

The changes talked of to take place in Administration are entirely laid aside, though such a measure was in agitation a few days since. Lord Chatham was not sent for to court. His Lordship was there, but his business, we are informed, was solely to acquaint his Majesty that he had two sons, whom he should be glad to see provided for, one of whom he intended for the army, and the other for the navy.

Yesterday evening, about seven o'clock, an Express was received at St. James's from Berlin, and this morning a Messenger was sent off with dispatches to the English Minister at that Court.

July 2. It is now generally thought, that several English merchants and factors, of the first eminence and property, wearied out with the partial and unjust treatment of the Portuguese Prime Minister, are preparing to quit the dominions of his most faithful Majesty, and return home.

ANNAPOLIS, SEPTEMBER 10.

The Managers of the ANNAPOLIS LOTTERY request immediate Payment of all Persons who may have purchased Tickets on Credit, in order to enable them to discharge the Prizes with Punctuality, as the Lottery will certainly begin drawing this Afternoon.

TO THE PRINTERS.

BE pleased to give the following Opinion a Place in your Gazette, and you'll oblige many, but particularly
Anne-Arundel County, B. H.
5th Sept. 1772.

C A S E.

THE Province of Maryland was in the Hands of the Crown in the Reigns of King William and Queen Anne. A General Assembly, in the Time of William, had been legally chosen by the King's Writ of Election and Summons: King William died on the 8th March 1701-2: Without any fresh Writ of Election and Summons the Assembly afterwards met, and on the 16th March 1701-2 made and enacted the contested Law, commonly called the Forty per Poll Law.

Ques. Is this Forty per Poll Act a Law or not?

The King being the Fountain of all Judicature, the Writ of Summons of the Parliament issues in his Name, and by his Authority; and the Parliament commences and is held by such Writ of Summons: All Commissions, Civil and Military, flow from him: And all Process in the several Courts of Justice proceeds from him and in his Name. At Common Law, therefore, upon the Demise, or Death of the King, the Writ of Summons abated, and the Parliament was dissolved; all Commissions, Civil and Military were determined; and all Process in the Courts of Justice abated, or discontinued. To prevent the Inconvenience, Delay and Expence of a general Abatement, or Discontinuance of Process in the Courts of Justice, an Act was passed in the Time of Edward the Sixth; but not being large and comprehensive enough, the Act of 1 Anne, Cap. 8, was afterwards enacted. The Continuance of all Process in the Courts of Justice by the Act of Edward VI, after the Demise of the King did not invigorate, or impliedly revive the Patents of the Justices, or Commissions of the Judges. This was a Mischief, which called for Redress; and hence the Statute of the 7th and 8th of William III. Cap. 27, which being local, and not reaching the Plantations, was afterwards extended by the above Act of 1 Anne, Cap. 8. Another Mischief demanded Redress;—The Dissolution of the Parliament by the Abatement of the Writ of Summons, upon the Demise of the King: Wherefore the Act of 7 and 8 William III. Cap. 15, was enacted. This Act is expressly confined to Great Britain and not extended to the Plantations.

By Virtue of the Provisions in the above several Statutes, I admit, upon the Demise of King William, the Proceedings in our Courts of Justice were not abated or discontinued: And I also admit, the Commissions in this Province, Civil and Military, were not determined: But I hold the Assembly was dissolved.

I lay out of the Case the Act of 7 and 8 William III. Cap. 15, which provides against the Dissolution of the Parliament at Home. I presume no Gentleman of legal Knowledge will oppose it against me: the Act being local and not extending to the Plantations.

The Common Law operates till suspended or abrogated by Statute: Upon the Demise of the King, the Writ of Summons of the Parliament, at Common Law, abated, and the Parliament was dissolved: I ask, upon the Demise of King William, what Statute prevented the Abatement, or Discontinuance of the Writ of Summons, by which the Assembly of this Province was then held? If no Statute existed, the Common Law attached, and the Assembly was dissolved.

I have been told a Gentleman of a very respectable Character has given a different Opinion, and relies upon the Act of 7 and 8 of William, Cap. 27, (extended to the Plantations by the Act of 1 Anne, Cap. 8.) which enacts, that all Commissions, Civil and Military, shall remain in full Force for Six Months after the Demise of the King.

I grant the Commission of the Governor upon the Death of King William did not cease or determine: I also grant, that the Governor is invested with the Powers of summoning, proroguing and dissolving, the Assembly: But these Concessions cannot influence the Case.

When we speak of the Powers of the Governor to summon, prorogue, and dissolve, we ought to be explicit in our Ideas. The Governor has no exclusive Authority in this Department of his Office: The Writ of Summons for an Assembly issues in the King's Name, tested only by the Governor: The Prorogation is made in the King's Name: And so is the Dissolution.

The Assembly, then, being held by the King's Writ of Summons, what avail the *substituting Commission* of the Governor upon the Point of Abatement or Discontinuance? The Writ may abate without affecting the Com-

mission: There is no Clashing or Repugnancy: A Summons might have issued for a new Assembly in the Name of Queen Anne, and every Power might have been exerted consequential upon such Commission.

The Argument cannot be rested upon the general Operation of the Governor's Commission to *summon, prorogue, and dissolve*; for these Powers, with Respect to the Parliament at Home, upon the Demise of the King, devolve upon his Successor: And yet, at Common Law, the Successor could not proceed upon a Writ of Summons awarded in the Time of the Predecessor: The Parliament dissolved, and a new Writ issued. I observed the Continuance of all Process in the several Courts of Justice did not prevent a Determination of the Commissions of the Judges upon the Death of the King: And yet no Process could be executed without Judges and Officers: Upon what Principle, then, shall the mere Continuance of a Commission invigorate a Process, which, at Common Law, upon the Event of the King's Death, ceased and determined? But to mention a Case more analogous to the present. The Statute of Edward VI. extended only to *civil Suits*: Criminal Proceedings were left, as they stood at Common Law, and upon the Demise of the King abated or discontinued. The Act of 7 and 8 William III. Cap. 27, continued all Commissions for Six Months, &c. Did the *substituting Commissions* of the Judges alter the Demise of the King—prevent an Abatement or Discontinuance of Criminal Process? Could the Courts of Judicature proceed upon a Criminal Process awarded in the Time of the deceased King? No. The Parliament was aware of this in the Time of Anne and provided against the Mischief by an express Statute. The Court of King's Bench is authorized by Commission to issue Criminal Process: The Governor was authorized by Commission to issue a Writ of Summons: The Criminal Process issues in the King's Name tested by the Court of B. R. The Writ of Summons for an Assembly issued in the King's Name tested by the Governor: The Commissions of the Judges of B. R. subsist after the Demise of the King: The Commission of the Governor also subsisted: But, upon the Event of the King's Death, before the Statute of Anne, the criminal Process ceased and determined, and the Court of King's Bench could not proceed upon it. What shall prevent a Determination of the Writ of Summons, or warrant after Proceedings upon it?

The King, in Judgment of Law, is a Body politic, to prevent an Interregnum. The Powers of Government lodged in the Crown do not drop upon a Demise, but are instantaneously handed to the Successor without any Cessation or Intermision: The Power, therefore, to *summon, prorogue, and dissolve*, the Parliament, devolves as a *substituting Power* undetermined.

Before the Act of William, Cap. 27, the Powers of Government delegated to the Governor, upon the Death of the King, determined with the Commission: And of Consequence the Power to *summon, prorogue, and dissolve*, the Assembly, ceased. After the above Act of William the Commission of the Governor did not fall upon the Demise of the King, but remained in Force for Six Months: Upon the Event, then, of King William's Death, the Power to *summon, prorogue, and dissolve*, the Assembly did not fail, but survived and existed in the Governor as a *substituting Power* undetermined.

The Power to *summon, prorogue, and dissolve*, the Parliament is handed, by the Common Law, as a *substituting Power* to the succeeding Monarch: The Power to *summon, prorogue, and dissolve*, the Assembly of this Province, was handed, by Statute Law, upon the Demise of the King, as a *substituting Power*, to the Governor.

But the succeeding Monarch, notwithstanding the *Subsistence* of the Power to *summon, prorogue, and dissolve*, cannot, by the Common Law, proceed upon the Writ of Summons issued by his Predecessor: A fresh Writ of Summons must issue, and a new Parliament must be called: Did the Statute of William give a greater Latitude to the *substituting Power* of the Governor?

The Statute of William, Cap. 27, is enacted in general Expressions: All Commissions, Civil and Military, shall remain in full Force for Six Months after the Death of the King. My Lord Coke observes, in the Construction of a Statute, we should always advert to what the Mischief was at Common Law.

Before the above Statute of William, by the Common Law, all Patents of Justices, Commissions, Civil and Military, were determined by the King's Death, and the Defect, or Mischief, was the Anarchy resulting from the Want of Officers to put the Laws in Execution. This, then, was the Mischief the Statute meant to provide against: And as the same Anarchy, upon the same Event, prevailed in the Plantations, the Act of William was extended by the 1st Anne, Cap. 8. Not a Syllable is dropt with Respect to the Parliament: Nor is there any Ground whatsoever to infer, that the preventing of a Dissolution of the Parliament, upon the Demise of the King, was an Object in Contemplation when the above Statutes were framed. The Dissolution did not spring from the Determination of Commissions: The Continuance, therefore, of Commissions, was never meant as a Prop to Parliament.

The celebrated Blackstone lays down the Law, that a Parliament may be dissolved by the Demise of the Crown: For the King being considered in Law the Head of the Parliament—*Caput, Principium et Finis*—that failing, the whole Body is extinct. While the Province was in the Hands of the Crown, I ask who was *Caput, Principium et Finis* of the General Assembly? The King, or his Deputy, the Governor? I affirm not the Governor; upon no Principle can he be considered as *Caput, vel Principium*: For the Assembly commenced and was held by the King's Writ of Summons, tested only by the Governor: Nor upon any Principle can he be considered as *Finis* of the General Assembly: For upon the Death, or Removal, of a Governor, the Assembly did not, in Law, cease, and determine, but was kept alive by the King's Writ, and subsisted. Only the King, then, could have been *Caput, Principium et Finis*; upon his Demise a Dissolution followed.

The Colony of Virginia was in the Hands of the

Crown, as well as this Province, in the Reigns of William and Anne. Upon the Death of King William the Assembly of Virginia was dissolved: A fresh Writ of Summons issued, and a new Assembly was called: The *substituting Commission* of the Governor, by Virtue of the Statute of William, which continues all Commissions Civil and Military, did not prevent a Dissolution: And so far from entertaining any such Idea of the Statute, the General Assembly afterwards, in the Fourth Year of Queen Anne passed "An Act for the continuing of General Assemblies in Case of the Death or Demise of her Majesty, her Heirs or Successors," &c. Had the Statute of William a more extensive Influence in Maryland than in Virginia? Or does it operate differently in different Colonies?

Having then observed that the Assembly of this Province was dissolved upon the Death of King William, and that the Writ of Summons, by which it was held, was discontinued, or abated; I now lay down the Position, as a fundamental Principle, that a Parliament cannot be legally convened without the King's Writ of Summons: And I further assert that, by the undoubted Constitution of this Province when in the Hands of the Crown, no Laws could be enacted without the Consent of the Freemen legally called together and assembled by the King's Writ of Summons: I do not expect to be contradicted in this Assertion of the Law: But the Fact is stated as a *Postulatum* in the Case, that after the Demise of King William, no fresh Writ of Summons was issued. By what Authority, then, and upon what Constitutional Ground, was the Assembly convened, which enacted the contested Law of 1701-2?

After the Death of the late Charles Lord Baltimore, and before the General Assembly was apprized of the Event, a Session was held and Laws enacted: By the Death of his Lordship the Assembly was held to be dissolved, and a fresh Writ of Summons issued: When the General Assembly was afterwards convened, a Law was immediately passed to confirm and make valid the several Acts which had been made in the preceding Session, "The Death or Demise of the said Charles Lord Baltimore notwithstanding." What can be a clearer Proof, that an Assembly dissolved upon a Demise, and afterwards called, without a fresh Writ of Summons, is illegally convened, and cannot enact, or establish Laws?

When I assert for Law, that the Parliament cannot be legally convened without the King's Writ of Summons, I do not forget the two Capital Cases of the Restoration and Revolution Parliaments: The former summoned in the Names of the Keepers of the Liberties of England: The latter in the Name of the Prince of Orange, before the Crown was placed upon his Head, Charles the Second met the Lords and Commons thus assembled, and Laws were enacted: King William too, when crowned, met the Lords and Commons thus summoned, and Laws were also enacted: Both Parliaments passed a Statute to establish the several Conventions as legal Parliaments, and to cure the Defect or Want of the King's Writ of Summons. If these Cases, however, are urged against me, I shall only reply in the Language of an eminent Sage of the Law upon this Subject: They are Cases founded upon the Necessity of the Thing, which supersedes all Law.

It has been alleged, that the Act of 1701-2, though void ab Initio, has been lifted up and animated by succeeding Acts of Assembly. I should be glad to know what succeeding Acts of Assembly have worked this Miracle? When did the Act of 1701-2 first obtain the binding Force of a Law? From what Period shall we calculate the Commencement of its Validity? From the Act of 1704? Or from the Act of 1713? Or from the Act of 1715? Or from the Act of 1730? Or from the Act of 1763? Or from the Act of 1771? Which of these Acts communicated the obligatory Virtue? That successive Assemblies have presumed an Existence of the Act of 1701-2 I freely admit: That the above several Laws recognize it, as an Act in Force, by Reference, Recital and Supplementary Provisions, I also admit: But that such Recognition can, upon any legal Principle of Construction, amount to a Confirmation, I must take the Liberty to deny.

I presume I may safely assert, that the Act of 1701-2 has never been re-enacted: But the Advocates for this Act insist that it has been confirmed: The Position, then, is this, that the Act of 1701-2, though void ab Initio, has been confirmed by succeeding Laws. Every Confirmation must be express or implied: I can find no succeeding Law which expressly confirms the Act: And an Act void ab Initio, confirmed impliedly by an After Act, is, in my Judgment, a perfect Novelty in the Law: I candidly own I never met with such an Assertion, and confess my Ignorance of any Statute existing upon such Implication. I have met, indeed, with a Maxim *posterior Leges priores abrogant*: Subsequent Laws cancel and repeal preceding Laws: But this Maxim, far from supporting, defeats the Assertion.

It is an established Rule of Law, that Statutes have no Retrospect: they look forward only and prescribe for the Time to come: For upon no Principle of natural Justice can a Man's Actions fall within the Continuance of a Law made and enacted *ex post Facto*: But when an Act, originally void, is confirmed by an After Act, the Act thus confirmed operates ab Initio, and attaches upon the Time mesie the Commencement and Confirmation of it: And therefore the Act confirming has a clear retrospective Effect. By the Act of 1701-2 many Pains and Penalties are imposed: The first Act recited upon as a Confirmation is the Act of 1704: Three Years and upwards, then, had the Act of 1701-2 operated without the sanction of a Law: In that Interval of Time, upon a Supposition of the Nullity of the Act originally, every Precept might have been lawfully broken without Apprehension of Pains and Penalties: Every such breach in the Interval, though clearly a legal Act at the Time, becomes criminal and subject to the Punishment imposed: This is contrary to natural Justice: Hence the Maxim *Nova Constitutio futuris formam dicit imponere non prateritis*: which in Substance is, Statutes have no Retrospect: When an Act therefore, is originally void, the Law will never work a Confirmation.

by Construction indeed, when down the Law Act is not plain, which is not ed maxims.

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My Opinion, King William, r solved: That th enacted the cont without a fresh capitally conca tion can result Law.

Annapolis, 15 The Extra from

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WHEREAS Capt. Ja Lot of Ground ans Reib lately quaint such Pe the said Lot, tha ight to dispose nes Reib, nor d James Reib Title to the fa us now occupi e mortgaged mmond, Esq; d mption now ve ner; and I int Recovery of t