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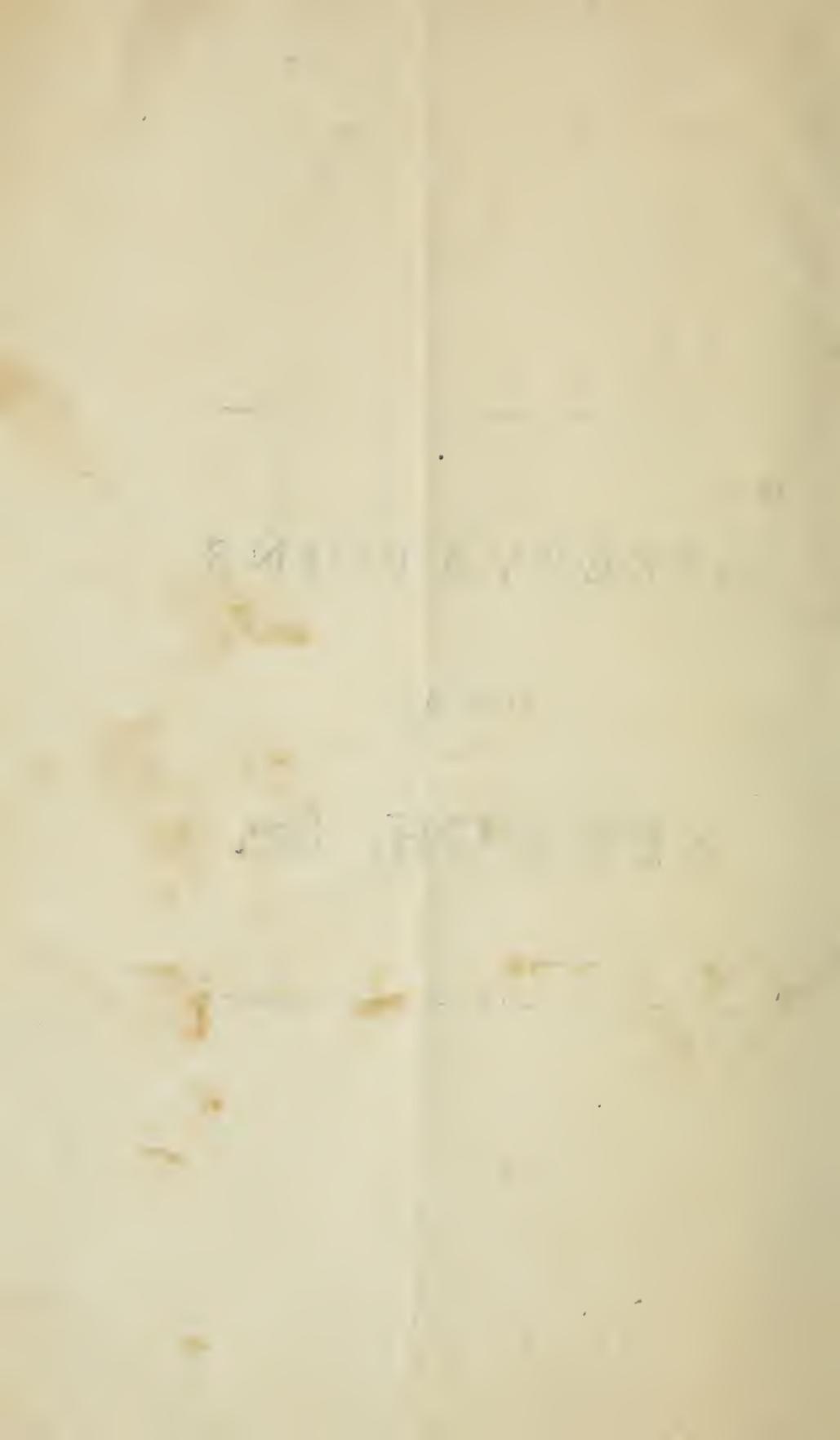
QUEEN'S UNIVERSITY
AT KINGSTON

KINGSTON ONTARIO CANADA

OBSERVATIONS

ON A

SPEECH, &c.



OBSERVATIONS

O N A

S P E E C H,

Delivered the 26th Day of *December*, 1769.

I N T H E

H O U S E of L O R D S,

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I R E L A N D.

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OBSERVATIONS

O N A

S P E E C H, &c.

WHEN the Conduct of an House of Parliament is publickly arraigned and the People are made to suffer for the Acts of their Representatives, Silence under Censure may be interpreted into an Admission of Wrong. Unconscious of intentional Injury or intentional Offence, I will state the Charge, and attempt to account for the Conduct which it arraigns.

On the 26th Day of *December*, 1769, His Excellency Lord Viscount TOWNSHEND, Lord Lieutenant of *Ireland*, ordered the Commons to attend him in the House of Lords: they did attend him accordingly, with their Speaker at their head, and presented to him Two Money Bills, for

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for which the Royal Thanks were given; and then His Excellency in a long Speech, and by a long Protest, censured the Conduct of the Commons, and prorogued the Parliament to the 20th of *March*, 1770.

As a Consideration or Cause of Summoning the present Parliament of *Ireland*, the Privy Council had certified to His Majesty, and His Majesty had transmitted under the Great Seal of *Great Britain* a Bill, intituled an Act for granting to his Majesty the several Duties, Rates, Impositions and Taxes therein particularly expressed to be applied, to the Payment of the Interest of the Sums therein provided for, and towards the Discharge of the said principal Sums, in such manner as is therein directed.

This Bill was once read, and as the Purpose of it was to continue the Duties therein expressed, only for three Months, from the 25th of *December*, 1769, to the 25th of *March*, 1770; and the Commons were preparing to continue the said Duties for Two Years; when a Motion was made and the Question put, that the Bill be read a second Time, it passed in the Negative. The Commons then *voted*, that the Bill be rejected—and immediately afterwards *resolved*, that the Bill was rejected, because it did not take its Rise in their House.

The

The Censure passed on this Proceeding, is in the following Words. “ This Vote and this Resolution of yours, declaring, That the said Bill was rejected because it did not take its Rise in your House, being contrary to the Acts of Parliament of this Kingdom, of the 10th of *Henry VII.* and the 3d and 4th of *Philip and Mary*, and the Usage and Practice *ever since*, and intrenching upon the just Rights of His Majesty, and the Crown of *Great-Britain*, to transmit such Bills to *be treated of* and *considered* in Parliament here ; I am now to assert His Majesty’s Royal Authority, and the Rights of the Crown of *Great-Britain*, in this Respect, and in such a Manner as may be most public and permanent, and therefore I do here, in full Parliament, make my public Protest against the said Vote and Resolution of the House of Commons, by which you, Gentlemen of that House, declare, that the said Bill was rejected by you, because it did not take its Rise in your House ; and against the Entries of the said Vote and Resolution, which remain in the Journals of the House of Commons. And I do require the Clerk of this House, now to read my said Protest, and to enter it in the Journals of this House, that it may there remain to future Ages, a Vindication of the undoubted Right and Authority of His Majesty, and of the Rights of the
 Crown

Crown of *Great-Britain*, in this Particular.’’

The Charge is, That this *Vote* and this *Resolution* are contrary, First, to the 10th of *Henry VII.* and the 3d and 4th of *Philip and Mary*; Secondly, to the Usage and Practice ever since; and Thirdly, that they intrench upon the just Rights of His Majesty and the Crown of *Great-Britain*, to transmit such Bills, to be *treated of and considered* here in Parliament.

Before I state the Laws, which I shall in the very Words of the Statutes, that it may appear how far this *Vote* is contrary to Law, and how far this *Resolution*; I beg Leave to premise, that before the 10th of *Henry VII.* the Legislative Power of *Ireland* was, in Form and Substance, like that of *England*: It was the *English* Constitution, adopted by this Kingdom; but when Liberty was given to Governors to call Parliaments at their Pleasure, (* I speak from the Authority of the Legislature) Acts passed, as well to the Dishonour of the Prince, as to the Hindrance of His Subjects: To prevent these Evils, Sir *Edward Poyning*, Deputy of *Henry VII.* in His Kingdom of *Ireland*, *better to make Compensation*, as

* 11 *Eliz.* Sess. 3. c. 8.

Lord *Verulam* expreffes it, of the meagerness of his Service in the War, by Acts of Peace, called a Parliament at *Drogheda*, where Two memorable Statutes were passed; One, by which all the Laws of *England* were made of Force in *Ireland*; and Another, which concerns the present Subject, in the following Words,

“ That no Parliament be holden hereafter in the said Land, but at such Season as the King’s Lieutenant and Council there, first do certify the King, under the Great Seal of that Land, the Causes and Considerations, and all such Acts as them seemeth should pass in the same Parliament, and such Causes, Considerations and Acts, affirmed by the King and His Council, to be good and expedient for that Land, and His Licence thereupon, as well in Affirmation of the said Causes and Acts, as to summon the said Parliament, under His Great Seal of *England*, had and obtained; that done, a Parliament to be had and holden, after the Form and Effect before rehearsed.”

By this Law a considerable Change was made in the Constitution of *Ireland*; by the Letter of the Law, a Right of propounding Acts and Ordinances was vested

in the King's Lieutenant and Council of *Ireland*, and no Parliament could be convened till these were affirmed by the King and his Council of *England*, as good and expedient Acts for this Kingdom. This is a restrictive Law, but cannot operate farther than the express Restriction. Suppose a Parliament convened under this Law; what Power remains to them? To *deliberate*, and to *affirm or reject*: In the words of the noble Lord's Speech to *treat of and consider* the Matters propounded. This Right is not taken away by the Letter or the Spirit of the Law, and no Construction can take it away. Construction shall not affect the Rights of the meanest Individual, much less rob a nation of its Privileges. This Law does not say, that when a Parliament is convened, after the Form aforesaid, they must of necessity approve and ratify what is transmitted to them: Had it gone so far, it would have been a Transfer of the whole Legislative Power, and Parliaments would have been only the Registers of the King and his Councils. If the Right of rejecting is not taken away by that Law, the *Vote* of the Commons is not contrary to that Law.

Consider next the Law of *Philip and Mary*, as an Expository, and enacting Statute: As an expository Statute it says, no
Par-

Parliament shall be summoned or holden in *Ireland*, till the Chief Governor and Council of *Ireland* shall have certified the Considerations, Causes and Articles of such Acts, Provisions and Ordinances, as shall by them be thought necessary to be passed here by Parliament, and shall have received His Majesty's Answer under the great Seal of *England*; and that after a Return made and Licence to summon a Parliament, the Chief Governor shall and may hold a Parliament, for passing and agreeing upon such Acts, and no other, as shall be so returned under the Great Seal of *England*.

Thus far the Statute is expository; and take it in its fullest Latitude; a Parliament is summoned to consider certain Acts returned under the Great Seal of *England*, and those only: But does the Law say, the Parliament *must* agree to them? Does it say they are summoned only to record the Will of others, not to declare their own? If they have no Power to reject, why are they called at all? Surely not to bear Testimony to their Slavery. If, notwithstanding this Exposition, they have a Right to reject, the *Vote* is not contrary to this Part of the Law.

Consider this next as an Enacting Statute, and explanatory of itself: It enacts, that

at all Times *after the Summons*, and *during the Time of every Parliament*, to be hereafter holden within the Realm of *Ireland*, the Chief Governor and Council of the said Realm of *Ireland*, for the Time being, shall and may certify *all such other Considerations, Provisions and Ordinances, as they shall further then think good to be enacted*, to the King, his Heirs and Successors, and such as shall be thereupon returned under the Great Seal of *England*, and no others, shall and may pass and be enacted here in this said Realm of *Ireland*, *in Case the same or any of them be agreed and resolved upon by the Three Estates of the said Parliament.*

The Right of the Commons to deliberate and resolve, is here explicit, and would not have been more clear if the Law had said, *Such Ordinances shall not be enacted, if they are not agreed upon by Parliament.*

Such are the Laws to which the Noble Lord has pronounced the Negative Vote of the Commons contrary.

From the Time that the Law of *Philip and Mary* was enacted, the Necessity of certifying Money Bills to *England*, previous to the Session, absolutely ceased. If any were certified before, it was because they were considered as included in general
Words

Words, to which there was no Exception. But by this Law, the Commons regained a Part of their antient Right, and have, ever since, during the Session of Parliament, propounded not only Money Bills, but other Ordinances, though in a new Form; their Propositions, from that Time assumed, and still retain the Name of *Heads of Bills*, and differ from Bills only in the trifling Form, *of praying it may be Enacted*, instead of saying, *Be it Enacted*. To me it is Matter of Wonder, that the Commons, from that Day, ever passed a Money Bill that had its Origin any where but in their own House. All Necessity of taking its Rise in the Council was at an End. The Right of Taxing, in Virtue of Representation, is not to be questioned. I beg Leave to give the Words of a Subsidy Act, passed in thote very Years, the 3d and 4th of *Philip and Mary*.

“ The King and Queen’s most humble,
 “ faithful, loving, and obedient Subjects,
 “ the Commons in this present Parliament
 “ assembled, do, *for themselves and all the*
 “ *whole Body of the Realm, whom they do*
 “ *represent, freely, liberally, most loving-*
 “ *ly and benevolently give and grant* unto
 “ the King and Queen’s Highnesses a Sub-
 “ sidy, and humbly *require the same to be*
 “ *Enacted.*” Such is the Language of all
 the Subsidies, and so recorded stands the
 Right

Right of the Commons to tax in Virtue of Representation.

Since the Time that subsidies have given way to other modes of Taxation, the new Forms of Proceeding are all declaratory of the ancient Right of the Commons: All Applications to * *provide for the Honour of His Majesty's Government and the Safety and Welfare of this Kingdom*, are made to the Commons; all Money Bills are carried by the Commons to the Throne; the Commons are particularly thanked for their Gift.

But this *Vote*, rejecting the Bill, and this Resolution, the Noble Lord says, are contrary to the Usage and Practice ever since the 10th of *Henry* the VII. and the 3d and 4th of *Philip* and *Mary*. With great Deference to the Noble Lord, I am authorized by the Records of Parliament to say, that an Usage to transmit a Money Bill to *Ireland*, previous to the Summons of every new Parliament cannot be maintained. Since the 10th of *Henry* the VII. many New Parliaments were called without any Subsidy or Money Bill being certified to *England*, or transmitted under the Great Seal to *Ireland*. In the 15th of *Henry* the VII. Five Years

* Lord *Townshend's* Speech at the opening the last Session.

after

after the Law of *Poyning*, a Parliament was called and One Act only passed; it was indeed a Subsidy Act; but it does not appear that it was certified by the Council of *Ireland*, or transmitted by the Crown of *England*; if a Judgment is to be made from its Form, it had its Rise in the House of Commons, for the First Words of it are, *at the Prayer of the Commons, be it Enacted*. In the subsequent Reign of *Henry* the VIII. when a New Parliament was summoned in *Ireland*, no Subsidy or Money Bill was transmitted previous to the Session, or, if transmitted, it was rejected, for it appears not among our Statutes. During the Reign of *Edward* the VI. no Parliament was held in *Ireland*. I find no Evidence of the Subsidy Bill which passed in the 3d and 4th of *Philip* and *Mary*, having been transmitted by the Crown of *England*: The Language of the Bill is, *the Commons require it to be enacted*, and it stands in order the 12th Act of that Parliament, and subsequent to the Act expounding the Law of *Poyning*. Queen *Elizabeth* summoned a Parliament in *Ireland* in the 2d Year of her Reign: But no Subsidy Bill was transmitted, or, if transmitted, it was afterwards rejected. *James* the I. summoned a New Parliament in the 11th Year of his Reign, but no Subsidy Bill was certified before the Summons. When a New Parliament was called

called in the Year 1661, in the 13th of the Reign of *Charles* the II. no Money Bill was transmitted, or if transmitted, it was rejected, for it is not to be found among the Records of Parliament.

In 1692, the Commons resolved that it was and is the sole and undoubted Right of the Commons to prepare *Heads of Bills* for raising Money. This was confined merely to *Heads of Bills*; and strictly and literally all *Heads of Bills* are prepared in one or the other of the Two Houses of Parliament; *Heads of Money Bills* particularly in the House of Commons. This Resolution was referred to eight Judges, and they reported their Opinion upon it: But allow me to say, That the Commons in 1769, entered into no such Resolution.

In 1692, the Commons rejected a Money Bill, for continuing certain Duties for One Year, *because the Bill had not its Rise in their House*, and the Judges, in their Opinion upon the former Resolution, supported the Negative Vote of the Commons upon these as well as other Bills.

To return to the Usage: Uninterrupted Usage since the 10th of *Henry* the VII. to transmit such Bills before the Summons of
New

Parliaments cannot be maintained :
 uninterrupted Usage to pass such Bills, can-
 not go higher than the Year 1695.

The Commons of *Ireland*, ages past,
 have been voting Supplies and propounding
 Modes of Taxation, by Heads of Bills pre-
 pared in their own House, and four or five
 Bills which had their Origin elsewhere, tho'
 not certified to *Great Britain* without Op-
 position, are made the Foundation of Usage
 that is to have the Force of Law.

The Noble Lord says, the *Vote* and *Re-
 solution* of the Commons in their late Ses-
 sion, intrench on the just Right of His
 Majesty and the Crown of *Great Britain*,
 to transmit such Bills to be considered here
 in Parliament. The Vote does nothing
 more than reject ; if the Right of the
 Commons to reject be admitted, the Exer-
 cise of it cannot be considered as intrench-
 ing on the Rights of the Crown. Does
 then the Resolution intrench, which assigns
 the Cause of the Vote ? Does that Resoluti-
 on say, the Bill was rejected because it was
 transmitted by the Crown under the Great
 Seal of *Great Britain* ? No : The Com-
 mons could not be so absurd as to give such
 a Reason ; For every Bill hath the Great
 Seal of *Great Britain* affixed to it, before

it appears *as a Bill* in the House of Commons. Put the Question in its strongest Light. The Crown hath a Right to transmit such a Bill duly certified by the Council of *Ireland*; the Commons have a Right to reject that Bill, and standing on the Broad Bottom of Representation, and the consequential Right of Taxing, they do reject such Bill, *because it had not its Rise in their House*, and it is not necessary such Bill should take its Rise elsewhere. The Noble Lord does not pretend to affirm, that the Right intrenched upon, is a Right in the executive Power of the State and a Council nominated by the executive, to say to the whole Body of the Realm, We require you to give to the Crown such or such a Portion of your private Property, and you must give it: We the King and Council give to the King such part of the Property of his Subjects as We think proper.

The Commons of *Ireland* are willing to give, but they look, with a jealous Eye, on a Body of Men who, unnecessarily, intrench on their Right of giving. They have no Desire to with-hold, but they have an honest Ambition to merit the Favour of their Sovereign, by being the sole Givers. They give as Representatives of the whole Body of the Realm; and their Right to
give

give stands recognized in the First Subsidy of Twelve Pence in the Pound, upon all Merchandize, imported and exported, given in the 15th of *Henry VII*, by the very First Parliament that was called, Five Years after this famous Law of *Poyning*.

The only Offence given by the Commons, is founded in their Benevolence, in their Desire to maintain their ancient Right of *Giving*, which Right all their Gifts are Evidence of, upon the highest Records. But for this Offence the Parliament is prorogued, before Time is given to devote One Week, to the Wants and Necessities of the People. In Compliance with a Requisition from the Throne, they increased the Military Establishment, and thereby the public Expence of the Nation, many Thousand Pounds a Year. I seek no Merit from their Compliance, for I considered it as a ministerial Requisition, and opposed it from Principles which I shall never be ashamed to avow; from an Affection to my Native Land, to which I considered the Measure as dangerous, because it then appeared to me by a Species of Stealth, to furnish a bold and hardy Minister with an Addition of Three Thousand Two Hundred and Thirty Five disciplined Troops, to be employed in the Suburbs of *London*, or the Forests of

America. But the Commons complied, and I hope wisely; the great Exigencies of Government are provided for; the People have given their Treasure, and the Ministry are not solicitous about their Affections; Kingdoms as well as Colonies must bow.

I do not contest the Right of the Crown to prorogue and dissolve: The King hath a Prerogative in all Things that are not injurious to the Subject: But the King's Prerogative stretches not to the doing of any Wrong.

By the late Prorogation, Temporary Laws which, by the last Parliament, were continued only to the End of the next Session of Parliament, have expired by its sudden Determination: Twenty Eight Thousand Pounds, granted to the Crown for Public Works, of the highest, confess'd Utility, *to be applied by Parliament*, remain undisposed of: Twenty Thousand Eight Hundred and Thirty One Pounds, granted to Support and Array a small Body of Militia, in Order to make the Regular Troops more serviceable, in Case of Necessity, are to lie in the Treasury, useless to the Nation, because no Militia Law is yet framed. Not a Bill to improve or regulate the Trade or Policy of the Nation,
hath

hath been read. All gave Way to the pressing Exigencies of the Government, and the very Moment those were provided for, the Parliament was prorogued.

The Effects are already felt ; the Kingdom, not yet recovered from the waste of one General Election, sees another approaching. The Metropolis is almost desolated ; it's Trade must sink, and its Credit expire, with its Commerce.

With the most sincere Affection for my Sovereign, with the greatest Confidence in His Wisdom, and Reliance on His Virtues, and with great Respect for the Noble Lord who represents those Virtues, I most ardently long to see His Majesty's Ministers, possessed of the Affections and the Confidence of the Subjects, to see them attentive to the Wants of His Dominions, and not desirous to increase his Power, at the Expence of the Affections of His People.

F I N I S.

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