The CASE of the Heir at Law and Executrix of the Late Proprietor of Pensilvania, &c. in relation to the Removal of Sir William Keith, and the Appointing Major Patrick Gordon to succeed him as Deputy-Governor there.

KING Charles the Second was pleased by Patent, dated the 4th of March, 1680, for the Considerations therein mentioned, to grant to the late William Penn Esq; his Heirs and Assigns, all that Tract of Land in America then inhabited only by Savages, since called the Province of Pensilvania, with all Powers of Government, and full Authority to appoint Deputy-Governors for that Province, &c.

IN the Year 1682, his then Royal Highness James Duke of York, afterwards King James the Second, granted to the said William Penn, his Heirs and Assigns, all that Tract of Land lying on the West Side of the Bay and River of Delaware adjoining to Pensilvania, together with all Royalties, Franchises, Powers, &c.

IN virtue of which Letters Patents and Grants aforesaid, the said Mr. Penn enjoyed all the said Lands and Powers of Government for above forty Years, and from time to time appointed his Deputies to be Governors of the said Province of Pensilvania and Counties aforesaid, who have constantly been approved of by the Kings and Queens of England.

IN 1715, Sir William Keith being in America, and out of all Employ, happen'd to pass thro' Pensilvania, where making his Circumstances known to some of the Gentlemen of the Council in that Province, who were Friends to the late Proprietor, upon the solemn Promises and Assurances made by the said Mr. Keith, of his Affection to the said Proprietor Penn, they recommended the said Mr. Keith to the said Proprietor, then in England.

THE said Sir William no sooner arrived in England and presented himself to the said Proprietor and his Friends, but he was, without any Expence to himself, appointed Deputy-Governor of the Province of Pensilvania, and the said three Counties of Newcastle, Kent, and Sussex, on Delaware; and the said Mr. Penn lent him a Sum of Money, in order to transport himself and his Family to Pensilvania, which Sum of Money remains unpaid to this Day.
THE said Sir William arrived in Pensilvania in May 1717, where he found the Government in perfect Peace and Tranquillity, and by the Assistance of the Proprietors Friends in Pensilvania, he receiv'd for his Support and Perquisits of Government that Year at least 1600 l. besides a great Sum of Money then in the Treasurer's hands of that Province belonging to his Majesty, which he stands indebted for at this Day.

IN 1718, when the Proprietor died, the People in that Government were in perfect Tranquillity, and there was no want of Powers to govern them; for by an Act of Assembly of that Province, made in the Tenth Year of the late Queen Anne, it is provided, "That in case the said Mr. Penn Governor in Chief shall be removed by "Death or otherwise, then it shall be lawful for his Deputy or Lieutenant for the time being, to exercise all the "Powers of Government as fully and amply as before, till further Order from her Majesty, her Heirs, or Successors, "or the Heirs of the said Proprietary and Governor in Chief, which shall first happen." But it is not true that Sir William procured any such Act in the Province of Pensilvania. —It is true the Heir at Law, upon the Death of his Father, sent over a Commission to Sir William; but he, without acquainting the Heir at Law, or any other of the Proprietors Family, did, on pretence of a Difference in the Family about the Government, make a private, but untrue Representation of the State of that Province and Counties to his Majesty; and thereupon a Letter from Mr. Delafay, dated 30 July 1719. (purporting, That by an Order of the then Lords Justices, the said Sir William, should continue to act under his former Appointment, until his Majesty's further Pleasure, or the Proprietor's, should be known,) was sent to the said Sir William Keith.

AS soon as Sir William received this Letter, (tho' it gave him no new Powers, or any other Directions but what he had by the aforesaid Act of Assembly, yet) he took upon him the Title of Excellency, and affected to be thought the King's Governor—He took upon him (contrary to the Laws and Usages of that Government, and expressly contrary and in opposition to his Commission and Instructions from the late Proprietor, under which Appointment he was directed by their Excellencies the Lords Justices, as aforesaid, to act;) to survey Lands to himself, and invited and settled a great number of Palatines, who came from the Government of New York, upon the Proprietors Lands, without any colour of Authority.—He discountenanced and displaced some of the late Proprietor's Principal Officers, and attempted to invalidate the Authority of the Commissioners of Property appointed by the Trustees, to whom the said Province and Counties are made over for securing the Payment of part of a large Debt contracted by the said late Proprietor Penn, which he expended, (besides the greatest part of his Paternal Estate) in settling and improving the said Province and Counties.

THE People of Pensilvania, who have always been distinguished for a peaceable People, continued such until the Year 1723. when the said Sir William, in opposition to the true Interest of his Majesty's
Subjects in that Province, and the English Merchants trading thither, encouraged and promoted a Paper Currency, and accordingly past an Act for emitting 15000 l. Paper Money to be lent out upon the Credit of Lands of the Borrowers—'Tis true the opposition made to this Act by the Merchants, and Men of the best Circumstances in that Government, did occasion some Uneasiness, but it was all owing to Sir William's animating the Common People against the Council, and the Merchants to a very great degree.

THIS Difference was no sooner blown over, but the very next Year 1724. (tho' the said Sir William had received a Letter from the Commissioners of Trade, &c. advising him against passing any Laws for the making Paper Money) the said Sir William with the Assembly, made another Law for emitting 30000 l. Paper Money—And altho' some Persons of note in that Government made a Remonstrance against the passing the said Law, which they presented to the Assembly; wherein they prayed, that the said Act might not be in Force, until it should be sent home, and have his Majesty's Royal Assent.

2dly, That all Debts due or payable to his Majesty, might be excepted out of the Act.

3dly, That all Debts due to the Proprietor, and the English Merchants, might be likewise excepted out of the Act—The same was rejected, and that Act also pass'd.

THESE Acts being passed against the Opinion of almost all the Men of Substance in the Government, and especially against the Opinion of the Council—The said Sir William made use of this to create a Jealousy in the Assembly of the ill Designs the Council had upon the Constitution of that Province.

IN May 1724. Mrs. Penn, Executrix of the late Proprietor, who generally, by consent of the Family, acted in the Affairs of Pensilvania, being advised of the undue Practices of the said Sir William; yet having Compassion for his Family, wrote only a private Letter of Instructions to him, in which she required him, tho' the Council were by the Constitution of that Government no Part of the Legislature (yet they being Men of the best Circumstances and [???] Abilities) to do no Act of Legislature without their Consent—And indeed Pensilvania is the only Government in the King's Dominions, where the Council is not a Part of the Legislature.

THE said Sir William upon Receipt of this Letter, exposed it publickly, and by Colonel Spotswood the late Governor of Virginia, when he came from America, wrote to Mrs. Penn, letting her know he could not follow her Instructions, and that the Council were no more than solemn Witnesses of his Actions—But before any Answer could be sent back to Sir William, he at the next Assembly in January 1724. exposed the said Mrs. Penn's private Letter, and by Speeches influenc'd the Assembly and the
Generality of the People against the Proprietors whole Family, and all their Friends; and by these Practices obtained a Remonstrance from that Assembly to the said Mrs. Penn, wherein they say that some part of the said Instructions are an Infringement of their Liberties.

THE said Colonel Spotswood soon after his coming to England, (notwithstanding he pretends in his Petition, that the said Instructions were not agreeable to the Charter, and that the Execution of them would certainly raise the People's Dissatisfaction and Anger) applied himself to the Proprietor's Family, and others concern'd in the Affairs of Pensilvania, and used his Interest to have Sir William continued in the Government aforesaid; and offer'd himself to answer for Sir William's having a due regard to their Instructions, if they would please to continue him.

AND as to any Account which the said Mr. Penn's Representatives are liable to render to the Crown, it is evident, that no Change of a Governor can have any Influence upon that Demand; for the Representatives of Mr. Penn are in England, and are obliged to answer any Demand his Majesty shall think fit to make of them—The King's Officers at New York have no power to make any Demand in Pensilvania: So this is an Objection of no weight. But if it had, then it is plain from Colonel Spotswood's own Word and Conduct, that this Discovery made to his Majesty by the Colonel, is owing to the Penns themselves, by appointing a new Governor for Pensilvania; for he himself threatened, that if the Penn Family (as he's pleased to call them) offered to turn out Sir William, he had something in his power, which he got at New York, which he would put in execution, much to their prejudice, or to that effect.

AND so it appears, for the Colonel never presented any Petition to his Majesty, that the Penns know of, to inform his Majesty of any Right he had to any Part of Mr. Penn's Possessions, until Colonel Spotswood perceived they would not be frightened or threatened into a Complyance of keeping the said Sir William in the Government of Pensilvania at his Request.

THE Earl of Sutherland about eight years ago apply'd to his Majesty for a Grant of Part of Mr. Penn's possessions in America, on pretence the same were not well granted to the late Proprietor Penn. And on a Report made then by the Attorney and Sollicitor General, Lord Sutherland thought fit to let the thing drop.

BUT now, having received new Lights by Colonel Spotswood, he has renewed his Application to his Majesty for a Grant of Part of Mr. Penn's possessions in America, on pretence the same were not well granted to the late Proprietor Penn. And altho' it is allledged by the Colonel's Petition, that the Penns have no Right to the Government of the three Lower Counties, as they are called, yet Mr. Penn has enjoyed this Right for forty Years by gone. And if the Family would have continued Sir William Keith, Colonel Spotswood, it seems, would have allowed the Proprietors Appointment good.
A Generous Return from a Person, who was made Governor without any Title to such a Favour except the Goodness and Compassion of the late Proprietor Penn, who generously preferred him to that Government, where he has got not less than 16000 l.

AS to the Petition of the Creditors of Sir William Keith, who has been Mr. Penn's Deputy-Governor of Pensilvania and the three Lower Counties for these nine Years by gone, it is indeed an Original, and deserves no other Observation, but to take notice of that Sense they seem to have of Honour and Justice, when they take upon them to represent the State of the Province of Pensilvania, and Proprietor Penn's Family; with either of which, as they have no Concern, so they are no Judges, as every one must know, who sees their gross Misrepresentation of both, and are acquainted with the Affairs of Pensilvania, whose Inhabitants have always enjoyed their Liberties and Properties, and a Tranquillity at least equal to any of his Majesty's Colonies in America, and that without the Direction or Assistance of any of those Petitioners.

Mr. Penn's Family have too great a Confidence in his Majesty's Justice, which all his Subjects are so sensible of, to apprehend that his Majesty can be prevailed upon to break in upon their Right to help the Petitioners to get their Debts of Sir William, who has by the meer Favour of the said Mr. Penn receiv'd no less than 16000 l. while he has been Deputy-Governor of Pensilvania, which is presumed, put it at least once in his power to pay all those modest Petitioners. But whether he ever does or not, neither Mr. Penn, nor the People of Pensilvania are accountable However if the Petitioners, who seem to have so great an Opinion of Sir William's Honour and Conduct, think that it is not owing to his want of Justice that they are not paid their Debts, they are still at their Liberty to rely upon his Honour for their Money, tho' Mr. Penn's Family does not think fit to trust him any longer with the Government of their Province.

BUT for an Answer to the Petitioners, it is undoubtedly true that the Proprietor is accountable for the Acts of his Deputy. And if so, it is humbly conceived, that imposing a Deputy upon him, or denying him the Appointment of such a Person as he can confide in, provided the Person be qualify'd as directed by the Act of the 7th and 8th of William and Mary, is in effect to take away the Right granted him by the Charter, or at least it is putting it in the power of the Deputy to do such Acts as may occasion a Forfeiture of the Charter.

THE Words of the Act of Parliament by which the Proprietors of Colonies in America are obliged to have the Royal Approbation to any Appointment of a Deputy-Governor, are as follows:

"And all Governors nominated and appointed by any such Persons or Proprietors, who shall be intitled to make such "Nomination, shall be allowed and approved of by his Majesty, his Heirs and Successors,
as aforesaid, and shall take the “Oaths injoined by this or any other Act, to be taken by the Governors or Commanders in Chief, in other his Majesty's “Colonies and Plantations, before their entring upon their respective Governments, under the like Penalty his Majesty's “Governors and Commanders in Chief are by the said Act liable to.”

LL 542030 May 14, 33
Ann. Rep. 38 p. 8, no. 49

To the King's most Excellent Majesty in Council, The Humble Representation of Springett Penn Esq; Grandson and Heir at Law of William Penn Esq; Deceased, and Hannah Penn Widow, Relict and Executrix of the said William Penn, who was the late Proprietor and Governor in Chief of the Province of Pensilvania, and the three Counties of Newcastle, Kent, and Sussex, on Delaware in America:

Sheweth,

THAT the said Province and Counties having been formerly granted to the said William Penn, He, with your Majeyst's Royal Assent and Approbation, in the Year 1716, appointed Mr. Keith, since Sir William Keith, Deputy-Governor of the same, which Government he has held NINE Years and upwards.

That the said William Penn being since deceased, and Sir William Keith having by his Conduct greatly dissatisfied the Proprietor's Family, the said Heir at Law and Executrix, to render an Appointment the more effectual, have both joined in nominating Major Patrick Gordon to be Deputy, or Lieutenant-Governor of the said Province and Counties, whom they accordingly in all Duty and Humility do hereby present to your Majesty, pursuant to the Act of Parliament in that Case.

And forasmuch as the said Major Gordon is well affected to your Majesty's Person and Government, and hath behaved well in a long Service of the British Crown during both the last Wars in Flanders, as may be attested,

They humbly pray your Majesty's Allowance and Approbation of him to be Deputy or Lieutenant-Governor of the said Province and Counties.

And as in Duty bound shall ever pray, &c.

To the King's most Excellent Majesty in Council, The Petition of Colonel Spotswood in behalf of Sir William Keith, Bart. Deputy-Governor of Pensilvania, and of the three lower Counties on Delaware-River:

Humbly sheweth,
1. THAT such have been the difficult Circumstances of the Province of Pensilvania ever since the Death of the late Proprietor William Penn Esq; that nothing less than an extraordinary Portion of Prudence could enable a Governour to conduct your Majesty's Subjects there in that Peace and Tranquillity which Sir William Keith has all along done: For,

2. That the Controversy in the Penn Family (which still remains undetermined) about the Right of Government, rendered an Authority delegated from them disputable, until Sir William procured an Act of Assembly to quiet the Minds of the People, by vesting him with a Legal Power to carry on the Government, until it should otherwise be more duly settled; And which Conduct of his was approved of at home by the then Lords Justices, who ordered Sir William to continue to act in the Administration of the said Province, until further Signification of your Majesty's Pleasure.

3. That under such Provincial Settlement, the said Province did thenceforth happily remain in a most peacable State, until the Widow Penn, without regard to the Settlement made by the Assembly, and approved by the Lords Justices, would take upon her to act as if she were the unquestionable Proprietor, by sending her own Mandatory Letters and Instructions to Sir William Keith, and requiring his absolute Obedience thereto, on pain of his immediate Removal from that Government.

4. That some of her Orders and Instructions not being formed agreeable to the Charter and Constitution of Pensilvania, have therefore occasioned a Remonstrance from the whole Assembly, as well as Petitions from the Generality of the People there—And if the present Governor has incurred the Proprietor's Displeasure, by endeavouring to persuade Mrs. Penn to recall her Instructions; a new Governour, by offering to put them in execution, will as certainly raise the People's Dissatisfaction and Anger.

5. That thus the Tranquillity of a whole Province lying at stake, your Majesty may judge it worthy of your Royal Consideration, to know what these new Orders and Instructions are, which your Subjects in Pensilvania appear to be aggrieved at, and which the Penn Family conceive they cannot subject them to, without the Help of a new Governor.

6. That furthermore your Petitioner has good Grounds to believe (as he has already acquainted the Auditor-General of your Majesty's Plantations) that the present Application of the Family to remove Sir William Keith, is in order the better to frustrate an Enquiry which the Officers of your Majesty's Revenues at New York are now upon, for considerable Sums which they apprehend the Proprietor is at this Day accountable to the Crown for, as Quit-Rents received from the three lower Counties on Delaware.
7. And lastly, that altho' the Penn Family may have the Proprietorship of the three upper Counties on Delaware, called Pensilvania, and may have a Right to appoint their Deputy-Governor for that Province; yet it is much questioned whether they have any manner of Right to shew for the Dominion, whatever Title they may have to the Soil of the three lower Counties on Delaware, which at this day make a distinct Government, with their own proper Assemblies: And consequently the Appointment of a Governor for this lower Province, is wholly in the Crown. And if the Proprietor's Appointment has heretofore been admitted of, yet it has always been with an express Salvo to your Majesty's Right.

Wherefore your Petitioner most humbly prays, that seeing no Charge of Male-Administration is exhibited against Sir William Keith, your Majesty would be graciously pleased to gratify the Body of the People of Pensilvania, by continuing him in the Administration of both Provinces upon the foot of the Provisional Settlement made by the Assembly, and approved by the Lords Justices, until the Controversy in the Penn Family is ended—Or at least That Sir William may remain as your Majesty's own appointed Governor for the three lower Counties on Delaware, until some Right of Appointment thereto shall appear to be in the said Family; which will soon be manifested, when the Attorney and Solicitor-General shall make their Report upon the Case now before them, with reference to the Earl of Sutherland's Petition, for a Grant of the said Counties.

And your Petitioner shall ever pray, &c.

Alexander Spotswood.

To the King's most Excellent Majesty in Council, The Humble Petition of Micajah Perry, Robert Carey, John Gray, and Edward Jeffreys of London, Merchants; and of Mr. John Baskett, on behalf of themselves and others, Creditors of Sir William Keith Bart. Deputy-Governor of Pensilvania:

Sheweth,

1. THat the said Sir William Keith having put himself to a very great Expence to obtain the Deputy-Government of Pensilvania, did, upon his Appointment thereto, borrow considerable Sums of your Petitioners towards enabling him to carry over his Family, and take Charge of the said Government, under Promise of repaying your Petitioners out of the Income thereof.

2. That he having been strictly tyed up by his Instructions from the late Mr. Penn the Proprietor, to be at his own risque for what the People of that Province could be prevailed with to give for the Support of Government, without putting the said Proprietor or his Family to any manner of Charge or Expence whatsoever, it was a Work of Time to ingratiate himself so far with the People, as to
engage their Annual Assemblies to grant him an Allowance beyond the Expence of supporting his Family.

3. That the said Governor by his constant Demeanor in the Administration has so far gained the Affections of the People, by strictly maintaining their Rights and Properties, that they are now liberally disposed to allow him for the future a Sallary, whereby he may in few Years satisfy all his Creditors: And he has thereupon, in Justice to your Petitioners, actually made over the whole Sallary, whatsoever it happen to be, for the Payment of his Debts, reserving only the Perquisites of his Government to live upon.

4. That these Hopes and the just Expectations of your Petitioners are likely to be frustrated by the Conduct of the Widow Penn, who lately took upon her, without legal Authority, to send over her Instructions to the said Governor in Matters which the People apprehend destructive of their Liberties; whereby the Province is put into such a Flame, that their House of Representatives came last March to an unanimous Resolve, Viz. “That those Instructions were contrary to, and an Infringement of the Liberty and Privileges granted by Charter to the People of Pensilvania, and were an Invasion on their “Consti Constitution.” So that if the said Governor complys with such Instructions, he can't expect any Sallary from the People for Support of Government. And on the other hand, Mrs. Penn required his absolute Obedience thereto, on pain of his immediate Removal from that Government.

5. That your Petitioners are informed the Right of the said Proprietorship has not been settled since the Decease of the late William Penn, but is still depending at Law, and that your Majesty has commanded the said Governor to act under your Authority, till your Pleasure should be further signify'd.

6. And for as much as your Petitioners are informed, that your Majesty's good Subjects of the said Province do humbly hope, that your Majesty will not, out of your usual Goodness and great Tenderness to the Rights and Privileges of your People (which your Majesty has been always graciously pleas'd to preserve Sacred) suffer a Change in the Government of that Province; but that your Majesty will, out of your tender Concern for them, first examine into the Differences between the Proprietors Family and the People.

Your Petitioners do also on their own Part most humbly pray, that your Majesty will be pleased to interpose your Authority. And in regard to the Hardships your Petitioners are likely to be put under, by the extraordinary Steps which have been taken by the said Widow Penn, who has attempted to oblige the said Sir William Keith to continue in the said Government under such Circumstances as would disable him from doing Justice to your Petitioners; It is humbly hoped that your Majesty will
be pleased to order the said Government to be continued under your Majesty's Royal Authority, by which it hath for several Years been happily carried on thro' the great Abilities and good Conduct of the said Sir William Keith. And that your Majesty will not approve of the Nomination of any other for the said Government, unless it shall appear, that the said Sir William Keith has been guilty of any Male-Administration in Discharge of his Trust.

And your Petitioners shall ever pray, &c.

John Gray,
Edward Jeffreys,
John Baskett,
Micajah Perry,
Robert Carey.

1725
THE CASE OF THE PROPRIETORS of Pensilvania, &c.

About the Appointing a New Deputy-Governor.

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