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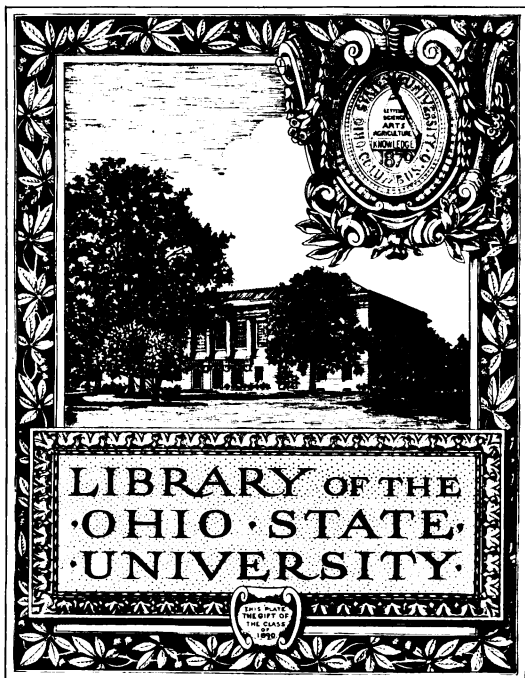
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REMARKS UPON
DR. SHERLOCK'S BOOK



JOHNSON



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REMARKS
UPON
DODDSHERLOCK'S
BOOK
INTITLED

The Case of Resistance of the
Supreme Powers Stated and
Resolved, according to the
Doctrine of the Holy Scrip-
tures.

Written in the Year 1683,
By *SAMUEL JOHNSON*.

London; Printed for the Author, and are
to be sold by *Richard Baldwin*, 1689.

THE MARKS

OF

REGISTERED

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Printed in the Year 1842

BY SAMUEL JOHNSON

Printed and Published by
S. JOHNSON, Strand

To the Right Honourable

W R I O T H E S L Y

Lord R U S S E L.

My Lord,

YOur Lordship has
the largest Inheri-
tance of Honour
of any Englishman be-
sides, and your very early
Years promise to the
World, that you will
rather improve than waste
your Patrimony. I hope

The Epistle.

your Great Father will Live in You, and that there never will be wanting a Great Lord *Russell* in *Succession*, which is the only way wherein Mortal Men can stay any while here upon Earth. That You may follow Him in his Piety, in his Devotedness to his Religion and Countrey, in his Integrity, Wisdom, Magnanimity, Constancy, and all the Parts both of a Christian and a Nobleman. And that

Dedicatory.

You may be the Joy
and Delight of your
Countrey (as He was,) .
but Never their Grief,
is the Hearty Prayer of

My Lord,

Your Lordship's

Most Humble

and Most Obedient

Servant

SAMUEL JOHNSON.

A 3

T H E
P R E F A C E.

I Have Published these Papers, which I had not seen for above five Years before, to rid my Hands of the baffled Cause of Non-Resistance, and to offer my Service to do as much for some Men's new-fashioned Loyalty, which is in election likewise to be Adopted for Church-of-England-Doctrine, as the other was. It consists in being Discontented with the present Government, in loathing our late and wonderful Deliverance, and in hankering after Egypt again; in refusing to swear Allegiance to the King, and in effect forbidding him to be King without their leave: And after all it lies hid in lurking

*Scruples, and in Reasons best known to
 Themselves. Now till we are worthy
 to know to whom these Persons think
 themselves under Engagements, whe-
 ther to the late King, or to the Prince
 of Wales, or to Tyrconnel, or to what
 Foreign Prince or Potentate it is, And
 for what Reasons they are not free to
 take the present Oaths, it is impossible
 to say any thing in particular to them.
 For the Errors and Windings of Igno-
 rance and Interest are intricate and
 endless: And the Reasons of a self-
 willed Obstinacy, which is in it self
 an unreasonable Principle, must needs
 be incomprehensible. If any Man had
 told me seven Years ago, that the Do-
 ctrine of Passive Obedience should be
 maintained by such Arguments as I
 have since met with, I could not have
 believed him: For no Man, who has
 used his Thoughts to Evidence and Co-
 herence, could possibly foresee or fore-
 stall those Arguments. And therefore
 till these Reserved Persons will please
 to let their Scruples see the Light,
 and bring forth all their strong Rea-
 sons,*

sons, they must enjoy the Priviledge of being Unanswerable.

But in the mean time we are able to Prove, if the Nation wanted any Satisfaction in that Point, That King William (a Prince of God's sending, and whom He have in his especial keeping!) is the Rightfullest King that ever sat upon the English Throne. For he is set up by the same Hands which made the First King, and which hereafter will make the Last, and which have always unmade all Tyrants as fast as they could: And the Realm has not chosen him like a Persian King, by the neighing of an Horse, or by some light Accident; but in the wisest way, and upon the most weighty and valuable Considerations. For if he had not come, there had not been a Kingdom for him to Govern; England had now been a Wilderness of howling Irish, a Rendevouz of French Apostolick Dragoons, a Nest of Priests and Jesuits, and any thing but a Kingdom. So that he is a Prince who Governs his Own Kingdom, which he first saved from

from Perishing; and though Conquest never was a Title; yet Redemption is. In such Cases Men used heretofore to become Slaves to their Deliverers: Now this indeed is a thing impossible for English-men, but they never had such a Temptation to it before. The least they can do, is to make him a Present of their Lives and Fortunes, not in foolish and flattering Addresses, but in real Services; and to perpetuate his Benefits to this Nation to the World's-end, by passing them into such advantageous Laws for the Publick, as could not be had in other Reigns.

We are able to prove likewise, That if the Realm has a Right to provide themselves of a King when they have none, much more they may do so when they have one, who has made himself a thousand times worse than none. One who was long since known to be a publick Enemy to this Kingdom, and had utterly unqualified himself for the Government, and forfeited his Remainder in the Crown, by rendering himself incapable of the Regal Office. For
we

The Preface.

V

we knew before-hand that he was not capable of taking the Coronation-Oath, with any other Intention than to break it; and that he wanted to be let into the Government, only to spoil and subvert it. And therefore in Pursuance of the Ancient Rights of the Realm, (whose Consent is the Foundation of all Government, and who never made any Establishment of the Crown for the Destruction of the Nation, nor ever intailed the Government but upon the Terms of the Government,) He was Excluded by no less than three Successive Houses of Commons: Which was such a Covenant entered by all the Counties and Boroughs of England against his Succession, as never was against any other. This had passed into an Act of Parliament, had it not been for the mean and indirect Practices of some Persons, who owed their Native Country better Offices, than to bring the Calamity and Vengeance of a Popish Successor upon it. After this Successor, with the help aforesaid, had paved his Way to the Throne upon the Ruins of
the

the Franchises of most Corporations, and upon the Heads of the Best Men in England, of a sudden, when for many Years before the King was to out-live the Duke, on the other Hand the Duke out-lives the King, and makes himself King. But if he had been a Rightful King when he took Possession of the Crown (as he was not, but a publick Enemy) he has since that time broken the Fundamental Contract, or Covenant of the Kingdom, or Coronation-Oath, (for they are but several Names for the same Thing) with that Perjury and Perfidiousness as never any Prince did before him. I will not mention his smothering of all the Laws against Popery and Priests, whom he ought immediately to have apprehended, prosecuted, and hanged, if he had taken the Oath in Good Faith, which according to the Constitution he was bound to do. For according to ancient Custom he was to be Adjured not to meddle with the Crown, unless he would take his Oath, sine Fraude & malo ingenio, and mean Honestly. Neither need

need I say any thing of his holding Correspondence with the Foreign Tyrant, Usurper, and publick Enemy of this Kingdom, by sending a pompous Embassy to Rome, and by obtruding a Nuncio upon the Nation, with that insolence that he must dine at Guildhall. But the Things I shall mention are, The keeping a Mercenary in constant Pay, to deprave, ridicule, and pervert the English Constitution, and to Banter the Nation out of all their Laws, by two or three authorized Observators every Week: The Murthering of great Numbers in the West in cold Blood, without any Procces of Law: The garbling of Judges, and perverting of all Justice in Westminster-Hall: The breaking the Peace of the Nation, (the keeping whereof was a principal part of his Office) by keeping up a standing Army, for several Tears together, in the Bowels of the Kingdom, not only at the Charge, but to the Terror and Disberison of his People: Whereas, as I remember, it was a considerable Article in the Deposing of Edward the

Second

Second, That he went into Gloucestershire with a thousand Horse. The five Positions of the Eleven Judges; The Yearly Declarations of Dispensing with the Laws, that is, violating them by whole-sale, instead of Annual Parliaments: The High-Commission Court; and at the latter end of the Day the Tyranny and Oppression was coming home to those, who had long been made the Instruments of Oppressing and Destroying all others.

Besides, these were all of them Instances of an open and avowed Tyranny, which was to have been the Inheritance of our miserable Posterity, under a Pretence of Prerogative, Sovereignty, Imperial Laws, Dispensing Power, and the like; So that our Children should never have known, but that they had been born Slaves at Common-Law, and so never have aspired after their English Freedom more: And to make all sure, by Packing the only Parliament in that Reign, by Closetting the Members of it, by Regulating Corporations, and by their last Project of a

Super-

Supernumerary Nobility, we were likewise in a fair way to have been made Slaves by Statute. I have not mentioned his Disertion all this while, neither will I take any Advantage of it, because I look upon it as the very best Action of his whole Life, and the stopping him in it was an ill Day's Work: And if he had absented himself for-ever, as for me, he had carried his Tyranny and all the Faults of his Mis-rule along with him, neither should I ever have mentioned them in this manner. But being he has altered his Measures, and Deserted his Desertion, and wants more Blood, and is come back in a War upon the Kingdom, whereby the Subjects of England will have occasion to shake down their Lives in the Field against him; I thought it necessary, thus far, to open the Merits of our Country's Cause against him: And to shew, that we shall venture our Lives in the best Cause in the World, against the very worst; in Defense of our Religion and Country, against the irreconcilable Enemy of both; who

has

has been just such a Father of our Country, as he was a Defender of our Faith.

Besides, we are able to produce the Original of an English King, and the very Fundamental Contract made with him before they made him King, out of the 8th Page of the Mirror, out of the Saxon History and Laws, out of Bracton and Chancellour Fortescue, who writ his Book on Purpose to shew the English Constitution; where it is demonstrated to be a perfect Stipulation and a down-right English Bargain. Part of which was, For the King to be obeyant to suffer the Law as others of his People; And it is likewise declared, to be the First and Sovereign Fraud, Abusion and Perverision of the Law for the King to be Lawless, whereas he ought to be subject to it as is contained in his Oath. And he that makes strange, and wonders at such a National Covenant, never yet knew where he lived, whether Here or in Turkey, or at Algiers; neither could he ever tell, whether he

and

and his Children were born Freemen or Slaves. And tho' the Phrase and Form of this Contract has varied upon occasion in the Coronation-Oath, yet the Effect and Substance of it has always been Preserved. *Thomas*

We are able further to prove, That the Oath of Allegiance being the Counterpart of the Coronation-Oath, and containing the Subjects Duty as the other does the King's, is of the nature of all Covenants, and is a Conditional Oath. Suppose, in a lower Instance, an Apprentice were sworn to his Indenture, would he be bound in Conscience to perform his Master's Service, when his Master instead of finding him Maintenance and Lodging, would allow him neither, but turned him out of Doors? Such a Master must even do his own Business himself, or Travel abroad to find him out a new Apprentice, if he can, notwithstanding his former Apprentices Oath.

Moreover, we are able to prove, That the Oath of Allegiance taken to a Ty-

rant

rant would be a void unlawful and wicked Oath; Void, because it is an Obligation of Obedience according to the Laws, which a Tyrant makes it his business to destroy, so that it is swearing to things Inconsistent; Unlawful, because the English Constitution will not admit such a Person to be King, it knows no King but such a one as can do no wrong; and Wicked, because it strengthens his Hands in the Destruction of our Countrey. He that swears Allegiance to a known publick Enemy, and engages to be aiding and assisting to him, is so far a publick Enemy himself. If some Persons knew him not to be a Tyrant when at the first they were sworn to him, yet as soon as they do know him to be such, or especially if the Realm declare him to be such, their Oath of Allegiance becomes a void, unlawful and wicked Oath to them, and they cannot possibly keep it any longer if they would. And therefore to ask, Who shall Absolve us from our Oath to King James? is to ask, Who

shall

shall Absolve us from an Oath which cannot bind; from an Oath which ought not to have been made, and is now, at least, as if it had never been made; which was ill made, and would be worse kept. Such an Oath is so far from needing any Absolver, that on the other hand an Angel from Heaven cannot oblige us to keep it.

And whereas it is the Maxim of the Malecontents to the same Purpose, Better Popery than Perjury; They may remember if they please, That the Popery and the Perjury have always gone together, and have been both of a Side. They may remember, That their Popish King, while he was Duke, was the Cause of almost an Universal Perjury in Corporations by delivering up their Charters; and that he got the best Franchises of his greatest Village in Europe to be betrayed and surrendered, by the help of such another Maxim, Better half a Loaf than no Bread. That he was Perjured in the very taking of the Coronation-Oath,

which he did not and could not take in Good Faith, and all the World knows how well he kept it. That he likewise by his own Perjury-Prerogative of a Dispensing Power, brought an Universal Perjury upon the Magistrates of England, who were sworn to the Execution of the Laws. And throughout the late Reign of Treason, I would fain know the Man that kept his Oath of Allegiance, in discovering to a Magistrate the High-Treason against the King and the Realm, of Persons being Reconciled to the Church of Rome, and of those who endeavoured to Reconcile others; and that did not conceal these Treasons which he knew of, and thereby make himself guilty of Misprision. No, they were Happy Men who laid down their Lives betimes, and did not stay to see the Guilt and Misery in which a Popish Successor has since involved their Country, the Foresight of which made them not count their Lives dear to them, but they endeavoured to prevent such a Calamity

at the expence of their last Blood, and died the true Martyrs of their Religion and Countrey. But as for us who are left behind, we must see the Wretches, who shed that more than Innocent Blood, wash their Hands in it, and justify the shedding of it, and cause it to cry afresh. This is particularly done in an Infamous Libel, entituled, The Magistracy and Government of England Vindicated; wherein the Murthering of the Greatest Englishman we had, for endeavouring to save his Countrey, is still avowed. If these Men had the Trying of Causes once more, no doubt we should have our late Deliverance Arraigned for an Invasion, and every brave Englishman, who joined with that unexpected Helping Hand out of the Clouds, Indicted and Condemned for a Traytor. I shall only say in general, That that Vindication wants another, as much as the Magistracy and Government which it pretends to Vindicate; for there is not one material Word of it true. For

instance,

instance, A Consult to levy War is not an Overt Act of Compassing the Death of the King, because the Actual levying of War is often done without any such Tendency; as I could instance over and over again in former Times, but I love to quote what is fresh in Memory. My Lord Delamere (whom I mention out of Honour to him) did very lately levy War, and when he had the late King in his Power at Whitehall, was so far from Compassing his Death, that he only delivered him a Message to remove in Peace. And being that Illegal Tryal is still justified, I must needs add this, That if there had been Law enough left to have Tried a Felon in the Counties of London and Middlesex, that Great Man had never been brought upon his Tryal. But because the Parties concern'd desire to answer it only in Parliament, I only desire that there they may be put to make out, how known Unlawful Sheriffs, de Facto, obtruded upon the City of London

London against their own Lawful Choice, on purpose to be Instrument's of destroying the Lives, Liberties and Estates of the best Subjects, could be at the same time Lawful Sheriffs de Jure: And on the other Hand it is easy to make it good, That the Validity of that Tryal and Proceedings depending upon the Legality of the Sheriffs and Jury, that pretended Court was of no Authority, and was such another Low Court of Justice, as the Black-Guard are able to make among themselves every Day. Perhaps they may plead Ignorance of so notorious a Matter, and that they could take no Cognizance of it, because it did not come Judicially before them: But that cannot be said, for the Nullity of those very Sheriffs was before that brought in that very Place, in a Special Plea, and Overruled. Their best and their truest Plea is this, That they never Dreamed of the Prince of Orange's coming

XVII THE PLACE.
coming over to restore Justice to
this lost Nation, which we doubt
not he will cause to run down like a
Mighty Stream: For otherwise (as
appears by the repeated Choice of the
Never-to-be-forgotten Sir John Moor)
these Men must have the Destroying
of their Countrey over again, only
to Justify their having Destroyed it
once before.

R. E.

REMARKS

UPON

Dr *Sherlock's* late Book,

ENTITLED,

*The Case of Resistance of the
Supreme Powers, Stated and
Resolved, according to the
Doctrine of the Holy Scrip-
tures.*



THE Case which the Title of this Book promises to Resolve, is a very plain Case, and soon resolved: for it never was made a Question,

Whether Men might lawfully Resist any Legal Subordinate Powers, much less the Supreme Powers; and they

B

are

are ordinary Readers indeed, that are to be instructed, That Resistance is unlawful in this Case.

But under the shelter and countenance of this plain and unquestioned Case, and under the covert of these Names, *Sovereign, King, Prince, Authority*, and the like, this Author has slyly convey'd into his Book the Resolution of another Case, of a far different nature; and determines, That as well inferiour Magistrates as others, imploy'd by a Popish or Tyrannical Prince in the most illegal and outrageous Acts of Violence, such as cutting of Throats, or the like, are as Irresistible as the Prince himself, (under pretence of having the Prince's Commission and Authority to do these Acts) and must be submitted to, under pain of Hell and Eternal Damnation.

I fully agree with this Author in his Resolution of the first Case, but I crave leave to dissent from him in the Resolution of the latter Case; and to enter the Reasons of my dissent.

But though I agree with him in his *Resolution* of the first Case, yet I do not in his *Reasons* of that Resolution, which are utterly insufficient, and betray the Cause which he seems to maintain. His Reasons why the King is Irresistible in all Cases, are such as these: 1. *That the King has a Personal Authority, antecedent to all the Laws of the Land, independent on them, and superiour to them.* Which is not true; for the King is King by Law, and Irresistible by Law, and has his Authority from the Law. Indeed our Author says, That the Great Lawyer *Bracton*, by those very words of his, *Lex facit Regem*, was far enough from understanding that the King receives his Sovereign Power from the Law. I confess I never was so well acquainted with *Bracton*, as to know what secret meanings he had, contrary to the sense of his words, and therefore cannot tell how far he was from understanding that the King receives his Sovereign Power from the Law; but I am sure he was not far from saying so; for he says it in the very next words: *Attribuat igitur*

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197, &c

Pag. 196

(4)
Rex Legi quod Lex attribuit ei, videlicet, Dominationem & Potestatem. He proves, that the King is under the Law, and ought to govern by Law, because he is made King by the Law, and receives his Power and Authority from the Law ; and then adds what this Author is pleased to cite, *Non est enim Rex, ubi dominatur Voluntas, & non Lex :* He is no King who governs by Arbitrary Will, and not by Law ; that is, no lawful *English* King, *Bracton* must mean ; for still he may be a good outlandish and *Assyrian* King, and no Tyrant, though his Arbitrary Will does all. For our Author (pag 41.) quotes out of *Dan. 5. 18, 19.* That God gave *Nebuchadnezzar* such an Absolute Kingdom, that *whom he would he slew, and whom he would he made alive ; and whom he would he set up, and whom he would he pulled down.* And I hope no Man tyrannizes over his People, who uses the Prerogatives which God has given him ; tho' He does over Authors, who quotes what he will, and suppresses what he will, and construes them how he will, and ren-

ders *Lex facit Regem*, To govern by Law, makes a Sovereign Prince a King, and distinguishes him from a Tyrant; which will pass with none but such Ordinary Readers as he writ his Book for, and who never saw *Bracton*.

Chancellor *Fortescue* likewise says, That a Limited Monarch receives his Power *a Populo est fluxam*, which unriddles our Author's Riddle in the same place, How the Law can make the King, when the King makes the Law? But is it such a wonderful thing, that there should be a Law to create a King, and to enable him so far in the making of Laws, as to make his Consent necessary to the Being of all future Laws? Was it not thus when the Two Houses were erected, and endowed with the like Power? For our Author says admits, when he says, *The Law has no Authority, but what it receives from the King*: for the Laws are made *Autho-ritate Parliamenti*, which is by the Authority of the King, Lords, and Commons.

But, to lay aside *Bracton* and *Fortescue* at present, let us a little reason the matter. This Personal Authority of the King, antecedent to all the Laws of the Land, independent on them, and superiour to them: whence is it? Has *He* a Throne like *God*? Is he of *Himself*, and for *Himself*? Or has he a Personal Authority from *God*, antecedent to Laws, to be a King? Then shew a Revelation from *God* where he is named. Or has he the Natural Authority of a Father to govern his Children? Then it must be proved that he has begotten his Three Kingdoms, and all the People in all other His Majesty's Dominions? Or has he a Personal Patriarchal Authority, which is set up as a Shadow of the Authority of a Father, whereby the eldest Son is his Father by *Representation*? Then it must be proved, that the King is the Eldest Son of the Eldest House of all the Families of the Earth. Or were Mankind made in the day of their Creation, by Nations, and created Prince and People, as they were created Male and Female? But if none of these

these things can be said, then it remains, that a Civil Authority, that is, a mutual Consent and Contract of the Parties, first founded this Civil Relation of *King and Subject*, as we see it every day does of *Master and Servant*, which is another Civil Relation; and that the Consent of a Community or Society, is a Law, and the Foundation of all Civil Laws whatsoever, is proved beyond all Contradiction by Mr. *Hooker*, *Eccl. Pol. Lib. I. Cap. 10.*

And as this Personal Authority of the King, which is antecedent to all the Laws of the Land, and independent on them, is airy and imaginary, and has no Foundation, but is of this Author's own making: so he has been pleased to make it very large and lawless; and though he be but a *Subject*, yet, like *Araunah the Jebusite*, he gives like a King. For it is a Personal Authority Superior to the Laws of the Land, whereby all manner of Arbitrary Acts are binding; whereby the Prince may trample upon all the Laws,

and in vertue whereof he still governs, in the violation of all those Laws, by which he is bound to govern : Whereas the Law of *England* absolutely denies that the King has any such Personal Authority. For, not to mention King *Edward's* Laws, Chap. 17th, *De Officio Regis*, which were confirmed by *William* the Conqueror, and sworn to by all succeeding Kings ; nor to mention the *Mirror*, which page 8. gives us a far different account of things ; nor to mention *Magna Charta*, which Chap. 37. says, That if any thing be procured by any person, contrary to the Liberties contained in that Charter, it shall be had of no force or effect : So that a Personal Authority, which can trample upon the Liberties of the Subject, and violate the Laws, is an Authority of no force nor effect, a void Authority, or, in other words, it is nothing. I say, not to insist upon any of these, I shall quote some passages out of my Lord Chancellor *Fortescue*, where he professedly handles the difference be-

twixt an Absolute Monarchy, and a Limited Monarchy ; and after he has shewn the different Original of them, he thus proceeds in the 13th *Chap.*

“ Now you understand, most Noble

“ Prince, the form of Institution of a

“ Kingdom Politick, (*or limited Mo-*

“ *narchy*) whereby you may measure

“ the Power, which the King thereof

“ may exercise over the Law, and

“ Subjects of the same. For such a

“ King is made and ordained for the

“ Defence of the Law of his Subjects,

“ and of their Bodies and Goods,

“ whereunto he receiveth Power of

“ his People ; so that he cannot go-

“ vern his People by any other Power.

To whom the Prince thus answer'd,

in the 14th Chap. “ You have, good

“ Chancellor, with the clear light of

“ your Declaration, dispelled the

“ Clouds wherewith my Mind was

“ darkened ; so that I do most evi-

“ dently see, that no Nation did ever

“ of their own voluntary mind in-

“ corporate themselves into a King-

“ dom, for any other intent, but only

“ to the end that they might enjoy

(10)
“ their Lives and Fortunes (which
“ they were afraid of losing) with
“ greater security than before. And
“ of this intent, should such a Nation
“ be utterly defrauded, if then their
“ King might spoil them of their
“ Goods, which before was lawful
“ for no Man to do. And yet should
“ such a People be much more injured,
“ if they should afterwards be Go-
“ verned by foreign and strange
“ Laws, yea, and such as they per-
“ adventure deadly hated and abhor-
“ red; and most of all, if by those
“ Laws their Substance should be di-
“ minished, for the safegaurd whereof,
“ as also for the security of their Per-
“ sons, they of their own accord sub-
“ mitted themselves to the Governace
“ of a King. No such Power for cer-
“ tain could proceed from the People
“ themselves; and yet unless it had
“ been from the People themselves,
“ such a King could have had no Pow-
“ er at all over them.

Now this Discourse of the Institu-
tion of a Political Kingdom was to
shew the Prince of Wales, that he
ought

ought to study the Laws of *England*, and not the Civil Laws, by which an English King cannot Govern; whereof the Prince stood in doubt, *Chap. 9.* But now you see that Cloud is dispelled, and he is convinced by this, *That a Political Kingdom cannot be govern'd by foreign and strange Laws*, which had signified nothing toward his Conviction, if *England* were not a Political Kingdom. And I think there cannot be a plainer Comment upon those former words of *Bracton* (*Lex facit Regem, attribuat igitur Rex Legi quod Lex attribuit ei, videlicet, Dominacionem & Potestatem, &c.*) than this Discourse of *Fortescue* is.

2. Another Reason which he gives why the King is Irresistible in all Cases, is, Because he is a *Sovereign*, and it is essential to *Sovereignty* to be irresistible in all Cases. Which is false: For the King of *Poland* is a *Sovereign*; He coins Money with his own Image and Supercription upon it, which according to our Author, *p. 50.* is a certain Mark of *Sovereignty*; and *p. 51.* by the very Impression on their Money it is

is evident that he is their Sovereign Lord : He stiles himself by the same Grace of God with any King in *Christendom*, and wears the like Crown : He assembles Dyets ; he disposes of all Offices ; he judges the Palatines themselves, and is full of the Marks of Sovereignty. And yet he that shall take a *Polish Penny*, and make such work with it as our Author does with the *Roman Tribute money*, and out of it read Lectures either of *Active* or *Passive Obedience* in all Cases, will read amiss. For, in case he break his Coronation-Oath, they owe him *no Obedience* at all, of any kind ; for this is one Clause in it : *Quod si Sacramentum meum violavero, incolæ Regni nullam nobis obedientiam præstare tenebuntur.* So that in case he violate his Oath, his Irresistibility departs from him, and he becomes like other Men.

3. A third Reason is, Because the *Jewish Kings* in the Old Testament, and *Cæsar* in the New Testament, were Irresistible in all Cases. Now that is more than I know, and I

leave it to Divines to examine, whether it was so or no, as also to enquire why the Christians of *Nero's* Household did not shew their Loyalty in defending their Master, after the Senate had pronounced, That he was *Hostis Humani generis*? But this I say, That if they were *thus Irresistible*, and if this be a good Argument *here*, it is a good Argument in *Poland*; and thither I would desire our Author to send it by the next Shipping, for the Law of the Land has furnish'd us with those which are much better.

I come now to the second Case; which, as I said before, is resolved under the covert and countenance of the former, That as well inferiour Magistrates, as others employ'd by a Popish or Tyrannical Prince in the most Illegal and Outragious Acts of Violence, such as cutting of Throats, &c. are as Irresistible as the Prince himself, (under pretence of having the Prince's Authority to do these Acts) and must be submitted to, under pain of Hell and Eternal Damnation.

Now this Resolution is very false which I shall shew, 1. By confuting all the Reasons which are brought for it; and, 2. By producing some Reasons against it.

His Reasons are, 1st, A Personal Authority in the Prince, antecedent and superior to all Laws, which makes himself inviolable, tho he trample upon all Laws, and exercise an Arbitrary Power, and makes all others inviolable under him, who act by this Authority. But I have shewed already, that this Personal Authority is false and groundless, and that the King is inviolable by Law, and that this Prerogative is highly just and reasonable, and can never prejudice the Subject, for *the King can do no wrong*. And it is plain, that he cannot give such an illegal and miscalled Authority to others, if he have it not himself.

To shew that the Authority, to which we are bound to submit, is *not in Laws, but in Persons*, tho acting contrary to Law, he has brought this following Argument, which is the most

laboured of any in his Book. *Nay,* Pag. 193,
194, 195
it is very false and absurd to say, that every Illegal, is an Unauthoritative Act, which carries no Obligation with it. This is contrary to the Practice of all Humane Judicatures, and the daily Experience of Men, who suffer in their Lives, Bodies and Estates, by an unjust and illegal Sentence. For the most illegal Judgment is valid, till it be revers'd by some Superiour Court; which most Illegal, but Authoritative Judgment, derives its Authority not from the Law, but the Person of him whose Judgment it is.

Now to use his own words, this is very false, and absurd all over. For 1st, Legal and Authoritative are all one; and Illegal Authority is in English unlawful lawful Power. 2^{dly}, It is not true, That an Illegal Judgment is valid, till it be revers'd. For the Judgment of a Man to Death in an Arbitrary way, either contrary to the Verdict of his Jury, or without a Jury, is not Authoritative nor Valid at all, no not for an hour. But, I suppose, by *Illegal Judgments*, this

Author means legal Judgments which have Error in them; and if these should not be Valid, and stand Good, till that Error be found in some Higher Court, there could not be Legal, nor Illegal, nor any Judgments at all, but all humane Judicatures must come to an end. For if Judgment cannot be given, till we have Judges who are not subject to Error; the Laws must lie by and rust, and there can be no Administration of Justice. 3dly, The Authority of a Judgment which is Erroneous, is not from the Judges Personal Authority above the Law, nor from his mistakes beside the Law, but from that Jurisdiction and Authority which the Law has given to Courts and Judicial Proceedings; which, if they be in due Course of Law, are legal, and are presumed to be every way right, and as they should be, and free from Error, till the contrary appears in some Higher Court. But if the Judges in *Westminster-Hall* should use a Personal Authority superiour to Law, in judging Men to Death without a Jury, or in

condemning a Man when his Jury acquits him, or the like, the Law having given no Authority to any such Proceedings, these Judgments would be illegal and void, and have no Authority at all.

And herein I say no more than this Author himself has said in another place. For where he professedly lays down the difference betwixt an Absolute Monarchy, and the *English Constitution*, pag. 208, 209. he has these words: *An Absolute Monarch is under the Government of no Law but his own Will, and is not ty'd up to strict Rules and Formalities of Law in the execution of Justice; but it is quite contrary in a Limited Monarchy, where no Man can lose his Life or Estate without a Legal Process and Trial.* But thus do men contradict themselves, who write by rote, and without considering things! and thus does their blind Passive Obedience tie us up to Impossibilities, and oblige us to lose our Lives and Estates without a Legal Process and Trial, where, even as this Author

confesses, no man *can* lose them in such a way.

Pag. 192. *2dly.* Another reason why we must submit to illegal Violence, is this: *Because though they have no Legal Authority for it, yet we have no Legal Authority to defend our selves against it.* But he himself has given as full an Answer to this as can be desir'd, in these words, pag. 59. *For no man can want Authority to defend his Life against him that has no Authority to take it away.*

P. 191. *3dly.* We must submit to illegal Violence, because the people cannot call *inferiour Magistrates to an Account*, pag. 191. But sure the People may defend themselves against the murderous Attempts of inferiour Magistrates, without pretending to call them to an Account, or sitting in Judgment upon them: And when they themselves are called to an Account for this Defence, they may give a very good Account of it, by the 24 *H. 8.* cap. 5. *4thly,*

4thly. *We must not defend our selves* when we are persecuted to Death for our Religion contrary to the Laws of England, because we must not defend our selves when we are thus persecuted contrary to the Laws of God and Nature, which are as sacred and inviolable as the Laws of our Countrey. *Ans.* I grant that the Laws of God and Nature are more sacred and inviolable than the Laws of our Countrey; but they give us no Civil Rights and Liberties, as the Laws of England have done. Every Leige-Subject of England has a Legal Property in his Life, Liberty, and Estate, in the free Exercise of the Protestant Religion established amongst us; and a Legal Possession may be Legally Defended. Now the Laws of England in Queen *Maries* time were against the Protestants, and stript them of this unvaluable Blessing; and therefore, tho they chose rather to observe the Laws of God and Nature, than those of their Countrey, which at that time viola-

ted both the other : yet withal they submitted to the Laws of their Country, which alone give and take away all Legal Rights and Titles, and, when all is said, are the only Measures of Civil Obedience.

P. 202.

5thly. Men must not defend their Lives against a Lawless Popish Persecution, when they are condemned by no Law, because they must not defend their Lives when they are condemned by a wicked persecuting Popish Law. For such a lawless Persecution has as much Authority as such a wicked persecuting Law. This is manifestly false: For a lawless Popish Persecution has no Authority at all, but has all the Authority of Heaven and Earth against it; whereas a wicked Popish persecuting Law, tho as it is wicked it cannot command our Obedience, yet as it is a Law it may dispose of our Civil Rights. If Queen Maries Laws were no Laws, because they were wicked persecuting Laws, why were they repealed? why were they not declared to be null from the beginning?

beginning? I know the Protestants in her time, and in Queen *Elizabeths* time before they were repealed, disputed the validity of them, and would not allow them to be of any Force or Authority, as appears particularly from Mr. *Hiles* Oration to Queen *Elizabeth*, *Fox* Vol. 3. p. 977, 978. But their Reasons were, because the Parliaments were not legally constituted. *Queen Maries first Parliament was of no Authority, because, as his words are, the Commons had not their free Election for Knights and Burgesses: for she well knew, that if either Christian men or true English men should be elected, it was not possible that to succeed which she intended; and therefore in many places divers were chosen by force of her threats, meet to serve her malicious affections. Also divers Burgesses being orderly chosen, and lawfully returned, as in some places the people did what they could to resist her purposes, were disorderly and unlawfully put out, and others without any order of Law in their places placed. For the which cause that Parliament is*

void, as by a President of a Parliament holden at Coventry in 38 H. 6. appears, And the third Parliament he says was void, because the Writs of Summons were contrary to a Statute. Now these were needless and frivolous Exceptions, if a wicked persecuting Law were no Law, without any more ado. And I desire no greater Advantage in a Civil Question, than to reduce an Adversary to this Absurdity, of making no difference betwixt Laws and no Laws.

Pag 205,
206,

6thly. That Non-Resistance of illegal Violence is the best way to secure the publick Peace and Tranquility, and the best way for every man's private defence: for self-defence may involve many others in blood, and besides exposes a man's self. That is to say, when the publick Peace is violated in an high manner, the best way to secure it, is quietly to suffer it still to be broken further; a man's best defence is to die patiently, for fear of being killed; and when Murtherers are broke loose, the only way to prevent the effusion of more

Christian Blood, is to let them alone. Now in opposition to this Doctrine I shall only remember our Author, that if there had not been a Defence made against the *Irish* Cut-throats in *Forty One*, though they had the impudence to pretend the King's Commission, there had had hardly been a Protestant left, but the *pestilent Northern Heresie* had been thoroughly extirpated in that Kingdom.

7thly. Another Reason is, *Because* Pag. 212.
Non-Resistance is certainly the best way to prevent the change of a Limited into an Absolute Monarchy. Now this is so far from being true, that, on the other hand, absolute Non-Resistance, even of the most illegal Violence, does actually change the Government, and sets up an Absolute and Arbitrary Power, in the shortest way, and by the surer side. For a Prince, whom the Laws themselves have made Absolute, has thereby no more than a Right and Title to an Absolute Subjection; but Non-Resistance puts him into the actu-

al Possession of it. Our Author himself has made this out beyond all contradiction; for, pag. 44. he says, *That Non-Resistance is as perfect Subjection as can be paid to Sovereign Princes;* and, pag. 115. he calls it, *The only perfect and absolute Subjection we owe to Princes.* Now the most perfect and absolute Subjection that can be paid, erects the most absolute Government that can be devised. For those words are of Eternal Truth, which we read in pag. 63. of this Book: *For Authority and Subjection are Correlates; they have a mutual respect to each other, and therefore they must stand and fall together: There is no Authority, where there is no Subjection due; and there can be no Subjection due, where there is no Authority.* And is not this as bright and as evident a Truth: There is no absolute Authority, where there is no absolute Subjection due; and there can be no absolute Subjection due, where there is no absolute Authority?

I shall now briefly run over his Scripture-proofs, so far as they concern this second Case: For if he had multiplied his Texts of Scripture, to shew that Kings are Irresistible, I should have had nothing to say to it, because the Law has made our King so; but if the Law had not made him so, all his Texts would never have done it, as I have instanced in the Kingdom of *Poland*. For the Scripture does not erect *new Polities*, as *St. Chrysostom* long since observed; nor does the Gospel *bar or abolish any Politick Laws*, as *Luther's* constant Position was, which *Bishop Bilson* thought was undeniable.

In the Old Testament his two Examples of Non-Resistance are, *David*, and the *Jews* under *Ahasuerus*; which are the untowardest for his purpose that he could have pitch'd upon. For as for the former of them, if the Duty of Passive Obedience may be practised by a Subject at the Head of an Army, and if to decline engaging the King's Army only when it is Six to One (which

Pag. 32.

(which always, at the least, was the odds between *Saul's Forces* and *David's*) be an Example of Nonresistance, I am sure it is such Passive Obedience, and such Nonresistance, as if it were acted over again in the Highlands of *Scotland* for half the time, that it was in the Wilderness of *Ziph*, would occasion new Sermons against Rebellion, even in the same Pulpit where the substance of this Book was preach'd.

Pag. 41.

The other, he says, *was as Famous an Example of Passive Obedience as can be met with in any History*; and yet it amounts to no more than this, That the *Jews* being doomed to utter Extirpation by a Law, and delivered up as a Prey to their Enemies, thinking a Defence either unlawful or impossible (for the Scripture does not say which) did look upon themselves as lost men, till they afterwards had procured a Law, which in effect reversed the former, by publishing it to all People, *That the Jews might stand*

stand for their Lives, to destroy, to slay, and to cause to perish all the power of the People and Province that would assault them, both little ones, and women, and to take the spoil of them for a prey, Esth. 8. 11. upon which they made a vigorous and successful Defence against their Enemies, who were so hardy as to take no warning by this Law, but continued maliciously resolved to destroy the Jews, though they were thus expressly threatned that they must do it at their utmost peril. And may not those men then be as *Famous Examples of Passive Obedience*, who, if the Laws were against them, would readily submit; but having the Laws on their side, shall defend themselves against the Illegal Violence of any evil disposed persons, that never were, nor ever could be, authorized to destroy them?

As for St. Peter's Case in the New Testament, it was the Resistance of Lawful Authority, and therefore just

ly condemned by our Saviour. For the apprehending our Saviour was not an act of *unjust and illegal violence*, as our Author there says; but was done by proper Officers, by virtue of a Warrant from the Chief Priests and Elders (the Lords Spiritual and Temporal among the *Jews*) who were aided by the *Roman* Guards for fear of a rescue.

As this Author says, *Our Saviour is our Example in not resisting a Lawful Authority*; but what is that to the resisting of those that have no Authority? And yet if our Saviour had practised Non-resistance towards persons having no Authority, it had not been binding to us, no more than his not appealing to *Cæsar* hindred *St. Paul* of his appeal.

In a word, There is not a Case or a Text, which he has argued from, in Scripture, which he has not perverted and abused.

I shall answer the Arguments used in this Question, which are taken out of the *Acts* concerning the Militia, and which are mentioned by this Author, p. 111, 112. by giving the Reader a particular and distinct view of those Acts: whereby it will appear that we are not enslaved by those Acts, neither are the Subjects hands tied up from making a legal defence against illegal Violence.

There are three Statutes concerning the Militia. The first, 13 *Car. II. cap. 6.* which was an Interim or Temporary Provision till the Militia Act could be perfected, Entituled, *An Act declaring the Militia to be in the King, and for the present ordering and disposing the same.* The second is 14 *Car. II. cap. 3.* to establish the Militia; Entituled, *An Act for Ordering the Forces in the several Counties of this Kingdom.* And the third is an Explanatory and Supplemental Act; Entituled, *An Additional Act for the better ordering of the Forces in*
the

The two former of those Acts have the very same Preamble, in these words. ‘ Forasmuch as within all his
‘ Majesty’s Realms and Dominions,
‘ the sole Supreme Government,
‘ Command, and Disposition of the
‘ Militia, and all Forces by Sea and
‘ Land, and of all Forts and Places
‘ of Strength, is, and by the Laws of
‘ *England*, ever was the undoubted
‘ Right of His Majesty, and His Royal
‘ Predecessors, Kings and Queens of
‘ *England*; And that both, or either
‘ of the Houses of Parliament cannot,
‘ nor ought to pretend to the same;
‘ nor can, nor lawfully may raise, or
‘ levy any War Offensive or Defen-
‘ sive against His Majesty, His Heirs,
‘ or lawful Successors; And yet the
‘ contrary thereof hath of late years
‘ been practised almost to the Ruine
‘ and Destruction of this Kingdom;
‘ and during the late usurped Go-
‘ vernments, many evil and Rebelli-

ous Principles have been instilled
into the minds of the People of this
Kingdom, which unless prevented,
may break forth to the disturbance
of the Peace and Quiet thereof.

This Preamble consists of five
Clauses, of which the three first are
concerning matter of Law, and the
two last concerning matter of Fact.

In the first Clause there are these
two things evidently contained. *First*,
That the Militia is in the King by
Law. *Secondly*, That the Militia's
being in the King, is no new Power,
but was ever the undoubted Right
of all the Kings of *England*. Con-
clusion; Therefore, unless the Peo-
ple of *England* were ever Slaves un-
der all former Kings, they are not
made Slaves by this Declaration.

The two next Clauses say, That
both, or either of the Houses of
Parliament, cannot pretend to the
sole Supream Government, Com-
mand,

mand, and Disposition, of the Militia, Forces, Forts, and Places of Strength.

Nor can raise or levy any War against the King; But neither is it here said, that the King can or lawfully may raise or levy any War against both, or either of the Houses of Parliament, or any of his *Liege* Subjects.

The two last Clauses are concerning matter of Fact; in these words, *And yet the contrary thereof hath of late years been practised*; That is, the Houses did pretend to the sole Supreme Government, Command, and Disposition of the Militia, Forces, Forts; and did raise and levy War against the King.

And during the late usurped Governments, many Evil and Rebellious Principles were instilled into the minds of the People; such, I suppose, as asserted the Militia to be in the Parliament, &c.

As to the Body of the first Act it is all of it either repeated in the second, or else superseded by it, and therefore we are next to consider what is enacted in the *14th. Car. 2. cap. 6.* And immediately after the Preamble before recited, there are these Words. “ Be it therefore De-
 “ clared and Enacted by the King’s
 “ most Excellent Majesty, by and
 “ with the Advice and Consent of
 “ the Lords Spiritual and Temporal,
 “ and Commons in Parliament Af-
 “ sembled, and by the Authority of
 “ the same, That the King’s most
 “ Excellent Majesty, his Heirs and
 “ Successors, shall, and may from
 “ Time to Time, as occasion shall
 “ require, issue forth several Com-
 “ missions of Lieutenancy to such
 “ Persons as his Majesty, his Heirs
 “ and Successors shall think fit to be
 “ his Majesties Lieutenants for the
 “ several and respective Counties,
 “ Cities, and Places of *England,*
 “ and Dominion of *Wales,* and Town
 “ of *Berwick upon Tweed*; which
 “ Lieutenants shall have full Power
 D “ and

“ and Authority to call together all
“ *such* Persons at *such* Times, and to
“ arm, and array them in *such* Man-
“ ner as is hereafter expressed and
“ declared; and to form them into
“ Companies, Troops, and Regi-
“ ments; and in case of Insurrecti-
“ on, Rebellion, or Invasion, them
“ to lead, conduct, and imploy, or
“ cause to be led, conducted, or im-
“ ployed, as well within the said
“ several Counties, Cities, and Pla-
“ ces for which they shall be Com-
“ missionated respectively, as also
“ into any other the Counties and
“ Places aforesaid, For suppress-
“ ing all such Insurrections and
“ Rebellions, and repelling of Inva-
“ sions as may-happen to be, accor-
“ ding as they shall from Time to
“ Time receive Directions from his
“ Majesty, his Heirs and Successors;
“ And that the said respective Lieu-
“ tenants shall have full Power and
“ Authority from Time to Time, to
“ constitute, appoint, and give
“ Commissions to such Persons as
“ they shall think fit to be Colonels,

“ Majors, Captains, and other Com-
 “ mission-Officers of the said Persons
 “ so to be armed, arrayed and wea-
 “ poned, and to present to his Maje-
 “ sty, his Heirs and Successors, the
 “ Names of such Person and Per-
 “ sons as they shall think fit to be
 “ Deputy-Lieutenants, and upon his
 “ Majesties Approbation of them,
 “ shall give them Deputations ac-
 “ cordingly ; always understood
 “ that his Majesty, his Heirs and
 “ Successors, have Power and Au-
 “ thority to direct and order other-
 “ wise, and accordingly at his and
 “ their Pleasure, may appoint and
 “ commisionate, or displace such
 “ Officers ; any thing in this Act
 “ to the contrary notwithstanding :
 “ And that the said Lieutenants re-
 “ spectively, and in their Absence,
 “ out of the Precincts and Limits of
 “ their respective Lieutenancies, or
 “ otherwise by their Directions, the
 “ said Deputy-Lieutenants, during
 “ their said respective Deputations,
 “ or any two or more of them, shall
 “ have Power from Time to Time,

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“ to Train, Exercise, and put in
“ Readiness; and also to Lead and
“ Conduct the Persons so to be ar-
“ med, arrayed and weaponed, by
“ the Directions, and to the In-
“ tents and Purposes, as is hereafter
“ Expressed and Declared.

Here you see all is Regulated and Limited; and the Lieutenancy have no other Powers nor Authorities, nor can execute them but by the Directions, and to the Intents and Purposes, expressed and declared by Law.

Consequently, The Lieutenancy have no Power to raise Insurrections or Rebellions, or to assist Invasions, for that is directly contrary to the Intent and Purpose of this Act, which is, *In Case of Insurrection, Rebellion or Invasion (whereby occasion shall be to draw out the Militia into Actual Service) to employ these Forces for suppressing all such Insurrections and Rebellions, and repelling of Invasions, as it is frequently repeated in this Act.*

Nor, *Secondly*, have they Power to act contrary to the Directions of these Acts, as for Instance, to
search

search for Arms in the Houses of Persons judged to be dangerous, without a Constable or Parish-Officer ; nor to search in Villages or Country-Towns (other than within the Bills of Mortality) between Sun-setting and Sun-rising ; nor have the Commissioned Peers Power to imprison a Peer, where he is expressly excepted from that Penalty.

The rest of this Act is spent in charging the Quota's and Proportions of Men and Arms, in setting Pay for the Souldiers, and in declaring what Powers and Authorities shall be executed in all Cases relating to the Militia : And to the Persons concern'd we leave them, only taking notice of this Oath, which is directed by the Act to be administred to all Officers and Souldiers in the Militia, in these following Words. **I A. B. do declare and believe that it is not lawful upon any pretence whatsoever to take Arms against the King ; And that I do abhor that Traiterous Position, That Arms may be taken by his Authori-**

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ty against his Person, or against
those that are Commissioned by Him,
in pursuance of such Military Com-
missions. But, as I said before,
neither are the People of *England*
enslaved by this Oath. For as for
the first Clause, It never was law-
ful upon any Pretence whatsoever to
take up Arms against the King, for
that, in other Words, is to levy War
against Him. And as for the first
part of the Position to be abhorred,
That Arms may be taken by the
King's Authority against his own
Person, it was always Traiterous
Non-sence, and fit to go along with
the other Proposal in the *Oxford Ex-*
pedient; of inthroning the Name
of a Prince, but banishing his Per-
son 500 Miles off under Pain of
Death. And so the other part of
the Position, That Arms may be ta-
ken by the King's Authority against
those who have received Authority
from the King, in the Execution of
that very Authority, is Stuff as ill
put together as the other; for it
makes the King's Authority to sup-
plant

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plant and destroy it self. And therefore the renouncing and abhorring of such Positions can never be interpreted to be parting with our English Liberties, which having been all along preserved by our Ancestors, at a vast Expence both of Blood and Treasure, must needs be presumed to be something that was more valuable than barbarous Nonfence.

But because there are many Men, who (like *Trouble-all* in *Bartholomew-Fair*) take two or three Words under the Hand of a Magistrate to be a sufficient Warrant for any thing, and think all to be Commissions which are so called, whether they be so or no, it will be necessary to take into Consideration this last part of the Oath, and to shew,

1. What a Commission is. And,
2. Who act in Pursuance of such Commission.

1. A Commission is the Legal Appointment of a Legal Person to execute or exercise some Legal Power or Authority. And therefore the first

thing requisite to a Persons being Commissionated, is, that he be Legally appointed. So Dr. *Falkner* commenting upon this Clause of the Oath, by a Commission, understands a Commission *regularly granted*. *Book 2. chap. 1. Sect. 6.* But though, as he says, that be *the true Sense of the Clause*, yet it is not the whole Truth. For tho a Commission may be issued in due Form of Law, and be regularly granted, yet the Incapacity or Disability of a Person to receive a Commission, or the Illegal Powers of the Commission it self, may render it void.

2. The next thing requisite to a Person being Commissionated is, that he be a Legal Person. For First, a Person may be incapable by Law of being Commissionated; as he that was not a Natural-born Subject of *England*, was incapable of being an High-Commissioner. Or Secondly, A Person may be disabled by Law from having a Commission, by being convicted of some Offence against the Laws, which is punished by such a dis-

disability. Or 3dly, Which we may likewise refer to this Head, a Person may be unqualified by Law, to execute a Commission, or act by Virtue of it, till he have perform'd some Condition required by Law: As for Instance, till he have taken his corporal Oath for the due and impartial Execution of the Trusts committed to him; or as in the Militia-Act every Lieutenant, Deputy-Lieutenant, Officer and Souldier remains unauthorized till he have taken the Oath. For in all these Cases, where the Law says no Man shall be enabled or impowered, he is not impowered.

The third Requisite to a Person's being Commissionated, is, that he be appointed to execute or exercise some Legal Power and Authority. No Man can be commissioned to exercise Powers which are illegal and Arbitrary, and which the Law says shall not be exercised. And therefore all such Commissions are null and void, that is, they are no Commissions. As for Instance, Letters Patents, or Commissions to erect a Court

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Court with such Powers and Authorities as the High-Commission Court had ; or because we are speaking of Military Commissions, a Commission for Proceedings by Martial-Law, contrary to the Laws and Franchises of the Land.

The next thing is to consider, when a Man acts in Pursuance of his Commission. And First, It is plain that he does not act by Virtue nor in pursuance of his Commission, who exceeds the Legal Powers and Authorities of his Commission. For in those Acts he is not authorized and impowered, but acts of his own Head. Secondly, Much less does he act in pursuance of his Commission, who acts quite contrary to the Intents and purposes of his Commission. As for Instance, he who in case of Insurrection, Rebellion or Invasion is Commissionated to lead & employ the Militia for the suppressing such Insurrection, or Rebellion, or for repelling such Invasion, if instead of this he himself shall raise an Insurrection or Rebellion, or assist an Inva-

tion, he pursues his Commission to Death, and acts in direct opposition to the end for which the Law has impowered him, and does that which he neither is, nor can possibly be authorized to do.

But because no Commission can be given, no Power can be granted, no Authority can be entrusted with any Person, but may be unfaithfully discharged, yea though men be sworn to the due and impartial Execution of it; it may be made a Question, Whether Legal Powers and Authorities which are not duly and truly and impartially executed, are Authoritative, and consequently must be submitted to?

To which it must be Answered, That a trust is inseparable from an Office or Commission, and that no Legal Power or Authority can be so cautiously regulated, but that still something that is within the Compass of that Power and Authority, must be left to the Honesty and Integrity of him that executes it. Only it is the Perfection of the English Laws.

Laws, whereby they have preserved the Franchise of the Land, that they have left very little to the Discretion of those who are intrusted with the Execution of them, but in all Cases have secured the main. As where they have left Fines at the Will of the King, still it is *Salvo Contentemento*. But where the Law has expressly intrusted a Commissioner with the exercise of some Power, while he acts within the Bounds and Limits of his Authority, there he is to be submitted to, though he should exercise that Power amiss. As for instance in this Act, "The said respective Lieutenants and Deputies, " or any three or more of them, shall " have Power to hear Complaints, " and examine Witnesses upon Oath, " (which Oath they have hereby " Power to Administer) and to give " Redress according to the Merits " of the Cause, in matters relating " to the execution of this Act. Now if they do not faithfully discharge this Power, nor give Redress according to the Merits of the Cause,

Cause, a Man must even put his Complaint in his Pocket, till he can have legal Redress elsewhere. This Act likewise inables the Lieutenants, or any two or more of their Deputies, to warrant the seizing of all Arms in the Possession of any Person, *whom the said Lieutenants or any two or more of their Deputies, shall judge Dangerous to the Peace of the Kingdom.* Now if they shall abuse this Power, which is for securing the Peace of the Kingdom, to the disarming the Loyalest and Best Subjects the King has; and will not restore these Arms to the Owners again, (nor they be able to recover them by Replevin) it cannot be help'd; nor indeed is it of very great Importance, because they may buy more. But, as I said before, where the Property or Liberty or Lives of the Subject are concern'd, this very Act has been careful to secure them; so as to forbid searching for Arms in the Night-time (unless within the Bills of Mortality, Cities, & Market-Towns) and every where has required

it to be done with a Parish-Officer ; whereby both the Persons and Goods of the Subject are least exposed.

It has likewise been careful to provide, “ That neither this Act, “ nor any matter or thing therein “ contained, shall be deemed, con- “ strued or taken to extend to the “ giving or declaring of any Power “ for the transporting of any of the “ Subjects of this Realm, or any “ way compelling them to march “ out of this Kingdom, otherwise “ than by the Laws of *England* “ ought to be done. And yet some Men, I cannot say have deemed and taken, but I am sure have wickedly construed this Act to extend much farther, even to a Power of destroying the Liege Subjects of this Realm, and marching them out of the World, otherwisethan by the Laws of *England* ought to be done. But this last Proviso has sufficiently confuted all such mischievous Doctrine.

Where is Arbitrariness then ? It is excluded. By what Law ? Even by the Imperial Law, or Law of the

Prerogative: For though the Power of the Sword is declared in these Acts to the full, yet they have taken care to prevent all such dangerous Mistakes, as if thereby those that are Commissionated by the King had any Power of transporting his Liege Subjects, or compelling them to march out of the Kingdom; and much less have they any Power to destroy them at home, as both *Magna Charta*, and the Petition of Right, 3 *Car.* intituled, A Declaration of divers Rights and Liberties of the People to the King's most Excellent Majesty, do fully declare.

Now I would fain know wherein those who transport the King's Liege Subjects, without any Power to transport them, differ from Kidnappers? or those that destroy them, without any Power to destroy them, differ from Murderers? And surely the People of *England* have a Legal Right, and several Legal ways, to rescue themselves from Kidnappers and Murderers, without pretending to the Command of the Militia!

But though the last mentioned *Proviso* was twice Enacted, yet comes the Pulpit Law and utterly repeals it (as it does the 13th of *E-liz.*) and says the Subjects of *Eng-land* must be Compelled, and shall be Compelled to march out of the Kingdom, if those that are Commissioned by the King shall think fit. For though these have no Power to Compel, yet the Subjects of *Eng-land* are bound in Conscience to know their Duty and their Drivers, and to supply this lack of Legal Power by the inward Impulses of their own Spiritual, and never-failing Passive Obedience; and must either go out of the Kingdom upon this Occasion, or go to the Devil for their wicked and rebellious Refusal. It likewise repeals all the Legal Limitations, which have ascertained Penalties for the several Offences committed against the Laws. As for Instance in this Act, whereas the Law says, “ That the chief
“ Commissioned Officer upon the
“ place may imprison Mutineers, &

“ such

“ such Souldiers as do not their Du-
 “ ties, and shall and may inflict for
 “ Punishment for every such offen-
 “ ces any Pecuniary Mulct, not
 “ exceeding five Shillings; or the
 “ Penalty of Imprisonment without
 “ Bail or Mainprise, not exceed-
 “ ing twenty Days. The Doctrine
 of Passive Obedience makes nothing
 of these Legal Restrictions, and
 says, that Men must submit to per-
 petual Imprisonment, or to be hang-
 ed for such Offences, or for no Of-
 fence at all, if those that are Com-
 missioned will have it so.

I humbly submit it to the Wis-
 dom of our Legislators when they
 shall be assembled in Parliament,
 Whether they will endure to have
 all their Laws thus used, and suffer
 them to be put into a Bottomless Bag
 (as the Poets say *Jupiter* disposes of
 Lovers Vows) of a boundless and
 endless passive Obedience.

But because some Men have mo-
 ved another Question, Who shall be
 Judg when there is an Insurrection,
 Rebellion or Invasion? and conse-

quently, whether there be occasion or not, according to Law, to imploy the Militia, and to draw them forth into Actual Service? it is fit to say something to it. To which I answer, That the Law has judged already, and determined the matter to our hands; and all English-Men know as well, as if they had the Opinion of all the Judges, that going peaceably to Market, or to their Parish-Church, is neither Insurrection, Rebellion, nor Invasion. But I have long since observed, that those who would inflave Men, either under an implicit Faith, or a blind Obedience, are very pert in putting such Questions; *The Scripture is the Rule of Faith, but who shall be Judge of the sense of it?* And when you have once allowed them that point of an Absolute Judg, then presently an Apple shall be an Oyster, Bread shall be Flesh and Blood and Bones, Pig shall be Pike, and a Dog shall be a Catawimple. Now, I humbly conceive, there is no need at all of constituting a Judg to resolve that
the

the Barbar's Bason is not *Mambrino's* Helmet, when none but a Madman who is bent upon seeking Adventures, and is ready to pick Quarrels with all Mankind, will say it is.

As to the third Act concerning the Militia 15 Car. 2. c. 4. I shall only take notice of one Clause of Indemnity, in these Words. " And it is further declared and enacted, That all
" and every Person and Persons
" which since the five and twentieth
" day of *March*, one thousand six hundred sixty and two, have acted or
" done any thing in the dismantling
" of any Cities or Towns, or demolishing of Walls and Fortifications thereof, or relating thereunto,
" shall be, and are hereby indemnified and saved harmless. Now this was long after the Militia had been declared to be in the King, & yet these Persons having exceeded their Legal Powers, stood in need of an Indemnity by Act of Parliament: which had bin vain, if the King's Command, or their own Commission would have justified them, and born them out in it.

I come now in the 2^d place to produce some Reasons to prove the Lawfulness of defending our selves against Illegal Violence; which is a Truth so obvious and so agreeable to the common sense of Mankind, that even those Men who set themselves to oppose it, do oftentimes assert it unawares, and give unanswerable Reasons for it. I shall therefore first set down those Concessions which the Force of Truth has extorted from this Author, and 2^{dly} add some other Arguments to them.

1st. No Man wants Authority to defend his Life against him who has no Authority to take it away. p. 69. But no Man whatsoever has any just and legal Authority (that is, any Authority at all) to take it away contrary to Law. p. 190, 191. And from these premises it is easy for any Man to infer the Conclusion.

2dly. He that resists the Usurpations of Men, does not resist the Ordinance of God, which alone is forbidden to be resisted. But Acts of Arbitrary and Illegal Violence are the Usurpations of Men. Therefore, &c. These

These again are our Author's Doctrines, the former p. 128. l. 15. the other p. 211. l. 11. as likewise 212. l. 22. he acknowledges, that the assuming of an Absolute and Arbitrary power in this Kingdom would be *Usurpation*; tho he says at the same time *that no Prince in this Kingdom ever usurped such a Power*: which is notoriously false: for *Richard the 2d* by name did, not to mention any other.

3dly. A 3d Argument which this Author furnishes us withall, is this, p. 164, 165. *The Reason why we must submit to Governours, or Subordinate Magistrates, is, because they are sent by our Prince, and act by his Authority; and we must never submit to them in opposition to our Prince.* Now nothing is better known in this Kingdom, than that those who commit Illegal Violence, do not act by the Princes Authority; for, as our Author says, p. 190. he himself *has no just nor legal Authority to act against Law*; and therefore we need not submit to them in such Acts. Nay, farther, according to this Author, *we must never*

never submit to them in this Case, because they are in opposition to our Prince; for they act against the Peace of our Sovereign Lord the King, his Crown, and Dignity; as the Law has evermore interpreted such Acts.

4thly. Our Author, p. 126. has these Words: *Every Man has the Right of Self-Preservation, as intire under Civil Government, as he had in a state of Nature. Under what Government soever I live, I may still kill another Man, when I have no other way to preserve my Life from unjust Violence by private Hands.* Now the Hands of subordinate Magistrates, imployed in acts of Illegal Violence, are private Hands, and armed with no manner of Authority at all; of which this is a most convincing Proof, That they may be hanged by Law for such Acts, which no Man can or ought to suffer for what he does by Authority. They are no Officers at all in such Acts, for Illegal Violence is no part of their Office.

This is sufficient to shew, that this Author holds so much Truth, as would have led him to his own Conviction, if he had but attended to the immediate consequences of it, instead of blending it with a great many Falshoods: and after he has answered his own Arguments, I shall desire him to do as much for these which follow.

1. No Man can authorize himself. But in acts of Illegal Violence if a subordinate Magistrate have any Authority at all, he must authorize himself. For it is a Contradiction to say the Law authorizes him to do an Illegal Act, as our Author well observes p. 195. and it is as false to say, that the King who can do no wrong, can authorize another to do it. In the great Conference of the Lords and Commons, 3^o Caroli, concerning the Contents of the Petition of Right, the Law was held to be, *That if the King command a Man to do Injury to another, the Command is void, and the Actor fit Author, and the Actor becomes*

Ephemeris
Parliam.

comes

comes the *Wrong-door*. That is, he acts of his own Head, and authorizes himself.

2dly. The Illegal Violence of Subordinate Magistrates cannot be more Irresistible, only by being more Criminal than it is in other Men; for that would be to make a Man's Crime to be his Protection. But Illegal Violence done by subordinate Magistrates, is not only as inautho-ritative, as if it were committed by private persons, but likewise more criminal; as being done with a face and colour of Authority, and under pretence of Law, making the partaker of their Crime, violating and blemishing the Law at once.

I might multiply such Arguments; but if this Author will please to give a full and clear Answer to these only, I here promise to be of his Opinion.

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