

present it that day, it being after twelve o'clock, desired they would let him show it Mr Pelham of Sussex, and Mr Colepeper told him he was willing enough Mr Pelham should see the petition, not doubting he would be a friend to it, but that he was unwilling to part with it, being entrusted with it by his country, adding, "That he should make but an indifferent figure in this country, if the petition should be got out of his hands and lost." Whereupon Sir Thomas Hales past his word and honour, that he would not shew it to any person whatever, but to Mr Pelham, and that he would return it to them immediately. But this word and honour so solemnly engaged, was as easily forgotten: For having gotten the petition, he carried it into the house, where he stayed an hour and an half, and then returning, he gave it to the gentlemen; and told them he had shewn it to Sir Edward Seymour^{*} and several others.

This perfidious action to that very part of the nation which he represented, deserves some special notice, and there is no question but the people will remember it for him, and show their resentment on proper occasions.

Mr Colepeper, in the name of the rest, gave him an answer suitable to the action, and sufficient to let him know their surprise at so ungentleman-like usage, viz. "That he had broke his word, and served his country very ill." But this being neither place, nor season, for further debates, he appointed to meet them in the evening, and then after making them wait two hours beyond his time, he adjourned them till next morning in the Court of Request, where he told them absolutely, that he would not deliver the petition.

Here it is very observable, that at the very time Sir Thomas Hales came out of the house, and returned the petition in the manner above-mentioned, Mr Meredith, the other representative for the county, came to them, and told them that their petition had been exposed in the house, and that Mr How was then making a speech against it.

The gentlemen finding themselves thus betrayed by Sir Thomas Hales, consulted together, about finding another more proper person to deliver the petition, and resolved to apply themselves to Mr Meredith, the other member for the county of Kent, and Mr Meredith having agreed to deliver it, in case Sir Thomas Hales should refuse, had appointed to meet them, with several other gentlemen, members of the house, in order to consult about the matter of the petition, and the manner of delivering it.

In the morning the house being met, Mr Meredith came out and told them the house was in such a ferment that none of the gentlemen durst appear for it, nor come to them, and he doubted would not venture so much as to speak a word in the house for the petition.

Nor were these all the discouragements the gentlemen met with in their presenting the petition, but several members of the house pretending respect, and others that were really their friends, and in concern for them, came out of the house to them, and endeavoured to persuade them not to expose themselves to the fury of the house, by delivering the petition, telling them that Mr How in particular had said, "That if there were one hundred thousand hands to the petition, they should be all made examples of." And Sir Edward Seymour added, "That the whole country should be double taxed, and the estates of those who presented it be confiscated to the use of the war."

Although these menaces, together with the almost omnipotent power of the House of Commons, had circumstances enough in them to shake the resolution of a whole county, yet they had not the effects here which was expected, for the gentlemen, far from being terrified at all this, unanimously declared their resolution to discharge the trust placed in them by their country, and to present it to the house; and Mr William Colepeper in particular alluding to the words of Luther, to those who dissuaded him from going to the city of Worms, told them, "That if every tile upon the chapel of

^{*} Sir Edward Seymour was the head of the Tory party.

Saint ' Stephen's was a devil, he would present the petition." And all of them declared, "That if none of the gentlemen would do their country so much service as to present their grievances to the parliament in a legal petition, they would knock at the door of the house and deliver it themselves." Mr Meredith, finding the gentlemen so resolute, did consent to carry the petition, which he performed with great discretion and fidelity.

The petition being thus delivered, the gentlemen attended; for Mr Speaker, further to intimidate them, had let fall some speeches, "That it was the usage of the house when a petition was brought in, the persons who presented it ought to be ready without to justify the matter of their petition." And the gentlemen seeing no reason to be ashamed of theirs in particular, resolved to abide the utmost which their and the nation's enemies could do to them.

Having waited about half an hour, they were called in to the bar of the house, where Mr Speaker, treating them in his usual haughty tone, this short dialogue passed between them.

Speaker. Gentlemen, is this your petition? [*Holding up the petition by one corner.*

Gentlemen. Yes, Mr Speaker. [*Bowing very respectfully.*]

Speaker. And, gentlemen, you own this petition?

Gentlemen. Yes, Mr Speaker.

Speaker. And, gentlemen, your hands are to this petition?

Gentlemen. Yes, Mr Speaker.

Speaker. [*Turning to one of the clerks.*] Carry it to them, and see if they will own their hands. [*Which they severally did.*]

Speaker. Withdraw, and expect the order of the house.

Whereupon they withdrew, and attended in the lobby, and now began the second attack upon their resolutions; for the members, who came out, represented with all the terror imaginable the fury of the house; imprisonment and the ruin of their fortunes and families was the least they had to expect; impeachments, laws *ex post facto*, tacking them to money-bills, and all the arbitrary methods which any arbitrary parliament have ever made use of to ruin those who have felt their magnipotent indignation, were laid before them. When some who pretended pity for the misfortune of so many worthy gentlemen, came out of the house and told them they had yet a lucky moment left them, by an immediate submission, to fly to the clemency of the house, that they were sent out by Sir Edward Seymour and the rest of the gentlemen on that side, to let them know that Mr How was now speaking, and would continue so for some time, to give them opportunity to recollect themselves, and by a timely acknowledgment to save themselves from ruin.

The gentlemen being at a loss to know in what particular they could have given the house such offence, and being well assured they were in the protection of the law, and had not acted any thing but what the known constitution of the realm expressly allowed, remained still unshaken, and boldly replied, "They had nothing to say but what was in their petition."

But being further pressed by Sir Theophilus Oglethorpe, and several other gentlemen; and because they would not shew any disrespect to the house, or seem to slight their displeasure, they considered of an answer to be given to the proposal of submission.

And because whatever answer they gave might be misrepresented to the house, de-

* The house that the commons did sit in was formerly St Stephen's chapel.—Orig. Note.

livered by word of mouth, they resolved to put it into writing, and having consulted a while, they agreed to send in this civil answer.

"We are humbly of opinion, that it is our right to petition this honourable house, according to the statute of 13 Car. II. As to the matter of our petition, we declare that we intend nothing offensive to this honourable house."

This writing being shewn to Sir Theophilus Oglethorpe, and several other members, they began to smile, and imagined their point gained, and told the gentlemen they were glad they began to be sensible of their danger; and if they would but add one word more, viz. that they were sorry for what they had done, they would undertake for the clemency of the house: This they unanimously refused, one of the gentlemen with some heat replying, 'We will have no sorry.' Here the members, (or conspirators rather) would have had them put it, that they did it through inadvertency. This they also refused, declaring that they did it at the request of their country, maturely and deliberately, were justified in doing it by the laws of the land, and they would never recede from it.

So they delivered the paper to Sir Thomas Hales, but whether he delivered it to the house or no, he never had the civility to inform them.

The debate in the house held five hours, after which notice was given them by the messengers, that the house had voted the petition scandalous, insolent, and seditious, [vid. the votes] tending to destroy, &c. and ordered them to be taken into custody for the same; upon which the gentlemen went and immediately surrendered themselves to the serjeant, though the warrant was not made out for some hours after.

The serjeant only asked them where he should come to them at dinner, which was agreed to be at the Castle-Tavern, in Fleet-street, where they dined on Thursday, Friday, and Saturday, and were hitherto very civilly treated by his officers; and accompanied by great numbers of citizens and gentlemen of the first quality, and not a few of the nobility; the officers were seldom with them, went of errands for them, and oftentimes were all absent together; so that there was no colour of reason for the serjeant to say, he feared a rescue, for they had all the opportunities they could desire, if they had had the least design to escape, and it was never heard of that they who could escape when they pleased, would expose their friends to the hazard of a rescue.

On Friday in the evening, Mr Serjeant began to treat with them, and representing his absolute power, letting them know, that he had an unbounded liberty of using them at discretion, that he could confine them at pleasure, put them into dungeons, lay them under ground, keep them apart, remove them daily, and keep all people from them, by making them close prisoners. He thereby gave them to understand, that he expected a consideration suitable to his civility; upon this the gentlemen offered him a hundred guineas, half in hand, and the other when they should be discharged, though it should be next day: The serjeant neither accepted nor refused the offer, nor expressed any dislike as if he thought it too little, but appointed to come to them the next day.

Saturday in the evening Mr Thomas Colepeper, having notice that his lady was very much frightened at his confinement, desired leave of the messenger, in whose custody he was, to let him go down to Maidstone, upon his parole, to return by Monday night; which the messenger tacitly granted.

The rest of the gentlemen being met at the tavern, expecting the serjeant according to appointment, and having waited till ten o'clock, instead of coming himself, he sends orders to the messengers to separate the gentlemen, and confine them in several prisons, that very night; which order the officers executed as rudely as the serjeant could desire, saving that they obtained the civility from the officers to be confined two in one place, and two in another; but were hurried away with such unmannerly indecency, that they would not permit them to send for their night-gowns and necessaries.

In this manner Mr William Colepeper and Mr Justinian Champneys were carried to Myatt's house, the messenger, in Fox-Court in Holborn, where they had this hard choice proposed to them at their entrance, whether they would lodge in the cellar or in the garret; and chusing the latter, they were thrust into a little hole on the top of the house, where they had all the inconveniences of a nasty prison, as base lodging, foul sheets, little covering, and a cold room, by which means they both took such cold as they have not yet recovered.

But Mr Serjeant, lest they should not be treated ill enough, coming the next morning to Mr Myatt's house, was in a great rage at him, and drawing his sword, cut him over the head, for 'using the gentlemen so civilly,' as he called it: afterwards coming up into the garret where Mr Colepeper and Mr Justinian Champneys were lodged, they asked him, what order he had for using them thus? he replied, he had an order from those who committed them. Being asked again, if there was any such vote passed in the house? he said, no; but he had an order. Mr Colepeper replied, 'If it be not a vote of the house, pray how is it an order? have the majority of the house, one by one, come to you, and given you direction to use us thus barbarously?' he replied, yes, they had. For which scandalous reflection, if false, his masters, the members of the House of Commons, are exceedingly obliged to him. Mr Colepeper told him, 'he believed he should live to see him hang'd:' and so they parted.

All this while Mr Polhill and Mr Hamilton were put into a cellar, without the favour of having their choice, and had so vile a lodging that they could scarce breathe; and were likewise in their turn bullied by Mr Serjeant the next day; and when they asked him to shew them the copy of their commitment, he denied it; Mr Polhill in particular replied, they asked him nothing but what by law he ought to grant: He rudely replied, 'he cared not a fart for them, nor the law neither;' and so left them; which refusal of his he may hear of again perhaps in a way of legal application.

On Tuesday he gave the house notice, that the younger Mr Colepeper had made his escape, though he had a letter from him that he would be in town that very day; and at the same time he made a complaint that the other gentlemen behaved themselves so disorderly, that he apprehended a rescue; though the gentlemen, to avoid any suspicion, had voluntarily surrendered their swords to the messengers, without being required so to do.

This complaint to the house was the gentlemen's deliverance, and the serjeant's disappointment, though not in kindness to them neither; for ordering them to the Gatehouse, as a more ignominious confinement, the serjeant lost the extravagant fees which he designed to extort from them; and the humanity of Captain Taylor, the keeper of the Gatehouse, made their restraint easy to them; for this keeper used them like gentlemen, and the reputation he has obtained by his civility, will be as lasting as the infamy of the serjeant; the one leaves a grateful acknowledgment in the mouths of all men, and will always be spoken of to his advantage; and the other nauseous like the person, is dishonourable both to his memory, and to the house that employed him.

On Wednesday, Thomas Colepeper, Esq. the younger brother, who had been in Kent, and who was just come up according to his promise, rendered himself to the speaker, and desired to be sent to his brethren. Mr Serjeant, who thought to make himself amends upon him, laboured to have him continued in his custody, and had not that party in the house thought the Gatehouse a greater punishment, possibly it had been so. But therein that infallible house were deceived, and he was delivered from the hands of a villain, by his enemies themselves, who thought they had mortified him the more, to the infinite regret of the serjeant, and the general satisfaction of his fellow sufferers.

The same morning that Mr Colepeper surrendered himself, the Legion Paper,^{*} as it was called, was sent to the house; it was said it was delivered the Speaker by a woman, but I have been informed since that it was a mistake, and that it was delivered by the very person who wrote it, guarded with about sixteen gentlemen of quality, who, if any notice had been taken of him, were ready to have carried him off by force; it was reported, that Mr Thomas Colepeper brought it out of Kent, and that all the country were at his heels to make it good, though it was really no such thing, and that gentleman declared he knew nothing at all of it.

But be it as it will, that paper struck such a terror into the party in the house, that from that time there was not a word ever spoken in the house of proceeding against the Kentish petitioners, and the members of that party began to drop off and get into the country, for their management began to be so disliked over the whole nation, that their own fears dictated to them they had run things too far.

The clashings with the upper house about the trial of the four peers they had impeached, and the miserable shifts they were driven to by the lords, to avoid trying them, served but to make them more uneasy, and to hasten the dispatch of the money bills in order to the prorogation, which was on the 23d of June, 1701.

By the prorogation, the Kentish gentlemen were discharged; but to shew their respect to the civility of Captain Taylor their keeper, they continued to lodge with him till they went into the country.

The first honour done them on account of their sufferings, was their being invited to a noble entertainment at Mercers-hall in Cheapside, at the charge of the citizens of London, where above two hundred gentlemen dined with them, together with several noble lords and members of parliament.

Thursday the 2d of July, they set out for Kent; the citizens had offered to accompany them out of town, but they declined it, desiring to go privately.

And those who pretend to charge them with affecting popularity, would do well to remember, that they were fain to send their coaches empty out of town, and go by water to meet them, to avoid the respect which the citizens would have shewn them.

But there was no shunning the appearance of the country, who shewed their value for the gentlemen, and the cause for which they had suffered, in all the possible terms of respect and affection.

The first instance of this was at Black-heath, where Mr David Polhill, one of the gentlemen, was to separate from the rest, his road lying near Bromley to his house at Ottford in Kent. He was met at Black-heath by the above five hundred horse, who received him into the midst of them, and surrounded his coach with such shouts, and joy, as sufficiently testified their respect for him and their satisfaction at his return among them: nor can I omit, that having to satisfy my curiosity, drank among and discoursed with some of that party, while they were waiting for Mr Polhill, I never heard of any gentleman more universally beloved by the country or more particularly distinguished for modesty and temper; and I believe I may affirm that it would be hard to find any gentleman so near the city of London, who could have had such an appearance, of his own tenants and neighbours, to congratulate his deliverance.

Mr Polhill being come to the corner of the park wall on Black-heath, stopt to take his leave of his brethren, and giving them a loud huzza, wished them a good journey, and proceeded to Ottford.

All possible demonstrations of joy concluded the day, and it has not been known that the country ever expressed more satisfaction since the coronation of King William, than at the return of this gentleman.

The rest of the gentlemen proceeded to Rochester, where they were met by such a

^{*} See this remarkable paper in the sequel. It was even in a more violent strain than the petition, and generally imputed to De Foe.

body of horse, that the principal inns of the town could not entertain them, some of whom had come twenty miles to meet them.

The mayor of Rochester paid his respect to them, and complained that he had no notice given him of their coming, otherwise he would have met them out of town with a good body of horse.

Here they rested to refresh themselves and horses, and about six o'clock set forward for Maidstone; the people of Maidstone, though it was market day, could not have patience to wait at the place where they generally go to meet the judges. but a great many horsemen met them on the Downs, and the top of Boxley-hill, four miles from the town.

At Sandlin, about two miles from the town, the gentlemen of the neighbourhood met them with their coaches, and an innumerable multitude of people on horseback, and on foot, shouting and bidding them welcome.

After a short stay here to receive the compliments of the gentlemen, they proceeded (the gentlemen's coaches falling into the rear) to the park, the seat of the Lady Taylor, who is married to Mr Thomas Colepeper, where they were welcomed by the said Lady Taylor, the old Lady Colepeper the mother of the gentleman, and several ladies of quality, the people shouting all the while, A Colepeper! a Colepeper! and the poor strowing the ways with greens and flowers; and thus they proceeded into the town, with such universal acclamations of the people, as the like was never seen in that country since the restoration of King Charles II.

The night concluded with a great bonfire, and the healths of all the gentlemen drank round it, to the great mortification of the Jacobites, of whom there are but very few in those parts; and to the general satisfaction of the country.

Nor was this the only appearance; for at Beartsted, about three miles further, the country was assembled, the bells rung, and several hundreds of the people continued together all night, with extraordinary joy, expecting that the elder Mr Colepeper, Mr Champneys, and Mr Hamilton, would have continued their journey to Holingbourn, the antient seat of the family of the Colepepers; but the extraordinary reception they found at Maidstone, had detained them so long, that it was too late to go on; so they lay at Maidstone that night, and the next day abundance of gentlemen and country people came particularly to pay their respects to them, and bid them welcome into the country.

And at the time of the assizes lately held at Maidstone, the grand-jury, consisting of very eminent gentlemen and freeholders of the country, whereof twelve were justices of the peace, went in a body to the gentlemen, and publicly gave them thanks for their fidelity to the country, in delivering their petition to the parliament.

In all these expressions of the country's joy at the return of these honest gentlemen, it might be enquired, what they said of the parliament, because it is so natural to curse with one hand, when we bless with the other, that it might be rationally expected; it is true, the country being justly disobliged at the ill usage of these gentlemen, did not spare their reflections, but I chuse to pass it over, because it is not parliaments in general, but the conspirators and Jacobite party in a parliament, that are at present the nation's burthen, and from whom she groans to be redeemed.

The Conclusion.

Had this nation listened to the calls of their own reason, and to the voice of things, all this confusion of councils had been prevented; had the people of England chosen men of honesty, and of peaceable principles, men of candour, disengaged from interest and design, that had nothing before them but the benefit of their country, the safety

of religion, and the interest of Europe, all this had been avoided; they would never have imprisoned five honest gentlemen, for coming to them with the sense of their country in a peaceable petition; they would never have had the occasion to repent of their refusing to hearken to the voice of the people: But it is too late to look back, the nation has had the misfortune to chuse them, and our peace, and liberty, and the protestant interest in Europe, is too much in their hands.

All the advice I can pretend to give my fellow-slaves and countrymen is, that they would not be backward to let the gentlemen know, that the nation is sensible they are not doing their duty; and withall, that to impose upon the rights and liberties of the English nation, has always been fatal to the persons of those who have attempted it, and their examples stand as buoys and marks to warn posterity of the hidden dangers which others have fallen into.

It has been fatal to favourites, to judges, to lords, and to kings, and will certainly be so even to parliaments, if they descend to abuse the people they represent.

The imprisoning these five gentlemen had neither reason, law, pretence, nor policy in it.

It had no reason in it, because they had offended against no law, either of reason, or the nature of the thing.

It had no law in it, because they had no legal power to commit any but their own members.

And I am of the opinion, they are convinced there was no policy in it, for there is seldom much policy in doing that publicly, which we know we shall be ashamed of.

The not proceeding against them afterward, shewed they were either ashamed or afraid; had they been in the right, there could be no reason to fear; and if in the wrong, they had all the reason in the world to be ashamed.

To commit five gentlemen to custody, for petitioning them to do what they really knew they ought to have done, it was the most preposterous thing in nature: To punish for humbly petitioning! it is nonsense in itself. God himself permits the meanest and most despicable of his creatures to remind him, as we may say, of their wants, and petition for his aid: The most contemptible beggar is permitted to be importunate for relief, and though the law is against him, we are not affronted at it. But to resent the representation of their country, and imprison gentlemen who, at the request of the freeholders of a country, came, under the express protection of an act of parliament, to deliver a petition! it was the most ridiculous inconsistent action that ever parliament of England was guilty of; and, with submission, I think the best action the same house can do, at their next meeting, is to vote that it should be razed out of their journals, and never be made a precedent for the time to come; upon which condition, and no other, the nation ought to forgive it them.

The act of 13 Carol. II. to assert the right of the subjects petitioning, is a sufficient authority for any one to quote, and those that pretend to call this an illegal act, must first trample down the authority of that act of parliament.

Let this act justify me, in saying, that to imprison Englishmen for petitioning, is illegal, and a dishonour to English parliaments: *Legion*, article the 5d.

But, say the lame excusers of this eccentric motion of the house, this was a factious thing contrived by a few private insignificant people of no value, and the matter of it is saucy and impertinent.

First, had it been a petition of the meanest and most inconsiderable person in England, and that single by himself, provided he were a freeholder of England, he had a legal right to speak his mind; for that same reason from whence the commons in parliament claim a freedom of speech, gives every commoner a freedom to speak to the house, since every freeholder has an equal concern in their debates, and equal power in deputing them to sit there. But because this right unlimited might be tumultuous and un-

easy, therefore the method how we shall do it, is circumscribed for decency's sake, that it shall be done by petition, and that petition shall be presented so and so, and by such a number and no more: but that it should not be lawful to petition, no tribunal, no court, no collective or representative body of men in the world ever refused it; nay, the inquisition of Spain does not forbid it, the divan of the Turks allows it, and I believe if Satan himself kept his court in public, he would not prohibit it.

But besides this, the fact is not true: As for it being contrived by a few people, let the impartial relation here given, answer that ridiculous untruth, unless you will account the county of Kent a few; for certainly eleven parts of twelve of the whole county, and now of the whole kingdom, approve of it.

Nor has the reproach upon the persons presenting it more of truth, unless gentlemen of ancient and illustrious families, whose ancestors have been known for several ages to be men of honour and estates, allied to several of the nobility, and now known and valued by the whole country, both for their considerable fortunes, as well as personal merit; unless, I say, such men are to be accounted private and inconsiderable, the charge cannot be true: To such I shall only say, that the ancestors of these gentlemen were members of ancient parliaments, and of such parliaments as would have been ashamed of committing such an absurdity, as to imprison the freeholders of England for a peaceable petition.

As to the matter of the petition, and which some people say was a banter, the turning their loyal addresses into bills of supply. The gentlemen ought to have had liberty to explain themselves, which if they had done, I am of the opinion that it would have been to this purpose, that they thought it was proper "the house should speedily supply the king so with money, as that he might be enabled to defend our protestant neighbours from the encroachments of France;" and not to lose their time in addressing the king in matters of less moment.

I shall conclude with this short animadversion by way of remark, and let all men judge of the justness of the observation.

"That as this was the first time that ever the English nation petitioned to be taxed, so this was the first parliament that ever addressed the king to take care of himself, and defend himself against his people."

Addenda.

Some book-learn'd fools pretend to find a flaw,
In our late senate votes for want of law,
And insolently say the men of Kent
Were rudely handled by the parliament.
Knowledge of things would teach them every hour,
That Law is but an heathen word for power.
Might, right, force, justice, equity,
Are terms synonymous, and must agree;
For who shall e'er the argument confute,
Where power prevails, and no man dare dispute?
Nature has left this tincture in the blood,
That all men wou'd be tyrants if they cou'd,
Not kings alone, not ecclesiastic pride,
But parliaments, and all mankind beside.
All men, like Phæton, wou'd command the reins,
'Tis only want of power that restrains.

Then why should we think strange the parliament
 The people's late petitions shou'd resent ?
 'Tis fatal to tyrannic power, when they
 Who shou'd be ruin'd, grumble to obey :
 And tyrants never can complete their reign,
 So long as injured subjects dare complain ;
 If they do not their first address withstand,
 What now they supplicate, they'll soon command,
 By first suppressing early discontent,
 They aim'd the consequences to prevent,
 For well they knew that should the nation try,
 To ask once more, they durst not twice deny.

England has this one fate peculiar to her,
 Never to want a party to undo her,
 The court, the king, the church, the parliament,
 Alternately pursue the same intent,
 Under the specious term of liberty,
 The passive injured people to betray :
 And it has always been the people's fate
 To see their own mistakes when 'twas too late,
 Senseless of danger, sleepy and secure,
 Till their distempers grew too strong to cure ;
 Till they're embraced by the approaching grave,
 And none but Jove and miracles can save.

In vain bold heroes venture to redeem
 A people willinger to sink than swim :
 If there's a Brutus in the nation found,
 That dares patrician usurpation wound,
 He's sure to find an ignominious grave,
 And perish by the people he would save.

Such are by virtue signalized in vain,
 We'll own the merit, but abuse the men.
 Marius saved Rome, and was by Rome despised ;
 And many a Russel we have sacrificed.
 Then who for English freedom would appear,
 Where lives of patriots are never dear,
 And streams of generous blood flow unregarded there ?

Posterity will be ashamed to own,
 The actions we their ancestors have done,
 When they for ancient precedents enquire,
 And to the journals of this age retire,
 To see one tyrant banish'd from his home,
 To set five hundred traitors in his room.
 They'll blush to find the head beneath the tail,
 And representing treachery prevail :
 They'll be amazed to see there was but five,
 Whose courage could their liberty survive,
 While we that durst illegal power dethrone,
 Should basely be enslaved by tyrants of our own.

The arrival and imprisonment of the Kentish petitioners gave occasion to the following Address, which was written, it is said, by the celebrated Daniel de Foe, and presented by him disguised as a woman. The bold language with which it expresses the popular indignation at the imprisonment of British subjects, for the exercise of their constitutional right of petitioning parliament, had the effect of intimidating those to whom it was addressed, and all further proceedings against the Kentish petitioners were laid aside. "In what manner," says Ralph, "it was communicated to the house, or whether at all according to form, does not appear from the journals. All that we find there is, That the serjeant at arms having been ordered to go his round with the mace, to summon such members as he should find to attend the house, a complaint was made of endeavours to sow tumults and sedition in order to disturb the public affairs, and it was ordered thereon that a committee should be appointed to draw up an address, humbly to lay before his majesty the endeavours of several ill-disposed persons, to raise tumults and sedition in the kingdom; and humbly to beseech his majesty that he will provide for the public peace and security. The committee so appointed consisted of 53 persons. They were to meet the same day at 5 o'clock in the speaker's chamber; they were empowered to send for persons, papers, and records, and were directed to sit *de die in diem*: but having thought better of it, no report was called for, and the whole affair was silently let fall.

"That, however, the house was in no small ferment, appears from a minute on the journals, which intimates that such warm words had passed between Sir William Strickland and Mr How, that the authority of the house was made use of to prevent consequences: as also from the paragraph of another piece of the same brazen author, called *Legion's New Paper*, or second Memorial, wherein it is said that Mr How in the course of the debate said he was in fear of his life: that several other members were frightened into the country, and that in general the whole house were frightened out of their wits, as appeared by their senseless address to his majesty to defend himself against his people, which they were afterwards ashamed to present.

"And it is certain, that in proportion as the public grew more and more infatuated with their resentments against France, and their passion for a war, and as the difficulties and controversies increased, numbers of members did absent themselves from the service, nor could be prevailed to return either by orders or letters from the chair, accompanied with all the menaces of the house.

"If, therefore, they did on some occasions, by yielding to the various pressures of the times, depart a little from the firmness they manifested at first, it is scarce to be wondered at. A noise without doors is more discouraging than opposition within, and when the people are divided in their opinions, that of the court, like the serpent of Aaron, will swallow all the rest."—RALPH, II. 953.

Mr S—R,

The inclosed memorial you are charged with, in the behalf of many thousand of the good people of England.

There is neither popish, jacobite, seditious, court or party interest concerned in it, but honesty and truth.

You are commanded by two hundred thousand Englishmen, to deliver it to the H—s of C—s, and to inform them that it is no banter, but serious truth; and a serious regard to it is expected; nothing but justice and their duty is required, and it is required by them who have both a right to require, and power to compel, viz. the people of England.

We could have come to the house, strong enough to oblige them to hear us, but we have avoided any tumults, not desiring to embroil, but to save our native country.

If you refuse to communicate it to them, you will find cause in a short time to repent it.

To R——t H——y, Esq. S——r to the H——e of C——, These.

THE MEMORIAL.

To the K——s, C——s, and B——s in P——t assembled.

A Memorial from the Gentlemen, Freeholders, and Inhabitants of the Counties of—— in Behalf of themselves, and many Thousands of the good People of England.

Gentlemen,

It were to be wished you were men of that temper, and possessed of so much honour, as to bear with the truth, though it be against you; especially from us who have so much right to tell it you; but since, even petitions to you from your masters, (for such are the people who chose you) are so haughtily received as with the committing the authors to illegal custody, you must give us leave to give you this fair notice of your misbehaviour, without exposing our names.

If you think fit to rectify your errors, you will do well, and possibly may hear no more of us; but if not, assure yourselves the nation will not long hide their resentments. And though there are no stated proceeding to bring you to your duty, yet the great law of reason says, and all nations allow, that whatever power is above law, it's burdensome and tyrannical, and may be reduced by extrajudicial methods: You are not above the people's resentments; they that made you members may reduce you to the same rank from whence they chose you; and may give you a taste of their abused kindness, in terms you may not be pleased with.

When the people of England assembled in convention, presented the crown to his present majesty, they annexed a declaration of the rights of the people, in which was expressed what was illegal and arbitrary in the former reigns, and what was claimed as of right to be done by succeeding kings of England.

In like manner, here follows, gentlemen, a short abridgment of the nation's grievances, and of your illegal and unwarrantable practices; and a claim of right which we make in the name of ourselves, and such of the good people of England as are justly alarmed at your proceedings.

I. To raise funds for money, and declare by borrowing clauses, that whosoever advances money on those funds shall be reimbursed out of the next aids, if the funds fall short; and then give subsequent funds, without transferring the deficiency of the former, is a horrible cheat on the subject who lent the money, a breach of public faith, and destructive of the honour and credit of parliaments.

II. To imprison men who are not your own members, by no proceedings but a vote of your house, and to continue them in custody, *sine die*, is illegal; a notorious breach of the liberty of the people, setting up a dispensing power in the House of Commons, which your fathers never pretended to, bidding defiance to the *habeas corpus* act, which is the bulwark of personal liberty, destructive to the laws, and betraying the trust reposed in you. The king, at the same time, being obliged to ask you leave to continue in custody the horrid assassins of his person.

III. Committing to custody those gentlemen, who at the command of the people (whose servants you are) and in a peaceable way, to put you in mind of your duty, is

illegal and injurious ; destructive of the subjects liberty of petitioning for redress of grievances, which has by all parliaments before you been acknowledged to be their undoubted right.

IV. Voting a petition from the gentlemen of Kent insolent, is ridiculous and impertinent, because the freeholders of England are your superiors ; and is a contradiction in itself, and a contempt of the English freedom, and contrary to the nature of parliamentary power.

V. Voting people guilty of bribery and ill practices, and committing them as aforesaid, without bail, and then upon submission, and kneeling to your house, discharging them ; exacting exorbitant fees by your officers is illegal, betraying the justice of the nation, selling the liberty of the subject, encouraging the extortion and villainy of jailors and officers ; and discontinuing the legal prosecutions of offenders, in the ordinary course of law.

VI. Prosecuting the crime of bribery, in some to serve a party, and then proceed no further, though proof lay before you, is partial and unjust, and a scandal upon the honour of parliaments.

VII. Voting the Treaty of Partition fatal to Europe, because it gave so much of the Spanish dominions to the French, and not concern yourselves to prevent their taking possession of it all ; deserting the Dutch, when the French are at their doors, till it be almost too late to help them, is unjust to our treaties, and unkind to our confederates, dishonourable to the English nation, and shew you very negligent of the safety of England, and of our protestant neighbours.

VIII. Ordering immediate hearings to trifling petitions, to please parties in elections ; and postpone the petition of a widow, for the blood of her murdered daughter, without giving it a reading, is an illegal delay of justice, dishonourable to the public justice of the nation.

IX. Addressing the king to displace his friends upon bare surmises, before a legal trial or article proved, is illegal, and inverting the law, and making execution go before judgment ; contrary to the true sense of the law, which esteems every man a good man till something appears to the contrary.

X. Delaying proceedings upon capital impeachments, to blast the reputation of the persons, without proving the fact, is illegal and oppressive, destructive of the liberty of Englishmen, a delay of justice, and a reproach to parliaments.

XI. Suffering saucy and indecent reproaches upon his majesty's person to be publicly made in your house, particularly by that impudent scandal of parliaments, John How, without shewing such resentments as you ought to do, the said John How saying openly, ' that his majesty had made a felonious treaty to rob his neighbours, insinuating that the Partition Treaty (which was every way as just as blowing up one man's house to save another's,) was a combination of the king, to rob the king of Spain of his due.' This is making a Billingsgate of the house, and setting up to bully your sovereign, contrary to the intent and meaning of that freedom of speech, which you claim as a right, is scandalous to parliament, undutiful and unmannerly, and a reproach to the whole nation.

XII. Your S—r exacting the exorbitant rate of ten pounds *per diem*, for the V—s, and giving the printer encouragement to raise it on the people, by selling them at four-pence per sheet, is an illegal and arbitrary exaction, dishonourable to the house, and burthensome to the people.

XIII. Neglecting still to pay the nation's debts, compounding for interest, and postponing petitions, is illegal, dishonourable, and destructive of the public faith.

XIV. Publicly neglecting the great work of reformation of manners, though often pressed to it by the king, to the great dishonour of God, and encouragement of vice,

and neglect of your duty, and abuse of the trust reposed in you by God, his majesty, and the people.

XV. Being scandalously vicious yourselves, both in your morals and religion; lewd in life, and erroneous in doctrine, having public blasphemers and impudent deniers of the divinity of our Saviour among you, and suffering them unreproved and unpunished, to the infinite regret of all good Christians, and the just abhorrence of the whole nation.

Wherefore, in the said prospect of the impending ruin of our native country, while parliaments (which ought to be the security and defence of our laws and constitution) betray their trust, and abuse the people whom they should protect: And no other way being left us, but that force which we are very loth to make use of, that posterity may know we did not insensibly fall under the tyranny of a prevailing party, we do hereby claim and declare,

1. That it is the undoubted right of the people of England, in case their representatives in parliament do not proceed according to their duty, and the people's interest, to inform them of their dislike, disown their actions, and to direct them to such things as they think fit, either by petition, address, proposal, memorial, or any other peaceable way.

2. That the House of Commons, separately and otherwise than by bill legally passed into an act, have no legal power to suspend or dispense with the laws of the land, any more than the king has by his prerogative.

3. That the House of Commons have no legal power to imprison any person, or commit them to custody of serjeants, or otherwise (their own members except) but ought to address the king, to cause any person, on good grounds, to be apprehended; which person so apprehended, ought to have the benefit of the *habeas corpus* act, and be fairly brought to trial, by due course of law.

4. That if the House of Commons, in breach of the laws and liberties of the people, do betray the trust reposed in them, and act negligently or arbitrarily and illegally, it is the undoubted right of the people of England to call them to an account for the same, and by convention, assembly, or force, may proceed against them as traitors and betrayers of their country.

These things we think proper to declare, as the unquestioned right of the people of England, whom you serve, and in pursuance of that right, (avoiding the ceremony of petitioning our inferiors, for such you are by your present circumstances, as the person sent is less than the sender,) we do publicly protest against all your foresaid illegal actions, and in the name of ourselves, and of all the good people of England, do require and demand,

1. That all the publick just debts of the nation be forthwith paid and discharged.

2. That all persons, illegally imprisoned, as aforesaid, be either immediately discharged, or admitted to bail, as by law they ought to be; and the liberty of the subject recognized and restored.

3. That J——n H——w aforesaid, be obliged to ask his majesty pardon for his vile reflections, or be immediately expelled the house.

4. That the growing power of France be taken into consideration; the succession of the emperor to the crown of Spain supported, our protestant neighbours protected, as the true interest of England and the protestant religion requires.

5. That the French king be obliged to quit Flanders, or that his majesty be addressed to declare war against him.

6. That suitable supplies be granted to his majesty, for the putting all these necessary things in execution, and that care be taken, that such taxes as are raised may be more equally assessed and collected, and scandalous deficiencies prevented.

7. That the thanks of the house may be given to those gentlemen, who so gallantly

appeared in the behalf of their country, with the Kentish petition, and have been so scandalously used for it.

Thus, gentlemen, you have your duty laid before you, which it is hoped you will think of; but if you continue to neglect it, you may expect to be treated according to the resentments of an injured nation; for Englishmen are no more to be slaves to parliaments, than to a king.

Our name is Legion, and we are many.

Postscript.

If you require to have this memorial signed with our names, it shall be done on your first orders, and personally presented.

I.

Ye true-born Englishmen proceed,
Our trifling crimes detect,
Let the poor starve, religion bleed,
The Dutch be damn'd, the French succeed,
And all by your neglect.

II.

Your actions all the world disgust,
The French are only glad,
Your friends your honesty distrust,
And while you think you're wise and just,
The nation thinks you mad.

III.

Are these the ways your wisdom takes,
To raise our reputation;
To quarrel at a few mistakes,
Whilst France its own advantage makes,
And laughs at all the nation?

IV.

You are the people who of old,
The nation's troops disbanded,
And now you should your friends uphold,
Your friends and you are bought and sold,
As always was intended.

V.

There's none but fools in time to come,
Will trust the English nation;
For if they do, they know their doom,
That we'll be falling out at home,
And baulk their expectation.

VI.

You are the nation's grand defence,
 Against illegal power,
 And yet against both law and sense,
 And sometimes too without pretence,
 You send folks to the Tower.

VII.

Some lords your anger have incur'd,
 For treaty of partition,
 But if you'll take the nation's word,
 Most people thing it was absurd,
 And empty of discretion.

VIII.

For if that treaty, as 'tis famed,
 Gave part of Spain to Gaul,
 Why should those gentlemen be blamed,
 When you yourselves are not ashamed,
 To let them take it all?

IX.

Bribes and ill practices you found,
 And some few felt your power,,
 But soon you run yourselves a-ground
 For had you push'd the matter round,
 You all had gone to th' Tower.

X.

Some reformation hath from you
 In vain been long expected,
 But when you shou'd the business do,
 Your private quarrels you pursue,
 And th' nation lies neglected.

XI.

Long has the kingdom borne the weight
 Of your deficient funds,
 Parliamentary public cheat,
 Pray where's the difference of that
 And plundering w th dragoons?

XII.

Are you the people that complain
 Of arbitrary power?
 Then show the nation if you can,
 Where kings have been since kings began,
 Such tyrants as you are.

XIII.

When kings with right and law dispense,
 And set up power despotic,

It has been counted law and sense,
To take up arms against our prince,
And call in aids exotic.

XIV.

But you, although your powers depend
On every ploughman's vote,
Beyond the law that power extend,
To ruin those you should defend,
And sell the power you bought

XV.

The king religion did commend
To you his law-explainers,
We know not what you may intend,
Nor how you should religion mend,
Unless you will your manners.

XVI.

You are the nation's darling sons,
The abstract of the mob,
For city-knights and wealthy clowns,
Stock-jobbers, statesmen and buffoons,
You may defy the globe.

XVII.

Toland insults the Holy-Ghost,
Bribed S——r bribes accuses,
Good manners and Religion's lost,
The king who was your lord of host,
The rascal H——w abuses.

XVIII.

Your statesman G——lle, with intent
To cultivate with care
The dignity of parliament,
Plies closely at the dancing tent,
And manages May-Fair.

XIX.

The true-born hero's diligence
For publick good appears,
There he refines his wit and sense,
That the next day in our defence
May fill committee chairs.

XX.

The limitation of the crown
Is your immediate care
If your wise articles go down,
Your power will be so lawless grown,
'Tis no matter who's the heir.

XXI.

Did we for this depose our prince,
And liberty assume,
That you should with our laws dispense,
Commit mankind without offence,
And govern in his room ?

XXII.

You should find out some other word
To give the crowns acceptor,
To call him king would be absurd,
For though he'll seem to wear the sword,
'Tis you have got the sceptre.

XXIII.

And now your wrath is smoking hot
Against the Kent petition,
No man alive can tell for what,
But telling truths which pleased you not,
And taxing your discretion.

XXIV.

If you those gentlemen detain
By your unbounded power,
'Tis hoped you'll never more complain
Of bishops in King James's reign,
Sent blindly to the Tower.

XXV.

A strange memorial too there came,
Your members to affront,
Which told you truths you dare not name,
And so the paper scaped the flame,
Or else it had been burnt.

XXVI.

Some said the language was severe,
And into passion flew ;
Some too began to curse and swear,
And call'd the author mutineer,
But all men said 'twas true.

XXVII.

But oh ! the consternation now
In which you all appear !
'Tis plain from whence your terrors flew,
For had your guilt been less you knew,
So would have been your fear.

XXVIII.

In fifteen articles you're told
You have our rights betray'd,
Banter'd the nation, bought and sold
The liberties you shou'd uphold ;
No wonder you're afraid.

XXIX.

And now, to make yourselves appear
The more impertinent,
A wise address you do prepare,
To have his majesty take care
Rebellion to prevent.

XXX.

No doubt his majesty will please
To take your cause in hand,
Besides, the work is done with ease,
Full seven thousand men he has
The nation to defend.

XXXI.

One hundred thousand heroes more
Do our train'd-bands compose,
If foreign forces shou'd come o'er,
Plant them and you upon the shore,
How bravely you'd oppose !

XXXII.

Then blush, ye senators, to see
How all men stand dismay'd,
The nation shou'd so patient be,
To bear with all your villainy,
And see themselves betray'd.

XXXIII.

It was our freedom to defend,
That we, the People, chose you,
And we, the People, do pretend
Our power of chusing may extend
To punish and depose you.

XXXIV.

For since in vain our hopes and fears,
Petitions too are vain,
No remedy but this appears,
To pull the house about your ears,
And send you home a gain.

XXXV.

These are the nation's discontents,
 The causes are too true,
 The ploughman now his choice repents,
 For though he values parliaments,
 He's out of love with you.

XXXVI.

When to be chose with caps in hand
 You courted every voice,
 You were our servants at command,
 By which it seems you understand,
 Until we made our choice.

XXXVII.

If that be true, we let you know
 Upon that very score,
 You'd best your present hours bestow
 In all the mischiefs you can do,
 For we'll ne'er chuse you more.

Legion's New Paper : Being a second Memorial to the Gentlemen of a late House of Commons. With Legion's humble Address to his Majesty : By T. G. Gent. 1702.

Gentlemen,

The greatest respect which could possibly have been shown to you by the people of England, had been to have let your actions have sunk into forgetfulness, and in kindness to you, have let neither you nor your deeds have been named any more in your native country.

But since these people who (in your house) were so restless in their endeavours to ruin us, are not ashamed to undertake your defence, we are obliged, in the just vindication of our native right, further to expose your errors, than in charity to your memory we designed.

We were bound to let the people know, that a late pamphlet printed by your own club, and industriously spread over the whole nation, entitled, a Defence of the last Parliament, is calculated to wheedle the people to chuse you again.

But we hope their eyes will be opened. And we wonder you can suggest that the freeholders should so contradict the language of their addresses, and be found so to mock the king and the nation, as to address you out of doors, and then put you in again themselves ; if they should act so unaccountably, kings for the future will the better know what English addressing signifies.

Gentlemen,

The same hand that presented your speaker with a certain memorial, called the Legion Paper, written, as Mr Harley very well knows, in a hand that stood the wrong way ; that paper which came, as is said, from two hundred thousand Englishmen ; that paper which frightened Mr P. and Mr H——t, and several others, into the country ;

that paper which Mr How, in a lamentable tone, told the house, made him, from the sense of his own guilt, afraid of his life ; that paper which put you all so besides yourselves, as to make a senseless address to his majesty, to defend himself against his people ; which address you were afterwards ashamed to present ; that paper which you had so little wit as to read, and so much modesty, that is, guilt, as to blush at ; that paper which made you wish you had never committed the Kentish petitioners, and made you afraid to prosecute them ; that paper which made you clap up the sessions in such haste, as made the lords baffle you, and all the nation ashamed of you ; that paper which made you pass one good vote at parting, to desire the king to make alliances, &c. which some of your members called a sweetner, that you might not be afraid to go home : the same hand presents you with this paper, as the true sense of the nation concerning you.

The author does not come *incognito* as before, but you may see it at the corner of every street, every bookseller can sell it you, every Englishman has it in his head ; and your humble servant the author is to be spoken with at his house as constantly as a quack-doctor, from eight to twelve in the morning, and from two till nine at night.

It had been time for your defender to have voted the author of the Legion to Tyburn, when the charge there given you in the name of the people of England had been cleared.

And the author tells you, he will be content with that fate when you will fairly disprove one article of that yet unanswered paper.

There you may see, gentlemen, that the nation's exceptions at your behaviour, are not to be reduced to three heads of your own making ; the first of which nobody ever charged on you, but your new defender ; but if we mistake not, there are no less than fifteen articles of illegal proceedings, from one of which, you, nor all the men alive, cannot fairly purge you, which for your better satisfaction are here transcribed.

I. To raise funds for money, and declare, by borrowing clauses, that whosoever advances money on those funds, shall be reimbursed out of the next aids, if the funds fall short ; and then give subsequent funds, without transferring the deficiency of the former, is a horrible cheat on the subject who lent the money ; a breach of public faith, and destructive to the honour and credit of parliaments.

II. To imprison men who are not your own members, by no proceedings but a vote of your house, and to continue them in custody, *sine die*, is illegal ; a notorious breach of the liberty of the people ; setting up a dispensing power in the House of Commons, which your fathers never pretended to ; bidding defiance to the *Habeas Corpus* act, which is the bulwark of personal liberty, destructive of the laws, and betraying the trust reposed in you, the king at the same time being obliged to ask you leave to continue in custody the horrid assassins of his person.

III. Committing to custody those gentlemen, who, at the command of the people (whose servants you are) and in a peaceable way put you in mind of your duty, is illegal and injurious, destructive of the subjects liberty of petitioning for redress of grievances, which has by all parliaments before you been acknowledgd to be their undoubted right.

IV. Voting a petition from the gentlemen of Kent insolent, is ridiculous and impertinent, because the freeholders of England are your superiors, and is a contradiction in itself, and a contempt of the English freedom, and contrary to the nature of parliamentary power.

V. Voting people guilty of bribery and ill practices, and committing them as aforesaid without bail, and then upon submission and kneeling to your house, discharging them, exacting exorbitant fees by your officers, is illegal, betraying the justice of the nation, selling the liberty of the subject, encouraging the extortion and villainy of

gaolers and officers, and discontinuing the legal prosecutions of offenders in the ordinary course of law.

VI. Prosecuting the crime of bribery in some to serve a party, and then proceed no further, though proof lay before you, is partial and unjust, and a scandal upon the honour of parliaments.

VII. Voting the Treaty of Partition fatal to Europe, because it gave so much of the Spanish dominions to the French, and not concern yourselves to prevent their taking possession of it all. Deserting the Dutch when the French are at their doors, till it be almost too late to help them, is unjust to our treaties and unkind to our confederates, dishonourable to the English nation, and shews you very negligent of the safety of England, and of our protestant neighbours.

VIII. Ordering immediate hearings to trifling petitions, to please parties in elections; and postpone for the petition of a widow the blood of her murdered daughter, without giving it a reading, is an illegal delay of justice, dishonourable to the public justice of the nation.

IX. Addressing the king to displace his friends upon bare surmises, before any legal trial or article proved, is illegal, an inverting the law, and making execution go before judgment, contrary to the true sense of the law, which esteems every man a good man till something appears to the contrary.

X. Delaying proceedings upon capital impeachments, to blast the reputation of the persons without proving the fact, is illegal and oppressive, destructive of the liberty of Englishmen, a delay of justice, and a reproach to parliaments.

XI. Suffering saucy and indecent reproaches upon his majesty's person to be publicly made in your house, particularly by that impudent scandal of parliaments J——n H——w, without shewing such resentment as you ought to do: The said H——w saying openly, that his majesty had made a felonious treaty to rob his neighbours; insinuating that the Partition-Treaty (which was every way as just as blowing up one man's house to save another) was a combination of the king to rob the crown of Spain of its due: This is making a Billingsgate of the house, and setting up to bully your sovereign, contrary to the intent and meaning of that freedom of speech which you claim as a right, is scandalous to parliaments, undutiful and unmannerly, and a reproach to the whole nation.

"XII. Your S——r exacting the exorbitant rate of ten pounds *per diem* for the V——s, and giving the printer encouragement to raise it on the people, by selling them at fourpence *per sheet*, is an illegal and arbitrary exaction, dishonourable to the house, and burthensome to the people.

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"XIV. Publicly neglecting the great work of reformation of manners, though often pressed to it by the king, to the great dishonour of God, and encouragement of vice, is a neglect of your duty, and an abuse of the trust reposed in you, by God, his majesty, and the people.

"XV. Being scandalously vicious yourselves both in your morals and religion, lewd in life and erroneous in doctrine, having public blasphemers and impudent deniers of the divinity of our Saviour among you, and suffering them unreprieved and unpunished, to the infinite regret of all good Christians, and the just abhorrence of the whole nation."

The best shift that ever was found yet to help you was by Sir Humphrey Mackworth, that you are not to be told your faults, although they are true.

Forbid it, Heaven, that truth shou'd ever be
Subjected to usurp'd authority.

And are you the men who want to be chosen again, who think you deserve so much favour from the nation, as to be trusted again with those liberties you betrayed? With what face can you desire the people should be so blind to their own interest?

What we have now to say, was true of you some time ago, but you had so fenced yourselves by your usurped, unlimited, dispensing power, and by Sir Humphrey Mackworth's new doctrine, that an honest man could not inform the world what you were, without the danger of being abused by your serjeant, and being refused the benefit of the *Habeas Corpus* act, and confined in a garret during the arbitrary pleasure of your house.

But since you are dissolved, and now reduced to an equality with your fellow subjects, we think the least we can do, is to let you know, the freeholders of England are sensible of your behaviour, and those who are not, may be informed from the following particulars.

You are the men who, sitting in the leets of council, representing the good people of England, vested with legislative authority, and having the liberties and estates of your native country put into your hands, mis-improved that unlimited power to oppress the very people who chose you to defend them.

By unjustly imprisoning the freeholders of England for coming to put you in mind of your duty, and oppressing such as you had no power to touch, they being under the immediate protection of the known laws.

By partial proceedings against such persons as the prevailing party thought fit to expel, as guilty of bribery, wisely, though unjustly, declining the proceedings against others more guilty, whose assistance to do evil you wanted in the house.

By not refusing to declare war without ground, for nobody desired it, but delaying the public affairs, till the enemy was at the door. Flanders possessed, Portugal discouraged and fallen off, the Dutch besieged, and his majesty obliged to turn solicitor, and, to your shame be it spoken, permitted almost to beg you to make good the leagues and stipulations of his predecessors.

By impeaching members of the House of Lords, and shuffling off their trial by miserable shifts and ridiculous punctilios, the end being to blast their reputation, not prove the fact, that they might be put out of places and yourselves put in.

By quarrelling with the House of Lords, at a time when peace at home was the most necessary thing in the world, at the same time the circumstances being unjust, and the management ridiculous.

You are the men who, since the last recess, have scattered yourselves about the kingdom to make yourselves advocates for your own proceedings, and, if possible, to reconcile the people to your actions, and possess them with a belief of your honesty, a certain sign your deeds would not speak for themselves, who, in all your foolish discourses, take upon you to vilify and reproach the king, expose his servants and ministers, though your accusation, to this hour, remain unproved.

Who so far from giving the people any hopes that you would recollect yourselves against another session, and proceed to discharge your duty, and the trust reposed in you, with more fidelity and moderation, have filled the town with your threatnings of what you would do at your coming together again :

How you would begin where you left off with your disputes against the House of Lords.

How you would make the king agree to clip the wings of their authority, or give him no money.

How you would enter upon no business till you had humbled the lords, that if they insisted on their privileges, the blame of the delays might lie upon them, and so find a way at one act to throw your spleen at the peers and at the king together.

You are the men to whom we owe the many neutralities of the princes and circles

of the empire, and Italy, the league of the Portugueze with the French, and the French king's venturing to acknowledge another king of England.

'Twas the fears of your being corrupted by a French party, made our friends abroad shy of engaging in the protestant interest; and the hopes of it has, on the other hand, encouraged the French to insult the christian world, and bid fair for all the liberties of Europe.

'Twas a creature of your speaker's, and a fawning dependant upon the party, who, scribbling for favour, had the impudence to affirm in print, "That leagues and confederacies, allies and foreign treaties were useless and insignificant to England: that we were an island separated from the rest of the world independent of any body; and if all the world leagued against us, if we were true to ourselves, we need not care. As to our trade, our manufactures had the command of the world, and would force their way, and our fleet could protect and continue our trade in spite of all mankind; and that the concern we had in the safety of our neighbours, was only a pretence to raise armies to enslave us at home."

You are the men that have acted, as if ye believed this preposterous doctrine, endeavouring to possess the people with fears and jealousies of slavery at home, under the protection and government of the only king in the world that ever sincerely sought, and effectually restored, our freedom.

But that we may do justice also to those gentlemen, who to their utmost opposed all your treacherous proceedings before we come more freely to tell you our minds, we must plainly mark you out, that the innocent may not suffer with the guilty.

I. Such of you (for such as these were among you) who having been purchased in former reigns by court-pensions, to assist arbitrary princes, joined with them to enslave us, selling the liberties of your country to gratify the lust of dominion, and the projects of popish counsels.

II. Such of you (who being poisoned with arbitrary principles) gave your consents to submit all our laws and charters to a dispensing authority in the crown.

III. Such of you as having forgot that the original of all right is derived from, and rested in the people, had complimented your native country out of her privileges, and elevated our kings with a divine right of government, which neither God, nature, or the people ever gave them.

IV. Such who having thus been the tools of tyranny in former reigns, and by great interests in small boroughs, have obtained again to be trusted in parliament with the people's safety.

V. Such of you who having no estate, nor able to pay your own debts, should put such a banter upon the people, as to desire to be examiners of the nation's accounts without a salary; as if we did not know that if the nation did not pay them, somebody else must.

VI. Such of you who, bribed by foreign hopes and French money, expect to make your fortunes at the expence of the nation.

VII. Such as are blindly led by the party, who pursue these devilish designs, whereas they are trusted by their country, not to act by the directions of others, but ought either to be capable of judging and acting for the people that chose them, or be sent home in hanging-sleeves, and a slabbering-bib.

VIII. Such of you as should have been hanged at the Revolution, for your formerly betraying your country, and are now, like a true thief, striving to cut their throats who saved you from the gallows.

IX. Such of you who cry out of the people of 41, for raising war against, and deposing their sovereign, but are just sixty years after, going in the same steps, and had you the same prince to do with, would before now have brought it to the sword.

These are the men which make the people of England give thanks to God and the

king, that has freed them from the ruin designed for them by their own representatives.

'Tis for your sakes that is come to pass in England, which never was heard of before, that the people should have recourse to the king, to save them from being undone by the parliament.

What means all the language of the addresses which crowd from the extremest part of the nation? That whenever it shall please his majesty to call a new parliament, they will endeavour to chuse such and such.

Had you not been a parliament in being, and your unreasonable and wrong extended power formidable, it is presumed the language of those addresses would have been for God's sake, and for the nation's sake, to beseech his majesty to call a new parliament, and to promise to chuse honester men than they did before.

As for all those honest gentlemen who had the misfortune to be overpowered by your numbers, to be huffed, railed, and bear-bated by the clamours and noise of the multitude; but still to their power opposed your wicked designs, and discharged their duty to their country.

The grateful remembrance of their fidelity will remain in the hearts of every honest Englishman, and be on every occasion called to mind, and rewarded to them and their posterity.

We unanimously are of opinion, that the whole nation ought to keep a day of rejoicing, and solemn thanksgiving to God, who has put it into the heart of his majesty once more to save this nation from destruction, by divesting you of that power, which you so visibly exacted to the ruin of your country.

That his majesty has listened to the voice of things, as well as to the voice of his people, and having a discerning judgment, has timely discovered your wicked designs, and timely prevented the confusion your proceedings could have brought upon us.

That his majesty has once more put it into the power of the English freeholders to chuse again, that they may, if possible, find honest gentlemen enough in this degenerated nation, who will stand up for religion, and hold the balance of the state with that equality, between every branch of the constitution, as neither may oppress the other; that the whole may be in its full and free exercise, in order to bring more easily and effectually to pass that which is the great original of all constitutions in the world, the good of the people.

If we are still so infatuate and blind, as not to set a mark of infamy upon every man of you.

If some ensuing parliament does not by legal authority disfranchise you as Englishmen, and make you for ever incapable of being chosen, or of sitting in the house: As traitors in an army are made incapable to serve.

If every borough, city, or corporation, be not deprived of its privilege of choosing that shall ever send one of you up again.

If every county be not double taxed, that shall choose any of you to represent them again.

Then we deserve to be betrayed to the end of the chapter, and England will fall unpitied by all the nations in the world.

Legion's Address to his Majesty.

To the King's most excellent Majesty.

Among the throng of your loyal subjects, and obedient cities, towns, and corporations, who come to testify their resentment of the affront put upon your majesty by

the French king, in acknowledging the titles of your majesty's kingdoms to a contemptible impostor, and to make tender of their humble duty to your majesty, we beseech your majesty to permit the humble address of not the fewest nor the meanest of your most dutiful subjects.

We humbly approach your majesty in the names of all the freeholders of England, who love the protestant interest, and seek the prosperity of their native country; and though we have not had time to take their hands to this paper, we presume to assure your majesty that the hearts of the whole nation are here represented. Such excepted as will be hereafter expressed, because the sincerity of this address is such, and the substance of it of such moment, as no man can dissent from, and remain either a lover of his country, or a faithful subject to your majesty.

We had come to your majesty with our humble petition, but that we find no room left to complain, your majesty having been always so ready to redress the grievances of your people in a parliamentary way, that we have rather had cause to fear our representatives too much of late falling into parties, and led by furious men, or separate interests, should impose upon your goodness, and injure the people they were sent to serve, than that any real grievance of the nation should not be redressed, or any needful laws passed by your majesty, at the first request of your people.

We cannot but represent to your majesty, and humbly complain, that a late House of Commons, having with more freedom than they approved of, been told the illegality of their proceedings, and charged with the facts, wherein they acted contrary to the sense and interest of the people they represented, should, instead of rectifying or answering the same, address your majesty to take care of, and defend yourself against your people, as if it could be possible your people of England could entertain any thoughts to the prejudice of your majesty, who are so justly dear to them.

And whereas the prosperity of this nation depends upon the unanimous conjunction both of hearts and interest, between your majesty and your people, and your majesty has fully testified both your sense of, and your desire to cultivate, and, if possible, to improve such a conjunction, we cannot but express our sorrow and disappointment that it should ever come to pass that an English parliament should be less careful to preserve it than consisted with our safety, or your majesty's satisfaction.

'Tis not without a just concern we have for some time past observed, that it has been possible even for so great an assembly to err, their invading the rights of the people who they were chosen to defend, by imprisoning such gentlemen as by humble petition, according to law, put them in mind of their duty; and by addressing your majesty to put them out of your favour and commission in the countries where they were severally useful to your majesty and the nation; their evading the prosecution of persons of honour, whom they had impeached of crimes they did not think fit to prove; their untimely and inconsistent trifling with the House of Lords; their unreasonable delays in paying the just debts of the nation; their backwardness in assisting our protestant neighbours, ready to be insulted by the French; the partiality of their proceedings in several particular cases among themselves; these, and the like miscarriages, have often filled the hearts of your most dutiful subjects with trouble, to see those gentlemen we sent up as our representatives so ill pursuing the great end of assembling in parliament, viz. the service and benefit of your majesty and their country.

Your majesty in your great wisdom, we doubt not, has been fully satisfied that wherein our representatives have been wanting in their duty to your majesty in their care of the protestant religion, and your majesty's allies, so far they have acted contrary to the general sense of us, your majesty's most dutiful subjects the freeholders of England, who chose them, and have betrayed the trust reposed in them by their country.

Your majesty has sufficiently expressed in all the actions of your glorious life, your value for, and resolution to maintain, the English constitution, and we acknowledge

the freedom we now enjoy is owing to the happy conduct of your majesty, in rescuing us from those who would have betrayed us and our liberties to the power of the French and popish counsels; and 'tis to our great sorrow, that we observe some of those very instruments of tyranny have found ways to be trusted again with the liberties of their country, not doubting but it is by their restless contrivances that many of the gentlemen of that house have been deluded, and blindly led, under specious pretences of liberty, to embroil us in civil heats and disorders.

Your majesty (more than any of your late predecessors) has appeared fully satisfied with the constant affections of your subjects, and has therefore graciously granted them constant and uninterrupted assemblies of parliaments, and your people have, on all occasions, testified their zeal for your service, loyalty to your person, and their willingness to supply your majesty with all needful sums for the support of your glorious designs, firmly believing (as they have always found) that your majesty was ever entirely in the common interest, and a true defender of the liberty of your people; and though to our unspeakable grief your majesty has not been so well served, nor the ends of the nation so well answered by our representatives, yet we humbly beseech your majesty not to entertain from thence any resentments against either parliaments in general, which your majesty has so often declared to be the safety and glory of the English constitution, or against your loyal and loving subjects (the good people of England) in particular.

And we take leave to assure your majesty, that we cannot entertain any fears that your majesty should decline your affections to parliaments in general, in that your majesty has thought fit to give us an opportunity to elect again another representative, which we hope shall more fully answer the great ends for which they are chosen.

Wherefore, from our deep sense of your majesty's great care, to preserve the affections of your loyal subjects, and to prevent all interruptions it may meet with from the private designs of our enemies, we come to present your majesty with our humble and unfeigned thanks for your late proclamation for the dissolution of the parliament, and for your gracious intentions therein declared for the speedy calling another.

Nor can we forget to give your majesty our most humble thanks and grateful acknowledgments, even for the very words of your said proclamation; wherein your majesty is pleased to take notice of the true intent and meaning of the repeated addresses of your people; who, coming with hearts full of resentment at the insolence of your majesty's enemies, and the indignity offered your person, in fostering and acknowledging a scandalous and ridiculous pretender to your majesty's rightful dominions, cannot refrain expressing their just fears that the late House of Commons would fail in their duty to your majesty and the nation, by assuring your majesty what care they would take to send up such men as should fully answer the expectations of all good people, if your majesty would be graciously pleased to give them an opportunity, by calling a new parliament.

And we humbly thank your majesty for that (by your gracious proclamation) you have confirmed what the constitution of England, the reason and nature of the thing, and all impartial men have allowed, that it is most reasonable your majesty's concurring the freeholders of England, should have an opportunity of a new choice given them when they find cause, in order to chuse such men as are more likely to bring to pass the just and pious intentions of the nation.

And because it may seem a new thing in England, for the people to thank their king for dissolving the parliament, we humbly crave leave to assure your majesty, that nothing could have led us to such a proceeding, but the satisfaction of having an opportunity put into our hands, of sending up such representatives to attend your majesty in parliament, as may, with unshaken fidelity to your majesty, and unbiassed regard to the interest of their native country, proceed in the weighty matters your ma-

jesty shall lay before them, with that unanimity of council, and vigour in resolution, as is necessary, at this juncture, to encourage the protestant confederacy abroad, secure the peace and tranquillity of Europe, reduce the exorbitant power of our enemies, complete your majesty's just and glorious designs, and defend our commerce in the world.

And we further humbly assure your majesty, that if ever a parliament (which God forbid) should proceed contrary to these just and reasonable ends, they must be acted by some ill agents, contrary to the sense of their country, their duty to your majesty, and the honest intentions of us your majesty's obedient subjects who chuse them.

And if ever that unhappy time should come again, and as often as it shall so happen, your majesty will infinitely engage the hearts and affections of all your honest protestant subjects, by giving them opportunity to show their resentments, by chusing men of more honesty in their rooms.

So shall the peace and tranquillity of these nations be preserved, the glory of your majesty's reign increased, the enemies of our happiness be defeated; our protestant neighbours, your majesty's allies, be assisted and encouraged; our religion, liberty, and trade, secured; and your majesty's satisfaction compleated, to the glory of God, and the infinite comfort of all those who wish and pray for the prosperity of your majesty and old England.

Legion's humble Address to the Lords. 1703.

To the Right Honourable the Lords Spiritual and Temporal assembled in Parliament.

A proclamation was published, offering 100l. reward for discovering the author, and 50l. for apprehending the printer of this Tract; but without effect. It is of the same complexion with the other papers signed Legion, and was addressed to the House of Peers, who were at this time in the whig interest, and favourites consequently of the author of these extraordinary productions.

"The peers, in an address to the king, said 'they were satisfied that the safety of England and Holland were so inseparably connected, that what was ruin to the one was fatal to the other; and desired him 'to enter into a strict league, offensive and defensive, with Holland for the common preservation of both countries; and that he would invite into it all princes who are concerned in the present visible danger arising from the union of France and Spain, and that he would form an alliance with the emperor pursuant to the treaty of the year 1689.' They concluded with a prayer, 'that God Almighty might protect his person in so righteous a cause, and carry him and them with honour and success through all the difficulties of a just war.' In terms more modest, but of equal consequence, the Commons resolved, without a contradictory voice, 'effectually to assist his majesty to support his allies in maintaining the liberty of Europe.'—DALRYMPLE, III. 214.

May it please your Lordships,
The distressed people of England, betrayed and abused by their representatives,
humbly fly to your lordships as the only refuge now left them, next under God and

her majesty, where they can apply themselves for the safety of their liberties, and redress of the grievances of the nation.

And that your lordships and all the world may know, that as it is not without great reason that we come to your lordships from that house where all our safety ought to depend, and where formerly it did depend; accordingly we crave leave humbly to represent to your lordships,

1. That there is a duty incumbent on the people's representatives, viz. the care of the liberties, properties, and peace of the persons they represent, which they have no right to part with, or to expose, and that therefore all the powers and rights of us the represented, are not committed to them our representers.
2. That whenever a House of Commons shall part with, expose, neglect, or suffer to be infringed the liberties, rights, and peace of the people they represent, they betray their trust, violate the general reason and nature of their being chosen; their representing power and being ceases of course, and they become from that time forward, a mighty conventicle, an unlawful assembly; and may and ought to be deposed and dismissed by the same laws of nature and right, that oppressed subjects may, and in all ages have, deposed bloody and tyrannic princes.
3. It is the undoubted right and privilege of the people of England, that they are not bound to submit to any power but what is legal; and the known laws of the land are the stated bounds of parliamentary as well as regal power; and the people therefore ought not to be oppressed. On the breach of these laws, and oppressing these people, your lordships noble ancestors have frequently taken arms, and pulled down bloody tyrants; deposing their power, and rescuing your country from slavery and oppression: And having conveyed to your lordships, and us the people of England, the right of being governed by known laws, we have, till now, defended that right, to the destruction of all those that ever attempted to invade it; and under your lordships protection, still resolve to do so, to the last drop of our blood.
4. As it is the undoubted right of the people of England, that they may not be oppressed, so when at any time they have suffered the invasions and depredations of tyrannic princes contrary to that right, they have always made legal claim of their proper rights and privileges: And it cannot be just, that what our kings have no right to take away, our representatives may give without law; and that the people may endure the tyranny of five hundred usurpers more than of one, since no number or quality of persons can make that lawful which in its own nature is not so.

These things being undeniably true, we cannot without great regret apply ourselves to your lordships; and humbly represent in our own names, and in the names of all the good people of England,

1. That 'tis the undoubted right of all the boroughs, cities, and towns corporate, who by prescription, charter, or other right, are to chuse representatives in parliament, always to do so, unless they are legally divested of that right; and that to deprive the town of Maidstone, for now two sessions of parliament, of their privilege of sending two members to represent them, is arbitrary and illegal, contrary to the privilege and liberties of Englishmen, who can forfeit no right, but by legal conviction, attainder, or act of parliament.
2. To throw out and put in members of parliament at committees of elections, by interest of parties, and positive vote, not prescribing that vote by the true merit of the case, and plain majority of the electors, is destroying the people's right of

elections, and divesting the towns of their privileges, which by law they ought to enjoy; and that to vote in such committees, that sixteen voices of electors entitle any person to be a member of parliament against twenty-two, is partial, unjust, and destructive of the being of parliaments, and the original rights of the people of England; and has nevertheless been notoriously practised of late in several other elections besides those of Westbury and Sudbury.

3. For the House of Commons to invade the nation's judicature, and take from any freeholder his right of action, where the law gives him the privilege to right himself in case of injury, is betraying the trust reposed in them by the people of England, and exercising the same arbitrary power they are sent thither to suppress; and no illegal proceeding of the late king James, for which the Commons of England deposed and dethroned him, were more directly against the constitution of the English government, and the rights and liberties of the subject.
4. To deprive any freeholder of his right in election of members to serve in parliament, or to encourage others to do so, as was practised in the case of the election at Aylesbury, is a manifest invasion of those very liberties, which it is the House of Commons business to protect and defend.
5. The manifest distinction of all votes in the house by interest and parties, and not by merit and real right, as it is too plain is now the practice of that house, a large number of out-lying members always being in the speaker's chambers, or in publick houses near the house, ready to be called in by their party when a question is put, who, having heard nothing of the merit of the case, enquire not after the particulars, but how Sir John or Sir Thomas, or any leading man of the party, votes. This is a manifest reproach to the justice of the nation, a scandal to the House of Commons, a slight and neglect of the trust reposed in them by the people, and betraying the interest of the nation.
6. Voting the prosecution of some persons intrusted with the management of the public revenue, but not of others equally guilty of frauds and ill practices, is a great defect of justice, a scandalous partiality, and a reproach on the integrity as well as duty of the commons.
7. Resolving to re-assume the grants of King William on whatsoever merit or valuable consideration they were made, and at the same time continue the extravagant dispositions of former reigns, in which the stated revenues of the crown are alienated to whores, bastards, and papists, and the public enemies of the nation, is a partial and malicious proceeding, contrived to reflect upon his late majesty, and lessen the value all true Englishmen have for his memory; and shews the degeneracy in the principle of the present House of Commons from those that joined with that glorious monarch in the redemption of this nation from slavery and arbitrary government.
8. Caressing the queen's majesty with the title of a queen, as sitting on the throne of her ancestors by right of succession from her father, when at the same time they know her majesty's right depends upon the validity of parliament limitation, and is built on the foot of the late revolution, and the act of settlement, is a barbarous treachery to the whole nation, an insolent affront to her majesty, an insinuation of the title of the pretended Prince of Wales, and a villainous attempt to destroy the present settlement of succession, and is consequently high treason by their own act of parliament.
9. That to address her majesty to extend her prerogative, and thereby to embroil her majesty with the privilege of the peers, is the most aggravated piece of treachery that ever House of Commons was, or ever can be, guilty of.

1. As it is an affront to her majesty, and reproaching her with not knowing how to manage her government.

2. As it is a malicious design on her person, by persuading her to enter on that very thing, the exorbitant practice whereof was the ruin and destruction of her father and grandfather.

3. As it is an apparent meddling with what they have no power nor right to touch; excepting only when it encroaches upon, or infringes, the people's just liberties; and then no farther than to cause it to return to its proper channel.

4. As it is a notorious discovery of a treacherous plot against the people of England, to bring the prerogative of the prince in play, and prompt it forward, which has cost the nation so much blood and treasure to restrain.

5. As it is the most unparalleled unprecedented attempt upon the liberties of the people, who sent them there to protect, settle, and defend them, whose servants they are, and whose rights and liberties they cannot expose without the most detestable perfidy, and degenerating from all the members that ever sate within those walls before them.

6. As it is a terrible precedent for future ages, when some prince of less honesty may sit on the throne, who may be with more ease persuaded by a biassed and corrupted House of Commons to become tyrants and advancers of the prerogative.

This being the distressed condition of the liberties of the free-born people, now given up, deserted, and exposed by the House of Commons, whose proper business and duty requires them more particularly to defend them.

And your lordships, like the true posterity of those noble ancestors, at the price of whose blood we received our privileges and liberties, having vigorously and gloriously withstood the treacherous and unfaithful proceedings of these our degenerated representatives,

We cannot but with a deep sense of gratitude and affection present unto your lordships, this our humble address, heartily acknowledging your lordships zeal, courage, and fidelity, both in vindicating your own undoubted rights, invaded by the same House of Commons; in your diligent care for the safety of her majesty's person, in searching after the deeply-laid contrivances of her enemies in the late plot; and in your lordships asserting the liberty and rights of the people of England, against the invasion and usurpation of the House of Commons.

And as these three heads, in which your lordships have distinguished yourselves, to the immortal glory of the English nobility, do contain all the material things which can make this nation happy; so, in your lordships vigorous defending those three, we cannot but thankfully acknowledge your lordships as the sanctuary and safety of this nation, and the glorious instruments of preserving her majesty's person and our just and undoubted liberties.

And we cannot in gratitude but assure your lordships, that in the farther pursuit of these just and glorious ends, we, the injured freeholders and commons of England, will firmly adhere to, and faithfully defend, your lordships both in your persons and authority; we will maintain your lordships in all your just and legal privileges, and in all the due measures you have already taken, or shall further take, in the defence and vindication of your just rights, her majesty's person, and our liberties. In all which we humbly assure your lordships, that we resolve as one man to live and die with you.

Our Name is MILLION, and we are more.

A Vindication of the Rights of the Commons of England. By Robert Harley, Esq. 1701.

*Quod omnes tangit, ab omnibus tractari debet.
Amicus Plato, Amicus Socrates, sed magis Amica Veritas, et Patria.*

This and the following Tracts relate to the dispute which took place between the upper and lower houses of parliament respecting the impeachment of the lords concerned in the Partition Treaty, of which Dalrymple gives the following account.

"Soon after the new parliament was assembled, the Tories made preparations for impeaching the late Whig ministers, the Lords Portland, Somers, Halifax, and Oxford, for negotiating the Partition Treaties, and the Marquis of Normandy began the attack in the House of Lords. But the king retired to the country, and seemed to give himself no trouble about it. In the two first weeks of April the lords were impeached, and on the 16th of that month, the commons in a very artful address, in which they endeavoured to separate the king's conduct from that of his ministers in the management of the treaties, prayed him 'to remove them from his presence and counsels for ever.' The king's answer was, that he would employ none in his service but such as should be thought likely to improve the mutual confidence between him and his people. From this answer it was inferred, that he would give up the four lords to the vengeance of their enemies. But a few days after, the House of Lords, regarding the laws of justice and the dignity of parliaments, addressed him not to prejudge the cause of persons who were under trial by the impeachments, nor to punish any person until guilt should be proved against him. And then the king ordered their names not to be erased from the council book, which must have been erased, had he intended to comply with the address of the Commons, and from that order it was inferred, that he intended not to give them up. In this uncertainty of his intentions the Tories hoped, that by pleasing him on the subject of war, they should induce him to let the impeachments take their course; and the late Whig ministers and their friends hoped, by the same compliance, to gain his protection against the storm. And thus both houses and both parties gave him full authority to form the alliances he wished for.

"The impeachments proceeded, but were defeated by the partiality of those who conducted them; for they did not include the impeachment of Lord Jersey, because he was of their own party, although he had been secretary of state and ambassador in France in conducting the last of the treaties. But, above all, the attempt which had been made to prevail upon the king to punish men who were entitled to be presumed innocent till they were found guilty, and who were actually under trial for fortune, life, and fame, shocked their generous judges. The commons, therefore, under pretence that the peers had done injustice to them in refusing to comply with some trifling forms of procedure, on which they insisted, did not appear at the bar of the House of Lords when called upon to support the impeachments, and the lords were acquitted. Each house then made grievous complaints of the other; and the people, according to their different humours, complained sometimes of the one, and sometimes of the other, displeased in public, as they always are, that the great had not fallen, and yet pleased inwardly that no injustice had been committed."—DALRYMPLE. III. 215.

To the King, Lords, and Commons, in this present Parliament.

To the King.

Great Sir,

Your majesty's loyal subjects have reason to be highly sensible of the glory and happiness this nation enjoys in two very extraordinary particulars, that is, the excellency of their king, and the excellency of their government.

The first hath been fully demonstrated, by your majesty's great and glorious actions, to all the world; the latter seems rather to be understood by its happy effects than its happy institution; and therefore a plain and brief explanation thereof is humbly set forth under your majesty's gracious patronage, in hopes that the universal love, which the people of England have gratefully entertained for your majesty's royal person, may also be extended to the established government.

It may be observed, that in most former reigns there have been two sorts of men within the kingdom, who have been commonly known and distinguished by the name of the court and the country party; but when their professions have been compared with their actions, the real difference betwixt them hath ever appeared to be no more than this, that one party were very zealous for the king and themselves, and the other for their king and their country.

But since, by the experience of all ages, it is apparent, the first proposition in this little treatise is certainly true, that in all monarchical governments, it is absolutely necessary, for the common good, to preserve a right understanding between the king and the people, and that no king was ever great and glorious in England, but he that, like your majesty, became the prince of his people: nor no people ever happy but they, who, like your majesty's subjects, performed a cheerful obedience to their prince, I humbly conceive, that I cannot attempt to do a better thing for England, than to endeavour to continue and establish to all posterity the like happy union in this kingdom; and I do not know any better way to accomplish that great end, than by demonstrating to all sorts of capacities, that the happiness and prosperity of both prince and people doth entirely depend upon preserving the happy constitution of the established government.

Most gracious Sovereign,

As the subject of this treatise, so the author also doth, with all humility, depend upon your majesty's royal protection, that his sincere endeavours, for the public good, may not suffer for any involuntary mistake on one side, or for want of charity, or love of kingly government, on the other; and that he may have the honour to profess himself amongst the number of those who are entirely devoted to the true interest of their king and their country, is the highest ambition of,

May it please your majesty,

Your majesty's most obedient,

Most humble,

And most dutiful

Subject and servant,

HUMPHREY MACKWORTH.

To the Right Honourable the Lords Spiritual and Temporal, in this present Parliament.

My Lords,

The excellency of the government of England, by king, lords, and commons, is a subject worthy of the greatest consideration; and though, as a member of the House of Commons, I have entituled this little treatise, *A Vindication of the Rights of the Commons of England*, yet I humbly hope I have not been wanting, upon all occasions, to assert and maintain the just rights and judicature of your lordships, or else I must confess I have ignorantly varied from my intentions, and failed in that great rule that I have laid down as necessary for the common safety; which is, to preserve the just balance of the constitution.

My good intentions therefore, for the general good, will, I hope, plead my pardon

with your lordships, for any error or mistake in judgment, since I have not wilfully transgressed the bounds of law or reason, nor asserted any proposition but what I sincerely apprehend to be as necessary for the support of the rights of your lordships, as of that honourable house where I am entrusted to sit as a member, and where I hope I shall always discharge my duty with great respect to your lordships, as well as with loyalty to my king, and fidelity to my country.

And under this character, together with an humble assurance of my readiness to change my opinion, and acknowledge any error, whenever I shall hear good reasons for it, as aiming at nothing but the public good, and a happy union in this kingdom, I humbly crave leave (with all due regard and deference to your lordships) to subscribe,

My lords,

Your lordships most obedient,

And most humble servant,

HUMPHREY MACKWORTH.

To the Honourable Robert Harley, Esq. Speaker, and all the Honourable the Knights, Citizens, and Burgesses, in this present Parliament.

Honoured Sirs,

This little treatise, in vindication of the rights of the commons of England, comes naturally to crave your favour and protection, as the constant and generous patriots of your country, and the representatives of those very people, whose rights are here (in all humble manner) asserted and maintained.

And the writer thereof doth entirely depend on your usual candour, and favourable construction of his proceedings, not doubting but his good intentions, to serve the public, will make an apology for his want of performance.

And yet there is nothing affects him more, upon this occasion, than a just apprehension and concern for his country, lest this noble subject should any ways suffer under his management; especially since he labours (at present) under want of time, as well as capacity, to treat of it in such a manner as becomes the weight and dignity thereof.

But since something of this nature seems necessary to be done at present, in order to create a right understanding of these weighty matters, and to preserve that happy union in England that is absolutely necessary for the common good of the king and kingdom, he humbly hopes that this poor acknowledgement of his duty may be favourably accepted, till a better be performed.

And in the mean time, as he must confess that he hath a great veneration for every part of the constitution of the government of England, so (amongst the rest) for that honourable assembly the House of Commons, which has been established by the wisdom of our ancestors, as the great bulwark of the rights and liberties of the people of England; to the preservation of whose rights, he can never doubt but every true Englishman will give his helping hand, and endeavour to promote a right understanding thereof, with the like disinterested zeal as is here attempted by,

Gentlemen,

Your most obedient

Humble servant,

HUMPHREY MACKWORTH.

PREFACE.

When a misunderstanding unfortunately happens between any two persons or bodies of men, who aim at the same common end, the public good; and whose interest it is

to be united, and agree together, as the only means to attain that end, or even to preserve themselves; it is plain, that it can be only a mistake, or misapprehension, on one side or other, and that he that by any means can convince either, will certainly oblige and please both.

My hopes therefore are, that what is here humbly offered to consideration, may, in some measure, contribute to such a mutual satisfaction.

For as there is nothing can ruin England but unhappy divisions, so there is nothing in the present circumstances can save it but a happy union.

Divide et impera, to govern by parties and factions, may be a maxim for arbitrary governments, but not in a regulated monarchy; in England the direct contrary hath ever been observed, that when all parties, especially all the branches of the legislative authority, have been united and inseparable, the nation hath ever been found insuperable, and not to be subdued.

It is certain, that no person can act more for the interest of the French king, in this conjuncture of affairs, than by creating animosities and differences in England: And no person can act more against the French interest, than by creating a happy agreement.

Since, then, we all seem to contend, who shall appear to be most loyal to the king, and most zealous against France, I hope we shall all demonstrate our sincerity by our actions, by doing those things that are most likely to please his majesty, and to humble France; and that is, in his majesty's gracious expressions, by being firmly united amongst ourselves, since nothing can contribute more to our safety at home, or to our being considerable abroad.

Let us therefore lay aside all private interests, where the public is concerned: Let us not so much consider who are the chief ministers of state, whether new or old, as whether they do faithfully discharge their trusts, and execute the duty of their respective places, for the general good of the king and people.

A counsellor of state, or officer of justice, is not to be revered and esteemed, because he is true to the interest of this or that party, but because he is just and honest to all parties, and true to the interest of the king and kingdom.

But this I may be bold to say, and it appears, by the constant experience of all ages, that he who is false and ungrateful to his Creator, can never be sincere, either to his king or to his country.

He that hath not understanding to discern an Almighty Power, by all the wonderful works of the creation; or he that hath, and yet lives in open defiance to the same, and in a wilful habit of sin and debauchery; he that denies dependence on a divine providence, and he that owns it with infinite obligations, and yet discovers by his actions, that he forgets them all, are equally unworthy to be trusted with the honour of the king, or the safety of the people.

Many men (says a famous author) have good sentiments in the moment you oblige them, but the constitution of their nature sways them soon after, and they easily forget what they owe others, because they only love themselves; And as fire converts all things into its own substance, they only consider public interests to convert them to their own advantage, and equally despise those who do them good, and the state in which they receive it.

This is most certain, that the same qualifications which render men worthy of favours, are the same which make them capable and desirous to acknowledge them: And, on the contrary, the same ill qualities which make men unworthy of favours, are the same which make them ungrateful both to their king and their country.

And the qualifications of any minister will always be suspected, who shall at any

time endeavour to lay his own faults on the sacred person of his prince, and to shelter himself from justice by a fatal division in his country.

But let the faults of ministers be what they will, they cannot be greater to an earthly power, than the crimes of all other men are in the sight of Heaven; and therefore it must be the duty of every man to forgive others, as he would be forgiven himself: That is, upon the same condition of repentance and amendment.

But if a great minister shall at any time offend, and persist in his error; if he shall break in upon the constitution of the government, and at the same time justify it to be lawful, and so endeavour to establish a precedent which tends to the ruin and destruction of his native country to all posterity, how can any man pretend to say, that during such impenitency, he is entitled to forgiveness either from God or man?

The end then of publishing these occasional thoughts on the rights of the commons, is, First, to demonstrate the nature of the constitution of the government of England, by king, lords and commons, and thereby to encourage all true Englishmen, of what degrees and capacities soever, to put a just value upon it, and to be as tender of its preservation as of the apple of their eyes, as the nature and excellency thereof doth require, and as that upon which depends the honour and safety of the king, and the preservation of the rights and liberties of all the people of England.

In the next place, it is designed (with due respect and deference to the great officers and ministers of state, who shall at any time be concerned in the administration of public affairs) as an humble and kind admonition to them, not to offend against this happy constitution; or if they do (as the best of men may err) that they study rather to excuse, than justify their mistakes, and find out any other way to save themselves, and palliate their errors (which may happen from the surprise of extraordinary honours and preferments) than by procuring an impunity at the price, and with the ruin, of their native country.

And in the third place, it is proposed, with all humility and deference to better judgments, to demonstrate the nature of the powers and proceedings of lords and commons upon impeachments, and how they do mutually support and depend upon each other for their common safety, and thereby to promote a right understanding thereof, and continue a happy union between both houses.

And in order to this, it has been considered, that the great end of speaking and writing, is to make other men understand what is spoke or writ, and thereby to convince them of that truth which is to be demonstrated.

Many things are plain when they are plainly expressed, which till then do often remain as mysteries.

When, therefore, the intent of a writer is to do good to others, and not to gain preferment or applause to himself, he will rather study how to convince than please; and how to make that truth, which seems evident to himself, appear so to others, than to entertain his reader with useless and amusing oratory.

But he must, at the same time, confess, that he thinks himself very fortunate in this particular, that he is at present to treat of such a constitution of government, which needs no other advantage to set it off, than a bare relation of its own worth and excellency; and consequently is more agreeable to the mean capacity of the writer.

If any thing therefore, in these papers, shall in the least contribute to a right understanding of the subject matter, and consequently to a good agreement between all parties, the intent thereof is fully answered.

And if the writer is unfortunately mistaken in any particular (as a person of his weak understanding very well may) he shall be obliged, for the discovery of his error, to any person that shall treat him as a gentleman, and as soon as he has an opportunity to consider thereof, he will as fairly acknowledge the same, or give his reasons to the contrary.

But since his end is serious and sincere for the public good, he cannot shew a respect to any other answer, than that which aims at the same advantage to the public as is hereby intended, which is, to convince all parties of the real truth, and thereby to promote a happy union in this nation.

The writer, indeed, cannot but be sensible, that if there shall happen at any time hereafter to be a set of evil ministers in this kingdom, they will be apt to be very much offended at this well-intended treatise; and for that reason it might have been esteemed a politic part to have concealed his name; but this he did not think for the honour of the house of which he is a member, lest their enemies should asperse it as a spurious pamphlet, and as if the writer had not a good cause to defend, or wanted courage to own it; and therefore this is his true and real satisfaction, that he shall either in some measure contribute to the preservation of the happy constitution of the government, and thereby promote his own and his country's welfare together, and prevent the unhappiness of an evil ministry to his nation, or else have the honour to suffer in such a glorious cause, in defence of the rights of the Commons of England.

But if this treatise fall into the hands of persons zealous and affectionate for the true interest of their native country, it may perhaps be of some use to promote a right understanding between all parties, and to continue a happy union between the king, lords, and commons, which is absolutely necessary for the happiness and safety of England, and for the attaining those great ends which all good men do heartily wish and desire: And that is to secure our trade, and promote our manufactures, to pay our debts, and assist our allies, to employ our poor, and preserve our religion; and, in short, to put a timely stop to the exorbitant power of France, and to advance the general good of the king and kingdom.

A Vindication of the Rights of the Commons of England.

CHAP. I.

Of the Nature and Excellency of the Government of England, by King, Lords, and Commons.

The happy constitution of this government (which is the glory and happiness of England, and the wonder or envy of all the world) is founded on these following maxims and prudent considerations:

That in all monarchical governments it is absolutely necessary, for the common good, to preserve a right understanding between the king and the people.

That therefore it is necessary, in all such governments, that whatever mismanagements happen, no blame or wrong be imputed to the king.

That as it is necessary to take care that no blame be imputed to the king, so it is necessary to take as much care as possible that no wrong be done to the people.

That, therefore, when any wrong is done, the people may have a legal remedy for redress thereof.

That the king and the people are like the head and the body, and do mutually depend on each other.

That as the people depend on the protection, justice, and conduct of the prince, so the prince depends on the subjection, strength, and treasure of the people.

That therefore it is the interest of all kings and princes, to govern in such a manner as is consistent with reason, and with the rights and liberties of the people.

That in order thereunto, and to prevent mistakes, it is very requisite and convenient,

that (as far as may be) the prerogatives of the king, and the rights of the people, be declared and ascertained.

That therefore a regulated or limited monarchy, according to such declarations or laws, founded upon reason and justice, is the most happy, secure, and best sort of government both for the king and the people.

That in all such monarchies it is absolutely necessary for the common safety, that the prerogatives of the king, and the rights of the people, be secured to each other by a prudent distribution of power, in the original frame and constitution of the government.

That therefore the absolute, supreme, and legislative authority (which is necessary to support all governments against contingencies) be lodged, not in one, but in three distinct persons or bodies, united by interest in the same common end, the public good.

That these three branches of the supreme authority have also several particular powers lodged in them, as mutual securities, for the common safety, to assist each against the encroachments of the other, which may not be legally defeated or made impracticable.

That the said absolute, supreme, and legislative authority in England, be lodged in the king, the lords, and the commons; with the king as supreme, and common father of his country; with the lords, as persons of great honour, quality, and estates, and consequently highly concerned for the public safety; with the commons, as they are the representatives of the people; and with all three together, as united by interest in the same common end, the public good.

That the king, lords, and commons, have also several particular powers and authorities lodged in them, as mutual securities for the common safety; that is to say, that the king have the power of making war and peace, of commanding the militia and forces of the kingdom, of calling and dissolving parliaments, of appointing all officers ecclesiastical, civil, and military; and, in short, all other powers and prerogatives that a wise and good prince can desire, to make him happy and beloved at home, as well as potent and respected abroad.

That the commons, as representatives of the people have (amongst other things) the power of levying money, and of impeaching and prosecuting evil ministers, as a necessary security to preserve the rights and liberties of the people.

And that the lords be entrusted with a right of judicature; and, as another branch of the legislative authority, to preserve a balance of power between the king and the people.

That as the king, lords, and commons, united together, have an absolute supreme power to do whatever they shall think necessary or convenient for the public good, of which they are the only judges, there being no legal power on earth to controul them, so the several and particular powers lodged in them as branches of the supreme authority, as mutual securities for the common safety, and as checks one upon another, must in their nature be supreme and absolute against all but one another.

That the lords and commons therefore have power over the courts of Westminster-Hall, but the courts of Westminster-Hall have no power over the House of Lords or Commons.

The lords have a power, upon a writ of error, to reverse the judgments of the courts of Westminster-Hall; and the commons have a standing committee for courts of justice, to inspect into the abuses in those courts, either by corruption in the judges, or extortion in the officers; but the judges of those inferior courts have no power to judge of the legality of the proceedings in the high court of parliament; for that would be to invert the order of justice, and subvert the constitution established for the common safety.

The king, lords, and commons, therefore, as supreme, have superior powers, and the

liberty of exercising them (according to the nature and constitution thereof) as they in their respective wisdoms and discretions shall think most conducing to the public good, without rendering any account for the same; that is, the king, by advice of his council (viz. the privy council in matters of state, and the judges in matters of law) and according to the noble constitution of the monarchy hereafter set forth, may exercise the high and great prerogatives of making war and peace, calling and dissolving parliaments, &c. and no mismanagement is to be imputed to the king, but to his ministers.

The House of Lords being a great council within themselves, are entrusted with the exercise of the power of judicature on impeachments, upon honour; they are not bound up by an oath, nor restrained by a jury; but they supply the place of judge and jury, and determine according to right and justice, and according to their lordships great judgments and discretions, from which there lies no appeal.

And the House of Commons, being a numerous body, the representatives of the people, and another great council within themselves, have the power of impeaching and prosecuting evil ministers, and other great offenders, as they in their discretions shall judge requisite for the public safety; and are not accountable for the same to any superior power.

And it is absolutely necessary for the safety of England, that such large powers should be lodged somewhere, to preserve the king and people from the secret designs of contriving and ambitious men, who will be endeavouring in every age to overturn the happy constitution of the government, and to accomplish their wicked ends by such dark and hidden measures, which though manifest and apparent by their evil consequences and effects, yet may not immediately admit of a plain and positive evidence.

Since, therefore, these supreme powers are necessary for the common safety, and no person can assign any other bodies of men in England, that are more fit to be entrusted with these powers than the king, lords, and commons, every rational man ought to submit to the established government, and not presume to argue against it, upon any supposition of mismanagement in the king, partiality in the lords, or delay in the commons; since it is the highest and best security for the rights and liberties of the people of England, that the nature of the government will admit.

And when there is occasion to debate concerning these supreme powers of king, lords, or commons, we must not argue like lawyers in Westminster-Hall, from the narrow foundation of private causes of *meum* and *tuum*, but like statesmen and senators, from the large and noble foundation of government, and of the general good of the king and people.

But although these supreme powers are above the jurisdiction of all inferior courts, and may be exercised according to the discretion of the respective parties, yet they must of necessity be limited and bounded by one another in such a manner, that one may not be allowed to encroach on the other; and that it may not be in the power of any one to defeat the right or power that is lodged in any other, or render the same impracticable; but that all three may subsist together for the common good, and each of them be able to attain the end for which they were established: For if otherwise, the whole design of the constitution will be disappointed, and these three powers will not be checks one upon another, nor be mutual securities to preserve the common safety, as was intended.

This is the plain rule, by which we are upon all occasions to measure and set out the bounds and limits of the legal authority of the king, lords, and commons. This is the infallible touchstone, by which we are to try the legality of all claims and demands of power by every branch of the legislative authority: This is the *ne plus ultra*, the utmost boundary to their respective authorities.

Hence it is that the commons have always insisted, that the king's great and high prerogative of pardoning offenders is yet so limited and restrained, that it cannot extend to pardon impeachments; because the king cannot defeat that power in the commons, which is appointed as a check upon the prerogative itself, and is the great bulwark of the rights and liberties of the people, against an evil ministry and arbitrary power. For if the king can command an unlawful thing, to the prejudice of the people, and afterwards pardon the evil minister that puts that command in execution, there can be no manner of security for the rights of the people.

Hence it came to be determined in the case of the five popish lords, 'that the office of high steward, upon trials of peers, is not necessary to the House of Peers, but that the lords may proceed in such trials, if a high steward be not appointed according to their humble desire:' Because, if such an office were necessary, then the king (by not appointing a high steward) might defeat the judicature of the lords, and render the exercise of that power impracticable, which is appointed as another check upon the prerogative, and to prevent any encroachment on the rights of the people.

And hence it is, that neither the lords nor commons can have such a legal power, which is able to defeat the power of each other; and which would only be a power to destroy the balance of the constitution, and ruin themselves.

And thus it appears, that the several and respective powers vested in the king, lords, and commons, are mutual checks and mutual boundaries to one another, but are not to be limited by any authority besides their own.

These supreme powers therefore are as great as the nature of such powers will admit, and as the king, lords, or commons can reasonably desire; and the greater they are, the greater are the people of England, for whose security they were established: But then they must agree together in the exercise of their powers, and not interfere or clash with one another, for thereby they will both destroy themselves, and the end for which they were established.

Every body natural (that has a rational soul) hath an understanding, a will, and a memory, for the safe and prudent government of that body; and the greater and more extensive those faculties are, the greater is the happiness and safety of that body natural: So, in the great body politic of the kingdom, the king, lords, and commons, do compose the soul of that body politic, and are entrusted with the safe and prudent government thereof; and the greater those powers are, the greater is the happiness and safety of that kingdom.

But as in the body natural, if the understanding pretends to judge before the memory has truly stated the case, or the will to make a choice, before the understanding is consulted, the end for which these faculties were appointed will be defeated; so the king, lords, and commons, must agree together, and assist each other in the exercise of their several and respective powers, without the least encroachment upon one another, or else they will not answer the end for which they were established.

The king therefore may exercise his prerogative to the highest extent of power that the nature thereof will admit, and that does not invade or defeat the just rights of the lords or commons.

And the lords may exercise their right of judicature to the highest extent of power that the nature thereof will admit, and which does not invade or defeat the prerogative of the king, or the rights of the commons; and the commons may exercise the power of impeaching, and prosecuting evil ministers, vested in them, for the security of the people, to the highest extent of power that the nature of the thing will admit, and that does not invade or defeat the king's prerogative, or the just right of judicature in the lords: But none of them can extend their power to defeat, or make impracticable, the power of any of the other, without destroying the balance of the constitution; and, in the consequence thereof, destroying themselves.

The three several powers vested in the king, lords, and commons, are like the three perfect concords in music, which being exactly tuned to one another, upon proper instruments, make admirable harmony; but if you stretch any one string, beyond its proper pitch, you put all out of tune, and destroy the whole concert.

But as a discord in music may sometimes be brought in, to make the ear more sensible of the sweetness of the following concord, so a discord in politics may possibly give occasion to many persons to take more notice of, and be better pleased with the harmony and excellency of the established government.

And herein consists the excellency of the government of England, that it is not only the best sort of government in the world, both for the king and the people, when the happy constitution thereof is preserved, but it is admirably well contrived, and every thing provided that was possible for its preservation: For,

Our wise ancestors have so prudently disposed and distributed the supreme powers in the original frame and constitution of the government, that it is manifestly the interest of the king, lords, and commons, inviolably to preserve to each other the several and respective rights and powers belonging to them, and not to encroach upon one another. For,

In case any encroachment be made on the prerogative of the crown, it will only lessen that power that is to protect the people, and consequently lessen the safety and security of the people, that are to be protected by that power.

And in case any encroachment be made on the rights and liberties of the people, or of their representatives, it will only lessen that strength that is to support the king, and consequently lessen the power and interest of the king, that is to be supported by the strength and treasure of the people.

And so in case any encroachment be made on the legal jurisdiction of the House of Lords, it will only lessen that power, that is the very band of union between the king and the people; and consequently lessen the security of both king and people, that is to be preserved by that mediation.

And there has not only been care taken to make it the interest of all parties concerned to preserve the established government, but the nature of the establishment is such, that it does in a manner preserve itself: For the supreme power is not lodged in one, lest he should be arbitrary; nor in two, lest they should fall out, and there be none to interpose betwixt them; but,

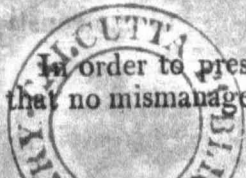
Such is the happy constitution of this government, that it consisting of three distinct branches of the supreme authority, who are mutual securities, and checks upon one another, for the common safety, if a misunderstanding happen between any two, there is still one left, whose interest it is to reconcile the difference: And if any one endeavour to advance their power beyond its just bounds and limits, there are always two against that one to preserve the balance of the constitution.

But the excellency of the government of England, is not only proved by reason, but by long experience; this nation having, for many ages, flourished under the same constitution of government, by king, lords, and commons, and from generation to generation preserved their liberties, whilst many of our neighbours have lost their ancient form of government, and their liberties together.

CHAP. II.

Of the Establishment of public Officers and Ministers of State, and how the Rights of the King and the People are thereby secured.

In order to preserve a right understanding between the king and the people, and that no mismanagement in the government be imputed to the king, nor yet any wrong



done to the people, without a remedy, it is necessary that all public acts of government be performed by public officers; for if done by the king, and any mismanagement happens, either the people must lose their rights, or the blame be imputed to the king: neither of which ought to be admitted.

That therefore these public officers be answerable for all public acts done by them, both to the king and to the people; and in order thereto,

That all grants, patents, and public acts of government be enrolled, and made matter of record.

That these public officers, or the chief of them, as the lord chancellor, and the lord treasurer of England, the judges, &c. do take an oath of office, and therein (amongst other things) do swear, well and truly to serve the king and his people in the office of chancellor or treasurer, &c. respectively.

That such a prudent establishment be made of all these public officers, that one may be a check upon another, for the common safety: and that no person presume to undertake any two offices that are checks one upon another, whereby the king and people lose one of the great securities for the safety of the nation, and the officer is left at liberty, without controul, to act contrary to his duty, and the interest of the public.

That the king have the power of appointing public officers at his will and pleasure for the security of his prerogative. The representatives of the people have a power of impeaching them for any mismanagement and breach of trust, for the security of the rights and liberties of the commons of England: And the lords have the power of judging whether their actions are justifiable or not, for the common security of all parties.

The exercising all public acts of government, by public officers, is no restraint upon the just prerogative of the king: First, because the king has the choice of them, from time to time, at his will and pleasure. Secondly, because those ministers are bound to obey the king in all lawful things. And the law presumes, that no king (who is the father of his country) will command that which is unlawful; or if he do, that when he is made sensible of it, he will recal his order.

The law therefore wisely provides for the safety of the people, without invading the prerogative of the crown, and has made it not only the duty, but the interest of every minister (for his own safety) to inform his majesty of the legality of all proceedings: 1. By words, by an humble declaration of the sense of the law; and if that will not prevail, then to convince his majesty of his sincerity, by his actions; and that is by a resignation of his office.

All good princes will be convinced by this rational, honourable, and self-denying argument, and will rather commend the fidelity of his minister, than be offended with him. But if it should happen hereafter, in a future reign, that the prince will not be advised, but shall accept the resignation of his officer, that minister will have the satisfaction of suffering in a good cause, for the safety of his country, and gain very great honour to himself and family: And the people of England will still have the same security for their rights and liberties as they had before.

For if the succeeding minister betrays his trust, he must expect to answer for it in the House of Peers, on the impeachment of the commons: And if he also, in humble manner, desires to be excused from executing the same unlawful command, to the ruin or prejudice of the people, the king (who cannot exercise any public act of government but by his ministers) will at last observe the necessity of yielding to the law of the land.

These are the wise and prudent methods our forefathers have devised and established, to preserve the rights and liberties of the people, without any force or violence on the royal person of the king.

These are the dutiful ways of keeping princes within the bounds of law; not by

rebellion and resistance against the person of the king, but by faithful council and self-denial in the subject. And it is the miserable neglect of ministers, in the faithful discharge of this part of their duty, that frequently leads princes into those errors which sometimes prove fatal to them.

Could we but persuade the ministers in all reigns, thus to discharge their oaths of office and duty both to their king and their country, this nation would not so often fall into convulsions of government, that frequently endanger the whole constitution.

The exercising therefore all acts of government by public ministers, is so far from being a prejudice, that it is a great advantage and security both to the king and to the people: To the king, because no mismanagement can be imputed to him, but to his ministers; to the people, because they may have redress for their grievances, without any misunderstanding with their prince.

By this means the king may always reign in the hearts of his subjects, and the subjects always preserve their rights without offence to the king.

The king has the power of preferring honest men, which is all a good king desires in the nomination of public officers. And the lords and commons have the power of punishing dishonest men; which is both for the honour and safety of the king and the people.

King Charles the First, in his answer to the nineteen propositions, doth set forth, that the king, the House of Lords, and the House of Commons, have each particular privileges: And (after enumerating the several prerogatives of the crown) his majesty declares, that the prince may not make use of that high and perpetual power, to the hurt of those for whose good he hath it; and make use of the name of the public necessity, for the gain of his private favourites and followers, to the detriment of his people. And then adds, that the House of Commons (an excellent conservator of liberty, &c.) is solely entrusted with the power of levying money, and of impeaching those ministers, who, for their own end, (though countenanced by any surreptitiously-gotten command of the king) have violated the law, which he is bound, when he knows it, to protect; and to the protection of which, the ministers were bound to advise him, or, at least, not to serve him in the contrary. And the lords being entrusted with a judicatory power, are an excellent skreen and back between the prince and the people; to assist each against encroachments of the other, and by such judgments, to perform that law which ought to be the rule of every one of the three.

Whoever therefore affirms, that the king's command doth justify the minister in doing an unlawful act, maintains a proposition that destroys the original frame and constitution of the government; and consequently the happiness and safety both of the king and of the people.

He destroys the happiness and safety of the king, by imputing the blame of doing an unlawful act to the prince, and excusing the minister. He destroys the happiness and safety of the people, by depriving them of the only proper means for redress of grievances:—For the people of England have no relief, in case of mismanagement, but either against the king or his ministers. But to seek relief against the king, is a remedy worse than the disease:—Is against the nature and constitution of our government, and would be an occasion of creating a misunderstanding between the king and his people, which is a principal thing to be avoided: And therefore the people must either have their remedy against the ministers, or none at all: And to be without any relief or redress of grievances, would quickly end in the ruin of the people, and destruction of their rights and liberties.

If the people of England have no relief, in case their rights are invaded, then they have no security for those rights: And if they have no security, if they are precarious on the will and pleasure of others, it is the same thing in effect, as if they had no

rights and liberties at all ; for a right, without a remedy, is not properly a right, but a favour or courtesy, to be enjoyed during pleasure.

In all regulated monarchies, the king is to act according to the laws of the land ; but the laws of the land being numerous and difficult to be understood, it cannot be presumed that a king can spare time to study the laws, and attain to the perfect knowledge of them : Therefore our wise and prudent ancestors have provided, that the king shall be guarded by his counsellors and great officers, who are to understand the laws at their peril, and to be answerable both to the king and to the people for all public acts that pass through their hands.

These great officers of state are placed, like centinels at several distances, to be mutual checks one upon another, and to keep constant watch, for the common safety of the king and people. Observe, therefore, the progress which the law has directed in passing of ordinary grants and patents : 1. A petition is made to the king ; then this petition is referred to the lords of the treasury, by an order of reference, signed by a secretary of state ; and if the lords of the treasury make a report in favour of the said grant, then the king signs a warrant to the attorney or solicitor-general, empowering one of them to prepare a bill containing such a grant. After Mr Attorney or Solicitor has passed the same, then it goes to the privy signet, the custody whereof is in the secretary of state, who being a minister in high office, is presumed by the laws to be watchful for the king's good and the welfare of the public.

The warrant being thus signed by the secretary, is carried to the lord privy-seal, who is another great officer, well versed in matters of state, and in the knowledge of all the king's affairs, and this great officer, by the oath of his office, is obliged to take care that his majesty is not deceived in his grant : And in case a private subject is concerned in the consequence thereof, he may enter a caveat at the office, and be heard before the lord privy-seal, before the grant passes that seal : But in case the same doth pass there,

Then the grant is carried to the lord chancellor, or lord keeper of the great seal of England, who is always a person of great ability and knowledge of the law ; and who, by his oath, is bound to the observance thereof, and to advise the king to the best of his skill and knowledge, for the universal good of the king and his people, and is not to suffer any grant or patent, prejudicial to the king or people, to pass the great seal of England : And any subject concerned, hath also a right to enter a caveat at the great seal, and to be solemnly heard before the lord keeper.

And as soon as any patent is passed the great seal, before it goes out of the care of the lord keeper, it ought to be enrolled in chancery, and made a matter of record, in justification of the said lord keeper ; to defend the patents from any alteration or forgery, and for the common security of the king and all his subjects.

Thus you see the great care that is taken for the common safety ; if an enemy surprize the first centinel, or public officer, and is able to obtain his pass there, yet, when he comes to the second, there he is bid to stand again : And if by any art or corruption he passes through that, and all the rest of the offices, yet when he comes to the lord-chancellor, or lord keeper, there he meets with another full stop, and the strictest examination ; and as soon as a grant is passed the great seal, it is enrolled, and made a matter of record.

So that if any of these great officers are honest men, all is safe, the design is discovered, and the enemy defeated. And when the law requires so much care in every the least grant, how can it be imagined that the law requires less care in grants or patents relating to the whole kingdom ?

But to what end is all this formality, and great number of officers appointed, if the king's warrant must positively be obeyed, whether the matter therein contained be lawful or not ? Any one officer can execute a command of this kind as well as twenty ; what can then be the reason of it, but that in the multitude of counsellors there is

safety? For a number of officers are less liable than one, either to corruption, or to a mistake in judgment; but if all these officers are to take the warrants or orders, one from another, as a sufficient authority, if that were all that was expected from them, there had been no need of such a constitution, or such an unnecessary charge to the government: Our ancestors, therefore, have not only obliged all these officers to fidelity, by oaths of office, but wisely considering, that it was not possible to know what advice a minister of state might give in private to his prince, have prudently provided, that they shall prove their integrity by their actions; that is, by doing nothing but what is lawful, or else by a resignation of their office.

They were sure every officer would give good advice, when he was to do it at his peril; he would argue, and plead hard to convince his prince of the unlawfulness of an action, and use all his interest to dissuade him from it, when his majesty's persisting did present such officer with no other prospect than an impeachment of the commons, or a necessity of resigning his office.

'Tis well known, that princes are frequently surprised in these cases; and by misrepresentations in the great hurry of public affairs, many warrants have surreptitiously been obtained, and others have been granted merely to satisfy the importunity of courtiers, when the prince himself did not expect that any of those warrants should pass through the hands of the great officers: But if kings grant warrants depending on the fidelity of their ministers, and the ministers execute warrants depending on the authority of the prince, it's plain that neither the king, nor the people, will have security by this constitution.

A warrant from the king is indeed a command to his officers, but it is upon an implied condition in law (well known,) in case the matter commanded be lawful, and no ways prejudicial to the king or the people. * And such a warrant is necessary in all cases, as the first step, the *primum mobile*, or the spring that sets all the wheels of government a-going. But then the legal artist must at his peril take care, that the spring of power be neither too strong to break the wheels of government, nor too weak to support itself: But that it be so regulated, according to the known laws of the land, as to answer the ends of government for which it was established, and preserve the common safety of the king and the people.

This is a doctrine which perhaps will not be very agreeable to such ministers of state, who shall at any time hereafter think themselves safe, if they can by any means whatsoever obtain the king's warrant, (which a set of corrupt ministers may always be able to do for one another;) but it is the only doctrine that hath, or can make the king and people happy, and save England from ruin and destruction.

'Tis true, that of later times, several errors have crept into the happy constitution of this government, and the king's warrants have, in some cases, been carried immediately from the privy signet to the great seal, without ever passing the scrutiny of the lord privy seal; but this is an error that manifestly lessens the security of the king and people, and is to be rectified.

However, this does not excuse the lord chancellor, or lord keeper, for the time being, from doing their duty; but, on the contrary, the less care was taken of a warrant before, the more ought to be taken when it comes to the great seal.

And thus the difference may appear between the king's letter and the king's warrant. The king's warrant, in some cases, passes through the hands of the lords of the treasury, the attorney-general, and one of the principal secretaries of state; and, in all cases, through the hands of one or more of them, who are public officers and centinels, appointed to watch for the public safety; and on whose judgment and advice both the king and people do very much depend. But the king's letter is a private transaction, and is not attended with these advantages to the public: Therefore, when any patent is passed upon the king's letter, without a warrant, that patent is passed contrary to

law, and the king and people are thereby deprived of those securities that the law has appointed for the common safety.

And hereby it plainly appears, that the setting the great seal of England to any patent with a blank, cannot be justified; for every patent ought to be complete and perfect, and enrolled in chancery, both for the security of the king and the people, before it goes out of the care of the lord keeper. And when the prince is acquainted with the law, in this case, he will always come to a resolution in every particular, before his orders are carried to the keeper of the great seal.

How can it be consistent with the oath of a lord chancellor, that he will well and truly serve the king, and his people, in the office of chancellor, when he does a thing that he cannot know himself what may be the issue of it? Whether the words that shall be inserted in that blank, may be for the good of the king and kingdom, or for their destruction?

How can it be consistent with the great and high trust reposed in a lord chancellor, who has the custody of the great seal of England, to leave an affair of the greatest consequence to the nation, to accidents and uncertainties? When a patent is out of his sight and reach, he can neither know what will be inserted in any blank, nor by whom; nor into whose hands the patent may fall, nor what other alterations may be made therein, especially if it should so happen that the patent is to go into a foreign country, and run the hazard both of robbers at land, and pirates at sea: And when there is no record in chancery to be a check upon this patent, and to detect any alteration or forgery in the same.

But whenever there shall be several blanks left in a patent, and one blank of an entire sheet, large enough to insert therein unlimited powers, and convey away England or Ireland to the French king, how can such an action be justified, with safety to England, and the constitution of the government?

And from thence also it may appear, how inconsistent it is with the safety of the king and kingdom, and the trust reposed in these great officers, that they should take any grants of the king's revenue to their own private use: For shall that great officer who is appointed to take care that the king be not deceived in his grant, be the taker of the grant himself? What is this but to appoint officers as centinels to watch for themselves, and not for the king? To give them an opportunity to deceive, and not to keep the king from being deceived? It can never be consistent with reason, or the wise constitution of the English government, to trust any man in his own case; either that person ought to be no officer, or that officer ought to take no grant: For if this be once established as a precedent, and declared to be lawful, 'tis plain, that all the care that is taken to preserve a regular course in the exchequer for the security of the crown is evaded and defeated; which is absurd, and a contradiction to the very design and intent of the original constitution.

'Tis true, that such things have often been done without punishment; but it is as true, that such offences have been punished: And that whenever such an officer was called in question, that offence was always made an article of impeachment. There has, indeed, been frequent robbing on Shooters-Hill, but will that usage justify the legality thereof, at any trial at law? No, the oftner it has been done, the more need of redress.

But whenever a great officer of state, upon whose care and fidelity the king and the people do chiefly depend, shall take grants of the king's revenue in time of war, when the nation is oppressed with heavy taxes, and large debts, and when the grants shall be taken in other persons names, the better to cover a fraud, or elude the force of a law; and when considerable rewards shall be given to inferior officers, to make proper discoveries for that purpose; or when such a great officer shall pretend to make a purchase from the crown, and never pay in his money, but perhaps by a fictitious talley,

or some other artifice, shall avoid the payment, any such deceit, in so great an officer, contrary to his oath and the duty of his office, will always be esteemed (as in reason it ought to be) a very great aggravation of the offence.

But as these great officers cannot legally take to themselves any private grants from the crown, so much less any grants of a more public nature, where the justice of the nation is concerned, and where the interest of those great officers may probably interfere with the rights of the subject.

The judges of Westminster-hall cannot take a grant of any man's estate before conviction, because it would then be their interest to convict him, whether guilty or not, which would bring a great hardship upon the subject, and occasion many false accusations; and the most innocent subject would be forced, in that case, to compound at any rate for the hazard of his life.

The same reason holds good in all other cases, where the takers of the grants, or the profits thereof, may in any probability become judges and parties in the same case. As if any grants should hereafter happen to be made of goods and merchandizes taken on board of pirates, before conviction, to several great officers of justice, and ministers of state, or to any other in trust for them, the honest merchants, from whom these goods were first taken by the pirates, making their claim within a year and a day, and proving their title to the same, have a right to have their goods restored to them; but what a condition will the poor merchants be in in that case? If they go to New England to sue for justice, there the governor may be judge and party against them: If to the admiralty in England, there may be another judge and party presiding at that board: If to the high court of Chancery, a judge and a party may be there also concerned in interest against them. If they apply to the council, there may be a great many parties interested against them. So that the property of the subject may (in effect) be defeated by such grants; for since the remedy is made so difficult and in a manner impracticable, who would not rather lose his goods, than attempt to recover them at a vast expence against such potent adversaries? Who would be so unwise as to throw away his money and time, upon so desperate a remedy?

So that it seems very rational to conclude, that such sort of grants, to public officers of justice, and powerful ministers of state, cannot be justified; or else, that there is a manifest defect in the constitution of the government, which ought not to be allowed: For it is a fundamental maxim of our government, that no man shall be judge in his own case, but that the duty and interest of every officer be one and the same, and go hand in hand together, for the common safety of the king and the people, and not interfere with one another; and therefore that public officer that takes a grant to himself, or to any other in trust for him, whereby he doth, or may, become both judge and party, or which makes it his interest to act contrary to his duty, is manifestly guilty of a breach of the high trust reposed in him; for such a proceeding tends to the obstruction of justice, to the dishonour of the king, and to the violation of the property of the subject.

And here we may observe the excellency and wise contrivance of the constitution of this government; for how is it probable any prince should understand whether such grants as these are legal or not? The pretence of destroying pirates that infest the sea, disturb the trade, and invade the properties of English merchants, is plausible and fair, and what the best of princes are desirous, and think themselves obliged to accomplish, for the good of their subjects: But then the public officers ought, at the same time, to acquaint his majesty, that the doing of this is a royal prerogative inseparably annexed to the crown, and not fit to be entrusted with any private subjects, for their own particular advantage, much less with such public officers of justice, and ministers of state, as are before described.

The king is the father of his people, and it is not his interest to do wrong to them;

and in case any dispute arises, indifferent judges are appointed to decide the controversy; but when grants shall be made of goods before convictions, and the judges shall be entitled to the benefit of their own judgments and decrees, the subject must needs be in a very miserable condition.

And therefore it is wisely provided, by our constitution, that the king shall be guarded by his officers and ministers, who are bound to understand the business they undertake; to give his majesty a just and true information of the law upon all occasions, and at their peril to avoid the passing any illegal grant; and that no blame or wrong be imputed to the king, but to his ministers.

CHAP. III.

Of the Security to the Public, from the Establishment and Use of the King's Councils.

As the law has a great regard to a private grant of the crown, so more especially to those public acts of government, to those great and weighty grants and patents, that relate to the common welfare and happiness of the king and kingdom.

And therefore, in all public acts of state, as making war and peace, calling and dissolving parliaments, &c. by the original constitution of this government, the king is to be advised by his privy-council, which is called, *Concilium Regis Privatum et Concilium Regis Secretum*. These privy-councillors are *Partes Corporis Regis*, they are incorporated into the monarchy, and are bound by the ancient oath of a privy-councillor (amongst other things,) to keep secret the king's council, and to advise the king in all things to the best of their skill and knowledge for the universal good of the king and his land, and for the peace, rest, and tranquillity of the same.

This institution can be no restraint to the just power and prerogative of the king, because the king has the choice of his counsellors; and if he does not approve of the advice of one council he may choose another.

And, as has been said before, the king being *pater patriæ*, can't be supposed to desire any thing but the public good: And no man can imagine, that any wise or good king would attempt any undertaking relating to the public which he could not get twelve men in England to think safe or reasonable.

This institution, therefore, as well as the appointment of the great officers of state, is for the security of the king and the people: Of the king, because no blame can be imputed to him, but to his council: Of the people, because the privy-councillors being upon oath, and being answerable to the parliament, have reason to take care to give such advice as shall be advantageous for the public good, or at least consistent with the general interest of the king and kingdom.

'Tis true; a bad prince may get a bad council, and may do bad things, but then the parliament have relief against the council, and preserve their prince.

And therefore, both good and bad princes have reason to approve of this institution; for if they are good, they will be glad of good council; if they are bad, they'll rather choose that their counsellors should suffer than themselves. And it will be very difficult to find out more than one instance, in all the English history, where any king ever suffered in England, but where the prince was either so imprudent as to take all the faults on himself, and excuse his ministers; or, at least, to protect them from the usual methods of justice, by refusing to refer them to a free parliament.

Observe, therefore, the steps that are taken for the common safety: First, there are great officers of state, to observe and watch that nothing passes to the prejudice of the king or the people. Secondly, if a matter be too high for their determination, then it is considered by the king and his council, where the matter is not only determined by

a greater number, but also upon a solemn debate and hearing of the arguments of all parties: which may be compared to a consultation of able lawyers or physicians, conducing very much to the safety of the public; but if the matter be of such weight and difficulty that the council don't think fit to determine the same, or cannot come to a safe resolution, then they humbly advise the king to refer that affair to his great council assembled in parliament; and by this means all are safe without prejudice to any one.

And here it may be observed, that an error has formerly crept into this part of our constitution; and that is, by determining matters of the highest importance without advising with any of the established councils. The original of which, in the late reign, seems to be derived from the precedent of France, where it was first invented as an introduction to an arbitrary government; and 'tis to be doubted, that they were no true friends to the constitution of this government, who first brought that evil custom into England.

'Tis true, former princes did sometimes advise with particular persons, before they offered a matter to the council to be debated and determined; but it is an innovation by evil ministers, that war and peace, and matters of the highest consequence, should be finally concluded in a secret cabal, and only pass through the privy-council for form's sake, as a conduit-pipe to convey those resolutions with authority to the people.

All proclamations for declaring war, &c. are constantly set forth in the name of the king, with advice of his council (which shows that it ought to be so) when perhaps the war was resolved in a private cabal, and only declared in a privy-council, and published with that authority to the people; which is an abuse of the constitution.

It is therefore a noble resolution in his majesty to restore to England the practice of their ancient constitution, to repair the breaches and innovations brought in upon them in the late reigns, and not only to declare, but debate and transact all matters of state in the privy-council.

Such a proceeding tends very much to the honour and safety of the king, and the satisfaction of all the people of England.

But upon what has been said of the nature and authority of the privy-council, it may appear, that as to the setting the great seal of England to foreign alliance, the lord-chancellor, or lord-keeper for the time being, has a plain rule to follow, that is, humbly to inform the king, that he cannot legally set the great seal of England to a matter of that consequence, unless the same be first debated and resolved in council; which method being observed, the chancellor is safe, and the council answerable.

And if a matter of that moment shall be hereafter referred to one of the lords justices, and such as he shall think fit to advise with, in the king's absence, it would be an astonishing thing to hear, that a person of that high trust and station, and of great learning and knowledge in the law, and in the constitution of the government, should neither advise with the privy-council, nor so much as communicate the same at any solemn and usual meeting of the lords justices, that shall then equally be entrusted with the regal power and safety of all England.

It is true, that an alliance made by the king, and sealed with the great seal of England, may be good and valid in law, and so accepted by all foreign princes, whether the treaty was concluded and the great seal affixed to it by the advice of the privy-council, or not: But this does not lessen, but rather aggravate, the crime of the officer; for the greater the consequence, the greater ought to be the care not to transgress the law.

The happiness and prosperity of England hath hitherto been preserved by the constitution of our government, by the several securities and checks that are appointed for the common safety, and not by any private trust or management: and therefore, how-

ever an offence against this constitution may by some circumstances be mitigated, yet it can never be justified.

But as the king has always a privy-council, so he hath upon extraordinary occasions a great council, the parliament of England, who are summoned together to assist and advise the king, in matters of the greatest difficulty, concerning the state and welfare of the king and kingdom.

Whenever, therefore, a matter of the highest consequence to England, as any alliance with France, hath, and must always be esteemed, shall be privately carried on by particular ministers, and the great seal of England put to it, during the sitting of the parliament, and without advice of the same, or even of the privy-council, that must ever be esteemed a high breach of the constitution.

It is a maxim in law, *Ignorantia juris non excusat*; but if ignorance of the law will not excuse an offence, certainly the knowledge of the law is no small aggravation; and therefore that minister that first expresses a deep sense of the dangerous consequences to the nation, by any treaty, and yet at the same time against his own judgment, and without the advice of any established council, affixes the great seal to the ratification of it, cannot plead that as a mitigation, much less as a justification, of the offence.

Whenever, therefore, any persons learned in the laws and constitution of the government, shall severely condemn the faults of others, and afterwards do the same and worse things themselves, they ought much more to be blamed for it.

CHAP. IV.

Of the Nature of the Powers and Proceedings of the Lords and Commons upon Impeachments.

The exercising of all public acts of government by public officers, who are answerable for the same, is not only a great security to the king and the commons for the reasons aforesaid, but also to the lords: for what can more secure the power, greatness, and dignity of that honourable house, and keep the great ministers within the bounds of law? What can make them have greater regard for the persons and properties of the lords, than this very consideration, that on all impeachments of the commons, the lords are to be their judges.

The several powers then of the lords and commons do mutually depend upon and support each other; for as the commons cannot have their remedy against an evil ministry, without the judicature of the lords, so the power and judicature of the lords cannot entirely be preserved without supporting the right of impeachments in the commons.

It is therefore the interest of the lords and commons to preserve to each other the several and respective rights and powers vested in them; for on the due execution thereof depends the safety and happiness of both houses.

These distinct powers, therefore, being lodged in the lords and commons, as branches of the supreme authority, for the common safety, ought to be so limited and bounded by one another, that both may consist together for the common good, and that it be not possible for either of them to defeat the power lodged in the other.

And, therefore, as the king himself, who is father of his country, and whose justice ought not to be questioned, is not entrusted by the constitution with a power to defeat the right of judicature in the lords, or the right of impeachments in the commons, or to render the same impracticable, because these distinct powers are appointed in the original institution of the government, as mutual checks upon the prerogative,

and upon one another, for the common safety ; so, *a fortiori*, it may be argued, that the commons are not entrusted with a power to defeat the right of judicature in the lords, nor the lords with a power to defeat the right of impeachments in the commons.

And therefore, as the right of impeachment in the commons must not be so construed, as to enable them to make the right of judicature in the lords impracticable when they please, so the right of judicature in the lords must not be extended so far as to enable the lords to make the right of impeachments in the commons impracticable when they think fit : But both the powers must admit of such a limitation and construction in the nature and exercise thereof, as that they may consist together for the common good, and be able to attain the end for which they were established.

And here I must beg leave to observe, that I do not pretend to treat of the judicature of the lords upon writs of error, or upon indictments, nor of the trials of lords out of parliament, for treason or felony, by their peers, nor of any other authority but only of the judicature of the lords upon impeachments, which is a power lodged and entrusted with the lords, as a branch of the supreme authority, to do justice between prince and people, on all great offenders, public officers, or ministers of state, who shall be impeached in the name of all the commons of England for offences against the state, in violation of their oaths, in breach of the high trust reposed in them, and to the prejudice of the rights of the people of England : And therefore this great power being founded on different reasons, is different in its nature, and also exercised in a different manner from both the other. For,

Upon a writ of error, the cause must always be originally tried by the judges in Westminster-Hall, and the matter of fact found by an ordinary jury, where all proceedings are to be had, and judgments to be given, according to the common and statute laws of the land, used and practised in all the ordinary courts of justice, for the preservation of the lives and properties of particular subjects ; and therefore in this case the lords are to determine upon such a writ of error, whether the judges have given judgment according to the said laws or not.

But in case of an impeachment, the cause comes originally to be tried before the lords, according to the law and custom of parliament, which is very different from the common laws, and by which their lordships do act in a more extraordinary manner, both as jury and judges, which is a method of proceeding never used in any inferior courts, by the common and statute laws of this realm ; and as their power is different, so is the nature of their proceedings.

And so in the case of the trial of a lord out of parliament for treason or felony, by his peers : There the lords are only triers, in the nature of a jury of peers, and not judges, but the high-steward is the judge, and pronounces judgment according to the known laws of the land.

And therefore, the office of high-steward seems to be a necessary office in that case, though not in the case of impeachments, or trials before the lords in parliament, for the reasons aforesaid.

For impeachments not being at the suit of the king, but of all the commons of England, and being in the time of a parliament, where every branch of the legislative authority is exalted to a high pitch of greatness and power, and where the powers vested in them are designed as mutual checks one upon another, for the common safety, it does not seem agreeable to the constitution, that the king, by any pardon, or otherwise, may defeat the parliamentary power of judicature in the lords, or power of impeachments in the commons.

But a prosecution for treason, or felony, out of parliament, is at the suit of the king ; and consequently, though the lords are triers, the king is to appoint the judge, and may pardon the offender. By all which, the difference may appear between the judi-

cature of the lords upon impeachments, and their lordships judicature and power in other cases.

And therefore, to return to the right of judicature upon impeachments, it must be acknowledged, that a right of judicature does necessarily imply a power of judging and determining whether an offender that is brought to trial for any offence be guilty or not guilty, for that is inseparably annexed thereunto.

And therefore the commons cannot insist on the right of concurring in the sentence, and giving their voices with the lords, whether the offender be guilty or not, without encroaching on the right of judicature in the lords.

But the appointing a time for bringing in the articles of impeachment, and of time and place for trial, is not necessarily implied in the power of judicature, or inseparably annexed to it, but is a collateral power, which may or may not belong solely to the judge, as the nature of the case does require.

It must be confessed that it seems very proper for every court of justice to order and direct such circumstances and matters of form that can have no influence to the prejudice of justice, in such way as they shall judge fit, and where the same are not settled otherwise by any positive rule.

But then, in the case of the fundamental constitution of the government, where the whole is at stake, and where the king, lords, and commons, do all depend upon reserving a just balance of power, they are not to depend upon the will of each other, but upon the power; and therefore, if by any possibility such a power may at any time be made use of by the lords, to the prejudice of justice, it does not seem reasonable, that the same should be allowed in this case solely to the lords, without the approbation of the commons: for where the reason varies, the collateral powers may also vary, without any encroachment on the right of judicature.

If the lords upon all impeachments have an absolute power belonging to their judicature of limiting a time for bringing in the particular charge before them; and also to appoint time and place for the trial of an impeachment, and to proceed both to trial and judgment without any regard to the commons, whether they are ready and do concur, or not; have not the lords then a power to make the right of impeachments in the commons impracticable when they think fit? May not the lords either appoint a time so short that the commons cannot possibly be ready, or a time so long that justice shall never be done? and may not the place appointed be so distant, or so very inconvenient to the commons, that they shall not be able to attend the prosecution of the said trial with effect?

As in case of a general impeachment, it may be supposed to be possible, that the lords may appoint the next day to bring in the articles (which perhaps cannot be done so soon in a parliamentary way of proceeding) and they may appoint the following day for the trial to be had at Truro in Cornwall, where neither the commons nor the witnesses can be able to attend; or else the lords may appoint the trial to be had twenty or forty years after, by which time all the prosecutors and witnesses may be in their graves, and the nation undone by an evil ministry. All this is possible to be done, though not probable; but a wise constitution of government provides against possibilities (as far as may be) where the common safety is at stake.

If, therefore, the commons have no right of impeachment, but what the lords may defeat, or make impracticable when they please, then it is plain the commons have not such a right of impeachment, as is sufficient to answer the end proposed by the constitution of the government; which is, to secure the rights and liberties of the people of England, and consequently the commons have (in effect) no right at all.

And, if the right of impeachments may be defeated, the right of levying money may, in effect, be defeated too: for what signifies the power of giving money for the safety

of the nation, without the power of impeaching evil ministers, that act to the ruin of the nation, or misapply that money to their own private or other corrupt uses?

And herein (amongst other things) consists the safety of the people of England, that those noble lords who in any age might, perhaps, be disposed to save their friends or relations in an honourable way, or by any collateral method of discharging the prosecution, yet, upon a full hearing of the case, will not be diverted from justice; and especially upon a fair trial in open parliament, where the king is generally present, the whole body of the House of Commons, and great numbers of persons of the best rank and quality of England, besides all the foreign ministers, none of them will be persuaded to declare upon honour, that a person impeached is not guilty of an offence, which is then by sufficient evidence proved against him.

And therefore, it highly concerns all the commons of England, that trials on impeachments may not, by any possibility, be defeated by any collateral powers in the lords; and it seems plain, that we must either reject the original constitution of the government, established by our wise ancestors, to preserve the balance of power, for the common safety of the king, lords, and commons, or else we must conclude, that the lords can have no distinct power belonging to their judicature, which is able to surprise the commons, and make the trial of impeachments impracticable.

And, as in the cases before-mentioned against the king's pardoning impeachments, and against the necessity of having a lord high steward in the trials of peers, during the sitting of a parliament, it was not considered, what the king in justice would do towards the defeating the right of judicature in the lords, or right of impeachments in the commons, but what in right and power he might do if he pleased: So in case of a right vested in the commons, and secured and established to them by a proper distribution of power, in the original frame and constitution of the government, for the common safety of the king and the people, it is not to be so considered, what the lords in justice will do towards the defeating of that right, but what in right and power they may do, if they think fit; for the safety of England is not to depend on the will of any one house, but on a proper distribution of power secured to both.

And though all the deference imaginable ought to be given to that noble branch of the legislative authority, yet their lordships will not expect in this case to have a greater trust reposed in their lordships by the constitution of the government, than in the king himself; nor that the commons should give up the right of impeachments, as a matter precarious, upon will and pleasure, which is the great bulwark of the liberties of England; especially when by so doing, they would not only prejudice the people they represent, but in a good measure defeat the power and jurisdiction of the lords themselves, and destroy that balance of power, which is essentially necessary for the safety of all.

And when it is fully considered, it will appear, that it is not the interest of either lords or commons, to have more power than is necessary to preserve the balance of the constitution; for though, peradventure, either of the present houses may trust themselves with a dangerous weapon, yet it is not prudent to entail such a danger to their posterity, lest it should at any time hereafter be turned upon them, and this power misapplied, to the ruin of the constitution.

Those noble lords therefore, that shall at any time endeavour to preserve the balance of the constitution in this particular, will not act in derogation, but in support of the honour and power of that honourable house; and will wisely avoid the establishment of a precedent that may render impeachments impracticable, and at one time or other subject both lords and commons to the arbitrary power and tyranny of an evil ministry.

The way, therefore, to preserve the right of judicature in the lords, and the right of impeachment in the commons, without interfering one with the other, seems to be for

both houses to concur and agree in proceeding to the punishment of offenders, as well as to the passing of laws: And having adjusted all preliminaries in a parliamentary way, to go hand in hand together in the exercise of the several powers vested in them for that purpose, in order to a fair trial of all offenders; that is, that the lords do appoint time and place of trial, but that the same be convenient for, and agreed to by the commons.

This method of proceeding preserves inviolable the right of judicature in the lords, and the right of impeachments in the commons, without placing a power in one to defeat the power that is vested in the other.

Whereas, if either claims the sole power of appointing time and place without regard to the other, that house seems to claim a power that is able to defeat the power of the other house at will and pleasure, which by no means is consistent with the constitution of the government, or the safety of England.

It is a maxim in law and reason,——*Quando lex aliquid concedit, concedere videtur et id, sine quo, res ipsa esse non potest*;——When law, when sound reason, when the constitution of any government gives a right or power to one branch of the legislative authority, to be a check upon another, it gives every thing that is necessary to support that power, or else it gives nothing at all: And so where it gives a power to one to be exercised singly, it gives all that is necessary to support that single power; but when it gives two powers (the right of judicature and the right of impeachments) to two distinct branches of the legislative authority, to be exercised by both, as mutual securities and checks upon one another for the common safety, and it happens that one thing, viz. the appointing a convenient time and place of trial, is necessary to support them both, it must of necessity give that one thing so far to both, as that it cannot be exercised singly by one without the approbation of the other.

For whatever is necessary to support two distinct rights or powers, cannot be in any one alone entirely abstracted from the other; for then the one will want the power that is in the other, and will not be supported: And if any one wants what is necessary to support it, as a power, then it is no power at all.

Therefore, since a convenient time and place for trial of offenders is necessary both for lords and commons, it seems very agreeable to reason, that neither of them should have an absolute power of appointing the same without the approbation of the other; for if the lords have that power in them alone abstracted from the commons, which is necessary to support the power of impeachment in the commons, then the commons have, in effect, no real power at all: But that power of impeachment which they claim as a right, must be esteemed no more than a favour or courtesy, during the will and pleasure of the lords, and consequently if there be any weight in this argument, then it seems, by this construction, as if the axe were laid to the root of the constitution, and that there were an end of the right of impeachments, the great security of the rights and liberties of the people of England.

Therefore, in case of impeachments, where the commons are the prosecutors in the name of all the people of England, it seems highly reasonable and agreeable to the nature of the case, that the commons should make the first step in all that proceeding. First, by exhibiting articles in due time; of which, they that are to draw them are (in reason) the proper judges. Then by a previous signification to the lords, that they are ready for trial, and desire their lordships to appoint a convenient time and place for the same; (which, if inconvenient, the commons desire a conference, or free conference, to adjust the same) but if approved, then the commons are to be first at the place of trial, ready to prosecute; and after trial, judgment is not to be given till the commons think fit to demand the same: For as no impeachment, so (in reason) no step upon an impeachment is to be made, but at the suit and desire of the commons of England.

For all suits are prosecuted either in the name of the king, or of the commons of

England, or of private subjects; and they in whose name any suit is prosecuted, may, if they please, let fall the prosecution, and in no court whatsoever will the judges proceed to trial, in any private suit, unless the plaintiff appear in person, or by attorney; nor to judgment, unless the same be demanded by the proper party, to whom justice is to be done.

But an impeachment is not at the suit, or in the name, of the king, but of the knights, citizens, and burgesses of parliament, and of all the commons of England; and therefore as the king cannot discontinue, or put a stop to any private suit, nor pardon, or enter a *Noli Prosequi* upon an appeal of a private subject, for the killing of his relation, so much less is such a power reasonable upon an impeachment of the House of Commons, for invading the rights of all the commons of England.

But although the king cannot, yet the private subject himself may delay his own suit, as in the case of a trial on ejectment; and so may the commons delay, or let fall, a prosecution upon impeachments; for they are the plaintiffs in this suit, they are the appellants, they have a power by the constitution of the government, to impeach and prosecute public officers and ministers of state, for any mismanagement, to the prejudice of the public; and will any man say, that the House of Commons have not more power over their own suits, than any private subject hath? Will any man say, that the concern of a private subject is of more weight than the concern of a whole nation? Or, can any rational person affirm, that such a power in the commons is unreasonable? No. We may as well argue, that it is an unreasonable thing for the lords to have a right of judicature, upon honour, because it is possible they may be partial in justice, as for the commons to have a right of impeaching and prosecuting offenders, at discretion, because they may delay the prosecution.

'Tis true, that in the case of a private subject in an inferior court, both law and reason doth admit of a supposition, that a suit may be commenced out of malice and private revenge, or an erroneous judgment may be obtained; and therefore, a reasonable time is limited for such prosecutions, within which time, if the plaintiff does not proceed, his suit may be dismissed; and a method is appointed for reversing such an erroneous judgment, upon a writ of error.

But neither law nor reason, nor the constitution of any government, doth admit of such a supposition to be made against any branch of the supreme legislative authority; for since the wisest men in the world, in the original institution of government, cannot provide for all possible cases that may happen, and on which the happiness or ruin of a nation may depend, it is absolutely necessary, that all the branches of the supreme authority have a liberty of exercising the extraordinary powers vested in them for the common safety, in such a manner, as they in their great judgments and discretions shall conceive to be most just and reasonable, and most advantageous and conducing to the public good, and from which there lies no appeal.

And therefore, since a discretionary power of impeaching and prosecuting great ministers of state is necessary to be lodged in some one branch of the supreme authority, no rational person can justly argue against that power in the House of Commons, unless he can shew any other body of men in England in whom that power is legally vested, or can indeed be more safely lodged, than in the representatives of the people.

And as to that, there are three branches of the supreme authority, the king, the lords, and the commons; but it is not proper to place a discretionary power in the king, of prosecuting ministers for obeying his own unlawful commands, because it is possible to have a bad prince, who may aim at arbitrary power, and rather countenance than punish his ministers in such cases.

Nor no man can reasonably place a discretionary power of prosecuting offenders upon impeachments in the lords, for then the lords will be both judges and prosecutors, which is absurd; and since the public officers and great ministers of state are fre-

quently members of that honourable house, it is happy for the people of England, and a great honour to that noble assembly, that justice can be had against them there, at the suit of all the commons of England.

Since then this power of impeaching and prosecuting evil ministers, is necessary for the public safety, and must be placed in some one branch of the supreme authority; and since no branch thereof are accountable to any superior power, but may exercise the powers vested in them, as they in their great judgments and discretions shall think most conducive to the publick good, and since this power cannot be lodged with the king nor with the lords, for the reasons aforesaid, it follows, that the same is legally vested in the commons; and that they may exercise it as they think most convenient for the public safety, without controul, or rendering any account of their proceedings; and consequently, that they may (amongst other things) exhibit articles of impeachment when they think it convenient; that is, in due time, of which they, who are to draw them, must be the proper judges.

But to explain this matter to the meanest capacity, give me leave to suppose (for a wise constitution of government provides a remedy for all distempers and accidents in the body politic) that in any future reign, a great and powerful minister of state, having the command of many millions of money raised for the necessary occasions of the king and kingdom, but in great part employed for the unnecessary occasions of this powerful minister and his creatures, should thereby be enabled to create many friends and dependants in the government, and also in the several branches of the supreme authority; and at length, to establish such a scheme of management of the public affairs, that the nation should not only be brought under a vast debt, whilst the managers got vast estates, but should be involved in such unhappy circumstances, and so reduced to the last extremity, that the representatives of the people should be entirely convinced that either that public manager must be removed from the public ministry, or the nation be utterly ruined and undone.

What would you have the House of Commons do in such a case? Would you have them sit still and see the nation brought to ruin and desolation? Would you have them betray their trust, and act contrary to their judgments? No! The House of Commons, in such a case, ought to do what all good men would expect from them; and that is, to carry up a general impeachment to the lords, and appoint a committee to draw up articles upon that impeachment; and in the mean time they would humbly address the king, for his own and the common safety, to remove that great minister from his councils and presence.

And the committee appointed to draw up the said articles, would think themselves obliged, for their own reputation, and for the honour of the House of Commons, and of all the commons of England whom they represent, to take great care in discharging the trust reposed in them; and therefore, as the case may happen to be very short, so it may also happen to be very long, and according to the nature thereof, and the circumstances of the fact, so the drawing of the articles may take up a very short, or a very long time.

Sometimes there are a great number of articles to be exhibited, sometimes very few, sometimes many witnesses are to be examined, at other times none at all; sometimes they are obliged to send for persons, papers, and records; at other times they want no such assistance; sometimes the witnesses are near at hand, sometimes at a great distance; sometimes the committee agree to all the articles at first sight, sometimes they differ in opinion about every article, and many days are spent in debating one article, and perhaps in debating one sentence in that article; and the like may happen upon the report to the house, where the same are read paragraph by paragraph, and frequently debated and altered before they are agreed to by the house. And infinite other circumstances may happen, to make the proceeding more quick or more slow; and

therefore, who can possibly be the proper judges of the time of bringing in the charge against the person impeached, but they who have all the circumstances of the case before them?

It is true, that in inferior courts, where causes are carried on by private persons, and not by numerous bodies of men, and where the nature of the business does admit of it, the law hath appointed a set time to private subjects, for bringing in all declarations and pleadings; and in case the plaintiff or defendant desires a longer time he must give a good reason for it: But this is so far from being an argument against the privilege of the House of Commons, that it is a strong argument for it: for it is evident by all the precedents in the journals of the House of Lords (of which many are lately published) that no fixed day was ever appointed for bringing in articles of impeachment, but that sometimes they were exhibited the same day, sometimes in two days, sometimes in five, seven, twenty-five, and twenty-nine days, and at other times they have not been exhibited till another session, or another parliament, as the nature of the case has required; and therefore, there never being any set day fixed for bringing in the charge, does evidently demonstrate that it was left at liberty; and that neither the nature of the case, nor the nature of the constitution of the government, did admit of any limitation of time in such cases, but that the same was entirely left to the discretion of the House of Commons. And what great matter is this, that the House of Commons, who have a power over the rights and liberties of all the people of England, as their representatives, should also have a power over the liberty of a particular subject? Where is the danger? What is the great inconvenience? It is plainly proved, that we must either trust it there, or no where; and if we trust it no where, we must all be ruined.

And if the commons have usually brought in the articles or charge in a short time, that is no sort of argument against them, but rather demonstrates that they have ever made good use of the power lodged in them, and therefore ought not now to be divested of it.

But, although the commons have upon all occasions demonstrated their zeal for justice, and their tenderness for all particular persons, as far as was consistent with the public safety, does it follow from thence, that when they desire it, and conceive there is occasion for it, that they must not have as much time to prosecute an impeachment at the suit of all the commons of England, as a little attorney has to prosecute an action of ten pounds at the suit of a private subject? No certainly, this can never be admitted, when it is duly weighed and considered in a proper manner.

For if ever the parliament should be inclined to limit a time for bringing in the charge, and prosecuting an impeachment to trial and judgment, which must be done by a law, as the bill of privileges was, and not by any one branch of the legislative authority, yet it cannot be conceived, that any member of either house would desire the time should be limited to so short a space as the very same sessions of parliament; which though ever so long, may be so taken up with other public business, and the prosecution delayed by accidental circumstances, that the greatest offender may in such a case escape, for want of time to make good the charge against him; and so the liberty of all the people of England be lost for ever, for fear of losing the liberty of a single person for a short time.

And here it may also be observed, that the trying of impeachments hath always taken up a considerable part of a session of parliament, by reason of the greatness of the assembly, and the debates that frequently happen about the privileges of both houses, as may be seen in all proceedings of that kind, in the journals of both houses: And therefore, in times of danger, and at the latter end of a session, when foreign affairs, and matters of great consequence, require dispatch, it may not always be consistent with the safety of the nation, to proceed to such trials; and whether is of greater con-

sequence to the public, the safety of the king or kingdom, or the trial of an impeachment this sessions or the next?

But when a debate shall at any time arise between the two houses, that concerns the right of all impeachments whatsoever, and consequently the common safety of the king and people, there the commons ought not to proceed to trial, till that matter be first determined, notwithstanding they have plain and positive proof against the person impeached, or that he had actually confessed many of the articles of impeachment, which alone were sufficient to found a judgment against him; for otherwise it may so happen, that the whole justice of the nation may be obstructed and defeated, by proceedings of the like nature.

This was the resolution of the commons in the case of the five popish lords, whom no person can think they were unwilling to bring to a trial, or that they made use of such pretences only to cover an affected delay in the prosecution.

There may perhaps be instances given of a private suit being heard and determined in the said term, but then it was by consent of all parties; or else no court in Westminster-Hall can compel either party to come to trial and judgment the first term, by the strictest rules of proceeding; and if a trifling suit of small value be ended in three terms, it is reckoned a very quick prosecution; since few of them are determined in as many years: And is it reasonable, that three or four impeachments, at the suit of all the Commons of England, should be brought to trial and judgment, without consent, the very same session of parliament?

And if the lords have a legal power to appoint a time for bringing in the particular charge before them, and in default thereof to dismiss the impeachment, may not the lords then, if they please, make all impeachments whatsoever useless and impracticable, and the people of England have no certain remedy for redress of grievances.

And in case the lords may also proceed to trial and judgment, without the concurrence of the commons, then they may proceed either to judgment of condemnation, or to judgment of acquittal, and may not either of these proceedings, at one time or other, prove very prejudicial both to the king and the people?

For give me leave once more to suppose, (what has or may happen) that there should be at any time hereafter a great conspiracy to take away the life of the king, and to subvert the government, and two offenders are first detected and impeached; and afterwards it should appear by farther evidence, and by the confession of the impeached persons, that divers other great offenders more dangerous than themselves, are engaged in the same wicked design; and that it was absolutely necessary for the common safety, that the first impeachment should not be prosecuted, in order to make those persons evidences against the rest: And suppose the said great offenders to have many great friends and relations; if then the House of Lords have a power to proceed to trial and judgment, without the consent and concurrence of the commons, may not the lords, if they please, condemn the persons that were to be the witnesses, and afterwards acquit, for want of evidence, all the rest of the dangerous conspirators, whereby utter ruin and destruction may happen both to the king and kingdom.

It is true it may with great reason, and without the least doubt, be presumed, that the present House of Lords doth abhor the least thought of such an action; but we are not now arguing what any House of Lords will do, but what they may do hereafter, if they think fit, and from thence to draw an argument to prove the constitution of the government in this particular.

For such is the admirable contrivance of the constitution of the government of England, to the eternal honour of those who first established the same, and for the perpetual happiness of the English nation, that no care has been wanting effectually to provide for the public safety, and therefore a less security was not established for the safety of the people, when a greater might be had: The people of England are not to

depend upon the security of two checks or branches of the supreme authority, when the nature of the thing will admit of three; nor of any one, when the nature of the case will admit of two.

Thus, in the passing of laws, the nature of the case doth admit of three to be checks one upon another, the king, the lords, and the commons, and therefore no law can be passed but by all three branches of the supreme authority, who are united by interest in the same common end, the public good. But in punishing great ministers of state, for doing unlawful things at the command of the king, the nature of the case does not admit of all three, for the reasons aforesaid: But it does not admit of two, the lords and commons; and therefore, it seems very agreeable to the wisdom of our forefathers, that neither of them should be omitted, where the security of both might be had; and that since both houses are united by interest in the same common end, they should also be united in the means to attain that end; and that the safety of the whole nation should not depend on any one, but on the concurrence of both houses.

And thus it seems to be wisely established, that as the commons cannot impeach but at the bar of the lords, so the lords cannot regularly proceed to trial or judgment on that impeachment, but upon the prosecution of the commons.

And as the lords have a right on one side to appoint a time and place of trial, so the commons have a right, on the other side, to such an appointment as is convenient for both houses.

And here again we may observe the policy and excellency of this constitution, which is so contrived, that it does in a manner compel an agreement between the two houses for the public good; for if neither house can regularly proceed to trial and judgment, without the concurrence of the other, they must either agree to settle all preliminaries for the conveniency of both houses, or else both the powers of lords and commons, relating to the impeachments, will be rendered ineffectual.

So that it is not very material which house has the power of appointing time and place, since they must be convenient, and approved by both. Neither is it to any purpose, for either of them to insist on any time and place of trial when both are not ready, if neither can regularly proceed to the said trial without the concurrence of the other.

And as there is great conveniency and security to the subject on one side, by the necessity of the concurrence of both houses, so there is no manner of inconveniency by it on the other, but what is incident to all governments in the world; for if the supreme powers cannot agree, not only a private subject must suffer for want of being brought to trial, but the whole kingdom must suffer for want of their agreement.

And as to the liberty of a particular subject impeached, certainly his life and fortune is still more safe in the hands of both houses than in any one; and much more safe under the necessity of their concurrence, than if any one house had the power of proceeding alone; for as it is the interest of an innocent person that justice be not delayed, so it is his interest that justice be not precipitated.

A guilty person may have reason to dread the delay of a session, because he may perhaps dread the discovery of more faults; but an innocent person being safe from the latter fear, hath no reason to be too much concerned at the former, especially when his person is under no confinement.

But be the case as it will, the most that can be made of it for the liberty of the subject is only this, that by one construction the lords may delay the trial of an impeachment, and in the other the commons, that is, by one the liberty of the subject is in the power of the lords, by the other of the representative of all the commons of England.

But since the lords are not entrusted with both powers, but only with the right of judging, and the commons have the right of prosecuting offenders, it seems reasonable

that the lords may judge, and the commons prosecute, as they in their great judgments and discretions shall think just and reasonable, for the public good; and as no argument against the power of judicature in the lords ought to be founded on a supposition of partiality in justice, so no argument against the discretionary power of impeachments in the commons ought to be founded on the supposition of delay in the prosecution.

The lords and commons are both branches of the supreme legislative authority, and have these distinct powers lodged in them for the common safety of the people of England, and being mutual checks one upon another, and both under the happy influence of the king, who is the father of his people, we ought not to find fault with our constitution, but rather to admire the care and wisdom of our ancestors, who have done all that was possible, and the nature of the thing would admit, for the public safety.

It is the power of impeachments has hitherto preserved the constitution of this government from the many attempts of evil ministers; and 'tis to that we must always owe the common safety; and therefore the possibility, supposition, or reality of a hardship to a private person must not stand in competition with the public safety, nor with the rights and liberties of all the people of England. 'Tis better suffer a private mischief, than a public inconvenience; and therefore it is better for the nation that a few persons stand to the mercy of the commons of England, than that a fundamental part of the constitution of the government, which is established for the safety of all, be rendered precarious and ineffectual in their favour.

'Tis for the liberty of England that every true Englishman will contend; and surely it is better, that the commons have a discretionary power in the prosecution of impeachments than any others have a power of defeating impeachments, and thereby of destroying the rights and liberties of all the people of England.

The king, lords, and commons, have several rights and powers, as necessary checks one upon another, to preserve the common safety; but if any one hath a power to make the power of the other impracticable, then they cannot be checks one upon another, and consequently there is no common safety.

No sort of government doth admit of an absolute perfection, and therefore that government is the best which carries with it as great a certainty and security for the king and people as the nature of human government will admit; and since in all constitutions of government there must be a power lodged somewhere for the preservation of the rights and liberties of the people, and that power in this government is chiefly lodged in the commons of England as their representatives, we must not, in favour of a few, endeavour to destroy the original constitution for the safety of all.

The commons of England are men and may err, yet it is they have hitherto preserved the rights and liberties of the people; and the discretionary power of impeachments is so essentially necessary to the preservation of those rights and liberties, that whenever it is taken from them, the safety of the people is gone with it.

What had become of this nation in former reigns, when evil ministers had almost ruined the king and kingdom by secret intrigues and private councils, if the commons of England had not had a power to censure them even upon common fame?

How often had England been undone, if it had been necessary to make the proofs publick before the commons impeached evil ministers, or made any address to the king to remove them from his council and presence?

Evil council, like poison, is given in secret; and though all men are convinced of the guilt by the consequence and effects, yet plain and positive proof is not immediately to be attained: And if evil ministers are to be continued till such proof can be regularly produced, upon trial of an impeachment, the nation, in that time, may be ruined and undone.

For this reason, the power of impeachments was not lodged in any but the repre-

representatives of the commons of England ; nor the right of judicature, upon such impeachments, in any but the House of Lords, who being original branches of the supreme legislative authority, are presumed to be above any private ends or designs, and therefore are not confined to the strict rules and methods of proceedings in inferior courts.

And here it may be observed, that no subject of England ought to think himself in danger of any injustice from the House of Commons, who are a branch of the legislative authority, representatives of all the people, guardians of their liberties, and patriots of their country, and where it is not to be imagined that a majority of so numerous a body of gentlemen can be influenced against reason and justice ; and the person impeached may also petition both lords and commons to bring on his trial.

And it may also be observed, that whenever either house has thought fit to put the other in mind of any matter depending before them, it has always had a due influence, for the dispatch of business, in a reasonable time, and has ever been done with that great respect to each other, as is due from one branch of the legislative authority to another, and as becomes the wisdom and conduct of both houses, without the least reflection on the honour or justice of either house, or without expecting any answer thereto.

For this proceeding seems to be founded on a supposition, that in the multitude of business a single matter may be neglected, but that as soon as either house is put in mind of it they will immediately proceed, or else that they have just cause to the contrary ; and therefore, after they have put one another in mind, in general terms, the proceeding is still left to their own discretion, without expecting any answer, or inserting any thing in the message, that may seem to distrust the honour and sincerity of either house.

But by what has been said, it may appear, that there is as much care taken by the constitution of our government, for the liberty of particular subjects, as is consistent with the preservation of the liberties of England ; and more than that cannot reasonably be expected.

Hence also it may appear, that the lords and commons being branches of the supreme legislative authority are not in the exercise of the great and high power reposed in them, for the common safety, to follow the laws and customs of the inferior courts of justice, but the laws and customs of parliament ; for as the foundation and reason of their proceedings are different, so are their laws.

And therefore, as it would be very improper to cite a case out of the journals of parliament, as an authority in Westminster-hall, so it would be altogether as improper to cite a precedent out of Westminster-Hall as an authority in parliament.

Lex et consuetudo parliamenti, the law and custom of parliament, is a distinct law by itself. Thus my Lord Coke says, in his 4th Institutes, p. 15, ‘ As every court of justice hath laws and customs for its directions, some by the common law, some by the civil and canon law, some by peculiar laws and customs, &c. so the high court of parliament, (*suis propriis legibus et consuetudinibus subsistit*) has its own proper laws and customs ;’ for as the reason differs, so also doth the law.

And therefore, there is as much reason to alledge, that a common informer and prosecutor ought to be treated as a branch of the legislative authority, as to affirm that a branch of the legislative authority ought to be treated as a common informer or prosecutor.

It is insisted, that what an inferior court can do a superior court may do ; but all the inferior courts may appoint time and place of trial, therefore the House of Lords, who are a superior court, may do so too. This is true if the case be rightly stated ; but *qui bene distinguet bene docet* : Every case stands upon its own bottom, and one material circum-

stance quite alters the nature of the case. A judge in Westminster-Hall may appoint the time of trial to a common informer, and also to the attorney-general, though this is seldom or never done without a previous signification to the court that he is ready with his evidence: But be it as it will, the lords may do as much to the same prosecutors, if they came before them. But it does not hence follow that they can do the same to the representatives of the commons of England, unless they can shew that the judges can appoint time and place of trial to the House of Commons, or that a common prosecutor, or the attorney-general, is a branch of the legislative authority, and has a right of impeachments vested in them as a bulwark to preserve the rights and liberties of the commons of England: Then indeed that case would be something like the case of the commons; but such a supposition being absurd, no argument can be drawn from thence against the rights of the commons.

The attorney-general does indeed prosecute in the name of the king, and the king ought to have justice as much as the commons; but then it must be considered that the king sues in his own courts in Westminster-Hall, and is as secure of justice from the judge as he is from the attorney-general; for the judge is not only bound to the king as his sovereign, but in conscience by his oath of a judge; and if justice be refused, he may be removed from his office, or a writ of error may be brought: But the lords are under no such oath or obligation to the commons, neither is there any appeal from their lordships judgment. So that if the commons may be surprized in time or place, it must be fatal to them without farther remedy, and the right of impeachments for the safety of England will be totally defeated. Therefore no inference can rationally be drawn from this proceeding in Westminster-Hall, to govern the case in question.

My Lord Coke, in his 4th Institutes, p. 23, treating of judicature, hath these words: 'Now order doth require to treat of other matter of judicature in the lords house, and of matters of judicature in the House of Commons; and it is to be known that the lords in their house have power of judicature, and the commons in their house have power of judicature, but the handling thereof, according to the worth and weight of the matter, would require a whole treatise of itself.' And therefore refers to the journals of the lords, and the book of the clerk of the House of Commons, which he says is a record, as is agreed by Mr Prynne to some purposes, and, as it is affirmed by act of parliament, *anno* 6 H. VIII. c. 16. And here he cites the case of Thomas Long, who gave the Mayor of Westbury four pounds to be elected burgess, and thereupon was elected: This matter was examined and adjudged in the House of Commons, *secundum legem et consuetudinem parliamenti*, and the mayor fined and imprisoned, and Long removed; for this corrupt dealing (says Lord Coke) was to poison the very fountain itself. 8 Eliz. *vid.* book of the House of Commons, 8 Eliz. Ounsloe speaker, fol. 19. 23 Eliz. *ibid.* fol. 14 *ibid.* Muncion struck William Johnson, a member of parliament: The House of Commons adjudged Muncion to the Tower, &c. See Rot. Parl. 8 H. VI. nu. 57. 2 Aprilis, 1 Mariae. These cases are not opposed by my Lord Coke's great adversary Mr Prynne.

And by these few authorities (of which many more might be cited out of the old books and journals) it appears that the commons, who have a right of judicature in their own house, and are a branch of the supreme legislative authority, are not, either in point of right, reason, or decency, to be treated like a common informer, or like an attorney or solicitor-general. The nature of the case speaks so plain, and has been so fully set forth before, that to offer much more upon that subject seems to be altogether unnecessary.

All men have a right by the law of nature to defend themselves from injury and oppression, and till better forms of government were devised and appointed, offenders against the public were usually condemned by the general voice of the people.

The power of impeachments therefore in the commons seems to be an original inhe-

rent right in the people of England, reserved to them in the first institution of the government by the law of nature, and self-preservation, for the common security of their just rights and liberties.

And therefore, they cannot be defeated of that power without an encroachment upon that right which belongs to them by the law of nature and self-preservation, and thereby dissolving the fundamental and original institution of the English government: For an impeachment, (as the commons were pleased to declare upon another occasion) is virtually the voice of every particular subject of this kingdom crying out against an oppression, by which every member of that body is equally wounded. And it may prove a matter of ill consequence, that the universality of the people should at any time have occasion ministred and continued unto them, to be apprehensive of utmost danger from any branch of the legislative authority, from whom they of right expect assistance.

The judicature of the lords is indeed a wise and prudent institution in the established government to preserve a balance of power, and to be a skreen and back between the king and the people; but that power cannot reasonably be conceived to be lodged in the lords as an inherent right by the law of nature.

Whenever, therefore, a material dispute shall arise between the proprietors of an inherent right by the law of nature, and of a subsequent right by institution, concerning a matter that is absolutely necessary to support both, which of them ought to give place?, or why is it not fair and equal for them to concur together and assist each other, for the general good of the king and kingdom?

This seems very plain and evident, that the concurrence of both houses to settle the preliminaries before-mentioned, does not destroy the right of judicature in the lords; but the contrary thereof, manifestly tends to make the right of impeachment in the commons precarious and ineffectual, at will and pleasure.

Whoever therefore argues for the concurrence of both houses to settle preliminaries, does not argue against the essential power and right of judicature in the lords, but rather to preserve the same by preserving the just balance of the constitution, which is essentially necessary for the safety of all.

But from hence it appears how unjust it is to censure any House of Commons for committing persons that are not members, either for an affront to the house, contempt of their orders, or for corruption and bribery in elections, when the same has been done, not only in all the parliaments since this revolution, whenever there was cause for it, but this power has been exercised and claimed as an undoubted right in the commons in all former reigns: and indeed is as absolutely necessary to support that part of the constitution of the government, as the same power is in the lords to support the other.

For to what purpose have they a power to send for persons, papers, and records, for the dispatch of public business, if they have not power to punish those that disobey their orders? Or to what end have they a power to give money for the service of the nation, if they have not likewise power to call those persons to an account, who defraud both the king and people, and apply the public treasure to their own or other corrupt uses?

And here the same maxim which is cited before comes in force again; that where a power is granted to any branch of the legislative authority, every thing is granted with it that is necessary to support that power, or else, in effect, no power is granted at all.

And for that reason neither the *habeas corpus* act, nor any other statute, is ever extended to destroy the privilege of either house of parliament, without express words in the act; and in this case a person committed cannot be continued in custody longer than that session of parliament, which is a small punishment for an open indignity to either house, or an offence that tends to destroy the constitution of parliament.

Upon the whole matter therefore, it appears, that the way to preserve the constitution of the English government is to preserve the right of judicature to the lords, and the right of impeachment to the commons, from interfering or clashing one with the other; and the best way to do that seems to be for the lords and commons to agree and settle preliminaries, and then the lords to appoint time and place, and to proceed to trial and judgment at the instance, and with the concurrence, of the commons.

The lords and commons have continued for many years in peace and union, assisting and supporting one another for the common good, and 'tis humbly hoped that the same methods by which that happy union has hitherto been preserved, will still be a means to perpetuate that happiness to this nation.

When any misunderstanding, therefore, has at any time happened between the two houses, the ancient and constant method of proceeding in parliament hath ever been to appeal to precedents, and when precedents were doubtful, then to the fountain and foundation of all precedents, and that is, to sound reason; and in order to that, both houses have agreed to conferences or committees, and thereby adjusted all difficulties.

But here we must observe a difference between facts and precedents. When either house hath actually passed a vote, or done a thing which never came to be considered by the other house, nor ever was debated and agreed to, at any conference, or otherwise betwixt the two houses, that is called a fact, but cannot be insisted on as a precedent to bind the other house. But when a matter comes in question betwixt the two houses, and is solemnly debated and considered, and afterwards agreed to by both houses, that is esteemed a precedent, and ought (with great submission) to be binding and conclusive to both houses, and no ancient precedents are usually cited against the latter, in which all the former precedents are supposed to have been considered. For,

Either the ancient precedents are plain in the point, or they are doubtful; if they are plain, there is an end of the debate; if they are doubtful, then reason is to be the judge, and the matter being determined by the reason and judgment of both houses, the last determination of the case is an explanation of all the doubtful precedents, and they ought never to rise up in judgment against the same.

And such is the authority and sovereignty of reason in all cases, but especially in proceedings of parliament, where the public safety is more immediately concerned, that it not only explains, but in some cases over-rules, even the strongest precedents, as in the case of a high-steward before-mentioned. It was never known upon any impeachments and trials of peers, but that the king did always nominate and appoint a high-steward; the precedents in the journals of both houses were full and express on the point; and yet when it came to be considered and solemnly debated and argued from the nature of the constitution of the government, whether the office of high-steward was necessary to the House of Lords in trials of peers? it was carried in the negative, upon the very same reason in effect that the argument for the commons is now founded; because, if such an office were necessary, then the king might suspend or deny to name a high-steward, and thereby a power lodged in one of the branches of the legislative authority, that is, the power of judicature in parliament, upon impeachments, might be defeated.

But if reason upon a solemn debate in the House of Lords shall over-rule express precedents, to which both houses had consented in all former reigns, merely because upon farther enquiry it did appear, that thereby it was possible (though not probable) for the king to defeat the power entrusted with another branch of the legislative authority, as one of the supreme checks for the common safety: How much more shall the same reason over-rule any matters of fact in either house, that were never debated or brought to a final determination by both houses? If this argument be good for the lords against the king, why not for the commons against the lords?

But as to the appointing a committee of both houses to adjust preliminaries, the resolution in the case of the five popish lords seems to be a very express precedent for

the direction of both houses ; for there the commons, to avoid all interruptions and delays in the proceedings against the lords impeached, and the inconveniences that might arise thereby, did propose at a conference, that a committee of both houses might be nominated, to consider of the most proper ways and methods of proceedings upon impeachments : The lords at first refused a free conference, but afterwards they were pleased to order that there shall be a free conference with the House of Commons, upon the late conference, concerning the forms and methods of proceedings to be had at the trial of the lords.

And the then lord president having given the lords an account of the said free conference, with the several debates *pro* and *con* on both sides,

Upon consideration thereof it was ordered, that a committee of the lords be appointed to meet with a committee of the commons, to consider of propositions and circumstances in reference to the trial of the said lords.

Now what can be a more express precedent than this, when, after several conferences and free conferences, the matter was at last so solemnly agreed to and settled ? in which proceedings it cannot be denied, but that all the former doubtful precedents (which were not very numerous) were considered on both sides ; and therefore ought never more to rise up in judgment against a precedent thus established. The like commission was appointed by both houses in the case of the Earl of Strafford.

And as the methods of adjusting preliminaries between the two houses, there seems to be no difference (in reason) between impeachments for high crimes and misdemeanors, and impeachments for high treason ; for the lords and commons are equally concerned in both, and it is equally necessary for them to preserve their rights and methods of proceeding in one as well as in the other ; and since the commons are allowed to concur in the greater case, why not in the lesser ?

Whenever then the commons shall desire a committee of both houses for settling the necessary preliminaries on impeachments, and amongst other things, whether several lords accused of the same crimes shall sit as judges on each others trials for those crimes ; they seem to be justified both by the said precedent, and by reason : for it is a fundamental maxim of reason and justice in all governments, that no man shall sit as a judge in his own case, and consequently shall not sit as judge to pass sentence, that the very fact of which he himself is accused is no crime or offence in law ; for it is not said, that no man shall be judge on his own trial, to acquit or condemn himself, but no man shall be judge in his own case : But if the case of another be the very same as his own, and upon the same individual fact, then his judging in the case of the other is judging in the case of himself.

And here it may be observed, that whenever a debate hath happened concerning any preliminary of this consequence, and which relates to the method of proceedings upon all impeachments whatsoever, the commons have always refused to proceed to trial till the preliminaries were adjusted, lest the same should be thereby established as a precedent, to the subversion of justice, on all future impeachments.

Since the way then to reconcile any misunderstanding between the two houses, is by conferences and free conferences, which are essential to the proceedings of parliament, and the only means to preserve a good understanding between the two houses ; and wherein, upon a fair debate, sound reason is to be the judge, it follows, that all the conferences are to be managed and carried on by the members of both houses, with all the decency and respect that is due from one branch of the legislative power to another, and with that prudence and moderation that is requisite and necessary to promote a union and right understanding between the two houses, for the common good of the king and kingdom.

Whenever then any managers of the lords or commons do transgress that rule, they have always been censured for it by their respective houses, according to the circumstances of the case, and the nature of the offence.

And it is to be observed, that in all free conferences, the managers do usually receive instructions from the respective houses for whom they are to manage; and if any manager exceed his instructions, he is like a soldier that goes out of his rank, or a general that exceeds his commission; he is to be blamed for it, though he has success: But in case this transgression is also attended with indecent and disrespectful language to either house, and instead of promoting a union (which is the end for which they meet) tends to widen the difference, the same hath always been adjudged an aggravation of the offence, and to deserve a greater punishment.

And in this case it is not only to be considered, whether the words spoken are true or not, for neither house has a power to try the other, guilty or not guilty? but whether the words were indecent, and did reflect to the honour and justice of either house: for in an action of *scandalum magnatum*, the party cannot justify the words although they were true; much less any words of scandal against either house of parliament.

When a free conference therefore is desired, in order to a committee of both houses, and a committee is desired in order to a fair trial, and a fair trial in order to determine by the judgment of all the House of Peers, whether the persons impeached are innocent or not, no particular manager of either house has an authority to determine that point, or censure either house for their proceedings. It is indeed possible, that persons impeached may be innocent, though either lords or commons think them guilty, and a fair trial will bring that matter to a fair determination; but for a manager of either house to exceed his instructions, and to assert at a free conference, that the lords or commons themselves think those persons innocent, whom the commons have impeached, or the lords condemned, seems to be not only a high indignity to that branch of the legislative authority, that is so treated, but a great abuse of the trust reposed in such manager.

But that I may state the case fairly, give me leave to suppose, that a manager of the House of Commons should be so indiscreet as to affirm at a free conference, that the lords themselves thought that person innocent that they had condemned; and that thereupon, the lords should send to the commons, to demand reparation for that indignity offered to the House of Peers. There is no doubt but the House of Commons have a right of judicature within their own house, and especially upon their own members; what would then be reasonable and proper for the House of Commons to do in that case? They might, indeed, admit the manager to put in an answer, in his own defence, by either denying or excusing the matter charged against him; but can it be imagined, that they would admit the said manager to justify such a charge against him, and to multiply affronts to the House of Peers, by giving reasons to prove, that the lords were guilty of so ill an action, and that they had not only condemned the innocent, but had done it wilfully, and were conscious of their own evil action? Can it be conceived, that they would suffer such a justification to be put in writing, and sent up to the House of Lords; alledging, that the lords did think those persons innocent whom they had condemned, because others that were in his opinion guilty of the same crimes, were not condemned also? To what end should such an answer and justification be sent to the lords, to reply and join issue upon it? How should that matter be tried? How were it possible to know what were the lords thoughts, or the reasons why the lords did not think others equally guilty, or had not yet thought fit to condemn them? Shall the commons pretend to try the House of Peers, guilty or not guilty? (and in this case, no other can have a right of judging, where their own member is concerned, but themselves;) or can either house try the other? No, certainly, the sole question upon this message to the commons would be, what were the words that were spoken? And then, whether they were decent and proper to be said at a free conference between the two houses, and pertinent to the matter in debate, and within the instruc-