

tions of the house? And if they were, the House of Commons would endeavour to excuse their member to the lords; but if that would not be accepted, they would rather command a private member to assure their lordships, that he did not design to reflect on, or dishonour the House of Peers, but if he had unfortunately spoke any words that were in the least offensive, he humbly begged their lordships pardon, than suffer any misunderstanding between the two houses on that account, to the prejudice of the public affairs of the king and kingdom; and no subject of England is too big to make such a submission to any branch of the supreme authority.

But if upon consideration of the words they appeared to be indecent, and not proper to be said at a free conference, and that they were not within the instructions of the house, the commons would immediately pass such a censure and punishment upon that manager, as the nature of the offence did require; and it is to be hoped the lords will always observe the same respect to the representatives of all the commons of England.

And here it may be observed, that when several persons are concerned in the same fact, it does not therefore follow, that they are equally guilty; or, if they were, that because one is prosecuted, and the other not, that therefore all are thought innocent. Sometimes it is thought convenient to show mercy in the midst of justice, and to prosecute a few of the chief, and excuse the followers and dependants, *Ut penæ ad paucos, metus ad omnes preveniat*. Sometimes it is proper to save one in order to obtain evidence against another, and sometimes a circumstance alters the nature of the crime, as in the case of killing a man, that which is only man-slaughter or chance-medley in one, by the addition of malice prepense, is murder in another. And many other differences may happen to distinguish one case from another; therefore,

No private person is a proper judge in cases of this nature, nor ought, upon a free conference, to make any reflecting inferences upon the honour or justice of either lords or commons, from his own private apprehensions.

The commons have a discretionary power in all cases of this nature, and may think fit to begin with one person, who appears to them to be most criminal, and may re-spite the impeachment of another till they see the event of that proceeding. Or they may think fit to impeach one person for a multitude of crimes, and not to impeach another for a single crime; for they are the proper persons to judge, from the various circumstances of every case, what is prudent and fit to be done, in cases of impeachments, for the common safety of the king and the people; and no manager at a conference has any authority to censure, or reflect on the justice of their proceedings.

And thus, upon the whole matter, the nature and excellency of the government of England, by king, lords, and commons, may appear to all, and even to the meanest capacity. Here we may observe the wise provision made by our ancestors, for the common safety of the king and the people, that as no blame may be imputed to the king, so no wrong be done to the people.

Under this happy constitution of government, secured by a wise distribution of power, in the original frame and institution thereof, to all the three supreme branches of the legislative authority, as mutual securities for the common safety, and to assist each against the encroachments of the other, this nation has enjoyed peace, prosperity, and happiness for many generations: And it will be difficult to find an instance, in any age, that ever any troubles, or civil war, happened in England, but when some one branch of the supreme authority did unreasonably encroach upon the rights of the other.

The way then to preserve England, is to preserve the just balance of the constitution, and when any mistake or misapprehension happens between any of the branches of the supreme authority, to preserve those methods that are essential to the proceedings of parliament, and the only means to preserve a good understanding; and that is,

by humble petitions or addresses to the king, and by conferences, free conferences, and committees betwixt the two houses.

By these means, this nation has hitherto prospered, and the people enjoyed their rights and liberties, to the wonder or envy of all the world; and therefore we must be careful of admitting any innovations, or new doctrines, spread abroad by ignorant or seditious persons, to render this happy constitution void and of no effect.

The three branches of the supreme authority, are all entirely concerned in interest to promote the public good, and have an absolute supreme power of making such laws, and doing such things, as they in their great wisdoms and discretions shall conceive to be most advantageous and conducive to the welfare of the nation: And the particular powers lodged in every one of them, as mutual securities for the common safety, are not to be limited by any other authority besides their own; neither can they be accountable to any other power on earth, without confounding the government, and dissolving the constitution.

For since one person cannot dispose of the right of another unless he has authority from the other so to do; and since it was not possible to have a general meeting of the body of the people of England, to consult together for the interest of the nation, and to determine, by majority of voices, what was most prudent and safe to be done for the good of the whole (which is always to be preferred before the good of any particular part) it follows that it was absolutely necessary to chuse representatives from all parts of the kingdom, to whom the interest and grievances of every place and county might be fairly represented and debated together at one and the same time; and who (in concurrence with the king and the lords) after many serious and solemn debates, are best able to judge, and most proper to determine, by majority of voices, what is most advantageous and conducive to the general good of the king and kingdom.

It can never therefore be admitted as legal, or so much as is consistent with the interest and safety of England, for the freeholders of any particular place or county, to direct the proceedings of parliament, since the safety of the people entirely depends upon the result of the mutual debates and consultations of their representatives, that come from all the parts and corners of the kingdom; and who alone are able, by the assistance of one another, to understand the true state and condition of the nation.

It is true, that such is the great care and tenderness had for the safety of the people, that they may, in a decent and respectful manner, petition the king, lords, or commons, for relief or redress of any real grievance; but when ill-disposed persons abused the goodness of their governors, and, under pretence of public grievances, took upon them to direct the king, or the parliament, in matters of the highest importance relating to the welfare of the whole kingdom, whereby many disorders and calamities did arise to this nation, then at last a statute was made, in the 13th of King Charles II. Chap. 5. entitled,

*An Act against Tumults and Disorders, on Pretence of preparing or presenting public Petitions, or other Addresses, to his Majesty, or the Parliament.*

Whereas it hath been found by sad experience, that tumultuous and other disorderly soliciting, and procuring of hands by private persons to petitions, complaints, remonstrances and declarations, and other addresses to the king, or to both, or either houses of parliament, for alteration of matters established by law, redress of pretended grievances in church and state, or other public concernments, have been made use of, to serve the ends of factious and seditious persons gotten into power, to the violation of the public peace, and have been a great means of the late unhappy wars, confusions, and calamities in this nation.



This is the recital of that statute, by which some persons do claim a right to petition the king and parliament in any case whatsoever; but hereby it appears, what has been the effects of disorderly petitions in former times; and that such proceedings (even where lawful) ought not to be had without extraordinary occasion for it; for what has served the ends of factious and seditious persons in former times, may do so in this.

For preventing the like mischiefs for the future, be it enacted by the king's most excellent majesty, by and with the consent of the lords and commons assembled in parliament, and by the authority of the same, that no person or persons whatsoever shall, from and after the first of August, one thousand six hundred sixty and one, solicit, labour, or procure the getting of hands, or other consent of any persons above the number of twenty or more, to any petition, complaint, remonstrance, declaration, or other address to the king, or both, to either houses of parliament, for alteration of matters established by law in church or state, unless the matter thereof have been first consented unto, and ordered by three or more justices of the county, or by the major part of the grand jury of the county or division of the county where the same matter shall arise, at their public assizes, or general quarter sessions, or if arising in London, by the lord mayor, aldermen, and commons in common council assembled: And that no person or persons whatsoever shall repair to his majesty, or both or either of the houses of parliament, upon pretence of presenting, or delivering, any petition, complaint, remonstrance, or declaration, or other addresses, accompanied with excessive number of people, not at any one time with above the number of ten persons, upon pain of incurring a penalty not exceeding the sum of one hundred pounds in money, and three months imprisonment without bail or mainprize for every offence, which offence to be prosecuted at the court of King's Bench, or at the assizes, or general quarter sessions, within six months after the offence committed, and proved by two or more credible witnesses.

Provided always, that this act, or any thing therein contained, shall not be construed to extend to debar or hinder any person or persons, not exceeding the number of ten aforesaid, to present any public or private grievance or complaint, to any member or members of parliament after his election, and during the continuance of that parliament, or to the king's majesty, for any remedy to be thereupon had; nor to extend to any address whatsoever to his majesty, by all or any of the members of both or either houses of parliament, during the sitting of parliament, but that they may enjoy their freedom of access to his majesty, as heretofore hath been used.

By this statute it may be observed, That not only the number of persons is restrained, but the occasion also for which they may petition; which is, for the alteration of matters established in church or state, for want whereof some inconvenience doth arise to that county from which the petition shall be brought. For it is plain, by the express words and meaning of that statute, that the grievance, or matter of the petition, must arise in the same county as the petition itself. They may, indeed, petition the king for a parliament to redress their grievances; and they may petition that parliament to make one law that is advantageous, and repeal another that is prejudicial to the trade or interest of that county, but they have no power by this statute, nor by the constitution of the English government, to direct the parliament in the general proceedings concerning the whole kingdom; for the law declares, that a general consultation of all the wise representatives of parliament, is more for the safety of England, than the hasty advice of a number of petitioners of a private county, of a grand jury, or of a few justices of the peace, who seldom have a true state of the case represented to them.

But it is wisely provided by this statute, that in all cases where it is lawful and reasonable for a number of persons to petition for making or repealing a law, that even in that case, it should be done in a peaceable manner, and by the consent and order

of three or more justices, or by the majority of the grand jury; because they are generally persons of some note, and are answerable to the government for all illegal petitions that they consent to; and although the form of proceeding, by order of three or more justices, may in great measure excuse the petitioners from such illegal acts, as not doing the same in a tumultuous manner, yet it will not justify the justices or grand jury, who ought to understand the law (though not matters of state) and be well advised before they consent to petitions of that nature and consequence.

But admitting a petition to be made upon a lawful occasion, to redress a real grievance arising in that county, and to be made pursuant to the said statute, yet no subject can pretend to a right, under the pretence of a petition, to reflect on the honour and justice of the parliament, or to condemn and expose their proceedings.

The subject has an undoubted right to commence a suit in Westminster-Hall, to exhibit a bill in Chancery, or to petition the Lord Chancellor; but yet he has no right to affront any of the said courts; and if he should presume in such a petition to desire the Lord Chancellor to turn his plausible speeches into just and righteous decrees, I presume his lordship might legally commit him to the Fleet for such an indignity to the court.

For as we must take care to preserve the rights of particular subjects, so much more to preserve a due respect to all courts of justice, and especially to preserve the dignity of parliaments, and the rights of the representatives of all the commons of England; for whoever affronts the representatives of the people of England, affronts the people themselves; and, as much as in them lies, overturns the constitution of the government, appointed for the common safety of both king and people.

And here it may not be improper to observe, that it seems very prudent and requisite, that all the several branches of the supreme authority should at all times, and upon all occasions, support and assist each other, and not in the least countenance any sort of proceeding, that in any measure, or by any indirect means or insinuations whatsoever, tends to the dishonour or reproach of any one of them, lest that method that is taken at one time to dissolve a parliament, should be taken at another to deprive this nation of the happiness of the house of peers, or even of kingly government.

But as to the nature of the powers and proceedings of the lords and commons upon impeachments, the writer, notwithstanding any thing herein alledged, doth not pretend to assert, but argue; not to determine, but to submit to better judgment. He is (indeed) desirous either to convince, or be convinced; and therefore hath freely delivered his opinion in such terms as the nature of the matter seemed to him to require, in hopes that if his arguments have any weight in them, they may influence one side; and if none, that the answer to them may influence the other, in order to a right understanding and a happy union betwixt all.

It is no dishonour to a just judge to change his opinion, and a multitude of publick business may justly excuse all persons from a hasty resolution: and since it is the interest of all to live in peace and union, it is the interest of all to hear what can be fairly offered for that purpose.

As to the three branches of the supreme authority, he takes it for a maxim, that no blame or wrong is to be imputed to them, or any of them: but if any mistake happen, they will be pleased to hear the matter fairly debated, on all sides, in order to create a right understanding, which must be the desire of all, since they are all united by interest in the same common end, the publick good.

And as to any private persons that either have, or shall hereafter offend against our happy constitution of government, the writer can come up to any thing in favour of their persons, though not of their errors: it is the publick good he aims at, and the



preservation of that constitution, that is so valuable to this nation; and which he should think himself and his posterity unworthy to enjoy, if he should basely give up or betray the same, for any private respects or friendships on one side, or for any mean or servile fear on the other.

*A Vindication of the Rights and Prerogatives of the Right Honourable the House of Lords; wherein a late Discourse, entitled a Vindication of the Rights of the Commons of England, is considered. 1701.*

*Beati Pacifici.*

*A reply to the Treatise of Sir Humphrey Mackworth, in which the rights of the House of Peers are maintained in opposition to those of the Commons.*

MAN, the perfection of the creation, was not only made a citizen or inhabitant of this world, but lord paramount over all creatures that have a being within the circle of the terrestrial globe; a dignity conferred upon him by the supreme Governor of heaven and earth, which extends not only over irrational creatures, but has constituted a superiority and authority to reside in some peculiar members of the creation, over others of the same species; lest all aspiring to an equality of power and privileges, should turn the world into a chaos of confusion.

Superiority and subordination are the ligaments of government; which, duly preserved in their natural and legal distances, will regulate affairs of state, by the sound principles of solid reason, mature deliberations, and profound judgment; whereas a parity of jurisdiction will totter the state, amuse the people with self-interested councils, wavering opinions, and make the well-being of a kingdom depend upon uncertain fate, and the capricious of unsteady fortune; which at length must necessarily plunge the state into an ocean of distractions, misery, and infelicity.

The conservation of a kingdom or state in peace, prosperity, and unity, and the knowledge of governing discreetly and regularly, to compass those blessed ends, are rays of favour and goodness issuing from a wise and almighty Essence:—

*Est Deus in nobis, agitante calescimus illo;*

*Spiritus hic sacra lumina mentis habet.*

Which renders it more especially the duty of those that preside at the helm, to surmount the title of mere men, by endeavouring after such a measure of understanding, as flies a more sublime and nobler pitch, than humanity can otherwise attain to; for by this means, great men will not only surpass others of lesser quality, but will live after the dictates of those divine monitors in their bosoms, which ought to have the supremacy in all their cogitations and actions, viz. ‘the steady belief of a Deity, and a conformity to the precepts of religion and the laws of reason.’ These will ren-

der them truly wise, just, and courageous, and add a nobler distinguishing allay to their understandings, than others of equal title can boast of: who for want of these qualifications, are so deeply emerged in sense, as renders them unserviceable to their country, by a celebrated maxim, 'that those who slight the great concern of eternity, will little regard the temporal well-being of their country.' Such men, by indulging corrupted nature, and abdicating their reasons, *facie tantum homines sunt, non animo*, have only the external aspect of men, but are destitute of those noble and illustrious habits as qualify other men for government.

It is the English nobility of the forementioned character, that knowing themselves honourably born, of plentiful estates in their country, and that owe their original to virtue, that can never be suspected of ill intentions against their native soil, where their parents, relations, friends, and tenants reside, and must be possessed by their heirs and successors. And though they are tender of their rights and privileges, as the supreme court of judicature in England, from which there is no appeal, and are zealous in maintaining them, cannot, I say, without the greatest breach of duty and charity imaginable, be supposed to act against the valuable interest of England in general; but, on the contrary, are the pillars that support the nation's welfare and grandeur, and their estates in conjunction with others, that defend our coasts from the insults and depredations of our enemies.

These are the English nobles, which being adorned with their own virtues, as well as with those of their ancestors, merit esteem, preferment, trust, honour, and fame, above all others that would stand in competition with them, in the administration of public affairs; for they are armour of proof against all innovations, and whatever might reflect injuries upon our happy constitution of king, lords, and commons, either obliquely or directly,

——— *Quod nec Jovis ira nec ignis,  
Nec poterit ferrum, nec edax abolere vetustas.*

And by their prudent consultations and resolutions are the Nestors and Ulysses, that secure their country against the repeated designs of our neighbours, that would be reputed Ajaxes and Achilles.

Their lordships have been also equally zealous in demanding and maintaining the rights of the people at home; as may be seen in all the traces of the Barons Wars, when our kings would have erected a despotic authority, and enslaved the people under the arbitrary power of the reigning monarchs, if they had not been brought to reason, by the opposition that was made against them by the lords, earls, and barons.

And it is no less observable in justice to the honourable House of Peers, that when a factious crew of republicans, that scandalously called themselves a House of Commons, confederated, by the exclusion of more worthy members, into a wicked and execrable design, of investing themselves with an absolute and arbitrary power, to the destruction of the monarchy, and enslaving their fellow-subjects, they could not accomplish their ends, till they had violently, and by armed force, hindered the House of Lords from sitting, and voted them dangerous and useless.

Again: The inconsiderable number of lords, that engaged in the design of promoting and carrying on a bloody and ruinous civil war in this kingdom, and the many that shewed their abhorrence of it, and zeal in settling the kingdom upon its ancient and venerable basis of king, lords, and commons, is a sufficient argument and an invincible evidence, that the right honourable the House of Lords, notwithstanding all their losses, and the provocations they had from the adverse party, were yet always firm and immoveable, in the preservation of the rights of the people and our legal constitution.

But since the design of this brief discourse is not to aggravate mistakes, create jea-



lousies, or widen breaches, but to pacify the unhappy differences between two of the branches of our legislative powers, from whose happy concord, mutual union, and amicable correspondence in the common interest of the kingdom, we only can expect a durable tranquillity, and, on the contrary, from whose unseasonable jars and disagreements, we must live under the dismal sense of approaching ruin; I shall summarily discourse the excellency of our constitution in general, and then proceed to the branches that compose the whole establishment, which has been as often as truly called, the glory and happiness of England, and the admiration or envy of all the world. Now,

To the end that rights being adjusted, either by convincing eager or ill-advised parties of their mistakes, or by persuading good men that have the same common interest of the necessity of suffering circumstantial and lighter matters to sleep at this juncture, and for their own and our preservation, to espouse affairs of the greatest consequence and importance: By which address, each constellation moving amicably in their proper stations, without reflecting unkind aspects upon one another, Heaven, in answer to the prayers and endeavours of all good men, may bless us with a salubrious air, a healthful and vigorous body politic, minds united in peace and concord, which will infallibly produce fair weather and a happy issue of parliamentary proceedings in England.

Those wise and courageous men that first reduced mankind into some kind of tolerable order, by associating and assembling them into cities, who before like savages ranged over woods, and dispersedly inhabited deserts, without the knowledge of government or laws, first obtained the title of kings; but some of them, in time, and by excess of power, degenerating into tyrants, produced commonwealths, and both by ill management, and straining their authorities, produced that maxim, That monarchy leaves men no liberty, and a commonwealth no quiet. But we in England have embraced the golden mean: our laws take away from the monarch the power of doing hurt, and yet leave him enough to govern and protect us; we take from the other the parity, the confusion, the animosity, and the licence, and yet reserve a due care of such a liberty as consists with men's allegiance.

Our government has much the stronger bias towards monarchy, which, when it falls into good hands, has so great an advantage above all other forms, that they look out of countenance when they are set in competition with it. Here our king and kingdom are (or ought to be) one creature, not to be separated in their politic capacity; his throne is supported by love as well as power; the laws of the kingdom when steadfastly adhered to, are the sparkling jewels that illustrate his crown, and he has as much dignity, superiority, and command, as a wise and good prince can desire to have. So happy is our constitution, that dominion and liberty are so well reconciled, that it gives the prince the glorious power of commanding freemen, and the subject the satisfaction of seeing the power so well lodged, that their liberties are secure.

In the early days of monarchy, kings seeing they were but single persons, as long-sighted and handed as they are said to be, soon found themselves unable to transact all the affairs of their kingdoms in their own persons; besides, being sometimes seduced from the conduct of reason and policy, by yielding to their own affections, they found themselves under a necessity of serving themselves by the assistance of other heads and hands, and therefore chose grave, sober, discreet, and virtuous persons, to help them to sustain the weight of government, and lessen their cares and troubles, by imparting their power into other hands. Thus Romulus, the first king of the Romans, chose a hundred senators to assist him in his government, who, out of respect to their grey heads, and great understandings, were called *patres*. Theopompus, King of Sparta, constituted the Ephori, and invested them with eminent authority. After the same manner acted Lycorgus, Solon, and Thucydides; and as nations multiplied in Europe, so

we find the Germans have their Diets, the Danes and Swedes their Riicks Dachs, the Spaniards their Cortes, the French have, or ought to have, their Assembly of the Three Estates, and we in England our Parliament, or, according to the old Norman French, 'An assembly, where all the members should sincerely and discreetly *parle la ment*, freely speak their minds for the good of the kingdom in general.'

The institution of this illustrious assembly in England is as ancient as the Britons, who called their *commune concilium*, or parliament, *Hyfrythen*, because their laws were ordained in it. Under the government of the Saxons, who made themselves masters of the British nation, they had their *Wittena Gemots*, or parliaments, as now phrased, wherein they made laws, and managed the great affairs of the kingdom, according to the platform of their ancestors. I pass over the Danish government, because I cannot find there were any great mutations, either of the councils or laws of the English nation. William the First, though he got the imperial crown of England, and introduced several arbitrary laws, as new tenures, &c. yet was not England so entirely subdued, but that they made claims against the king himself, which they could not have done but by virtue of their ancient rights, which that king durst not utterly abolish. Under William the Second, the English obtained their ancient rights, by siding with him against the Normans. William being dead, Henry the First granted the English all their rights and privileges by charter. And though in those days all affairs were transacted by the king, and the *Magnates Angliæ*, Peers, yet it must be granted, that the commons have had a right to sit, and were convocated to parliaments, as an essential branch of them, in the most early days of our Saxon ancestors, though the records being destroyed by age, or ill purposes, the precise time of their first being summoned cannot be exactly computed.

It must also be remembered, that the *magnates*, or peers of the kingdom, had always a primacy of order and jurisdiction; and being, in right of their births and the laws of the land, invested with a judicial authority, from which court there is no appeal, have always in their proceedings, as a court of judicature, took care 'to preserve a right understanding between the king and the people, that no blame might be imputed to the king; who can do no wrong: Nor no injury be done to the people, who ought to suffer none.' Their lordships in these proceedings, act upon honour, are not bound up by oaths, are both judge and jury, uncontrollable; and therefore, with respect to the worthy Vindicator of the rights of the Commons, cannot be liable to the check of any other branch of the supreme authority; for their lordships act in these matters according to their own 'great judgments and discretions, from whose determinations there is no appeal.'

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; 'and the lords never denied them the exercise of this power; but still have entirely reserved to themselves the power of judging whether the impeachments of the commons be well grounded, and whether, from the proof they make, the accused persons are guilty or not guilty of the charge, either in the whole or in part; and by their own authority, according to their great wisdoms, either acquit or condemn the persons accused.' Which, with submission, I think decides the controversy about preliminaries.

To keep the balance of power equal and in its due poize, that one branch of it may not encroach upon the other, there is a power lodged in the lords, to determine, in relation to their own privileges, whether the matter complained of be an encroachment or not: for the decisive power must be lodged somewhere; it cannot be in the complainants, for that would make them judges in their own cause; and therefore must reside in the House of Lords, who, as a court of judicature, may take notice of the minutest circumstance, as time, place, order, decency, encroachments, or innova-



tions, as tending to the common safety, by preventing parity in powers, disorder and confusion, which would otherwise extend *ad infinitum*, in debates *pro* and *con*, about the matter controverted between the two houses.

On the 14th of March, in the 18th of Elizabeth, the House of Lords disapproving the proceedings of the House of Commons in the Lord Sturton's bill, and among other things, 'That the House of Commons did not use that reverence to them as they ought to do,' which concerned the lords in point of honour, and being reported by the committee to the commons, Sir Anthony Mildmay, by commission from the commons, told the lords at the next conference, 'That they were very sorry that their lordships had conceived such an opinion of the house, as though they had forgot their duty to them;' praying their lordships to believe, that the House of Commons did not want consideration of the superiority of their estates, in respect of their honourable calling, which they did acknowledge with all humbleness; protesting that they would yield unto their lordships all dutiful reverence, so far as it was not prejudicial to the liberties of their house, which behoveth them to leave to their posterities, in the same freedom they have received them. By which submissive and modest answer the lords were satisfied, and the honour and rights of both houses amicably preserved; which method, if it were as strictly observed as by all good men it is earnestly desired, it would allay unnecessary heats, prevent animosities, and put an end to parties and factions, which, by endeavouring to divide the two houses, open a way to the French to accomplish their ends over us.

This course, I say, by creating a right understanding between the two houses, which is equally their own interests, as well as of the whole kingdom, would render the nation insuperable, and is worthy the most serious and pious considerations and resolutions of both houses, more especially in this juncture of affairs; for since both houses agree in the main, the public good, and seem to contend which of them shall most contribute to that blessed end, it must needs be nothing but mistakes and misapprehensions that keeps them at variance, or a bone thrown among them from the other side of the water, to inflame differences, who for many years have laid it down as a certain maxim among them, 'that England is a strong body, that can never be destroyed but by itself,' which, by an English interpretation, is by a division among the powers, that can only, under an Almighty Providence, secure us; and is now attempted by all the subtle, nefarious, and treacherous artifices of our domestic and foreign enemies.

To prescribe the methods for a reconciliation, between two such wise and judicious assemblies, otherwise than by our prayers to God and them to effect it, would be an unpardonable presumption in a man of my weak capacity, and therefore shall only beg leave to tell the world a short but very significant story.

Two great and good men having been set at difference, and forced upon law-suits, but by ill acquaintance and neighbours, to the prejudice of their estates and families; one of them taking a prudent neighbour with him, went to his antagonist, and proposed terms of agreement; the other as generously offered to stand to his award, and so they were immediately reconciled; upon which the latter said to the third person,—Am not I a good man in agreeing upon terms proposed by my adversary?—Yes, replied the indifferent person, you have shewed yourself a good man by such a generous condescension; but certainly he is the wisest and best man that first offered terms of accommodation. Stiffness enrages, but prudence dissolves angry mistakes.

January the 19th, in the parliament begun the 19th of Elizabeth, several members of the House of Commons were sent with a message to the lords, to receive satisfaction from them, touching an innovation lately begun, as it was said, in that house, *viz.* 'That an answer to a message from the commons was given by the Lord Keeper, sitting in his place, and all the lords keeping their places, and not going down to the bar, as usually was their custom.' Upon a long debate, it was resolved by the lords,

that it was the order and usage of the house, when any bills or messages are brought from the commons to the lords, the Lord Keeper and the rest of the lords are to rise from their places, and go down to the bar, to meet such as come from the commons, and in that place to receive their message and bills; but, on the contrary, when any answer was to be delivered in the name of the house, to such knights, citizens, and burgesses, as came from the House of Commons, the said knights, citizens, and burgesses, standing at the lower end of the house, without the bar, the Lord Keeper is to deliver the lords answer, sitting in his place, with his head covered, and all the lords keeping their places: And the Lord Archbishop, Lord Treasurer, Lord North, and Lord Buckhurst, who were seniors of that house, affirming this to be the ancient custom, the commons were satisfied.

This, you see, was a pure mistake in the commons, without any design of encroaching upon the privileges or custom of the House of Lords, who, they thought, made innovations upon them; but the mistake being rectified by the lords, they amicably dropt their pretensions: which will always have the same effect, where persons only propose and debate purely to receive satisfaction, and not to keep up a controversy, to humour a mal-contented faction, that have some private interests of their own to serve, which others, that unadvisedly run with the herd, are utter strangers to, and would desert them if they were privy to the secret.

The power of judicature belonging to the House of Lords is seen chiefly in their jurisdiction upon writs of error, and their judgment of offences, as well capital as not capital, which they give to any public mischief in the state. Of these judgments of such offences, many examples of former times are to be found in the records of parliament, but none more apposite to our present purpose, than that of Mr Thomas Thorpe, who was not only a member, but Speaker of the honourable House of Commons, whose case followeth.

Friday the 15th of February, in 31st Henry VI. it was opened and declared to the lords spiritual and temporal, who were then in the parliament-chamber, by the counsel of the Duke of York, that whereas Thomas Thorpe, on Monday the first day of August, came into the place of the Bishop of Durham, and then and there took away certain goods and cattle of the said duke's against his will and licence; the duke took his action by bill, in Michaelmas term last past, against the said Thomas, in the court of Exchequer; to which bill the said Thomas appeared, and was by a jury found guilty of the trespass, to the damage and cost of 1010 pounds, and was committed to the Fleet. Thereupon it was humbly prayed, on behalf of the duke, that since all this was done out of parliament time, that the said Thomas might not be released, by virtue of privilege of parliament, till the duke be satisfied his costs and damages.

The lords, unwilling to prejudice the liberties and privileges of the House of Commons, but desirous to administer justice according to law, enquired of the judges, whether the Speaker ought to be delivered from prison by virtue of his privilege or not? To which, after consultation, the chief justice, in the name of the rest, said, that they ought not to answer that question, because it was already determined in parliament, that the judges should not intermeddle in the privileges of parliament: However, by a writ of supersedeas of privilege of parliament, of which the high court of lords had only cognizance, he might be detained. Upon which it was judged by the lords spiritual and temporal, that the Speaker should remain in prison, his privilege notwithstanding. Whereupon, by the command of the lords, the House of Commons being now assembled, they were made acquainted with these proceedings, that they should elect another Speaker in the place of Mr Thorpe, with all godly haste and speed, that the matter for which the king called this parliament might have a good and effectual conclusion and end; to which the House of Commons agreed, and in his place chose Mr Thomas Carleton their Speaker, who was approved by the king.



This is a clear conviction of the unanimous agreement in ancient times, between the three branches of the supreme power, the body politic of the kingdom, without any unnecessary clamours or bickerings about particular privileges, which is but like one's limb jarring with the rest, which may procure the dissolution, never the strengthening of the whole. Here a subject complains of injury he was like to suffer by the privilege of a great commoner; the lords interpose by their judicial authority; the king confirms their judgment, by issuing out a new writ for the choice of a new Speaker; and the House of Commons affirm the proceedings of the other two branches, by complying with their orders. The good effect of which exemplary agreement, and the readiness also of the lords to comply with the commons in any thing tending to the public good, was also particularly conspicuous in the late act for abolishing those privileges of both houses of parliament; which, however reasonable at their first institution, came by degrees to be the scandal of those that enjoyed them, and the insupportable grievance of all others.

Common experience has too amply convinced the world, that great ministers of state, or, as the old word was, minions, did always poison the minds of kings with a despotical power, inherent in them as sovereign princes; *Quod principi placuit lex esto*; not for the honour or good of the crown, which can only be steady upon the monarch's brows, by a strict observation and conformity to the laws, but for their particular advantages in heaping up riches, or that they might reign themselves, and be sovereigns over their masters. To rectify these abuses, and punishing the offenders, who has been more vigilant than the House of Lords, even against their own members, when the notoriety and proof of the facts were as evident as the accusation importunate: Which shewing their justice in the executive part of their authority, as well as their judicial power in capital offences, I shall exhibit some examples of both.

And this I rather do, to shew the ancient methods of proceeding in cases of impeachment, and with how much ease and unanimity each house of parliament then preserved their own rights, without jarring about adjusting preliminaries, or flying into dangerous and unnatural heats, about such petty circumstances, as time, place, &c. to the defeating the great end of trying the issue; which is equally the interest and desires of both houses, and makes it worth a diligent inquisition, whether the obstructions they encounter do not originally proceed from such ill men out of doors, as wish well to neither king, lords, nor commons, but, to serve themselves, or some interest behind the curtain, would ruin the best constitution in the world.

*Rotulo Parlamenti Anno 10. R. 2. M. 4. 5.* In this parliament all the commons with one accord, and in one assembly, came before the king, prelates, and temporal lords, in the parliament-chamber, and there, by word of mouth, grievously complained against Michael de la Pool, Earl of Suffolk, late Chancellor of England, and put in articles of impeachment against him afterwards, importing, 'that he being chancellor, and by oath of office obliged to promote the king's interest,' which is the common good, 'without respect to his oath, or the king's great necessity, had purchased several lands of the king at under rates; neglected the great affairs of the kingdom; converted a subsidy to other uses than for which it was appropriated by the king, and lords of parliament,' with many other high crimes and misdemeanors, of which the commons demanded judgment of the House of Lords. In which I observe, that the commons had the privilege *accusare et petere judicium*, the king *assentire*, and the lords only did *judicare*; and therefore, by a natural consequence, it ought to be granted indisputably, 'that the lords having the sole power of judicature, have the same right in ordering all circumstantials conducing to that great end,' giving judgment; which I only offer argumentatively, not dogmatically; but submit, as in all other things, to better judgments.

That the judgment belongs only to the lords, appears 7 Henry IV. in the case of

the Earl of Northumberland, where, upon an endeavour to add others as judges in that high court, the lords made protestation, 'That the judgment belonged to them only.' Which is further confirmed by the protestation of the commons, 1 Henry VII. which excludes them. However, to shew there were early designs to encroach upon the authority of the lords by degrees, on Monday, November 3, the commons made a declaration to the king, that no record in parliament should be made against the commons, that they are or shall be parties to any judgment given, or hereafter to be given in parliament.

Unto which it was then answered by the Archbishop of Canterbury, by the king's command, 'That the commons are only petitioners, not demanders, and that the king and the lords have ever had, and of right ought to have, the judgment in parliament, in manner as the commons had declared, saving in statutes to be made, in granting subsidies and the like; though for what is done for the common profit of the realm, the king will have especially their advice and assent: and that this order should be held and kept at all times to come.'

This excludes the commons from right to judgment: but whereas it is said, that judgments in parliament belong only to the king and lords, that is to be understood only of the king's assent, as appears by the replication of the lords, in 2 Henry V. which was thus:

In the parliament at Leicester, 11 Henry V. Numb. 11. Thomas Earl of Salisbury petitioneth to reverse a judgment in parliament, against John Earl of Salisbury his father, 11 Henry IV. and one of the errors assigned was, 'that the judgment was not given by the king, but by the temporal lords only;' but the whole matter being legally debated, first by the king's council learned in the laws, and after that in full parliament, it was adjudged, that the king being always presumed to be in parliament, as the head of that illustrious body, the judgment was *bona et justa et legalia, et ea pro hujusmodi ex abundanti decreverunt et adjudicaverunt*.

Out of the last recited precedent of the 11 Henry V. may be observed, that the temporal lords, by the king's assent, may give judgment in capital crimes, and that the temporal lords are the sole judges; but in high crimes and misdemeanors, the lords spiritual and temporal are equal judges, and the king's assent is not necessary. And for this reason it was, as King Charles I. learnedly expressed it, 'that the lords were entrusted with a judicatory power, that they might be a skreen between the prince and the people, to assist each against the encroachments of the others, and by such judgments to perform that law which ought to be the rule of every branch of the supreme power.'

When the commons, in 10 R. II. impeached the lord chancellor, they were present at his answer; often replied and enforced his oath against him; but where the commons only complain, and do neither impeach the party by word of mouth in open house, nor in writing, nor demand to be present at the trial; in these cases it is in the election of the lords, whether the commons shall be present or not. Nay farther, as in instance of the superior power of the lords in impeachments and trials: In the case of Alice Peirce, in the 10 R. II. though the commons impeached her by word of mouth in the lords chamber, the lords, for reasons best known to themselves, and for which they were not accountable to any other real or pretended jurisdiction, deferred her trial till the commons were adjourned. By which it appears, that the time for trials for offenders is to be appointed by the House of Lords; and if to procrastinate the time, and create delays injurious to the honours and affairs of the persons impeached, it be objected, that the time or place is inconvenient for the prosecutors; with due respect to the ingenious Sir H. M. their lordships are the proper judges of the reasons given to delay justice, and if they think them insufficient may proceed to judgment: for as their sentence is irrevocable, so the methods their lordships prescribe, in order to do justice, are uncontrollable; for otherwise they cannot answer the end for which their powers were established; to do justice without delay or partiality.



Lionel Cranfield, Earl of Middlesex, who was made Lord Treasurer of England by King James I. was impeached of high crimes and misdemeanors, by the House of Commons of the 21st and 22d of that king. In which impeachment all things proceeded regularly between the prosecutors, the impeached, and the lords that were judges, till upon mature deliberations the cause was ripe for judgment; and then, as appears *ex Journali Domus procerum*, a message was sent from the lords to the commons, by Mr Serjeant Crew and Mr Attorney General, viz.

‘That the lords are now ready to give judgment against the Lord Treasurer, if they with their speaker will come and demand the same.’

It was answered, ‘they will attend presently.’

The lords being all in their robes, the Lord Treasurer was brought to the bar by the Gentleman Usher and the Serjeant at Arms; his lordship made low obeysance, and kneeled, till the Lord Keeper willed him to stand up.

The commons with their speaker came, and the serjeant attending the speaker presently put down his mace, and the speaker, in the name of the House of Commons, and of all the Commons of England, delivered himself to this effect :

‘The knights, citizens, and burgesses, in this parliament assembled, heretofore transmitted to your lordships an impeachment of several offences, against the right honourable Lionel Earl of Middlesex, Lord High Treasurer of England, for bribery, extortion, oppressions, and other grievous misdemeanors committed by his lordship; and now the commons by me their speaker demand judgment against him for the same.’

The Lord Keeper answered, ‘The high court of parliament doth adjudge, That Lionel Earl of Middlesex, now Lord Treasurer of England, shall lose all his offices that he holds in this kingdom, and shall be made for ever incapable of any office, place, or employment, in the state and commonwealth; that he shall be imprisoned in the Tower of London during the king’s pleasure; that he shall pay to our sovereign lord the king the fine of 50,000*l.*; that he shall never sit more in parliament; and that he shall never come within the verge of the court.’

May 24, 1624, ordered, That the king’s council draw a bill, and present it to the house, to make the lands of the Earl of Middlesex liable unto his debts, unto the fine to the king, unto accounts to the king hereafter, and to make restitution to such as he had wronged, as shall be allowed of by the house.

Here you see the great care that was taken for the common safety; the commons exercised their power of impeaching and prosecuting; the lords exercised their power of judicature; the people were relieved from intolerable oppression; those that were wronged had restitution made them, and the king was well rid of an evil minister, whose mismanagement reflected blame upon the king’s conduct, and all this done without any kind of jarring between the two houses.

And yet the offender was very rich, had many friends at court, had an opportunity, by the great post he filled, to make a considerable interest every where; and from the caution that was given by the Lord Bacon, viz. ‘That a parliament would come,’ did not neglect to provide against a storm. He had great alliance, a numerous kindred, the king’s ear, and assurance of his favour; notwithstanding all which we see no artifices employed to elude the law, no stumbling-blocks thrown in the way of justice, no unnecessary disputes raised about circumstantial, to delay or disappoint the trial; or if there were, the prudence and integrity both of prosecutors and judges, rendered all such attempts ineffectual, and at length made the offender’s punishment proportionable to his crimes.

Now why all things run so smoothly and regularly, where, in all probability, a powerful opposition, or an artificial puzzling and perplexing the cause, corrupting evidences, and bribing those that would take them, was to be expected, may easily be collected from these considerations.

First, because the lords who were judges of the facts, were men of honour, justice, wisdom, and integrity, who would not be imposed upon by the subtle arts of a factious party; nor allured by any temptation to scandalize their own bearings by acting against the interest of their country, either in acquitting the nocent, or condemning the innocent, but, like the judge of all the world, would do right.

Secondly, because the House of Commons, who were impeachers and prosecutors, had nothing in view but redressing grievances in punishing an evil minister; they had no piques or revenges to serve; their aims were honest without any allay of self-interest, or by jostling him out of a fat employment to step into it themselves, which would be thought a more effectual method to accomplish that sinister end than that prescribed by the vindicator of the commons, viz. 'To resign their offices to purchase the satisfaction of being without one, and the honour of suffering for their country.'

Thirdly, they did not impeach the lord treasurer blindfold, upon uncertain report, or with insufficient matter, and after finding him innocent, studied by little arts and evasions to blind the world and drop the prosecution, but, looking upon him as a criminal offender, prosecuted vigorously, as people do that would be thought to be in earnest; for otherwise they had laid themselves under the vehement suspicion of acting weakly or wickedly; which would have been but very indifferent recommendations to a new election, when that parliament arrived to its period.

But if by corruption of men's morals, things should be carried directly contrary to the practice of our ancestors, and of right reason and justice; and that the right of impeachment in the commons should be extended to make the right of judicature in the lords (by shifts, evasions, and needless disputes,) impracticable as often as they please; then is the right of the subject utterly destroyed, they can have no remedy against an evil ministry, and all things must unavoidably run into confusion. To prevent which, our constitution has lodged a power in the lords to bound and limit all jurisdictions that are inferior to their own, that they may not interfere with theirs, to frustrate the end of their establishment; and this superiority must take place, by all the maxims of law and reason in the world; for where there are distinct powers in relation to the same end, there is a necessity, for order and justice sake, that the lesser power submit to the greater, or else unnecessary and trifling disputes might be perpetrated to the world's end: And it is this over-ruling or decisive power in the lords, that exalts them to such a high degree in the esteem of the people; because in all impeachments of the commons, the lords are to be their judges, who, by several examples in a few years last past, have preserved several persons and families from utter infamy and ruin, only by checking the fatal consequence of a heat began and continued with more passion than reason in another place.

A man prefers a bill of indictment against his neighbour in the court of King's Bench, for a misdemeanor, and requires he may give sufficient security to abide the judgment of that court, and then lets the matter sleep; he has served his end in scandalizing his neighbour, and will proceed no farther. The person indicted being conscious of his own innocency and the malice of his adversary, and withall finding this indictment tending to his disreputation and the loss of his trade, moves the judges, that in justice to him, and the honour of the court, he may be either tried or acquitted; which the court immediately, and in course, will make a rule for.

Now would it not look very oddly, that the prosecutor should assign for reasons to keep the indictment a foot, 'That he is full of business, and not at leisure to prosecute; or that the place and time appointed by the judges is inconvenient?' Can any man that has his reason about him, forbear to think but that the prosecutor knows the person he has accused is innocent, and only makes use of these shifts to keep himself from being exposed?

Can any man that is not qualified to believe transubstantiation offer such violence



to his reason, or reflect so much dishonour upon the court, as to imagine the court before whom the matter lies, and who are proper judges of it, and of all things relating to it, will admit this trifling with the court? No, but on the contrary, having allowed the prosecutor a reasonable time, and he not complying with it, will dismiss the indictment?

In answer to this, Sir Humphrey Mackworth is pleased to tell us, 'That the supreme court of parliament has a greater latitude than inferior courts, and is not tied up to such strict rules as they are.' And truly this evasion was all that learned, modest, and worthy gentleman had to say in that matter; for if he had waded farther, and been more particular in his answer to that objection, he might have eclipsed the reputation he had so justly merited in all sorts of learning, which he wisely foresaw, and therefore would not dwell upon so plain and equitable a comparison, which the meanest capacity might be a judge of.

I will not deny but that the high court of parliament has a more extensive jurisdiction, and is not tied up to the formalities and strict rules of inferior courts; but I know Sir Humphrey will grant me, 'that the highest courts in the world, nay of heaven, are circumscribed within the bounds of reason and justice, and that the higher the court of parliament is, the greater obligation lies upon it to proceed agreeably to those sacred principles;' because they are examples to inferior courts, who will be apt to take the liberty (while men are but men, and subject to failings) to copy after such ill precedents, if any should happen; and think themselves justified in wandering into bye paths, while they but imitate the examples of their superiors.

Thomas Cromwell, Earl of Essex, was attainted by parliament of high treason, and yet never called to answer Rot. Parl. 32 Hen. VIII. yet without questioning the authority of parliaments, or the validity of the attainder, it was said of the manner of proceeding, *Auferat oblivio, si potest; si non, utcumque silentiam tegat*; for the more high a court is, the more just and honourable it ought to be in proceeding, and to give example in inferior courts. And this I find was the opinion of all the judges in the case above-mentioned, though that arbitrary prince carried it against them. Coke's Instit. Vol. 3. Par. 4. pag. 37. Now, though I will not say that keeping men under impeachments for high crimes and misdemeanors, without bringing them to a trial, is equivalent to attainting men without hearing, yet the too long delaying trials after impeachments is of ill example; and to this I have the authority of a House of Lords.

The next thing I shall observe is, that the Vindicator, in taking notice of the duty of ministers of state, and that they often give ill advice to their sovereigns, falls very heavy by palpable, though not direct words upon the late Lord Chancellor, in justification of the charge against him by the House of Commons, and therein begins with the first article, 'That he, knowing the most apparent evil consequences, as well as injustice of the Treaty of Partition, did not, according to the duty of his place, and his oath of office, endeavour to obstruct it, but did advise his majesty to enter into the said treaty, &c.'

Now, since I am of no party but that of law and reason, I will not intermeddle with parliamentary affairs, or in the least concern myself with the transactions of that illustrious assembly, but only answer Sir Humphrey Mackworth, as to the reasonable part of things, and as a private gentleman, I take leave humbly to acquaint him, that nothing ought to be taken for granted to any man's disparagement or dishonour, till it be sufficiently proved; for if bare accusations rendered men guilty, the most innocent person in the world could not escape censure. 'Tis true the commons have impeached that noble lord, but impeachments are so far from being convictions, that they are no proofs. How often have the House of Commons in all ages been misinformed, and, proceeding upon accusations that others have informed falsely, have met with

severe reflections, as well as disappointments; besides, by the maxims of the antients, we are obliged to judge charitably of all men, till proof sets us right. Till which time there is much more reason to credit his lordship's negative than an approved affirmative, unless we knew the witnesses; for his lordship has averred,

That he was never acquainted with the Treaty of Partition, or the design of it, or any other matter relating to it, at any other time, nor in any other manner, before he was told it was concluded and signed. And in relation to other charges upon him on the same head, his lordship answers, That by his majesty's express command, he did send full powers under the broad seal of England, for negotiating the said treaty, with blanks for his majesty's commissioners names; which he humbly conceives, and is advised, was a sufficient warrant for him to pass that commission, it being prepared in usual form of commissions of full powers with blanks for the commissioners names, according to his majesty's directions. And having also his majesty's command, that the said treaty should be kept secret, he did not communicate it to the rest of the lords justices, or his majesty's privy-council; which besides he conceived was necessary to be done, in regard his majesty had then by his commissioners perfected the said treaty, so that the same could not be altered. Which is a direct and plain answer, and relieves Sir H. M. from his astonishment.

That he did pass several grants to diverse persons of several lands belonging to his majesty in right of his crown of England; but saith, 'Before any of them came to the great seal, the same were regularly passed through the proper offices, and brought with them sufficient warrants for the great seal.' And conceives and is advised, that being required by his majesty by warrant to pass the same, he ought so to do: but denies that he ever advised, promoted, or procured any grant to be made to any person whatsoever, of any forfeited estate in Ireland, or did procure any act or bill prepared for confirming any such grant in the parliament of Ireland; but that what bills of this nature were remitted under the great seal of England, to be passed into laws in Ireland, the same were 'first approved and passed in the privy-council of England, and being so approved, were by order of council sent to him, who was by the said order required to affix the broad seal thereto.'

That he did, besides the profits and perquisites of his office, receive from the king an annual pension and allowance of four thousand pounds, being the like pension that had been allowed to several of his predecessors; but denies that he did beg, 'or use any means to procure any grant whatsoever from his majesty, for his own benefit, &c.' but that what he possesses in that kind, he received from his majesty's bounty; and he humbly conceives it was lawful for him to accept the same.

I have thus briefly mentioned his lordship's answer, to shew the world what little cause Sir Humphrey had to harangue against a person of his lordship's honour and integrity, while matters were only *pendente lite*, and nothing proved against him, though his lordship and the House of Lords have very earnestly desired it. If the Vindicator should object, that he named no person, I answer, he had better have done it; for every reader knows who he means, and without question, if he had named him, he would have thought himself obliged to have treated that noble peer with more respect than he hath done, by expatiating in generals, and amusing men with pretended crimes, where to this day there is nothing proved, and peradventure will never be attempted.

No sort of good men are offended with the House of Commons, in exercising their right of impeaching, that truth might come to light, and noisy clamours be either confirmed or silenced for ever; but no man of birth or education will commend or approve of a private gentleman's 'heaping frightful consequences upon an unconvicted man of quality, on naked suppositions and possibilities.' The matter has been before the proper judges, who have declared him not guilty; and after that it was unkindly done to raise new heats against him, by raking in embers where water ought to have been



thrown to have extinguished them for ever. I presume Sir Humphrey was no evidence against his lordship, and therefore as a commoner ought not to have been a judge: But things will for ever run in this channel, while too much zeal, or prejudice, forms the harangue, without consulting the understanding.

Further, in discoursing the security of the public, from the establishment and use of the king's councils, this worthy member is pleased, for the information of the ignorant world, to tell us, 'that the privy-council is called *Concilium Regis Privatum, et Concilium Regis Secretum*; that they are *Partes Corporis Regis*; that they are to keep secret the king's councils, and to advise the king in all things to the best of their skill, for the universal good of the king and his land; that it is an error to determine matters of the highest importance, without advising with any of the established councils; that the happiness and prosperity of England hath hitherto been preserved, by the constitution of the government,' and that 'tis a maxim in law, *Ignorantia juris non excusat*.

All wonderful discoveries, which he puts into italick, that they might not escape the reader's particular observation. It would be the highest ingratitude in the world to bury these superfine politick notions in the shades of oblivion, without owing the knowledge of them to the worthy Vindicator: And 'tis a thousand pities, while his hand was in, and the good-natured and learned fit was upon him, that he had not farther obliged his dear countrymen, by telling them 'that these privy-councillors, these great statesmen, did wear cloaths, and eat, and drink, and sleep, like the rest of the creation.'

In the next place the Vindicator proceeds to discourse the powers in the lords and commons upon impeachments, which is the only part that answers his title, and can be called a Vindication of the Rights of the Commons; for all the rest, nay and that too, is such a confused heap of extraneous interlocutory positions, maxims, and voluntary affected aberrations from his main design, (if there be any such thing as a design in his whole book) that it is impossible to trace in any kind of tolerable order or method, without running it into the same unpardonable fault that he is so manifestly guilty of in every page of his Vindication, I mean patching up a pamphlet with useless tautologies, unnecessary and continued repetitions of the same matter, and tedious long-winded digressions, enough to nauseate any reader, and transport an answer into harsh reflections, if the respect due to his person and quality did not more confine me within the rules of decency, than the merits of his Vindication. I will not say the gentleman is fond of his new notions, unless it be for their antiquity, that he repeats them so often; but this I dare affirm, that they are offensive to every indifferent reader: And therefore am of opinion, that the worthy member took this course, only for the interest of the bookseller, to swell into a volume, that the Grub-street printers might not pirate upon his copy, and sell his two-shilling book for a penny; for otherwise all that he has said in forty, might, with greater reputation to the author and satisfaction to the reader, have been comprehended in six pages; but lean subjects are always larded with words, to make them have the better *gusto*.

I agree with this gentleman, 'that 'tis the great security of the people and the government, that the judgment on impeachments is of right lodged in the lords, who have the power of impeaching also, if they please;' for I find that sometimes the commons have been defective in that affair, and that those defects have for the public good been supplied by the lords; as in that notorious case of Richard Lyons, merchant of London, who in the 50th year of Ed. III. numb. 15, 16, was impeached by the commons of several misdemeanors; as of defrauding the king and his liege people by covin made between him and some of the privy-council of the then king, for their own profit and advantage.

But the many extortions and villanies were set down by the commons in such general terms, that the offender took exceptions against the generality of the charge, and

the exceptions were allowed: However, the lords in their great wisdoms would not reject the impeachment, but supplied the defects thereof by granting commissions to make a particular enquiry into the matters so generally charged: And after the return of those commissions, by their single authority, without consulting the commons about the methods and formalities to be observed about his trial, sentenced the criminal to imprisonment, to make fine and ransom at the king's pleasure, to lose his freedom of the city of London, never to bear any office, nor approach the council, or the king's house, and that all his lands and tenements, goods and chattels, should be seized in the king's hands.

By which it is observable, the power of the lords in impeachments, as well as judicature, and that their adding weight to the commons impeachment, which was defective in law, the offender was brought to condign punishment.

I also accord with him in another paragraph, wherein he is pleased to say, 'that the rights of impeachment in the commons must not be construed to enable them to make the right of judicature in the lords impracticable when they please: Nor that the right of judicature in the lords should be extended so far as to enable the lords to make the rights of impeachment in the commons impracticable when they think fit; but that both the powers should admit such a limitation and construction, in the nature and exercise thereof, that they may consist together for the common good, and be able to attain the end for which they were established.'

Nothing can be more or better said towards obtaining a perfect reconciliation between both houses, the great thing that employs the good wishes of all honest and thoughtful men in the whole kingdom, than what Sir Humphrey has advanced in the preceding paragraph; though I cannot forbear observing, that he so twists both the powers together, that he seems to confound their distinct jurisdictions, by making their powers inseparable in every minute circumstance, as if the lords had not the superiority of determining, when any such disputes arose between them: which cannot be allowed him, for reasons that will be shewed anon.

Nor may I omit, that he also very artfully insinuates and promotes the belief of a prejudicate opinion, 'That the lords had a design to encroach upon or infringe the rights of the commons, in the matter of impeachments,' though it be directly contrary to their lordships express words; who, in their message to the commons on the 30th of May, 1701, are pleased to say, 'That they do not controvert what right the commons may have of impeaching in general terms, if they please.' These two veins running through the whole mine of his elaborate discourse, he smelts and refines them to his own advantage, to make it pass upon the credulous world, that the lords were aggressors in the disputes between them, by endeavouring to deprive the commons of the right of impeaching: Which I take to be a great error in his pen, or a defect in his memory, in not rightly stating the case before he suffered his will to commit it to public view and censure; as will appear by the following check upon that unkind reflection.

For what court of judicature in the world can shew such examples of moderation, and a prudent circumspection, in avoiding all occasions of offence, as their lordships have done in the whole course of their proceedings about impeachments; which I humbly beg leave to take a cursory view of, for the conviction of our worthy knight, and all others that either promote or are deluded into that erroneous opinion.

The commons having impeached four lords of parliament, and addressed his majesty to banish them from his councils and presence for ever, the lords also addressed his majesty, that he would be pleased not to pass any censure upon them, until they were tried upon the same impeachments, and judgment be given according to the usage of parliament, and the laws of the land; and which were in the right, according to the old maxim, that every man is presumed to be innocent, till he is legally convicted of a crime, I leave wiser heads than mine to determine.



The House of Commons having impeached four noble peers, on the 15th of April, 1701, and not having sent up articles against them all, on the 15th of May, 1701, their lordships thought themselves obliged to put them in mind, 'that as yet no particular articles have been exhibited against the lords, which, after impeachments have been so long depending, is due in justice to the persons concerned, and agreeable to the methods of parliament in such cases.' What could be more justly, modestly, and affectionately expressed, in relation to the accused and the accusers? It was only putting them in mind. The same message was sent by the House of Lords to the House of Commons, on behalf of two lords against whom no articles were exhibited on the 20th of May following; and an answer fully as modest and reasonable was returned to the first, by the commons to the lords, on Monday the 19th of May, 1701, 'That articles were preparing, and in a short time the house would send them up.' Here was no sign of a disagreement between the two houses, nor would it ever have happened if the kindled coals without doors had not blown up sparks, that would have died of themselves, into unnecessary heats.

These were the first steps used between the houses, in which there is not one word that tends towards the lords encroachment upon the rights of the commons in impeachments, or of the commons suspecting the lords had any such design; and therefore I cannot but admire, that the *Vindicator* should take so much pains to insinuate it; for that must be the meaning of his suggesting a power might arise in the lords, to defeat the right of the commons in impeachments, and his dreading the right of levying money might be defeated also; or else all the discourse on that head signifies nothing.

But the *Vindicator's* uncouth and fallacious way of arguing in generals, wherein he sees every body, and nobody sees him, and directly points at men and things to their reproach, and yet cannot be charged with it, while he wilders himself and his reader in generals, he thinks will bring himself off from the suspicion of reflecting upon the lords; and therefore has already provided himself an asylum which he has recourse to, for shelter, almost in every page; and though he treats of transactions now on foot, and of persons under a present denomination, yet must, he thinks, be excused, because he says, 'he is not arguing what any House of Lords will do, but what they may do hereafter.' So when he is pleased to give a slanting blow against the king's prerogative, he must forsooth be understood, by way of prevention, that 'tis not meant against his present majesty, but against bad kings that may come hereafter. I confess this is a subtle and secure way of talking, but whether it is decent and becoming the character of a true English gentleman, to do the nation a present mischief, by keeping up feuds and animosities, in order to prevent dangers in futurity, I leave to his most serious consideration.

Not that I would be thought to derogate from the honour and integrity of Sir Humphrey Mackworth, by any thing I have said on this particular; but, with due submission, to enquire of him, whether this be the way to effect a reconciliation, by making gaps for the entrance of new heats? Whether this be a time to mince atoms, and split hairs, to raise fears and jealousies about encroachments, and to coin nice distinction to divide a kingdom, while our enemies are watching for that advantage to destroy it? Certainly, as the affairs of England are now circumstantiated, it stands more in need of emollients than corrosives; of a grave, not a throne for quarrels; of good men to compose our differences, and not of stiff men, that, insisting upon niceties and punctilios, obstruct the process of such weighty affairs, as tend to preserve our nation and religion from the jaws that are gaping to devour them; who clap their hands at our diversions, and cry, So, so would we have it.

Next, after wasting ten paragraphs about writs of error, impeachments, at the king's suit, and trials out of parliament, which are all long since handled by Selden and Pettit, from whom he has transcribed his notions, the *Vindicator* comes to intimate,

for he says nothing directly, that in order to the trials of the impeached lords, no day ought to be appointed by their lordships for the trials, without some previous signification from the commons to their lordships of their being ready to proceed; for appointing a time for the 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.

This assertion of Sir Humphrey's destroys itself by its own uncertainty, as well as for other reasons; for after he has positively denied the lords have the power of appointing time and place for trials, he says, 'tis a collateral power, and it either may or may not solely belong to them; but tells us not, as he ought to have done, in order to gain his points, in what cases they may, and in what cases they may not, exercise that authority, nor indeed could he, for his own quoted law and reason is irresistibly against his pretension.—*Quando lex aliquid concedit, concedere videtur et id, sine quo res ipsa non potest.* When law, when sound reason, when the constitution of a government, gives a right or power to one branch of the legislative authority, to judge and determine in the highest and most material part, in relation to trials on impeachment, it gives every thing necessary to support that power, or the great end, which is giving judgment, may be defeated. Besides it would confound all judicial proceedings, and the people could never obtain their rights, if every court of justice had not an uncontrollable power to order and direct the circumstances and matters of form, that can have no influence to the prejudice of justice, after such a manner, and at such a time, as they shall judge fit, and where the same are not settled by a positive rule; for otherwise nothing could ensue but endless disputes, unnecessary competitions, confusion, and every evil work. Every inferior court has such a jurisdiction, and it would be the greatest absurdity in the world, to affirm, that the supreme court of judicature in England (from which there is no appeal) has it not. But,

To confirm his private opinion against these known and till now uncontroverted maxims of law and reason, the Vindicator falls again to supposing (the only shelter and topick to amuse, where proof is wanting,) and at such a rate too as could never have been expected in print, from a man of Sir Humphrey's parts and probity; for he says, 'if the lords upon all impeachments have an absolute power belonging to their judicature, of appointing time and place for trial of an impeachment, and may 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 impeachment 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?'

'May it not be supposed to be possible, that the lords may appoint the next day to bring in articles? May they not appoint the following day for the trial to be had at Truro in Cornwall, where neither the commons nor the witnesses can 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 even against possibilities as far as may be, where the common safety is at stake.'

Omitting all pleasantry and ridicule, that some men would employ upon these repeated provocations, I beg Sir Humphrey's licence to acquaint him, that suppositions not grounded upon ill and foolish things done already, which might warrant a man to suppose that worse and more ridiculous things would follow, are direct and egregious



scandals upon the honours and integrity of noblemen that never gave occasion for them: and to argue from possibilities to facts, without any probability of their happening, deserves a more severe return than I am willing to give, though when one considers that they are offered against the noble lords in parliament, it is a great mortification to one, that admires their moderations, sagacities, and justice, to forbear it. What one step have the House of Lords made to give colour for these extravagant surmises? In what one instance have they neglected the care and safety of their country? but it may be, this is Sir Humphrey Mackworth's way of asserting and maintaining the just rights and judicature of their lordships, by supposing improbabilities; and then I hope he will give me leave to remind him, that if he has not varied from his intentions, he has sufficiently wandered from the rules of decency in the execution.

There is but one thing in his whole bundle of suppositions that deserves an answer, and that is, that it was possible the lords might appoint a time for the trials, before the commons were prepared to prosecute, which the lords, not being privy to the commons transactions in that affair, might do unawares, though I am very confident, if the commons had assigned that as a reason of their delay, their lordships would have given them satisfaction in it; for, by any thing that appears in their whole management of that affair, their lordships never intended to surprise the commons.

And indeed with what shew of reason can they be suspected to have any such design? Are not their lordships as much concerned that the nation should not be wronged as the commons are? Did they not defer the trials from day to day that the commons might be ready? Did not their lordships give the commons notice of their resolutions to try the impeached lords? And did they not repeat those notices, and desire the commons to appear at the trials, till the commons had made it impossible to send them any more messages, by adjourning their house? Now he that consults the journals of either house, will find, in my weak opinion, that the time appointed by the lords was not so short but that the commons might have been ready, or at least have given their lordships their reasons why they could not: Nor so long as twenty or forty years to carry the dispute into the other world. The place was Westminster-Hall, which is somewhat nearer the House of Commons than Truro in Cornwall.

Does the Vindicator believe the common safety lies at stake at this juncture, then certainly it is the common interest now more than ever not to entertain disputes about powers when we are in danger of losing them all, but to employ their utmost abilities to accommodate differences between the two houses of parliament, which are the sinews, nerves, and soul of the kingdom, and endeavour to procure that happy union in their councils and affections, that his majesty has often told them will contribute to our safety at home, and our being considerable abroad.

No man in his right mind can believe but that all the endeavours of both houses of parliament in the main, are to promote the public good; their unanimous concurrence in all acts of this session to that purpose, are undeniable proofs of it, and therefore setting them at variance, or keeping up feuds between them on any pretence whatsoever, is laying the axe to the root of the constitution, which should be every man's care to preserve. Forms in proceedings are but the necessary attendants on power, but peace and unity between the two houses are essential requisites to our well-being, are to be preferred before all other things in the world. Ceremonials may be omitted, circumstances may be laid aside, and disputes, though necessary in their kind, may be adjourned to other times, without prejudice to the kingdom; and therefore ought to give way and not disturb the peace of the kingdom; and how it would become every wise head to labour in this affair, I leave to Sir Humphrey's more sedate humour.

To uphold his cause, the Vindicator further advanceth, 'that 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, then 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 resolutions 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.'

Here the Vindicator runs again into this old mistake, and would persuade the nation, 'that the differences between the two houses was about the right of impeachments,' which, as has been said before, the lords never controverted, and therefore it looks like an ill design in the Vindicator to promote the belief of that story by his often repeating it.

The difference is about the right of appointing time and place, and of a committee to settle preliminaries in order to a trial, but he thought these circumstances were too inconsiderable things to differ about, and therefore lays it upon something that would make a greater noise, viz. the right of impeaching.

Well then, since Sir Humphrey has allowed, in several places of his Vindication, that appointing time and place are but circumstances, and not essentially, though formally, necessary to the great end, giving judgment, it is not strange he should assert that 'the commons ought not to proceed to judgment till that matter be first determined.' So that if the nation be abused, cheated, and reduced to the last extremity by the avarice, corruption, and mismanagement of evil ministers, yet the right of the commons in impeachments shall be defeated, the judicial power of the lords disappointed, and criminals escape with impunity, and all upon the nicety of adjusting preliminaries; but whether such a resolution can compensate the ill consequences of it, or whether this fine show of the Vindicator's be worth the candle, *coram judice lis est*.

As to a committee of both houses to settle the preliminaries, their lordships could not agree to it, because they could not find that ever such a committee was appointed on occasion of impeachments for misdemeanors, and therefore thought themselves obliged to be cautious in admitting any thing new in matters relating to their lordships judicature. For though such a committee was agreed to upon the impeachment of the Earl of Danby and the five popish lords for high-treason, yet Sir Humphrey has little reason to insist upon that precedent; for that was in a case of high-treason, not misdemeanors; and after much time spent at that committee, the disputes were so far from being adjusted, that they only occasioned an abrupt conclusion of a session of parliament.

Now, for a full and conclusive answer to all the rest of Sir Humphrey's allegations in his Vindication, let him be pleased to read the message sent to the House of Commons from the House of Lords; and if he will not receive his satisfaction from that, I will not pretend to give him one.

The lords, in answer to the message of the House of Commons of the 17th instant, say, the only true way of determining which of the houses has acted with the greatest sincerity, in order to bring the impeached lords to their trials, is to look back upon the respective proceedings.

The lords do not well understand what the commons mean by that resentment which they speak of in their message. Their lordships own the House of Commons have a right of impeaching: And the lords have the undoubted power of doing justice upon those impeachments, by bringing them to trial, and condemning or acquitting the parties in a reasonable time. This power is derived to them from their ancestors, which they will not suffer to be wrested from them by any pretences whatsoever.

Their lordships cannot but wonder that the commons should not have proposed a committee of both houses much sooner, if they thought it so necessary for the bring-



ing on of the trials; no mention being made of such a committee from the first of April to the sixth of June, although during that interval their delays were frequently complained of by the House of Lords.

The manner in which the commons demand the committee, the lords look upon as a direct invading their judicature, and therefore, as there never was a committee of both houses yielded to by the lords in case of any impeachment for high crimes and misdemeanors, so their lordships do insist, that they will make no new precedent upon this occasion. Many impeachments for misdemeanors have in all times been determined without such a committee: And if now the commons think fit, by any unprecedented demand, to form an excuse for not prosecuting their impeachments, it is demonstrable where the obstruction lies.

As to the preliminaries which the commons mention in particular, as proper to be settled at such a committee, they have received the resolutions of the House of Lords therein, by their message of the 12th instant; from which (being matters entirely belonging to their judicatory) their lordships cannot depart.

As to the last pretence the commons would make for the delaying of the trials, from some expressions which fell from the Lord Haversham at the free conference, at which offence was taken, their lordships will only observe, that they have omitted nothing which might give the commons reasonable satisfaction of their purpose to do them justice in that matter, so far as is consistent with doing justice to that lord, and also to preserve a good correspondence with them; as appears by the several steps they have taken.

Secondly, That this business has no relation to the trials of the impeached lords; and therefore their lordships cannot imagine why the commons should make satisfaction and reparation against the Lord Haversham a necessary condition for their going on with the trials, and at the same time find no difficulty in proceeding on other business. And now, if Sir Humphrey in his replication will or can make a direct answer to these reasons in vindication of the proceedings of the lords, *erit mihi magnus Apollo*.

To conclude, the Vindicator says, and all good subjects of England agree to it, that 'tis the interest of all to live in peace and union; to which I beg his leave to subjoin, that woeful experience has taught us that nothing ever succeeded well in this nation, when there was any clashing or unhappy difference, either, 1. Between the king and both houses of parliament; for that has several times been the occasion of bloody wars in England, and has ever run even the whole kingdom upon the brink of ruin. 2dly, When there was no good correspondence between the lords and the commons; as in the example of the kingdom of Denmark, which, in four days time, by thinking to abate the power of the lords, changed from an aristocracy to an absolute monarchy, and where the commons have since experienced, that the little finger of an absolute prince is heavier than the loins of many nobles. 3dly, When the commons were at variance among themselves; for that is dividing a house against itself in the literal sense, which cannot long subsist under such dangerous symptoms of approaching ruin: from all which ominous presages of mischiefs to a nation, Good Lord deliver us.

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*A true Account of the Proceedings relating to the Charge of the House of Commons  
against John Lord Haversham.*

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In the course of a free conference between the Houses of Peers and Commons upon the subject of impeachment of the seven Lords, Lord Haversham expressed himself in such warm language, as gave great offence to the lower house. The proceedings in this affair are recorded in the following Tract. "Sir John Thompson, Bart. was created Lord Haversham, in the county of Buckingham, in 1696, by William III. He was son of Mr Maurice Thompson, who had collected 31,000*l.* by leave of the state, for the distressed Protestants in Ireland, after the massacre, for which the parliament voted him thanks. This nobleman distinguished himself when a commoner by his daring speeches: he voted for the Exclusion Bill, and did the same for the Revolution: Removed into the House of Lords, he was the only one who opposed the Union, which he compared to the toes of Nebuchadnezzar's idol, which were made of iron and clay; 'they may cleave together,' said he, 'but they can never incorporate.' His intemperate language had nearly involved the two houses of parliament in quarrels, and the commons even threatened to prosecute him as an incendiary. It is well known he was a republican in politics, and a dissenter in religion; yet he often associated with the most violent Tories and high-church-men. His lordship died Nov. 1, 1710, and was buried on the 13th, in Richmond church, Surrey, having had by Frances, daughter of Arthur Earl of Anglesey, widow of Francis Wyndham, Esq. Maurice his successor, in whom the title became extinct in 1744; George, who also died s. p. and eight daughters, all of whom married. John Lord Haversham moved for Queen Anne's inviting over the heir-presumptive, the Princess Sophia. He is given as one of the Noble Authors by Lord Orford."—NOBLE, II. 58.

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The thirteenth of June, 1701. By order of the House of Commons, Sir Christopher Musgrave brought up the charge against John Lord Haversham to the House of Peers, in the manner following.

THE commons, desiring to keep up a good correspondence with their lordships, do think it necessary to acquaint your lordships with what has happened at the free conference.

One thing there is, though I cannot speak to it, because I am bound up by the orders of the house, yet it must have some answer; that is, as to the lords voting in their own case, it required an answer, though I cannot go into the debate of it. The commons themselves have made this precedent: for in these impeachments, they have allowed men guilty of the same crimes, to vote in their own house; and therefore we have not made any distinction in our house that some should vote and some not. The lords have so high an opinion of the justice of the House of Commons, that they hope justice shall never be made use of as a mask for any design; and therefore give me leave to say (though I am not to argue it) 'tis a plain demonstration, that the commons think these lords innocent, and I think the proposition is undeniable: for there are several lords in the same crimes, in the same facts, there is no distinction. And the commons leave some of these men at the head of affairs, near the king's person, to do any mischief, if their persons were inclined to do it, and impeach others when they



are both alike guilty, and concerned in the same facts. This is a thing I was in hopes I should never have heard asserted, when the beginning of it was from the House of Commons.

Resolved,

That John Lord Haversham be charged before the lords, for the words spoken by the said lord, this day at the free conference: and that the lords be desired to proceed in justice against the Lord Haversham; and to inflict such punishment upon the said lord, as so high an offence against the House of Commons doth deserve.

16th June, 1701.

A message was sent to the House of Commons by Sir John Franklin and Sir Richard Holford, to acquaint them, that in order to keep a good correspondence between the two houses, to put the charge against John Lord Haversham in a court of justice, have ordered (at his lordship's motion) his lordship a copy of the charge against him; and that he do put in his answer thereunto, in order to bring that matter to a speedy judgment.

*The Answer of John Lord Haversham, to the Charge exhibited against him by the Commons, for Words spoken at a free Conference, on the Day of*

The said Lord Haversham saving to himself all advantages of exception to the said charge, and of not being prejudiced by any want of form in this his answer, and also saving to himself all rights and privileges belonging to him, as one of the peers of this realm, for answer to the said charge, saith,

That on the sixth day of June, 1701, the commons, by a message sent to the lords, desired a conference, upon their message to the commons of the fourth of June; in which conference they proposed to the lords, that a committee of both houses might be nominated, to consider of the most proper ways and methods of proceeding on the impeachments of the lords, according to the usage of parliament. That on the tenth of June the lords desired another conference with the commons, in which they delivered them their reasons why they could not agree to the appointing of such committee, (viz.) 1st, That they could not find, that ever such a committee was appointed on occasion of impeachments for misdemeanors, and their obligation to be cautious, in admitting any thing new in matters relating to judicature. 2dly, That although a committee of this nature was agreed to, upon the impeachments of the Earl of Danby, and the five popish lords, for high treason, yet the success in that instance was not such as should encourage the pursuing the same method, though in the like case: And that, after much time spent at that committee, the disputes were so far from being there adjusted, that they occasioned the abrupt conclusion of a session of parliament. 3dly, That the method of proceedings on impeachments for misdemeanors are so well settled by the usage of parliament, that no difficulties were likely to happen, nor none had been stated to them: And that all the preliminaries, in the case of Stephen Gouddett, and others (which was the last instance of impeachments for misdemeanors) were easily settled and agreed to, without any such committee. 4thly, That the proposal of the commons came so very late, that no other fruit could be expected of such a committee, but the preventing of the trials during this session. Whereupon the commons on the 12th of June, desired of the lords a free conference on the subject matter of the last conference.

That the lords on the said 12th of June, came to two resolutions in relation to the lords impeached. 1st, That no lord of parliament, impeached of high crimes and misdemeanors, and coming to his trial, shall, upon his trial, be without the bar. 2dly, That no lord of parliament, impeached of high crimes and misdemeanors, can be pre-

cluded from voting on any occasion, except in his own trial. And by messengers of their own, the lords acquainted the commons with the said two resolutions: And also, that they agreed to a free conference with the commons, and appointed the next day.

That upon the 13th of June, Mr Harcourt, one of the managers, began the free conference on the part of the commons, and argued upon the four reasons given by the lords, why they could not agree to the appointing a committee of both houses; and principally relied upon the instance in the case of the popish lords: And insisted upon the delay, that the not agreeing to the nomination of such a committee would necessarily occasion, whereby the lords trials, and the justice due to the nation, would be retarded. And departing from the subject matter of the said conference (which was, whether it were requisite to appoint or not appoint such a committee) the said manager discoursed upon the latter of the two resolutions of the lords, communicated to the commons: And said, that he wished the lords had sent down their reasons as well as their resolutions; which words seemed to the said Lord Haversham, to carry an implication, as if the said resolution could have no reason to justify it.

That Sir Bartholomew Shore, another manager for the commons, observed the same methods of discourse; and having argued upon the lords reasons, departed from the subject-matter of the free conference, and, inveighing against the manner of the lords judicature, asserted by their resolution, said, that it was abhorrent to justice.

Which expressions being foreign (as the said Lord Haversham apprehended) to the subject-matter of the free conference, which was, whether such committee of both houses should be appointed or not, the said lord being appointed by the lords for one of the managers of the said free conference on their behalf, in vindication of the honour and justice of the House of Peers, and of their judicature and resolutions. In answer to what had been said by the managers for the commons, he spoke to the effect following:

*Gentlemen,*

I shall begin what I have to say, as that worthy member who opened this conference, that there is nothing the lords more desire, than to keep a good correspondence, which is so necessary to the safety of the nation, and the dispatch of public business; and nothing they have more carefully avoided, than what might create a misunderstanding between the two houses. A greater instance of which could not be given, than the messages my lords returned to some the commons had sent them up: in which they took care to express themselves so cautiously, that no heat might arise from any expression of theirs: And as to what the worthy members mentioned in relation to delay, the repeated remembrances sent the commons, with relation to the sending up the articles against the impeached lords, are a sufficient instance how desirous they are that these matters should proceed: And the lords have this satisfaction, that it is not on their part, that the trials are not in greater forwardness. They cannot but look upon it as a great hardship, that any should lie under long delays on impeachments; persons may be incapable, facts may be forgotten, evidences may be laid out of the way, witnesses may die, and many the like accidents may happen. The instance the worthy members gave of the popish lords, as it is a crime of another nature, and not fully to the point, so it seems to make against what it was brought for; for the worthy members say, there was but one of the lords brought to justice, though four more (as I take it) were accused: And can any man believe, that the commons have a mind to bring only one of these lords to trial? it is inconsistent with the opinion that every body must have of their justice. And as to the point of judicature, it were very hard upon the lords, that no person should be brought to trial till the judicature of the house be so first. The judicature of the lords is their peculiar, and hath in former ages been sacred with the commons themselves: And this house perhaps hath as much reason to be jealous



and careful of it, as any other house ever had, especially when one single precedent is so urged and insisted upon. One thing there is, which a worthy member mentioned, though I cannot speak to it at large, because I think myself bound up by the resolutions of the house. Yet it must have some answer; that is, as to the lords voting in their own case: it requires an answer, though I cannot enter into the debate of it. The commons themselves have made this precedent: For in these impeachments, they have allowed men equally concerned in the same facts to vote in their own house; and we have not made the distinction in ours, that some should vote and some not. The lords have so high an opinion of the justice of the House of Commons, that they believe justice shall never be made use of as a masque, for any design. And therefore give me leave to say (though I am not to argue it) 'tis to me a plain demonstration, that the commons think these lords innocent, and I think the proposition is undeniable; for when there are several lords in the same circumstances in the same facts, there is no distinction: And the commons leave some of these men at the head of affairs, near the king's person, to do any mischief if they were inclinable to it, it looks as if they thought them all innocent. This is a thing I was in hopes I should never have heard asserted, when the beginning of it was from the House of Commons.

The said lord being here interrupted, he desired to be heard out, and that his words might be taken down in writing: but the managers for the commons broke up and departed, refusing to hear any explanation.

Now, the said lord, as to any implicit charge of a design to reflect on, or dishonour the House of Commons, denies any such design or intention; having (for many years) had the honour to sit in the House of Commons, and having ever had an honourable and respectful sense thereof.

But the said lord was let to express himself in the manner aforesaid, for the reasons aforesaid, and takes himself to be justified therein by the facts and reasons following.

That the nature of that conference was, that it should be free. The occasion of it, because either House apprehended the other to be in an error; and the end of it, that each side may urge such facts as are true, and such reasons as are forcible to convince.

That one article of the impeachment against John Lord Sommers was, that the Treaty of Partition of 1699, was ratified under the great seal (which then was in the custody of the same lord, then lord chancellor of England.)

That the commons, on the 1st of April, 1701, resolved, that the Earl of Portland by negotiating and concluding the Treaty of Partition, was guilty of a high crime and misdemeanor: and pursuant thereto, lodged an impeachment against him in the House of Peers. Which vote and impeachment could not have reference to any treaty (other than the Treaty of Partition of 1699,) the treaty of 1698 not being before the House of Commons till after the time of that vote and impeachment.

And yet the Earl of Jersey, who was then secretary of state and privy counsellor, and actually signed the said treaty of 1699, as a plenipotentiary with the Lord Portland, stands unimpeached, and continues at the head of affairs (being lord chamberlain) near his majesty's person, and in his presence and councils (without complaint.)

That the Earl of Orford, and the Lord Sommers and Halifax, are severally impeached for advising the Treaty of Partition of 1698.

And yet Mr Secretary Vernon, who then was secretary of state and a privy counsellor, and acted in the promoting the Treaty of Partition of 1698, stands unimpeached, and still continues one of the principal secretaries of state.

And Sir Joseph Williamson, who then was a privy counsellor, and transacted and signed the Treaty of Partition of 1698, as a plenipotentiary, stands unimpeached.

That the Lord Halifax is impeached; for that he being a commissioner of the

treasury, assented to the passing of divers grants from the crown, to several persons, of lands in Ireland.

And yet Sir Edward Seymour, Sir Stephen Fox, and Mr Pelham, who being severally lords commissioners of the treasury, did severally assent to the passing of divers like grants from his majesty, of lands in Ireland, stand unimpeached.

That in the impeachments against the Earl of Orford and Lord Sommers, one of the articles against them is, for procuring a commission to Captain William Kidd; and likewise a grant under the great seal, of the ships and goods of certain persons therein named, to certain persons in trust for them.

And yet other lords, equally concerned in procuring the said commission and grant, stand unimpeached.

That the said Mr Secretary Vernon, Sir Edward Seymour, Sir Stephen Fox, and Mr Pelham, notwithstanding their being parties in the same facts charged in the said impeachments, have been permitted to sit and vote in the House of Commons, touching the said impeachments, and the matter thereof.

That these facts being true and publickly known, the consequences resulting therefrom (as the said Lord Haversham apprehended) are undeniable, (*viz.*) that the doing of the same thing by two persons in equal circumstances, cannot be a crime in one, and not in the other.

That the commons had no reason to insist, that the lords should not permit that in their members which the commons had first permitted and continued to permit, and so begun the first precedent in their own members.

That it must be thought that the impeached lords (notwithstanding the facts alleged in the impeachments) are innocent of danger to the king, when the Lord Jersey, and Mr Secretary Vernon, who were respectively concerned in the Partition-Treaties, are permitted (without complaint) to be at the head of affairs, and in the king's presence, and of his counsels, as not dangerous.

That the word innocent used in the words spoken by the said Lord Haversham can extend no farther than to such matters as were done by the impeached lords, of the same nature with what was done by those unimpeached.

All which facts being true, and the consequences obvious, the said lord being ready to prove the same, he insists that the words spoken by him at the said free conference were not scandalous and reproachful, nor false or reflecting on the honour and justice of the House of Commons, but were spoken upon just occasion given, in answer to several expressions that fell from the managers, remote (as he conceives) from the matter in question, and reflecting on the honour and justice of the House of Peers: And in maintenance and defence of the lords resolution and judicature, and conformable to the duty he owes to the said house. And the said lord humbly demands the judgment of this honourable house therein.

And the said Lord Haversham denies, that he spoke the words specified in the said charge, in such manner and form as the same are therein set down.

And having thus given a true account of this matter, and it being true and indisputable, that some lords in this house equally concerned in facts, for which other lords are impeached by the House of Commons, are still near the king's person, in the greatest places of trust and honour, and unimpeached: And also that several members of the House of Commons, equally concerned in the same facts for which some of the lords are impeached, do however remain unimpeached: The said lord thinks such a truth could never have been more properly spoken than in the maintenance and defence of your lordships judicature and resolutions; and insisteth, that what he said at the free conference was not any scandalous reproach, or false expression, or any ways tending to make a breach in the good correspondence between the lords and commons, or to the interrupting the publick justice of the nation, by delaying the proceedings



on the impeachments at that conference, as in the said charge is alledged: But agreeable to truth in discharge of his duty, and in the defence of the undoubted right and judicature of this house.

HAVERSHAM.

21st June, 1701.

The house being moved to consider what is fit to be done in relation to the charge of the House of Commons against John Lord Haversham, and after due consideration thereof, and the Lord Haversham desiring to be prosecuted,

It was proposed as followeth:

That the answer of John Lord Haversham to the charge sent up against him by the House of Commons, having been sent down to that house, it is resolved by the lords spiritual and temporal in parliament assembled, 'That unless the said charge shall be prosecuted against the said Lord Haversham with effect, by the commons, before the end of this session of parliament, the lords will declare and adjudge him wholly innocent of the said charge.'

Then this question was put, Whether this resolution shall be agreed to?

It was resolved in the affirmative.

24th June, 1701.

The commons not having prosecuted the charge against John Lord Haversham, it is this day ordered, 'That the said charge against John Lord Haversham shall be and is hereby dismissed.'

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*An exact Account of the Sickness and Death of the late King James II. As also of the Proceedings at St Germain's thereupon. 1701.*

In a Letter from an English Gentleman in France, to his Friend in London.

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"About the same time William's unfortunate rival was on his death-bed at St Germain's, surrounded by priests and a few followers of the Scots and Irish nations, who continued faithful to his fortunes to the last. Lewis XIV. whose resolutions were always directed by a strange mixture of policy and sentiment, in which sometimes the one and sometimes the other got the better, paid him a visit when in this situation. But whether he meant it as a simple visit of compliment and sympathy, or whether he had further views, is not known. When he entered the chamber, James was lying on his back with his eyes shut; the posture in which he commonly kept himself, that his mind, wrapped up in religious meditations, might be the less disturbed by external objects. His servants were performing prayers on their knees around him, so that Lewis thought he was dead, and was retiring. But one of his attendants informing James that the King of France was come to see him, he looked round the room, but was so insensible as not to perceive him, and said, "Where is he?" Lewis, approaching the bed, James was not able to see him, but taking the king's hand into his two hands, grasped it, kissed it, and a tear or two trickled upon it. Lewis, struck with the contrast between his own grandeur and the humbled state of the other, burst into tears, and assured him that he would protect his son, and proclaim him king upon an event which he hoped was yet far off. All in the chamber threw themselves on the ground, sharing in the passion of the two sovereigns. From thence, the contagion of sympathy ran to the guards of the palace at the gate, and from them to the multitude without; so that when Lewis took his coach, he passed through thousands of

people blessing and praying for him; amidst the extreme imprudence of the measure to his own and his people's peace, perhaps more happy in that tender moment of passion than he had ever been in his most active hours of exaltation and glory. As he passed, he called the officer of the guard, and gave him orders to proclaim the young prince as soon as his father expired. The officer, who happened to be an Irishman, bowed, kneeled, and weeping retired. A few days after, on the 17th September, James died, and his son was proclaimed at St Germain's king of the British islands, with all the parade of heralds, trumpets, and other ceremonies usual on such occasions.

"The news of this proclamation set all England in a flame; for, even those who wished well to the royal family of Stuart, accounted it an indignity, that a King of France should presume to name a King of England without consulting his subjects. Addresses to the throne were therefore poured from every quarter of the kingdom, filled with gratitude to heaven for the Revolution, loyalty to King William and the house of Hanover, and hostility against France."—DALRYMPLE, III. 226.

SIR,

I DOUBT not but you have heard of the indisposition, and since, of the death of the king; therefore it's no news to you: however, I cannot omit giving you a short particular of both; which take as followeth, *viz.*

On Friday the second of this instant September, his majesty, being at chapel on his knees, fainted away; which some of his servants perceiving, supported him from falling, put him into his chair, and carried him to his lodgings; where, after an hour's time, he came pretty well to himself again, eat heartily, continued so, sleeping and dozing, till Sunday (by intervals speaking to those about him,) when, about half an hour past two in the afternoon, on a sudden he was taken so ill, that he could not speak, by reason of an imposthumation breaking within him, and nature endeavouring to discharge it, he was almost suffocated. This occasioned the report, that he was dead, which presently flew to Paris, and consequently all over Europe: but by bleeding, and other proper remedies, a considerable quantity of that corrupt matter passed both ways, Sunday, Monday, and Tuesday, but none on Wednesday or Thursday. He slept well that night; on Friday was better, only he had an intermitting fever, which left him that night: he continued so till about eleven o'clock Sunday night, when the physicians observed a lethargy in him; and fearing he might die in that condition, they applied the blistering plaister betwixt his shoulders with good effect: yet a disposition to doze and sleep continuing in him, they applied those plaisters to his ancles, afterwards to his head, but without success.

In this condition his majesty continued till Monday night, when every body thought he was departing; but the physicians giving him somewhat inwardly, he presently began to discharge both ways, then rested till near five next morning: awaking, he spoke to the curate of the parish (who watched by him) to give him the sacrament; which he accordingly did: at which time he forgave several persons by name, all his enemies, and every one that had wronged him; prayed father Saunders, and all the rest about him, to declare it to the world; called for all his servants, and exhorted them to be constant to their principles, thanked them for their fidelity to him; sent for the prince and princess, charged them to be constant in their religion, and that no hopes of crowns or sceptres should make them do a thing unworthy their birth, and above all, to be obedient to the queen, gave them his blessing, desired that all his servants might continue on the same foot they now were, and that all his subjects would acknowledge his son for their lawful king and sovereign. So from that time the physicians resolved to apply no farther remedies, but leave his majesty to the will of Almighty God.



The King of France came to see his majesty, but he was speechless: Whereupon he went to comfort the queen, and sent for the Prince of Wales, told them, maugre all the difficulties he had met with in his great council, yet having the unanimous consent of the dauphin, and all the rest of the princes of the blood, he resolved to acknowledge and declare the prince his majesty's lawful heir and successor to the imperial crown of England, &c. And that he should be so acknowledged by France, Spain, and Portugal; and that he would by his ambassadors proclaim him as such in all the courts of Europe. After some time the king came to himself again, and being told of this declaration, sent for the prince next day, told him he had not seen him since the King of France had been there, charged him, during his minority, exactly to observe the King of France's counsel and direction in all things; and said he had sent my Lord Middleton to Marly, to give the King of France thanks for the same.

The King of France hearing his majesty was somewhat better, came to St Germain's to see him, and when he was entered the lodgings, said, He was not only come to see the king, but also on an affair of great weight. Whereupon all persons were withdrawing; but he called them all in again, caused all the doors to be opened, that every body might enter that belonged to the king: And then commanded, That as soon as the king should be dead, the Prince of Wales should be proclaimed King of Great Britain, with his ordinary titles; declaring he would also cause the same to be done at Versailles, and (by his ambassadors) in all the courts of Europe: That his body should be removed from the queen's apartment to his own; and gave order to the captain of the guards to attend his corpse accordingly. And told all that belonged to the king, they should continue on the same foot they were at present, till he could do no more for them. While the King of France was making this speech, the whole court was in tears; but when he had done, they clapt their hands for joy, which caused that great monarch to weep.

The king desired to be buried privately at St Germain's, dying there in exile; but the king of France told him, That was the only thing in the world he could not grant him; for he would lay him where he would have the honour to lay by him himself. And on Friday the 17th instant, about three in the afternoon, the king died, the day he always fasted in memory of our blessed Saviour's passion; the day he ever desired to die on, and the ninth hour, according to the Jewish account, when our Saviour was crucified. His death was edifying to men, and no doubt precious to God. As soon as he was departed, the great master of the ceremonies of France (by the king's order) proclaimed the Prince of Wales King of Great Britain, and all the dominions thereunto belonging, with the usual ceremony. The queen is appointed regent. My Lord Mid. gave up the great seal. All the lords have taken the oath of fidelity; the servants have kissed his majesty's hand, and every thing stands as it did in the late king's days.

And now I cannot omit telling you two remarkable passages: The one is, That when the king first fainted in the chapel, when he first fell ill, it was on Good-Friday, on singing the anthem, the two first verses of the last chapter of the Lamentations, "Remember, O Lord, what is come upon us: Consider and behold our reproach. Our inheritance is turned to strangers, our houses to aliens." Which was so touching, and made such an impression on his majesty, that he never perfectly recovered it, although he went to the waters of Bourbon. The other is, the King of France, upon his majesty's sickness, called his great council, which consisted of 23 persons: All but seven were against proclaiming the prince so soon. The dauphin being the last that was to speak, rose up in some heat, and said, it would be a great piece of cowardice, and unworthy the crown of France, to abandon a prince of their own blood, especially one that was so dear to them as the son of King James: That for his part, he was resolved, not only to hazard his life, but all that was dear to him, for his restoration.

The King of France said, "I am of Monseigneur's opinion;" and so said all the princes of the blood.

[*Sion College Library, A. B. 5. No. 43.*]

***The last Dying-Words of the late King James to his Son and Daughter, and the French King.***

*Moriatur anima mea morte justorum.*

THE king being suddenly seized with a violent fit, sent immediately for Mr Sanders his confessor, and after having received at the hands of the rector of St Germain's, all the rites of the church, he expressed himself as follows: 'I am now going to make my exit out of this miserable world, out of a tempestuous sea to a port of eternal rest, as I firmly hope, through the merits and passion of my dear Saviour. My integrity and innocency has been oppressed with infinite lies and calumnies. I never entertained a thought which was not levelled at the good of my subjects. O sweet Jesus, of thy infinite mercy forgive the authors and forgers of them. I offer up all my sufferings in union with thine; sweet Jesus, sanctify them to me for the eternal salvation of my poor soul. Forgive, sweet Jesus, my own bowels, who have risen up against me. Forgive the chief contrivers of my dethroning, give them grace to repent of their errors. Eternally praised be thy holy providence, who, by permitting me to be deprived of an earthly, hast given me better means to gain an eternal crown. I thank thee, sweet Jesus, for giving me the spirit of resignation among so many calamities.'

*Then sending for the Prince, he told him: 'I am now leaving this world, which has been to me a sea of storms and tempests;*

'It being God Almighty's will to wean me from it by many great afflictions. Serve him with all your power and strength, and never put the crown of England in competition with your eternal salvation. There is no slavery like sin, nor no liberty like his service. If his holy providence shall think fit to set you upon the throne of your ancestors, govern your people with justice and clemency, and take pity of your misled subjects. Remember kings are not made for themselves, but for the good of the people. Set before their eyes, in your own actions, a pattern of all manner of virtues. Consider them as your children, aim at nothing but their good in correcting them. You are the child of vows and prayers. Behave yourself accordingly. Honour your mother, that your days may be long, and be always a kind brother to your dear sister, that you may reap the blessing of concord and unity.'

*Then calling for the Young Princess, he said to her:*

'Adieu, my dear child; serve your Creator in the days of your youth, and consider virtue as the greatest ornament of your sex. Follow close the steps of that great pattern of it your mother, who has been no less than myself over-clouded with calumnies; but time, the mother of truth, I hope, will at last, make her virtue shine as bright as the sun.'



*The French King coming to pay a visit to him, and asking him how he did,*

He answered, 'I am going to pay that debt which must be paid by all kings as well as their meanest subjects. I give your majesty my dying thanks for all your kindnesses to me and my afflicted family, and do not doubt of your continuance. I have always found you equally good and generous. I thank God I die with a perfect resignation, and forgive all the world, particularly the Emperor and the P—— of O—— Sweet Jesus, out of the infinity of thy tender mercy, forgive them; and give your majesty the reward of your heroical bounty and goodness.' Here the French King began to tender and weep (as did all the standers-by) and deeply sighing, in most pathetic terms, expressed his concern for the loss of so good a friend and brother, and promised, that as soon as the breath was out of his body, the prince and his family should find in him a father; and that he would never forsake his interest; then tenderly with tears in his eyes embraced him; he took his last leave, saying; 'Adieu, my dear brother, the best of Christians, and the most abused of monarchs.' The little remainder of his life after was spent in most devout ejaculations, and begging pardon for his enemies and misled subjects; and being sensible to the very last, he said, 'Into thy hands I commend my soul, O Lord; lay not this great sin to their charge.' And after some long time spent in devout prayers, and out of a profound sense of humility, he begged of his most christian majesty, that he might be buried as a private gentleman, without any funeral pomp, which was unwillingly granted him.

[*Sion College Library, A. B. 5. No. 43.*]

*The Pope's Speech made in a Consistory, which he held on the 3d of October, 1701, to notify the Death of the late King James II. to the Sacred College.*

*Venerabiles fratres, acerbissimum ac vere luctuosum clar. mem. Jacobi magnæ Britanniae Regis obitum, quem sine maximo paterni cordis nostri mœrore audire non potuimus, suspiria inter et lacrymas vobis nunciamus; nec sane ullum nobis dubium esse potest quin animos aque vestros ingenti dolore afficiat gravissima hæc christiana reipublicæ jactura; quam in amisso vere catholico principe, vere ecclesiæ filio, vere fidei defensore impensissime deflemus. Verum quia juxta monitum apostoli contristari de dormientibus non debemus sicut et cæteri qui spem non habent, jubet nos præclara defuncti regis pietas quam nulla unquam ætas delebit, nulla sæcæ posteritatis extinguet oblivio; jubet heroicus illius ac universo terrarum orbi notissimus rerum omnium humanarum pro orthodoxa religione contemptus, quippe cui rex optimus patriam,*

VENERABLE brethren; We impart to you with tears and sighs the most sad and doleful death of James King of Great Britain, of illustrious memory, which we could not hear of, without feeling in our paternal heart a most grievous affliction; and we cannot doubt but you will be affected with the same grief for the great loss the christian commonwealth has sustained in the death of a truly catholic prince, a true son of the church, and a true defender of the faith; which we do sadly lament at this time. But as we are not to sorrow, according to the advice of the apostle, for such who sleep, as others that have no hope, the great piety of the deceased king, which no time shall blot out, and which shall be remembered to the latest posterity; his heroick contempt of all human things, for the orthodox religion, so well known

*opes, regnum, et vitam ipsam post habere non dubitavit; jubet demum mors ab eo religiosissime ac constanti animo obita, prout luculentis testimoniis comprobari percepimus, juste nos sperare debere, illum a Deo optimo maximo, sicut dum vixerit tanquam aurum in fornace probatum, ita post mortem quasi hostiam, acceptum esse. Nostras nihilominus pro animo regio de hac apostolica sede optime merito ad Deum preces atque suffragia deesse charitatis ratio non potitur. Id et privatim hactenus nos ipsi agere non omissimus, et publicis quoque in pontificio nostro sacello exequiis romanorum pontificum predecessorum nostrorum exemplo suo tempore præstituri sumus.*

*Ceterum eximiam et regio plane ejus animo dignam charissimi in Christo filij nostri Ludovici Francorum Regis Christianissimi virtutem hac occasione silere non possumus, qui quemadmodum olim eundem Jacobum Regem a regno nefarie deturbatum cum regia conjuge et nato magnifice et liberalissime exceperat, ita eum semper omnibus benevolentiae et humanitatis officiis usque ad extremum adstitit, et quod illustrius est, superstitem illius filium, a charissima in Christo filia nostra Maria Regina ejus matre ad paternarum virtutum æmulationem piissimo educatum, benigne complexus uti verum Britannici Regni heredem, omni prorsus proprii commodi ratione neglecta palam agnovit, eumque in catholice fidei quacumque demum adveniente fortuna fortiter asserendæ proposito egregie confirmavit. Qua sane in re cum ipsius Christianissimi regis zelus et animi magnitudo magnifice eluceant, nostræ et omnium vestrorum laudes ei merito debentur, quas quidem uberimas posterius omnes illi reddent dum pulchri facti memoriam recolent nunquam interitiram.*

*Haec et si vobis vel ipso rumore publico nunciante innotuisse jam credimus, nuperime tamen ad nos per celerum cursorem a venerabili fratre Philippo Antonio Archie-*

to all the world, which that excellent prince preferred to his country, riches, kingdom, and even his life; and lastly, his constant and most religious death, as we are informed by noble testimonies, give us just grounds to hope, that as God has been pleased to try him during his life as gold in a crucible, so he has received him after his death as an acceptable sacrifice. However charity does not permit us to be wanting in our prayers to God Almighty for the soul of a prince, who has so well deserved of the apostolick see; and as we have not neglected to do it already in private, so we shall, in a due time, do it publicly by funeral solemnities in our pontifical chapel, according to the example of the Roman pontiffs our predecessors.

Moreover, we cannot on this occasion be silent, and forbear to take notice of the great virtue of our most dear son in Christ, Lewis, the most Christian King of France, (so worthy of his royal soul) who having received with all magnificence and liberality, the said King James, villanously dispossessed of his kingdom, with his royal consort and his son, and given them to the last all possible proofs of humanity and tenderness, has still (which is more great and noble) continued the same affection to his surviving son, so carefully brought up by our most dear daughter in Christ, Queen Mary his mother, that he may imitate or exceed the virtues of his father; and, entirely neglecting his own private interests, has publicly owned him for heir of the Britannick empire, and has thereby nobly confirmed him in his resolution of professing and asserting the catholick faith, to what fortune soever he may be reduced. The zeal of the most christian king, and the greatness of his soul, do so conspicuously shine in this thing, that he justly deserves from us and from you the praise and encomium which our posterity will pay him, whenever they call to remembrance that noble action, which will never be forgotten.

Though we believe that you have been informed of these things, yet having lately received a particular account thereof, by an express from our venerable brother Phi-



*piscopo Athenarum, nostro et hujus apostolicæ sedis apud eundem Christianissimum regem nuntio, qui omnia cognovit et vidit fideliter allata, confestim et hoc loco referre opportune duximus, ut scribantur in generatione altera, novumque hinc paternæ nostræ erga vos charitatis argumentum accedat.*

*Venerabiles fratres, quorum fortibus humeris piisque votis impositum infirmitati nostræ onus quod his afflictis turbidisque temporibus gravius semper indies experimur levatum iri confidimus.*

lip Anthony Archbishop of Athens, our nuncio to the most christian king, who has been an eye-witness of all these things, and has carefully examined them, we have thought fit to acquaint you with the same in this place, that they may be recorded to another posterity, and afford a new proof of our affection for you.

We hope and assure ourselves, venerable brethren, that you, by your powerful assistance and prayers, will ease the great burthen put upon us, notwithstanding our weakness, which we daily experience more heavy in these times of troubles and affliction.

[Sion College Library, A. B. 5. No. 43.]

*A Memorial from his Most Christian Majesty, presented by the Count de Briord, his Ambassador Extraordinary to the States General of the United Provinces, at the Hague, December 4, 1700. Containing his Reasons for accepting the late King of Spain's Will, in favour of the Duke of Anjou.*

The following state papers contain the germs of the War of the Succession. When Louis, contrary to the Partition Treaty, consented that his grandson should assume the Spanish crown, he signed, as has been said, the death warrant of millions. His chief pretext for his breach of faith was, that the emperor had not acceded to the Treaty of Partition, and that the will of the King of Spain bore a clause devolving the succession of the kingdom upon the Archduke Charles, and failing him, upon the Duke of Savoy. Conscious of the jealousy which his conduct must necessarily give to England, Louis bent all his policy to divide Holland from the interest of her ally, and to engage her in a train of separate negotiation. See the subsequent letter from the States to King William, 13th May 1701.

If the States General seem at present to be surprised at the king's accepting the will of the late King of Spain, they will in a little time thank his majesty for preferring on this occasion the peace of the public to the advantage of his own crown. If they take time to examine, with their usual prudence, the infinite troubles which the Treaty of Partition would produce, that same prudence will oblige them to desist from the demand, contained in the memorial which they have put into the hands of his majesty's ambassador. They will confess, that the misfortunes of obtaining it will be common to all Europe; and certainly they will be of opinion, that there is nothing can be a greater contradiction, than to abandon the design of the treaty, for the sake of adhering to the terms of it.

For we must of necessity at this conjuncture distinguish betwixt the one and the

other. The design and the terms were united whilst the King of Spain lived; but the last will of that prince, and his death, make such a difference betwixt them, that the design is absolutely destroyed if the terms stand. The former maintains a general peace, the latter causes an universal war. This observation alone makes a true decision, as to what choice we are to make, in order to conform ourselves to the principal object of the treaty, as explained by the first articles of it, viz. 'To maintain the general peace of Europe, to preserve the public repose, and to avoid a new war, by an accommodation of those disputes and differences that may happen upon the subject of the Spanish succession, or by the umbrage of too many dominions being united under one and the same prince.' It was upon such motives that the king took with his allies, the necessary measures for preventing a war, which the Spanish succession seemed unavoidably to threaten.

It was not his majesty's design to acquire by a treaty the kingdoms of Naples and Sicily, the province of Guipuscoa, and the duchy of Lorrain; his allies had no right to those dominions, and perhaps he might have obtained more considerable advantages by his arms, if he had designed to make use of them on the occasion of the King of Spain's death. But his principal end being to maintain the peace, he treated upon that foundation alone. He suffered the dauphin to content himself with the share allotted him, in lieu of all his right to the whole succession of the kingdoms of Spain. But it happens that the measures then taken, with a design to preserve the public peace, produce a quite contrary effect, and that they engage Europe in a new war: If it become necessary for preserving the peace, to use means different from those that were proposed for that end; if this new way occasion no prejudice to the potentates in alliance with his majesty, all the disadvantage falls upon himself; and if he is willing to sacrifice his own interests to the general good of Chistendom, it not only depends upon his majesty to do it, but he has likewise ground to believe, that his allies will commend his moderation, and his love to peace, rather than complain of a change, which the public welfare requires, and that they will thank him for a resolution, which it was impossible for him to defer, without exposing himself at the same time to long and bloody wars, which his majesty, in concert with them, was willing to prevent.

The first appearances of it were already plain enough. The Spaniards, being zealous to preserve their monarchy entire, made preparations on all sides for a defence. The Milonese, the kingdoms of Naples and Sicily, the provinces, the places comprehended in the Partition, all of them put themselves in a condition, to maintain their union with the body of the Spanish monarchy. The nation demanded only a king whom they might lawfully own: And though the inclinations of all the dominions of the crown of Spain did universally carry them to desire a prince of France, the subjects of that monarchy would have been loyal to any other prince appointed by the will of the late catholic king, exclusive of the dauphin's sons.

They were left at no uncertainty, but as to the acceptation; for the late king having at last done justice to the true heirs, their refusal would have authorized Spain to submit themselves to the archduke. Nobody, in all likelihood, will doubt but the emperor would have accepted the will. The succession of Spain for his second son was the main design of his long negociations at Madrid. His treaties in the empire were for that same end. He did not refuse to sign the Partition but in hopes of that. It will be hard to persuade any man to believe, that when he was just ready to reap the fruits of so much labour, he would be willing to lose them, and rest contented with the same offers that he had constantly rejected.

Thus the archduke becoming King of Spain by the consent of the whole nation, there must be a necessity, in order to execute the treaty, to conquer the kingdoms and dominions reserved for the share of the dauphin. There would be no room left to alledge the injury done to the lawful heirs, for the Spaniards had owned their right. There



must be a necessity of attacking a prince declared successor of all the dominions depending on the monarchy.

His new subjects being accustomed to loyalty toward their sovereigns, being informed of the refusal of the true heirs, would be as zealous for him as they had always been for their preceding kings. The States-General being informed by the king of all his steps for the execution of the treaty, know that his majesty did openly solicit the princes of Europe to enter into the same, and that he never attempted the loyalty of the subjects of the late catholic king by any secret methods. He had not any intelligence, neither in the kingdoms of Sicily or Naples, nor in any of the dominions comprehended in the share of the dauphin. The favourable opportunity was the only way to attack them. But war being once commenced, after having refused the justice which the late catholic king would have done to the princes of France, it would have been hard to have put an end to it. A king in possession of all the Spanish monarchy, without any conditions, would have been reduced to great extremities before he had parted with the kingdoms of Sicily and Naples, the province of Guipuscoa, the duchy of Milan, and the other countries and places of which the share of the dauphin was to have been composed.

It is to no purpose to enquire what the consequences of that war might have been. It was unavoidable; and this certainly is sufficient to shew that the sage precautions taken for maintaining an inviolable peace in Europe, were perfectly overturned by the very methods that were judged only proper for entertaining it, acknowledging the inconveniences of a war, the uncertainties, the misfortunes which it draws after it; had he accepted the treaty, and renounced the will, he must have obliged the archduke to desist from his right, and to content himself with the share stipulated for him.

It was certainly in the emperor's power to have done so, but his former refusals, pushed on to the extremity, will they suffer any man to believe, that that was his resolution, even though he had pretended to it? Would the public peace have been any further ascertained by it? The Duke of Savoy, he was no way engaged in any treaty, and he is called to the succession by this will, failing the princes of France and the archduke: What offer considerable enough could there have been made to him, to prevent his attempting to have his new rights made valid, or to balance the advantages that he might reasonably hope for from them.

It must not be said, that the confederate powers would have substituted him to the archduke; that is not the case, since it is supposed that the emperor would have accepted the treaty, which the exchange proposed to him, and which is infinitely below what futurity offered him; and would not his particular interest have obliged him to make the will valid in favour of that prince who should thus conform himself to it?

In fine, the disposition made by his catholic majesty did still produce new troubles in the choice of a prince to substitute in the room of the archduke.

Since the States-General insist upon that secret article of the treaty, they must have probably considered what prince was in a condition to subject the Spaniards to his obedience, and would have been willing, against the mind of the nation, to ascend the throne of Spain, and maintain the remainders of the dismembered monarchy against the enterprises of the archduke, authorized by the will of the late king, and against those of the Duke of Savoy, concerned to maintain that last will. It does no way appear that so many differences could have been easily accommodated, without giving the least trouble to the general peace. On the contrary, there is nothing to be foreseen but an universal war. Therefore, there's a necessity, in order to preserve the peace, to make use of methods different from those that were proposed at the signing the Treaty of Partition.

The most natural, that which is most agreeable for maintaining the general peace, and the only just method, consists in the resolution taken by the king to accept the

will of the late catholic king. If any prince have a right to oppose the dispositions of that will, there needs no more but to read them, to be convinced that this right belongs only to the dauphin. But since he is willing to desist from his pretensions in favour of his son, the will is executed without trouble, without effusion of blood, and the people of Spain receive with peace a prince whom his birth, the will of the late king, and the unanimous desire of all the dominions belonging to the monarchy call to the crown.

If any potentate should undertake to attack so many rights, they would justly be branded with the odious name of disturber of the public repose, and begin an unjust war, without any appearance of success. Then if this war should appear unjust, when undertaken by potentates, who think it their interest to traverse the advantages of a prince of France, would it be consistent with the king's equity, and with his tender affection to the King of Spain, to turn his arms against a nation, for no other reason but because they offered their new king, his majesty's grandson, the crown of one of the most potent monarchies of Europe, and begged of him as the greatest of favours to accept it? The high dignity of kings does not excuse them from considering whether the wars they undertake be just. Then what reasons could his majesty (who is known to be a just prince) offer for resuming arms, to divide a monarchy which is settled entirely upon the lawful heir?

There was a design to deprive him of his rights. The emperor, looking upon himself to be assured of the intentions of the late King of Spain, flattered himself with hopes of enjoying the whole succession. Justice, honour, the interest of the crown, and paternal affection, equally obliged the king to maintain with his power the rights of the dauphin. His former success was sufficient to shew what was to be feared from the efforts of his arms. The King of England, and the States General, were equally desirous to prevent the war. The king consented to it. The dauphin was very willing to abandon the greatest part of his rights, on condition of having the dominions allotted to his share ascertained to him. The equal desire on all hands to maintain the peace produced the treaty; and thus it was, that by sage precautions taken during the life of a prince, whose frequent and dangerous distempers foretold an approaching death, it was believed, that justice was done in part to the true heirs, and that at the same time a solid foundation was laid for a peace in Europe.

The disputes raised, as to the validity of the renunciation of the late queen, served for a motive to this accommodation. In effect, it had been of no use, if the nullity of that renunciation had been acknowledged as fully during the late catholic king's life as it is declared by his will.

In short, it was necessary that the king should explain himself positively, whether he would accept the will, such as it is, in favour of his grandson, or whether he absolutely rejected it. There was no medium, no expedient or change to be proposed. His majesty accepting the will, the rights of the whole succession pass uncontrovertibly to the king of Spain; he is not at liberty to separate them, to accept one part of the succession and reject the other.

The rejecting of the will transported all the rights to the archduke; nor could the true heirs in that case have had lawful reason to complain of any injustice done them. By consequence, be it how it will, had his majesty been minded to maintain the conditions of the treaty, he must have been obliged to attack a living prince, possessor of the crown of Spain; and it is certain that the measures he had taken with the allies, related only to the division of the succession of a prince whose death appeared to be very near.

Since the war must have been unavoidable, and that it would have been unjust if the king had fixed his resolution to keep precisely to the terms of the Treaty of Partition, the States-General have no reason to complain that his majesty hath prevented



it by accepting the will, except that resolution occasion them some prejudice; but hitherto there's none to be perceived. The only view they had in entering into that treaty, and their sole end, was to ascertain the general peace. We owe them the justice to declare, that they stipulated no particular advantage to themselves, no province, no place, no sea-port depending on the monarchy of Spain, either in the old or new world, no article for facilitating their commerce. They, properly speaking, acted the part of disinterested mediators betwixt the king and the emperor; they were willing to pacify the troubles which the reciprocal differences about the succession seemed likely to produce in a little time: If the emperor had been influenced with the same desire of maintaining the peace, and had signed the treaty, the engagements then entered into betwixt the parties only interested in the succession, would have been different, but there was no treaty except with the mediators: and the States being informed of all the king's steps with relation to the treaty, know how useless all the instances made at Vienna in his name were. They know also that the emperor being persuaded that the archduke would be called to the whole succession of the kingdoms of Spain, would not engage in the partition of the dominions of the monarchy, but in so far as it might have contributed to extend his authority in Italy. Let them complain then of the emperor and his continued refusals. If they be troubled at his majesty's accepting the will, which, though he has ground to believe from the memorial they have put into the hands of his ambassador, yet he is willing to suspend his judgment, until such time as they make more serious reflections upon this great event. He knows the wisdom of the republic's councils. All things being well examined, the States-General will perhaps find, that so many considerable dominions being added to France, according to the disposition of the treaty, might have given just jealousy of her power, and if it depended upon them to make choice, the reasons appear strong that they should prefer to the execution of the treaty, according to the terms, the present state of the monarchy of Spain, governed by a prince of France, without the dismembering of its dominions. The people of England and Holland were already prejudiced, and endeavouring to prevent the decisions of the government on this occasion: Their complaints of the uniting the kingdoms of Naples and Sicily to the crown of France, did openly discover their fears concerning the trade of the Mediterranean.

Though the King of Spain be a prince of France, his high birth, his education, and pattern, instruct him what he owes to the welfare of his subjects, and the interest of his crown. Those considerations will always have the chief place in his mind; they will incline him to augment the splendour of his monarchy; and farther, the tender affection of the king to his catholic majesty, would certainly be the strongest barrier, and the most solid assurance, that Europe could desire. If his majesty's intention to maintain the peace would allow the least jealousy of his designs, there was much more reason to take umbrage at the reuniting of too many dominions under one and the same prince, if the treaty could have been executed.

Those reflections will probably convince the States-General, that justice, the benefits of peace, and the very design of the treaty, would not allow the king to take other resolutions than that of accepting the will of the late King of Spain; that it suits the particular interests of the republic of Holland, and that it is agreeable to those of all Europe; the misfortunes then would be general, were it possible that his majesty, after this declaration, could have any regard to the instances contained in their last memorial; and in truth he is persuaded that they never had any design to obtain the effect of it. They are too clear-sighted to have formed vows so contrary to their light, and to the true interest of their republic, yet if they were capable of forgetting them so far as to wish effectually, that his majesty would execute the conditions of the treaty, they would have shewed the certain means of effecting the partition without a war,

to the general satisfaction of all Europe. They should at least have named the princes that were ready to join in it, the troops for being guarantees of the articles of it: They should have mentioned those that the republic of Holland was to furnish by sea or land. But their memorial contained no such thing. The Lords the States propose only to grant the emperor the term of two months, according to the secret article of the treaty: Have they already forgot, that he hath had seven months time to deliberate in? That his answers to the different instances made to him contained an absolute refusal to sign the Partition? Let them examine, what would be the fruit of that new proposal. The emperor refused the Partition upon the single hopes that the King of Spain would call the archduke to the succession. The hope was vain, and the effects have verified it to be so. In the mean time, if that was capable of suspending the emperor's resolutions, what would not the certainty do, which he has at present, to procure the whole succession of Spain to the archduke: For, in short, the delay of two months, proposed on this occasion by the States, would with reason have been looked upon by the Spaniards as the king's rejecting the will of his catholic majesty. There was no reason to demand of them to wait for an answer so long, and besides this answer, according to the terms of the treaty, could be no other than a refusal. Thus the regency of Spain should have been obliged, in conformity to the intentions of the late catholic king, to devolve the crown upon the archduke, and the emperor should obtain by this delay (which my Lords the States propose) what he hath sought after with so much labour; and thus, under the specious pretext of executing the treaty, they would ascertain for ever the grandeur and power of the house of Austria.

His majesty is willing to believe that this was not their design; they know too well that it is their interest to merit, by their good conduct, the honour of his affection, and the continuation of his good will. He assures himself that they will reflect more than they have done upon the testimonies which he gives of his application to the maintenance of the public peace; and upon the sacrifice which he is willing to make on that account of considerable dominions that were to be united to his crown, that they will change their complaints into thanks, and congratulate the King of Spain as soon as possible upon his accession to the crown, and that they will endeavour to merit of the king the good-will and protection that they and their ancestors have received of his majesty and his predecessors.

DEAREST great friends, allies and confederates, the peace of Europe is so firmly established by the just disposal which the late King of Spain, our dearest and well-beloved brother, hath made of his kingdoms and dominions, in favour of our dearest and well-beloved grandson Philip V. now King of Spain, that we doubt not of your being glad at his accession to the throne. We have already made known unto him the true affection which we bear you, and since we are persuaded that his sentiments will be agreeable to ours, the strict correspondence which shall henceforward be maintained betwixt our crown and that of Spain, will give us new opportunities of shewing you how much we interest ourselves in what concerns you, and the sincere friendship that we entertain for you; the Count De Briord, our ambassador extraordinary, will give you new assurances of it; and in the mean time, we pray God, that he may take you into his holy protection.

Wrote at Versailles, Nov. 29th, 1700.

Signed Louis.

I, the subscriber, ambassador extraordinary of France, having received orders from my master to give your lordships the letter that his majesty hath wrote to you, to notify the accession of King Philip V. his grandson to the monarchy of Spain, and to communicate to you at the same time the just motives that obliged him to accept the will of the late King of Spain, which are contained in the memorial joined to the



king's letter. The said ambassador hath caused the letter and memorial to be delivered to M. de Haren, president for this week. I wish your lordships may make all the reflections upon it suitable to the present state of affairs, and to the good and advantage of this republic, which may and ought to rely upon the assurances, which he hath order from the king his master to give your lordships of the continuation of his friendship, and of his majesty's sincere desire to maintain the alliance and good correspondence which he hath with this state. The said ambassador is persuaded that your lordships will correspond with the favourable intentions of the king his master.

At the Hague, Decemb. 4th, 1700.

Signed BRIORD.

*The King of France's Memorial delivered to the States-General by Monsieur d'Avaux, upon the taking Possession of the Towns in Flanders 1701.*

*The Memorial delivered to the States-General by the Count d'Avaux.*

Memoir presente aux E. Gen. par le Comte D'Avaux.

The proceedings of the king my master, ever since the death of the King of Spain, have manifested the sincere desire which his majesty hath of preserving the publick repose, and of keeping up a perfect amity with my lords the States-General. If they have been alarmed at the resolution which he has taken of accepting the will of that prince, his majesty, upon enquiring into the grounds of their fear, has forgot nothing that might remove it. He has informed them, as his allies, of the just reasons he had of looking upon the last will of his late catholic majesty, as the foundation of the peace of Europe. The strongest assurances of his affection for them have been added to the declaration he has given them of his intentions: But these very assurances, though renewed upon all occasions, have not been able to overcome the silence of my lords the States-General, nor to prevail upon them to return an answer to the letter which his majesty wrote to them to acquaint them of the king his grandson's accession to the crown of Spain.

It is needless to remind them of the first demand they made to his most christian majesty. In short, his patience has been so great as to let them say and believe, that the condition of his forces would not permit him to begin a new war. His ma-

*Les demarches du Roy depuis la mort du Roy d'Espagne, ont fait connoitre le veritable desir que Sa Majesté de conserver le repos public, et d'entretenir une parfaite intelligence avec Msrs. les Etats Generaux. S'ils ont esté alarmez de la resolution qu'elle a pre d'accepter le testament de ce Prince; Sa Majesté examinant les motifs de leur crainte, n'a rein oublié pour la dissiper. Elle les à informé comme ses alliez des justes raisons qu'elle avoit de considerer les dernieres dispositions de feu Roy Catolique comme le fondement de la paix de l'Europe. Les plus fortes assurances de son affection pour eux, ont esté jointes a l'explication qu'ell leur a donne de ses intentions; mais ces mesmes assurances renouvelles en toute occasions, n'ont pu vaincre le silence de messieurs les Etats Generaux n'y les determiner a repondre a la lettre que Sa Majesté leur avoit escrite pour leur donner part de l'avenement du Roy son petit fils au throne d'Espagne.*

*Il est inutile de rapeller la premiere demande qu'ils ont faite a sa majesté. Enfin sa patience a esté jusques au point de faire dire et delaisser croire que l'estat de ses forces, ne luy permettoit pas de commencer une nouvelle guerre. Sa majesté uniquement*

jesty, wholly taken up with the care of preventing it, has not been diverted from this his care by such discourses: And his constant desire of maintaining the peace has inclined him graciously to receive the two last memorials, sent to his majesty in the name of the republick. And whereas these memorials have given him hopes that the States-General would effectually agree with him about the methods of securing their repose, he has dispatched the Count D'Avaux to hear at the Hague the proposals they shall make to him.

But though the king has quietly taken notice of the extreme jealousy which the government of the United Provinces have openly shewed of the sincerity of his majesty's intentions, he cannot tell how to disapprove of the jealousy which the catholic king has of them, being so reasonably founded on their conduct ever since his accession to the Spanish crown. The memorials of his ambassador, and the letter of that prince remaining without an answer, the constant refusal of the States-General to own him as King of Spain, and this resolution shewn, upon even the least occasions (the particulars of which 'tis needless to repeat) can ever establish a [mutual] confidence.

The prudence and wisdom of their government does hardly allow any credit to be given to the reports that are spread abroad of a project on foot of offering to acknowledge that prince, upon condition that he dismembering the Low Countries from the monarchy of Spain, would yield them up to the Archduke Charles. There is little likelihood that they should imagine that the King of Spain, the most christian king's grandson, should at the beginning of his reign buy peace of them at such a price. But though these reports should be absolutely false; though it were true that no extraordinary provision of arms and ammunition, nor any other preparation for war, was made in Holland; nay, though there were no negotiation on foot for entering into new alliances; yet it were impossible that the King of Spain should with any patience see the towns of the Low Countries filled with those troops,

*occupée du soin de la prevenir n'a pas esté détourné de ce mesme soin par de tels discours; et son attention continuelle au maintien de la paix, luy a fait recevoir encore avec plaisir, les deux derniers memoires remis a sa majesté au nom de la republique comme ils luy donnoient lieu de croire que M<sup>rs</sup>. Les Etats Generaux vouloient effectivement convenir avec elle des moyens d'assurer leur repos, elle a fait porter le Comte d'Avaux pour écouter a la Haye les propositions qu'ils auroient a luy faire.*

*Mais en mesme temps que le roy a veu tranquillement l'extreme defiance que le gouvernement de Provinces unies a fait ouvertement paroître des sincerés intentions de sa majesté, elle n'a pu de s'aprouver celle du roy catolique justement fondée sur le conduit qu'ils ont tenue depuis son avènement a la couronne d'Espagne. Les memoires de son ambassadeur et la lettre de ce prince demurer sans response, le refus constant des Etats Generaux de le reconnoître en qualité de Roy d'Espagne, cette resolution marquée jusques dans les moindres occasions dont le detail seroit inutile, ne pouvoient établir la confiance.*

*La sagesse de leur gouvernement permet difficilement d'ajouter foy aux bruits repandus d'un projet formé d'offrir au prince de la reconnoître, a condition que seperant les Pays Bas de la monarchie d'Espagne il les cederoit a l'Archiduc Charles. Il y a peu d'apparence qu'ils ayent cru que le Roy d'Espagne petit fils du roy, voulut au commencement de son regne acheter d'eux la paix a ce prix: Mais quand ces bruits seroient absolument faux; quand il le seroit qu'on fit aucun amas extraordinaire d'armes et de munition, aucun preparatif en Hollande pour la guerre; quand mesme il n'y auroit nulle negociation pour de nouvelles alliances, il estoit impossible que le Roy d'Espagne vist sans peine les places des Pays Bas remplies de troupes dont les maitres ne veulent pas le reconnoître pour souverain legitime de ces mesmes places.*



whose masters will not acknowledge him as the lawful sovereign of those very places.

The refusal of my Lords the States-General has therefore obliged him to apply himself to his most christian majesty, and to desire of him those supplies which he has given him: But his majesty declares, that after he has taken those precautions, which are absolutely necessary to establish the lawful authority of the king his grandson, he is entirely disposed to agree immediately upon such terms as may secure the peace.

The public tranquillity therefore depends upon my Lords the States-General, which will be soon confirmed and rendered lasting, if it is true that they so earnestly desire it, as they testify in the last memorial which the Earl of Manchester, the ambassador of the king of England, has delivered in their behalf. If the treaty of Ryswick, hitherto punctually observed, is not sufficient to remove from them all occasion of alarms, both with respect to their security, and their trade, the king desires that they would make new proposals to him, but withal such as are equitable, and such as his majesty may fairly allow of. The time is precious, and my Lords the States-General, if they are heartily desirous of peace, ought to beware of giving any occasion to believe, that under a pretended appearance of a negociation, their real intention is to obtain the delays which are necessary to prepare themselves for a war. The constitution of their government, the waiting for the answers of the king of England, can be no hindrance to their explaining themselves. They must needs be informed of the intentions of that prince, they must needs know, that he is inclined to maintain the peace, since they communicate to his ambassador the measures which they take to obtain it.

His majesty being persuaded that they are such as are conformable to the interest which they have in contributing to the public repose, assures himself likewise, that they will immediately declare themselves in such a manner, that, all occasion of jealousy being removed, he may conti-

*Le refus de messieurs les Etats Generaux l'a donc oblige de s'adresser au roy et de luy demander les secours que sa majesté vient de luy donner; mais elle declare qu'apres avoir pris les precautions absolument necessaires pour etablir l'autorité legitime du roy son petit fils, elle est entierement disposée a convenir incessamment des moyens d'assurer la paix.*

*Ainsy la tranquillité publique depend de Mrs les Etates Generaux; elle sera bien tost affermie pour long temps, s'il est vray qu'ils la desirent aussy ardamment qu'ils le temoignent dans le dernier memoire que le Comte de Manchester Ambassadeur du Roy d'Angleterre a remis de leur part. Si le traité de Ryswick ponctuellement observé jusqu'a present, ne suffit pas pour leur oster tout sujet d'allarmes et sur leur sureté et sur leur commerce, le roy veut bien qu'ils luy fassent de nouvelles propositions; mais equitables et telles que sa majesté les pusses admettre. Le temps est precieux et Messieurs les Etats Generaux doivent éviter s'ils veulent sincerement la paix, de laisser croire que sous une feinte apparence de negotiation, leur veritable intention ne soit que d'obtenir les delays necessaires pour se preparer a la guerre. La constitution de leur gouvernement, l'attente des responses du Roy d'Angleterre, ne les empeche plus de s'expliquer: ils doivent estre instruits des intentions de ce prince, ils doivent sçavoir qu'il est porté a maintenir la paix puis qu'ils confient a son ambassadeur les resolutions qu'ils prennent pour y parvenir.*

*Sa majesté persuadee qu'elles sont conformes a l'interest qu'ils de contribuer au repos public, s'assure aussy que bientost ils s'expliqueront de maniere que tout sujet de desfiance venant a cesser, elle pourra continuer a leur donner en toutes occasions des marques de l'estime et de l'affection ve-*

nue to shew them upon all occasions the tokens of that real esteem and affection which he has always borne to their republick.

*ritable qu'elle a toujours conservée pour leur republique.*

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*Some Reflections by way of Answer to a Memorial of his most Christian Majesty, presented to the States by the Count de Briord, Ambassador of France, on Occasion of the Elevation of the Duke d'Anjou to the Crown of Spain, contrary to the Treaty of Partition lately concluded betwixt France, England, and Holland. 1701.*

THE said ambassador acquaints the States, ' That the chief and main end of the Treaty of Partition was to preserve the peace of Europe, and to prevent the uniting too many kingdoms and states to one and the same crown (meaning that of France). That the late king and subjects of Spain being unwilling to have their kingdom dismembered, the late king by his last will hath declared the Duke d'Anjou his universal heir; by reason whereof, the Treaty of Partition becomes impracticable, for that it will tend to the effusion of blood, and therefore destroys the design of the treaty, which was the preservation of the peace of Europe; and upon these considerations rejects the same.

*Ans.* By the Treaty of Partition, both France and the Emperor were to be satisfied in part as to their pretensions to the dominions of Spain, the same being divided betwixt them. But why the French king can think the emperor will better bear the utter exclusion of the house of Austria from its primitive right, and the archduke that of the Partition, than the French king would (had the will favoured the archduke) have suffered the denial of those dominions and states stipulated for France in the Partition, how this expedient tends to the preservation of the peace of Europe passeth my invention: But I am apt to believe the contrary is maintained by way of parallel.

I should be glad to be convinced, by reason, how the French king will more spare the effusion of blood by maintaining all the dominions of Spain, against his own solemn act, and the united powers of Europe, than the supposed difficulties he was to have met with from the archduke in enterprising the stipulated states (which already seem by nature to be separated from Spain) in conjunction with the united force of England and Holland, without whose consent, Spain would be so far from succouring them, it could scarce receive intelligence of their being attacked.

It appears plainly that France was so far from being surprised at these difficulties, upon entering into the treaty, and particularly as to the shedding of blood, that the French king must in a manner confess himself guilty of wilful murder; else why doth he, by the fourteenth article of the treaty, provide, in case of opposition made by the states agreed to belong to the dauphin, that the united powers of France, England, and Holland should mutually assist one another, by force of arms, to enterprize the same.

What do the French mean by these words, (viz. ' The design and terms were united while the king of Spain lived,') except his intent by the treaty was only to make advantage of it during the king of Spain's life, by loudly proclaiming, in the ears of his catholic majesty, and the council of Spain, That the monarchy was dismembered? What were his vehement pressing other potentates to enter guarantees of the treaty, but to amuse Spain, and force them to think of new resolutions, for preserving the monarchy entire? The archduke hath no fleets to dispute the power of those princes engaged in the Partition; therefore we may conclude, it was not choice but necessity



drove Spain to apply themselves to a prince of France, where treaties have no sanctuary, nor ambition any bounds.

His christian majesty is for carrying on banter yet further; he would have the States believe, though the terms or letter of the treaty are broken, yet the condition remains, (as to the umbrage of too many states devolving upon one and the same crown, by the accession of the Duke d'Anjou to that of Spain) and therefore to keep the balance of Europe even.

*Answ.* Now in this point, I think the monsieur is kinder to Europe than he designed; for he gives us some figurative resemblance of the terms or notion of a distinct titular kingship of Spain: By his former paragraphs he destroyed both terms and design of the treaty. But I shall not be well satisfied till he quits his designings; whilst the balance of Europe is to be secured by a shadow only, the French enjoy the substance, design, and spirit too; not of the Treaty of Partition, but what is worse, the union of two crowns, viz. France and Spain. I shall take but little pains to prove the suggestion; I am apt to believe the ambassador's own words imply one and the same thing, which are as follows, viz.

'The tender affection of the king to his catholic majesty would certainly be the strongest barrier, and the most solid assurance, that Europe could desire.' In another part of the memorial his most christian majesty tells the States, 'We have already made known unto him (meaning the catholic king) the true affection which we bear you; and since we are persuaded, that his sentiments will be agreeable to ours, the strict correspondence which shall henceforwards be maintained betwixt our crown and that of Spain, will give us new opportunities of shewing you how much we interest ourselves in what concerns you.'

The French king now begins to change his style; now the cards are dealt, he hath no more occasion to shuffle them; henceforwards we shall hear nothing but of the irresistible power of the two crowns to menace and disturb the states of Europe; and this he doth not forbear telling you in another part of the same memorial, viz.

'If any potentate should undertake to attack so many rights, they would justly be branded with the odious name of disturbers of the public repose, and begin an unjust war without any appearance of success.'

His most christian majesty will very suddenly apply himself to Europe in the doctrine of passive obedience: The great correspondence he pretends shall be maintained betwixt the two crowns, is what Europe most feared, and well hoped had been prevented by the Treaty of Partition. But what artifice must the French king use to persuade the potentates of Europe, That the tender affection of his christian majesty to his catholic majesty, will be the strongest barrier and solemn assurance that Europe can desire? In this I confess myself to be much at a stand, unless he means the potentates of Europe are to have no peace but through the intercession of his catholic majesty to that of France. If this must be the event, from the unhappy conjunctions of the two crowns, (or rather evil planets, I may say, from the effects) the price of this peace, I fear, will cost nothing less than the extirpation of the protestant religion, loss of trade, and the entire subjection of Europe. Now, in case this olive-branch will produce no better fruit to Europe, I think, without dispute, we ought to stock up the very root from whence it springs: But to this end it will be held necessary to untie this gordian knot; it is very improbable it will dissolve of itself; or at least imprudent for Europe to stay to expect that issue; we must use means. The present expedient proposed is that of love, the charms of the archduchess.

*Object.* Now this is presumed will be but a cure in part; this may lull the emperor asleep for awhile: But this excludes the protestant interest of Europe. By this alliance you only give Rome leisure to enterprize upon the protestant interest her damnable practices: Then, instead of expecting the armies of the emperor to divert upon the

Rhine and in Italy, the storm that may threaten us, we may hear of them entertaining the protestant princes of Germany: We must likewise expect at the same time, St Germain will be trump in England, and Madrid in Holland; so that this remedy seems as bad as the disease itself. So that we are not to let the emperor's spirits sink for want of succours, our only recourse at present seems to be, to the sword of the archduke in conjunction with the powers of Europe, to cut this strong bond made up by the mystery of iniquity.

If any object, That all attempts upon Spain are to be suspended, lest by that means you open a door to the French troops to possess themselves of all the strong-holds, and so consequently render the enterprize upon Spain impracticable, I shall prove this argument of no weight.

For, to me, there seems little difference, whether the French troops are already entered, or will do when there is occasion; if we fear opposition, we may then as well lay down our army and cry *Peccavi*: If the enemy once knows we dare not strike, we must expect to meet with greater provocations still (both knocks and kicks.) But it is hard we want greater to illuminate our understandings, or sense to discover the danger we are in, if by so notorious an act of perfidy the French king, at an instant, swallows up the greatest monarchy in Europe as one single bait: Methinks we should not think it long, ere we may expect it to come to our turn; for, as I take it, the question will shortly be, who must be first devoured? And though it is agreed on all hands, that France and Spain united are very potent, yet we are not to think them omnipotent nor omnipresent; so that it matters not whether the seat of war be in New Spain or Old Spain, or in France itself; for, as long as the force is joint, they must be contested by the like or greater force of the united powers of Europe.

And further, the French king's jugglings are such, that he spares not to abuse his nearest kinsman and ally, the Duke of Savoy, at the same time he would have him put an inestimable value upon his new right (as he terms it,) which is a claim in remainder to the dominions of Spain, after two princes of France, and the archduke, and their issue. He forbears not telling you, that France hath the entire execution of the will; and though the two princes of France die without issue, it is to be thought that the French king, who now, only in regard to the peace of Europe, suffers the Duke d'Anjou to anticipate the right of the dauphin and Duke of Burgundy: I say, will he not then use the same argument, and tell them how inconsistent it is with his justice to suffer such a breach upon his own house? Is it likely, when the French are in actual possession, they will surrender at discretion, after they have contested with the force of Europe? If the archduke can use no other process but that of his sword, can the Duke of Savoy think himself in a better posture to prosecute his title when he is bound hand and foot? When the French are once possessed of Milan, can he think himself more at liberty than a man that is kept prisoner in his own house, when all the doors are made fast upon him? So that we may necessarily conclude, the care the Duke of Savoy ought to have of his present estate, will very much imbitter the pleasurable thoughts the French king would have him conceive in that of his contingent succession, when French troops are to become his only guarantees for livery of seizin.

Now I would not be so understood, as to precipitate the English nation into such a war as to bear the whole burden; the case is now different from the last war, when it was in the very bowels of the kingdom. The emperor and states, as they seem most concerned, we may hope will be content the English quotas be such as have regard to the defence of the seas, and the transportation of such forces, whether for Spain or France, as the nation can maintain by its own product, without embezzling the coin: This will answer the intent of a flying camp to a very great degree, and whilst you alarm the whole coasts of Spain and France (wherein if you take footing you will secure costs at last: But if not, if the French will be diverted to their prejudice, the



advantage will be equal to the confederate armies :) You will maintain your trade with triumph, while the seat of war becomes in a manner universal in all Europe; besides you likewise open your magazines and storehouses, and carry your English product to the best market. So that, when France shall see, that it is not only the honour and justice, but profit likewise of the English nation to protect and assist its allies against such manifest perjury, they must not look upon their present gain all clear profit; futurity will bring them to another reckoning, and perhaps their misfortunes may then best inform them, what value they ought, and are to put upon their treaties.

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*The Translation of the States-General's Letter to his Majesty the Thirteenth of May, 1701.*

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This letter, detailing the arts by which France was proceeding in her great plan of securing the Spanish succession, and threatening the frontiers of Holland, has been characterized as possessing the highest kind of eloquence, namely, the simple enumeration of striking circumstances. The recital of their distressed state, and their unabated confidence in English generosity, made the deepest impression on both houses of parliament.

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*Die Veneris 9 Maij, 1701.*

It is ordered by the lords spiritual and temporal in parliament assembled, that the translation of the States-General's letter to his majesty, the 13th of May, 1701, read this day in the house, shall be forthwith printed and published.

MATTHEW JOHNSON, *Cleric' Parliamentor'*

SIR,

SINCE the protestation we made to your majesty, in our last letter of the 23d of April, not to enter into any negociation with France, but in concert with England, we have judged it proper to ask Count D'Avaux, ambassador extraordinary from his most christian majesty, if he was inclined and authorised to enter again upon the negociation, in the manner it was begun, jointly with the minister of your majesty, as your majesty will see by our resolution of the 2d of this month, here enclosed: Count D'Avaux having sent it to his most christian majesty, after the return of his express, presented a memorial, of which we likewise add a copy to this letter. We immediately communicated it to Mr Stanhope, your majesty's envoy extraordinary, and after having consulted with him about it, we found some things obscure in the said memorial, which made us doubt of the true meaning of it; therefore we thought it necessary to acquaint the said Count D'Avaux with the letter we had the honour to write to your majesty the 23d of April last past; and that we were engaged not to take any measures in the negotiations, but in concert with your majesty. Count D'Avaux made answer to our deputies, that he was come hither to treat about the means of preserving the general peace, and establishing our particular safety; that if we would concert thereupon with your majesty, he had nothing to object against it; and that he was content that your majesty's envoy should assist at the conferences which were to be held upon

that subject: But that he was not at all authorized to enter into negociation with him about the concerns of England, which were to be treated elsewhere: To which our deputies represented, that in the preservation of the general peace, in which your majesty is equally concerned with us, our safety could no ways be separated from that of England; that the interest therein was common to both the two nations; and that in the present negociation, your majesty could not, without doing you wrong, be looked upon otherwise than as a principal party, as well as we. But notwithstanding the many instances, and all the reasons our deputies could alledge, Count D'Avaux persisted in his aforesaid answer, saying, that he had no other orders; that he would send our resolution (of which your majesty will find herewith a copy) to the court of France, without giving the least hopes of receiving an answer agreeable to our sense of matters. Upon the report which was made to us of this matter, we judged by this means the interests of England would be separated from those of our republick, whereas we think them inseparable: And since it is evident that they are so, we could draw no other conclusion from this proceeding, than that France had a mind to put an end to these conferences, and to grant none of the securities demanded, and which are so necessary for the preservation of your majesty's kingdoms, and of our state. We are obliged to make all this known to your majesty, and do again protest, that our interests being the same with those of your majesty, in this present negociation, and not to be separated one from the other, we will not suffer them by any means to be divided. At the same time, sir, we cannot but represent to your majesty the great need we have of being assisted, without loss of time, if we will prevent the ruin that threatens us, and the evident danger we are in. Your majesty knows perfectly well the state of our affairs, and will easily judge, if it is possible, in the condition we are, to resist the forces of France, so much superior to ours: Which was the reason of our earnest request to your majesty to perform the treaty made, with the approbation of the parliament, in the year 1678, between King Charles the Second (of glorious memory) and this state. We do now repeat our most pressing instances, that we have speedily the succours stipulated, and the entire effect of the said treaty. We hope your majesty will seriously consider the state we are in, especially after the positive assurances your majesty has given us, that your parliament had resolved to interest themselves with vigour for our preservation, and to assist us in our present necessity, by furnishing the succours agreed on. We will acquaint your majesty with the posture France puts itself in, and your majesty will thereby judge, whether our fear, which animates our demands, is ill grounded. France not being satisfied with having taken possession of all the places that belonged to Spain in the Netherlands, does daily put into them, and causes actually to march thither, very formidable forces. They are drawing a line from the Schelde, near Antwerp, to the Maes; and beginning another line, as we are informed, from Antwerp to Ostend. They send to the places which are nearest to our frontiers a very great number of cannon. They erect, with all diligence, a great many magazines in Flanders, Brabant, Geldres, and at Namur, which they fill with all sorts of ammunition and provision for war, besides the vast quantities of forage they lay up every where. They build forts under the cannon of our towns. Moreover they have endeavoured, and do still endeavour without ceasing, to separate the princes our friends from our interest, and to engage them in their alliance, or at least to a neutrality. In fine, our friends are made useless to us by the intrigues and divisions in the empire, and those of France augmented, so that we are surrounded on all sides, except by sea. You see, sir, without any disguise, the true state and condition to which we are reduced, without the addition of any thing but what is matter of fact. This makes us hope, that as your majesty knows perfectly well our affairs, you will agree with us, that our condition at present is worse than it was during the last war, and worse than if we were actually in war, since they build forts under the cannon of our strong places, and make



lines along our frontiers, and that we cannot hinder them as we could do if we were in war. These reasons oblige us to put ourselves into a defensive condition, more than if we were actually attacked; to put our country under water; and even to cut our dykes to secure our frontiers. We find ourselves forced to make use of these means, and whatever else we could have done in open war, insomuch that our subjects suffer already more than they did in the last war. Hitherto the winter has been some sort of a small security to us: That season is now past, and we do expect every moment to be invaded and over-run, unless we are speedily succoured. We do promise it ourselves from you, sir, especially since it has pleased your majesty to assure us, that your parliament had taken favourable resolutions in our behalf. And as our necessity is very pressing, so we beseech your majesty to consider well the extremity we are in, and the impossibility we are under of avoiding the total ruin and overthrow of our state, if we are left in this condition. Sir, we believe the interest of England so closely united to ours, that we will expose ourselves to all events, rather than suffer them to be separated, or to take any other measures than in concert with your majesty. It is very needless to represent to your majesty, that the preservation of your own kingdoms should engage you to prevent our ruin, seeing we think their loss is inseparable from ours. The reasons, sir, are better known to you than to us, as well as the fatal consequences they will be exposed to, in leaving us in this condition; which persuades us, that by your majesty's great prudence, and the good intentions of your parliament, you will direct all things so, as to let Europe see, that nothing is more conducive to its safety than the alliances with England, and your friendship for us: We expect without delay the succours and the performance of the aforementioned treaty, and pray to God,

Sir,

To preserve your majesty's sacred person in a long state of health, and your dominions in a flourishing condition.

At the Hague, the 13th of May, 1701.

Your Majesty's

Very humble servants,

The States-General of the United Provinces.

ISWichers.

By order of the States,

J. FAGEL.

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*The most Christian King's Letter to the States-General of the United Provinces, upon his recalling the Count d'Avaux, his Ambassador Extraordinary at the Hague; together with the said Ambassador's Memorial, both presented by him to the State the 15th 26th of July: and the Answer of the States-General to the said Memorial, delivered to the Ambassador the 21st July 1st August, 1701.*

The most Christian King's Letter to the States-General.

Most dear great Friends, Allies, and Confederates,

WE have thought fit to recall the count d'Avaux, our ambassador extraordinary to you, seeing the little fruit those conferences have produced which you had desired of us, and which you have since often interrupted. We are not the less inclined to the

establishing of the peace. As he will further declare our intentions to you before his departure, nothing remains for us, but to assure you, that it still depends on you to receive marks of our antient friendship for your republic, and of our desire to give you proofs thereof on all occasions: So we pray God, that he may have you, most dear great friends, allies, and confederates, in his holy keeping. Given at Versailles the 18th of July, 1701.

Your good friend, ally, and confederate,

To our most dear great Friends, Allies, and  
Confederates, the States-General of the  
United Provinces of the Netherlands.

LEWIS.

COLBERT.

*Count d'Avaux's Memorial.*

The underwritten Count d'Avaux, ambassador extraordinary from the most christian king, being arrived at the Hague in February last, had reason to believe, that the orders given him by his majesty would sufficiently make known the desire his majesty always had to maintain the peace, and that your lordships would make use of his favourable dispositions, after having earnestly desired that his majesty would permit that proposals should be offered in settled conferences, concerning the securities which you might reasonably desire, and that an agreement should be made at the same time, about the means of preventing a new war. This step and your lordships true interest ought equally to persuade, that the desired conferences would have had a happy issue; and the most christian king declaring, that on his part he would not omit any thing to preserve the public tranquillity, it seemed, that your lordships first alarms would have been happily calmed; that your confidence in his majesty's affections would have removed those vain fears, which his grandson's accession to the Spanish throne had inspired you with. The Count d'Avaux hoped therefore, that after a short embassy he should soon return to the king his master, with the satisfaction of having been employed in preventing the new troubles Europe was threatened with. This his hope was confirmed when your lordships, acknowledging the lawful right of the king of Spain, wrote a letter to that prince, to congratulate with him on his accession to the crown; it appeared by this resolution, worthy of your prudence, that if you persisted in demanding securities for yourselves, you were sensible at least of the injustice of foreign pretensions, and would for ever avoid the dangerous trouble of intermixing the same with your own interests. So the most christian king passing over your lordships long silence, in relation to the catholic king's accession to the crown, every thing seemed to be in a good disposition towards the establishing of the peace, when the proposals made by your lordships, and those of the envoy of the king of England, gave occasion to judge, that war, rather than peace, would be the consequence of the strict union between that prince and your lordships, which appeared by the conformity of those proposals. You have since protested, that your excessive demands were the effect of a just fear grounded on the king's power, that they ought not to be looked upon as a mark of your confidence in your own strength. But if this fear, so lively expressed once, in the letter your lordships wrote to the king of Great Britain during the session of parliament, was real, if in representing those dangers you were willing to appear encompassed with on every side, you had no other end than to prevent them, the means of doing it were in your own hands; there was no need of bringing so great a number of troops into the field; of buying foreign assistances at a dear rate; of laying



your provinces under water ; in a word, of making all the extraordinary preparations that might be necessary for the greatest war. Your lordships had yourselves desired the conferences as a means of securing the peace, and it depended on you to render those conferences useful ; the king's intention was never to prolong them by vain difficulties, and to take an advantage from those delays to prepare for war, under a false appearance of peace. His majesty, though strictly united with the king his grandson, has not formed any incident for the Spanish ambassador's admission to the conferences, and has not made use of any pretence to delay the effect thereof ; they were begun to treat of the interests of your lordships only. It depended on you to bring them to a speedy conclusion, to find therein the safety of your provinces, the advantage of your commerce, and a perpetual security in the most christian king's friendship : But instead of pursuing the same with your serious endeavours, your lordships have again delayed the conclusion thereof, by desiring that the king of England's envoy should be admitted to confer with the under-written ambassador, and with your deputies : you ought not to imagine that the true motive of this new demand can have escaped the penetration of his most christian majesty. If his majesty opposed it for some time, if he offered to your lordships, that the negociation begun at the Hague for the establishing of the peace, should be carried on under his eye, he acted by the same principle which guides his whole conduct, the sincere desire of removing all the obstacles which those who are enemies to the peace are continually laying in the way : He foresaw the little advantage of the conferences at the Hague ; he judged that the difficulty concerning the admission of the English envoy would no sooner be cleared, but some other incident would industriously be formed, which might more effectually serve to perplex the negociation. 'Tis true, he could not well imagine that it would be an easy matter to persuade your lordships to insist upon the pretended satisfaction to be given to the emperor, to take upon you to support the interests of that prince, and to confound them with those of your republic, to set up yourselves for arbitrators between the houses of France and Austria, to determine that Philip IV. had a right and a power to alter as he pleased all the constitutions of his kingdoms ; that Charles II., on the contrary, had no authority to recall those same heirs, and to restore by his will the fundamental laws of the crown of Spain. Indeed it was hardly to be believed, that so wise a republic should in favour of the house of Austria, against France, resolve to break those treaties which you have looked upon as the confirmation, and, one may say, the seal of your sovereignty ; that you would engage yourselves at the expence of your provinces, the commerce of your subjects, and your wealth, to support foreign interests, when a few months before you had made a quite contrary step in acknowledging the King of Spain : But it seems, that those considerations which formerly would have been of weight with your republic, have given place to newer maxims.

The underwritten ambassador should abuse the confidence which the king his master is pleased to honour him with, should he write to him, that any success were to be expected from the conferences. His majesty has too discerning a judgment to believe it, after the declarations which the King of England's envoy has made on the part, as he says, of the king his master to the said ambassador. Your lordships are informed of the manner in which this envoy has signified to him, that the King of Great Britain would never depart from the interests of the emperor ; that he would not enter into any proposals of an accommodation, unless satisfaction were given to that prince. The ties between your lordships and the King of England are too strict, and your lordships have too well made known, that they blindly submit to the sentiments of that prince, that they will follow the measures which he shall think most convenient, to leave room to doubt that they have already taken a resolution to make a like declaration to the most christian king. You have already done it, by declaring, that your deputies could not go on with the conferences, without the intervention of the English

envoy. Does he exclude himself, they are presently suspended. So it would be to no purpose for the most christian king's ambassador, sent only for the sake of these conferences, to make any longer stay at the Hague. If he has not the satisfaction of having fulfilled his majesty's intentions in establishing a durable peace between him and the United Provinces, he will have that at least of having made known that his majesty is willing to contribute all that depends on him to prevent the interrupting of the public peace. That his majesty has taken up arms only for the defence of the king his grandson; that if he had had a design of making new conquests, he might easily have put it in execution, his forces upon the frontiers of your republic afforded him the means to have, without any difficulty, made his advantage of the weak condition you were then in. Your lordships will not be unwilling this should be spoken of, since you yourselves have published it every where; and this truth, which is evident from your own testimony, ought to make you sensible, that it has always depended on you to find in his majesty's friendship, that security which you thought you had lost when you saw the king his grandson advanced to the crown of Spain. If these reflections, which you have yet time to make, cannot prevent the war, the most christian king has reason to hope that God, recompensing the care his majesty has taken to maintain the tranquillity of Christendom, will continue to pour down upon the justice of his cause, the same blessings which his divine providence has heaped upon him during the course of his glorious reign. That those who will dare to attack him, will be made to know by the events, that it is neither his weakness, nor his distrust of his own strength, which hitherto withheld his arms; that they will see that he could have revenged the affronts put upon his flags at sea, have prevented his subjects being seized and treated as enemies by the English and Dutch ships, have hindered the said ships from coming to sound the ports of this kingdom. That it was in his power to have possessed himself of places that were yet without defence, and to have procured to himself very considerable advantages for the carrying on of a war, which he foresaw from the conduct of the neighbouring powers; that if he has passed over these affronts, neglected the advantage he might have drawn from the known superiority of his forces, he has done it only to avoid giving the least occasion to say, that he has acted contrary to the exact observation of the treaties of Ryswick.

The underwritten ambassador wishes that your lordships, being convinced by his majesty's conduct, of the sincerity of his intentions, would, while it is yet time, take such resolutions as may be conformable to your true interest; and though his departure hinders him from having the glory of employing his endeavours therein, he shall always have a concern for the happiness of your republic, after having, during so many years, executed the king's orders near your lordships. Done at the Hague, the 26th of July, 1701.

The Count d'AVAUX.

*The Answer of the High and Mighty Lords, the States-General of the United Provinces to the Memorial presented to their High and Mightinesses, by Monsieur d'Avaux, Ambassador Extraordinary from his most Christian Majesty, the 26th of July, 1701. Extracted from the Register of the Resolutions of the High and Mighty Lords the States-General of the United Provinces of the Low Countries.*

Monday, August 1, 1701.

The report of the Sieurs Van Essen and others, commissioners of their high and mightinesses for foreign affairs, being heard, who, by virtue of their commissorial resolution of the 26th of July last, have examined the memorial of the Count d'Avaux



ambassador extraordinary from his majesty the most christian king, containing the reasons why it would be to no purpose for him to stay any longer at the Hague; as also his said majesty's letter, by which he has thought fit to recal the said Count d'Avaux, mentioned more at large in the acts of the said 26th of July; and the same being debated; it has been thought good and decreed, that the following answer shall be returned to the Count d'Avaux upon his said memorial.

That their high and mightinesses do still think themselves very much obliged to his most christian majesty for his goodness in sending hither the said Count d'Avaux with the character of his ambassador extraordinary; that they were in hopes, and wished, that in the conferences held with him, sufficient expedients could have been found out to have obtained the end and the aim that was proposed by the said conferences, which is, the preservation of the general peace, and a reasonable security for this state: As also that the said Count d'Avaux might have remained here till they had attained the said wholesome end. That therefore their high and mightinesses could not without concern receive the news, that his most christian majesty had thought fit to recal him before affairs were concluded, and brought to a happy and so-much-desired end. The rather, because it seems as if it should be attributed to their conduct, that the negotiation had no better success, and that the conferences could not be usefully continued. That their high and mightinesses nevertheless are very certain, that both before and during the negotiation, they did all that lay in their power, and all that in reason could be expected from them, to make known the sincerity of their inclinations for the peace, and that they were willing to contribute as much as in them lay to the bringing of the negotiation to a good and happy conclusion, because they well understand that nothing can be more for the interest of their republic, than the preservation of the peace, and that their people may enjoy the fruits thereof with a reasonable security: But that they ought to attribute it to the misfortune of the times, that in this affair they could not persuade his majesty of the sincerity of their sentiments; that they still persist therein, and that they hope that at length they shall be yet so happy as to convince him. That when after the death of the last deceased King of Spain, his most christian majesty, instead of keeping the treaty made for the partition of the succession, thought good to accept the will of the said deceased king, and to impart to their high and mightinesses the reasons which had inclined him to do so, their high and mightinesses forthwith made known to his said majesty the reasons why they could not take any resolution in an affair of so great a consequence without having more time; and that afterwards, so soon as the constitution of their government did permit, they offered to enter into a conference with the Count de Briord, at that time ambassador extraordinary from his majesty to them, or with any other whom it should please his said majesty to authorise, that they might jointly find out the necessary means for the maintaining and preserving of the general peace, and the establishing of their particular security. That they made the said offer upon the assurances which his said majesty was before pleased to give them, that he had no other intention than to maintain the peace and public tranquillity, and that he would give them a reasonable security. That afterwards his said majesty having thought fit to send hither the Count d'Avaux, with the character of his ambassador extraordinary, their high and mightinesses, as soon as he arrived, and had notified to them his arrival, immediately appointed deputies to enter into conference, and to agree with him upon the manner how the negotiation might be carried on with most benefit and least delay: And because at the same time their high and mightinesses saw by the said Count d'Avaux's memorials, that his most christian majesty with great earnestness desired that the new King of Spain should be acknowledged, they took a resolution to acknowledge him, and testify their desire to entertain and cultivate a sincere and good correspondence with him; declaring at the same time, that they were ready to pursue the negotiation with

their most christian and catholic majesties, with the intervention of his majesty of Great Britain, to treat together of the most proper means for the preservation of the general peace and tranquillity, and the establishing of their particular security; and that in such a manner, together with the intervention of such other princes and potentates as should be thought most useful and necessary for obtaining the wholesome ends proposed. That their high and mightinesses made this recognition after the overture of the conferences, in the first place to give an essential mark of their love for the peace, and after that, in consideration that the end of the negociation might be attained as well after as before they should have acknowledged the King of Spain. That these reasons among others having been the true motives of acknowledging the King of Spain, they consequently have done no prejudice to the intervention of his majesty of Great Britain, as one of the contracting parties in the Treaty of Partition, nor to that of other princes and potentates concerned in the preservation of the general peace. Moreover, that by this proceeding they have not taken any cognizance of the justice or injustice of the pretensions of a third party, nor have separated their interests in respect of the general peace from the interest of those who are equally concerned with them, as seems to be inferred in the same memorial. That their high and mightinesses having acknowledged his said catholic majesty, in hopes that for that reason the negociation would have been so much the less delayed, they represented to the said Count d'Avaux, in the first conferences, that since by the acceptation of the will of the deceased King of Spain, his most christian majesty had departed from the Treaty of Partition, wherein their high and mightinesses thought to have found their security, as well in respect of the general peace as their own private safety, and since his most christian majesty had represented to them, that by means of the said will, as well as by the way of the Treaty of Partition, the end expected from the said treaty might be attained; they expected from the said Count d'Avaux, and requested him, that he would make overtures and proposals, by which they might see how the public peace and repose would be now secured, and their particular safety warranted. But the said Count d'Avaux refusing more than once to explain himself upon this head, insisted, that the proposals that were to be made should be given in by their high and mightinesses. That their high and mightinesses having consulted thereupon with his majesty the King of Great Britain, they settled the proposals, which the deputies put into the hands of the said Count d'Avaux, at the same time that Mr. Stanhope, envoy from his majesty of Great Britain, delivered his proposals to him. That their high mightinesses are extremely surprized to see that it should be alledged, 'That those proposals should give occasion to judge, that war rather than peace would be the consequence of the strict union between his majesty of Great Britain and their high and mightinesses.' That they cannot apprehend what ground there is to such an inference. That their high and mightinesses never knew otherwise, than that his majesty of Great Britain has given upon all occasions sufficient proofs of his love for the peace: That they are strongly tied to his said majesty by strict alliances, contracted several years ago, for their mutual security and defence; that his said majesty, moreover, was one of the principal parties in the Treaty of Partition; that they declared before they settled and gave in their proposals, that they thought it necessary to act in concert with his said majesty in this negociation, as well for the reason alledged as because of the relation his said majesty has with their republic. That no reflection was ever made thereupon, and therefore they must repeat it again, that they cannot apprehend upon what ground it can be said, 'That war rather than peace would be the consequence of the union between this prince and them, in this affair.' That their high and mightinesses are very sorry, that his most christian majesty, having received their proposals, thought it not fit to answer them: That they have often heard, that their proposals were taxed with being excessive, but that it was never made out as yet wherein this excess con-



sisted, which might have served matter to the negotiation. That the preservation of the general peace, and the establishing of the particular security of this state, were the foundation upon which the whole negociation rested: That it is evident, that the public peace cannot be preserved, without satisfaction given to the emperor, whose pretensions are so well known, that in the Treaty of Partition it was regulated, with the approbation of his most christian majesty, after what manner the same should be satisfied: That his said majesty having departed from the Treaty of Partition, their high and mightinesses demanded a reasonable satisfaction for his imperial majesty, and that the same time be agreed upon with him, the whole in general terms: That there is nothing that can be called excessive in this article of their demand; and as to what they have demanded for their particular security, which they declared more at large, that they are well persuaded that every unbiassed person will judge, that what they have demanded is not sufficient even to give them a security like to what they had before the decease of the last King of Spain, or should have obtained by the Treaty of Partition. That if fear had any part in the affair, their high and mightinesses believe they had just grounds of apprehension; that their reasons, moreover, were grounded, not only upon their particular sentiments, but also upon the sentiments of their friends and allies, who made no scruple to send them the assistance which they were bound to do in case of necessity, by virtue of their defensive alliances: Besides that the ground of their fears appeared sufficiently from what is said toward the end of the said memorial, where their weakness is declared at large. That if it had been in their power to have freed themselves from this perplexity, without betaking themselves to their arms, without seeking new alliances with those from whom they expected assistance in case of necessity, and without drowning their country, certainly they had done it: That they should not scruple to refer themselves to the knowledge which the said Count d'Avaux has of the constitution of their government, whether it would not be very easy to convince him, and even whether he be not of opinion, that all which they have done to put themselves in a condition of defence, that they have done it only because they were entirely convinced of their danger, that they sincerely declare that they desire nothing more than to be able to free themselves from it with some security, the sooner the better. That with this prospect their high and mightinesses demanded conferences, to the end that the peace being secured, their dangers might also cease. That if it had depended upon them to render the conferences useful, certainly they ere now would have had a happy success: That they are heartily sorry for the difficulties which obstructed them: That they freely acknowledge that the most christian king did not form any incident for the admission of the King of Spain's ambassador to the conferences, neither should their high and mightinesses have opposed it, having declared more than once that they were content the said ambassador should be admitted to them. And as for what concerned the admission of the envoy of his majesty of Great Britain, and the delays of the negociation occasioned thereby, that their high and mightinesses have shewed before, that from the beginning they always looked upon the intervention of his majesty of Great Britain in the negotiation, and the admission of his minister to the conferences, to be necessary. That without doubt the said Count d'Avaux must remember that at the beginning there was no dispute about it, unless it were in respect of rank and place to be observed in the conferences, which was regulated without any contest, so soon as the parties had given each other the satisfaction that was required; so that when the proposals were delivered into the hands of the Count d'Avaux, the envoy of England was present at the conference, and delivered his without any difficulty. That their high and mightinesses were in hopes that this matter would never have given occasion to any scruples, since his majesty of Great Britain, being so highly concerned in the success of this negotiation, in respect to the Treaty of Partition, the general peace, and

the particular security of his kingdoms, he could not be excluded out of the negotiation. That the difficulties which afterwards occurred upon this subject, did not proceed from their high and mightinesses, but had their spring from hence, that the said Count d'Avaux, in his most christian majesty's name, began to oppose the admission of the English envoy to the following conferences, upon the same foot as before; that this is the reason why the conferences have been suspended for a long time, to the great grief of their high and mightinesses, who in this negotiation could not any ways separate themselves from England. So that as the cause of this delay cannot be attributed to their high and mightinesses, and it being so just and reasonable that the envoy of his majesty of Great Britain should not be excluded from the conferences, they believe they have sufficiently answered every thing that is alledged in this memorial upon that head. That they ought to acknowledge also, that his most christian majesty had reason to expect, that they would insist upon satisfaction to be given to the emperor, since that point was the first article of their demands; but that their high and mightinesses do not remember that they ever gave the least occasion to presume, that they went about to make themselves arbitrators between the houses of France and Austria, and to decide whether or no the two last kings of Spain, Philip IV. and Charles II. had a right to alter the constitution and fundamental laws of the crown of Spain. That they beseech his most christian majesty to call to mind and consider, how that before the decease of the last King of Spain, the state of his health having been for some time very languishing, his most christian majesty, as well as his majesty the King of Great Britain, and their high and mightinesses judged it necessary to prevent the misfortunes which they had reason to expect after the death of that prince without issue, since the overture of the succession would infallibly occasion a new war, if his most christian majesty maintained his pretensions, those of the dauphin, and his posterity, to all the Spanish succession; and that the emperor would also make good his pretensions, those of the King of the Romans, of the archduke his second son, or of his other children, to the said succession: That these reasons inclined his most christian majesty, his majesty of Great Britain, and their high and mightinesses, to conclude the treaty so well known, concerning the succession of the Spanish monarchy. That as their high and mightinesses as to themselves, when they entered into the said treaty, never presumed to make themselves arbitrators of the differences between such great princes as the emperor and the King of France, but only endeavoured to contribute to an agreement between the parties concerned, to the preserving of the peace, and preventing a new war, by a regulation of the said succession, wherein his most christian majesty then concurred with them, and wherein they flattered themselves that the emperor would also have concurred in like manner; they neither desire nor aim at any thing, more than that a way may be found out to procure the emperor a reasonable satisfaction, in regard of his pretensions, to which at that time so much consideration was had: That since this cannot be effected upon the foot of the Treaty of Partition, other ways may be found out, that the peace may be preserved, and a new war prevented. That in this their high and mightinesses cannot be charged with maintaining foreign interests, since they only insist upon the same principles now that the case is in being, which his most christian majesty himself judged to be just and necessary before the case had happened. Nor can it any more be imputed to them, that they have made any step contrary to their proceeding, in acknowledging the King of Spain, since that proceeding does not hinder but that reasonable satisfaction may be given to the emperor. That they acknowledge the King of Spain, to remove, as much as it was possible, all obstacles that might retard the negotiation for the general peace, and their particular security; seeing, that according to their opinion, neither the general peace can subsist without giving the emperor satisfaction, nor their particular security without the general peace, as they have formerly alledged. That if the prudence of their high and



mightinesses be so great as is attributed to them, his most christian majesty ought to be fully convinced, that they will do nothing to the prejudice of their provinces, of their trade, and of their wealth, but what they are persuaded is entirely necessary for their preservation. That they are certain they have done nothing by which it may be said, 'They have broken those treaties, which would be as it were the confirmation and seal of their sovereignty.' That they do not well understand what is meant by this: That their provinces have been always accounted free and sovereign provinces: That their ancestors have defended their liberties against the violence of foreigners, at the expence of their estates and their lives, and that they are bound and resolved to do the same: But they live in hopes that nobody will question their liberty and their sovereignty, and much less molest them in the enjoyment thereof: That they never sought, nor do they seek, to enlarge their limits; but they are only employed in defending their rights and their possessions, and in endeavouring the preservation of the peace and tranquillity with and between their neighbours: That these are the true principles and real maxims of their republic, wherein they acknowledge no change or alteration. That their high and mightinesses are much concerned the said Count d'Avaux expects so little success from the conferences, that he durst not write about it to the king his master, by reason of the declaration which Mr Stanhope made to him touching the satisfaction to be given to the emperor. That they cannot deny but that both his majesty of Great Britain and themselves are of opinion, that it would be just that the emperor's satisfaction should be treated of as one of the means that ought to be made use of for the preservation of the general peace, and their particular security. That this is no new proposition; that it was advanced in the proposals delivered to the Count d'Avaux, as well in the name of his majesty of Great Britain, as of their high and mightinesses, who have expressly demanded, that the emperor should be invited into the negociation, that the satisfaction to be given him might be there agreed upon, which is the same thing they now demand. That in like manner their high and mightinesses cannot acknowledge that they blindly submit to the sentiments of his Britannick majesty, as they are said to do; but that they have a great deference for his advice, because they are fully persuaded, that his majesty is very much inclined to the maintaining of the peace and public tranquillity; that they are absolutely convinced, by an infinite number of proofs, that his majesty seeks nothing more than the welfare of their republic, and very much rely upon his prudence and experience; besides that they have very strict ties with that prince, as King of Great Britain, that they cannot separate from him. That if the conferences must be suspended by reason of the said Mr Stanhope's declaration, and because of the conformity of their high and mightinesses sentiments with those of his majesty of Great Britain in this affair, they shall look upon it as a very great misfortune; but if his most christian majesty had thought good to continue the conferences, and to suffer the emperor's satisfaction to be there treated of, they should have hoped that in the end matters might have come to a good and wholesome conclusion; and that the said Count d'Avaux might have departed with the satisfaction of terminating an affair of the greatest importance, wherein he has already taken so much pains. That nevertheless their high and mightinesses live in hopes that the said Count d'Avaux, having seen, during his residence here, the sincerity of their sentiments for the peace, and their respect and esteem for his most christian majesty and his friendship, will, upon his return, remove all those evil impressions that may have been made upon his said majesty, to the prejudice of their conduct. That their high and mightinesses can truly declare, that they know not of any cause of jealousy they may have given to his said majesty since the conclusion of the last peace: That 'tis true they have been forced to arm in their own defence, but they did not begin to do it till after they saw their barriers in the Spanish Low Countries, which had cost them so much pains and so much money, which are so necessary for them, and which his

most christian majesty himself thought formerly so important to their republic, possessed by his majesty's forces; till their forces, which, to remove all occasion of jealousy, they had recalled, were detained there; and till they had seen what great preparations of war were making in those parts. That their high and mightinesses cannot deny but that besides the great preparations which gave them umbrage, they could not but be very jealous of the strict union between France and Spain, and the effects which they see do daily result from the same, notwithstanding they had entered into the Treaty of Partition, for this reason among others, to prevent the giving of any jealousy, by the uniting of too many dominions. That their high and mightinesses formerly declared, that their opinion of his most christian majesty was, that whether he began a war or continued the peace, he would not regulate his actions according to his power, but according to reason and equity; which is still their opinion, since otherwise none of his neighbours could ever be secure. That their high and mightinesses know the value of his majesty's friendship, for which reason they have always sought it, and desire nothing more earnestly than to preserve it by all possible means, together with the general peace, and a reasonable security for their state: That if notwithstanding all their care, and all the pains which they have taken to this effect, they must undergo a war against their wills, and contrary to their inclinations, they cannot charge themselves with omitting any thing they ought to have done to avoid it; and this will be their comfort in their misfortune; with hopes that God, through his divine goodness, will afford them his almighty assistance. That their high and mightinesses cannot forbear saying, that they are much concerned to find themselves accused, as if their men of war, in conjunction with the English, had affronted his most christian majesty's flag, seized his subjects, sounded his ports, and fired upon the French vessels. That their high and mightinesses having for his most christian majesty a very great respect, they have always endeavoured with all the circumspection imaginable to preserve to themselves the honour of his friendship: That if by accident, or otherwise, any of their subjects may have done any thing to the prejudice of his said majesty or any of his subjects, they are ready to make all due reparation, and to give his said majesty all the satisfaction that he can reasonably desire. That though they have no knowledge of what the English vessels may have done in that particular, nevertheless they make no question but that his majesty of Great Britain is in the same disposition as their high and mightinesses to give his most christian majesty reasonable satisfaction, in case his English subjects had done any wrong to the subjects of France. That so far as these things may concern their high and mightinesses, they never received any information of any thing done, that could deserve the name of an affront, unless the same be applied to an accident that came to their knowledge, not by way of a formal complaint, but indirectly, which happened between one of their men of war and two French ships, not far from Genoa, in the month of April last: That the truth of the fact, as far as they can learn, is, that a man of war belonging to this state, called the *Sun*, being convoy to certain merchantmen in the Mediterranean, and being separated by bad weather from the ships under his protection, and being left alone for some days, had sight off of Monaco of a bark coasting along the shore, not knowing of what nation she was: That the captain, to the end he might speak with her crew, and enquire about the ships that were parted from him, gave the usual signal by firing a gun; upon which the said bark making the best of her way, he sent out his shallop after her; but the bark's crew quitted their vessel, betook themselves to their shallop, and escaped ashore, leaving only two men aboard, who gave an account, that it was a French bark, and that their companions had made their escape, believing that the States man of war had been a Turkish ship. But after the captain had shewed them their mistake, the bark was released; but that a gun laden with ball was nevertheless fired from the city of Monaco. That two days after the same captain met a little



frigate, and endeavoured to speak with the ship's crew for the same reason; to which end making up to her, he put out white colours, and fired a gun for a signal, but the frigate retired under the walls of Monaco, from whence several guns were fired upon the man of war, though for what reason the captain could never tell. That this relation, containing all their high and mightinesses could learn to this hour of the matter, so inconsiderable an action, which it seems was a mistake, ought not, in the opinion of their high and mightinesses, to be looked on as an affront offered to his said majesty's flag. That except this, they declare that they do not know that their men of war ever did any thing that so much as resembled an affront put upon his said majesty's flag, or the seizing his subjects, sounding his ports, or firing upon the French vessels. That their high and mightinesses never having been informed of any such thing, they cannot believe that his majesty can have conceived or can retain any displeasure against the republic for the inconsiderable and accidental meeting of the forementioned barks. That as for what remains, their high and mightinesses have taken, and always will take care, religiously to observe their treaties, particularly their treaties with his most christian majesty; and shall at all times take those resolutions, by which they may preserve the honour of his friendship and affection; and as much as it depends on them, facilitate the general peace; so as they may find their particular security therein. That it being said more than once in the said memorial, that their high and mightinesses have still time to resolve, it would be a satisfaction to them that the said Count d'Avaux should remain here some time longer, to the end they might have an opportunity to continue the conferences for a general peace and for their private security, and to bring them to a happy conclusion; That therefore their high and mightinesses, before they take their leaves of the said Count d'Avaux, and before they deliver to him their recredential letter in answer to his said majesty's letter, have taken this resolution to serve for an answer to his memorial: And so the extract of the present resolution shall be delivered him by the agent Rosenboom.

Signed, W. VAN HAREN.

It agrees with the said Register.

F. FAGEL.

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*An Account of the Proceedings against Dr Titus Oates, at the Quarter-Sessions held in Westminster-Hall on Thursday, July the 2d, 1702, for scandalizing and assaulting Mrs Eleanor James; and of his being found guilty and fined for the same. To which is added Mrs James's Case relating thereto.*

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This disgraceful brawl is the last occasion on which the portentous name of Oates has met our eyes. Mrs Eleanor James was a printer's widow, her picture is to be seen at Sion College, in the library, to which she bequeathed many books. She wrote, in the reign of James II., "A Vindication of the Church of England," in answer to the celebrated tract entitled, "A New Test of the Church of England's Loyalty." Mrs James is mentioned as an authoress in Dryden's preface to the second part of the Hind and Panther.

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ON Thursday last, being the 2d instant, July, Dr Titus Oates, and Mrs Eleanor James, had a hearing at the quarter sessions held for the city of Westminster, relating

to an assault that was made by the said Titus Oates on the body of Mrs James: As also for several scandalous and reflecting expressions, the particulars of which were to this effect,—That the plaintiff, Mrs James, happening to meet the said Oates some time since in the Court of Requests, where, only asking him some modest questions, he was so enraged, that in a violent and riotous manner struck her on the head with his cane, putting her in bodily fear; and not only so, but attempted to repeat his blows a second time, though prevented; after which, her counsel having declared the customary scandals that the defendant had been guilty of, as well against the dead as living (besides the matter in question) and of the evil consequences that has attended them. Mrs James's evidence were called, who made it appear, that Oates had assaulted her as aforesaid; has also proved the said reflecting expressions, though Oates's counsel endeavoured to insinuate that she made the first assault, by pulling him by the sleeve; but it being made appear that her taking him by the sleeve was done by way of admonition, in a friendly manner, without the least appearance of anger, the court, after some consideration, gave it in favour of Mrs James, and thereupon was ordering a considerable fine to be paid by the said Titus Oates, for committing the said assault and scandal: But upon the doctor's acknowledging the crime, and promising to refrain from such like scandals for the future, and withal alledging he was above a thousand pounds in debt, and consequently incapable to pay a large fine, but must be obliged to lie in prison all his life for its payment; and upon his engaging that he would never affront, scandalize, or assault Mrs Eleanor James, or any other person whatsoever, in the like nature any more, he was only fined six marks and dismissed the court, but not without a severe check for acting so irreverently and unbecoming his profession.

*The chief Heads of Mrs James's Case, relating to the Occasion of her differing with Titus Oates, as abovesaid.*

Mrs Eleanor James having heard the abovesaid Oates speak very disrespectfully of King Charles II. and also of the word of God, she was troubled to see him wear the canonical habit, and therefore, meeting him in the Court of Request (as abovesaid) she asked him why he presumed to wear the robes of the church, when he knew himself an Anabaptist? In answer to which he returned her (as a mark of his favour) a dreadful blow on the head, and had he not been prevented by a gentleman (something civiler than himself) he would have repeated his strokes; upon which she was pleased to petition the House of Lords about it, to this effect, viz.

'I humbly entreat your lordships, for the love of God, and for the sake of religion (to which Oates is a scandal) to forbid him wearing the gown, and order his cane to be burnt, that it may no more be an instrument of mischief. And as it is in your lordships' power to lessen his pension, he having 300l. per annum; if part of that was given to poor ministers' widows, it would glorify God, and bring a blessing on your lordships and the nation: Indeed he was made an instrument to discover the Popish Plot, and had he kept to truth, he might have done some service; but telling lies which the king knew to be such, made him not believe what might be true, and so thought his brother and the Roman catholics were injured, so that Oates was an instrument to carry the plot on under the pretence of preventing it: And this is the man who some has idolized as saviour of the nation.

'I wish it was seriously considered what great evils such scandals do, especially when it happens upon magistrates, to asperse them with popery when they are innocent; for by that notion the Jews destroyed Christ, pretending he would bring in the Romans; and King Charles the First fell under that malicious pretence, &c. Therefore, seeing lying does so much mischief, it ought to be severely punished.'



*And in another paper she says thus :*

' Is there any reason (quoth she) I should be scandalized and abused for my innocent intentions and good endeavours, by Oates, that uncircumcised Philistine, whose actions are as black as hell, one whom justice, for the blackness of his crime, excluded him from the common benefit of mankind, that his oath might not be taken in any court of justice ?

' And was it a crime in me to take him by the sleeve and ask him a question, when I have taken kings, princes, and governors by the hands ? Sure he showed himself more like a devil than a doctor, in endeavouring to beat out my brains with his cane ; therefore I think there's not any man that has any sense of God and goodness can be on his side ; for what is worse than a lying tongue ? St James says, " It is set on fire of hell." And Christ compares false teachers to devouring wolves, and Dr Oates is known to be such, and why should he wear the church livery ? I hope all good men will be against it. And as I am innocent of all his accusations, so I desire I may obtain justice ; for all hope now to see justice appear in her perfect beauty, and that lying will not be encouraged, nor perjury rewarded.'

It was signed ELEANOR JAMES.

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*England's Path to Wealth and Honour ; in a Dialogue between an Englishman and a Dutchman. 1700.*

LUKE v. 4. Launch out into the deep, and let down your nets for a draught.

*To the most noble Thomas Duke of Leeds, Marquis of Carmarthen, Earl of Danby, Viscount Latimer, Baron Osborne of Kiveton ; and Knight of the most noble Order of the Garter ; Governor of the Royal Fishery of England.*

May it please your Grace,

No person having spent more money and pains than your grace to re-establish the fishery of England, I presume to dedicate to you the following dialogue : Not that I have the vanity to believe this my poor mite can make any addition to your grace's great treasure of knowledge ; but as believing the fact in this little book contained, so true, it might safely appear before the best of judges.

With all respect I am,

Your grace's most humble, most faithful,

Most obliged, and most obedient servant,

JAMES PUCKLE.

PREFACE.

THE highlands of Scotland, Wales, Biscay, Switzerland, and other countries, (not worth the conquering) continue still in possession of their aborigines :

Whereas England, being a country (as was said of the tree of paradise) good for food, pleasant to the eyes, and to be desired, hath been possessed by five several nations, and coveted by many more.

Yet view its coasts, they all appear bold, and but thinly inhabited, and the civil wars of our island having occasioned the demolishing its strong-holds, in case of an

attack how can we be defended against foreign powerful enemies, but by a naval power?

Allowing us masters of more tall ships than any of our neighbours, what security can a numerous navy afford, if mariners be wanting?

Whether England wants mariners best appears by our turning them over from ship to ship, by our long, long embargoes, and yet excessive charge in pressing, (and by so many of our ships being lost during the late war) for want of their complement.

Nor can the number of our seamen be readily increased with establishing a fishery. For men of war and merchantmen spend many mariners and breed few; the great and best nursery for seamen is the fishery; where each dogger brings up (it may be) six, eight, or ten new men every year, and the fishermen's business lying where our ships' danger lies, makes them know how the sands shift, where the rocks and shelves are, consequently most able coasters and admirable pilots.

Besides, by frequent riding out great storms in small busses and doggers, fishermen become so steeled and habituated to danger, that in tempests and engagements they work wonders; and the fish lying upon our own coasts, the men we employ to catch them (though out of his majesty's pay) will be ever at hand, and so ready for service, as to make our watchfullest enemies despair of surprizing us.

Again, 'a due care for our poor is an act of great civil prudence and political' wisdom, for poverty in itself is apt to emasculate the minds of men, or at least it makes men tumultuous and unquiet; where there are very many poor, the rich cannot long or safely continue such; necessity renders men of phlegmatick and dull natures stupid and indisciplinable, and men of more fiery or active constitutions, rapacious and desperate.

The poors rates of England (besides voluntary charity) amounts to near a million per annum; by which it is evident, what vast numbers of beggars and idle persons live upon the public without return of labour for their bread; now beggars children (if not destroyed in the womb, or at their birth) being bred up in want and laziness, become of unhealthful bodies, and more than ordinary subject to many loathsome diseases, whereof abundance die in their tender age; and such as attain to riper years, by idle habits contracted in their youths, are rendered for ever unapt and undisposed for labour, and serve only to stock the kingdom with thieves and beggars: So that without a due care for relief of our poor in a way of industry, they'll daily increase.

Suppose, to employ our poor any one manufacture be encouraged, it may perchance remove the present trade of one city or county to another, and occasion such complaints as the button-makers (not long since) made against cloth buttons, yet leave the generality of the poor destitute of a convenient support and provision.

Nay, could we at once encourage every manufacture in England, increasing our manufacture, and not our food, would only lessen the misery of our present poor, by sharing it among all the people in the kingdom.

The most effectual expedient then to employ our poor, is to establish a fishery; which, by affording them at once both food and employment, would quickly turn the great burthen of our nation into an equal benefit.

Much more might be said to this purpose; but at present shall only add, that within thirty years past, our active neighbours the French have increased their navigation to a proverb; given Europe much disquiet, and cost England (in particular) abundance of blood and treasure. But had not Englishmen been guilty of more than Spanish sloth in not putting forth their hands to take that rich blessing, (the fishery) which Providence by placing upon our coasts, courts us (as it were) to receive, all our sovereigns

<sup>1</sup> L. C. Justice Hale, in his *Discourse touching Provision for the Poor*.—*Orig. Note.*



(as well as Queen Elizabeth,) might have bounded the numbers of the French fleet, and by the blessing of God have been

*Pacis Europæ Arbitri, Maris Domini et Vindices.*

*A new Dialogue between an Englishman and a Dutchman.*

*D. M.* Good-morrow, friend; what art musing on?

*En. M.* Considering the extent of these your dikes, I was thinking what excessive charge and pains Holland is yearly at to defend itself against invading waves: Whereas the sea that encircles happy England (barrier-like) fenceth it against surprise and ravages, exempts us from the charge and terror of garrisons and fortifications, and (with our floating castles) continues to us that quiet liberty and security the rest of Europe more or less have lost.

*D.* What though England be fenced in by the seas, happier Holland hath a mighty ocean of wealth to defend it, and money, you know, is the sinews of war.

*E.* The cold winds (being moistened by the vapours, or softened by the warmth of the sea's motion before they reach our islands) are less fierce, and the air is far more mild and temperate, if not more healthy, than any part of the continent under the same climate; so that we have no necessity for grottos in summer, or stoves in winter.

*D.* In my opinion, that country is still happiest that is stored with the richest growths and products for traffic and commerce, and air ever best where most money is stirring; for poverty and want will render people unhealthy in all climates.

*E.* England abounds with mines, rocks, pits and quarries of alabaster,<sup>1</sup> antimony,<sup>2</sup> ardois,<sup>3</sup> black-lead,<sup>4</sup> chalk,<sup>5</sup> chrystal,<sup>6</sup> tobaccopipe-clay,<sup>7</sup> coals of divers sorts,<sup>8</sup> copper,<sup>9</sup> fullers earth,<sup>10</sup> freestone,<sup>11</sup> iron,<sup>12</sup> lapis calaminaris to make brass,<sup>13</sup> loadstones,<sup>14</sup> lead,<sup>15</sup> marble,<sup>16</sup> milstones,<sup>17</sup> plaister harder than that of Paris,<sup>18</sup> potters-ear,<sup>19</sup> slate,<sup>20</sup> salt,<sup>21</sup> steel,<sup>22</sup> tin,<sup>23</sup> whetstones,<sup>24</sup> &c.

Upon its coasts are found amber,<sup>25</sup> ambergrease,<sup>26</sup> abundance of copperice stone,<sup>27</sup> jet,<sup>28</sup> pearls,<sup>29</sup> fine pebbles,<sup>30</sup> transparent like diamonds; also flint, varrack, &c. to make glass: Besides (not to mention the rich commodities yearly imported from its fruitful plantations, that are to it as so many mines of treasure,) England affords plenty of corn, cattle, fowl, fruit, pulse, leather, wool, &c. whereas, Holland produceth nothing but a few hops, madder, butter, and cheese.

*D.* The whole product of your island is nothing, when compared to the golden mines<sup>31</sup> of our provinces, which have yielded us more treasure than the mines of Potosi, or both Indies to Spain.

<sup>1</sup> Darbyshire, Nottinghamshire, Staffordshire.

<sup>2</sup> Darbyshire.

<sup>3</sup> Cornwall.

<sup>4</sup> Camberland.

<sup>5</sup> Sussex.

<sup>6</sup> Darbyshire.

<sup>7</sup> Dorsetshire.

<sup>8</sup> Carmarthenshire, Camberland, Durham, Lancashire, Leicestershire, Northumberland, Shropshire, Staffordshire, Yorkshire.

<sup>9</sup> Cornwall, Camberland, Darbyshire, Staffordshire, Yorkshire.

<sup>10</sup> Bedfordshire, Surrey.

<sup>11</sup> Dorsetshire.

<sup>12</sup> Darbyshire, Durham, Gloucestershire, Hampshire, Shropshire, Staffordshire, Warwickshire.

<sup>13</sup> Somersetshire.

<sup>14</sup> Devonshire.

<sup>15</sup> Cardiganshire, Carmarthenshire, Derbyshire, Devonshire, Durham, Staffordshire, Yorkshire.

<sup>16</sup> Darbyshire, Dorsetshire.

<sup>17</sup> Anglesey, Cheshire, Darbyshire, Flintshire.

<sup>18</sup> Nottinghamshire.

<sup>19</sup> Carmarthenshire.

<sup>20</sup> Cornwall.

<sup>21</sup> Cheshire, Camberland, Worcestershire.

<sup>22</sup> Gloucestershire.

<sup>23</sup> Cornwall, Devonshire.

<sup>24</sup> Darbyshire.

<sup>25</sup> Norfolk.

<sup>26</sup> Cornwall.

<sup>27</sup> Whitstablesallow.

<sup>28</sup> Norfolk.

<sup>29</sup> Cumberland.

<sup>30</sup> Cornwall, Gloucestershire.

<sup>31</sup> So the Dutch, in a proclamation 1624, styled the fishing trade.—Orig. Notes.

*E.* The golden mines of your provinces; pray where do they lie?

*D.* In Neptune's store-pond, which the English call their seas.

*E.* Our famous Edgar, with a navy of four hundred sail, vindicated his dominion on our adjacent seas, and records mention his successor Canutus to have laid that ancient tribute called *danegelt*, upon all (whether strangers or denizens) trading on our coasts or seas.

Egbert, Althred, and Ethelfred, all stiled themselves supreme lords and governors of the ocean, surrounding the British shore.

King John<sup>1</sup> challenged the honour (or rather duty) of the flag, universally paid us, not barely as a civility, but as a right (*debita reverentia*) acknowledging our title and dominion.

The famous record entitled *Pro hominibus Hollandie*, shews how obsequious your ancestors were, not only in acknowledging<sup>2</sup> Edward the First's dominion on the sea, but craving his protection and permission to fish on the coast of England: And had not the sovereign of the British seas, in fact, been in the crown of England, why did the Earls of Holland petition Edward the Third<sup>3</sup> (and the French our Henry the Sixth<sup>4</sup>) for leave to fish therein? And why did your skippers<sup>5</sup> use to purchase license from Scarborough Castle, before they presumed to cast a net upon the north coast of England? Wherefore did Philip the second of Spain,<sup>6</sup> obtain license of Queen Mary for his subjects to fish upon the north coast of Ireland for the term of twenty-one years, for which was yearly paid one thousand pounds into the exchequer of Ireland, as by the records appear?

*D.* A fig for your mouldy records: I say the sea is as free to fish in as—

*E.* —As the roads of Holland are to travel in, where both natives and foreigners are forced to pay passage ghelt.

*D.* Don't interrupt me, sir; I say, the sea is as free to fish in as the air to breathe in; who doubts it, may read our great Hugo Grotius's *Mare liberum*.

*E.* Grotius, in his *Sylvæ* upon the Inauguration of King James, (before he was perverted by the importunities of his countrymen) speaking his thoughts freely, says,

—*Tria sceptrâ profundî  
In magnum coire duces.*

The rights of the English, Scottish, and Irish seas, are united under one sceptre; neither is he satisfied with that bare profession:

*Sunt animos à rege tuo qui dat jura mari.*

Take courage from the king that giveth laws to the seas.

And in the same book, in the contemplation of so great a power, he concludeth:

*Finis hic est qui fine caret, &c.*

This is an end beyond an end, a bound that knows no bounds, which even the winds and waves must submit to.

And if you remember when King James observed your encroachments, he enjoined his ambassador, Sir Dudley Carleton, to expostulate it with your states, as may be seen in Mr Secretary's letter,<sup>7</sup> wherein he tells them, 'That unless they sought leave

<sup>1</sup> Anno 1200.

<sup>2</sup> Anno 1295.

<sup>3</sup> Rot. Par. 23. Ed. 1st. memb. 5.

<sup>4</sup> Rot. Par. 22. Ed. IVth. memb.

<sup>5</sup> Camden's Britannia.

<sup>6</sup> 1552.

<sup>7</sup> 21st Dec. 1618.—Orig. Notes.



from his majesty and acknowledged his right, as other princes had done, and did, it might well come to pass, that they who would needs bear all the world before them by their *mare liberum*, might soon endanger their having neither *terram, nec solem, nec republicam liberam*: So much did that wise prince disdain to be wrangled out of the antient rights and regalities, inherently annexed to his crown, by the subtle arguments of wit and sophistry.

D. Don't tell me of King James; I say, that the sea is free for every body, and defy you to shew the contrary.

E. Why then do the Venetians exercise dominion in the Adriatick, and the Tuscans lord it in the Tyrrhene seas? How comes it to pass that all your skippers pay toll to Denmark for passing the Sound, and to Sweedland for sailing in the Baltic? Wherefore doth the republic of Genoa let to farm the fishery for Teunies in their neighbouring seas; and the Emperor of Russia compel all fishermen (within his seas) to pay him tribute? How is it that the like is done by the Duke of Medina Sidonia in Spain, and by all the princes of Italy bordering on the seas? Nay, wherefore do the Dutch stile themselves lords of the southern seas, and allow far less liberty in India than they take upon the English coasts?

But to wave this dispute: Pray, sir, how many labourers have you in your golden mines as you called 'em?

D. Upon taking an account of the several trades and employments, by which the Dutch subsisted, in order to find which best deserved the protection and encouragement of the public, it appeared that in *anno* 1668, the subjects of the States-General were two millions four hundred and fifty thousand,\* of which (besides those employed in the inland fishery) four hundred and fifty thousand were then maintained by fishing at sea, and the traffic depending thereon; since which time we have much increased the numbers of our fishing busses and doggers, to the great encouragement of our navigation, and all trades depending on the fishery.

E. Which are they?

D. Anchorsmiths, bakers, ballastmen, basket-makers, blacksmiths, brewers, butchers, carpenters, caulkers, clapboard-splitters, compass-makers, coopers, duck-weavers, hemp-dressers, hook-makers, hoop-slitters, joiners, line-makers, mariners, mast-makers, net-makers, net-tanners, plumbers, pully-makers, pump-makers, rope-makers, sail-makers, sawyers, ship-chandlers, ship-wrights, tallow-chandlers, thread and twine-spinners, &c. to the no small profit of the makers and venders of all materials, tools and utensils belonging to those trades, and of all tradesmen that make or sell culinary wares, bedding, cloathing, &c. for mariners; to which may be added, packers, tollers, dressers and couchers to carry, sort, and make the herring lawful merchandize; also porters, carmen, &c. in a word, you can hardly cast an eye upon any sort or condition of people, but are the better for our fishery, and the community most of all.

E. Pray where and at what times of the year, do you fish for herrings?

D. In the beginning of June, the herring rising about two leagues off Cranehead (the outermost part of Bratio-sound,) stay there about fourteen days, thence to Farry Islands (seven leagues to the southward of Shetland,) round which they remain one-and-twenty days, thence to Buffinness, (about thirty leagues to the southward of Farry Island,) the fishing place is called Buffin-deeps, and is twenty leagues to the northward of the firth, where the herring abide about fourteen days, in the fishing ground under Chivit-hills and Chivit-chace about fourteen days, thence we follow them to the Dogger-bank, where they stay about thirty-seven days; about the beginning of September, they come into Yarmouth seas, where they continue near seventy days, from

\* Pol. Gron. et Maxims Van Holl. p. 43.—Orig. Note.