

at pleasure ; for as nothing is more rational than that we should submit in all things to the absolute power of God over us, so nothing is more unreasonable than a blind obedience to earthly princes, as if they were as infallible as God himself ; whereas their very kingship proves sometimes an occasion to make them the more liable, both to error, as being often misinformed of things, and to sin likewise, if they are not truly religious, as King William undoubtedly is, because of their uncontrolled power of doing what they please.

XVII. For these, and other reasons of that kind, though William III., whom God long preserve, be the mildest and moderate prince that ever sat upon the English throne, yet our representatives, to secure us from the encroachments of this and all succeeding ages, have thought fit to declare and establish the rights of the people so fully, and upon such a sure foundation, that England now is the securest and happiest nation in the world, if the natives can be but sensible of their own happiness. *Felices nimium bona si sua norint Agricolas !*

XVIII. Four things especially declared in this act, secure us from oppression, tyranny, and arbitrary power. First, The rejecting of either a dispensing or suspending power. Secondly, All grants of money for, or to the use of the crown, reserved to the parliament for the time in being. Thirdly, The disbanding of standing armies in time of peace, unless the parliament give consent to the keeping them on foot. Fourthly, The settling of the succession of the crown. I need mention nothing else contained in this act to shew that we are the only subjects in the world that can boast of freedom and liberty, in case our princes cannot dispense with our laws, as they cannot without our leave, since they are not to give us for the only reason of their kingly actions, *Tel est nostre bon plaisir*, Their good-will and pleasure, as the French king does ; for however the French modes have taken with us of late, we could never yet fall in love with so absolute a mode as this. As our kings must act by law and not absolutely, though real kings, they do nothing of moment but by and with the advice of their parliaments : Our happiness then consists in this, that our princes are tied up to the law as well as we, and upon an especial account obliged to keep it up in its full force, because if they destroyed the law, they destroyed at the same time themselves, by overthrowing the very foundation of their kingly grandeur and regal power. So that our government not being arbitrary, but legal, not absolute, but political, our princes can never become arbitrary, absolute, or tyrants, without forfeiting at the same time their royal character, by the breach of the essential conditions of their regal power, which are to act according to the ancient customs and standing laws of the nation. If we are happy upon this account, that our kings can neither suspend nor destroy our laws, we are no less to be envied that our purses are secured from the encroachments of an aspiring covetousness, by that part of this act which tells us, " That levying money for, or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is, or shall be granted, is illegal."

XIX. We may easily think our security greater than that of any other nation in Europe, if we reflect but a moment upon this important article, that we are never obliged to open our purses but by the order and consent of our representatives, whom we have trusted with the care of our interest ; which being equally theirs at the same time, we have no reason to fear that they ever lay any taxes upon us but when 'tis absolutely necessary for the preservation of our lives, liberties, and religion, as all seeing men confess it to be in the present juncture of our affairs, to prevent the return of popery and arbitrary power. This privilege has made our government to be envied by all our neighbour nations, and the happiest that can be imagined ; for there being no surer way for a prince to become absolute, arbitrary, and a tyrant, than to impoverish his subjects to that degree of want and misery, as may force them for subsistence to comply with all his desires, whether just or unjust, he is disabled by this act from doing them any mis-

chief that way ; I mean by squeezing the blood out of their veins, that is, the money out of their pockets, for any design he might have of ruling over them as mere slaves. To the want of privilege, we may chiefly ascribe the slavery the French nation groans under, their prince disposing absolutely of their estates at pleasure, and laying such heavy taxes upon his subjects as leave them not money enough to buy leather shoes, instead of which they are forced to make use of wooden ones ; so that the French are not so much in the wrong as one would think, when in their flattering panegyricks they style him sometimes their god, since they in a manner are his creatures, whom he creates or destroys by the least word of his mouth ; for so absolute his power is, that his will is the only law they can depend upon, insomuch, that when he publisheth his orders for gathering of money, if his subjects cannot supply him otherwise, they must sell their goods, and whatever they have, to give him what he demands ; yea, I have known in France poor people sell their beds and lie upon straw, sell their pots, kettles, and all their necessary household goods, to content the unmerciful collectors of the king's taxes. By this little hint we may easily see how much happier we are, as being laden with no burthens but what we are able to bear, and enjoying securely our estates, and whatever we can call our own, under the protection of our laws. Should we then leave any stone unturned to keep ourselves as we are, by opposing to our utmost such a cruel conqueror as the French king would undoubtedly prove, if he ever, to our great misfortune, subdued us ?

XX. But let us speak one word to the third thing I mentioned before, that by this act we are to have no standing army in time of peace ; the advantage whereof we may easily conceive, if we look a little aside towards our neighbours the French ; they suffer patiently in time of war the heaviest taxes, and would not think themselves so much to be pitied, as now they are, if a peace concluded with the enemy bettered their condition, for they are then in a worse condition, in a manner, than they were before, because the standing armies impower their prince to do what he pleases in time of peace ; 'tis then that he looks about him, to consider who has got together any considerable treasures, that he may ease them of them, though lawfully gained, and by good services done to the crown, so that it is no wonder if the French subjects chuse at any time war rather than peace, because in time of peace, their king's armies are wholly employed against them, whereas in the time of a settled war, they are partly taken up in opposing a foreign enemy. Let the impartial reader judge from the premises of the happiness of the English subjects, compared with the miserable condition of the French.

XXI. The late parliament has done another thing, without which, notwithstanding all our other advantages contained in this act, our happiness had not been lasting, as it is now like to be for ever ; and it is the settling of the succession of the crown upon protestants, and none but protestants ; the words of the act are so remarkable, that I think it fit to insert them here, before I give you my reflections upon them.

“ Whereas it has been found by sad experience, that it is inconsistent with the safety of this protestant kingdom, to be governed by a popish prince, or by any king or queen marrying a papist, the said lords spiritual and temporal, and commons, do further pray, that it may be enacted, that all, and every person, and persons, that is, or shall be reconciled to, or hold communion with the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same ; and in all, or every such case, or cases, the people of these realms shall be, and are hereby absolved of their allegiance, and the said crown, and government, shall from time to time descend to, and be enjoyed by such person or persons, being protestants, as should have

inherited and enjoyed the same, in case the same person or persons, so reconciled, holding communion, or professing or marrying as aforesaid, were naturally dead."

XXII. Nothing more certain than what is here asserted, that it is inconsistent with the safety of this protestant kingdom, to be governed by a popish prince, or by any king or queen marrying a papist. If we look back to the public transactions, in the days of King Charles I. we shall soon be convinced of this undeniable truth, since we may derive all our domestic and civil disturbances from his marrying a popish French princess, who at last became so troublesome to him, that he was forced to send home to France again all her attendants, in hopes to bring her to a better temper, by removing from her such popish emissaries, as were thought to put her upon some dangerous designs, which made the nation jealous of her secret intrigues with France; yea, and sometimes of the very king's religion, as if he had been perverted by the queen or her priests, or had shewn himself somewhat too much inclined to the popish way of worship; but whether things were just as the people fancied them, or not, it is certain this unlucky match was the occasion of our civil wars, and of so much bloodshed in these three nations: such another suspicion as this, was the secret spring of all our domestic troubles, during the reign of King Charles II. for though he professed outwardly the protestant religion, yet the people, upon what grounds I know not well, could not be sometimes satisfied, but that he was either a papist, or popishly inclined; and upon this very account, the nation was always apprehensive of French pensioners, of popish plots, of tyranny, and arbitrary power: now such apprehensions and fears could not but be the seed of divisions among us, of heart-burnings, and either of grounded or groundless jealousies, to the endangering the peace and safety of the whole kingdom: so true it is, that it is inconsistent with the safety of this kingdom to be governed by a prince thought to be popishly affected, but sure far more to be governed by a sincere, zealous, and professed papist, as we all know King James gloried to be; how near we were the brink of our ruin during his reign, and how unavoidable our entire ruin was, had he reigned longer over us, is so evident to all seeing men, that I need not enlarge upon the matter here. I shall only add in this place, in order to make out the truth of what is asserted by the late parliament, "that it is inconsistent with the safety of this protestant kingdom to be governed by a papist," that when our prince is a real papist, he is obliged by the principles of his religion, to do his utmost endeavours to submit his subjects to the pope's jurisdiction.

XXIII. First, because he must then of course look upon his subjects as real heretics and schismatics, whom if he do not root out by all possible means, he is liable to be deposed by the pope, according to the famous and known decision of the third council of Lateran; how then can a protestant nation put any trust in such a prince, whose whole business is, and ought to be, to destroy their religion, and force them to return to the old Romish superstitions again? And if subjects cannot trust their sovereign, it is but rational to think they will take all imaginable measures to prevent their own ruin, and that of their religion, always dearer to them, if they have any piety at all, than their very lives; but these very measures, how just soever, must needs breed stirs in a nation, to the general disturbance of the natives; since the politic body, no more than the natural, can be a moment in a quiet temper, without a free and friendly intercourse and communication between the head and the members. Secondly, If a popish prince is obliged in conscience, as I elsewhere intimated he is, neither to stand to his promise, nor word given, to protect heretics and heresy, how can he sincerely promise to maintain and defend our church, or rather how can we be so silly as to believe he will maintain it, since it is not in his power to do it, in case he finds himself in a posture to undertake its ruin? But, thirdly, to be somewhat more particular, the safety of

this nation was inconsistent with the government of the late King James, upon a particular account that I shall here mention.

XXIV. Of all the different persecutions of the church of God, none can be compared to the late persecution of France, both for its cruelty and novelty. The Roman emperors, I confess, exercised all imaginable barbarities upon the bodies of the primitive Christians, but never attempted or pretended any right over their souls and consciences; they banished them, tortured them, invented all sorts of death to destroy them, but the art of dragooning men into religion was reserved to be the contrivance of Lewis XIV. Though he was engaged by the most solemn edicts of Nantz and Nisme, and by his coronation oath, to protect and defend the French protestants with all their rights and privileges, had he declared he would suffer no longer the Hugonots in his kingdom, and ordered them upon that account to depart out of it if they could not change their religion, we had not complained so much of his severity, how anti-christian soever; but not to suffer his subjects to leave him, nor to live with him, without turning to his principle, and that not by argument, but by all the wounds the dragooning sword could inflict, that of death only, which in this case was the least, excepted, is such an example of cruelty as is not to be paralleled by the greatest fury of the Roman persecutions; and which, without doubt, contributed not a little to our late happy revolution, by determining the English through an absolute necessity to do what they did for their own safety; for had they not reason to look to themselves, considering the proceedings of the French king, contrary to all his oaths and promises, to maintain, defend, and protect the Hugonots; they could not but know that the late King James was more devoted to the interest of the church of Rome than Lewis XIV. himself; so that they could not in prudence but take the measures they have so successfully taken, for their own preservation, and that of the protestant interest in general. In one word, nothing could be more terrible to the English, who are so much in love with liberty and property, than to see themselves threatened to be dragooned out of both, by the help of such a powerful ally as Lewis XIV. The late parliament then considering the great progress King James had made in a very short time, towards the bringing in of the French method of converting people to popery, and what impressions such a precedent as that of France might make upon a prince, that needeth no spur to the promoting of his own religion, thought it fit, and absolutely necessary, for the safety of the protestant religion, and the peace of this kingdom, to exclude for ever from the imperial throne of England all popish princes; whereby not England only is secured from such troubles as always ensue upon any jealousy between the king and the people from different principles of religion, but likewise all the protestant princes abroad are encouraged to stand their ground against popish invaders, since they may be sure of seasonable succours upon occasion, from the protestant princes of this powerful monarchy.

Though what has been hitherto said does sufficiently justify all the proceedings of the king and late parliament, to the satisfaction of all such as are but impartial men, and not disaffected to the present government, yet, because some men seem discontented at two things not done by the late parliament, and which they think ought not to have been omitted, as being undoubtedly of no small consequence for the public concerns and peace of the nation, it may not be amiss in this place to clear all their scruples upon these two heads, viz. Why the late parliament neither settled the militia of the kingdom, nor passed the act of indemnity, though earnestly pressed to it by the king, in order to the quieting of people's minds. As to what relates to the settling the militia of the kingdom, it is to be considered that how necessary soever it may seem to be, it was neither perhaps possible as then things stood, nor expedient to settle it, by reason of the uncertain and unknown disposition of most men's minds at first, in all

great and sudden revolutions, but more especially in such an extraordinary and unprecedented one as ours was; for since our greatest strength consists in our militia, can any man of sense think, or say, 'twas either fit or secure in the then posture of our affairs, to deliver up the very bulwark of the nation into the hands of such high officers, as the lieutenants of the militia are in England, till it was better known if those who were fit for such places were really men of such a temper as the present government might trust to, and rely upon: for extraordinary revolutions of state being much of the nature of the great waters, tossed to and fro by boisterous winds, do always require some time before they are settled again in such a calm, as may encourage both private men to follow their former measures, and likewise those who sit at the helm to undertake and prosecute the fittest methods for securing themselves, and the people under their government, from new dangers and storms, always to be feared after a sudden and unexpected calm as ours was; we were under such a dismal cloud of imminent and threatening dangers, a little before the heavens cleared up from the Dutch coast, that we do wonder at this very day to see ourselves escaped such an unavoidable shipwreck, as we thought ourselves then exposed to; but it is not enough that we are got on shore, and a *terra firma* to stand upon, unless, by looking nearer into the matter, we consider seriously with ourselves how to maintain our ground, and settle what we have done upon a sure foundation; for as our late happy revolution was a real one, how odd soever, and unlooked for, so considering how easily men change their resolutions, and because it might be immediately succeeded by an unhappy one after the like manner, it was a piece of great prudence in our late representatives, not to be over hasty in settling the militia of the nation, till both they and the king were thoroughly acquainted with those who were to be trusted with commissions, of such an high concern; but it being impossible they should understand their real temper, while all things were as yet on float, no wonder if they deferred the settling of the militia, till the hearts of men were known to be first settled, which time only could inform them of. As to the act of indemnity, it is clear there was little or no inconveniency to defer it for a while; for since it relates mostly to such as have been guilty of irregularities, and illegal proceedings in the late reign, where is the harm if the government keep them somewhat in awe, by deferring their pardons till more settled times, lest they might prove ring-leaders to new changes, if they were not checked by the fear of the punishment their past crimes deserve? For it is a groundless reflection to say, that the not passing of the act of indemnity encourageth them to do their utmost endeavours towards the bringing in of King James again, since it is clear to all men acquainted with the present posture of his majesty's affairs, both at home and abroad, that they must needs despair of ever being secure, if they hope for no security till King James is settled upon his abdicated throne again. And may not I be allowed to say, that to judge of things to come, by the present temper of the nation, they are in no danger at all, or at least not so great as some would have them apprehend it to be, because of the great moderation the government has hitherto shewn, and will undoubtedly shew hereafter, to all such as are willing to comply with the present, that is the protestant interest, in opposition to popery, and the French king's designs against our properties and liberties, if, by the help of the Irish papists and other malcontents, he were enabled to conquer us. But to mention here another pressing particular relating to this subject, since it is well known that, at the sitting down of the late parliament, the king, by the advice, yea, and earnest request too, of our late representatives, entered into a necessary war against France on the one hand, and against the Irish papists in Ireland on the other hand, I would fain know from any not designing man, what was fittest to be done in this case; was the time to be trifled away with the settling of the militia, and passing an act of indemnity before any supplies had been granted his majesty for maintaining this kingdom and his subjects against the formidable French king's fleets at sea, and his Irish

forces at land, commanded by the late King James in Ireland? Sure all men of sense must needs confess, that this principal was first to be minded before any such accessories, as undoubtedly these were in that juncture of our affairs. Now it is methinks evident, that the ordering the sinews of great warlike preparations both by sea and by land, then as now so necessary, could not but take up a great deal of time, especially when the money is to be levied in due proportion, upon all the chief subjects of the nation; the necessary debates upon such occasions, about the sum itself to be raised, upon what, and the manner how it is to be gathered, are things of such a nature, as cannot be done on a sudden, whatever men's endeavours may be to bring them in a short time to a period. The late transactions of the last parliament, besides the nature of the thing itself, are evident proofs of what I do here affirm, to all such as understand any thing in affairs of this kind, never done in England, otherwise than by meetings, conferences, committees, debates, votes, and such other like methods used in parliament, upon all matters of a general and national concern. To conclude; notwithstanding all that I have said, grant it was expedient, though I have sufficiently proved it was not, to settle the militia of the kingdom, and pass the act of indemnity before any thing else, these so-much-talked-of omissions are both inconsiderable in themselves, since we smart not yet for them, and not at all dangerous in their consequences, which, if really hurtful, may easily be prevented by the next parliament.

A Debate upon the Quære, whether a King elected and declared by the Lords Spiritual and Temporal, and Commons assembled at Westminster, 22d of January, 1688, coming to and consulting with the said Lords and Commons, doth not make as compleat a Parliament, and legislative Power and Authority, to all Intents and Purposes, as if the said King should cause a new Summons to be given, and new Elections to be made by Writs.

We have already seen that the turning the convention into a parliament was a point of great interest to King William. In the one case he had around him the friends who had pledged their faith to his fortunes, by the decisive act of declaring him king. On the other alternative he had to risque the dangerous experiment of a new election, in times when the popular humour was extremely mutable. Accordingly it was resolved, that the king should go with the usual forms to the convention, and by opening it with a speech, restore the integrity of the constitution, and pave the way to make those a parliament who had made him a king. The Tories, who saw that this was the last great popular point left them to manage, maintained strenuously that the king's will was as necessary as the king's presence to make a parliament. The new courtiers replied, that the essence of a parliament consisted in the solemn meeting and co-operation of king, lords, and commons, and that in the pressing circumstances of the country, there was neither necessity nor prudence in dissolving the convention, which fully and regularly represented the nation, upon a mere point of form. The latter opinion prevailed, and a declaratory act was passed, converting the convention into a parliament. The following piece contains the substance of the arguments upon which the bill was supported.

THAT the highest and supreme court of this nation (according to its ancient constitution) is the parliament, I need not now labour to make out; the present business being to find out and discover the substantial and real parts of a parliament, for thereby shall we be satisfied touching the question in hand.

A parliament (as Sir Edward Coke in his *Jurisdiction of Courts*, fol. 11 tells us,) consists of the king's majesty, (sitting there as in his politic capacity) and of the three estates of this realm, (that is to say,) 1st, the lords spiritual, as archbishops and bishops; 2dly, the lords temporal, as dukes, marquisses, earls, viscounts, and barons; 3dly, the commons of the realm, (that is) knights of shires, citizens, and burgesses.

As to the lords both spiritual and temporal, Sir Edward Coke in the same place tells us, that every one of them being of full age when a parliament is to be held, ought of right to have a writ of summons to come to that parliament. As to the commons, he says they are respectively elected by the shires or counties, cities and boroughs, by force of the king's writs. Crompton, in his *Jurisdiction of Courts*, fol. 10 says, the high court of parliament is the highest court in England, wherein the king himself sits in person; and comes thither at the beginning of the parliament, and at the end thereof, and at any other time when it pleaseth him during the parliament.

To this court come all the lords of parliament, as well spiritual as temporal, and are severally summoned thither by the king's writ.

There is a writ also sent to every sheriff of England and Wales, to elect knights for parliament, &c. saith that author.

But the lords and commons assembled at Westminster, 22d of January, 88, were not summoned thither by the king's writ, and therefore, as is objected, though the king afterwards comes to them, yet such king, lords, and commons, cannot be a parliament.

In answer to which, and to demonstrate whether upon the king's coming to and consulting with them, the king and them make a parliament, I must premise, that in extraordinary cases, such as of which there is no direct example, we must take our directions from the resolutions and practices in such cases as come nearest and are most like to them; and by consequences from thence make our resolutions as may be most agreeable to reason.

It is generally admitted, that in an hereditary kingdom, if the king should die without any heir, either lineal or collateral, the crown in that case would devolve, or as it were escheate to the whole people and nation; and that hereupon the estates and representatives of such a nation may dispose of the crown to whom they please, or quite alter and change the government into what form they think fit.

This hath been frequently adjudged and practised, one instance whereof was in the Emperor Charles the Gross, who dying without any heir, the kingdoms which were under him did severally chuse themselves kings: France chose Charles the Simple: In Italy some chose Berengarius, and some Guido; and the Germans chose Arnolph, Duke of Bavaria, for their emperor. Ferdinand, King of Portugal, dying without lawful heir, the estates of that kingdom assembled themselves at Coimbre, and elected John the late king's bastard for their king, and in their decree of election it is recited, that King Ferdinand died without any lawful issue or kindred, whereby, according to the law of nations, it was lawful for them to chuse who they pleased for their king or governor.

In like manner it is where a king doth abandon, forsake, or desert his government, by going out or flying out of his kingdom without appointing any guardian to protect and take care of his people in his absence, whereby the throne is become vacant; in such a case the estates of such a people may appoint another king or governor.

And to come close to our present case, King James the Second, whether out of fear, or for what other reason it is not material, but away he goes, or rather flies, out of his kingdom; abandons, forsakes, and leaves his people unguarded and undefended, at the mercy of a foreign army, even in the heart of the country; without so much as leaving a guardian or great seal behind him: His great officers and ministers of state flying some one way and some another. What could then be done but was then done? viz. Several of the lords spiritual and temporal, many of the knights, citizens, and burgesses of a former parliament, the aldermen and divers common council of our capital city of London, addressed themselves to his highness the Prince of Orange, desired him to take upon him the administration of public affairs both civil and military, for the preservation of our religion, rights, laws, liberties, and properties, and of the peace of the nation, until the then intended convention of the three estates or great council of the realm: they also desired his highness to send letters subscribed by himself, to the lords spiritual and temporal, that were protestants, to meet on the said 22d of January, at Westminster, the summons to parliament being always omitted to known popish lords since the test-act. And they desired his highness to send the like letters to the several shires, counties, universities, cities, boroughs, and cinque ports of the nation, for electing of such number of persons to represent them, and to meet on the said 22d of January, for the purposes aforesaid, as of right were to be sent to parliament, with directions that such elections should be made by such persons only as according to the ancient custom and laws of right, ought to chuse members for parliament: And accordingly such letters were sent, and due notice given, and elections accordingly were made, and the said lords spiritual and temporal, and the knights, citizens, and burgesses so elected met on the said 22d of January: And after mature and deliberate consideration they resolved, "That the Prince and Princess of Orange should be king and queen of England, &c. for their natural lives and life of the longer liver of them, and that the sole and full exercise of the regal power be in the prince only, in the name of both."

Now after the Prince and Princess of Orange are proclaimed King and Queen of England as aforesaid, and he comes and consults with the three estates so assembled, I would fain know what is wanting in that assembly to make them a full and complete parliament; or what can be had more than is in this convention of king, lords, and commons, if the said king should issue out writs for calling a new parliament? Certainly nothing more can be had material to the essence of a parliament.

If the substantial parts of a parliament be, and consist of an assembly or convention, or meeting together of the king and the three estates, as I have shewed that it is out of the best authorities we have, the difference of the lords and commons being called by writ or by letter, is nothing material, since both writ and letter are to the same effect; and in some ancient records it is mentioned that parliaments should be summoned by letters, particularly in King John's great charter in the 17th year of his reign, he promises to summon the bishops, abbots, earls, &c. *per literas nostras*, by our letters. *Orig. Jud. 17.*

The Prince of Orange's not being king at the time of his sending forth his letters matters not, for he was the person to whom the administration of the government was then committed.

It is evident, that in many parliaments it was not so material how the king, lords, and commons came together, as that they were together.

I dare appeal to any man, if the manner of calling together the three estates of the realm by the Prince of Orange's letters was not a much fairer proceeding, considering the state of affairs, as to the calling of them together, than was in several cases wherein they were never doubted to be a parliament when joined with a king. I shall instance only a few of many that might be named.

Edward the Second being imprisoned by his queen, son, and nobles, they issue forth writs in the imprisoned king's name to summon the lords, and to chuse knights, citizens, and burgesses to meet at Westminster, 16th of Jan. 1325. This, one would think, was pretty hard, and an absolute force upon the king by making use of his name against his will; so that it could not be said to be his act; yet the lords and commons being met, they deposed Edward the Second, and declared his son Edward king, and this new king, and the lords and commons, so (as I may say) irregularly convened together, made several acts of parliament, and have been ever since adjudged a good parliament to all intents and purposes without any subsequent act of confirmation.

In like manner Rich. II. being taken prisoner by Henry Duke of Lancaster, the duke issues forth writs in the king's name (the king then in prison) to summon the lords, and to elect representatives for the people, to meet at Westminster 13th of Sept. 1399. These being met by this irregular summons, they depose Richard II., and declare the Duke of Lancaster king; and that the new king, and the lords and commons so irregularly convened, being joined together, were and are to this day adjudged, deemed, and taken to be a good parliament to all intents and purposes, without any act of confirmation by any subsequent parliament.

The lords and commons assembled at Westminster, 25th of April, 1660, were convened by writs in the name of the Keepers of the Liberty of England, who were usurpers; yet when King Charles the Second came to them, and they received him as king, he and they together were adjudged a parliament, and they enacted that they should be so taken, and they made many laws, which immediately were put in execution; and they continued as a parliament until 29th of December following, which was for above eight months; but, indeed, most or all those acts were afterwards confirmed by a subsequent parliament convened by the king's writs in May 1661; but that confirmation, according to many good judgments, was rather to satisfy some scrupulosity than out of necessity, most of the said acts having in great measure had their effects before the subsequent confirming parliament began.

If upon the Prince of Orange's being declared and proclaimed king he comes to the convention of lords and commons assembled at Westminster; if the same number of lords be summoned thither that of right ought to be summoned to parliament; if the same number of knights, citizens, and burgesses, be duly chosen as ought to be chosen to represent in parliament, then consequently there are all the substantial and essential parts of a parliament met together, and being so, where's the necessity, where's the advantage, where's the prudence, to dissolve these, and thereby give new trouble of new summons, of new elections, lose a great deal of time, suffer irrecoverable loss and damage to Ireland and our allies abroad, and, after all, at the next meeting, be but where we now are as to the essential parts of a parliament, there being nothing more to be had at any other time but what we have already.

I can see no material difference as to the making of a parliament, whether the king come to the lords and commons being assembled together and join with them, or the king, by his writ or letters, call them to him; and therefore I conclude, if the Prince of Orange, after he is declared and proclaimed king, doth come to the lords and commons now assembled at Westminster and advise with them, in that instant that the king so comes and advises with them, they will be as good a parliament as if he should issue out new writs of summons, and they should meet again by force thereof.

I dare appeal to any man, if the manner of calling together the three estates of the realm by the Prince of Orange's letters was not a much safer proceeding, considering the state of affairs, as to the calling of them together, than was in several cases where they were never doubted to be a parliament when joined with a king. I shall instance only a few of many that might be named.

A Relation of the tragical End of some Persons of Quality at Paris, who, on the 8th of this instant August, 1689, suffered for their witty Zeal the severe Revenge of Lewis the most Christian King.

This piece was doubtless intended to excite the horror of the English people for the sanguinary and tyrannical proceedings of Louis XIV. Anderton the printer, however, who was executed upon slight evidence for printing treasonable libels, and calling King William III. "Hook-nose," forms, at least, one example that the hand of the King of England was not much lighter in such cases than that of his most Christian Majesty.

ABOUT the latter end of the last month, three persons of quality were seized and committed to prison at Paris, for a bold attempt upon the glory of Lewis the Great, the French king, especially at such a ticklish juncture of time as this is, when prophetic hints are very ungrateful, now his ambitious designs seem to incline to a period.

They were the Baron of Killingsang, a German, with the Marquis de Pissentieux and Monsieur de Feuillages, both Frenchmen; and their crime no less than the pasquinading the king out of his title to his crown, by comparing him with two other competitors. The pasquil was in two languages, French and Latin, which, for the satisfaction of the English reader, is now by an ingenious pen translated into the third, all which are here subjoined.

For the unpardonable offence of being the authors, and of having affixed this satire upon the French king's statue, erected by the Duke de Feuillade in the Place des Victoires at Paris, the three gentlemen were shortly after brought to a trial, and after a most severe enquiry and examination, by way of most exquisite torture, two of them, to wit, the Marquis de Pissentieux and the Baron of Killingsang, were convicted and sentenced to death, the third being acquitted for want of the least proof, which in that case would have been sufficient.

According to the sentence pronounced against these two unfortunate, though well-meaning gentlemen, they were on the 8th of this instant August hanged in the place where they had affronted the king in his statue, and afterwards quartered, their quarters being ordered to be publicly exposed a fortnight to the view of the people in the avenues of the place, which is a spectacle so nauseous, that 'tis supposed few will be invited to gaze at it.

The Pasquil in French.

*Louis, Jacques, et Guillaume
Sont trois rois du même royaume ;
Mais avec cette diversité,
Jacques ne l'a jamais été,
Louis en est toujours le maître,
Guillaume le pourra bien être.*

Latin.

*Tres modo Francorum ostentant insignia reges,
Verus adhuc Princeps Ludovicus; túque Jacobe,
Qui nunquam fueras nisi solo nomine; sed re
Wilhelmus tandem, ni fallant fata, futurus.*

English.

France totters under these three royal names,
Great Lewis, greater William, little James.
Lewis still braves it, the possessing king,
James only can an empty title sing,
For William fate reserves both name and thing. }

The Translator's Descant.

How equally foolish are titles and things,
Our James has three kingdoms, and France has three kings.
The good people of France want freedom and bread;
And James his three kingdoms are dropt from his head.
Then he's surely happy, who truly can say,
I've no kingdom to govern, no king to obey.

*Some short Considerations relating to the settling of the Government, humbly offered to
the Lords and Commons of England now assembled at Westminster, 1689.*

— *Post est Occasio Calva.*

This author chalks out for the convention pretty much the line of conduct which they followed, excepting that he recommends the placing the crown on the head of William alone during his life. That this was William's wish cannot be disputed, and Bentinck pressed upon Bishop Burnet all the arguments arising from the superiority of the husband over the wife, and the various dangers of divided authority. But his English adherents resisted the proposal to a man, and one of the most zealous, William Herbert, though ill of the gout, started from his bed at the proposal of making the prince sole king, and vowed if he had thought him capable of such unjust ambition he would never have drawn sword in his cause. So the prince saw himself compelled to accept a joint sovereignty, which, however, vested in his own hands the whole administration.

My Lords and Gentlemen,

You are assembled upon matters of the highest importance to England and all Christendom, and the result of your thoughts in this convention will make a numerous posterity happy or miserable. If, therefore, I have met with any thing that I think worthy of your consideration, I should think myself wanting in that duty which I owe to

my country and mankind, if I should not lay it before you. If there be (as some say) certain lineaments in the face of truth with which one cannot be deceived, because they are not to be counterfeited, I hope the considerations which I presume to offer you will meet with your approbation: That bringing back our constitution to its first and purest original, refining it from some gross abuses, and supplying its defects, you may be the joy of the present age, and the glory of posterity.

First, 'Tis necessary to distinguish between power itself, the designation of the persons governing, and the form of government: for,

1. All power is from God, as the fountain and original.

2. The designation of the persons, and the form of government, is either, first, immediately from God, as in the case of Saul and David, and the government of the Jews; or, secondly, from the community chusing some form of government, and subjecting themselves to it. But it must be noted, that though Saul and David had a divine designation, yet the people assembled, and in a general assembly, by their votes, freely chose them; which proves that there can be no orderly or lasting government without consent of the people tacit or expressed; and God himself would not put men under a governor without their consent. And in case of a conquest, the people may be called prisoners or slaves, (which is a state contrary to the nature of man,) but they cannot be properly subjects till their wills be brought to submit to the government; so that conquest may make way for government, but it cannot constitute it.

Secondly, There is a supreme power in every community, essential to it and inseparable from it, by which, if it be not limited immediately by God, it can form itself into any kind of government. And in some extraordinary occasions, when the safety and peace of the publick necessarily require it, can supply the defects, reform the abuses, and re-establish the true fundamentals of the government, by purging, refining, and bringing things back to their first original: which power may be called, The supreme power real.

Thirdly, When the community has made choice of some form of government, and subjected themselves to it, having invested some person or persons with the supreme power, the power in those persons may be called, The supreme power personal.

Fourthly, If this form be a mixed government of monarchy, aristocracy, and democracy, and, for the easy execution of the laws, the executive power be lodged in a single person, he has a supreme power personal, *quoad hoc*.

Fifthly, The supreme power personal of England is in king, lords, and commons; and so it was in effect agreed to by King Charles the First in his answer to the nineteen propositions, and resolved by the convention of lords and commons in the year 1660. And note, that the acts of that convention, though never confirmed by parliament, have been taken for law, and particularly by the Lord Chief Justice Hales.

Sixthly, The supreme power personal of England fails three ways:—

1. It is dissolved; for two essential parts fail. 1. A king. 2. A house of commons, which cannot be called according to the constitution, the king being gone, and the freedom of election being destroyed by the king's encroachments.

2. The king has forfeited his power several ways. Subjection to the Bishop of Rome is the subjection against which our laws cry loudest: and even Barclay (that monarchical politician) acknowledges, "That if a king alienate his kingdom, or subject it to another, he forfeits it." And Grotius asserts, "That if a king really attempt to deliver up, or subject his kingdom, he may be therein resisted; and that, if the king have part of the supreme power, and the people or senate the other part, the king invading that part which is not his, a just force may be opposed, and he may lose his part of the empire."—*Grotius de Bello, &c. cap. 72*. But that the king has subjected the kingdom to the pope, needs no proof; that he has usurped an absolute power superior to all

laws, made the people's share in the legislative power impertinent and useless, and thereby invaded their just rights, none can deny. It were in vain to multiply instances of his forfeitures; and, if we consider the power exercised by him of late, it will most evidently appear to all who understand the English constitution, that it admits of no such king, nor any such power.

3. The king has deserted,

1. By incapacitating himself by a religion inconsistent with the fundamentals of our government.

2. By forsaking the power the constitution allowed him, and usurping a foreign one: so that though the person remained, the king was gone long ago.

3. By personal withdrawing.

Seventhly, The supreme power real remains in the community, and they may act by their original power; and though every particular person is, notwithstanding such dissolution, forfeiture, or desertion, subject to the laws which were made by the supreme power personal when in being, yet the community's power is not bound by them, but is paramount all laws made by the supreme power personal; and has a full right to take such measures for settling the government as they shall think most sure and effectual for the lasting security and peace of the nation. For we must note, that it was the community of England which first gave being to both king and parliament, and to all the other parts of our constitution.

Eighthly, The most renowned politician observes, that those kingdoms and republics subsist longest, that are often renewed, or brought back to their first beginnings; which is an observation of self-evident truth, and implies, that the supreme power real has a right to renew or bring back. And the most ingenious Lawson observes (in his *Politica*;) That the community of England, in the late times, had the greatest advantage that they or their ancestors had had for many ages for this purpose, though God hid it from their eyes: but the wonderful concurrence of such a series of providences, as we now see and admire, gives ground to hope that the veil is removed, and the nation will now see the things that concern their peace.

Ninthly, The acts done and executed by the supreme power personal (when in being) have so modelled the parts and persons of the community, that the original constitution is the best, justest, and the most desirable. The royal family affords a person that both heaven and earth point out for king; there are lords, whose nobility is not affected by the dissolution of the government, and are the subject matter of a House of Lords; and there are places, which by custom or charter have right to choose representatives of the commons.

Tenthly, There are inextricable difficulties in all other methods. For,

1. There is no demise of the king, neither civil nor natural.

2. There is consequently no descent.

3. The community only has a right to take advantage of the king's forfeiture or desertion.

4. Whatever other power may be imagined in the two houses, as houses of parliament, it cannot justify itself to the reason of any, who understand the bottom of our constitution.

5. By this method all popish successors may be excluded, and the government secured, in case all the protestants of the family die without issue; and this by the very constitution of England. And the question can never arise about the force or the lawfulness of a bill of exclusion.

6. The convention will not be obliged to take oaths, &c.

Eleventhly, If these things be granted, and the community be at liberty to act as above, it will certainly be most adviseable, not only for the security and welfare of the nation, but (if rightly understood) for the interest of their royal highnesses, to limit

the crown as follows:—To the Prince of Orange during his life (yet with all possible honour and respect to the princess, whose interests and inclinations are inseparably the same with his) remainder to the Princess of Orange, and the heirs of her body; remainder to the Princess of Denmark, and the heirs of her body; remainder to the heirs of the body of the Prince of Orange; remainder as an act of parliament shall appoint.

This will have these conveniences among others,

1. Husband and wife are but one person in law, and her husband's honour is hers.
2. It puts the present kingly power into the best hand in the world, which (without flattery) is agreed on by all men.

3. It asserts the abovesaid power in the community.

4. It will be some acknowledgment to the prince for what he has done for the nation: and it is worthy observation, that before the theocracy of the Jews ceased, the manner of the divine designation of their judges was by God's giving the people some deliverance by the hand of the person to whose government they ought to submit; and this even in that time of extraordinary revelations. Thus Othniel, Gideon, Jephthah, Sampson, and others, were invested by heaven with the supreme authority; and though Joshua had an immediate command from God to succeed Moses, and an anointing to that purpose by the laying on of Moses's hands, yet the foundation of the people's submission to him was laid in Jordan. And I challenge the best historians to give an instance (since that theocracy ceased) of a designation of any person to any government, more visibly divine than that which we now admire. If the hand of Providence (miraculously and timely disposing natural things, in every circumstance to the best advantage) should have any influence upon men's minds, most certainly we ought not here to be insensible; if the voice of the people be the voice of God, it never spoke louder. If a nation of various opinions, interests, and factions, from a turbulent and fluctuating state, falls into a serene and quiet calm, and men's minds are strangely united on a sudden, it shews from whence they are influenced. In a word, if the hand of God is to be seen in human affairs, and his voice to be heard upon earth, we cannot any where (since the ceasing of miracles) find a clearer and more remarkable instance, than is to be observed in the present revolution. If one examines the posture of foreign affairs, making way for the prince's expedition by some sudden events and occurrences, which no human wisdom or power could have brought about; if one observes that divine influence which has directed all his counsels, and crowned his undertakings, notwithstanding such innumerable dangers and difficulties, with constant honour and success; if one considers how happily and wonderfully both persons and things are changed in a little time, and without blood; it looks like so many marks of God's favour, by which he thinks fit to point him out to us in this extraordinary conjuncture.

I will trouble you but with one consideration more; which is, that the two things most necessary in this affair, are unanimity and dispatch; for without both of these, your counsels will have little effect. In most things it is good to be long in resolving; but in some, it is fatal not to conclude immediately. And presence of mind is as great a virtue, as rashness is a vice. For the turns of fortune are sometimes so quick, that if advantage be not taken in the critical hour, it is for ever lost. But, I hope, your lordships and all those gentlemen who compose this august assembly, will proceed with so much zeal and harmony, that the result of our present consultations may be a lasting and grateful monument to posterity, of your integrity, courage, and conduct.

An Argument for Self-Defence, written about the Year 1687, never before published, and now offered to the Consideration of the Gentlemen of the Middle-Temple.

This argument seems to have been published after the Revolution, to reconcile the minds of the timid and wavering to the steps which had been taken at that important crisis. The ghost of passive obedience had already begun to haunt the consciences of both clergy and laity, and the author endeavours to appease their remorse with the best of his skill.

Gentlemen,

You are busy at present inquiring whether any manner of resistance to the supreme magistrate is lawful, which will excuse me in publishing the remains of a manuscript discourse of a worthy person deceased; but be that as it will, you have it as I find it; only pardon the publisher, if, where the copy is torn or defaced, he leaves you in the dark to question the author's meaning.

An Argument for Self-defence.

'Tis a fundamental law of nature, and universal rule of justice, that man should be free from injuries and violence. This freedom extends not only to his life and limbs, but to his possessions also, which are a part of him, and so necessary to him, that take away those and you rob him, if not of life itself, at least of those enjoyments which make it considerable or desirable. But so depraved is human nature, and so apt are avarice and ambition to make men forget the obligations they lie under to one another, that 'tis to little purpose he has a right to this freedom, unless he has it in his power to preserve it, and punish the infringers of it. God has therefore made it the duty and privilege of every man to defend himself from unjust force, and to take reparation for the injury done him.¹

This, before the forms of government were fixed in the world, or laws invented to be the rule of life, before justice was distributed by one common person, to whom all might appeal for redress, could be no otherwise than every one judging of the danger or injury, and opposing force to force, to prevent the one, or repair the other. Such a state of equality I call a state of nature, which had abundance of inconveniences: For self-love is apt to make us partial where we are allowed to be judges in our own case; and if the sentence shall happen to be equitable, perhaps the injured party is too weak to resist his oppressor, so that the innocent may often suffer; or if a man be in some measure guilty, be punished beyond the nature of his crime, and the mighty triumph in impunity: it was therefore necessary to fix on some standing rules, which should be the measure of right and wrong between man and man: These we call laws; hence we see that

¹ Dr and Student, cap. 2. Of the Law of Nature.—Orig. Note.

Laws were ordained by the general consent, and for the public good, which are so far from infringing natural liberty, that they are the only means to enlarge and preserve it; for liberty is to be free from violence and oppression. But,¹

Laws being for the better governing human societies are to no purpose, unless duly executed, which made it necessary that there should be some person or persons with sufficient authority to that end; and this could not be but by entering into societies, in which every individual gave up his natural right of judging for himself, and of using force to defend his person and goods, and consented to submit to the decision of the laws, and common justice, administered by one or more persons appointed for that end by the whole, and for the same end armed with the force of the whole society. And hence came political power to be vested in the magistrate, who is supreme to a particular purpose, viz. The public good, by putting the laws, which are the public voice, in execution.²

People then entering into society, the better to be preserved in their lives and properties, must be subject to the laws of the society by which they are protected: And hence it is that it is not lawful for any one under civil government to take upon him to judge for himself, or to do himself justice on the offender, because there are known laws and equal judges, to which he may appeal. Now this disability, or rather right of appeal, being introduced for the good of every individual, and by universal consent, shall never be extended to the prejudice of any one, when he can't have the advantage is designed him by it. And therefore,

Every one under civil government may do what would have been lawful for him in a state of nature, in such cases where he can't have the benefit of an appeal to the laws of the commonwealth he is under. By a state of nature, I mean such a state of equality where there is no superior power on earth, to which a man on any injury received or threatened may have recourse for relief; and therefore where two men are without this common judge, they are with respect to another in a state of nature. Now, let it be observed, that though I am in a country where there are laws and judges, yet if I am by violence put out of a capacity of taking the benefit of them, it is the same to me as if there were none at all. As for instance,

The law says, That whosoever kills another with malice, without provocation willingly, is guilty of murder, and shall die for it; the same law for very good reasons says further, That the murderer shall be put to death according to law, in a manner and by persons appointed by it, and that if any one do it otherwise, he too is guilty of murder: Certainly this is better than the state of nature punishments, which give way too much to malice and revenge. But if a villain puts a dagger to my throat, or assaults me in so violent a manner, that flying would inevitably be my death, in this case I am excused in killing him in my own defence; for I can't appeal to the law, my life is in extreme danger, and the injury designed is irreparable; I am therefore called down to the exercise of an ancient power, which I parted with on no other terms but for my better preservation.

¹ Sanderson de obligatione conscientiae, 103. *Leges nulla alia ex causa nos tenent quam quod iudicio populi receptae sunt. Idem p. 132. Civilis autem regiminis eiusque quae ipsi debita obedientiae finis est humanae societatis salus et tranquillitas. Cicero de leg. l. 2. Constat profecto ad salutem civium civitatumque incolumitatem vitamque hominum quietam et beatam inventas esse leges. Ex quo intelligi par est eos qui perniciose et injusta jussa populis descripserint cum contra iecerint quam polliciti professique sint quidvis satius tulisse quam leges.*

² Fortescue de laudibus leg. Angliae, cap. 13. et 14. *Le Mirror*, cap. 1. s. 2. *They (that is, the Saxons in England) after great wars and troubles which they had been under a long time, chose 'em a king to reign over them, or to govern the people of God, and to preserve their persons and goods by the rules of justice. And, cap. 5. s. 1. The principal abuse is that the king is oustred le ley, whereas he ought to be subject to it, as is said in his oath. Cicero de leg. l. 3. Magistratus hanc esse vim ut praesit praescribatque recta utilia et conjuncta cum legibus, ut enim magistratibus leges ita populo praesunt magistratus.—Du Hamelle Tract. de Philosophia Moral. Dissert. de Justitia.—Deinde ne imbecilliores praedae essent validioribus, quam quisque habuit vindicandi facultatem in multitudinem aut potius in eum qui praesesset transtulit, uti ille provideret ne cujusque jus violaretur.—Orig. Notes.*

Civil laws then never did wholly take away the right of self-defence between equals, which God and Nature have intrusted every man with. I say equals, for I am coming to that self-defence which respects the supreme magistrate.

And now by self-defence I would not be thought to mean a bare running from the stroke, avoiding the blow, but doing whatsoever is necessary to preserve my own life or property from unlawful violence. This every one knows when we talk of giving back to the wall, and then drawing on the assailant; now as far as a man can go with safety is to the wall, and if the assault be so violent that 'tis dangerous to retire, I am at the wall already: In short, I mean active resistance, when 'tis absolutely necessary to save my own life; and I dare say nobody denies what has been said as to resistance between equals; but the difficulty with some is how this is applicable to resistance of the supreme magistrate in the excesses of power; but it will appear if we remember, that

The state of nature is a state of perfect equality, none claiming dominion over another, and so is opposed to a state of laws; from whence it follows that nobody has a right to a political power over another, but as he is a member of civil society, and so subject to and protected by the laws of it, the due execution of which this superior is intrusted with for good of the whole, and as far as is consistent with that, the preservation of every individual.¹

Now if a magistrate be supreme only by virtue of the laws, (which are the only standing voices of the society,) it will follow that in all cases where the laws don't interpose, he is a private man, and we are equal. To apply this to an instance like the former: The prince without any cause assaults me in so violent a manner, that 'tis impossible for me to defend my life without returning the same violence, what shall I do? I can have no benefit of those good laws which he is to execute, or that equal justice he is to distribute, and for that end only is put above me, (for it can't be to my prejudice,) if therefore these don't interpose to save me from unlawful violence, which was the sole end of them, 'tis absurd to imagine they shall to my inevitable destruction, which they would did they make it treason or rebellion, unlawful to resist him in this case; and where the laws don't interpose, we are equal.

Being equal then, and he the aggressor, if I can't otherwise save my own life than by taking away his,

² it may be said perhaps, No, you must not kill him, for his death would be a public loss, and therefore far beyond any injury he can offer a single person. For this time I'll say, that if he so far abandons himself to all that is bad, as to kill a subject (who certainly was not born for his diversion) in cold blood, there will be no great loss to the public in his death. But it seems this is not the case, the prince must not be supposed so barbarous as to attempt to murder a man; yet since he is but a man of like infirmities, and one that is told he ought to act without controul, and that but to question his proceedings is little better than blasphemy, (a learned king's words,) we must allow 'tis possible. However,

There are other instances in which 'tis possible for a king to betray his trust, endeavouring to subvert and extirpate the laws and liberties of his people, by assuming and exercising a power of dispensing with the laws he is to govern by, and making use of the force of the community in standing armies, against the liberty of the subject, to back his own arbitrary proceedings; and if this happens to be the case, how much more justifiable is resistance in the whole body of the people, so as to preserve themselves

¹ Fortescue de Laud. Leg. c. 13. ad tutelam namque legis subditorum ac eorum corporum et bonorum Rex hujusmodi erectus est et ad hoc, potestatem a populo effluxam ipse habet quo ei non licet potestate alia suo populo dominari.

² Here seems to be some lines wanting.—Orig. Notes.

from ruin, than in one single person, whose particular wrongs may never affect the whole?¹

Nobody doubts but the general good is to be preferred by the public to any private man's advantage; and therefore more caution used to prevent public calamities than private injuries. It follows then, that if it be lawful for a single man to resist unlawful force with force, when his life is in danger, 'tis much more so for the whole body, or the majority of the people, when their laws are cancelled or in apparent danger of it; and consequently their estates, lives, liberties, and all that is valuable in this world, subjected to the arbitrary decrees of one person, armed with the force of the society, and generally supported by all the arts of learning and religion. But the better to set out the heinousness of his crime, and the mighty danger of such practices, 'tis best to take a survey of the benefits men receive from good laws, and the misery that would follow on a dissolution of 'em.

And now methinks there should be no difficulty in convincing the unprejudiced, that for this very inconvenience, viz. the want of law, mankind weary of the state of nature, where the weak were in continual danger of the strong; he still insulting the weak, in danger himself of a stronger neighbour, quickly came into societies, and were content to be subject to the laws by which they were protected.²

And if this be the end of laws, he that destroys those brings us back again to a state of nature, with this only difference, that whereas then men were in danger of one another, but not without hopes of remedy, since 'twas the duty and interest of every one to assist the injured party against his oppressor, now they are all subject to one man, who, according to the doctrine of unlimited passive obedience, is to act without restraint, whatever mischief he may design. But to be better satisfied, that the happiness of one people becomes the envy of their neighbours; from this difference, that one has good laws duly executed, the other none at all, or at least subject to the prince's pleasure; why are we here in England in a better condition than the subjects of France or Denmark? I'm sure we think ourselves so, and are apt to be proud of it,³ and our English liberty; if any one is of another mind, 'tis a thousand pities he had not his heart's desire, and a pair of wooden shoes there. We here enjoy the fruits of our honest industry, every one under his vine and fig-tree, solicitous for nothing but the happiness of her that derives these blessings on us. In short, if peace and quietness be the effect of good laws, and a just temperament of power; if success abroad and liberty at home be owing to a happy administration; what dismal consequences has he to answer for, that by destroying all order and rule does what in him lies to let loose the reverse of all these blessings on a nation over which he was set for their good? *Merito beneficium legis amittit qui legem ipsam subvertere intendit.*

Obj. To this it will be objected, that indeed all these advantages you have been talking of are owing to a good government, and great is that prince's crime that endeavours to rob you of 'em; but for it he is accountable to none but God; and that the subject ought rather to endure all this and more, that disobey God's command, Resist not.

I suppose they mean that the magistrate is supreme on earth, and therefore accountable to none but God. In answer to this I beg leave to say, where a power is given to any man with a trust to the attaining any end, if that end be not pursued, and so the trust broken, the power ceases; therefore, if the supreme power was lodged in the

¹ If the author had been so happy as to have lived to the Revolution, he would have seen this in other words in the Claim of Rights, 1 W. and M. 2 ss. c. 2.

² Fort. de Laud. Leg. c. 4. Non alio pacto gens aliqua proprio arbitrio unquam se in regnum corporavit, nisi ut per hoc se et sua quorum dispendia formidabat, tutius quam antea possiderent.

³ Fortescue, cap. 35 and 36. The Comparison.—*Orig. Notes.*

magistrate, in order to the well-governing the people committed to his charge, if that end be not answered, but on the contrary, the people are made a prey to his unbounded dominion, their lives and fortunes depending on his caprice and humour, his power thus abused ceases, and he becomes a private man; and resisting him (which here is but self-defence) can never be resisting the ordinance of God, since that is resisting the power, not the person in the abuse of it.*

It would be little less than blasphemy to say that God ever set one man over millions for their destruction, or that in this sense power is the ordinance of God; it must be then for their good. Indeed, for the sins of a people he has suffered a prevailing conqueror to carry 'em captive, or to oppress 'em in their own country; thus he sold his people the Israelites into the hands of Chusanrîshathaim and of Jobin; he strengthened Eglon against them, delivered them into the hands of Midian; but still left a right in them to use all the means they were able to get out of their bondage, which because they could not be effectual without his concurrence, (as no human endeavours can,) he is said to deliver 'em again, but 'twas still in a way of resistance, Judges 3, 4, 6. 2 Kings xviii. v. 7. "And the Lord was with him, and he prospered wheresoever he went forth; and he rebelled against the King of Assyria, and served him not."

Obj. But it will be further objected, that though the magistrate exceed the bounds of his commission, and that in those instances he can't be said to act by it, and so not supreme, yet in other cases he is supreme still, and therefore in no wise to be resisted, since any resistance will affect his whole power.

To this I say, that if it be true, then resistance in the first case, where the magistrate puts a dagger to my breast, would be unlawful; for that would effectually divest him of his whole power: Besides, let it be observed; that the lawfulness of resistance is laid down only on a supposition that the laws are cancelled, and the course of justice hindered by force; and if that happens, I see no reason why the prince shall destroy one part of the laws that relate to the subjects liberty, &c. and take advantage of another part which makes him supreme, when he is supreme only the better to preserve the subjects liberty, by putting the beneficial laws in execution.

I confess I have in this argument made use of a supposition, that there was once a time when there was no government in the world, and that men chose themselves governors, and came out of the state of nature the better to live together, and preserve their lives and properties. Indeed, I know no great necessity of this hypothesis, for whencesoever power be derived, be it from the consent of men or God's appointment, it must be for the public good, which being the end of it, whoever, let him come by it as you please, abuses it to another and contrary end, forfeits it. As for God's designation, if it be lawful to resist a tyrant that was set over a people for a scourge to 'em, and that was the sole end of his promotion; (as by the places cited out of the scripture it appears it was,) it is much more so when the magistrate was appointed for the good only of the people, and abuses the power he has to their destruction. And no other end can God have in setting one above another, but either to execute his vengeance on a sinful people, or to dispense judgment and justice in the world. However, the supposition of a state of nature, and of the original of government, by the consent of the individuals will not appear so unreasonable, if we consider that there has never been any other satisfactory account given of the beginnings of lawful monarchies, (for

* Portescue de Laud. c. 14. Et ad hoc gravius multo populus talis læderetur si deinde Peregrini legibus etiam ipsis forsan exosis regeretur. Et maxime si legibus illis, (or any other way the following reason holds good,) innovaretur substantia pro cujus vitanda jactura ut pro suorum tutelæ corporum ipsi se regis imperio, proprio arbitrio submitterunt; non potuit revera potestas hujusmodi ab ipsis erupisse, et tamen si non ab ipsis Rex hujusmodi super ipsos nullam obtineret potestatem.—*Orig. Note.*

I meddle not with conquest and usurpation;) and unless the first man was immediately monarch of the universe, which will never be made appear, there must have been a time when there was no civil government in the world, and men were at liberty to fix on what form they pleased. I know I ought not to cite any more authorities; but I can't pass by Cicero de Off. l. 2. *Mihi quidem non solum apud Medos sed apud majores nostros justitiæ fruendæ causa videntur olim bene reges morati constituti. Nam cum premeretur inops multitudo ab iis qui majores opes habebant ad virum aliquem confugiebant, virtute præstantem; qui cum prohiberet injuria tenuiores; æquitate constituenda summos cum infimis pari jure retinebat. Eademque constituendarum legum fuit causa, quæ regum. Jus enim semper quæsitum est æquabile, aliter non esset jus. Id si ab uno justo et bono viro consequerentur, eo erant contenti; cum id minus contingeret leges sunt inventæ, quæ cum omnibus semper una atque eadem voce loquerentur. Ergo hoc quidem perspicuum est, eos ad imperandum deligi solitos, quorum de justitia magna esset opinio multitudinis.* I make no remarks on this passage, the reader will be persuaded there needs none.¹

Obj. To what has been offered for resistance, 'tis urged that it opens a way to rebellion and confusion, and that 'tis better to suffer the greatest tyranny than run into a civil war.

To this I say, admitting my doctrine be true, I am not to answer for the consequences of it, which will not be very fatal, if we consider that there is no hazard in a resistance, unless the majority at least be sensible of the danger they are in, and then no matter how soon 'tis prevented. It can't be said, that by this doctrine if any one thinks himself abused, he will take upon himself to resist; perhaps he has a right to it; but there is no danger that he will, unless he be mad, and desires to be hanged. And for the other objection, that 'twill be a means of bloodshed, that will hold altogether as well if a ruffian assaults me in the highway, or at least in the case of a foreign invasion; yet there 'tis thought better to oppose force to force, than bear all the conqueror can inflict. Now the people's condition of slavery is the same, whether they are subject to the tyranny of a foreigner or their own sovereign, with this only difference, the first is under no obligation to 'em, has broke no trust, as the other has. But if all the fear be of a civil war, and outrages one among another, it may as well be said an usurper must not be opposed if assisted by our own countrymen only, for that might occasion bloodshed and outrages one among another.

I hope nobody will think this argument sufficiently answered by producing the homilies of our church, or the Oxford decree against it; for I must beg him to grant me, that no body of men, however learned or impartial in their search of truth, are infallible; and therefore their bare asserting a thing shall never establish it for a truth never to be disputed. Besides, till I see the practice of the church and university agreeable to those rules, I shall not take much pains to reconcile my doctrine to 'em.

P. S. It may seem unseasonable in me to publish a discourse of this nature at a time when the matter in debate has received the most solemn determination we of this nation ever knew; but I know people will not acquiesce in solemn resolutions, nor do I desire they should, any further than as rules of peace; but I hope those gentlemen who will not allow a parliament to judge for 'em in matters of civil concern, will never trouble us again with general councils, or the power of the church, to decree rites and ceremonies, and its authority in controversies of faith.

¹ This is strengthened by a late discourse of a reverend prelate of our church, I mean the Bishop of Exeter's Accession Sermon of 1705. "The designation and appointment of particular persons to the administration of the government, this is human, and the distribution of the power of government into one or more heads, this likewise is human, this is the ordinance of man only; which could not be unless people were at liberty to fix on what form they pleased, and consequently there had been a time in which no form was fixed on, which I always called a state of nature."—*Orig. Notæ,*

Reasons why the Rector of P—— took the Oath of Allegiance to King William and Queen Mary.

Whether this grave piece was written in jest, or earnest, it contains the casuistry of many Jacobites. The oaths of allegiance to William and Mary were composed upon a liberal and accommodating principle; being so worded as to leave many a salvo and loop-hole of excuse for those who wished to compound between their interest and their consciences. Sir John Reresby gives us one instance in a dignitary of the church:—"It happened this day that I met with the Bishop of St David's, who asked if I thought he might safely take the oaths of allegiance and supremacy, he being one of the prelates who had hitherto stood out, and were now cited to appear before the House of Lords. I told him it were fittest for me to be advised by him in such a case, and that certainly his own conscience could not but dictate to him right. But I found he was already resolved, and accordingly he went the next day and complied. Meanwhile the archbishop was obstinate in his refusal, and would not so much as repair to the House of Lords, disowning the authority either of the king or parliament."—*Memoirs*, p. 339.

WHEN a man is about to discourse a case of conscience, it's not proper to entertain the reader with compliments, or insinuate into him with slights of eloquence, but to refer his judgment free and unpossessed to the consideration of the strength or weight of his arguments; and, therefore, without any formality or caress bestowed upon him, I fall directly upon the point in question:—

Whether a clergyman, having first taken the oath of allegiance to King James, and afterwards that to King William and Queen Mary, be thereby involved in the guilt of perjury?

In order to the solution of this doubt, I shall slit it into three more:

1. What we were bound to by virtue of the oath of allegiance made to King James?
2. What we are obliged to by the oath given to King William and Queen Mary?
3. Whether the obligation to the first may not be thought to cease or expire before the other was superinduced?

To state the first of these, it will not be necessary to transcribe the whole oath; but 'tis sufficient to single out such passages as are most liable to exception, and seem to contain such matter as we have put ourselves out of all capacity to perform, if we will be sincere and true to the second, and the assurances we have thereby given to the accessors. And, I suppose, these are all from which any objections can be raised.

*1. That we will do our endeavour to disclose and make known to his majesty, &c. all treasons and traitorous conspiracies which we shall know or hear of to be against him.

2. That we will defend him to the utmost of our power, against all conspiracies and contempts whatsoever.

3. That we will bear faith and true allegiance to him.

The first, that we will endeavour to disclose, &c. we have not put ourselves out of a capacity to perform; for this cannot be understood of open and avowed wars, or oblige us to take post, and travel sea and land, to let him know that his crown is assumed by another, and that there are mighty preparations to invade that kingdom also which he has made his retreat, when he has already beheld enough with his own eyes, and seen his enemy encamped against him in the open field.

But should I by any accident be made acquainted with any private conspiracy against his person, to poison or assassinate him, or cut him off by any other clandestine or sinister means, there lies no obligation upon me to conceal it. These are wicked and inhuman practices against the laws of arms and nations. *'Impia bella suscipitis, et cum arma habeatis, licitamina hostium capita.* And in this case we have not promised to keep counsel: for all obligations to secrecy must be understood with this exception, that the business they impart be no sin to be committed, for that we are bound to reveal that it may be prevented. Upon this principle the oath of allegiance is founded; which could take no hold of a Romish priest, for whom it was chiefly intended, if when he has given his faith to keep the secrets of a penitent, he might not discover a treasonable design. And Garnet's plea should have been admitted, who said, "He durst not inform of the powder-plot, because it was communicated to him under the sacred seal of confession."

2. We promise that we will defend him to the utmost of our power against all conspiracies whatsoever.

As for defending him from all contempts, that is, that we will assert him to be our rightful sovereign prince, not to hold his crown by the favour of the pope, nor to be deposable by him or any other person or power whatsoever. Which does not oblige us to be always arguing and pleading for it, but when it may probably do good; and upon the concurrence of such circumstances, they have expunged all that passage out of the latter oath, that we may not be abridged of that liberty.

And to defend him from all conspiracies, is to watch the motions of all those whom we suspect to be discontented and disaffected to his government, or upon any account to incline to the disturbance of him, or to introduce any other person or power; that we will observe their meetings and cabals, dive as much as we may into the matter of their consults; use all diligence first to inform ourselves, and then the king or his officers, of any plot or practice that we shall learn to be carrying on against him.

And this is all that this particular obliges us to, as may appear, 1. because this is sufficient for him, and his security; and, 2. because we have no power or authority to do more.

1. Because this is sufficient. Let a plot be hatched with never so much subtlety and stratagem; let the confederates be never so numerous and strong; if it come to light before it be put in execution, 'tis, without any difficulty, or any further assistance from us, easily baffled and disappointed. There needs no more than timely detection to save him from any danger or attempt against him. When the prophet had told the King of Israel of the ambush that was laid for him, there was no fear but he might escape it. And then the informer was the real author of that deliverance, and may, without any impropriety of speech, be said to defend him, and be stiled the Saviour of the King and Nation.

2. Private men have no power to do more. Should they arm or associate themselves

* Alexander apud Q. Curt. Lib. 4.

without any further order or commission than this oath of allegiance, though with a sincere purpose to prevent, or seize, or disperse the conspirators, they are punishable as traitors themselves.

Nay, to exceed a commission a little in this case, and with good success too, is not without peril of our lives.* Upon intimation that some of the principal of those who were engaged in the powder-plot were hovering thereabouts, the sheriff of Worcester raises the power of his country to apprehend them. They fly, and he pursues; but, not able to overtake them till they had escaped beyond the bounds of his province, he still follows them into the frontiers of the next, and there takes them prisoners. But for this good service he was forced to beg pardon, and in rigour of law had forfeited his life for overpassing with his power the borders of his own jurisdiction. For all his oath, the most loyal subject, if but a private person, can do no more with safety for the defence of his king than discover a treason: for that can never be accounted a branch of our duty or allegiance, by the doing of which we incur the pain of death. We never were obliged to more, and this we may still perform.

3. We promise that we will bear faith and true allegiance to him.

For the first, it concerns those who have enjoyed any offices or places of trust under him, who are hereby bound faithfully to discharge the duty and service belonging to them. And such, if they should enter into any new covenant, or promise, to cease or forbear acting according to the tenor of such trust or commission, have no benefit of this apology. In the Poet's² Vision of Hell there was one apartment for those, *Quique arma secuti impia, nec veriti Dominorum fallere dextras*. But in relation to others, it signifies no more than truth and sincerity of

Allegiance. And what that imports is the grand question, and supposed to be an insuperable difficulty. The word being a term of art, the just and true value of which to us may not be exactly known; it seems to the reasonable and necessary to refer it to the judgment of those who are versed and learned in it: the lawyers I mean, who, in this case, I esteem the most able casuists, for every man is to be believed and trusted in his own profession, especially when there is little or no difference of opinions amongst the masters or professors of it, but that they go unanimously one way. I could clearly acquiesce in this, without any conflicts; but since others may think it not safe to submit to their authority, I will reason a little about the notion of allegiance.

One grave and pious author sends us much too far in the search, who would have us to seek it among the records of the obsolete Gothic feudal laws, and infers that it must needs signify at this day some active warlike endeavours in behalf of the sovereign; because the tenure of those times was, upon condition that the tenant should attend his lord to the wars, and the security they gave to perform this, was swearing to bear true faith and allegiance to them.

Had there been a controversy about the sense of some record or deed of equal date, there might have been some use of the criticism; but it is not to be allowed in the interpretation of a modern statute. Many strange absurdities would follow, if we were to expound words in present writings, according to their primitive and original use. How ridiculous did this make the Emperor Claudius,³ when, in a speech and apology which he made to the senate, it appeared, that he took Libertinus for the same man that it signified in the time of Appius Cæcus? *Ignarus temporibus Appii et deinceps aliquandiu, libertinos dictos, non ipsos qui manumitterentur, sed ingenuos ex his procreatos*. He that hears the name of tyrant now, supposes him to be some savage beast or monster rather than a man; a prince that employs all his power to cruelty and oppression, that regards no laws but those of his own lusts, that tramples and insults upon the lives and fortunes of his vassals with pride and pleasure. But time was when it was no scandal

* Sanderson de Consc. Præl. 10.

² Virgil, *Æn.* 6.

³ Suet. Claud. 24.—Orig. Notes.

or reproach, a title becoming the most moderate and indulgent monarch. And by this rule, clemency and tyranny should signify the same thing ; which, according to the idiotism of our days, are quite contrary.

But, supposing that the name should, through many successions, adhere to the same thing, there would arise great incongruity betwixt them ; because that individual to which it is so inseparably united, would in process of time differ from itself. So that if the same word should be appropriate still to the same thing, yet that, because it undergoes many alterations, transformations, and decays, cannot be rightly apprehended by one unalterable notion. Because the things are subject to so much vicissitude and change, if the words or names continue the same, there must needs be some disproportion. Rome was once a small street of shepherds tents, she grew to be one of the most sumptuous cities in the world, is now much fallen from her magnificence again ; yet, in all these variations, she retains the same name. Now, he that should frame to himself an idea of that city, in the case it stands, by the descriptions he meets about the reign of Augustus, would be as much mistaken on one hand, as the swain that measured it by his mantua was on the other. Nothing in this world continues in the same state and posture ; but if any thing be more moveable and transient than another, it is the affairs of government, and the terms and forms that depend upon it.

Now, after so many and great revolutions as have happened to the government, and such exchanges and regulations as have been made of the revenue, and other laws relating to the support and maintenance of it, when the tenure itself is extinct, the militia otherwise settled, the knight of the fee by act of parliament excused from going himself in person, it cannot be that allegiance should yet be equivalent to what it was in the reign of King Arthur.

Yea, I must advance further, and affirm that there is no conclusion can be drawn from a word, because there is no necessity that it should be taken in the full latitude of that which was the received sense at the penning of the statute. For every single term does increase, or abate of its natural force, by the structure of a sentence, and the influence of other words that are joined with it. That sentence may be corrected or restrained by other paragraphs or provisos in the same statute ; and that statute admit of several limitations from other laws, made before or after it. The author gives some indications that he is a divine, and then he cannot be ignorant, that to make a right and sound interpretation of a text, it is not sufficient to know the etymology of the words, but we must seriously weigh the context, compare it with other places of scripture, and the acknowledged principles of faith ; all which were vain and fruitless, if words were to stand inflexible in any certain and natural sense. I hope, therefore, that good man will give me leave to say, that his argument from those barbarous laws is not conclusive.

It will from hence likewise follow, that I need not trace it through all the labyrinths of the law ; for I think a few considerations will evince, that the oath of allegiance does not oblige us to any actual military service.

1. We cannot have a judge of more credit or authority in this cause than King James, in whose reign, and for whose security against his subjects of the Romish persuasion, the oath was enjoined. And he in his apology for this oath does often declare, that nothing more is intended by it than bare obedience. And, upon that account, does exaggerate the injustice of the pope, who by his breve forbade the catholics to take it. And looks upon that as a command to them to rebel, as if there were no medium betwixt that and allegiance ; and says, that if they did not design that, they might safely make profession of it.

Nor does the oath seem to be framed for the sake of those that would take it, but to discover those that would not. Rather that such might be excluded from all employments, than that the king should make use of their service. The philosopher says,

it is a foolish thing to capitulate and intreat for that which is in our own power and hands already. Since therefore the king had power before this, when his occasions called, to summon and compel them to go for or with him to the wars, it was altogether superfluous and vain to extort a promise from them to do that which he might assure himself of by more effectual and compendious means. The truth is, that the design and purpose of it was, to take care that none should creep into offices or commands, who, when opportunity offered, might revolt and betray him.

2 It is common to make acts of parliament for the naturalizing of strangers, after which naturalization they become, to all intents and purposes, as natural born subjects, and owe the same faith and allegiance; yet all foreigners must of necessity be the natural subjects of some other sovereign prince or state. Either therefore the king and the houses deal very strangely, in bestowing that upon them as a favour and privilege, which they know must unavoidably involve them into that black sin of treachery and disloyalty to one of their sovereign lords; or else, allegiance must in their judgments be something payable to two several princes, though they should chance to contend; which can be nothing but neutrality, or non-opposition; for it is impossible he should be active on both sides, unless as a fugitive and deserter: or, if he could, by adhering to their enemies, becomes disloyal and rebellious unto both. Or else, the obligation to his ancient lord must be supposed to cease and expire, upon this new stipulation of his subject.

3. If allegiance did require the bearing of arms, then would it be a capital crime not to accept a commission. Indeed, to decline it in time of danger, may bring upon a man the reproach of a coward, or the suspicion of being ill affected to his majesty's person or interest; but surely no indictment lies against him for perjury, or attainder for treason, unless under such a tyrant as Domitian, whom Xiphilin reports to have put Herennius Senetio to death, for no other reason, but because after the quaestorship he never sued for any higher office. Upon the news of any navy seen off the coasts, or some insurrection in the bowels of the kingdom, if every man were bound to repair to the camp, or list himself at the first beat of drum, there would be a strange confluence of people, more in danger to be called in question for a riot, than likely to be commended for their loyalty. And if all that are left behind must be accused, traitor will be a title for the most, and wisest, and best men of the nation; and there are none truly loyal, but a few bankrupts, debauchees, ragmen, and the very scum of the rabble.

When a proclamation, in these cases, is issued out, and professes to prescribe and teach us our duty exactly, it requires no more but that we should not aid, or abet; that we should not adhere to, or any way assist the king's enemies, or the like: but never, that we should desert our several vocations; or that the shepherd should leave his sheep in the wilderness, and go down to the battle.

Nay more, he that has been listed and inrolled the king's soldier, that has been in actual service, and afterwards flies from his colours, shall only be prosecuted as a felon, not impeached of treason; nor shall his indictment run, for having done any thing contrary to his allegiance: and if the forsaking of his colours be not the crime, the staying at home is surely less criminal than that.

4. The church of England has been always eminent for the loyalty of her principles. Upon this she justly values herself, and her sons pay her due honour and veneration: For this she creates herself many enemies, who asperse her as a parasite and flatterer of princes. Even they, who are the parties concerned, applaud her for it; and one who professed he would suffer no diminution of his prerogative, gave her this testimony, that she ascribed enough to monarchy. Yet, after all this, have I never found that she carried the point a jot higher than non-resistance.

5. Every law or statute, once enacted or received, must continue in force till it be abrogated or annulled. And therefore all subsequent acts, where there is no clause of repeal, must be understood with submission to those senior laws. And in this statute for the oath of allegiance, there being no syllable to evacuate any ancient laws, it must needs leave us in possession of all our legal privileges. Now, clergymen were exempted from all martial service, both by statute and canon law.

The statute of 19 Henry VII. 1: which did oblige all others (of such estate and tenure) to attend the royal standard, when the king goes to war in person, provides that it shall not extend to any spiritual person.¹ There were several canons then in force, that forbade them, under heavy censures, the bearing of arms; several constitutions require they should be so abstemious from spilling of blood; that they should not give a vote, nor concur to the sentence that may touch the life or limb of any criminal; much less do they allow that we should become executioners, and imbrue our hands in the blood of rebels in the field: ^{Nat.} this seems to be a law of nations, for the heathens always spared their priests, and upon what exigence soever they made new levies, never offered to draw them from the service of their idols. These are fundamental articles in all religions: That the worship of God should be continually attended, that sacrifices and praise should be offered at his altar, without intermission; and that the hands of those who are to officiate at the sacred rites, should be innocent and clean from the blood of all men. Therefore, since there were such laws in being, and this latter statute must be so expounded as not to derogate from them, the oath of allegiance cannot oblige us to handle sword nor spear, or fight in the behalf of an injured and oppressed king.

And, if it do not oblige us to any actual service, there is no clashing of oaths; for it is not impossible to be patient, while the competitors dispute it; nor does it imply any contradiction for Amyclas to sleep in his cottage, while Cæsar and Pompey are ready to join battle, and try for the fortune of the world in the adjacent fields.

But this will be thought to pinch the prerogative too much, and reduce the sovereign into an evil state; to leave him destitute of sufficient means to subdue his rebels, or resist the force of any foreign adversary; and expose his kingdom as an easy prey to any that shall have the courage to invade it.

If this were a necessary consequence I should be ashamed of the premises; but there are provisions enough for the defence of the crown and realm, though these principles were granted to be true. Though there be too many that pretend to the office, and are of late endowed with the liberties and immunities belonging to it, yet all the kingdom does not consist of priests *de jure* or *de facto*. Were all those who are in real orders excused, there would be hands enough found for all the employments and services of war. There are certain standing guards, and a militia settled by law, in the judgment of the great council of the land, sufficient for both the purposes; at least for ordinary occasions. And if any extraordinary require an augmentation and increase of their number, there never wants men enough that are ready to embrace the service. There are always too many in that indigent and necessitous condition, that for protection and present maintenance would be glad of any adventure. There are abundance of idle persons, who, not willing to endure the fatigue of a manual trade, or other corporal labour, will account it a preferment to be attired like gentlemen, and domineer in a country village, though once or twice in a campaign they hazard their lives in a fight. Some out of stoutness of heart are pleased with the sport; they seek occasion to signalize themselves by acts of valour, and to cut out a fortune with their swords; some out of love and loyalty to the prince, and many because they esteem it their own

¹ Apost. Can. 82.

² And by the law we cannot be pressed. Origen. cont. Cels. lib. 8.—Orig. Notes.

in earnest to support the government. For wise men always, and fools when they have paid for their learning, will join together as one man, to repel any that should invade his dominions from abroad, and subdue all those who begin any sedition, or offer to disturb and dissettle his affairs at home. All which mustered together would make a formidable army.

Or, if all these should fall short, he may make up his levies with a press: And then the officers by their oaths, as well as antecedent duty, (and the common soldiers at the peril of death,) must not desert their commanders, (which to men of that quality is a firmer bond than the fear of perjury, or sense of allegiance,) are obliged to be true and faithful, and to stand and fall by him. We also fight with our spiritual weapons, prayers, and tears; with these we assault Heaven, and beseech God Almighty, who is the giver of all victory, to cover the head of his anointed, to defend his person that rules by justice, and prosper his arms that fights in the necessary defence of a righteous cause. Upon these terms the sovereign is as safe as laws, privileges, or human strength can make him. And had all men in their several stations thus discharged their duties, I am persuaded that I had never been put to make this apology for a second oath of allegiance.

2. What we did oblige ourselves to by the oath given to King William and Queen Mary.

And because this is contrived in more general terms, and so may seem to be more large and comprehensive than the former, or at least give occasion to more doubts, I think it convenient to enquire, 1. In whose sense it ought to be taken? 2. What that sense of it is?

1. In whose sense it ought to be taken? For although it be commonly received as a maxim, and argued from as if it were a principle beyond all dispute, that it ought to be taken, or must oblige us to the sense of the imposer, and the satisfaction that he expects by it, I cannot let it pass without examination. There are two admirable authors that affirm the quite contrary, H. Grot. and Bishop Sanderson.

The first says,¹ *in dubio magis interpretemur contra eum qui legem dedit*, and lib. 3. cap. 20. § 26. *contra venditorem, contra eum qui conditiones elocutus est*. Where there is any doubt it must be construed to the disadvantage of the lawgiver, the seller, or any man who spake or composed the words, or drew up the form of the contract. The bishop says the same,² the swearer may take the advantage of an ambiguity, because it behoved the legislature to have taken care that his meaning had been set down in more plain and unexceptionable terms.

The style of an orator (said an eminent one³) should be perspicuous and clear; he must make use of common and simple words, dispose them in a natural and easy order, that even the ignorant and unskilful might apprehend him. *Quare non ut intelligere possit, sed ut non possit non intelligere curandum*. He must take care to speak not that the hearers may understand him, but they cannot mistake him.

Much more is it incumbent upon law-makers; and they seem to be conscious of this, when upon all occasions they muster up such a number of synonymous terms, or such as amongst which we can see but small diversity. As in the beginning of the former oath, "I do truly and sincerely acknowledge, profess, testify, and declare." They would not thus abound in words, descend to such minute distinctions, but that they know it to be their duty to exclude all cavils, and prevent every fallacy, to block up the smallest avenue, at which any, though never so subtle, that is not willing to be held, may make his escape; and allow it as an undoubted privilege of the subject to take the utmost inch of that liberty of which they have not plainly debarred them.

¹ Grot. de Jur. Bel. 3. c. 23. § 12.

² Quintil. Inst. 8, 2—Orig. Notes.

³ Case of Eagag.

To say absolutely that every oath should bind in the sense of the imposer, seems to me most irrational. All words in the world are equivocal, may signify several things; there may be amphibology in every sentence, and the construction of it made several ways, and the imposer may have such flights and fetches as a vulgar simple capacity could not conceive or imagine. When the obvious and appearing sense contains nothing but what is innocent and agreeable, he may have such a reserved and secret meaning as the swearer would abhor, and by no means have digested, if it had been fairly expressed in words at length. And now shall his soul be caught in this snare, and he be perjured if he do not act according to that unknown altitude? This has all the absurdities of an implicit faith, or swearing with an &c. It leaves a man no security of promising any thing, puts a man's conscience into the custody and power of another, who may throw the guilt and sin upon his soul in spite of all the sincerity and innocency of his own intentions.

It would be of as ill consequence to leave this liberty of interpretation entirely to the swearer, who by this help might evacuate the force of all obligations. So that there could be nothing transacted between a governor and his people, but all society must dissolve. And it will be a hard matter to fix and divide the right of interpretation justly and exactly between them. But this I think will not be denied, that it is sufficient to swear in that sense that I believe the imposer did intend, or would be content to be understood in. It is not impossible but there might be amongst them a double meaning; perhaps they might mince the matter, so that the scrupulous might swallow it; and yet wish that it would go down with others in greater goblets. This I take to be certain, that God has given me reason and judgment, and appointed that to be my rule and guide, which can never certainly inform me what are the thoughts and designs of another, or what he may intend and mean; only this I may be sure of, that I am persuaded this is his meaning.

This premised, I declare my firm opinion to have been, that the imposers of this second oath expected nothing that was inconsistent with the former.

1. Because most of them lay under the same obligation to it that we do. And that so many persons of wisdom, integrity, and honour, (though with a mixture of some that perhaps deserve no such character,) should deliberately contrive to perjure themselves first, that so they might ensnare the nation; no reason, no honesty, no charity will permit me to suspect. In scripture we sometimes meet with passages that seem repugnant to common reason and discretion, contrary to the analogy of faith, and to good manners; but when we are satisfied that cannot be the true and genuine meaning, then we admit of any criticism that will reconcile it with all those. Let us deal here with the same candour, and the controversy will be at an end. Resolve that such an honourable assembly could design nothing so grossly wicked, and then there will never want ways and expositions to accommodate the difference between the oaths.

2. There are strong reasons to believe that they want no more in this than the other; for,

1. If he be acknowledged by all the advocates of the cause to be only king *de facto*, why it should include more when referred to him, than it did to the rightful and natural prince, is a riddle, or rather a thing so irrational as nobody can suppose.

2. In the preamble of the act, it is called the oath of allegiance or obedience. And from that, 1. I infer, that by allegiance is meant no more than obedience. 2. I shall prove that this obedience can be no more than passive obedience.

1. I gather from the order of the words, allegiance or obedience, that allegiance is no more than obedience.

The orator^a does caution his young scholar, *Ne fortiori subjungatur aliquid infirmi-*

^a Quintil. Inst. 9, 4.—Orig. Note.

us; ut sacrilego fur, aut latroni petulans. After he has accused a man of sacrilege, he must not add, or simple theft, or any word that may lessen or extenuate what went before. Nor would only sons of art, but even the rudest ears be sensible of the absurdity, if any man should so speak. The countrymen would be apt to ridicule a judge, that should condemn a prisoner to be hanged or whipt. Who would be so foolish, if he understood the degrees of honour, to direct a letter to Sir Philip Sidney, Esquire? No man could think it civility or sense, when he has saluted a person by a better title, to foist in a second which shall recant and degrade him. When any man does multiply single terms, and join them after this manner, it must either be, 1. Because he thought the first intricate and obscure, and would explain it by one of more familiar use, but then the last must be of equal value; or, 2. It falls somewhat short of his intention, and so would amplify it by another of wider comprehension; or, 3. he has overlasht himself a little, and offers another to correct and restrain it. In all which cases the latter must be full match for the first; and therefore in this place, allegiance must signify no more than obedience. But all this while I have gained no ground, if obedience must be universal and active obedience. Therefore,

2. This obedience must be but passive obedience. In a kingdom thus constituted, where the king is to govern by law, and the people so impatient of a few arbitrary excesses, it cannot be thought that they have invested him with such a prerogative, that we should all be sworn to obey his single command. And if it be in things only according to law, that would be obedience to the laws, not to him. But whether to one or the other, indefinite, universal, active obedience cannot be proper matter of an oath. The flattering courtier, who moved to have it passed into law, that whatsoever the king his master did should be right and just, deserved to be hissed out of the society of wise and sober men; but this would be something worse, for we must either swear that it is so, or that we will obey if it be otherwise. This is a deifying a human power, ascribing to it the divine perfections; nay, in some measure, advances it above God himself, not so much as reserving to us the liberty of paying our duty and allegiance to him; active obedience cannot be the thing intended.

Amongst the eastern nations, where sovereignty was at the highest elevation, non-resistance was all that was expected.* Else, in those days, when they did almost adore their kings, Teribazus had not been so renowned for his loyalty, of which he is celebrated as a singular example; because, that having his sword in his hand, and able to have made a good defence against one that weened about to assault him, yet he dropped his weapon, yielded his hands to be manacled as soon as he heard that the aggressor had the king's warrant to apprehend him.

But this does seal and confirm all. That the judges, when the oath has been tendered in their courts, have admitted of these explanations, been content with the promises of quietness: And neither king nor parliament ever sent them any reprimand for it, or brought the swearers to any further test.

3. There are some presumptions that in this second oath they might rather design something less. A slave that has been manumitted, may hire himself out for a year, in both cases here is master and servant; but it does not imply the same authority on the one part, nor oblige the other to the same subjection. A widow takes husband, who becomes a father to her former children; but they are not obliged to regard him in all respects as their natural parent. Many times the same words may be retained, and yet must necessarily suffer some alteration and abatement in the sense.

All languages are defective, have not words justly adapted to every thing, relation, and accident. Cicero* says, that the Greeks had no equivalent for *Innocentia*; and Seneca,† that the Romans had none for ἀνομία, and Quintilian‡ could not translate νόμος;

* Plut. de Superst.

† Tuscul. 3.

‡ Ep. 87.

§ Inst. 5. 2.—Orig. Notes.

every age produces strange junctures and occurrences, which whosoever would express must have recourse to words that are already in use. But forasmuch as it must be the proper name of another thing, to which this new and anonymous thing is not parallel, therefore must it depart in some measure from its old signification when applied to this.

Here was a case for which there was no precedent; and it is plain they were at a stand for want of words adequate to it. The king was withdrawn, and the nation left in such disorder they knew not what to call it. They pitched upon dereliction, or abdication, not that either of these were commensurate to the state of the business, but none could be found that came more home to it. They do not deny many things to have been irregular and different from ancient forms of proceeding, yet they retain the same names. A convention, not summoned by royal writs, bears the name of a parliament; a person, not our natural-born prince, is stiled a king; the caution which they give this king is called allegiance: but all these, with some small strain and condescension from their true importance. It troubles a government to deviate from former terms, and of ill consequence to innovate even in words. It was one point of Tiberius's policy, *scelera nuper reperta priscis verbis obtegere*.¹ This is certain, that though they had designed to moderate and abate something of the old allegiance, they could not have given it any other name.

2. Let it be remembered how many material passages are left out of the oath, as the recognition of his just and undoubted right, with which allegiance seems to have a near alliance. And as the cause is manifest why that could not be continued, so it is palpable that this abstract, these few words which they have selected, cannot have all the force and effect of the whole, unless we must suppose that the parliament had espoused the principle of Carneades, that there is no such thing as justice, no difference between right and wrong; or else, that the cancelling of a book is the same thing with the demanding of a debt, and *abrogamus* with *statuimus*.

3. Observe what account the present and modish commentators have given of allegiance. Infinite numbers of tracts and pamphlets are every day published and spread abroad, which labour to persuade us that allegiance is no more than obedience to a king, while he rules according to law; that in many cases it does not hinder from resistance, and the like: now, that these notions are not disallowed by the law-makers themselves seems probable,

1. By their constant connivance at a thing so notoriously known, and which it so much concerns them to punish and suppress, if they did not approve it. If it be well argued that the court of Rome must have a secret liking of the seditious doctrine of Mariana, and other jesuits, because the books have been published in some remote catholick countries without a censure, how much more may we infer, that our governors allow of such measures of obedience and submission when they are written by their most inward favourites, their most able champions, spread upon every counter, and cried in every street? "What a man sees, and yet shews no resentment at; what he hears, and does not reprove where he has authority; he is supposed to ratify and confirm." Numbers xxx. 4.

2. Because it is for their advantage and interest, and that carries a strong presumption of their liking and consent. When any wickedness is committed whereof the author is uncertain, enquire to whose account it turns, to whom the benefit accrues, and you may conclude he did it. *Cui prodest scelus is fecit*.² Now were the people convinced that they were clearly absolved or disengaged from all duty to their former king, they had gained a point that would conduce more to their settlement, than all their preparations and policies besides; and since these are the only arguments or suppositions

¹ Tacit. An. 4.

² Senec. Med. Act. 3.—Orig. Notes.

that can make it good, they may well be thought willing that this should be the standard of allegiance.

After all this some will still urge, that this reduces it into atoms, makes it but a noble and empty nothing: or, that this will not secure them from their enemies without assistance, and then it is but mere delusion.

If it do not afford them all the satisfaction and assurance that they could wish, yet if it yield as much as the matter will bear, it is not to be condemned: yea, perhaps this conduces most to their peace and safety.

1. Because if they should insist upon any further demands, and require not only patience and submission, but active service and assistance, it would make a dangerous rupture, compel a multitude of considerable persons openly to dissent, and to study and labour for another revolution, who now would sit down quiet, and, as Photinus advises Ptolemy, *Fatis accede deisque*;* so these would yield to the torrent, and commit all to the providence of God.

2. To carry those to fight against a king *de jure*, who were obliged to him by oaths and all the bonds of allegiance, is to shew an ill light, and give a dangerous example against themselves. For the same persons, when the wind turns, may think that they have as good warrant to rebel against any other to whom they have sworn it. They would frustrate the oath that is made to themselves, if they would have us to believe that to bear arms against our late sovereign is no breach of allegiance. Should they be taught that this is no violation of their faith to him, they would scarce apprehend that it could be a more strong or insolvable bond to their most gracious king and queen.

3. They will need no active assistance from us, for they will find other hands and instruments to maintain their possessions, and defend their crown and dignity. If they suppose that allegiance does oblige men to act and fight in the behalf of their sovereign, it can never be fit for them to employ either those who take the oaths, or those who refuse them, in any action or design against him. A traitor can never be trusted, and he that has been false to his natural lord, will never keep faith with a stranger; and he that will be true, can be no friend to a violent intruder. They can put no confidence in either of these, but must strengthen themselves with foreign aids and alliances. Bands of mercenary soldiers must be introduced to do the execution, if we will be but quiet spectators of the quarrel. So that this negative notion of allegiance contributes more to their safety than a larger would do.

But let the composers, or parties concerned, intend what they please, he that, to clear the doubt, does declare to the magistrate that he would only be understood of patience and submission, is in conscience bound no further than his own declaration.

Let it not be said that I must be supposed to take it in the publick sense, maugre any addition or explanation of mine. For words do but signify by contract, and oblige me to make them good in no other sense, but that wherein he, with whom I treat and confer, and I, have agreed. And if men please to correspond by cypher, and to the intent that strangers may not attain the secret, will covenant that allegiance should stand for rebellion, and religion for atheism or impiety; after this, he that should use them in their common acceptation were a cheat and a liar. Nero would sometimes command those that had offended him to die at an hour's warning; and if they made any hesitation or doubt to dispatch themselves, sent a physician to cure them. *Ita enim vocabit venas mortis gratis incidere.** Now had this confidant of his performed the command according to the letter, and, by wholesome and seasonable applications, stopped the blood and restored the life of the languishing disfavoured, he had plainly falsified with his master. Or if this instrument of his had given the emperor notice that if he were dead, the sign should be that he is recovered, he was no deceiver, if the emperor would

* Lucan, Lib. 8.

* Sueton. Nero 37.—Orig. Notes.

not so understand him. Truth requires no more but that I do my endeavour to invest my meaning in such language, that the party may know the real thoughts and purposes of my soul. And if he will misunderstand me, he deceives himself. The governors, in this case, may question whether I have fulfilled the law, and if not, they may still inflict the penalty, and proceed to deprive me; but can with no colour charge me with falsehood. I dealt faithfully and clearly with the bench, but whether they did so with the supreme, when they accepted of the declaration, let those who are more concerned, dispute.

3. "Whether the obligation to the first may not be thought to cease, or expire, before the other was superinduced?"

When the expressions are most absolute and positive, there must be several covert conditions implied, even in oaths themselves. To set down all the cautions and restrictions, or all the circumstances wherein they should be reputed invalid, is not possible; for as no human prudence can foresee all events, so no art can provide laws, or invent inexorable words, that will be equitable upon all emergencies and occasions: nor is it practicable, for the possible accidents are so many, that it would swell the oath of allegiance to a vast book of conscience; so many distinctions would make it rather intricate to many capacities, and immemorable unto all; it would trouble all transactions, perhaps give the captious more advantage to elude it, and scarce allow space in the courts to administer it. It is necessary, therefore, it should be summarily expressed; but it is as necessary that there should be many reservations understood. Now, that positive oaths must have some implications, the casuists prove from the example of Solomon, "He swore that he would not slay Adonijah," 1 Kings i. 51, 52, and yet cap. ii. v. 20, 22, "he swore Adonijah should die;" between which, if no condition was understood, there is evident contradiction. But the nature of the thing makes it apparent, that the first promise was upon a tacit supposition, that he should attempt nothing against the government, or else his pardon to be void. Ariston,¹ in Herodotus, persuades his intimate friend and companion Agetus, to enter articles in a frolick, and confirm them with an oath, to grant to each other any one thing that they requested. Agetus pitched upon some precious utensil, and that done, Ariston demanded his wife. Does any man think that Agetus was bound to perform? Dymnus makes Nicomachus swear² that he would never discover that secret which he was about to commit to him; then he declares a conspiracy against Alexander, which within three days was to be put in execution: Nicomachus honestly and constantly denies that ever he gave his faith to conceal a treason. The oath of allegiance is liable to exceptions, as well as any other. Trebonianus³ swears to pay homage and acknowledgment for his Villa of Ramola, and all the royalties of Panizza, to his landlord Calender, but if the land or possessions be aliened, or swallowed up in an earthquake, or drowned in the sea, he is not bound to pay for that which is not. What is it that excuses these but equity? And wherever there is equal reason, there is equal dispensation.

This, I suppose, will be allowed, *Si is ad cujus utilitatem spectat eam vult, non tenebitur qui juravit.*⁴ The swearer is acquitted, if he to whom the right accrues will not accept, or is content to relinquish. *Quilibet potest renunciare juri pro se introducto.* Any man may wave or resign an interest, to which he hath the most undoubted right. King Charles the Second makes sale of Dunkirk; his ancestors, upon several treaties, have articted to surrender several towns and counties to the King of Scots: and though the inhabitants might be his sworn subjects, yet being thus aliened and abandoned by him, are released from their allegiance. And as in a part, so in the whole; for if Dioclesian and Charles the Fifth retire, and will not act in the affairs of the empire, the subjects are not to be blamed that submitted themselves to others.

¹ Egato, cap. 62.

² Q. Curt. 6, § 7.

³ Duct. dubit. pag. 271.

⁴ Grot. de Jur. Bell. 13. § 18.

Orig. Notes.

That this was the case, we have the testimony of two houses of convention, who resolved it upon a mature debate, and upon that foundation laid all their after proceedings. If it was not altogether voluntary, because the absenting of his person might be the effect of a just fear, yet the stop put to the administration of affairs seems to have been done with more free consent; he could not be compelled to carry away the seals. All was done with an unwilling willingness; but if that would nullify it, no alienation could be valid. When a prince delivers up, in pursuance of a treaty, some town or country upon the frontiers of his kingdom, it is only because he is distressed; and, were it not to prevent or compose a quarrel, which he fears would be more fatal to him, would never have resigned it. And, truly speaking, a man cannot be necessitated to do any thing. That which we call so, is but some hard choice, when we prefer a less before a greater mischief.

But this I would not urge too far. If it be otherwise, the imposers have only deceived themselves. For a promise upon a mistake, or an oath upon the presumption of a thing that is not, leaves no obligation. Titius and Sabina come to church to contract marriage, but when the bridegroom has repeated his part, the damsel, upon some sudden instinct or repentance, does finally refuse to say the counterpart. Will any man say that Titius is now become a husband without a wife? The vow was of no force, because the supposition failed upon which it was grounded; that his spouse would have plighted her faith to him afterwards. Upon these foundations I raise this conclusion, that there is no inconsistency between the two oaths: For if the matter of abdication be true, the first is void; and if it be false, the latter.

Suppose it to have been pure force or compulsion, if I might call that a conquest, there would spring new solutions. But because the consequences to which that might be improved, would be too formidable upon another account, I let go the advantage.

However, it is certain, there was a dissolution of government. The fountain once stopped, the stream does soon dry up; all such as he left in authority refused, or were afraid to act; so that here was a perfect *interregnum*, or pure state of nature. How would the Leviathan have smiled, to have seen his chimæra real?

Things standing thus, it was absolutely necessary, there should be some government established. Anarchy is as much to be abhorred as a *vacuum* in nature, to avoid which, every body makes haste to leave its station, and moves contrary to the laws of its particular being, least the sides of the universe should crack, and fall, and with its weight crush every creature. So, to fill a vacant throne, and save a kingdom from confusion, men may break through all impediments, and the most sacred bonds must relax a little. All principles of religion and justice must bow to this, That there must be government.

And if that be necessary, so are all those means without which that cannot be attained: * *Quando lex aliquid alicui concedit, concedere videtur et id, sine quo res ipsa esse non potest.* And therefore it was necessary, that the sovereign power should be lodged in some body that might see to the execution of laws, and the administration of all affairs. It was as necessary they should pitch upon the person; who, if he had not received it by votes, might have claimed by a higher title. There is no room for a debate, whether they shall chuse a candidate, who, if repulsed, is able to take all that we deny, and more. Cornelius went to the senate, and, in the name of the army, demanded the consulship for Augustus; * while they demurred, he laid his hands upon his sword, and said, if they would not make him consul, that should.

I know it will be thought this was not necessary, because there was another and better expedient; it had been but recalling the king, and then all things would have run in the right stream. But this was not possible. If the majority did not like that

* Cook, Inst. ad Sect. 68.

* Suet. Aug. 26.—Orig. Notes.

motion, what could baffled loyalty do more? Such must needs fall in with the rest. *Fit temeritatis alienæ comes spurinnâ, primo coactus, mox velle simulans*——¹ Or, if all the convention should have invited him back, there was no probability that he would have returned, while the same rub was in the way which caused him to withdraw; and who had the power to remove it?

If a governor was necessary, so was it that he should be king; not only to indemnify all that had or should act, but to fit the frame of our laws, which are composed like Lysia's speech;² you cannot alter a word, but you will spoil the sentence. There can no other title be substituted in its stead, which will cohere with all cases and occasions.

It was necessary this governor should be submitted to, and warranted against all unjust pretenders; and secured from those who enjoyed his protection, yet this could be called by no other name than allegiance. Nor could the laws have taken hold of an offender in that point, under any other notion.

Many things seem harsh and unjust, when we look at the last act only; which would change their aspect, if we would begin at the bottom of the cause, and follow it by the same steps it advanced. The stories which Suetonius reports of Nero and Claudius, did seem to a learned lord³ fabulous, and beyond all belief; but when he met the same actions in Tacitus, invested with circumstances of times, persons, and inducements, they were not improbable. These proceedings, and this allegiance at which we boggle, could not appear so horrid and strange, if we would take our stand a while at the necessity of government, and see by what a series of necessities they were led to the top and crown of all. For, *Necessitas non habet legem*.

Obedience due to the present King, notwithstanding our Oaths to the former. Written by a Divine of the Church of England.

Anno 1689.

This Tract turns upon the same controversy, which the preceding author ingenuously sums up in the old adage, "Necessity has no law." "The matter of the oaths begat controversy upon controversy, and that not more for conscience than party's sake: For though many well-meaning clergymen did actually sacrifice their livings to their scruples, others, who had been the stiffest advocates for non-resistance and passive obedience, thought fit to satisfy the law by transferring their allegiance from King James to King William, and endeavoured to set a gloss on the satisfaction it gave to themselves, by declaring previously, that they took the oaths in no other sense, than as a peaceable submission to the powers that were; which, they would needs have it, they had authority for, even from the legislature itself; since they had dropt the word rightful when the form was under debate; which they would scarce have done, said they, if they had not allowed the distinction between a king *de facto* and a king *de jure*. Now these jurors found themselves between two fires; for as those who swallowed the oath whole would not allow the sense of it to be frittered away, so those that wholly rejected it treated the temporisers with all the bitterness imaginable; who in answer to both alledged, that as pru-

¹ Tacit. Hist. 8.

² A Gel. 2. 5.

³ Bacon, de Ang. Scient.—Orig. Notes.

- dence obliged them to conform to the letter of the oath, so conscience required them to give it their own interpretation.
- "Among the nonjurors were five of the seven bishops who had of late been called the seven golden candlesticks of the church, for the stand which they had made in the late reign against the religion of the court; viz. Canterbury, Ely, Chichester, Bath and Wells, and Peterborough; and who probably believed that their credit with the people was so great that they could turn the scale of government as they pleased. With these joined Frampton of Gloucester; and as to the other two, St Asaph was at court, and Bristol dead.
- "It is not to be supposed that those in power were altogether easy under this separation, or without some apprehensions of ugly consequences; for which reason they proceeded as tenderly with them as possible. They first invited them to come in; and when they found it necessary to proceed to compulsion, they began with suspension; after which they waited long before they proceeded to deprivation; and in the mean while plyed them from the press with arguments, remonstrances, and every other battery which affects the mind of man; but, as we shall find, without effect: Those who had made the breach resolved to keep it open; and instead of being induced to swear as the law required, endeavoured (at least their emissaries did) to convince their half conforming brethren that they ought not to pray for those as their lawful and rightful governors whom they refused to acknowledge as such in their oath of allegiance."—RALPH, II. 166.

1. THE oath of allegiance is the expression of our natural duty to the king (as the coronation oath is of the regal; which in nature is antecedent to it) 'tis especially signified in these words: "I will bear faith and true allegiance to his majesty, his heirs and successors, and him and them will defend against all attempts, which shall be made against his or their persons, their crown and dignity."

2. If the king do manifestly separate his person from, and engage it against his crown and dignity, so that we cannot defend them both; I mean, if his personal actions, contrary to law, do directly and openly tend to the prejudice and spoiling of his crown and dignity, by his voluntary subjecting them to a foreign power, contrary to the plan and primary intention and letter of the oath; subverting the legal constitution, and enervating the very laws by which his crown is supported, his prerogative is measured, and the dignity of the king, as such, hath its very being, as well as the safety of his people, is maintained; certainly in such a case, none can be bound by this, or any other oath, to defend the king's person, in attempts so contrary to the very reason and end of all government, with the neglect of the other part of our duty, which is to defend his crown and dignity.

The oath of supremacy seems to direct us more clearly in this difficulty; the words are, "I shall bear faith and true allegiance to the king's highness;" but how? it follows, "and to my power shall assist and defend all jurisdictions, privileges, preeminences, and authorities, granted or belonging to the king, or annexed and united to the imperial crown of this realm; that is, thus we are to bear faith and allegiance to the king."

4. For if we should be bound to assist and defend his person, when it is, and as it is engaged against his crown and dignity, we seem bound, *toto posse et totis viribus* (so far defence is expounded) to assist and contribute to the ruin both of our king and country, and perhaps to the cutting of our own throats.

5. If any should imagine, that the oath will not suffer us to consider the person and crown of the king thus divided, but that it binds us to assist and defend them together: 'tis true, while they are kept together. But if the king himself divide them, and 'tis become impossible for us to assist his person but we must betray his crown; nor

¹ He must be king before we can be bound to him as such.—Orig. Note.

defend his crown without forbearing to assist his person; to say, now we are bound to assist and defend both, makes a plain repugnancy in the oath and in our duty (to do and not to do the same thing) and consequently the obligation ceaseth.

6. That we are bound by our allegiance to assist the person of the king, to the prejudice of his crown and people, seems not only to be against the light of nature, the primary end of it being the safety of his kingdom, and the safety of the king, but the secondary end of it; but most agreeable to the sense of our antient and learned lawyers, and also of the plain acknowledgement and profession of antient kings and parliaments.

King Henry I. five hundred years ago, told the pope, Whilst I live the authorities and usages of the kingdom shall never be diminished: But if I would so debase myself (which God forbid) *Magnates mei et totus Angliæ populus nullo modo paterentur*: The lords and people of England would by no means suffer it. And Edward I. wrote himself to the same purpose. Besides, with his consent, the lords and commons in parliament, in their letter to the pope, have these words, "We do not permit, or in the least will permit" (*sicut nec possumus nec debemus*) though our sovereign lord the king do, or in the least wise attempt to do any of the premises (by owning the pope's authority, touching his right to Scotland) so strange a thing, so unlawful, prejudicial, and otherwise unheard of, though the king himself would." Once more, on record in the fourth of Henry III. the commons declare, *Si Dominus Rex et Regni majores hoc vellent* (Adomer's revocation upon the pope's order) *Communitas tamen ipsius ingressum in Angliam, nulla tenus sustineret*.

Now what's the meaning of all this? but that the king's personal will, contrary to law, however expressed (for it must be signified by his words or actions) if the performance of it would prejudice his crown and dignity, may be resisted. Much less are we bound by our allegiance to assist or defend him in so doing, in reason, law, or the sense of our antient kings or parliaments.

Objection. But we swear to defend, not only the king, but his heirs and lawful successors.

Answer 1. True, but *haeres non est viventis*, and the successor in law and common sense, is the person that doth actually succeed, or is in possession. Now, if the actual successor be the lawful successor, we are bound by our oaths to defend him; but if he be not the lawful successor, none else is so, because none else is the successor, and consequently so far the object and reason of our oaths ceasing, our obligation by them ceaseth, and we are bound to none besides the person in possession.

2. 'Tis farther remarkable, that though the word lawful be once in the oath of supremacy, 'tis only there where we swear faith and allegiance in general; but, as if it were intended that the subject should not trouble himself about the title of the king in being, where that allegiance is explained with respect to practice, the word lawful is left out in that oath. It follows there in these words,—"Shall assist and defend all jurisdictions,"—granted or belonging to the king's highness, his heirs and successors, without the word lawful. And agreeable hereunto we find the word wholly left out in the oath of allegiance, both in the same place where we swear allegiance in general, as well as in the other place of our more particular duty; and it looks as if this was done *de industria*, for the same reason, namely, that such as take the oaths might not think themselves bound thereby to be solicitous about the title to the crown.

3. The Holy Scriptures seem not to involve the consciences of private Christians about princes titles; but expressly require their subjection to the powers that are, as a

* Bract. Fleta. *Ei fratum ponere.*—Orig. Note.

great and necessary instance of that humility and peaceable behaviour which their religion teacheth them.

4. In the same Holy Books we are further most plainly admonished, that (by what means soever obtained) 'tis "God that putteth down one, and setteth up another;" and upon that ground too we are strictly charged to submit to the powers that are, because they are ordained of God, and though the apostle use the word *Exalta*, I think none can imagine he intended by it to determine the lawfulness of Augustus' title, who was admitted by the senate; but rather to inforce that obedience that he presseth the Christians to yield, by this consideration, that all authority is from God; and in its true nature, and by God's ordinance, intended for our good.

5. The known statute of 11 H. 7. 1. is of the same import, and grounded, we find, upon the like reason and Holy Scripture; it gives us way to this plain inference, that the same duty which we owe to a lawful king, is to be performed to the king in being; that is, to the king in possession; and that no other king or future parliament can in reason, law, or good conscience, upon any pretence of usurpation in the possessor of the crown, or any disloyalty in the subject, charge us with guilt, for serving or defending the king in possession. The subjects therefore might lawfully fight for him, and consequently take the military oath; in reason, (by the law of nature) in law, by the law of the land; in all good conscience, that is, by the law of God in the Holy Scriptures.

6. Hereupon my Lord Coke's words are notable: This act, saith he, (meaning 25 Ed. III. about treason) is to be understood of a king in possession of the crown and kingdom; for if there be a king regnant in possession, although he be *Rex de facto* and *non de jure*, yet is he Seigneur le Roy, within the purview of this statute; and the other that hath right and is out of possession, is not within this act.

Nay, saith he, if treason be committed against a king *de facto* and *non de jure*, and after the king *de jure* come to the crown, he shall punish the treason done to the king *de facto*; and a pardon granted by a king *de jure*, that is not also *de facto*, is void, Inst. 3. l. p. 7.

Now, if by the law of the land, which I think is our only guide in such cases, treason may be committed against a king that is so only by possession, without right; and cannot be committed against him that hath right, and not possession: Seeing he is not within the purview of the statute, sure we cannot reasonably be thought to be entangled in such a strait as to be bound by our allegiance to commit treason, which we cannot presume the king in possession will pardon, and the law tells us the king that hath right only, cannot. Who, therefore, would question our liberty to be true and faithful to the king in possession, so far at least as not to resist him, or to be traitors to him, or to give him assurance thereof by our oath. The renowned casuist, Bishop Sanderson, would not declare the very engagement to be unlawful, taken in that lower sense, to the pretended commonwealth without any king or House of Lords.

7. Since we have mentioned that excellent casuist, whose loyalty, judgment, fidelity, and authority is unquestionable, 'tis fit for us to observe what he hath frequently and without the least hesitancy, delivered as his premeditated thoughts about the present case.

Having supposed a king in possession only, by power, if the query be what is to be done by the subject that hath sworn allegiance to the rightful king, he answers, 'tis not only lawful to obey the king in such possession, but it often happens that not doing so, [*defuisse officio*,] we are wanting to our duty. Yea, that we owe subjection to

¹ Rom. 13.

² Rom. 13.

³ *Imperatores Rom. fatendum est, non optimo jure imperium adeptos.* Sanderson.

⁴ Case of Engag. p. 111.—Orig. Notes.

a king in possession, upon the grounds of justice, equity, charity, and gratitude, while we enjoy our liberties, and are protected by him.

Exigit hoc a nobis (optima æqui boni lex) vetus illa commutationum formula, Δός τι, καὶ λάβῃ τι. et profecto perversissimæ mentis, sub illius dominationis patrocinio, velle vivere cui parere nolis: et cujus protectione gaudeas, ejus imperium detractare.

8. His third argument for the necessity of obedience to the present power, however obtained, is taken from the charity we owe to the public, whether church or state, of which we are members, and for the good of which we are born; in *quantum igitur illius societatis, cujus ipse membrum et pars est salus et tranquillitas exigit, eatenus civis unusquisque imperiis ejus qui de facto—præest obtemperare tenetur.* Words worthy the most serious reflection of the present church of England. Read at large his 5th Prælect.

But as to the argument from gratitude, when we seriously reflect upon our late forlorn and ruinous condition both in church and state; when we call to mind that all our foundations were put out of course, and our pillars even broken by the late king's own ill-guided hands, and that the heroic prince hath been at so great expence, and exposed himself to so many hazards in his own country, at sea, and here in England, in compassion both to our miseries and infirmities; when our land was weak, and all the inhabitants thereof in an utter disability to rescue or save themselves; and none under Heaven, within the reach of human apprehension, besides that one prince, could possibly effect it; that glorious instrument under God, put his hand to support and strengthen and bear up our pillars, to redeem and secure our religion, laws, and liberties; and when our late king, either for fear of his person, or rather of the issue of affairs in our re-establishment, had deserted or abdicated his kingdom, and left us in confusion to shift for ourselves, whose return now cannot be thought of without horror; And the present king and queen being therefore first petitioned to take the government, have graciously accepted it, upon terms answering all men's desires or interests: I say, when all this is well pondered, the ground and argument for our quiet and chearful submission, taken from gratitude, is indeed too big, to be contained in a sheet or two of paper, or the mind of man; and prodigious beyond the credit of posterity.

Lastly, one would think there was no place left for any further scruple. The late change was urged by extreme necessity, and carried on with a wonderful providence, and perfected with universal consent; it was eminently the Lord's doing, and our own too; the government was unhinged by the late king himself. The present king, &c. was put into possession by ourselves in our representatives, who were as freely chosen by us as ever any parliament was: The convention had nothing wanting but the previous formality of the royal writs, which could not be then had; that punctilio of order cannot reasonably be supposed to go into the being of the representative body; the want of it cannot well be thought to prejudice our election, or consent to what they have done, whom we chose and intrusted with our politick reason and interest, and in whose acts we ought to acquiesce as our own doings, in every thing or matter of expediency for the public good, not evidently contrary to our duty to God.

In short, the possession of the throne, by the act of the people of England, is now unquestionable; we have no liberty left us, either to dispute the king's title, or deny him our duty. "Give unto Cæsar the things that are Cæsar's," &c.

The present Case stated; or the Oaths of Allegiance and Supremacy no Badges of Slavery. 1689.

Another objection was stated by the nonjurors to the oaths enjoined by the new government. These were, they said, an illegal and tyrannical imposition upon the consciences of the subject, and in that point of view a badge of conquest and of slavery. This opinion is combated by the author, whose object it is to shew, that the injunction of such oaths was frequent in English history, and that they were held as no innovation upon the constitution, being in fact the same with the original oath of fealty due by the law from subjects to the sovereign, or at farthest to be understood as explanatory thereof, and as adapting its general obligation to the particular circumstances of the times.

THE ecclesiastical jurisdiction of the crown of England having been invaded and broke in upon by the power of the court of Rome, in King Henry the Eighth's time all foreign power was abolished, and the antient legal supremacy restored, and by many additional acts corroborated. But all that was done of that kind in King Henry the Eighth's time, was undone again in Queen Mary's; and therefore in the first year of Queen Elizabeth's reign, an act of parliament was made, entitled, "All ancient Jurisdiction restored to the Crown. A Repeal of divers Statutes, and Reviver of Others: And all Foreign Power abolished:" Which act recites, that whereas in the reign of K. H. VIII. divers good laws were made and established, as well for the utter extinguishment and putting away of all usurped and foreign powers and authorities out of this realm, as also for restoring and uniting to the imperial crown of this realm the ancient jurisdictions, authorities, superiorities, and preheminences to the same of right belonging and appertaining; by reason whereof the subjects of this realm were kept in good order, and disburthened of divers great and intolerable charges and exactions, until such time as all the said good laws and statutes by one act of parliament, made in the first and second years of the reigns of King Philip and Queen Mary, were clearly repealed and made void; by reason of which act of repeal the subjects of England were eftsoons brought under an usurped foreign power and authority, and yet remained in that bondage to their intolerable charges; and then enacts, That for the repressing of the said usurped foreign power, and the restoring of the rights, jurisdictions, and preheminences appertaining to the imperial crown of this realm, the said act made in the first and second years of the said late King Philip and Queen Mary (except as therein is excepted) be repealed, void, and of none effect.

The said act of *primo* Elizabeth proceeds, first, to revive by express words many statutes that had been made in King Henry the Eighth's time, and repealed in Queen Mary's; and secondly, to abolish all foreign authority in these words; viz. And to the intent that all usurped and foreign power and authority, spiritual and temporal, may for ever be clearly extinguished, and never to be used or obeyed within this realm,

&c. May it please your highness that it may be enacted, That no foreign prince, person, prelate, state, or potentate, spiritual or temporal, shall at any time after the last day of this session of parliament, use, enjoy, or exercise any manner of power, jurisdiction, superiority, authority, preheminance or privilege, spiritual or ecclesiastical, within this realm, &c. but the same shall be clearly abolished out of this realm, &c. any statute, custom, &c. to the contrary notwithstanding. Thirdly, the said act restores in the next paragraph to the imperial crown of this realm, such jurisdictions, privileges, superiorities, &c. spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority had theretofore been, or might lawfully be exercised or used, &c. Fourthly, the act empowers the queen to assign commissioners to exercise ecclesiastical jurisdiction. And fifthly, for the better observation and maintenance of this act, imposes upon ecclesiastical and temporal officers and ministers, &c. the oath, commonly called the Oath of Supremacy, which runs thus: viz.

The Oath of Supremacy.

"I, A. B. do utterly testify and declare in my conscience, that the queen's highness is the only supreme governor of this realm, and of all other her highness's dominions and countries, as well in all spiritual or ecclesiastical things and causes, as temporal; and that no foreign prince, person, prelate, state, or potentate, hath, or ought to have any jurisdiction, power, superiority, preheminance, or authority, ecclesiastical or spiritual, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdiction, powers, superiorities, and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and lawful successors; and to my power shall assist and defend all jurisdictions, privileges, preheminences, and authorities, granted or belonging to the queen's highness, her heirs and successors, or united and annexed to the imperial crown of this realm. So help me God, and by the contents of this book."

It cannot but be obvious to every impartial pursuer of the statute, especially if he have the least knowledge of what condition the government of this nation was reduced to by papal encroachments and usurpations, that the makers of this law, and the sense of this oath, was no other in general, than that the people of this realm should bear faith and true allegiance, even in matters relating to ecclesiastical jurisdiction, to the queen's highness, her heirs and lawful successors, and not to the pope or any foreign pretended jurisdiction.

What the several jurisdictions, privileges, preheminences, and authorities granted or belonging to the queen, her heirs and successors, are in particular; and what the jurisdictions, privileges, preheminences, and authorities united and annexed to the imperial crown of this realm, are in particular, is not material here to be discoursed of; though the several statutes made in King Henry the Eighth's time, and King Edward the Sixth's, and revived in Queen Elizabeth's, will unfold many of them, and clear the distinction, which the oath makes, betwixt authorities granted or belonging to the king, and authorities united and annexed to the imperial crown: And Mr Prynne's History of the Pope's intolerable Usurpations upon the Liberties of the Kings and Subjects of England and Ireland; together with Sir Roger Twisden's Historical Vindication of the Church of England in Point of Schism, will in a great measure acquaint the curious how matters stood with us here, with respect to church-government, before the pope had wrested the ecclesiastical jurisdiction almost wholly out of the hands of our kings, our parliaments and courts of justice. In short, those jurisdictions, &c.

are such as the ancient laws, customs, and usages of the realm, or latter acts of parliament, have created, given, limited, and directed.

The makers of this law did not design to impose upon the people of England any new terms of allegiance, but to secure the old ones, exclusive of any pretences of the pope or see of Rome.

Nor are there any words in this oath, more strong, more binding to duty and allegiance, than are words which the old oath of fealty is conceived in; which all men were anciently obliged, and may yet be required to take to the king in the court-leet at twelve years of age, which runs thus: viz.

“ You shall swear that from this day forward you shall be true and faithful to our sovereign Lord King James, and his heirs: And faith and truth shall bear of life and limb, and terrene honour: And you shall not know or hear of any ill or damage intended to him, that you shall not defend. So help you Almighty God.”

This is as full and comprehensive as the oath of supremacy: “ I do promise that I shall bear faith and true allegiance to the queen’s highness, her heirs, and lawful successors, and to my power shall assist and defend all jurisdictions, &c.” So that the true sense and meaning of the oath of supremacy is this, viz. “ I will be true and faithful to our sovereign lord the king, his heirs and lawful successors, and will to my power assist and defend all his rights, notwithstanding any pretence made by the pope or any other foreign power to exercise jurisdiction within the realm; all which foreign power I utterly renounce, in matters ecclesiastical as well as temporal.”

The oath of allegiance is appointed by the act of 3 Jac. 1. chap. iv. entitled, “ An Act for discovering and repressing of Popish Recusants.” It recites the daily experiences that many of his majesty’s subjects, that adhere in their hearts to the popish religion, by the infection drawn from thence, by the wicked and devilish counsel of jesuits, seminaries, and other like persons dangerous to the church and state, are so far perverted in the point of their loyalties and due allegiance to the king’s majesty, and the crown of England, as they are ready to entertain and execute any treasonable conspiracies and practices. And for the better trial how his majesty’s subjects stand affected in point of their loyalties and due obedience, enacts, “ That it shall be lawful for any bishop in his diocese, or any two justices of the peace, whereof one to be of the quorum, within the limits of their jurisdiction, out of the sessions, to require any person of the age of eighteen years or above, which shall be convicted, or indicted of recusancy, other than noblemen, &c. or which shall not have received the sacrament twice within the year then next past, or any person passing in or through the country, unknown, that being examined upon oath shall confess, or not deny him or herself to be a recusant, and to take the oath therein expressed, viz. &c. the oath of allegiance.”

So that by the occasion of imposing the oath, and by the appointing it to be tendered only to papists, or suspected papists, it is apparent that the design of the law-makers was to detect such persons as were perverted, or in danger to be perverted in their loyalty, by infection drawn from the popish religion.

The form of the oath makes it yet more evident, being wholly levelled against any opinion of the lawfulness of deposing the king, or practising any treason against him, upon pretence of his being excommunicated or deprived by the pope; and against any opinion of the pope’s power to discharge subjects from their oaths of fidelity to their princes. It runs thus, viz.

“ I, A. B. do truly and sincerely profess, testify, and declare in my conscience before

God and the world, that our sovereign Lord King James is lawful and rightful king of this realm, and of all his majesty's dominions and countries: And that the pope, neither of himself, nor by any authority of the church or see of Rome, or by any other means, with any other, hath any power or authority to depose the king, or to dispose any of his majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him, or his countries, or to discharge any of his subjects of their allegiance or obedience to his majesty, or to give licence or leave to any of them to bear arms, raise tumults, or to offer any violence or hurt to his majesty's royal person, state, or government, or to any of his majesty's subjects within his majesty's dominions.

"Also I do swear from my heart, That notwithstanding any declaration or sentence of excommunication, or deprivation made or granted, or to be made or granted by the pope or his successors, or by any authority derived or pretended to be derived from him or his see, against the said king, his heirs and successors, or any absolution of the said subjects from their obedience, I will bear faith and true allegiance to his majesty, his heirs and successors, and him and them will defend to the uttermost of my power against all conspiracies and attempts whatsoever, which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration, or otherwise, and will do my best endeavour to disclose and make known unto his majesty, his heirs and successors, all treasons and traitorous conspiracies, which I shall know or hear of to be against him, or any of them.

"And I do further swear, that I do from my heart abhor and detest and abjure, as impious and heretical, this damnable doctrine and position, that princes, which be excommunicated or deprived by the pope, may be deposed or murdered by their subjects, or any other whatsoever.

"And I do believe, and in conscience am persuaded, that neither the pope nor any person whatsoever, hath power to absolve me of this oath, or any part thereof, which I acknowledge by good and lawful authority to be lawfully administered unto me, and I do renounce all pardons and dispensations to the contrary. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, or mental evasion, or secret reservation whatsoever. And I do make this recognition and acknowledgment heartily, willingly, and truly, upon the true faith of a Christian. So help me God.

And the statute of 7 Jacobi cap. 6. recites, that "Whereas by a statute made in the third year of the said king's reign; the form of an oath to be ministered and given to certain persons in the same act mentioned, is limited and prescribed, tending only to the declaration of such duty, as every true and well-affected subject, not only by bond of allegiance, but also by the commandment of Almighty God, ought to bear to the king, his heirs and successors; which oath such as are infected with popish superstition do oppunge with many false and unsound arguments, the just defence whereof the king had therefore undertaken and worthily performed, to the great contentment of all his subjects, notwithstanding the gainsayings of contentious adversaries. And to shew how greatly the king's loyal subjects do approve the said oath, they beseech his majesty, that the said oath be administered to all his subjects."

The pope and authority of the see of Rome run through the first paragraph: "Notwithstanding any declaration or sentence of excommunication, &c." governs the second paragraph: "Excommunicated and deprived the pope" are the material words

in the third paragraph. The fourth is added in *majorem cautelam*, in opposition to the popish doctrine of "dispensing with oaths, absolving subjects from their allegiance equivocations, mental evasions," &c.

So that as the oath of supremacy did but enforce the ancient oath of fealty, with an acknowledgment of the queen's supreme authority in ecclesiastical causes and things, as well as temporal, and a renunciation of all foreign jurisdictions, so the oath of allegiance does but enforce the same old oath of fealty, by obliging the subjects of England expressly to disown any lawful authority in the pope or see of Rome, to depose, invade, or annoy the king, his dominions or subjects. And notwithstanding any sentence of excommunication, deprivation, &c. by the pope, &c. to bear faith and true allegiance to the king, his heirs and lawful successors, and to abjure that position, that it is lawful to depose princes that are excommunicated or deprived by the pope.

Whatever is added, is either oath over and above what was expressed in the old oath of fealty, is but as explanatory of it, and branching it out into such particulars as their and occasion required.

So that the oaths of supremacy and allegiance not having altered the terms of allegiance due from the people of England to their princes, if their princes by ancient laws of the realm, and by the practice of our forefathers, were liable to be deposed by the great councils of the nation, for mal-administration, oppressions, and other exorbitancies, for not keeping their coronation-oaths, for insufficiency to govern, &c. then they continue still liable to be deposed in like manner, the said oaths, or any obligation contracted thereby, notwithstanding.

For the practice of former times, I shall begin with a very ancient precedent in the kingdom of the West Saxons, viz.

Cudred, King of West Saxony, being dead, Sigebert, his kinsman, succeeded him in that kingdom, and held it but a small time; for being puffed up with pride by the successes of King Cudred, his predecessor, he grew insolent, and became intolerable to his people. And when he evil intreated them all manner of ways, and either wrested the laws for his own ends, or eluded them for his own advantage, Cumbra, one of his chief officers, at the request of the whole people, intimated their complaints to the savage king. And, because he persuaded the king to govern his people more mildly, and that laying aside his barbarity he would endeavour to appear acceptable to God and man, the king immediately commanded him to be put to death, and, increasing his tyranny, became more cruel and intolerable than before: Whereupon, in the beginning of the second year of his reign, because he was arrived to an incorrigible pitch of pride and wickedness, the nobles and the people of the whole kingdom assembled together, and upon mature deliberation, did, by unanimous consent of them all, drive him out of the king-

Cudredo, Rege West-Saxiæ, defuncto, Sigebertus cognatus ejus sibi in eadem regno successit; brevi tamen tempore regnum tenens, nam ex Cudredi regis precessoris sui eventibus tumefactus, et insolens intolerabilis suis fuit cum autem eos modis omnibus male tractaret, legesque vel ad commodum suum depravaret, vel pro commodo suo devitaret; Cumbra, consul ejus nobilissimus prece totius populi regi fero eorum querimonias intimavit. Et quia ipse regi suaserat, ut lenius populum suum regeret, et inhumanitate deposita Deo et hominibus amabilis apparet. Rex eum impia nece mox interfici jubens, populo sævior et intolerabilior quam prius suam tyrannidem augmentavit, unde in principio secundi anni regni sui cum incorrigibilis superbiæ et nequitie esset, congregati sunt procures et populi totius regni et eum provida deliberatione a regno unanimi consensu omnium expellebant. Cujus loco Kenwolfum juvenem egregium de regia stirpe oriundum, in regem super populum et regnum West-Saxiæ elegerunt.—Collect. 769, 770. Ibid. p. 795, 796.

dmo. In whose stead they chose Ken-
wolph, an excellent youth, and of the roy-
al blood, to be king over the people and
kingdom of the West Saxons.—*Collect. p.*
769, 770. *Ibid. p.* 795, 796.

This deposition of King Sigebert appears to have been done in a formal and orderly manner, viz. in a convention of the *proceres* and the *populus totius regni*; and it was done *providd deliberatione, et unanimi omnium consensu*, and consequently was not an act of heat, rebellion, or tumultuary insurrection of the people, but was what the whole nation apprehended to be legal, just, and according to the constitution of their government, and no breach of their oaths of allegiance.

Nor have we any reason to wonder that the English nation should free themselves in such a manner from oppression, if we consider that by an ancient positive law enacted in King Edward the Confessor's time, and confirmed by William the Conqueror, the kings of England are liable to be deposed if they turn tyrants.

The king, because he is the vicar of the supreme King, is constituted to this end and purpose, that he may govern his earthly kingdom and the people of the Lord, and especially to govern and reverence God's holy church, and defend it from injuries, and root out, destroy, and wholly to extirpate all wrong-doers; which, if he do not perform, he shall not retain so much as the name of a king. And a little after, the king must act all things according to law, and by the judgment of the *proceres regni*. For right and justice ought to reign in the realm, rather than a perverse will. It is the law that makes right; but wilfulness, violence, and force, is not right. The king ought above all things to fear and love God, and to keep his commandments throughout his kingdom. He ought also to preserve, to cherish, maintain, govern, and defend against its adversaries, the church within his kingdom entirely, and in all freedom, according to the constitution of the fathers, and of his predecessors, that God may be honoured above all things, and always be had before men's eyes. He ought also to set up good laws and approved customs, and to abolish evil ones, and put them away in his kingdom. He ought to do right judgment in his kingdom, and maintain justice by advice of the *proceres regni sui*. All these things the king, in proper person, looking upon and touching the holy gospels, and upon the holy and sacred reliques, must swear in the presence

Rex autem, quia vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum et populum domini, et super omnia sanctam veneretur ecclesiam ejus et regat et ab injuriis defendat, et maleficos ab ea evellat et destruat, et penitus disper. Quod nisi fecerit, nec nomen regis in eo constabit. Et paulò post; debet rex omnia ritè facere in regno, et per judicium procerum regni. Debet enim jus et justitia magis regnare in regno, quàm voluntas prava. Lex est semper quod jus facit, voluntas autem, violentia et vis non est jus. Debet verò rex deum timere super omnia et deligere, et mandata ejus per totum regnum suum servare. Debet etiam sanctam ecclesiam regni sui cum omni integritate et libertate juxta constitutiones patrum et prædecessorum servare, fovere, manutenere, regere, et contra inimicos defendere, ita ut Deus præ cæteris honoretur, et præ oculis semper habeatur. Debet etiam bonas leges et consuetudines approbatas erigere, pravas autem delere, et omnes à regno deponere. Debet judicium rectum in regno suo facere, et justitiam per consilium procerum regni sui tenere. Ista verò debet omnia rex in propria persona, inspectis et tactis sacrosanctis evangeliiis, et super sacras et sanctas reliquias coram regno et sacerdotio et clero jurare antequam ab archiepiscopis et episcopis regni coronetur.—*Lamb. de Priscis Anglorum Legibus, p. 142.*

of his people and clergy to do, before he be crowned by the archbishops and bishops of the kingdom.—*Lamb, of the Ancient Laws of England, pag. 142.*

Another instance of the deposition of a king of England, subsequent to this law, we find in King John's time, whose oppressions and tyrannical government our histories are full of. Of which take this following account out of a very ancient historian :—

Whereas the said John had sworn solemnly at his coronation, as the manner is, that he would preserve the rights and usages of the church and realm of England, yet, contrary to his oath, he subjected, as far as in him lay, the kingdom of England, which has always been free, and made it tributary to the pope, without the advice and consent of his barons; subverting good customs, and introducing evil ones; endeavouring by many oppressions, and many ways, to enslave both the church and the realm, which oppressions you know better than I, as having felt them by manifold experience. For which causes, when after many applications made, war was waged against him by his barons; at last, among other things, it was agreed, with his express consent, That in case the said John should return to his former villainies, the barons should be at liberty to recede from their allegiance to him, never to return to him more. But he, after a few days, made his latter end worse than his beginning, endeavouring not only to oppress his barons, but wholly to exterminate them; who, therefore, in a general assembly, and with the approbation of all the realm, adjudging him unworthy to be king, chose us for their lord and king.—*Collect. p. 1868, 1869. Chron. W. Thorn.*

Cum præfatus Johannes in coronatione suâ solennitèr prout moris est jurasset, se jura et consuetudines ecclesiæ et regni Angliæ conservaturum, contra juramentum suum absque consilio vel consensu baronum suorum idem regnum, quod semper fuit liberum, quantum in ipso fuit, domino papæ subjecit, et fecit tributarium, bonas consuetudines subvertens, malas inducens, tam ecclesiam quam regnum multes oppressionibus multesque modos studens ancillare, quas oppressiones vos melius nostis, quam nos, ut qui eas familiari sensestis experimento. Pro quibus, cum post multas requisitiones guerra mota esset contra ipsum & baronibus suis. tandem inter cætera de ejus expresso consensu ita convenit, ut si idem Johannes ad flagitia prima rediret, ipse barones ab ejus fidelitate recederent, nunquam ad eum post modum reversuri. Verùm ipse nihilominus paucis diebus evolutis, fecit novissima sua pejora prioribus, studens barones suos non tantum opprimere, sed potiùs penitus exterminare. Qui de communi regni consilio et approbatione ipsum regno judicantes indignum, nos in regem et dominum elegerunt.—*Collect. 1868, 1869. Chron. W. Thorn. Lewis's Letter to the Abbot of St Austins, Canterbury.*

The next instance shall be that of King Edward the Second. The record of whose deposition, if it were extant, would probably disclose all the legal formalities that were then accounted proper for the deposing an unjust, oppressive king; but they were cancelled and embezzled (as is highly probable from Rastal's Stat. pag. 170, 171, compared with the articles exhibited in parliament against King Richard the Second, of which hereafter) in King Richard the Second's time, and by his order: yet the articles themselves are preserved in the Collect., and are as followeth, viz.—

Accorde est que Sire Edward Fitz ainsne du roy ait le government du royaume et

It is accorded that Prince Edward, the king's eldest son, shall have the govern-

soit roy couronne, pur les causes que s'ensuent :—

1. Pur cœo que la person le roy n'est pas suffisant de gouverner. Car en tout son temps il ad estre mene et gouverne per auters que ly ont mavaisement conseillez, à deshonneur de ly et destruction de Saint Eglise, et de tout son people sanz cœo que il le vousist veer ou conuster lequel il fust bon ou mauveys ou remede mettre, ou faire le vousist quant il fuit requis par les grants et sages de son royaume, ou souffrir que amende fuist faite.

2. Item, par son temps il ne s' voloit doner à bon counsel, ne le croire, ne à bon government de son royaume, mes se ad done tous jours as ouvrages et occupations nient convenables, enterlessant l'exploit des besoignes de son royaume.

3. Item, par defect de bon government ad il perdu le royaume d'Escoce et auters terres et seigneuries en Gascoine et Hyrland, les queux son pere le leisa en pees et amistè du roy de France, et dets mults des auters grants.

4. Item, par sa fiertè et qualte et par mauveys counsel ad il destruit saint esglise, et les persons de saint esglise tenus en prison les uns : et les auters en distresce, et auxynt plusors grants et nobles de sa terre mys à honteuse mort, enprisonnes, exulets et desheritez.

5. Item, là ou il est tenus par son serment à faire droit à toute il ne l' ad pas volu faire, pur son propre proffitt et covetise de ly, et de ces maveis consailires, que ount este pres de ly, ne ad garde les auters points del serment qu'il fist à son corone-ment, si come il fuest tenus.

6. Item, il deguerpist son royaume et fist tant come en ly fust que son royaume et son people fust perduz, et que pys est, pur la cruaute de ly et defaute de sa personne il est trove incorrigible saunz esperance de amendment, les queux choses sont si notoires, qu'ils ne pount este desdits.

For these causes, de consilio et assensu omnium praelatorum, comitum et baronum et totius communitatis regni amotus est à

ment of the kingdom, and be crowned king for the causes following :—

1. For that the person of the king is insufficient to govern : For that during his whole reign he has been led and governed by others, who have given him evil council, to his dishonour and the destruction of holy church, and of all his people ; he being unwilling to consider or know what was good or evil, or to provide remedy even when it was required of him by the great and wise men of his realm, or suffer any to be made.

2. Also, during all his time, he would neither hearken to nor believe good council, nor apply himself to the good government of his realm, but hath always given himself over to things and occupations altogether inconvenient, omitting in the mean time the necessary affairs and business of the kingdom.

3. Also, for want of good government he hath lost the kingdom of Scotland, and other lands and territories in Gascoine and Ireland, which his father left him in peace and friendship with the French king, and with many other grandees.

4. Also, by his pride and arrogance and evil council, he hath destroyed holy church ; imprisoning some persons thereof, and put others in distress. And also he hath put to a shameful death, imprisoned, and disinherited many of the great men, and nobles of the land.

5. Also, whereas he is bound by his oath to administer justice to all, he would not do it, through his own covetousness, and that of evil counsellors that were about him ; neither hath he kept the other points of the oath, which he took at his coronation, as he was bound.

6. Also, he hath wasted his kingdom, and did what in him lay, that his realm and people should be destroyed ; and, which is worse, by his cruelty and personal failings or defects he is found to be incorrigible, and past all hopes of amendment. All which things are so notorious, that they cannot be denied.

For these causes, by advice and assent of all the prelates, earls, and barons, and of the whole commonalty of the kingdom, he

regimine regni.—[*Apolog. Ade de Orleton*, was deposed from the government. [Apology of Adam de Orleton, Collect. p. 2765, 2766.] Collect. p. 2765, 2766.]

These proceedings against King Edward the Second are no where extant but in that author ; which is the less to be wondered at, if we consider, that in King Richard the Second's time the king's parasitical court-favourites so influenced the judges, that to the question, " How he was to be punished, that moved in the parliament, that the statute should be sent for, whereby Edward, the son of King Edward, was another time indicted in the parliament," they answered, " That as well he that moved, as the other who by force of the same motion brought the said statute in the parliament-house, be as criminous and traitors worthy to be punished." V. Rastal's Statutes, 170, 171, (though for that and other extravagant, pernicious, and treasonable opinions delivered, those judges were severely punished, as is notoriously known.) And also, that it was afterwards one article of impeachment against King Richard the Second, " That he had cancelled and razed sundry records."

In King Richard the Second's time, many animosities arose from time to time betwixt him and his parliaments ; insomuch, that in the eleventh year of his reign, the parliament then sitting at London, the king absented himself from them, and stayed at Eltham, refusing to come at them, and join with them in the public affairs, upon which occasion the lords and commons sent messengers to him with an address, which the historian H. Knighton sets forth at large, and which I will here give the reader a transcript of at large, because it will afford many useful inferences and observations.

Salubri igitur usi consilio miserunt, de communi assensu totius parliamenti dominum Thomam de Wodestoke, Ducem Glocestrie, et Thomam de Arundel, Episcopum Elyensem, ad regem apud Eltham, qui salutarent eum ex parte procerum et communium parliamenti sui, sub tali sensu verborum ei referentes vota eorum.

Domine rex, proceres et domini atque totus populus communitatis parliamenti vestri, cum humilimâ subjectione se commendant excellentissimo regalis dignitatis vestræ, cupientes prosperum iter invincibilis honoris vestri contra inimicorum potentiam, et validissimum vinculum pacis et dilectionis cordis vestri erga subditos vestros, in augmentum commodi vestri, erga Deum, et salutem animæ vestræ, et ad inedicibilem consolationem totius populi vestri quem regitis: Ex quorum parte hæc vobis intimamus, quod ex antiquo statuto habemus, et consuetudine laudabili et approbata, cujus contrarietati dici non valebit, quod rex noster convocare potest dominos et proceres regni atque communes semel in anno ad parlamentum suum, tanquam ad summam curiam totius regni, in

Wherefore taking wholesome advice, they sent by common assent of the whole parliament, the lord Thomas de Woodstock, Duke of Gloucester, and Thomas de Arundel, Bishop of Ely, to the king, to Eltham, to salute him on behalf of the lords and commons of his parliament, who expressed their desires to the king to this effect :

" Sir, The lords and all the commons of your parliament, have themselves commended to your most excellent majesty, desiring the success of your invincible honour against the power of your enemies, and a most firm bond of peace and love in your heart towards your subjects, for your good Godwards, and the good of your soul, and to the unspeakable comfort of all your people whom you govern ; on whose behalf we intimate these things to you, that it appears to us by an ancient statute, and by laudable and approved usage, which cannot be denied, that our king can call together the peers of the realm and the commons once a year to his parliament, as to the supreme court of the whole kingdom, in which all right and justice ought to shine forth without any doubt or

quâ omnis æquitas relucere deberet absque qualibet scrupulositate vel nota, tanquam sol in ascensu meridiei, ubi pauperes et divites pro refrigerio tranquillitatis et pacis, et repulsione injuriarum refugium infallibile quærere possent, ac etiam errata regni reformare, et de statu et gubernatione regis et regni cum sapientiori consilio tractare, et ut inimici regis et regni intrinseci et hostes extrinseci destruantur et repellantur, quomodo convenientius et honorificentius fieri poterit cum salubri tractatu id eo disponere et prævidere; qualiter quæque onera incumbentia regi et regno levius ad ediam communitatis supportari poterunt. Videtur etiam iis, quod ex quo onera supportant incumbentia, habent etiam supervidere qualiter et per quos eorum bona et catalla expendantur. Dicunt etiam, quod habent ex antiquo statuto, quod si rex à parlamento suo se alienaverit sua sponte, non aliquâ infirmitate, aut aliquâ aliâ de causâ necessitatis, sed per immoderatam voluntatem protervè se subtraherit per absentiam temporis quâdraginta dierum, tanquam de vexatione populi sui et gravibus eorum expensis non curans, extunc licitum omnibus et singulis eorum absque domigerio regis redire ad propria, et unicuique eorum in patriam suam remeare: Et jam vos ex longiore tempore absentastis, et quâ de causâ nesciunt, venire renuistis. Ad hæc rex, Jam planè consideramus, quod populus noster atque communes intendunt resistere, atque contra nos insurgere moliantur; et in tali infestatione melius nobis non videtur, quin cognatum nostrum regem Franciæ, et ab eo consilium et auxilium petere contra insidiantes, et nos ei submittere potius quàm succumbere subditis nostris. Ad hæc illi responderunt. Non est hoc vobis sanum consilium, sed magis ducens ad inevitabile detrimentum; nam rex Franciæ capitalis inimicus vester est, et regni vestri adversarius permaximus; et si in terram regni vestri pedem figeret potius, vos spoliare laboraret, et regnum vestrum invadere, vosque à sublimitate regalis solii expellere, quam vobis aliquatenus manus adiutrices cum favore apponere; si, quod absit, ejus suffragio quandoque indigeretis. Ad me-

stain, as the sun at noonday, where poor and rich may find an infallible refuge, to enjoy the refreshments of tranquillity and peace, and for repelling of injuries; where also errors in government are to be reformed, and the state and government of king and kingdom treated upon by sage advice, and the destroying and repelling of both intestine and foreign enemies to the king and kingdom, with most convenience and honour, may be debated upon, and provided for; as also in what manner the charges incumbent upon the king and kingdom, may be borne with most ease to the commonalty. They conceive likewise, that since they bear the incumbent charges, it concerns them to inspect how and by whom their goods and chattels are expended. They say also, that it appears to them by an ancient statute, that if the king absent himself from his parliament voluntarily, not by reason of sickness, or for any other necessary cause, but through an inordinate will, shall wantonly absent himself by the space of forty days, as not regarding the vexation of his people, and their great expences, it shall then be lawful to all and singular of them to return to their own homes without the king's leave: and you have now been longer absent, and have refused to come to them, for what cause they know not." "Then," said the king, "I now plainly see, that my people and the commons design to oppose me with force, and are about to make an insurrection against me: And if I be so infested, I think the best course I can take will be to apply to my cousin the King of France, and ask his advice, and pray in aid of him against those that way-lay me, and rather to submit myself to him, than be foiled by my own subjects." To which they replied, "That counsel is not for your good, but will inevitably tend to your ruin; for the King of France is your capital enemy, and the greatest adversary that your kingdom has; and if he should set his foot within your kingdom, he would rather endeavour to prey upon you, and invade your realm, and to depose you from your royal dignity, than afford you any assistance, if, which God forbid, you should stand in need of

memoriam igitur revocetis, qualiter avus vester Edwardus tertius rex, et similiter pater Edwardus princeps nomine ejus in sudore et angustiiis in omni tempore suo per innumerabiles labores in frigore et calore certaverunt indefesse pro conquisitione regni Franciæ, quod eis jure hæreditario attinebat, et vobis per successionem post eos. Reminiscamini quoque qualiter domini regni et proceres atque communes innumerabiles tam de regno Angliæ quam Franciæ, reges quoque et domini de aliis regnis atque populi innumerabiles in guerrâ illâ mortem et mortis periculum sustinuerunt, bona quoque et catalla inæstimabilia et thesauros innumerabiles pro sustentatione hujus guerræ, communes regni hujus indefesse effuderunt. Et quod gravius dolendum est, jam in diebus vestris tanta onera iis imposita pro guerris vestris sustinendis, supportaverunt, quod ad tantam pauperiem incredibilem deducti sunt, quod nec reditus suos pro suis tenementis solvere possunt, nec regi subvenire, nec vitæ necessaria sibi ipsis ministrare, et depauperatur regia potestas, et dominorum regni, et magnatum infelicitas adducitur, atque totius populi debilitas. Nam rex depauperari nequit, qui divitem habet populum; nec dives esse potest, qui pauperes habet communes. Et mala hæc omnia redundant non solum regi, sed et omnibus et singulis dominis et proceribus regni, unicuique in suo gradu. Et hæc omnia eveniunt per uniuersos ministros regis, qui malè gubernaverunt regem et regnum usque in præsens. Et nisi manus citius apponamus adiutrices, et remedii fulcimentum adhibeamus, regnum Angliæ dolorose attenuabitur tempore, quo minus opinamur. Sed et unum aliud de nuncio nostro superest nobis ex parte populi vestri vobis intimare. Habent enim ex antiquo statuto, et de facto non longe retroactis temporibus experienter quod dolendum est habito, si rex, ex maligno consilio quocunque, vel inepta contumacia, aut contemptu, seu proterva voluntate singulari, aut quovis modo irregulari, se alienaverit, à populo suo, nec voluerit per jura regni et statuta ac laudabiles ordinationes cum salubri consilio dominorum et procerum regni guber-

his help." Call to mind therefore, how your grandfather King Edward III. and your father Prince Edward for him, fought indefatigably in sweat and sorrow all their days, and went through innumerable hardships of cold and heat, to acquire the kingdom of France, which by hereditary right appertained to them, and does now to you by succession after them. Remember likewise, how innumerable lords and commons of both realms, and kings and gentlemen of other kingdoms, and people innumerable, perished, or hazarded perishing, in that war; and that the commons of this realm poured out goods of inestimable value, and innumerable sums of money, for the carrying on of that same war; and, which is more to be lamented, they have now in your days undergone such heavy taxes towards the maintaining of your wars, that they are reduced to such incredible poverty, that they cannot so much as pay their rents for their farms, nor aid the king, nor afford themselves necessities; and the king himself is impoverished, and the lords become uneasy, and all the people faint; for a king cannot become poor that has a rich people; nor can he be rich whose people are poor. And all these mischiefs redound not to the king only, but also to all and singular the peers of the realm, in proportion: And all these mischiefs happen by means of the king's evil ministers, who have hitherto misgoverned both the king and kingdom; and if some course be not taken, the kingdom of England will be miserably diminished sooner than we are aware. But there remains yet another part of our message, which we have to impart to you on the behalf of your people. They find in an ancient statute, that it has been done in fact not long ago, that if the king through any evil counsel, or foolish contumacy, or out of scorn, or some singular petulant will of his own, or by any other irregular means, shall alienate himself from his people, and shall refuse to be governed and guided by the laws of the realm, and the statutes and laudable ordinances thereof, together with the wholesome advice of the lords and great men of his realm, but persisting.

nari et regulari, sed capitate in suis insanis consiliis propriam voluntatem suam singularem proterve exercere, extunc licitum est iis, cum communi assensu et consensu populi regni ipsum regem de regali solio abrogare, et propinquiorem aliquem de stirpe regia loco ejus in regni solio sublimare.—*H. Knighton, Coll. 2681.*

head-strong in his own hair-brained counsel, shall petulantly prosecute his own singular humour, that then it shall be lawful for them, with the common assent and consent of the people of the realm, to depose that same king from his regal throne, and to set up some other of the royal blood in his room.—*H. Knighton, Coll. 2681.*

No man can imagine that the lords and commons in parliament would have sent the king such a message, and have quoted to him an old statute for deposing kings that would not govern according to law, if the people of England had then apprehended that an obedience without reserve was due to the king, or if there had not been such a statute in being. And though the record of that excellent law be lost, as the records of almost all our ancient laws are, yet is the testimony of so credible an historian, who lived when these things were transacted, sufficient to inform us that such a law was then known and in being, and consequently that the terms of English allegiance, according to the constitution of our government, are different from what some modern authors would persuade us they are.

This difference betwixt the said king and his parliament ended amicably betwixt them, in the punishment of many evil counsellors, by whom the king had been influenced to commit many irregularities in government.

But the discontents of the people grew higher by his after-management of affairs, and ended in the deposition of that king, and setting up of another, who was not the next heir in lineal succession.

The articles against King Richard the Second may be read at large in *H. Knighton, Collect. 2746, 2747, &c.* and are yet extant upon record. An abridgment of them is in *Cotton's Records*, page 386, 387, 388, out of whom I observe these few, there being in all thirty-three.

The first was, His wasting and bestowing the lands of the crown upon unworthy persons, and overcharging the commons with exactions. And that whereas certain lords, spiritual and temporal, were assigned in parliament to intend the government of the kingdom, the king by a conventicle of his own accomplices endeavoured to impeach them of high-treason.

Another was, For that the king by undue means procured divers justices to speak against the law, to the destruction of the Duke of Gloucester, and the Earls of Arundel and Warwick, at Shrewsbury.

Another, For that the king against his own promise and pardon, at a solemn procession, apprehended the Duke of Gloucester, and sent him to Calais, there to be choaked and murdered; beheading the Earl of Arundel, and banishing the Earl of Warwick, and the Lord Cobham.

Another, For that the king's retinue, and a rout gathered by him out of Cheshire, committed divers murders, rapes, and other felonies, and refused to pay for their victuals.

Another, For that the crown of England being freed from the pope, and all other foreign power, the king notwithstanding procured the pope's excommunication on such as should break the ordinances of the last parliament, in derogation of the crown, statutes, and laws of the realm.

Another, That he made men sheriffs, who were not named to him by the great offi-

cers, the justices and others of his council; and who were unfit, contrary to the laws of the realm, and in manifest breach of his oath.

Another, For that he did not repay to his subjects the debts that he had borrowed of them.

Another, For that the king refused to execute the laws, saying, That the laws were in his mouth and breast, and that himself alone could make and alter the laws.

Another, For causing sheriffs to continue in office above a year, contrary to the tenor of a statute-law, thereby incurring notorious perjury.

Another, For that the said king procured knights of the shires to be returned to serve his own will.

Another, For that many justices, for their good counsel given to the king, were with evil countenance and threats rewarded.

Another, For that the king passing into Ireland, had carried with him, without the consent of the estates of the realm, the treasure, reliques, and other jewels of the realm, which were used safely to be kept in the king's own coffers from all hazard; and for that the said king cancelled and razed sundry records.

Another, For that the said king appeared by his letters to the pope, to foreign princes, and to his subjects, so variable, so dissembling, and so unfaithful and inconstant, that no man could trust him that knew him; insomuch, that he was a scandal both to himself and the kingdom.

Another, That the king would commonly say amongst the nobles, that all subjects' lives, lands, and goods were in his hands without any forfeiture; which is altogether contrary to the laws and usages of the realm.

Another, For that he suffered his subjects to be condemned by martial law, contrary to his oath, and the laws of the realm.

Another, For that whereas the subjects of England are sufficiently bound to the king by their allegiance, yet the said king compelled them to take new oaths.

These articles, with some others, not altogether of so general a concern, being considered, and the king himself confessing his defects, the same seemed sufficient to the whole estates for the king's deposition, and he was deposed accordingly.

The substance and drift of all is, that our kings were anciently liable to, and might lawfully be deposed for oppression and tyranny, for insufficiency to govern, &c. in and by the great council of the nation, without any breach of the old oath of fealty, because (to say nothing of the nature of our constitution) express and positive laws warranted such proceedings: And therefore the frame of our government being the same still, and the terms of our allegiance being the same now that they were then, without any new obligations superinduced by the oaths of allegiance and supremacy, a king of England may legally at this day, for sufficient cause, be deposed by the lords and commons assembled in a great council of the kingdom, without any breach of the present oaths of supremacy or allegiance. *Quod erat demonstrandum.*

MANTISSA.

When Stephen was King of England, whom the people had chosen rather than submit to Maud, though the great men of the realm had sworn fealty to her in her father's life-time, Henry Duke of Anjou, son of the said Maud, afterwards King Henry the Second, invaded the kingdom *anno Dom.* 1153, which was towards the latter end of King Stephen's reign; and Theobald, Archbishop of Canterbury, endeavoured to mediate a peace betwixt them, speaking frequently with the king in private, and sending many

messages to the duke ; and Henry, Bishop of Winchester, took pains likewise to make them friends. *Factum est autem, ut mense Novembris, in fine mensis, ex præcepto Regis et Ducis, convenirent apud Wintoniam Præsules et Principes Regni, ut et ipsi jam initæ paci præberent assensum, et unanimiter juramenti sacramento confirmarent,*¹ i. e. It came to pass, that in the month of November, towards the latter end of the month, at the summon of the king and of the duke, the prelates and great men of the kingdom were assembled at Winchester, that they also might assent to the peace that was concluded, and unanimously swear to observe it.

In that parliament the duke was declared King Stephen's adopted son, and heir of the kingdom, and the king to retain the government during his life.

I observe only upon this authority, that there being a controversy betwixt the king and the duke, which could no otherwise be determined and settled but in a parliament, the summons of this parliament were issued in the names of both parties concerned.

Quisquis habet aures ad audiendum, audiat.

Mijn Heer T. Van C.'s Answer to Mijn Heer H. Van L.'s Letter of the 15th of March, 1689 ; representing the true Interests of Holland, and what they have already gained by our Losses.

The principal hold which the malcontents had upon the passions and prejudices of the English nation, was by exaggerated complaints of King William's partiality for his countrymen. The Dutch mean time were not without their suspicions, though perhaps they had less real foundation.

"His majesty," according to the historian we have often quoted, "was indeed as good a Dutchman as ever, though no better republican. When he was on the point of taking possession of the English throne, he had communicated the glad tidings by letter to his good friends the States, assuring them withal, That his new dignity, instead of diminishing his affection for the republic, or his concern for its preservation and prosperity, would enable him to discharge the duty of *Stadtholder* with more weight and success than before ; and that he would make it the business of his reign to establish and maintain a perfect intelligence between the two states. Possibly there was a secret stipulation, that in case he succeeded in his designs in England, he should forego the stadtholdership ; and possibly it was in this expectation that the *Louvestein* faction, his ancient enemies, had co-operated in the expedition with as much zeal as his own. It is certain that this dispatch was no sooner received in Holland than his enemies there spoke of him with more bitterness than ever, giving out, that he had stript the republic of its money, ships, and troops, not only to make himself master of England, but to reduce his own country also to a blind submission to his sovereign will and pleasure : and hence he lay under a sort of necessity to expedite the payments of the Dutch demands, and even to admit them to a share of the profit of his voyage, to maintain his credit at home."—RALPH, II. 80.

This pamphlet was written to excite the public jealousy of William's preferences in favour of Holland and its inhabitants.

¹ Collect. page 1374, 1375.

SIR,

You may think me very rude in making no quicker a return to your obliging letter; but the truth on't is, my apprehensions at that time lest the late King James should return, by the aid of the French and Irish, were so great, that they blinded my understanding, and made me so stupid, that I could not see any probable appearance of those glorious advantages which you affirmed would accrue to our country, though he should regain his kingdoms, and force his present majesty to abdicate as he had done; and therefore I declined writing, till actions might convince us whether you or I were in the right.

But now, sir, I must confess my error, and acknowledge that we almost feel what you then foresaw. 'Tis true we have some amongst us who are still as blind as I was then, and these occasion no small divisions here as well as with you, and an inclination in some persons to renounce his authority, and acknowledge him no more to be our stadtholder. Against these I oppose your arguments, and many more of my own, which I shall here subjoin, hoping they may be of use with you, and have the same effect they begin to have with us. For I assure you, sir, our leading men begin now to look upon him with another eye; and they who consider what he has hitherto done, what he is now acting, and what we have just reason to hope he will effect to our advantage, before he quits them and returns, are ready to prepare golden statutes for him. as for one that has procured us a long wished for liberty at sea, freed his native country from the greatest obstacles to their trade, suppressed those who have always been the objects of our envy, rendered them for ever incapable of standing in competition with us, diverted the channel of traffick to our own merchants, and all this in one year's time, without any charge to us; nay, on the contrary, with a considerable reward from our adversaries for their own destruction. To evince all which,

I. First, I shew them the good he has done for us.

In order to which, I beg of them to consider the condition we were in before this revolution, and to compare it with that we are in at present.

'Tis certain England had robbed us of our trade in the two last kings' reigns, who by an unlucky neutrality had made the stream of traffick run that way. 'Tis certain also the late King James was taking most mischievous measures to continue and augment their trade, and ruin ours; for if the liberty of conscience, which he was going to establish, had not been prevented, the most considerable of our merchants (who live amongst us because they are not molested in the free exercise of their religion) would have removed, and drawn their effects to England, where the ports being more secure, they would, without hazarding their religion, have run less danger of their goods. 'Tis manifest also, and foreseen by our wise men, that (whilst it was impossible for us to stave off a war with France) K. James, whose industry and application to the advancement of trade made him embrace all occasions to encourage it, would have preserved a neutrality to our utter ruin. These, and many other considerations, (as I affirm,) made us willing to pluck the thorn out of our own foot and put it into another's; and therefore, after much consultation, nothing was found so expedient as to heighten the divisions in England, and join with the mal-contents. So that what the ridderscap, (i. e. nobility,) together with the deputies of other cities, have here lately alledged against the resolutions of the city of Amsterdam [p. 6, 7.] is now manifest, though formerly kept as a secret, and stoutly denied to the late king by our ambassador in England, that the "prince did not undertake that expedition without the previous communication, full approbation, and good pleasure of the states; and that the States-General were moved so considerably to assist him therein principally for the liberty and prosperity of our dear native country."

Moreover, I tell them in our state words, [pag. 9.] "That this expedition having

been effected by the assistance of the arms of the States-General, and with an aim at the saving of the state, ought not to be accounted a foreign expedition." And that [pag. 7.] seeing "by the admirable providence of Almighty God, under the wise and valiant conduct of his majesty of Great Britain, it had that success which is known to all the world, the states expect no other but that it should necessarily tend to a narrower and stricter union of these kingdoms with this state, and that the states shall be thereby made more fit and able to grapple with all the ill designs with which the enemies of these lands have threatened us."

Having thus represented to them the condition we were in, and the benefit we hoped to reap by the expedition, I proceed to shew that we were not out in our politicks, and that however his present majesty has behaved himself to others, he has still been true to our interest, and faithful to the promises he has made us.

And to prove this, I shew them how careful he has been (notwithstanding the urgent occasions he has had for money) to repay us the 600,000*l.* which our states laid out upon the expedition; whereas, being now K. of England, he might, with justice enough, have discounted it upon the old scores betwixt us and that nation ever since Queen Elizabeth's protection.

How speedily he sent us succours; 12,000 of their best men to weaken their strength and fortify us, ever before he took care to establish his own footing in Scotland, or proceed to the reduction of Ireland.

How careful he has been to put the strongest places of trust into the hands of our countrymen, or at least such as our ambassadors and the Earl of Portland were secure of, who, in case of a turn of times, will be able to hold them out till we can pour in fresh supplies.

How religiously he has observed his promise of making no advance without the advice and approbation of our ambassadors and Min Heer Bentingh, to whom he has caused all the strength and weakness, together with all the commodious ports, landing places, and creeks of that kingdom, to be imparted.

How by their advice he has dispersed the English troops, some even to both the Indies, that he may more easily govern by a foreign force, and have no dependence upon such as had no regard to their natural allegiance, and repeated oaths of fidelity, to a prince that loved them.

I also represent to them the condition of the English fleet and merchants: How many thousands have died this summer for want of wholesome provisions, and even through scarcity of them also (which destruction of seamen is of mighty importance to us) how many men of war have been lost. How the merchant-men have had their seamen pressed from their ships, and by that, and embargoes and storms this year, have lost above two millions: and desire them to consider, that he who has been brought up amongst us, is not a stranger to what belongs to a fleet and trade; so that the miscarriages of both these cannot be attributed to his want of judgment or application, but to a further design of weakening that kingdom, and advancing us.

I tell them how he was once going to remove all, or most of the English captains of ships, and put ours in their places, which had certainly been done, but that it would too soon have made the secret known to the nation.

I also shew them, that notwithstanding the vast stock he has in bank amongst us, he has been so cautious, both for his own concern and ours, as not to touch one penny of it, but has made the people of England furnish him even beyond their powers, and yet runs daily in debt there for stores and provisions, nay, even for his soldiers' pay; by which means, if he increase not his own stock, (of which I have at present no positive account,) he at least impoverishes them to our wish, so that hereafter they will be able to do nothing without our assistance.

'Tis true he has given out there, that the Earl of Portland is to draw 20,000*l.* out of

his stock in the East India trade; but we know when that money was sent from England, and what plate was melted down to help to make up the sum, and that this at least shall be hereafter added to his bank is more than probable.

These things I demonstrate to them as done for us, and then shew what benefit we have already reaped by these proceedings.

That we have (as I said before) established our interest upon a firm and lasting foundation, by their utter ruin, being now masters of the whole trade of the inhabitable world.

That whilst he has denied convoys to their merchant ships, pressed their seamen, and, after promises to the contrary, clapped embargoes upon all their outward-bound ships, we have sent out ours with all freedom, and have by that means got the choice of all foreign commodities at easy rates, if not the sole emption of them, and vented our own at our own price.

That by these means and his permitting us to carry all sort of commodities into England in our own bottoms, our country is enriched by this year's war treble to what we expended for the expedition, besides the prospect of a perpetual enjoyment of a free sea and traffick: nay, we may hope in time (as I shall shew hereafter) to ride masters of the British sea, and make them lower their topsails to us.

II. In the second place, to shew what he is now doing to our advantage, I tell them that I need only mention these actions, by which 'tis manifest he has our interest in his eye, and uses all means to give us a lasting insurance of all these good things he has procured for us; but, besides all these, has he not moreover sent the Earl of Portland amongst us with fresh proposals, if we will further lend him our assistance?

Are not these proposals so advantageous to our interest, that our states, who know them, are more than willing to assist him with greater numbers of men and ships this summer than they did the last? Again,

Does he countenance their merchants, or hearken to their proposals for the advancement of trade, any more now than he did the last year?

Is he not raising fresh recruits, and daily sending them hither in exchange for ours? And does he not pay both the one and the other, (or at least engage for the payment,) by which a good part of our army is maintained for us? Has he not all the last summer been at two-thirds of the charges for maintaining the war by sea, notwithstanding that it was principally entered into upon our accounts, and that we are likely to be the only gainers?

Has he not of late prorogued and dissolved their parliament, that he may espouse the church of England's interest, by which means the liberty of conscience we so much dread can never be established, and by which means all conscientious dissenters will, with the Jews, be again forced to take their retreat amongst us?

Are not these, and many more, which he does for us, and permits us to do for ourselves, such things as no kings of England would ever have suffered, and such as would have caused a war betwixt our states and them? And yet these things he does for us, and has done, and we are not satisfied. Let us, therefore, see,

III. Thirdly, and lastly, what good we may hope he will do for us, if we obstruct not his designs.

This depends much upon future contingencies, and measures are taken to fit all occasions.

If he find it possible to maintain his ground against the late King James, and the power of France, he knows it cannot be without our help, and our confederates assistance; and we know upon what terms we will lend him such as will be efficacious. We have (as I have already mentioned) long wished for a *mare liberum*, and could not endure the kings of England should be kings at sea, and make us lower our topsails to them, or be subject to such laws as they prescribed. And will we, think you, lose so happy an opportunity of stripping them of that prerogative, or, if we can, of making

use of it ourselves? We know he is of a changeable humour, but yet we know also his ambition, and he cannot gratify his pride without being kind to us, and no kindness can endear so much as to give us up that prerogative by which we may have a free sea, and a plentiful trade above our competitors.

For this it is our states are now labouring, and I hope all the opposition some of them seem to make, is but to facilitate this and the other concessions we would have.

But if he find it impossible for him to keep the throne, (as it is most likely,) his designs we now know are what you formerly told me, To fleece that proud and pampered nation, and leave them neither men nor money, nor ammunition, nor ships, nor any thing to enable them to make war against us, or carry on a trade.

Indeed, by all appearances, we may conjecture that he gives up the crown as lost, and that this is the reason why he has already emptied the forts of arms and ammunition, the exchequer of money, and his palace of plate, furniture, and jewels. He has borrowed immense sums of the merchants, and is still borrowing more, and yet pays nobody, scarce his own guards, because 'tis supposed he reserves a city-plunder for their recompence. He has prepared 500 waggons, under pretence to go for Ireland, but we know that measures are already laid how (if King James should land and the nation return to their allegiance) he may carry off all the booty with the remainder of our army, and a considerable part of the fleet, and return to his dear native country, which will then receive him with open arms, notwithstanding all jealousies that are now cast amongst us. I am,

Min Heer,

Yours T. Van C.

The Hague, Feb. 15, 1690.

A Letter to a Member of the Committee of Grievances, containing some seasonable Reflections on the present Administration of Affairs, since managed by Dutch Councils.

It was almost an inevitable consequence of the Revolution, that the new government, in order to maintain itself, was obliged to adopt measures of force and severity too much resembling those which had incensed the nation against James II. But the difference lay here, that these severities were only incidental to the times, whereas James's were founded upon a systematic perversion of the laws of the kingdom, attempted without having provocation, far less necessity, for their apology.

SIR,

If you have read or heard of the changes between 1640 and 1660, you cannot be surprised at the accidents between 78 and 89. The pretences, the successes, the methods used and had in both are so exactly agreeable, that the last would have been impossible, but that the same men who did procure the first have occasioned the latter. The designs we observe to be the same, and we begin to feel the consequences much like the other, or rather worse. To insist on the parallel, is as needless as to shew their

malignity : It is enough now for us to bethink ourselves how we have been twice gull-ed and cheated by those men already. It is true, grievances we have had, and still have, and must expect more, as long as those are at the helm, who when they had forfeited their own interest and share in public administrations, complained of every thing which others did ; until, by murmurs, lies, libels, lampoons, and ballads, they had made others as uneasy as themselves ; that during a convulsion of state they might mount the saddle, and ride us all, and with a vengeance, as they now do. Their pretences were specious, but false. In their pamphlets they complained of falsehood and insincerity, yet never shewed us the mother of the Prince of Wales brought over in the Dutch fleet : the original league under King James's own hand with the French king, to cut protestants throats ; or the two witnesses of Essex's murder, as they promised to us. They complained of sham stories put upon the people ; yet they published and gained more by a third sham declaration, than by the former ; a sham paper of a fight in Ireland between papist and protestant, of 6000 killed of one party, and 4000 of the other ; and industriously sent men at midnight to the several corners of the town to alarm the city with fears of a massacre from the Irish, and the same throughout the country ; sham stories of the Dutch taking King James, and carrying him to Holland ; sham papers of his death, and those licensed by authority. They complained of a breach of promise, and a variance between the declaration at council-board on the 6th of February, 1685, on the behalf of the church of England, and the Declaration for Liberty of Conscience ; but will not now remember the harmony between the promise to the London clergy on the 20th of February last, for the support of the church's establishment, and " that they might depend on it ;" and the speech made in parliament the 16th of March, for to capacitate all persons, not excepting atheists, fifth monarchy-men, &c. to enjoy all the preferments and offices in the nation. They feared unqualified men should come into parliament, yet have admitted persons outlawed and attainted to it. They feared members would not take the oaths in King James's parliament, but themselves never took the new ones in eight days after they had made them, when by their own law none was to sit or vote till that was done ; and yet they sat and acted all that time, and passed the money bill, which now hath relation to a day, when by an act of parliament, 30 Car. II. cap. 1. it appears they were not qualified to make it. They complained of court officers being members of parliaments ; yet have solicited and procured the choice of many such, when for their turn. They did complain of judges not taking the oaths ; but have made several without swearing allegiance, as the statute of King James I. requires at the time of taking the oath of office. They complained of judges patents, that they were not during good behaviour ; but make all their own grants *durante bene placito*, even such as were usually for life, as the master of the rolls and the like. They complained of lewd and scandalous persons employed and encouraged with public offices ; yet preferred an outlaw, viz. R. F., to be housekeeper to the excise-office, and many others. They complained of turning out English officers to gratify the Irish with their employments ; but they are excusable to take the bread out of the mouths of hundreds of English protestants, to feed foreigners in their places. They complained of causeless removals of persons from public places ; but the bitter cries of many numerous families, depending for a livelihood upon the late owners of those employs, shew what the practice now is. They complained of closetting ; but have removed several for voting according to their consciences, as the Duke of Grafton, &c. They complained of billeting soldiers upon public-houses against the owners will ; but still do the same thing. They complained of hanging soldiers for desertion as felons ; but after long threats have now made a law, " That whosoever shall excite, cause, or join in any thing they shall call mutiny or sedition, or shall desert, shall suffer death, or such other punishment as by a court-martial shall be inflicted."

ed." They complain of a popish army; but don't assign any difference between one papist and another, while they maintain 4000 foreigners of that persuasion at the protestants charge. They complained of not taking the tests; but would not allow any term or sessions to take them in. They complained of passive obedience as an unreasonable, foolish, and impertinent doctrine; but now it is treasonable to deny it. They complained of the buying of places, yet they themselves sell all, nay, turn out all that will not pay a year's value. They complained of the treasonable collecting of the revenue after King Charles II.'s death, yet receive it without an act of parliament, and after it is devolved to the people by the abdication, as was agreed by all the lawyers in the house the first day, though the case was altered, and they changed their opinions five weeks after. They complained of oppressive subsidies; but give to the Dutch above half a million of money, even without examination of accounts, when in justice they ought to have paid us much more, being gainers by the diversion of this year's storm from themselves, by making us the seat of war to preserve their own peace. They complained of a breach upon Englishmen's liberties, by long imprisonments, for want of excessive bail demanded in evasion of the *habeas corpus* act; but themselves have absolutely suspended it, though it is hoped they may live to repent of the precedent, as an argument hereafter for the like or a longer suspension upon an alledged necessity. They complained of the encouragement given to a gentleman for writing an *Observator*; but themselves have maintained a *Gazetter* and a *Remarker*, which is two to one. They complained of Johnson's usage for writing a book, viz. *Julian the Apostate*; but gaoled the author of a sheet of paper, viz. *The Desertion discussed*. They complained of Sir Thomas Armstrong's execution without the aid of a jury, though in pursuance to a statute, viz. 5 Edw. VI. cap. 11. yet threaten others with attainders, without calling them to answer, though in prison and at forthcoming. They complained of unjust accusations and persecutions; yet Sir John Moor was prosecuted before a small committee, consisting chiefly of such persons who were his accusers, or unqualified for acting according to the known customs and usages of the city. They complained of the decay of English trade; and yet Dutch foreigners are encouraged and employed to import goods, which by law ought to be done by English bottoms only. They complained of breach of the laws, but have forgot what the law says, that there can be no *interregnum*, and that a father is elder than a child, that an uncle is preferable to a nephew, a brother before his sister, in case of inheritances. They are very pressing for a bill of comprehension and indulgence; yet are about to impose their new oaths of allegiance with the utmost rigour; hoping to raise money, or imprison or ruin all those who make conscience of their oaths to King James. And instead of preserving our properties, a fourth part of the money of the nation will scarce serve for a present supply to secure their usurpations. Thus you see what are our grievances, and how we are relieved.

Juv. Sat. 13.

*Committunt eadem diverso crimina fato;
Ille crucem pretium sceleris tulit, hic diadema.*

With different fates men act the self-same crimes,
Whilst one's reward's a cross, the other's a diadem.

The Earl of Sunderland's Letter to a Friend in the Country, plainly discovering the Designs of the Romish Party and Others, for the subverting of the Protestant Religion, and the Laws of the Kingdom.

Licensed and entered, March 23. 1689.

Robert Spenser, Earl of Sunderland, makes too prominent a figure during the reign of James II. The indecent readiness with which he changed his religion to that of the king, and his treachery in pushing the unfortunate James upon every unpopular measure, combined with his sudden retirement to Holland on the eve of the Revolution, and the publication of this letter, in order to increase the public odium against his indulgent and too partial master, can never be excused or explained away. He reaped the reward of his treachery, being made lord chamberlain of the household to King William. But being supposed to be inimical to a standing army, he was obliged to resign his office, and retire to the country in the year 1697. He died at his country seat in 1702.

To comply with what you desire, I will explain some things which we talked of before I left England. I have been in a station of great noise, without power or advantage whilst I was in it, and to my ruin now I am out of it. I know I cannot justify myself by saying, though it is true, that I thought to have prevented much mischief; for when I found that I could not, I ought to have quitted the service: Neither is it an excuse that I have got none of those things which usually engage men in public affairs: My quality is the same it ever was, and my estate much worse, even ruined, though I was born to a very considerable one, which I am ashamed to have spoiled, though not so much as if I had increased it by indirect means. But to go on to what you expect: The pretence to a dispensing power being not only the first thing which was much disliked since the death of the late king, but the foundation of all the rest, I ought to begin with that which I had so little to do with, that I never heard it spoken of till the time of Monmouth's rebellion, that the king told some of the council, of which I was one, that he was resolved to give employments to Roman catholicks, it being fit that all persons should serve who could be useful, and on whom he might depend. I think every body advised him against it, but with little effect, as was soon seen: that party was so pleased with what the king had done, that they persuaded him to mention it in his speech at the next meeting of the parliament, which he did, after many debates, whether it was proper or not, in all which I opposed it, as is known to very considerable persons, some of which were of another opinion, for I thought it would engage the king too far, and it did give such offence to the parliament, that it was thought necessary to prorogue it. After which the king fell immediately to the supporting the dispensing power, the most chimerical thing that was ever thought of, and must be so till the government here is as absolute as in Turkey, all power being

included in that one. This is the sense I ever had of it, and when I heard lawyers defend it I never changed my opinion or language; however it went on, most of the judges being for it, and was the chief business of the state, till it was looked on as settled. Then the ecclesiastical court was set up, in which there being so many considerable men of several kinds, I could have but a small part; and that after lawyers had told the king it was legal, and nothing like the High Commission Court, I can most truly say, and it is well known, that for a good while I defended Magdalen College purely by care and industry, and have hundreds of times begged of the king never to grant mandates, or to change any thing in the regular course of ecclesiastical affairs, which he often thought reasonable, and then by perpetual importunities was prevailed upon against his own sense, which was the very case of Magdalen College, as of some others.

These things which I endeavoured, though without success, drew upon me the anger and ill will of many about the king. The next thing to be tried, was to take off the penal laws and the tests, so many having promised their concurrence towards it, that his majesty thought it feasible, but he soon found it was not to be done by that parliament, which made all the catholicks desire it might be dissolved, which I was so much against, that they complained of me to the king, as a man who ruined all his designs by opposing the only thing could carry him on; liberty of conscience being the foundation on which he was to build. That it was first offered at by the Lord Clifford, who by it had done the work, even in the late king's time, if it had not been for his weakness, and the weakness of his ministers; yet I hindered the dissolution several weeks, by telling the king that the parliament in being would do every thing he could desire, but the taking off the penal laws and the tests, or the allowing his dispensing power; and that any other parliament, though such a one could be had as was proposed, would probably never repeal those laws; and if they did, they would certainly never do any thing for the support of the government, whatever exigency it might be in. At that time the King of Spain was sick, upon which I said often to the king, that if he should die, it would be impossible for his majesty to preserve the peace of Christendom; that a war must be expected, and such a one as would chiefly concern England; that if the present parliament continued, he might be sure of all the help and service he could wish, but in case he dissolved it, he must give over all thoughts of foreign affairs, for no other would ever assist him but on such terms as would ruin the monarchy; so that from abroad, or at home, he would be destroyed, if the parliament were broken, and any accident should happen, of which there were many, to make the aid of his people necessary to him. This, and much more, I said to him several times privately, and in the hearing of others; but being overpowered, the parliament was broke, the closetting went on, and a new one was to be chosen; who was to get by closetting I need not say, but it was certainly not I, nor any of my friends; many of them suffered, who I would fain have saved; and yet I must confess with grief, that when the king was resolved, and there was no remedy, I did not quit, as I ought to have done, but served on in order to the calling another parliament. In the midst of all the preparations for it, and whilst the corporations were regulating, the king thought fit to order his declarations to be read in all churches, of which I most solemnly protest I never heard one word till the king directed it in council: that drew on the petition of my lord the Archbishop of Canterbury, and the other lords the bishops, and the prosecution which I was so openly against, that by arguing continually to shew the injustice and imprudence of it, I brought the fury of the Roman catholicks upon me to such a degree, and so unanimously, that I was just sinking; and I wish I had then sunk: But whatever I did foolishly to preserve myself, I continued still to be the object of their hatred, and I resolved to serve the publick as well as I could, which I am sure most of the considerable protestants then at court can testify, and so can one eminent man of the con-

try, whom I would have persuaded to come into business, which he might have done to have helped me to resist the violence of those in power; but he despaired of being able to do any good, and therefore would not engage. Some time after came the first news of the prince's designs, which were not then looked on as they have proved, nobody foreseeing the miracles he has done by his wonderful prudence, conduct, and courage; for the greatest thing which has been undertaken these thousand years, or perhaps ever, could not be effected without virtues hardly to be imagined till seen nearer hand. Upon the first thought of his coming, I laid hold of the opportunity to press the king to do several things which I would have had done sooner; the chief of which were to restore Magdalen College, and all other ecclesiastical preferments; which had been diverted from what they were intended for, to take off my Lord Bishop of London's suspension, to put the countries into the same hands they were in some time before, to annul the ecclesiastical court, and to restore entirely all the corporations of England: These things were done effectually by the help of some about the king; and it was then thought I had destroyed myself, by engaging against the Roman catholick party, to such a height as had not been seen; they dispersed libels of me every day, told the king that I betrayed him, that I ruined him by persuading him to make such shameful condescensions; but most of all, by hindering the securing the chief of the disaffected nobility and gentry, which was proposed as a certain way to break all the prince's measures, and by advising his majesty to call a free parliament, and to depend upon that rather than upon foreign assistance. It is true I did give him those councils which were called weak to the last moment he suffered me in his service; then I was accused of holding correspondence with the prince, and it was every where said amongst them, that no better could be expected from a man so related as I was to the Bedford and Leicester families, and so allied to Duke Hamilton and the Marquis of Halifax. After this accusations of high treason were brought against me, which, with some other reasons relating to affairs abroad, drew the king's displeasure upon me, so as to turn me out of all without any consideration, and yet I thought I escaped well, expecting nothing less than the loss of my head, as my Lord Middleton can tell, and I believe none about the court thought otherwise; nor had it been otherwise if my disgrace had been deferred a day longer; all things being prepared for it, I was put out the 27th of October, the Roman catholicks having been two months working the king up to it without intermission, besides the several attacks they had made upon me before, and the unusual assistance they obtained to do what they thought so necessary for the carrying on their affairs, of which they never had greater hope than at that time, as may be remembered by any who were then at London. But you desired I would say something to you of Ireland, which I will do in very few words, but exactly true.

My Lord Tyrconnell has been so absolute there, that I never had the credit to make an ensign, or keep one in, nor to preserve some of my friends, for whom I was much concerned, from the least oppression and injustice, though I endeavoured it to the utmost of my power; but yet with care and diligence, being upon the place, and he absent, I diverted the calling a parliament there, which was designed to alter the acts of settlement. Chief Justice Nugent and Baron Rice were sent over with a draught of an act for that purpose, furnished with all the pressing arguments could be thought on to persuade the king, and I was offered forty thousand pounds for my concurrence, which I told to the king, and shewed him at the same time the injustice of what was proposed to him, and the prejudice it would be to that country, with so good success, that he resolved not to think of it that year, and perhaps never. This I was helped in by some friends, particularly my Lord Godolphin, who knows it to be true, and so do the judges before named, and several others.

I cannot omit saying something of France, there having been so much talk of a league between the two kings. I do protest I never knew of any; and if there were such a

thing, it was carried on by other sort of men last summer. Indeed French ships were offered to join with our fleet, and they were refused; since the noise of the prince's design more ships were offered, and it was agreed how they should be commanded if ever desired. I opposed to death the accepting of them, as well as any assistance of men, and can say most truly that I was the principal means of hindering both, by the help of some lords, with whom I consulted every day, and they with me, to prevent what we thought would be of great prejudice, if not ruinous, to the nation. If the report is true, of men, ships, and money, intended lately for England out of France, it was agreed upon since I was out of business, without my knowledge; if it had been otherwise, I believe no body thinks my disgrace would have happened. My greatest misfortune has been to be thought the promoter of those things I opposed and detested, whilst some I could name have been the inventors and contrivers of what they have had the art to lay upon others; and I was often foolishly willing to bear what my master would have done, though I used all possible endeavours against it. I lie under many other misfortunes and afflictions extreme heavy, but I hope they have brought me to reflect on the occasion of them, the loose, negligent, unthinking life I have hitherto led, having been perpetually hurried away from all good thoughts by pleasure, idleness, the vanity of the court, or by business:—I hope, I say, that I shall overcome all the disorders my former life had brought upon me, and that I shall spend the remaining part of it in begging of Almighty God that he will please either to put an end to my sufferings, or to give me strength to bear them, one of which he will certainly grant to such as rely on him, which I hope I do with the submission that becomes a good Christian. I would enlarge on this subject, but that I fear you might think something else to be the reason of it, besides a true sense of my faults, and that obliges me to restrain myself at present. I believe you will repent in having engaged me to give you this account, but I cannot the doing what you desire of me.

An Honest Commoner's Speech.

The whigs, as well as the tories, joined their jealousies and complaints to embarrass the government of William III. The former began to reflect with dissatisfaction, that they had in a great measure missed the opportunity which the Revolution afforded them, of narrowing the royal prerogative, and that in their hurry to place on the throne a king after their own heart, they had omitted to make those stipulations against arbitrary power, which had been their principal object in inviting the Prince of Orange to Britain. Thus vexed at their own precipitance, displeased with the share of favour extended to Nottingham, and some other leading tories, and not much conciliated by the cold and military hauteur of the new king, they lent their aid to the Jacobites, to disturb an administration which was chiefly formed from their own party, and to embitter the government of a monarch whom they themselves had raised to the throne. The following treatise is an illustration of their views and sentiments at this period.

WHERE the king ends his speech I will begin mine. Since his majesty himself tells us, "That we have such an opportunity now to settle the future quiet and prosperity

of these kingdoms, and all Europe, as we can never hope to see again," we ought, I think, to believe him, and apply it the best way we can to a common safety. Give me leave, therefore, to say and press you, by all that is dear to you; your liberties, your honour, your posterity, that having but one throw more for your lives, for your all, you trifle not, you mistake not, you misuse not this opportunity. "Charity begins at home;" it is a sensible proverb, and never more seasonable; and to instruct ourselves the best we can, allow me to look back a little into former reigns.

The struggle that has been in these kingdoms since the latter end of King James the First's time, between the court and country party, cannot, I am sure it ought not, to be unknown to any member that has the honour of sitting in parliament; for nothing is more instructive and accomplishing to the persons that compose it. We shall find an endeavour in the court to grow upon the rights and privileges of the people, and a most flattering clergy ever ready to stamp all these attempts, under the banner of prerogative, with their *jure divino*. I will not run into their history, that of the Star-chamber shall prevent me, to be had at every bookseller's; there cannot be a worse nor a truer. It leads me to pity kings, and excuse them, for their errors of their government are rarely their own; they see and hear by other men's eyes and ears; and as they are interested, kings are abused, and royal authority dishonourably employed. It has been the endeavour as well as duty of the sovereign council of this kingdom to give a check to these abuses, by representing freely to their kings the law, the constitutions, what they may and may not do, what is his, and what is theirs, their consistency and dependency, and the dangerous consequence of their adhering to such counsels, and persisting in those courses. And to the honour of the constitution, and wisdom of our parliaments be it spoken, those kings have left the fairest characters to their names, that have lived best with their parliaments; and you will find that they have been the ablest and valiantest of our princes, that have seen them oftenest and followed their advice most; but three great opportunities we have lost, which I will but hint at that you may increase your zeal, by remembering them to improve this only one that is left us, by which to retrieve the loss of them, and save all.

The first was, the concessions of King Charles I. to the nineteen propositions presented to him in the Isle of Wight, by the parliament, 1647, which the king himself assures us were not the constraint but illumination of his afflictions; for, after a series of successes against him, the houses only prayed their ancient rights of him, that though personally in their power, they desired ever to be under his legal authority, and abhorred to be thought to have their king at their mercy, but that they only redeemed him from the ill counsel of merciless and mercenary men. This opportunity was lost by the interruption of their own victorious army, which, influenced by a few superior officers that found not their account by the peace, had always the means and methods to discontent their followers against their masters, and so turned their swords upon those that paid them, and from that time fought for their leaders rather than their country; though in this the men were possibly outwitted and abused. The ill consequences of this oversight, or rather violence, were many and terrible. First, that the king's tragical death, not only a dishonour to the nation, but a beheading of the government; a preposterous disabling of the constitution, as well as an unlawful action. Secondly, from this sprung new wars with Scotland, and all over this kingdom, in Kent, Essex, Wales, and Lancashire, especially at Dunbar, Preston, and Worcester; and though the veins that were opened afresh upon this sad occasion, bled freely and largely every where, and put all parts of the kingdom into mourning, more perishing in two years of this second civil war, than in the seven years of the first; yet the fatallest part of the business was the banishment of the young princes; for when they were compelled to seek their bread among strangers, they learned their customs, and

sucked in with foreign air outlandish principles; and this naturally led them to dislike the government, as well as the people of their own country; which very consideration has sometimes obliged me to make allowances in my own reflections, upon the conduct of the brothers, who perhaps were more unhappy than faulty, and much of that owing to us ourselves. I will close this remark with saying, we had saved our king, our allegiance, our honour, our blood and treasure, and a better thing, our government, if we had improved the Isle of Wight opportunity. But some will say this was not the act of the kingdom, but of a few ambitious men; true, but the consequences were as bad; and for that reason let us have a care of victorious armies, and their ambitious leaders, while they are in our power; there is, at least, that instruction in it. But our next instance shall be of an opportunity as extravagantly lost, and with a sort of universal neglect, if not consent; and that was the restoration of his son King Charles II. For he that would have married Lambert's daughter, and returned upon almost republican principles, would certainly have thought it duty and religion to have submitted to, and performed his royal father's commissions to the privileges of the people, and power of parliaments, but this opportunity was slept too; our extremes were so great in love and hatred, that we could not find in our hearts to observe any mean for the real good of prince and people: We would be debauched in spite to the preciseness of the party we hated, and the king should return unconditional, that we might be even with them for their unmonarchical principles. It was rebellion now to fight by his authority against his person, and treason to distinguish his politick from his personal capacity; and parliaments themselves might be disloyal, for we are told, "That our kings being sovereigns, they had no superior but God; and their people, neither collectively nor representatively, could so much as put the least restraint upon the person of their king, and that such attempts were treason within the 25 Ed. III., and much more, to alter the ancient frame of the government." But about 66, being awakened out of our excesses of joy and revenge, by the nature of things, we repented too late; and after 78, we would have given half our estates, and as much of our blood too, for such an opportunity as what we had so prodigally and irrecoverably lost.

This false step we hoped to retrieve by the Bill of Exclusion, but that became abortive as it deserved; for it was purely personal in its regards, loving one man more than liberty, and hating another man more than slavery; and miserable is that people whose security is more from the temper of the magistrate than the constitution of the government. The next greatest opportunity of all was at the election of this king. He seems not to have come for a crown, but our safety; to secure the succession rather than obtain the possession: Doubtless we surprised him with the tender of it, and as one unable to resist our love, after he had overcome our fears, he submitted to the burden of a crown, to preserve what he had procured for us; "A deliverance from our jealousies of popery and a despotic power." To do what we should have done in those former occasions, had been to save us indeed, but we lost our memory now in our joys, as we had done before; I will not say our wits, and less our morals; but that we should miss of the best part of the end of our sending for him, and his coming, has something in it so reproachful to our understandings or integrity, that it is never to be wiped off, but by improving this opportunity now in our hands, and which the king tells us is like to be the last: And since it may be the last time also that I may have the honour of speaking to you, at least so solemnly, give me leave to use all the freedom of an Englishman, and take every thing in good part, as it is meant in the greatest good will; for whatever be the success, I shall have the satisfaction of having cleared my conscience; that if the authors of our safety come hereafter to prove the

means of our destruction, the world and posterity shall know I had no hand in the tragedy.

That which I call the present opportunity is taking the advantage of the necessity of affairs, to settle the government upon its true basis, and supply whatever we find defective. If this yet wants an explanation, then I say, "Let us not give a penny of money till we are safe at home;" let us be out of danger from being the worse for victory; let us know what is ours, how we shall keep it, and what we have in future to trust to. As the king tells us, "We must sink under the great power of France, if in this session we make not provision for a vigorous opposition to France;" so I tell you, unless you secure yourselves against the very successes you hope for, your provisions may be the means of your own ruin, instead of safety. The king is a stranger to our constitution, and was nearer to the crown in blood, than to our government in his education. He is very able in military affairs, and the civil too of the place he took his breeding in, and has better knowledge in foreign affairs than we have; but in English business it is no dishonour to him to be told his relation to us, the nature of it, and what is fit for him to do; and who should or who can do it with that freedom and authority, that we may and ought to do? And the rather, because we see how much he is influenced by ill or weak men, that are the mere creatures of power; some stained in their credit, or beggars; others covetous, and that have second broods to provide for; some voluptuous and prodigal; a vast number of foreigners that wait both for fortunes and title upon the conclusion of this war, enough to move a conqueror to ask or take more power, than is for the safety of our constitution to suffer. I cannot forget that I have read Cæsar's story, what he did with his victorious army when he returned home, and have seen something to the same purpose in our own country. The world has very few Solons, Dions, and Scipios in it; and to be very free with you, as the time and case obliges me, there are some passages I have observed since the Revolution with no little regret; the employment of unpopular and ungrateful men, the laying by the most zealous men in the change, and as able as any body to serve; the pressing in the house by ministers; the interruption of the *habeas corpus* act, though the liberty of it be declared a fundamental right; practices upon evidences, even to blood, by promises and threats, which are boots and bribes in the upright sense of this government; the general complaint of sober men, Scotchmen, of the violation of the conditions upon which they presented the king with the crown of Scotland, and the wracking of an Englishman there, against the laws of that kingdom as well as of this; and, it is said, by particular orders from hence; last of all, the danger and scandal of our administration in general, by the employment of incompetent persons, such as are suspected of falseness, or that are of known insufficiency; as often as any free or good thing is proposed, they oppose it in pretence of upholding the monarchy; and, as with this, they flatter the most dangerous and weak part of this king, so if he comes to fail they recommend themselves to King James, if he or his son succeed with the merits of supporting the crown against a commonwealth: For these reasons I am led to say, if this be the last opportunity for the king to be victorious, it may be the last opportunity for us to be free. The former princes wanted not good qualities, and were accessible upon all occasions, and extremely civil, as if they had a mind to live well with their people, but they had not power to resist the evil influences of some men about them. And though this king shews great magnanimity in the field, he is conquered daily in the cabinet; and by whom, pray, more than by him that in the worst of times was the worst of tools? and to the eternal infamy of this government, is endured at the head of affairs in a war against France, that was by the commons of England impeached upon letters under his own hand of a treacherous negotiation with France. Nor is this the blackest of his crimes, and therefore not the grossest of our follies to suffer