

fault the Goods of their Fellow Subjects were seized. He granted Letters of Mark against their Enemies, having abused their Commissions by robbing the Friends of the Dutch, and refusing to return when recalled: It was questioned whether the States were obliged to repair those damages, either because they made use of wicked Instruments, or did not require sufficient Surety from them for their due observance of the Commissions? J. Grotius (lib. 2. cap. 17. §. 20.) was of Opinion, that y^e States stood obliged only to punish or deliver up the Rogues when apprehended, and to take care to make reparation out of their Goods. Seeing 1^o The Commission from the States was not the true Cause of the wrong done to their Friends, but the Abuse of that Commission; and private Men might Arm their Ships, and put out to Sea without any Commission. 2^o They could not foresee, that such Men would betray their Trust: nor could they altogether avoid making use of wicked Men; for otherwise it was not possible for them to raise an Army. 3^o If their Soldiers by Sea or Land invade their Allies contrary to the Command of y^e Supreme Magistrate, they are not bound to Reparation. We have a Law in Scotland something Analogous to that Law of Nations concerning Reprisals; where by its Lawfull to those whose Goods are stolen or robbed by Notorious Thieves and blocken Men of Clans, to apprehend & put to death at their own hand with y^e Goods of the offender, or of any other of the same Clan till Court and reckoning, Act. 112. 1707. Act. 16. par. 10. §. 6. 29. November 678. More Contra M^o what Contend by force. The Question if it be Lawfull at any time to make War is largely handled by Grotius de jure Belli & Pacis lib. 1. cap. 2. who proves the affirmative, from Treason, Cruelty, and humane Authority, and sufficiently answers all objections. War is divided into publick and private War: y^e one made by private, and the other by publick Authority. Publick War is either Solemn according to the Law of Nations, or less Solemn that is waged without the rites & formalities observed in the other. My Business here being to treat only of Solemn publick War, I shall then first by whom such a War may be commenced and directed. 2^o For what Causes. 3^o The rites and formalities required in the denouncing of War. 4^o Who are obliged to serve in the War. 5^o What may be lawfully done in y^e War. 6^o How that which is lost in War may be recovered. 7^o The Nature and effect of Publick compacts between Enemies. 8^o Of Military privileges and encouragements to serve in War.

By whom a Solemn publick War may be commenced and directed?

This War should commence and be directed by the Supreme Authority on both Sides, the right of War being Godd^o in the Sovereign, J. Grotius lib. 1. cap. 3. §. 4. Thus y^e power of Making peace or War was declared to be the prerogative of the Crown Act. 5. par. 1. Sep. 1. Ch. 2. Which was afterwards limited in the 1703. Act. 5. par. 1. §. 9. A. Whereby y^e Sovereign of Scotland and England after Queen Anne and the heirs of her Body, was to have the power of making War without Consent of Parliament. But y^e Law is now since the Union repealed as inconsistent with the

the Articles thereof by a Statute of the parliament of great Britain 6. A. cap. 2. under the right of making War, is contained that other of arming the Subjects, of Leading or sending them abroad upon expeditions, the right to raise Money upon them, and other necessary Manner against the Enemy, and how far to be a Soldier and to Act offensively in a hostile Manner, a Man must be Commissioned by Publick Authority, Puffendorf.

A General to whose Conduct the War is intrusted by the Sovereign, having an unlimited Power, may use what Measures he thinks fit, either to disquiet and offend his Enemy, or defend himself. But Generals having limited Commissions, have no farther power than those give them. However the General, whether his Commission be limited or not, may use what Method he thinks best to defend himself against the Enemy, when they have advanced too far to give him an Opportunity of making an Honourable retreat, Puffendorf.

A Governour of a Province or Town especially if he have any good Number of Soldiers under his Command ought to make the best Resistance he can, when he is invaded by an Enemy, without expecting Instructions from the Sovereign: But he is not to carry the War into a foreign Countrey without an express Commission, Puffendorf. An Inferiour Commander left in trust with a Body of Soldiers for the Defence of a Town or Fort, is obliged to do the out most he possibly can for its Security, and indeed to hold out so long in defence of it, till he sees the Place must inevitably be carried by Storm, and his forces cut off, Puffendorf.

For what Causes War may be Commenced.

There be so many Causes of a Just War, as there are Causes of Civil Actions. For ubi definit Judicia incipit Bellum. These Causes may be reduced to three heads 1^o To defend our selves & properties against others that design to do us harm, either by assaulting our Persons, or taking away or Ruining our Estates. 2^o To assert our Rights, when others who are justly obliged refuse to pay them to us. 3^o To recover Satisfaction for Damages we have injuriously sustained: and to force the Persons who did the injury to give Caution for their good Behaviour in time coming, J. Grotius lib. 2. cap. 5. Puffendorf. Hence arises the division of Just Wars into offensive, and Defensive. The latter of which I take to be those sorts of Wars, in which Men endeavour to defend and keep what is their own. The former are, when Men extort their Rights that are denied, by force attempt to recover what hath been unjustly taken from them, and require Caution or Suretyship for the future. Men not only make War upon their own Account, but also for others. To answer the Justice where it is necessary 1^o That the party assisted have just reason for War. 2^o That the party who assist be under some particular

The power of making War or peace is no longer in the King; but is now in the Parliament. See the Statute in the 13th year of Queen Anne, cap. 2. §. 9.