

**REPLY**  
**TO TWO PAMPHLETS,**  
**ENTITLED**  
**“ ILLUSTRATIONS**  
**OF THE**  
**PORTUGUESE QUESTION,**  
**BY A PORTUGUESE LAWYER,”**  
**AND**  
**“ THE LAST DAYS OF THE**  
**PORTUGUESE CONSTITUTION,**  
**BY LORD PORCHESTER.”**

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*BY AN ENGLISH CIVILIAN.*

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## REPLY, &c.



THE two pamphlets on Portuguese Affairs, named in the title-page, have simultaneously made their appearance, somewhat different, it must be confessed, in their pleas and mode of argument ; yet both deserving of particular notice, at this precise moment, not on account of the new facts which they contain, or the elucidations found in their pages ; but, because of the high authority intended to be given to each, arising out of different causes. The one relates to the right, and the other to the expediency of D. Pedro's ascendancy in Portugal. The one is silent on the merits of the Charter, sent from Brazil, as if ashamed that it should ever have existed ; whilst the other argues that, if only properly modified, it would work miracles and constitute the felicity of those for whom it was enacted. Both are evidently party works, specially written to promote the same cause ;

yet each varies in its views of the subject, as well as in the development of the details. The first professes to be written by a "Portuguese Lawyer," who, consequently, must be presumed well acquainted with the Legislation and Jurisprudence of his own country ; whilst the second is the production of an English Nobleman, who pledges for the fidelity of facts which he himself witnessed, and assures his readers that the information he offers them, is derived from the purest sources and the highest authority, almost exclusively his own. One is a concentration of all that the Portuguese refugees on this topic had previously written among us, in great measure divested of that acrimony of diction and virulence of thought which have hitherto invariably marked their publications ; at the same time that the other strikes off into a new and unbeaten path. They are not, consequently, equally original ; or stamped with the same vigour of perception ; yet both authors are impelled by the same ardour and, it is but charity to suppose, alike actuated by sincerity ; nevertheless, whilst one creates doubts which he by no means satisfies ; to an impartial mind, it will be found that the general tenour of his coadjutor's remarks convey impressions, totally opposite to those which he seeks to excite.

The aim of the writer of the following pages, is to examine and answer both publications, in their most material parts, and this he will proceed to do in the order in which they are named. After the variety of works already written on the Portuguese question, both here and in France, by many the present effort will be deemed unnecessary ; by some perhaps pre-

sumptive ; but, it ought to be borne in mind that delusion must be attacked, at every hour in the day and at all seasons. Both works endeavour to affix a stigma on our national honour; separately they upbraid and insult the government for acts, of which their authors cannot be competent judges. Their united efforts are moreover directed to preserve that delusion, so early spread among us on Portuguese affairs, by a misguided press, and kept alive by all kinds of expedients. Their appeal is to the feelings, rather than to the judgment of Englishmen; and whilst they seek to prolong the popular cry, excited by all kinds of fictitious means and emboldened by clamour and intrigue, they seem unmindful that expedients of this kind can only give them a temporary triumph, and must eventually end in their own discomfiture. The voice of justice is not thus to be silenced ; nor is a question of so much moment to be treated with levity. No artifice—no refinement in politics can now avail ; the truth—the naked truth, will come out. It is evident that ministers have at length taken their stand, and those who were once so eager to deceive, now run the risk of becoming the victims of their own stratagems. This may, besides, be considered as a question, affecting the great balance of European interests. That rank which Portugal has always held in the scale of nations, cannot any longer be disregarded ; or treated with indifference. It is a topic of great and universal importance ; it is connected with some of our best interests, and since the late Speech from the Throne and the discussions which ensued, it presses with redoubled force upon our attention. With these

preliminary considerations, the writer will commence the performance of his task.

When the "Portuguese Lawyer" tells us that, in order "to place the perfect and unqualified recognition of her Majesty's rights (meaning Donna Maria) beyond all dispute, it will be sufficient to refer to the epoch at which the throne of Portugal devolved upon her illustrious father, D. Pedro, and thence to the period when, with the full concurrence and sanction of the only powers whose interference in the internal arrangements of the Portuguese Monarchy, could be justified by the relation in which they stood to that crown, as the most intimate Allies of the House of Braganza," he cannot certainly wish it to be understood that governments are infallible and incapable of committing errors, when acting with precipitation; or, that the recognition of D. Pedro by "the intimate allies of the House of Braganza," is virtual proof of his inherent rights in Portugal; and much less can he deduce that such an act, uncautiously and hastily performed, now prevents them from correcting their oversight and retracing their steps. No inference, as regards right, can be drawn from any such circumstance. No barrier is thus placed to a revision of the subject; such a formality does not debar the injured from resorting to an appeal; the opinion thus expressed does not prevent an act of justice, however tardy, from being done. If one party was then condemned without a hearing, it does not follow that the same partiality and precipitation will be observed at the new trial. If the "Portuguese Lawyer" wishes to adduce substantial evidence and aid to the establishment of a

correct verdict ; if he seeks to make this country the theatre of the contest and the British public the umpire, let him give us plain matter-of-fact ; let him state his case fairly and stick to points ; let him descend from the clouds of mist and confusion in which he steers his devious course, and instead of overwhelming us by references ; or dazzling us with ponderous authorities, let him state to us what the Law of Succession in Portugal really is—what are its modifications, and leave us to make the applications and do the rest. Let him lay before us the materials requisite to form an accurate judgment on the question, not by holding forth to us parliamentary speeches, or anonymous pamphlets ; but, by a full and authentic exposition of the state of the law in Portugal, and a review of the manner in which that law has been affected by D. Pedro's preference to another crown. Let him inform us by what competent tribunal and according to what legal forms, the claims of either D. Pedro, or Donna Maria, have been established ; since their validity, whether claimed by the father, or the daughter, among foreign nations, even as an historical question, must ever remain problematical, if it rests only on the precipitate act of an interested party. Their eager champion seems also to forget that the rights of Succession were by the only competent tribunal, known in Portugal, formally declared vested in D. Miguel, and neither raillery, nor invective can shake that award, unless the allegations then set forth can be controverted. He ought further to recollect that Portugal is the most interested in this affair, and that there the people have declared that institutions

which their ancestors founded on experience, earned by struggles of the most arduous kind, endeared to them by historical retrospection and rendered venerable by the lapse of centuries, shall not be overthrown at one blow, either to please D. Pedro, or his "intimate allies."

It must be considered as a most extraordinary feature, distinguishable in all the works, written by the Portuguese Refugees for our instruction, that not one of them ventures to grapple with that part of the subject which relates to D. Pedro's acts in Brazil; and this omission is the more unaccountable in the two effusions now under consideration, particularly the first, which professes to be unusually full and comprehensive, because this has always been held by far the most important point by those Englishmen who have expressed an opinion on the competition to the throne. Both the "Portuguese Lawyer" and My Lord Porchester seem studiously to have avoided this most essential division of the question; although they fondly indulge the hope of being able to carry conviction to the breasts of their readers. They enter the arena, as the avowed champions of a party, seeking to intercept the Succession to the throne of Portugal, guarded, as it is, by clear and distinct laws, and then shrink from the contest and claim a victory, without having overthrown a single opposing combatant. The Portuguese writers talk of the process of a judicial investigation, conducted by themselves, as being best acquainted with their own affairs, and, after all, adduce no other than mutilated and often contradictory evidence, and even on this they offer us their own interpretations. As,



however, these friendly monitors, our "Lawyer" included, who appear so anxious that the British public, the House of Commons and the Government should thoroughly understand the question at issue, have deigned only to favour us with such a view of it, as suited their own purposes, I will undertake to state the case myself and regularly examine the question, in all its bearings. This is the only mode of eliciting a proper enquiry into a subject, so important—thus only can judgment be entered up, without prejudice, or partiality.

In pursuit of my object, I shall arrange this part of my subject under two distinct heads; viz. 1st, the various ways in which D. Pedro forfeited, or renounced his right and title to the throne of Portugal, previous to the death of King John VI.; and 2ndly, the manner in which the existing laws of that kingdom peremptorily excluded him from the Succession, after the demise of the monarch just named. He forfeited, or renounced his right and title,

1st, Because, by open war and force of arms, he severed Brazil from Portugal, at the time an integral portion of the Monarchy. By the Cortes of Coimbra, in 1386, the two sons of Peter I., Deniz and John, were excluded from the Succession, in consequence, as the act sets forth, "of their having gone to Castile and taken up arms against Portugal." (*O terem ido para Castelha e tomado armas contra Portugal.*)\*

2dly, Because he lost his character of a Portuguese, by taking up his residence in a foreign country, a distinction applicable to Brazil, from the moment

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\* Portugal, or Who is the Lawful Successor to the Throne?

she was disunited and declared independent. Here it ought to be remarked that the first time it became necessary to dispense with that part of the Statute of Lamego which relates to the exclusion of foreigners, was in 1245, when the Cortes, on the death of Sancho II., called to the throne his brother, Alonzo III., who, after his marriage with Matilda, sovereign Countess of Boulogne, continued to live abroad with her. This rendered the dispensation of the Three Estates necessary; *pues estava desligado do Character Portuguez, por ter feito residencia em pais estranho*.<sup>\*</sup> The late Cortes of Lisbon, in their "Solemn Declaration," signed on the 11th of July, 1828, on this subject, observe thus: "But, they tell us that Count de Boulogne was estranged to Portugal and yet reigned in Portugal. The Count, however, did not reign by Succession; he reigned extraordinarily, by election. The leaders of this Kingdom went to France to fetch him; the Pope's authority strengthened the choice, and by immediately proceeding to Portugal, he recovered his right of birth. He did not take the title of King, until after, as it were, by dispensation, he had been specially empowered by the Estates. It is besides a very remarkable circumstance that, at the time, no other member of the Royal Family was in the Kingdom; the Infante D. Fernando being married in Castile, and the Infanta Donna Leonora equally so, in a country still more remote: in such manner that the laws were not violated, in the case of the Count de Boulogne; but in him an extraordinary remedy was rather sought

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<sup>\*</sup> *Ibid*

for the urgent wants of the Kingdom ; the spirit of the laws and the national usages being, at the same time, followed with all possible scrupulosity.”

3dly, Because, when he accepted the Imperial Crown of Brazil, he did it on the principle of total and eternal Separation, the avowed object of the revolution, and, with reiterated pledges, the most solemn and binding, that no union should again take place between the two Kingdoms, under any circumstances whatsoever.

4thly, Because the very first Article of the Brazilian Charter, which on oath he swore to observe and maintain, expressly declares “ that the Empire of Brazil is the Political Association of all the Brazilian Citizens, and they constitute a free and independent Nation, which does not allow of any bond, union, or federation, with any other, opposed to its independence.”

5thly, Because, Article 4 of the said Charter enacts “ that all persons, born in Portugal and the dominions thereof, who, residing in Brazil at the period when the independence was proclaimed in those provinces in which they had their abode, expressly adhered to the said Independence, or tacitly by a continuation of their residence, ARE BRAZILIAN CITIZENS.” This clause consequently affects D. Pedro and the whole of his issue.

6thly, According to Article 7 of the same Charter, “ that person loses his rights as a Brazilian Citizen, who naturalizes himself in a foreign country ;” a principle established not only as a check against abuses ; but also in reciprocity to a similar law, prevailing in Portugal.

7thly, Because, by Article 116, relating to the Succession, he bound himself "to reign in Brazil;" a positive and direct pledge that he would never reign elsewhere.

8thly, Because, in order to guard against contingencies and render the Separation more complete, the Charter (Article 119) enacts "that no foreigner shall succeed to the power of the Empire;" a clause, in like manner introduced, in reciprocity to the prevailing law in Portugal.

9thly, Because, by Article 118, it is ordained "that, in case the lawful issue of Peter I. should become extinct, the General Assembly shall choose the new dynasty;" evidently framed to protect the rights of the Nation, and again, on a principle of reciprocity, to exclude Portuguese members of the Royal Family from the Succession.

10thly and finally, Because, by his own letters to his father, and especially by that of the 15th July, 1824, of which further notice will be taken, he voluntarily surrenders up all his rights of primogeniture and claims of inheritance, when he distinctly declared, "that he never again wished to have any thing to do with Portugal."\*

For the reasons and by the acts, enumerated in the preceding clauses, each one of which is sufficient in itself to defeat the right and title once vested in D. Pedro, as the surviving first born male of the Blood Royal, he was clearly disabled from instituting any claim to the Crown of Portugal, at the time of his

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\* This document, in English and Portuguese, is to be found at full length, in Walton's Letter to Sir James Mackintosh, page 158.

father's demise, and, consequently, it was out of his power to prevent the laws from taking their course. Thus it was that he became, to all intents and purposes, a Brazilian, to the exclusion of himself and issue—thus did he prefer a Brazilian to an European Crown. By this choice and the circumstances on which it was founded, he consequently became a foreign sovereign, in reference to Portugal; was debarred from the Succession to the Crown of that realm, and disqualified from therein exercising any act of authority whatsoever.

As a further elucidation of the spirit in which the Independence of Brazil was achieved and the national institutions subsequently enacted, it is necessary to take a short survey of the events which led to the separation of the two Kingdoms and the establishment of a new and distinct Monarchy, on the other side of the Atlantic. This sketch, followed by a recapitulation of the sentiments of the Brazilian Chambers, as far as they can be ascertained, respecting the Emperor's interference in the affairs of Portugal, will complete this part of the picture.

The object aimed at by the Brazilians in severing their bond of union with Portugal, by having recourse to arms, was clearly to establish a separate and independent State, and it is equally so that all their subsequent enactments were directed to preserve that separation and independence, unimpaired, by every means which human foresight could suggest. Agreeably to this feeling and in support of this determination, as early as June 10, 1824, D. Pedro issued a decree, at a time when Portugal was sending armies against him, in which he announces “the universally adopted

resolution of the Brazilians to defend their liberties, to the last drop of their blood;" adding thus; "What would they with us—those infuriated ministers, who urge His Most Faithful Majesty to take so violent a course? Would they reunite us—what insanity! Would they dictate laws to us, by offering to us, with lighted matches and fixed bayonets in their hands, a nominal independence, founded on an artful basis? Gross error—miserable policy! Would they tear me from among you and have me leave you, abandoned to all the horrors of anarchy? This they never shall accomplish. To arms, Brazilians, INDEPENDENCE OR DEATH is our watch-word." In another proclamation, about the same time addressed to the Pernambucans, among whom a revolution was raging, and after treating every idea of a reunion with Portugal as preposterous, he avows that "having perfectly identified himself with the Brazilian people, he is resolved to share their fate, whatever it may be;" adding, "that his interest, happiness and glory do, and always will, correspond with those of the Brazilian people," &c. These are merely two specimens, selected from various documents of a similar tendency.\*

King John VI. at length acknowledged the separation and independence of Brazil, by a solemn Treaty, negotiated through the mediation of Great Britain, and concluded on the 29th of August, 1825,

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\* The subject of D. Pedro's pledges and professions to the Brazilians, is treated of at full length in "Portugal, or Who is the Lawful Successor to the Throne?" as well as in the Letter to Sir James Mackintosh, above quoted.

in which, after the usual preliminaries, he sets forth that "wishing to promote the general prosperity and secure the political existence and future destinies of Portugal, as well as of Brazil, &c., he acknowledged Brazil in the rank of an independent Empire, separated from the Kingdoms of Portugal and Algarves, and his son D. Pedro as Emperor; of his own free will, surrendering up and transferring the sovereignty thereof to his said son and his Successors," &c. Previously, and at a time when D. Pedro was writing to his father and urging him to acknowledge the independence of Brazil, under date of July 15, 1824, as before noticed, he states "that it was the interest of the King, his father, to acknowledge the independence of Brazil, as soon as possible, and thus adds he, "may I be allowed to express myself, as of Portugal, I have already told your Majesty, I wish nothing at all."\* Further on he says, "I, as Emperor, and your Majesty, as King, are at war and it is our duty to sustain the rights of the independent nations of which we are the chiefs; but, I, as a son, and your Majesty, as a father, ought to love each other."

In no document, public, or private, that ever was produced; in no known communication that ever passed between the father and his distant son, was the Succession to the Crown of Portugal mentioned; nor did the Brazilians know any thing respecting the Emperor's intentions to institute a claim, at least officially, till the opening of the General Assembly,

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\* *Posso assim fallar, pois de Portugal, já disse a V. M. que não querria nada.*