

High Treason.

There may be some Kings de facto to whom it may be dangerous to do any services viz such as shall depose a Rightful King: and according to the Lord Chief Justice Hale If the Right heir of the crown be in the actual exercise of the Sovereignty in one part of the Kingdom and a usurper in the exercise of it in another, the Law adjudges him in his possession that hath the true right and the other is not a King de facto, but a disturber, and no King: Thus was the case King Edward 4 and Hen. 6. And the like was hold as to Queen Mary, at the same time that Lady Jane was proclaimed Queen at London on the nomination of K. Edw. 6. that both being de facto in possession of the crown, the Law adjudged possession in Mary, who had the Right to the same. State Trials. 937

Concerning the Kings Regalities in passing Acts of parliament.

There is no known or written Law that gives the King any Regalities in the making Laws. That his Majesty hath fundamentally a Right of Consent to the Enacting of Laws is true, which is part of that Honourable Trust constituted in him: and that his Royal Assent is an act of Honour, and not of ad =  
= solute or regal power or prerogative appears by these following Reasons. 1<sup>o</sup> By his oath at the coronation where he doth or should swear to confirm and grant all such good Laws as his people shall choose to be observed. 2<sup>o</sup> By the practice of requiring the Royal Assent even unto those very Acts of subsidies which are granted to him self and for his own use, which is supposed he will accept of, and yet honours Gratia is his Royal Assent and contributed therunto. 3<sup>o</sup> By the Kings not sitting in parliament to consult and debate Laws, nor are they at all offered to him to consider of but he consent to, which yet are transmitted from one House to another, as well to consult as to consent to, showing thereby he hath no part in the consultory part of them (for that belongs only to the people in parliament to deliberate and consult their own good) but he comes only at the time of Enacting, bringing his Royal Authority with him as it were to set the Seal therof to the Undertaken already prepared by the people, for the King is head of the parliament in regard of his Authority, not in regard of his Reason or Judgment as if it were to be opposed to the Reason or Judgment of both Houses (which is the Reason both of King and Kingdom) and therefore do they, as consult so also in respect of Laws without him, supposing him to be a person respected with honour and Royal Authority, not skilled in Laws, nor to receive Information either of Law or Counsel in parliamentary Affairs from any, saving from that supreme Court and highest Council of the King and Kingdom, which admits of no counterpoise being entrusted both as the wisest counsellors and justest Judicators. 4<sup>o</sup> Either the choice of the people in parliament is to be the ground and Rule of the Kings Assent, or nothing but his pleasures, and so all Bills the more so necessary for publick good and preservation, and after notwithstanding so much pains and consultation of both Houses may be rejected, and so they made cyphers, and not brought to that pass as either to have no Law, or such only, as come immediately from the King and then what difference betwixt a free Monarchy, and an absolute, saving that the one rules without Counsel, and the other against it or at best but to a cabinet council consisting commonly of men of private Interests, but certainly of no publick Trust. 5<sup>o</sup> But if the King must consent to such Laws as the parliament shall choose so nominally, they may then propose unreasonable things to him, as to consent to his own deposing or to the loosening of his Revenues. Answer. So that the Issue is, whether it be better to trust the wisdom and Integrity of our parliament, or the will and pleasure of the King in this case of so great and publick concernment. In a word the King being made the fountain of Justice and protection to his people by the fundamental Laws or Constitution of this Kingdom, he is therefore to give life to such acts and things as tend therunto, which acts depend not upon his pleasures, but the they are to receive their greater vigour from him, yet are they not to be suspended bound to perform it, where his Authority properly respects, for if he refuse that honour which the Kingdom by its fundamental constitution hath conferred upon him, and will not put forth the Acts of it, for the end it was given him, viz for the Justice and safety of his people this hinders not but that they who have as fundamentally reserved a power of being and well being in their own hands by the concurrence of parliamentary Authority to the Royal dignity, may thereby provide for their own Subsistence: where in is acted the Kings Juridical Authority, though his personal pleasure be with the Acts of the courts of Justice, whose being he may as well suspend as their power of acting for that without this is but a cypher, and therefore neither their being nor their acting to depend upon him, as not with them, and yet both to depend upon him, as that he is bound both in duty and Honour by the constitution of this polity to act in them and they for him, so that (according to the Axiom in Law) the King can do wrong, because his Juridical power and Authority is always to control his personal mis carriage. Of the Fundamental or publick constitution of England, State Tracts published London 1693 part 2 pag 25. 26. But there is no great hazard of the Kings regalities being exercised, as only to give occasion to both Houses more maturely to consider the necessity of what they have offered, happened in the happy Reign of King William the third, when Bills which first had been refused, were afterwards received at the second offering.

For with too much violence claim'd.