QUERIES

RELATING TO

The propoſed PLAN for altering

The ENTAILS in SCOTLAND,

In a LETTER to ———

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QUERIES, &c.

SIR,

THE propoſed alteration in the law of Entails, is a meaſure of ſuch important concern to Scotland, whether conſidered as it will affect individuals or the public, that it is with diffidence and reluctance I have brought myſelf to comply with your requeſt, in giving my opinion on ſo intereſting a ſubject.—My inclination to obey your commands would hardly have got the better of my ſcruples, if the ſteps that have been taken to promote this ſcheme, did not call on every man who diſapproves of it, to declare his ſentiments aloud.—Silence in the preſent caſe may be miſtaken for indifference,

indifference, or conſtrued into conſent; and is therefore blameable, if not criminal.

If I am rightly informed, the Faculty of Advocates were at no loſs to decide finally, after a diſcuſſion of a few minutes, for the repeal of a law tranſmitted by our anceſtors, and by which a great part of the property of this country is held; and it is to be hoped a private man may be indulged in pronouncing his ſentiments on a ſubject of ſuch general concern, after having taken time to examine what has been ſaid on both ſides of the queſtion.

I acknowledge I was one of the multitude, who, ſtruck with the ſeeming inconveniencies attending the unequal diſtribution of land in Scotland, imputed all of them to Entails, and imagined they might be removed at once, by aboliſhing what, at firſt view, I took to be the cauſe of them.

A fourth part of the real property of the country in mortmain—No poſſibility of its being brought into commerce—Creditors diſappointed, if not defrauded—Younger children unprovided for—Great men accumulating eſtates, and tempted to ſpend the rents of them out of the country, &c.

These

THESE appearances made impreſſion on me; and, without looking farther, I joined in the cry, Down with Entails.

WHEN the meaſures taken by the Faculty of Advocates, had called on every Scotſman to conſider this matter maturely, I ſoon perceived difficulties that had not before occurred to me; and I am not aſhamed to own, that the inſtruction I received from Mr Dalrymple's pamphlet on this ſubject, contributed not a little to make an entire proſelyte of me, as I am perſuaded it will do of every man who argues only for the ſake of truth and information, and is not wrong-headed enough to think himſelf bound in honour to adhere to an error, becauſe he has once aſſerted it.

IT muſt, however, be allowed, that the abuſe of the preſent law of Entails has been attended with ſome diſadvantages; but ſince we are in the reforming ſtrain, it is by no means difficult to correct all the inconveniencies reſulting from that abuſe, without totally aboliſhing an inſtitution, which will be found, on due conſideration, to be the beſt means to prevent the very grievances it is ſuppoſed to create.

IF

If we can ſuppoſe the propoſed law or alteration to take place, it cannot be doubted, that, in this diſſipating age, great quantities of land will ſooner or later be brought to market, prices will fall of courſe, and men, forced to part with their inheritances, will look out for purchaſers where there is money to be had, and will find in England the poſſeſſors of 140 millions veſted in ſtock, and only waiting an opportunity to realize, ready to purchaſe in Scotland, as faſt as any thing worth while ſhall be offered to ſale.

If it is admitted that this may be the caſe, it will not be improper to propoſe the following queries.

If Engliſhmen are to be tempted to make purchaſes of our land, Is it likely they will come down here and reſide? Is it not more likely that they will remain in England, and ſpend the rents of their eſtates there, as is the caſe with reſpect to Ireland and the Weſt Indies, which countries, tho' rich in themſelves, are confeſſedly beggared by the abſentees ſpending their rents in England? And can we imagine, that any motive can tempt a rich man to reſide in Scotland,

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except a natural attachment to the place of his nativity, and the advantages arising from the respect he derives from the reputation of his ancestors and his family-connections; and can it be for the benefit of this country, or of its commerce, that all the land of it shall belong to men who can have no natural attachment, but must have the prejudice of manners and climate to struggle with, as well as the ungracious reception they may expect from the natives on their first arrival?

Can it be for the interest of the owners of land to bring down the price of it; so that where L. 100 a year is now worth L. 3000, and perhaps cost that sum, it shall be reduced to be only worth L. 2500?

The only argument of weight I have heard advanced against the present law of Entails is, that the accumulation of great fortunes is ascribed to it.

Would it lessen that grievance, to enable an ingrosser to make cheaper purchases, insomuch that where now L. 30,000 can only purchase L. 1000 a year, that sum shall be made sufficient to purchase L. 1100? or is there any doubt, that had it not been for the prices occasioned by Entails, the money laid out by some particular

cular purchaſers, would have gone much farther, and greatly increaſed their accumulations?

Is the complaint of ingroſſing land peculiar to Scotland? Does not that grievance prevail more in proportion in England? To judge of this, one needs but caſt an eye on the three adjacent counties, and inquire what ſhare of them is poſſeſſed by the Earl of Northumberland, Sir James Lowther, and Miſs Bows.

Can any reaſon be given, why one half of Ireland is become the property of Engliſhmen who never reſide, and why, in 60 years, not one Engliſhman has made a ſolid purchaſe in Scotland, but the ſingularity and difficulty of making conſiderable and contiguous purchaſes here? Is it our intereſt to remove theſe difficulties, and that too by making our land come cheaper, ſince the conſequence muſt be, that every inch of it will be purchaſed by men living in England; and becauſe we complain, that by means of Entails, ſome of our own countrymen have ingroſſed great eſtates, and ſeldom reſide, ſhall we conſent to abandon the whole to men who never can?

May it not be aſſerted with truth, that Entails have contributed to put a ſtop to the depredations of ingroſſers? Is there a ſingle great purchaſer who has not been interrupted in the progreſs of his accumulations, by meeting with entailed land, proof againſt his high offers, and the ſpirit of diſſipation that has prevailed of late years, and which, in a generation or two, muſt infallibly bring every unentailed eſtate to market?

May it not be aſſerted, that entailing is the only means of preſerving any thing like a landed repreſentation, or body of landed gentlemen in Scotland? For Peers with overgrown eſtates, and abſentees, can ſcarcely be reckoned ſuch.

In a monopolizing age, when ſo many hitherto unknown means are introduced of acquiring immenſe wealth, has a private man any means left of hindering his inheritance from being ſwallowed up, but by entailing it? How many entailed eſtates under L. 1500 a year, would have been ſold, and ſerved to make up the rent-roll of an ingroſſer, had it not been for the bar of an Entail?

Will not every inconveniency be obviated, by limiting the *quantum* of valued

rent to be entailed by a particular man, or in a particular family? and will not this expedient anſwer the double intention, of ſecuring ſmall fortunes from being ſwallowed up, and preventing great ones from being perpetual? and, if commerce is found to ſuffer by entailing trifling ſubjects, may not this too be corrected by a limitation?

SINCE the plain intent of the propoſed plan is to annihilate Entails, why dare not the promoters of it ſpeak out, and avow their intention? and why do they diſguiſe their meaning under the maſk of amending what they really propoſe to deſtroy?

IF the preſent law requires amendments, as perhaps it does, like moſt other human inſtitutions, might not the gentlemen of the law have confined their talents to the pointing out its defects, inſtead of propoſing to deſtroy the whole? and if particular men are found to have ingroſſed too much, will not every purpoſe be effectually anſwered by limiting the *quantum* of land to be entailed?

SURELY the gentlemen who draw arguments againſt our Entails, from the injury done creditors and younger children, do not recollect, that in England every

every eſtate is entailed of courſe by a marriage-ſettlement, in ſo much, that it is neither in the power of the law, nor of the poſſeſſor, whatever his inclinations may be, to give relief to his creditors or younger children. Thoſe who reaſon thus, muſt be totally ignorant of the branch of the Engliſh law which they want to adopt, or muſt want to take advantage of the ignorance of others.

Is it the good of the country, or the deſire to get land cheaper, has moſt weight in the preſent ſcheme?

Does not this ſcheme come with a very bad grace from the lawyers, ſince it is paſt a doubt, that the intention of Entailers, is as much to keep their land out of the parliament-houſe, as out of the market?

Are gentlemen in earneſt, when they pretend, that it would be for the profit of the practitioners of the law, if all eſtates were entailed? or will they ſeriouſly aver, that the entailed eſtates have brought in as much to the lawyers, in equal time, as the ſame extent of property unentailed; and have the diſputes concerning ſucceſſions ariſing from Entails, been as lucrative to the gentlemen

of

of the profeſſion, as adjudications, ſequeſtrations, rankings, and ſales, *&c.*

It cannot be denied, that a good deal of profit has accrued to the profeſſion from their conteſting the validity of every Entail; but as the ſubject ſeems now exhauſted, and every difficulty explained by deciſions of the Houſe of Lords; is it not whiſpered, that it has been thought expedient to ſubſtitute a new law in place of the old one, to make room for new diſputes, and new deciſions.—*Hinc illæ lachrymæ* ?

Had this propoſal come from England, one could only wonder, how ſo trifling an object as the land of Scotland, could ſeem worthy the attention of a people who pretend to deſpiſe our poverty; and had it come from any other quarter than that of the gentlemen of the law, it might have paſſed for a well-meant, tho' weak endeavour, to correct a ſeeming inconvenience: but when one conſiders where it began, with what obſtinacy it has been perſevered in, and what artful means have been uſed to influence the landholders in its favour, one cannot help ſuſpecting there is ſomething more at bottom than the general good of the country;

country; and when the Faculty of Advocates are pleaſed to repreſent this as a ſelf-denying ſcheme, by which they mean to leſſen their own profits, one cannot help aſking, with Doctor Garth, in the *Diſpenſary*,

Whence are our lawyers thus ſo frugal grown,
Of others wealth, and laviſh of their own?

WILL not plain men be apt to imagine, that as Entails are generally framed by the advice of ſkilful lawyers, and every precution taken to keep out the *chicane*, the intent of the preſent plan is to break down that bulwark, in order to expoſe all the land in Scotland to the artillery of the law; and will not malicious people be ready to ſuſpect they mean only to draw it within the vortex of the parliament-houſe?

WILL it be thought impoſſible that the certainty of introducing the gainful and ſuit-engendering truſt-deeds of England could have any ſhare in the preſent plan?

I acknowledge, that if Entails are to be aboliſhed, and Engliſh owners of millions to make great purchaſes in Scotland; it is by no means probable, that the ſame ſpirit of litigation, that now ſupports

ſupports the town of Edinburgh and the parliament-houſe, will prevail. In ſuch an event, it is but reaſonable to ſuppoſe, that each Engliſh purchaſer will buy and poſſeſs what is now divided among ten gentlemen; and as a man will hardly go to law with himſelf, the chance of law-ſuits is likely to diminiſh in proportion. If the gentlemen of the law ſee their propoſal in this light, it cannot be diſowned, that theirs is a ſelf-denying ſcheme indeed.

As to the antient families, are they not low enough already, and is there any danger from that quarter?

Is not ours a mixed government? is it not eſſential to our conſtitution, that there ſhould be a diſtinction of rank? and is not birth and a pedigree eſſential to ſupport that reſpect and opinion in the multitude, in which the weight and authority of rank conſiſts?

Will wealth alone operate the ſame effect in government?

Would it be of advantage to Scotland, to aboliſh every idea of diſtinction of birth, and to annihilate all the antient families?

As to the frivolous objection from an averſion to perpetuities, one is aſhamed

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to take notice of it. In all human ſchemes, nothing is ſo natural and beneficial as a view to duration. Is not that the purport of every law, of every commendable endeavour of art? is it not the aim of architecture, of government, of politics? is not the crown of Great Britain under a perpetual Entail? Is it not as juſtifiable in every individual, to aim at the duration of his family, as the prolongation of his own life?

THIS principle is the chief incitement to induſtry, to patriotiſm, and to fame. God, indeed, for wiſe ends, has ordered it ſo, that all ſuch endeavours muſt ever prove ineffectual, and this to make way for new induſtry and invention. If men could perpetuate life and youth, the world would ſoon be overpeopled; but ſhall it be made criminal in a man to try to live as long as he can, and, for fear of the danger of crowding ſociety, ſhall he be forbid to endeavour it?

As to the objections, or rather minute criticiſms, founded on the whimſical conditions inſerted in ſome Entails, to the prejudice of agriculture; the remedy is ſo eaſy and obvious, that to urge them as a reaſon for annihilating Entails, is as

abſurd,

abſurd, as it would be to knock down a clump of trees that defended one's houſe from the ſtorm, becauſe a ſingle branch might interfere with the proſpect.

To conclude, I have no apprehenſion from a ſcheme ſo thoroughly abſurd; nor is it poſſible for me to imagine, that the landholders of Scotland, moſt of whom can ſtill tell who were their grandfathers, will tamely ſubmit to ſo unprovoked an attempt to ſtrip their poſterity of the honours and influence attending their antient poſſeſſions; theſe cannot be tranſferred with their land; but without land, they become as much the ſubject of ridicule, as they are of envy while united with it: for, as Shakeſpear ſays ſomewhere, "He who robs me of my good name, takes from me what can do him no good, but makes me poor indeed."

I take the liberty to finiſh with the words of the before mentioned gentleman, to whoſe ingenious pamphlet I have been ſo much beholden.

"Do the landed gentlemen of Scotland think that their ſilence ſhews contempt? Alas! their ſilence will be termed acquieſcence. The loud roar of thoſe who wiſh to deſtroy them, will be called the

voice

voice of the country, while the ſingle and diſunited efforts of the others, will be called the whims of ſingular and diſcontented men." I am, Sir, *&c.*

POSTSCRIPT.

SUPPOSE a bill was offered to the following purpoſe, and lawyers to expreſs it in the terms of their profeſſion, ſo as to make it fit to offer to parliament.

WHEREAS the experience of 80 years has ſhewn, that the law for entailing land in Scotland has been extremely beneficial to that country, and has anſwered moſt of the good purpoſes intended by it; yet it having been found, that in that wiſe law, as in moſt human inſtitutions, ſome inconveniencies have attended the great advantages ariſing from it; therefore, to make it ſtill more compleat, and to rectify ſaid inconveniencies, more eſpecially in order to prevent the perpetuating of overgrown eſtates in particular families; be it enacted,

1*mo*, THAT no Entail ſhall be binding beyond the extent of L. 15,000 Scots

per

per annum, valued rent, and that wherever the ſubject entailed exceeds that extent, the ſuperplus ſhall be conſidered to all intents and purpoſes, as if it was not entailed, ſo as to be liable to every ſpecies of alienation.

2*do*, THAT no reſtriction in any Entail ſhall be competent, to hinder the heir of Entail from granting to his wife a jointure out of the ſubject entailed, to the extent of ————.

3*tio*, THAT it ſhall be lawful, notwithſtanding any reſtriction in the Entail, for every heir of Entail, to grant to his younger children annuities out of the entailed ſubject, to ſubſiſt during their lives, to the extent of ————.

4*to*, THAT, notwithſtanding any thing to the contrary, it ſhall be always lawful for the heir of Entail to grant leaſes of the entailed land for 21 years, ſo as that the preſent rent ſhall not be diminiſhed; and, in caſe of a fall of rents, by a public roup.

5*to*, SINCE it may happen, when the ſubject entailed is very inconſiderable, that the heir of entail, by being reſtrained from converting it into money, may be

be deprived of the means of following ſome profeſſion, or branch of commerce, ſuitable to his genius; therefore be it enacted, That no eſtate under L. 500 valued rent, ſhall be capable of being entailed.

6to, THAT it ſhall be always lawful to excamb land by authority of the Court of Seſſion, *&c. &c. &c.*

IF the Gentlemen of the law would take the trouble to dreſs up a bill to this purpoſe, it is not unlikely they might receive the approbation of their country, and the ſanction of the legiſlature, by making it effectual.