Some REASONS *humbly offered to the King, Lords, and Commons, in Parliament, by* Wa. Williams *of the* Middle-Temple *Esq; for passing the Bill Entitled, An Act for the better Reviewing of Causes in Chancery, and other Courts of Equity.*

THE Enacting part of the Bill, is, that instead of Rehearings, and Bills of Review, in the same Court where the supposed Erroneous, or Unjust Order or Decree was made, the Cause upon Petition and Entry into Recognizance to perform the Decree, and pay Costs if affirm'd, shall be Reheard, and the Order or Decree Review'd, by the Justices of the King's Bench, and Common Pleas, and Barons of the Exchequer of the degree of the Coif, if the Order or Decree be of any Court but the Exchequer, and if of the Exchequer, then the Justices of the King's Bench, and Common-Pleas only, or any Five of them, whereof one of the Chiefs to be one, and they shall Reverse, Alter, or Affirm, and send their Decree into the Court, where the first Decree was made, to be put in Execution.

The *REASONS*.

1. This sort of Rehearing and Review is in nature of an Appeal in the Intervals of Parliament, and it is necessary there should be such an Appeal, because the Chancery, and other Courts of Equity, may force Obedience to such Decrees as may be Erroneous or Unjust, in the Recess of a Parliament, though Parliaments should sit as frequent as they have done for these Three Years last past, and if Money be paid in Obedience to such a Decree, it may be the Party that gets it may run beyond Sea, or otherwise abscond, become Unsolvent, or Die without Assets, before the Appeal in Parliament can be determin'd, and if the Decree Appeal'd from should be Revers'd, there could be no Restitution in such a Case, and besides it is a great wrong to a Man to be forc'd to pay his Money in obedience to an Unjust Decree, though he were sure the Party that got it should continue able to make Restitution for having parted with his Money, and perhaps his all, he may not be able to prosecute the Reversal of that Decree, or at least wise very slowly.

2. There's no Court in *England* that I know of, nor perhaps in any other part of the World, inferior to the supream Court of each Nation, and which exerciseth a Jurisdiction over Men's Estates only, but there may be an Appeal, or a Writ of Errour, (which is in nature of an Appeal,) at all times had, against their Errours, except the Court of Chancery, and such like Courts of Equity. Nor is any Man Compellable to part with his Estate, unless he will himself, without the Concurrence of Two of those Courts at least: But whether there ought to be more Confidence put in the Court of Chancery, or any other Court of Equity, as to matters of Equity, then there is in the Courts of Law, as to matters of Law, the common Complaint of the Kingdom may in a great Measure inform.

Its Objected, and its true, that sometimes Writs of Errour and Appeals are brought for meer delay, but its worthy Consideration, if there were not such a Remedy, whether there might not be more Wrong done then there is.

3. A further Reason for passing this Bill is this, that it is in effect but an affirmance of the Common Law, and Ancient usage of the Kingdom, as to the method of proceedings in Equity, and it is not an unusual thing when the Common Law hath not its usual Course to have it affirm'd and inforced by making Acts of Parliament to the same, or the like effect.

That by the Common Law, or Common Usage of the Kingdom heretofore, some of the Judges of the Common Law were either Consulted with, and their Advice followed, or else they had the Reviewing of Chancery Decrees, we have as great an Evidence as for any thing else of the Common Law, *viz.* The unanimous Opinion of all the Judges of *England*: and the reason why their Opinion in such Cases ought to be allow'd, may be this, because it was a long time before Men began to put the Common Laws of *England* into Writing, as appears by *Bracton, fol.* 1. and the knowledg of them was continued by Tradition only, until they came by degrees to be Reduc'd to Writing, and as to such as are Reduc'd to Writing, the Rule ought to be *Sit Liber Judex*, and if it were so observed, we should every Generation more then another arrive to certain and known Laws, and not for ever Labour under the Slavery mention'd by my Lord Chief Justice *Cooke* in his Fourth *Instit.* 246. *Misera est servitus ubi jus est vagum aut Incognitum.*

In *Rolls* Reports, 2*d* part, in the Case of *Hudson* against *Midleton, fol.* 434. It is said and admitted, that in former times the Chancellor us'd to send for the Judges to know when Equity was to be admitted against the Common Law, for, (as is there said) the Common Law is not to be alter'd for every Fancy.

In *Rolls* Reports, 1*st* part, in *Vaudrey* and *Paunells* Case, *fol.* 331. you may find that *Cooke* then Chief Justice said, he had perus'd his Books, and that in the 42*d* and 43*d* Year of Queen *Elizabeth*, in a Sute in Chancery between the Countess of *Southampton* and the Earl of *Worcester*, and others, for the Mannor of *Heningham*, it was Resolved by all the Judges of *England* under their Hands, That when a Decree was made in Chancery, the Queen, upon Petition to Her, might Referr it to the Judges, but not to any other, to Examine and Reverse the Decree, and that the then Lord Chancellor did Agree to that Resolution.

I do not know of any greater Evidence there can be of any thing at the Common-Law, then the unanimous Opinion of all the Judges, with the Concurrence of the Chancellor, and in a matter that some others have thought an Abridgment of their Power and its being a thing admitted, without any Contradiction for ought appears, and confirm'd by a long continued Practice, afterwards for several Reigns, untill the Government it self was overturned, as hereafter shall be shewed.

But some have in these latter days made an Objection against that Resolution, that it might be a partial Opinion of the Judges, to inlarge their own Power, in that, they say, the Reference ought to be to the Judges, and no other, but for that part of the Resolution there is this ground, that in the First Year of

Richard

Richard the 2d the Commons in Parliament pray'd the King, that no Suite between Parties should be ended before any Lords, or other of the Counsel, but before the Justices only, which the King granted, as appears, *Rot. Parl.* 1 *Ric.* 2d. *Nu.* 87.

That this Course of the Kings Referring the Examination of Complaints against Decrees in Chancery, was frequently practised, though sometimes the Reference was to the Chancellor and some of the Judges, yet there was most times a Majority of Judges, and this in the Reigns of Queen *Eliz.* King *James* the 1st. and King *Charles* the 1st. as appears by several Orders, yet to be seen in the Registers Office in Chancery, that appear to be made by Vertue of such References, of which some are as followeth, *viz.* 21. of *June*, 2. *Jac.* 1. Between *Chamberlain* and *Bubb*, 24 of *Novem.* 3. *Car.* 1. between *Barker* and *Unwyn* 12 of *Novem* 7. *Car.* 1. *Inter Penington* and *Holmes*, and in 15. *Car.* 1. *Roti pat: Nu.* 5. in *Dors.* there is a Commission to Review a Decree *Inter Harvey* and *Langham*, but it was not to any Judges, but to the Archbishop of *Canterbury* &c.

Soon after, The unhappy Wars began and the Powers that afterwards prevail'd, did not think fit the Chancery should be without an immediate Appeal, but *An.* 1654. ordain'd that Decrees in Chancery, should be Reveiwed by Two Judges out of each Common-Law Court in *Westminster Hall*, though there were then Three Commissioners for the Custody of the great Seal, but that Ordinance fell to the Ground upon King *Charles* the 2ds: Restoration, not for any Inconvenience that was in it, but for want of a Lawful Power in the Creation of it, and there was no absolute need to confirm it at the Restoration of King *Charles* the 2d. for thereby the Monarchy was restored in all its Parts and Powers, and consequently, that Method of proceeding against unjust Decrees, as well as any other was restored in Law, though not in Practice; and one great Reason that it was not practised, might be, that there having been about Twenty Years interruption in the Government; that way of being Relieved against Errors in Chancery might be unknown to most, but it was not long before the Kingdom became sensible of the need of such a Remedy in the Intervals of Parliament, in so much, that the Commons in Parliament the 28th of *May*, 1657. Resolved, that they would on *Tuesday* following take into Consideration, the increase of the Jurisdiction of the Court of Chancery, and the Remedy against unjust Decrees there, but that Parliament was Prorouged before any thing could be done in pursuance of that Resolution.

About 1681. there were several Petitions to King *Charles* the 2d. Complaining of Decrees in Chancery, and praying His Majesties Refference to the Judges, and His Majesty referred it to His Counsel Learned in the Law, to certifie their Opinion touching the Legality of that Course, and Five to one were of Opinion, that it was a lawful Course, but there was great Artifice used to prevent a Report thereof to the King, which would be too long, and perhaps not material to be here Recited, and in the last Session of Parliament, and in the Session before there was considerable Progress made in this matter.

In *Cookes* 4 *Instit fo.* 240. you may find it said, that an Appeal is so natural a Defence, that no Prince or Power can take it away. I suppose that Author means it cannot, *de Jure* be taken away, but I think *De Facto*, the immediate Appeal hath been taken away for too long a time.

As Men in all Governments ought to submit to their Condemnation, be it in Person, or Estate, when done regularly, for it must be supposed Just, so on the other hand such Condemnation by irregular Means is unjust, and therefore very uneasily submitted to.

I doubt not but it will be yielded to me, that those in whose Power it is to have a regular Course Revived, or have a new Law made upon occasion in Administration of Justice, are equally guilty before the great Judge of the whole Earth with those that pronounce an unjust Sentence, if they do not their endeavour to procure a fit Remedy:

And since we are in a Kingdom of Christians that should regard the Word of God, whatever they do by the Word of Man, it may not be improper to repeat in some measure, how God Resents and punisheth for want of Justice, for which purpose see

Jeremiah, *the* 5. 15.

Loe, I will bring a mighty Nation upon you from far, O House of Israel, saith the Lord, &c.

The Reason (*inter alia*) is expressed, *vers:* 28. 29.

——— They judge not the Cause, the Cause of the Fatherless, yet thry prosper; and the Right of the Needy they do not Judge, shall I not visit, for these things, saith the Lord, shall not my Soul be avenged on such a Nation as this.

To Repent and Amend, is the known way to avert Gods Judgments.

I humbly conceive, That the Method of Proceeding, propos'd by the Bill, will be a speedier and cheaper Remedy by Two Parts in Three, and a surer way of Relief, then the Re-hearings, and Bills of Review now in use in the Chancery, *and other Courts of Equity, which, here to shew in Particular, would be too long; but I shall be ready to do it at any time, to any that desire it; and besides, that it no ways hinders an Appeal to the Lords in Parliament.*