A

REPRESENTATION, &c.

PART I.

Remarks on an opinion given in the year 1729, *by the (then) Attorney and Solicitor General, concerning Slaves brought to Great Britain.*

PREAMBLE TO THE OPINION*.

" IN order to certify a miſtake, that " Slaves become free by their being in

* This is copied from a MS. collection of opinions, caſes, &c. in the hands of a gentleman of the law: but the opinion, without the preamble, may be ſeen in the XIth volume of the Gentleman's Magazine.

" England, or being baptized, it hath " been thought proper to conſult the King's " Attorney and Solicitor General in Eng- " land thereupon; who have given the fol- " lowing opinion, ſubſcribed with their " own hands."

OPINION.

" We are of opinion, that a Slave by " coming from the Weſt-Indies to Great- " Britain, or Ireland, either with or with- " out his maſter, doth not become free; " and that his maſter's property or right " in him, is not thereby determined or " varied; and that baptiſm doth not beſtow " freedom on him, nor make any altera- " tion in his temporal condition in theſe " kingdoms: We are alſo of opinion, that " the maſter may legally compel him to " return again to the plantations."

P. YORK.
C. TALBOT.

Jan. 14, 1729.

The authority of theſe great names is ſuch, that I might ſeem guilty of an un- pardonable preſumption, if I ſhould com-

mence my criticiſm on this opinion by any other method, than that of comparing it with the ſentiments of other perſons, who have conſidered the ſame ſubject.

" It is ſaid, that the law of England is " favourable to liberty; and ſo far this " obſervation is juſt, that when we had " men in a ſervile condition amongſt us, " the law took advantage even of neglects " of the maſters to enfranchiſe the villain, " and ſeemed for that purpoſe even to ſub- " tilize a little; becauſe our anceſtors " judged, that *freemen were the real ſupport* " *of the kingdom.*" (See the Account of the European Settlements in America, vol. ii. part vi. ch. xii. p. 130.) Another remark of the ſame ingenious author (in p. 118.) conveys a very ſenſible idea of thoſe juſt and equitable reaſons, which probably induced our anceſtors to render the Engliſh laws ſo indulgent to the oppreſſed villain.

" Indubitably" (ſays he) " the ſecurity, " as well as the ſolid wealth of every na- " tion, conſiſts principally in the number " of low and middling men of a free con- " dition, and that beautiful gradation from " the higheſt to the loweſt, where the " tranſitions all the way are almoſt im-

" perceptible.—To produce this, ought to " be the aim and mark of every well regu- " lated common-wealth, and *none has ever* " *flouriſhed upon other principles.*"

The vaſſalage of Scotland was conſidered by our legiſlature, as highly injurious to the welfare of that kingdom, dangerous to this, and unjuſt in itſelf: it was therefore aboliſhed by an Act * of Parliament in the twentieth year of King George

* This Act (according to the preamble) is " for ex- " tending the *influence*, *benefit* and *protection* of the " King's *laws* and *courts of juſtice* to *all his Majeſty's* " *ſubjects in Scotland*;" yet it muſt be confeſſed, that *ſome of* his Majeſty's ſubjects in Scotland, (viz. thoſe who work in the collieries, ſaltworks, or mines) ſeem ſtill to be expoſed in too great a degree to the will of their employers, by the 21ſt ſection; unleſs it ſhould be allowed, that the clauſe is expreſſed in ſuch terms, that it cannot juſtify any arbitrary proceedings.

And indeed, there is ſome room for a favourable interpretation, the proprietor being only at liberty to exerciſe " *ſuch power and authority as is competent to him by* " *law.*"

Therefore, as the law cannot authorize an unjuſt oppreſſion, the above-mentioned " *power and juriſdiction*," may (I hope) be conſidered as a mere ſhadow of vaſſalage, without effect.

Nevertheleſs there will not be wanting intereſted perſons to urge, that the clauſe is ſufficiently effectual, and that it muſt neceſſarily be underſtood to imply and authorize a continuation of the former vaſſalage, over " *all workmen employed in carrying on coalworks, ſalt-* " *works, and mines in Scotland.*" But even if this ſhould really be true, I will venture one objection againſt it, viz. that the ſame is abſolutely unneceſſary, if not hurt-

the ſecond, (A. D. 1747. ch. xliii. "An "Act for taking away and aboliſhing the "Heretable Juriſdictions in that Part of "Great-Britain called Scotland, &c.") for which ſalutary meaſure, all true friends to the liberty of Great Britain ought to be thankful.

Indeed there are many inſtances of perſons being freed from Slavery by the laws of England; but (God be thanked) there is neither law, nor even a precedent (at leaſt I have not been able to find one) of a legal determination, to juſtify a maſter in claiming or detaining any perſon whatſoever as a Slave in England, who has not voluntarily bound himſelf as ſuch by a contract in writing.

In the caſe of Gallway verſus Caddee, tried before Baron Thompſon at Guildhall, about 30 years ago *, verdict was given for the defendant, in behalf of a Negro claimed by the plaintiff as his Slave, whom the

ful to the true intereſt of the proprietors of ſuch works. The learned Baron Monteſquieu clearly demonſtrates this point, (viz. "Inutilité de L'Eſclavage parmi nous.") in the 8th chap. of his 15th book, des L'Eſprit de Loix.
See further remarks on this head in the IVth part.

* The author accidentally met with a gentleman who was preſent at this trial.

court declared to be *free on his firſt ſetting foot on Engliſh ground.*

Alſo in the caſe of De Pinna, &c. verſus Henriques, (who protected a poor Negro woman, claimed by the plaintiffs as their Slave) a verdict was given for the defendant at Guildhall in 1732.

Lord Chief Juſtice Holt held, that "as "ſoon as a Negro comes into England, he "becomes free: one may be a villain in "England, but not a Slave." See Salkeld's Reports, vol. ii. p. 666.

"Slaves may claim their freedom as ſoon "as they come into England, Germany, "France, &c." Groenwig Vinnius adht. Wood's Civ. Inſt. b. i. ch. ii. p. 114.

The ſtate of Slaves amongſt the ancient Romans or other heathen nations, and the imaginary right of conquerors in thoſe early days to enſlave their captives, do not at all concern a Chriſtian government; ſo that it would be ſuperfluous to quote the learned Grotius's conſiderations on theſe ſubjects; becauſe ſuch precedents cannot be of any authority amongſt Chriſtians. 'Tis ſufficient for our purpoſe, that theſe heathen cuſtoms are not now eſtabliſhed in Europe, and that even Grotius himſelf allows the ſame.

After

After ſpeaking of the aſylum given by the Jews to Slaves, who had fallen into that unhappy ſtate, without any fault of their own, he obſerves as follows: "Quali "ex cauſa videri poteſt ortum jus *quod in* "*ſolo Francorum ſervis datur proclamàndi in* "*libertatem, quanquam id nec quidem nunc* "*tantum bello captis ſed & aliis qualibuſlibet* "*ſervis videmus dari.*" Grotius, lib. iii. cap. vii. ſect. viii. p. 735. Gronovius further explains theſe words, ("Servis datur "proclamandi,") in the following note, viz. "*Ut Servus peregrinus, ſimul atque ter-* "*ram Francorum tetigerit, eodem momento* "*liber fiat.*" * Gronovius.

I may add farther, that it is, and ever has been, the conſtant practice of Juſtices of the Peace in England, (if I except a certain mercenary trading Juſtice at the Weſt end of the town) to enlarge all perſons who demand the Magiſtrate's protection from the tyranny of Slaveholders. Therefore it muſt appear, that Slavery is by no means tolerated in this iſland, either by the law or cuſtom of England; though

* "That a foreign Slave, as ſoon as he ſhall have "touched European ground, the ſame moment may be "made free."

the opinion, which I now propoſe to examine, inculcates a very different doctrine: but, indeed, it is expreſſed in ſuch *general* terms, that it admits of an ambiguous interpretation; for it may be right, or it may be wrong, according to the different circumſtances of caſes.

Nevertheleſs, the characters of the very eminent and worthy perſons who ſubſcribed this opinion, are ſuch, that it is not poſſible to conceive, that the leaſt equivocation was really intended: ſo that I am entirely at a loſs how to account for their having contented themſelves with ſtating the caſe merely on one ſide of the queſtion (I mean in favour of the maſters,) without ſignifying at the ſame time, that their opinion was only *conditional*, and *not abſolute*. The want of this neceſſary diſtinction, has occaſioned an unjuſt preſumption and prejudice (plainly inconſiſtent with the laws of the realm) againſt the other ſide of the queſtion.

Therefore, with all the deference due to the great learning, ſkill and abilities of theſe very reſpectable perſonages, I propoſe, 1ſt of all, to ſhew, that this opinion *conditionally* is right. And 2dly, That the *general*

general preſumption upon the whole is wrong.

The opinion conſiſts of three Parts, 1ſt, "*That a Slave, by coming from the Weſt* "*Indies to Great Britain or Ireland, either* "*with or without his maſter, doth not be-* "*come free, and that his Maſter's property* "*or right in him, is not thereby determined* "*or varied:*" all this is certainly true, provided the Maſter can produce an authentic agreement or "*contract in writing*;" by which it ſhall appear, that the ſaid Slave hath voluntarily bound himſelf, without compulſion or illegal dureſs.

2dly, They affirm, "*That Baptiſm doth* "*not beſtow freedom on him*" (the Slave) "*nor make any alteration in his temporal* "*condition in theſe kingdoms.*" This I am willing for the preſent to allow, as I have not hitherto ſeen any ſufficient authorities to alledge againſt it.

The 3d Part of the opinion is, "*That* "*his*" (the Slave's) "*maſter may legally* "*compel him to return again to the planta-* "*tions.*" This is certainly true, provided that the Maſter is poſſeſſed of ſuch an agreement or contract, as is before mentioned.

For

For even if a free Engliſh Subject ſhould enter into ſuch a kind of contract; he may be carried out of the kingdom (if the contract expreſſes ſo much) *with or without his own ſubſequent conſent* *, by expreſs permiſſion of an Engliſh Statute; (31 Car. II. ch. 2. ſect. xiii.) unleſs the maſter, to ſecure his bargain, ſhall have impriſoned or confined him; for ſuch an act ought, in ſtrict juſtice, to be eſteemed abſolutely illegal, if the indentured Perſon did not previouſly refuſe to fulfil the contract on his part.

Baron Puffendorf, in his Law of Nature and Nations (b. vi. ch. iii. p. 619.) makes ſome obſervations, which may ſerve to illuſtrate this point. "*When a Slave*" (ſays he) "not by way of puniſhment, or on "account of any preceding offence, is "thrown into irons or OTHERWISE DE-"PRIVED OF CORPORAL LIBERTY, he is "by this act, *releaſed* from his *former ob-*"*ligations by compact*; for his maſter is

* This indeed is law, but whether or not, 'tis altogether equity, doth not reſt with me to determine. The learned Baron Monteſquieu, indeed, ſeems clearly to prove, that a freeman cannot make an equitable bargain for his liberty. "Il n'eſt pas vrai qu'un homme libre puiſſe ſe vendre, &c." b. xv. ch. ii. p. 342.

"ſup-