

THE
CLAIM
OF THE
AMERICAN LOYALISTS
REVIEWED AND MAINTAINED
UPON
INCONTROVERTIBLE PRINCIPLES
OF
LAW AND JUSTICE.

“ The high Court of Parliament ought to give *Example* to
“ inferior Courts of proceeding according to JUSTICE.”

*The Opinion of the Judges in the Case of the
Counts of Salisbury.*

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INTRODUCTION.

IF any apology can be necessary for the following review, we have many to offer, any one of which, we trust, will satisfy the ingenuous enquirer.

The claim of the American Loyalists, upon a candid examination, will appear to stand upon the highest ground of national honour and national justice. Their pleas of merit are, a *faithful obedience* to his Majesty's commands, —a *firm confidence* in his ROYAL FAITH— a *perfect reliance* on the assurances of both Houses of the BRITISH LEGISLATURE; and a faithful discharge of the first of all political duties, by their *undaunted exertions* in the support and defence of the authority of the *Crown*, and the RIGHTS of Parliament; in consequence of which, their fortunes have been sacrificed to the national safety. Their pleas of *right* are the *unchangeable* principles of reason and justice—the *fundamental* laws of the British constitution—the *sacred obligations*, by which the Sovereign Authority is bound to indemnify

indemnify its faithful subjects—the faith of THEIR GRACIOUS SOVEREIGN, and the SOLEMN promises of Parliament PLEDGED to them for that indemnity.

It must be confessed, that in a claim established upon such principles, the dictates of reason and justice forbid *all delay*; and yet (from what causes we presume not to suggest), FIVE years have elapsed since the right was perfectly vested, and since it was clearly acknowledged by the Ministers, who devoted their fortunes to the national necessities; and by many others of the most eminent and learned speakers of both Houses of Parliament. Their Sovereign has been graciously pleased, long since, to recommend it to the consideration of Parliament. A Bill has been passed to enquire into their losses, and reports have been made, from time to time, of the value of those losses to the Lords of his Majesty's Treasury, which have been laid before the House of Commons; notwithstanding which, the claimants still remain altogether in the dark, respecting the issue of their claim. Their *bumble prayers* for justice have not been wanting. Their petitions to Parliament have been repeatedly presented, and, contrary to many, and, as we believe, to all precedents in cases.

cases of much less public merit, have been ordered, session after session, to lie on the table. Their claim of justice has not been fulfilled, discussed, or even examined. Hence it is, that their minds, before too much oppressed by their misfortunes, have remained in the most painful and distressing uncertainty, suspense, and anxiety. Many of them, who might have been made happy by the sums reported to be due to them, are at this moment labouring under all the distresses incident to poverty and want. Numbers in Nova Scotia have been supported by the charitable donations of their friends*, the subjects of the American States. Many are labouring under the want of means to subsist themselves on their uncultivated farms; many, through the prospect of want, have died of broken hearts; and others have been driven, by their extreme distress, into *insanity*, and from insanity to **SUICIDE**, leaving their helpless widows and orphans to prolong their miserable existence on the cold charity of others.

* The Quakers of Pennsylvania being informed that a number of their brethren, Loyalists in Nova Scotia, who had been driven from the United States on account of their fidelity to Great Britain, were in extreme distress, after the rations allowed by his Majesty's treasury had been withdrawn, have charitably collected considerable sums of money, and sent them several hundred barrels of flour and other provisions for their subsistence,

In stating these melancholy truths, and in publishing the following review, we trust no person will think that we can mean to give offence. Our design is simply to revive a claim of the first public merit which seemed to be sinking into *oblivion*, and to give information to those on whose liberality and justice we most sincerely rely; and who, we are firmly persuaded, when they shall *candidly* and *maturely* consider the facts upon which their claim is founded, will make that compensation which is due to them as British subjects by the faith of Majesty, and the honour of Parliament, and the fundamental laws of the British constitution.

THE

T H E
C L A I M
O F T H E
AMERICAN LOYALISTS
R E V I E W E D.

C H A P. I.

*The Case of the American Loyalists briefly
stated.*

IN the year 1764, several tumults and insurrections *against the authority of the Crown and the rights of Parliament* took place in America. The houses and other property of divers persons, who had discharged their duty in attempting to carry that authority and those rights into execution, were destroyed, whereupon both Houses

Resolved, "That an humble Address be
" presented to his Majesty, to desire that he
B " would

“ would be graciously pleased to give in-
 “ structions to the Governors of the several
 “ provinces where those tumults and insur-
 “ rections have happened, that they should,
 “ in his Majesty’s name, *require* the Assem-
 “ blies of the said provinces *to make* A PRO-
 “ PER RECOMPENCE *to those who have suf-*
 “ *fered in their persons or properties, in con-*
 “ *sequence of the said tumults and insurrections ;*
 “ and to assure his Majesty that they will,
 “ upon this and all occasions, support the
 “ lawful authority of the Crown, and the
 “ rights of Parliament.”

And they further

Resolved, “ That all his Majesty’s subjects
 “ *residing* in the said colonies, who *have ma-*
 “ *nifested their desire to comply with, or to assist*
 “ *in carrying into execution the Act for lay-*
 “ *ing a duty on stamps, or any other Act of*
 “ Parliament, in the British Colonies in North
 “ America, have acted *as dutiful and loyal*
 “ *subjects, &c.* and are therefore *entitled to,*
 “ and *will assuredly have the favour and*
 “ PROTECTION of this House.”

In the year 1767, the insurrections in Ame-
 rica encreasing, the House of Commons took
 into their consideration the state of North
 America ;

America; and after full deliberation, came, among others, to the following resolves, viz.

Resolved, “ That tumults and insurrections
 “ of the most dangerous nature have been
 “ raised and carried on in the North American
 “ colonies, in open defiance of the powers and
 “ dignity of his Majesty’s government, and in
 “ *manifest violation of the legislative authority*
 “ of this kingdom.”

Resolved, “ That such persons, who, *on*
 “ *account of the desire which they have mani-*
 “ *fested to comply with, or to assist in carrying*
 “ *into execution, any Acts of the Legislature of*
 “ Great Britain, relating to the British colo-
 “ nies in North America, have suffered any
 “ injury or damage, *ought to have full and*
 “ *ample compensation made to them for the*
 “ *same* by the respective colonies in which
 “ such injuries or damages were sustained.”

Resolved, “ That *all* his Majesty’s subjects
 “ residing in the said colonies, who have
 “ manifested their desire to *comply with, or*
 “ to *assist in* carrying into execution any
 “ Acts of the Legislature, relating to the said
 “ colonies in North America, have acted as
 “ *dutiful and loyal subjects*, and are therefore
 “ ENTITLED TO, and will *assuredly have the*
 “ PROTECTION of the House of Commons of
 “ GREAT BRITAIN.”

The same House of Commons, impressed not only with a proper sense of the national justice which the Loyalists contend for, but with the policy and necessity of holding out *distinguishing rewards*, and marks of the national favour and approbation to those who had and should distinguish themselves by their zeal and fidelity,

Resolved, “ That an humble Address be
 “ presented to his Majesty, that he will be
 “ graciously pleased to confer *some marks of his*
 “ ROYAL FAVOUR on those Governors and
 “ Officers in the several colonies, who distin-
 “ guished themselves by their zeal and fidelity
 “ in supporting the dignity of the Crown, the
 “ just rights of Parliament, and the supreme
 “ authority of Great Britain over the co-
 “ lonies, *during the late disturbances* in
 “ America.”

In the year 1775 the preceding tumults and insurrections against the authority of the Crown and the rights of Parliament, increased to “ open and avowed rebellion.” The leaders assumed the rights of independent legislation, of judicial enquiry, sentence, and execution. The prevalence of the power and violence of the insurgents was such, that, in a little time, those who appeared *desirous* to support

support the authority of the Crown and rights of Parliament, or refused to unite with the insurgents, were *disarmed, tarred, feathered,* and *inhumanly treated.* The King's forts were dismantled. The Governors and the Officers of the Crown, who had continued faithful to their trust, together with all others who had opposed the sedition, were reduced to the alternative of escaping from the tyranny, or of being imprisoned in loathsome dungeons or polluted mines, in which situations *numbers have perished.* Whereupon his Majesty laid this state of the colonies before the two Houses of Parliament, who concurred in assuring his Majesty, "That it was their fixed
 " resolution, at the hazard of their lives and
 " properties, to stand by his Majesty, against
 " all rebellious attempts, in maintenance of
 " his just rights, and of the two Houses of
 " Parliament."—And the aids were accordingly granted for that purpose.

In pursuance of these spirited measures of the Parliament, his Majesty, on the 23d of August in the same year, published a proclamation at St. James's, in which, after reciting that an "open and avowed rebellion
 " existed in America," as the reason of the proclamation, his Majesty adds, "To the end,
 " there-

“ therefore, that none of our subjects may
 “ *neglect or violate* their duty through igno-
 “ rance thereof, or through *any doubt of the*
 “ *protection which the LAW will afford to their*
 “ *loyalty and zeal*, We have thought fit, by
 “ the advice of our Privy Council, to issue
 “ this proclamation, hereby declaring, that
 “ *not only all our Officers, civil and military,*
 “ *are obliged to exert their utmost endeavours*
 “ *to suppress the rebellion, but that all the*
 “ *subjects of our realm, and the dominions*
 “ *thereunto belonging, are bound by law to*
 “ *be aiding and assisting in the suppression of*
 “ *the rebellion, and to disclose and make known*
 “ *all traiterous conspiracies and attempts*
 “ *against our Crown and dignity. And we*
 “ *do accordingly strictly charge and command*
 “ *all our Officers, civil and military, and all*
 “ *other our obedient and loyal subjects, to use*
 “ *their utmost endeavours to withstand and*
 “ *suppress such rebellion,*” &c.

In the same year General Gage, Com-
 mander in Chief of the British forces in
 America, issued his proclamation, declaring,
 “ that all those who should protect, assist,
 “ supply, conceal, or correspond with the
 “ insurgents, should be treated as rebels and
 “ traitors.”

The usurped legislatures of the several colonies, in their turn, passed laws, declaring, " That all persons who should aid, assist, or correspond with the subjects of Great Britain, should be adjudged guilty of high treason against their authorities." And under these laws they attainted the persons, and confiscated the property, of all who adhered to their allegiance, or gave the least aid or assistance towards supporting " the authority of the Crown, or rights of Parliament."

The critical and dangerous predicament in which these transactions placed the Loyalists, is not easily described. General Burgoyne, who was on the spot, has attempted to give some idea of the dreadful scene, which he declares to consist of " *arbitrary imprisonment, confiscation of property, persecution and torture, unprecedented in the INQUISITION OF ROME.* These are inflicted," continues the General, " by Assemblies and Committees, who dare to style themselves friends to liberty, upon the *most faithful subjects,* without distinction of age or sex, for the *sole crime, often for the sole suspicion,* of having adhered in principle to the government under which they were born, and to which,

" by

“ by every tie, human and divine, they
“ owed allegiance.”

Notwithstanding this critical and dreadful situation into which the Loyalists were drawn by their confidence in his Majesty's proclamation, and the assurances of Parliament; and notwithstanding many had suffered death, and numbers were languishing in dungeons and mines; the Commissioners of his Majesty and Parliament, and Commanders in Chief acting under his Majesty's authority, did not cease to call on those who survived to adhere to their allegiance, and for their assistance.

In the year 1776, Lord Viscount Howe * published a proclamation, and as a farther and more especial encouragement expressly declared, “ That *due consideration* should be
“ had to the meritorious services of all per-
“ sons who should aid and assist in restoring
“ the public tranquillity, and that *every suit-*
“ *able encouragement* should be given for pro-
“ moting such measures as should be condu-
“ cive to the establishment of civil govern-
“ ment and peace.”

In the same year, two other proclamations were issued by Lord and General Howe, and

* One of the Parliamentary Commissioners, and Commander in Chief of his Majesty's naval forces in America.

a declaration by the latter in the year following, calling on the people to discharge their duties as subjects.

In the year 1778, his Majesty's Commissioners acting under the authority of Parliament, in their manifesto and letter to Henry Laurens, President of Congress, which they afterwards published throughout America, declare, that a " regard must be paid to the
 " many who, from affection to Great Britain,
 " have exposed themselves to suffer in this
 " contest, *and to whom Great Britain owes*
 " *support at EVERY EXPENCE OF BLOOD*
 " *AND TREASURE.*"

In the same year the same Commissioners published their manifesto and proclamation, in which they call on the people of America in general, " to vie with each other in eager
 " and cordial endeavours to secure their own
 " peace, and to promote and establish the
 " prosperity of their country, and the general
 " weal of the empire ;" and in particular, apply to and command " all Officers, civil and
 " military, and *all other his Majesty's loving*
 " *subjects* whatever, to be aiding and assisting
 " unto them in the execution of their manifesto and proclamation, and all matters
 " therein contained."

On the 23d of May 1780, Sir Henry Clinton issued a proclamation, wherein, in his Majesty's name, he called on and commanded all persons whatsoever, to be aiding and assisting to his forces, whenever they should be required, in order to extirpate the rebellion; and for the encouragement of the King's faithful and peaceable subjects, he assured them, "that they should meet with *effectual countenance, protection, and support*;" and the same requisition and assurances were with equal solemnity repeated in a subsequent proclamation published by Sir Henry Clinton and Vice-Admiral Arbuthnot, as his Majesty's Commissioners to restore peace and good government in the several colonies in rebellion, on the first of June following.

In the year 1778, the Congress, desirous of weakening the British power, and of gaining over the influence and assistance of the Loyalists, by a resolve, recommended to the several States to repeal the sanguinary laws made against them, and to restore their property which had been confiscated; and overtures were made by General Washington to take them under his protection; but although they had reason to apprehend, from the evacuation of Philadelphia by order of the British government,

ment, the subsequent movement of the troops from America to the West Indies, and the numbers in both Houses of Parliament against carrying on the war in the colonies, that they were about to be deserted by the British arms ; yet, with this prospect of distress, which no language can describe, they considered their allegiance to his Majesty, and their connection with their fellow-subjects, *as sacred and inviolable* ; the infallible consequence of which was, a more general attainder of their lives, and a confiscation of their fortunes ; although, had they then withdrawn from their allegiance, they might have obtained a repeal of the laws attainting their lives, and been restored to their property. Under these circumstances, painful as they were, they never complained. Their *loyalty* and *zeal* in the cause of the *State* remained undiminished, or rather kept pace with their encreasing distress. All the tender ties of the parent, husband, and son, were overcome by their public virtue ; nor did they desert the sinking cause of their country until *she deserted it herself*. Thus led forth from the *rest* of their fellow-subjects, by their duty to the State, their obedience to his Majesty's command, and the assurances of both Houses of Parliament, they firmly confided in the *royal faith*, and the

honour and justice of Parliament, that they would at all events afford them the protection due to them by law, and so solemnly promised.

In the year 1781, the Loyalists, being alarmed at the distinction made in the articles of capitulation of York, in Virginia, between British subjects and the Loyalists who had rendered themselves amenable to the sanguinary laws of the New States, his Excellency William Franklin, Esq. Governor of the province of New Jersey, wrote to Lord George Germaine, then Secretary for the American department, on the subject. In answer to which letter, his Lordship wrote to the Governor on the 2d of January 1782, That “ the alarm
 “ taken by the loyal Refugees at the fifth article of Lord Cornwallis’s capitulation is
 “ not to be wondered at. The King’s
 “ ANXIETY to remove the *fears*, and restore
 “ the *confidence*, of those ZEALOUS and MERITORIOUS SUBJECTS, has induced HIS
 “ MAJESTY to direct me further to express
 “ to Sir Henry Clinton (then Commander in
 “ Chief of all the British Forces in America)
 “ his royal pleasure, that he should, in his
 “ MAJESTY’S NAME, give them the FULLEST assurances of the continuance of HIS
 “ AFFEC-

“ AFFECTION and REGARD for their HAP-
 “ PINESS, and that, IN ALL EVENTS, they
 “ may RELY upon the utmost attention be-
 “ ing shewn to their SAFETY AND WEL-
 “ FARE.”

At length, in the year 1782, a negotiation for peace was opened at Paris between the contending parties. Here it will not be denied that the Loyalists, after such strong assurances of protection by his Majesty and Parliament, had good right to expect an article would be obtained for annulling the sanguinary laws which attainted their persons and confiscated their property, and that, according to all usage on similar occasions, it would be restored to them. But in this they found themselves fatally mistaken. The American Commissioners declared they had no authority from the States to make it; and besides, if they had the authority, and the restitution was insisted on, they would also insist that Great Britain should pay for all the damages done, and property taken, by the British armies during the war, which would amount to much more than the confiscated property*. The Minister, on the part of Great Britain, considering the state of the nation, the enormous expence of carrying on

* See the Appendix.

the war, and the necessity the Public was under of obtaining peace, gave up the point in dispute, and ceded the property of the Loyalists, as a *recompence and satisfaction for those damages, and as the price and purchase of peace for the empire*. He unconditionally confirmed the independent sovereignties of the usurpation, and with them the sanguinary laws by which the persons of the Loyalists were attainted and their property confiscated. This treaty was afterwards ratified by his Majesty, and confirmed by both Houses of Parliament.

Such is the unexaggerated state of the facts which make up the claim of the American Loyalists. It remains to be examined, whether those who are entrusted with the sovereign authority of the British Government, are not under the most sacred obligations to protect the subject in his person and property, *in all events*, while he performs the duties of allegiance and fulfils the laws of the land? Whether, in the constitution of the British state, there is no law which entitles the subject to indemnity for property lost in consequence of his *fidelity* to the Government, or through the want of the protection due to them *by law*? Whether the sovereign authority may lawfully

lawfully cede, in a treaty, the property of the subject *without such indemnity?* And whether the rights and property of the subject are so *extremely precarious*, and the powers of the sovereign authority so perfectly *despotic*, that it is authorized by *law* to dispose of his property, while he fulfils the duties of a faithful citizen, *without his consent, on any account or to any purpose whatever,* WITHOUT MAKING A JUST COMPENSATION?

C H A P. II.

Of the Rights of the Loyalists to Protection and Indemnity under the fundamental Laws of civil Society, and particularly under those of the British Constitution.

THE right of the Loyalists is not originally derived from an act of the sovereign legislature. Their title to protection and indemnity for their property lost, in consequence of their fidelity to the State, and through the want of national protection, and afterwards given up by his Majesty and Parliament to the United States of America, is perfectly founded on laws coeval with the institution of that authority, and which gave it existence. It is easy to perceive that we
here

here mean neither the prescriptive, common, nor statute laws, but those fundamental laws which form and establish civil society; laws so sacred in their nature, that they are not subject to alteration or repeal, even by the sovereign authority itself. On the contrary, they are those laws which were established before the municipal institutes of the state could exist; from which the latter derive all their authority, and which the sovereign legislature is, by the most sacred principles of honour and justice, bound to preserve *inviolate*, not only as the *basis* and *foundation* of its own powers, but as the dearest birthrights, and sacred pledges for the *protection and happiness of the people*.

These laws, although too little understood, are treated of by many learned and eminent authors, among whom there is no difference in opinion respecting them. To their authority all sovereigns and their subjects either do or ought to appeal, as to the *proper standards* of decision, whenever disputes happen respecting the powers and obligations of the first, and the rights and privileges of the last. They are in substance,

1. The covenant or law by which each individual engages with *all the rest* to join for
ever

ever in *one body*, and to regulate with *one common consent* whatever relates to their *common protection* and *preservation*.

2. The law by which the form of government is settled, the sovereign authority appointed, its powers modified and limited, and its obligations and duties to the individuals who compose the society are defined and fixed. And,

3. That law which establishes the mutual covenants between the sovereign authority and the subject, by which that authority solemnly engages to consult, upon all occasions, the common benefit and safety, and to afford to every individual *equal protection* against the evils of a state of nature; and by which every subject promises, in return for that protection, *his fidelity and allegiance* to the sovereign authority.

By such laws, either tacit or express, every regular state or perfect government is formed and bound, not excepting even that of absolute monarchy, and consequently that of Great Britain. Burlamaqui, in his Treatise on Politic Law, defines them in the following manner :

“ The fundamental laws of a state are not
 “ only those decrees by which the entire body
 D “ of

“ of the nation determine the form of govern-
 “ ment and the manner of succeeding to the
 “ throne, but are likewise the covenants be-
 “ tween the people and the person on whom
 “ they confer the sovereignty, which regulate
 “ the manner of government, and by which
 “ the supreme authority is limited.

“ They are, as it were, the *basis* and *found-*
 “ *ation* of the state, on which the structure of
 “ the government is raised ; and because the
 “ people draw from them their principal
 “ strength and support.

“ These covenants are obligatory between
 “ the contracting parties (the sovereign au-
 “ thority and the subject), and have the force
 “ of laws themselves. They are those pro-
 “ mises, either tacit or express, by which
 “ princes, when they come to the throne,
 “ bind themselves, *even by oath*, of govern-
 “ ing according to the LAWS OF JUSTICE
 “ and EQUITY, of consulting the public good,
 “ of OPPRESSING NOBODY, and of PRO-
 “ TECTING THE VIRTUOUS.”

Having given this general idea of the na-
 ture and substance of the fundamental laws of
 a regular state, it is not necessary to the sub-
 ject before us to dwell more particularly on
 those which relate to the union, and consti-
 tute

tute the particular form, of this great body politic. We shall therefore confine our observations to those which have established the mutual obligations and duties between the sovereign authority and the people, and by which the right of the Loyalists to compensation is incontestably established. These laws are truly of the first importance. They form the great bulwark of the people's rights and freedom, and are the only security they possess for their defence and safety, against both domestic and foreign injuries. They regard the protection due from the sovereign authority to every subject, and the allegiance due from every subject in return, by which the former is bound to protect the latter, and the latter to give the former his allegiance in all things necessary to that protection.

“ By this law,” says Burlamaqui, “ the subject promises his allegiance to the prince (or sovereign authority), *upon condition* that he will protect him; and the prince, on his side, promises the subject protection, *upon condition* that he will obey him. Without this law, a subject cannot be *obliged* to obey the prince, nor can he be *obliged* to protect the subject, at least by any perfect obligation.” And Lord Coke declares,

when treating of this law of the British Government, "That protection and allegiance
" are reciprocal duties."

But further; to shew that these mutual obligations of protection and allegiance form a part of the fundamental laws of the British constitution, we shall cite many cases solemnly adjudged in the books of law, while there is none to be found of a contrary nature or tendency. In *Calvin's case*, which we are told by the first of lawyers and judges, Lord Coke, was most elaborately, substantially, and judicially argued by the Lord Chancellor and all the judges of England, and in which, we may add, all the authorities on the subject were collected and cited, the bands which tie the sovereign authority and the subject together, with their respective duties to each other, were fully discussed and clearly explained. In this case it was unanimously resolved,

1st, "That the law of nature is *part* of the
" law of England.

2d, "That the laws of nature are immu-
" table, and cannot be changed.

3d, "That protection and government are
" due to the subject by the law of nature.

4th, "That the ligeance and obedience of
" the subject are due by the law of nature.

5th,

5th, " That neither ligeance nor protection
 " is tied to municipal laws; but is due by the
 " laws of nature.

6th, " That ligeance is a true and faithful
 " obedience of the subject due to the sovereign.
 " This ligeance and obedience is the inci-
 " dent inseparable to every subject; for as
 " soon as he is born, he oweth by birthright
 " ligeance and obedience to his sovereign.
 " *Ligeantia est vinculum fidei; et ligeantia*
 " *est quasi legis ESSENTIA; ligeantia est liga-*
 " *mentum, quasi ligatio mentium, quia sicut li-*
 " *gamentum est connectio articulorum, juncto-*
 " *rum, &c.* * As the ligatures or strings do
 " knit together the joints of all the parts of
 " the human body; so doth ligeance join
 " together the sovereign and all his subjects,
 " QUASI UNO LIGAMINE †." Glanville, who
 wrote in the reign of Henry II. lib. 9. c. 4.
 speaking of the connection which ought to
 be between the lord and tenant that holdeth

* " Ligeance is the bond or obligation of faith between
 " the sovereign and all the members of civil society; and
 " ligeance is, as it were, the *essence* of the law of *union*. Ligeance
 " is the ligature which, as it were, ties and binds the minds
 " of the sovereign and subjects together; because, like a band
 " or ligature, it forms the connection, and binds the limbs,
 " joints, muscles, nerves, &c. and the head of the human
 " body together."

† " As in one sacred and inviolable band."

by

by homage, faith, “ That *mutua debet esse*
 “ *dominii et fidelitatis connexio, ita quod QUAN-*
 “ *TUM debet domino ex homagio, TANTUM*
 “ *illi debet dominus ex dominio, præter solam*
 “ *reverentiam**; and *the lord*,” saith he, “ ought
 “ to *defend* his tenant. But between the sove-
 “ reign and subject, there is, without compa-
 “ rison, a *higher and greater connexion*. For
 “ as the subject oweth to the king his true and
 “ faithful allegiance and obedience, so the sove-
 “ reign is bound to govern and *protect* his sub-
 “ jects. *Regere et protegere subditos suos* †; so
 “ as between the sovereign and his subject there
 “ is *duplex et reciprocum ligamen, quia sicut*
 “ *subditus regi tenetur ad obedientiam, ita rex*
 “ *subdito tenetur ad protectionem; merito igitur*
 “ *ligeantia dicitur a ligando, quia continet in se*
 “ *duplex ligamen* ‡. And therefore it is holden

* “ The connection or obligation between the Lord and
 “ his tenants ought to be *mutual*, so that as *much* as is due
 “ from the tenant by homage to the lord, so *much* the
 “ lord owes to his tenant from his power and right of do-
 “ minion, a dutiful respect only excepted.”

† To govern with justice, and to protect the subject from
 all manner of violence and injuries, both foreign and domestic.

‡ There is a double and reciprocal obligation and duty,
 because, as the subject is bound to obey the sovereign, so the
 sovereign is bound to protect the subject; therefore, more
 especially, ligeance is called a ligature, because it implies a
 double and reciprocal obligation between the sovereign and
 the subject.

“ in 20 H. VII. c. 8. that there is a liege or li-
 “ geance between the king and subject. And
 “ Fortescue, cap. 13. *Rex ad tutelam legis, cor-*
 “ *porum et bonorum subditorum erectus est* *.
 “ And in the acts of parliament of 10 R. II.
 “ c. 5. and 11 R. II. c. 1. 14 H. VIII. c. 2. sub-
 “ jects are called *liege people*, and in the acts of
 “ parliament in 34 H. VIII. c. 1. and 35 H. VIII.
 “ c. 3, &c. the king is called the *liege lord* of
 “ his subjects. And with this agreeth Skeene
 “ in his book *De Expositione Verborum* (which
 “ book was cited by one of the Judges, who
 “ argued against the plaintiff). Ligeance is
 “ the mutual bond and obligation between the
 “ king and his subjects, whereby the subjects
 “ are called the *liege* subjects, because they
 “ are bound to OBEY and SERVE him; and
 “ he is called the *liege lord*, because he is
 “ bound to MAINTAIN AND DEFEND THEM.
 “ Therefore it is truly said, that PROTECTIO
 “ TRAHIT SUBJECTIONEM, ET SUBJECTIO
 “ PROTECTIONEM †.

* The king is appointed to execute the laws, to administer justice to his subjects, and defend their persons and goods.

† “ Protection of the sovereign draws to it and commands the obedience and subjection of the people; and the obedience and subjection of the people draws and commands the protection of the sovereign.” Any thing short of this would destroy the reciprocity of the obligations and duties between the sovereign and subject.

The

The intelligent mind will readily perceive, that these mutual obligations and duties, which form the political connection between the sovereign authority and the people, are essential in every regular and just government, and cannot be dispensed with on *either* side, without destroying the bands, and sapping the foundation, of its UNION. For when the people refuse, and withdraw their allegiance from the sovereign authority, it necessarily loses its power and support, and a state of anarchy and injustice must ensue ; and when that authority withdraws its justice, ceases to protect the subject, and, against his consent, disposes of his property *without making adequate compensation*, it becomes *despotic*, and subverts the very design of its institution.

To understand the importance of these covenants to the safety and happiness of the subject, it is necessary to know the meaning and extent of the words *protection* and *allegiance*. For this we must look into the end which mankind had in view, by giving up their natural freedom and independence. Here we shall find that this end was, “ to deliver
 “ and shelter themselves from the evils inci-
 “ dent to a state of nature, from the frauds
 “ of

“ of the artful, and the violence and injustice
 “ of the strong *;” by submitting to a power
 more *wise*, more *just*, and more *strong* than
 they were in their natural and unconnected
 state. To attain this purpose, they formed
 the union; appointed the sovereign authority,
 and conferred upon it all the rights and
 powers necessary to afford this “ shelter from
 “ injuries;” which, at the same time, so-
 lemnly engaged to afford it upon all occasions
 against all injuries. For this engagement is
 not confined to any specified particular evils;
 but in its own nature extends to all, both
 foreign and domestic, which men are liable to
 in a state of civil society. This is simply
 what is meant by the word PROTECTION
 under the laws of all civil societies.

That it is so under the laws of the British
 constitution, will appear from a number of
 writs of protection granted by the Kings of
 England, to be found in the Register, and
 cited at large in Calvin’s case, 4 Coke’s Rep.
 These writs are directed to every subordinate
 body politic, officers and persons bound to
 protect the subject under the ROYAL AUTHO-
 RITY. Here “ *protectio regia*,” or the pro-

* Burlamaqui.

tection of the Crown, is described in these words: *Suscepimus ipsos F. et A. res ac justas possessiones et bona sua quæcunque in protectionem et salvam gardiam nostram. Et vobis et cui-libet vestrum injungimus et mandamus quod ipsos T. et A. familias, res et bona sua quæcunque a violentiis et gravaminibus defendatis, et ipsos in justis possessionibus manutencatis. Et si quid in prejudicium hujus protectionis, et salvæ gardiæ nostræ attentatum inveniretis ad statum debitum reducatis**. And in another writ, this protection is thus described: *Et ideo vobis, &c. injungimus et mandamus quod ipsos G. et R. eorum homines, familias ac justas possessiones et bona sua quæcunque manuteneatis, protegatis et defendatis: non inferentes in eis, seu quantum in vobis est ab aliis inferri permittentes, injuriam, molestiam, damnum, violentiam, impedimentum aliquod seu gravamen. Et siquid eis forisfactum, injuriatum et contra eis indebite*

- “ We have taken the said F. and A. their estate, their pos-
 “ sessions and goods of every kind, into our protection and safe-
 “ keeping; and we enjoin and command you, and every of you,
 “ that you defend the said T. and A. their families, estates, and
 “ goods of every kind, from violence and injury, and preserve
 “ them in their just possessions. And if you shall find any thing
 “ done to the prejudice of this our protection and safe keeping,
 “ that you restore them to the *same state* in which they were
 “ before the injury committed.”

attentatum

attentatum fuerit, id eis sine dilatione corrigi, et ad statum debitum reduci faciatis prout ad vos et ad quemlibet vestrum noveritis pertinere.*

But as the sovereign authority could not perform this important duty, upon which the safety and happiness of the subject entirely depend, without the proper means, the fundamental laws have made various and most effectual provisions for that purpose. They have conferred on it a right to command the wills and strength, and personal services of every individual, whenever necessary, to afford the protection due from it; and this submission of the wills and strength of every subject to the direction and command of the sovereign, when necessary to public peace and safety, is truly what is meant in law by the word ALLEGIANCE.

The sovereign authority for the same purpose is, moreover, vested with a right to esta-

* “ Therefore we enjoin and command you, that the same
 “ G. and R. their persons, families, possessions, and goods of
 “ every kind, you maintain, protect, and defend; not doing to
 “ them yourselves, nor, as much as in you lies, suffering to be
 “ done to them by others, any injury, trouble, loss, violence,
 “ let, or damage whatsoever. And if any thing be wrongfully
 “ or unjustly done against them, that without delay you cause
 “ it to be remedied, and them restored to the state they were
 “ in before the injury done, as you know you, and every of
 “ you, ought to do.”

blish courts of justice, raise armies, fit out fleets, and to take and dispose of the property of the subject to pay for their extraordinary services. Thus the subject not only gives up his independence, his will and strength, to the sovereign authority, but pays in money a *bona fide consideration for his protection* *; and the State being thus furnished with all the means which human wisdom has been able to devise, is, beyond all possibility of doubt, indispensably bound by law to afford it to every subject, without respect to persons. We say, to every subject, because every individual who composes the society is a party to the act of union; which is formed by *each* individual covenanting with the *rest*, and the *rest* with *him*, to unite their wills and strength in one Sovereign, for the purpose of securing their *individual* as well as *general* protection. The sovereign authority also engages to afford this protection to *every* individual indiscriminately, as well as to the *whole* society; for as the whole is made up of the individuals, it cannot defend the whole without defending every member which composes it. Besides, in pursuance of this covenant of individual protection, every

* "Taxes are contributions *paid* by the subjects to the state, for the preservation of their lives and properties." Burlamaq. part iii. c. 5. s. 10.

subject pays his just proportion, according to his abilities, towards the support of the sovereign authority and the protection which it is bound to afford him, and therefore is equally entitled to it with the rest of his fellow-subjects. Hence it is evident, that a State cannot, with the means to which all contribute their just proportion, give protection to *one* part of the society, while it abandons *another*, without subverting the design of the union, and manifestly violating its solemn engagements, its duty, and the evident principles of reason, justice, and law.

But this right to command the personal services of the subject for the common protection, is not in any state arbitrary and unlimited. It cannot be exercised when the public good and safety do not positively require it; but when there is so much danger as to require more than the ordinary aids of the army and navy, the Sovereign is bound to call upon all to discharge their allegiance, in giving their service to protect the society; and because all are interested in the public safety, and of course bound to defend it, all are bound to obey the summons *. And if
some

* His Majesty, when the American opposition broke out into "open and avowed rebellion," well understanding this law,

some perform their duty to the State in times of such danger, the faithful subject ought, by the most evident principles of reason and law, not only to be rewarded for his extraordinary services, but to be fully compensated for the losses he may have sustained in consequence of his fidelity and zeal in supporting the common safety, by those who enjoy the benefit of such safety, without having sustained any share in the dangers and losses incurred in the preservation of it.

Nor can the sovereign authority dispose of the property of the subject by levying taxes, when the public wants and necessities do not demand it. And when they call for, and justify it, it cannot be lawfully done with partiality or injustice. For this right extends no further than to take the sum necessary, and of that, only a reasonable and just proportion from each individual according to his ability. It cannot lawfully take from one district, and exempt another, nor from some particular persons, and exempt others. “ The subject

law, and the nature of the subjects duty under it, declared,
 “ That ALL the subjects of the realm, and the dominions
 “ thereunto belonging, were bound *by law* to be aiding and
 “ assisting in suppressing it *,” and therefore called upon *all*
 to unite for that purpose.

* See the proclamation in the Case, ch. 2.

“ must be equally taxed. As every subject
 “ equally enjoys the protection of the Go-
 “ vernment and the safety which it procures,
 “ so it is just that they should all contribute
 “ to its support in a *proper equality*. Every
 “ man therefore ought to be taxed according
 “ to his income, both in ordinary and extra-
 “ ordinary exigencies *.”

The sovereign authority is moreover vested with a yet more extraordinary power, to enable it to fulfil its solemn covenant of protection. It may seize upon or destroy the property of the subject, when the *necessities of the State* and the public good require it. But this power, like that of taxation, is not despotic and arbitrary, but limited and conditional. For nothing less than the general interests and safety of the State can justify the exercise of it; and even then it is conferred upon this *express condition — this positive and explicit obligation and injunction*, to indemnify and make good the losses of the suffering individuals out of the public revenue, to which all contribute. The reasonableness and equity of this condition will be evident, when we reflect on the nature of civil society; the intent of which is, that all the individuals who have

* Burlamaq. p. iii. c. 5. f. 14.

entered into and compose the union, shall partake of its protection, and of *every* benefit resulting from it. Nothing therefore can be more just, than that not only the expences and burthens necessary to maintain it, but *every sacrifice* made to preserve it, should be equally distributed and sustained by *all*.

If this were not the law of every civil society; if the sovereign authority possessed a right to take or destroy the property of the subject, which it is bound to protect, without making a *just compensation* for it, the very design of the union would be subverted. and mankind would have committed extreme folly in changing a state of nature for civil society; because in that state, although they were liable to fraud and violence, yet that fraud and violence was prohibited by the laws of nature; and it was lawful for the party injured, not only to punish the aggressor for the personal injury, but to make reprisals for the property of which he had been robbed or defrauded. But in such a civil society as we have supposed, force and injustice would be sanctioned by law, and mankind would be in a much worse condition than in a state of nature. The injured and ruined subject could make no reprisal upon the sovereign authority. He
would

would remain, without a possibility of remedy, under the load of oppression. But so far is civil society from countenancing such extreme wrong, that the principle of equal justice and individual protection we have before laid down, is stamped in the very nature of it, and pervades all its regulations, whether they be *its civil institutes* or *fundamental laws*. To demonstrate this truth, we shall produce, in order, examples of both.

In the civil institutes of every state, it is an invariable axiom, that all sacrifices of property made by individuals for the public benefit or accommodation, shall be paid out of the public revenue.

If houses be pulled down, or pieces of ground taken from an individual for the King's highway, an inquest shall be ordered to ascertain the value, and the amount shall be paid out of the public purse.

If land be taken by the State from an individual to erect a public building on, for any general public use, such as palaces, courts of justice, or public offices, compensation shall be made to the owner out of the public treasury.

So if the property of an individual be taken for the benefit of a county, corporation, or some particular private persons, it shall be paid

for by those to whose use it is applied, and who enjoy the advantage.

If this style of equity pervades the *civil* institutes of all civilized states, it would be strange indeed if we should find that their *fundamental* laws were less reasonable and just; and stranger still, were they so perfectly iniquitous as to justify political robbery in the sovereign authority, the source from whence the purest streams of beneficence and justice ought to flow, by authorising it to take from or give up the property of individuals, which it is bound by the most sacred of all obligations to protect and defend, *without making an adequate compensation*; and that too for the benefit of others, who are no more intitled to its protection and justice, than the suffering and despoiled individual. But this never was the law of any state, as the following authorities of the most learned authors on politic law will irrefragably demonstrate.

Puffendorff, when treating of the fundamental law of *transcendental propriety*, or *eminent domain*, by which the sovereign authority of every state is authorised to take, destroy, or dispose of the property of individuals, when it becomes *necessary* to the *public good or safety*,
and

and by which it is *bound to make compensation* to the owners of it, says,

“ It will be confessed, agreeable to *natural*
 “ *equity*, that when contributions are to be
 “ made for the *preservation* of some particular
 “ thing, every man should pay his *quota*, and
 “ *one* should not be *forced to bear more of the*
 “ *burthen than another* ; and the same holds
 “ to be *equity in commonwealths*. But because
 “ the state of a commonwealth may be such
 “ that either some *pressing necessity* will not
 “ give leave, that every subject’s *quota* should
 “ be *collected*, or else that the public may be
 “ found to want the use of *something* in the
 “ possession of some *private subject*, it must be
 “ allowed, that the sovereign power may
 “ seize upon it to answer the *necessities of the*
 “ *state* : but then, *all above* the proportion
 “ that was due from the proprietors, is to be
 “ refunded to them by the rest of the sub-
 “ jects*.”

The same author gives the following examples of the right of the sovereign authority, to *destroy or resume* the property of the subject, in virtue of this law :

* Puffendorff, b. viii. c. v. f. 7.

“ A sovereign may prostrate the houses or
 “ fences, or lay open the fields or gardens of
 “ private men, to make room for ramparts or
 “ ditches, if it be necessary to the fortification
 “ of a town.

“ In sieges, houses or trees may be pro-
 “ strated or cut down to deprive the enemy
 “ of shelter.

“ If private men lay by materials for their
 “ own use, such materials may be seized and
 “ made use of in fortifications.

“ If, in a general scarcity, the storehouses
 “ and granaries of private men are shut up,
 “ they may be opened to supply the necessi-
 “ ties of the people.

“ The private coffers of individuals, who
 “ see the state in extremity, and will not lend
 “ their money, may be seized and rifled.
 “ Cyrus did so, *engaging to make restitution*,
 “ and it was held lawful and justifiable. But
 “ the conduct of the indebted and bankrupt
 “ Cæsar, in compelling the Romans to lend
 “ him money, and resolving never to pay it,
 “ has been ever adjudged *unlawful*; not be-
 “ cause he compelled them to make the loan,
 “ but because he resolved *not to pay it*.

“ And if there is no other means of saving
 “ a society, but that of *destroying a part or*
 “ *district*

“ *district of it*, the Sovereign may lay it waste
 “ and remove whatever may be serviceable to
 “ the enemy out of it.”

All these acts are justifiable under the fundamental law of *eminent domain*, or *transcendental propriety*, common, indeed essential, to all societies. “ But, however,” says Puffendorff, when treating of them, “ *without dispute*, they that have lost or sacrificed their fortunes to the public safety, in such extremities, ought to have a *restitution* or *satisfaction* made them, *as far as possible*, by the commonwealth.”

Burlamaqui, when treating on the same subject, says, “ That it is really a maxim of natural equity, that, when contributions are to be made for the *necessities of the state*, every man ought to pay his *quota*, and one should not be forced to bear *more of the burthen* than another.

“ And since it may happen that the pressing wants of the state may oblige the Sovereign to seize on something in the possession of some private subject, it is just in these cases, that the proprietors should be *indemnified* either by their *fellow-subjects*, or by the *Exchequer*, for what exceeds his proper share, at least as near as possible*.”

* Burlamaqui, Pol. Law, part 3. c. 5. § 27, 28.

Having thus shewn that the State is bound by law to make compensation for the property of the subject, *taken or destroyed* by the sovereign authority in cases of necessity, or the public benefit or safety ; we will next inquire, what the law is, where that authority is *obliged* to give up *by treaty* the property of the subject with the territory ceded.

All authors on the fundamental laws of civil society agree, that the sovereign authority has no right to alienate a province, without impending public necessity, against the consent of the *whole nation*, more especially without the consent of the *province* intended to be alienated, although all the other districts agree to it, nor without the consent of *every man* of that province. The reasons are, the union of civil society is formed by a mutual, joint, and perpetual contract, to which the province and every individual are parties, jointly interested in, and equally intitled to, the protection and every other benefit flowing from it, with those of the other districts ; and, of course, the union cannot be dissolved or impaired by the other co-parties without their consent. The right of plurality of suffrages, which is proper and just in the decision of other matters, cannot therefore extend so far as to dissolve or violate the union thus formed
by

by *all*, nor to cut off from the body politic of the State, those who have not violated their engagements under the laws of the society. Nor can any subject be deprived of the right he has acquired by the act of union, of being a part of the body politic, and enjoying all its benefits, except by way of punishment for *crimes committed against the laws*. “ For as
 “ no subject can lawfully take the crown from
 “ a prince without his consent, so neither has
 “ a king a power to deprive a subject of his
 “ right or property, or to substitute another
 “ sovereign over him without his consent* ”

But to this law there is one, and only one, exception, founded on the law of necessity, which is superior to all other human laws, and binding on the sovereign and subject of every state. By this law, the sovereign authority, which is bound to prefer the general safety to that of a part, “ when there is imminent
 “ danger of perishing, or suffering extreme
 “ evil, if they continue united,” may give up a part to save the remainder; but, in this case, the nature of civil society, the mutual and common benefits established by its union, and the protection and individual security which constitute its essence, together with

Burlamaqui, part 3. c. 5. § 38,

the

the equitable condition upon which this law of necessity operates, all require that those subjects who have thus innocently suffered by an act of the State, for the benefit of their fellow-subjects, should *be fully indemnified* by those who have been benefited and saved by the sacrifice.

But, in such case, what becomes of the people resident in the territory ceded; of their personal safety, of the protection of their property, and of their political rights, liberties, and immunities, derived from, and secured to, them by the union, and which the sovereign authority is bound to *preserve inviolable*? Has any State a right to cede them with the territory, by virtue of this law of necessity? By no means; for this law extends only to a conditional disposal of the subjects *property*: and therefore, although a State may lawfully give up a part of its territory to save the remainder; yet it cannot, under any law whatever, dispose of the persons and political rights of the people residing in the part ceded to another sovereign. For if such was the law, it might transfer them to the most despotic tyrant, and reduce them to the most abject slavery. It cannot transfer the duties which they owe to the society, nor its

own

own obligations, as the sovereign trustee and protector of their rights and liberties: it cannot transfer their allegiance, nor abandon the protection of their rights and privileges *without their consent*, while they obey the laws and perform the duties of citizens. And therefore, when such cessions have been made, it has been customary to stipulate, that if the subjects residing in the territory ceded, choose to adhere to the union, and enjoy the rights they are entitled to under it, they may leave the territory given up, and retire to the society of which they are members. And when the subject has made his election, by taking the benefit of such stipulation, it has ever been the uniform practice of States to receive them, and to continue to them all the rights, liberties, and immunities to which they were entitled before the cession, and more especially to the protection and indemnity due to them by law, for the property given up by an act of the State for the benefit of the society.

Any thing short of this, *no necessity*, however extreme, can possibly justify; because mankind never yet conferred on the sovereign authority a right to give up or injure their persons, or to dispose of their rights and properties, while they performed their engage-

G

ments,

ments, without making them *full compensation*; and had such a transfer ever been made, it would have been void in itself, as the persons making it could not possess such a right under the laws of nature established by God himself. These laws, on the contrary, enjoin mankind, under the heavy penalties of misery and want, to consult and pursue the means of their own preservation, welfare, and happiness; and no human covenant, no necessity, can justify a violation of them. Hence all the rights and powers ever yet conferred on any sovereign authority, by the union of civil society, have been conferred *in trust*, and under the most *sacred obligation* entered into on the part of that authority, to defend, protect, and preserve their persons from injury; and not to devote their lives to ignominious death, nor to dispose of their rights and properties without making full compensation, while they behave with fidelity to the laws of the society.

This truth will appear evident, not only from the laws of the British constitution, but from every authority to be found in authors who treat on politic law, and the established principles of every regular State.

That

That the Crown, in the British constitution, is not only bound to defend the subject in his person, but also in his goods and chattels, rights and privileges, will appear evident from the writs of protection I have before cited, and many others to be found in the Register; and the law is equally settled, that if the State fails to afford this protection, it is “bound to place the subject who has suffered through a want of it, in the *same state* he was in before the injury received;” that is, to make him adequate compensation. For the words of the writs in the Register, of folio 25, 26, as I have before said, are, “*Et si quid in præjudicium hujus protectionis et salvæ gardiæ nostræ attentatum inveniretis, ad statum debitum reducatis.*” And, “*Et si quid eis forisfactum reformari faciatis.*” And, “*Et si quid forisfactum, injuriatum vel contra eos indebite attentatum fuerit, id eis sine dilatione corrigi et ad statum debitum reduci faciatis, prout ad vos et quamlibet vestrum noveritis pertinere.*”

To these authorities we will add that by 11 H. VII. c. 1. it is declared, “That by the common (fundamental) law of England, the subjects are bound by their duty of allegiance to serve the Prince against every *rebellious power and might.* And that

“ whatever may happen in the fortune
 “ of war, against the mind of the Prince
 “ (to the prejudice of his subjects), it is
 “ *against all LAW and good conscience*, that
 “ such subjects attending upon such service
 “ *should suffer for doing their true duty of alle-*
 “ *giance.*”

Upon this statute, so important to the rights both of the Crown and the subject, Justice Forster, whose authority will ever be respected in courts where the principles of justice are understood, makes the following observations: “ Here is a clear *parliamentary declaration*, “ that, by *the ancient constitution of England*, “ founded on principles of *reason, equity*, and “ *good conscience*, the allegiance of the subject “ is due to the King for the time being, and “ to him alone. This putteth the duty of the “ subject upon a rational and safe bottom; “ and *he knoweth that allegiance and protec-*
 “ *tion are reciprocal duties.*” That is, in other words, that the subject “ knoweth” that the State is as perfectly “ bound by the principles “ of reason, equity, and good conscience,” principles, the force of which no human law can supersede, to protect and defend his person and property against all violence and injuries, as he is bound to obey, and assist the
 Prince,

Prince, in defending the State in time of need and danger; and that if he fails in the protection, and violates his engagement, he is bound by the same principles to make the subject *adequate compensation*. Indeed, this is the law of every regular State, as will appear from all the books on the fundamental laws of civil society.

Puffendorff therefore says, “ That under the
 “ law of Eminent Domain (which alone
 “ gives the sovereign authority a power over
 “ the property of the subject), if a Prince is
 “ compelled by necessity to alienate in a treaty
 “ a part of his dominions, the losses of indi-
 “ viduals, whose fortunes are sacrificed to *the*
 “ *national safety*, must be made good by the
 “ *nation*.”

“ What power (continues the same author)
 “ the commonwealth has to cede the goods
 “ of private subjects upon a pacification, must
 “ be discovered from the nature of *transcen-*
 “ *dental property*; upon the force of which
 “ the goods and fortunes of private men may
 “ be *given up* whenever the necessities of the
 “ State and the public interest require it: *but*
 “ *with this consideration*, that the state is *ob-*
 “ *liged to make good such losses to the subject*
 “ *out of the public revenue*. But whether a
 “ particular subject’s goods may be ceded, or
 “ taken

“ taken from him, must in a monarchy be
 “ determined by the PRINCE; and *the whole*
 “ *body of the subjects*, upon his *command*, is
 “ *obliged* to make satisfaction to the persons
 “ that have sustained loss upon the *public ac-*
 “ *count beyond his own proportion.*”

Burlamaqui, when treating on the same law, says—“ As to the effects of a *private subject*
 “ *ceded with the territory*, the Sovereign, as
 “ such, has a transcendental and supereminent
 “ right to dispose of the goods and fortunes
 “ of private men; consequently he may give
 “ them up as often as the public advantage
 “ or necessity requires it; but *with this CON-*
 “ *SIDERATION*, that the State ought to in-
 “ demnify the subject for the loss he has sus-
 “ tained *beyond his own proportion.*”

M. de Vattel asserts the same law, and tells us, “ That the right which belongs to the
 “ Society or the Sovereign, of disposing, in
 “ case of necessity, and for the public safety,
 “ of *all* the wealth contained in the State,
 “ is called the Eminent Domain. It is evi-
 “ dent that this right is, in certain cases,
 “ necessary to him that governs, and conse-
 “ quently is a part of the sovereign power;
 “ when, therefore, it disposes, in a case of
 “ necessity, of the possessions of a *commu-*
 “ *nity,*

“ *nity*, or of an *individual*, the alienation will
 “ be valid. But JUSTICE DEMANDS that this
 “ community or this individual be recom-
 “ pensed out of the public money ; and if
 “ the Treasury is not able to pay it, all the
 “ citizens are obliged to contribute to it.
 “ FOR THE EXPENCES OF A STATE OUGHT
 “ TO BE SUPPORTED EQUALLY AND IN A
 “ JUST PROPORTION. IT IS IN THIS CASE,
 “ AS IN THROWING MERCHANDIZE OVER-
 “ BOARD TO SAVE THE VESSEL.”

Authorities from every other author on the
 fundamental laws of civil society might be
 adduced to support the same truths ; but these
 are so plain and decisive, that more would be
 superfluous. They incontestably prove, that
 the sovereign authority of every State is
 bound, *in all events*, to protect the subject—
 that the right vested in it, of disposing of the
 subjects property in a treaty or pacification,
 is not *arbitrary*, but limited and *conditional*,
 even in an *absolute monarchy* ; that it cannot
 be lawfully exercised but when the necessities
 and safety of the State require it, and even
 then it is given *with this consideration and
 sacred obligation inseparably annexed*, to in-
 demnify the subject for the loss he has suf-
 tained

tained in consequence of it. To this we will add, that it is impossible for a mind open to the conviction of reason and truth, to consider these authorities, without confessing that they perfectly embrace and evidently support the claim of the Loyalists, whose property has been first lost through a want of the protection due to them by law, and afterwards given up by treaty to the American States, in satisfaction for damages alleged by them to have been done, by the British troops, and as the price and purchase of the *national peace and safety*. Their case indeed far surpasses in public merit, and has a much higher demand upon the *honour* and *justice* of Parliament, than the cases to which the preceding authorities apply*; for those authorities state no peculiar merit in the sufferers—no solemn assurances of protection and indemnity previously given by the sovereign authority—no extraordinary exertions of the sufferers in the common cause, nor any dangers encountered in supporting the rights of Parliament: but the right of compensation and indemnity is declared upon the mere cession of the property of the subject with the territory; and upon

* See Chap. V.

the law and equity which enjoin the State to distribute the losses, burthens, and sacrifices sustained on the public account, among the whole society who receive the benefit resulting from them.

C H A P. III.

On the Usage of Nations, under the fundamental Laws of Civil Society.

THE Sovereigns of Europe, well understanding the obligation they are under, to protect the property of the subject *in all events*, and in the *last extreme*, have not failed to do it whenever it has been possible in every pacification. To this end, they have insisted on, and always obtained, a stipulation, that the individuals of the district ceded should be restored to their property, if taken from them ; if not, that they might dispose of it to the best advantage, and return with the proceeds to the society of which they were subjects*.— This usage has been adopted for many centuries, in order to save the expence of making the compensation due, which otherwise the States could not avoid, *without violating the sacred and essential laws of their respective societies.*

* The case of the Loyalists only excepted.

In the civil war of the fifteenth century, which happened in the dominions of Spain, and ended in the independence of Holland, this principle of national justice was fulfilled. The war had continued near half a century. The attainders and proscriptions were numerous; the enmity of the parties during the war was violent, and yet the sovereign parties to the pacification; conscious of their duty to obtain all possible protection for their subjects who had suffered by the war, expressly stipulated, "That all *real estates* which had " been seized, exposed to sale, or proscribed " on account of the war, should be restored " to their former owners; and that for all " goods seized and sold by the public officers, " the owners should have *return* or receive " (a perpetual annuity of) six and one quarter " *yearly*, for every hundred pounds."

In the Treaty of Utrecht, care was taken by Great Britain to have the honours and domain of Châtelherault restored to the family of Hamilton, and the honours and domain of Aubigne to the family of Richmond.

In the definitive Treaty between the Emperor and the States General, the city and castle of Dalheim, and other towns and territories, were ceded to the Emperor, and other
towns.

towns and territories were ceded by the Emperor to the States of Holland. But the high contracting parties, well knowing that they could have no right to sacrifice the interest of individuals to the emolument of society, *without ample indemnification*, agreed that the officers and others on duty in the country of Dalheim, should have pensions *equal* to their salaries at the charge of the country—and the Mayor or Greffier of the High Court of Dalheim, as also of the Lordships ceded to his Imperial Majesty, who were not continued in their employments, should receive a *reasonable compensation*, or have the liberty of selling their places under the approbation of the Government of the Netherlands.

At the termination of the war in 1763, when the King of France ceded the province of Canada to Great Britain, he was so sensible of the protection due to his subjects, that it was insisted on, and it was accordingly agreed by the Treaty, that the Canadians should retain their property, and that such as did not chuse to become the subjects of Great Britain, but wished to return to their former allegiance, should have a right to dispose of it to the best advantage, and to transport its produce unmolested to France.

At the same time the like stipulation was made by the French Monarch in the cession of New Orleans to Spain.

By the same Treaty, in the cession of the Floridas to Great Britain, the same stipulation was obtained by the King of Spain, in behalf of his subjects.

Upon this occasion the conduct of the Spanish Monarch is an illustrious instance of royal attention to the laws of civil society, which regard the protection and security of the subject: for after the surrender of the territory, finding that the English settlers would give little or nothing for the property of his subjects reserved by the Treaty, and that of course they were *ruined* by his own act, the act of cession, and therefore that he had not afforded them the protection due by the fundamental laws of society, he ordered them to retire to his own dominions, and on their arrival gave to every officer, civil and military, salaries equal to those they enjoyed before the Treaty. He further made them compensation for the property they had lost; and to the common labourer, his wife and children, even to the infant at the breast, he allowed pensions for their support. These pensions, being in their
nature

nature perpetual, would have been yet continued, had not this Monarch obtained, by the last treaty of Paris, the Floridas from Great Britain. Upon this event the Spaniards, in their turn, refused to purchase of the British settlers, and in a manner compelled them to leave their property, which they had greatly improved. His Catholic Majesty, by a late proclamation, has generously restored these improved estates to his subjects, the former owners, their children and grand-children. Thus the wings of the Sovereign hovered over his subjects, and protected them in all their distress. He felt the high obligation he was under to do it. He considered the value of a number of subjects to the society over which he presided. He saw the force with which this example of *sovereign justice* would secure the *confidence* of his people, and bind their fidelity to him on all *future occasions*. Nor did he for a moment put the sum, though large, he was obliged to draw from his public treasury, in competition with the public benefits which would be derived from it.

Such has been the usage of States, whenever a cession of territory, and with it the property of the subject, has been found necessary
to

to the common safety. There was no such reservation or restoration of the property of the Loyalists, no indemnity whatever obtained; and had there been nothing mentioned respecting them in the treaty, it would have been more to the honour of the British government, than that humiliating stipulation, by which it was agreed, that the Loyalists should have "*the liberty* to go to the United States, and there to remain *twelve months* unmolested in their endeavours to obtain restitution, and that the Congress should RECOMMEND to the States, to restore their estates, they refunding the *bona fide* price which the purchaser may have paid."

Here the British State, which was bound to obtain a restitution of their property, if it could possibly be done, procured "*a liberty*" for *them* to solicit for it. They were sent by the State which had granted their property for a valuable consideration, to ask it of those whose right to hold it the State itself had solemnly confirmed. They were sent by the State, which they had faithfully served, and which was bound to protect them, to seek for that protection from States to which they were aliens, whose existence they had fought to prevent, and who, from a principle of self-preservation, were

were naturally led to refuse it. And they were sent by the State, which had deprived them of their fortunes, and made them bankrupts indeed, to bargain and *pay* in ready money for those fortunes which it had appropriated to *its own emolument*. For the stipulated condition of the restitution, supposing it to be made, was, “refunding the *bona fide* price, which the purchaser of the state “had paid for it;” and this extraordinary boon was to be humbly solicited for, of their implacable enemies, without the least hope of success, and without any possibility of deriving any advantage from it, had it been obtained.

The advantage which was so repeatedly and sanguinely described, and expected from those recommendations, has, however, been long since fully essayed. A number of Loyalists have gone to the United States to obtain restitution of their property, under the recommendations of Congress; and the effect has been what the Loyalists, and many Members of Parliament, in their debates on the peace, foretold. Instead of restoring them to their property, the American States have not only treated the solicitations for it with insult and contempt, but have imprisoned the persons
of

of the claimants, and afterwards banished them under the pain of death.

As to the great body of Loyalists, who were not within the districts in the possession of his Majesty's arms, and who had equally demonstrated their fidelity and zeal in support of the rights of Parliament, and rendered services equally important, there was *no stipulation* whatever made in their behalf. They were not even mentioned in the treaty; they therefore could have nothing to expect from the recommendations of the Congress or from any other quarter whatever, but from the HONOUR AND JUSTICE OF HIS MAJESTY AND PARLIAMENT.

C H A P. IV.

Of the Sense and Declaration of his Majesty and Parliament, on the Right of the Loyalists to Compensation, when their Aid was thought necessary to suppress the Rebellion.

WE can look nowhere for the sense of the two Houses of Parliament, but in their own records. Here we find the most clear and positive decisions upon the right of the subject to compensation for injuries sus-

tained in consequence of his allegiance, and through a want of the protection which the State is bound to afford him by law.

The occasion of these resolutions were certain tumults and insurrections “ against the “ authority of the Crown, and rights of Parliament,” which took place in America in 1764, as stated in the foregoing Case. The civil and military powers of the State then in the colonies, were either incompetent, or not exerted, to protect the people. Sundry houses, and other valuable property of divers persons who had attempted to carry an Act of Parliament into execution, were destroyed by the mob. After full consideration of these facts, the two Houses of Parliament

Resolved, “ That an humble Address be “ presented to his Majesty, to REQUIRE the as- “ semblies of the American provinces to make “ *a proper recompense* to those who had suf- “ fered in their *persons or properties* in conse- “ quence of the said tumults and insurrec- “ tions.”

In this resolve the sense of Parliament on three points is manifest : 1st, That those who had suffered through a want of protection in “ their persons or properties,” were *entitled* to

“ a proper recompense.” For otherwise, it is not to be supposed that the two Houses would insist that the Colonial Assemblies should make it. 2. That the subordinate governments of the colonies, which had been vested with the proper powers, and had assumed the protection of the subject within their inferior jurisdictions, were bound to make “ a proper recompense” for injuries done to the subject through a want of their protection; and, 3d. That his Majesty and Parliament were bound by law to compel, if necessary, the Assemblies to make it. This is fully implied in their right “ to *require* it*.”

The two Houses, however, suspecting that the Provincial Assemblies, in the then tumultuous state of the provinces, would not comply with the requisition; and knowing that Parliament, as the supreme source of *power, protection, and justice*, was bound either to compel a compliance, or to make the recompense

* The word *require* was adopted by the Commons instead of *recommmend*, which was said to be too loose and discretionary. And Mr. Pitt, that great Statesman, approved of the *requisition* to make the recompense, by a resolve of the House, saying, it was building on a *rock* that could not be shaken by the refractory and peevish humour of the Colonies; but, on the contrary, might be established and executed by an act vindicatory of their resolve, if neglected, or not immediately complied with. MS. Report.

itself,

itself, at the same time, and upon the same occasion, concurred and

Resolved, “ That all his Majesty’s subjects
 “ residing in the said colonies, who have ma-
 “ nifested *a desire to comply with, or to assist*
 “ in carrying into execution any Act of Par-
 “ liament in the British colonies in North
 “ America, *have acted as dutiful and loyal sub-*
 “ *jects, and are therefore entitled to, and will*
 “ *assuredly have, the favour and protection of*
 “ this House.”

In the year 1767, when those tumults were renewed, the two Houses were more explicit, if possible, in regard to the right of the subject to indemnity for losses sustained in consequence of his allegiance to the Crown, and his support of the rights of Parliament. And again

Resolved, “ That *all persons, who, on ac-*
 “ *count of the desire they have manifested to*
 “ *comply with, or to assist in carrying into*
 “ *execution any Acts of the Legislature of*
 “ *Great Britain relating to the British colonies*
 “ *in North America, have suffered any injury*
 “ *or damage, ought to have full and ample*
 “ *compensation made to them for the same by*
 “ *the respective colonies.*”

And lest the colonies should not comply with this act of public right, and the confi-

dence of the Loyalists in the *ultimate justice of* Parliament should be thereby abated, the House of Commons again

Resolved, " That all such persons have
 " acted as *dutiful* and *loyal* subjects, are *there-*
 " *fore* entitled to, and *will assuredly have*, the
 " protection of the *House of Commons of Great,*
 " *Britain.*"

It is impossible for a person conversant in the laws of civil society to read these resolves without perceiving the following truths :

1st. That they are founded on, and declaratory of, the fundamental laws of the British constitution, which have established the reciprocal obligations, duties, and rights, between the sovereign authority and the subject.

2d. That in and by these resolves the two Houses of Parliament have expressly asserted the right of the subject who had suffered in his person or property, in consequence of his *only* " manifesting a *desire*" to comply with an Act of Parliament, " to *ample compensa-*
 " *tion.*"

3d. That the two Houses have, by their repeated resolutions, in the most unequivocal manner, pledged themselves to do justice to the subject upon the right so confessed and asserted, by the most solemn assurances of pro-
 tection

tection and indemnity for the "injuries and
"damages sustained."

4th. That the protection thus solemnly promised is not a matter of *favour* depending on the pleasure or discretion of the two Houses, but a *right*; or, to use the word of the resolves, a "TITLE," incontrovertibly founded in the fundamental laws of the State; a right coeval with the British constitution, and *as firmly established as any one right of Parliament itself*; and therefore a right which the two Houses are bound, were their solemn assurances out of the question, by the most sacred principles of honour and justice to fulfil.

But it may be here asked, What did the two Houses mean by *protection*? The answer to this question is, That they could mean nothing else but that "protection" to which the subject has a right under the laws of the British constitution, and indeed of every civil society, which is by no means ambiguous. *It is that security of person and property, that shield or cover from injuries, of which mankind were destitute in a state of nature, and to obtain which he gave up his natural liberty, and entered into civil society.* The word itself is derived from the Latin term *protego*, to *shelter, to cover from evil.* This important blessing,
upon

upon which the safety and happiness of the subject entirely depend, is secured in the constitution of every State by various means and by various sources; from the military establishment, from the civil courts of justice, and in cases where these are incompetent, from the sovereign authority. The King is bound to protect the subject in the *possession* of his property, by the military power, when necessary; but the courts of justice and the two Houses of Parliament are bound to give him “*protection*” “for *injuries sustained*, for *property lost* or “*destroyed*, or *given up* by the State.” And this can be done *only* in the mode of *compensation*; in the courts of justice, by compelling the person who has done the injury to *make good the damages*; and in the two Houses of Parliament, by giving that *indemnity* and *compensation* which are due to the subject by the laws of the State.

But were the word *protection* of ambiguous meaning, we could not be at a loss for the sense in which the two Houses have used it. Their own resolves declare it to be “a *proper*” “*recompense, full and ample compensation,*” “which those who have suffered any injury” “or damage, on account of the *desire* they” “have manifested to comply with any acts” “of the British legislature, *ought to have,* are

“ *entitled to, and will assuredly have, from the*
 “ HOUSE OF COMMONS of Great Britain.”

The protection of a State in every precedent to be found either in the books which treat of the fundamental laws of civil society, or in the resolutions and acts of the British Parliament, means, “ *restitution,*” “ *satisfaction,*” “ *indemnity,*” “ *recompense,*” “ *compensation.*” Grotius, when treating of the right of the sovereign authority to *give up* the property of the subject, calls it, “ *restitution,*” “ *satisfaction;*” Burlamaqui, “ *indemnity, and indemnifying the subject for the injury sustained;*” and Vattel, “ *recompense out of the public money.*”

Indeed the protection thus declared to be the right of the subject, and solemnly promised by the two Houses, can be nothing but the *same* which was given by Parliament to the citizens of Glasgow for *their loyalty*, in putting that city in a posture of defence against the rebels, which was *a full reimbursement of the sum expended.* It is the *same* which was given by 4 Geo. I. to all persons who had continued *faithful* to his Majesty, and whose houses and goods had been *destroyed* either by the rebels, or the King’s army, in Scotland or Lancashire, and who were “ *fully reimbursed,*
 “ *and*

“ and repaid their losses by the respective Ex-
 “ chequers of England and Scotland.” It is
 the same which was given to Daniel Camp-
 bell Esq; whose property had been destroyed
 by a mob, on “ account of his promoting an
 “ act for laying a duty on malt, *who was*
 “ *paid his great losses and damages, clear of*
 “ *all deductions.*” It is the same which was
 granted to Dr. Swinton, for houses destroyed
 at Chester, in consequence of the *preceding*
rebellion, who was paid for them out of the
 public aids granted to the Crown. And it is
 the same which was given to the Duke of
 Montagu, the proprietor of St. Lucia, when
 the British government found it necessary to the
 peace and interest of the nation to cede that
 island to France, “ *who was amply recom-*
 “ *pensed for his loss, both in honour and re-*
 “ *venue.*”

From the sense and declarations of the two
 Houses of Parliament, we will pass to those
 of his Majesty, which we shall find in his
 Royal Proclamation, stated in the preceding
 Case, and drawn up by the then Attorney and
 Solicitor Generals, now Lord Thurlow and
 Lord Loughborough. Here the opinion of
 his Majesty on the fundamental laws of the
 British constitution, and the right of the sub-
 ject

ject arising from them to protection and indemnity, will appear to be clearly the same with that of the two Houses of Parliament; and we may certainly conclude, that his Majesty's deliberate judgment upon the law of the land and the right of the subject, thus aided by the advice of his privy council, and of the most eminent judges of the law, cannot lessen, but will corroborate, that of the two Houses. From a little consideration of this proclamation, the following matters are either expressly or implicitly *asserted and declared*.

1st. " That an open and avowed rebellion
" existed in his American dominions."

2d. " That not only ' all his Majesty's
" officers, civil and military, were obliged
" to exert their utmost endeavours to suppress
" the rebellion,' but *all the subjects of his
" realm, and the dominions* thereunto belong-
" ing, were bound, *by law*, to be aiding and
" assisting in the suppression of it."

3d. That his Majesty having thus clearly pointed out the duty of the subject, in order to prevent their " neglecting or violating it
" through ignorance thereof;" he expressly forbids them to admit " *any doubt of the pro-
" tection which the law will afford to their
" loyalty and zeal.*"

4th. That the protection which his Majesty has so unequivocally declared to be the *lawful right* of the subject, can mean nothing else but what the law means, which, as we have before shewn, is a *restitution* of the property lost, if regained by the State; or if lost *through a want of the protection due*, or given up by the State, *recompense, indemnity, and compensation* for it. And,

5th. That his Majesty, supported by the preceding *resolutions* of the two Houses of Parliament, and the *law* of the land, has, in a manner the most solemn, pledged his ROYAL FAITH to *every subject* who should, during the rebellion, discharge his duty with "loyalty and zeal," by declaring in his royal wisdom, that to those "who should assist in suppressing the rebellion, the *law* would, without doubt, afford protection."

But it may be asked to whom were these declarations and solemn assurances made by his Majesty and Parliament? It was from the year 1764 to 1782, that the unlawful resistance to the "authority of the Crown, and the rights of Parliament," was continued. It was in 1764 and 1767, that the resolutions of Parliament were made. The latter were expressly directed to "his Majesty's subjects
" residing

“residing in the colonies,” to incite them to support *that authority and those rights*. And it was in 1775, when the same lawless resistance broke out into “open and avowed rebellion,” that his Majesty issued his proclamation, calling on *all* his subjects to assist in suppressing it. Now let the fact be enquired into, and it will readily appear, that the American Loyalists are the very subjects described in the proclamation and resolves; the persons they were pointedly intended to encourage, and who, placing the *utmost confidence* in them, have fully complied with the duty required of them by his Majesty and the two Houses, and of consequence the *identical persons* to whom the *faith of Majesty* and the *honour and justice of Parliament* have been solemnly pledged for their protection and indemnity.

Indeed it has already appeared to the Commissioners of Inquiry, appointed by Parliament, that these unfortunate but faithful subjects of the British Crown have not only manifested a desire to comply with, and to assist “in carrying into execution the acts of the British Parliament,” in strict conformity to the Parliamentary resolves and the Royal command; but, with a degree of for-

titude which no dangers could abate, and with a loyalty and zeal unprecedented in the annals of nations, have risked their lives, and been deprived of their fortunes, *in direct consequence of those resolves*, and their obedience to the command of their Sovereign. A number of them have moreover suffered the most ignominious deaths; others, and not a few, have been confined, and perished in loathsome dungeons and polluted mines, and many have been assassinated and barbarously murdered. And when the State ought to have regained their property, and restored it to those who survived, and to the widows and orphans of those who had *virtuously perished* in the cause of their country; it was given up as the price and purchase of peace for their *fellow-subjects, who have been near five years in the possession of the benefits and blessings purchased by that sacrifice*. And yet these faithful subjects have been thus deprived of their property near *twelve years*, and near five years have elapsed since the compensation due by law OUGHT TO HAVE BEEN MADE.

It is well known that this delay of justice has produced the most melancholy and shocking events. A number of the sufferers have been

been driven by it into insanity and become their own destroyers, leaving behind them their helpless widows and orphans to subsist upon the cold charity of strangers. Others have been sent to cultivate a wilderness for their subsistence without having the means, and compelled through want to throw themselves on the mercy of the American States, and the charity of their former friends, to support that life which might have been made comfortable by the money long since due to them by the British Government; and many others, with their families, are barely subsisting upon a temporary allowance from Government, a mere pittance when compared with the sum due to them.

— May not subjects who have thus suffered, whose lives have been risked in the cause of their country, and whose property has been devoted to the PUBLIC SAFETY, with all due deference and respect ask these questions: Were not his Majesty and the two Houses of Parliament in earnest when they made the preceding declarations? Did they not speak the language of law and truth? If they were in earnest, as we must conclude, can Parliament now say that his Majesty's proclamation and their own solemn resolutions meant nothing?

Nay

Nay more, will they reverse their own declarations, and now assert that the "*dutiful and loyal* subjects," who have risked their lives in supporting the rights of Parliament, "ought" "*not*" "to have" ample and full compensation for losses sustained in consequence of it; and "that they are" "*not*" entitled to, and assuredly shall "*not*" have the "protection" of Parliament? This surely is impossible!

Shall subjects to whom these royal and parliamentary assurances have been solemnly made, longer solicit for that protection and indemnity to which the laws of the land give them an undoubted right? Will Parliament longer withhold from them the justice it has afforded to every other person in their predicament, ever since the establishment of the present government? What plea or pretence can justify the distinction, and vindicate a treatment of them *as men out of the protection of the laws*? What crime have they committed which can justify such *unprecedented partiality*? They have committed none, unless innumerable acts of the most affectionate loyalty to his Majesty, and the most undaunted zeal in supporting the rights of Parliament, be those crimes. Can such acts be really

really *criminal* in the opinion of Parliament, after having excited the Loyalists to commit them; after having declared the law which commands them, and pledged its faith for the protection and indemnity of the persons committing them; after having suffered their fortunes to be confiscated by the rebel States through a want of the protection due to them, and after it has sacrificed their property to the benefit and safety of their fellow-subjects, WITHOUT HAVING MADE COMPENSATION?

To these arguments we will only add, that by the treaty, the independent sovereignties of the American States were *unconditionally* confirmed, and consequently the sanguinary laws by which the Loyalists were attainted. These laws remain *in force* to this day, and the American States stand justified, by the treaty of peace, to put those of them to death who shall appear within their jurisdictions. A number of them have been imprisoned and cruelly treated, and with difficulty escaped the ultimate punishment which those laws inflict.

Now, although it is allowed that the British government might lawfully dispose of the property of its subjects for the public safety, making

making *them adequate compensation*, it will not be contended that it could possibly have any *right*, under any *law* either *human* or *divine*, to confirm unlawful acts, which *devoted* the lives of several thousands of its *innocent and faithful* subjects, on any account or upon any pretence whatsoever. If it could not obtain a repeal of such laws, it certainly ought not, by any means whatever, to have given its sanction to them. Indeed, this was an act so fundamentally wrong, that it is impossible to suppose his *Majesty*, whose paternal affection for his people is so well known, or that the two Houses of Parliament, whose honour and justice have ever remained unfulfilled, would have approved of it, *however urgent the public necessity*, had not their minds been impressed with the most firm and immutable resolution to make the most *ample and complete* reparation for it.

C H A P. V.

*Of the Usage and Precedents of Parliament,
under the fundamental Laws of the British
State.*

WE have seen in the preceding chapters, that the Sovereigns of every State have held themselves bound by the laws of civil society never to abandon the protection of the subject in their *greatest extremities*; that even when they have been under the necessity to give up a part of their dominions to save the remainder, the property of the subject has been still an object of their utmost protection and care: that in all cases where it could be done, it has been reserved by treaty and restored to the owner; and where the nature and issue of the war have not admitted of such restitution, the *usage* founded on the LAW has been, to indemnify the private sufferer out of the public revenue, and by that means to divide and distribute the burthen equally and justly among those whose protection and safety have been purchased by the sacrifice. This being the universal practice of States, it would be strange were there not precedents of it in the administration of the govern-

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ment of Great Britain. On the contrary, it will be found, upon perusal of the Books of Statutes and the Journals of the House of Commons, that the sovereign authority has ever held itself bound by law to make a just compensation to the subject, not only in cases similar to that of the Loyalists, but in others of infinitely less public merit. To demonstrate this truth we will cite the following cases.

1st. Wherever the rights or property of the subject has been taken from him by the State, to answer some public convenience or benefit.

When it was found necessary to the public welfare to unite the two kingdoms of England and Scotland, and to deprive the city of Carlisle of certain tolls, *adequate compensation* was made for the loss of them. Com. Journ, vol. 15. p. 336.

When Parliament thought it necessary to the public peace and safety, to suppress the heritable jurisdictions in Scotland, it gave to the proprietors £152,037 as *compensation*. Ibid. vol. 25. p. 301.

When the exclusive rights and privileges of the African Company were thought injurious to the national commerce, Parliament de-
prived

prived them of their charter; but gave them £ 112,140 as a *just compensation*. Com. Journ. vol. 26, p. 408.

When a resumption by the Crown of the royal jurisdiction of the duke and duchess of Athol, was found necessary to the interest of the public revenue, the sum of £ 70,000, with an annuity to the survivor, was given by Parliament as a *full compensation*. Ibid. vol. 30. p. 225. 228.

£ 22,500 was given to the proprietors of Carolina for their rights of government, when it became necessary to the peace of the province, that the Crown should resume them. Ibid. vol. 21. p. 426.

And Parliament has been so careful not to infringe on the smallest rights of the subject *without making compensation*, that it would not take from the clerks of the Secretary of State's office the savings they made, by sending letters *free* of postage, without a *compensation*.

2d. Where the property of the subject has been destroyed, to prevent some public mischief.

When the cattle of the subject has been destroyed, to prevent infection, by an order of the State, he has been always paid the va-

lue out of the public revenue. Com. Journ. vol. 32. p. 966. Vol. 33. p. 714.

If ships are burnt by order of the State, to prevent the plague, the owners have been always paid their value. Ibid. vol. 89. p. 604. 606.

3d. Where the property of individuals has been destroyed, lost, or injured by a failure of the sovereign authority in fulfilling its public engagements, by not affording the protection due to the subject by the fundamental and essential laws of the British constitution, Parliament has ever made a *just compensation*.

In March 1716, several persons having suffered, through a want of the protection due to them as subjects, by the *tumultuous* and *rebellious* proceedings in sundry counties, £5577 were granted by Parliament, to make good their losses. Com. Journ. vol. 18. p. 495.

The saw-mill of Charles Dingly being destroyed by a number of disorderly and *tumultuous persons*, Parliament paid him the value of his loss. Ibid. vol. 32. p. 240.

If Parliament, from a due sense of the laws of the land, and of the protection which it is most sacredly bound to afford to every subject,

ject, has thought itself bound to make compensation in the preceding instances, where the sufferers could pretend to no public merit, farther than that they were peaceable subjects, how stands the law in respect to those *faithful* citizens, who, in obedience to the royal command, and under the most solemn assurances of protection from his Majesty and from both Houses of Parliament, have fulfilled the duties of allegiance with activity and “zeal;” and, at the risk of their lives and fortunes, have stepped forth in defence of the *royal authority* and the *essential rights* of *Parliament*? Are such subjects entitled by law to *less* protection and *less* justice than those who have manifested no merit, on account of their fidelity to the State? Surely they are not. — Every principle of reason, law, and justice, and the uniform usage of a British Parliament, forbid it. And therefore,

4th. In pursuance of the law of the land, the usage of Parliament has been, whenever the subject has suffered loss or damage in consequence of a performance of the *least* of his political duties to the State, in which he has not been *protected*, to make him *adequate* and *full* compensation for his losses.

In the year 1725, Daniel Campbell had given his vote for the bill for laying a duty

upon malt. A mob at Glasgow destroyed his property; Parliament adjudged that he was entitled to full compensation, "*clear of all deductions.*"

It is proper to observe, that this statute is clearly declaratory of the fundamental laws of the British constitution, which establish the reciprocal obligations of protection and allegiance, with the right of the subject to compensation for losses sustained through the want of that protection; because, by this statute, the King, Lords, and Commons, declare, "That as the great losses and damages sustained were on account of the concern he had, *or was supposed to have had*, in promoting the act for laying a duty upon malt, it is JUST and REASONABLE, that the said damages and losses should be MADE GOOD and REPAID to the said Daniel Campbell, *clear of all deductions.*" And it is further observable, that the Parliament of that day thought it true policy, as well as justice, further to declare to the subject, that *full compensation* was due by law to those who had suffered in consequence of *a mere supposition* that they had discharged the least of their political duties to the State.

In the year 1689, during the rebellion in Ireland, the House of Commons made ample provision

provision for the support of the Irish nobility, gentry, and clergy, whose estates had been confiscated in consequence of their fidelity to the Crown of England, and who had taken refuge under the British government. Com. Journ. vol. 10. p. 204. 212. 217. 259. 97, 98. And,

In the same year, the rebellion being suppressed, by the statute of the 1 W. and M. c. 9. " All the Protestant subjects, who had continued *faithful in their allegiance* during the rebellion in Ireland, and had incurred a forfeiture of their estates under acts of the Irish Parliament," were restored to their possessions, as well ecclesiastical as temporal, *in the same manner they were held before the rebellion.*"

Compensation was made for the losses sustained by those who had *defended* Londonderry during the siege, out of the public fund raised by the confiscated estates of the rebels. Ibid. vol. 13. p. 291. 293.

In 1705, the House of Commons, on the petition of Elizabeth Wanderford, stating, that her husband, on account of his *zeal and service* in Ireland for the late King William, had been condemned as a *traitor* and *his estate*
con-

confiscated, voted her an annuity as compensation. Com. Journ. vol. 13. p. 54.

In the year 1708, Alexander Grant was reimbursed by a vote of the House of Commons, for the waste committed by the *rebellious* clans in Scotland. Ibid. vol. 15. p. 580. 588.

In the year 1715, by the first of Geo. I. c. 24. On account of the *loyalty and zeal* which the citizens of Glasgow had shewn, in putting themselves “ in a posture of defence “ against the rebels and traitors,” Parliament, “ in consideration of their losses and expences,” granted “ to the city a duty upon “ ale and beer for the space of twenty years.”

By the 4th Geo. I. c. 44. the subjects who had behaved with *fidelity* to the Crown during the rebellion, and whose property had been destroyed *by the rebels*, were fully recompensed for their losses.

In the year 1717, by the 4th Geo. I. c. 8. it was enacted, “ That all persons who had “ continued *dutiful and faithful to his Majesty*, “ and whose houses or goods had been burnt “ by the *rebels in Scotland*, or burnt or otherwise destroyed at Preston in Lancashire by “ the *rebels*, or his *Majesty's army*, shall be “ *fully*

“ *fully reimbursed and repaid* their losses by
 “ the respective exchequers of *England* and
 “ *Scotland.*”

In the year 1749, the House of Commons granted to the *loyal city* of Glasgow 10,000*l.* for that sum extorted from them by the rebels: Com. Journ. vol. 25. p. 959.

In the year 1747, Doctor Swinton petitioned the Commons, for a compensation for fundry houses which had been destroyed in the preceding *rebellion* at Chester. HIS PETITION CAME DOWN RECOMMENDED FROM THE THRONE. It was considered as a petition, in the prayer of which the public honour and justice were concerned, and therefore it was received by the House of Commons, *although the time limited for receiving private petitions was expired*; and he was fully compensated for his losses, out of the aids granted to the Crown.

When the State found it necessary to the public interest and safety, to cede to France the island of St. Lucia, ample compensation was made to the Duke of Montagu, the proprietor, both of honours and revenues; there being in his case, as in that of the Loyalists, *no reservation of his property.*

M

From

To these we will add one authority more. Judge Blackstone, when treating of the protection due from the Legislature to the subject, in the most decided manner declares, that “ so great, moreover, is the regard of *the law* “ for private property, that it will not au- “ thorise the *least violation of it*, no, not even “ for the general GOOD of the *whole com-* “ *munity*. Besides, the *public good* is in “ nothing more *essentially* interested than in “ the protection of every *individual’s private* “ *rights*, as modelled by the municipal law. “ In this, and similar cases, the Legislature “ alone can, and indeed frequently does, inter- “ pose and compel the individual to acquiesce. “ *But how does it interpose and compel?* Not “ by stripping the individual of his property “ in an arbitrary manner, but by giving him “ *a full and ample indemnification and equivalent* “ for the *injury* thereby sustained.”

From these and many other authorities, it evidently appears, that Parliament has ever held itself bound by the law of the land, to make compensation to the subject for property taken or destroyed by the State, either to avoid some public mischief, or to obtain some public benefit; for property lost through a failure in the State, to afford him the pro-
tection

tection due by law, and for property lost in consequence of his faithful exertions to defend the public interest and safety: while there is not one to be found of a contrary tendency or spirit, nor one where the compensation claimed by the Loyalists, has been delayed beyond the session of Parliament in which the application has been made. Indeed the right is so replete with public merit and equity, and the law from which it is derived has been so well understood, that it has never been disputed or doubted. It is, as the most eminent civilian in Great Britain declared, when his opinion was taken upon it, “ *A TRUISM which admits of NO POSSIBILITY OF DOUBT.*”

C H A P. VI.

Of the Sense and Declarations of the Members of both Houses of Parliament in their Debates on the Treaty of Peace, upon the Right of the Loyalists to Indemnity and Compensation.

IT is not to be presumed that a great national council will be of contrary opinions at different times, respecting a topic of national justice. The principles of justice, which are immutable, and the same yesterday, to-day, and for ever, are so deeply stamped by Omnipotent wisdom in the consciences of men, that they cannot be mistaken. No man, whose intellectual powers were not impaired, or whose reason was not perverted, ever yet doubted of the obligation he was under to make reparation for injuries done to, or damages suffered by, another, through a violation of his solemn engagements. Nor is an instance to be found in the annals of Parliament, where it was ever denied or disputed that the sovereign authority of Great Britain was bound, by law, to make compensation for losses sustained by its faithful subjects, through a
breach

breach of its sacred obligation to defend and protect their persons and properties. Hence we shall find that the Members of the two Houses of Parliament, who spoke in the debate on the treaty of peace, have fully confirmed the declarations and solemn decisions of the two Houses of Parliament in 1764 and 1767, and of his Majesty in council in 1775, on the right of the Loyalists to compensation for losses sustained in consequence of their fidelity to his Majesty, and their attachment to the British government.

To prove this, we here give extracts from such parts of the speeches of the learned Members of both Houses as relate to the Case of the Loyalists.

HOUSE OF COMMONS.

Mr. Wilberforce. “ When he considered the
 “ Case of the Loyalists, he confessed he there
 “ felt himself *conquered*; there he saw his
 “ country *humiliated*; he saw her at the feet
 “ of America! Still he was induced to believe,
 “ that Congress would religiously comply
 “ with the article, and that the Loyalists
 “ would obtain redress from America. *Should*
 “ *they not, this country was bound to afford it*
 “ *them,*

“ *them. They must be COMPENSATED; Ministers, he was persuaded, meant to keep the faith of the nation with them.*”

Lord North. “ And now let me, Sir, pause on a part of the treaty which awakens human sensibility in a very irresistible and lamentable degree. I cannot but lament the fate of those unhappy men, who, I conceive, were in general objects of our GRATITUDE and PROTECTION. The Loyalists, from their attachments, surely had some claim on our affection. But what were not the claims of those who, in conformity to their *allegiance, their cheerful OBEDIENCE* to the *voice* of Parliament, their *confidence* in the proclamation of our Generals, invited under every assurance of *military, parliamentary, political and affectionate PROTECTION*, espoused, with the hazard of their lives, and the forfeiture of their properties, the cause of *Great Britain*? I cannot but feel for men *thus sacrificed* for their bravery and principles: men who have sacrificed all the dearest possessions of the human heart. They have *exposed* their lives, *endured* an age of hardships, *deserted* their interests, *forfeited* their possessions, *lost* their connections, and *ruined their families*, in OUR
“ CAUSE.

" CAUSE. Could not all this waste of human
 ' enjoyment excite one desire of protecting
 " them from that state of misery with which
 " the implacable resentment of the States has
 " desired to punish their loyalty to their So-
 " vereign and their attachment to their mother-
 " country? Had we not espoused their cause
 " from a *principle of affection and gratitude*,
 " we should, at least, have *protected* them, to
 " have preserved our OWN HONOUR. If not
 " tender of their FEELINGS, we should have
 " been tender of our OWN CHARACTER.
 " Never was the *honour*, the *principles*, the
 " *policy* of a nation, so grossly abused as in
 " the desertion of those men, who are now
 " exposed to every punishment that *desertion*
 " and *poverty* can inflict, BECAUSE THEY
 " WERE NOT REBELS."

Lord Mulgrave. " The article respecting
 " the Loyalists, he said, he never could regard
 " but as a lasting monument of *national dis-*
 " *grace*. Nor was this article, in his opinion,
 " more reproachful and derogatory to the
 " *honour and gratitude* of Great Britain than
 " it appeared to be wanton and unnecessary:
 " The Honourable Gentleman who made the
 " motion had asked, if those Gentlemen, who
 " thought the present peace not sufficiently
 " advan-

“advantageous to Great Britain, considering
 “her circumstances, would consent to pay the
 “*amount of expence another campaign** would
 “have put us to, for the degree of advantage
 “they might think we had a right to expect?
 “In answer to this, he declared for one, *be*
 “*had rather, large as the sum in question was,*
 “*have had it stipulated in the treaty, that*
 “*Great Britain should apply it to making good*
 “*the losses of the Loyalists,* than that they
 “should have been so shamefully deserted,
 “and the *national honour so pointedly disgraced*
 “as it was by the fifth article of the treaty
 “with the United States.”

Mr. Secretary Townshend, now Lord Sydney. “He was ready to admit, that many
 “of the Loyalists had the *strongest claims*
 “upon the country; and he trusted, should
 “the recommendation of Congress to the
 “American States prove unsuccessful, which
 “he flattered himself would not be the case,
 “*this country would feel itself bound in honour*
 “*to make them FULL COMPENSATION for*
 “*their losses.*”

Mr. Burke. “At any rate, it must be
 “agreed on all hands, that a vast number of
 “the Loyalists had been deluded by this
 “country, and had risked every thing in

* Twenty millions.

“ our cause ; to such men *the nation* OWED
 “ *protection*, and its *honour* was pledged for
 “ *their security* AT ALL HAZARDS.”

Lord Advocate. “ With regard to the
 “ Loyalists, they merited *every possible effort*
 “ on the part of this country.”

Mr. Sheridan “ execrated the treatment
 “ of those unfortunate men, who, without
 “ the least notice taken of their civil and re-
 “ ligious rights, were handed over as subjects
 “ to a power that would not fail to take
 “ vengeance on them for their zeal and at-
 “ tachment to the religion and government
 “ of this country. This was an instance of
 “ British DEGRADATION, not inferior to the
 “ *unmanly petitions of government to Congress for*
 “ *the wretched Loyalists.* Great Britain at the
 “ *feet* of CONGRESS suing in vain, was not a
 “ HUMILIATION or a STIGMA, greater than
 “ the infamy of consigning over the loyal
 “ inhabitants of Florida, as we had done,
 “ without any conditions whatsoever.”

Mr. Lee. “ With respect to the cession of
 “ territory, it was great and extensive in every
 “ quarter of the world. Europe, Asia, Africa,
 “ and America, beheld the dismemberment
 “ and diminution of the British empire. But

“ this, alarming and calamitous as it was, was
 “ nothing when put in competition with ano-
 “ ther of the crimes of the present peace ; *the*
 “ *cession of men into the hands of their enemies,*
 “ *and delivering over to confiscation, tyranny, re-*
 “ *sentment, and oppression, the unhappy men who*
 “ TRUSTED TO OUR fair PROMISES and DE-
 “ CEITFUL WORDS.”

The Honourable Mr. Norton. “ Mr. Nor-
 “ ton added, that under all the circumstances,
 “ he was willing to approve of the two
 “ former (the European treaties), but on ac-
 “ count of the article relating to the Loyalists,
 “ *he felt it impossible* to give his assent to the
 “ latter.”

Sir Peter Burrell. “ The fate of the
 “ Loyalists claimed the compassion of every
 “ human breast ; these helpless, forlorn men,
 “ *abandoned* by the ministers of a people on
 “ whose JUSTICE, *gratitude,* and *humanity,*
 “ they had the best-founded claims, were left
 “ at the mercy of a Congress highly irritated
 “ against them. What then could they ex-
 “ pect from such an assembly ? Why truly,
 “ nothing ; and therefore he might fairly say,
 “ that *nothing had been obtained* for them by
 “ this country. If nothing else was wanting,
 “ was not this enough to damn a peace, and

“ render it INFAMOUS in the eyes of all HO-
 “ NEST men? He spoke not *from party zeal*,
 “ but as an INDEPENDENT COUNTRY GEN-
 “ TLEMAN, who, UNCONNECTED WITH
 “ PARTY, *expressed the EMOTIONS of his*
 “ HEART, and gave vent to his honest in-
 “ dignation.”

Sir Wilbraham Boodle. “ There was one
 “ part of it (the treaty) at which his heart
 “ bled; the article relative to the Loyalists.
 “ Being a man himself, he could not but feel
 “ for men so cruelly abandoned to the malice
 “ of their ENEMIES. It was scandalous! it
 “ was disgraceful! Such an article as that
 “ ought scarcely on *any condition* to have
 “ been admitted on our part. *They had fought*
 “ *for us, and run every hazard to assist our*
 “ *cause; and when it most behoved us to afford*
 “ *them PROTECTION, we deserted them.*”

Mr. Macdonald. “ He declared, that he
 “ forbore to dwell upon the case of the
 “ Loyalists, as an assembly of human beings
 “ could scarcely trust their judgments when so
 “ powerful an attack was made upon their
 “ feelings. If they had hearts and nerves
 “ they must necessarily overwhelm their un-
 “ derstandings. He turned his eyes there-
 “ fore from that subject, by a kind of natural
 “ impulse, as from a *corpse* or a *grave*.

“ There was, however, a *chance* held out by
 “ America of restoring some of those me-
 “ ritorious men to the very *natale solum*
 “ on which they had been born and bred.
 “ A *very bad chance be feared* ; yet they ought
 “ to have the benefit of that chance, *such* as it
 “ was. This a parliamentary declaration
 “ might frustrate. If that chance fails, said
 “ he, TAX ME TO THE TEETH, and I will
 “ *cheerfully stint myself to contribute to their*
 “ *relief or to make up any deficiency.*”

HOUSE OF LORDS.

Lord Walsingham “ assured their Lord-
 “ ships, that the noble Earl (Carlisle) had
 “ forcibly aroused his feelings, and he could
 “ neither think nor speak of the dishonour of
 “ our treatment of those *deserving men with*
 “ *patience*. Their claim upon us was self-
 “ evident ; they had been *invited* to join us
 “ by our own acts ; it was a *parliamentary war*,
 “ and therefore it was the more incumbent on
 “ the legislature to *protect* them. The Crown
 “ had no separate interest in the war ; the
 “ addresses to the King from *every part* of the
 “ country proved, that the people of England
 “ considered the war as *necessary*, since its
 “ object was the preservation of our *just do-*
 “ *minion.*

“ *minion*. Parliament should be CONSISTENT.
 “ He begged their Lordships to look at the
 “ *resolutions of Parliament in 1766*, and see
 “ by them, if, in order to be CONSISTENT,
 “ they ought not to have observed a different
 “ conduct in regard to the Loyalists.”

Lord Hawke “ denied that the Loyalists
 “ had been abandoned; and after paying
 “ them *every proper compliment* said, that he
 “ should support *no minister* who would coun-
 “ tenance SUCH A MEASURE. In America,
 “ said he, Congress had engaged to recom-
 “ mend their cause to the legislatures of the
 “ country. He flattered himself that recom-
 “ mendation would be attended with *success*;
 “ but, said he, state the case that it will not,
 “ the *liberality* of Great Britain is still open to
 “ them; *ministers had pledged themselves to*
 “ *indemnify them, not only in the address now*
 “ *moved for, but even in the last address, and*
 “ *in the Speech from the Throne.*”

Lord Viscount Townshend. “ To desert men
 “ who had constantly adhered to loyalty and
 “ attachment, was a circumstance of such CRU-
 “ ELTY as had never before been heard of.”

Lord Stormont. “ These were men whom
 “ Britain was bound in JUSTICE and *honour*,
 “ *gratitude*

“ *gratitude and affection*, and EVERY TIE, to
 “ *provide for and protect*. Yet, ALAS FOR
 “ ENGLAND as well as THEM, they were
 “ made a PART of the price of peace. Those
 “ who were the *best friends* of Britain were,
 “ *eo nomine*, on *that very account*, excepted
 “ from the indulgence of Congress. Britain
 “ *connives* at the BLOODY sacrifice, and seeks
 “ for a SHAMEFUL retreat at the expence of
 “ her most *valiant and faithful sons!* How
 “ different was this from the conduct of Spain
 “ to the Loyalists in the Netherlands, in the
 “ reign of Philip III. on occasion of the
 “ famous truce in 1609, and also in the peace
 “ of Munster. Their effects and estates were
 “ either restored, or they were paid interest
 “ for them at the rate of six and 1-4th per
 “ cent. on the purchase money. A general
 “ act of indemnity was passed, without ex-
 “ ception of place or person.” Lord Stormont
 also touched on the case of the Catalonians,
 “ who revolted from Spain, and when they
 “ put themselves under the protection of
 “ Britain. In both cases *their privileges,*
 “ *lives, and properties,* were preserved to them.
 “ Even Cardinal Mazarin, so artful, so shuf-
 “ fling, and fallacious; and I am sure, says
 “ he, I mean not the most distant allusion to
 “ any of his Majesty’s ministers (for the
 “ Parliament

“ Parliament of Paris determined, that to call
 “ any person a MAZARIN was a reproach to
 “ him, and that an action would lie); even
 “ he, though so little scrupulous on most
 “ occasions, deemed it sound and wise policy
 “ to observe *good faith* with the Catalonians.
 “ He negotiated the peace of the Pyrenees
 “ himself, and he took care that an act of
 “ indemnity should be published in their *fa-*
 “ *vour*, on the same day in which a procla-
 “ mation was issued reclaiming *their obedi-*
 “ *ence*. *History, experience, furnish no example*
 “ *of such base dereliction.*”

Lord Sackville. “ In regard to the aban-
 “ donment of the Loyalists, it was a thing
 “ of *so atrocious a kind*, that if it had not been
 “ already painted in all its *horrid colours*, he
 “ should have attempted the ungracious task;
 “ but never should have been able to describe
 “ the CRUELTY in language as strong and ex-
 “ pressive as were his feelings. The King’s
 “ ministers had WEAKLY imagined, that the
 “ recommendation of the Congress was a suffi-
 “ cient security for these unhappy men. For
 “ his own part, so far from believing that this
 “ would be sufficient, or any thing like suffi-
 “ cient for their protection, he was of a direct
 “ *contrary opinion*; and, if they entertained
 “ any notions of this sort, he would put an
 “ end

“ end to their idle hopes *at once*, by reading
 “ from a paper in his pocket, a resolution
 “ which the Assembly of Virginia had come
 “ to, so late as on the 17th of December last.”

Having read the resolution, his Lordship demanded “ what ministers had to say now
 “ for this boasted recommendation for which
 “ they had stipulated with Congress? Could
 “ they say, that the unhappy men who had
 “ *fought and bled for this country*, who had
 “ given up *their all*, and (a pang the more
 “ grievous to minds of feeling) *the all of their*
 “ *little families*; could ministers say, that these
 “ men who had *said and done and suffered* all
 “ that was in the power of human nature for
 “ *our cause*, ought not to have had a better
 “ security than the present, from *scorn, inso-*
 “ *lence, and ruin*? A peace founded on such
 “ a SACRIFICE as this, must be *accursed in the*
 “ *sight of God and man*.”

Lord Loughborough said, “ That the 5th ar-
 “ ticle of the treaty has excited a general and
 “ just indignation. For what purpose could
 “ it have been inserted? Those whom it pre-
 “ tends to favour receive no benefit from it;
 “ for what is the purport of a recommenda-
 “ tion? but to those the most entitled to our
 “ regard, the *brave and unhappy* men who
 “ have

“ have not only *given up their property*, but
 “ exposed *their lives* in our cause, the distinc-
 “ tion admitted to their prejudice is cruel and
 “ injurious indeed. In *ancient* or in *modern*
 “ *history* there cannot be found an instance of
 “ so shameful a desertion of men who had
 “ *sacrificed all to their duty, and to their re-*
 “ *liance upon our FAITH.* There is even an
 “ *horrible refinement* in the cruelty of the ar-
 “ ticles: they are told that one year is allowed
 “ them to solicit from the lenity of their *per-*
 “ *secutors* that *mercy* which their friends *ne-*
 “ *glected* to secure; to beg their bread of those
 “ by whom they have been *stripped of their*
 “ *all; to kiss the hands that have been dyed in*
 “ *the blood of their parents, and to obtain, if*
 “ *they can, leave to repurchase what they have*
 “ *no money to pay for.*”

Lord Shelburne, “ But there remains some-
 “ what in these provisional articles still to be
 “ considered, which I have never reflected
 “ on without feelings as pungent as any which
 “ the warmest admirers of the virtues of the
 “ Loyalists can possibly have experienced; I
 “ mean the unhappy *necessity* of our affairs,
 “ which induced the *extremity* of submitting
 “ the *fate* of the property of these brave and
 “ worthy men to the discretion of their ene-
 “ mies. I have but one answer to give the
 “ House;

“ House ; it is the answer I gave my own
 “ *bleeding heart*. A *part* must be *wounded*,
 “ that the *whole* of the empire may not pe-
 “ rish. If better terms could be had, think
 “ you, my Lords, that I would not have em-
 “ braced them ? *I had but the alternative ei-*
 “ *ther to accept the terms*, said Congress; *of*
 “ *our recommendation to the States in favour of*
 “ *the Colonists, or continue the war*. But say
 “ the worst; and that, after all, this *inesti-*
 “ *mable set of men* are not received and che-
 “ rished in the bosom of their own country ;
 “ is *England so lost to gratitude, and all the*
 “ *feelings of humanity*, as not to afford them
 “ an asylum ? Who can be so *base* as to think
 “ she will refuse it to them ? Surely it cannot
 “ be that noble-minded man, who would
 “ plunge his country again *knee-deep in blood*,
 “ and saddle it with an expence of *twenty*
 “ *millions* for the purpose of restoring them.
 “ Without *one drop of blood spilt*, and with-
 “ out *one fifth of the expence of one year’s cam-*
 “ *paign*, *happiness and ease* can be given the
 “ Loyalists in as ample a manner as *these bless-*
 “ *ings were ever in their enjoyment*; therefore
 “ let the outcry cease on this head.”

Lord Chancellor. “ As to the Loyalists, they
 “ had a specific provision in the treaty : his
 “ own conscious honour would not let him
 “ doubt

“doubt the good faith of others; his good
 “wishes to the Loyalists would not let him
 “indiscreetly doubt the dispositions of Con-
 “gress. It was stipulated, that all these un-
 “happy men should be provided for; but
 “if not, then, and not till then, Parliament
 “could take cognizance of the case, and im-
 “part to each suffering individual that relief
 “which REASON, perhaps policy, CERTAINLY
 “VIRTUE and RELIGION, REQUIRED*.”

FROM

* We trust that the sentiments of Parliament have not
 changed since the year 1783. Indeed, we have reason to hope the
 contrary, from the speeches of several Members who have
 given their sentiments on the subject so late as the year 1786.

The Chancellor of the Exchequer, when opening his plan for
 reducing the national debt, observed. “That another matter
 “of expence comes properly under this head; and it is *what*
 “*the House have already acknowledged to be a JUST DEMAND*
 “*upon the JUSTICE and generosity of this nation*, that is, a pro-
 “*vision for the American Loyalists. Their situation demands*
 “the most tender consideration; nor would I chuse to mention
 “any sum for this purpose; if it was a great one, it would
 “raise the expectations of those unhappy people: and I would
 “not wish to say any thing more to them, than that I hope
 “there will be a *generous and liberal regard* paid to their me-
 “lancholy and unfortunate circumstances.”

Mr. Dempster, having remarked, that the ROYAL WORD
 as well as the *faith* of the *House*, and of the nation, stood
 pledged for the protection and support of the American
 Loyalists, begged leave to present a petition in their favour,
 and said, that the House would find it presented such a melan-
 choly picture of the misfortunes which the Loyalists had en-
 dured, *in consequence of the neglect* they had been treated with,
 as he hoped would prevail on the House to grant them a *speedy*
 and *effectual* relief.

From these Extracts, it evidently appears, that there was no difference in opinion on the right of the Loyalists to adequate compensation. Those who spoke against the Treaty as inadequate to the national circumstances, declared, that the Loyalists had been sacrificed through a want of the protection due to them, and therefore that a full compensation for the sacrifice (and if possible more) was due; and that if the expence of one year's campaign, or twenty millions, was necessary, it ought to be applied to that purpose. Those who contended, that the peace was necessary to the then state of the country, candidly and honourably agreed, that for such compensation the faith of the nation was pledged. One of the Ministers who made the peace declared,

Sir George Howard seconded the petition, and declared, that he ever had, and, on all occasions, would stand up the zealous advocate of the American Loyalists, to whom he held the HONOUR, the JUSTICE, and the good faith of that House and the British nation UNAVOIDABLY pledged.

Mr. Sheridan. There was a subject which, he was sorry to see, had so far *changed* its impressions on their feelings, that though the bare mention of it used to call forth *all their sensibility*, it was now heard with the *coldest indifference*; he meant the American Loyalists, men to whom the *faith of Parliament* was solemnly pledged, and therefore men whose cause that House *neither could nor ought to abandon*. The House had recognized their pretensions to protection, by instituting a committee to enquire into their claims, the amount of which was considerable, and MUST BE DEFRAIDED.

that

that “ if the ‘recommendations of the Con-
 “ gress proved unsuccessful, this country
 “ would feel itself bound in HONOUR to make
 “ them *full compensation* for their losses.” The
 noble Lord at the head of the Treasury, who
 made the peace, candidly confessed that it
 ought to be made, and that it would not cost
 the nation more than one fifth of the ex-
 pence of one year’s campaign, or twenty
 millions, “ to give to them the same hap-
 “ piness and ease they ever enjoyed before ;”
 and the noble and learned Law Lord, whose
 profound knowledge of the laws of the land,
 and of the mutual obligations between the
 sovereign authority and the subject was never
 disputed, decidedly declared, that if the Con-
 gress should not provide for them, Parliament
 ought “ to impart to them that relief which
 “ *reason*, perhaps *policy*, CERTAINLY *virtue*
 “ and *religion*, REQUIRED.”

Here we find that the compensation claimed
 was confessed to be due by all—and that the
 noble Lord who made the peace, thought it
 but just to make such compensation as to give
 the Loyalists the same ease and happiness they
 ever enjoyed before ; but this is impossible.
 What compensation can Parliament make
 for suffering them, through a want of its pro-
 tection,

tection, to be driven as it were into exile from the land of their nativity, and from the tenderest and dearest of all connections?— What, to the fathers who have lost their sons? to the widows who have lost their husbands? to the numerous orphans who have lost their fathers, the only hope and support of their infant years? For such losses, too great to be described by language, and scarcely to be estimated by the utmost feelings of humanity, excited by the strongest powers of sensibility, government can make none. The Loyalists expect none; because they are losses to which no earthly compensation can be *adequate*. For a reward for such losses, and of that virtue which excited them, at *every hazard of life and fortune*, to fulfil their duty to the State, and to support the rights of their Sovereign and his Parliament, they look up to the supreme FATHER of all justice. They now ask for that compensation only which they have so long solicited in vain from Parliament; compensation for property and rights which have been lost through a want of that protection which is due to them by the first great laws of the British constitution—by the Royal faith, and the resolutions of a British Parliament, solemnly pledged to them for it;

a com-

a compensation which is due to them by their birth-rights as British subjects, of which no power on earth can lawfully deprive them,

C H A P. VII.

Of the Doctrine of the Right Honourable Mr. Pitt, applied to the Claim of the Loyalists.

ALTHOUGH, in the preceding pages, we have demonstrated from the laws of civil society—the usage of states—the practice of Parliament, and from the declarations of his Majesty, and the uniform resolutions of both houses of the legislature, the indispensable obligation which Parliament is under to make compensation to the Loyalists adequate to their losses; we will yet further corroborate those arguments by the opinions of the first minister of Great Britain, in a case similar, but of much less public merit and importance; opinions not hastily formed, but established in his enlightened mind, after the fullest deliberation upon the subject, and which therefore, we must conclude, speak the language of law and truth. These opinions are to be found in his memorable speech in February 1787.

The case upon which this speech was made is that of Mr. Hastings. This gentleman, as
Governor

Governor General of our Indian possessions, was charged with resuming the Jaghires, the property of the Begums of Oude, promising them compensation which he did not make. A motion was made in the House of Commons to impeach him for this *act of violence and injustice*. In the course of the debate, Mr. Pitt declared, " That there were but *two* " principles which could justify a resumption " of these Jaghires. To *resume* the *property* " of any *subject*, or of any *Prince* with whom " you are in alliance, it *was necessary* that " either it should be first *forfeited by delin-* " *quency*, or that *impending* and *immediate* " *political danger* should *authorise* the seizure, " But in *either* case *justice* should be observed, " For if you seized them as a punishment for " a crime, it should be done *with justice*, " Could the political emergency be proved, it " would certainly acquit Mr. Hastings of the " *criminality*. For the necessities of the public " safety produced *many* instances of the *justice* " of *possessing private property*, PROVIDED " YOU GIVE TO THOSE YOU HAVE DE- " SPOILED AN ADEQUATE COMPENSA- " TION,"

He further contended, that the right in the State to take the property of the subject, or an ally, is founded on the compensation to be

be made. "For," says he, "the necessities
 " of the State made it common justice to re-
 " sume private property, which was always
 " the right of public benefit. When any
 " dangers arose, even to a subject or a prince,
 " self-preservation dictated the lawful possess-
 " ing of every means to avert the approach-
 " ing or impending danger. BUT THE CRI-
 " TERION OF THE RIGHT WAS THE JUS-
 " TICE WITH WHICH IT WAS ACCOMPA-
 " NIED.

" Thus, if such had been the state of af-
 " fairs, as to render it indispensably necessary
 " to resume the Jaghires, for the immediate
 " preservation of our possessions and terri-
 " tories; AN *adequate compensation should have*
 " *been* MOST SACREDLY *given to the dispos-*
 " *posed.*

" If these Jaghires occasioned so much dis-
 " turbance at Fyzabad, as to threaten broils
 " and contentions, that produced such evils to
 " our State as were necessary should be avoid-
 " ed, the resumption of them was morally
 " and politically just, ATTENDED WITH THE
 " ADEQUATE COMPENSATION."

After contending that no such necessity ex-
 isted to justify Mr. Hastings in resuming the
 P property

property of the Begums, he says, “ If it had,
 “ it would certainly have compelled him to
 “ the instantaneous application of the only
 “ remedy which offered. As these Jaghires
 “ were the supposed or assumed cause of the
 “ insurrection, Mr. Hastings should, without
 “ delay, being first convinced of the truth,
 “ have resumed them, and GIVEN THE POS-
 “ SESSORS, AS BEFORE OBSERVED, THEIR
 “ JUST RIGHT TO A COMPENSATION.”

Shortly after, he repeats and enforces the
 same principle of law and justice ; and adds,
 “ But admitting the right to the resumption,
 “ THE GUARANTEE OF THE COMPENSA-
 “ TION SHOULD HAVE BEEN INVIOLEABLE.
 “ Instead of this, ‘ he asserts,’ the Jaghires
 “ were resumed ; the compensation guaran-
 “ teed, and this treaty afterwards *violated* ;
 “ and that the good faith of this country, and
 “ the law of nations, should have taught Mr.
 “ Hastings rather to have *preserved* and *pro-*
 “ *tected*, than *injured and destroyed the rights of*
 “ *the Begums.*”

This act of Mr. Hastings, in resuming the
 property of the Begums, without *adequate com-*
penensation, he concludes, with reprobating in
 the strongest terms, and declares, that he was
 convinced, “ the national character had been
 “ debased

“ debased and degraded, and it was only by
 “ an act of national justice it could be restored
 “ to its wonted brilliancy, excited by its sa-
 “ cred attachment to HONOUR, JUSTICE, and
 “ HUMANITY.”

Here we find, that the law, and every principle of justice, asserted in this speech, are the same we have laid down in the preceding pages, and manifestly prove the right of the Loyalists to compensation. The Minister, with much learning and truth, considers the property of the subject, as sacred and inviolable, under the laws of civil society, and the property of an ally, under the laws of nations; and candidly declares, that neither can be deprived of it without “ *criminality in the de-
 “ spoilers;*” but upon TWO principles, in case of “ forfeiture by delinquency, or when the
 “ necessities and preservation of the State re-
 “ quire it.” And when that necessity demands it, he repeatedly affirms, that the resumption cannot be *lawfully* made WITHOUT ADEQUATE COMPENSATION. This compensation he declares is the “ CRITERION,” the “ PROVISIO,” or condition of the right, and that it ought to be *most sacredly made to the despoiled*, whether they be *subjects or allies*.

Should it be said that there is a difference between the case, where the property of the subject is "*resumed*," and where it has been *lost* through a want of public protection, and afterwards sacrificed to the public safety: we answer, that this distinction is not founded in law; because the State, by its solemn political engagements, is bound to defend and protect the subject against all foreign as well as domestic injuries; and therefore it cannot do any injury, or suffer it to be done to him, without violating those engagements and the law upon which they are established. Hence it cannot *resume*, or *destroy*, or *suffer* to be taken or destroyed, or *cede* in a treaty the property of the subject, and thus violate his right to its protection, but when the public benefit or necessities require it. For the right of the state to do all these acts, so contrary to the laws of nature, reason, and justice, so injurious to the individual, and so inconsistent with its most sacred duty, originates in, and is founded on, the law of necessity, which at the same time enjoins the State as the "*critereon*" and *condition* of this right, to repair the damages sustained by a breach of its solemn engagements, by making to the sufferer ample compensation. In all these cases, the
 oblige-

obligations of the State, and the right of the subject to protection, are equally broken; the injury done, and the loss sustained, are the same, and that security to which he is entitled under the laws of civil society equally destroyed; and of course, equal compensation is due in all.

We have thus reasoned from the doctrines of the Minister, whose candour, love of justice, extraordinary abilities, and firm attachment to the honour of his country, we are at all times ready to acknowledge, not doubting, but that when he shall detach his mind from his other important engagements, and give to the case of the Loyalists full consideration, he will perceive the high obligations under which Parliament remains to do them justice—and how much it is his *peculiar duty* in the high office he now holds under his Sovereign, to solicit and obtain it for them; and that, “the principles of reason, justice, and humanity *,” the force of which he has so sensibly felt and exerted in favour of others, will *all* combine to convince his upright and enlightened mind, of the justice and compensation which is due by law to the Loyalists.

See the Speech.

C H A P. VII.

*Of the Benefits received by the British Nation,
from the Sacrifice made of the Property of
the Loyalists.*

IT will not be denied, that the property of the Loyalists has been given up by the sovereign authority, as the *necessary price and purchase of peace for the whole society*. The Minister who made the treaty, unequivocally declared it. It was so understood at the time by all the Members of both Houses of Parliament, when they confirmed the peace. Indeed the fact speaks for itself; because unless that authority conceived that the affairs of the nation were in such extremity as to make such a sacrifice necessary, it could have no right to give up their property, as is before proved, but was obliged to protect it by carrying on the war, until it was regained and restored to them.

Should we attempt to describe the benefits purchased for the nation by this sacrifice, the extent of them is so great and diffusive, it
could

could not be done. However, to have before us a summary view of them, we will only observe, that the ravages of war were stopped in the most violent stage of their progress; and peace and security, with all the invaluable blessings attending them, were restored to every person in the British dominions, except the American Loyalists. The farmer was restored to the unmolested tillage of his ground, and to the peaceful enjoyment of more extensive profits, “under his own vine, and his own fig-tree;” the manufacturer, to a greater vent and greater profits for his commodities, every market being laid open to him; and the vessel of the merchant traverses the ocean at less risk and expence, and consequently to much greater advantage. To these benefits, which are more readily conceived than expressed, we must add the immense national savings. Had the war continued one year more, *twenty millions* at least, according to the confession of the Minister who made the peace, must have been raised and added to the national debt; and, in all probability, *thousands of Britons* would have been lost in battle. Had it been extended to two or three years, treble that sum, or *sixty millions*, would have been incurred; and no man can say, what

what might have been, in the then deranged state of our public affairs, the loss the nation might have sustained in its territorial possessions. From these burthens, losses, and dangers, great as they were, the nation has been happily relieved, by giving up the property of a few of its subjects. And as it is now certain the debt due to the Loyalists will be much less than one fifth of the expence of one year's campaign, which was the supposition of the Minister who negociated the peace, it is evident that an immense gain thereby accrued to the nation; but when the other savings and benefits are thrown into the scale, the profits are so great that they admit of no calculation, and the consideration to be paid for them sinks below comparison.

There are certain duties so strongly enforced by moral obligation, that nothing will justify a violation of them but inability or impossibility to perform them; such as, the payment of a debt justly contracted; the fulfilling a promise made for a reasonable and just consideration; the making satisfaction for injuries sustained through a violation of a just covenant or engagement, or a just recompense for benefits received at the expence of others; and adequate compensation for damages or injuries done.

done *. These are moral axioms, which carry with them no less evidence than mathematical demonstrations. In all these cases, the moral obligation has been esteemed so great, that the legislatures of States have subjected the property to seizure, the person to perpetual imprisonment, and, in some instances, obliged the debtor to give up his freedom and the produce of his labour, until the duty is fully discharged. The debt due from the nation is certainly of this kind. The human mind can conceive no duty where the moral obligation to discharge it, is more solemnly enjoined by the laws of God and man. It is a debt due from the whole people of Great Britain, not only arising from the most important services done, but from a two-fold violation of their public faith and engagements. The property of the Loyalists has been lost, through a breach of the sacred engagement entered into by the sovereign authority, and confirmed by the essential laws of the State, *to protect them*; and, as the nation is represented in, and acts by,

* “ No human establishment, no connection into which mankind can enter, can supersede the obligation of that general and inviolable law of nature, that the damage we have done to another should be repaired, except the sufferers have manifestly renounced their right to reparation.”
Burlamaqui, part iii. c. 5. s. 14.

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that

that authority, of course, through a breach of that engagement by *the whole nation*. It has moreover been given up as the price of peace*, and as a sacrifice to the necessities, security, and happiness of those who were sacredly bound to protect and preserve it. Besides, the advantages and interests derived from the breach of the national and sovereign faith, to those who have committed it, infinitely surpass in value the sum necessary to make a due reparation, and this reparation is expressly enjoined by the original and immutable laws of the British constitution. It is therefore a debt of the highest and most inviolable nature, from which Parliament can never honourably and justly discharge itself, but by making adequate compensation; nor can the moral obligation to do it be by any means suspended, for a moment, but by national inability and insolvency.

To use many arguments to prove that the nation is not insolvent, but able to discharge all its debts with honour, is unnecessary, since greater demonstrations of wealth than are to be found in any country in Europe, appear wherever we cast our eyes. To which it cannot be necessary to add any other proof than

* See the Appendix.

that

that declaration penned by the first Minister of Great Britain (whose peculiar duty it is to understand the national resources), and delivered by the mouth of Majesty itself, “ That our commerce and *revenue* are in a flourishing state.”

We will therefore leave the chimerical idea of national insolvency, there being nothing more absurd and contrary to truth; and proceed to shew with what ease the demand of the Loyalists may be satisfied. We will take for granted, what will not be denied, that there are eight millions of persons in Great Britain who contribute towards the national expences; and suppose, that the debt due to the Loyalists should amount even to the sum suggested by the Minister who negociated the peace, which will not be the case; it would require to pay it in five years, only one shilling and sixpence each person per annum; and, to fund and place it upon a par with that of the national creditors, it will require less than four pence per annum each person; which would amount, on the whole, to a sum considerably less, as experience has shewn, than can be easily raised by voluntary contributions to an annual lottery.

Here we find, when this debt to the Loyalists shall be fairly distributed among those who enjoy the benefits arising from it, as both reason and law direct, it will be scarcely felt. And when it is further considered that it may be paid, in a mode yet more easy to the nation at large, and without adding in the least to its present burthens, by the voluntary contributions of thousands who are ready to make them, no reason can be assigned why it has not been done long since.

Under these circumstances, it is impossible for us to suppose, there is a man in Great Britain, who, understanding the *nature and import* of the debt due to the Loyalists, the *benefits* he has long enjoyed in consequence of it, the *facility* with which it may be paid, and the *high obligation* he is under to discharge it, will not cheerfully contribute his proportion towards it. Is there one honest and liberal mind which can enjoy benefits obtained by the sacrifice of the lives and fortunes of his innocent and faithful fellow-subjects, without making a just recompense? Is there one man of the least degree of sympathy and humanity, who can see his brethren, equally entitled with himself to the protection of the State, made

the VICTIMS to their peace and happiness, without contributing his quota to rescue them from the *oppression*? If there are persons so lost to all sense of reason, justice, and humanity, let them consider, that the case of the Loyalists may soon be their *own*. Rebellions and war may and will happen; their property may be taken, destroyed, or given up to the public necessities without their consent; and they, like the Loyalists, with their helpless families, may be reduced from affluent fortunes to poverty and want, while others enjoy the benefits arising from the oppression and injustice done to them. Indeed the sacrifice of private property to the public benefit is a common case. It has occurred as often as a rebellion or war has happened in Great Britain. Should a precedent in the case of the Loyalists be established by the highest authority, for refusing the protection and indemnity due to the subject, where will they find, in their case, relief from the oppression?

It may also not be improper for Parliament to consider, that foreign nations will not fail to exult at finding so great a want of public justice in the British government, the strongest of all possible proofs of a decline in the wisdom and power of States; and that the subject
at

at home will clearly perceive, he cannot in future rely on any protection or indemnity for the sacrifice, which may at any time be made, of his property for the public benefit, nor for the losses he may sustain by his fidelity to the Crown, and zealous exertions in defence of the State. Will he not reflect, that a state of neutrality will be his only security, and that he can be under no obligation to do more ?

C H A P. IX.

Objections answered.

SHOULD it be objected to the preceding arguments and authorities, “ that the property of the Loyalists was *confiscated*, and “ in the hands of the American States before “ the treaty ; that Great Britain having used “ her utmost endeavours to recover it, was “ obliged to *relinquish* it ; and therefore, that “ such relinquishing is not to be considered as “ a cession of it, nor are the Loyalists entitled “ to the same compensation as if it had been “ ceded.” To this objection we answer, that it is more specious than just, and without the least foundation in reason. We suspect it has arisen from a superficial examination of the

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the law, in the case where a State has been obliged to relinquish or *abandon* a part of its territory, “ when there has been evident “ danger of their perishing if they continue “ together*.” This renders it necessary to enquire what the law is in such case. The authorities all agree, “ that a sovereign can- “ not, even under such circumstances, *force* “ his subjects in the province he abandons, to “ submit to another government.” He cannot annihilate the obligation he is under to protect them, although he is prevented by necessity from doing it at the time, nor dissolve the union between him and his subjects by a transfer of their allegiance to the conqueror, without *their consent* †. “ He can “ lawfully do no more under the law of necessity, than *merely* withdraw his forces, and “ abandon the inhabitants,” who make their election to remain after his forces are withdrawn. For should any of them chuse to leave the territory abandoned, and follow his standard, or to retire to his other dominions, determined to adhere to their allegiance, he cannot, without violating the most sacred and immutable laws of civil society, refuse them the protection due to them before as subjects;

* Burlamaqui, p. iii. c. 5. s. 52.

† Ibid. s. 53.

nor is there one instance to be found, where any sovereign has ever committed so great a violation of reason, justice, and law.

Indeed the utmost extent and operation of such abandonment is this: it leaves those who, from motives of interest and the impulse of necessity, *choose* to remain in the territory abandoned, the right and privilege of taking care of themselves, either by *defending* it; or, in order to save their property from plunder and to secure their possessions, by *submitting* to, and making their peace with the conqueror. When this choice is made, in preference to their former allegiance, then, and not till then, are the mutual obligations between them and the Sovereign who has abandoned them, dissolved. Thus the disunion, with all the consequent losses and misfortunes, although effected by necessity, takes place with the *consent* of both parties. And this *disunion* is what is called in the books, “ a pure misfortune, which must be suffered by the “ abandoned part * ;” *by the people who have chosen to remain*, either with design to defend themselves, or to save their estates by submitting to a new Sovereign; a misfortune

* Burlamaqui, p. iii. c. 5. § 53.

which

which no reason, justice, or law can require their former Sovereign to compensate.

Such is the law in a case where the Sovereign has been obliged, through necessity, *merely to abandon or relinquish* a district, and where the people in it, finding themselves not protected, *refuse to follow the distressed standard of their country*, from an expectation of doing better. Here they are disengaged from the ties of allegiance, and the Sovereign from his obligation to protect and indemnify them for losses sustained in consequence of such disengagement. But the law is very different where subjects have faithfully fulfilled their political engagements with their Sovereign, and continue to *adhere to the fate of their country in such extremity*, and have, in consequence of their allegiance, lost their property; or where the State, through necessity, has been obliged, by treaty, formally to give up the property so lost. In these cases, we affirm, that it appears from every author, whether on the politic laws of States in general, or on the fundamental laws of the British constitution in particular, that protection and compensation are due to the subject. For here the mutual obligations of allegiance and protection, which are declared,

in every authority on the subject, to be in their nature *permanent, perpetual, and inviolable*, without the mutual consent of the Sovereign and subject, are not, and cannot be, dissolved; and therefore there is no case to be found in any book, where the compensation has not been adjudged, and accordingly made.

Now this is truly the undisguised case of the Loyalists. They were called upon by his Majesty and the two Houses of Parliament, to defend his authority and *their* rights, when in imminent danger. His Majesty and those Houses, to draw them forth, entered into the most solemn engagements, that they would protect and indemnify them in their fidelity and zeal. They have stepped forth in support of that authority and those rights, without any other consideration than the sense they entertained of their duty. Many of them have spilt their blood in the cause of their country, and others incurred innumerable difficulties and dangers; and in direct consequence of their fidelity, and a want of the protection due to them by law, have lost their whole fortunes; and moreover, have followed the standard of Great Britain, without a murmur at their distress, through all its dangers

dangers and extremities. What a *consideration!* what a price is here paid to ensure the protection due by law, by the royal faith and the parliamentary engagements solemnly pledged to them for their indemnity!

But "the property of the Loyalists," says the objector, "was confiscated, and in the hands of the American States before the treaty." That such an objection should be started by a Briton is strange indeed. Will he not be overwhelmed with shame and confusion, when he considers by what means those confiscations happened? The Loyalists, at the commencement of the rebellion, were in the peaceable possession of their estates, and might have continued so to the end of the contest, had they acquiesced under the measures of the insurgents, who neither disturbed nor intended to disturb them in their persons or possessions. The war was against the authority of the British crown and the rights of Parliament, and not against their lives or their property. Led forth by their confidence in the faith of Majesty, and their reliance on the sacred promises of Parliament, they zealously endeavoured to support and defend those rights. Hence, and hence only, did they incur the rage and vengeance

of the insurgents. Hence, and hence only, their property was confiscated and their persons attainted, and many of them put to an ignominious death, through a want of that protection which was due to them by law, and for which the Royal faith and parliamentary declarations were unequivocally and solemnly pledged; and hence, "their property was confiscated, and remained in the hands of the American States at the time of the treaty." Are these reasons, why they ought not to be compensated for property thus lost? Are such subjects less entitled to compensation than the *peaceable* and *inactive* citizen, whose cattle have been destroyed to prevent infection, or whose ships have been destroyed to prevent the plague, or whose goods have been destroyed by rebels and traitors, or ceded in a treaty with the territory? For in these instances, the cases cited from the Journals of Parliament evidently shew, that ample compensation ought to be, and has ever been made. Does not their claim stand upon much higher ground of public merit than any of the cases cited, or than any ever yet brought before any tribunal; and is it not only established on the same law, but on a rock which cannot be shaken, *the faith of Majesty*, and
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the *honour* of both Houses of Parliament
UNITED!

But the property of the Loyalists was confiscated and *in the hands of the Americans before the treaty, and Great Britain was obliged to relinquish it, but did not cede it.* This is a distinction which is truly more a subject of ridicule than serious refutation. It is what the logicians call a distinction without a difference. For whether Great Britain merely *abandoned* (which seems to be the meaning of the objection, if it means any thing) or *ceded* the property confiscated to the American States with the territory, it cannot vary the law upon the claim. For we have shewn, that at the time their estates were confiscated, and before the treaty, their right to protection and the obligation which his Majesty and Parliament were under by law, and their repeated promises to afford it, were violated, and their right of course to compensation *complete*.

But supposing America had been merely abandoned, the British State did not leave the Loyalists at the time any one privilege of *abandoned subjects*. Many of them had no property to defend, for that had been long before lost through a want of public protection. They were left no choice of submitting and
making

making their peace with the new States; for those States had condemned them to die, and the British government, by acknowledging their sovereign powers, had ratified the unjust sentence.

Besides, this distinction is founded in an assertion which is not true, that "Great Britain has only relinquished or abandoned the confiscated property of the Loyalists, and did not cede it." Upon examining the facts, it will be found that the British forces remained in the possession of New York, Long Island, and Staten Island, and all the fortifications on the lakes, with more than one half of the territory ceded, long after the treaty; and that in those districts much of the property confiscated remained in the actual possession of the Loyalists at the time it was given up, in pursuance of the treaty*. It is also

* Georgia had not only been recovered out of the hands of the insurgents in 1779, but the province was put at the peace of the King by his Majesty's Commissioners, and the King's civil government restored, and all the loyal inhabitants required by proclamation to return to their settlements, and an assembly called, and actually subsisting, and all the civil officers in the exercise of their functions, when orders came in 1782 to evacuate the country, and deliver it up to the rebels, which was done accordingly without any stipulation in favour of the attainted Loyalists, or their confiscated properties, although the force of the rebels in that country was so inconsiderable, that

also a fact which can be proved, and what the Minister will candidly confess, that the confiscated property was, by a mutual contract, given up to the United States, as a consideration and satisfaction for, and in discharge of the damages done by the seizures and desolation of the property of the American citizens, alleged by them to have been committed by the British forces, and as a part of the purchase and price of peace. Do these facts shew a single feature of a country merely abandoned? or do they not prove that all the property confiscated has been actually ceded?

When we look into the treaty itself, we find that the words and sense of the parties confirm the same truth. His Majesty "acknowledges" the people of the territory, who were before bound to him by the most sacred obligations of allegiance, to be "free, sovereign, and independent States." By this acknowledgment, and thus treating with them, he in law pardoned their offences against the Crown, released them from all their political duties to the British State, and confirmed their usurped rights of government over the territory, and with them the acts of attainer that the Loyalists offered to the King's General to preserve the province for his Majesty, if he would leave them a single regiment of foot and the Georgia Rangers to assist them.

and

and confiscation, and consequently their right to hold the confiscated property under those acts. His Majesty further, for himself, his heirs and "successors, relinquishes all claim " to the government, his property and territorial rights of the said States, and every " part thereof;" by which his Majesty has manifestly and actually ceded all his right to the government and property, and every right incident to the dominion of the territory; in which it must be confessed is included the confiscated property. For it cannot be contended, that his Majesty, by the word "relinquish," only meant to "forsake," and merely "*abandon*" the government, property, and territorial rights of the States. To do this, no treaty, but a mere withdrawing of the British forces, was necessary; and, in that case, the title of the Crown of Great Britain to the government and soil of the colonies, would not have been given up. But, surely, the intent and meaning of his Majesty was to "release, give up, and cede" (as the word *relinquish* in all treaties imports) "all " his claim" to the dominion and sovereign rights of the country, "and of every part " thereof." In this light, we imagine, the United States understood the treaty when they ratified it. Indeed, this is the declared intent

tent of the treaty itself, which is, “to secure
 “to both parties perpetual peace and har-
 “mony,” and to exclude “all seeds of dis-
 “cord.” Now, if the word *relinquish* only
 means to *forsake* or *abandon*, then there is no
 peace nor harmony secured. The same causes
 of quarrel remain as before the treaty.

There is no point more clearly settled by the
 law of nations, than that a mere abandonment
 of a country, transfers to the conqueror no
 right either to the dominion or soil. The so-
 vereign, who abandons it, may, at any time
 after, lawfully resume his right, or make war,
 on the possessors until it is obtained: so that
 if his Majesty has not by treaty actually ceded
 the confiscated property, he may lawfully go
 to war with the United States for the recovery
 of it; or he may grant letters of reprisal to
 the Loyalists for the injuries done them by
 the States. Such is the mischief in which
 this absurd distinction would involve both
 countries!

It is painful to be obliged to answer every
 trivial objection to so plain a claim. But as
 we have no hope, however distressing our
 situation, or just our right, or however long
 that right has remained undiscussed, of being
 heard, either by ourselves or counsel, in the

high court where our fate must be determined, it is our duty, not to leave any conceivable objection unanswered. It has been said, "That the right of the subject to compensation for property ceded with a district already in the hands of the State to which it is ceded, is not the same as for property ceded with territory in the *possession* of the State ceding it." We have searched for this distinction in the laws of nature, which we have shewn to be a part of the laws of England, in the principles of reason and justice, in the fundamental laws or all regular civil societies, and in the particular laws of the British government; and we cannot find it. The laws of nature established by the SUPREME OMNIPOTENCE, the principles of reason and justice, and the fundamental laws of all civil societies, where the rights of the subject are secured, are the same. They all tell us, that every man who enters into civil society, gives up his natural independence, and submits his will, his strength, his personal services, even to the risk of his life, together with a right to dispose of his property in cases of public necessity, to the command and direction of the sovereign, to *ensure* the protection which he wanted in his state of
natural

natural independence ; that this cession of his natural rights is the *high price*, the *great consideration* paid to the sovereign authority of every State for such protection : That this mutual covenant of *protection* and allegiance is, in its nature, immutable and perpetually binding as long as the society exists : That it cannot be dissolved or impaired, but with the mutual consent of both parties, or by the actual dissolution of the society : That while the Sovereign fulfils his covenant by protecting the subjects, their *allegiance* is most sacredly due ; and while the subjects perform their allegiance, the Sovereign is most sacredly bound to *protect them* : That if the subject violates this covenant, and acts "*contra legem suam debitam*," he is guilty of high treason, and shall *suffer death* ; and if the Sovereign violates it, by not affording the protection due, he is, *é contra*, bound to repair the damages sustained by making the subject *adequate compensation*. And this protection being due from the Sovereign, as the representative of the *whole*, and of *every* individual of the society, if he has not money in his exchequer sufficient to repair the damages done through a violation of this covenant, "*all are bound to contribute their proportion towards it.*"

These truths being clearly settled, where shall we find the difference between the right of a subject who has lost his property by a cession of territory *unconquered*, and that of a subject whose property has been lost through a want of the protection due by law, and afterwards ceded to the conqueror? There is none such to be found in any book on politic law whatever. They all speak in general terms of the property of subjects "ceded or "given up," and declare compensation to be due for it, without intimating that such a distinction ever existed. "*Ubi lex non distinguitur, ibi nos non distinguimur*," is an established maxim in the construction of all laws. If such a difference was ever before thought of, it is strange it does not appear. Besides, the words "cede and give up" are the express words of the books, and the true and radical meaning of them is, with much more propriety, applied to territory *conquered*, than to that which is in the *possession* of the sovereign ceding it. For the common and true sense of the terms is to "release, to resign, and to quit "claim" to a *right* to something not in our possession, and therefore they are used in a transfer of the *right*, and not of the *possession*. But in the conveyance of property in our possession, it is usual to define it in terms
much

much more significant of the true meaning of our intention. Here we use the words “*grant*, “*convey*, *surrender*, *deliver*,” the possession of the property intended to be conveyed. Such a cession therefore never has been construed to extend to a transfer of the private possessions and properties of the people in the territory; for, say the authors on politic law, “the sovereign power, however *absolute*, is “not invested of itself with the right of property, nor consequently with the power of “alienation.”

The law is the same in respect to a cession of a territory in the hands of the conqueror. The state to whom it before belonged, may cede its right to the dominion and sovereign power over the territory; but it cannot lawfully transfer a right over the people without *their consent*; and it is for this reason that every State, when it has ceded a part of its territory to the conqueror, has endeavoured to avoid or lessen the burthen of this compensation by stipulations in the treaty on the behalf of its faithful subjects, whom it has not been able to protect; which bind the conqueror to give up his right over the persons and private fortunes acquired by his conquest, and either to adopt them as subjects with their
consent,

consent, or to suffer them, after disposing of their property, to return to their former allegiance. But in either case, if dire necessity should compel the sovereign authority to surrender, by the express terms of the treaty, the property of a part of its subjects, together with its own rights; “and to wound a part, “that the whole empire may not perish*;” reason and justice, as well as the obvious principles of the social compact, evidently require that the sacrifice thus made for the public good, and the loss thereby sustained, should be compensated at the public expence; and if great and important advantages are secured by such surrender to the other part of the community, the right of the sufferers to compensation is still more clearly established, for it is become a debt due not only from justice but also from *gratitude*.

* Vid. Lord Shelburne's Speech.

A P P E N D I X.

THE Commissioner on the part of Great Britain did propose a restitution of the confiscated property; but the answer made by the American Commissioners was, that they had no power from the several States to restore it; and, if they had, they must insist upon compensation for the desolation and damages committed by the British forces, on the towns, private houses, and properties of the American citizens, contrary to the rules of war, an account of which had been taken by order of Congress. Upon this it was agreed, that no actual stipulation should be made for such restitution; but that it should be left to the *pleasure* of the States, either to keep the property confiscated as a satisfaction for such desolation and waste, or to restore it: that, however, Congress should recommend to the States to make the restoration; and upon this the peace was made, and the restitution left to the *pleasure* of the States.

Upon this ground, when the States took into consideration the resolve of Congress re-

commending the restitution, they refused to make it. The State of New York resolved, that there could be “ *no reason* for restoring “ property which had been confiscated or “ forfeited, as *no compensation* had been offered on the part of Great Britain for the “ damages sustained by the States, and their “ citizens, from the desolation aforesaid.” And all the other States have acted upon the same principles. From which it is evident, that the confiscated property of the Loyalists was both implicitly and expressly given up to the States as a compensation for the irregular desolation with which they charged the British army; and as the Minister, who made the peace has candidly declared,¹ that “ he had “ no alternative,” but to submit the restitution to the mere recommendation of the Congress, it follows that it was also given up as the price and purchase of the peace.

To support these truths, we here insert the resolutions of the State of New York:

“ Resolved, That it appears to this Legislature, that in the progress of the late war, the adherents to the King of *Great Britain*, instead of being restrained to fair and mitigated hostilities, which are only permitted by the laws of nations, have cruelly massacred, without

out regard to age or sex, many of our citizens, and wantonly desolated and laid waste a great part of this State by burning, not only single houses, and other buildings, but even whole towns and villages, and in enterprises which had nothing but vengeance for their object.

“ And that, in consequence of such unwarrantable operations, great numbers of the citizens of this State have, from affluent circumstances, been reduced to poverty and distress.

“ Resolved, That it appears to this Legislature, that divers of the inhabitants of this State, have continued to adhere to the King of Great Britain, after these States were declared free and independent, and persevered in aiding the said King, his fleets, and armies, to subjugate the United States to bondage.

“ Resolved, That as on the one hand, the rules of justice do not require, so on the other, the public tranquillity will not permit, that such adherents who have been attainted, should be restored to the rights of citizens.

“ And that there can be no reason for restoring property which has been confiscated or forfeited, the more especially, as *no compensation*

penfation is offered on the part of the faid King, and his adherents, for the damages fuftained by this State and its citizens, from the defolation aforefaid.”

The amount of the fum claimed by the United States, for the damages done by the Britifh forces, far furpaffed that now claimed by the Loyalifts. And as Great Britain muft have paid for thofe damages, or have continued the war, had fhe not given up the property confifcated; it is evident, that fhe has difpofed of it for more than an adequate confideration, and is a confiderable gainer by the bargain.

F I N I S.