AN

Historical Account

OF THE

Antient *Rights* and *Power*

OF THE

PARLIAMENT

Lauderdale OF History.

SCOTLAND.

Humbly offer'd to the Consideration of the Estates, when they come to settle Limitations for the next Successor.

To which is prefix'd,

A short Introduction upon Government in General.

Non censes igitur rerum omnium Arbitrium penes Regem esse debere? Minime; nam eum non solum Regem sed etiam Hominem esse memini, multa per ignorantiam errantem, multa sponte peccantem, multa prope invitum, quippe Animal ad omnem favoris & odii auram facile mutabile. *Buch. de Jure Regni apud Scotos.*

Printed in the Year 1703.

TO THE

Right Honourable the

Eſtates of *Scotland*

In Parliament Aſſembled.

THE [illegible]ject and Deſign of th[illegible]ollowing Treatiſe ſeems [illegible]naturally to entitle it to th[illegible] Protection of your Au[illegible] Aſſemb[illegible]. It is very well [illegible]n wh[illegible] E[illegible]leavours have [illegible]d fo[illegible]ove[illegible]00 Years paſt, [illegible]n the [illegible]uthor[illegible]y of the E[illegible] of

TO THE

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THE Subject and Deſign of the following Treatiſe ſeems naturally to entitle it to the Protection of your Auguſt Aſſembly. It is very well known what Endeavours have been us'd for above 100 Years paſt, to leſſen the Authority of the Eſtates of

Scotland. Courts, Benches, Pulpits, and even ſome of thoſe who compos'd our Parliaments, have been engag'd in the Conſpiracy. There is not one Reign ſince the Union of the Crowns, but what affords Inſtances of this Attempt by ſome ill men: Nor is it ever like to be otherwiſe, till you be pleas'd to reaſſume ſo much of your antient Power, as may make it Capital for any Man or Party to offer it. The laſt Age, or 17*th* Century, was by ſome call'd *the Age of Kings*, the meaning of which was, in plain *Scots*, an Age of Tyrants; *France*, *Denmark*, *Sweden*, *Bohemia*, *Hungary*, *Naples*, and other Nations are ſpeaking Inſtances of it. The Power of the Eſtates in thoſe Countries was wholly ſuppreſs'd by their Princes; and had it not been for the late Happy Revolution, this Antient Kingdom muſt

muſt in all probability have run the ſame Fate. We were very near it when King *James* VII. took upon him by deſpotical Proclamations to caſſe and annul our Statutes; and we muſt always look upon our ſelves to be upon the brink of it, when any of our Princes take upon them to diſpenſe with our Laws. But bleſſed be God, our Claim of Right in 1689. broke many of the ſtrongeſt Links of that heavy Chain which Arbitrary Princes and fawning Courtiers had put about our Necks. It is in Your power, *my Lords* (for with this Title You are all dignify'd in our old Statute Books) fully to reſtore us to our antient Liberty when you come to the next Act of Settlement; and what that Liberty was will plainly appear in the following Treatiſe. My Vouchers are the printed Acts of Your own Illuſtri-

ous Court, and not only those which our late Princes thought fit should appear to the view of the Publick, but those upon which they had pass'd an *Index Expurgatorius*. It has been the Misfortune of our Country to have our Records twice destroy'd by an *English* Usurpation, with a design to deprive us of all the Glorious Monuments of our antient Liberty, that we might the more easily be subjected as a Province to their Kingdom. But we did not suffer so much that way by *Edward* I, and *Oliver Cromwel*, tho in open War against us, as we have suffer'd from some of our own Princes, who by the Union of the Crowns became *English* Sovereigns. What the two former attempted was by fair Hostility, and done by the Hand of an avowed Enemy; but the latter carried on the Design under

der the Title of Fathers of their Country, and made some of those who were Members of the Estates of *Scotland* the unnatural Destroyers of their own Liberty, as is evi- by the Acts of K. *Charles* II's first Parliament.

The Reason of this, my Lords, was plain. By the Records of Parliament it appeared, that Your Lordships, before the Union of the Crowns, had a commanding Share in all the Rights of Sovereignty. It was by You, under God, that our Kings did reign; and never did our Princes decree Justice, either without or against Your Authority. It is an uncontrovertible Maxim in Politicks, that *Dominion ought to follow the Property*; and the Estates of *Scotland*, which were all included under the general Name of Lords of Mannors or Freeholders, being the

Hereditary Proprietors of the Country before ever we had any thing like a King, it followed by neceſſary conſequence, that Your Anceſtors were our Hereditary Sovereigns and Legiſlators, and that our Kings had their Power and Authority from them as an Office of Truſt, but not of Property. The contrary Doctrine has been maintained for ſome Reigns, in order to make our Eſtates of Parliament mere Vaſſals to our Princes; but with how little Truth will appear by the following Treatiſe: The ſole End of it is to ſet Your antient Power and Authority, my Lords, in a true light, againſt the Advocats and Champions of Arbitrary Power; and that you may reaſſume all or part of it, as in Your Great Wiſdom ſhall be found neceſſary for preſerving the Honour and Liberty of our Dear Coun-

Country. By the Abſtract of our Laws here exhibited it will appear that our Anceſtors were men of Counſel as well as Courage, that they underſtood Government as well as Arms; and that ſo mean a Thought could never have entred their Souls, as to ſurrender their Right of Governing themſelves to another Nation, either by an imprudent Union of the Crowns, or by ſuch an Union of the Kingdoms, as would ſubject our Bodies and Souls to the Votes of a foreign Majority. It's hard if *Scots*-men be ſo much degenerate, that they neither know how to improve their Eſtates or ſave their Souls without a foreign Direction. An inviolable Friendſhip and good Correſpondence with *England* is abſolutely neceſſary; but if this cannot be attain'd by an Union of Aſſociation without extending it any further,

further, it's our own fault. The Sentence of our Laws against them that offer to diminish the Power and Authority of our Estates of Parliament, is well enough known: If the Force of those Laws be enervated, or in any wise remitted or dispens'd with, it's easy to foresee the Consequence. *England* is a Wise, Gallant and Brave Nation; they love Liberty themselves, and therefore will always have a due regard to the same Spirit among others; but must needs despise a People who would tamely part with their Freedom as abject Slaves, and think them neither fit to be treated as good Neighbours or useful Subjects. The reason is plain, because they would constantly endanger the *English* Liberty by falling in with Arbitrary Princes.

It

It is evident, my Lords, that the present Danger of our Country arises from the Humours of an Arbitrary Faction, from the expectation that some Men have of Places and Pensions, and from the Abettors of different Titles to our Succession. It is not unknown to your Lordships, that there's a Party who look upon her Majesty only as Guardian to her suppos'd Brother, that there's another who absolutely deny her Title; and that both those Partys are one at bottom: the Madness of that Party, and the manifest Insults they commit upon our Constitution in Church and State, by invading Churches, and praying openly and avowedly for the King and Royal Family, *&c.* may perhaps prevail upon the Weakness of another, to throw themselves into the Arms of the House of *Hanover* without Limitations;

tations; which muſt neceſſarily entail all thoſe Grievances upon us, that have taken their Riſe from that imperfect Union of the Crowns, which hath prov'd impolitick and ruinous to our Country. May God direct your Lordſhips to proper Means for obviating thoſe Dangers: The following Treatiſe will ſhew what our Anceſtors would have done in the like Caſe. In thoſe Days it muſt certainly have been Capital for any Man or Party to ſet up a Title to the Crown, which the Eſtates had diſown'd, to have deny'd or diſtinguiſh'd upon the Authority of thoſe whom the Eſtates had inveſted, or to aſſert a future Title in any Perſon or Family which the Eſtates had not declar'd. We are already provided with very good Laws againſt a Popiſh Succeſſor: The excellent Meaſures taken by the

the Parliament of *England*, have ſecur'd that Nation againſt the Pretenſions of any ſuch Perſon, any otherwiſe than by a ſucceſsful Invaſion and Rebellion, of which, bleſſed be God, there's little fear in that Kingdom. We may depend upon the Aſſiſtance of our Neighbours the *Engliſh* and *Dutch* againſt any Party who ſet up in our Country for the pretended K. *James* VIII. tho if our own People be at Liberty, there will be no need of Foreign Auxiliaries, except the Pretender come in with a Foreign Power, which *England* and *Holland* are able, and concern'd in Intereſt to prevent. The Caſe being thus, there is no reaſon for a precipitant Settlement of our Succeſſion without Limitations: And ſince theſe are neceſſary, it is humbly conceiv'd that the antient Privileges of our Parliament and People, briefly diſcours'd

cours'd of in the following Treatise, are as proper to be taken into consideration for Limitations, as any other. These were the Maxims of Government by which our Ancestors preserv'd their Liberty, and left their Posterity free. Our Parliaments by keeping so much of the Power of the Sword, of the Power of the Purse, and of the Power of disposing all public Places of Trust in their own Hands, made the Reins of our Government steddy, and not changeable with the Tempers of Courts, or Humors of Favorites. Whether this be not more necessary now, since our Princes are remov'd to another Country, than it was whilst they dwelt among our selves, is humbly submitted to your Consideration.

The

The Preface.

THE Subject of the following Sheets has been much talked of, tho but little understood and unfairly handled by many of those, who have meddled with Controversies of State, and such Parts of our History as related to them. By such Men as these has our Nation been defamed both at home and abroad, by them has our true Constitution been denied, and a false one imposed upon us; nor have they made any scruple to traduce our Estates of Parliament, and to stigmatize our whole Nation with a Brand of Sedition and Rebellion. Most of the English *Authors, who have meddled with our Affairs in a Historical Way, except a very few, have followed the same Strain;*

and

and we have always since the Union of the Crowns, had an Arbitrary Party at home, who have been too ready to join with Foreign Enemies, in running down our Constitution, and fastening those unjust Calumnies upon the whole Nation, whilst they pretended to serve the Court, or the Interests of their own Faction. We might give many Instances of this, but Bp Guthry's *Memoirs, is a late as well as a pregnant one, and seems to have been published on purpose to countenance those unjust Reflections, which are cast upon our Country and greatest Families by the late Earl of* Clarendon.

My Motives for entring upon the following Work, were as follow: 1. *A Desire to obviate as much as possible such Misrepresentations as those above-mentioned, in time to come.* 2. *To vindicate the Memory of our noble Ancestors, who waded thro Seas of Blood, and gloriously ventured their Lives and Estates in Defence of their Liberty, against Domestick*

mestick Tyrants and Foreign Invaders. 3. *To set our antient Constitution in a true Light, which was very much wanted.*

In order to this, I resolved to follow our Antient and Modern Acts of Parliament as my Guide, and to join with them such of our Historians as I had by me. I chiefly made use of the first printed Edition of our Acts, called the Black Acts, *because printed in a black Letter, which were collected and published by Authority of Q.* Mary, *as appears by her Commission prefixed to that Edition. Yet it is very well known that it was stifled, not to say suppressed, in the Reign of K.* James VI. *and another Edition was published then by Sir* John Skeen, *and republished since with Additions by Sir* Thomas Murray, *in the time of K.* Charles II. *wherein there was care taken to leave out most of those Acts, which were Monuments of the Power of our Par-*

 liaments

liaments in the Jura Majestatis. *By this means that first Edition came to be almost forgot, and scarcely to be had. This, together with the Severity of the late Reigns against all attempts for recovering our Liberty, and the Doctrine of Prerogative from our Benches and Pulpits, which made every thing of that Nature Sedition and Rebellion, had almost buried the Memory of our antient Constitution in perpetual Oblivion.*

But having obtained one of those Black Acts from a Gentleman of great Worth and Integrity, I compared them carefully with the Edition published by Sir Thomas Murray. *I did likewise peruse the repealed Acts of K.* Charles I. *in* 1641. *and the publick Papers of that time; and consulting as I went along our old Law-Books of* Regiam Majestatem, *and the antient Acts of K.* Malcolm, &c. *commonly bound up with them; and taking such Helps as* Sir Tho. Craig's *Book* de Feudis, *and our Hist-*

Historians could afford me, I took care to dispose what related to the Power of the three Estates under their proper Heads, as common Repositories, that so at one view the Reader may have the Substance of all that I could find relating to the respective Branches of our antient Constitution.

Having accounted thus for my Materials and Method, I must submit my Performance to the Censure of the Publick; but at the same time am very sensible of the Importance and Danger of such an Undertaking. A very Learned Gentleman of our own Country, a great Patron of Liberty, and happy in a Polite Pen, has well expressed it, "That "if any Man in Compassion to the Mi-"series of a People should endeavour "to disabuse them in any thing relating "to Government, he will certainly incur "the Displeasure, and perhaps be pur-"sued by the Rage of those, who think "they find their account in the Oppres-"sions

* *A Discourse of Government with relation to* Militias, p. 5.

" *sion of the World, but will hardly*
" *succeed in his Endeavours to undeceive*
" *the Multitude.*

Let the consequence be what it will, I am easy in my own Mind; it's the Liberty of my Country I have in view, I propose no Alteration during her Majesty's Reign, which I wish may be long and happy. I have quoted my Authorities for what I say, I show my Countrymen what their Ancestors were, and what they designed their Posterity should be. I know that I run counter to Men of great Names and Titles, that I thwart a strong Party who have been in possession for some Reigns, to impose the contrary Doctrines as Law and Gospel upon the Nation; but if they will advance Falshoods in matters of Fact, they cannot oblige any Man to be silent that is able to discover it. The great Judg and Lawgiver of the World pronounced a Curse upon those who removed antient Landmarks, *and if he passed such an heavy Sentence upon them who*

who would by that means invade a private Man's Property, What must be the Fate of such, as not only remove, but likewise destroy the Boundaries of a Nation's Liberty? It's her Majesty's Glory that she comes to the Throne upon a Foundation, directly opposite to Men of such Principles; and it's the Duty of all good Scots-men, *to pray that God would preserve her Majesty and their Country from the Influence and Effects of their pernicious Counsels. I shall say no more by way of Preface, but because the Party have Recourse to Divinity, when they are baffled by Law and History, I have subjoined the following Introduction.*

An INTRODUCTION *upon the Nature of Government in general, as it appears by Divine Revelation.*

THE Neceſſity of Government is ſo obvious, that all Societys fall naturally into it; and the Wiſdom of Nations or leſſer Communitys never diſcovers it ſelf more than when they agree upon ſuch Forms of it as are moſt adapted to the Good of the Publick.

There's nothing ſo contrary to Reaſon or the Good of Mankind, as ſuch Models of Government, *which oblige the Subjects to be on a conſtant Guard againſt them, or otherwiſe put them in perpetual danger of their Lives, and render their Liberty precarious.* Such pernicious Models are theſe, which lodg an abſolute and uncontrolable Power in *One, Few* or *Many*: I mean ſuch a Power as makes thoſe intruſted with the Government no ways accountable to the People who intruſt them, how inconſiſtent ſoever their Adminiſtration may be with the Publick Welfare.

But of all the Models that ever were thought

thought on, that of ſubjecting Mankind to the abſolute Will of a ſingle Perſon, by Hereditary Lineal Deſcent, which way ſoever the firſt of the Line came by the Title, offers the greateſt Indignity to Human Nature, and puts Man in a worſe Condition than the Savage Brutes. Thoſe Creatures by natural Inſtinct repel Force by Force, and are under no Subjection but the original Law of their Being; whereas the Model we ſpeak of puts Millions of Men under a ſlaviſh hereditary Subjection to the Will of a ſingle Perſon, who has no Right to that Superiority over them by Nature, nor perhaps any tranſcendent Virtues that could entitle him to it by Choice, if the Authors of this Syſtem would allow us the liberty of an Election.

The firſt King that we hear of was indeed one of their ſort; and to the Reproach of all thoſe who maintain ſuch Principles, it happened to be *Nimrod* the *6th* Grandſon of curſed *Cham*, who uſurp'd ſuch an Authority over a part of Mankind, tho he had five Elder Brothers, his Father, Grandfather and Great Grandfather alive at the time: Evidence ſufficient that he had no regard to Primogeniture, as giving the only Title to Government, and a ſtrong Preſumption

that that Notion had not then got footing in the World, otherwise his Progenitors and elder Brothers would certainly have made War upon him for invading their Property.

The first King mention'd with the approbation of the Divine Legislator was one of another Character; he comes to the Crown by the Peoples Consent with strict *Limitations* *, such indeed as bespeak the infinite Goodness of God towards Men: He would have them to be govern'd according to the Dignity of the Rational Nature, and not to be treated as Brutes; therefore he strictly forbids their King to *multiply Horses*, and much more to overaw and oppress them by numerous Guards and Standing Armies. He will not allow him to *multiply Wives to himself*, and much less to prostitute the Wives and Daughters of his Subjects: The Reason assign'd is observable, lest they should *turn away his Heart*, i. e. from the Fear of God, and the Care of his Subjects, as happen'd to *Solomon*, and to some of our Princes that might easily be nam'd. He is not allowed to *multiply Silver and Gold*, and much less a Prerogative to tax his Subjects at pleasure.

* Deut. 17. *from the* 15 *V. to the End of the Chapter.*

His

His Heart must not be *lifted up above his Brethren*, and much less must he treat them as abject Vassals. He must govern them by Law, and for that end must constantly read the Statutes, so that his Administration must have nothing in it that looks like absolute Power and uncontrolable Authority, or a Demand of Obedience without Reserve. This Law was not propos'd to him as a mere Scarecrow without a Sanction, but has a dreadful Penalty annex'd, which implies no less than the loss of his Life, and the Forfeiture of his Crown for himself and his Posterity. This was accordingly fulfil'd in the Person and Offspring of *Saul*, who broke in upon their Constitution, as *Samuel* foretold them he would †.

Thus God cut off that Tyrant by the Hand of his Enemies in Battel, and made use of the People to dethrone his Posterity. His next Successor *David*, tho he was appointed by God himself to sit on the Throne, was so far from urging that Divine Right of Succession to deprive the People of their just Suffrage, that he did not meddle with the Administration till made King by the Tribes, and entred into a League or confirm'd the original

† 1 Sam. 8. 11, &c.

Contract

contract with them; we have reason to think, that by this League they oblig'd him to observe the Law of the Kingdom enjoyn'd in *Deuteronomy* as abovemention'd, for that was their Claim of Right appointed by God himself.

This Hypothesis seems to be very much strengthned by the practice of the Ten Tribes, when they came to make his Grand-Son *Rehoboam* King. They demanded an Ease from the Burdens with which his Father had oppressed them, when he broke in upon the original Constitution, by multiplying Horses, Wives, Concubines, Horsemen, Chariots, *&c.* and oppressing the People to maintain them, as we read at large in his Story *(a)*. But this young ambitious Prince being resolv'd to advance his Prerogative, refus'd to comply with their Terms; upon which they renounc'd his Authority, and made *Jeroboam* their King. From this it is evident that under the Old Testament Dispensation, they who were God's peculiar People, and perfectly instructed in his Will, understood nothing of the Modern Doctrine, of the Divine Right of a Lineal Succession, that Kings are accountable to none but God, and that

(*a*) 1 Kings, *Chapters* IV *and* XI.

Subjects

Subjects are to make use of no other Defences against their Usurpations but Prayers and Tears.

Under the New Testament Dispensation, the infinitely wise and good Author of Government took the same care of the Libertys of Mankind, and confin'd the Power of Governours within the same Limits. This will be evident to those that compare *Solomon*'s Notion of Government before his Defection, with St. *Paul*'s Definition of Rulers in his Epistle to the *Romans*; The former pray'd *to God for an understanding Heart, to judg the People, and to discern between Good and Bad* *. The latter informs us, *that Rulers are not a Terror to Good Works, but to the Evil; that they are the Ministers of God to the People for Good, attend continually upon this very thing, and that this intitles 'em to Obedience, Prayers and Revenue from the Subject* †. So that it appears undeniably clear from Revelation, that the Good of the People, and not the Grandeur of Rulers, is the End for which God appointed Government.

If we look into profane History, we shall find that the *Grecians*, *Romans*, and

* 1 Kings, *Chap.* III. 9.
† Rom. XIII. 3, 4, 5, 6. 1 Tim. II. 2.

other

other civiliz'd Nations, did form to themselves the same Idea of Government by the Light of Reason, a Beam which comes from the same Father of Light, tho nothing so clear as that of Revelation. It were easy to prove this by multitudes of Instances, but it does not sute with my design'd Expedition and Brevity; therefore I come now to the antient and true Constitution of the Government of *Scotlund*, by which it will appear that our Ancestors have been Men of great Wisdom and Virtue, that they modell'd their Government according to Scripture and Reason; and that the standing of our Kingdom for above 2000 Years, is as much owing to the Prudence and consummate Wisdom of our Estates when met in Parliament, as to their Valour and Intrepidity when they appear'd in the Field; for those very Persons who compos'd our Parliaments, to wit, the greater and lesser Barons, our Freeholders and Commissioners of Burrows, were antiently our Leaders in War.

A SCHEME of the following Treatise by way of Index.

V. *The*

The

ERRATA.

Page 108. Line 17. for *Adocation*, r. *Advocation*.
128. Line 8. for *Waves*, r. *Wavers*.

An Historical Account of the Antient Rights and Power of the Parliament of Scotland, *&c.*

IT will be evident to any Man, who perusES our Acts of Parliament and Histories, that the Declaration of the Estates, or Claim of Right, agreed on in *April* 1689. and afterwards tender'd to King *William* and Queen *Mary*, tho Noble in it self, the then Posture of Affairs being consider'd, came very much short of recovering our Antient Liberty and Constitution.

It was as evident by the whole Course of that Reign, tho one of the best we ever had, that *Scotland* suffer'd extremely, both in its Freedom, Wealth, and Reputation, because we were not before-hand restor'd to the full possession of our antient Liberties.

And it is very well known how much we have been blam'd since by our selves, and by others, for not having made bet-

ter Terms with that Prince, and our Neighbours, before we entail'd our Crown in the ſame manner as they did theirs.

We have now another Opportunity put into our hands, of obtaining what was then omitted; Our Experience ſince that time is enough to convince us that it is neceſſary: And our improvement of this will beſpeak us a Wiſe Nation, or the contrary, in the Eyes of *Europe*, and all ſucceeding Poſterity; for according to our Behaviour at this juncture, we ſhall either lay the Foundation of future Liberty, or condemn our ſelves to a perpetual and unpitied Slavery.

It is natural for Men to have a Veneration for their Anceſtors; and it is our happineſs to have had ſuch, as the *Romans* in the height of their Glory and Freedom, would have accounted it their Honour to be deſcended from. For this Reaſon it is thought proper to give a brief account of our Antient Conſtitution, from our Statutes and Hiſtories: This may be of uſe to direct us in the future Settlement of our Succeſſion, and will be attended with a double Advantage; Firſt, it will ſecure us from the Imputation of making new Demands; and next it ought to ſatisfy our Princes that

that they abate nothing of their juſt Prerogative, when they receive our Crown with ſuch Limitations.

It is therefore humbly propos'd,

That the Parliament of *Scotland* ſhould take into conſideration their Antient Privileges, in order to reaſſume ſuch of them as they think fit, when they come to make a new Settlement of their Crown: which Privileges appear to have been as follows.

I. *The Power of the States to reſiſt the Sovereign if he invade the Conſtitution.*

If the King or Queen broke in upon our Conſtitution, or violated the Liberties of their Subjects, ſo as to endanger the Subverſion of our Government, it was no Treaſon in the three Eſtates, or thoſe commiſſion'd by them, after all the other Methods of Petitions, Remonſtrances, *&c.* prov'd unſucceſsful, to take Arms againſt their Princes, or thoſe that were commiſſion'd under them, for aſſerting and recovering the Libertys of the Nation.

This no doubt will ſeem extravagant to thoſe who have never read our Antient

tient Statutes, and to ſuch as are poſſeſs'd with a falſe Notion by ſome of our Prerogative Authors, That our Kings were always Abſolute, and accountable to none but God Almighty. But the following Acts of Parliament may ſhew them how little thoſe Mens Authority is to be rely'd upon.

Parl. *6th James 2d*, held at *Edinb. Jan.* 19. 1449. Cap. 24. intituled, *Sundry Points of Treaſon*, in the Acts printed by Sir *Tho. Murray*; but in the Black Acts printed by *Rob. Lekprivick*, it is Cap. 25. and intituled, *That na Man do Treſoun to the King's Majeſty*, and is as follows.

" *Item.* It is Statute and ordainit, that
" gif any Man, as God forbid, com-
" mitt or do Treſoun againis the Kingis
" Perſoun, or his Majeſtie, or ryſis in
" feir of Weir agains him, or layis hands
" upone his Perſoun violently, what Age
" the King be of, zoung or auld, or reſ-
" ſetis ony, that hes committit Treſoun,
" or that ſuppleis thame in help, Red, or
" Counſal, or that ſtuffis the Houſis of
" thame, that are convict of Treſoun,
" and haldis thame againis the King; or
" that ſtuffis Houſis of thair awin in
" fur-

" furthering of the Kingis Rebellis, or
" that aſſailzies Caſtellis or Places,
" quhair the Kingis Perſoun ſall happin
" to be, **without the Conſent of the the**
" **Eſtatis**, ſal be puniſt as Traitouris.

This Exception [*without the Conſent of the three Eſtates*] clearly evidences that tho they made it Treaſon to make War upon the King without their Conſent, yet they would not have a War made by their Conſent, to infer that Guilt or Puniſhment. But this will appear yet more plain by the following Act, in the Caſe of K. *James* the Third, Son to this K. *James* the Second, about 39 Years after the making this Act.

Parl. 1 *James 4th*, held at *Edinb. Octob.* 6. 1488. Cap. 14. intituled, *The Propoſition of the Debate of the Field of Striviling.*

" *Item*, In this preſent Parliament our
" Soverane Lord beand preſent, togidder
" with his Thre Eſtatis of the Realm,
" was proponit the Debait and Cauſe of
" the Field of *Striviling*, in the quhilk
" umquhile *James* King of *Scotland*,
" quhome God aſſolzie, Father to our
" Soverane Lord, happinit to be ſlane,

 " and

" and the Cause and Occasion thereof
" Commonit oppinnit and arguit amang
" the Lords of the Thre Estatis, *John*
" Lord *Glammis* presentit, and schew
" certane Articlis subscrivit with the
" said umquhile K. *James* Hand, the
" Tennour of the quhilkis followes, *&c.*
" thequhilkis beand, read, and Schawin,
" that the saidis Articlis was divers
" tymes grantit to, and broken be per-
" verst Counsal of divers Persounis be-
" ing with him for the tyme Quhilkis
" counsallit and assistit to him in the in-
" bringing of Inglismen, and to the
" perpetual subjectioun of the Realme,
" and under dissait and colour maid,
" and refusit; and that our Soverane
" Lord that now is, ever consentit for
" the Gude of the Realme, and the com-
" moun Profit thereof (for the quhilk
" the Erle of *Huntly*, the Erle of *Errol*,
" the Erle *Merchal*, the Lord *Glammis*,
" and uthers diverse Barronis, and uthers
" the Kingis trew Liegis left him, and
" his dissaitful and pervers'd Counsal,
" and adherit to our Soverane Lord that
" now is, and his trew Opinioun for the
" commoun Gude of the Realme) the
" quhilk Matter beand Schawin, Exa-
" minat, Commonit and Understanding
" be the Thre Estatis, and the hail Body
" of

" of the Parliament, that ryplie avisit,
" declarit and concludit, and in thair
" Lawties and Allegiance ilk ane for
" himself declairit, and concludit:
" That the slaughter committit and
" done in the Field of Striveling,
" quhair our Soverane Lordis Father
" happinit to be slane; and uthers di-
" vers his Barronis and Liegis, was
" allutterly in thair default, and colour-
" it dissait don be him and his perverst
" Counsal, divers times befoir the said
" Field. And that our Soverane Lord
" that now is, and the trew Lordis and
" Barronis that was with him in the
" samin Field, war innocent, fre, and
" quyte of the said Slaughter done in
" the said Field, and all persuit of the
" Occasion, and Cause of the samin;
" and that pairt of the Thre Estatis,
" foresaidis, Prelatis, Bischoppis, Great
" Barronis, Burgessis, gaif their Seillis
" heirupone, togidder with our Sove-
" rane Lordis Greit Seil, to be schawin
" and producit to our Haly Father the
" Pape, the Kingis of *France*, *Hispan-*
" *zie*, *Denmark*, and uthers Realms, as
" sall be sene expedient for the tyme.

This Act was so full to the purpose, that by Order of King *James* VI. as 'tis

 sup-

ſuppos'd, it was left out of the Acts re-printed in his Time, and the like out of all thoſe that have been printed ſince; but it was publiſh'd among thoſe that were printed by order of his Mother Queen *Mary*, commonly call'd the *Black Acts*, becauſe printed in a Black Letter, from whence this is taken *Verbatim*.

I know it is objected, that theſe Acts were obtain'd from Princes during their Nonage, and therefore are not to be drawn into Conſequence. To which it is anſwered, That K. *James* the Second was nineteen Years of Age at leaſt when the firſt mention'd Act was made, a Seaſon when Princes are apt enough to enquire into their Prerogatives, and tenacious enough to maintain 'em: And K. *James* IV. when that Act paſs'd which condemn'd his Father as being the Cauſe of his own Death, was ſixteen Years of Age, and of ſuch a Capacity, that the States thought him fit to ſit on the Throne; as appears by their laſt Meſſage to K. *James* the Third, who being ſo void of Faith that they could not truſt him, they ſent him word that there was no other way to accommodate Matters, but to reſign the Crown to his Son; which he not thinking fit to comply with, it haſten'd his Fate. Beſides, it's

it's known to be the Conſtitution of *Scotland*, that our Kings may revoke any thing they have done to the damage of their Crown during their Minority, when they come to full Age, which is 21; but tho King *James* the Second liv'd till he was 29, and King *James* the Fourth died in the 25*th* Year of his Reign, they did neither of them attempt to repeal thoſe Acts. They were both of 'em Princes of Courage, and of excellent natural Endowments; and therefore had they thought it juſt and practicable, would certainly have tried it; eſpecially K. *James* IV. who, according to the Superſtition of the Times, was afterwards prevail'd upon by the Prieſts to wear an Iron Chain about his Middle, as an Evidence his Father was kill'd againſt his will: But he never offer'd at abrogating the Act, for he knew too well that the Common Law of the Kingdom was for it, and that the Eſtates were authoriz'd by former Precedents, particularly by that of the Parliaments making War upon *Baliol*, and pulling him down from the Throne for betraying our Sovereignty to the *Engliſh*; and by the Declaration of the Eſtates to the Pope, that as they had ſet up *Rob. Bruce* on the Throne in *Baliol*'s ſtead, they

they would depoſe him too if he follow'd the ſame Meaſures: and indeed they were ſo little accuſtom'd to Arbitrary Government, that tho they had all the Deference imaginable for the ſaid K. *Robert*, as the Deliverer of his Country, and the greateſt Captain of his Time; yet when by the Advice of ſome greedy Courtiers he was influenc'd to demand in Parliament, that every Man ſhould produce the Rights by which he held his Lands, they took it ſo ill, becauſe he knew that moſt of 'em were deſtroy'd during the War with *England*, and *Baliol*'s Faction, that every Man drew his Sword in his Preſence, and told him, they held their Lands by that Right. He dar'd not to reſent this, tho he was very angry at it, but without juſt Reaſon, for he held his Crown by no other Tenure: 'Twas by thoſe very Swords that he obtain'd it, and 'twas by their Authority that he kept it.

In this place it is likewiſe proper to take notice of the Parliament's obliging K. *James* the Third to ſtitch the Earl of *Morton*'s Charter upon the Throne; where he tore it in a tyrannical manner, becauſe of the large Royaltys and Privileges it contain'd; and particularly that in certain Caſes there ſhould be no Appeal

peal from the ſaid Earl, which that Prince thought was a Privilege fit for none but a King.

But to put this Objection from the Nonage of our Kings to perpetual ſilence; thoſe who think there's any weight in it, ought to conſider, that tho the Kings of *Scotland* may ſometimes happen to be under Age, the Three Eſtates can never be ſo, it was their Act and Deed; and whether our Kings were young or old, they had no Negative Voice in thoſe Days, and therefore could not refuſe to paſs what the States had enacted: but of this more anon. Beſides, it was not in the Reigns of theſe two Kings alone, or only when our Princes were under Age, that the Three Eſtates laid a Claim to the Power of calling our Kings to an Account for breaking in upon the Conſtitution: It had been their conſtant practice from the very Foundation of our Monarchy. It were eaſy to prove this by many partilar Inſtances from our Hiſtory, but we ſhall content our ſelves with a late one of unqueſtionable Authority.

The Eſtates of *Scotland* in the beginning of *James* the *6th*'s Reign, ſent the Earl of *Mortoun* and other Commiſſioners to Q. *Elizabeth*, to juſtify their depoſing

ſing his Mother Q. *Mary*; and in their Memorial for that end, did plainly aſſert their Right of calling their Kings to an account, as an unalterable Law. A part of this Memorial, as reported and approv'd in the Convention at *Sterlin*, upon the return of thoſe Commiſſioners from *England*, we ſhall give an Account of from *Buchanan* as follows.

" The *Scots* being originally a Free " Nation, created themſelves Kings on " this Condition, That the Power they " were intruſted with by the Suffrage " of the People, might be taken from " 'em by the ſame Authority if Occaſion " requir'd.—It appears likewiſe by the " Ceremonies in practice at the Inaugu- " ration of our Kings, when a mutual " Stipulation is ſworn to by the Prince " and People. This is alſo manifeſt by the " inviolable Tenour of our Law, from " the beginning of our Monarchy to " this very Day; for no Man ever at- " tempted to have it repeal'd, or any " way leſſen'd: and tho our Anceſtors " have dethron'd, baniſh'd, impriſon'd, " and executed ſo many Kings, that it " would be tedious to rehearſe them, " yet no Man ever complain'd of the " Severity of this Law, or talk'd of " reſtrain-

" reſtraining its Force: For it is one of " thoſe Sanctions that are not ſubject to " the Mutations of Time, but engraven " in the Minds of Men from the very " Creation, approved by the unanimous " Conſent almoſt of all Nations, and " muſt continue inviolable to the End of " the World.

K. *James* VI. himſelf after he came of age, confirm'd by Acts of Parliament all that had been done by the three Eſtates during his Nonage, and annulled all that had been done againſt it by his Mother's Authority; tho he had as much Kingcraft, and as great an Itch after Arbitrary Power as any of his Predeceſſors.

The nearer we approach to the Fountains and Origin of our Government, the more ſtrong and clear ſhall we find the Streams of our Liberty. Our Kings have in time of Peace been ſummoned to appear before their Parliaments to anſwer for their Male-adminiſtration; for inſtance, *Culenus* our 79*th* King: and when any of them happen'd to be guilty of Capital Crimes in their own Perſons, they were liable to the Law as well as others. This is evident from the Inſtance of *Eugenius* VII. who was brought to his Trial for the ſuppoſed

 Murder

Murder of his own Wife; and from many other Instances. Our Ancestors thought there was no reason that the Subject should have remedy at Law against the King, if injur'd by him in his Estate, and yet be left without remedy when injur'd by him in matter of Life. Much less did they think it reasonable that a particular Subject should have the benefit of the Law against his Prince, when injur'd by him in his Person or Property, and that the whole Subjects should be left without relief when a tyrannical Prince invaded their Constitution, and would take upon him to dispose of their Lives and Fortunes at his pleasure. Our Forefathers never dreamt of any such Government. Their Monarchy was only an Office of Trust confer'd upon the Prince in conjunction with the three Estates, who had a share with him in all those things which Politicians call *Jura Majestatis*, as the Power of making Laws, the Power of raising Mony, the Power of Peace and War, the Power of making Leagues and Treatys, the Power of making Officers of Law and State, and a joint Power in the whole Administration, as shall be fully proved afterwards. This ought for ever to stop the Mouths of Foreigners or others who are so

so liberal in their Censures upon our Nation, and reflect upon us as having been always rebellious and disloyal to our Kings; for these Reflections have no other Foundation but Malice, or Ignorance of our Constitution. This serves also to take off that common and seemingly weighty Objection, that our Kings being the Fountain of all Power and Jurisdiction, could not be tried by Courts who deriv'd their Power from them: For as to our Nation it's a Mistake in Matter of Fact, our Kings derived their Power from the States of the Country, as is evident from our Histories in the first Foundation of our Monarchy, and in all the several Revolutions of it since that time. It is no less evident from our Acts of Parliament, that tho the Administration was in the King's Name, yet the Sovereignty was lodg'd in him and the three Estates. This appears by their having a joint share with him in all the *Jura Majestatis*, as has been already mention'd: and therefore when he invaded the Constitution, and upon that account was call'd to the Bar of the three Estates, he was brought in Judgment before his Superiors, if three parts of the Sovereignty be superior to one, and if those who gave the Power and Authority be superior

or to him that received it. Besides, when he became a Criminal he made himself subject to those very Laws which were ratify'd by the Touch of his own Scepter, and of those of his Ancestors. So that in his personal Capacity he was judged by himself in his politick Capacity, and in effect condemned by his own Mouth, which gave the Royal Assent to the Laws that he had transgress'd.

This will not in the least justify the Illegal Trial, Condemnation and Execution of K. *Charles* I. in *England*, since the Parliament there had voted his Concessions to be a sufficient Foundation for a Treaty; and since our whole Nation oppos'd those Proceedings against him: So that admitting what he was charg'd with to have been true, it was *coram non Judice*, and therefore the whole Proceeding was an Act of Force and Tyranny.

II. *The King of* Scots *had no Negative Voice in Parliament; but the Estates had a commanding Power in all Matters relating to the Government, and he could do nothing in those Matters but by their Advice.*

The

The 2*d* thing humbly proposed to the Consideration of the Parliament of *Scotland* is, that in the next Act of Settlement they should deliberate whether it be fit to have their antient Privilege restored, that what passes the three Estates be confirmed as a Law by the Touch of the Scepter, without the King's having a Negative Voice. Not that he should be obliged to act by an implicit Faith: He may be allowed to propose his Reasons against any Act that is offer'd; but if those Reasons be not satisfactory to the States, and manifestly tend to the advantage of the Country, his Negative ought not to hinder their passing into a Law. This was our old Constitution, and while our Estates retained three parts of the Sovereignty in their own hands it could not be otherwise; they might conclude the King, but he could not conclude them. Had it not been so we must have been ruin'd by K. *James* III. and others of our Tyrannical Princes; nor had we ever been blessed with a Reformation establish'd by Law. It's well enough known that Q. *Mary* and her Husband the King of *France* refus'd to give their Assent to the Acts establishing the Reformation; but being enacted in a Parliament legally assembled, they had

 the

the Force of a Law notwithſtanding. And tho ſhe was by her own inclination ready enough to aſſert her Prerogative, and confirmed in that Principle by her Education in the Court of *France*; yet ſhe was ſo far from uſurping a Power to caſſe and annul thoſe Laws, as her Great Grandſon K. *James* VII. did, that ſhe never ſo much as pretended to it. On the contrary, ſhe humbly intreated her Nobles and others ſo far to diſpenſe with them, as to allow her a private Maſs in her own Palace.

This Petition of hers was no new or unprecedented thing in our Princes, nor was it owing to the Weakneſs of her Sex or the Danger of her Circumſtances; but the natural Reſult of our Noble Conſtitution, which allow'd our Kings to petition the Eſtates in Matters relating to the Adminiſtration, but not to command them: and therefore we find it thus expreſſed in the Acts of K. *James* I. Cap. 125. *Item Dominus Rex obtinuit per modum Requeſtus*, i. e. **Our Lord the King obtained by way of Requeſt:** And this Requeſt was, *That the Prelats and Barons ſhould not remove the Husbandmen from their Farms, not yet let to others, for the Year to come, except they had a mind to take them into their own hands.* In

In the Acts of K. *James* II. Cap. 62. they ſay, *It is thocht Speidful* **that the King make Requeiſt** *to certaine of the Greit Burrowis of the Land that are of ony Mycht, to mak Cartis of Weir, and in ilk Cart twa Gunnis*, &c. Theſe are left out of the late Editions of our Acts, becauſe they did not ſute with that towering Prerogative we have had paum'd upon us ſince the Union of the Crowns, but are ſtill to be found in the black Acts formerly mentioned. We would wiſh theſe Gentlemen, who have taken the liberty to declare by Word and Writing, that our Parliaments were antiently no more but the Kings *Baron Court*, to bethink themſelves whether Barons uſe in this manner to petition their Vaſſals, and whether Vaſſals have any Power to order their Superior to petition them, and to turn him out from his Eſtate, if he don't fulfil the Conditions of his Grants; or whether it was originally their Gift, or his own Property.

But to return to the Negative Voice, what is here aſſerted concerning it has been frequently denied by our Royaliſts ſince the Union of the Crowns; but One of them more ingenuous and knowing than the reſt, hath owned it in a Paper call'd, *An Eſſay upon the Diſorders of*

Scotland, ſubjoin'd to a ſhort Narration of the State of Affairs in *Scotland* at the down-ſitting of the Parliament, 1661. ſent by the Earl of *Middleton* to King *Charles* II. and now lately publiſh'd at *London* in a Book call'd *Miſcellanea Aulica*; ſo that 'tis probable the ſaid Earl may have been the Author of it. But however that be, it ſeems highly reaſonable in it ſelf that our Parliaments ſhould reaſſume that Authority, when the preſent Entail of our Crown determines. Had they re-poſſeſs'd themſelves of this at the Revolution, we had not ſuffer'd ſo much in our Lives, Eſtates and Reputations, as we have done by the Affair of *Caledonia*; and we ſhould at this time, humanly ſpeaking, have been in poſſeſſion of that important Iſthmus, which would have made us more conſiderable in the Eyes of *Europe* than any thing elſe that ever we undertook ſince a Nation. There were other things relating to our Conſtitution, wherein we ſuffer'd during the laſt Reign, for want of that Privilege; but it's hop'd this is enough to ſatisfy the thinking part of the Nation of the Neceſſity that our Parliament ſhould reaſſume that Power. If we ſuffer'd ſo much for want of it in the Reign of K. *William*, whom we must

muſt juſtly reckon to have been one of the beſt of our Kings, what may we ſuffer for want of it in ſuch Reigns as that of *Charles* II. and *James* VII? Let us turn over the long Roll of our Kings, bound up with our Acts of Parliament, and conſider, that of 110 of our Princes there are 33 ſtigmatiz'd with the odious Epithets of *Bloody*, *Cruel*, *Greedy*, *Lecherous*, *Vicious*, *Tyrannical*, *Fooliſh*, *Uſurpers*, &c. And if we may give credit to what is ſaid by *Buchanan* and others of our Hiſtorians, or if we may be allowed to ſpeak what the Nation has experienc'd within this laſt 100 Years, it can ſcarcely be charg'd with Falſhood, if we add near half a dozen more to the number. I was not able to forbear ſmiling when I read the 134*th* Act of the 8*th* Parliament of K. *James* VI. *againſt Slanderers of the King's Progenitors*, &c. which was directly level'd againſt *Buchanan*'s Hiſtory, and at the ſame time found the Liſt abovementioned, which gives thoſe Characters of ſo many of his Progenitors, bound up and printed by Authority with our Acts of Parliament. *Magna eſt Veritas & prevalebit.*

Then ſince the matter is thus, and that according to this Calculation we cannot ſay we have had one good Prince

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in three among those that are past, and have no reason to promise our selves that it will be otherwise among those that are to come; What wise Nation would put it in the power of any Prince to refuse the passing of good Laws when they are laid before him by the States? Our Ancestors were so far from allowing their Princes any Power of this nature, that it never appears to have been claimed by any of them before the Union of the Crowns. Hence it is that so many of the Laws in the time of the five *James's*, are enacted in the Name of the States without any mention of the King: In some of them they are many times mentioned before him, and in others they plainly direct, not to say command their Kings in the weightiest Affairs of the Administration. Thus we find in the Acts of *Jam.* I. *Cap.* 25. the States determine and ordain that the King shall *gar*, *i. e.* cause mend his Mony; and *Cap.* 49. that the King shall command all Judges to do full Justice, and appoint Advocates to plead poor Peoples Causes; and *Cap.* 50. they ordain where the King gives Remissions, that the injur'd Party have Satisfaction. In the Acts of *Jam.* II. *Cap.* 1. they ordain the King to be in or near the Town where the Justice Air

Air is kept. *Cap.* 6. they conclude, that the King shall ride thro all the Realm upon advice of any Rebellion, Slaughter, Burning, Robbery, *&c.* and that he call for the Sheriff, and see the injur'd Parties redress'd before he leave the Place: And *Cap.* 102. they exhort and require him to a diligent Execution of the Statutes, *that God and his Subjects may be pleas'd with him.* In the Acts of K. *James* III. *Cap.* 80. they tax the King with Slothfulness in not putting the Laws in execution for the bringing in of Bullion and keeping Mony in the Kingdom, and order that he shall *yet* cause the said Statutes sharply to be put in execution, and that he shall *now* depute true and able Persons to be Searchers. *Cap.* 100. they obtain'd his Promise to cause Justice to be equally administred by the Counsel of his Prelats and Lords: And in the Acts of K. *James* IV. *Cap.* 6. they concluded that the King shall ride about in Person to administer Justice, and be present at his Justice Airs. In the Acts of K. *James* V. *Cap.* 38. we find that Prince, tho he had a large share of the Courage and Ambition of his Uncle K. *Henry* VIII. of *England*, pay so much deference to the Constitution of his Country and the Dignity of the three

Eſtates, that he told them by his Advocate, *He intended not to move or do any thing, but what he might juſtly do by their Advice.* The Occaſion of this is very remarkable, and ſets the antient Authority of our Parliament ſtill in a clearer Light; therefore we ſhall exhibit the Act it ſelf *(which is call'd the Declaration of Parliament)* at large.

" The quhilk Day, Maſter *Henry*
" *Lauder*, Advocat to our Soverane Lord,
" exponit in preſence of the Kingis
" Grace, and Thre Eſtatis of Parlia-
" ment, how that his Grace had raſit
" Summoundis upon the Airis of Um-
" quhile *Robert Leſlie*, to heir his Name
" and Memorie deleit and extinct for
" certain Punctis and Crimes of Leſe
" Majeſtie committit and done be him
" or his deceis, and thairfoir all his
" Gudis, movabill and unmovabill, per-
" teining to him, the time of the com-
" mitting of the ſaid Cryme, and ſen-
" ſyne, to be decernit to pertene to his
" Grace. And becauſe it is Murmurit,
" that it is ane Noveltie to rais Sum-
" moundis, and move ſic aganis ane per-
" ſoun that is deid (howbeit the Com-
" moun Law directlie provydis the
" ſamin) not the leſ for ſtanching of
" ſic

" ſic Murmure, and that his Grace
" tends on ne ſort to move or do ony
" thing, but that he may juſtlie be the
" aviſe of the Thre Eſtatis. Thair-
" foir deſyrit the ſaidis Thre Eſtatis to
" aviſe thairupon, and that his Grace
" may have the Cenſement of Parlia-
" ment, quhither that he has an Acti-
" oun, to purſue ſic Summoundis or not.
" The hail Eſtatis Spiritual and Tempo-
" ral, and Commiſſaris of Burrowis,
" all in ane Voice, but Variance or Diſ-
" crepance hes deliverit and concludit,
" that his Grace hes gude juſt Cauſe and
" Actioun to perſew the ſaid Summoun-
" dis, and all uthers ſiclyke Summoun-
" dis of Treſoun, done and committit
" againis his Perſoun and Commoun-
" weil conform to the Commoun Law,
" gude Equitie and Reaſon: Notwith-
" ſtanding thair is na ſpecial Law, Act
" nor Proviſion of the Realm maid
" thairupon of befoir.

Thus this valiant and high-ſpirited Prince own'd himſelf to be oblig'd to do nothing but with the Advice of the Parliament, even in ſuch Caſes as this, that were rul'd by the Common Law. He knew the Conſtitution of the Government to be ſo, as indeed it muſt evidently

dently appear to those who consult our Statute Books; for by them it is manifest that from the highest Acts of Sovereignty, such as making Peace or War, to the very lowest Acts of Common Police or Discipline, such as forbidding People to play at Footbal, and taking order about the building of Rooks on Trees, and burning of Heath, † the Kings of *Scotland* could do nothing without the Concurrence of the Three Estates; and in all new Cases, even such as seem'd only to relate to Ceremony, or what the Custom of the Times made common Decency, they could do nothing but by their Authority, no not so much as grant a Charter to a Bishop to have a silver Rod carried before him *. This is Matter of Fact, and the Reason of it is evident; our Kings had their Power originally from the Estates, and in all new Cases were oblig'd to have recourse to their Advice. They were Sharers with them in all Acts of Sovereignty; they had a Negative upon the King, tho he had none upon them, because they were the Majority; and therefore in their Laws and Statutes they speak as Sovereigns,

† Jam. 1. *Parl.* 1. *Cap.* 17, 19, 20.
* Jam. 3. *Cap.* 87.

and

and command their Princes in what related to the Administration. Since the Union of the Crowns indeed, this would have been look'd upon as an assuming, if not a rebellious Stile: But our antient Parliaments understood their Interest, and the Nature of our Constitution better; they knew they could not answer it to themselves, and to the People from whom they had their Commissions, if they did not take effectual care that their Princes, whose Office was only a Power of Trust, should be faithful in the Discharge of that Power which they had entrusted them with.

I know it is objected against this by our Royalists, *That our Parliaments deriv'd their Power from the King; that the Lords of the Articles were a Check upon them, and that they were only to treat of such Articles as the King propos'd, and gave in to those Lords.* To the first part of this it has been answer'd already, that our Historys in all the Turns of our State, from first to last, make the contrary evident. As to the Lords of the Articles, they were only a Committee of each Estate chosen by themselves to prepare Matters, and to determine upon the Articles propos'd by the King; but the Estates were at liberty to recede from

those

thoſe Propoſals, and their Determination upon them, as they themſelves thought fit; which fully proves that the Eſtates had a Negative upon the King. This is evident from the Preface to the Acts of K. *James* I. where it is ſaid, *Electæ fuerunt certæ perſonæ ad Articulos datos per Dominum Regem determinandos, data cæteris Licentia recedendi*; but this is left out in the late Editions of our Acts, becauſe it was not conſiſtent with that Arbitrary Power which ſome of our late Princes aſſum'd ſince the Union of the Crowns, and contrary to the uſe which after that time they made of the Lords of the Articles, and therefore they were aboliſh'd after the Revolution as an intolerable Grievance. That the Members of Parliament by themſelves, or their Speaker, had Power to propoſe what was thought meet and neceſſary for the Commonwealth, is likewiſe evident from the Act of *James* I. Cap. 112. in the old Acts, and 102. in the new. Beſides, theſe Lords of Articles were never heard of till the Time of *David Bruce*; nor was there ever any Statute-Law enjoining them, or to determine their Power and manner of procedure; there were likewiſe ſeveral Parliaments after the time of the ſaid *David Bruce*, which had none

none of thoſe Lords of the Articles; and when they were in uſe, they were nam'd and choſen by the Advice and Conſent of the whole Parliament, till the Year 1617. that the Biſhops took upon them to remove out of plain Parliament to the Inner Houſe, and choſe ſome out of the Noblemen, and the Noblemen them, and they two choſe the Commiſſioners of the Articles of the Shires and Burrows, as may be ſeen in the Repreſentation of the Proceedings of the Kingdom of *Scotland* by the Eſtates, *An.* 1640. *Pag.* 21. From all which it would ſeem that the Articles deliver'd by the Kings, were inſtead of the Speeches now in uſe by themſelves, their Commiſſioners or Chancellors, which propos'd what was thought fit to be done on the part of the Crown, but did not hinder the Parliament from propoſing alſo what they themſelves thought fit to propoſe for the Benefit of the Country.

It being evident, as hath been ſaid already, that the Three Eſtates were Sharers of the Sovereignty, it was an indiſpenſible and neceſſary Reſult of ſuch a Conſtitution, that Parliaments ſhould not only be frequent and certain, but *continual* by themſelves or their Committees, otherwiſe our Government muſt have

 been

been lame, and three parts in four of the Sovereignty wanting at times.

III. *The Parliament had a Power to appoint the Times of their Meeting, and Adjournment, and Committees of their own Number to superintend the Administration.*

Therefore it is propos'd in the third place, that the Parliament of *Scotland* in the next Act of Settlement, should consider whether it be fit to ascertain their Meeting once *per An.* or oftner, *pro re nata*, that it should not be in the Power of the King or Queen to adjourn them without their own Consent; and that they should appoint Committees of their own Number to sit during Intervals, to superintend and assist in the Administration, and to be accountable to them at the next Meeting; and that before the Parliament break up, the Time and Place of their next Meeting should be appointed.

It appears to have been our antient Privilege, tho not always duly observ'd, to have annual Parliaments, and sometimes they met twice *per Ann.* Thus in the thirteen Years of K. *James* I's Reign we had fourteen Parliaments and Gene-

General Councils: and Annual Parliaments appear to have been our Right, by the Acts of *James* I. *Cap.* 112. ratify'd by *Ja.* VI. Parl. 11. *Cap.* 113. And in the Acts of *James* I. *Cap.* 125. we find the Parliament which met at *Perth* on the 26*th* of *April* 1429. adjourn'd by the King, with their own Consent, till *Martinmas* the Winter following. *Cap.* 145. we find the Parliament which met at *Perth* on the 30*th* of *January* 1430. adjourn'd likewise to the Feast of St. *Michael* next that same Year. In the Acts of *Jam.* II. *Cap.*22. we find the meeting of the Parliament appointed to be at *Perth*. *Cap.* 38. The Parliament met at *Edinburgh* on the 26*th* of *Aug.* 1442. orders another to meet there on the 28*th* of *March* following; and all the Prelats, Barons, Freeholders, and others that owe presence there, to appear to Commoun, Treat and Conclude upon such Things as are profitable and convenient for the Realm. *Cap.* 42. We find the Parliament which met at *Edinburgh*, *June* 9. 1455. continued with their own Consent to the 4*th* day of *August* following. *Cap.* 52. We find the Parliament meet accordingly, and again continued, by their own Consent, to the 12*th* day of *October* next.

In

In the Acts of K. *James* III. *Cap.* 61. we find the Parliament which began at *Edinburgh* on the *6th* day of *May* 1471. continued, by their own Consent, to the *2d* day of *August* next. And, *Cap.* 75. we find the Parliament which began at *Edinburgh May* the *9th* 1474. continued, by their own Consent, to the *6th* day of *August* next: And this Privilege is own'd and assented to by K. *Jam.* VI. who in his Letter from *England* to the Lord *Balmerinoch* his Secretary, dated *May* 6. 1604. ordered that the Estates should continue the Parliament *. And indeed it seems altogether unreasonable, that the King or Queen should have the Power to adjourn or dissolve Parliaments at pleasure, which are the great Barrier for the Peoples Libertys, and the Supreme Court for doing Justice to the whole Nation, when they have not Power to adjourn the ordinary Courts of Justice without the Consent of Parliament. It is however very observable that all these Acts of Parliament relating to the Consent of the Three Estates, as to the Time of their Meeting and Adjournment, are left out in the Edition of

* *Representation of the Proceedings of the Kingdom of* Scotland *by the Estates* 1640.

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the Acts printed by Sir *Thomas Murray*; so careful were our late Courts to remove all the antient Landmarks of the Power of Parliaments.

Then as to Committees of Parliament during Intervals; in the Acts of *James* I. *Cap.* 72. we find that the King, with Consent of Parliament, appoints his Chancellor, with certain Persons of the three Estates, to sit for Administration of Justice three times *per Ann.* which Times are appointed in the following Chapters.

Cap. 85. we have an account of Articles, Points, and Causes, determin'd by the King and Committee of Parliament, which was chosen by the three Estates in the Parliament at *Perth, March* 16. 1425.

Cap. 89. and following, we have a Report of what the King and Committee of Parliament had commun'd and ordain'd, as to certain Statutes profitable for the common Good of the Realm, according to the Ordinance of the three Estates, in the Parliament held at *Perth* in *October* foregoing.

In the Acts of K. *James* II. *Cap.* 22. a Committee of the three Estates is appointed to examine the Acts made in the Time of that King and his Father, and

to

to make their Report in the next Parliament to be held at *Perth*, of ſuch as they find good and convenient for the time.

Cap. 77. A Committee of Parliament is named and appointed to meet in the Exchequer, to commune upon the Matter of Mony for the Profit of the Realm.

In the 1*ſt* Parl. of K. *James* III. held at *Edinburg*, Oct. 9. 1466. *C.* 2. a Committee is appointed to commune upon the Marriage of the King, his Siſter and Brothers, upon the Annual of *Norway*, and upon thoſe that held the Kings and my Lord of *Albany*'s Caſtles from them: And this Committee had Power to authorize, ratify or annul all Acts and Statutes communed in the Seſſions of Burrows for the good of Merchants and Profit of the Realm; which Power was to continue till the firſt of *February* following.

Cap. 52. It appears there was a Committee appointed having the whole Power of the three Eſtates, to order Matters relating to the Adminiſtration of Juſtice; and that they ordered the Prelats and Barons to make Carts of War, that is, Carriages with Great Guns, for the defence of the Realm.

Cap.

Cap. 57. That ſame Committee order'd the Mony to have courſe upon the preſent footing, until the Meeting of the Parliament, that another Committee ſhould be appointed to determine that Matter.

Cap. 61. A Committee is there nam'd, having the Power of the whole Parliament, to determine, treat and conclude, as in their Wiſdom they ſhould find meet, concerning Matters relating to the Welfare of our Sovereign Lord, which were propos'd in that preſent Parliament, but not concluded, and other Matters that ſhould occur for the time, for the Welfare of the King, and the common Good of the Realm.

Cap. 75. The Power of the three Eſtates is given to a Committee of 24 of their own number, to adviſe and conclude upon Matters that ſhould occur in the mean time, and particularly of the Mony, with Power to adjourn the Parliament to another Day, if they thought it needful, they themſelves having adjourned it to the *6th* Day of *Auguſt*.

Cap. 97. The Eſtates for ſparing their own Labour and Travel, committed their full Power to 24 of their own number, to commune, adviſe and conclude upon an Embaſſy to be ſent to the

 King

King of *England* about his Marriage with the King's Sister, and about summoning and trying the Lord of the Isles, and Sir *Alexander Rait*.

In the Acts of K. *James* IV. *Cap.* 8. a Committee is appointed for putting a stop to Theft, Robbery, and other Enormitys, and to bring the Persons guilty of those Crimes to Justice; for which they gave their Oaths to the King in Parliament: and this Power was to continue till his Majesty attain'd the Age of 21. This Committee being appointed to continue so long, we are not to wonder that we hear of no more during this Reign, for the King not many Years after entred into a War against *England*, in which he fell.

In the Reign of K. *James* V. the Institution of the College of Justice with the Consent of Parliament, who nam'd the Lords of the Session, regulated their Methods of Proceeding, and superintended the same from time to time, render'd those Committees in a great measure needless. Besides, his *French* Match, and that of his Daughter Queen *Mary*, brought in too much of the *French* Mode of Government, as it has ever done in all other Nations who have been so unfortunate as to have their Princes marry into

into the *French* Line: but we have seen already by K. *James* V's own Concession, that he could do nothing of his own Power without the Consent of Parliament; and it will be further evident from other Instances we shall have occasion to mention, that the three Estates abated nothing of their Original Power in the Reign of himself or his Daughter.

In that of K. *James* VI. we find those Committees of Parliament again brought in use. Thus in the Table of the Acts of his Ninth Parliament, which are not printed, we find Committees appointed for discussing Articles propos'd in Parliament, and for erecting the College of *Aberdeen*. And in the Table of the Acts of his 11*th* Parliament, which are not printed, we find Committees appointed concerning the Coinage, about a Tax for the King's Marriage, for establishing universal Measures and Weights, for satisfaction of the Clergy for their Life Rents, about the priority of Places and Voting in Parliament; and others to treat for the defence of the Realm in the time of War, for regulating the quantity of Bullion to be brought into the Mint, for better execution of Justice, and for considering the Acts of

Parliament. In the like Table of Acts of his 12*th* Parliament we find Committees mentioned upon ſeveral occaſions; and alſo in his 13*th*, 16*th*, 17*th*, 18*th*, 19*th*, 20*th*, 21*ſt*, 22*d*, and 23*d*, which was his laſt: tho here we muſt obſerve, that all thoſe Acts relating to the Committees of Parliament in former Reigns, are left out in Sir *Tho. Murray*'s Edition.

The Antient Conſtitution of the Parliament of *Scotland*.

IV. *A* 4th *thing propos'd to the Conſideration of the Parliament of* Scotland, *is to take a view of the Antient Conſtitution of that Supreme Court, and to conſider what part of it is fit to be reſtored.*

It appears by our Statute Books, that formerly all Barons and Freeholders came in Perſon to Parliament, and were obliged to do ſo by their Holdings. This is ſuppoſed to be one of the Reaſons why ſome late Authors have preſum'd to aſſert, that our Parliaments were antiently the King's Baron Courts, but it is a palpable Miſtake; for the Reaſon of it appears to have been, that they who had a fix'd and certain Intereſt in the Kingdom, were

were judg'd to be the moſt proper and fit Perſons to *meet, commune, treat and conclude upon ſuch things as were profitable and convenient for the Realm.* This is plainly implied and aſſerted to be the End of their Meeting in the Acts of *Jam.* I. *Cap.* 49, & 112. *Jam.* II. *Cap.* 38. *Jam.* III. *Cap.* 106. Nor can it in reaſon be thought to have imply'd any thing of a ſervile Tenure, ſince Legiſlature and taking order in Matters relating to the Adminiſtration, are Acts of Sovereignty. And we find, as has been already ſaid, that our Parliaments in antient times never look'd upon themſelves to be the King's Servants; ſo that it plainly appears that thoſe Tenures, if they muſt be accounted ſervile, were only to ſerve themſelves and their Country, and no other way to ſerve the King, but as his Service fell in with that. This is plain from the Preface to the Parliament of *Rob.* I. where it is ſaid they met about the various and arduous Affairs that did concern or might concern him and his Kingdom, for the Honour of God and of our Holy Mother the Church, for the bettering of his Country, the Defence of his People, and to maintain and confirm the Peace of his Country.

In those Times they were far from thinking, that the only End of Parliaments was to raise Mony for the King, and to support his Prerogative and Grandeur. They did indeed from time to time limit and ascertain his Prerogative, and did the King Justice in the Matter of his Revenues and the Patrimony of the Crown, as well as they did Justice to the Subjects: but it is as evident that they had an uncontrolable Power to annex or dissolve from the Crown as they thought fit; and that the sole End of those Annexations or Dissolutions was the publick Welfare, and the Defence of the Kingdom, without any regard to the Person of the King, but in so far as it fell in with those Ends, as we shall have occasion to see afterwards. But that Baron Courts have, or ever had any such Power over the Estates of their Landlords, let those who have endeavour'd to degrade the Authority of Parliaments by that Similitude, prove if they can.

To return to the Barons and Freeholders, it is evident that they are the far greatest part of the substantial Body of the Kingdom, and by consequence most concern'd in its Preservation and Prosperity;

rity; and therefore, generally speaking, they have all along been truest to its Interest, because their own Interest and that of the Nation is inseparable. For if the Common People be diminish'd by Famine, Sword, Plague, or by the Oppression of the Prince, the Barons and Freeholders are the immediate and most sensible Sufferers by it: Their Lands, how large and fruitful soever, are of no use to them, if not tenanted; and when that happens to be the case, they are in a worse condition than those whose Stock is in Trade, for that is removeable to other Countrys, and may be improv'd by foreign Commerce, in case of any of the domestick Calamitys beforementioned: but the Barons and Freeholders cannot remove their Lands, therefore it's their principal concern to guard against all such things as may lessen or discourage the People. From all which it naturally follows, that they ought to have the greatest share in the Legislature. This our Ancestors thought reasonable, and therefore all Barons and Freeholders appear'd personally in Parliaments and General Councils; and to this we must justly ascribe the Preservation of our Freedom and Liberty for so many Centuries. It was impossible for any designing

ſigning Prince or Court either to bribe or force ſo many Gentlemen into Meaſures that were deſtructive to their Country: and therefore according as this Practice grew in diſuſe, our Princes grew in their Prerogative, which hath reduc'd our Country ſo low as it is at preſent.

The firſt time we find them diſpens'd with from coming to Parliament is in the Acts of K. *James* I. *Cap.* 112. and the reaſon was, that many of them were not able to bear the Charge of it*. So that inſtead of all of them being obliged to appear in Perſon, they were at the Head Court of each Shire to chuſe two or more wiſe Men, according to the Largeneſs of each Shire, except *Clacmanan* and *Kinroſſe*, who were each of them to chuſe but one; and theſe Commiſſioners of the Shires were to have their Charges born by the Electors, and to *chuſe their Speaker, who was to propoſe all things pertaining to the Commons in Parliament.*

* *Sir* George Mackenzie's *Inſtitution of the Law of* Scotland, *p.* 13.

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By this it is evident that the Medium of adjuſting the Proportion that each Shire was to have in the Legiſlature, was their Largeneſs, by which muſt be meant their Populouſneſs, and the Share they bore in the Publick Burdens, there being no reaſon that the Shire of *Nairn*, which pays but 277 *l.* as its proportion of a Public Tax, ſhould have as many to repreſent it in Parliament, as the Shire of *Roſſe*, which pays 1131 *l.* that *Cromarty* which pays but 214 *l.* ſhould have an equal Share in the Legiſlature with *Inverneſs*, which pays 1213 *l.* or that *Bute* which pays but 308 *l.* ſhould have as many Repreſentatives as *Renfrew*, which pays 1353 *l.* and ſo of the reſt. In like manner as to the Burrows, it's not reaſonable that *Whitehorn* which pays but 8 *l.* ſhould have as many Repreſentatives in Parliament as *Glaſgow*, which pays 1800 *l.* or that *Innerbervy* which pays but 6 *l.* towards a Public Tax, ſhould have as many as *Perth*, which pays 360 *l.* and ſo of the reſt.

Something towards a Remedy of this, as to the Counties, has been done ſince the Revolution, by the 11*th* Act of the Earl of *Melvil*'s Parliament, upon the Ground laid down in this Act of King

James

James I. which is there refer'd to, and assigns the Reason to be the Largeness, Extent and Value of the Lands held by the Barons and Freeholders in those Shires: but it may justly deserve the consideration of our Parliament, whether more of this ought not to be done, both in respect of the Countys and Burrows.

By this means the Nation should be more equally represented, and it would not be so easy for any future Prince to influence our Parliaments, as sometimes they have done, to fall in with such Measures as are prejudicial to the Kingdom: At the same time it would do Justice to the Barons and Freeholders, who had a Right to come to Parliament themselves, that the Number of their Representatives should be enlarg'd. Perhaps it may deserve consideration, whether all of them whose Estates will bear the Charge, should not be restor'd to that Right, which seems not to have been entirely taken from them till the Reign of King *James* VI. for in that of his Mother Queen *Mary*, we find all of them to have been present in Parliament, when a War was agreed on against *England*, as appears by the 3*d* Chapter of the Parliament held at *Monkton-hall*: and that

that the 112*th* Chapter of K. *James* I's Acts, did not deprive them of that Privilege, but only freed them from the Fine they were formerly liable to for not attending in Parliament, is evident from this, that we find them mention'd as present at several subsequent Parliaments, *viz.* the very next, which was held at *Perth*, *April* 26. 1429. We find them again in the Parliament held at *Edinburgh* in the Reign of K. *James* II. *July* 14. 1455. And in another Parliament held there in 1449. we find the Freeholders of Regalitys in the King's Hand, order'd to appear in Parliament as well as those of Royaltys. The Freeholders were likewise present at the Parliaments held in *Edinburgh*, *August* 6. 1452. and *Aug.* 4. 1455. And in the Acts of King *James* II. collected by Sir *Thomas Murray*, Parl. 14. *Cap.* 75. we find that no Freeholder who held of the King under the Sum of 20 *l.* should be constrain'd to come to Parliament, or General Council, except he be a Baron, or specially warn'd by the King. By which it is evident that all Barons were still oblig'd to attend in Parliament. We find no mention of the Freeholders in any of the Parliaments of K. *James* III. who was a Tyrannical Prince, and in all pro-

probability improv'd his Grandfather's Act, dispensing with their Presence to hinder their coming: but in the Reign of his Son K. *James* IV. *Cap.* 113. we find it enacted, that all Barons and Freeholders, above the extent of 100 Marks, should come in Person to Parliament, on pain of the old Fine; while those under that Extent were excus'd on sending their Commissioners. So that this must be understood to have been the Constitution of our Parliament till the Time of K. *James* VI. Nor do we find any Law in his Time, or since, that expresly abrogates the same: for the 113*th* Act of his 11*th* Parliament relates to the Commissioners of small Barons and Freeholders, and only releeves the remainder of the small Barons and Freeholders from their presence in Parliament; but does not exclude the Barons and Freeholders above the Extent of 100 Marks from coming to Parliament. The 272 Act of his 15*th* Parliament, takes order indeed that no Barons be receiv'd as Commissioners of any Shire, except they produce Commissions granted to them in a full Convention of the whole Barons of the Shire. It's true, this seems to imply, that those Commissioners must represent all the Barons, yet it does not ex-

expresly say so; and since it enjoins that the Commission must be authoriz'd by the Subscription of a great Number of the Barons then present, and not by all or the Majority, it leaves room to conjecture, that the great Barons were not by this Act depriv'd of their Privilege of coming in Person, especially considering the beforemention'd Act of K. *James* IV. that expresly enjoins their coming.

The 35*th* Act of the first Session of the first Parliament of K. *Charles* II. only regulates the Elections and Charges of Commissioners from Shires, but does not expresly forbid the Appearance of the Great Barons in Person. So that the 113*th* Act of K. *James* IV. which Sir *Thomas Murray* in his Collection calls the 78*th* Act of his 6*th* Parliament, must in all reasonable Construction be still thought to be in force; for his Commission from K. *Charles* II. which is printed before the Acts, extends only to the collecting and printing of such as were so.

The allowing of all the Great Barons to come to Parliament, or at least the granting them more Representatives, is highly reasonable, because since the Bishops, Abbots, and Priors, who made up the

the third Eſtate before the Reformation, are now juſtly laid aſide, our Parliaments are not ſo numerous, and by conſequence their Weight and Authority not ſo great as formerly. That the bringing in of more Barons, inſtead of thoſe Clergymen, is certainly much more for the Intereſt of the Country, than to ſupply their Places by Proteſtant Biſhops, will evidently appear by the following Argument.

Thoſe Popiſh Clergymen had not ſuch an abſolute dependance upon the King as the Proteſtant Biſhops, but own'd the Pope and the Conclave of *Rome*, as their more direct and natural Superiors; and the Abbots depended entirely upon the Choice of the Monks, and therefore were not ſo apt to be at the Devotion of the Court as our Proteſtant Biſhops, who immediately depended on the King and no other Perſon for their Preferments. This is evident from the *Roman* Clergys having many times eſpouſed the Quarrel of the Church of *Rome*, againſt that of their Princes in moſt Nations of *Europe*; and the danger of that in *Scotland* was well enough perceiv'd by our Anceſtors, which occaſion'd thoſe frequent Laws we find in our Statute Books againſt Clergymens going out of the

the Country to purchaſe Benefices at *Rome*, &c.

Sir *Thomas Craig*, in his Book *de Feudis*, *Edinburgh* Edit. in *Folio*, *Pag.* 90. ſays, That our Archbiſhops, Biſhops, and Abbots, were all Elective Dignities; the Archbiſhops were choſen by the Biſhops, and the Biſhops by their Chapter, with the Conſent of the Nobility of the Country; and the Abbots and Priors were choſen by their own Convents. But the Pope, the King of *France*, and King of *Scots*, falling afterwards into an ambitious Contention about naming the Perſons to thoſe Prelacies; the Elections which before that time were altogether free, were intrench'd upon, and the Chapter or Convent nam'd three, of whom the King choſe one, and the Pope confirm'd him, as appears by the Pragmatical Sanction, and ſome of our Statutes: But in proceſs of time both the Election and Nomination fell to the King, and the Chapter only made choice for Forms-ſake. By our Acts of Parliament this appears to have been in the time of *James* V.

Yet by their Authority in Parliament, and otherwiſe, they had ſo much influence, that there are two remarkable Inſtances of their having indanger'd the

Ruin of the Nation, rather than they would part with any of their Benefices, or quit a Rag of their Superstition. The first was, when for fear of their Religion they hinder'd an Interview betwixt our King *James* V. and his Uncle King *Henry* VIII. of *England*, and by consequence the Union of the Nations upon more honourable Terms than any that we have had offered since, which occasion'd our disgraceful Overthrow at *Solan Mosse*; the grief of which kill'd that unhappy and misled Prince. The second was their Breach of the Contract of Marriage betwixt our Queen *Mary* and the Prince of *Wales*, afterward King *Edward* VI. which occasion'd our shameful defeat at the Battel of *Musclebrough*, and expos'd the Country to the Devastations of the *English*, as their matching her to the Dauphin, did afterwards expose us to the Tyranny of *France*.

King *James* the Sixth, who was a cunning Prince, and fond of Prerogative to the highest degree, soon perceiv'd, that if he could bring Protestant Bishops into the Church of *Scotland*, who should have an intire dependance upon the Crown, they might be as useful to support that Towering Monarchy which he had in view, as the Po-

pish Bishops had formerly been to support the Papacy, in which the Event shew'd he was not mistaken.

Another thing proposed to the Consideration of the Parliament, is, Whether or not they may think it proper to reassume their old Privilege of chusing their Speaker. This was their antient Right, as appears by the Act of *Jam.* I. *Cap.* 112. formerly mention'd. Nor do we find that they were depriv'd of it by any Law till the time of King *Charles* II. when this Power was confer'd on him by the first Act of his first Parliament. How much this hath been since improv'd, to lessen the Privileges of Parliament, is well enough known.

It may also deserve their Consideration, Whether they ought not to exclude the Officers of State from voting in Parliament, as such. The King of *Scotland* is none of the Estates, tho formerly he us'd to preside in Parliament; and therefore there seems to be no reason that his Ministers should have any Vote there as such, for this can no way consist with our old Constitution, as appears by the 47*th* Chapter of the Statutes of *David* the 2*d*, the Title of which is, *Soli Consiliarii Electi debent Interesse Concilio Regis*,

where

where it is ordain'd, that no Person of what Quality, Eminence or Degree soever, bring any other Person with himself into the King's Council, as a Counsellor or Assessor, except those who are chosen by the Council and the Estates; and the like is confirm'd by the Statute of *Rob.* II. *Cap.* 1. This Practice seems also directly to thwart the Act of *Ja.* VI. Parl. 11. *Cap.* 40. which obliges the King to do nothing directly or indirectly in prejudice of free Voting and Reasoning, since it is evident that the Voting of his Ministers must certainly have an Influence upon the Votes of others, who have any dependance upon the Court, or expectation from it.

The Privilege of creating Lords of Parliament and Royal Burrows, relates also to the Constitution of Parliament, and therefore deserves the Consideration of the Estates in the next Act of Settlement. Antiently Peers were created in Parliament: Thus we find many Earls and Barons created in the Parliament at *Forfar* by K. *Malcolm*, An. 1061, and amongst them the Lord *Douglas* *. We find likewise that *Kenneth* III. obtained

* *History of the House of* Douglas, *p.* 15.

the Consent of the three Estates when he confer'd the Title of Prince of *Cumberland* upon his Son, *An.* 900. and *Robert* III. in a Parliament at *Perth*, An. 1396. created his own Son Prince *David*, Duke of *Albany*. And indeed it is but reasonable that they who are made Lords of Parliament, and by that means entitul'd to a Power of Legislation, should be admitted with the Consent of Parliament; of which antient Privilege we have nothing left now but the Shadow, which is the reading and recording the Patents in Parliament.

This will appear to deserve the Consideration of our Estates so much the more, if they consider what Sir *Tho. Craig* says of the Original of the Lords of Parliament in his Book *de Feudis*, p. 79. " The Name of Lords and their Dignity in the Government, says he, arose " thus: In the beginning they were " only Barons, and are no more still; " but the Name came from hence, all " Barons were obliged to give their Presence in Parliament, but when they " were all there it being impossible to " collect their Suffrages because of their " Multitude, one or two was chosen " from every Province to treat with " the King about the Affairs of the

 " King-

In the old Acts all Members of Parliament were call'd Lords of Parliament.

" Kingdom. At first those of the great-
" est Dignity and Experience in Affairs
" were delegated, and called by the
" Name of Lords; but after Ages grow-
" ing more degenerate, and Parliaments
" becoming more frequent, because
" most Controversys were decided in
" them, the lesser Barons were not able
" to bear the Charge of attending: and
" hence it came to pass, that those who
" had most Riches were delegated in-
" stead of those who had most Experi-
" ence, and so those richer Barons retain'd
" that Dignity during their Life. And
" as Mankind is always prone to Flat-
" tery, they retained the Name when
" the Parliament was up, and their
" Heirs being possess'd of the same E-
" states, were unwilling to part with
" the Name. And thus it came to pass
" in progress of time, that those who at
" first were only Commissioners from
" the Barons, were taken into the num-
" ber of the Lords of Parliament, as
" often as Parliaments were summoned.

By this it would seem, that tho the Titles of Duke, Marquess, Earl, Viscount and Lord, advanced those that had them to higher Degrees of Honour, yet it gave them no Authority to sit in Parliament, but as they were Barons; so

so that it was an Intrenchment upon the Liberty of the Barons, since they did not all come to Parliament in Person, that any Baron should sit there by virtue of a Patent of Nobility, without a Commission from the other Barons. But since this Abuse is of so long a standing, and that there are so many great Men concerned in it, as would make it of dangerous consequence to redress it, perhaps it may deserve the consideration of our Parliament, whether this should not be one of the Preliminaries for the next Successor, that no Patent of Nobility shall henceforward carry an Hereditary Right to sit in Parliament, without the Consent of the Estates. This would raise the Dignity of our present Nobility, which is so much diminish'd every day by the addition of new Familys, and be a sufficient Guard against the Designs of succeeding Princes to make a ballance in the House on the Court-side, against the Interest of the Country.

Then as to Royal Burrows, which have a Power of sending Members to Parliament, there is no reason to doubt but they were at first dignify'd with that Privilege by the Consent of Parliament, tho we don't find it expresly mention'd in

in our printed Acts. The other Privileges of ſeveral of them, and the manner of their Government, we find from time to time ratify'd and regulated in Parliament; particularly as to the chuſing of their Councils and Magiſtrates, as may be ſeen in the Acts of *Ja.* II. Parl. 11. *Cap.* 46. *Ja.* III. Parl. 5. *Cap.* 30. where for the more ſecurity and freedom of the Burrows, it is enacted, that no Conſtable or Captain of any Caſtle may bear Office in the Town. Parl. 14. *Cap.* 108. that the Election of Officers be without Partiality or Maſterſhip: and *Jam.* IV. Parl. 6. *Cap.* 80. *Jam.* V. Parl. 4. *Cap.* 26. & *Jam.* VI. Parl. 20. *Cap.* 8. That all their Officers be Traders and Dwellers within the Burrow: and *James* III. Parl. 14. *Cap.* 111. & *Jam.* VI. Parl. 5. *Cap.* 64. & Parl. 7. *Cap.* 119. the Royal Burrows are allow'd a yearly Convention for Matters concerning their State, and the Welfare of their common Trade; which is a Confirmation of their antient *Curia*, or *Parliamentum quatuor Burgorum*, the firſt Inſtitution of which we know not, but find it mentioned in the Parliament of *David* II. *Anno* 1368. but the old Laws, called *Leges Burgorum*, were enacted in the Reign of *David* I. And if the King could

could not grant thoſe leſſer Privileges without the Conſent of the three Eſtates, it is very improbable that he could give 'em this, which is the higheſt Privilege of all, and a part of the Sovereignty it ſelf, without their Conſent. Tho there be no mention of this found in our printed Acts as to our old Burrows, yet it appears plain enough from Parl. 15. *Ja.* VI. *Cap.* 263. where it is ordain'd, "That three Burrows be built "in the *Highlands*, *viz.* one in *Kyntire*, "another in *Lochaber*, and a third in "the *Lewis*, to which our Soverain "Lord *and the Eſtates forſaids*, ſhall "grant, and by theſe Preſents grants "all Privileges which his Highneſs or his "Predeceſſors have granted to any other "Burrowes within this Realm. And "that it ſhall be lawful to our Sove-"rain Lord, by the Advice of the Lords "of his Majeſty's Exchequer, to grant "to every one of the ſaid Burrowes ſo "much Land and Ground from his an-"nex'd Property, as may ſerve to build "the ſame upon, with as much Land "and Fiſhing next adjacent, as may "ſuſtain the common Charges of theſe "Burrowes.

This is ſufficient to explain the Method how our Royal Burrows were erected,

ed, and came by their Privileges; and there is another Act which helps still to make it clearer, *viz.* Parl. 11. *Jam.* VI. *Cap.* 112. which enacts that no Burrow may sell their Freedom in whole or in part, without consent of Parliament. The Reason of which is plain, because they had that Freedom by their Consent, and therefore no less Authority was necessary to destroy than there was to create: And by an Act of K. *Jam.* II. Parl. 11. Act. 45. it is enacted, that no Regalitys be granted without Consent of Parliament; which may serve to put this Matter beyond all doubt.

To this may be added, that it seems highly necessary for the Parliament to take into their consideration, whether it may not be fit in the next Act of Settlement to deprive little insignificant Burrows of their Privilege of sending Members to Parliament, and to confer the same upon several considerable Towns which have it not. This were a ready way to have the Nation more fully and truly represented in Parliament, and likewise to prevent Bribery in Elections, or taking off of Members from the Interest of their Country, when elected, by Bribes, Pensions, *&c.* For substantial and rich Towns are under no Tentation

tion to take Bribes, or to elect insignificant and needy Men, who are neither capable of serving their Country in Parliament, nor proof against Bribes, to make them espouse an Interest contrary to that of the Nation. This will appear to be the more reasonable, because by the 111*th* Act of the 11*th* Parliament of K. *James* the *6th*, it is statute and ordain'd, that the Taxation of the Free Burrows shall no ways be altered, but stand as the same stood in all Times preceding; that is to say, their part of all General Taxations in time to come, shall extend to the *6th* part thereof only. This shews it to be altogether unreasonable, that they who bear but a *6th* part of the Publick Charge, should have any more than a *6th* part of the Representation in Parliament; otherwise they may impose upon the Nation, as they have for the most part done of late, in making such Laws as are against the Inclinations of those who bear the other five parts.

It would seem also to deserve the Consideration of our Parliament, Whether it were not fit to make a Law, that no Lord should be capable of being admitted, nor no Commoner capable of being elected a Member of Parliament, without

out a previous examination by a Committee of Parliament appointed to attend Elections, as to his Abilitys, and particularly as to his Knowledg of our Constitution. This would oblige all Men of Note to read our Statutes, Law-Books, and Historys, and the best Treatises about Government, and the Interest of Nations, carefully; and having once imbib'd true Notions of our own Constitution, and just Ideas of Government in general, they would not be so easily brought to comply with Arbitrary Princes, as too many have been of late because of their Ignorance.

V. The 5*th* thing propos'd to the Consideration of our Parliament is, Whether it may not be proper for them, in the next Act of Settlement, to secure to themselves their antient Share in the *Jura Majestatis*, and Administration formerly mention'd.

The Power of the Scots *Parliaments formerly, in Peace and War.*

1. That there be no War or Peace made without their Consent. Our Historian *Buchanan* informs us, that King *Robert*

Robert the Second, at the Sollicitation of *France*, agreed to a Truce with *England*, but in vain, because it was not in his Power to make Peace or Truce without Consent of Parliament. He gives us likewise an older Instance of *Malcolm* the Fourth, who by Act of Parliament was oblig'd to make War upon *England*, because K. *Hen.* II. had fraudulently depriv'd him of the Northern Counties. And when this pusillanimous Prince agreed voluntarily to part with *Northumberland*, the Estates would not allow it, but told him, he could do no such thing without their Consent. In like manner they oblig'd *Baliol* to denounce War against King *Edward* I. of *England*, for having deceitfully prevail'd with him to own him as his Superior; which they determined to be void, because the King of *Scots* could no nothing which related to the State of the Kingdom, without the Consent, or against the Mind of the three Estates.

In King *Robert* the Second's Time, when the *English* had invaded our Borders, under confidence of a Truce, the King was for passing it by, and observing the Truce; yet the Nobility, not only without his Consent, but directly against

gainſt his Will, reveng'd themſelves by an Invaſion upon *England*; ſo far were our Princes in thoſe days from having Peace and War at their own Diſpoſal. King *James* the Third, one of the moſt Arbitrary Princes that ever we had, when *Henry* the Sixth of *England* ſollicited him for a perpetual League, or a durable Peace, frankly own'd that he could do no ſuch thing, becauſe it was forbidden by an antient Law. In the Minority of King *James* the Fifth, the Duke of *Albany* his Viceroy being bred in *France*, and totally addicted to the Intereſt of that Court, he endeavoured at their Sollicitation to engage us in a War with *England*. The Nobility hearing the *Engliſh* were alſo making great Preparations, agreed in Parliament to raiſe an Army for Defence of their Country, according to their antient Conſtitution, and march'd with them to the Borders; but perceiving that the main Deſign of the Governor was to give the *Engliſh* a Diverſion in favour of the *French*, and that the Earl of *Shrewsbury*, the Great *Engliſh* General, kept only upon the defenſive, and did not invade us, they would by no means invade *England*: But the Earl of *Arran*, ſays Biſhop *Leſsly*, and the reſt of

of the Nobility told the Governor plainly, that they were there to defend their Country according to Law, but would not invade *England*, till he ſhew'd them the Cauſes why. Thus the Viceroy was oblig'd to forbear, tho he was a Prince of greater Prudence and Conduct than moſt of the Kings of his Family that had gone before him, and had the full Exerciſe of the Royal Authority. Theſe are a few of the many Inſtances of this ſort that are to be found in our Hiſtory; but it will appear more uncontrovertibly plain from the following Acts of Parliament.

In the Acts of King *James* the Third, *cap.* 100. they order all the Subjects to be ready arm'd with twenty days Proviſions, upon eight days Warning, to attend the King: they appoint the Length of their Spears, the Length of their Jacks, the Faſhion of their Targets, and that every Lord and Baron, for they were then the Commanders, ſhould be anſwerable for their Mens obſerving good Diſcipline; they gave Order for repairing and furniſhing the Caſtles belonging to the King or any of the Subjects. They debate and conſider of the Juſtice of the War againſt *Edward* IV. King of *England*, expreſs the Cauſes

Causes of it in the Act, and take notice,
" That the King was altogether for
" Peace, sa that it had been according to
" the Honour and Worship of his High-
" nesse and the Realm, be the Sycht of
" his said thre Estatis. They add,
" The thre Estatis foirsaid, hes thairfoir
" hartfully of thair awin free Will,
" grantit and promittit to our Soverane
" Lord, to remane and abide at the Com-
" mand of his Hienes with thair Per-
" sounis, and thair Substance of Landis
" and Gudis, in defence of his maist no-
" bil Persoun, his Succession, Realme
" and Liegis, as *they and thair Forbearis*
" *hes of auld times done of befoir.*

By this it is plain, that the Proposals of Peace made by the King were laid before the Parliament, and submitted to their Judgment, and that his Majesty could not engage them in a War without their own Consent, they knew no such Prerogative belonging to the Crown; and therefore the Rule of their attending him in the War, was the *Practice of their Ancestors.*

The Power of the Estates in Matters of War, is further evident from the other Articles of this Act, wherein they order Rendevouzes of the People every 15

15 days, appoint Guards on the Sea-Coasts at every six Miles distance, that if the Enemy invade by his Wardens, the King should resist by his Wardens; but if the King of *England* invaded in Person, *the King should resist him in Person:* so that here he was appointed *Dux Belli* by the Authority of the Estates. Their Power in Military Matters was of universal extent, from the highest Act of it, in appointing the Commanders, to the very lowest of it, which was appointing the Couriers, and ordering the Treasury to pay them for their Intelligence. Therefore we are not to wonder, that in the same Act we find the Estates order Proclamations to be issued out against Traitors, and appoint Garisons, with the Number of Men that should maintain them, the Officers that should command them, and the Pay that both Officers and Soldiers were to have.

In the Reign of Queen *Mary*, it was one of the Articles agreed on betwixt the Deputies of the Court, and those of the Nobility, That the King and Queen neither make Peace nor War on their Parts, but by the Counsel, Judgment and Consent of the Estates, according to the Ordinance of the Country, and as was ob-

ſerved by their Predeceſſors *; which was a fair Acknowledgment of the Power our Eſtates had antiently in that matter.

The Eſtates having ſo great a Power in Affairs of War and Peace, it followed naturally that they ſhould have a Right to take Order about arming the People, and training them up in the uſe of thoſe Arms. So much of the Sovereignty being then lodg'd in the three Eſtates, they apprehended no danger of Rebellion from the People, becauſe they themſelves were only the Quinteſſence, or refin'd part of them met in Parliament, and could have no diſtinct Intereſt from that of the People, whom it was their Advantage to cheriſh and encourage: The Barons and Freeholders could not otherwiſe maintain their own Grandeur and Riches, but by having Subſtantial and Wealthy Tenants; and the Burrows could not expect that their Corporations ſhould flouriſh either in Commerce or good Diſcipline, if the Burghers and other Inhabitants were not incourag'd by a mild and good Government. This being the Caſe, and the Intereſt of the Government and

* Knox *and* Spotſwood's *Hiſtories*.

People

People one and the ſame, the Parliament from time to time appointed all of them that were capable of bearing Arms, to be arm'd and diſciplin'd, ſettled the Days for their Rendevouzes, order'd Buts to be erected in every Pariſh, that the Youth might on Holidays be encourag'd to improve themſelves in Archery; and enacted that the Sheriffs, and Barons, and Magiſtrates of Burrows ſhould take care to ſee this perform'd, and levy Penalties upon thoſe that neglected or tranſgreſſed thoſe Statutes. Thus in the Acts of *William* the Firſt, *Cap.* 23. it is enacted, that every Man ſhall be arm'd for the Defence of the Kingdom according to his Ability; and the Arms are there ſpecified, and Muſters appointed by the Sheriffs and Barons every Eaſter.

In the Acts of *Robert* the Firſt, *Cap.* 27. the like is enacted. In the Acts of *James* the Firſt, *Cap.* 20. it is ordain'd, that every Man busk them to be Archers from twelve Years of Age; and that in every ten Pounds worth of Land there be made Bow-marks, eſpecially near Pariſh-Churches, where every Man ſhould at leaſt ſhoot three times in his Turn; and the Proprietor of the Land or Sheriff, was to raiſe a Fine from every Man that did

not

not come to the ſaid Archery. *Cap.* 48. it is order'd, that there be four Rendevouzes in each County *per Ann.*

In the Acts of *James* the Second, *cap.* 71. it is ordain'd, that the Lords and Barons, Spiritual and Temporal, hold Rendevouzes of the People four times *per Ann.* that the People uſe Archery each Sunday; that every Man ſhoot ſix times at leaſt, and have Money allow'd him to drink; that there be four or five pair of Buts in each large Pariſh, and that all Men from twelve to fifty uſe ſhooting.

In the Acts of *James* the Third, *cap.* 106. it is ordain'd, that the Sheriffs hold Rendevouzes of the Subjects according to the Act, and give the King an account under his own Seal, and that of four Barons of the Shire, of all the Men able to carry Arms in the ſaid Shire, and of their being armed according to the Act.

In the Acts of King *James* the Fourth, *cap.* 53. Rendevouzes are appointed four times *per Ann.* in like manner, that all Men from ſixteen to ſixty be ſufficiently arm'd, and that the Sheriffs and Magiſtrates of Burrows take care to ſee this Act put in Execution. *

In

In the Acts of King *James* the Fifth, *cap.* 55. Rendevouzes are appointed twice *per Ann.* and that all the People be armed according to their Degree and Ability. And *cap.* 59. it is ſtatute, that every Earl, Lord, Baron, and Laird, give the Names of the Perſons that come with them to the ſaid Rendevouzes, and the manner of their Armour to the Sheriff, *&c.*

In the Acts of King *James* the Fifth, *cap.* 61. it is enacted, that in order to diſcipline the People thro all the Kingdom, every Sheriff, Stewart, Baillie, Provoſt, Alderman and Baillies of Burrows, Lords and Baillies of Regalities, at every Weaponſhawing concur with the King's Commiſſioners, that ſhall happen to be deputed to them, and they together to conſult with the moſt able Perſons of the Shire; and after they have enrolled the Names of every Man with their Harneſs and Weapons, chuſe one Able Man or more for every Pariſh, who ſhall be Captains to the Companies of the ſaid Pariſhes, to teach them the uſe of their Arms; and ſhall aſſemble their Companies at leaſt twice *per* Month during *May*, *June* and *July*, and the like in all other Months, if they find it convenient;

 and

and the ſaid Captain to be choſen, as oft as ſhall be ſeen expedient, by the Sheriff of the Shire, and the Commiſſioners and Council join'd with him.

Thus we find that our People were univerſally and continually train'd up in the uſe of Arms, that every Man was obliged to be arm'd according to his Quality; and that the Command of thoſe arm'd Men was not entruſted with every Man that could get a Commiſſion from the King, but either with ſuch as were choſen by the People themſelves, as in the above-mention'd Act, or with the Lords and Barons that were their Landlords and Maſters, and by conſequence oblig'd in Honour and Intereſt to treat them civilly; and being ſo much concern'd in the Welfare of the Kingdom themſelves, were not ſo liable to be brib'd or bought over to eſpouſe the Intereſt of the Court againſt that of the Country, as Mercenary Troops and Standing Armies have ever been.

The firſt Attempt of introducing Mercenary Troops among us, we find to have been made during the Regency of *Mary* of *Guiſe*, Dowager to King *James* the Fifth; and this ſhe was put upon by her *French* Council, and ſuch ſlaviſh

viſh mean-ſpirited People of our own Country as fell in with them. They offered alſo to impoſe a Tax for maintaining thoſe mercenary Troops, and would then have compleated our Slavery under that *French* Adminiſtration, had not 300 Barons, being equally offended with this Tyrannical Project, and the ſluggiſh Temper of the Nobility, who by their ſilence betray'd the Publick Liberty, met at *Edinburgh* of their own Accord, and ſent two of their Number to the Queen Regent with a noble Remonſtrance, ſignifying that their Anceſtors had not only defended their Country againſt the *Engliſh*, when much more powerful than they were then, but had alſo frequently invaded *England*; and that they were not ſo much degenerated, but they were ſtill willing to hazard their Lives and Eſtates in defence of their Country; that it was a thing of moſt dangerous Conſequence, to truſt the Safety of the Nation to mercenary Soldiers, Men of no Subſtance or Expectation, and therefore liable to be tempted to do any thing for Money, Men whoſe infatiable Avarice is ready to be inflam'd by every new Opportunity, and who have no other Standard of their Fidelity but variable Fortune: but ſuppo-

 ſing

ſing it to be otherwiſe, and that they are more acted by Love to their Country, than by any reſpect to their own private Condition, is it credible, that mercenary Soldiers will fight with more Courage for other Mens Eſtates, than the Proprietors themſelves will do for their own; and that a little inconſiderable Pay, which is to laſt no longer than till the War is at an end, is more capable of inſpiring vulgar Fellows with Courage, than the Conſideration of fighting for Eſtates, Wives, Children, Honour and Religion, is capable of animating our Nobility and Gentry? They added beſides, that the Meaſures propoſed, related to the Eſſential part of the Government, and was a thing of too great Conſequence to be treated of at that time, and during the Nonage of their Prince; and they concluded like Men of Wiſdom and Foreſight, that this making uſe of mercenary Troops, would introduce Luxury, and Want of Military Diſcipline and Experience among the reſt of the People, make both their Bodies and Minds unfit for War, and expoſe the whole Kingdom to danger. This Remonſtrance, and the Fear which the Regent had of the Reſentments of ſuch a Body of Gentlemen, ob-

obliged her to lay aſide the Project, and to acknowledg her Error.

There happen'd ſoon after this another remarkable Inſtance of our Nobility and Gentry's aſſerting their Power in matters of War, which was thus. In the Year 1557. the Regent aſſembled the Nobility at *Newbattle*, and preſſed them to declare War againſt *England*, both upon the account of the Injuries they themſelves had received, and of their League with *France*; but they could not be prevailed upon to be the firſt Aggreſſors. At laſt being provok'd by new Injuries from the *Engliſh*, they were brought to denounce War: But Monſieur *d' Oſel*, the King of *France*'s Lieutenant-General, and Commander of his Auxiliaries in *Scotland*, having by the Advice of the Queen Regent and her Faction, preſum'd to carry the great Guns over *Tweed*, to attack *Wark Caſtle*, before any ſuch thing was agreed upon by the Nobility and Gentry, who were then in the Camp, they reſented it highly; and the Duke of *Chaſtelherault* being at their Head, they told the Regent and her Faction, that this was a greater Power than ever any of their Kings had laid Claim to, and therefore they called a Council, wherein they orde-

red

red Monſieur *d' Oſel* to bring back the great Guns on pain of Treaſon; at which the Queen Regent and he were both extremely offended, but there was no Remedy, they were forc'd to ſubmit, tho her Majeſty complain'd that it was a Violation of her Authority as Regent, and Monſieur complain'd that it was a Diminution of his Maſter the King of *France*'s Honour, whom he repreſented. This Story is to be found at large in *Leſsly* and *Buchanan.*

They that don't underſtand our Conſtitution, are ready to think that this and other Paſſages of the like nature, as the hanging of King *James* III's Minions over *Lauder* Bridg, were only the Reſults of Military Fury, and irregular Tumults: But they are miſtaken, for in thoſe days we had Parliaments in the Camp, and ſome of their Acts are mentioned among our Statutes, particularly that at *Tweſilhaugh* in *Northumberland*, in the Reign of K. *James* IV. and upon this was the Complaint of our Nobility grounded, that the Regent and her *French* Champion, ſhould have offer'd to manage any thing relating to the War without their Conſent, ſince they were upon the Spot, which none of their Kings had ever attempted to do in ſuch a manner, as ſhe and *d' Oſel* had

had done. This Notion of a Camp-Parliament I know will ſound but oddly amongſt ſome of our young Sparks, Aſſerters of Prerogative; but they will find that of King *James* IV. above-mention'd to be the laſt of his printed Acts; and that they may underſtand how it was practicable, they muſt conſider, that the Lords, Barons and Freeholders, the conſtituent Members of our Parliament, were oblig'd by the Conſtitution to attend the King's Standard for ſuch a limited time, in defence of the Country: And we have no reaſon to doubt, but Commiſſioners from the Burrows did the like; for we find by the Acts of *James* IV. *cap.* 120. and Queen *Mary*, *cap.* 18. that no War was to be proclaimed or Tax levied, without the Conſent of Deputies from the Burrows, as the third Eſtate of Parliament; and it is certain, that they either ſent ſome of their own Magiſtrates, or other Officers to command the Men, whom they furniſhed upon ſuch Occaſions. Nay ſo far were our Princes from having a Power to raiſe Men at pleaſure, or to keep ſtanding Armies on foot, that they could not ſo much as appoint themſelves ſtanding Guards without Authority of Parliament; and thus we find the firſt ſtanding

ſtanding Guards that ever any of them had, was forty Gentlemen appointed by the three Eſtates to attend King *James* VI. for which their Allowance was ſettled by Parliament, *Jac.*VI.Parl.8.*C.*137.

As to Naval Force, our Kingdom never abounded in that, becauſe our War being chiefly with *England*, we could manage that by Land; yet ſuch Naval Force as at any time we had Occaſion for, was likewiſe ſubject to the Determination of Parliament. This appears by the Acts of *Jac.*I. *Cap.*140. where it is ordain'd, that all Barons and Lords having Lands and Lordſhips near the Sea, on the Weſt and North parts, have Galleys under a certain Penalty; and the way how theſe Galleys ſhould be maintain'd, is there alſo determin'd, *viz.* by the Proprietors of the Lands upon the Coaſt within ſix miles of the Sea. And in the Acts of Queen *Mary*, we find that the Parliament revok'd Letters of Mark, laſt Parl. Queen *Mary*, *Cap.* 23. And in the Acts of King *James* VI. Parl. 12. *Cap.* 157. the King and three Eſtates, revoke a Commiſſion which had been granted to the Admiral, with unuſual Clauſes.

In like manner as to Caſtles, even thoſe

thoſe which were call'd the King's; they were not abſolutely at the diſpoſal of our Princes, but the Parliament from time to time gave ſuch Orders about them, as they thought moſt conducible to the Welfare of the Kingdom. Thus we find in the Acts of *Ja.* IV. *Cap.* 16. the Governor of the Caſtle of *Edinburgh*, appointed by the Eſtates; that they order'd the Caſtle of *Dunbar* to be demoliſh'd: and the Caſtle of *Roxburgh* was alſo demoliſh'd by the like Authority.

And in the Articles betwixt the Deputys of the Court, and thoſe of the Eſtates in Queen *Mary*'s Time, it was agreed the Caſtle of *Dunbar* ſhould be demoliſh'd if the States thought fit; and that in time to come the King and Queen ſhould make no more new Forts in the Realm, nor enlarge them that are made, or repair them that are demoliſh'd, without the Conſent and Advice of the Eſtates *.

And in the Acts of King *James* VI. Parl. 9. *Cap.* 8. the Parliament aſſigns Mony and Proviſions for keeping the Caſtles of *Edinburgh*, *Dumbarton*, *Ster-*

* Knox *and* Spotſwood's *Hiſtorys.*

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lin, and *Blackness*, to the Behoof of his Majesty, and the Welfare of the Realm. And if the said Mony and Provisions be otherwise dispos'd of, such Disposition to be void and null.

And as our Kings had not the sole Power of making Peace and War, neither were they the sole Judges of Controversys about Military Affairs, as appears by the Acts of King *James* II. *Cap.* 62. where any Debate that might happen betwixt Partys, about Persons that should be taken Prisoners of War, is referred from the King to the Barons, to whom it belong'd because of their Experience. In like manner as to those Feeds which did formerly so much abound among our Nobility and Gentry, the Parliament enabled the King, from time to time, to take them away, by calling the Chiefs before him and his Council, and appointing him to be Arbitrator of the Differences, *&c.* Act *Jac.* IV. *Cap.* 20. and *Jac.* VI. Parl. 16. *Cap.* 22. and Parl. 20. *Cap.* 7.

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The Power of the Estates in raising and appropriating the Public Mony, and calling for the Accounts.

2. There's a second thing reckoned among the *Jura Majestatis*, which is, raising of Mony. In this our Parliaments have hitherto maintain'd and preserv'd their Authority, more than in any other Branch of the Sovereignty; yet it will appear by the following Instances, that our Parliaments formerly exercis'd a greater Power in ordering and disposing of the Mony which they granted for any publick Use, than they have been accustomed to do since the Union of the Crowns.

The first Instance is that in the Acts of K. *James* the First, *Cap.* 146. when the Estates having granted a Tax of 12 *d. per l.* for suppressing a Rebellion in the North, they appointed four Persons to be Auditors of the Accounts, and Receivers of the Mony; that they should keep it in a Chest with four Keys, of which each of them were to have one: they order that the said Chest should be kept in the Castle of St. *Andrews*; and in case a Peace were made in the mean time

time, they ordered the Mony ſhould be kept for common Profit and Uſe: ſo that Clauſes of Appropriation, appointing public Accountants, and inſpecting into their Accounts, is no new thing in the Kingdom of *Scotland*.

The ſecond Inſtance is found in the Acts of King *James* the Fourth, *Cap.* 21. where the Eſtates having granted a Tax for an Embaſſy about the King's Marriage, his Majeſty had been prevail'd upon to give a Diſcharge of part of it; which the Parliament took ſo ill, that they declar'd he could not do it, and that his Diſcharge was Void, and of no Force or Effect, becauſe the ſaid Tax had been granted by the Eſtates for the Cauſe aforeſaid. And *Cap.*72. they order again that no Diſcharge giv'n for any part of it by the King, ſhall be of any Force or Effect, becauſe the ſaid Tax was granted by the Eſtates for his Marriage, and for no other Uſe.

The Power of the Eſtates to name and commiſſion Ambaſſadors, about the Marriage of our Princes, Trade, War, &c.

3. There's a 3*d* thing reckon'd among the *Jura Majeſtatis*, which our Parliaments

ments had a large ſhare in, and that is, the naming of Ambaſſadors, giving them Inſtructions, adjuſting their Number and Retinue, and regulating their Expences when ſent to make Leagues and Treaties about the Affairs of Peace and War, the Marriages of our Princes, and Matters relating to Trade and Commerce; as is evident from the following Statutes.

In the Acts of *Jac.* II. *Cap.* 51. it is ordain'd that an Embaſſy be ſent to the Pope to purchaſe certain Privileges for the common Good of the Realm; and their Expences and Inſtructions are refer'd to the King's Secret Council. *Cap.* 61. They approve of the ſending an Embaſſy to *France*, and of the Letters and Inſtructions given to them.

In the Acts of *Jac.* III. *Cap.* 62. they order the ſending of an honourable Embaſſy to *England* for obtaining Redreſs for breach of Truce, and concerting Meaſures for entertaining Amity and Peace in time to come. In the ſame Act they ordain, that the King ſend a Commiſſion to his Father-in-law the King of *Denmark*, to make an Alliance with the Emperor. *Cap.* 90. They ordain an Embaſſy to the Duke of *Burgundy*, to

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confirm and renew the Alliance formerly made with him, to get a Confirmation of the Privileges granted to the Merchants, and greater if possible; and to obtain a Reparation of Damages: and the Expences of this Embassy were to be born by the whole Burrows. *Cap.* 97. An Embassy is ordered to *England*, concerning the Marriage of the King's Sister. *Cap.* 100. They ordain that an honourable Embassy be sent to *France* from the King, and the three Estates, to the King of *France*, for a Supply against the common Enemy of *England*. *Cap.* 108. They order'd an Embassy to *England* about a Truce, the Marriage of the Queen's Sister, and the Fishery of the River *Esk*, with Instructions; and adjusted the Number and Expences of the Ambassadors. *Cap.* 111. They appoint an Embassy to the Pope, and adjust the Instructions. *Cap.* 126. They order an Embassy to the King of the *Romans* about a Letter of Marque; appoint the Number of the Ambassadors, and their Charge to be born by the Merchants.

In the Acts of *Jac.* IV. *Cap.* 2. they nam'd the Ambassadors sent to *France*, *Britany*, and *Spain*, about the King's Marriage; adjusted their Retinue and Ex-

Expences, and gave them their Instructions about renewing the antient League with *France*. *Cap.* 22. They commit their Power to the Secret Council, to give Instructions to the Ambassadors for renewing and confirming the Alliances with *France*, *Denmark*, and *Spain*. *Cap.* 23. They appoint an Embassy to *Denmark*, settle their Number and Expences, and give them Instructions. *Cap.* 44. They give Instructions for renewing the Alliance with *France*. *Cap.* 45, and 46. They give Orders again concerning an Embassy about the King's Marriage, and an Embassy to *Denmark*. *Cap.* 72. They name the Ambassadors to go to *France*, or any other Realm, to treat of a Marriage for the King, as it should be thought expedient by him, with the Advice of his three Estates.

In the Acts of Q. *Mary*, we find that the three Estates sent an Embassy into *France* about her Marriage with the Dauphin; that they appointed the Terms of the said Marriage, and adjusted the Privileges to be granted to the Ambassadors.

This Power of the Parliament in the Marriage of our Princes, is further evident from that remarkable Passage in our History concerning the Settlement of

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the Succeſſion in the time of K. *Robert Bruce, viz.* that if the Male Iſſue of himſelf and his Brother fail'd, the Crown was to deſcend upon his Daughter, but the Nobility ſhould chuſe her a Husband, ſuch as they thought worthy of her Royal Bed, and fit to ſucceed to the Crown; becauſe it was much more equitable that they ſhould chuſe a Husband for her, than that ſhe ſhould chuſe a King for them. *Buchan. in Vita Rob. Bruſſii.*

In the Acts of *James* VI. Parl. 15. *cap.* 277. we find that the Parliament, conſidering how expedient it was that his Majeſty for ſundry weighty Affairs, tending to the advancement of his Honour and Eſtate, and the benefit of the whole Subjects, ſhould ſend Ambaſſadors to ſeveral foreign Princes, and granted a Tax for that end.

The Power of the States in Matters of Coinage.

4. Coinage is another thing reckon'd among the *Jura Majeſtatis*, and in this our Parliaments have from time to time exercis'd a very large Power. In the Acts of *David* II. *Cap.* 46. there's an Act for coining new Mony, becauſe of the

the preſent Scarcity of Silver; wherein the three Eſtates of Parliament, call'd there *Tres Communitates*, order the Standard, and the Allowance to the King and the Officers of the Mint.

In the Acts of *Jam.* I. *Cap.* 25. the Parliament determine and ordain, that our Lord the King cauſe mend his Mony, and ſtrike it in like Weight and Fineneſs to the Mony of *England.*

In the Acts of *James* II. *Cap.* 33. intituled, *The Aviſement of the Deputys of the three Eſtates touching the Matter of Mony*, they gave Order as to the Weight, Fineneſs and Impreſſion of the Mony, which they enact to be coined, and at what Price the *Engliſh* and *French* Mony ſhall have courſe. *Cap.* 64. of that King's Acts, they appoint at what rate foreign Gold and Silver ſhall be currant, and particularly fix the Value of *French* and *German* Coin.

In the Acts of *James* III. *Cap.* 12. the States give Order about coining Copper Mony, and the Value of *Engliſh* Mony. *Cap.* 22. they raiſe the Value of the Mony, becauſe being at a lower Rate than in other Nations, it occaſion'd the exporting great Quantitys of our Mony. *Cap.* 29. They order the

Mony to have universal Course as before the first Proclamation made in Parliament in the Month of *October*, because of the great Murmur occasion'd by the Diversitys of Payment within the Realm; and that the Penny-worths, *i. e.* the Value of Goods, were rais'd with the Penny or Coin, and thereby became dearer than usual. *Cap.* 80. they order the Laws to be put duly in execution for bringing in of Bullion, and preventing the Exportation of Mony out of the Country. *Cap.* 83. they raise the Value of Gold Coin, to prevent its being exported. *Cap.* 89. they take notice of Abuses in the Coinage contrary to the Acts of the last Parliament, and order the same to be put in execution, and the like Abuses to be prevented for the time to come. *Cap.* 108. they order Mony to be coined, appoint the Fineness, Weight and Value, and what Profit the King shall have of the Coinage.

In the Acts of King *James* IV. *Cap.* 10. it is ordered that Pieces of Gold and Silver be coin'd equal in Value and Fineness to the Rose Noble of *England*, and to the old *English* Groats. At the same time they name the Essay-Masters, and give

give Orders about the bringing home of Bullion. *Cap.* 34. we find Orders given about Coinage, and the Price of Plate brought to the Mint. *Cap.* 61, & 71. they give Orders about receiving crack'd Mony. *Cap.* 88. they give Orders about Mony and Bullion, and that the Laws on that Head be put in execution. *Cap.* 133. they order again that crack'd and flaw'd Mony have Course in the Realm.

In the Acts of K. *James* V. it is order'd that the Crown of the Sun shall have free Course in the Kingdom. *Cap.* 89. they make an Act against exporting of Mony out of the Kingdom. *Cap.* 106. they make an Act against counterfeiting the King's Coin.

In the Acts of Queen *Mary*, Parl. 9. *Cap.* 69. we find a Prohibition against carrying Gold and Silver out of the Realm; and *Cap.* 70. they make an Act against false Coin, or the bringing in foreign false Coin into the Realm.

In the Acts of *James* VI. Parl. 1. *Cap.* 17. they order Mony to be coined equal in Fineness to that of other Kingdoms, and that no allay'd Mony have Course without Consent of Parliament. *Cap.* 19. they order all false Mony to be

 clip'd.

clip'd. Parl. 7. *Cap.* 106. they lower the Price of Gold and Silver, and give Order about foreign Coin and Bullion; and Parl 16. *Cap.* 8. they make an Act about Coin and Bullion.

The Power of the States in granting and limiting Pardons, and in punishing Rebels.

5. The Power of giving Pardons is another of the *Jura Majestatis*, wherein our Kings were far from having an absolute and unlimited Power, as will appear by what follows.

In the 4*th* Book of *Regiam Majestatem*, *Cap.* 17. N°. 3, & 4. the King is not to pardon Manslaughter without the Advice and Consent of the Deceased's Relations, otherwise the said Relations may avenge themselves upon the Manslayer. The like is to be seen in the *Iter Justitiarii*, agreed on in Parliament in the time of K. *William* I.

In the Acts of *David* II. *Cap.* 44. it is statute, that Remissions granted or to be granted by the King for any Crime, shall be void and null, except the injur'd Party have Satisfaction made within a Year after the Date. *Cap.* 50. it is statute that

that no Pardon be given for wilful Murder without the Consent of Parliament, and that they think the Pardon expedient for the Commonwealth. It is likewise there statute, that no Pardon be given for Manslaughter, till Enquiry be first made in the Place where the Slaughter was committed by unsuspected Persons.

In the Acts of *James* I. *Cap.* 50. we find it was not customary for our Kings to grant Pardons, but on condition that the Party endamag'd should have Compensation: And it is enacted, that the *Highlanders* should make Compensation for Robbery, *&c.* in the *Low Lands*, at the Arbitration of honest men sworn for that end.

In the Acts of *James* II. *Cap.* 83. it is enacted that those who have the King's Remission, find Surety to satisfy the Parties that complain within 40 Days, on pain of being imprison'd during the said 40 Days, and that the Remission be of no force. For Actions committed in time past the Complainer to have recourse to the Lords of the Session, who shall have Power to order Restitution according to the Act of Spoliation; and if the Party be not content, the Remission to

to expire and be of no force.

In the Acts of *Jam.* III. *cap.* 10. we find that whoever carried or sent any Mony out of the Realm, should pay the like Sum, and 10 *l.* over and above, which should be unremittable, *i.e.* the King should have no Power to pardon it. *Cap.* 88. it is observ'd that the King's readiness to grant Remissions had occasion'd frequent Treasons, Slaughters, Robberies and common Thefts; and therefore the King promis'd to give no Pardon or Reprieve to any manner of Slaughter for three Years, nor any Pardon for common Theft: and if he gave Remissions for old Actions, it was to be express'd, that the Action was committed before he was 25 Years of Age, otherwise to be of no force. *Cap.* 110. they counsel the King, which is the same thing with making an Act, that he should take care to have all notorious Trespassers brought to trial without remission, and that he give no Respite or Reprieve in time to come, as being more against Justice than plain Remissions. *Cap.* 116. the King again owns the abounding of Treason, Murder, *&c.* because of the too common giving of Pardons, and therefore promises to give none

none for seven Years to come.

In the Acts of *James* IV. *cap.* 96. it is enacted that the greatest Crime be specify'd in Remissions, because of Abuses there had been committed, in putting a slight Cause instead of the special Cause in Remissions. *Cap.* 97. it is order'd, that no Remission be given for premeditated Murder. In the Acts of this King collected by Sir *Tho. Murray*, Parl. 2. *Act* 12. it is enacted, that no Gifts, Signatures or Remissions, be pass'd, but by Advice of the Privy Council; and that all such Letters be sign'd by the King and six of the Counsellors at least, otherwise to be null.

In the Acts of *James* V. Parl. 3. *cap.* 7. it is own'd that no Remission or Respite is to be pleaded for Slaughter and Mutilation.

In the Acts of *James* VI. Parl. 8. *cap.* 136. it is own'd that Slaughters and other odious Crimes have been frequently committed, because of the ready granting of Respites and Remissions; and therefore the King promises to give none for three Years to come; and if any be given for old Actions, it is to be express'd, that the Trespass was committed before this present Parliament, otherwise

therwiſe the Remiſſion to be void. *Cap.* 138. it is enacted, that whoever pleaded a Remiſſion or Reſpite for Slaughter committed in purſuit or defence of legal Actions, the pleading of the ſame ſhall be the Conviction of the Pleader. Parl. 11. *cap.* 47. the King is precluded from giving a *Superſedere* in caſes of Treaſon. Parl. 12. *cap.* 155. he promiſes to give no Remiſſions for Slaughter and other odious Crimes for five Years, and if he do, that they ſhall be void; and if granted for old Actions, that it be expreſs'd in the ſame, that the Party had had Compenſation, otherwiſe the Remiſſion to be void. Parl. 13. *cap.* 169. orders, that Remiſſions and Reſpites ſhall not be granted without a Letter of *Slaines*, teſtifying that the injur'd Party is ſatisfy'd: And *Cap.* 176. it is order'd, that no Pardon be given for Slaughter, *&c.* except the injur'd Party be firſt ſatisfy'd, otherwiſe the Remiſſion or Reſpite to be void.

To this Head do properly belong the Puniſhment of Rebels, the Terms on which they were again received into Favour, and *General Pardons*; all which we find to have been adjuſted by Authority of Parliament.

Thus

Thus in the Acts of *James* II. *cap.* 14. it is enacted, that ſuch as rebel againſt the King's Perſon and Authority, ſhall be puniſh'd according to the Quality of their Rebellion, by the Advice of the three Eſtates. *Cap.* 42. we find that the Earl of *Douglas*, Earl of *Murray* and others were forfeited in Parliament. In the Acts of K. *James* IV. *cap.* 3, and 6. we find thoſe who were in Rebellion or Arms againſt the King in the Field of *Sterling*, pardon'd and reſtor'd to their Eſtates in Parliament. In the Acts of *James* V. *cap.* 62. we find a general Remiſſion or Pardon given in Parliament. In the Acts of Queen *Mary*, cap. 7. we find Traitors to have been declared ſuch by the three Eſtates in Parliament. *Cap.* 15. The Earl of *Angus* and others that had been forfeited and declared Traitors, are reſtored again in Parliament. In the firſt Act of Queen *Mary*'s Parliament held at *Edinburgh* on the 4*th* of *June* 1560. we find a general Pardon or Act of Oblivion. In the firſt Parliament of K. *James* VI. *Cap.* 4. we find the Conditions upon which Rebels were to be received into favour, appointed in Parliament; and one of 'em was, that they ſhould oppoſe the Holy League and

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the Decrees of the Council of *Trent*. *Cap.* 9. and following, those who took part with Queen *Mary* against her Son *James* VI. are declared to be Rebels. Parl. 7. *cap.* 109. what the Nobility and others did against them was declared to be well and lawfully done. *Cap.* 10. the Earl of *Argile* and others are restored, upon their return to their Obedience. And Parl. 23. Act 23. we find a general Pardon for things done against Penal Statutes. Nay, even in the time of King *Charles* II. when all the Noble Structure of our Freedom and Liberty was overturn'd, we find so much Deference paid to the Authority of Parliament, that Parl. 1. Sess. 2. *Cap.* 10. a general Act of Indemnity, with some few Exceptions, was pass'd with the Advice and Consent of the three Estates; and we never find a General Pardon for Treason but in Parliament.

The Power of the Estates in appointing Judges and Courts of Judicature, and in censuring them.

6. Another of the *Jura Majestatis* is the appointing Courts of Judicature, Judges and other Ministers of Justice, and the Methods of administring the same; in all

all which the Parliament of *Scotland* did always reserve to themselves a Sovereign Power. This appears by the Acts of *Malcolm* II. where the Barons, that is, Lords of Parliament, settled all the Fees of the Officers of Justice and Courts of Judicature, and of the Officers of the King's House, from *Cap.* 1, to 9.

In the Acts of *William* I. *cap.* 35. mention is made of the Chamberlain Air or Court, which enquir'd into all Transgressions of the Law thro the Towns of the whole Kingdom, and into the Abuses committed by Magistrates of Citys, Merchants and Tradesmen of all sorts; which, by the Account of it bound up with our old Laws of *Regiam Majestatem*, seems to have been an excellent Constitution. The Institution of this Court must however be much older; for we find it mentioned in *Cap.* 8. of *Malcolm* II's Laws, where the Fines of the same, as well as of those of the Justice Air, the Sheriffs Courts, Burrow Courts, Baron Courts, *&c.* are also settled. And any Man who looks upon our Laws will find the Justice Airs, which are much the same with the Circuit Courts in *England*, appointed to be held from time to time, and the Method of their Proceeding regulated by those Laws.

In

In the Acts of *James* I. *cap.* 6. it is ordained, that Officers and Miniſters of Law be appointed throughout the Realm, and that they be ſuch as have a Sufficiency of their own, by which they may be able to make ſatisfaction, if they tranſgreſs. *Cap.* 72. the King and Parliament ordain, that the Chancellor and certain diſcreet Perſons of the three Eſtates, be choſen and deputed by the King to ſit three times *per Annum* for adminiſtring Juſtice; and in the following Chapters they appoint the time of their meeting. *Cap.* 93. it is appointed that all thoſe who ſhall be choſen in any future Parliament for hearing and determining Cauſes, ſhall ſwear to determine the ſame faithfully according to their knowledg, without Favour or Affection. *Cap.* 98. they appoint that an odd Perſon be choſen in every Arbitration for compromiſing Differences: If it be among Clergymen, by the Biſhop and his Chapter; if among Barons or other Laymen in the Country, by the Sheriff and Barons; and if among Burgers, by the Provoſt and Council of the Town. From whence it is evident that there was an Ariſtocracy interwoven throughout our whole Conſtitution. *Cap.* 139. it

it is appointed that Advocats, before they be admitted to plead any Cauſe, ſhall ſwear that they believe it to be juſt. *Cap.* 150. the Judges are choſen and ſworn in the Parliament held at *Perth*, *January* 10. 1434.

In the Acts of *James* II. *cap.* 3. it is appointed that two Seſſions be held yearly by the Lord Lieutenant and the King's choſen Council. *Cap.* 68. it is ordained, that the Seſſion ſhall ſit three times *per Ann.* and the Times when and Places where, are there appointed. The Lords of the Seſſion being a Committee of the three Eſtates, are there alſo nam'd for each Diet, and their Power and manner of Procedure is regulated in the following Chapters. As to their Expences, the three Eſtates allow'd them only the Fines ariſing to the King in their own Courts, thinking that they ought to bear their own Charges, conſidering they were not to ſit above forty Days, and that it might not come to their turn again once in ſeven Years. So that here was a Rotation of the Juridical Power amongſt the Nobility and Gentry, without any Charge to the Country, which muſt needs oblige all Men of Note in the Kingdom to ſtudy

the Laws and Conſtitution, that they might be capable of adminiſtring Juſtice with Knowledg and Applauſe, when it came to their turn. So that there was no room for Bribery by the Court to wreſt Law for ſerving a turn, as has been practis'd but too frequently ſince.

In the Acts of this King collected by Sir *Tho. Murray*, Parl. 11. Act 44. it is ordained, that his Majeſty make no Hereditary Officers for adminiſtring Juſtice, and that ſuch as were ſo made ſhould be revok'd.

In the Acts of *James* III. *cap.* 30. it is order'd that there be a Seſſion after the form of the Seſſion laſt held, and that the Lords ſhould be choſen to ſit thereupon. *Cap.* 33. they appoint Juſtice Airs for Miniſtration of Juſtice. *Cap.* 76. they appoint Juſtice Airs twice *per Annum*, and that the Lord Juſtice paſs thro the Realm for that End.

In the Acts of *James* IV. *cap.* 51. there is a Law made to the ſame purpoſe for the univerſal Execution of Juſtice; and if it be needful, that the King be preſent in Perſon.

In the Acts of *James* V. *cap.* 6. we have the Inſtitution of the College of Juſtice, with the Names of the Lords, the

the Time and Place appointed for their Sitting, and the Manner of their Proceedings regulated; and the King promiſes, that he will not by private Writing, Charge or Command, at the inſtance of any Perſon, deſire the Lords to do otherwiſe in any Matter that ſhall come before them, but as Juſtice requires: And *Cap.* 63. this Inſtitution of the College of Juſtice is approved. It was likewiſe ratify'd in the Acts of Queen *Mary*, cap. 2. In the Acts of King *James* VI. Parl. 12. *cap.* 132. there is an Act for regulating the Juriſdiction, Preſentation, Qualification, and Age of the Lords of the Seſſion, and annulling ſuch Preſentations as his Majeſty had made of any Perſon under the Age appointed.

And as our Kings could not of themſelves appoint Judges, neither could they give Being to any new Court or Juriſdiction, without the Conſent of the three Eſtates, as appears by Act *Jam.* VI. Parl. 8. *cap.* 131. which diſcharges all Juriſdictions and Judgments not approv'd by Parliament. And if the King commanded any thing contrary to Law or Reaſon, tho under the Great Seal, Privy Seal, or Signet, to any Sheriff or

 other

other Officer of the Law, they were not to obey him, but to receive his Command, write upon the back of it, and return the ſame to him again; as appears by the Act of *David* II. Book I. *cap.* 18. and by the Parliament of *Robert* II. held in 1372.

We find likewiſe by the Statute of *Robert* III. *de Vicecomite & aliis Miniſtris Regiis calumniandis*, cap. 34. that the Juſtices in their Eyres were to enquire into the Behaviour of the Sheriffs and others of the King's Miniſters, and if they found them guilty of any Defect, were to remove them from their Office till next Parliament; and ſuch as were ſo removed were to loſe the Fee of their Office for that Year, and the Juſtices were to take ſecurity for his appearance in next Parliament to abide their determination, and he was not to be reſtored without conſent of Parliament.

In like manner we find, that in Parl. 6. *James* VI. *cap.* 92. notice is taken that ſeveral private Writings and Charges had been directed to the Lords of the Seſſion by the King and his Privy Council, ſometimes to proceed in Civil Cauſes, ſometimes to ſtay the Proceſs, and ſometimes to ſtop the Execution after

ter Decreets given; which being contrary to the Act of Parliament whereby the College of Juſtice was inſtituted, it was enacted that the ſaid Lords ſhould proceed in all Civil Cauſes depending before them, notwithſtanding any private Writing, Charge or Command by any Perſon or Perſons to the contrary. *Cap.* 93. becauſe of a heavy Murmur among the Subjects, that the King chuſes Young-men without Gravity, Knowledg and Experience, and who have not ſufficient Eſtates, to be Lords of the Seſſion; it is enacted that the King ſhall preſent Men that fear God, of good Learning, Practice, Judgment and Underſtanding of the Laws, of good Fame and ſufficient Eſtate, who ſhall firſt be ſufficiently try'd and examin'd by a number of the ſaid Lords; and if they find them not duly qualify'd, they are at liberty to reject them, and the King is to preſent another, until he be found ſo qualify'd.

The Power of the Eſtates in naming the Officers of State, and Privy Counſellors.

Another thing which may not improperly be reckon'd among the *Jura Majeſtatis*, is the naming of the Officers of the King's Houſhold, the Officers of State, and Privy Counſellors; and this our Parliaments had a Power to do, as appears by the following Acts. *Jam.* III. *cap.* 48. they appoint Mr. *Richard Guthry* to be principal Confeſſor to the King, and General Almoner. In the Acts of *James* IV. *cap.* 16. they appoint *Patric* Lord *Hales* to be Maſter of the Houſhold to the King, Governour to the Duke of *Rothſay* the King's Brother, and of the Caſtle of *Edinburgh*. *Cap.* 25. they appoint thoſe who were to bring in the King's Property and Caſualty, Silver, *&c.* for the Suſtentation of his Houſe. *Cap.* 27. the Parliament orders the Accounts to be taken of the King's Officers, as Treaſurer, Comptroler, *&c.* both thoſe appointed in his Father's time and in his own; and that Auditors for taking the ſaid Accounts be choſen and nam'd, and have their Commiſſion by the

the Advice of the three Eſtates, and they were accordingly named in that Act. *Cap.* 28. they name and appoint the Members of the ſecret Council, that are to be conſtant, and likewiſe ſuch as were to be of the Privy Council, when they were preſent, or when the King ſent for them; and thoſe Counſellors ſo choſen were ſworn in the Preſence of the King and three Eſtates, to give him true and plain Counſel in all Matters that concern'd his Majeſty and the Realm. They were appointed to continue of his Council till the time of the next Parliament, and to be reſponſable and accuſable to the King and the three Eſtates for their Advice: and in that ſame Act the King promiſes and grants, that he will *abide and remain*, that is, follow their Counſel until the next Parliament; and that no Infeoftments, Donations, Conducts, Remiſſions, *&c.* be granted without their Advice and Conſent, ſign'd by the King, and ſo many of the ſaid Council as ſhall be preſent for the time, to the number of ſix at feweſt, whereof the Chancellor to be one: and all Letters granted otherways to be of no force or effect, nor anſwered by the Chancellor, Privy Seal or Secretary;

and the King was to be govern'd by their Advice in disposing and giving his Treasure, Plate, Chains, Jewels, and other Habiliments pertaining to his Person. It is true that the naming and electing of this King's Council in Parliament was during his Minority; but as the Act takes no notice of this Exception, and that in the Proposition of the Debate of the Field of *Sterlin*, they inveigh against the perverse Council which misled his Father, it is not to be doubted but they had a mind to prevent the like for the time to come, and therefore thought it their Right to have a hand in naming and chusing such Counsellors as were to be about his Majesty, whether he were of age or not. Thus in the Reign of Queen *Mary*, one of the Articles agreed upon betwixt the Deputies from her Husband the King of *France*, and her self, and those of the Nobility of *Scotland*, was, that 24 worthy men of the Realm be chosen by the States, of which the King and Queen was to chuse seven, and the States five, to be an ordinary Council for the Administration during their Majesties Absence: and if any of the seven chosen by the King and Queen happen'd to die, their Ma-

Majesties were to chuse another out of the said 24; and if any of the five chosen by the States happen'd to die, the remaining part of those whom the States had chosen were to name another out of the said 24; and if the States thought expedient to add two more to their number, the King and Queen were to chuse one, and the States another. To which the Court Deputies agreed, provided it should be no prejudice, for the time to come, to the King and Queen and the Rights of the Crown †; which were nothing but Words of course, to please the Court, for the States had formerly been in possession of this Power, as we have seen already.

We find likewise that the Parliament nam'd and elected the Privy Counsellors until King *James* VI. attained the Age of 21, as appears by the List of the unprinted Acts of Parl. 5, 6, 7. Parl. 10. *cap.* 17. it appears that the Lords of the Council and Officers of State were appointed in that Parliament: and after he came

† Knox's *History and* Spotswood's *History, tho the latter prevaricates, and passes over the Parliament's first chusing the* 24.

came of Age, we find, among the unprinted Acts of Parl. 11. there's one concerning the Privy Council. In that of Parl. 12. we find one about the Nomination and Eſtabliſhment of the Privy Council. And, Parl. 22. *c.* 11. we find that the King, with the Advice of the three Eſtates, appointed and nam'd the Queen's Council; which refers to another Act in 1593. that had been made for the ſame End.

This, and what hath been ſaid before, is ſufficient to ſhew that it was no Impoſition upon King *Charles* I. when the Parliament of *Scotland* demanded a Share with him in chuſing and naming his Privy Council, Officers of State, Lords of Seſſion, Preſident of Parliament, *&c.* which he granted by the 15*th*, 20*th*, 21*ſt*, 22*d*, 23*d*, 29*th*, 50*th* and 65*th* Acts of the laſt Seſſion of his ſecond Parliament. The Reaſons of his agreeing to it mentioned in the ſaid Acts, are his Abſence for the moſt part out of the Kingdom; and becauſe on their Care, Wiſdom and Fidelity in their ſeveral Judicatories (which, next unto the Supreme Court of Parliament, are the chief and principal Judicatories) depends the Welfare and Happineſs of the

the Government. Both theſe Reaſons are permanent, for the Abſence of our Kings from *Scotland* is now become cuſtomary, and in all probability by themſelves judg'd neceſſary; and the other Reaſon is of perpetual Force, and therefore not only juſtifys the Demands of our Parliament then, and proves that thoſe Privileges were of a much older Date than 1641. but will juſtify the ſame Demands in our Parliament now when they come to ſettle the Succeſſion.

The Power of the Eſtates, about annexing and alienating the Revenues of the Crown.

Another of the *Jura Majeſtatis*, is the annexing, appropriating, diſſolving, or otherwiſe diſpoſing of the Crown Lands, or other Revenues of the Crown; and what Share our Parliaments had in this Matter, will appear by the following Acts.

In the Acts of King *David* the Second, *Novemb.* 6. 1357. it is ſtatute and ordain'd, That all Lands, Rents and Poſſeſſions, which of old pertain'd to the Crown, or the King's Domain, ſhould per-

perpetually remain in the Poſſeſſion of the King for his Suſtentation and Living, without any Alienation thereof. And, *Septemb.* 27. 1367. it was ſtatute for the King's better Suſtentation and Living, that all Rents, Farms, Canes, Cuſtoms, Foreſts, Offices, and other Emoluments whatſoever; and alſo all Lands, as well the Property, and others in poſſeſſion, whereof King *Robert* I. Father to King *David* II. deceas'd, as of Fie, and that all Poſſeſſions and Lands which pertain'd to the Right and Property of the Crown the time of the ſaid King *Robert*, or of King *Alexander* III. or of the ſaid King *David* II. ſhould return all and whole to the Crown, with all Adocations of Kirks, and all Service pertaining thereto, to remain perpetually with the Crown, notwithſtanding any Alienation thereof made to any Perſon; and that no Diſpoſition thereof be made thereafter without Conſent of the three Eſtates.

In the Acts of *James* I. *Cap.* 6. the Parliament conſents that the great and ſmall Cuſtoms be given to the King during his Life; and that thoſe who had a Claim to any part of the ſaid Cuſtoms, ſhew their ſaid Claim to the King, who is

is to give anſwer with the Advice of his Council. *Cap.* 9. The Parliament thought fit the King ſhould make enquiry by the Sheriffs, what Lands, Poſſeſſions, or Annual Rents pertain'd to him or his Anceſtors, *David* and the two *Roberts*, and might ſummon his Tenants to ſhew their Charters. *Cap.* 14. The Parliament determines what Mines ſhall belong to the King, *viz.* ſuch of whom it can be prov'd, that three Half-pennies of Silver may be fined out of the Pound of Lead. *Cap.* 148. They annul the Gift of any Lands from the Crown by the Governor.

In the Acts of King *James* II. *Cap.* 2. they revoke all Alienation of Lands, Poſſeſſions, and moveable Goods made, or that ſhall be made, without the Conſent of the three Eſtates, till the King arrive at the Age of 21. *Cap.* 8. They confirm the King in the poſſeſſion of all that his Father had at the time of his Death. *Cap.* 43. The Parliament conſidering that the Poverty of the Crown is oft-times the Cauſe of the Poverty of the Realm, therefore ſtatute and ordain, that there be certain Lordſhips and Caſtles therein nam'd, annexed to the Crown perpetually, not to be alienated without the

the Advice and Decree of the whole Parliament, for the great, evident and reasonable Causes of the Realm; and if the King, or any of his Successors, alien or dispose the said Castles and Lordships so annexed, such Alienation or Disposition is to be of no avail; and that the King and all his Successors, be sworn at their Coronation to observe this Statute, and all the Articles of it. This shows that the Author of the Appendix to *Spotswood*'s History is mistaken, when he says, that there was no provision made about the Coronation Oath in our Laws till the time of the Reformation. It is moreover observable, that in the 17*th* Chapter of the Statutes of *Rob.* II. the King promises on his Royal Word, faithfully to observe all the Laws enacted in that Parliament, which is in effect the same thing with an Oath: And 'tis known that King *James* III. promis'd, with the help of God, to cause Justice to be equally administred to all his Subjects, as may be seen in the 100*th* Chapter of his Acts. So that tho there be no express Form of a Coronation Oath, there was that which was of equal Force and Validity; for in the Proposition of the Field of *Sterlin*, the Parliament charge the

the King expresly with breach of Articles.

In the Acts of King *James* III. *Cap.* 86. there's a Revocation of all Alienations, Infeoftments and Gifts in prejudice of the Crown, and the Gifts of keeping of Castles, especially those that are the Keys of the Realm. *Cap.* 87. The Earldom of *Ross* is annex'd to the Crown for ever, without power of Alienation.

In the Acts of King *James* IV. *Cap.* 17. all Alienations, Gifts, Grants, *&c.* made by King *James* III. in prejudice of his Crown, since the 2*d* day of *February* last, are made void, because they were granted since that time for the assistance of his perverse Council, that were contrary to the common Good of the Realm, and the cause of the Slaughter of King *James* III. and several others his Barons and Lieges. *Cap.* 24. They revoke all Gifts, Donations, Infeoftments, Feufarms, *&c.* given by the King to any Person since the day of his Coronation. *Cap.* 41. They order all those who had Grants as above-mention'd from King *James* III. to bring in their Evidences to be destroy'd. *Cap.* 82. They again revoke all the Donations made by King

James

James III. after the 2d day of *September* 1487. *Cap.* 83. The King revokes all that had been giv'n away from the Crown by his Father, or by himself in his Youth, in prejudice of the Crown, because he had sworn at his Coronation, that he would observe and keep the Right, Honour, Preheminence and Privileges in Lands, Rents, Possessions, Dutys, and other things thereunto pertaining: And because the Estates of the Realm judg'd it profitable that the King have Lands, Lordships, and Possessions for the Maintenance of his Dignity, and the Defence of his Lieges and Realm. *Cap.* 125. They give leave to the King to set all his Lands in Feu, but without diminution of his Rental Gressoums, or other Dutys.

In the Acts of *Jac.* V. *Cap.*40. we find the like Revocation; and *Cap.*96. there's an Annexation of several Lands therein mention'd to the Crown; and *Cap.* 97. leave given him to set his Lands in Feu, but without diminution of his Rental, *&c.*

In the Acts of Queen *Mary*, there's the like Revocation by Queen Dowager in her first Parliament; and *Cap.* 23. they order the Queen's Forests to be cut

cut down for the Welfare of the Realm.

In the Acts of King *James* the Sixth, Parl. 8. among the Acts not printed, we find one mention'd which annuls certain Alienations and Dispositions made in favour of the King. Parl. 10. *Cap.* 17. there's an Act for Revocation of the King's Property, wherein it is own'd by the King, that several former Revocations had been of no effect, because new Grants and Purchases had been procur'd from him by Importunity; and he promises, in the Word of a Prince, inviolably to observe this Act, and to abstain from all such new Dispositions, and to allow of that good Form in his House, which the Lords of his Secret Council and Officers of State appointed in that Parliament, should determine to begin on the first day of *January* next; and that his Warrant to the Controler should be no Security for paying Pensions, Fees, or Wages, contrary to this Act. Parl. 11. *cap.* 29. The Temporality of Benefices is annex'd to the Crown, because during the prevalency of Superstition, the greatest part of the Patrimony of the Crown had been given to Abbys, Monasteries, and other Clergymen, by which the Crown was greatly damag'd,

 and

and many Inconveniences brought upon the Realm. *Cap.* 30. There's a Diſſolution of annex'd Lands for ſetting the ſame in Feufarm: And, *cap.* 31. there's a Revocation of all that had been granted, given, or ſold from the Crown, contrary to the Laws of the Land, and without the Conſent of the three Eſtates. *Cap.* 78. It is enacted, that the Treaſurer's Accounts ſhall be audited in Parliament. In his 13*th* Parliam. *cap.* 176. there are ſeveral Lands annexed to the Crown, not to be alienated without the Conſent of Parliament, and for great reaſonable Cauſes concerning the Welfare of the Realm; and if the King, or any of his Succeſſors, ſhould alienate the ſame, ſuch Alienations to be of no force. *Cap.* 189. The Abbey of *Dumfermlin* is annex'd to the Crown, and the Reaſon given is, that the Poverty of the Crown is the ſpecial Cauſe of the Poverty of the Realm; and that the Patrimony of the Crown being augmented, it is great Profit both to the King and to the Subject. Parl. 16. *cap.* 2. Forfeited Lands are annex'd to the Crown, and not to be alienated without conſent of Parliament.

In

In the Reign of King *Charles* the Firſt, Parl. 1. Act 9. there's a Revocation of all Grants contrary to the Laws of the Kingdom. Act 10. Annexations to the Crown are ratify'd, without Power to alienate the ſame.

In the Reign of King *Charles* the Second, Parl. 1. Seſſ. 1. Act 53. this Act was ratify'd. Seſſ. 2*d*, Act 8. there's a general Revocation by the King, according to the practice of his Anceſtors.

In the Reign of King *James* the Seventh, when our Conſtitution was tore up from the very Foundations, the Power of the Parliament was ſo far acknowledg'd, that in the ſecond Act of his firſt Parliament, there was an Act made for the Annexation of the Exciſe to the Crown. Act 40. The Offices belonging to the late Earl of *Argile*, were annexed to the Crown. Act 42. The Eſtates of ſeveral forfeited Gentlemen were likewiſe annexed to the Crown. Parl. 2. Act 1. There's a Diſſolution of ſeveral Eſtates from the Crown, in order to be confer'd upon ſuch as the King thought deſerv'd them. Acts 7, 9, 13, 26, 27, 28, 29. there's the like.

The

The Kings of Scotland *not the Original or sole Fountain of Jurisdiction, nor the Parliaments antiently their Baron Courts.*

There needs no more but the perusal of these Acts to satisfy any Man, that the Kings of *Scotland* were so far from having an absolute Authority over the Estates of their Subjects, or the like Power over their Parliaments that a Baron has over his Courts, as has been unjustly alledg'd both in Word and Writing; that they had not a Power to dispose of one Foot of the Lands, or of one Penny of the Revenues belonging to the Crown, without the Consent of Parliament. By these Acts it is likewise evident, that the Patrimony and Revenues of the Crown were the Gift of the People; and that the Reason of their Gift was to enable their Princes to defend the Country. We may easily see then how little Foundation our Royalists have for their darling Maxims, that our Kings had always a Title to their Crown by Hereditary Descent, and an absolute Authority and uncontrolable Power over the Persons and Estates of their

their Subjects, when from Reign to Reign it is manifest by the Acts abovementioned, that they deriv'd their Title both to the Crown and its Revenues, from the Consent of the Estates, and that they could neither alienate the one or the other without their Concurrence. Whereas it is evident from the constant Practice of our own and of all other Nations, that Barons derive no Title or Authority over their Lands and Vassals from their Baron Courts; but on the contrary those Courts derive all their Authority from the Barons, who are the Hereditary Proprietors of their Estates, might have dispos'd of them as they had pleas'd, and chose what Vassals they would, because no man can have a Right to any part of their Estates as a Vassal, but by a Feudal Covenant with themselves or their Ancestors.

Against this it is objected by Sir *George Mackenzie* and others, that since we had Kings before we had Parliaments, it is evident that the King's Power could not flow from them; but on the contrary that the King is the Fountain of all Jurisdiction, and that by consequence their Power must flow from him. *Institutions*, pag. 12.

But the Anſwer is eaſy, Sir *George* equivocates upon the Words *Parliament* and *Fountain of Juriſdiction*. That we had Parliaments at firſt in the ſame Form and Method as we have them at preſent, there's no man aſſerts; but that we had Proprietors of Lands, and of ſuch Towns and Villages, or other Places of Dwelling as were then common in theſe Parts of the World, there's no man will offer to deny: and if thoſe Proprietors agreed by common Conſent to confer the Sovereignty or Right of Government upon any one Perſon, as it is evident from our Hiſtory they did upon *Fergus* the Firſt, whom they ſent for from *Ireland* for that very end; we may as juſtly ſay, that we had a Parliament or Meeting of the Eſtates before we had a King, and that he derived his Royal Authority from that Parliament or Meeting, as we can ſay that we had a Convention of Eſtates before we had King *William*, and that he had the ſame Dignity conferr'd upon him by thoſe whom we now call our Eſtates of Parliament.

Then as to the *Fountain of Juriſdiction*, the Equivocation there is every whit as manifeſt; for if we form our Idea as we ought to do, from the Thing, and not from

from the Word, we ſhall find the Word *Fountain* to be improperly made uſe of in this caſe. A Ciſtern, which is but a ſecondary Fountain, would ſute the Notion much better; for the original Fountain is certainly the People, who convey'd that Power to the Crown as to a Ciſtern, from whence by their own Advice and Direction it was diſpens'd from time to time for the good of the Society, as appears by the abovemention'd Acts of Parliament.

The Origin and Cauſes of Wardholding in Scotland *conſidered.*

There are two Objections made againſt this, *viz.* the antient and immemorial Tenure of holding Lands of the Crown, by which the Proprietors were obliged to do Suit and Service in Parliament, and to attend the King's Hoſt; and the Gift that was made of the Lands of the Kingdom by *Malcolm* to the Nobility and Gentry: which ſhews that the Fountain of Power and the Property of the Country was in the King, and not in the Subject.

It is anſwered, 1. That we have the unanimous and concurrent Teſtimonies

of all our Historians, that the Clans or Familys under their *Phylarchi*, who were their Chieftains or Heads, were possest of the Islands and West of *Scotland*, before we had any King; which makes it evident that the Property of the Country could not come from the Crown. 2. Those Historians are all of them as positive that those *Philarchi* or Chieftains of the Islanders, the same with the present Chieftains of the Highlanders, being almost of equal Power and Authority, sent for *Fergus* from *Ireland*, and made him King by unanimous Consent, that he might assist them with his Forces, and be their General in the War against the *Britains*. This makes it as evident, that the original Fountain of our *Scotish* Government was likewise in the People.

It remains then that this Tenure of holding Lands of the Crown could not derive its Origin from this, that the King was sole Proprietor or Self-holder of the Country, as the *Czar* of *Muscovy* calls himself, but must have happened one of these two ways: 1. That all Men of Estates or Lords of Mannors, did at the first Institution of our Monarchy oblige themselves for the support of the

the Government they had agreed upon, to pay an acknowledgment to the Crown, to assist the King with their Counsels, to serve him in the Administration, and to maintain his Authority by their Arms, both against foreign Enemies and domestick Rebels, and all this in proportion to the Estates they were possess'd of. So that as they invested the King with a Sovereignty over their Persons, they did in like manner invest him with a Sovereignty or *Dominium directum* over their Estates, to be held in his Name as the Head of the Government; but all to be manag'd by the Advice of those Lords of Mannors, who were afterwards call'd Lords of Parliament, and had a joint share with them in all those things which are call'd the *Jura Majestatis*, as is plain from the Tenor of our Statute Books.

2. After the Monarchy was settled, and that more Lands came to be dispos'd of, either by Conquests from our Neighbours, or by the Forfeitures of Rebels, they fell to the King as *ultimus Hæres*; and such part of them as the Parliament thought necessary for the support of the Government, was irrevocably annex'd to the Crown, and other part was dissolv'd

solv'd to be confer'd in the King's Name, and on the usual Tenure, upon such as had merited Rewards by serving their Country; but always with consent of Parliament, as we have seen already. This is so plain, that even in the before-mention'd Acts of *James* VII. who assum'd a more despotical Power than ever any of his Predecessors durst aim at, the Lands which fell to the Crown by the Illegal Forfeitures of his Reign, were by consent of his pack'd Parliaments bestow'd upon the Duke of *Gordon*, the Earl of *Melfort*, Sir *Theophilus Oglethorp*, and others, whose Services, on which they founded their Merits, are taken notice of in the Narratives of the said Acts. So much had even the Parliaments of that Reign thought fit to preserve of our antient Constitution.

This is sufficient to explain how *Malcolm* II. is said to have dispos'd the Lands of all the Kingdom among the Nobility and Gentry in Feu, admitting the Matter of Fact to be so: But tho it be asserted by Sir *John Skeen* upon the word *Relevium*, in his Book *de Verborum significatione*, and likewise by Sir *Geo. Mackenzie* in his *Institutions*, from the Authority of *Malcolm Mackenneth*'s Laws, *cap.* 1. it

it is no way probable. *Buchanan* says it was only the Crown Lands, or rather Kings Lands, *Agros Regios*: which may be allow'd to be a good and just Explanation of the Words of the said Law, which are, *totam Terram Regni Scotiæ*, because in the 2*d* Article of the Law it's said, the King retain'd nothing *in Property* to himself but the Royal Dignity, and the Mute-hill of *Scone*: So that it would seem there's nothing else meant by *Terram Regni* but the Lands of the Crown, which were his Property, as King. The Prefacer to *Knox*'s History says the same with *Buchanan*, and there is reason to think them in the right: for tho the antient *Scots* might part with that which is call'd *Dominium directum*, or Superiority to their King when they first set up one, which agrees with the Maxim of our Law, that the Superiority of all the Lands in *Scotland* is vested in the King *de jure Coronæ*, it is very improbable that they would part with the *Dominium utile*, and so of Proprietors transform themselves into mere Tenants. Therefore *Malcolm* must either have only given away his Crown Lands among them, in lieu of which the Barons gave him the Ward and Releeve of their Heirs, or he must

muſt have prevail'd upon them by that Diſtribution to change their antient Tenure, whatever it was, into that of Ward-holding. But however this be, the Matter was tranſacted in Parliament, which ſhews that the Authority of the Eſtates was requiſite to make it currant: and if we may be allowed to form Conjectures in Matters ſo remote from our own Times, this Diſtribution was ſo much the more tempting, becauſe the Crown Lands muſt needs have been much enlarg'd by the Victory he had formerly obtain'd over *Grimus* his Competitor and his Party, and likewiſe by the Countries of *Murray-Land* and *Buchan*, newly reconquer'd from the *Danes*, who being accuſtom'd to murder all the People where they came, becauſe of their Hatred to Chriſtianity, much of thoſe Countries muſt have fallen to the Crown for want of Heirs.

It appears alſo by Sir *George Mackenzie*'s Account of that Matter, and Sir *John Skeen*'s Notes upon that Law, that there was a Paction betwixt King *Malcolm* and the Subjects, when they agreed to hold their Lands by this Tenure: and by our Hiſtorians *Buchanan* and *Leſsly* we are inform'd, that the dividing of the Crown Lands among them,

them, and erecting their Eſtates into Baronies, which we know made every Baron a petty Sovereign, and gave them Power of Life and Death in their own Juriſdiction, was the valuable Conſideration upon which they agreed to it; whereas had the King been abſolute Proprietor of all the Lands in the Kingdom, there is no Probability that he would have purchaſed their Goodwill at ſuch a rate. But if his feuing out the whole Lands of *Scotland* among them, be really the meaning of this Law, we can underſtand nothing elſe by it, but that he and his Parliament agreed, that their antient holding, which it's probable was only to aſſiſt him in the Defence of the Country, in the Legiſlature and Adminiſtration, ſhould be changed into that which the Feudal Law calls Wardholding, or *Servitium militare*, by which the King had the Eſtates of Minors till they came of Age, except what was neceſſary for their Education, and alſo the Right of matching them and receiving their Marriage-Portion. This Origin of Wardholdings in *Scotland*, is doubted however by our Hiſtorian *Buchanan*, who thinks that we firſt received that Cuſtom from the *Engliſh* and *Danes*. But admitting it to be otherwiſe, and that King

King *Malcolm* the Second first introduc'd this Custom, it can no more be thought, that he by his sole Authority and personal Property, divided the Lands of *Scotland* among the Barons, *&c.* into Feuholdings, because the thing goes in his Name, no more than our Kings can be thought to have made all our Acts of Parliament by their own personal Authority, because they are called the King's Laws. The Reason of which is plain, because he is at the Head of the Legislature, as well as of the Administration, and consequently has the Honour of having all transacted in his Name, tho not by his sole Authority; and therefore we find by the Statutes of *Robert* the Third, *cap.* 33. that the Barons were not obliged to change their Superiour without their own Consent, tho the Superiority were alienated by the King.

Besides, the Authority of the Book called *Regiam Majestatem*, which contains those Laws of *Malcolm* the Second, is questioned; and that the Feudal Law was in use so early as his time in *Scotland*, we see is justly doubted. Wards and Releeves therein mentioned are not allowed to be so old; and it is supposed, that the Courts of Judicature and the King's Houshold,

Houshold, were scarcely then so constituted, as there they are alledged to be *. So that a Matter of this Importance cannot be defended by such a questionable Authority, against so many express Acts of Parliament, which evidently shew, that instead of the King's giving Lands to the Subject, the Estates gave Lands to the King, and tied him up from alienating any part of them without their Consent, which if he obtained, it was their Gift as well as his; and so we must judg this Distribution under consideration to have been their Act as well as his, whatever King's Reign it happened in, whether in that of *Malcolm Mackenneth*, or in that of *Malcolm Canmoir*, tho it is justly suspected, as has been said already, to be of a much younger date than either of 'em: And here also it is proper to observe, that the Note upon the Margin of *Malcolm's* Laws, saying they are proved to be Authentick by the *Parl.* 14. *Jam.* III. *cap.* 113. is a Mistake; for *cap.* 113. says nothing of them, and *cap.* 115. which it is supposed the Author meant, speaks only of revising *Regiam Majestatem*, *&c.*

* Craig de Feudis, lib. 1. cap. 8. Nicholson Scot. Hist. Library, p. 258, 260.

but

but has not one word of *Malcolm*'s Laws, which are prefixed to the said *Regiam Majestatem*, under a distinct Title.

As a further Evidence how weak a Foundation this Story of *Malcolm* is for our Royalists to build on, let us consider how much Sir *Thomas Craig* fluctuates and waves upon it, tho one of the greatest Lawyers that ever *Europe* bred, and as well acquainted with the Laws of *Scotland* as any Man. In his Book *de Hominio*, or *Scotland*'s Sovereignty asserted, *cap.* 3. he informs us, that the Feudal Law did not come into *Britain*, till it was brought in by the Conqueror, whose Expedition did not happen till *Anno* 1066. He tells us further, that *Peter Rebuff* in his Declaration of the Feudal Law, says, that the Name of *Feu* was not heard of in *Britain* till the Year 1170. Yet Sir *Thomas*, in his Book *de Feudis*, under the Title *de custodia quam Guardam sive Wardam dicimus, & Relevio*, says, that the Feudal Law began to be practised every where some Years before *Malcolm*; that there is a Statute by his Father *Kenneth*, ordering that the Wardship and Marriage of Heirs should belong to the Superiour: but it may be that *Malcolm* brought this Custom first in

in use among us. He tells us in the same place, " That he is very much in doubt " as to the Original of this Wardship; " Love to his Country, and the common Opinion not only of Great Men, " but almost of all Men, makes him willing to ascribe it to *Malcolm* the Son " of *Kenneth*, who having subdued the " *Danes* in many Battles, and forced 'em " out of the Kingdom, he exhausted " his own private Estate and the Revenues of the Crown by Military Donations, and is said to have assembled his " Nobility at *Scone*; and having declared to them his Poverty, which was " not occasioned by Prodigality, or any " other ill Management, but by his necessary Expences in the War, he prayed them to consider his Poverty, and " to make such Provision for him, that " he might be able in time to come to " live according to his Dignity. The " Nobility being sensible how much " they were oblig'd by his Donations or " Grants, and conceiving that by this " Complaint he designed to redemand " those Lands which he had given them " for their Loyalty and Valour, to prevent that, they granted him the Wards " and Releeves. And this he says was

alſo the Opinion of *William Terren*, a Learned *Norman*, in his Commentaries on the *Norman* Conſtitution, who, he tells us elſewhere, thought the Feudal Law was practiſed in *Scotland*, before it was practiſed in *Normandy*. And perhaps not without Ground; fortho the Feudal Law might not be practiſed ſo fully in *Scotland*, in the Reign of *Kenneth* and *Malcolm* his Son, as it came to be afterwards, yet it is not improbable that *Fergus* II. who join'd the *Goths* in their War upon the Empire, might bring in part of the *Gothic* Conſtitution, afterwards called the Feudal Law, into *Scotland*. And this perhaps may be the beſt Solution that can be given for theſe Footſteps of the Feudal Law, which Sir *Thomas Craig* finds in *Kenneth* and *Malcolm*'s Acts, tho before the time that the ſaid Law was generally received in this Iſland, or practiſed it may be any where elſe in *Europe*, but where the *Goths* had ſettled. But ſtill we ſee it is agreed on all Hands, that it was brought in by Conſent of the Eſtates, which ſhews that our Kings were not abſolute. But granting our Royaliſts their Propoſition, that *Malcolm* diſtributed all the Lands of *Scotland* in Feu, as being his own Property, it will not bear their Con-

Concluſion, that our Kings muſt therefore be abſolute, ſince any Man who caſts his eye upon Sir *Thomas* his Book *de Feudis*, under the Title *de veterum Judiciorum forma in cauſa Feudali*, will ſee it there fully prov'd, that according to the Conſtitution of the Feudal Law, there are many Caſes, wherein the Superiour may forfeit his Right of Superiority over his Vaſſals, and that he muſt alſo be determined by their Judgment in Controverſies betwixt him and others of their Fellow-Vaſſals or Peers; and that when Princes had any Controverſies with their Vaſſals, they were to make uſe of the Judgment of their Council (under which we know Parliaments are comprehended) which to them were inſtead of Peers. But there is this, which ought for ever to put an end to that Controverſy: Vaſſalage is own'd by all Men to be founded upon the Donation of a Benefactor: and ſince it appears undeniably from our Hiſtories and Acts of Parliament, that the Crown and Revenues for the Support of it, were the Gift of our Anceſtors to our Kings, our Kings muſt in ſtrictneſs of Senſe have been the Vaſſals according to this Foundation, and our Eſtates the Benefactors or Superiors.

Or it proves ſo much at leaſt, that our Princes were originally no more than the Publick Servants of the Nation, and therefore we are not to wonder that our Anceſtors treated them accordingly.

To ſet this matter in a clearer Light, and to make it evident that the King was not ſole Proprietor of the Lands of *Scotland*, we need only to obſerve the following Paſſages of our Hiſtory: 1. That in a Meeting of the Eſtates, *Conarus* our twenty fourth King is tax'd, for beſtowing the publick Patrimony of the Crown upon Villains, and adviſed to revoke it; and at the ſame time they refuſed him a Tax upon their Eſtates: whereas had they been Tenants at Will, he could have turned them out when he pleaſed; or had they been mere Vaſſals, he might have ſeized their Feus for not granting him an Aid. 2. When *Fergus* the Second recover'd the Kingdom from the *Romans* and *Britains*, *Græmus* his Father-in-law, who was appointed Guardian and Viceroy to his Children during their Minority, divided by the Conſent of the Eſtates or Nobles, the conquer'd Lands among new Colonies, and gave Eſtates to Foreigners and others, who had follow'd him in the Wars. 3. When King *Kenneth* extermi-

tated

nated the *Picts*, he divided the conquered Lands among his Followers, according to their Valour; wherein tho *Buchanan* does not ſay ſo, we are not to doubt but he follow'd the Advice of the States, as others had done in the like caſe before him: But ſo much however is gain'd by it, that it deſtroys the Fancy of *Malcolm*'s being the firſt, who divided all the Lands of *Scotland* among the Barons. 4. In the Reign of *Kenneth* the Third, we find that the Honours and Lands conferred upon *Hay* and his Sons, by whoſe means the famous Victory of *Loncart* was obtained over the *Danes*, was by Conſent of Parliament.

The Power of the States of Scotland, *in diſpoſing of the Sovereignty and Succeſſion; and the Origin of our Kingly Government enquired into.*

VI. A *6th* thing, and which indeed ought to be reckoned the chief of the *Jura Majeſtatis*, is the Power of diſpoſing of the Sovereignty upon Families or Perſons. This has been touch'd by the way in the preceding Diſcourſe; but ſince it deſerves a particular Chapter or Section by it ſelf, we come now to conſider what

Power the States of *Scotland* have from time to time exercised in this Matter.

We have already heard that the late Sir *George Mackenzie* of *Rosehaugh* and other Royalists have been so bold as to assert, that we had Kings before we had Parliaments; and that therefore the Power and Authority of our Parliaments comes from our Kings, and that our Kings don't derive their Power and Authority from our Parliaments. This was likewise the prevailing Doctrine from the Bench and Pulpit; and generally speaking, the Judges and Clergy in *Charles* II. and *James* VII. time, were so far from keeping within any tolerable Bounds on this Head, that they had brought our Parliaments to be of no more Significancy in effect, than the mock Assemblies of the States in *France*, who are never called but at the King's Pleasure to give him Money. And as to this Power of ordering the Succession, they prevail'd with one of those managed Parliaments in King *Charles* the Second's Reign, to make a Surrender of it, in favour of King *James* the Seventh, a Popish Successor, by asserting *Parl.* 3. *Act* 2. "That the Kings of this Realm "derive their Royal Power from God "Almighty alone, do succeed lineally "there-

"thereunto, according to the known De-"grees of proximity in Blood, which "cannot be interrupted, suspended or "diverted, by any *Act* or Statute what-"soever ——— And that upon the "Death of the King or Queen who ac-"tually reigns, the Subjects of this "Kingdom are bound by Law, Duty "and Allegiance, to obey the next im-"mediate and lawful Heir, either Male "or Female, upon whom the Right and "Administration of the Government is "immediately devolv'd. And **that no "difference in Religion**, nor no Law, "nor *Act* of Parliament made or to be "made, can alter or divert the Right of "Succession, and Lineal Descent of the "Crown, to the nearest and lawful "Heirs, *&c.* This *Act*, together with that of the Test, and the Oath therein enacted by the sixth *Act* of that same Parliament, swearing "That it was un-"lawful to take Arms against the King, "or those commissioned by him, on a-"ny pretence whatsoever, made us as complete Slaves, as the Subjects of *France* and *Turky*. And the Narratives, or Preambles of those Acts, were founded upon direct Falshoods, both in matter of Fact and Law, as has been partly made evi-

dent already, but will more fully appear by what follows.

I shall begin with Bishop *Lessly*'s Authority; and that we may know how much it is to be relied upon, we are to consider in the first place that he was a Popish Bishop, and by consequence not chargeable with favouring Presbyterian Aristocracy, either in Church or State. In the next place he was so far from being a Republican, that he was a vigorous Asserter of his Mistress Queen *Mary*'s Prerogative in *Scotland*, and of her Title to the Crown of *England*, according to the then Laws of Succession. As to his Qualifications, he was a Man of Honour, Quality and Learning; and as to his Opportunities of knowing our Constitution, no Man could have better, for he was bred to the Law, took his Degrees of Doctor in that Faculty, was a Judg, and for the most part of his time employed in great Affairs of State, and was one of those commissioned by Queen *Mary*, to collect our Acts of Parliament from the Records, in order to their being printed, as appears by that Queen's Commission, prefixed to the first Impression of our Acts of Parliament, commonly called the Black Acts: and therefore since he had those

those excellent Opportunities, tho he writes with an Air of Ingenuity that is seldom to be found in a Courtier, we have no reason to suspect his Testimony in favour of the Peoples Freedom: His Tentation lay on the other side, for the States of *Scotland* had dethroned his Mistress, and forbidden by Law the Exercise of his Religion.

Yet he was so far from seeking a Revenge, by running down the Power of our States, and exalting the Royal Prerogative above all Laws and Limitations, as our Protestant Bishops have done, that he is very just in his Historical Account of our Constitution; he could not offer that Violence to his Light, and to that Ocular Demonstration of our Freedom, which his Perusal of our antient Records and Histories afforded him, as to transform all the People of *Scotland* from Freemen into Slaves, and all our Freeholders into mere Tenants at Will, or the basest of Vassals, as Sir *George Mackenzie*, and some others of our late Protestant Court-Writers have done, and to which Archbishop *Spotswood* has given but too much Countenance in his History.

There-

Therefore Bishop *Lesley*, instead of deriving the Power and Authority of our Kings from God alone, gives us a very plain and fair Narrative of the Occasion and Manner of chusing our first King, and makes no scruple to own that our Original Government was an Aristocracy by the Heads of Clans, who were chosen themselves by those Clans or Tribes over whom they presided. He tells us, that upon the first arrival of our Ancestors in *Ireland*, they chose themselves a King of their own Number *(a)*; and that ev'n unto his own time, that Original Custom of chusing their Prince continued in *Ireland*, so as their Lords and Heads of Clans came to the Government of their own Territories or Estates *(b)* by the Suffrage of those of the same Clan, *(c)* as well as by Succession. Tho he informs us indeed *(d)* that for avoiding Discords and Slaughters, they agreed, by the Advice of *Thanaus*, to chuse *Simon Brechus* and his Posterity their Hereditary Princes.

(a) *P.* 46. *Edit.* Quarto, 1675.
(b) Dominia.
(c) Contribulium Suffragiis.
(d) *Pag.* 47.

When

When he comes to speak of our arrival in *Albion (e)*, he tells us, that every Tribe chose themselves Leaders, who are now call'd *Chieftains (f)*: and they continued under this Form of Government for many Years; nor did they submit themselves to one Governor or King, till being attack'd by the *Picts*, at the Instigation of the *Britains*, they sent for help from *Ferquhard* King of *Ireland*, and made his Son *Fergus*, who came to assist them with numerous Forces, their King *(g)*. The manner of it he describes thus, that *Fergus* arriving in *Argile (h)* he held a Consultation with the Nobles or Heads of Clans *(i)*, and propos'd to them, whether they thought it more commodious, that the Sovereign Power should be lodg'd in *their Nobles and Heads of Familys, as in former Ages*, or in one King; and protested he was willing to submit to what they should agree on. Upon this none of the Clans being willing to submit to another, they all agreed to make him King. This is

(e) *Pag.* 48.
(f) Capitaneos.
(g) *Pag.* 48, 49.
(h) *Pag.* 77.
(i) Populi primoribus.

the

the very ſame Account which *Buchanan* gives of it; and therefore ſince Biſhop *Leſsly* and he were Men of different Principles and Intereſts, there's no reaſon to think that they would agree to forge this Story, but on the contrary, that both of 'em wrote according to the Evidence they had from our antient Writers and Records.

But ſince the Truth of this is diſputed, not only by ſome Neighbours who envy our Antiquity, but ev'n by ſome of our own Countrymen, who had rather ſacrifice our Honour, and the Nation it ſelf, than not have us Slaves to Princes and Biſhops; let us ſee what we can have from Foreign Authors, to prove that the antient Form of Government in this Iſland was in petty Princes, Heads of Familys, or Governors of Citys. We ſhall allow *Julius Cæſar* the firſt place, in regard of his Quality and Learning; He tells us in his Commentaries (*a*) that when his deſign to invade *Britain* was known, many Citys of that Iſland ſent Ambaſſadors to him into *France*, who promis'd to give him Hoſtages, and to ſubmit to the *Roman*

(*a*) De Bello Gallico, *lib.* 5.

Govern-

Government: Which they could not have done, had the whole Iſland, or the Southern Parts of it, been ſubject to any one Prince, for the Deputation muſt then have been in his Name. He further informs us in the ſame place (*b*), that when he did actually invade *Britain*, the Princes of the Country aſſembled from all places, and ſubmitted themſelves and their Citys to his Command. But afterwards perceiving that the *Romans* were few in Number, and that they wanted Horſemen, Ships and Proviſions, they revolted (*c*). Being worſted in Battel, they again ſubmitted. But when he returned to *Belgium*, now the *Netherlands*, there were only two of the *Britiſh* Citys that ſent Hoſtages to him (*d*).

In his fifth Book (*e*), where he gives an Account of his ſecond Expedition into *Britain*, he mentions *Caſſivelaunus*, whoſe Dominions were divided from the Maritime Towns by the *Thames*. Before the arrival of the *Romans*, this

(*b*) *Sect.* 27. *Edit.* Amſtelodam. 1697.
(*c*) *Sect.* 30, 31, &c.
(*d*) *Sect.* 38.
(*e*) *Sect.* 11.

Prince

Prince had been at War with the Neighbouring Citys; but upon this second Invasion, he was by common Consent elected General in this War against *Julius Cæsar*. There likewise he takes notice that *Cassivelaunus* had kill'd *Immanuentius* King of the *Trinobantes*, whose Son *Mandubratius* fled to *Cæsar* in *France*, and was by him afterwards restor'd to his Father's Dominions *(f)*.

In the 22*d* Section he informs us, that *Cassivelaunus*, who we have heard before was by common Consent chosen General in this War, sends Orders to four Kings that govern'd *Kent*, to attack the *Romans* by way of Surprize; which makes it evident that the Country was then govern'd by many little Princes.

The next we shall bring is *Cornelius Tacitus*, another Author of great Quality, Parts, and Opportunity, to whom our Country is much oblig'd for the honourable Character he gives of the Valour and Bravery of our Ancestors. In his Life of *Julius Agricola*, he tells us, that the *Caledonians* being taught at last, that mutual Agreement among themselves was necessary for withstand-

(*f*) *Sect.* 20, &c.

ing

ing the common Danger, they did, by Embassys and Leagues, assemble together the Strength of all their Citys; and forming an Army upon the *Grampian* Hills, amongst other Captains, *Galgacus*, the most considerable for Birth and Valour, made a noble Speech to them, wherein we have that memorable Sentence, *Let us shew them* (says he) *at the first Charge what brave Men* Caledonia *has reserv'd in store*. We must necessarily suppose that this *Galgacus*, who is thought to be our *Corbredus* II. sirnamed *Galdus*, was chosen General in this War by the other *Caledonian* Princes or Captains, in the same manner as *Cassivelaunus* was by those of South *Britain*. Or if he were King of all that Part of the Island then nam'd *Caledonia*, according to our Historians who make him the 21*st* in our Catalogue; It is evident he had not an Absolute Power; and that our Government, tho it had a single Person at the Head of the Administration, consisted of the Chiefs of Familys and Citys associated, otherwise *Galgacus* might have summon'd them together against the *Romans* by his Royal Authority, and needed not have been at the trouble of assembling them by Leagues and Embassies. This Rela-

Relation of *Tacitus* agrees very well however with what is ſaid by our own Hiſtorians concerning our firſt Kings; that they acted in every thing by the Advice and Authority of the *Phylarchi*, or *Primores Populi*; and it's very probable that *Galgacus* was our King, otherwiſe he could ſcarcely be ſaid by this *Roman* Author to be *inter plures Duces Genere præſtans*, to be the Nobleſt or moſt High Born of all the Captains: Since our own Hiſtorians ſay of our Chieftains of Clans, that they were *pari pene dignitate*, almoſt all of equal Degree; and therefore his Anceſtors muſt have been conſpicuous above the reſt of the Chieftains for ſome Succeſſion of time, before he could be ſaid to be higher born than the others. This is no way inconſiſtent with what our Hiſtorians ſay of the Antiquity of our Nation, or of our Royal Line: For tho they were not Monarchs in the modern Senſe, yet being *inter cæteros Principes*, as a *Roman* Emperor ſaid of himſelf, and the chief Place of the Adminiſtration in Peace and War being always given to one of *Fergus*'s Offſpring, ſometimes in a direct, but for the moſt part in a collateral Line, till the time of *Kenneth* III. that the Government

vernment was made Hereditary, all the remarkable things which befel our Nation are reckon'd to the time of their reſpective Governments or Reigns, as the remarkable Events of the *Roman* Government are noted to have fallen out in the Time of ſuch a Conſul, Dictator or Emperor. For it is evident from Hiſtory that the Emperors were only Generals for a conſiderable time, tho they were afterwards made Hereditary Sovereigns: And our Anceſtors being under a neceſſity of having a conſtant General to command 'em in their Wars againſt the *Britains*, *Picts* and *Romans*; and thoſe Generals, as has been ſaid already, being always of *Fergus*'s Line, they were probably by latter Hiſtorians call'd Kings, according to the Mode of their own Times, and by them plac'd in our Catalogue as ſuch; tho it would ſeem by the Accounts above-mention'd from *Cæſar* and *Tacitus*, that they were ſcarcely known by that Name in thoſe Days, and that they had not indeed ſuch a Power as after Ages thought fit to conſtitute a King, or to make up that which is now call'd Royal Authority.

But to return to *Tacitus*, he tells us further in the ſame Place, "That the "*Britains* were governed by Kings be-

 "fore

" fore the arrival of the Dictator ; but
" now (says he) they are divided into
" Factions by Princes, and there is no-
" thing more serviceable to us against
" those valiant Nations, than that they
" don't consult together : For it's very
" rare to find two or three Citys who a-
" gree to ward off the common Danger,
" so that while they fight separately,
" they are all overcome. And a little
after he adds, " When the *Britains* be-
" wail their Servitude, they complain
" that they had formerly each of them
" their own King ; but now there are
" two Governors impos'd upon them,
" the Legate who preys upon their Lives,
" and the *Procurator* who seizes their
" Estates. He says the same as to *Ire-
land*, that they were govern'd by many
petty Kings (*Reguli*). He mentions
also the Kings of the *Silures* and *Brigan-
tes* in *Britain*, and takes notice that
Claudius Cæsar triumph'd over *Gethus*
King of *Orkney*. It is likewise manifest
from *Cæsar*'s Commentaries, that every
Province in *France* had a King. *Livy*
says the same of *Spain*, and *Vopiscus* tells
us, that there were nine *German* Kings
who met *Probus Cæsar*. From all this
it is evident, that nothing but an unac-
countable Bigotry for absolute Monar-
chy

chy, or a slavish Parasitical Temper, to
fawn upon our late Princes for Prefer-
ment, could have prevail'd with Sir *Geo.
Mackenzie* and others of our Modern
Authors to assert, that we had Kings
before we had Parliaments, that our
Monarchs were absolute and uncon-
trolable, and deriv'd their Authority
from God only ; since by these unquesti-
onable Authoritys it is evident, that an-
tiently this Island was govern'd by many
petty Princes, that in the time of *Cæsar*
and *Tacitus*, all or most part of *Europe*
was govern'd in the same manner ; and
that *Ireland*, from whence our Ancestors
came, and deriv'd their Form of Go-
vernment, was govern'd by many *Re-
guli*. So that to assert *Scotland* at that
time to have been rul'd by one Monarch,
in any other sense than that one of our
Princes was chosen by the rest to be Ge-
neral in War, and at the Head of the Ad-
ministration in time of Peace, is con-
trary not only to those famous *Roman*
Historians, but to the then Custom of all
other Nations in *Europe* ; which makes it
far more probable that we had not then
any such thing at all as a Monarch, but
that our Government in those days va-
ried little or nothing from what it is
said to have been at first by Bishop *Lesly*

 and

and *Buchanan*, to wit, an Ariſtocracy by the Heads of Clans choſen by thoſe Clans over whom they preſided; and that *Galgacus* or *Galdus*, being one of *Fergus*'s Line, was choſen General of all thoſe Clanſhips or leſſer Ariſtocratical Governments united together in a common League, as *Tacitus* ſays they were againſt the *Romans*.

What ſtill remains of that antient Form of Government by Heads of Clans in the *Highlands*, adds a mighty Strength to this Suppoſition; and what was aſſerted by our States in their Memorial to Queen *Elizabeth* to juſtify their depoſing Queen *Mary*, confirms it; to wit, that to that very day the Clanſhips in the Iſlands, and in thoſe Places of the Continent, where the antient Cuſtoms and Language ſtill obtain'd, pleaded a Right to elect and depoſe their Chieftains. It's true, that Cuſtom is now leſs frequent, if at all practis'd; yet there was a freſh Inſtance of it in their own Memorys, recorded in Bp *Leſsly*'s Hiſtory in the Reign of K. *James* V. when the Clan of *Mackintoſch* choſe *Hector* a Baſtard-Son of the Family to be their Chieftain during the Nonage of the lawful Heir. The Great Familys of *Gordon*, *Argile* and *Athol*, may ſerve ſtill to

to give us an Idea of thoſe antient *Reguli* or Princes, and are perhaps greater than moſt of them were, becauſe of other leſſer Clans which now depend upon them: and if the Government of theſe Clans have at preſent more of a Deſpotical than of that Ariſtocratical Power which Bp *Leſsly* ſays they formerly had, that's owing to the Corruption of ſucceeding Times.

From the time of *Fergus* I. till that of *Fergus* II. the Power that our *Phylarchi* or States exercis'd in the Government, and in diſpoſing the Sovereignty it ſelf, is ſo plain from our Hiſtory, that it cannot be denied: And never was any of our Princes happy that did not govern by their Advice, according to a Law made in the time of *Finnanus* our 10*th* King or Captain-General. And *Corbredus Galdus* our 21*ſt* King, ſo famous for his Victorys over the *Romans*, took a ſolemn Oath, as we are inform'd by Bp *Leſsly* in his Life, that he would do nothing without conſulting his States or Nobles, or againſt their Will.

We come next to the Reign of *Fergus* II. which ſome of our envious Neighbours will have to be the firſt time of our ſettling in the Iſland, tho the contrary appears expreſly from *Bede*, one of the

antienteſt as well as beſt of the *Engliſh Saxon* Hiſtorians. It is plain from our own Writers, that this *Fergus* was ſent for from *Denmark* or *Scandia* by the Remainders of the *Scots*, who ſtill kept poſſeſſion of the Iſles, notwithſtanding the united Force of the *Romans*, *Britains* and *Picts*; and that he deriv'd his Title from the People, who might, had they pleas'd, have ſet up any other in his ſtead; but being of the Royal Line, and fam'd for his Atchievements againſt the *Romans* in conjunction with the *Goths*, whom he accompanied in their War upon the Empire, as beforemention'd, they choſe him, as a Perſon under whoſe Conduct they hop'd to recover their Country, and effected it. From his time to the Reign of *Kenneth* III. the Government was ſtill continued in the Royal, but not in a direct Line, the States reſerving ſtill that Power to themſelves to chuſe ſuch of the Family as they thought fitteſt.

When *Kenneth* III. came to the Crown, his Ambition prompted him to have the Succeſſion made Hereditary; and he prevail'd with the Parliament to abrogate the old Law made by *Feritharis* our 2*d* King, that if the Children of our Kings were under age, the next of kin thought

thought fitteſt to govern ſhould be ſet upon the Throne, and after his Death the Succeſſion ſhould devolve upon the Children of the laſt King. Hitherto it is plain that our Anceſtors underſtood nothing of that Doctrine which derives the Authority of our Kings from God alone. Nay even whilſt they were Heathens, they had a much juſter Notion of the Fountain of Authority than many of our modern Chriſtians have. That Noble Prince *Galdus* above-mention'd, is a plain Inſtance of this: Bp *Leſsly* tells us, that upon his being declared King by the joint Suffrage of the States, he gave thanks firſt to the Immortal Gods, and then to the Nobility and People for conferring the Crown upon him.

We ſhall next take a brief View of what fell out moſt remarkable concerning the Succeſſion, after it was made hereditary by *Kenneth* III. It is evident from our Hiſtorians, that this Law was much complain'd of, as depriving the States of their juſt Suffrage in electing their Prince, and ſubjecting 'em to the caſual Government of Children, Women and others, who ſtood in need of Governours themſelves; therefore Bp *Leſsly* ſays, that immediately upon *Kenneth*'s Death the Nobility broke that Law, and

 gave

gave the Crown to *Constantin* the Son of *Culenus*. Upon *Constantin*'s Death *Grimus* was made King by the Nobility and People; but degenerating into a Tyrant, they took part with *Malcolm*, *Kenneth*'s Son, against him, and *Grimus* falling in Battel, *Malcolm* was made King; but, which was remarkable, did not meddle with the Government, tho it was made Hereditary by his Father's Act, till he was solemnly invested with it by the States at *Scone*, where he prevail'd with them to confirm his Father's said Law. *Buchanan* in his *7th* Book makes very severe, but judicious Reflections upon this Act of Hereditary Succession, and asserts, with Evidence enough from Matter of Fact, that all the publick Calamitys and Mischiefs which this Law was made to prevent, were nothing in comparison of what befel our Country by reason of this Law, upon the Death of K. *Alexander* III. when *Bruce*, *Baliol* and others put in their Pleas for an Hereditary Right of Succession.

Malcolm leaving no Son behind him, his Grandson *Duncan* succeeded him, and was created King by universal Consent, says Bp *Lessly*; but being a Man of

of a soft and easy Temper, and by consequence not likely to have been admitted to the Government, had it not been for the Act of Hereditary Succession, his Kinsman *Mackbeth*, Grandson likewise to *Malcolm* by a Daughter, was made his General and Viceroy, who conspiring against *Duncan*, murder'd him, and usurped the Crown: He prevailed with the Nobility and People to confirm him in the Government, having acquired the good Will of the former by his Bounty, and being grateful to the latter, because of his Success in War against the *Danes*: But he degenerated afterwards into one of the most horrid Tyrants that ever was heard of; upon which the People sent to *England* for *Malcolm Canmoir* (Son to K. *Duncan*) who had fled thither from *Mackbeth*'s Fury, and joining him against the Tyrant, *Mackbeth* was defeated and afterwards killed; upon which *Malcolm* was made King by universal Consent. *Malcolm* being afterwards kill'd in the War with *England*, and leaving none but young Children behind him, his Brother *Donald* did by the help of the K. of *Norway* usurp the Crown; and his Brother's Lawful Children having fled into *England*, the Nobility chose *Duncan*, *Malcolm*'s natural Son, a great Warriour, to be

be General against *Donald*; who being deserted by his Troops when he came into the Field, *Duncan* was made King: But *Donald* having found means to get him murdered, the Nobility sent to *England* for *Edgar*, one of *Malcolm*'s Sons, who again subdued *Donald*, and put him in Prison, where he died. *Edgar* having no Children, his Brother *Alexander* was sent for from *England*, and succeeded; and he being also childless, his Brother *David* a great and excellent Prince came next to the Crown; and all his Children dying before him, his Grandson *Malcolm* succeeded; he having no Children, his Brother *William* succeeded 15 days after his Death: which shews that the Consent of the States was at that time still thought necessary, before our Princes entred upon the Administration. He was succeeded by his Son *Alexander* II. and he by his Son *Alexander* III. who leaving no Issue but a Grand-daughter, by his Daughter the Queen of *Norway*, a Convention of the Estates met about making a new King, says *Buchanan*, where they agreed upon 6 of the Nobiltty to take care of the Administration. Bp *Lessly* says the same, with this addition, that *Alexander* left no Issue to whom the Crown could descend, by which it would seem that they did not then

then think themselves obliged by the Act of Succession to give their Crown to a Woman. With this Convention *Edw.* I. of *England* treated of a Marriage betwixt this Princess and his Son *Edw.* II. in order to an Union of the Kingdoms, which the *Scots* agreed to on certain Conditions, but the Lady died before the Marriage: and then happened that fatal Competition betwixt *Bruce* and *Baliol* for our Crown; the latter enjoyed it first, by the Assistance of *Edw.* of *England*, to whom he made a base Surrender of our Sovereignty. *Baliol* was upon this account dethroned by the States of *Scotland*, and his Posterity for ever excluded from our Throne, which was deservedly conferred upon *Robert Bruce* and his Issue, because that Prince did so gallantly recover our Liberty. In *Bruce*'s time an Act was made for settling the Succession, in order to prevent such Troubles as the Country was afflicted with, by the Competition above-mentioned. By this Act the Crown was settled upon his Son *David Bruce*, and his Male Issue; and failing that, upon his Brother *Edw. Bruce*, and his Male Issue; and failing that, upon his own Daughter and her Issue. This is the first time we hear of any Woman mention'd in the Entail of our Crown, but

but it is evident, that the King and States did not then think of the Divine Right of Lineal Succeſſion, ſince they put *Edw. Bruce* the Brother and his Male Iſſue in the Entail, before the Daughter and her Iſſue. And to prevent ſuch Diſputes as thoſe above-mentioned about the Succeſſion, when the League with *France* was renewed, it was agreed, that when any doubt happened about a Succeſſor, it ſhould be decided by the Convention of Eſtates. And the King of *France* was obliged by the League, to ſupport that Perſon on the Throne, to whom the Convention ſhould adjudg the Right. Bp *Leſsly* adds, that the Obligation was mutual, and that the *Scots* were to give the like Aſſiſtance to *France*, in caſe of any diſpute about their Succeſſion. *Edw. Bruce* being killed in the War, and leaving no Iſſue, K. *Robert* got the Succeſſion again ſettled on his own Son *David*, and his Iſſue; and failing that, on *Robert Stuart* his Grandſon by his Daughter. From this it is evident, that the Settlement of our Crown by the laſt Convention of Eſtates, upon K. *William* and Q. *Mary*, and her Preſent Majeſty, was agreeable to our old Conſtitution: and it plainly demonſtrates the Weakneſs of the Objection, which ſome are pleaſed to raiſe againſt it, as

as being done only by a Convention; for here is an Act of Parliament giving a Convention that Power. Beſides, this Objection againſt the Power of that Convention proceeds from a Miſtake, becauſe of two other ſorts of Conventions in *Scotland*, which are owned to be of leſs Authority than Parliaments. One is a Convention that uſed formerly to be called by our Princes upon their Succeſſion to the Crown, in order to their being ſolemnly inveſted with the Sovereign Authority by the Eſtates, until which time we have ſeen by ſome of the above-mentioned Inſtances, they could not well meddle as Kings with any other part of the Adminiſtration; and until then they could not call a Parliament, as is owned by the Continuer of *Spotſwood*'s Hiſtory, *p.* 31. and after this was done, they uſually ſummoned a Parliament. There is another ſort of Convention which our Princes have been uſed to call, ſince the Union of the Crowns eſpecially, without any Power to make Laws, but only to aſſiſt the Sovereign with their Advice in any great exigence of State, and to raiſe Money; and this has created a Diminutive Idea of Conventions in general, for want of diſtinguiſhing betwixt the one and the other. But a Convention of the Nature of that which was called at the Revolution, has the moſt auguſt and higheſt Degree of Original Sovereign Power, that the Nation by themſelves, or their Repreſentatives can exert, which is to make or unmake Sovereigns, as they find the Caſe of the Nation requires it; and from Conventions of that ſort our Princes in all the

the Revolutions of our Government have ever received their Authority; and to such Conventions before the Union of the Crowns, they were ever held accountable, as has been sufficiently proved already. Nor is there the least shadow of Reason to think the Authority of such a Convention to be any thing less than that of a Parliament, because it is composed of the very same States, and is capable of acting with a great deal of more Freedom; they meet by virtue of the Intrinsic Authority of the Nation, without any thing of those Intrigues too commonly made use of by Courts, to influence Elections, and to dispose Members when elected to act according to their Interests, tho opposite to that of the Country; but here they act without any control from the Prince, because either there is none till they make him, or if there be, and that they meet without his Authority, as they did in the first Ages of our Monarchy, and of late in the Reigns of K. *James* III. Q. *Mary*, and K. *James* VII. it is that they may call them to an Account for the Administration of that Trust which they receiv'd Originally from the States; and either to continue them in it, or to take it from them, as they find meet: and indeed it's the greatest Solecism in nature to say, that the States of a Limited Monarchy like that of *Scotland*, confer'd upon a Prince in Trust, should have less Power without such a Trustee of their own making, than they have when there is one.

I shall conclude this Head with one Observation more, which is, That those Men who asserted, that *the Right to the Imperial Crown of* Scot-

Scotland, *was by the inherent Right and Nature of the Monarchy, as well as by the Fundamental and Unalterable Laws of the Realm, transmitted and devolv'd by a Lineal Succession, according to the Proximity of Blood*, as in the abovemention'd Act of Parliament, 3 *Car.* 2. did not consider that instead of doing the Royal Family any Service by that Position, they fix'd a Charge of Usurpation upon the whole Line and Race of the *Stuarts*, and according to their own Principles, and the Words of that Act, *involv'd the Subjects of the Kingdom in Perjury and Rebellion*: for it is undeniable that the Right of Succession, according to Proximity of Blood, was in *Baliol*'s Race; for *Alex.* III's Line failing, the Reversion came to the Line of *David* Earl of *Huntington* Brother to *William* King of *Scotland*, whose eldest Daughter was Grandmother to *John Baliol*, and the second Daughter Great-Grandmother to *Robert Bruce*. This Claim was after *Baliol*'s Forfeiture and Resignation, renew'd by his Son *Edward Baliol*, who was for some time King of *Scotland*; and it was again reviv'd by *William* Earl of *Douglas*, who upon *David Bruce*'s Death put in his Plea as next Heir to the Crown, because descended from *Baliol* and the *Cummins*; and had not the States determin'd it against the Lord *Douglas*, in favour of *Robert Stuart*, the *Stuarts* had never come to the Crown. So that for one Parliament to assert, that the Descent which was made Hereditary by a former, could not be altered by a future Parliament, was not only contrary to Sense, and the intrinsick Power of all Governments, but contrary to standing Acts of

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Parliament, which made it *Treason to diminish the Power of the three Estates, or any one of them*; whereas this Act diminish'd the Power of all succeeding Parliaments, which can never be limited, without destroying their very Essence as Sovereign Courts: otherwise it should be in the Power of one Parliament to make the Nation Papists or Slaves for ever, and no future Parliament would be able to reverse it. Whereas it is evident to common Reason, and confirm'd by daily Practice, that one Parliament may reverse what another has enacted, according as the Good of the Publick requires it, for that's the End and *Ne plus ultra* of all Government; and if Governours of any Denomination whatever enact any thing contrary to the Good of the Publick, it is *ipso facto* Null and Void, because contrary to what is laid down by God and Nature, as the unalterable Rule and End of Government. This is tacitly own'd ev'n in the Preambles of those Acts in the beginning of K. *Charles* II's Reign, which surrendred our Liberty; for the End there propos'd, *is the Peace and Happiness of the Kingdom*, as may be seen Acts 1, 3, 4, 5, &c. But since the Experience of all Ages is sufficient to convince Mankind, that Slavery or absolute Subjection to the Will of a Prince, so as in no Case to resist him, did never issue in the Good of the People, that's enough to prove that such a Subjection is inconsistent with the End of Government, and therefore *ipso facto* Null and Void (tho all Mankind should agree to it) and Reversible, whenever the Estates or Body of a Nation think fit to repeal it.

FINIS.