

40-7

1
2
3
4
5
6
7
8
9
10

0099

THE
DEBATE
At Large,

BETWEEN THE
HOUSE of LORDS
AND
HOUSE of COMMONS,
AT THE
FREE CONFERENCE,
HELD

In the *Painted Chamber*, in the
Session of the CONVENTION,
Anno 1688.

Relating to the Word,
ABDICATED,
AND THE
Vacancy of the THRONE,
In the COMMON'S Vote.

Printed for *J. Wickins*; And to be Sold by the
Bookfellers of *London* and *Westminster*, 1695.

The Debate at Large, &c.

Martis die 22 Januarij, 1688.

IN the Convention met, upon his Highness the Prince of Orange's Letters, this Day in the House of Commons. A Motion being made that the House would appoint a Day, to take into Consideration the Condition and State of the Nation.

Resolved, Nemine Contradicente,

That the House, on *Monday* next, at Ten of the Clock in the Morning, take into Consideration the State and Condition of the Nation.

Lunæ 28 die Januarij, 1688.

The House then (according to the Order of *Tuesday* last) proceeded to take into Consideration the State and Condition of the Nation.

Resolved,

That the House do now Resolve it self into a Committee of the whole House, to take into Consideration the State and Condition of the Nation.

Mr. *Speaker* left the Chair.

Mr. *Hamden* took the Chair of the Committee. A 2 Mr.

Mr. Speaker Reassumed the Chair.

Mr. Hamden Reported from the Committee of the whole House that, having taken into Consideration the Condition and State of the Nation, they had agreed upon a Resolve; which he Read in his Place, and then delivered the same in at the Clark's Table, where the same being Read, was as followeth.

Resolved,

That King James the Second, having Endeavoured to Subvert the Constitution of the Kingdom, by Breaking the Original Contract between King and People; and, by the Advice of Jesuits, and other Wicked Persons, having Violated the Fundamental Laws, and With-drawn himself out of the Kingdom, hath Abdicated the Government, and that the Throne is thereby Vacant.

Resolved,

That this House do agree with the Committee, That King James the Second, having Endeavoured to Subvert the Constitution of the Kingdom, by Breaking the Original Contract between King and People; and by the Advice of the Jesuits, and other Wicked Persons, having Violated the Fundamental Laws, and With-drawn himself out of the Kingdom, hath Abdicated the Government, and that the Throne is thereby Vacant.

and other wicked Persons, having Violated the Fundamental Laws, and having With-drawn himself out of the Kingdom, hath Abdicated the Government; and that the Throne is thereby Vacant.

Ordered,

That Mr. Hamden do carry up the said Resolution to the Lords for their Concurrence. And it was carryed up to the Lords, by Mr. Hamden, accordingly,

Sabbath. 2 die Feb. 1688.

A Message from the Lords to the Commons, by Sir Miles Cook and Mr. Methwin, Two Masters in Chancery attending the House of Lords.

Mr. SPEAKER,

The Lords have considered of the Vote of this House of the 28th. of January last, to which they Concur with Amendments; unto which Amendments they desire the Concurrence of this House.

The Amendments made by the Lords to the Votes sent up to them from this House, the 28th. of January, were Read and are as followeth,

L. 8. Instead of the Word Abdicated Read Deserted. L. 9.

L. 9. Leave out these Words, *And that the Throne is thereby Vacant.*

Lun: 4 die Feb. 1688

To the First Amendment, Propofed by the Lords to be made to the Vote of the Commons, of the 28th. of *January*, Instead of the Word *Abdicated*, to Insert the Word *Deserted*, the Commons do not agree; because the Word *Deserted* doth not fully exprefs the Conclusion neceffarily inferred from the Premifes, which your Lordships have agreed; for your Lordships have agreed, *That King James the Second hath Endeavoured to Subvert the Constitutions of the Kingdom, by Breaking the Original Contract between King and People, and hath Violated the Fundamental Laws, and Withdrawn himself out of the Kingdom.* Now the Word *Deserted* respects only the With-drawing, but the Word *Abdicated* respects the Whole; for which Purpose the Commons made Choice of it. The Commons do not agree to the Second Amendment, to leave out the Words, *And that the Throne is thereby Vacant.*

1st.

1st. Because they conceive, that, as they may well infer from so much of their own Vote as your Lordships have agreed unto, *That King James the Second has Abdicated the Government, and that the Throne is thereby Vacant;* so that if they should admit your Lordships Amendment, *that he hath only Deserted the Government;* yet, even thence, it would follow that the *Throne is Vacant* as to King *James the Second, Deserting the Government*, being, in true Construction, *Deserting the Throne.*

2dly. The Commons conceive they need not Prove unto your Lordships, That, as to any other Person, *the Throne is also Vacant;* your Lordships (as they conceive) having already admitted it, by your Addressing to the Prince of Orange the 25th. of December last, *To take upon him the Administration of Publick Affairs, both Civil and Military; and to take into his Care the Kingdom of Ireland, till the meeting of this Conventi-on.* In Pursuance of such Letters, and by your Lordships renewing the same Address

Address to his Highness, (as to Publick Affairs, and the Kingdom of Ireland,) since you met; and by Appointing Days of *Publick Thanksgivings* to be Observed throughout the whole Kingdom, all which the Commons conceive to apply that it was your Lordships Opinion, *That the Throne was Vacant*, and to signify so much to the People of this Kingdom.

3dly. It is from those who are upon the Throne of *England* (when there are any such) from whom the People of *England* ought to receive Protection; and to whom, for that Cause, they owe the Allegiance of Subjects; but there being none now from whom they expect *Regal* Protection, and to whom, for that cause, they owe the Allegiance of Subjects, the Commons conceive, *The Throne is Vacant*.

Resolved,

That the Earl of *Wiltshire* do go up to the Lords to desire a Conference upon the Subject matter of the Amendments.

The Earl of Wiltshire Reports, That, he having attended the Lords to desire

a

a Conference, they had given Answer, *That they did consent to a Conference immediately in the Painted Chamber.*

Resolved,

That the Committee to whom it was referred to prepare Heads of Reasons at a Conference with the Lords, be the Managers of the said Conference.

Mr. *Hamden*, Reports, from the Committee appointed to Manage the Conference with the Lords, That they had Attended the Lords at the Conference and Communicated unto their Lordships the Reasons why this House doth not Concur with their Lordships in the said Amendments.

Martis 5 die Feb. 1688

Mr. *Hamden* Reports from the Conference with the Lords, that the Earl of *Nottingham* spoke to this Effect,

“ That the Lords had desired this
 “ Conference with the Commons, that
 “ they might be as happily United to the
 “ Commons in Opinion, as they are
 “ inseparable in their Interest; and
 “ that they are, at this time, uneasy
 “ that they cannot Concur with the

B

“ Commons

[26]

“ Commons in every thing ; because it
 “ is of so great a Concern to the Nation,
 “ and from so great and Wise a Body.
 That he then delivered what the Lords
 had done in Reference to the Subject
 Matter of the last Conference, and said,
 “ That the Lords did insist upon the
 “ First Amendment of the Vote of the
 “ House of Commons of the 25th. of
 “ January last, instead of the Word
 “ *Abdicated*, to have the Word *Desert-*
 “ *ed*.

1st. “ Because the Lords do not find,
 “ that the Word *Abdicated* is a Word
 “ known to the Comon Law of *England*,
 “ and the Lords hope the Commons
 “ will agree to make use of such
 “ Words only, whereof the Meaning
 “ may be understood according to Law,
 “ and not of such as will be liable to
 “ doubtful Interpretations.

2^{dly}. “ Because in the most common
 “ Acceptation of the Civil Law, *Abdica-*
 “ *tion*, is a Voluntary Express Act of
 “ *Renuntiation*, which is not in this
 “ Case, and doth not follow from
 “ the Premises, *That King James the*
 “ *Second*

[27]

“ *Second*, by having *With-drawn himself*,
 “ *after having endeavoured to Subvert the*
 “ *Constitution of the Government, by Break-*
 “ *ing the Original Contract between King*
 “ *and People, and having Violated the Fun-*
 “ *damental Laws*, may be more properly
 “ said to have *Abdicated*, than *Deserted*.

He said the Lords did Insist on the
 Second Amendment, to leave out the
 Words, *And that the Throne is Vacant*, for
 this Reason.

“ For that although the Lords have
 “ agreed, that the King has *Deserted* the
 “ Government, and therefore have made
 “ Application to the Prince of *Orange*,
 “ *To take upon him the Administration of*
 “ *the Government, and thereby to Provide*
 “ *for the Peace and Safety of the Kingdom*,
 “ yet there can be no other Inference
 “ drawn from thence, but only that
 “ the Exercise of the Government by
 “ King *James the Second* is Ceased ; so
 “ as the Lords were, and are willing,
 “ to secure the Nation against the Re-
 “ turn of the said King into this King-
 “ dom; but not that there was either
 “ such an *Abdication* by him, or such a
 “ *Vacancy*

“ Vacancy in the Throne, as that the
“ Crown was thereby become Elective,
“ which they cannot agree.

I. “ Because, by the Constitution of the
“ Government, the Monarchy is Heredita-
“ ry, and not Elective.

II. “ Because no Act of the King alone
“ can Barr, or Destroy the Right of his
“ Heirs to the Crown; and therefore in
“ Answer to the third Reason alledg'd by the
“ House of Commons, If the Throne be Va-
“ cant of King James the Second, Allegi-
“ ance is due to such Person as the Right
“ of Succession doth belong to.

The Question being put that this
House do agree with the Lords in the
said First Amendment.

It passed in the Negative.

The Question being put that this
House do agree with the Lords in the
said Second Amendmen.

The House Divided.

The Yea's go forth,

The Tellers for the Yea's, Sir Joseph
Tredenham, and Mr. Gwyn. 151.

The Tellers for the No's, Mr. Colt,
and Mr. Herbert. 282.

And

And so it was Resolved in the Ne-
gative.

Resolved,

That a free Conference be desired
with the Lords upon the Subject Matter
of the last Conference.

Ordered,

That it be Referred unto,

- | | |
|---------------------|--------------------|
| Sr. Robert Howard. | Mr. Hamden. |
| Mr. Polexfyn. | Sr. Henry Capel. |
| Mr. Paul Foley. | Sr. Thomas Lee. |
| Mr. Serj. Maynard. | Mr. Secheveril |
| Mr. Serjeant Holt. | Major Wildeman. |
| Lord Faulkland. | Collonel Birch. |
| Sr. George Treby. | Mr. Ayres. |
| Mr. Sommers. | Sr. Rich. Temple. |
| Mr. Garraway. | Sr. Hen. Goodrick. |
| Mr. Buscoven. | Mr. VValler. |
| Sr. Tho. Littleton. | Sr. John Guyes. |
| Mr. Palmer. | |

To manage the Conference.

Ordered,

That Mr. Dolbin do go up to the
Lords, and desire a free Conference
with the the Lords upon the Subject
Matter of the last Conference-

Mr.

[30]

Mr. *Dolben* Reported, That he having (according to the Order of this House) attended the Lords to desire a Free Conference with their Lordships, upon the Subject Matter of the last Conference, they had agreed to a Free Conference presently in the *Painted Chamber*. And the Managers went to a Free Conference, at the Free Conference in the *Painted Chamber*.

Mr. H—den.

MY Lords, the Commons have desired this Free Conference from your Lordships upon the Subject Matter of the last Conference, that they may make appear unto your Lordships, that it is not without sufficient Reason, that they are Induced to Maintain their own Vote, to which your Lordships have made some Amendments; and that they cannot Agree to those Amendments made by your Lordships for the same Reasons.

My Lords, the Commons do very readily agree with your Lordships, That it

is

[31]

is a Matter of the greatest Concernment to the Kingdom in general, its future Peace, and happy Government, and the *Protestant* Interest, both at Home and Abroad, that there be a good Issue and Determination of the Business now in Debate between Both Houses, and a speedy one as can consist with the Doing of it in the best manner. This way of Intercourse between Both Houses by Free Conference, where there is full Liberty of Objecting, Answering, and Replying, the Commons think the best Means to attain this End, and to Maintain a good Correspondence between Both Houses, which is so necessary at all Times, but more especially in the present Conjunction; this my Lords will bring Honour and Strength to the Foundation that shall be laid after our late Convulsions, and Discourage our Enemies from Attempting to Undermyne it.

It is true, my Lords, the present Difference between your Lordships and the Commons is only about a few Words; but the Commons think their

Words

Words so Significant to the Purpose for which they are used, and so Proper to the Case unto which they are applied, that in so Weighty a matter as that now in Debate, that they are by no means to be parted with.

The Word *Abdicated* the Commons conceive is of larger Signification than the Word your Lordships are pleased to use *Desert*; but not too large to be applied to all the Recitals in the Beginning of the Commons Vote, to which they meant it should be applied. Nor ought it to be Restrained to a Voluntary Express Resignation, only in Word or Writing, Overt Acts there are that will be Significant enough to amount to it.

My Lords, that the Common Law of *England* is not acquainted with the Word, it is from the Modesty of our Law, that it is not willing to suppose there should be any Unfortunate Occasion of making use of it; And we would have been willing that we should never have had such an Occasion as we have to have Recourse to
it

it. Your Lordships next Amendment is, that your Lordships have left out the last Words in the Commons Vote, *And that the Throne is thereby Vacant.*

My Lords, the Commons conceive it is a true Proposition, and *That the Throne is Vacant*; and, they think, they make it appear that, that is no new Phrase; neither is it a Phrase that perhaps some of the old Records may be Strangers to; or not well acquainted with: But they think it not chargeable with Consequences that your Lordships have been pleased to draw from it, *That it will make the Crown of England become Elective.* If the Throne had been full, we know your Lordships would have assigned that, as a Reason of your Disageement, by telling us who filled it; and it would be known by some Publick Royal Act, which might notify to the People in whom the Kingly Government resided; neither of which hath been done; and yet your Lordships will not allow the *Throne to be Vacant.*

C

My

My Lords, I am unwilling to detain your Lordships longer, from what may be better said for your Lordships Satisfaction in these Matters, by those whose Province it is: I am to acquaint your Lordships, That the Commons do agree, it is an Affair of very great Importance. Here are other Gentlemen that are appointed to manage this Conference, and will give their Assistance to bring it, we hope, to a happy Conclusion, in the Agreement of Both Houses, in this so very a Considerable Point.

Mr. S----- is.

My Lords what is appointed me to speak to, is your Lordships First Amendment, by which the Word *Abdicated*, in the Commons Vote, is changed into the Word *Deserted*; and I am to acquaint your Lordships what some of the Grounds, are, that induced the Commons to insist upon the Word *Abdicated*, and not to agree to your Lordships Amendment.

117.

But the Word *Deserted* (which is the Word used in the Amendment made by your Lordships) hath not only a very doubtful Signification; but in the common Acceptance both of the Civil and Cannon Law, doth signify only a *Bare With-drawing*, a *Temporary Quitting of a Thing*, and *Neglect only*, which leaveth the Party at Liberty of Returning to it again. *Desertum pro Neglecto*, says *Spigelius* in his *Lexicon*: But, the Difference between *Differere* and *Derelinquere*, is expressly layd down by *Bartolus*, upon the 8th. Law of 58th. Title of the 11th. Book of the *Code*, and his Words are these, *Nota diligenter, ex hac Lege, quod aliud est Agrum differere, aliud derelinquere; qui enim derelinquit, ipsum ex Penitentiâ non revocat: sed qui deseret, intra biennium potest.*

Whereby it appears, my Lords, that, that is called *Desertion*, which is *Temporary* and *Releasable*: That is called *Dereliction*, where there is *no Power of Right to Return.*

So

So in the best Latin Authors, and in the Civil Law, *Deserere Exercitum* is used to signify, *Soldiers leaving their Colours*, Cod. Lib. 12. S. 1.

And in the Cannon Law to *Deserere Benefice*, signifies no more than to be *Non-Resident*; so is *Calvin's Lexicon*, Verb. *Desert*. secund. *Canones*

In both Cases, the Party hath not only a *Right of Returning*; but is *Bound to Return again*: Which, my Lords, as the Commons do not take to be the present Case; so they cannot think that your Lordships do; because it is expressly said, in One of your Reasons given in Defence of the last Amendment, *That your Lordships have been, and are willing, to secure the Nation against the Return of King James*; which your Lordships would not, in Justice, do, if you did look upon it no more than a *Negligent With-drawing*, which leaveth a *Liberty to the Party to Return*.

For which Reasons, my Lords the Commons

Commons cannot agree to the First Amendment, to insert the Word *Deserted* instead of *Abdicated*; because it doth not, in any Sort, come up to their Sence of the thing: So, they do apprehend, it doth not reach your Lordships meaning, as it is expressed in your Reasons; whereas they look upon the Word *Abdicated* to express properly what is to be Inferred from that Part of the Vote to which your Lordships have agreed, *That King James the Second, by going about to Subvert the Constitution, and by Breaking the Original Contract between King and People, and by Violating the Fundamental Laws, and With-drawing himself out of the Kingdom, hath thereby Renounced to be a King according to the Constitution, by Avowing to Govern by a Despotick Power, unknown to the Constitution, and Inconsistent with it; he hath Renounced to be a King according to the Law, such a King as he Swore to be at the Coronation, such a King to whom the Allegiance of an English Subject is due; and hath set up another*

ther kind of Dominion, which is to all Intents an *Abdication*, or *Abandoning of his Legal Title*, as fully as if it had been done by exprefs Words.

And, my Lords, for these Reasons the Commons do insist upon the Word *Abdicated*, and cannot agree to the Word *Deserted*.

Mr. Serjeant H——lt.

My Lords, I am commanded, by the Commons, to assist in the Management of this Conference, and am to speak to the same Point that the Gentleman did, who spoke last to your Lordships First Amendment.

As to the First of your Lordships Reasons, for that Amendment, (with Submission to your Lordships) I do conceive it not Sufficient to alter the Minds of the Commons; or to induce them to change the Word *Abdicated*, for your Lordships Word *Deserted*.

Your

drawn in the Conclusion of your Vote, *That the Throne is thereby Vacant*: that is, What the Commons mean by that Expression Whether you mean it is so Vacant as to null the Succession in the Hereditary Line, & so all the Heirs to be cut off, which we say will make the Crown *Elective*? And it may be fit for us to settle that matter first, and when we know what the Consequence of *The Throne being Vacant* means in the Vote as you Understand it, I believe we shall much better be able to settle the Difference about the Two Words,

Mr. Serjeant M——rd.

My Lords, when there is a present Defect of One to Exercise the Administration of the Government, I conceive, the Declaring a Vacancy, and Provision of a Supply for it, can never make the Crown *Elective*.

The Commons apprehend there is such a Defect now; and, by consequence, a present Necessity for the Supply of the

the Government, and that will be next for your Lordships Consideration, and theirs afterwards.

If the attempting the utter Destruction of the Subject, and Subversion of the Constitution, be not as much an *Abdication* as the attempting of a Father to Cut his Son's Throat, I know not what is.

My Lords, the Constitution, notwithstanding the Vacancy is the same; the Laws that are the Foundations and Rules of that Constitution are the same: But, if there be, in any particular Instance, a Breach of that Constitution, that will be an *Abdication*; and that *Abdication* will infer a Vacancy.

It is not that, the Commons do say, the Crown of England is always and perpetually *Elective*; but it is more necessary that there be a Supply when there is a Defect, and the Doing of that will be no Alteration of the *Monarchy* from a *Successive One* to an *Elective*.

Lord

Lord Bishop of E——ly.

Gentlemen, the Two Amendments made by the Lords, to the Vote of the Commons, are as to the Word *Abdicated*, and as to the *Vacancy of the Throne*: That *Abdicated* may be Tacitely by some *Quasi-Acts*, that Gentleman, (I think I may name him without Offence,) Mr. Sommers, very truly did alledge out of *Grotius*: But, I desire to know, Whether *Grotius*; that great Author, in Treating on this Subject, doth not interpose this Caution, *If there be a Yielding to the Times*: *If there be a going away, with a Purpose of seeking to Recover what is, for the present Lost or Forsaken*: In plain English, *If there were any thing of Force or just Fear in the Case, that doth void the Notion of Abdication*: I speak not of *Male-Administration*, now of that hereafter.

Mr. Serjeant M——rd

But, my Lords, that is not any Part of the Case declared by the Commons

D

in

in this Vote, when the whole Kingdom, and the *Protestant* Religion, our Laws and Liberties, have been in Danger of being Subverted, an Enquiry must be made into the Authors and Instruments of this Attempt; and if he, who had the *Administration* intrusted to him, be found the Author and Actor in it, What can that be, but a *Renuntiation of his Trust*, and consequently his Place thereby *Vacant*?

My Lords,

Abdication (under Favour) is an *English Word*; and, your Lordships have told us, the true Signification of it is a *Renuntiation*. We have indeed, for your Lordships Satisfaction, shewn its meaning in Foreign Authors; it is more than a *Deserting* the Government, or Leaveing it with a Purpose of Returning. But, we are not, I hope, to go to learn *English* from Foreign Authors, we can, without their Aid, tell the Meaning of our own Tongue.

villains

If

Then, Gentlemen, there is another Distinction in those Authors that Writ concerning this Point, which are chiefly the *Civilians*; there may be an *Abdication* that may *Forfeit the Power of a King only*; and there may be *One*, that may *Forfeit both That and the Crown too*. It is a Distinction indeed in other Words, but to the same Sence: I will tell you presently why I use it.

Those *Abdications* that are of *Power only*, are *Incapacities*; whether those I call Natural and Involuntary, as Defects of Sence, Age, or Body, or the like; or Moral and Voluntary, as Contrariety in Religion; an Instance whereof there was lately in *Portugal*, which was a *Forfeiture only of the Power*, and not of the *Name and Honour of a King*; for though the *Administration* was put into the Younger Brother's Hand, the Patents, and other Publick Instruments ran in the Elder Brother's Name.

This not, without all Doubt, Naturally

turally an *Abdication* in the full Extent of the Word; nor do I here (as I said) consider, whether that the King be gone out of the Kingdom, or stay in it; but only, whether he be fit for the *Administration*, which must be Provided for; be he here, or gone away.

But the highest Instance of an *Abdication* is, when a Prince is not only Unable to execute his Power; but Acts quite contrary to it; which will not be Answered by so bare a Word as *Endeavour*.

I take these to be all the Distinctions of *Abdications*.

Now, if this last Instance of an *Abdication* of both Power and Right, take Place in a Succeeding Monarchy, the Consequence will be, That there is a Forfeiture of the whole Right; and then that *Hereditary Succession* is Cut off; which, I believe, is not intended by the Commons: There is indeed one Instance of the Use of such an *Abdication* in Monarchy,

Monarchy; and that is, that of Poland; and such an *Abdication* there makes the *Throne Vacant*; and those with, and in whom the Power is Invested of making Laws, (to wit the Senate) appoint One to Fit it. But that, and whatever other Instances of the like kind, these may be all of *Elective Kingdoms*; for though some of them are, or may be in *Kingdoms* now *Hereditary*, yet they were, in those Times, *Elective*; and since altered into *Hereditary Successions*.

But, here is One thing, that is mentioned in this Vote, which I would have well considered, for the Preservation of the *Succession*, and that is the *Original Compact*: We must think sure that meant of the *Compact*, that was made at the first Time, when the Government was first Instituted, and the Conditions that each Part of the Government should observe on their Part, of which this was the most Fundamental, That King, Lords, and Commons, in Parliament assembled, should have the Power of making New Laws, and altering of

of *Old Ones* : And that being one Law which settles the *Succession*, It is as much Part of the *Original Compact* as any : Then if such a Case happens, as an *Abdication* in a *Successive Kingdom*, without Doubt, the *Compact* being made to the *King*, his *Heirs*, and *Successors*, the *Disposition of the Crown* cannot fall to us, till all the *Heirs* do *Abdicate* too. There are indeed many Examples, and too many Interruptions in the *Lineal Succession* of the Crown of *England*: I think, I can instance in Seven since the Conquest, wherein the *Right Heir* hath been put by : But that doth not follow, that every Breach of the First *Original Contract*, gives us Power to *Dispose* of the *Lineal Succession* ; especially, I think, since the Statutes of Queen *Elizabeth*, and King *James* the First, that have Established the Oath of *Allegiance* to the *King*, his *Heirs*, and *Successors*, the Law is stronger against such a *Disposition* : I grant that from King *William* the First, to King *Henry* the Eighth, there has been Seven Interruptions of the *Legal Line of Hereditary Succession* ; but, I say, those Statutes

Mr. Serjeant *Maynard* says, *That it is not intended to make the Government perpetually Elective*. I would know, what he means by *Perpetually* : Our Breaking through the *Line* now, by a Choice out of the *Lineal Course*, is an Alteration and a Precedent : And why may not others take the same Liberty we doe ? And, Will not that make it *Perpetually Elective* ?

But truly, I think, no Act of ours can alter the *Lineal Succession* ; for, by all the Laws we have now in Being, our Government appears to be *Hereditary* in a Right Line of *Descent* : And upon any Discent, when any one ceaseth to be *King*, *Allegiance* is by Law due to his *Legal Heirs*, as *Successor*, before Coronation, as after.

I was in great Hopes that you would have offer'd something in Answer to One of my Lord's Reasons against that part of the Vote, which declares, *The Throne to be Vacant*.

That

That no Act of the King's alone can Bar or Destroy the Right of his Heir to the Crown, which is Hereditary, and not Elective. And then, if this matter goes no farther than King James the Second, in his own Person, How comes the Vacancy and the Supply to be Devolved upon the People? For if he only be set Aside, then it is apparent, whether the Crown is to go, to the Person that hath the next Right of Succession; and consequently there is no Vacancy.

Earl of N—m.

Gentlemen, I would not Protract Time, which is now so necessary to be Husbanded; nor perplex Debates about any Affair like that which lies now before us: It is not a Question barely about Words, but Things, which are now Disputing.

The Word *Abdicated*, it is agreed by Mr. Sommers, is a Word of Art; and he hath told us what its Signification is, from those that are Skilled

in

in the Art to which it belongs. He doth acknowledge that it is no Law-Word among English Lawyers; nor known to the Common Law: But then he saith, neither is the Word, used by the Lords, *Deserted*.

I agree to him that neither the One, or the Other are Words used in our Law; but the Inference I would draw thence is this, That we have no Words applicable to this Case; because we never before had such a Case; and we must not draw Inferences of Law in such a Case, that are not deducible from Rules well known in our Laws.

I will not Dispute what the Sence of the Word *Abdication* is in the Civil Law; but that it is a Civil Law Word, is agreed to by me; and if it be, for that Reason I am against using of it; because I am so much in Love with our own Laws, that I would use no Words in a Case that so much concerns our Legal Constitution; but what are fetched from thence,

E

I

I hope I shall never see our old Laws altered; or, if they be, *God* forbid, we should be the Voluntary Agents in such an Alteration.

But, then we are told the Word *Deserted* doth not reach our Case, because the signification of the Word is but a *Temporary Leaveing, or Forsakeing of his Power, which he may Reassume;* nay, *which in some Cases there is a Duty upon him to Return unto.* If that were all, Mr. Sommers hath given himself an Answer to that Objection, out of what he alledges of the Lords Reasons, who have declared that they are willing, *To secure the Nation against the Return of King James into this Kingdom; and will therefore concur with the Commons in any Act that shall be thought necessary to prevent such his Return.* So that it should seem we were agreed in that Matter; and if that were the Point, we should find Words proper soon enough to express our Meaning by.

But

Constitution? or, Whether it be new Language among us? And I offer this to your Lordships Consideration for Two Reasons,

First, It is a Phrase and Thing used by the Learned Mr. *Hooker* in his Book of *Ecclesiastical Polity*, whom I mention as a valuable Authority, being one of the best Men, the best Church Man, and the most Learned of our Nation in his time, and his Works are very worthily Recommended by the Testimony of King *Charles* the First; He alloweth, *That Government did Originally begin by Compact and Agreement,*

But I have yet a greater Authority than this, to influence this Matter, and that is your Lordships Own, who have agreed to all the Vote, but this Word *Abdicated,* and *The Vacancy of the Throne.* And therefore so much enough to be said to that; and go back to Debate what is not in Difference, is to confound our selves, instead of Endeavouring to compose Differences.

And

And truly, my Lords, by what is now Proposed, I think, we are desired to go as much too far Forwards, when the *Vacancy of the Throne* is proposed to be the Question to be first Disputed before the *Abdication*, from which it is Inferred.

But sure I am, it is very much beyond what the Vote before us doth lead us unto, *To talk of the Right of those in the Succession*: For that goes further than the very last part of the Vote; and it is still to lead us yet farther, to say any thing about making the *Crown Elective*: For, I hope, when we come to answer your Lordships Reasons, we shall easily make it out, that it is not in this Case; neither was there any occasion given by this Vote to infer any such thing. We shall therefore, keep to the Points as they are both in order of Place, in the Vote, and of Reason in the thing; and, as we have done hitherto, speak

to the Words *Abdicated* and *Deserted*, the Words to be Disputed about in the First Place. Another Lord did give One Reason against the using the Word *Abdicated*, *Because it is a Word belongs to the Civil Law*; and said, *He would by no means exchange our own English Common Law for that*. I intirely concur with that Noble Lord in that Point; but he did agree to us also, *That there is no such Word in our Common Law as Deserted*; that is which should signifie, by the Stamp the Law puts upon it, any Sence applicable to the matter in Hand.

Then, if we must not use our Word, because unknown to our Common Law; neither must we use your Lordships for the same Reason, and so shall be at an intire Loss what Word to use; and so, indeed, they may well come to consider the Conclusion First, who leave us at Uncertainties on what Terms we are to Discourse; and there cannot be a greater Confusion in any Debate, than to state a Conclusion without the Premises;

mises; which we must doe, if we cannot agree how to Word the Fact we infer from.

My Lords, I shall not much differ from what, in general, has been said concerning the Sence of the Word *Abdicated*; for it seems to be agreed on all Hands that it is a *Renunciation*; Neither, will I contend for an *Involuntary Abdication*; because I think it means a *Voluntary Act*: But truly what your Lordships mean, in your Reason against it, by the Word *Express*, I cannot so well understand.

That a King may *Renounce* his Kingship, I think, may be made out both in Law and Fact, as well as any other *Renunciation*; and that, as far as I can discern, by your Lordships Reasons; and this Days Debate hitherto, is not intended to be Denied by any: Indeed, some of my Lords have told us, *That there tis meant of the Exercise of a Right which may be Renounced, without Renouncing that Right.* Whether that be a true

Distinction

hath Embraced, he is Obliged to Suspend the Laws that defend the Established Religion, and to Treat it, as it has been (as we well know) called, as the *Northern Heresy*; and, under Pain of Damnation to Extirpate it: And, in order to it, did set aside and Repeal all the Legal Fences of it, without Consent of Parliament. What the Endeavours and Practices of that kind have been in the last Reign, I suppose, we are not now to be told of, or Instructed in; and if (as is very Plain) this doth amount to a manifest Declaration of his Will, no longer to Retain the Exercise of his Kingly Office, thus Limited, thus Restrained, then in common Sence, as well as Legal Acceptation, he has sufficiently declared his *Renouncing of the very Office*: As for his Departure out of the Kingdom, tis not material, whether it was Voluntary or Involuntary; but it is sufficient, that his Actings declare, *quo Animo*, he went away, he no longer would pursue what he designed; and was so strongly Obliged unto the contrary,

trary, by the Duty of his Office and Relation, and the Obligation of the *Orginal Contract*; as likewise his own Coronation Oath, and then he desires no longer to be here.

So that, taking both these things together, that he will not; nay, he cannot (as thus perswaded in Point of Religion) Govern according to Law; and thereupon hath withdrawn himself out of the Kingdom: It is a manifest Declaration of his Express *Renouncing* and *Parting with his Kingly Office*: And therefore I cannot depart from insisting upon this Word *Abdicated*, which doth so well correspond to the Fact of the Case, and so well express the true Meaning of the Commons in their Vote: Nor can we Consent to the *Postponeing* this Point, till the Other about *The Vacancy of the Throne*, be determined; for this is the very Foundation upon which we are to proceed, for Establishing the Superstructure of the other Conclusion.

Earl

Earl of N—m.

This Learned Gentleman that spoke last, says, *It is necessary to prefer the Premises before the Conclusion, as being the Foundation to the Superstructure.* Truly, I apprehended that this Word *Abdicated* was Part of the *Conclusion*, and not of the *Premises*; the Vote runs thus, *That by Breaking the Original Contract, having endeavoured to subvert the Constitution of the Kingdom, and having withdrawn himself out of the Kingdom, he has Abdicated the Government, and the Throne is thereby Vacant.*

I take it to be (as I say) part of the *Conclusion*, the other Part being joyned by a Copulative; therefore that which is but the other Part of the *Conclusion*, is not to be inferred from the other Part of the *Premises*. But take it to be (as you say) that *The Vacancy of the Throne is another Distinct Conclusion from all that preceded, as the Premises, and therefore it is to be*

F

con-

considered last; I would then beg the Favour of You, Gentlemen of the *House of Commons*, to answer me one Question about this Point of *Abdication*, Whether you mean by *Abdication*, a Renouncing for Himself, or for himself and his Heirs?

If You mean only *Abdication* for Himself, it will have a different Influence upon the Debate and Resolution of the Case, as to the meaning of that You call the *Conclusion*; for then, *How can the Throne be Vacant?*

But if it be meant for himself and his Heirs, then I apprehend it is no more than what you say at the End, *That the Throne is indeed Vacant*; and then this *Abdication* cannot be Part of the *Premises*, but must be the same Thing with, or Part of, the *Conclusion*: I will not undertake to dispute, Whether a King of *England* may, or may not, Renounce his Kingdom? for my own Part, I think he can, and I may go so far in Agreement with those that have spoken to

such a Law was not Executed by them, whose Duty it was to see it put in Execution? You may, in ordinary Cases of breaking the Law, have Remedy in the ordinary Courts and course of Justice.

But sure! He does not take this to be such a Case, or these to be ordinary Violations of the Law: And therefore in the extraordinary Cases, the extraordinary Remedy's to be recurred unto; for the *King* having a limited Authority, by which he was obliged to keep the Laws made, as to the executive Part of the Government, and to observe the Constitution for making such new Laws as the People should find necessary, and present him for his Consent; when he doth *Violate*, not a particular Law, but all the Fundamentals; nor Injure a particular Person in Religion, Liberty, or Property, but falls upon the whole Constitution it self, what doth all this speak?

He therein saith, *I will no more keep*
F 4 *within*

within my limited Authority, nor hold my Kingly Office upon such Terms.

This Title I had by the Original Contract between King and People; I Renounce that, and will Assume another Title to myself: That is, such a Title, as by which I may Act as if there was no such Law to Circumscribe my Authority.

Where shall any Man come to have Redress in such a Case as this, when the Malefactor comes to be Party, unto whom all Applications for Relief and Redress from Injuries should be made, and so he himself shall be a Judge of his own Breaches of Law. This most apparently was the Case as to the *Quo Warranto's*, which was a plain Design to subvert the Constitution in the very Foundation of the *Legislature*.

It is because the King hath thus violated the Constitution, by which the Law stands, as the Rule both of the Kings Government, and the Peoples Obedience, that we say, He hath *Abdicated* and

and Renounced the Government, for all other particular Breaches of the Law, the Subject may have Remedy in the ordinary Courts of Justice, or the extraordinary Court of Parliamentary Proceedings: But were such an Attempt as this is made on the Essence of the Constitution, it is not We that have brought ourselves into this state of Nature, but Those who have reduced our Legal well-established Frame of Government into such a state of Confusion, as we are now seeking a Redress unto.

Earl of R — cr.

The Lords have given their Reasons, why they altered the Word *Abdicated*, because it is a Word not known to the Common Law, and of doubtful Signification: Therefore it would be well, if the *Commons*, would please to express their own Meaning by it. I believe, my Lords would be induced to Agree, that the King hath *Abdicated*, That is, *Renounced the Government for Himself*. If you mean no further than that,

that; and if You do so, Why should You not be pleased to explain your selves, that every one may know how the Matter stands, and to preserve a good Correspondence between Both Houses, in such a Juncture and Conjunction as this?

But, if you do mean any thing more by it, than *Abdication* for Himself only, tho' their Lordships should agree to the using of the Word *Abdicated*; yet this would prove a greater Argument against their Agreeing in the Other Point, about the *Vacancy of the Throne*: Therefore, we would be glad to have you explain your selves what you mean by it.

Then there was a little Pause.

Mr. H—en.

If the Lords have nothing further to offer upon this Point, it will be fit for Us to go on to the other Amendment, made by the Lords to Our Vote.

No

If the Case be so, then King *James* the Second, who has only left the *Exercise*, continues in the *Office*, and is King still; and then all the Acts that we have done in this *Convention*, are wholly (as we conceive) not Justifiable; You are in no Place or Station to Relieve your selves, or the Nation, in this Exigence; unless you will think of setting up another Regency by your own Authority, without his Consent; which, I conceive, by the Laws of *England*, you cannot do.

What then follows upon all we have done? We have drawn the Nation into a Snare, by the Steps we have taken; and leave all in such an Intricacy, as we have no Power, by Law, to deliver them out of; nor can we answer for what we have done, unless the King should Die, and that would leave the Succession uncertain.

My Lds. I only apply my self, to consider the Reasons of your Lordships, for insisting

ing

ing upon this Second Amendment; because, I conceive, your Lordships have therein given no Answer to the Reason First given by the *Commons*, why they cannot agree to your *Lordships* Amendment.

Mr. Poll — n.

My Lords, your own Reasons (under Favour) do shew, That your Lordships do intend, that the King is still in the Government: This, I think, is most apparent out of your own Reasons,

For, when you have declared, *That the King hath Deserted the Government*, and then say, No Inference can be drawn thence, but only, *That the Exercise of the Government by King James the Second, was Ceased*; then you do thereby still say, That King *James* the Second is in the Government; for if only *the Exercise be Ceased*, the *Right* doth still remain: Then, I am sure we have no Reason to Agree with their Lordships in that Point.

Next

Next, my Lords, truly we cannot see how this thing that you would have can be inferred from your own Vote, That *only the Exercise of the Government by King James ceased*; since you do not say that he deserted the Exercise of the Government?

And if your Lordships had any purpose to express your Meaning by a publick Vote, that *only the Exercise ceased*, surely your Lordships would have put in the word *Exercise* there: But when in your Vote you say, *The Government was deserted*, you cannot mean only the Exercise of it.

And that it is the first Reason that the *Commons* give your Lordships why we cannot by any means admit of your Lordships amendment, because *Throne and Government* are in the true construction the same; but the Exercise of the Government only (as you express it) and the Government it self (if your Reason conclude right) are not the same. And we are to reason from the words expressed in the Vote.

G

Next

[98]

Next, my Lords, we say, It cannot be inferred from the words, as they rest in your Lordships Vote, that only the Exercise of the Government, as to King *James* the Second, did cease.

For if we read that part about Deserting the Government, with the rest of the Particulars that go before, his endeavouring to subvert the Constitution of the Kingdom, breaking the original Contract, violating the Fundamental Laws, and withdrawing himself out of the Kingdom; then can any Man of Understanding think that this deserting of the Government can be any thing else, but somewhat that is agreeable to all those precedent Acts, which are not a ceasing of the Exercise of the Government only, but a destruction of the Government it self.

But besides, my Lords, under Favour, the Administration or Exercise of the Kingly Government is in construction and consideration of Law all one and the same: And I think no body that would reason aright from thence can
say

[99]

say there is any distinction between Government and the Exercise of the Government; for whosoever takes from the King the Exercise of the Government, takes from the King his Kingship; for the Power and the Exercise of the Power are so joyned that they cannot be severed.

And the Terms themselves (taking them as the Law of *England*, which we are to argue from this Case, teacheth them) are so co-incident, that they cannot either subsist without consisting together: If a Man grant to another the Government of such a Place, this imports the Exercise of the Government there to be granted thereby.

As if the Islands belonging to this Crown and Dominion of *England* (as the Plantations abroad) if the King grants to any one the Government of *Jamaica*, or the like, sure no one will say, that That is not a Grant of the Exercise of the Government there.

G 2

[100]

So that where-ever a Government is granted, the Exercise of that Government is meant and included, and therefore the supposed Distinction may be something indeed, if they be only notionally considered; but it is a Notion altogether disagreeing to the Laws of *England*.

When your Lordships say in your Reasons, That *the Exercise of the Government as to K. James the Second is ceased*; which as far as you can go in this Point, the Commons can by no means agree to this Reason; for by the words so used (*the Exercise ceased*) we apprehend, that you mean the Kingship continueth still in him, and that only the Exercise is gone.

And if it be so, and it be utterly unlawful, and as great a Crime (as what Law saith it is not?) to make away from the King the Exercise of the Government, as to take from him the Government, then it may do well for your Lordships to consider, whether you

[101]

you are not Guilty of the same Crime and thing which you would decline by your amendment.

The Commons therefore cannot admit, that there should be a taking away of the Exercise of the Government from the King, any more than the taking away the Government which (we say) he hath himself given away by *Abdication*. And if *K. James* be our King still, we cannot by any means agree to the keeping of him out of the Kingdom; for if it be his Right to be King still, God forbid but that he should enjoy it, and be admitted to the Exercise of it again.

Then, my Lords, for the Conclusion that your Lordships have added to your Reason (as making it from the very words of our Vote) that it is, *That it would infer such a Vacancy in the Throne, as that the Crown should thereby become Elective*; this, we conceive, is a conclusion, that he hath no Premises either from our Actions, or our Sayings, or our Votes, or any thing else in this Case;

[102]

Case; nay, it is quite varying from all the Premises: But when such a Conclusion can be shewn to follow from them, then it will be time enough for us to give our Answer to it.

But, my Lords, this is that we do insist upon; That if the Right of Kingship be still (after all that is agreed on both hands) due to him, we cannot in Justice agree to keep him from it. And if it be not his due Right, but by these Acts, his subversion of the Constitution, his breaking the original Contract, and violation of the Fundamental Laws, he hath Abdicated it (as we say) and this Abdication hath put him by his Right, and so his Right is gone from him (as we conceive it is); then, I think, we may lawfully go on to settle the Peace and Welfare of the Nation.

But the Right to be still in him to have a Regency upon him without his own Consent, or till his return, we take it to be a strange and impracticable thing,

[103]

thing, and would be introductive of a new Principle of Government amongst us. It would be setting up a Commonwealth instead of our ancient regulated Government, by a limited Monarchy; then, I am sure, we should be justly blamed: And therefore we can by no means submit to your Lordships Alterations of our Vote, upon any of the Grounds and Reasons that have as yet been offer'd.

Earl of C-----n.

As to what Mr. P-----n hath offered, I desire to observe a word or two, and that is from the Commons second Reason for their disagreeing to their Lordships Amendments.

You say there, That *the Commons do conceive they need not prove to your Lordships, that as to any other Person besides King James the Throne is also Vacant*: Doth not this shew, that the meaning of the Vacancy is a Vacancy throughout, as well as with respect to King James. I ask your Pardon if I do not declare my own Opinion about the
Va-

[104]

Vacancy as to him; but all that I mention this for, is to know your Meaning in this point, how far the Vacancy is to extend.

You said before, That *He had Abdicated the Government, and thereby the Throne was vacant.* How is it Vacant? Is it only as to King *James*, or is as to him and all or any of his Posterity, or any of those that are in the remainder in the Royal Line in Succession? If it be as to them too, then it must necessarily follow, that the Kingdom must thereby become Elective still, or the Government changed into a Commonwealth; neither of which, we hope, the Commons intend by it. And therefore that made me ask before what a grave and learned Gentleman meant when he said it should not be perpetually Elective.

Mr. Serjeant M——d.

I am sure, if we be left without a Government, as we find we are (why else have we desir'd the Prince to take upon

[105]

upon him the Administration?) sure we must not be perpetual under Anarchy, the word *Elective* is none of the Commons word; neither is the making the Kingdom Elective the thing they had in their Thoughts or Intentions; all they mean by this matter, is to provide a Supply for this Defect in the Government, brought upon it by the late King's Male Administration. And I do say again, this provision must be made; and if it be, that would not make the Kingdom perpetually Elective? I stand not upon any Word, but am for the Thing, that a Provision be made to supply the Defect.

Mr. P——n.

Do your Lordships agree, that the Throne is Vacant as to King *James* the Second? If so, or if you will say it is full of any body else, and will name whom it is full of, it will then be time for the Commons to tell what to say to it. If your Lordships will please to shew that, we shall go on to give it an Answer.

H

Earl

Earl of C——n.

Your own words in your Second Reason are, That you need not prove to us, that it is to any other Person the Throne is also Vacant: Then how should we name who it is full of? Admit for Discourse sake, but we do not grant it, for my part I do not. I say, taking it to be Vacant, as to King James the Second, then you ask us, who it should be supplied by; must it not be supplied by those that should have come if he were dead?

For, I pray consider, I take this Government by all our Laws to be Hereditary Monarchy, and is to go in Succession by Inheritance, in the Royal Line; if then you say this Government is Vacant, that would be to put all those by that should take by Succession, and that will make the Kingdom Elective for that time.

You

You say, *the Throne is Vacant*; then I may very well ask you who hath the Right of filling up that Vacancy? We say, there is no Vacancy; if there is, pray is there any body that hath the Right of filling it up?

Mr. Serjeant M——d.

That is not the Question before us, yet that will come properly in debate when we are agreed upon the Vacancy.

The Noble Lord says, *It is by our Law an Hereditary Monarchy*: I grant it; but though it should in an ordinary way descend to the Heir, yet as our Case is, we have a Maxim in Law as certain as any other, which stops the course; for no Man can pretend to be King James's Heir while he is living: *Nemo est hæres viventis.*

H 2

Earl

E. of P——e.

To that Point I think my Lord of *C——n* gave an Answer, 'That it should go to the next in the Line that were to take it, if the King were dead: for as we should be understood, we should make it a Case of Demise of our Kings, our Law calls it; that is, the King is dead in Law by this *Abdication* or *Desertion* of the Government, and that the next Heir is to take by Discent.

You, Gentlemen, ask us who the Throne is full of; I think it is sufficient to know that there are Heirs who are to take by Lineal Succession, though we do not or cannot positively name the particular Person; and therefore we may well conclude there is no Vacancy.

Suppose I should be told such a Gentleman is in such a Room, and there I find him, and another man with him, and I come out and tell you so, and ask which

which is he, you may be doubtful which of the two is the Man, but sure the one of them is he; but because you cannot tell which it is, shall I conclude no such one is there. If there be a doubtful Title (that is, dubious in whom the Title resides, but a certain Title as to some one) and I cannot directly name him that hath the immediate Right, yet it is sufficient to prevent the Vacancy, that there is an Heir or Successor, let him be who he will.

Mr. S——M——d.

But your Lordships will neither agree it is Vacant; nor tell us how it is Full. King *James* is gone, we hear or know of no other, What shall the Nation do in this Uncertainty? When will you tell us who is King, if King *James* be not? Shall we everlastingly be in this doubtful condition?

E. of P——e.

Sure, *Mr. S——M——d*, you will agree there is one, and no more than one,

[116]

one, to whom a Right does belong of Succeeding, upon failure of King James. Has he no Heir known?

Mr. Serjeant M——d.

I say, No Man can be his Heir while he lives. If he has any, it is *in Nubibus*, our Law knows none; and, What shall we do till he be dead? It cannot descend till then.

E. of P——c.

You agree, That notwithstanding King Charles the Second was abroad at his Father's Death, and did not actually Exercise the Government, yet in Law, immediately upon his Father's Decease, he was not the less Heir for that; nor was the Throne Vacant.

Mr. Serjeant M——d.

That is not like this Case, neither because the Discent was Legally immediate; but here can be no such thing during King James's Life, as an Hereditary Discent:

[117]

Discent: So that either here must be an everlasting War entail'd upon us, his Title continuing and we opposing his return to the Exercise of the Government; or we have no Government for want of a Legal Discent and Succession.

Pray, my Lords, consider the Condition of the Nation till there be a Government; no Law can be executed, no Debts can be compelled to be paid, no Offences can be punish'd, no one can tell what to do to obtain his Right or defend himself from Wrong.

You still say, *the Throne is not Void*, and yet you will not tell us who Fills it. If once you will agree, that the Throne is Vacant, it will then come orderly in debate, how it should, according to our Law, be filled.

E. of N——m.

The Objection (as I take it) that is made to these Reasons, the Lords have sent for their insisting upon the Amendments

ments, is, *That we have not fully answered in them the Reasons given by the Commons for their not agreeing to those Amendments.*

Mr. S—l.

My Lords, we say you have not fully answered the first of our Reasons.

E. of N—m.

Gentlemen, I intend to state the Objection so:

That first Reason of yours I take to be this in effect, That our word (*Deserted*) being applied to the Government, implies our Agreeing that the King hath deserted the Throne, those two being in true construction the same; and then by our own Confession, the Throne is Vacant as to him.

To this you say, my Lords have given no Answer: Truly, I think it is a clear Answer, that the word (*Deserted*) may have another sense, and doth not

ne-

necessarily imply *Renouncing* entirely of a Right, but a ceasing of the Exercise. But then, if that does not Vacant the Throne as to him, the other Reason comes to be considered, How came you to desire the Prince of *Orange* to take the Administration upon him, and to take care of *Ireland* till the Convention, and to write his Letters circulary for this Meeting? And to renew your Address to the Prince, and to appoint a Day of Publick Thanksgiving?

In answer to that, my Lords say, That tho' the King's *Deserting* the Government (as they agree he has done) did imply the Throne to be Vacant, yet they might justly do all those Acts mentioned in the Commons Reasons; because if barely the Exercise of the Government were *deserted*, there must be a supply of that Exercise in some Person's taking the Administration; and as none so fit, because of the Prince's relation to the Crown (and his presence here) to Address unto about it, so none so proper to make that Address as the Lords; for in the absence of the

I

King

King they are the King and Kingdoms great Council, and might have done it by themselves, without the Commons; but being met in a full representative Body, they joyned with them.

Mr. P——n indeed has said, *There is no distinction in Law between the Kingship and the Exercise of it.* And, That *it is the same Crime, in consideration of Law, to take away the Exercise, as to take away the Kingship.*

I shall not dispute with that learned Gentleman (whom I very much honour for his Knowledge in the Profession of the Law) what Offence either of them would be now, for we are not discoursing concerning a Regency, how the Government should be Administred, but we are barely upon the Question, Whether the Throne be Vacant, so that we may have another King. But if we should grant a Vacancy as to the King himself, we are then told, the next in Succession cannot take, because no one can be Heir to one that is alive. Yet, I think, the Answer given by my Lords
be,

before is a very good one. That *tho' the King be not dead Naturally, yet if (as they infer) he is so Civilly, the next of course ought to come in as by Hereditary Succession;* for I know not any distinction between Successors in the case of a Natural Death, and those in the case of a Civil one.

For I would know if the next Heir should be set aside in this case, and you put in another, whether that King shall be King of *England* to him and his Heirs, and so being once upon the Throne, the ancient Lineal Succession be altered: If that be so, then indeed it is sufficiently an Elective Kingdom, by taking it from the right Heir.

If it be not so, then I would ask, Whether such King as shall be put in shall be King only during King *James's* Life. That, I suppose for many Reasons, is not their meaning; but, at least he must be made King during his own Life; and then if there be a Distinction made as to the Succession between a Natural and a Civil Death,
I 2 if

[116]

if King *James* should dye during the Life of the new King, what would become of the Hereditary Monarchy? Where must the Succession come in, when the next Heir to King *James* may not be next Heir to the present Successor?

Therefore we must reduce all to this point, which my Lords have hinted at in their Reasons, Whether this will not make the Kingdom Elective: for if you do once make it Elective, I do not say that you are always bound to go to Election, but it is enough to make it so, if by that President there be a breach in the Hereditary Succession, for I will be bold to say, you cannot make a stronger Tye to observe that kind of Succession, than what lyeth upon you to preserve it in this Case.

If you are under an Obligation to it, it is part of the Constitution. I desire any one to tell me what stronger Obligation there can be; and that, I say, is Reason enough for my Lords

to

[117]

to disagree to it, it bringing in the Danger of a Breach upon the Constitution.

Next, Gentlemen, I would know of you, if the Throne be Vacant, whether we be oblig'd to Fill it; if we be, we must Fill it either by our old Laws, or by the Humour of those that are to chuse; if we Fill it by our own old Laws, they declare, That it is an Hereditary Kingdom, and we are to take the next to whom the Succession would belong, and then there would be no need of standing upon a Vacancy.

If we are to Fill it according to the Humour of the Times, and of those that are to make the Choice, that diverts the course of Inheritance, puts it into another Line: And I cannot see by what Authority we can do that, or change our Ancient Constitution, without committing the same Fault we have laid upon the King.

These

[118]

These are the Objections against the Vacancy of the Throne, which occur to me; and We, my Lords, desire a Satisfaction to them before we agree to the Vacancy.

And, I think, the Answering them will lead us unto that which I take to be the main point in question, Whether the Vacancy of the Throne, and Filling it again, will not, as my Lords say, endanger the turning this Hereditary Monarchy of ours into an Elective one.

Mr. S——1.

My Lords, it seems very strange to us, that this Question should be asked us, when we come to shew, That your Lordships Reasons for leaving out this part of our Vote are not satisfactory, neither do answer the Reasons we gave for our not agreeing to your Lordships Amendments: And it is much stranger that we should be asked, Whether this Vacancy extend to the Heirs, when you

[119]

you will not tell us, whether it be Vacant as to King *James* himself.

You put it upon us to say, the Execution or Exercise of the Government is ceased; but you will not say the Throne is vacant, so much as to him: And if it be not, what have we to do, or consider, or debate, of any consequence, whether it will infer an Election or not?

We desire of your Lordships that which we think is very proper; first, to know whether the Throne be vacant at all: If it be, then our Proposition in the conclusion of our Vote is true, That the Throne is thereby vacant.

My Lords, I think we come here very much in vain, till this Point be set'd; What Satisfaction can it be to your Lordships, or Us, or the Nation, to know that such things as are mentioned in the Votes have been done by King *James*, and that he has deserted (as you say) the Government, if he still retain a Right to it, and your Lordships will

[120]

will not declare he hath no Right, but amuse the Kingdom with the doubtful words of the *Exercise* (as to him) *Ceasing*. If that be all you mean, what need the Question be asked, how far it is vacant, for it should seem it is not vacant at all.

E. of N——m.

Will you please to suppose it Vacant as to King *James*, that is, that he hath no Right? Then let us go on to the next step.

Mr. S——l.

That, my Lords, we cannot do, for all our business is to maintain our own, That the Throne is Vacant.

Mr. S——s.

My Lords, your Lordships, as a Reason against the word *Abdicate*, say, *It is not a word known in our Common Law*. But the word *Vacant*, about which we are

[121]

are now disputing, cannot have that Objection made to it; for we find it in our Records, and even apply'd in a parallel Case to this of ours, in 1 *Hen. IV*, where it is expressly made use of more than once, and there it doth import what I think it doth import in this Vote of the House of Commons, now in debate, and to require any further or other Explication of it than the Record gives, will be very hard and unreasonable; for we are here to give the Commons Reasons for maintaining their own Vote, and nothing else.

If your Lordships please to look into the Record in that case, there was first a Resignation of the Crown and Government made and subscribed by King *Richard* the Second, and this is brought into the Parliament, and there they take notice, that the *Sedes Reglis* (those are the words) *fuit vacua*; and the Resignation being read both in Latin and in English, in the Great Hall at *Westminster*, where the Parliament was

[122]

was then assembled, it was accepted by the Lords and Commons.

After that, it proceeds further; and there are Articles exhibited against Richard the Second, and upon these Articles they went on to Sentence of Deposition and Deprivation, and then followeth the words in the Record; *Et confessim ut constabat ex præmissis & eorum occasione Regnum Angliæ cum pertinentiis suis vacare.* Then Henry the Fourth riseth up out of his place as Duke of Lancaster, where he sat before, and standing so high, that he might be well enough seen, makes this Claim to the Crown: The words in the Record are, *Dictum regnum Angliæ sic ut præmitur Vacans una cum Corona vendicat.*

After that, the Record goeth on, That upon this Claim the Lords and Commons being asked, What they thought of it, they unanimously consented, and the Archbishop took him by the Hand, and led him *ad Sedem Regalem prædictum, &c.*

Nay,

[123]

Nay, and after all this, it is there taken notice of, and particularly observed, that *prius Vacante sede Regali*, by the Leasion and Deposition aforesaid all the publick Officers ceased; there is care taken for Hen. IV's taking the Royal Oath, and granting of new Commissions.

My Lords, the Commons do therefore apprehend, that with very good Reason and Authority they did in their Vote declare the Throne to be Vacant. But as to the going further to enquire into the Consequences of that, or what is to be done afterwards, is not our Commission, who came here only to maintain their Expressions in their Vote against your Lordships Amendments.

E. of R. — r.

In a free Conference the Points in question are freely and fully to be debated; and my Lords, in order to their

K 2 agree-

agreement with the Commons, are to be satisfied what is meant, and how far it may extend.

You, Gentlemen, that are the Managers for the House of Commons, it seems, come with a limited Commission, and will not enter into that Consideration which (as our Reasons express) hath a great weight with my Lords, Whether this Vote of the Commons will not make the Monarchy of *England*, which has always heretofore been Hereditary, to become Elective.

That the Vacancy of the Throne will infer such a Consequence; to me appears very plain: And I take it from the Argument that that last Gentleman used for the word *Vacant*, out of the Record of *Richard* the Second's time, that is cited for a President for that word. But as that is the only President, yet it is attended with this very Consequence; for it being there declared, That the Royal Seat was
Va-

Vacant, immediately did follow an Election of *Henry* the Fourth, who was not next in the Right Line; Did not then this Hereditary Monarchy in this Instance become Elective? When King *Charles* the Second dy'd, I would fain know, whether in our Law the Throne was Vacant. No sure, the next Heir was immediately in the Throne. And so it is in all Hereditary Successive Governments.

Indeed, in *Poland*, when the King dyes, there is a Vacancy, because there the Law knows no certain Successor: So that the difference is plain, that where ever the Monarchy is Hereditary, upon the Ceasing of him in possession, the Throne is not Vacant; where it is Elective, 'tis Vacant.

Earl of C——n.

I would speak one word to that Record which Mr. S——s mentioned, and which the Lord that spake last
last

[126]

last hath given a plain Answer unto, by making that difference (which is the great Hinge of the matter in debate) between Hereditary and Elective Kingdoms. But I have something else to say to that Record.

First, It is plain in that Case King *Richard* the Second had absolutely resigned, renounced, or (call it what you please) *abdicated* in Writing under his own Hand. What is done then? After that, the Parliament being then sitting, they did not think it sufficient to go upon, because that Writing might be the Effect of Fear: And so, not voluntary; thereupon they proceed to a formal Deposition upon Articles, and then comes in the Claim of *Hen. IV.*

After all this, Was not this an Election? He indeed saith, That he was the next Heir, and claimed it by Descent from *Henry* the Third; yet he that was really the next Heir did not appear, which was the Earl of *March*;

so

[127]

so that *Henry* the Fourth claimed it as his indubitable Right, being the next Heir that then appeared.

But, Gentlemen, I pray consider what follow'd upon it; All the Kings that were thus taken in (we say Elected, but the Election was not of God's Approbation) scarce passed any one Year in any of their Reigns, without being disturbed in the possession.

Yet, I say, he himself did not care to owe the Crown to the Election, but Claimed it as his Right. And it was a plausible Pretence, and kept him and his Son (though not without interruption) upon the Throne. But in the time of his Grandson *Henry* the Sixth, there was an utter Overthrow of all his Title and Possession too: For if you look into the Parliament Roll, *1. Edw. 4.*, the Proceedings against King *Richard* the Second, as well as all the rest of the Acts during the Usurpation (as that Record rightly calls it) are annul'd, repeal'd, revok'd, revers'd, and all the words

words imaginable used and put in, to set those Proceedings aside as illegal, unjust, and unrighteous. And, pray what was the reason? That Act deduceth down the Pedigree of the Royal Line, from *Henry* the Third to *Richard* the Second, who dy'd without Issue, and then *Henry* the Fourth (saith the Act) Usurped; but, That the Earl of *March*, upon the death of *Richard* the Second, and consequently *Edward* the Fourth from him, was undoubted King by Conscience, by Nature, by Custom, and by Law.

The Record is to be seen at length, as well as that 1 *Hen.* 4, and being a later Act, is of more Authority.

And after all this, (I pray consider it well) the Right Line is restored, and the Usurpation condemned and repealed.

Besides, Gentlemen, I hope you will take into your consideration, what will become of the Kingdom of *Scotland* if they

they should differ from us in this Point, and go another way to work, then will that be a divided Kingdom from ours again. You cannot but remember how much Trouble it always gave our Ancestors, while it continued a divided Kingdom; and if we should go out of the Line, and invest the Succession in any point at all, I fear you will find a Disagreement there, and then very dangerous Consequences may ensue.

Sir R ——— H ——— d.

My Lords,
The Proceedings and Expressions of the House of Commons in this Vote are fully warranted by the President that hath been cited, and are such as wherein there has been no interruption of the Government according to the Constitution.

The late King hath, by your Lordships concession, done all those things, which amount to an *Abdication* of the
L Go

Government, and the Throne's being thereby Vacant: And had your Lordships concurred with us, the Kingdom had long e're this been settled, and every body had peaceably followed their own business. Nay, had your Lordships been pleased to express your selves clearly, and not had a mind to speak ambiguously of it, we had saved all this Trouble, and been at an end of Disputing.

Truly, my Lords, this Record that hath been mentioned of *Henry* the Fourth, I will not say is not a President of Election, for the Archbishop stood up, and looked round on all sides, and asked the Lords and Commons, *Whether they would have him to be King;* and they asserted, (as the words of the Roll are) That *He should Reign over them.* And so it is done at every Coronation.

As to his Claim, they did not so much mind that, for they knew that he Claimed by Descent and Inheritance, when

when there was a known Person that had a Title before him.

For, that which a Noble Lord spoke of touching the Publick Acts that have been done since the King left us, I may very well say, we think them legally done; and we do not doubt but that Power which brought in another Line then, upon the Vacancy of the Throne by the Leasion of *Richard* the Second, is still, according to the Constitution, residing in the Lords and Commons, and is legally sufficient to supply the Vacancy that now is.

That Noble Lord indeed said, That your Lordships might not only with the Commons advise the Prince of *Orange* to take upon him the Administration, and joyn with us in the other things, but that you might have done it of your selves, as being in the absence of the King, the Great Council of the Nation.

L 2

My

My Lords,

I shall not say much to that point, your Lordships Honours Privileges are great, and your Councils very worthy of all Reverence and Respect.

But I would ask this Question of any Noble Lord that is here, Whether, had there been an Heir, to whom the Crown had quietly descended in the Line of Succession, and this Heir certainly known, your Lordships would have assembled without his calling, or would have either Administer'd the Government your selves, or advised the Prince of Orange to have taken it upon him? I doubt you had been (pardon me to say it) all guilty of High-Treason, by the Laws of *England*, if a known Successor were in possession of the Throne, as he must be if the Throne were not Vacant.

From thence, my Lords, your Lordships see where the Difficulty lyes in this matter, and whence it ariseth, because

cause you would not agree the Throne to be Vacant when we know of none that possess it.

We know some such thing hath been pretended to as an Heir Male, of which there are different Opinions, and in the mean time we are without a Government; and, Must we stay till the Truth of the matter be found out? What shall we do to preserve our Constitution, while we are without a safe or legal Authority to act under the same according to that Constitution, and in a little time it will, perhaps, through the distraction of our Constitution, be utterly irremediable?

I do not deny, but that your Lordships have very great Hardships to conflict with in such a Case, but who is the occasion of them?

We all do know the Monarchy is Hereditary; but how, or what shall we do to find out the Successor in the Right Line?

You

You think it will be a difficult thing to go upon the Examination who is Heir; perhaps it will be more difficult to Resolve in this Case, than it might be in another: for though heretofore there have been *Abdications* and *Vacancies*, it has been where the King has been of the same Religion of the Establish'd Worship of the Nation; and amongst those that pretended to the Succession, the several Claimers have been Persons born and bred up in that Religion that was Establish'd by Law; or it may be there hath been a Child in the Womb at the time of the Vacancy.

But then, my Lords, there would not be much difficulty to examine, who should Inherit, or what were fit to be done. I confess, I say, there are Difficulties of all sides, or else your Lordships sure would have spoke out before now: And if you had been clear in it your selves, you would have let the Commons and the World have known

it.

it. But it not being clear, must we always remain thus? Use what words you will, *Fill up*, or *Nominate*, or *Elect*, it is the thing we are to take care of, and it is high time it were done.

My Lords, There is no such Consequence to be drawn from this Vote, as an Intention or a Likelihood of altering the Course of the Government, so as to make it Elective, the Throne hath all-along descended, in an Hereditary Succession, the main Constitution hath been preserved.

The President of *Henry* the Fourth is not like that of Elections in other Countries; and I am sorry there should be any occasion for what is necessary to be done now.

But when such Difficulties are upon the Nation, that we cannot extricate our selves out of, as to the Lineal Successor, your Lordships, I hope, will give

us

us deive to remember *Salus populi est
suprema Lex.*

And if neither You nor We can do any thing in this Case, We, who are met under the Notion of an Assembly or Convention of the States, then have met to no purpose; for after we have Voted our selves to be without a Government, (which looks as if something were really intended as to a Settlement) all presently sinks, and we are as much in the dark as we were before.

And, my Lords, I pray give me leave to say one thing more: Your Lordships say, You will never make a President of Election, or take upon you to Alter the Succession.

With your Lordships Favour the Settlement of the Constitution is the main thing we are to look after. If you provide for the supply of the Defect there, that point of the Succession will, without all question, in the same method,

and

and at the same time be surely provided for.

But, my Lords, you will do well to consider; Have not you your selves already limited the very Succession, and cut off some that might have a Line at Right? Have you not concurred with us in our Vote, *That it is inconsistent with our Religion and our Laws to have a Papist to Reign over us?* Must we not come then to an Election, if the next Heir be a Papist? Nay, suppose there were no Protestant Heir at all to be found, would not your Lordships then break the Line?

By your Lordships Vote that is so inconsistent, you do suppose a Case of the greatest Consequence that can be may happen; and if that should happen to be our Case, that the whole Protestant Line should fail, would not that necessitate an Election, or else we must submit to that which were inconsistent with our Religion and our Laws?

M

If

If your Lordships then, in such a Case, must break through the Succession, I think the Nation has reason to expect you should take care to supply the present Defect, where the Succession is uncertain.

My Lords,

If this should not be agreed unto, what will be the Consequence? We that used, and justly, to boast of living under the Best of Governments, must be left without any one; for, your Lordships, it seems, cannot agree with us to Supply and Fill up this Gap in it, or tell us who is the Successor: And we must not do it our selves by Election; which is the only way left us to provide for our Settlement.

Truly my Lords, upon the whole, I cannot tell what condition we shall be in, or what we can do further; but we must even part, and break up in Confusion, and so leave the Nation to extricate it self, as well as it can, out of

of this Distraction. But then, at whose Door that will lye, I must leave to your Lordships own Thoughts.

E. of P — e.

We have indeed passed such a Vote, as that Gentleman says, against a *Po-pish* Prince's reigning over us, but I should think that amounts to no more than a Resolution, that by a Law to be made we will take care of it in Parliament: Therefore I think that which we aim at, and that which the Constitution of our Government does require, is, to put things in a legal method: And, in order to it, I would have the Legal Successor declared and proclaimed, and then a Parliament summoned in that Prince's Name, and the whole matter settled there.

An Act made by a King *de facto* is Void as to a King *de jure*; therefore I would have the Constitution preserved, and would desire, that all that is done

in this matter may be again done in Parliament.

E. of C——n.

Sir R——H——d was pleas'd to say, That *by the same method that the Throne now should be Filled, by the same the Successor should be Declared, and the Right Line Settled.* Is not that declaring the Crown to be Elective?

Suppose you say nothing, but Fill the Throne, Is it not to take away the Right Line of Inheritance? And, Will not such Successor claim it for his Posterity?

Truly, I think if the Right Line be Declared in the same way that the Successor is, then we take upon us to dispose of the Inheritance of the Crown absolutely; which, I think, by all the Law I ever read or could hear of among us, is out of our power; and, that neither House, or both Houses together, have

have power to do any thing relating to the Succession, but by Act of Parliament; which the two Houses by themselves cannot make.

of the Sir R——T——e.

I think we are now going too far in this matter; the Question before us is only, *Whether there be a Vacancy in the Throne.* After we have done with that, I do not see how this will preclude the Consideration of any Claim to the Succession.

Your Lordships say, *You are under great Difficulties upon this Subject.* But, my Lords, till you have declared the Throne Vacant, I must presume to say, I do not see how it is possible for any of us to make one step towards a Settlement.

If there be any Claims to the Crown, that Consideration will be next; and how to come at them, I conceive we are

[142]

are in the same Capacity as our Predecessors were to provide for all Exigencies as shall emerge, and for the supplying all Defects in the Government.

It is true, by the Acts of Queen *Elizabeth* and King *James*, first, we have the Oaths of Supremacy and Allegiance that are to be, and have been taken by all Persons.

But, my Lords, there is an old Oath of Fidelity, that useth to be required in Leets, and that by the ancient Law of *England* every man ought to take that is Sixteen Years of Age; and this was as much obliging to the King, his Heirs and Successors, as any of those later Oaths are, for they seem only to be made to exclude foreign Authorities, and not to infer any new Obedience or Subjection; therefore I am only saying, we are in as natural a capacity as any of our Predecessors were to provide for a Remedy in such Exigencies as this.

I do

[143]

I do not intend to trouble your Lordships any farther than the words of the Vote lead me.

If the Throne were Full, what do we do here; nay, how came we hither? I would fain know, whether all that is mention'd in one of our Reasons of the Administration being committed to the Prince, and those other Acts, do not all imply at least that we are in such a Case as *wherein the Throne is Vacant*, otherwise, if it had been full, I appeal to any one, whether we could have assembled or acted in any other Name, or by any other Authority, than his that filled it. Then do not all these things declare, that there is a Vacancy?

My Lords,

I have done, having said this, That it is a subsequent Consideration, how the Throne shall be Filled, and all the Particulars that relate to it remain entire, after this Resolution taken.

But

But I think we are at present to go no further. No Man, I hope, thinks there is a just Ground for any Apprehension of an Intention to change the Government; I am sure there is no Ground for any such Apprehension: So that we have all the reason in the World still to insist, That your Lordships should agree with us, that the Throne is Vacant, or we shall not be able to move one step further towards a Settlement.

Sir T — L — e.

My Lords,
So much has been said in this matter already, that very little is to be added.

But give me leave to say unto your Lordships, That those Amendments your Lordships have made to the Commons Vote are not agreeing with your other Votes, nor any of the Acts done since

since the *Abdication*. Had it been in the common ordinary case of a Vacaney by the King's Death, your Lordships in *December* last would sure have let us known as much: But it is plain you were sensible we were without a Government, by your desiring the Prince to take the Administration, and to issue out his Letters for this Convention.

But, my Lords, I would ask this Question, Whether upon the original Contract there were not a power preserved in the Nation to provide for its self in such Exigencies?

That Contract was to settle the Constitution as to the Legislature which a noble Lord in the beginning spoke of; so we take it to be: And it is true, that it is a part of the Contract, the making of the Laws, and that those Laws should oblige all sides when made; but yet so, as not to exclude this original Constitution in all Governments that commence by Compact, that there should

[146]

should be a Power in the States to make provision in all times, and upon all occasions, for extraordinary Cases and Necessities, such as ours now is.

I say nothing now as to the Hereditary Succession; our Government has been always taken to be Hereditary, and so declared when there has been occasion to make provision otherwise than in the direct Line.

But our matter is singly upon a Point of Fact, Whether the Throne be Vacant (as the Commons say it is) by the *Abdication* of King James the Second.

This present Vacancy is nearest to that of *Richard* the Second, of any that we meet with in our Records; and the Phrase being there used, we insist upon it as very proper. And when that is agreed unto, the House will, no doubt, declare their Minds in another Consequential Question that shall

[147]

shall arise in a proper way. But this is all we can speak to now.

Sir G——T——y.

To discourse, Whether the Crown of *England* would by this means become Elective, is altogether unnecessary; and I think your Lordships have given no Reasons that are sufficient to make the Objection out, neither any Answers to the Commons Reasons for their Vote.

It seems to me an odd way of Reasoning, first to mistake the meaning, and then give Reasons against that mistaken meaning.

The Question is only here, Whether we can make good this Proposition, *That the Throne is Vacant by the Abdication of the late King.*

N 2 I con-

[148]

I confess, 'tis a melancholy thing to discourse of the Miscarriages of Governments, but 'tis much more afflictive to talk of unHINGING all the Monarchy by a breach upon the direct Line of the Succession, as, if the Crown of *England* did actually descend to *Lewis* the Fourteenth, it would not be in the power of the States of this Kingdom to divolve it upon another Head.

A Noble Lord put an Instance of two Men in one Room, one of whom was really such a one: But though a flander by could not directly tell which was he, yet it could not be said by him, that such a one was not there. But if you please, I will put this Case:

Suppose there were two Men in one Room, that no one alive could tell which was which; as suppose this to be the Case of the two Children of *Edward* the Fourth, that they had been kept close Prisoner by their Uncle *Richard*

chard

[149]

chard the Third, so long, that there were no living Witnesses able to tell which was the eldest of the two, that would occasion a difficulty much what as intricate as ours here. One of them must be the eldest, but by reason of the uncertainty, must not an Election be made of them? And, Could any thing else do but an Election?

But, I say, the proper single Question here is, Whether we have well said, and well affirmed upon the Premises that are mentioned in the former part of the Vote, that he has *Abdicated*, and that the Throne is thereby *Vacant*.

Your Lordships in part agree; for you say, *He has Deserted the Government*; then you say, *He is not in it*. And it is as much as to say, He has left the Kingdom destitute of a Government.

Now

Now, if there be any sence in which our Propofition is true, will you deny the whole Propofition, becaufe it may be taken in a sence that is dubious and uncertain, as to the Confequences.

You cannot fay the Throne is Full: if then there be a Doubt with you, to be fure it is not like to be evident to us, epecially in this Cafe, confidering who your Lordships are.

You are the Perfons that ufually are or ought to be prefent at the Delivery of our Queens, and the proper Witnesses to the Birth of our Princes. If then your Lordships had known who was on the Throne, we fhould certainly have heard his Name from you, and that had been the beft Reason againft the Vacancy as could have been given.

My

My Lords,

We fay no more than our Ancestors have faid before us, as you fee by the Parliament-Roll, 1 *Henry IV*; and I must maintain the Record to this purpose, that the Government is Vacant, as it is there declared, and as it is expressed in our Vote: So that we have not invented or coined a word for our turn, neither is the Notion new, it is a word that has been used before in a Cafe as near this as any can be.

But it is objected, that That should be no President, becaufe of what follow'd upon that Vacancy of the Throne. I desire that your Lordships would read the Record.

The next thing there, is, *Henry the Fourth* cometh himself, and says, *He Claimed the Crown as descended from Henry the Third, and the Lords and Commons assented.* It is true, the Archbishop did propose him (as was usual at Coronations) and he did there actually

actually ask them, *Whether they did chuse him for their King*; they agreed to it, and the Archbilhop makes a Discourse upon the Virtues of a Man to Govern the Nation better than a Child; and then he is placed in the Throne. And this I take to be a proper, plain, applicable President in our Case.

But that Noble Lord's Objection strikes at the very Heart of it, if the Objection be rightly made, That all these Proceedings, and so consequently the Words and Phrases there used, are all repealed, *1 Edw. 4.*

My Lords,

It is very well known, and readily agreed by us, that *Edward the Fourth* came in in disaffirmance of the Title of the House of *Lancaster.*

As those times went, whenever there was any Turn in the Government, (as there were several.) there were new and contrary Declarations about the Title to the Crown, made constantly in Par-

Parliament; and what one Parliament setled, another undid.

But then this Advantage we have on our side, that as we have this first President for us, so we have the last; for I need go no farther than the Parliament Roll of *1 Henry VII. 12/16.* where the Record is set right again.

The Act for Deposing *Richard the Second* is indeed by *1 Edw. IV.* Repealed, and saith, That *Henry the Fourth* usurped the Crown, and murder'd *Richard the Second*; and thereupon it proceeds to attaint *Henry the Sixth.* But then comes in *Henry the Seventh,* and *1 Henry VII.* there is an Act made, that sets aside all the Acts and Attainders made against his Line, and consequently repealed *1 Edw. IV.* which repealed *1 Hen. IV.*

And I would observe one thing by the way concerning *Henry the Fourth*: He was of the Line of *Lancaster*, and when he came to the Crown, would
○ not

not endure to have his Crown reckon- ed only Matrimonial, or suffer the Stile to go in the Names of *Henry* and *Elizabeth*, as he must have done if he had stuck to the Title by the Right Line of Succession ; no, he always stood up for his own Title, though he had the Hei- res of the House of *Tork* in his Bos- some.

Therefore, my Lords, his Act of re- storing the Record of *Henry IV.* again, it is as good an Authority as it was before, and somewhat better; for it hath the last Act on its side, which is unrepealed to this day.

E. of P—e.

Henry the Seventh had a good Right and Title by Marriage to the Crown, *in re Uxoris*. No one can question but his own Title, as descended from *Hen- ry* the Fourth, was an Usurpation; and he would not suffer any one to pre- scribe

scribe which Title was best, as long as it was acknowledg'd he had one good one.

That this Kingdom is Hereditary we are not to prove by President in the List of our Kings and Queens; for we shall scarce find above three in any di- rect Line, without some interruption: and therefore we are not to fetch our Presidents or Proofs so far as those days. And this I speak for the Reason which was hinted before.

The Laws made are certainly part of the original Contract; and by the Laws made, which establish the Oath of Allegiance and Supremacy, we are ty'd up to keep in the Hereditary Line, being sworn to be true and faithful to the King, his Heirs and Successors; whereas the old Oath was, only to bear true Allegiance to the King. There (I take it) lies the Reason why we cannot (of our selves) without break- ing that Contract, break the Succession, which is settled by a Law, and cannot be

be altered but by another, which we our selves cannot make.

Sir G — T — y.

Your Lordship is pleased to say *Henry the Seventh's Title* by Descent was an Usurpation. I think it is pretty hard to determine what Title he did govern by, since though his Wife was the Lineal Heir, yet she had no part, or so much as a Name in the Administration. And if it were too great an Issue to be try'd then, it will be harder to do it now. And it has been said, It was his Mother's Counsel to him, not to declare particularly upon what foot his Title stood.

But, my Lords, if we should allow none for Acts of Parliament, but those that were made in the Reigns of Hereditary Kings, and in the Right Line, I doubt we should want the greatest part of those Laws that compose the Volume

lume of Statute-Books, and the Records by which we enjoy a great part of our Inheritances and Possessions.

Mr. Serjeant M — d.

If we look but into the Law of Nature (that is above all Humane Laws) we have enough to justify us in what we are now a doing, to provide for our selves and the Publick Weal in such an Exigency as this.

Sir R — T — e.

If Laws made about the Succession be so obliging, what then shall we say to the Succession of *Queen Elizabeth*, who had an Act of Parliament (to the keeping of which an Oath was required) against both her and her Sister.

E. of

[158]

E. of P — e.

But to shew what Opinion she her self and the Wise Men of her Times had, and were of, in this point, there is an Act, made in her Reign, and yet in being, which declares it to be a *Præmunire* to affirm, The Parliament cannot settle the Succession of the Crown, or alter it. Entails in Parliament have been of the Crown, both ancient and modern, yet the Authority of another subsequent Act has prevail'd against such an Entail: So that it should be done, I say, in Parliament.

Sir R — T — e.

I think we are in as full a Capacity to take care of the Government as any of our Predecessors, in such an Exigence; and if we do as they have done

[159]

before us, that is not to be called a changing of the Monarchy from an Hereditary to an Elective.

E. of N — m.

After this long Debate, pray let us endeavour to come as near as we can to an Agreement: We have propos'd some Questions, about which my Lords desired to be satisfied; You, Gentlemen, have not been pleased to give an Answer to them, and We have no great Hopes of getting one from you, as this Debate seems to be managed.

On your part, you have declared, That you do acknowledge the Monarchy is Hereditary and Successive in the Right Line; then I cannot see how such an Acknowledgment consists with the Reasons you give for your Vacancy; for I cannot imagine how a Kingdom can be an Hereditary Kingdom, and that King who hath Children now in being

being (at the time of his forsaking the Government) can have the Throne Vacant both of him and his Children.

The Course of Inheritance, as to the Crown of *England*, is, by our Law, a great deal better provided for, and runs stronger in the right Line of Birth than of any other Inheritance. No Attainder of the Heir of the Crown will bar the Succession to the Throne, as it doth the Descent to any common person. The very Descent, by Order of Birth, will take away any such Defect.

And so was the Opinion of the great Lawyers of *England*, in the Case of *Henry* the Seventh. Then cannot I apprehend how any Act of the Father's can bar the Right of the Child (I do not mean that an Act of Parliament cannot do it); I never said so, nor thought so, but I say, no Act of the Father's alone can do it, since even the Act of the Son, which may endanger an

an Attainder in him, cannot do it, so careful is the Law of Royal Line of Succession. This is declar'd by many Acts of Parliament, and very fully and particularly by that Statute 25 *Henry* the Eighth, *Cap. 22*, entituled, *An Act concerning the King's Succession*; where the Succession of the Crown is limited to the King's Issue Male first, then Female, and the Heirs of their Bodies one after another, by course of Inheritance, according to their Ages, as the Crown of *England* hath been accustomed and ought to go in such Cases.

If then the King hath done any thing to divest himself of his own Right, it doth not follow thence, that That shall exclude the Right of his Issue; and then the Throne is not Vacant, as long as there are any such Issue; for no Act of the Father can Vacant for himself and Children too. There-

[162]

Therefore if you mean no more than but the divesting his own Right, I desired you would declare so: And then suppose the Right gone as to him, yet if it descend to his Lineal Successor, it is not Vacant.

And I told you, One Reason my Lords did stand upon against agreeing to the Vacancy, was, Because they thought your Vote might extend a great deal further than the King's own Person.

But your all owning it to be a Lineal Inheritance, and this Vacancy, methinks, do not by any means consist.

You declare, you never meant to alter the Constitution; then you must preserve the Succession in its ancient course: So I did hear a worthy Gentleman conclude it to be your Intention to do. But by what methods can it be done in this Case by us? I desire to be

fa-

[163]

satisfied in a few things about this very matter.

I desire first to know, Whether the Lords and Commons have power by themselves to make a binding Act or Law. And then I desire to know, Whether according to our ancient Legal Constitution every King of *England*, by being seated on the Throne, and possessed of the Crown, is not thereby King, to him and his Heirs. And without an Act of Parliament, (which we alone cannot make) I know not what Determination we can make of his Estate.

It has been urged indeed, That we have in Effect already agreed to what is contain'd in this Vote, by Voting, That it is inconsistent with our Religion and Laws to have a *Popish Prince* to Rule over us.

P 2

But

But I would fain know, Whether they that urge this think that the Crown of *Spain* is Legally and actually excluded from the Succession by this Vote.

No Man sure will undertake to tell me, That Vote of either House, or both Houses together, can Alter the Law in this or any other point.

But because I am very desirous that this Vote should have its Effect, I desire that every thing of this nature should be done in the ancient usual Method, by Act of Parliament.

GOD forbid that since we are happily deliver'd from the Fears of *Popery* and *Arbitrary Power*, we should assume any such Power to our selves; What Advantage should we then give to those who would quarrel with our Settlement for the Illegality of it? Would not this, which we thus endeavour to crush, break forth into a Viper?

For

For that Record of *Henry* the Fourth, I acknowledge the words of the Royal Seat being Vacant are us'd. But since you your selves tell us of it, That *Henry* the Fourth did Claim by Inheritance from his Grandfather, that, methinks, may come up to what I would have the declared sense of both Houses upon this Question; (to wit) The Throne might be Vacant of *Richard* the Second, but not so Vacant but the Claim of the immediate Successor was to take place, and not be excluded, but entirely preserved.

And *Richard* the Second seems to have had the same Opinion, by delivering over his Signet to him.

Our Laws know no *Inter regnum*; but upon the death of the Predecessor the next Heir is *in uno & eodem instanti*.

It

It was so Resolv'd even in *Richard the Second's* own Case; for at his Grandfather's Death it was a Question, Whether King *Richard the Second* or the Eldest Son of his Grandfather, then living, should succeed; and it was Resolved, That he ought to have it, because of his Right of Inheritance: which is the more remarkable, because of the Contest.

And when *Richard the Third* usurped his Crown, to make his Claim good to the Right of Inheritance, he Bastardized his own Nephews.

And so it was in all the Instances of the Breaches that were made upon the Line of Succession, which were some Seven (but all illegal); for such was the Force of the Laws, that the Usurpers would not take the Crown upon them, unless they had some specious pretence of an Hereditary Title to it.

That

That which I would have Avoided by all means, is, the Mischievous Consequences that I fear will ensue upon this Vacancy of the Throne, (to wit) the utter Overthrow of the whole Constitution of our Government. For if it be so, and the Lords and Commons only remain as parts of it, will not this make the King one of the Three Estates? Then is he the Head of the Commonwealth, all united in one body under him. And if the Head be taken away, and the Throne Vacant, by what Laws or Constitutions is it that we retain Lords and Commons? For they are knit together in their Common Head; and if one part of the Government be dissolved, I see not any Reason but that all must be dissolved.

Therefore 'tis of very great importance that we come to an Explanation, how far you mean the Throne to be Vacant; and that if it reach to the King and his Heirs, (notwithstanding

ing

[168]

ing all the Acts of Parliament about the Succession) we may consider how the Consequences of that will effect the Constitution; for, I presume to say, it may then be in your power as well to say, we shall have no King at all.

I was mistaken by the Gentlemen who took notice of what I said the Lords might do of themselves, in the absence of the King: I would not be understood to say, the Government devolved upon the Lords; but I may say they are the Governments great Council in the interval of Parliaments, and may have greater sway by the Privilege of their *Birth*, in the Exigencies of the State: As appears in several Instances, and particularly the first of *Henry the Sixth*, and during his Infancy.

There was a Case put by one Gentleman, about the two Sons of *Edward the Fourth* being kept Prisoners so long, till it could not be known by any

[169]

any Living Witnesses which was the Eldest: I would only ask that Gentleman, Whether in that Case he would say the Throne were Vacant; certainly there would have been One in the Throne.

But then it followeth, that though there should be an Uncertainty of the particular Person, yet that would not infer a Necessity that the Throne should be Vacant.

Upon the whole matter, you seem to understand your own words to signifie less than they do really import.

I do not find that you purpose to make the Kingdom Elective; and yet you talk of supplying the Vacancy by the Lords and Commons.

You do not say, That the King has left the Crown for himself and his Heirs; and yet your words speak of a Vacancy, and nothing of the Suc-

Q

cession

cession, but you do not tell us what you mean.

Therefore, if this matter were explained, that my Lords may know how far the Intention of the Vote reacheth, that it may not abroad, or hereafter, be construed to go beyond such Meaning, (that is) as to the King himself, and not to his Heirs, perhaps there might quickly be a happier Accommodation, than can be expected while things remain thus, still in doubt, and in the dark.

Gentlemen,

If any of you can settle this Matter in its true Light, it would do very well; and it is You must do it; for the Words are Yours, and so we must be told your Signification and Intention by your selves.

If you mean by *Abdication* and *Vacancy* only that the King has left the Government, and it is Devolved upon the next Successor, that may perhaps

satisfie my Lords, and we may agree upon some Settlement.

I must confess, any Government is better than none; but I earnestly desire we may enjoy our Ancient Constitution.

Therefore I again renew my Request, That you would come to such an Explanation as may breed an Union between the two Houses, for the strength of your Consultation and Resolutions in this great Emergency.

If the Kingdom were indeed Elective, we were in a Capacity of Electing, but *pro hac Vice*, according to the Constitution, this Question would be greater than what it was before; but then the great Debate in it would only be, Who should first have the Honour of Laying the very Foundation of the New Government.

But as this Case stands upon the Foot of our Ancient Laws, and Fun-

[172]

damental Constitution, I humbly beseech you to consider, Whether at the same time that in this way you get an Establish'd Government, you do not overturn all our Legal Foundations.

Mr. P ——— F ——— y.

I hope, my Lords, there is no danger of shaking our Fundamentals in this Case; but we are pursuing those Methods that agree with our Laws and Constitution: For though the Monarchy of this Nation be Hereditary in the ordinary course of Succession, yet there may fall out a Case wherein that cannot be comply'd with, and a plain Vacancy may ensue. For, put the Case the whole Royal Lines should fail, (as they are all mortal as well as we our selves are) should we in that Case have no Government at all? And, who then should we have but the Lords & Commons? and I think that case comes nearest to the Case in question, where the Successor is not known; for if he had been, we should have heard of him
be

[173]

before now. And, what is the reason that it should then in the former Case devolve to Lords and Commons, but that there is no King? And they being the Representative Body of the Kingdom, are the only remaining apparent parts of the Government, and are only to supply the Defect by providing a Successor. And, is here not the same Reason here? We are without a King, I am sure I do not know of any that we have: if that fall out to be the Case now, that will infer a Vacancy with a witness; and it will be of necessity that the Lords and Commons take care to supply it.

Mr. G ——— E ——— e.

My Lords,

We are led, and, I think, out of the Way, into a very large Field, hunting after the Consequences of a Vote not yet set'd or agreed unto: We have, as I conceive, nothing but the Vote it self to consider of, or debate upon: We do not intend to prejudice any Legal Right: But what the consequences of this Vote may be, before the Vote it self be pass'd
fed

fed, I believe no Man can reasonably pretend to ascertain, unless he have the Spirit of Prophecy.

The Throne may be Vacant as to the Possession, without the exclusion of one that has a Right to the Succession, or a dissolution of the Government in the Constitution; neither will there be room for the Objection of a King *de facto*, and not *de jure*, which some of the Lords were pleased to express their Fears of.

This Gentleman that stands by me instanced in a Record, and that was mistaken, as a Preident for the proceeding in this Case; it was only mention'd by him to shew, that by using the word *Vacant* the Commons did no more than our Ancestors did before us; and therefore it was not an unknown word or thing to have the Throne Vacant.

We do apprehend we have made a right and apt Conclusion from the Premises, for otherwise all the Vote is but Historical.

We

We declare the Late King hath broke the Original Contract, hath violated the Fundamental Laws, and hath withdrawn himself out of the Kingdom, that he hath *Abdicated*, actually Renounced the Government.

What occasion was there for such a Declaration as this, if nothing were concluded from it? That were only to give the Kingdom a compendious History of those Miseries they have too well learnt by feeling them.

Therefore there was a necessity to make some Conclusion; and none so natural as this; That we are left without a King in the words of the Vote; that the Throne is thereby *Vacant*, which it may be as to the Possession, and yet the Right of Succession no way prejudiced.

But, my Lords, we come here, by the Commands of the House of Commons, to debate the Reasons of their Vote and your Lordships Amendments,
not

[176]

not to dispute what will be the Consequences, which is not at present our Province.

And so the Conference ended, and the Members of each House returned to their respective Houses.

Die Jovis 7^{mo} Feb. 1688.

A Message from the Lords, by Sir Robert Atkins and Sir Edward Nevill.

Mr. Speaker,

The Lords have commanded us to tell you, That they have agreed to the Vote sent them up of the 28th of *January* last, (touching which there was a free Conference yesterday) without any Alterations.

F I N I S.