

with his judges, to employ his amazing abilities for the same purpose. The commons would not consent to declare the common law to be as stated by the commissioners; nor could the eagerness of the monarch, nor the eloquence of Bacon, prevail over their determined resolution. Enraged at their obstinacy, James called the two houses together, and laboured to convince them of their error. He informed them, that he had already issued his proclamation, declaring that all Scots subjects, born since his accession to the crown, were natural born subjects of England, and charged them, that by their determination they do not disgrace his proclamation. To advise them concerning the law, he called in his judges, who, ready prepared, declared the common law to be agreeable to the commissioners proposition and the royal proclamation. He then warned the parliament "not to disgrace the opinion of his judges, who, when parliament had done, had authority to try their lands and lives." He had the insolence to threaten the representatives of the nation; he warned them "to think of his power, and not to tempt his patience." He wheeled and menaced them by turns, but found himself baffled. The commons refused to declare those, born in Scotland since his accession to the crown, natural born subjects of England; and thus the matter rested, until the king procured the decision in Calvin's case.

That the judges were subservient to his will, many instances may be adduced. They declared, that the chancellor had a power to vacate the seat of a member of the house of commons, and to issue a new writ of election, and that the commons had no power to reverse or control his decision: they condemned to death Valentine Thomas, for calumniating James, in the life time of Elizabeth: they adjudged to death Peacham, a clergyman, for expressions against the ministry, in a sermon never delivered, or intended to be published: in the case of the bishop of Ely, they declared it their duty to try judgment, in any case depending before them, if the king, conceiving himself concerned either in profit or power, commanded them. The servility of his judges, and the king's undue influence over them, is testified by the earl of Southampton, who, speaking of the divorce of lady Howard from the earl of Essex, makes this observation; "By annulling the marriage, may he discerned the power of a king with judges."

The judges of this king sentenced to death the illustrious Sir Walter Raleigh, solely upon the slender evidence of lord Cobham, whom they refused to produce in court on the trial, or to be confronted with the accused, though required, contrary to every principle of law, and in direct violation of every rule of justice. In this case Sir Edward Coke, who managed the prosecution, with a peculiar malignity of nature, inveighed with the bitterest, most scurrilous and insulting language, against that eminent personage; and for his reward was appointed chief justice of the common pleas. In a year or two after, we find him dictating the law to parliament, concerning the naturalization of the Scotch subjects, and two years afterwards giving the decision in Calvin's case.

The above instances are sufficient to shew, what influence was used by that monarch, with his judges, to procure a determination, in every case, where he thought himself interested; and how ready they were to enter into all his views.

About two years after the king's disappointment in parliament, Robert Calvin, who was born in Scotland after the accession of James, commenced a suit in the common pleas to recover lands: the defendant pleaded that he was an alien born, and therefore not capable of maintaining the action. Hereby the very same point was brought in question, which was contained in the proposition of the commissioners, and which James had laboured to establish, by the sanction of his parliament. It was therefore treated as a case of the first magnitude, and conducted as the cause of the king, not of obscure individuals; and accordingly we find it was advocated on behalf of Calvin by the king's council, Hobart, and Sir Francis Bacon. Is it probable that James was less solicitous now for the event of this matter, than he had been before? Is it wonderful that the judges now gave their decision, agreeable to what, but two years before, he had prevailed upon them to declare as law to his parliament? Or that those who had sported with the laws and constitution, and sacrificed the lives of their fellow subjects, to the vindictive passions of that monarch, would now hold them sacred and inviolate.

If we examine the arguments of the judges in this case, we shall find that, by their judgment, they not only established a point which the king had much at heart, but also that this

very judgment was founded upon those principles of indefeasible, hereditary right of monarchs, and their absolute, uncontrollable authority, which he had adopted, and which to support and maintain was the most certain method of securing his favour. They declared that allegiance is due to the king in his natural, not in his civil or political capacity, a doctrine which reason has long since exploded: and from which it would follow, that when James II abdicated the throne, his subjects still remained bound in allegiance to him, and were traitors for transferring it to William and Mary; since, notwithstanding the abdication, though his political capacity was thereby altered, yet his natural capacity remained the same.

The judges declared the position, that, "allegiance was due more by reason of the king's crown, than by reason of his political capacity, than by reason of the person of the king, was a damnable and damned opinion, invented in the reign of Edward II, by the two Spencers, father and son, to cover the treason they hatched in their hearts, from whence execrable and detestable consequences were interred by them." And what would any person imagine were these execrable and detestable consequences? Why, truly, the following: 1. That if the king did not demean himself by reason, in the right of his crown, his subjects be bound to remove him. 2. That if the king could not be reformed by suit of law, it ought to be done by the sword. And 3. That his subjects be bound to govern in aid of him, and in default of him. These were the inferences of the Spencers! the truth of which has been since sealed by the best blood of Britain and America.

The judges also declared, in the argument of that cause, that "the allegiance of the subject to the sovereign is due by nature, and not by the law or constitution of man, and therefore cannot be altered."

These were the principles upon which the judges gave their decision, and it is only upon these principles, that the decision can be supported. That man must be more than blind, who does not see, at the first glance, that all these doctrines were established, by the judges, merely in conformity to the king's will and pleasure, and to those arbitrary, despotic notions of regal government, which he entertained. They are the corner-stones on which the Tories raised the whole superstructure of passive obedience, non-resistance, and the divine right of a king to act as vicegerent to the devil. They are utterly subversive, not only of the English constitution, but of law, reason, and the rights of human nature; and as they have long since been treated, with all the contempt they deserved, an authority founded expressly upon these principles ought to be expunged from the records.

That judges, who were under the influence of such a monarch as James, and whose offices depended upon his arbitrary fiat, should patronize and avow the tenets of ignorance and slavery, is by no means surprising; but with astonishment do we behold an enlightened Senator of this free state, with a mind improved and enlarged by comprehensive knowledge and an extensive intercourse with mankind, pleading the cause of its inveterate enemies, and advancing doctrines destructive to our government, and by which, if true, our present resistance to Great-Britain, instead of being stiled a glorious revolution, must be stigmatized, an unnatural rebellion: for although the Senator has spoken with some caution on the subject, yet the Plebeian, proceeding upon the Senator's positions, and law authorities, has carried the arguments to their full length; he has stripped off the mask, under which they were introduced, by the senator, and exposed to view all their horrid deformity, which lurked underneath, for which the public ought to be thankful to him. Upon the Senator's positions and law authority he has proved, that allegiance, being once due, always must remain due, as, upon those principles, it can never be forfeited or altered; that he, who was once a subject, must always remain so; in a word, that all the Americans, born in these states before the declaration of independence, are at this present time, notwithstanding that declaration, the establishment of our new governments, and our having sworn allegiance to them, subjects of Great Britain: and humouously adds, that if any person should make an objection to this, he can only say, "that Calvin's case is good law, and applies directly in point." Under the pretence of reproaching confiscation, the Plebeian has completely barbaqued the arguments and reasoning of the Senator, and has shewn the horrid inferences which flow from them; and pleasantly enough observes, that the subjects of Great-Britain are neither subjects, nor aliens, in these states, but a kind

of something, which never before existed. *Something between both; quasi-subjects!* As therefore they are not subjects, but only quasi subjects, he must certainly intend, not, that they should inherit here, but only *quasi inherit*, that is to say, stand seized of their lands to the use of the state.

The Plebeian has concluded with some observations, which the Senator, and those of his sentiments, would do well seriously to consider. "Disunion, he says, has already taken place in our councils; he points out some of the evils which may probably flow from the continuance of that disunion; he observes that great blame must be imputed to those who are in the wrong; that there is too much good sense in this country to be long deceived; and that the public vengeance will be too heavy for any individuals."

I must now beg to be indulged a few moments, while I shew in what light this determination of the judges in Calvin's case has been considered by the historians of those times.

Hume tells us, that king James "engaged the judges to make a declaration, that all those who after the union of the crowns should be born in either kingdom, were for that reason alone naturalized in both; to support which determination, we must suppose the sovereign authority resides chiefly in the prince, and that the parliament is rather ordained to assist with money and advice, than endued with any controuling or active powers in government."

Mallet, in his life of lord chancellor Bacon, says, "I though James did not succeed in the union of the kingdoms, in an affair of a similar kind, he found his judges more complaisant, than the great council of the nation had been; he meant the naturalization of all Scotchmen born after his accession to the throne of England. This was adjudged by Sir Edward Coke, in the great case of Calvin, as it had been argued large before the judges by Sir Francis Bacon. The affair is now no longer of importance to either kingdom, but one assertion of Bacon ought not to be forgotten, he roundly affirmed that monarchies do not subsist, like other governments, by a precedent law, or compact, and that submission to them is grounded on nature."

Rapin, after having given the history of James's disappointment from parliament, says these words: "Nevertheless, two years after the king got the same thing to be determined by the judges of the realm; though this determination of the judges was of no more force than his proclamation."

And to conclude with the authority of Warton. "The king (says he) obtained a judgment in Westminster-Hall, on a case called Calvin's, that those born in Scotland, after the king's accession to the crown of England, were free to purchase and inherit therein. This case is reported by lord chief justice Coke, who was fit metal for any *slamp royal*, and adjudged for him, the lord chancellor Ellesmere, and many of the judges of the kingdom; though many strong and valid arguments were brought against it. Such power is in the breath of kings, and of such soft stuff are judges made, that they can model their precedents into as many shapes as they please."

These citations speak for themselves, nor do they need a comment. From henceforth, therefore, we hope Calvin's case may rest in peace, and that we may have no more arguments drawn from authority, or from the principles on which it was decided.

#### AN INDEPENDENT WHIG. Baltimore, March 11, 1780.

FOR THE MARYLAND GAZETTE.  
THE Senator talks of "the secret springs of public measures." I have been struck with these expressions, as is natural to all men, in things that regard their occupation; and supposing that HE might be put in motion by springs of some kind, I have examined his works, and discover them to be,

1. Dislike to the tender law.
2. Friendship for individuals, whose estates may be liable to confiscation.
3. The bias of association.
4. Timidity.
5. The vanity of being at the head of a party.
6. The vanity of being an author.

Which of these is the main spring, I shall leave to others of the trade, who may inspect the mechanism.

#### A WATCH MAKER. March 11, 1780.

FOR THE MARYLAND GAZETTE.  
WHEN men high in trust, are so quickly swayed, as to "abuse the confidence" of their country, it is highly meritorious in any