and her Majesty, with advice and consent aforesaid, expressly provides and declares, that the foresaid true Protestant Religion, contained in the above-mentioned Confession of Faith, with the form and purity of worship presently in use within this church, and its Presbyterian church government and discipline, that is to say, the government of the church by kirk sessions, presbyteries, provincial synods, and general assemblies, all established by the foresaid Acts of Parliament, pursuant to the claim of right, shall remain and continue unalterable ; and that the said Presbyterian government shall be the only government of the church within the kingdom of Scotland. And further, for the greater security of the foresaid Protestant religion, and of the worship, discipline, and government of this church as above established, her Majesty, with advice and consent foresaid, statutes and ordains, that the universities and colleges of St Andrew's, Glasgow, Aberdeen, and Edinburgh, as now established by law, shall continue within this kingdom for ever. And that, in all time coming, no professors, principals, regents, masters, or others, bearing office in any university, college or school, within this kingdom, be capable, or be admitted or allowed to continue in the exercise of their said functions, but such as shall own and acknowledge the civil government in manner prescribed, or to be prescribed by the Acts of Parliament. As also, that before, or at their admissions, they do and shall acknowledge and profess, and shall subscribe to the foresaid Confession of Faith, as the confession of their faith ; and that they will practise and conform themselves to the worship presently in use in this church, and submit themselves to the government and discipline thereof, and never endeavour, directly or indirectly, the prejudice or subversion of the same ; and that before the respective presbyteries of their bounds, by whatsoever gift, presentation, or provision, they may be thereto provided.

And further, her Majesty, with advice aforesaid, expressly declares and statutes, that none of the subjects of this kingdom shall be liable to, but all and every one of them for ever free of any oath, test, or subscription, within this kingdom, contrary to, or inconsistent with, the foresaid true Protestant religion and Presbyterian church government, worship, and discipline, as above established; and that the same, within the bounds of this church and kingdom, shall never be imposed upon, or required of them in any sort. And, lastly, that, after the decease of her present Majesty (whom God long preserve) the sovereign succeeding to her in the royal government of the kingdom of Great Britain shall, in all time coming, at his or her accession to the Crown, swear and subscribe, that they shall inviolably maintain and preserve the foresaid settlement of the true Protestant religion, with the government, worship, discipline, right, and privileges of this church, as above established by the laws of this kingdom, in prosecution of the claim of right. And it is hereby statute and ordained, that this Act of Parliament, with the establishment therein contained, shall be held and observed, in all times coming, as a fundamental and essential condition of any treaty or Union to be concluded betwixt the two kingdoms, without any alteration thereof, or derogation thereto, in any sort, for ever. As also, that this Act of Parliament, and settlement therein contained, shall be insert and repeated in any Act of Parliament that shall pass, for agreeing and concluding the foresaid treaty or Union betwixt the two kingdoms; and that the same shall be therein expressly declared to be a fundamental and essential condition of the said treaty or Union, in all time coming; which Articles of Union, and Act immediately above-written, her Majesty, with advice and consent foresaid, statutes, enacts and ordains to be, and continue, in all time coming, the sure and perpetual foundation of a complete and entire Union of the two kingdoms of Scotland and England, under the express condition and provision, that the approbation and ratification of the foresaid Articles and Act shall be no ways binding on this kingdom, until the said Articles and Act be ratified, approved, and confirmed, by her Majesty, with and by the authority of the Parliament of England, as they are now agreed to, approved and confirmed, by her Majesty, with and by the authority of the Parliament of Scotland. Declaring nevertheless, that the Parliament of England may provide for the security of the church of England as they think expedient, to take place within the bounds of the said kingdom of England, and not derogating from the security above provided, for the establishing of the church of Scotland within the bounds of this kingdom. As also, the said Parliament of England may extend the additions and other provisions contained in the Articles of Union, as above insert in favours of the sub-

jects of Scotland, to and in favours of the subjects of England, which shall not suspend or derogate from the force and effect of this present ratification, but shall be understood as herein included, without the necessity of any new ratification in the Parliament of Scotland. And, lastly, her Majesty enacts and declares, that all laws and statutes in this kingdom, so far as they are contrary to, or inconsistent with, the terms of these Articles as above-mentioned, shall, from and after the Union, cease and become void.

And whereas an Act hath passed in this present session of Parliament, entitled, "an Act for securing the church of England as by law established," the tenor whereof follows, Whereas, by an Act made in the Session of Parliament held in the third and fourth year of her Majesty's reign, whereby her Majesty was empowered to appoint commissioners, under the Great Seal of England, to treat with commissioners, to be authorized by the Parliament of Scotland, concerning an Union of the kingdoms of England and Scotland, it is provided and enacted, that the commissioners to be named in pursuance of the said Act should not treat of or concerning any alteration of the liturgy, rites, ceremonies, discipline, or government of the church, as by law established, within this realm; and whereas certain commissioners appointed by her Majesty, in pursuance of the said Act, and also other Commissioners, nominated by her Majesty, by the authority of the Parliament of Scotland, have met and agreed upon a treaty of Union of the said kingdoms, which treaty is now under the consideration of this present Parliament; and whereas the said treaty, with some alterations therein made, is ratified and approved by Act of Parliament in Scotland, and the said Act of ratification is by her royal command laid before the Parliament of this kingdom; and whereas it is reasonable and necessary that the true Protestant religion professed and established by law in the church of England, and the doctrine, worship, discipline, and government thereof, should be effectually and unalterably secured; Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and the Commons in this present Parliament assembled, and by authority of the same, that an Act made in the thirteenth year of the reign of Queen Elizabeth of famous memory, entitled, "an Act for the ministers of the Church to be of sound religion;" and also another Act made in the thirteenth year of the reign of the late King Charles the Second, entitled, "An Act for the uniformity of public prayers and administration of sacraments, and other rites and ceremonies, and for establishing the form of making, ordaining, and consecrating bishops, priests, and deacons, in the Church of England" (other than such clauses in the said Acts, or either of them, as have been repealed or altered by

any subsequent Act or Acts of Parliament), and all and singular other Acts of Parliament now in force, for the establishment and preservation of the Church of England, and the doctrine, worship, discipline, and government thereof, shall remain and be in full force for ever. And be it further enacted, by the authority aforesaid, that after the demise of her Majesty (whom God long preserve !) the Sovereign next succeeding to her Majesty in the royal government of the kingdom of Great Britain, and so for ever hereafter every King or Queen succeeding and coming to the royal government of the kingdom of Great Britain, at his or her coronation, shall, in the presence of all persons who shall be attending, assisting, or otherwise then and there present, take and subscribe an oath to maintain and preserve inviolably the said settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established within the kingdom of England and Ireland, the dominion of Wales, and town of Berwick upon Tweed, and the territories thereunto belonging. And be it further enacted, by the authority aforesaid, that this Act, and all and every the matters and things therein contained, be, and shall for ever be, holden and adjudged to be a fundamental and essential part of any Treaty of Union to be concluded between the said two kingdoms; and also that this Act shall be inserted in express terms in any Act of Parliament which shall be made for settling and ratifying any such Treaty of Union, and shall be therein declared to be an essential and fundamental part thereof. May it, therefore, please your most Excellent Majesty, that it may be enacted, And be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by authority of the same, that all and every the said articles of Union as ratified and approved by the said Act of Parliament of Scotland as aforesaid, and herein before particularly mentioned and inserted, and also the said Act of Parliament of Scotland, for establishing the Protestant religion, and Presbyterian Church government, within that kingdom, entitled, "Act for securing "the Protestant religion and Presbyterian Church government," and every clause, matter, and thing in the said articles and Act contained, shall be, and the said articles and Act are hereby for ever ratified, approved, and confirmed. And it is hereby further enacted, by the authority aforesaid, that the said Act passed in this present session of Parliament, entitled, "An Act for securing the Church of England as by law established," and all and every the matters and things therein contained, and also the said Act of Parliament of Scotland, entitled, "Act for securing the "Protestant religion and Presbyterian Church government," with the establishment in the said Act contained, be, and shall

for ever be, held and adjudged to be and observed as fundamental and essential conditions of the said Union, and shall in all times coming be taken to be, and are hereby declared to be, essential and fundamental parts of the said articles and Union: and the said articles of Union so as aforesaid ratified, approved, and confirmed, by Act of Parliament of Scotland, and by this present Act, and the said Act passed in this present session of Parliament, entitled, "An Act for securing the Church of England as by law established," and also the said Act passed in the Parliament of Scotland, entitled, "Act for securing the Protestant religion and Presbyterian Church government," are hereby enacted and ordained to be and continue, in all times coming, the complete and entire Union of the two kingdoms of England and Scotland.

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CORRECTIONS.

- Page 267, line 16, *for he, read the.*
- 292, Note. The charge herein stated as being made for an examination of registers, is overrated, as has been since ascertained, and Indices are now partly formed, which both simplify searches, and lower the expense of making them.
- 324, line 22, *dele the word so*
- line 27, *for he read he*
- 388, line 4, *for gifts, read gift.*
- 397, first line in note, *for Francis Ross, read Francis Ross.*

THE END.

