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Observations on the Roman History.

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O B S E R V A T I O N S
O N T H E
R O M A N H I S T O R Y.

From a Manuscript of the late Lord LYTTTELTON, communi-
cated by WILLIAM HENRY LYTTTELTON, Esq.

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OBSERVATIONS
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OF THE

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O N

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I N the early part of my youth I wrote a little treatise, entitled *Observations on the Life of Cicero*, which went through two editions; the first coming out in the year 1731, the second in the year 1741. During the last of these years Dr. Middleton also published his *Life of Cicero*, in the preface to which elegant and elaborate work he did me the honour to take some notice of mine, and expressed a wish that I should re-consider the subject in a more extensive view of that great man's whole conduct. Finding my mind disengaged from other occupations, I now obey that call; and, upon examining the general state of the times in which Cicero lived, I have made some reflections, which induce me to enlarge my first design, so as to take in the whole period from the first alteration of the Roman republic into an absolute monarchy, by the short usurpation of Cornelius Sylla, to the final settlement of the *Imperial* power, another species of despotism, no less violently assumed,

assumed, but more moderately exercised, and more artfully constituted, by Augustus Cæsar.

The means by which Sylla, after a dangerous contest, obtained an uncontrouled dominion over Rome, are so well set forth by Plutarch, that no comment upon them will be necessary here. I shall only take notice of a weighty observation, made by another historian, who wrote in those times, viz. that the army, which, under the command of this consul, expelled Caius Marius and all his party out of Rome, *was the first Roman army which ever had entered into that city in a hostile manner.* To this I will add, that Sylla was the first Roman general who ventured to resist a decree of the people, however ill procured, and to continue himself in the command of an army against their orders, by the aid and strength of that army. But it must be also observed, that although the dissensions preceding this event had not risen to the height of civil war, yet for some time before these legions drew their swords in their general's quarrel, the violent outrages of the tribune Sulpicius and his armed band of ruffians, which he called his Anti-senate, had, in effect, destroyed the legal government and liberty of the state. Nor was it only the fury of a popular faction which had produced these disorders. By the barbarous murder of Tiberius Gracchus the sen. itself had set the example of such pernicious riots. The laws, which could not guard the sacred person of a tribune from the clubs of a mob brought against him by the nobles, became as unable to protect the nobles from the daggers of villains, banded together against them by seditious plebeians. And this anarchy soon constrained both parties to resort to a military force.

At the end of the civil war Sylla found himself master of the Roman Commonwealth. Had he then sheathed the sword, without doing any injury to the freedom of his country, he would have been ranked among her greatest heroes: but, against the whole tenor of his former behaviour, he shewed himself

V. Plut.
Vit. Syll. &
Mar.
App. Alex-
andrin. de
Bello Civili,
l. i.

himself a worse tyrant than Marius had been in the utmost excesses of his despotism and cruelty, after Cinna had brought him back to Rome.

It would be out of the compass of what I propose in these remarks, were I to relate all the horrors of the bloody proscription carried on by Sylla's orders: but, concerning the magistracy, under the name of which he chose to exercise his tyranny, (I mean the dictatorship) something must be said in this place.

The institution of this office was almost coeval with the liberty of Rome. Twelve years after the expulsion of Tarquin the Proud, or, as some reckon, only eight, (*ita lex jubebat de dictatore creando lata,*) a law was made for the creating of a dictator, with a power superior to that of all other officers, military or civil, and subject to no appeal, being only restrained by the following limitations—that it was to be exercised within the bounds of Italy, and not for more than six months. The idea of it seems to have been taken from Alba, of which city the Romans were a colony, and may therefore have adopted, without much deliberation, what had been practised there: but the occasion of their having recourse to it was (according to Livy) the instant dread of a war, which thirty Latin cities, confederated with the Sabines, threatened to make against Rome. Liv. l. i. c. 18.
Liv. ut supra.

Other reasons have been given, but this seems the most probable; because military operations are better carried on by a single commander, than by two equal chiefs; and the people, at a time of imminent danger, might more easily be induced to constitute such an officer for the defence of their country against foreign enemies, than if the law had been first proposed by the senate for any political purpose. Yet they should have considered, that the dictatorial power extended over the state, as well as over the army, and that the nobles might use it as an engine against *them* upon other occasions.

The nomination of this magistrate appears to have been assigned by law to either of the two consuls; but the choice was confined to some one of those senators who had before obtained the consulship: and the usual method was, for the senate to decree, upon any great exigency, that a dictator should be made, and to direct on what person of consular dignity the nomination should fall. Yet it was in the power of either of the consuls, without any order from *them*, and without the approbation of his colleague, to name, of his own accord, any consular senator to this supreme magistracy; and their approbation, concurring with such an appointment, fully ratified and confirmed it, however disagreeable it might be to the people. A remarkable instance of this, and likewise of the use occasionally made of the dictatorial power for the purposes

L. iv. c. 13, of the senate, occurs in the account which is given by Livy of
 14, 15. the events of the year 316 from the building of Rome. He
 Ann. Urb. tells us, that the senate reproaching the consuls with a neglect
 Condit. 316. of their duty, for not having exerted the authority of their charge to punish a conspiracy of the Roman knight, Spurius Mælius, with some tribunes of the people, against the Commonwealth, one of them said, "The blame laid on them was unjust: for they, being subject to the controul of the laws, which had given an appeal from them to the people, wanted strength in their magistracy, more than they did in their minds, to inflict the vengeance due to a crime of this nature. (*Opus esse non forti solum viro, sed etiam libero exsolutoque legum vinculis. Itaque se dictatorem Lucium Quintium dicturum.*) That there was need of a man, not only courageous, but moreover free, and not fettered with the restraints of the laws. He therefore would name Lucius Quintius dictator."

The whole senate approving it, Lucius Quintius was accordingly named to that office; and the next day guards of soldiers having been placed in the forum, Caius Servilius Ahala, whom he had appointed his general of the horse, cited Mælius, by

by his orders, to come before his tribunal, and answer there to the charge brought against him in the senate. But, he calling on the people to succour him in this danger, which, he said, was drawn upon him by his kindness to them and the malice of the senate, some of them rescued him from the hands of an officer, who was going to carry him before the dictator: whereupon Servilius, assisted by a band of young patricians, followed him into the crowd, in which he had taken refuge, and killed him there with his own hand: after which, covered over with the blood he had shed, he went back to Quintius, and told him what he had done. That magistrate praised him for having freed the republick; and then, in an harangue which he made to the people, whom the sight of this deed had thrown into a tumult, declared, (*Malium jure casum, etiam si regni crimine insons fuerit, qui vocatus a magistro equitum ad dictatorem non venisset,*) That Malius, though he were innocent of aspiring to make himself king of Rome, with which he had been charged, was yet justly put to death, because, having been cited by the master of the horse, to come before the dictator, he did not come.

When we consider, that this man was probably guilty of no other treason, than affecting to render himself too popular, by largesses of corn to the people, in a time of great dearth; it must appear that a power, which, upon such an occasion, could so suddenly be called forth, and so violently exercised, was not very consistent with the much-boasted liberty of the Roman republick.

The constitution of that state is praised by Polybius, as a Polyb. l. vi. happy mixture of monarchy, aristocracy, and democracy, but the dictatorship brought into it a kind of domination more properly tyrannical than regal.

For, in a limited monarchy, the king is not absolute, but restrained by the laws, and his ministers are responsible to the other estates of the kingdom, or the courts of judicature therein, for any abuse of his power: but a dictator in

Rome (*absolutus legum vinculus*) was absolved by his office from all restraints of the laws, and not accountable to the senate, or assembly of the people, or any other jurisdiction, for any act he had done in the exercise of his charge, however arbitrary or illegal. If it be said, that the regal power in the Roman constitution was exercised by consuls, and the dictatorship was only an extraordinary remedy, to which recourse was had in sudden emergencies, when the ordinary course of government was unable to answer the exigency of the state, or provide for its safety, I answer, that not only the consuls, or the senate, or both these powers united, but the people also as one constitutional part of the Roman commonwealth, ought to have judged of the necessity of employing this remedy, so dangerous to their freedom, and without their consent it never should have been used. Thus, in England, where a mixed constitution of government unites the powers of monarchy, aristocracy, and democracy, much more happily than that of Rome ever did, even in its best state, (as I hope to shew in the course of these remarks) if extraordinary dangers require that the Habeas Corpus law (the great security of our freedom) should for a time be suspended, it can only be done by the joint advice and authority of the whole legislature. And if, in any case where delay would be fatal, the safety of the publick apparently obliges the king, in whom alone the executive power resides, to act against this or any other law, without having been previously empowered so to do by both houses of parliament, his ministers are responsible for it to their country, and can no otherwise be secured than by a bill of indemnity, which, if the necessity pleaded for their justification is found to have been real, the lords and commons will not refuse to pass. But, in Rome, a single consul, agreeing with the senate to name a dictator, without the concurrence and against the will of the people, might subject, at any time, the liberty and the life of every Roman citizen to the arbitrary power of one man, set above all

all the laws, and in no way responsible, for the exercise of his sovereignty, to the justice of the state. Indeed, after the end of the second Punic war, the senate itself grew so jealous of the danger of this office, that, for 120 years before Sylla took it, no dictator was appointed. The manner in which he chose to have it conferred on him demands observation.

Both the consuls of the year 670, from the building of Rome, having perished in the war which Sylla and his friends made against them, he notified to the senate, that, agreeably to the custom of their ancestors in such cases, they should create an *interrex*, to hold the *comitia* for electing new consuls. They named to that office the president of the senate, Lucius Valerius Flaccus, to whom Sylla wrote, and bade him report his opinion to the people, that the present state of affairs required the appointment of a dictator; not for the term of six months, but till the whole commonwealth, and every part of the empire, which the civil wars had shaken, should be more firmly settled, and brought into better order; adding, at the end of his letter, that, if the senate approved it, he offered himself to do the republick this service. His offer was understood to be a command: he therefore was named dictator by the *interrex*, without any term being fixed for the expiration of his office; and thus (says Appian) *the dictatorship, which had before been a tyranny limited to a short time, this restraint being taken off, became a tyranny compleat.* Appian. de bello Civ. l. i. Ibid.

Nor yet was the dictator content with this indefinite prolongation of his power; but caused a law to be proposed by the *interrex* to the people, which ratified all his acts, whatever they might be; and authorized him to put to death, without a trial, any citizen of Rome, according to his pleasure.

Cicero, speaking of this law, in one of his orations, calls it *the most unjust and the most unlike a law, that had ever been made*; and in his treatise *De Legibus*, considers it as null and void in itself. Yet to such an extreme degree of servility De Lege Agraria, contra Rullum, Orat. 17. De Legibus, l. i. c. 15.

were

were the people and senate reduced, that it was enacted without the least opposition; and Sylla rewarded Flaccus for having been the propounder of it, by naming him to the dignity of his general of the horse!

Having thus, under the colour of a legal authority, assumed the most absolute and enormous despotism, he made several laws for the settlement of the state, chiefly tending to raise the power of the senate. This was contrary to the policy of every other tyrant, who, either at Rome, or elsewhere, had ever enslaved a free country! But the spirit of party was strong in Sylla's mind; and, as all his greatest enemies had courted the people, he was led by resentment, and by every connexion he had hitherto formed, to favour the nobles. In acting on this plan his principal object was, to reduce the authority of the tribunes of the people. But, before I take notice of what he did to that purpose, some account must be given of the nature and power of the tribunitial office.

Liv. l. ii.

c. 33.

Dionys. Ha-

lic. l. viii.

About fifteen years after the expulsion of Tarquin, in the 260th year of Rome, the people obtained, by a treaty with the senate, that they should, for the future, have magistrates of their own, whose persons should be deemed inviolably sacred; and that no patrician should be capable of holding this magistracy, which, by what was called *intercession*, had a power to protect them against any injuries from the consuls or senate.

Liv. l. iii.

c. 30.

The number of these magistrates, at their first institution, was five, and continued so till the year of Rome 296, when it was augmented to ten, and never afterwards altered. They were annually chosen; and a law was made, in the year of Rome

L. ii. c. 56,

57.

282, that the elections should be in the assembly of the people, not by centuries, but by tribes, from which the patricians were entirely excluded, and where, the lowest of the populace always making a majority, the sense of the better sort was little regarded. Soon after their first creation, the tribunes added to the power of protecting the people that of accusing the nobles and judging

judging them by the people, and of stopping, by a negative from any one of their number, any decree of the senate! These points being gained notwithstanding all the force of a warm opposition on the part of the nobles, the tribunes in process of time extended their authority to a right of proposing any law to the people without the assent of the senate, and referring to them any business treated of in that house.

The exercise of these powers was carried on with a violence more resembling the anarchy of a state of war, than the orderly acts of regular magistrates in a well-settled commonwealth. Tiberius Gracchus, in the year of Rome 619, forbade any public business to be carried on in the city, till, notwithstanding the opposition of one of his colleagues, his Agrarian law had been proposed to the people. He also sealed up the door of the treasury, that none of the quaestors, who had the administration of the public revenue, might enter into it; and stopped the praetors from performing the duty of their office in trying of causes, by threatening them with fines, till every obstacle to his legislation from any other magistrate should have been removed. In the year of Rome 614, the tribunes of the people contending for what they had no right to, that each of them should have a power to exempt from the obligation of military service ten citizens at his choice; and the consuls of that year resisting the attempt, they ordered both those supreme magistrates to be carried to prison; which was accordingly done: an act, by which the whole majesty of the consular power, which represented the regal, was violated and destroyed. If such exertions of the tribunitial power had been frequent, the government must have fallen into a mere democracy, or rather, indeed, into a tyrannical oligarchy in the persons of the tribunes; but the administration of this power being divided, at first, between five persons, and afterwards between ten, a check was usually given to the extravagances of it, by the opposition of some one among those magistrates to what the others proposed: and to this, on many

Liv. 1. 1v.
c. 2.

See Livy,
l. ii. c. 44.
l. iv. 48.
l. vi. 35.
39. et al.
Appian,
Plutarch,
Epitome
libri lviii.
Liv. Frein-
chem. Sup-
plem.

many occasions, the senate had recourse, particularly in their contest with Tiberius Gracchus about his Agrarian laws, the passing of which they obstructed by the intercession or negative of Marcus Octavius, one of his colleagues: nor could he any otherwise get over that obstacle, than by causing the people to depose Octavius, if he would not desist from that opposition which his magistracy gave him a right to make. This had never been done in any other instance, and was then considered by many as an odious act of violence, which, for the purposes of a factious demagogue, flagrantly violated the sanctity given by the laws to the person of a tribune, and tended to destroy the sacred power of that office by the people themselves. But Gracchus pleaded, with great force, the necessity of it, in order to prevent the betraying of the people, in points of the highest moment, by some of those very magistrates who were instituted to serve them. And it must be confessed that the blame of this irregular act ought less to fall on him than on the bad constitution of the magistracy itself. As unanimity in all those invested therewith could seldom be hoped for, the only means of giving consistency to it, and carrying things on in a quiet and orderly course, would have been the deciding of all differences among them, by a majority of votes: but, each having a power, by his single opposition, to stop any act of his colleagues, the obstinacy of one was sufficient to obstruct any business; and that impediment could not be removed by any other method than depriving him of his office.

NOTES

NOTES on the preceding OBSERVATIONS.

P. 34. *And the usual method was, for the senate to decree, upon any great exigency, that a dictator should be made, and to direct on what person of consular dignity the nomination should fall.*

In relating the transactions of the year 318 from the building of Rome, Livy uses these words, "Major itaque ex civibus amissis dolor quam lætitia fuis hostibus fuit; et senatus (ut in trepidis rebus) dictatorem dici Mamercum Æmiliū jussit." See also other proofs of their exercising this power, which the same historian gives, l. iv. c. 46. Ann. Urb. Condit. 317. l. ix. c. 38. Ann. Urb. Condit. 444.

Yet we find that some consuls did not think themselves bound to obey such an order: for (as Livy also informs us) in the year of Rome 324, the senate, alarmed at the extraordinary preparations of the Æqui and Volsci against the Roman state, and still more apprehensive of bad consequences from the discord between the two consuls, who differed in all counsels the one from the other, resorted to the expedient of creating a dictator: but those magistrates, so discordant in all other points, agreed in pertinaciously refusing to name one: whereupon, as the danger, by new intelligences brought, seemed to be more and more dreadful, Quintus Servilius Priscus, who, with a great reputation, had held the highest dignities of the commonwealth, applying himself to some of the tribunes of the people, who were present in the senate-house, told them, *the senate called upon them in that extremity to compell the consuls, by their power, to name a dictator.*

There had never been a precedent, either of such a refusal on the part of the consuls, or of such an application on the part of the senate. The tribunes, glad of the opportunity to

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augment their power, after consulting apart with all their colleagues, declared, *It was their pleasure, that the consuls should obey the decree of the senate; and, if these should persist in a longer resistance against it, they would send them to prison.* The consuls, chusing (says Livy) to be overcome by the tribunes rather than by the senate, yielded to this command; but not without a protest against the injury done to the consular power, which the senate thus betrayed. Nor yet could they agree which should name the dictator, but ended the dispute by casting lots.

Liv. l. iv. 58. In the year of Rome 347, when the consular office was exercised by three military tribunes, instead of two consuls, these making a resistance to a decree of the senate for creating a dictator, the tribunes of the people were again applied to by that body, for the aid of their power to force a compliance: but they, discontented at seeing the plebeians perpetually excluded, by the influence and intrigues of the patricians, from the military tribuneship, to which, by law, they might attain, though not to the consulship, sullenly refused their assistance. Yet they said, that, when all the dignities of the state should be, without distinction, communicated to the people, *they would then take good care that the decrees of the senate should not be made ineffectual by any arrogance of the magistrates.* This resource having failed, the contention was kept up between the senate and two of the military tribunes; who, thinking themselves equal to the conduct of the war, complained "that the dignity they had obtained from the people, should be thus taken from them: but the third said, that hitherto he had remained silent, because he rather desired that his colleagues should yield to the authority of the senate, without any force upon them, than suffer the power of the tribunes of the people to be implored against them. That even now he would willingly give them more time to alter their opinion, if the exigency of the state could bear that delay; but, as the necessity

of war would not wait for longer consultations, he would prefer the service of the publick to their good-will, and contenting himself with the sole authority of the senate (whatever opposition might be made against it) would name a dictator that night." He did so; and this shews, that any one of the consuls, or military tribunes, with consular power, might name a dictator without the consent of his colleague or colleagues: the reason of which, doubtless, was, that the natural unwillingness in the mind of such a magistrate, to make over to another the supreme command, would probably hinder its being unnecessarily or wantonly done; but on many occasions a contrary disposition might be well apprehended; and the absence of one consul, or military tribune, on the publick service abroad, might happen to disappoint the desire of the senate, if the concurrence of both consuls, or of all the military tribunes, had been necessary to this act.

In the year of Rome 542, the senate decreed, that the consul, before he went out of the city, *should ask the people* ^{Livy, 1. xxvii, 5.} *whom they would be pleased to have him name dictator, and should name the person they ordered*; adding, that, if the consul refused to refer this matter to the people, the prætor should do it; and, if the prætor would not, it should be done by the tribunes. The consul did refuse, declaring that he would not consult the people on a matter *which was in his own power*, and forbade the prætor to do it; whereupon it was done by the tribunes of the people, *and the people enacted, that Quintus Fulvius, who was then at Capua, should be named dictator.* Quum consul se populum rogaturum negasset, quod sue potestatis esset, prætoremque vetuisset rogare; tribuni plebis rogarunt, plebesque scivit, ut Q. Fulvius, qui tum ad Capuam erat, dictator diceretur.

I find no other instance in the Roman history of the senate's submitting to the will of the people the nomination of the person who should be raised to this office.

The purpose of creating a dictator at this time was only that the comitia, or assembly of the people for electing the magistrates of the ensuing year, might be held by that officer, instead of one of the consuls; it being necessary that both should be absent from Rome upon military service, in their several provinces, when the assembly was held. The cause of referring the affair to the people, in this extraordinary manner, was a difference which arose between the senate and the consul, M. Valerius Laevinus; the latter chusing to name M. Valerius Messalla, who commanded the Roman fleet in Sicily, to which province he was going; and the fathers denying that a dictator could legally be named out of Italy. The dispute was ended, in consequence of the decree of the people, by the other consul, Marcellus, being sent for to Rome, and naming Quintus Fulvius, agreeably to their order.

P. 34. "He tells us, that the senate reproaching the consuls with a neglect of their duty, for not having exerted the authority of their charge, to punish a conspiracy of the Roman knight, Spurius Maelius, with some tribunes of the people, against the commonwealth, one of them said, *The blame laid on them was unjust: for they, being subject to the controul of the laws, which had given an appeal from them to the people, wanted strength in their magistracy, more than they did in their minds, to inflict the vengeance due to a crime of this nature. That there was need of a man, not only courageous, but moreover free, and not fettered with the restraints of the laws. He therefore would name Lucius Quintius dictator.* The words of Livy are these: Tum Titus Quintius, consules immerito increpari, ait, *qui constrikti legibus de provocatione, ad dissolvendum imperium latis, nequaquam tantum virium in magistratu, ad eam rem pro atrocitate vindicandum, quantum animi haberent. Opus esse non forti solum viro, sed etiam libero exsolutoque legum vinculis. Itaque se dictatorem Lucium Quintium dicturum.*"

Ann. Urb.
Condit.
316.

These words seem entirely to overturn the opinion of some learned writers on the Roman history, that the law, proposed by the consuls, Horatius and Valerius, in the year of Rome 306, established a right of appealing to the people against the acts or decrees of a dictator. For, had this been true, it would have been the grossest absurdity for Livy to make T. Quintius, no more than ten years afterwards, (ann. U. C. 316) give it as a reason for naming a dictator, that the consuls, *being subject to the laws of appeal*, had not strength in their magistracy sufficient for the exigency of the state at that time. A magistrate *equally subject to the laws of appeal*, could not have supplied the defect of power in them. But the historian says expressly, that the dictator was free from that restraint, *liber exsolutusque legum vinculis*. Indeed it appears that the law of Horatius and Valerius had no reference to the dictatorial office, the object of it being to prevent the introduction of any new-invented magistracy, such as the decemvirate had been, without the controul of an appeal to the people. Livy writes of L. iii. c. 55. it thus: "*Aliam deinde consularem legem de provocatione, unicum præsidium libertatis, decemvirali potestate eversam, non restitunt modo, sed etiam in posterum muniunt sanciendo novam legem, ne quis ullum magistratum sine provocatione crearet, qui creasset eum jus fasque esset occidi, neve ea cædes capitalis noxæ haberetur.*" The dictatorship certainly was not a magistracy created after this law, having been established long before, in the year of Rome 253 or 257. And what power the law *de dictatore creando* had originally given to it, the same historian informs us in the following words: "Creato dictatore primum Romæ, postquam præferri secures viderunt, magnus plebem metus incescit, ut intentiores essent ad dicto parendum. Neque enim, ut in consulibus, qui pari potestate erant, alterius auxilium, neque provocatio erat, nec ullum, nisi in curâ parendi, auxilium." It was therefore a power without appeal, either to any other magistrate or to the people; a power against the
terror

P. 118.

terror of which the people had no help, but unresisting obedience. And this refutes the opinion of Algernon Sidney, who, in his celebrated Essay on Government, contends that when dictators are said to have been *sine provocatione*, it is only to be understood in relation to other magistrates, and not to the people; which, he says, "is clearly proved in the case of Quintus Fabius, whom Papirius, the dictator, would have put to death (Liv. l. iii. c. 33.) *Tribunos plebis appello* (says Fabius's father) *et provoco ad populum, eumque tibi fugienti exercitus tui, fugienti senatus judicium, judicem fero, qui certè unus plusquam tua dictatura potest polletque: videro cessurusne sis provocationi, cui Tullus Hostilius cessit?*"

Liv. viii. l.
34, 35.

But, if we look to what followed (as the same historian relates it) we shall find that Papirius continued firm in asserting the majesty of his office; and, though he spared the life of Fabius, at the intercession of the people, yet he took care to express, that the offender was not saved by any reversal or over-ruling of the sentence which he had past against him, nor by any right in the tribunes, or in the people, to help him, but was given to their prayers. "Stupentes tribunos, et suam jam vicem magis anxios, quam ejus, cui auxilium ab se petebatur, liberavit onere consensus populi Romani *ad preces et obtestationem versus, ut sibi pœnam magistri equitum dictator remitteret, tribuni quoque inclinatam rem in preces subsecuti orare dictatorem insistant ut veniam errori humano, veniam adolescentiæ Q. Fabii daret, satis eum pœnarum dedisset. Jam ipse adolescens, jam pater M. Fabius contenti-onis obliiti procumbere ad genua, et iram deprecari dictatoris. Tum dictator, silentio facto, bene habet, inquit, Quirites, vicit disciplina militaris; vicit imperii majestas, quæ in crimine fuerunt, an ulla post hunc diem essent. Non noxæ eximitur Q. Fabius, qui contra edictum imperatoris pugnavit; sed noxæ damnatus donatur populo Romano, donatur*"

“donatur tribunitiæ potestati, precarium non iustum auxilium
“ferenti.”

From all this it appears, that no lawful authority in the tribunes or people of Rome delivered Q. Fabius from the sentence pronounced by the dictatorial power. He was only saved because they *supplicated* for him; and their *supplications* themselves were a very sufficient proof *that no appeal lay to them*. They might indeed (as the right of making laws was in them, especially with the consent of the senate) have passed a law (*plebiscitum*) to restrain the dictatorial power from acting against Fabius, as they afterwards did pass one, in favour of Minucius, to render the power of the master of the horse equal to that of the dictator: for laws may be made repugnant to the principles of any constitution by an abuse of the legislative authority in those to whom it is trusted: and this, it seems, was what Papirius apprehended; but he firmly maintained the constitutional power belonging to his office, of judging in this case without the controul of any appeal to them; and this independency, asserted by him, they in effect acknowledged, when they had recourse to entreaties against the execution of his decree, instead of reversing it, or stopping it's effect, by any act of theirs.

Liv. l.
xxii. 25.

