Great-Britain.

HOUSE OF COMMONS, May 18.

THE SOLICITOR GENERAL'S REPLY TO MR. O'CONNEL.

The SOLICITOR GENERAL, after complimenting Mr. O'Connell for the temper and ability with which he had conducted his case, and expressing his opinion that as the question was purely a judicial one it ought to be discussed without any personal or party feeling, he continued,

"On attending to the argument of the Honorable and Learned Gentleman this evening at the Bar, I observe that it embraces two parts, perfectly distinct from each other; one relating to the effect of the Act of Union with Ireland, by the articles of which he contends that all the oaths and declarations then required by law to be taken and subscribed were virtually done away with; the other part of the Hon. and Learned Gentleman's argument arises solely and entirely on the effect of the Relief Bill passed this Session. It is perfectly clear that those two arguments are entirely different from and independent of each other. As to the first point, I must say it is certain, from the peculiar language of the Act of the Union with Ireland, that the penalties originally imposed by the Acts of the reign of Charles the II., were, in the first instance, incorporated into that Act of Union, and made applicable to the new state of things that has arisen since that period. If we could bring our minds to form an opinion in favour of the Hon. and Learned Gentleman's proposition, if we could persuade ourselves, that since the Union with Ireland these has existed no necessity for to take these oaths, and that the Roman Catholics might enter the House without violating the law—it would undoubtedly tend greatly to abolish many difficulties and animosities, and heal many heart burnings, and reconcile all parties at once, by shewing that we have only given up what was no security at all to us. But I am bound in honesty, after the way in which this proposition has been stated, to declare that I cannot adopt it. I do think, that from the Union with Ireland, down to the present Relief Bill, these oaths were a valid, sufficient, and substantial security against the introduction of Roman Catholics into this House, and that they were prevented from it until the passing of the Relief Bill. The Honourable and Learned Gentleman takes two grounds of a quite distinct character. He first argues the case as if no Oaths could be taken since the Union with Ireland; and next, he asserts his right to enter the House under the Relief Bill, taking the new Oath for the Roman Catholics. As to the first argument, there are a great many points as to which we must be all agreed. There may be differences of opinion as to whether the taking of the Oaths does not ultimately resolve itself into two distinct points only; for nobody will dispute that from the 5th of Elizabeth, down to the 1st of William and Mary, it was necessary that every commoner, before he took his seat, should take the Oath of Supremacy before the Lord high Steward or his Deputies—and it has been contended by some—though I am of a different opinion, and I will shortly state the reasons why I am so—that the 1st of William and Mary did, in fact, repeal the Statuate of Charles the Second. We shall find it provided, that all Members of Parliament shall take the Oaths together with the Declaration against Transubstantion.—There can be no difference of opinion that those Statutes compelled the taking of these Oaths and the subscribing of the Declaration, and that the practice was continued subsequently up to the Union with Ireland. Nobody can have any doubt that the only question that can arise is as to the obligation of these two statutes; that is, whether the 1st of William and Mary, cap. 1, rendered the Oaths of Supremacy and Allegiance no longer necessary to be taken before the Lord High Steward? The ground on which I contend that this Act did not render the taking of those Oaths unnecessary is because, if it had done so, it suggests the question, why was the practice continued? Therefore I maintain that the intentions of the Act are, that the Oaths required by it should be taken by every Knight, Citizen, and Burgess in Parliament. If that Act were still in force, the effect of the Hon. and Learned Gentleman making his entrance into this House for any purpose subsequent to this debate would be, to give the House the immediate power to dispose of his seat by issuing a new Writ for the election of a new Member for the county of Clare.—[Hear, hear.] I now come to the ground on which I think the statute of Elizabeth was not repealed by the 1st of William and Mary. All those who have at all attended to the eventful period when the latter Act was passed, know that on King Wiliam's landing, he sent letters missive, under the seal of the Prince of Orange, to call together an Assembly which should bear as near a resemblance to a Parliament as the circumstances would allow, the members of which were all summoned from the different counties, cities, and boroughs, which were entitled to send members to Parliament. But as they had come together without taking any oath, it was ascertained that some provision was necessary to give authority to this Assembly, which, resembling a parliament, was in terms and in fact a mere Convention. The Act of the 1st of Wiliam and Mary cap. I. was passed for the purpose of quieting the difficulties and disputes as to the title of the Convention, and also for the purpose of turning the Convention into a Parliament. Any provision in that Act as to taking the Oaths was not necessary. The only object of the Statute of 5th of Elizabeth was, to enforce the taking of the Oaths of Allegiance and Supremacy and the Declaration against Transubstantiation. The Oath of Supremacy is a merely negative oath; the party swears that "no Foreign Prince, Prelate, or Potentate, hath any power, authority, or jurisdiction within this Realm." To my mind, by the Act of William and Mary, the Legislature only meant to declare that the oaths should be taken in the body of the House, and was not intended to repeal the taking of the oaths before the Lord High Steward. The opinion I now support is that which was sanctioned by the authority of Lord Chief Justice Holt, Sir George Treby, and Sir John Somers, who was afterwards the great Lord Somers, and their names were surely sufficient to leave no doubt as to the state of the law. We find, accordingly, that under this statute, the Members of this House have continued to take the Oaths down to the present day. We find, too, a reference to this very statute in the Act of Union with Scotland, continuing its provisions in force. We come next to the Act of Union with Ireland. The Hon. and learned Gentleman satisfied himself with a very short statement of the grounds on which he founds his argument, that by this Act it was rendered unnecessary to take the Oaths. He contends, as there was no distinct words inflicting the penalties and disabilities which before attended the omission of the Oaths, the Act of Union cannot be carried into force as the former Acts were. Now, I always understood that Acts of Parliament were to be construed by the natural and fair import of the words they contained. Besides, it should be borne in mind, that at the very moment this Act was passed, the Irish Parliament took the same Oaths, and subscribed the same Declaration, except that they did not do it before the Lord High Steward. But the Members of both Parliaments had precisely the same laws, as to these Oaths and Declarations, and were subject to the same penalties and disabilities if they neglected to take them. If there had ever been a doubt as to the necessity of taking these Oaths, in the Irish Parliament, it was removed by the Yelverton Act, in 1782 or 1783, which declared all the Acts of the English or British Parliament, by which Oaths were imposed on the Members of the Irish Parliament, to be valid. It was a natural consequence that the two Parliaments, when united, should continue to take the same Oaths. By the 8th section of the act of Union with Ireland, it is provided, that every Member of the House of Commons of the United Kingdom shall in the first and all succeeding Parliaments, till Parliament shall otherwise provide, take the Oaths, and make and subscribe the Declarations now by law enjoined to be taken and made by the Lords and Commons of the Parliament of Great Britain.' The meaning of the word 'enjoined,' shews that the intention of this section was, that the same legal obligation was to be continued in the United Parliament that had previously in the two separate Parliaments. If there were anything else necessary to prove the soundness of this opinion, it is to be found in the repeated instances in which applications have been made to the Legislature for indemnity for neglecting to take these Oaths. Only four years after the Union, there was an Act of Indemnity for Lord John Thynne. It is always reckoned that the judgment of a Court of Justice, on any particular subject, is of a great weight and interest; but when any point of privilege comes before this House judicially, such as where a party disqualifies himself from sitting in Parliament, the solemn decision of this House is infinietly more important than any judgment of a Court of Record. The next case was in 1812 and 1814; there were Acts of Indemnity for Mr. Charles Grant, and two or three others. These form a strong corroboration of the opinion I maintain, and which I think it is impossible to overcome. The Honourable and Learned Gentleman contends that by the Relief Bill he is entitled to enter this House—but the very first clause of that Bill does in effect admit what I have been contending for. That clause runs in these words:—Whereas, by various Acts of Parliament, certain restraints and disabilities are imposed on the Roman Catholic subjects of his Majesty, to which other subjects of his Majesty are not liable. And whereas it is expedient that such restraints and disabilities should be from henceforth discontinued, &c.—Be it enacted, that from and after the commencement of this Act, all such parts of the said Acts as require the said declarations, or either of them, to be made or subscribed by any of his Majesty's subjects as a qualification for sitting and voting in Parliament, or for the exercise or enjoyment of any office, franchise, or civil right, be, and the same are (except as hereinafter provided and excepted) hereby repealed. On the argument of the Honourable and Learned Gentleman, this Act was altogether unnecessary. If the Act of Union removed the necessity of taking the oaths the Relief Bill is nothing. But when we see that in the Act of Union these oaths are specially continued 'until Parliament shall otherwise provide,' surely no more explicit proof can be given of their existence and validity. The words must be construed in their ordinary sense. The Honourable and Learned Gentleman has contended that Parliament has now otherwise provided, and therefore he is entitled to admission without taking the oaths. But if it had been thought advisable to try the experiment of admitting the Roman Catholics into the House of Lords merely, and in the House of Commons the oaths had continued to be required, would the Hon. and learned Gentleman have felt justisfied in saying, 'Parliament has otherwise provided by this change, and I therefore am entitled to sit in this House without taking the oaths?' Having said thus much concerning the argument of the Honourable Member from Clare, as to his admissibility to this House under the law as it formerly stood, I now come to the second part of his argument which he advanced to show that he had a right to take his seat under the Act recently passed for the relief of his Majesty's Roman Catholic subjects.—Now, Sir, I must say, that if any Hon. Gentleman will give his attention to the framing of that Bill, I think that it will be evident to him that it sets the question at rest; so that there can be no doubt of what was the intention of the Legislature on the question. In order to understand this, let us remember how the law stood at the time of the passing of the Bill.—I will state what it was—at least what it was as I view the subject. Up to the moment of the passing of that Bill, no Member could take his seat in this House without first taking the oaths of Allegiance and Supremacy; no person, then, up to that time, could be considered as a Member but by those two means; but then comes the present statute, containing the Declaration under which Roman Catholics shall be admissible to Parliament, repealing so much of the former law relating to the Oaths of Supremacy. If the new Act of Parliament had stopped at the end of the first section, merely repealing the Oaths as they had formerly stood, the argument of the Hon. Member for Clare would have had considerable weight in it; but the next clause goes on to state, "that from and after the commencement of this Act, it shall be lawful for any person professing the Roman Catholic religion, being a Peer, or who shall after the commencement of this Act, be returned as a Member of the House of Commons," &c.—Therefore, I ask, to what class of the Roman Catholics does this Act apply? Not to all, clearly, because the words expressly are, "who shall after the commencement of this Act be returned;" and, therefore, since no man before the passing of this Act could enter the House without taking the Oaths of Allegiance and Supremacy, by what authority are we now to say that the application is general, and that no one, whensoever returned, is required to take the Oaths of Allegiance and Supremacy? My argument then, Sir, is, that by looking at these two sections of the New act of Parliament, we shall find a clue by which to interpret the intention of the Legislature. Allow me also to state, that the reason which runs in favour of the intention of the Legislature, as I interpret it, is also consistent with the real justice of the case, because it is well known to every body that there was a measure, which, though it was not actually included in this Act of Parliament, was made an accompaniment of it; and the effect of which was to disfranchise an entire class of the freeholders of Ireland; the exclusion, therefore, of any Members elected previouly to the passing of that Act, seems to me to be no more than justice, if the effect of that measure is fairly taken into consideration.

DISTRESS OF THE COUNTRY.

[From Bell's Weekly Messenger, May 23.]

The interest of the week is confined wholly to the Parliamentary business. Mr. O'Connell has been refused a seat in the House of Commons, and a new writ has in consequence been issued for the County of Clare. The