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Sketches Of The History Of Man

In Two Volumes

Home, Henry

Edinburgh, 1774

Appendix. Sketches concering Scotland.

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A P P E N D I X.

Sketches concerning S C O T L A N D.

S K E T C H I.

SCOTCH ENTAILS considered in Moral and Political views.

MAN is by nature a hoarding animal; and to secure to men what they acquire by honest industry, the sense of property is made a branch of human nature (*a*). During the infancy of nations, when artificial wants are unknown, the hoarding appetite makes no figure. The use of money produced a great change in the human heart. Money having at command the goods of fortune, introduced inequality of rank, luxury, and artificial wants without end. No bounds are set to hoarding, where an appetite for artificial wants is indulged: love of money becomes the ruling passion: it is coveted by many in order to

(*a*) Book 1. sketch 3.



be hoarded; and means are absurdly converted into an end.

The sense of property, weak among savages, ripens gradually till it arrives at maturity in polished nations. In every stage of the progress, some new power is added to property; and now for centuries, men have enjoy'd every power over their own goods, that a rational mind can desire (*b*): they have the free disposal during life; and even after death, by naming an heir. These powers are sufficient for accomplishing every rational purpose: they are sufficient for commerce, and they are sufficient for benevolence. But the artificial wants of men are boundless: not content with the full enjoyment of their property during life, nor with the prospect of its being enjoy'd by a favourite heir, they are anxiously bent to preserve it to themselves for ever. A man who has amassed a great estate in land, is miserable at the prospect of being obliged to quit his hold: to sooth his diseased fancy, he makes a deed securing it for ever to certain heirs; who must without end bear his name, and preserve his estate entire. Death, it is true, must at last separate him from his idol: it is some consolation, however, that his will governs and gives law to every subsequent proprietor. How repugnant to the frail state of man, are such swollen conceptions! Upon these however are founded entails, which have prevailed in many parts of the world, and unhappily at this day infest Scotland. Did entails produce no other harm but the gratification of a distempered appetite for property, they might be endured, though far from deserving approbation: but, like other transgressions of nature and reason, they are productive of much mischief, not only to commerce, but to the very heirs for whose benefit it is pretended that they are made.

Considering that the law of nature has bestow'd on man, every

(a) Historical Law-tracts, tract 3.

power



power of property that is necessary either for commerce or for benevolence, how blind was it in the English legislature to add a most irrational power, that of making an entail! But men will always be mending; and when a lawgiver 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 authorising entails, is another instance of the same kind, will be evident from what follows.

The mischievous effects of English entails were soon discovered: they occasioned such injustice and oppression, that even the judges ventured to relieve the nation from them, by an artificial form, termed *fine and recovery*. And yet, though no moderate man would desire more power over his estate than he has by common law, the legislature of Scotland enabled every land-proprietor to fetter his estate for ever; to tyrannize over his heirs; and to reduce their property to a shadow, by prohibiting alienation; and by prohibiting the contracting debt, were it even to redeem the proprietor from death or slavery. Thus many a man, fonder of his estate than of his wife and children, grudges the use of it to his natural heirs, reducing them to the state of mere liferenters. Behold the consequences. A number of noblemen and gentlemen among us, lie in wait for every parcel of land that comes to market. Intent upon aggrandizing their family, or rather their estate, which is the favourite object, they secure every purchase by an entail; and the same course will be followed, till no land be left to be purchased. Thus every entailed estate in Scotland becomes in effect a mortmain, admitting additions without end, but absolutely barring any alienation; and if the legislature interpose not, the period is not distant, when all the land in Scotland will be locked up by entails, and withdrawn from commerce.



The purpose of the present essay, is to set before our legislature, coolly and impartially, the destructive effects of a Scotch entail. I am not so sanguine as to hope, that men, who convert means into an end, and avariciously covet land for its own sake, will be prevailed upon to regard, either the interest of their country or of their posterity: but I would gladly hope, that the legislature may be roused to give attention to a national object of no slight importance.

I begin with effects of a private or domestic nature. To the possessor, an entail is a constant source of discontent, by subverting that liberty and independence, which all men covet, with respect to their goods as well as their persons. What can be more vexatious to a proprietor of a great land-estate, than to be barred from the most laudable acts, suitable provisions for example to a wife or children? not to mention numberless acts of benevolence, that endear individuals to each other, and make society comfortable. Were he ever so industrious, his fields must lie waste; for what man will lay out his own money upon an estate that is not his own? A great proportion of the land in Scotland is in such a state, that by laying out a thousand pounds or so, an intelligent proprietor may add a hundred pounds yearly to his rent-roll. But an entail effectually bars that improvement: it affords the proprietor no credit; and supposing him to have the command of money independent of the estate, he will be ill-fated if he have not means to employ it more profitably for his own interest. An entail, at the same time, is no better than a trap for an improvident possessor: to avoid altogether the contracting debt, is impracticable; and if a young man be guided more by pleasure than by prudence, which commonly is the case of young men; a vigilant and rapacious substitute, taking advantage of a forfeiting clause, turns him out of possession, and delivers him over to want and misery.

But



But an entail is productive of consequences still more dismal, even with respect to heirs. A young man upon whom the family-estate is entailed, without any power reserved to the father, is not commonly obsequious to advice, nor patiently submissive to the fatigues of education: he abandons himself to pleasure, and indulges his passions without control. In one word, there is no situation more subversive of morals, than that of a young man, bred up from infancy in the certainty of inheriting an opulent fortune.

The condition of the other children, daughters especially, is commonly deplorable. The proprietor of a large entailed estate, leaves at his death children who have acquired a taste for sumptuous living. The sons drop off one by one, and a number of daughters remain, with a scanty provision, or perhaps with none at all. A collateral male heir succeeds, who after a painful search is discovered in some remote corner, qualified to procure bread by the spade or the plough, but entirely unqualified for behaving as master of an opulent fortune. By such a metamorphosis, the poor man makes a ludicrous figure; while the daughters, reduced to indigence, are in a situation much more lamentable than are the brats of beggars.

Our entails produce another domestic evil, for which no proper remedy is provided. The sums permitted in most entails to younger children, however adequate when the entail is made, become in time too scanty, by a fall in the value of money, and by increase of luxury; which is peculiarly hard upon daughters of great families: the provisions destined for them will not afford them bread; and they cannot hope to be suitably matched, without a decent fortune. If we adhere to entails, nunneries ought to be provided.

But the domestic evils of an entail make no figure, compared with those that respect the public. These in their full extent would



would fill a volume: they are well known; and it may be sufficient to keep them in view by some general hints.

As observed above, few tenants in tail can command money for improvements, however profitable. Such discouragement to agriculture, hurtful to proprietors of entailed estates, is still more so to the public. It is now an established maxim, That a state is powerful in proportion to the product of its land: a nation that feeds its neighbours, can starve them. The quantity of land that is locked up in Scotland by entails, has damped the growing spirit of agriculture. There is not produced sufficiency of corn at home for our own consumpt: and our condition will become worse and worse by new entails, till agriculture and industry be annihilated. Were the great entailed estates in Scotland, split into small properties of fifty or a hundred pounds yearly rent, we should soon be enabled, not only to supply our own markets, but to spare for our neighbours.

In the next place, our entails are no less subversive of commerce than of agriculture. There are numberless land-estates in Scotland of one, two, or three hundred pounds yearly rent. Such an estate cannot afford bare necessaries to the proprietor, if he pretend to live like a gentleman. But he has an excellent resource: let him apply to any branch of trade, his estate will afford him credit for what money he wants. The profit he makes, pays the interest of the money borrowed, with a surplus; and this surplus, added to the rent of his estate, enables him to live comfortably. A number of land-proprietors in such circumstances, would advance commerce to a great height. But alas! there are not many who have that resource: such is the itch in Scotland for entailing, as even to descend lower than one hundred pounds yearly. Can one behold with patience, the countenance that is given to selfish wrong-headed people, acting in direct opposition to the prosperity of their country? Commerce is no less hurt in another respect: when

when our land is withdrawn from commerce by entails, every prosperous trader will desert a country where he can find no land to purchase; for to raise a family by acquiring an estate in land, is the ultimate aim of every merchant, and of every man who accumulates money.

Thirdly, An entail is a bitter enemy to population. Population is generally proportioned to the number of land-proprietors. A very small portion of land, managed with skill and industry, affords bread to a numerous family; and the great aim of the frugal proprietor, is to provide a fund for educating his children, and for establishing them in business. A numerous issue, at the same time, is commonly the lot of the temperate and frugal; because they are strangers to luxury and voluptuousness, which enervate the body, and dry up the sources of procreation. This is no chimaera or fond imagination: traverse Europe; compare great capitals with distant provinces; and it will be found to hold universally, that children abound much more among the industrious poor, than among the luxurious rich. But if division of land into small properties, tend to population; depopulation must be the necessary consequence of an entail, the avowed intent of which is to unite many small properties in one great estate; and consequently, to reduce land-proprietors to a small number.

Let us, in the fourth place, take under consideration, the children of landholders with respect to education and industry; for unless men be usefully employ'd, population is of no real advantage to a state. In that respect, great and small estates admit no comparison. Children of great families, accustomed to affluence and luxury, are too proud for business; and were they even willing, are incapable to drudge at a laborious employment. At the same time, as the father's hands are tied up by his entail from affording them means to subsist as persons of rank, they become a burden on the family, and on the state, and can do no service to
either,



either, but by dying. Yet there are men so blind, or so callous, as to be fond of entails. Let us try whether a more pleasing scene will have any effect upon them. Children of small landholders, are from infancy educated in a frugal manner; and they must be industrious, as they depend on industry for bread. Among that class of men, education has its most powerful influence; and upon that class a nation chiefly relies, for its skilful artists and manufacturers, for its lawyers, physicians, divines, and even for its generals and statesmen.

And this leads to consider, in the fifth place, the influence that great and small estates have on manners. Gentlemen of a moderate fortune, connected with their superiors and inferiors, improve society, by spreading kindly affection through the whole members of the state. In such only resides the genuine spirit of liberty, abhorrent equally of servility to superiors and of tyranny to inferiors. The nature of the British government, creates a mutual dependence of the great and small on each other. The great have favours to bestow: the small have many more, by their privilege of electing parliament-men; which obliges men of high rank to affect popularity, if they have none at heart. This connection produces good manners at least between different ranks, and perhaps some degree of cordiality. Accumulation of land into great estates, produces opposite manners: when all the land in Scotland is swallow'd up by a number of grandees, and few gentlemen of the middle rank are left; even the appearance of popularity will vanish, leaving pride and insolence on the one hand, and abject servility on the other. In a word, the distribution of land into many shares, accords charmingly with the free spirit of the British constitution; but nothing is more repugnant to that spirit, than overgrown estates in land.

In the sixth place, Arts and sciences can never flourish in a country, where all the land is engrossed by a few men. Science
will

will never be cultivated by the dispirited tenant, who can scarce procure bread; and still less, if possible, by the insolent landlord, who is too self-sufficient for instruction. There will be no encouragement for arts: great and opulent proprietors, fostering ambitious views, will cling to the seat of government, which is far removed from Scotland; and if vanity make them sometimes display their grandeur at their country-seats, they will be too delicate for any articles of luxury but what are foreign. The arts and sciences being thus banished, Scotland will be deserted by every man of spirit who can find bread elsewhere.

In the seventh place, Such overgrown estates will produce an irregular and dangerous influence with respect to the House of Commons. The parliament-boroughs will be subdued by weight of money; and with respect to county-elections, it is a chance if there be left in a county as many landholders capable to elect, and to be elected, as even to afford a choice. In such circumstances, will our constitution be in no danger, from the ambitious views of men elevated above others by their vast possessions? Is it unlikely, that such men, taking advantage of public discord, will become an united body of ambitious oppressors, overawing their sovereign as well as their fellow-subjects? Such was the miserable condition of Britain, while the feudal oligarchy subsisted: such at present is the miserable condition of Poland: and such will be the miserable condition of Scotland, if the legislature afford not a remedy.

If the public interest only were to be regarded, the axe ought to be applied, cutting down entails to the very root: but a numberless body of substitutes are interested, many of whom would be disinherited, if the tenants in tail had power. To reconcile as much as possible these opposite interests, it is proposed, that the following articles be authorised by a statute. First, That the act of parliament 1685 be repealed with respect to all future operations.



tions. Second, That entails already made and completed, shall continue effectual to such substitutes as exist at the date of the act proposed; but shall not benefit any substitute born after it. Third, That power be reserved to every proprietor, after the act 1685 is at an end, to settle his estate upon what heirs he thinks proper, and to bar these heirs from altering the order of succession; these powers being inherent in property at common law.

At the same time, the prohibiting entails will avail little, if trust-deeds be permitted in their utmost extent, as in England. And therefore, in order to re-establish the law of nature with respect to land-property, a limitation of trust-deeds is necessary. My proposal is, That no trust-deed, directing or limiting the succession of heirs to a land-estate, shall be effectual beyond the life of the heirs in existence at the time.

SKETCH



S K E T C H II.

Government of ROYAL BOROUGHS in Scotland.

BY a royal borough is in Scotland understood an incorporation that hold their lands of the crown, and are governed by magistrates of their own naming. The administration of the annual revenues of a royal borough, termed the *common good*, is trusted to the magistrates; but not without control. It was originally subjected to the review of the Great Chamberlain; and accordingly the chap. 39. § 45. of the *Iter Camerarii*, contains the following articles, recommended to the Chamberlain to be enquired into. “ Giff there be an good assedation and uptaking of the
 “ common good of the burgh, and giff faithful compt be made
 “ thereof to the community of the burgh; and giff no compt is
 “ made, he whom and in quhaes hands it is come, and how it
 “ passses by the community.” In pursuance of these instructions, the Chamberlain’s precept for holding the ayr, or circuit, is directed to the provost and bailies, enjoining them, “ to call all those
 “ who have received any of the town’s revenues, or used any of-
 “ fice within the burgh, since the last chamberlain-ayr, to an-
 “ swer such things as shall be laid to their charge.” *Iter Camer. cap. 1.* And in the third chapter, which contains the forms of the chamberlain-ayr, the first thing to be done after fencing the court, is, to call the bailies and serjeants to be challenged and accused from the time of the last ayr.



This office, dangerous by excess of power, being suppressed, the royal boroughs were left in a state of anarchy. The magistracy, being now no longer under any check or control, was coveted by noblemen and gentlemen in the neighbourhood; who, under the name of office-bearers, laid their hands on the revenues of the borough, and converted all to their own profit. This corruption was heavily complained of in the reign of James V.; and a remedy was provided by act 26. parl. 1535, enacting, 1st, That none be qualified to be provost, bailie, or alderman, but an indwelling burges. 2dly, "That no inhabitant purchase lordship out of burgh, to the terror of his comburgesses. And, 3dly, That all provosts, bailies, and aldermen of boroughs, bring yearly to the chequer at a day certain, the compt-books of their common good, to be seen and considered by the Lords Auditors, giff the same be spended for the common well of the burgh, or not, under the penalty of losing their freedom. And that the saids provosts, bailies, and aldermen, warn yearly, fifteen days before their coming to the chequer, all those who are willing to come for examining the said accounts, that they may impugn the same, in order that all murmur may cease in that behalf." And to enforce these regulations, a brieve was issued from the chancery, commanding the magistrates to present their accounts to the exchequer, and summoning the burgeses to appear and object to the same.

A defect in this statute made it less effectual than it was intended to be. Magistrates, to avoid the penalty, brought the count-books of their common good to the exchequer; but they brought no rental of the common good to found a charge against them. This defect was remedied by act 28. parl. 1693, containing the following preamble. "That the royal boroughs, by the male-administration of their magistrates, have fallen under great debts and burdens, to the diminution of their dignity, and the disabling

“ abling of them to serve the crown and government as they
“ ought; and that the care, oversight, and control of the com-
“ mon good of boroughs, belong to their Majesties by virtue of
“ their prerogative-royal; therefore, for preventing the like abuses
“ and misapplications in all time thereafter, their Majesties sta-
“ tute and ordain, That every burgh-royal, shall, betwixt and
“ the first of November next, bring to the Lords of Treasury and
“ Exchequer, an exact account of charge and discharge, subscri-
“ bed by the magistrates and town-clerk, of their whole public-
“ good and revenues, and of the whole debts and incumbrances
“ that affect the same.” This completed the remedy, by putting
means into the hands of the Barons of Exchequer, to control
the accounts enjoined by the former statute to be yearly given in.

The foregoing regulations are kept in observance. Every year
a precept issues from the exchequer, signed by one of the Barons,
addressed to the director of the chancery, requiring him to make
out a brieve for every royal borough. The brieve is accordingly
made out, returned to the exchequer, and sent to the several
sheriffs, to be served in all the royal boroughs within their
bounds, as directed by the statute. These brieves are accord-
ingly so served by the sheriffs; and particularly it is a constant form
in most of the royal boroughs, to issue a proclamation, fifteen days
before the day named for appearance in exchequer, warning the
inhabitants to repair there, in order to object to the public ac-
counts of the town: and further, in order to give them opportu-
nity to frame objections, the book and counts are laid open for
these fifteen days, to be inspected by all the inhabitants.

We learn from the records of exchequer, that from the year
1660 to the year 1683, accounts were regularly given in to ex-
chequer, in obedience to the statute. The town of Edinburgh
only having failed for some short time, Captain Thomas Hamil-
ton merchant there, by an action in exchequer, compelled the
magistrates



magistrates to produce upon oath their treasurer's accounts, which were accordingly audited. And we also learn, that from the Restoration down to the Union, a clerk to the borough-roll was appointed by the crown, whose proper business it was to examine and audite the accounts of the boroughs.

Notwithstanding the foregoing salutary regulations, and the form constantly practised to make them effectual, the boroughs of late years have forborn to present their accounts in exchequer; hoping that they would be overlooked by the English court of exchequer, established in Scotland after the Union; which accordingly happened. This neglect in the court of exchequer is greatly to be regretted, because it reduces the royal boroughs, by the male-administration of their magistrates, to the same miserable condition that is so loudly complained of in the statutes above mentioned. It is undoubtedly in the power of the Barons to restore good government to the boroughs, by compelling the magistrates to account yearly in the court of exchequer, according to the foregoing regulations. And to that end no more is necessary, but to signify publicly that they are resolved hereafter to put these regulations in execution.

How beneficial that step would be to this country in general, and to the royal boroughs in particular, will appear from considering, first, the unhappy consequences that result from suffering magistrates to dispose of the town's revenues, without any check or control; and next the good effects that must result from a regular and careful management, under the inspection of the King's judges.

The unhappy consequences of leaving magistrates without any check or control, are too visible to be disguised. The revenues of a royal borough are seldom laid out for the good of the town, but in making friends to the knot who are in possession of the magistracy; and in rioting and drunkenness, for which every pre-

text



text is laid hold of, particularly that of hospitality to strangers. Such mismanagement tends to idleness, and corruption of manners; which accordingly are remarkable in most royal boroughs. Nor is the contagion confined within the town: it commonly spreads all around.

Another consequence, no less fatal, of leaving magistrates to act without control, is a strong desire in every licentious burgher, of stepping into the magistracy, for his own sake, and for that of his friends. Hence the factions and animosities that prevail in almost all the royal boroughs; which are violently and indecently pursued, without the least regard to the good of the community.

The greatest evil of all, respects the choice of their representatives in parliament. A habit of riot and intemperance, makes them fit subjects to be corrupted, by every adventurer who is willing to lay out money for purchasing a seat in parliament. Hence the infamous practice of bribery at elections, which tends not only to corrupt the whole mass of the people, but, which is still more dreadful, tends to fill the House of Commons with men of dissolute manners, void of probity and honour.

But turning from scenes so dismal, let us view the beautiful effects that result, from an administration regularly carried on, as directed by the statutes above mentioned. The revenues of the royal boroughs are supposed to be above L. 40,000 yearly. And were this sum, or the half of it, prudently expended, for promoting arts and industry among the numerous inhabitants of royal boroughs, the benefit, in a country so narrow and poor as Scotland, would be immense: it would tend to population, it would greatly increase industry, manufactures, and commerce, beside augmenting the public revenue. In the next place, as there would be no temptation for designing men to convert the burden of magistracy into a benefit, faction and discord would vanish; and there would be no less solicitude to shun the burden, than at present



present is seen to obtain it. None would submit to the burden but the truly patriotic, men who would cheerfully bestow their time, and perhaps their money, upon the public; and whose ambition it would be to acquire a character, by promoting industry, temperance, and honesty, among their fellow-citizens.

And when the government of the royal boroughs comes to be in so good hands, bribery, which corrupts the very vitals of our constitution, will be banished of course. And considering the proper and constitutional dependence of the royal boroughs upon the king's judges, we may have reasonable assurance, that few representatives will be chosen, but who are friends to their country and to their sovereign.

S K E T C H



S K E T C H III.

Plan for improving and preserving in order the
HIGHWAYS in Scotland.

P R E F A C E.

*H*ighways have in Scotland become a capital object of police, by the increase of inland commerce, upon which bad roads are a heavy tax. Happily for our country, no person is ignorant of this truth; and we see with pleasure the fruits of their conviction in various attempts, public and private, to establish this valuable branch of police upon the best footing. As this will be found no easy task, it may reasonably be hoped, that men of genius will seriously apply themselves to it, and in general that every person will freely produce such hints as occur to them. In the latter view the following plan is offered to the public: and if, from the various proposals that have been or shall be published, an effective plan can be framed, such as completely to answer its purpose, it may safely be pronounced, that it will produce more benefit to this country, than has been produced by any other single improvement since the union of the two kingdoms.



1. **T**HE justices of peace, commissioners of supply, the sheriff or steward depute, and the first magistrate of royal boroughs, shall be commissioners for making and repairing highways, bridges, and ferries, in the several shires and stewartries. All the powers given by law to the justices of peace, and commissioners of supply, with respect to highways, bridges, and ferries, shall be transferred to them; and any two shall be a quorum, except where a greater number is required by this act.

2. The sheriff or steward depute shall appoint the first day of meeting of the said commissioners, as soon as may conveniently be after the date of the act, by an intimation at each parish-church upon a Sunday at the close of the forenoon-service. And the last Tuesday of March shall yearly thereafter be a day of meeting at the head borough of the shire or stewartry, in place of the first or third Tuesday of May appointed by former acts. The commissioners shall appoint a preses, convener, and clerk: and they shall be empowered to adjourn themselves from time to time.

3. The commissioners, at their first meeting, shall set about a division of the shire or stewartry into two or more districts, as they see convenient. And if they cannot overtake this work at that meeting, they shall appoint proper persons to form a plan of the intended divisions, which plan shall be reported to the commissioners at their next meeting, in order to be approved or altered by them. This being settled, the commissioners shall appoint the heritors in these several districts, or any three of them, to meet on a certain day and place, to make lists of the whole public roads within their respective districts, and to settle the order of reparation, beginning with those that are the most frequented. The proceedings of these district-meetings must be reported to the commissioners, at their next meeting; who are empowered to settle the order of reparation, in case of variance among the heritors;



tors; and also to add any road that may have been omitted. And they shall record a scheme or plan of the whole roads in the shire, thus enlisted, with their resolutions thereupon, to be seen in the clerk's hands *gratis*. But upon any just cause appearing in the course of administration, the commissioners shall be empowered to alter or vary this plan, provided it be at a meeting previously appointed for that purpose, and where three fifths at least of the commissioners are present.

4. If the sheriff or steward neglect to appoint the first meeting of the commissioners, he shall incur a penalty of L. 100, upon a summary complaint to the court of session by any one heritor of the shire; with costs of suit, the one half to the plaintiff, and the other half to be applied by the commissioners for the purposes of this act. If the commissioners fail to meet at the day appointed by the sheriff or steward, or fail to divide the shire or stewardry into districts, within six months of their first meeting, the sheriff or steward depute, under the foresaid penalty, shall be bound to do that work himself; and also to appoint the heritors in the several districts, or any three of them, to make lists of the public roads as above mentioned, and to report their resolutions to him; and he is empowered to settle the order of reparation, in case of variance among the heritors. If the heritors fail to meet, and to make a list of the roads as aforesaid, this work shall be performed by the sheriff or steward depute himself. And he shall be indemnified of whatever expences he is at in prosecuting the said work, out of the sums that are to be levied by authority of this act, in manner after mentioned, with an additional sum for his own trouble, to be named by the circuit-judges.

5. No person shall act as a commissioner upon this statute, but who has an estate within the county of L. 200 Scots valuation, or is heir-presumptive to such an estate, or is named a commissioner *virtute officii*, under the penalty of L. 20 Sterling *toties quoties*, to



be prosecuted before any competent court, by a popular action, with costs of suit; the one half to the plaintiff, the other half to the purposes of this act.

6. Whereas the sum of 10 d. directed by the act 1669 to be imposed upon each L. 100 of valued rent, is insufficient for the purposes therein expressed; and whereas the six days statute-work for repairing the highways is in many respects inconvenient; therefore instead of the 10 d. and instead of the statute-work, the commissioners, together with the heritors possessed of L. 200 Scots of valued rent, five, whether commissioners or heritors, making a quorum, shall annually, upon the said last Tuesday of March, assess each heritor in a sum not exceeding upon each L. 100 valued rent; the assessment imposed on the heritors to be levied by the collector of supply, along with the cess, and by the same legal remedies. The heritors are entitled to relieve themselves of the one half of the said assessment, by laying the same upon their tenants, in proportion to their rents; an heritor being always considered as a tenant of the land he has in his natural possession.

7. With respect to boroughs of royalty, regality, and barony, and large trading villages, the commissioners are empowered to levy from each householder, a sum not exceeding 2 s. yearly, more or less in proportion to the assessment of the shire, to be paid within forty days after notice given, under the penalty of double, besides expence of process. Provided, that any of these householders who have country-farms, by which they contribute to relieve their landlords as above mentioned, shall be exempted from this part of the assessment.

8. If the commissioners and heritors neglect to assess their shire, or name so small a sum as to be an elusory assessment, insufficient to answer the purposes of this act, the court of justiciary, or the circuit-judges, are in that case empowered and required to lay on the
the



the highest assessment that is made lawful by this act. In case of a total omission, the commissioners and heritors who, by neglecting to convene without a good cause of absence, have occasioned the said omission, shall be subjected each of them to a penalty of L. 20 Sterling. And to make these penalties effectual, the trustees for fisheries and manufactures are appointed to sue for the same before the court of session, and to apply the same, when recovered, to any useful purpose within the shire, especially to the purposes of this act. And to preserve the said fines entire for the public service, the trustees shall be entitled to costs of suit.

9. The sums levied as aforesaid shall be laid out annually upon the highways, bridges, and ferries, for making, repairing, or improving the same; proceeding regularly with the reparation according to the scheme or plan ordered as above to be settled in each shire and stewartry.

10. With respect to roads that are not the first in order, and for which there is no interim provision by this act during reparation of the more frequented roads, the commissioners are empowered to exact from cottars and day-labourers their statute-work according to the acts presently in force, to be applied to those secondary roads. The statute-work is not to be demanded unless for this purpose; and is to cease totally after the highways have, by means of the present act, been once totally repaired.

11. The commissioners and heritors, at all their meetings, shall bear their own charges.

12. The clause in the act 1661, empowering heritors, at the sight of the sheriff, to cast about highways for their convenience, shall be repealed; and it shall be declared unlawful, in time coming, to turn about or change any highway, unless for the benefit of the public, as by shortening it, carrying it through firmer ground, or making it more level; and to that purpose the commissioners



missioners shall be impowered to turn about highways, as also to widen the same, not exceeding thirty feet, free of ditches. But the commissioners shall have no power to carry a road through any house, garden, orchard, or pleasure-ground.

13. The commissioners shall have power to take from the adjacent lands, stones, sand, gravel, or other materials for making the highways, paying always for the damage done.

14. With respect to high-roads which bound the properties of neighbouring heritors, and which it may be found necessary to alter or widen, the commissioners shall be empowered to adjudge to one heritor any small bits of ground cut off from the other by the road so altered; and if land cannot be given for land, to make a compensation in money, valuing the land at the current price of the country.

15. In order to prevent water stagnating on the highways, the commissioners shall be impowered to make ditches or drains through neighbouring grounds; and such ditches or drains shall be preserved entire by the proprietors of the land, or at their charges.

16. As the foresaid assessment, after repairing the highways, may not be sufficient for building bridges, or making ferries, where rivers are large; any five of the commissioners may, for building bridges, or making ferries, establish a pontage or toll; so much for horses, so much for horned cattle, and so much for sheep, and the double for each beast in a wheel-carriage. Upon the credit of the toll, the said commissioners may borrow money, to be employed wholly upon the bridge or ferry where the toll is gathered. But before borrowing the money, an estimate must be made of the expence of the work. After the work is finished, the sum bestowed on it must be ascertained: an accurate account must be kept of the gradual payment of this sum by the toll; and when
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it is completely paid, the commissioners must declare the bridge or ferry to be free.

17. The determinations of the commissioners shall be final, unless complained of in manner following.

18. If any heritor apprehend that undue preference is given to a certain highway, or conceive himself aggrieved by any order or sentence of the commissioners, it shall be lawful for him, within forty days of the act complained of, to enter a complaint in the court of session; and the judgement upon such complaint shall be final. But such complaint shall only be effectual for damages, and shall not stay execution of the work. At the same time, no complaint shall be admitted till security be given to pay full costs, in case the plaintiff be found in the wrong.

19. Former laws concerning highways, bridges, or ferries, to continue in force, unless as far as altered by this act.

20. An annual state of what is done by virtue of this act, made up by the commissioners, or their clerk, shall, before the last Tuesday of March, be laid before the trustees for fisheries and manufactures, in order to be made a part of their annual report to the King; and these trustees shall direct proper persons to inspect what work is done upon the high-roads, and in what manner. Upon any misapplication or embezzlement of the money levied, any neglect in levying, or any wrong done to the public, contrary to the intention of this act, the trustees are required to set on foot and prosecute what redress is competent in law or equity, provided the prosecution be commenced within a year after the offence.

Query, Ought not broad wheels to be required?

CON-



CONSIDERATIONS on the preceding PLAN.

THE laws in Scotland relating to this branch of public police, are numerous; some enacted while Scotland was a separate kingdom, some after its union with England. It is not the purpose of this paper to enter into a detail of the various regulations established by these laws: they are generally known; and in the late abridgement of our statute-law, they are all recapitulated with brevity and precision. It shall suffice cursorily to observe, that the acts made during the reign of Charles II. form the groundwork of our regulations concerning highways: the later acts are little more than explanatory of the former.

It seems to have been the plan of the legislature, that highways should be repaired by those who are employed in husbandry; and accordingly, the six days annual labour is, in the statutes of Charles II. imposed upon them only.

This was a measure not ill suited to the state of Scotland at that period. During the last century, we had little inland commerce to require good roads, except that of corn carried to market; and for that reason, it was natural to impose upon husbandmen the burden of repairing highways. These persons, at the same time, passing the whole summer in idleness, unless when called to perform personal services to capricious and unfeeling landlords, could not think it a hardship to have some part of their time employed in serving themselves instead of their landlords.

That annual labour upon highways, limited to a few days, should be required from men in that condition, appears not unjust. And why may we not suppose the legislature at that time capable



capable of such enlarged views, as to prefer this method for repairing highways, in order to bring on gradually a habit of labour and industry? But the condition of Scotland at present differs widely from what it was in the reign of Charles II.; and the regulations for repairing highways which were then proper, have, by alteration of circumstances, become both unjust and inexpedient.

Unjust they have become in a high degree. Inland commerce, which begins to flourish in Scotland, is greatly promoted by good roads; and every dealer, and indeed every traveller, profits by them. But no men are less interested in good roads than day-labourers, or those who are commonly called *cottars*; and yet these chiefly are burdened with the reparation. Such men, at the same time having commonly many children, find it difficult to support their families, even with their utmost industry. Nothing can be more unjust, than to impose upon such men an annual tax of six days labour for repairing roads, the goodness of which contributes little or nothing to their convenience.

Our present laws are inexpedient, as well as unjust. In the first place, a tax of this nature discourages the propagation of children, in which the strength of a state consists: the poor labourer ought to be encouraged with a reward, instead of being discouraged with a tax. In the next place, *cottars* called out to perform the statute-work, obey with reluctance, and trifle away time without doing any thing effectual. To enforce the law, and to compel such men to labour, is grievous to the gentlemen who are empowered to execute the law: they cannot punish with rigour or firmness, men who have so good reason to decline the service: they are soon disgusted with being taskmasters, and the generality desist altogether.

Laws concerning private property are always kept in observance, and they execute themselves, as is commonly expressed,



because there are always a multitude of individuals strongly interested to have them executed. But in making public laws, the great difficulty has ever been, to lay down effectual measures for putting them in execution; and by what means to make such laws execute themselves, is one of the most intricate problems in politics. Our laws concerning highways, are eminently defective in that respect: and accordingly, tho' most of them have existed near a century, they never have at any period been executed to any extent. Take the following specimen, among many that may be urged, of this defect. Overseers are forc'd into the service under a penalty, in order to compel the peasants to perform faithfully their six-days labour. To hope any good from a reluctant overseer set over a set of reluctant labourers, is a fond conceit: it is much if his resentment tempt him not to encourage their idleness. In vain would we expect, that any overseer, without a suitable reward, will exert himself in promoting the work.

To remedy the hardship of laying the burden of reparation upon those who are least able and least benefited, and at the same time to make this remedy effectual, is the purpose of the foregoing plan. And upon considering the matter in its different views, the only method that promises success, appears to be a county-tax laid upon land according to the valuation, and a capitation-tax on the inhabitants of boroughs. These taxes relieve the labouring poor, and lay the burden where it ought to be laid: and the law will execute itself, if that effect can be hoped from any public law. Effectual measures are laid down for levying the tax: and, if once levied, there is no danger of its being allowed to lie unemploy'd in the hands of the collector; for every heritor will be anxious to have some part employ'd for his benefit. The danger will rather be of factious disputes about the distribution. This danger also is attempted to be prevented; and, it is hoped, with success.

Some



Some narrow-minded persons may possibly grudge a tax, that loads the present generation for the advantage of those who come after: but is it rational to grudge, that others should benefit by measures evidently calculated for advancing our own interest? Let us suppose, that the heritors of a shire were to concert measures in common, for improving their lands: to make good roads would be one effectual measure; for supposing the reparation to cost L. 5000, their estates would be bettered double that sum.

To conclude: It is not to be expected that any regulations concerning highways, or concerning any branch of police, can be so framed as to please every individual. Wise men are practicable men, to use an expression of Lord Bacon, and will make concessions in order to promote a general good, if without such concessions it cannot be obtained. Better far to have a good law, tho' in our opinion defective in some articles, than to have no law at all, or, which is worse, a law eminently defective, unjust, and inexpedient.

F I N I S.

