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 OF THE
 CONTRACTS
 Relating to the
Third Money-Subscription
 Taken by the
 SOUTH-SEA COMPANY.



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*The Case of the Contracts
relating to the Third Mo-
ney-Subscription, &c.*



I being generally reported, that a Scheme is formed for the restoring of Credit, and Settlement of the *South-Sea* Company, by which all the Subscriptions are to be turned into Stock; and in consequence thereof, not only all Contracts relating to the Third Subscription will be set aside, but vast numbers of People will be obliged to repay great Sums of Money, which they have received on the Sale of such Subscriptions: This Report has given such an Alarm and Uneasiness to the Persons concerned, that I have adventured to publish a few Remarks, in order to

quiet their Minds against their own groundless Fears; since I am of opinion, 'tis impossible, that either that Honourable Person, who is said to be the Author, should form, or the Parliament (to whom the Care of every Man's Preservation and Property is committed) should approve a Design, which must tend to the utter Ruin of so many hundreds of innocent Persons.

But before I enter into the particular Consideration of the Case of the Sellers for ready Money, I must crave leave to take notice of a few things, by way of Introduction to it.

1. And the first is the Preamble to the third Subscription to the *South-Sea* Company, the fourth Article of which runs thus, *viz.* ' That the Cashier of the said Company shall give a Receipt or Receipts under his Hand for the first Payment, to be paid down as aforesaid, upon and for every Subscription; and that the Receipts of all future Payments shall be written upon the same Paper: and that the Right and Property of such Subscription shall be, and be deemed to be assignable by Indorsement on the said Receipt.'

Thus runs the fourth Article of the Preamble; from whence I would observe, That the *South-Sea* Company engages and con-

tracts with every Subscriber in particular, to deliver him out a Receipt for the first Payment: And I think from hence we may very naturally infer, without the Assistance of a Lawyer,

(1.) That the *South-Sea* Company cannot legally refuse to deliver out Receipts to the Subscribers for the first Payment, though such Refusal should be by an Act of the General Court.

(2.) We may from hence infer, that the Contract of the *South-Sea* Company, for the Delivery of Receipts, is distinct and severall with every Subscriber; and therefore, should all the Subscribers but one, consent to waive their Receipts, such Consent would not bind the single Person who stands out, but the Company would be obliged to deliver him a Receipt, according to his Contract, or be subject to an Action, in case of Refusal. These Conclusions are so plain and necessary from the Premises, that I shall not trouble myself, or the Reader, with any Proofs.

2. From the Consideration of the Preamble, I proceed to that of the Resolution of the House of Commons, passed the 19th of *December* last, and reported and agreed to by the House on the twentieth; that is in these Terms, *viz.* ' Resolved, That all Subscriptions of Publick Debts, Money-Subscriptions, and other Con-

tracts,

tracts, made with the *South-Sea* Company, by virtue of an Act of the last Session of Parliament, remain in the present State, unless alter'd for the Ease and Relief of the Proprietors, by a General Court of the *South-Sea* Company, or set aside by due Course of Law.

By this Resolution, taken in a full House, and after a very long Debate, we have, I think, the most solemn Opinion and Engagement on the part of the House of Commons, that nothing shall be done to the prejudice of Contracts between the *South-Sea* Company and particular Persons.

But it may be here objected, That the House of Commons have left it to a General Court of the *South-Sea* Company, to alter Contracts for the Ease of Proprietors; and giving Stock in lieu of Receipts, being for the ease of Subscribers, the House of Commons have, at least, given their Opinion, That the General Court may lawfully do it. To this I answer,

1. That a Contract being a mutual Engagement between (at least) two Parties, nothing can be done to discharge or alter such Contract, without the concurrence of both Parties: now the easing the Subscribers must be by discharging or altering the Contract in some measure, and

and therefore the Consent of both Parties is necessary to this; and it is in vain for one of the Parties to pretend, that what Alteration is made, will be to the benefit of the other: if I contract for a Horse, the Person contracting with me, can't give me a House instead of it, because (as he tells me) this is better for me; this is contrary to the very Nature and Obligation of a Contract, which always leaves each Party to judge for himself what is best for him. And therefore no more can be meant by this part of the Resolution of the House of Commons, but that the Subscribers may be eased by a General Court, in such manner, as may be to their own good liking: so that, if a General Court of the *South-Sea* Company should think fit to give Stock in place of Subscriptions, those Subscribers who approve such a Proposal, are free to accept of it, but without abridging the Liberty of the rest to refuse it.

2. I answer, That in the Case of the Sellers of Third Subscriptions for Ready-Money, the turning such Subscriptions into Stock, would by no means ease 'em; unless a Man may be said to be eased by saving about Five Hundred Pounds, and being laid under an Obligation, on that account, to refund Three Thousand Pounds. Possibly the Persons to whom the Money is to

to be repaid, may alledge it to be a great Ease to the Subscribers; but I believe the Subscriber himself will very hardly be persuaded into this Opinion.

I would, in the third place, just take notice of a Clause in an Act of Parliament passed the last Sessions, for erecting the two Corporations for the Insuranc of Ships, whereby some Provision was likewise made against that Swarm of Bubbles which was then coming out upon us. It is in that Act provided, *Fol.* 381. "That nothing therein shall extend to any Subscriptions, made, or to be made, for enlarging the Capital Stock of the *South-Sea* Company, by, or by order of the General Court, or Court of Directors, or to any Receipts made, or to be made out in respect of such Subscriptions; but that all such Subscriptions made, or to be made; and such Receipts made out, or to be made out, shall be firm and valid: and all Receipts made out, or to be made out, shall be assignable at Law by Indorsement thereon, &c." I would only from this Clause observe what Encouragement the Law has given for buying and selling these Receipts, by making them assignable by Indorsement, which otherwise they could not legally have been.

Having

Having premised these things, I go on to consider a little more particularly the Case of these Gentlemen, who are Sellers for Ready-Money. And,

In the first place; They must needs think their Case is not so trifling as to merit no regard, whatever Scheme may be hereafter laid before the Parliament. This can never be, if we consider either the Number of Persons concerned, or the Amount of their Contracts: by the Account we have already had of the Third Subscription, it amounted to Five Millions and a half; and if upon an Averidge we allow a Thousand Pounds to each Subscriber, I believe we shall not be very wide of the Mark. For tho some of the Directors may have kept very large Sums to themselves, yet they distributed in very small Shares, such as One Hundred, Two Hundred, Three Hundred, and Five Hundred Pounds, to abundance of other Persons, that so they might stop the Clamour of as many Persons as possible, without doing any great hurt to themselves. Upon admitting this Calculation, we may reckon the whole Number of Subscribers to be Five Thousand Five Hundred Persons; of these I may certainly venture to say, without Aggravation, one sixth Part have sold their Subscriptions for Ready-Money: nor
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can I be here thought to exceed, because almost all the Bargains for some time after the said Subscription was taken in by the Company, were made for Payment of part, or the whole Money down; and consequently there must be above Nine Hundred Persons concerned on this head. We are then to consider at what Price, on an Average, they may have sold their Subscriptions; and I believe we cannot allow less than 120 *per Cent.* Profit: for we may here remember, that the Proprietors of the First and Second Subscriptions, having at last gained so vastly thereby, the Third Subscription did not at the beginning advance with so slow a pace as the two former: these stuck some time between 10 and 12 *per Cent.* Profit, and 50; but the Third Subscription got up in a few Days to 100 *per Cent.* and soon after to 300: and it may be very well remembered, that the Press and Application for the Third Subscription was much greater than for either of the two former; which was the reason why it swell'd so much in Bulk beyond them. Now if we allow one Sixth Part of the said Subscription to have been sold at a Medium for 120 *per Cent.* Profit, which, with the Money advanced, is 220 *per Cent.* then the Amount of such Sales must come to more than Two Millions: So that upon the whole, if we consider

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sider either the Number of Persons concerned, or the Value of their Contracts, these Gentlemen have no room to suppose that their Case can be disregarded by any particular Gentlemen, who have turned their Heads towards any Scheme for the National Relief; or by the Parliament itself, when it comes before them: and the rather, when we know that that August Assembly do condescend every Sessions to employ their Thoughts on particular Acts of Parliament for the Relief of even single Persons.

Having a little touch'd on these Gentlemen's Case, as to its Extent, I wou'd now desire them to turn a little to the Merits of it; and, I think, from every Light we can put it into, and every Circumstance that attends it, they have still more reason to make themselves very easy from their present Fears: Here we must observe, That in the last Sessions of Parliament, an Act was passed, whereby the Scheme was establish'd, which is commonly called the *South-Sea* Scheme: By this Act the Execution of it was intrusted to the Directors of the *South-Sea* Company; who, in pursuance thereof, had then already taken in Two Subscriptions for Stock, the First at 300 *per Cent.* the Second at 400; and had deliver'd out Receipts accordingly. Upon the Success of

the two former, they adventured upon a Third at 1000: and as the First and Second were sold at Market upon the same foot with any other Commodity, no one can say but the Subscribers to the Third might do the same; and that such Persons could not at that time be said to sell a thing they had no right to: and when they were paid the Money for it, it cou'd not be thought but that the Money so received, was as much their Property, as any other part of their Estates; and I believe all of them made use of it as such: for since they could not possibly foresee that they should ever be called upon for the Repayment of it, therefore very few, or none of them, made Provision for such an Accident, but laid it out in such manner as they thought most convenient. And here it may not be amiss to make a stand, and review how the Prices of Commodities, or Bubbles, as we may justly call all Stocks, at that time stood: *South-Sea* was at about 900, *India* above 400, *Bank* above 300; First Subscription about 650 per Cent. Profit; Second Subscription near 600 per Cent. Profit; *Royal-Exchange Insurance* 220, *Ram* 150, *Tork-Buildings* near 300; and all the other Bubbles in proportion: nay, Land itself, which one would have thought most solid, had taken its Frisk with the rest,

rest, and was got up to about Fifty or Sixty Years Purchase; but this indeed was a Commodity fit for very few but Directors. Upon these Terms it was, that the Gentlemen who had sold their Subscriptions for Ready-Money, cou'd generally re-invest it; and wou'd the Buyers be contented to take the Produce of their Money from the Sellers, instead of the Subscriptions they have contracted for, I believe, generally speaking, there wou'd be no great matter of Dispute between them: for in several Instances, particularly in the First and Second Subscriptions, the Purchasers of Subscriptions at that time have not above Six-Pence or Eight-Pence in the Pound remaining, according to the present Price; and in many, the almost universal Bankruptcy of Goldsmiths, has left them nothing remaining. And in some Cases I must own this to be impracticable: as for instance, some Persons (and these of all the rest the happiest) have paid their Debts with the Produce of their Subscriptions; but will their Creditors consent to restore it again? Some Persons, with the help of this Money, have disposed of their Daughters in Marriage; but will their Husbands be persuaded to part with it again? Some Persons, by this means, have set up their Sons in Trades; but will their Sons be content to become Bankrupts,

Bankrupts, in order to return it again? Some, who have dealt for others, have paid this Money over to their Principals, and in some Cases to Foreigners, (as by Law they were obliged to do;) but can we be sure, that they are either in a Capacity or Disposition to reimburse them again? In this Case, Foreigners would recover of *English-men*, but an *English-man* can have no Remedy against a Foreigner; which would be a dead Loss to the Nation. Others, not well enough known in the World to be trusted for the Delivery of the Receipts, took the Money arising by the Sale of their Subscriptions, and prevailed with some Friend to be answerable for the Receipts; the Seller having made use of the Money, his Friend in this Case would be obliged to repay it. Besides many other Cases of the like nature, which might be put to shew how impracticable as well as unjust such a Retrospect would be.

But before we pass from the Case of the Sellers, we will admit, for Argument-sake, that all of them have their Money in their hands, able and ready to reimburse the Buyers, and that it ought to be done in some measure; yet certainly no indifferent Person would in Reason or Equity adjudge them to a Return of the

the whole Sum received. And this, I think, will be very plain, if we look back to the time when these Contracts were made, and things then stood thus: When the Frenzy of *Mississippi* in *France* had passed over to us, and we, in Imitation of them, had formed a Model of a vast imaginary Fabrick; we were nevertheless so prudent under our Delirium, as to consider this could not be raised without some sort of Materials: and therefore, although we had before a Paper-Credit proportionable to our Species, and what was indeed sufficient for our Trade and other Affairs; yet it was then agreed by a common Consent, as it were, that Paper should pass for Money, without any regard to the Rules of Prudence or Proportion. With this the Bankers fell in, from a Temptation of vast Premiums for a Scrap of Paper; and every Banker's Shop became a Mint for Money: inso-much, that I may venture to say, more of this Sort was coined in one day, in and about *Lombard-Street*, than had been done in the *Tower* for many Years: The Bankers issued their Notes without any Bounds or Discretion, and, as a Security, accepted of what was of little more Value, viz. all Sorts of Bubbles and *South-Sea* Subscriptions, as well as Stocks at any Price. But no sooner was their Coin brought

brought to the Touchstone, that is, no sooner did a few, more considerate than the rest, call for Money in Exchange for these Notes, but it soon appeared what they were: the Goldsmiths became almost universally Bankrupts, and the vast Fabrick, rear'd upon this Paper-Foundation, fell with it. Now when this Paper-Credit was at the greatest Height, were these Contracts made, and the Money arising from them paid, at that time Two or Three Thousand Pounds were to be had on almost any Security; nay, I might have said, without any. But now the Case is quite altered; Money has found its Value again, and being reduced to almost our Species, and on that account 100*l.* is as difficult to procure, and will, in many Cases, answer what 500*l.* would have done then. I don't mention this, as if these Changes should make any Difference between Debtor and Creditor on legal Contracts, which are not depending, but executed in the most material Part, *viz.* the Payment of the Money; but only stated this Case to shew how unreasonable it would be to set such Contracts aside between Buyer and Seller, and thereby expose the Seller to the full Demand of the Buyer,

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From the Case of these innocent People, who acted under the Protection of the Law, at the time they sold their Subscriptions for Ready-Money, we pass over to the Case of the Buyers, who would now be relieved at the Expence of the former. I have already calculated, (and am well assured I have not exceeded) that the Ready-Money paid for the third Subscription on Contracts now depending, is upwards of Two Millions. This is such a Sum, which every considering Person must conclude, could not be advanced, but by such who had been considerable Gainers in the former Operations of the *South-Sea* Company: for though it might not be thought so great, during the Height of the *South-Sea* Affairs, when Paper almost at large passed for Money; yet, before these Transactions, it would have been thought so: and consequently could not come, generally speaking, from those, who till that time, had been out of the Operations, but must necessarily have been part of the Gains, which the Buyers had made before by Stock, Subscriptions, or Refusals: These Gentlemen not contenting themselves with a reasonable Profit, but, in full Expectation that the Advance on the third Subscription would be as considerable as it had been

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been on the others, engaged themselves in these Contracts; but, by a sudden and unexpected Turn in Affairs, are now like to become Losers of the greatest Part of the Money advanced on these Contracts, unless relieved by some Act, whereby the Sellers will be incapacitated from complying with their Part of the Contract. This I believe is, generally speaking, the Case of the Buyers: and from the Consideration of their Case, with that of the Sellers, we may very naturally draw the following Conclusions.

As first, if any thing should be done, that will disable the *South-Sea* Company from delivering Receipts for the Third Subscription, in such a manner, that the Contractors for Ready-Money not complying with their Engagements, it will then follow, That Persons who have lost those great Sums of Money, received on these Contracts, must be obliged to refund them to such Persons who had been the Gainers of them: for I have already shewn, that it was next to impossible for such Sellers to invest the Money they had received on these Contracts, in such a manner, as not to be Losers of much the greatest Part of it; and in many Instances, almost the Whole has been lost.

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And would it not be a most deplorable Case, that such Persons who have already lost Estates, which at that time the Law said, they might call their own, must be obliged to pay the same over again, (which I believe few of them are able to do) or else be forced to rot in Jail, or fly their Country? This is very unfortunate in any Case, but it would be most shocking in the Case of innocent Persons, who have themselves done nothing towards it: Nay, what would render the Case of these Persons more deplorable than those who are unfortunately engaged under any other heavy Contracts, would be this, That in the latter Case, the Seller may have room for Compassion, and be still a great Gainer; but in our Case of refunding, I doubt the Seller would be told, That nothing is demanded of him but what he has received long since; that he, the Buyer, asks nothing but his own Money, which he, the Seller, will be said to be justly accountable for; and therefore the last Farthing must be exacted.

Another Consequence from what has been said, in case the Sellers for Ready-Money should by any means be disabled from executing their Contracts, would be this; That Persons would be thereby chargeable with the Repayment, contrary to

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the Act and Deed of the Person who demands the Money, though it can't be objected to, as illegal: They would in this Case be worse dealt with than State-Criminals, who are not to be executed by a Law *ex post Facto*; and that in favour of Persons who by the same Contracts have voluntarily consented to part with it. Now how can this be consistent with the Rules of common Justice and Honesty, or with that Liberty of dealing, which 'tis necessary every Man should have in these Cases?

Another Consequence would be this; That the Buyers in this Case would not have failed to reap all the Advantages which would have arisen from these Contracts on one side, without standing to any Loss or Inconvenience on the other, had the *South-Sea* Stock risen to 14 or 1500 *per Cent.* as the Buyers expected: What Clamours should we have heard upon the least Step taken in order to deprive them of their Gain? Should we not then have had all the Arguments now used by the Seller, urged upon them in the strongest and loudest manner? We have seen, a few Months since, what vast Gains were made by these Gentlemen upon those whom we called the prudent Men; nay, were they not at that time made their Jest, as well as their Property, when

when for a Premium of 2, 3, or 4 *per Cent.* Stock was delivered at a fifth Part of the then Market Price; and was it ever thought by the then unlucky Gentlemen, that they were to be let loose from their Bargains? Could any thing be said, or thought more infamous of a Man at that time, than that he would not comply with his Contract: and pray how comes the Case to be now so much alter'd? Must the establish'd Notions of Justice be now chang'd? Or shall it be said of these Gentlemen only, that 'tis not fit they should be bound by what they do: this would cast a Reflection on themselves, which they would hardly suffer from another.

Another Consequence from what has been offer'd, wou'd be, That the Persons of the most Prudence, Caution, and Moderation in their Views, would be injured; and that in favour of such as appear, by their Operations, to have been most unbounded in their Schemes, such as could not content themselves with any measure of Gain; these Persons must be restored to their Profits again, tho it be by the Ruin of less covetous Dealers. Had Men been contented, in any Bounds of Reason; had they not been push'd on with an Ambition,

bition, which, 'tis plain, could never be gratified, we had not groaned under our present Misfortunes: And are such extravagant Gamesters to be encouraged? nay, are numberless innocent Persons to be destroyed for their sakes? I am persuaded that no single Person, or Body of Men, can ever make the least step towards such an Act of Oppression.

The last ill Consequence I shall mention, is this; That should the Sellers be, by any Measures, incapacitated from the performance of the Contracts on their side, which are already executed on the part of the Buyers, it would have a most fatal Influence on our Credit. What the Evil of this would be, I need not mention, 'tis already most sensibly and universally felt all over *Europe*, from the languishing State 'tis now under; and should this Step be taken, it would give the last Stroke among us. The Decay of Credit, I take to proceed from the Scarcity of Money: when Money is not wanted, there is no want of Credit; but when the former fails, that is to say, when there are more Borrowers than Lenders, the latter must fail also. At present, what is the Reason that Land-Tax Tallies are at so large a Discount, and *South-Sea Bonds* at

at 10 *per Cent.* Discount, tho both depend on an undoubted Security, but because Persons, who want Money, know not where to borrow it, and therefore must sell these things at any rate to supply themselves? But when this Want of Money is farther increased by a fresh Demand of upwards of Two Millions, upon Persons not only innocent, but well and lawfully possess'd of the Money that has been paid to them, and who are not in a Capacity to repay it, but must either suffer themselves to be thrown into a Jail, or fly their Country; this, instead of relieving our Credit, must end in the intire Destruction of it, and reduce us to the last Distress. What must then become of us? How must our Stocks and other Securities be then run down? What an Obstruction must this be to any future Scheme for restoring of Credit?

Thus I have taken a short View of the Case of the Buyers and Sellers of the Third Subscription for Ready-Money, and of some of the ill Consequences that may attend the vacating such Contracts; many more might have been added, and still more will be felt, if ever this Case should happen: But by what has been observed, I think the Gentlemen concerned may be very

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very easy from such Apprehensions ; they may assure themselves, from the known Honour and Justice of Parliament, that no such thing will be done by them ; and they may be sure, that no such thing can be done by any other Persons, or Body of Men, whatever.



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