



SPECIAL
COLLECTIONS

DOUGLAS
LIBRARY



QUEEN'S UNIVERSITY
AT KINGSTON

KINGSTON ONTARIO CANADA

;

o

Li

qu

AT

kin

*Justice done to the Late
Ministry :*

O R, T H E

C H A R G E

O F

Their Designing to make the
Pretender King of *Great Britain*,
prov'd from their Conduct to be
Groundless.

A N D

The Reasons for a *Parliamentary Inquiry*
Consider'd.

With some *Thoughts* about A T T A I N D E R S.

The Second Edition.

L O N D O N,

Printed for J. BAKER at the Black-Boy in
Paternoster-Row. M. DCC. XV.

(Price 6 d.)

o
Li
qu
AT
kin

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

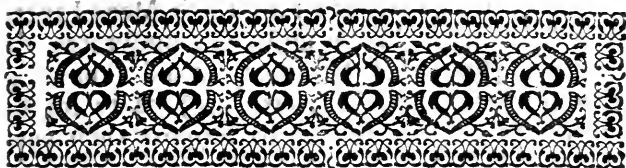
1885

1886

1887

1888

1889



Justice done to the Late Ministry, &c.



THE Whigs, no doubt, upon reading the Title will cry, This must be the Work of the *Staff* or *Mitre*, or some of the Late Ministry; for none else would have the Impudence, at this time of day, to argue from their Conduct, that they were not in the Pretender's Interest. But if they will but a while suspend their Censures, I do not doubt but they will easily perceive, that what I assert is no indefensible Paradox.

Shou'd I argue from any thing but Matters of Fact, and cry, 'Tis not to be presum'd that Men of their steady Principles wou'd sacrifice their Honour, their Conscience, their Religion, their frequently-repeated Oaths, and their Country, to any Private Interest whatever; I shou'd be laugh'd at by both sides, and told, that if any Case could possibly happen where Interest wou'd

not govern them, it wou'd be, when it requir'd the doing a downright honest Thing.

The Whigs say, it was to be presum'd from the whole Conduct of these Mens Lives, that they, being from mean Circumstances advanc'd to the highest Honours, wou'd (knowing how slippery Court-Favours are) be in mighty haste to get wherewith to support their new Titles and Dignities; and wou'd not scruple even to sell their Country, cou'd they meet with a Chapman who wou'd come up to their Price, and so do their business all at once. But this, supposing it true, will be far from proving them to be in the Pretender's Interest; because an outlaw'd Person, who lives on Charity himself, has scarce wherewith to bribe so much as one of their Footmen.

It will, no doubt, be answer'd, That tho the Pretender himself had not wherewith to bribe them, yet his great Protector was able to come up to their Demands.

But do we so little know that Prince, as to imagine he will bestow his Mony, except to promote his own Designs? And do we want to be convinc'd, that the chief Care and Business of his whole Life has been to make himself Monarch of this Western World, and consequently wou'd not employ his Bribes to make any, but himself, King of *Great Britain*? And considering the great Opposition he has met with from its Arms, he cou'd not think himself secure of the Universal Monarchy he has been so long aiming at, till he had subdu'd it, and annex'd it as a Province to his own Empire: and consequently cou'd have no other View in supporting the Pretender, but to use him and his Title as a Handle to kindle a Civil War in *Great Britain*,

so that he might with the more ease subdue both the contending Parties.

Thus he pretended at one time to join with us against the *Dutch*, and at another with the *Dutch* against the *English*; he did it with no other Design but to look on, and artfully encourage these two Protestant Nations to destroy one anothers's Naval Force.

And if he had here destroy'd the Whigs, he might, as soon as he pleas'd, have clapp'd the Pretender, as one incapable to govern, into a Monastery: which we have no reason to think he wou'd any more scruple, than he did the banishing the Royal Brethren, or owning the Title of the present and the late King, and Queen *Anne*. The Protestant *Jacobites* (if there were any such) wou'd then be dipp'd too far to think of a Retreat; and if they did, the *British* and *Irish* Papists, who upon this occasion wou'd be all in Arms, and who are entirely at his devotion, wou'd all join to cut them into pieces.

All thinking Men saw, that the Conduct of the late M—— was in every point agreeable to the Designs of *France*; and that things, by their extraordinary Management, were brought to that short Issue, that we must either have the House of *Hannover* or the House of *Bourbon*; be Protestants and Freemen under the former, or Slaves and Papists under the latter.

The better to perceive what the late M—— did for *France*, let us first see what the former did against it, and what Difficulties they extricated us out of.

In the Beginning of the last War, things had a most dismal Prospect: the House of *Bourbon* possess'd of all the *Spanish* Dominions; all *Italy* in effect in the power of *France*; the strong
Towns

Towns in *Flanders* deliver'd up to the *French*; and the *Dutch*, who garison'd them, made Prisoners of War; King *William* in a languishing Condition, and in the hands of a Tory Ministry and Parliament, which oblig'd him to own the new King of *Spain*; the Emperor in War with his own Subjects; the Empire divided, and two of its Electors declaring for *France*, and one of them ready to seize with a most powerful Army the Emperor's Hereditary Countries; and the then Victorious King of *Sweden* favouring the Designs of *France*.

Tho Matters were then in this deplorable State, yet by the able Management of the former Ministry, and the good Understanding they had with their Allies, the Scene was quickly chang'd. *Bavaria* and *Cologne* were stripp'd of all their Dominions; *France* beaten out of *Italy*; a great part of *Spain* declar'd for the House of *Austria*; and the *French* driven from the Gates of *Nimeguen* to the old Frontiers of *France*: and tho the Faction that was here forming in favour of *France*, did what they cou'd to stop our great Successes, and hinder'd us from entring *France* the Year *Bouchain* was taken; yet the next Year, until the *English* Army separated from the Allies, the Affairs of *France* were in a most miserable Condition, their Treasures exhausted, their Credit lost, the Flower of their Troops kill'd, and the rest by their frequent Defeats intirely dispirited; and encamping in a barren Country, were ready to disband for want of Necessaries: the Allies Masters of all the Rivers, and in a very rich Soil, and with the most numerous and best-appointed Troops they ever brought into the Field, penetrating into the open Country of *France*, so oppress'd
then

then with Famine, that they must have join'd the Allies, to keep themselves from starving. If the Confederates, without coming to a Cessation of Arms, had still push'd on their Conquests, the *French* King must have comply'd with whatever Terms they demanded; and to preserve *France*, wou'd not only have given up *Spain*, but whatever else, either here or in *America*, we shou'd have thought fit to have insisted on; and immediately have put what Cautionary Towns we wou'd into our hands.

If during the War, the Returns we made by Trade amounted (as is demonstrated by the *Letter to a Member of the October-Club*) to three Millions and a half, what vast Additions of Wealth wou'd a Trade to *Spain* and the *Spanish West-Indies*, especially if exclusive of *France*, have got us? And what Advantages must we have gain'd, if we had oblig'd the *French* to quit only their Northern *American* Plantations, and engross'd the whole *Newfoundland* Trade to our selves?

Not aiming at Conquest (our Trade giving us all the Wealth we cou'd desire) and being in the highest Reputation with our Allies, especially for having so inviolably maintain'd our Faith and Honour, and so punctually observ'd all our Treaties; we shou'd not only have kept the Ballance of Power in our own hands, but foreign Nations wou'd have pay'd us a willing Homage, and made us the Arbiters of all their Differences. And as we shou'd have been the most happy and flourishing Nation in the Universe, so we might (*France* being reduc'd to a Condition never more to disturb us) have transmitted all these Advantages to our latest Posterity.

But alas! how is that Glorious Prospect chang'd, and we become the Reverse of all this! The Late M—— were no sooner settled in their Posts, but they persuaded their Sovereign most humbly and most clandestinely, contrary to her solemn Engagements, to beg a separate Peace, and upon such base Terms, as none but a conquer'd Nation wou'd have submitted to. Had they agreed to pay the *French* King a Tribute of three Millions yearly, it had not been so advantageous to him, and fatal to us, as the Peace and Treaty of Commerce, for which they labour'd with their utmost force to have obtain'd a Parliamentary Sanction. And had it pass'd into an Act, we shou'd have had but little Trade except with *France*, which a few Hands cou'd have manag'd; and that Trade too, since it wou'd quickly have drain'd us of our ready Mony, cou'd not have lasted long. And if once our Trade was gone, our Seamen of course wou'd have left us: and an Island, if not Master at Sea, is by its Situation in a worse Condition to defend it self, than a Place on the Continent.

The chief Design of this Peace seems to have been no other, than to give *France* the Trade, and consequently the Riches and Naval Force of this part of the World. What other Reason can be assign'd, why our *Newfoundland* Trade, which was the chief Nursery of our Seamen, was given up to the *French*, by their being, contrary to an Act of Parliament, put in possession of *Cape Briton*? by which too, all our other Northern Plantations are in the utmost danger.

What other Reason can be assign'd, why, tho' *Portugal* was the first of the Allies that came into our Cessation of Arms, yet instead of taking care

care of it, we left it to the mercy of the House of *Bourbon*; and had not the Emperor and the *Catalans* unexpectedly held out, both *Portugal* and *Brazil* had no doubt before this time been in the power of *France* and *Spain*; by which they wou'd have been Masters of all the Gold and Silver that comes into *Europe*. And tho' that Scheme has hitherto not been executed, yet the *French* have gain'd their Point, by having the liberty to send as many Ships as they please to *Brazil*, which must in a little time deprive us of that most beneficial Trade.

By the giving up *Spain* to the House of *Bourbon*, we not only lose our *Spanish* Trade (the Goods of our Merchants being lock'd up, and their Persons insulted) but the private Trade from *Jamaica*, which alone brought us in about 300000 Pounds yearly, is intirely cut off: and the *French*, by engrossing the *Spanish* Wool, the *Cochineel* for dying Scarlets, &c. will out us of our *Turky* Trade.

That they might with the more ease enslave us, we allow'd them to build an Harbour infinitely more commodious than old *Dunkirk*, deep enough to hold the First-Rate Men of War, and wide enough to contain more than all the Royal Navy of *France*.

To weaken and disable the Nation, besides running into great Debts, they not only rais'd more Mony during these Pacifick Years, than the former Ministry for the same number of Years did during the War; but did every thing possible to reduce *Great Britain* to the lowest Condition imaginable. Was it not for this reason that our Wool was underhand encourag'd to be carry'd to *France*? And cou'd it be for any other reason, that our Ships, our Seamen,

and Soldiers were lost in the *Canada Expedition*, when the *French Pilots* who were taken on board ran the Fleet directly on the contrary Shore; where it was a wonderful Providence, that a great many more had not perish'd? This is no uncharitable Supposition, considering how the Soldiers, who had done so much against *France*, were used; especially those disbanded abroad in *Spain* and *Portugal*.

Sweden, which cou'd not have subsisted without a Piratical War, yet (being an Ally to *France*, and because it serv'd to destroy our Trade) was quietly suffer'd to disturb our Navigation, and to take our Ships in the *Baltick*, without so much as asking why they did so; but instead of that, we did every thing we cou'd in favour of them.

But this was not all these Men did for *France*, and against their own Country. Every one knows how they were modelling the Civil Posts, the Fleet, the Army, the Militia, in favour of *France*; and under colour of the Pretender, both in *Ireland* and *Great Britain*, Levies of Men were a long time made, by Connivance, if not Encouragement. And in *Ireland* things were brought to that pass, had it not been for the Moderation (which they call'd Cowardice) of the Lieutenant, the Protestants were in the utmost danger of being massacred.

In *Scotland* the Popish High-Land Clans, the fast Friends of *France*, were arm'd, and kept in Pay; and the *Scots* who cou'd not be brought to declare for the Pretender, were openly insulted, and threaten'd to be murder'd. Nor was it strange the Protestants shou'd be so treated there, when here the *Examiner*, who wou'd be thought
to

to write by their Order, advis'd the Whigs to *prepare to die with Decency.*

In a word, to reckon up all things of this nature, wou'd be to write a History of their Four Years Management. There seem'd nothing wanting to accomplish their Designs, but putting *Portsmouth* and the Isle of *Wight*, as Places of Arms, in the hands of *France*: and I refer my self to those who understand the Condition of those Places, whether every thing was not removing out of the way, which cou'd make that Design abortive.

And their whole Management, with relation to the Allies, tended to no other End, than to give *France* all the advantageous Terms they cou'd; and so to set the Allies one against another, that they might be no hindrance to *France* from enslaving us.

So impatient were they of giving up all immediately to *France*, that tho they had got from the Parliament almost seven Millions for carrying on a War, and at *London* and at the *Hague* had given repeated Promises that they wou'd act in concert with the Allies, and with Vigour; who likewise after they had taken the Field (which they were ready to do six Weeks before the *French*) had fresh Assurances from the General to the same purpose, so that the Army march'd to attack the *French* as to a certain Victory: yet when they were got in sight of 'em, and it was too late for either Army to retreat, then our Pacifick General produc'd his fatal Orders for a *Cessation of Arms*, and to withdraw all the Troops in the Pay of *Great Britain*; tho at that time there was no one Article concluded at *Utrecht*, either for our Allies or our selves. And had these Orders

been obey'd, there can be no doubt that *France* wou'd not have miss'd so favourable an Opportunity of cutting the rest of the Allies in pieces; as they easily might, considering what a Consternation such an unexpected Separation must have produc'd: And if after that, they had serv'd our *British* Forces in the same manner, we shou'd have been told by their Creatures, That they had only destroy'd a Whiggish Antimonarchical Army, Enemies to the Church. And to make sure work, there were the same Orders sent to the Commanding Officer in *Spain*.

This indeed was a Plot worthy these *Machiavellians*, and which alone deserv'd all the Rewards *France* cou'd give them: but this not succeeding (tho it had otherwise most dismal effects) the General did the next best thing he cou'd for *France*; for tho he engag'd to take another Rout, yet he march'd directly into *Ghent* and *Bruges*: And we kept 'em to the last, tho *Ghent*, by Treaty, was to have been one of the Barrier-Towns for the *Dutch*. By which means the M—— got it in their power to hinder the *Dutch* from supplying their Army and Frontier Garisons. And they not only threaten'd to deliver these two Towns to *France*, but to come into a War against them, if they wou'd not make peace upon such Terms, as they and *France* shou'd think fit to prescribe.

It has been an allow'd Truth, That the Safety of *England* depends on the Preservation of *Flanders*: and even the Pensionary Parliament under *Charles II.* when the Power of the *French* King was not near so great, were so alarm'd at every Advantage he gain'd in *Flanders*, that they made

* See Bar-
rier-Treaty
indicated. * Remonstrances, and Address'es upon Address'es to their King to enter into a War, in conjunction

junction with the other Powers of *Europe*, in order to force the *French* King to part with the *Flemish* Towns he had taken. Yet when we had made a Treaty for securing such a Barrier to the States, as wou'd sufficiently have cover'd 'em against *France*, whilst they acted in support of the Protestant Succession, these Men forc'd the *Dutch* to come into a new Treaty, differing from the old one in nothing material, except in giving back the greatest part of it to *France*, and making ineffectual the Security provided for the *Hannover* Succession. And they got that Able *Minister* who had made it (who wou'd have had the Thanks of any other Parliament, for so great a Piece of Service to his Country) declar'd an Enemy to the Queen and Kingdom: And if *They* were *Friends*, *He* no doubt was an *Enemy*, since *He* is the very Reverse of them; which is not the least Ingredient of his great Character.

And it was the same Management, which hindred the Confederates from being invited to be Guarantees to the Protestant Succession, tho the Queen had promis'd it, in answer to the Addresses of both Houses. Instead of that, these Men were forming an Alliance with *France*, *Spain*, *Sicily*, the Popish Cantons, &c. which cou'd be no more in favour of the Protestant Religion, than of the Protestant Succession.

If, after they had broke the Confederacy, the Emperor, left to shift for himself, and no ways a Match for *France*, cou'd obtain Terms much better than what they thought fit to carve for him, whilst they acted at the Head of the Confederacy seemingly entire; this alone is a glaring Proof whose Interest they were advancing.

But

But when we consider how they treated the Emperor, in the Person of his Ministers, particularly Count *Gallas*; how they allotted his Kingdom of *Sardinia* (actually in his possession) to one, and *Sicily* to another; it had been but a very natural Resentment of such Usage, if he had turn'd upon us, and enter'd into any Measures with *France* for the Destruction of *Great Britain*.

To give the Island of *Sardinia* to the Elector of *Bavaria*, whose Dominions are a Key into the Heart of *Germany*; and that of *Sicily* to the Duke of *Savoy*, whose Dominions are the same to *Italy*, both destitute of Naval Force; was tying 'em down eternally to the Interest of *France*.

The chief Aim of the late M——, especially after the Emperor and Empire wou'd not be contented with the Barrier we offer'd 'em, was to force the *Dutch* into such a separate Peace, as must necessarily imbroil them with the Emperor; and give *France* a handle, when she made Peace with the Empire, to agree that Towns and Places shou'd be otherwise dispos'd of, than they were by the Treaty at *Utrecht*, in order to involve the Confederates in a new War. For this end they not only employ'd Threats, but if the * Manager himself is to be believ'd, the better part of Three Hundred Thousand Pounds.

In a word, their whole Conduct shews, that they had no other regard to their Country, than to salve Appearances, till *France*, in pursuance of their Scheme, became Master of it. And their great Boastings of the Demolition of *Dunkirk*; the gaining Millions by the *Affiento* and *South-Sea Trade*; and the Renunciation which was to
execute

execute it self, &c. were only to delude the People in the mean time.

Tho they had brought things to that pass, that the Pretender, had he got into the Throne, cou'd not have kept it, without making such Alliances as were not to be had while their Heads were on their shoulders; yet the *Jacobites* were so weak, as to think they had no other View but his Interest.

They must be sensible it was impossible for them, after they had done so many things against their Country which at last wou'd all break out, to escape Punishment as long as it continu'd free, whoever was King: and therefore it was their business to make it a Province of *France*.

And they, no doubt, flatter'd themselves that they had given such Earnest of their being so attach'd to *France*, that they shou'd be intrusted with the Government of this Island; and that then there wou'd be nothing to hinder them from gratifying their implacable Revenge, unmeasurable Ambition, and insatiable Lusts.

I think I may now say, without adding more, That I have done Justice to the Late M——; and shewn, notwithstanding all the Clamour that is rais'd against them upon the account of the Pretender, that they were no more for making him, than the Elector of *Hannover* (whom they treated with the utmost Contempt) King of *Great Britain*: but that the necessary Consequence of this their traiterous Conduct (had not a timely stop been put to it by the hand of Providence) must have been an irretrievable Subjection of us and all *Europe* to the Pride of *France*.

NOW

NOW that we may the better see what these Men deserve from the Nation, we ought to consider what had been our *Condition*, had their cursed Designs taken place. And certainly we cou'd not have expected better Usage from the *French King* than his Protestant Subjects had, who kept his tottering Crown on his Head. He, no doubt, wou'd have made sure work, and disabled the Nobility and Gentry from ever rebelling, by either putting them to death, as *Lewis* the *French King's* Son design'd to have done to the Nobles that assisted him against King *John*; or else by securing their Persons in Prisons, Mines, or Gallies. There can be no doubt but that he wou'd, without regard to High or Low Church, seize on all their Estates, and put them into such Popish hands as he cou'd confide in, and who wou'd be glad to hold them on any Terms, even during Pleasure. The useful Hands he wou'd transport to *France*, there to manufacture our Wool, and other *English* Commodities; and after having burnt down the Metropolis, as too big to be bridled, he wou'd have forc'd the miserable Inhabitants, at their own Expences, to build Forts and Citadels, for the better curbing of Hereticks and Rebels. This wou'd have been our Condition, these the Advantages we shou'd have been blest'd with.

If National Crimes have National Judgments attending them, can we hope to escape, but by shewing our utmost Detestation of these almost numberless Acts of Perfidiousness, which were committed by the Late M—— in the name of the Nation? And can this be done, if they are permitted to descend in Peace to

to the Grave, and transmit to their Posterity the Rewards of their Treachery?

The *Gibeonites*, by pretending to be what they were not, obtain'd a Covenant for Protection from the *Jews*: and tho King *Saul* broke this Covenant, as Holy Writ says, out of Zeal to the Children of *Israel* and *Judah*; yet the Lord wou'd not suffer this single piece of Treachery to go unpunish'd, but even after *Saul's* Death (which was a very miserable one) in the Reign of holy *David*, he brought a Famine on the Land for three Years together: nor wou'd he be intreated, till seven of King *Saul's* Descendants were deliver'd up to the *Gibeonites*, and by them hang'd: so great an Abhorrence has the God of Truth for all Perfidiousness! Nor cou'd a Zeal for *Judah* and *Israel*, the then only true Church of God, in the least atone for this Breach of Faith.

But alas! what has been done among us is of a more crying Nature: Our Engagements were not hastily made, nor with a Handful of Men that had been design'd to Destruction; but it was to the most considerable Nations of *Europe* that we had pledg'd our Faith, and that upon the maturest Deliberation, for our own as well as their Safety. And when we most perfidiously broke these Contracts, it was not for the sake of *Judah* and *Israel*, but to gratify the uncircumcis'd *Philistines*, that they might be enabled to extirpate the true Church. Good God! what Vengeance may not this Nation justly fear! what Judgments has it not reason to apprehend! Punishing the Authors, is surely the least Atonement we can make; and how far that may avail us, God only knows.

But had we nothing more to bewail than the Loss of our Reputation (ever had in the highest Regard by all brave Nations) yet surely *that*, lavish'd away as it has been, ought to raise the Indignation of every true *Briton*. We are now become the *By-word* of Nations; hated by some, and laugh'd at by others: and this after we had attain'd to a Degree of Glory scarce to be match'd in History. Can there be any found among us, who own themselves *Englishmen*, and not join in calling for Vengeance on those who have plung'd us into this Sink of Infamy?

The Nation, in the time of *Richard II.* thought they cou'd no otherwise retrieve their Honour, which had extremely suffer'd by that King's acting a very perfidious Part (tho nothing to what has been practis'd of late) but by making this an Article of his Deposition; " That he was so
 " variable and dissembling in his Words and
 " Writings, and so contrary to himself; espe-
 " cially in writing to the Pope, Kings, and
 " other Lords, out of the Kingdom, as well as
 " within it, and also to his other Subjects; that
 " no Man living knowing what he was, cou'd
 " confide in him: yea, he was reputed so un-
 " faithful and inconstant, that he not only be-
 " came a Scandal to his own Person, but also
 " to the whole Kingdom, and to all Foreigners,
 " when once they came to know him."

If the best part of *Europe*, confederated against *France*, were hardly a Match for her; if such a Confederacy was barely enough for our Preservation, when the share *France* had in Trade (the only Source of Wealth) was but inconsiderable: have we not much greater need of Alliances, since by the late Peace she has got possession of it in all its most valuable Branches?

ches? But can we wonder, if those who have been once betray'd, ask us what Security we can give, if they join their Arms with ours, that we shall not desert 'em again in the very Article of Action; and if we draw 'em into a War, that we shall not leave them, as we did the *Catalans*, to the Mercy of their Enemies? At least, let 'em not say this was done, and that the Authors escap'd unpunish'd. Till then, I fear, it will be no easy Matter to convince 'em that our Affairs are now in the hands of those that abhor such Practices.

If at the Revolution, those Traitors, who for so many Years together had been advancing the Power of *France*, and endeavouring to bring Popery and Slavery on the Nation, had met with their deserv'd Fate; these Men wou'd not, with such eager haste, have strove to give up all to *France*. And if they likewise escape, what other Security can we have for our All, but either that *France* will not think it worth his while to buy us, or that in the frequent Turns that happen, we shall always be sure of a Ministry that can refuse Millions?

Having mention'd some of those many Reasons, which seem to prove a Parliamentary Enquiry into the Conduct of the late M—— to be necessary; 'tis but just to consider what is urg'd against this Enquiry. And here 'tis said, That if it be the undoubted Prerogative of the Crown to make Peace and War, then to call the late M—— to account for acting in pursuance of the Queen's Commands, is striking at the Prerogative; and if the Queen her self cou'd do no wrong, how cou'd they do wrong, who only acted in her Name and by her Authority, in a thing to which her Power undoubtedly extended?

But surely this is a new Doctrine with the Tories themselves ; since they were unanimously of the contrary Opinion in King *William's* Reign, when the House of Commons were for impeaching those that were concern'd in making the Partition-Treaty ; and none more zealous in it, than they who wou'd now skreen themselves under the Prerogative : nay, the Party then wou'd not allow that the Prince had a Right to make either Peace or War without Consent of Parliament.

The Prerogative is an extensive Power that our Princes have of doing Good, but 'tis Tyranny, when wrested to serve any Purpose detrimental to the Publick ; and Tyranny is certainly a great Wrong. And if it be a Maxim, That the Prince can do no Wrong, it is because the Prince does nothing by himself, but by his Ministers ; and that consequently they are accountable for all the Wrong that is done by the Misapplication of the Prerogative.

Will any say, That because the Prince has a Right to abate of the Rigour of the Law, and, where Mercy is seasonable, may unquestionably pardon a Malefactor ; that therefore he may pardon all Malefactors, and so put a total stop to Justice ? or that the Ministers who advise the doing this, ought to be skreen'd from Justice on account of the Prerogative, and because the King can do no Wrong ?

The King, no doubt, is the Fountain of Honour, and may confer the Dignity of Peerage as the Reward of Merit ; will any therefore say he can make a whole Troop of Lords in the midst of a Debate, to turn a Question ? This, sure, is Prerogative unknown to the *English* Constitution, and was never before practis'd

tis'd in the most arbitrary Reigns : it was not because the Ministers cou'd not think of so happy an Expedient in time of need, but they knew it might cost them their Heads ; because the Lords wou'd never suffer themselves, by such a Trick as this, to be put intirely into the hands of the Court ; nor wou'd the Commons bear their impeaching Power to be thus turn'd into a Jest. And this Abuse of the Prerogative makes that Law wholly insignificant, which now renders Persons condemn'd by Parliament incapable of Pardon ; since no Ministers wou'd be condemn'd, if at any time they can make new Lords by Dozens.

If it was thought reasonable to degrade *Nevil Duke of Bedford* by Act of Parliament, in the 17th Year of *Edward IV.* lest his Poverty shou'd influence him, and so the Honour of the House suffer ; will not the Honour of the House much more suffer, if certain Lords, made all at a clap, and for what vile Purposes every one knows, be permitted to enjoy their Seats in Parliament ?

Were this Precedent to be allow'd, it wou'd be an easy thing for the Ministers to get a Sentence in the Supreme Court of Judicature, for raising Mony without Parliaments ; since it wou'd be then in their power to get so many new Lords made, as wou'd turn the Question, when the Legality of raising Mony without Consent of Parliament came to be debated, in favour of the Court ; and then there's an end of the Constitution.

As the Prerogative is most likely to be abus'd in making Peace and War, because of the Interest ill Ministers, brib'd by foreign Courts, have in it ; so it may be of most fatal conse-

consequence, because an unseasonable War may involve the Nation in infinite Troubles; and a Peace may be made upon such vile Terms, as amounts to selling the Nation: and consequently 'tis the Duty of the Parliament, to take the utmost care that those who pervert the Prerogative in this point, be punish'd with the utmost Severity.

If we punish with Death the Commander of a Man of War, or of the most inconsiderable Fort, and that deservedly, when even by Cowardice (in some a natural Infirmity) he fails in his Duty, because of the Interest the Publick has in his Actions: is there not much more reason that Ministers of State, on whose Conduct the Safety of the Whole depends, shou'd account for their Actions? And when by Ignorance, Negligence, or *Treachery*, the Publick does in any instance suffer, ought not their Punishment to be so much greater, as the Charge they were intrusted with was so? Male-Administration can have no Plea to justify it; and vain is the Pretence, when evil Ministers vouch the Authority of the Prince for the Ill they have done. If that were allow'd to be a Bar to Parliamentary Enquiries, our Constitution cou'd last no longer than while we have Princes void of Ambition, or above the Influence of ill Men.

'Tis argu'd, that tho the late M—— are liable to be prosecuted in Parliament, yet out of respect to the Memory of the Queen, what has been acted within these last four Years ought to be bury'd in Oblivion.

'Tis impossible not to remember who was on the Throne when the late Peace was made, or that the Actions and Speeches of the Queen, for the four last Years of her Reign, were
 • directly

directly contrary to the former, when her Glory was carry'd to the greatest height. Therefore in justice to her Memory, those Men ought not to be skreen'd, who made it their business not only to tarnish the Lustre of her first eight glorious Years, but wou'd throw the blame of all that was done during their Administration on the Queen her self; who, but for their wicked Advice, might have maintain'd to the last the Character of being *always the same*. They first abus'd her Goodness by their Counsels, and wou'd now persuade the World, that what she did was contrary to their Advice, and that they barely submitted to her Commands.

But no Arguments of this nature are of any weight; because Truth shou'd be impartially spoken of dead Princes, to instruct the living, that they may know how to avoid their Faults, and imitate their Virtues: But if it be not safe to speak Truth of Princes neither when alive, nor when dead, Mankind are like to be admirably well govern'd.

The *Chinese*, the wisest Nation in the World, in every King's Reign take care that his Life be writ by most able Men, and with the utmost Secrecy; and in the next Reign, when it is publish'd, if they appear to have been guilty of the least Flattery, they are punish'd with the utmost Severity.

It's said, that were the late M.— ever so criminal, yet if they have acted so cautiously as that no Law can reach them, it wou'd be unjust to make a Law *ex post facto* to punish them; and therefore that all Acts of Attainder are in their own nature unjust.

If the Law of Self-Preservation gives a single Person, whilst in a State of Nature without Government, a Right to do every thing necessary for his Preservation, so as to punish an unjust Aggressor, and to seek reparation for the Injury done him: certainly the same Law gives a Government, on whose Welfare the Safety of such Numbers depends, the same Right; where every Member of the Body Politick engages to do all that he is able to support it, and submits his Person, and all he has, to the Supreme Legislative Power. And 'tis Treason, from the very Nature of the thing, for a Man to do any thing that tends to destroy that Constitution or Form of Government he is subject to.

'Tis impossible for any Legislature, considering the infinite Variety of Accidents, to provide against all Crimes, especially relating to the State; and there may be Crimes so monstrous (as 'tis said Parricide was for a long time among the *Romans*) that a Government may not provide against them, because it does not imagine Mankind so wicked, as to commit them, nor think it advisable so much as to mention them. And there may be Offences attended with such odious and aggravating Circumstances, as will require more than usual Punishment. In all these Cases, the Supreme Law, *Salus Populi*, will authorize the Legislature to act; and they are to take care *ne quid detrimenti Respublica capiat*: the preventing of which, must always be within their Commission.

It is, no doubt, unjust to make a Law *ex post facto*, to punish a Man for a thing which was indifferent till the Law forbid it: but if he does what he knows to be highly detrimental
to

to the Publick, and which in its own nature deserves the greatest Punishment; then, no doubt, it is the Duty of the Legislature, even *ex post facto*, to adapt a Punishment to the Crime.

Suppose the Gun-powder Plot had been design'd against the two Houses of Parliament only, and that conspiring against the Life of the King had been no part of their Crime; can any doubt but the Legislature might justly have punish'd the Conspirators with Death, tho there was no antecedent Law which made it capital?

If the burning the Royal Navy was forbid by no Law, wou'd it not be highly reasonable that the Legislature shou'd punish a Man with Death, that shou'd but conspire in such a Design? And is not giving up the Trade of the Nation, which drives away the Seamen, and makes the Royal Navy useless, a Crime that deserves the same Fate?

Any private Good, when in opposition to the publick, is look'd on *sub ratione Mali*. And tho, no doubt, it wou'd be highly unjust, when that is not concern'd, to expose innocent Persons to the utmost Hardships; yet do not Governments practise this, when they compel People into the Wars, whereby they are not only expos'd to the greatest Hardships, but great numbers must unavoidably lose their Limbs and Lives?

And 'tis for the same reason that Men have been put to death, tho no legal Crimes were objected to them, and even sometimes without any Tryal, merely upon suspicion of having Designs against the Publick. And this is not only the practice of Absolute Monarchies, but of free Governments. In *Venice* the Council

of Ten are trusted with this Power ; and if one, tho of the highest Rank, is never heard of after they send for him, there's no murmuring about it. In *Rome* they used to create a Dictator for this end ; and the punishing of *Sp. Malius*, was a remarkable Instance of this nature ; whose chief Crime was distributing among the common People, in a time of Dearth, a Largefs of Corn unfutable to the Condition of a private Man. It is of such Cases as these that the *Roman* Historian says, *Omne magnum Exemplar habet in se aliquid ex iniquo, quod publica Utilitate compensatur.*

Liv. l. 4.
p. 353.
Vol. 1.
Gron. Edit.

Tacitus.

At *Rotterdam*, the Magistrates not long since put a Man to death for breaking fraudulently, then forbid by no Law ; and divided his Estate among his Creditors, even tho he had compounded.

Tho in all Governments, both antient and modern, Men have been punish'd for Crimes against which there were no antecedent Laws : yet here in *England* so tender have we always been of Peoples Lives, that this Power was never trusted with a single Person or with a few, who might put any to death clandestinely, and upon bare Suspicion ; but the Legislature always kept it in their own hands. And there's no danger that the Lords and Commons shou'd be drawn into any unnecessary Severity, to gratify private Interest or Revenge ; since such Examples may be turn'd on themselves or their Posterity ; and Courts are not usually over-fond of making Precedents for the punishing of Ministers. So that the late M—— must appear to be very rotten Members indeed, if the King, Lords, and Commons shall all agree that 'tis necessary they shou'd be cut off, to preserve the Body Politick.

It

It may be objected, that we have now no other Standard for Treason, but the 25th of *Edw. 3.* by which the Parliament, as well as other Judges, are to govern themselves.

To come to a right Notion of that Statute, it may be necessary to take a Survey of Treason, antecedently to it.

Among the *Saxons* there was no other Treason known, than that of Treachery to their Country, and deserting it in time of danger. And *Tacitus* says, *Proditores & Transfugas arboribus suspendunt*. Even plotting against their King was no more than Felony, as appears by the *Mirror of Justice*: an Indictment for an Offence of that nature against King *Edmund*, concludes only *felonice*; whereas Indictments in the other case concluded *felonice & proditorie*. The Punishment of the one, was Loss of Life, and Forfeiture of the personal Estate only; of the other, Loss of Life, with Forfeiture of the whole Estate both real and personal.

Treason, which thus antiently related to the Kingdom only, we find by *Glanvill*, who wrote in *Henry II's* Reign, to have been then extended to the Person of the King: for that Author puts them both on the same foot, and makes one as well as the other to be *Crimen laesæ Majestatis*. And the reason of this, no doubt, was the Interest the Kingdom had in the Safety of their Sovereigns.

Offences against the Safety and Honour of the King's Person being then become Treason, made it so extensive, and render'd it of so uncertain a nature, that Persons were often involv'd in Treason before they thought of it: for as yet Treason was under no other Regulation, than what the

Tacit. G.
c. 10.Mir. c. 1.
Sect. 11.Leg. Ed.
c. 38.
Concil.
Ænham
26.Glanv. c.
Leg. 1.
c. 2. l. 1.
c. 1.

present Sense of the Judges (not always above the Influence of angry or covetous Princes) shou'd determine to be so; of which those Times afforded but too many sad Instances. To obviate therefore this Mischief, was the Statute of the 25 *Edw. 3.* made, as a Rule whereby the Judges were intirely to govern themselves, without ever designing (a thing impossible) to limit the Power of the Legislature, which must at all times be the same. And this is plain from the Statute it self, which declares, " That because many
 " other like Cases of Treason may happen in
 " time to come, which a Man can't think or de-
 " clare at this present time, it is accorded,
 " that if any other Case, suppos'd Treason,
 " which is not above specify'd, doth happen
 " before any Justices; the Justices shall tarry,
 " without any going to Judgment of the Trea-
 " son, till the Cause be shew'd and declar'd
 " before the King and his Parliament, whether
 " it ought to be judg'd Treason or other Fe-
 " lony."

By this Proviso it appears, that the Parli-
 ment, which for good reasons thought it neces-
 sary to confine inferior Jurisdictions to one Rule,
 reserv'd to themselves a Power of judging in
 particular Cases, that were not express'd in this
 Statute. Otherwise, why shou'd the Judges stay
 for the Resolution of Parliament, if their Re-
 solution was not to affect the Case before them,
 but was only a Rule to them for the future?

The Practice of Parliaments being the best In-
 terpreter of their Rights, I shall give some In-
 stances of Acts of *Attainder*, both before and
 after the making of this Statute.

By the 33 *Edw. 1.* *Nicholas de Segrave* was at-³ Inst. 7.
R. P. 33.
E. 1. R. 17.
22.
tainted by Parliament, for leaving the Army
then in *Scotland*.

As this was before the Statute, so after it,¹ R. 2.
n. 38, 39.
Pryn's
Doom of
Cowar-
dice, n. 2.
the Case
at large.
Gomines and *Weston* met with the same Treat-
ment by Parliament, in the Reign of *Richard II.*
for surrendring Forts of which they were Go-
vernours; not for Corruption, for that is not
pretended, but out of mere Cowardice. And
certainly' neither of these are so great Crimes
as a General's revealing to the Enemy the De-
terminations of the Council of War, receiving
Orders from them, and taking Measures with
them to divide the Army, that the greatest part,
upon a Separation, might be cut off.

Goury and *Oile* were attainted of Treason³ Inst. 7 R.
P. 4. E. 3.
n. 5.
by Parliament, in the fourth of *Edward III.*
for the Murder of the King's Father, depos'd
for Male-Administation. And in the same
Year, Sir *John Matrevers* was attainted for the
Murder of the Earl of *Kent*, Uncle to *Edward III.*
This was before the Statute, nor was it provided
for by it, and yet *Talbot*, after the making it,
was attainted by Parliament for conspiring the
Deaths of the Dukes of *Lancaster* and *Gloucester*,
Uncles to *Richard II.* And certainly the con-
spirings the Ruin and Destruction of the King-
dom, is infinitely a greater Crime: such mon-
strous Traitors, whatever their Quality was,
our Ancestors, as has been already observ'd, cou-
demn'd to be hang'd.

In the 22d of *Edw. 3.* (three Years before the
Statute) one *John at Hill* was attainted of Trea-²² Ass. 49.
son, for killing *Adrian de Walton* the King's
Ambassador. This Case likewise was left out
of the Statute, and yet in the 3d of *Rich. 2.*

Kirby

Kirby and *Algrove* were attainted of Treason by
 Inst. 8 R. Parliament, for the Murder of *John Imperiall*
 P. 3 R. 2. Ambassador from *Genoa*. In this case, the Di-
 a. 18. rection of the Statute was follow'd; for they
 Hil. 3 R. 2. were first indicted at the King's-Bench, but the
 L. 31. Judges wou'd not proceed upon it, but laid it
 before the Parliament.

In the 23d of *Edw. 3.* Justice *Thorpe* was for
 Inst. Bribery sentenc'd to death by Parliament; tho
 it was a Punishment much severer than prescrib'd
 by Law. And the reason of the Judgment was,
 That he had broke the King's Oath. And if
 this was a good reason for the Parliament to
 put him to death, it will hold much more
 strongly for punishing those who prevail on
 their Sovereigns to violate their Faith, and to
 break their most solemn Engagements with all
 their Allies. The Honour of the Kingdom
 and Crown is much more wounded by such
 Acts, than by a Judg's underhand taking of
 Bribes.

In the 11th of *Rich. 2.* the Duke of *Gloucester*
 1 R. 2. and others brought an Appeal for Treason a-
 Eld. Jud. gainst the Archbishop of *York*, Chief Justice *Tre-*
 3. and *filian*, &c. The Common and Civil Lawyers,
 is Notes upon a Reference from the Lords, declar'd their
 de Fortes- Opinion, That the Appeal cou'd not be sup-
 ae de Lau- ported by either Law. The Lords then re-
 ibus, &c. solv'd, that in a Crime of this nature, which
 33. concern'd the Person of the King, committed
 by so Great Men, of whom the Parliament were
 the only Judges, they wou'd not be bound by
 the Rules of inferior Courts, which are but the Exe-
 cutors of the antient Laws and Customs of the
 Realm, and of the Ordinances of Parliament :
 and so adjudg'd the Appeal to be good. Which
 was

was in effect saying, That the Parliament, which gives Rules to all inferiour Courts, was it self under none but those of right Reason and natural Justice. And do not both these cry aloud for inquiring into the late Conduct of the Ministry, their Tools and Instruments?

In the 11th of *Rich. 2.* *Tresilian* Chief Justice, ^{Seld. Ju}
Belknap, and other Judges, were attainted by ^{81.}
Parliament, for giving Opinions, tho by the King's special Command, contrary to Law: and upon this Attainder, *Tresilian* was hang'd at *Tyburn*. And if a late Minister set the Seals to a Treaty of Peace, which gave away, contrary to an exprefs Act of Parliament, *Cape Breton*; will the Prince's Command any more justify him, than it did the Chief Justice? And 'tis to be observ'd, this Act of Attainder is confirm'd by the 1st of *Hen. 4.* by which, Treasons were reduc'd to the old Standard of the 25th of *Edw. 3.*

The calling ill Ministers to account, was in those times carry'd so far, that the Sanction of one Parliament was not thought sufficient to skreen them from the Resentment of another: for the Lord *Cobham* was attainted by Parliament, in the 21st of *Rich. 2.* for procuring to ^{Seld. Ju}
himself and others a Commission founded on a ^{126.}
Statute made in the 10th of that King. And if even an Act of Parliament was not by our Ancestors thought sufficient to skreen evil Ministers, they wou'd never have imagin'd, that their mere *Votes* were so; especially if a Majority in one House was gain'd by a Practise highly criminal; and the other hastily voted Thanks for a Peace, before they knew upon what Terms it was made.

John Mortimer had been committed to the *Tower* on suspicion of Treason, but found means to make his escape: This breaking of Prison, tho' no Treason at Common Law, or by any Statute, was in Parliament, in the 2d of *Hen. 6.* adjudg'd Treason. And if ill Ministers, conscous of their own Guilt, fly out of the Kingdom, to avoid a Parliamentary Inquiry, there's no way to reach them, but by an Act of Attainder. Without that, untouch'd either in their Honour or Estate, they may securely laugh at the Justice of the Nation.

Seld. Jud.
59.

In the Beginning of the Reign of *Henry VIII.* *Empson* and *Dudley*, chiefly for Prosecutions founded on Acts of Parliament which had been long difus'd, lost their Lives; so tender was the Parliament to secure People from Oppression on any pretence whatever.

Herb. H. 8.

In *Henry VIII's* time, one *Richard Coke*, for putting Poison into a Pot of Broth in the Bishop of *Rocheſter's* Kitchin, of which two died, was, by the 22d of *Hen. 8.* attainted of Treason, and order'd to be boil'd to death.

22 H. 8.
. 9.

In that King's time, *Elizabeth Barton*, for pretending to Revelations from God, that he was displeas'd with the King for his Divorce from *Queen Katherine*, and that he wou'd not live a Month longer if he proceeded in his Match with *Anne of Bolen*, was attainted by Parliament: and her Crime, as *Coke* observes, was not within the 25 *Edw. 3.*

5 H. 8.
. 14.
Herb. H. 8.
. 404.

In the same Reign, the Lady *Katherine Howard* was attainted by Act of Parliament, for having been too free of her Favours before she marry'd the King (which cou'd not be Treason within the 25th of *Edw. 3.*) as were *Derham*

Herb. H. 8.
537.

ham

ham and *Colepeper* for having to do with her.

In *Charles* the First's Reign was the famous Tryal of my Lord *Strafford*, which lasted above a Year; who was, after many Hearings, attainted of Treason, for endeavouring to change the Limited Government into an Absolute one.

Two things objected against this Attainder, were, 1. That the Parliament was so conscious of having given a wrong Sentence, that they enacted their Judgment shou'd not be drawn into a Precedent. 2. That tho no single Fact amounted to Treason, yet that they made the several Facts to be an accumulative Treason.

The Clause in the Act of Attainder, on which the first Objection is founded, is, "That no Judg or Judges shou'd adjudg, interpret, or determine any Act or Thing to be Treason, otherwise than he or they shou'd, or ought to have done, before the making this Act." This Clause was necessary to confine the Judges (not Parliaments) to the 25th of *Edw.* 3. because without it they wou'd have had a right to judg all such Cases as were parallel to *Strafford's* to be Treason.

In answer to the other Objection, 'tis said, That the Crime charg'd on that Lord, was his designing to change the Limited Government; and that this was certainly such Treason as had always been cognizable by Parliament, tho not within the said Act: and that this was to be prov'd by such Overt Acts as shew'd his Intention.

Of late Years there have been three Acts of Attainder; that of the Duke of *Monmouth*, of Sir *John Fenwick*, and of the Pretender: in all

which the Parliament govern'd themselves according to the Exigency of the Matter, and had no regard to those Forms and Rules that are the Standard to inferiour Courts.

It may perhaps be objected, That some of the Attainders here quoted, having been revers'd by subsequent Parliaments, ought not to be of any weight, or urg'd as Precedents for the Power of Parliaments.

This certainly wou'd be true, cou'd it be prov'd that they were revers'd because it was thought that the Parliament had not this Power, or because the Matter their Judgments were founded on, was not within the Statute of the 25th of *Edw. 3.* But whatever other Reasons were assign'd for reversing these Attainders, I can't find, in any one instance, either of these to have been mention'd.

In the reversing the Attainder of the Earl of *Strafford*, it was not deny'd, that endeavouring to change the Limited into an Absolute Monarchy, was a Treason congizable by Parliament: but it was said, that no one Act that the Earl was charg'd with, amounted to a Proof of it.

The After-Ages have been sometimes led by Motives of Compassion to ease the Descendants of such as have suffer'd under extraordinary Attainders, by reversing them; yet I may take upon me to say, That if the Legislature shou'd think fit to proceed in this manner against the late M——, those who come after us will have but little reason to shew Mercy, since 'tis to be fear'd that the Consequences of their Administration may affect our latest Posterity.

THE House of Lords formerly, even in their judicial Capacity, have adjudg'd the making an ill Peace a capital Crime. And one of the Articles on which they condemn'd *Roger Earl of Mortimer* to be hang'd (and accordingly his Body hung two Days and Nights at *Tyburn*) was for procuring a Peace with *Scotland* dishonourable to the King and Kingdom. And tho this Judgment was revers'd, it was because that Earl was not admitted to make his Defence in Person.

Daniel,
Kennet
History
Englan
vol. 2.
p. 213.

Had it not been for the 25th of *Edw. 3.* the Common-Law Judges might have retain'd to this day a Power to declare any thing to be Treason, which they apprehended to be highly prejudicial to the Kingdom. And sure the Legislature, who cou'd first give them this Power, and afterward take it away, must have such a Power inherent in themselves.

I think I need add no more on this Head, since I hope 'tis by this time evident, that the Legislature, whenever they judg the Necessity of Affairs requires it, have an unalienable Right of proceeding by Acts of Attainder against great Offenders, tho guilty of such Crimes as were not punishable by any express Law; and that this Power is absolutely necessary for the Preservation of the Constitution.

If what is here writ, gives a true Idea of that Part of the Constitution relating to the Power of Parliaments, which every *British* Gentleman ought at all times, but especially at this juncture, to understand; I shall think the Time and Pains I have spent on this Subject, well employ'd.

And

And since the Guardians of the *British* Liberties have declar'd, That the Measures which for some time past have been taken to accomplish our Destruction, shall be trac'd out, and the Authors of them brought to condign Punishment; we ought not to be anxious about the Means they will employ: no doubt, they will take the most proper for effecting this so highly necessary Work, if it were but to strike at the Root of the *French* Faction, which every day grows more and more insolent: And without it, the Noise of the Danger of the Church (which was not safe, but when all was giving up to *France*) will not cease, as long as there are any Remains of the Principles of the Reformation, or of the *British* Liberties, or one Foot of Church-Lands in the hands of the Laity.

F I N I S.





