

liam Pritchard lord mayor, was afterwards arrested at the suit of Mr. Papillon and Dubois, and detained prisoner in Skinners-hall till midnight; but when the affair came to a trial, the election was vacated, Papillon and Dubois were imprisoned, and the leading men of the whig party, who had distinguished themselves in the contest, were fined in large sums of money, which made way for the loss of the charter.”

“ The court would have persuaded the common-council to make a voluntary surrender of it to the crown, to put an end to all contests for the future; but not being able to prevail, they resolved to condemn it by law; accordingly a quo warranto was issued out of the court of King’s Bench, to see whether the charter had been duly observed, because the common-council in one of their addresses, had petitioned for the sitting of the parliament, and had taxed the prorogation as a delay of justice; and because they had laid taxes on their wharfs and markets, contrary to law. After trial upon these two points, the Chief Justice delivered it as the unanimous opinion of the court, that the liberties and franchises of the city of London
had

had been forfeited, and might be seized into the king's hands, but judgment was not to be entered till the king's pleasure was further known. In the meantime the lord mayor and common-council, who are the representatives of the city, agreed to submit to the King's mercy, and sent a deputation to Windsor, June the eighteenth, one thousand six hundred and eighty-three, to beg pardon; which the King was pleased to grant, on condition that his majesty might have a negative on the choice of all the chief magistrates—that if his Majesty disapproved of their choice of a lord mayor, they should choose another within a week — And that if his Majesty disapproved their second choice, he should himself nominate a mayor for the year ensuing; and the like as to the sheriffs, aldermen, &c. When this was reported to the common-council, it was put to the vote, and upon a division, one hundred and four were for accepting the King's regulation, and eighty-six against it; but even these concessions continued no longer than a year. The charter of London being lost, the cities and corporations in general were prevailed with to deliver up their charters, and accept of such new ones as the court would grant, which

was

was the highest degree of perfidy and baseness in those who were intrusted with them.”

Bp. BURNET'S *History*, p. 527. and the *London Gazette*, No 1835.

THE KING'S DECLARATION SENT WITH THE QUO WARRANTO AGAINST THE CHARTER OF THE COLONY OF MASSACHUSETTS BAY, ACCOMPANIED WITH TWO HUNDRED COPIES OF THE PROCEEDINGS AGAINST THE CHARTER OF LONDON TO BE DISPERSED THROUGH THE PROVINCE, AND THE VOTE OF ADDRESS TO HIS MAJESTY UPON THE RECEIPT THEREOF, 15th November 1683.

“ UPON the agents of the colony receiving the final resolution of the court, their business was at an end. It was determined a quo warranto should go against the charter. The agents arrived at Boston the twenty-third of October, one thousand six hundred and eighty-three and the same week the quo warranto arrived, and a declaration from the King, that if the colony, before prosecution, would make full submission and entire resignation to his pleasure, he would regulate their charter for his ser-

E

vice,

vice, and their good, and with no further alterations than should be necessary for the support of his government there. Two hundred copies of the proceedings against the charter of London were sent at the time, by advice of the privy council, to be dispersed through the province. The governor and major part of the assistants, despairing of any success from a defence, passed the following vote: ‘ The magistrates have voted, ‘ that an humble address be sent to his Majesty, ‘ by this ship, declaring that, upon a serious ‘ consideration of his Majesty’s gracious intima- ‘ tions, in his former letters, and more particu- ‘ larly in his late declaration, that his pleasure ‘ and purpose is only to regulate our charter, in ‘ such a manner as shall be for his service and ‘ the good of this his colony, and without any ‘ other alteration than what is necessary for the ‘ support of his government here, we will not ‘ presume to contend with his Majesty in a course ‘ of law, but humbly lay ourselves at his Majesty’s ‘ feet, in a submission to his pleasure so declared, ‘ and that we have resolved by the next opportu- ‘ nity, to send our agents, impowered to receive ‘ his Majesty’s commands accordingly. And, for ‘ saving a default for non-appearance upon the ‘ return of the writ of quo warranto, that some
meet,

‘ meet person or persons be appointed and im-
‘ powered, by letter of attorney, to appear and
‘ make defence, until our agents may make
‘ their appearance and submission, as above.
‘ The magistrates have passed this with reference
‘ to the consent of their brethren the deputies
‘ hereto.

Nov. 15. 1683.

EDWARD RAWSON, *Sec.*

This lay in the house, under consideration, a
fortnight, and was then passed upon as follows :

Nov. 30. 1683. ‘ The deputies *consent not,*
‘ but adhere to their former bills.’

WM. TORREY, *Cler.*

THE VOTE OF THE HOUSE OF COMMONS THAT THE LATE PROSECUTION FOR TAKING AWAY CHARTERS WERE ILLEGAL, AND INCLUDE THE PLANTATIONS WITH THE CITIES, TWO UNIVERSITIES AND OTHER INCORPORATE BODIES, WHOSE CHARTERS HAD BEEN PROCEEDED AGAINST BY QUO WARRANTO IN THE LATE REIGN, I WILLIAM III. 1688.

“ AT a committee of grievances, Martis 5, Martii 1688, resolved, *nem. con.* that it is the opinion of this committee, that the late prosecutions of quo warrantos against the cities, two universities, the towns corporate, boroughs and cinque ports, and the plantations, and the judgment thereupon, and the surrenders of charters, to the violation of their ancient rights, are illegal and grievances. By the house,

Resolved, that this house doth agree with the said committee in said resolve, and that the late prosecution of quo warrantos against the cities, two universities, the towns corporate, boroughs and cinque ports, *and plantations,* and judgment thereupon, and the surrenders of charters, to the *violation of their ancient rights, are illegal and a grievance.*”

AN ACCOUNT OF WHAT PASSED IN THE HOUSE OF COMMONS RELATIVE TO THE CHARTERS OF THE PLANTATIONS IMMEDIATELY AFTER THE REVOLUTION, AND THE AUTHORITY GIVEN BY KING WILLIAM TO THE COLONY OF MASSACHUSETTS TO EXERCISE GOVERNMENT ACCORDING TO THE OLD CHARTER UNTIL A NEW ONE WAS SETTLED:

“ THE house of commons voted the taking away the charters of the plantations to be a grievance, and a bill passed the house for restoring the charters, and the New-England charters was expressly mentioned; but whilst the bill lay in the house of lords, the parliament sooner than expected, was prorogued, the king going to Ireland. The king, from the beginning, discovered a design to reserve the appointment of the governor to himself: it was in vain, after losing this chance in parliament, to try for the restoration of the old charter. A new charter, with as many of the old privileges as could be obtained, was all that could be hoped for. In the meantime, application was made, for express power and authority to be granted to the colony to
 exercise

exercise government according to the old charter, until a new could be settled. This was obtained."

WILLIAM R.

" TRUSY and well beloved, we greet you well. Whereas we are informed by several addresses from the colony of the Massachusetts bay, and particularly by the address coming to us in the name of the governor and council and convention of the representatives of the people of the said colony, that they had joyfully received the notice of our happy accession to the throne of these kingdoms, and caused the proclamation thereof to be issued throughout the said territory, We have therefore thought fit hereby to signify our royal approbation of the same, and gracious acceptance of your readiness in performing that which was necessary, on your parts, for the preservation of the peace and quiet of our said colony. And whereas you give us to understand, that you have taken upon you the present care of the government, until you should receive our order therein; we do hereby authorize and empower you to continue, in our name, your care in the administration thereof, and preservation of the peace, till we shall have taken such resolutions
and

and given such directions for the more orderly settlement of the said government, as shall most conduce to our service, and the security and satisfaction of our subjects within that our colony. And so we bid you farewell. Given at our court in Whitehall, the 12th day of August 1689, in the first of our reign,

By his Majesty's command,
Colony of Massachusetts.

SHREWSBURY.³³

Mr. Hutchinson's *History*, v. I. p. 389.

THE POWER GIVEN BY CHARTER TO THE PROVINCE OF MASSACHUSETTS BAY, AND OBSERVATIONS ON THE DIFFERENCE BETWEEN THE NEW CHARTER GRANTED BY KING WILLIAM AND THE OLD ONE TAKEN AWAY IN 1683.

“ THE governor, under the old charter, altho' he carried great porte, yet his share in the administration was little more than that of any one of the assistants. He had the power of calling the general court upon urgent occasions, so had the deputy governor or major part of the assistants, if the governor did not think fit to do it ;
but

but he could not adjourn, prorogue or dissolve the court, the vote of the major part of the whole court was necessary, he voted with the assistants, and if there was an equal vote, his vote was twice counted to make a casting vote; he gave commissions to civil and military officers, but this was meerly a ministerial act, in which nothing was left to his discretion, all officers being elected by the general court. Under the new charter, there must be an annual meeting of the general court, on the last Wednesday in May, but the governor calls an assembly at any other time he thinks proper, and adjourns, prorogues and dissolves it at pleasure. *He has no vote in the legislature, and does not, or regularly should not, interest himself in matters in debate, in council, or in the house; but no act of government is valid without his consent. He has the appointment of all military officers, solely, and of all officers belonging to the courts of justice, with the consent of the council; other civil officers are elected by the two houses, and he has his negative; no money can issue out of the treasury but by his warrant, with the advice and consent of the council."*

“ The assistants and councellers, under the old charter, were annually elected by the votes of all the freemen of the colony ; they were not
only,

only, with the governor, one of the two branches of the legislature, but the supreme executive court in all civil and criminal causes, except in such cases where, by the laws, an appeal was allowed the general court. The new charter provides, that upon the last Wednesday in May annually, twenty eight councillors shall, by the general court or assembly, be newly chosen. At the first election it was made a question, whether, by the general court or assembly was intended the house of representatives only, or the whole three branches, and it is handed down to us, by tradition, that after sometime spent in messages and replies, the council for the former year gave up the point, and sent Major Whally, one of their number, to acquaint the house with it ; but when he came to the door, he heard the speaker putting the question to the house, and finding they had conceded to the council, he returned without delivering his message; and a committee coming soon after from the house to bring up the vote, the council, by this accident, retained a privilege which they have been in the exercise of ever since; and, no doubt, it is in a great measure owing to this, that any great change in the council has been rarely effected, even when there have been very warm altercations between the two houses the preceding

eeding year. It is very difficult to form a second branch of legislature, analogous to the second branch in the British constitution. *The colonies are not ripe for hereditary honours, otherwise there seems no more room for exception to them there, than in Ireland.* In the charter governments of Connecticut and Rhode Island, this branch is more dependant upon the people in general, than the house of representatives; the first being elected by the freemen in general, the last by the freemen of their several towns; and there have been instances, in those colonies, where the representatives have had virtue enough to withstand popular prejudices, when the council have not, in the royal governments, as they are called: the council can scarcely be considered as a distinct branch; frequently they receive their appointment from the recommendation of the governor; they are always liable to be suspended by him, and if it be without sufficient cause, the remoteness of the colonies from the place where redress is to be obtained, and the expence of soliciting it, are very often sufficient to discourage from applying for it. In the Massachusetts, this branch is dependant both upon the governor and people, and we have seen, at different times, the influence of the one or the other

over

over this branch, according to the degree of spirit and resolution which has respectively prevailed. We have seen instances also of councillors, who have had fortitude enough to resist an undue influence from either, and who from year to year have had violent opposition to their election. We have seen so many good men members, that I may not give the epithet to this branch which is sometimes used for the small boroughs in England. But we have often seen, that the most likely way to secure a seat for many years is to be of no importance, and therefore it must be pronounced defective. Neither in the Massachuffets, nor in the royal governments, do we meet with that glorious independance, which make the house of lords, the bulwark of the British constitution, and which has sometimes saved the liberties of the people from the threatned encroachments, and at other times put a stop to advances making upon the royal prerogative."

"The representatives, under the old charter, were elected by freemen only; under the new, every freeholder of forty shillings sterling a year is a voter, and so is every other inhabitant who has forty pounds sterling personal estate."

"The

“ The speaker of the house was at first elected and took his place without any notice to the governor ; and for many years after the present charter, there was only the formality of notice, until disputes, upon other points with the governor, caused him to insist upon his right of negating the speaker, which the house was obliged, after a long struggle, to submit to.”

“ It was proposed, that the members of the general court should, during the recess, consider of such laws as were necessary to be established ; for the act reviving the colony laws was to continue in force no longer than until November 1692.”

“ This was a work of great importance, and required the wisest heads, and ought to have been committed to select persons, upon a preconcerted plan, the whole of which each person should have kept in view ; for want thereof the people of the province have been sufferers ever since ; the construction of many laws have been doubtful and varying, it being impossible to reconcile the several parts to any general principal of law whatsoever. Besides, being passed
one

one after another, as they happened to be brought in, and sent to England for allowance, some were disapproved; others, which depended upon or had some connection with those which were disapproved, were allowed; whereas if one complete code or system had been prepared and sent to England, such alterations would have been proposed, as might finally have issued in a well digested consistent body of laws; and a temporary provision might have been made, until this perpetual rule should be settled. Seven years had passed, and four different acts had been sent, one after another to England, for establishing courts of justice, before the royal approbation could be obtained. *It was the practice of the administration then, and, it seems, at that time to have been well enough received in the province, to point out either in the order disallowing laws, or to the agent who presented them, the particular exceptions, and to propose such alterations as might render them acceptable, except in such cases where the law in all its parts was disapproved.*"

From Mr. Hutchinson's *History*, vol. I. p. 7.

NUMBER

“ NUMBER OF INHABITANTS IN NEW ENGLAND
AND ITS PRESENT CONSEQUENCE.

“ THE Massachusetts colony may be considered the parent of all the other colonies of New England. There was no importation of planters from England to any part of the continent, northward of Maryland, except to the Massachusetts, for more than fifty years after the colony began. In the first ten years, about twenty thousand souls had arrived in the Massachusetts. Since then, it is supposed more have gone from hence to England than have come from thence hither. Massachusetts Bay, New Hampshire, Connecticut, and Rhode Island, at this day, probably contain five hundred thousand souls. A surprising increase of subjects of the British crown.”

“ BARBADOS and the Leeward Islands owed very much of their growth to the supplies of lumber, horses and provisions, with which they were furnished, at the beginning of their settlements, from this colony, in as great plenty as they desired.”

“ The

“ The addition of wealth and power to Great Britian, in consequence of this first emigration of our ancestors, exceeds all expectation. *They left their native country with the strongest assurances that they and their posterity should enjoy the privileges of free natural born English subjects. May the wealth and power of Britain still increase in proportion to the increase of her colonies; may those privileges never be abused; may they be preserved inviolate to the latest posterity.*”

Preface to the 1st vol. of Mr. Hutchinson's *History of Massachusetts Bay*, published in 1760.

ARGUMENT

A R G U M E N T

F O R T H E

Right claimed by the Colonies.

THE whole matter in dispute between Great Britain and her colonies may be reduced to a single point—The right of taxation—The power of disposing of the property of all his Majesty's subjects in America.

Matter in dispute.

But before I enter upon this very important question, I shall take a short view of such parts of the foregoing authorities, as are most immediately connected with it.

The great end of men's uniting together, and putting themselves under government, is for the mutual preservation of their lives, liberties and estates.

The end of government and the duty of supporting it.

E

And

And, as governments cannot be supported without great charge, it is fit every one who enjoys his share of the protection, should pay, out of his estate his proportion for the maintenance of it.

These are the words of a man to whom every subject of the laws of England at this day, is in no small degree indebted. Mr. Locke's knowledge of our constitution, his ability in the investigation of it, and his fortitude in defending it at the time that he did, against a torrent of opposite and powerful opinions, did, it must be universally allowed, highly contribute towards the re-establishment of the *English* constitution at the restoration. And if the subjects in any part of the king's dominions, mean by an opposition to taxes, to declare their unwillingness to bear their proportion of the charges of government, they will find nothing to support such a conduct in the opinions of Mr. Locke. If there is a man living under the protection of the English laws, and thinks he ought not to contribute his part to the administration of them, he must either be insensible of the advantage he enjoys, or be very unworthy of it. Those that will take the pains to trace the progress of the English constitution,

by

by those sure land marks the laws have erected for its perpetual support; and will carefully examine the wisdom of its contrivance; and the slow degrees by which it has arisen to its present excellence; they will then have too high an opinion of its worth, to be unwilling to contribute their proportion to maintain and uphold every part of a system, that has made such uncommon provision for the security of every temporal blessing men seem capable of enjoying. But in considering that part of our legislature that is composed of the commons; we should never forget the importance of the other branches of it; to the general security and welfare of the people.

Whoever imagines that the liberty of the subjects is to be promoted by degrading the dignity of their first magistrate; they have a discernment into the nature and excellence of our constitution, very different to that of Baron Montesquieu, who says his person should be sacred, to whom the executive power of the laws of *England* are committed, because it is necessary to prevent the legislative body from rendering themselves arbitrary, therefore the moment he is accused or tried there is an end of liberty. But it

A short
view of the
legislature

Of the
crown.

is

is not in the power even of this fine writer on our constitution, to make us think more highly of the office of our first Magistrate, than we must do of the justice and moderation of him that fills it.

At different periods in our history, our constitution has been in danger from very opposite quarters; sometimes a mistaken love of power in the crown, has made it attempt to bear down the other branches of the legislature; and at other times the people's part of the government have been erected into a tyranny over the heads of those they were intended to represent. But still the noble structure has risen superior to all the variety of dangers to which it has been exposed.

And that great and good being who alone can bring order out of confusion, has hitherto allowed our excellent system of laws, to secure to us liberty of conscience and the open exercise of our religion. He has raised us up a race of princes, who have uniformly filled the seats of justice with wise and good men; that we not only hold the security and protection of our persons and properties by the words of the laws, but they are also administered to our advantage.

And

And to bring down those blessings with increase upon our heads, we see a prince making the judges of the land independant of his crown, that free and uninfluenced the laws might reign alone. And we also see those judges as earnest in bringing the greatest men * within the reach of the law, as they are in extending its relief to the meanest. †

Those that will attentively compare the powers vested in the crown by our constitution, with the use that publicly appears to be made of them in all the executive departments of the state, will find himself called upon by every motive of duty and gratitude, to pay the strongest marks of allegiance both to the person and office of that magistrate from whom those powers are derived.

And

* See debates on obtaining the act for preventing delays of justice by reason of privilege of parliament, In 1770.

† And in 1772, by the judgment of the Court of King's Bench, the laws were made to say to those that held poor Sommerfet, the Negro—Loose him and let him go free.

For a few thoughts on the subject of *slavery*, see the conclusion.

The Lords.

And one cannot pass by the next part of our legislature, without likewise observing the high importance of which the constitution has made the Peers to the general welfare of the state. To this house is committed the most sacred charge of preserving the laws of the realm inviolable. It is their bulwark. In the persons of the peers we see the guardians of the people's rights : the constitution justly considering those worthy of the highest trust, who had the most to lose by its abuse : and they are united to the people by the strongest ties ; their extensive property is pledged on the common safety of the people who alone can defend it. And the sentiments of public good that we so frequently hear delivered in this house, shews that it continues worthy of the confidence our ancestors has placed in it.

And it will ever remain the duty and interest of every good subject, to contribute upon all occasions his endeavours to support in their full exercise, the legal powers of the crown and the privileges of the peers, as essential to public liberty, and the general welfare of the state.

The royal and noble branches of our government may now be laid intirely cut of the question, and our whole attention turned to the people's

part

part of the legislature. And we shall first enquire in what light it is considered by those that are allowed to be amongst the ablest writers and best judges of the *English* constitution.

This part of the legislative power should reside in *the whole body of the people*. But since this is impossible in large states, and in small ones subject to many inconveniences, it is fit *the people should do* by their representations what they cannot transact by themselves. * These are Baron Montesquieu's words. And according to Sir William Blackstone, † The commons consist of all such men of any property in the kingdom, as have not seats in the house of lords; *every one of which* has a voice in parliament, either personally, or by his representatives. In a free state, every man who is supposed a free agent, ought to be, in some measure, his own governor, and therefore a branch at least of the legislative power should reside *in the whole body of the people*. And this power, when the territories of the state are small, and its citizens easily known, should be exercised by the people in their aggregate or collective capacity.

The house of commons considered as the whole body of the people by the constitution.

But

* See p. 7.

† See p. 22.

“ But in so large a state as ours is, this would be impossible; it is therefore very wisely contrived, that the people should do that by their representatives which it is impracticable to perform in person.”

But still the constitution considers the representatives assembled in the name of the people, as the people themselves, and notwithstanding the necessity their numbers lay them under, to devolve their authority in the legislature on deputies, yet it alters not the design of the constitution, it still considers as the people, the representatives assembled in their name; and when they have done with the power of making laws, and are separated again; they are themselves subject to the laws they have made in common with the whole body of the people.

The colonies are excluded from any share in this design of the constitution.

Now see how this will apply to America; by allowing them the privileges of their fellow subjects within the realm, you put them in the same condition as if the colonies had existed at the time the constitution gave this branch of the legislature to the people at large, a principle in our constitution that never could have taken place, as it proceeds on a supposition that the
people

people were to assemble, and as this could not be, you make the constitution at its first outset, exclude every one of your fellow subjects in America, from any share in this great privilege granted in common to all the people.

But it is said this supposition in our constitution proceeds on an impossibility, it being to the next degree as impossible for the people of *England* to assemble, as it would be for their fellow subjects in *America* to meet them in forming their common part of the legislature, and therefore it unavoidably follows, that the people devolve the share the constitution has given them in the legislature upon deputies. This being a difficulty naturally foreseen by the constitution, it is next to be enquired what provision is made against it?

The laws first secure the legislative right *to all the people*, and then with wisdom equal to its justice provides for the exercise of that right. All the people could not assemble, but all the people might have a voice in choosing representatives to meet the other branches of the legislature. It therefore intended that *all the inhabitants should have a right of voting at the elec-*

The constitution grants to *all* the people, the right of choosing representatives.

tion

tion of representatives that were not in so mean a situation as to be deemed to have no will of their own.*

The commons consist of *all such men of any property* in the kingdom, as have not seats in the house of lords; *every one* of which has a voice in parliament either personally or by his representative.†

The lawful power of making laws to command whole politic societies of men, belonging so properly to the same *intire societies*, that for any prince or potentate of what kind soever upon earth, to exercise the same himself, and not by express commission immediately and personally received from God, or *else by authority derived* at the first *from their consent*, upon whose persons *they impose laws*, it is no better than mere tyranny. *Laws they are not therefore which public approbation hath not made so.*‡

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* Montesquieu on the English constitution p. 9.

† Sir Wm Blackstone on parliaments, p. 22.

‡ Hooker's Eccl. Pol. l. i. sect. 10.

The liberties of the people being the direct end of our laws, the power of making them implies, the consent of the people actually given; but the collective body being too numerous to meet together for this purpose, the constitution provides that the right of choosing representatives, should belong to all the people.—To *every man* that is not in so mean a situation as to be deemed to have no will of his own——To *every man* of any property in the kingdom.

But that part of our fellow subjects that are gone to *America*, with a reservation of all the rights of the subjects within the realm, are entirely excluded from any share in this great design of the constitution, in providing for the common welfare of *all* the people; and by their not having a single vote in the choice of any member of the assembly, that represents the people, they are as effectually deprived of their part in the representative body, as by their situation they are in the collective.

The colonies are excluded from any share in the representative body.

But still it is said, the colonies are upon an equality with the people that live in all those towns and villages in *Great Britain* that send no members to parliament—that have no choice in any representatives;

Compared with those towns in the kingdom that send no members to parliament.

representatives ; and therefore the people's part of the legislature is constituted, and the laws are made with as little of their consent, as that of the people in *America*.

It is very true that many towns of great consequence have arisen in the kingdom, since the time the constitution fixed on those places that send the members to parliament ; which at that time there is good grounds to believe were of so much importance, as to make it appear reasonable to the people, that if the rights of all those places were preserved, and provision made by the legislature for the good government of them, no injury could befall the rest of the kingdom : and every man would then see as we do at this day, if ever he was aggrieved in his property, by living in a place that sent no representatives, he had nothing to do but to remove into another that did.

But this cannot be done by all the people that now inhabit those great and populous towns that trade and industry has raised in the nation, since the elective bodies were settled, therefore those towns neither are nor can be represented ; but are exactly in the same situation

situation as the colonies, and might with as much justice plead an exemption from taxes ; because they have no share in forming the legislative body that imposes them.

But in what counties are those towns built in *England* that are not represented ? Since the privilege of sending members to parliament was extended to the county of *Durham*, the town of *Sunderland* has grown up in a part of it, and in the hundred years that this county has had any representation, a small fishing town has become a port with between two and three hundred sail of ships belonging to it, and from fifteen to twenty thousand inhabitants living in it, and dependent upon its trade. But who will say that this town—that those inhabitants are not immediately represented, in the persons of the members for the county in which it is built ? The honourable gentlemen that sit in parliament for that county will not say so ; they will not tell you that they have no constituents in this town. Neither will the people there say that they have nothing to do in any election—in sending any member to parliament. They will tell you quite the contrary—that there never is
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an election of a representative for the county in which they live, without some of them joining in the choice. And thus it is with all the towns of any note in every other county in the kingdom.

The town of *Leeds* has its freeholders for the county of *York*, *Manchester* for *Lancastershire*, and *Birmingham* its electors for the county of *Warwick*; and as all these places have increased in numbers and riches, their weight and interest increases in the representation of the county of which they are a part. These are the towns that are compared with the colonies—these are the people in *Britain* that are said to be as little represented as the people in *America*. Whoever asserts this ought to support it by a *fact*, and point out that man living in *England* that has property enough to boil a pot, and may not if he pleases have a vote in choosing a member of parliament,

It is not a few, and those too whose judgments give weight to their opinions, that contend the qualifications to vote at elections are too common, too low. And certain it is, that they are so easily to be obtained as to make them the general
property

property of all the people in the kingdom, who have any property to be affected.

But then it is said, if those elective privileges are so attainable, and no distinction being made between a subject from *America* and a native of *Great Britain*, it is their own fault if they are not partakers of the common right of their fellow subjects. There is nothing to prevent their becoming free of our cities, and corporations, and voting in all elections of members of parliament. And not only as many Americans as choose to come over may be electors, but they may become the very members of the assembly that taxes their property in America. And besides, the intercourse between the trading towns in *Britain* and *America*, must ever give the interest of the colonies so many advocates in parliament, as to make them always stand upon equal ground with their fellow subjects at home; more than this it would be unreasonable to ask—unjust to grant them.

The great provision made by the constitution for securing the property of the people, arises from their representatives being made to bear their due proportion of the burthens they impose, in

com-

The colonies do not partake of the provision made for securing the property of the people.

common with the people on whom they are laid : and when the member that has given his voice for making of a law—for granting a supply, comes without the door of the assembly, he must bear his part and submit to the law he has assisted to make. But was the decay of one half of the electors in *Britain* to be recruited from the woods in *America*, and their cities made to furnish us with the same proportion of representatives in parliament ; what security would the colonies have ; that a single man of them would ever return cross the western ocean, to pay with the sweat of his brow, a single guinea towards any tax the house of commons might lay upon *America* ? If electors or members from *America* had no property there to be taxed, it admits of a supposition that they might sometimes be unguarded in their liberality in disposing of that of others. And we must believe the gentlemen from *America* vastly superior to those of *Great Britain*, if we suppose them incapable of ever being so unwary, as to tax the colonies either in mode or extent, beyond the possibility of their complying with it. And indeed nothing is more naturally to be expected than mistakes, from conclusions formed at a distance, without any other knowledge than what is received

at second hand; and no joint property at stake to feel the effect of the resolutions that are made. Was the representatives of the people of Great Britain only to have their fellow feelings kept alive for their constituents by letters and petitions, we might soon expect to hear *St. Stephen's* sacred walls resound with the loud jollity of the members; whilst the body of the people without doors were weeping and dying under the loads laid upon them, by those that were not to touch the burthen with one of their fingers. This great evil our constitution foresaw, and therefore ordained for ever, that no tax should be laid upon the people, but by those whose property was placed as an hostage for their conduct, amongst that of the people's on whom the tax was laid. And whether the members of the house of commons are born in *Britain* or *America*, if they have no qualification—no property in the colonies, equal violence is done to their part in the provision made by our constitution for the common security of *all* the subjects.

But still the colonies are said to be *virtually represented*. That a member of parliament is not like a deputy sent from one of the United Provinces to the assembly of the States of Holland, where he appears only in the name of the province he represents, and acts under its immedi-

Virtual representation applied to the colonies.

ate controul. A member of parliament is very different; the moment he takes his seat in the house of commons, he is to be considered not only as the representative of his own particular constituents, but of all the commons—of every subject of the crown in every part of the king's dominions. And as he is not obliged to act under the controul of any single society of the people, he stands in the name of the whole, and therefore not one subject is unrepresented from the farthest east to the remotest west, but all may make themselves heard by their common representatives—all may find redress in the house of commons; and of consequence all are bound to pay the taxes it imposes, and none can plead an exception as not being represented.

What I understand by being virtually represented, in the sense it is here to be taken, is, that a people may be represented without any choice of their own, without ever hearing, seeing, or knowing any one of their representatives; and the representatives equally strangers to the persons, circumstances, situation and country of the people they represent; without having any joint property or interest, and without ever being exposed to suffer any inconvenience in common with the people they represent.

represent. *Virtual representation*, as applied to the colonies, can mean nothing less than this; and the very sound of it does such violence to common sense, and is I think so contrary to the first principles of our constitution, that nothing could make it deserve a serious consideration but the respect due to those that have used the term, that have applied it to the colonies—a respect which no difference of opinion can cancel.

We will therefore enquire if such a principle appears to have any foundation in our laws, and if at any period in our history the idea of *virtual representation* is warranted by any act of the legislature.

Till the year 1535, *Wales* had been taxed by the English house of commons without having any representatives. In page 29th the reader will see what was the sense of King Henry VIII. and both houses of parliament upon it. The act begins with declaring the dependence of *Wales* upon the crown, and it ends with abolishing the unjust distinction, that *being taxed and not represented*, had hitherto made between his majesty's subjects there and in England. And we find the king, lords and commons continued in the same
opinion

opinion for seven years after the *Welch* members had been added to the English ; and, in the same king's reign, in the year 1542, another law is made to give knights and burgesſes in parliament to the county palatine of *Chester*. The title by which the crown held its dominion of *Wales* may have prevented any thing being ſaid, in the wording of the act, of the injury they had ſuffered in having been taxed without being repreſented. But after the *Welch* had become the ſubjects of the ſame ſovereign, to continue to enforce their obedience under ſuch a diſparity in their privileges, was ſo great a diſtinction as common juſtice required ſhould be taken away. But the act for *Chester* (in page 31ſt) ſpeaks a different language. The inhabitants of this county had an equal title to every privilege of the people of England, therefore in this bill the two houſes tell his majeſty, that his ſubjects in the county palatine of *Chester* had been *grieved* with acts and ſtatutes, and *injured* in their juſt liberties and privileges, by being ſubject to laws made without their knowledge, and liable to pay taxes laid upon them without being repreſented. This act therefore gives to that part of the ſubjects the only remedy that reaſon and juſtice ſuggeſted

at that day—it gives them knights and citizens to be elected and chosen in the same manner as for any other county and city in England.

The house of commons now consisted of five hundred and nine members, and so it continued for one hundred and thirty years, till the 25th of King Charles the second, when it was found that a small part of his subjects were still left without the privilege of electing and sending representatives to parliament, although they had been liable to all rates and taxes equally with the rest of their fellow subjects; and therefore they were equally concerned with the other inhabitants of the kingdom, to have knights and burgessees in parliament of *their own choosing*, to represent their condition. These acts prove that it was uniformly held by the legislature down to the last century, that no part of the people could be considered as represented by members they themselves did not choose. All the members for *England* were not allowed to impose taxes upon a people whom stratagem and force had made subjects of the crown. But a law is made to empower *all the king's subjects* in Wales, to elect and choose for themselves representatives to all future parliaments.

ments. Again in 1542 the united members of *England* and *Wales*, were not to include the people of a single county, who had no share in their deliberations. And in the year 1672, five hundred and nine members were not considered as representing all the subjects of the crown, when a single county still remained that had not an immediate choice of their own representatives. The words—the spirit of all these acts are in direct opposition to every idea of *virtual representation*, not one of them admits of such a thought for a moment. And whoever would wish at this day to make that doctrine apply to any part of his fellow subjects, it is incumbent upon him to produce some authority from our laws to support it. Yet it is said, so far as virtual representation consists in being taxed without having any representatives, all these acts prove that virtual representation prevailed over all the people of *Wales*, *Chester*, and *Durham*, till the time the legislature gave to each of them the right of choosing their own members. And was none of the subjects to be taxed but those who lived within certain districts that did send members to parliament, it would follow that every company of people that leave the kingdom to seek their fortunes in the east or in the west, must either be
allowed

allowed the actual choice of representatives, or be free from the payment of all duties to the government that supports them, and if the want of a voice in choosing representatives is to exempt them from the taxes imposed by parliament, it is the next thing to an exemption to all the laws of parliament, and their total independence follows of course ; for how can they be subject to a *part* of the legislative authority of the state, when they are independent of the *whole* of it ?

Any number of merchants or adventurers that go abroad only with a view of trading with foreign nations, and returning again to their native country, are to be distinguished from colonies, where the residence of the settlers becomes as fixed and permanent as the habitations of their fellow subjects in their mother country. Of this sort are our colonies in *America*, and we shall now enquire on what conditions they went, and what provision was made against their becoming independent of the state to which they belong, and for their bearing their just proportion of the charges of the government that protected their settlements and encouraged their trade.

Massachusetts Bay considered in the name of all the other colonies.

In the present question of taxation all the colonies stand exactly upon the same ground; I shall therefore consider the rights of one province in the name of all the rest. The lead that Massachusetts Bay has taken in the common cause of the colonies, and the question at this time arising more immediately from that province than any other, is the first reason for confining the enquiry to it. But all their privileges, and their common relation to their parent state, are so exactly alike, that it makes no difference from which of their records the evidence is taken for considering the rights of them all. But another reason for confining the enquiry to the province of Massachusetts Bay is, that the accounts of the first establishment of the New-England colonies, are more in every body's hands than those of any other part of America; by which means every one may be better able to see for himself what has really passed between the mother country and the province in question; and be able to form his own judgment from all the light that the nature of the case admits of, as well as to see that the passages here produced are stated according to the authorities from which they are taken.

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The history of Massachusetts Bay, by Mr. Hutchinson a native and the present governor of it, will give every enquirer the most satisfactory information: a work that I think no one can read without considering it as a lasting service to his country; and the good sense and moderation that breathes through these volumes, makes one regret those unhappy divisions that deprives the author of the just returns due to his labour. May these divisions soon have an end! may he live to reap the tribute of public regard! But if he, like many other men, whose writings have done equal honour to their country and themselves, is denied this satisfaction, may posterity hand down his name with the respect I must ever think the author of this history deserves from his country!

It may at this time indeed be unfavourable to the colonies in general, to consider their rights by the evidence taken from a province, the inhabitants whereof have so lately been rendered unpopular in the eyes of the nation, to which perhaps the eloquence of an able advocate has not a little contributed: and the open violation of private property, committed in the capital of this colony, has added too much weight to the
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force of every argument used against them. Every good subject must certainly take the opposite part to all the violaters of the known rights of mankind; and those that would wish to see the late insult offered to the laws at *Boston*, treated in terms of the strongest abhorrence, need only look at the last public accounts from the neighbouring towns in the very same province. To include therefore the wrong-doer, and those who cry aloud against him to his face, in one common censure, would be unworthy the name of candour. And even in the very city of *Boston*, there is reason to fear many will severely partake in the punishment of the crime, they neither committed or could have prevented. But it is said the whole town united in opposing the landing of the *tea*—so did the whole province, and so did every province on the continent of *America* to whom it was sent: and for the same reason that they opposed the execution of the *Stamp-act*. And these reasons they have declared from the first, in a manner no way unbecoming the subjects of the government under which they live: a government built upon the principle, that none of its subjects should ever be forced to pay any other duties or taxes, than those that were laid upon them by their own representatives. And if it
cannot

cannot be said that the subjects in *America* joined in choosing the members of the assembly that laid this duty on tea, to be collected from the people in *America*, then it follows that they are taxed and not represented, and their rights as subjects under the government of the *English* constitution, are as clearly invaded as they were in the case of *ship-money*; and the province of *Massachusetts Bay* now stands in the same situation in behalf of the rights of all the people in *America*, as *Mr. John Hamden* did for all the people of *England* in the last century. I am as much for the obedience of the people in *America* as I can be against their illegal oppression. I would wish to be as far from wilfully shutting my eyes, and thinking all the people of the colonies faultless, as I would be to give up my reason, and believe those incapable of mistake who exclaim so much against them. I am equally afraid of being misled in the mists that are raised by violence or interest on either side of the question. I contend not for men's prejudices. It is the *rights* of my fellow subjects in *America* that I only mean to defend: and those rights not such as are of vague and uncertain interpretation, but such as the *English* constitution makes the unalterable property of every man that lives under the protection

tion of its laws. And if the people of *England, Scotland, Ireland, or America*, are ever to be taxed without having, or the possibility of having, any choice in those that impose the taxes upon them, they are no longer the *subjects* but the *slaves* of government. Our constitution as established by the laws, is utterly repugnant to every attempt to divide the right of taxation from the privilege of representation. And could any pretence ever justify the separation of those rights with a part of the subjects, the same reasons would hold good with the whole. These are rights so essential to our constitution, that they make a part of the rules by which the legislature itself is bound to walk. And it can no more take away the provision the constitution has made for the security of the people's property, than it can the known privileges of the peers or the prerogative of the crown. The legislature cannot turn our government into a republic, no more than it can into an absolute monarchy. Rights therefore there are that even the legislature cannot assume, regulate, and return to any part of the people at its pleasure.

A short
view of the
province of

We shall now enquire what provision has *already been made* for continuing to the people that

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are gone to *America*, the rights they possessed in their mother country, and for securing their subjection to the supreme government, upon an equality with their fellow subjects in *Great Britain* and *Ireland*. For this end we shall take a short view of a few passages selected from the history of the first settlements in *New-England*, and of the laws and acts of state made for the establishment and government of the province of *Massachusetts Bay*, and consider the rights of all the other colonies as standing upon the same ground.

Massachusetts-Bay
from its
first settle-
ment.

The reader will see what gave rise to the New-England settlements, which first took place in the year 1620. And the colony of Massachusetts Bay was first formed in the year 1629 of people that fled from the hands of oppression in *England* to enjoy liberty of conscience in *America*. They were then empowered by the authority of the crown, to elect their own governor, deputy governor, and magistrates, and to make such laws as they should think fit for the good of the plantation, not repugnant to the laws of *England*.

P. 35.

P. 36.

P. 39.

P. 40.

In 1634, the regular exercise of government begins to appear. But the people to whom

P. 44.

whom

whom these rights were granted—the *freemen*; were already so increased that they could not meet together to debate and determine matters of common concern. And therefore by necessity they devolved the powers and privileges that belonged to the whole body that could not assemble, upon a part of their number that could. This was not provided for in the charter, neither was it necessary that it should; the ancient laws and charters in *England* had likewise granted the privileges to *all* the people; and if an hundred men chose to trust one to do their business in the legislature, it was the same thing to the prince with whom these privileges were settled, it was the same thing to the people that enjoyed them. The end was mutual good; to the prince the support of his government; raised with the consent of people; and to the people protection. Thus we see it was with the first settlers of the colony before us; they could not have the presence of their prince, and it was unnecessary to burthen them with the whole system of their country's laws; to be all at once in full force and virtue; had all the laws of *England* been engrossed in their charter; they could only have used what would apply to an infant state; and therefore with wisdom becoming the simplicity of
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of times less refined, they had the whole laws of their mother country given them for their *rule*, and it was left to themselves to apply them as necessity and their growing wants required. Still the King was their supreme governor, for it was him with whom their compact was made, and by thus pointing to the laws of *England* as their guide in *America*, it was the same thing as if both King and people had assembled upon the sea shore, and the one had sworn to govern them according to the laws of the land, and the other to obey him in *America* as subjects within the realm.

Agreeable to the pattern shewn them by their prince, did the people of this colony settle their form of government. Or in Mr. Hutchinson's words, "Thus they settled the *legislative* body." And was the government of this colony understood to be *legislative* in the year 1634? Certainly it was, and the people were as much bound to obey the *laws* made by the legislative body, and administered by the governor and magistrates in the name of the King, as if they had remained subjects within the realm. And it is with admirable propriety Mr. Hutchinson calls the govern- P. 45
ment

ment of each province, the *effigies parva* of the mother state. Could the government of this colony be *legislative*, and thus exactly resemble the government of *England*, and not possess an *exclusive* right to tax the people of the colony? If they are not in possession of this right, how can their legislative bodies be said to bear that resemblance to their mother country, Mr. Hutchinson here says they did in the year 1634? If the people's representatives in the legislative body of each colony, are not in possession of the *sole* and *exclusive* right to tax those they represent, instead of their being the *exact* resemblance of the government of the parent state, they are not only unlike it, but totally the reverse, and that in a point of no less importance than the power of disposing of the property of all the people.

But certain it is, that the legislative body of the colony under our immediate consideration, did not only resemble that of its mother-state in *design*, but in truth and indeed. And accordingly we see that it began to exercise its authority after the very same manner; and amongst many other valuable papers preserved in Mr. Hutchinson's history, we have a state of the proportions that the assembly of representatives of
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the whole people agreed to charge their several constituents with, towards the supplies required by their government in the year 1642. No provision was made for this in the charter, the very nature of their legislature implied it. Their property was made sacred by the government under which they were to live, and it followed of course that they were to support the power that protected them. And this state of the supply, granted in the infancy of the colony, affords no small proof of the necessity, of their ever being taxed *only* by their own representatives.— One division of the colony we see is charged with one hundred and twenty pounds to the supplies, whilst another is made to contribute no more than five. Who could know the justice of this, but those that knew every part of the province, and all the people in it, and could represent their real condition?

The form of government given to the first settlers in the colony in the year 1629, continued to grow up in its resemblance to the rule laid down to them till the year 1683. When the King was unfortunately advised,

P. 49.

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their