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THE  
C A S E  
OF THE  
*Forfeited Estates*  
IN  
SCOTLAND.

Consider'd in a

L E T T E R  
T O A  
N O B L E L---D.

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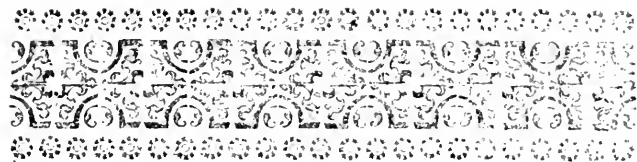
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L O N D O N :

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THE  
C A S E  
OF THE  
FORFEITED ESTATES  
IN  
SCOTLAND.

My L---d,



OUR L---dship's Thoughts are so much employed about those Transactions which more immediately relate to the Southern Part of the Kingdom, that Affairs of great Consequence to the Good and Happiness of the whole Island may sometimes escape your Observation, when they pass in the Northern Parts of it, and at a distance from your View. But since the Interest, Peace, and Quiet of the Government, and of the Minds of the People in *Scotland* have such a Connexion with the safety of the whole Kingdom, they may well deserve your L---dship's Consideration.

The Danger we were brought into by the late Rebellion, which broke out in the North, and the Influence it has had on Affairs of the greatest Importance to us all, together with the Regard and Concern every true *Briton* ought to have for the Good and Prosperity of every Part of the united Kingdom, will excuse my laying before your L<sup>—</sup>dship a few impartial Observations on some Things relating to this Part of the Island, which have of late made so much Noise amongst the People of this Country; and I hope they will be a sufficient Argument with your L<sup>—</sup>dship, to spare a little of your Time, to peruse what I here take the Liberty to offer you, concerning the Case of the Forfeited Estates in *Scotland*. And I trouble you chiefly with what concerns them, because I find there has not near so much Clamour nor Difficulty arisen about that Matter in *England*, as in this Country, where the Enemies to HIS MAJESTY'S Government are still numerous; and because I'm afraid this has already been us'd as an Argument to make our Enemies Abroad as well as at Home believe, that the Forfeiting Persons, and their Cause, have yet a solid and well founded Interest in this Country.

I beg leave therefore, in the first place, to represent the Condition, in which I take those Estates to stand at present.

The whole forfeited Real Estates, a few excepted, are sequestred by Decrees of the Lords or Judges of the Court of Session in *Scotland*; whereby HIS MAJESTY and the Publick are divested of the Possession of them, and the Authority of that Court is interpos'd to prevent the Payment of any Part of the Rents or Produce arising from them into the Exchequer: And such Factors, or Stewards,  
have



have been made choice of by Creditors, and authoriz'd by the Lords of Session, to possess those Estates, and to receive and levy the Rents by Distress in Case of Non-payment, as makes them seem rather to be continued in the Possession of the Forfeiting Persons, than preserv'd for the Interest of the Creditors and the Publick; neither of whom can be admitted to the Possession of any Part of them, or receive any part of the Rents arising from them, during the Continuance of those Sequestrations: that is, till all the Suits, which may arise from the Claims of Creditors, or the Artifices of Lawyers, be fully determin'd.

And the greatest Part of the forfeited Personal Estates, such as were not carried off and conceal'd before the Commissioners of Enquiry could enter upon the Execution of their Trust, are put under Arrestments at the Instances of some pretended Creditors; by which Arrestments (or Warrants by the Authority of the said Judges, which are of the Nature of Sequestration) Debts due to the Forfeiting Persons by Bond, or other Sums of Money of whatever Kind, in whatsoever Persons Hands, are appointed to remain there, till the Justice of the Creditors Claims be determin'd, or till Security be given by the Debtor for Payment of the Debt, if found due by Law upon Trial.

This I take to be the fair State of the Case. To which I beg your L--dship would allow me to subjoin some few Observations, before I come to examine, how far those Sequestrations are well founded in Point of Law.

1. Those Decrees of Sequestration were pass'd in a summary Way, on Application made to the Lords of Session by a few Creditors, most of whom produc'd no Evidence of their Claims and Rights,

Rights, but were really the nearest Relations of the Forfeiting Persons, or entirely in their Interest.

2. No Appearance was made, nor Regard had for HIS MAJESTY'S and the Publick Interest in those forfeited Estates, even after the Parliament had pass'd an Act, *declaring them vested and adjudg'd to be in the actual and real Possession of HIS MAJESTY, without any Office or Inquisition thereof thereafter to be taken or found*; and also appointing Commissioners to enquire into those forfeited Estates, and directing the Rents and Profits to be paid into the Exchequer.

3. Those Sequestrations were not petition'd for, till after the Forfeiture of the said Estates, altho' some of the Forfeiting Persons were long in Custody, before their Trials. But after their Condemnation, when the Publick's Title took place, then the Sequestration of their Estates was immediately petition'd for and granted, as if these were to have been look'd upon as Estates without Possessors, and whereof the Rents were in danger of Perishing.

4. And lastly, by those Decrees of Sequestration, HIS MAJESTY'S generous Intentions for the Benefit of the Publick, whereby he graciously and freely condescended to renounce his undoubted Right to those forfeited Estates, for the Ease of his Subjects, are likely to be disappointed; and the Creditors who are entitl'd to their just and lawful Debts, are reduc'd to the Melancholy Prospect of tedious and expensive Law Suits, before their Rights can be settled; and none reap Advantage, but those Factors or Trustees, or rather the Forfeiting Persons themselves, for whose Benefit more than for the Interest of Creditors, most of those Factors seem to act.

Now I beg leave to offer to your L---dship what occurs to me in Point of Law.

Sequestration by the Lawyers in Scotland has, on this Occasion, been describ'd to be (a) *The effectual seizing the Possession of the Estates, Goods, and Chattels of Debtors, for Payment and Satisfaction of their Debts.* And this Possession is committed to the Care of Factors, to receive and retain the Rents and Profits during the Continuance of the Sequestrations.

Even in this View there appears to be no Ground in Law for Sequestration in the Case of those Forfeitures. For the whole Estates, Goods, and Chattels of the Forfeiting Persons, are vested and adjudged by the aforesaid Act of Parliament, to be in the actual and real Possession of the Crown : And all Benefits, Advantages, and Rights whatsoever, which belonged to the Forfeiting Persons, or to which they were entitled, or wherein they were interest'd, on the respective Days and Times the same became forfeited, are devolved on HIS MAJESTY, and declar'd and adjudg'd to be in his Possession.

Now, amongst other Rights and Benefits which belong'd to the forfeiting Persons, before their Forfeitures took Place, this of holding and retaining the Right to possess their own Estates, and to levy the Rents and Profits, was unquestionably the chief, notwithstanding any Petitions which their Creditors might have presented to the Judges for sequestring their Estates, provided they offer'd sufficient security for paying their Debts. By what Law then, or Rule of Justice, can HIS MAJESTY who possesses for the Publick, and who has given the strongest security to Creditors, by two Acts of Parliament, be deny'd this principal Right and Benefit, without which, all others are of little,

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(a) See *Answers of Creditors in the Appendix to Commissioners Report*, P. 17. N. 5.

tle, or rather no Value? How can the Case of the Publick, with respect to those Estates, be reckon'd worse than that of the forfeiting Persons was before their Rebelling? Or, how can the Possession be taken from the Publick by Sequestration, since sufficient Security is given for the Payment of all just Debts affecting those Estates? Certainly the Publick ought to possess those Estates in the same manner, that the forfeiting Persons should have done, before they were guilty of Rebellion: Nor is it to be suppos'd, that on the Application of such Creditors, the Lords of Session would have sequestred those Estates, in a summary Way, if the forfeiting Persons had been so happy as to have continued peaceable, except their Credit had failed, and they had fallen into such bad Circumstances as to make them esteem'd Bankrupts, before they committed the Treason, which cannot be pretended of them. Why then should the Publick, which is the common Debtor to those Creditors, be denied the same Justice that the Forfeiting Persons would have had done them, except it be to make Rebellion less Penal and more practis'd?

But to make it more fully appear, that this summary Method of Sequestration, neither would have been us'd against the Forfeiting Persons, if they had continued in their Duty to HIS MAJESTY, and been able to offer sufficient Security for the Payment of their Debts; nor should have been us'd against HIS MAJESTY and the Publick, who have given such ample Security; I would beg your L—dship to examine a little the Effects of Sequestration, even in this View of it, and to consider how contrary it is to common Reason, that any Man, or Society, Publick or Private should be divested of their Estate, and the Possession of it taken from them, for paying of their Debts, til

it appear that That Man, or That Society is in Debt to the Value, or near the Value of their Estate.

The taking away Possession from any Man or Society of their Estate, of which the Law presumes them once to be in the Possession, for Payment of Debts, is a thing of so severe a Consequence, that it ought never to be practis'd, till the Value of the Debts be some way look'd into; and it appear plainly, that the Creditors may be in danger of losing their just Debts, if the Debtor continue in the Possession of the Estate. For if other Methods of Proceeding be admitted, and Debtors may be turn'd out of the Possession of their Estates in a Summary Way, before some Ground be given to suspect that they are not able to make full Satisfaction and Payment of what they owe; no Man can be certain how long he shall be able to hold the Possession of his Estate. Groundless Pretences may be soon fram'd, so as to have some colour of Justice; and if such be admitted to take away Possession, not only the Means of lawful and just Defence must immediately fail, whereby the greatest Frauds may become successful; but also Possession itself will be render'd precarious, and liable to be taken away in a manner rather arbitrary than legal. Surely if Sequestration imports the taking the Possession of an Estate from a Debtor, who has an unquestionable Title to it, for the Payment of his Debts, there ought at least to be an apparent Danger to Creditors by such Debtor's continuing in the Possession.

Before the Custody and Management of such Estate be entrusted to a Factor or Steward, it ought to be very clear, that the Debtor turn'd out of the Possession, to make way for such Steward or Factor, is left to be trusted with the Possession and Manage-

ment of his Estate than a Steward; and that it will be more for the Advantage of Creditors at least, that such Steward have the Custody, than that the Debtor have it.

But in this case, all these unreasonable Circumstances of an improper Use of Sequestration operate in the strongest manner, and not one of those just and necessary Requisites of Sequestration can be said to take place. The King, and the Publick, are in a most Summary Way turn'd out of the Possession of Estates belonging to them, for the Payment of Debts: And yet HIS MAJESTY'S, and the Publick Credit, is not pretended to be call'd in question. The Custody and Management of Stewards upon private and uncertain Security, is prefer'd to the Publick Faith and Care: And the Publick, instead of enjoying its Right of Possession, is reduc'd to the State of a *Claimant*, and must either lay aside all Thoughts of recovering any part of those Estates, or else must advance more considerable Sums out of other Publick Money, for carrying on the necessary Suits and Prosecutions at Law for the Recovery thereof, than the whole Value of them; whilst those Stewards or Factors (who, as I shall afterwards more fully shew your L--dship, are too justly to be look'd on as Agents and Trustees for the Forfeiting Persons) retain in their Hands the whole Rents and Profits arising from those Estates, and apply them either immediately to the Use of the Forfeiting Persons, or to support Claims upon those Estates, to the Prejudice of the Publick.

These Considerations, I hope, make it plain to your L--dship, that even taking Sequestration in this View, and admitting the above-written Description of it, there is little colour in Point of Law  
for

for it here, and that many obvious Absurdities must necessarily follow the extending the Use of it, so as to comprehend the present Case.

But I beg leave to give your L<sup>d</sup>ship a more just and true Definition of Sequestration, which (because Sequestration derives its Authority only from the Civil, and no wise from the *Scotch Law*) I shall set down in the Words of the Civilians: *Sequestratio [ seu depositum Sequestrarium ] est, cum res litigiosa a Litigantibus, aut Judice, plerumq; ex partium consensu, penes tertium deponitur, ut post lris eventum victori restitatur.* Sequestration is, when an Estate [or Goods] to which several Parties claim the Right and Title, is by the Parties, or by the Judge, generally with the Consent of the Parties, deposited in the Hands of a third Person, that upon the Event of the Debate, it may be deliver'd to the Party who shall be found to have the best Right.

[I shall not here trouble your L<sup>d</sup>ship with enumerating the Circumstances in which the Interposition of a Judge is allow'd, without the Consent of the Parties contending, that Point being fully clear'd in the Information given in to the Lords of Session, in the name of the Publick, contain'd in the *Appendix* to the Commissioners Report, N. 12. p. 26. where it is plainly demonstrated, that none of those Circumstances do take place in the present Case.]

Agreeable to this Definition, the late Viscount of *Stairs*, Lord President, or Chief Justice of the Court of Session, in his *Institutions of the Law of Scotland*, limits the Use of Sequestration to Cases where a Dispute and Competition of Right to the Estate crav'd to be sequestred, in whole or in part, is mov'd by different Parties. But neither his Lordship, nor any other Writer of the *Scotch Law*, makes mention of Sequestration on account only of Claims for Money payable by the Possessor of the Estate, so crav'd to be sequestred. For the other Cases mention'd by

his Lordship come rather under the Title *De Curatore bonis dando*, than under the Head of Sequestration.

It is true, this Competition of different Parties contending for the Possession, does generally arise from the Extinction of the Title and Right of a common Debtor to many Creditors, by Bankruptcy, which is thereby legally devolv'd upon a number of Creditors. This gives occasion for misapprehending the true Nature of Sequestration, or rather gives some colour for advancing a Misrepresentation of it, as if it could legally take place against a just and lawful Title actually subsisting, and not weakened by the Possessor's want of Credit.

But since, according to the genuine Nature of Sequestration, it can only take place where the *res* is *litigiosa*, that is to say, where there is no clear and indisputable Right to it, it will be sufficient for demonstrating that these Sequestrations are not well grounded in Law, to make it appear, that the Title of HIS MAJESTY and the Publick, is clear and beyond Dispute; for which end, I need but say, that it is grounded on the common and unquestionable Rules, which obtain in all Cases of Forfeitures for High-Treason, and farther ascertain'd by the Act of Parliament for appointing Commissioners, &c. which declares and enacts, *That those Estates shall stand, and be forfeited to HIS MAJESTY, his Heirs and Successors, and shall be deem'd, vested, and adjudg'd to be in the actual and real Possession of HIS MAJESTY, without any Office or Inquisition thereof thereafter to be taken or found.*

From these plain and obvious Considerations, which I hope are free from all Subtilty, or Ambiguity of Expression, your Lordship, I presume, sees how little foundation those Sequestrations have in Point of Law. I crave the Liberty in the next place, to examine some of these Arguments which have been brought in support of them. The



The first is grounded on the Act of Parliament *Primo GEORGII*, Intituled, *An Act for Encouraging Superiors, Vassals, &c.* whereby it is provided, That no Conviction, or Attainder of any Debtor, shall hurt or exclude the Rights or Diligences of his Creditors, for Payment and Security of his Debts. From this it is infer'd, that Sequestration being a Diligence or Prosecution competent to Creditors by the Laws of *Scotland*, it may be lawfully us'd by them in this Case. But it may with equal Reason be infer'd, that Imprisonment, and the other Methods of prosecuting Debtors for the Recovery of Debts, may be us'd against HIS MAJESTY, by Vertue of this Law, which it would be most absurd to suppose: And the Truth is, the Argument is plainly fallacious; for from a *Salvo* of Diligences or Prosecutions consistent with the Circumstances of the Debtor and Creditors, it infers the Lawfulness of such as are by no Law to be accommodated to either. But the true Meaning of the Law is, That just and lawful Debts and Diligences following thereon, shall have full Effect for establishing the Creditors Preferences amongst themselves, and for securing their Payment to be made according to such Ways and Methods as the Parliament shall direct; and that these Rights and Diligences shall not be cut off by the Forfeitures; But not that Creditors shall have it in their Power to divest the Publick of the Possession, before their Debts be duly stated, and legally enquir'd into. For the Denomination of just and lawful Debts us'd in the Act of Parliament, necessarily supposes, that they must first be enquir'd into. But by the Method of Sequestration the Publick is divested of Possession, and even the Claimants are excluded from it during those Sequestrations. So that according to this way of Reasoning, that which is intended to guard and save the Rights of Creditors from Hurt, would turn to their Prejudice. It

It is next pretended, That the Publick has Right only to the Remainder of the Rents or Value of the forfeited Estates, after Payment of Debts due to Creditors. But this seems to be extremely trifling, when us'd as an Argument to prevent the Publick's entring upon the Possession of those Estates, as may appear from what has been said of the Publick's having an immediate Right to possess those Estates, in the same manner the Forfeiting Persons had Right to possess them; from which nothing can debar it, (as being in the Case of a Purchaser of an Estate, with the Burden of the Debts affecting it) unless the Publick Faith and Parliamentary Engagements for the Security of Creditors, are supposed to be bad. For it has already been made evidently appear, that Claims of Money payable out of an Estate can be no sufficient Reason for the turning of a Debtor of good Credit out of the Possession, and sequestring such Estate.

The only tolerable Reason for having any Regard to those Sequestrations, is, That they are pass'd by Decrees of the Judges in *Scotland*, whence they may seem to be some way founded on the Laws of that Country. But it is to be observ'd, that the Judges were not unanimous in their Opinions in this Matter: And their Decrees, though great Regard is to be had to them, yet being subject to Review, as well as the Decrees of the Judges in *England*, are not definitive, but may be appealed from, and are frequently revers'd by the House of Lords. Besides, summary Sequestration is a Method seldom or never us'd by the Court of Session, in the Case of Private Persons, on slight Grounds. So that the Interest which the Government and the Publick have in this Matter in many different

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Respects, after and beyond the Payment of Creditors, may excuse a more narrow Examination of it, and the Liberty of differing from the Judges in *Scotland* concerning it.

These are the principal Arguments which I have heard insisted upon, in Defence of those Sequestrations. Of what Force they are, I leave it to your L---dship to judge.

I shall now proceed to consider the Effect of those Sequestrations, First, with relation to the Interest of Creditors, and next with relation to the Interest of the Government.

The just and lawful Creditors (many of whom are zealous and affectionate to the present Government) are entitled to the Payment of all their just Debts, with as little Charge or Delay as possible. But they are debarr'd from their Rights by those Sequestrations, and reduc'd to the melancholy Prospect of being obliged to recover by the most chargeable and tedious Prosecutions, which the Artifices of Lawyers can invent, what ought not in Justice to be in the least disputed with them: And many Widows and Orphans are forc'd to undergo the greatest Hardships by those Estates being sequestr'd in this Manner. It is plain to every Man's Observation, that the greatest Misfortune which Creditors can fall under, is the Sequestration of the Estate of their common Debtor, if their Debts can possibly be otherwise recover'd. For those who have the clearest and most indisputable Rights are thereby not only precluded from Payment during such Sequestration, (which perhaps may continue upwards of twenty or thirty Years) but are likewise engag'd in a litigious Train of Law Suits, with every other Creditor on the same Estate, to get their Preferences to Payment adjusted. And can there be a greater Hard-

ship

ship upon any Man, than to be forc'd to the Necessity of Law Suits, when his Claim is indisputable, and when he would not otherwise be oblig'd to have recourse to Suits at Law, were it not that his Debtors Estate is sequestred. Every Body knows, who has any tolerable Acquaintance with the Courts in *Scotland*, what detestable Practices are frequently us'd by Factors on sequestred Estates, and how Creditors, for the most part, not only cannot obtain the Determination of their Claims, nor procure their Ranks of Preference to Payment to be adju'dged for many Years, but also even after the Cause is brought to this Issue, how they are put to an extraordinary Expence, before they can bring such Factors or Receivers to an Account, and recover their just Debts so decreed to be paid to them, out of their Hands.

But besides the Hardships arising from the tedious Train of Law Suits naturally following Sequestration, and the unjust Advantages made by Factors, there is a very great additional Mischief to Creditors, occasion'd by a sort of Stockjobbers, who, intending to make their Market by Sequestrations, do first purchase Claims on sequestred Estates, and then draw out Law Suits with other Creditors to such a Length, that many of them are glad to sell their just Claims for less than half the Value. It is very well known, what Estates have been purchas'd in this scandalous way in this Country. And we may warrantably conclude, that many of the forfeited Estates would, by the Continuance of the present Sequestrations, become a Prey to People who use such Practices; and be torn to Pieces at Law, as if the forfeiting Persons had been Bankrupts; which is indeed the only Case, where Sequestration ought regularly to take place.

The Gentleman who publish'd soon after the Rebellion, a Memorial of the State of the Rebel Prisoners, has been well justified in saying, towards the End of that Paper, " That the way of  
 " Sequestrations would make a stop to the Payment  
 " of the Debts and Interest thereof due to lawful  
 " Creditors, and extend the Calamity of Forfeitures much beyond the Case of Criminals, and  
 " in Proportion encrease the Cry of the People ;  
 " and interest them in their Sufferings.

This being really the Case, and these the constant and unavoidable Effects of Sequestration, as is fully demonstrated in a Book entituled, *The Cry of Creditors on sequestred Estates*, publish'd by a Lawyer at *Edinburgh* in the Year 1710, I must acknowledge it is extremely surprizing to find that (while the Creditors on forfeited Estates in *England* have attempted no such extraordinary Methods for obtaining Payment) such Artifices, tho' improv'd by the Enemies of the Government to disquiet the Minds of the People, should have prevail'd so much in *Scotland*, as to obtain the favourable Construction of being intended for the Benefit of Creditors, when nothing can be more evident, than that the Interest of the Publick as well as that of the Creditors is subverted by those Sequestrations, which reduce both to the Necessity of tedious Law Suits, for which there is otherwise no Occasion, and which can never be desirable or advantageous to either.

But because Clamour is sometimes lookt on to have a real and just Cause, only because it happens to prevail, unless the artful Occasions of it be discover'd, I crave leave to set forth the true Springs of those Mistakes, and of this publick Noise. For which end I pray your L<sup>d</sup>ship to observe,

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That the real Creditors on forfeited Estates have appear'd little concern'd in this Dispute, and that most of those who at first petition'd for those Sequestrations, and are now earnest for continuing them, are personal Creditors, and generally for small Debts; and that of those Creditors some are near Relations to the Forfeiting Persons, or have been Dependents on their Families, whose Inducement to endeavour the Continuance of the Possession and Management of those Estates in such Factors Hands is evident, in Hopes that this may be a Means still to support the Interest of the forfeiting Persons: That others of those Creditors are the very Factors or the Trustees of the Forfeiting Persons, who since their Petitioning for Sequestration were made choice of by the rest, and appointed to be Factors by the Lords of Session, whose advantage to have those Estates remain sequestred is plain: That others who have meddled with Part of the Effects of Forfeiting Persons for their Use, join'd in Petitioning for those Sequestrations, hoping thereby to prevent their being called to an exact Account: That others of those pretended Creditors being Dependents on the Courts of Justice, have been principal Promoters of the Sequestrations, in order to create a Multiplicity of Law Suits: And lastly, that others are zealous for the Continuance of those Sequestrations, from a Principle of Jacobitism, that so while the Forfeiting Persons still in Effect enjoy their former Estates, the Cause of the Pretender may be the better supported; and such may justly be suspected, not to have so much in their View, the securing the Payment of their pretended Debts, as by this Method, to delay the Publick's entring into the Possession of those Estates, as long as ever the vain Hopes remain of their returning to the Forfeiting Persons.

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From all which it is not to be much wonder'd at, that such pretended Creditors have been industrious in raising Clamours against the Proceedings of the Government in this Affair.

Let me next represent to your L---dship the Effects of those Sequestrations, with relation to the Interest of the Government.

It is justly to be suspected, that the Designs and Wishes of some People by those Sequestrations (which may perhaps continue twenty or thirty Years, as has already been observ'd) are, that those Estates may be thereby kept entire, so as to prevent any Part of them from ever coming into the Possession of the Publick, in expectation of a new Revolution, by which all the Forfeiting Persons shall be restor'd to their Estates; or at least, in expectation, that by the extensive Clemency of this Government, so many of the Forfeiting Persons may come to be restor'd to their Estates, as will re-establish the Interest of the Pretender in the same flourishing Condition which it was in before the Rebellion. So that in this Case, those Factors or Stewards shall be understood to have been Managers for the Forfeiting Persons, during their Exile, and at length to be accountable to them, as if they had been appointed their Trustees to take Care of their Affairs during their Absence. I shall not suppose, that all who appear concern'd in this Matter have such Things in View, or have such Wishes, or desire a new Revolution; but no Doubt these are the Aims of many who appear so forward in this Affair.

In the next place, while the innocent and loyal Creditors are debarr'd from receiving Payment of their yearly Interest, and the Publick is precluded from the Possession, the very Forfeiting Persons themselves reap the Benefit. For many of them may be said still to possess their Estates, or at least

their Trustees for their Use, as most of those are who are appointed Stewards or Factors during the Sequestrations. And this Invention of Sequestration gives their Clandestine Possession this additional Advantage, *viz.* to shelter them from the just Demands of Creditors, and free them from the Incumbrance of the Interest of the Creditors Debts, which they were obliged to pay yearly before their Forfeitures.

In the third place, nothing can have a worse Effect with relation to the Interest of the Government, than the very Characters of those Factors authoriz'd by the Lords of Session. Most of them are known to be Jacobites, and Trustees for the Forfeiting Persons; nay, even some of them were concern'd in the late Rebellion; and do now use the Power given them in direct Opposition to the Interest of the Government, to encourage and keep up a Spirit of Rebellion and Disaffection, and to oppress those who are well affected to the Government in several Places in this Country, in a more unaccountable Manner than even the Forfeiting Persons themselves did presume to do at any time, since the Happy Revolution; many Instances of which might be given, were it needful.

Your Lordship may easily apprehend by all this, what prejudice those Things do to the Interest of the Government in *Scotland*: there is good Reason to believe, that most of the Rents already due, have been applied for Uses hurtful to it, and destructive to the Publick Peace of the Kingdom; and that Ways have been made Use of not only to send a good Part of the Forfeiting Persons Estates over Seas after them, but also that all the Contrivances which could be invented to raise Money out of many of those Estates, have been taken since the Forfeitures. For Example, several Tenants who have Claims for two Years Rent, by  
Virtue



Virtue of the Act of Parliament for *Encouraging Superiors, Vassals, Tenants, &c.* have been induc'd, or rather forc'd by threatenng of those Factors, to assign their Claims to Trustees, for the Use of the Forfeiting Persons. And many of the Tenants have been harras'd, and threaten'd to be turn'd out of their Farms, unless they did so. It is farther to be observ'd, that so little Regard has been shewn for preserving entire the Fund for Payment of Creditors, that most of the Decrees appointing Factors or Receivers on the forfeited Estates are so fram'd as not to oblige those Factors to account for the Rents and Produce of them in the Year 1715, nor for any Arrears of former Years Rents, which might be in the Tenants Hands at that Time: All which falls thereby plainly to the forfeiting Persons; so that 'tis no hard Thing to conjecture from whence a considerable Part of the Money was rais'd which was remitted to *Sweden* for carrying on that intended Invasion. What fatal Effects those Things would have produc'd in *Scotland*, had not the design'd Invasion been happily prevented, or what Encouragement they may give to the Enemies of the Government to attempt the like again, is easy to imagine.

To this it may be added, That the disorderly and confus'd State in which these Matters stand, has afforded the Enemies of the Government a fair Opportunity of creating Prejudices against it, by imposing upon the World, and alarming innocent Creditors with groundless Jealousies and Fears, as if the Publick had a Mind to defraud them, and that they certainly are design'd to be abus'd, trick'd, and cheated. This is spread about not only by the Enemies to the Government, but also by other designing Persons: and one can scarce imagine,

gine, how far this Delusion has prevail'd. Whoever is a little acquainted with the Affairs of *Scotland*, knows how much this Deceit has prevail'd in the Minds of the People. For so extraordinary are the Methods which are taken, that even the Government is blam'd as being the Occasion of those Hardships to Creditors. And, to continue the Aversion in the Minds of People to the Union, they are made believe, that if once the Rents are paid into the Exchequer, all that Money is to be carry'd out of this Country into the Exchequer of *England*; and that so Creditors will be put to great Trouble in procuring Payment from thence. It is spoke of as a Matter, on which it is pretended great stress should be laid, that Creditors can proceed by Distress against the Persons and Goods of Factors authoriz'd by the Lords of Session; but that they cannot have this Method to compel the Exchequer, in case of Non-payment, when once the Rents are lodg'd there; though it is well known that the Regularity of Exchequer Payments leaves no Occasion for such compulsory Methods; and that it is easier for those Factors to avoid making effectual Payments to Creditors, notwithstanding such Distress, than it can be to shun making Payments out of the Exchequer, according to the Directions of Parliament.

But the more such Deceit prevails, the more reason there is to give convincing Proofs of the contrary, and to shew that Creditors to the Publick may be better secur'd, and better provided for, by having their clear and just Debts made good, and their yearly Interest paid in the mean time, in the most speedy and easy way that can be thought upon, rather than by obliging them to expensive Law Suits.

It appears from the few above-mentioned ill Effects, and unavoidable Consequences of those Sequestrations, as they stand at present, to be absolutely necessary for the Peace and Safety of *Scotland*, that some proper Methods be taken on the one hand to discourage the Spirit of *Jacobitism* and Rebellion, which is still raising up its Head in that Country, chiefly by reason that those Estates continue in the Hands of such who make use of them for fomenting a new Rebellion, both from Abroad, by still remitting part of the Rents over Seas to the Forfeiting Persons; and at Home, by encouraging the Enemies of the Government, and oppressing His MAJESTY'S Loyal Subjects: And also, on the other hand, that some thing be done to make good the Parliamentary Engagements for the Security and Payment of just and lawful Creditors, who can't but vastly suffer by the Continuance of those Sequestrations as they now stand; and to quiet the Minds of honest People, who are artfully led into Mistakes by malicious Clamours industriously rais'd by the Enemies of the Government, on purpose to keep up groundless Jealousies, and also by other designing People out of private Views.

I shall not take on me to present, or insist upon any particular Method, for attaining those Ends, that being a Work for Persons of greater Abilities than mine. But with great Submission to your L-d-ship's Judgment, I shall freely offer my poor Thoughts concerning the two Methods I have heard propos'd. One is, to enlarge the Powers of the Lords of Session: And the other is, to enlarge those of the Commissioners of Enquiry.

As to the Enlarging the Powers of the Lords of Session, and committing the Management of those Estates wholly to them, I would beg the liberty to observe in the first place,

That the Steps already made by those Lords in this Affair, (though I will not be so bold as to say they are either contrary to the Intent and Meaning of that Part of the Act of Parliament *appointing Commissioners to Enquire*, &c. which reserves the Determination of Claims to the Direction of an Act or Acts of Parliament to be made, or even that they proceed upon a Mistake, yet I may mention what is Fact, that is, That these Steps) are plainly contrary to the Sense of that Act of Parliament, as it is understood by all the Judges in *England*, who have made no Steps towards the Determination of any Claims on Forfeited Estates, nor admitted of any Suits or Prosecutions founded upon them; and have been far from doing any thing to interrupt the Publick's Possession of those Estates, or to prevent the Payment of the Rents and Profits into the *Exchequer*.

Another Thing I would observe is, That the Mischiefs arising both to the Government, and to the Creditors on the Forfeited Estates, by the above-mention'd Sequestrations, and the unhappy Choice of Factors or Stewards, are owing to the Proceedings of those Lords in this Matter.

I shall add no more on this Point, lest I may seem to arraign or accuse the Lords, which, as it is none of my Business, is far from my Intention: But if this Proposal be examin'd a little more narrowly, and the Application of it to particular Cases be consider'd, I believe your L--dship will easily see, that it will no wise answer the pretended Intention; And that it is in this, as in all other popular Clamours propagated to deceive and lead People into Mistakes, something of Name, of Weight, of Authority and Influence amongst the People, is drawn in to the Question, which at the bottom has nothing to do with it. The Court of Session, as it is  
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the Supreme Court of Judicature for all *Scotland*, is doubtless of great Power, and must have a great deal of Respect from the People of this Country : and what carries the Appearance of Regard or Advantage to them, will certainly, at least 'till it be discover'd to be a false Appearance, obtain a great many Favourers.

But the best way to discover, whether any thing of this sort be practicable or not, is to consider, how it will operate in a particular Case. Let me in the first place observe to your L<sup>td</sup>ship, That the Session is a Court of Judicature ; and the Lords, or Judges of it, are ty'd by the Nature and Duty of their Office, to give Judgment between contending Parties, according to what is pleaded on each side. They are not to make a strict Enquiry into, or to give Directions about the Stating of Accounts, or the Defences to be us'd by one Party, or the Prosecutions to be carry'd on by the other ; but to give Judgment according as things are presented to them. I put the Case, that one of those Estates is worth Three thousand Pounds a Year, that the Yearly Interest due to Creditors, and other publick Burdens on that Estate amount to One thousand Pounds a Year ; the Prosecutions of Creditors, and of those who levy Publick Taxes, may in a regular manner oblige the Factor to pay this Thousand Pounds ; but still there remains Two thousand Pounds a Year in his hands ; which the Judges cannot dispose of, till some Person raise a Prosecution for it. Thus it may remain in the hands of the Factor during the Continuance of the Sequestration, and probably never any Account will be got of it. Besides, how can the Judges prevent a Collusion between Factors, and Persons pretending to be Creditors, to the Prejudice of the Publick, which there is too good reason to apprehend will be attempted

tempted in many Instances in this Case? Or how will Judges be able to look so narrowly into the Conduct of Factors, as to prevent the Decay of the Rentals of the Estate committed to their Care; or to their Practices in making up false Accounts, when every Body who is but a little acquainted with this Country knows, how frequently the yearly Rents are diminish'd under such Factors Management, and what ill Methods are practis'd by them, in making up their Accounts before the Lords of Session, even where the Parties concern'd in sequestred Estates are at all possible pains to prevent such Abuses. And to shew your L---dship that such Abuses are frequent, I need only mention the Rule or Order of the Court of Session made in *November 1710*, whereby all Writers and other Dependents on the Court of Session are expressly restrain'd from being Factors or Receivers on any sequestred Estate; and the Reason given in this Order is, for preventing Abuses and Inconveniencies arising by Writers and other Dependents on the Court of Session, being nam'd Factors on sequestred Estates, who being call'd to account for their Management, prolong their Suits to an intolerable Length, to the great Vexation and Expence of the Creditors. Yet it is observable, that most of the Factors appointed by the Lords of Session on the forfeited Estates, are Writers or Dependents on the Court of Session. And how easy will it be for such Factors to make up false Accounts, where there will be no Body besides the Judges to controul their Management, or to call them to an Account in the Name of the Publick, for the surplus of the Rents that shall remain in their Hands after Payment of the yearly Interest due to Creditors, and other annual Burdens?

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Then in the Case of false and fraudulent Claims; Many such will be made for old Debts already paid, by means of which great Parts of those Estates will be carry'd off, and be apply'd to the Use of the Forfeiting Persons, or of fraudulent Claimants, if there be none to object against such Claims, for the Publick. And it is evident even in this Case of extending the Powers of the Lords of Session, that the Evils complain'd of still continue; which are, that those Estates are still to be in those Factors Hands, and that all the Creditors, without distinction, are oblig'd to the Necessity of vexatious, and many of them to unnecessary Law Suits. Neither is it possible, that all Claims, though never so clear, can be speedily determin'd before the Lords of Session, because of the Contests and Suits which will be artfully carried on, and because of the Forms, which must in some Measure still be observ'd, even where the Lords of Session are to determine in a summary Way. So that by this Method the justest Creditors shall still be under the Necessity of having tedious Law Suits, and be left to the Mercy of Stewards or Factors, who seldom make Payments, without getting some private Gratuity to themselves.

It is however pretended in favour of this Scheme, That by the Regulations or Rules of the Court of Session, Factors appointed by the Judges on sequestred Estates are liable for the Interest of Rents receiv'd by them, or which by legal Prosecution might have been receiv'd from a Year after the same became due. But few Instances can be given where such Factors ever paid Interest in this Manner. And whoever considers the Difficulty and Charge of fixing by legal Proofs the particular Times when such receiv'd or might have receiv'd Rents, who have the preparing of their own Ac-

counts, and the stating of the Arrears or Rents in Tenants Hands, will easily perceive, that small Benefit can arise by this Rule even to Creditors, and much less to the Publick, where Examination cannot be made during the Sequestrations, with that Exactness which is practis'd, where private Persons look after their own Affairs.

Next it is pretended, that notwithstanding the Sequestrations, Creditors may have their Interest paid them by particular Order of the Judges. But from the Mixture of false and fraudulent with just and lawful Claims, there will necessarily arise an obvious Inconvenience, if those Factors should be allow'd to pay Interest to Creditors before their Claims be fairly heard and determin'd. For many who may pretend to be Creditors, will be thereby possess'd of the Rents, who in the Event, when their Claims shall be examin'd, may be found to have had no just Claims.

Lastly, it is pretended, That the surplus of arising Rents, above what pays the annual Burdens and Interest to Creditors, ought to be applied towards the extinguishing of Claims, and the Payment of principal Sums. But this Supposition destroys the Foundation on which Sequestration ought to proceed; for it is plain, that there is no need to sequester an Estate where there is such a surplus. But farther, let it be consider'd, for whose Benefit such Payments are to be made? If (as it is the Opinion of some People) the Forfeiting Persons shall be restor'd to their Estates, this were to let their Estates return to them in a better Condition than they were in before their Forfeitures, instead of the Government's reaping any Advantage by possessing the free Rents during the Forfeitures, and their Forfeitures being any Punishment to them; especially where their Estates are en-



entail'd. Neither can it be pretended, that those superplus's may be annually paid into the Exchequer, during the Sequestrations, for it is impossible to ascertain the Quantity thereof till after those Sequestrations are remov'd, and all the Claims and Competitions of every litigious Creditor are determin'd and satisfy'd.

Besides, the Lords of Session, as Judges, could not so much as order those annual superplus's to be paid into the Exchequer, except there were some Person to raise Prosecutions for them, in the Name of the Publick; so that the Necessity of some Agent for the Publick, besides the Judges, appears in every Case.

I know not, if I should be much in the wrong to say, that a great deal of the Noise concerning this Matter may be suspected to arise not so much from the Regard to the Court of Session, as from the Influence of some who would gladly have this Employment of managing the Publick Interest in the Forfeitures wholly in this way of Litigation. But the Necessity of having some Person employ'd in that way, is so plain and essential a Consequence of this Proposal, that I beg leave to suggest what I humbly apprehend would be the Effect of having some such Person entrusted with the Publick Interest in those Forfeitures. To be sure, such a Person's first Proposal would be, That a Sum of Money not under 500*l.* be advanc'd to him out of other publick Money than the forfeited Estates, and that some Lawyers be appointed to join with him in the necessary Prosecutions. Now this, upon the Matter, is no more than to erect another Commission of Enquiry, which would be under no Necessity of making a Report to the Parliament, and with this notable Difference too, that the Commissioners are only to be paid out of what arises from  
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the forfeited Estates, and so can be no Burden upon any other publick Money; but those other Gentlemen must be paid out of other publick Money; and the Publick for this Expence would have nothing but the uncertain Event of litigious Prosecutions at Law.

If this Method should take place, it would be to give up HIS MAJESTY'S undoubted Right and Title to possess the forfeited Estates, wherein he is fully vested for the Use of the Publick, by the plain Words of the Act of Parliament, and to reduce HIS MAJESTY and the Publick to the State of a Claimant. HIS MAJESTY'S possessing those Estates for the Use of the Publick, till the Demands of Claimants be made good, can be of no Hurt to any just Creditor, who may be fully satisfy'd when his Claim shall be found good: But the divesting HIS MAJESTY and the Publick of the Possession, is not only contrary to the Intent and Meaning of the Act of Parliament, but will render the Forfeitures a Burden and Charge to the Publick, instead of a Benefit; for it would be impossible on many Accounts for the Publick to recover the Possession of any Part of them by way of Prosecution, without extraordinary Expence and Trouble, which the Wisdom of the Parliament has thought fit to prevent, by vesting HIS MAJESTY in the Possession for the Use of the Publick, at the same time that it provides for the Security of Creditors.

I shall now offer what I have to say concerning the Proposal for enlarging the Powers of the Commissioners of Enquiry.

The Bill which pass'd the House of Commons concerning the Forfeitures in the last Session of Parliament, is the only Thing I have yet heard offer'd for that End; and though I do not pretend that what is contain'd in that Bill should be follow'd in  
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all Particulars, yet I beg leave to examine the principal Objections I have heard against it, not because they are of great weight, but because they seem to be contriv'd to perplex the Minds of the People, and to amuse Strangers.

One great Objection is, That by giving the Powers contain'd in this Bill to the Commissioners for forfeited Estates to determine upon Claims, and order Payment to Creditors in the Manner this Bill appoints, will be to overturn the common Course of Justice, and be erecting a new Judicature, and an Encroachment upon the Privileges of the Court of Session, which are all reserv'd by the Articles of Union. I answer, it can never be thought any Encroachment on the Court of Session, for the Parliament to open a plain and easy Method for fixing the just Claims of lawful Creditors, and admitting them to Payment, without Loss of Time or Expence, and which may be justly suppos'd a less tedious Method than that of vexatious Law Suits. And the Commissioners by having this Power to determine clear and indisputable Claims, are no more than a kind of Arbitrators or Referrees from whom the Parties, who do not acquiesce in their Determinations, have immediate Appeal to the Lords of Session. And the Practice of submitting Differences in Points of Law to be determin'd by Arbitrators, is well known in *Scotland*, and has never been reckon'd an Encroachment on the Courts of Judicature, even though the Decrees of such Arbitrators have by Law as much Force as the Decrees of any Judges.

The Argument brought from the Articles of Union in this Case appears to be very strange, which amounts to this. The Court of Session is reserv'd by the Articles of Union; therefore no Debtor can pay his Creditors, even when he is satisfi'd

tisfy'd of the Justice of their Demands, without a Prosecution before this Court, and a Decree of the Judges upon it. This were indeed to make Courts of Justice a Grievance rather than a Benefit to a Country; and to make Creditors suffer unnecessarily, if they must be oblig'd to have recourse to Law Suits in every thing. Any Powers propos'd to be given to the Commissioners are no more than the laying down a Method for fixing the more speedy and easy Payment of just Claims, where they are clear and indisputable. What is of itself plain and clear, needs not the Expence of Suits at Law to determine it. The Commissioners are appointed to receive and state the Claims of Creditors, in order to facilitate their Payment: but it were to have continu'd a very unnecessary Commission, to receive and state Claims, if they cannot admit Claims in order to Payment, which are without Dispute.

Another Objection against this Bill, is taken from the Clamours rais'd against it. But if it is consider'd, how those Clamours are excited, it is so far from being an Argument for the Government's yielding to them, that it is rather a strong Reason, why some effectual Method should be taken for putting those Affairs into distinct Order; which will be the surest way to put a stop to the Mistakes of the inconsiderate People, and whereby those Clamours would in a great Measure cease, nor would the Authors be able to impose any longer on the Country to such a Degree: Whereas, the submitting to those Clamours still makes them increase, and adds strength to the Enemies of the Government, who never will give over complaining, if that can be a means for restoring the Forfeiting Persons, and making them in the End entire Masters of the Country. Those Clamours

mours are originally excited and fomented by the disaffected Party, who by their Artifices have infected the Countſy to ſo great a Pitch, that they want not the Impudence and Diſloyalty to threaten a new Rebellion, if the Government ſhould offer to put the Forfeitures in Execution. And this Spirit of Diſaffection eſpecially prevails in the Northern Parts of *Scotland*, where ſeveral of the Forfeiting Perſons themſelves (or their Friends and near Relations, for them) ſtill remain in the actual Poſſeſſion of their Eſtates; and where great Numbers of the People in thoſe Parts have not deliver'd up their beſt Arms, thus eluding the late Act of Parliament *for ſecuring the Peace of the Highlands*: So that this Argument returns upon the Objectors againſt the Bill, and renders ſome ſuch Bill neceſſary as the beſt Remedy in this Matter: for thoſe very Perſons who are now much buſy'd and employ'd in exciting theſe Clamours, would be the firſt who would endeavour to draw the Government into Contempt for yielding to them.

Another Objection to this Bill (which is one of the weakeſt I have heard) is, That it obliges Creditors to accept of Debentures on the Exchequer, in the room of their own Rights and Diligences, and ſo cuts off their Real Securities, and leaves them on the uncertain and precarious Footing of Personal Rights. I answer, if it is conſider'd that theſe Debentures are to be iſſu'd out by Authority of Parliament, certifying that ſuch Sum is due by ſuch a Right on ſuch an Eſtate, without in any Degree cancelling or weakening the original Rights, for which the Payment is to be made, any ſeeming Force in this Objection vaniſheth; and there is no place for ſuſpicion, that the Fund can be diverted from paying of ſuch Debentures ſo iſſu'd; which may juſtly be look'd upon to be

founded on as good Security, as their Bank Notes in *Scotland*.

Another Thing complain'd of is, the Reversing of the Sequestrations by this Bill, and declaring all Acts and Decrees following thereon void and ineffectual. But this seems plainly to be a necessary Consequence of reserving the Determination of all Claims to the Direction of subsequent Acts of Parliament; and the Reasonableness of it appears fully from what has been abovesaid. Besides those Estates being properly a Part of the Possession of the Publick, and the Rents of them being publick Money, with the Burden of just Debts, they cannot regularly be put under the Management of any, but such only as are accountable to the Parliament, and do derive their Authority from thence. And farther let it be consider'd, that all those Sequestrations and Decrees which are declar'd void were pass'd, *altera parte inaudita*, not one Word was offer'd in the Name of the Publick. A delusory Form of calling HIS MAJESTY'S Advocate and the Officers of State to appear for the Interest of the Publick was us'd, when it was well known, such a Call neither would nor could be comply'd with: What better Fate then can those Decrees have, since they were pass'd in such a Manner.

It is very observable, that only in *Scotland* all the Obstructions that could be thought on, have been thrown in the Commissioners Way, to render their Commission ineffectual. And indeed some Difficulties were foretold by some People, which never would have happen'd, or might have been prevented, had it not been, that those who have been the Instruments of promoting those Difficulties expected the support of others, whose Jealousies or private Views had made them to be at first apprehended.

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I am sorry to observe that such Courses have been taken, and that such Disputes have arisen in *Scotland*, for there are no such wranglings in *England*, and that some People have excited and supported Clamours against the Commissioners, as if they were the worst of Men, and that all the bad Things that are so justly suspected would be the Consequence of these Estates falling into the Hands of artful Lawyers, are now suppos'd will be practis'd by the Commissioners. It is hard Treatment to suspect Gentlemen whom the Parliament entrusts with this Matter of such Things, when they have given no manner of Ground for Suspicion by any Thing in their Management, except some People may perhaps call their Faithfulness and Diligence a Fault; for this is no Paradox to a great many: bating this Exception, I have not heard, that hitherto there is the least Reason given for Suspicion from any one Step in the Execution of their Commission, in which I believe they have been very exact, so far as they could proceed. Besides, it is not in their Power to misapply the Rents, for those are appointed to be paid into the Exchequer; so that the Commissioners cannot meddle with the same; and the Creditors are guarded from any Injury that might possibly be done to them by the Commissioners, not only by the Privilege of appealing against their Decrees, but also by the Liberty they may take of presenting a Complaint to the Parliament against all or any of the Commissioners, if they should presume to commit any unfair Practice. And as to the Publick Interest, which, by the way, is the least of some People's Concern, who make so great a Bustle about Grievances, the same can be in no Hazard from any Steps the Commissioners may take; for all their Proceedings are to be laid

before the King and Parliament, and to be subjected to a strict Examination.

The Report of the Commissioners for *Scotland* is said to have been Offensive to the Lords of Session and others, by representing the great Difficulties they met with from those Decrees of Sequestration, and that there was little Assistance given them by some of those, whose Business it was to serve the Government in this Country. But to me these Things appear to be represented in the Report, in the tenderest manner, that the Facts could allow of, which I take to be true, not having heard the same contradicted. So that the Blame which those Gentlemen would fix upon the Commissioners, appears evidently to be groundless and malicious. And a Prejudice is taken against them by some People who don't like this Commission, because it tends to suppress a Jacobite Interest; others don't like it, because it may probably shorten Law Suits; and others are against it, because they desire the Affairs of this Country to fall into Disorder and Confusion, out of particular private Views. I am sorry indeed to observe, that some others are led into Mistakes about this Commission, by the Clamours and Artifices of those I have just now mention'd; therefore any Reflections which I may have made on others, have no relation to them.

All I shall say farther on this Head is, That I am persuaded many who were for this Bill's taking Effect, had nothing in View but the publick Good, and the speedy Relief of Creditors; and that their Design and Interest in it, was far different from the false and malicious Misrepresentations given of this Matter all over the Country. It were to be wish'd, that either any Mistakes that may perhaps be discover'd in this Bill, could be corrected



rected and amended in this present Session of Parliament: Or that some other better Method could be invented that might produce the same Effect for which this Bill was mainly intended. For my own part, I have no particular Engagement for the continuing of this Commission, if I could see a better and more effectual Means propos'd.

It is made use of as a strong Argument against this Commission, that after Payment of the Yearly Interest of just Claims, and other publick Burdens, with the Commissioners Salaries, and other Charges of their Commission, there will no great Sum arise to the Use of the Publick out of those Estates: But, I think, there is good reason to believe otherwise, and that there would arise a considerable Sum to the Publick out of the Forfeited Estates in *Scotland*, if carefully manag'd, after all necessary Payments and Expences: Which if true, is one good Argument why these Estates should not stand sequestred. But whatever be in this, whether it may prove true or not, 'tis bad Reasoning to conclude, that therefore those Rents should continue in Factors hands, a great Part of which may be made use of to the Prejudice of the Publick, as well as of the Creditors. The Safety of the Publick is concern'd in this, That these Rents be not employ'd in whole, or in part, to Uses hurtful to it.

And now the Question on this Head comes shortly to this; Whether Factors chosen by the Creditors in the manner I have above describ'd, without any Regard to the Publick Interest; or the *Exchequer* fortify'd by express Security of Parliament, for the Payment of just and lawful Creditors, be the proper Repository of the Rents and Profits of the Forfeited Estates, for the joint Benefit both of the Creditors and Publick?

How far it ought to be in the Power of the King to grant Relief to the Wives and Children of the Forfeited Persons, and even to such of the Forfeiting Persons themselves as HIS MAJESTY shall graciously think fit to pardon, is a thing I shall not much meddle with. A true and well grounded Principle of Mercy is very commendable in every one ; though it is plain in this case, that the too forward Interposition of some People in favour of the Rebels, who really did act from that good Principle ; and of others, who us'd it as a Cover to deeper Designs, hath tended to render the Rebels more confident of their own Strength, and consequently more obstinate Enemies to the Government ; insomuch that that degree of Tendernefs, which if it had been apply'd in due season, and deriv'd from the proper Fountain, would have been commendable and just, is really become unsafe, and dangerous to the future Peace and Quiet of the Kingdom. I believe few are of opinion, that there should be any general Rule taken for pardoning all without Exception, and restoring them to their whole Estates. The Hardships some People, who oppos'd the late Rebellion, have met with (if there follow a general and easy Restoration of all the Rebels) will be no small Discouragement to HIS MAJESTY'S good Subjects, to venture or risk any thing in opposition to such an unnatural Rebellion, if Men should be so wicked as to attempt the like again.

HIS MAJESTY'S Clemency is not to be doubted of to those, who will submit and live as good Subjects : And His generous Conduct, with relation to the Fortunes, as well as to the Lives of His Enemies, ought to procure HIS MAJESTY the Love, Esteem and Affection of every one : Therefore if HIS MAJESTY shall think any of the Forfeiting Persons deserving of His Favour, on whom He is pleas'd

pleas'd to bestow His Pardon, there may be proper Ways fallen on to procure them such Parts of their Estates as shall be thought reasonable. But surely it will not be thought proper to shew this Favour, but to such only as will own it to the KING's Clemency; and of whose good Behaviour the Government may have some Assurance for the future : And Care may likewise be taken, that what is bestow'd on them be given only for their Subsistence, or during pleasure, which may be afterwards encreas'd, according as they shall be found by their future Behaviour to deserve it ; and that in such a manner, as to put it out of their power to have so great an Influence in the Country as formerly, lest some of them, even to whom this Mercy and Favour may be shewn, should be tempted, if another Opportunity should offer, to rebel again. The surest way to deal with many of the Forfeiting Persons, (even those to whom the Government may allow reasonable Favour and Subsistence) is to keep it out of their Power, as far as can be, to fall into the like Unhappiness again ; so that HIS MAJESTY's Clemency to such of them as are so wise as to deserve it, may be consistent with the Peace of the Government.

It is to be wish'd, that those to whom HIS MAJESTY shall be thus graciously merciful, and their Friends, would shew a just Sense of the Favours done them, and out of a Regard to the Quiet and Happiness of their Country, and of their Posterity, may be engag'd to live peaceably for the future, under HIS MAJESTY's wise and easy Government. It might with ease be made appear, that the Misfortunes and Hardships complain'd of by many in *Scotland*, have been occasion'd by nothing so much as by a discontented *Jacobite* Spirit, which has prevail'd so far ever since the Revolution in this Country.

The Opposition made in *Scotland* to the Settling of the Protestant Succession before the Union, was owing to that turbulent Humour : And the Discontents which continue, have been fomented by the same Party, and other designing People, to the great Hindrance of the Flourishing of this Country.

The best Service those People can now do to their Country, as a Reparation for the Injuries they have formerly done it, is to live in Peace for the future, and heartily to mind their Country's Good.

It may be very reasonable, that the Government should take care of the Education of some of the Forfeiting Persons Children ; who, being little oblig'd to the Folly of their Parents, may be made sensible how much they owe to the Bounty of the Government, and may prove good Subjects, on whom consequently part of those Estates might in time be bestow'd. But if Provision should be made by the Publick for them, without due Care being taken of their Education, 'tis to be fear'd they will be still bred up in the Nurseries of Rebellion.

As to the Proposal made in the Memorial above-mention'd, that the Commissioners may have Power to compound with such of the Forfeiting Persons, (or their Heirs) to whom HIS MAJESTY shall extend His Pardon for their Estates, upon paying a Fine, such as a Sum equal to three Years Rent, or Income of their Estates, or the like, after Deduction of the Annual Burdens and Interest due to Creditors. This Proposal, if what is said of the low, and incumbered Condition of some of those Estates, be true, will be shewing no great Favour to some of these Families : For in that case, after paying of Fines according to this Proposal, those Persons must of Necessity become Bankrupt ; and thereby this Harvest of Sequestration would take place in the ordinary  
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Course of Law, and but an inconsiderable Sum would arise hereby to the Publick out of such Estates. This would be proposing a pretty cheap Price for Rebellion to others of those Rebels, and even to establish a Precedent, in some measure, of the Price for which Men may rebel in time to come. But this Proposal says nothing as to the interim Management of the Rents of the Estates of such Rebels as are not pardon'd: And if there can be any considerable Sum rais'd for the Use of the Publick out of those Forfeited Estates, this is still the stronger Argument against the Sequestrations. And even in this Case, there would be as much Trouble and Difficulty in fixing the Value of the Free Rent, and in distinguishing pretended and false Incumbrances from such as are just, as there will now be, in determining of Claims.

I shall not dip into the Question, Whether the giving of the Forfeited Estates to the Use of the Publick, was a good or a bad Measure? Some complain of it, because thereby HIS MAJESTY is divested of the Power of disposing of any Share of those Estates, to such of the Forfeiting Persons as He shall find to deserve it; and therefore, these are for reversing this Grant in favour of the Publick, and are for putting it again in HIS MAJESTY'S Power to bestow those Estates as He shall think good. But this will not be a Remedy to the present Inconveniencies Creditors lie under by the Sequestrations; for, the same Reasons which occasion the present Sequestrations would remain, in case HIS MAJESTY should give Grants of those Estates; there still would be as good Reason for Sequestering of them in that Case, as there is now. Neither does this say any thing as to the Management of such Estates as the KING does not immediately dispose of; Nor can it

be thought, that the *Exchequer* can any wise look after them, till once the Claims on such Estates be stated and determin'd.

But I am afraid I have encroach'd too much on your L--dship's Patience, and shall now only beg leave to say, That Justice to Creditors, the Quiet of the Country in *Scotland*, and in some measure, the Safety of the Government in *Britain*, are so deeply concern'd in this; and it is of so great consequence, that these things may not remain in Disorder, but be effectually settled, that I hope your L--dship will pardon me for having offer'd my Thoughts upon them to your Consideration.

I am, &c.

*Edinburgh* 21st  
December 1717.

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An

AN ABSTRACT of the BILL which  
 pass'd in the House of Commons  
 Last Session of Parliament, with  
 relation to the Forfeited Estates.

The BILL recites,

**T**HAT by An Act Intituled an Act for appointing Commissioners to enquire, &c. The Forfeited Estates therein mentioned are vested in HIS MAJESTY.

That all Grants thereof to be made by HIS MAJESTY are declared to be void. Whereby, HIS MAJESTY is disabled from making any Charitable Grant for the Wives of Forfeiting Persons, out of the said Estates.

That the Claims of the Lawful Creditors of the said Estates are by the said Act saved, but no Provision made for determining their Claims, nor for payment of what is due to them.

That certain Commissioners therein mention'd, are appointed to enquire of the said Estates, and make Report to the King and both Houses of Parliament.

That the said Commissioners have made Reports, by which it appears, that the Directions of the said Act for paying in the Rents and Profits of the said Estates to the Exchequer of *England*, and *Scotland* respectively, have been in a great Measure ineffectual.

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The BILL therefore Enacts,

That it shall be Lawful for HIS MAJESTY to Grant Provisions to the Wives of Forfeiting Persons, not exceeding what they would have Right to by the Deaths of their Husbands, and that such Grants shall be good in Law, but not to prejudice Lawful Creditors.

The BILL empowers and requires the said Commissioners to Summon to appear before them all Claimants on the said Estates, to hear and see their respective Claims decided and determined upon, and upon the Appearance of such Claimant, or Attorney for such Claimant, or after Notice that such Claimant hath been duly summoned to appear, to determine in a Summary Way upon such Claims.

And for the Execution of the said and other Powers, the said Commissioners are declared to be a Court of Record, and required to enter their Judgments, and Determinations of Record.

That their Judgments and Determinations shall be final and binding upon all Parties concerned, except the Party Claimant Appeal from such Judgment and Determination of the said Commissioners, to enter an Appeal against such Judgment before the Exchequer in *England*, or Court of Sessions in *Scotland*, within twenty Days after such Judgment is given, and to present Exceptions thereto, and the said Court to hear and determine upon the said Exceptions.

The BILL further Enacts, That if any Person fraudulently Claim under any forged Deed, or satisfied Security, he shall Forfeit double the Value claimed for such Offence; and if any Person give false Evidence, he shall be liable to the Penalty of a Person in case of Wilful and Corrupt Perjury. That the said Commissioners shall, and they  
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are empowered and required to Issue out Certificates to Claimants for their respective Sums, which Certificates shall bear the Legal Interest to be paid at the respective Exchequers, out of the Rents and Profits arising from the respective Estates on which the Claims are made. And provides, that such Certificates shall not contain any Sums on Account of Penalties, for want of paying the said Sums at the Days the same became due and payable.

And for the more effectual Levying and granting Discharges of the Rents of the said Estates, the BILL Enacts, That it shall be lawful for the said Commissioners to appoint Stewards or Factors on the said Estates, with the Power Stewards and Factors usually have, by the Laws of the respective Countries of *England* and *Scotland*, whose Salary shall not exceed the twentieth Part of the yearly Value of the Forfeited Estate.

The BILL Provides, That every such Steward or Factor shall take the Oaths by the said Act appointed to be taken by all Officers acting under the said Commissioners, and give Bond for a Sum not less than two Years Rent of the Estates, over which they shall be appointed Stewards or Factors.

The BILL Provides, That such Stewards or Factors shall be discharged and acquitted upon their paying into the Exchequer the Rents by them received, and accounting as in the BILL directed.

The Bill further Enacts, That all Sequestrations, Arrestments, and other Judgments of any Court of Judicature, made and passed since the 24th Day of *June*, 1715. or which shall hereafter be made, otherwise than according to the Directions of this

present Act, shall be void. And the BILL Empowers the said Commissioners, to call all and every Person who hath possess'd any Part of the said Estates, since the said 24th Day of *June*, 1715. to Account for the same, and to certify the Sums payable by them to the Exchequer.

The BILL recites, That the Forfeited Estates are vested in HIS MAJESTY, from and after the 24th of *June*, 1715. And Enacts, that all Grants and Demises, &c. made by the Forfeiting Persons *bona fide*, and for a full and adequate Price, and Money paid at any Time, before the Time of their Treasons committed, shall be as good as if the same had been made before the said 24th of *June*, 1715. And Provides, that the said full and adequate Price and Money received, shall be proved by other lawful Proofs and Evidence, besides the Deeds and Writings upon which the Claim is made.

The BILL further Enacts,

That the Time for Discovery of concealed Debts, and other forfeited Personal Estates, by any other Persons than the Debtors, or who have been in Possession of such Personal Estates; as also for the Discovery of concealed Lands forfeited, and of Lands, Tenements, Goods, and Chattels, settled or given to Popish or Superstitious Uses, otherwise than by the Trustees for the same, shall be enlarged to the first Day of *February*, 1717. and that such Discoverer shall be entitled to the like Rewards, as by the former Act.

The BILL recites several Inconveniencies to arise, for that by the Tenour of the former Act, the Powers therein can't be put in Execution, unless four or more of the Commissioners therein  
named

named join therein: And therefore Enacts, that the said Commissioners in the said Act named, shall be empower'd to put in Execution all the Powers in the said first mentioned Act.

A Clause for vesting in HIS MAJESTY all the Real and Personal Estates of attainted Persons in *Scotland*, pursuant to a late Act for encouraging Superiors, Vassals, Landlords, and Tenants, in their Loyalty to HIS MAJESTY, it having been a Doubt, whether or no those Forfeitures were to be applied to the Use of the Publick.

A Clause for saving to *Simon Lord Lovat*, the Benefit of HIS MAJESTY'S Grant of 500 *l. per Annum*, out of the forfeited Estate of *Alexander Mkenzie*.

A Clause for empowering the Commissioners to determine all Claims in a Summary Way, and to put the Claimants into Possession, pursuant to their Decrees. And that all Persons claiming any Rent Charges out of the Forfeiting Person's Estate, shall have the same Power to recover the same, as they had before they became vested in the Crown, provided such Decrees be subject to such Appeals as aforesaid.

Another Proviso, That if any Person having any Grant from HIS MAJESTY of any Forfeitures, who have or shall make any Claim before the Commissioners, which they shall think just, then the Money received by Vertue of such Grant, shall be deemed as so much Money received by such Claimant in discharge of his Demand.

A Clause that the Creditors shall in the first place be paid their Debts (their Claims being allowed) out of the Forfeited Estates sold, before any Payment shall be made to the Commissioners.

And

And that all Crown Lands, whereof any attainted Person was possessed on the 24th of *June*, 1715. shall remain in the Possession of the Crown.

A Proviso, That nothing in the Act shall prejudice or make void any of the Provisions made by HIS MAJESTY for the Wives or Children of the late Duke of *Ormond*, the late Earl of *Marr*, or late Lord Viscount *Bolingbroke* respectively.









