

these privileges are now held to be part of the law of the land, and are constantly allowed in the courts of common law^f.

II. IT is also the king's prerogative to make treaties, leagues, and alliances with foreign states and princes. For it is by the law of nations essential to the goodness of a league, that it be made by the sovereign power^g; and then it is binding upon the whole community: and in England the sovereign power, *quoad hoc*, is vested in the person of the king. Whatever contracts therefore he engages in, no other power in the kingdom can legally delay, resist, or annul. And yet, lest this plenitude of authority should be abused to the detriment of the public, the constitution (as was hinted before) hath here interposed a check, by the means of parliamentary impeachment, for the punishment of such ministers as from criminal motives advise or conclude any treaty, which shall afterwards be judged to derogate from the honour and interest of the nation.

III. UPON the same principle the king has also the sole prerogative of making war and peace. For it is held by all the writers on the law of nature and nations, that the right of making war, which by nature subsisted in every individual, is given up by all private persons that enter into society, and is vested in the sovereign power^h: and this right is given up not only by individuals, but even by the intire body of people, that are under the dominion of a sovereign. It would indeed be extremely improper, that any number of subjects should have the power of binding the supreme magistrate, and putting him against his will in a state of war. Whatever hostilities therefore may be committed by private citizens, the state ought not to be affected thereby; unless that should justify their proceedings, and thereby become partner in the guilt. Such unauthorized volunteers in violence are not ranked among open enemies, but are treated like pirates and robbers: according to that rule of the civil lawⁱ; *hostes hi sunt qui nobis, aut quibus nos, publice bellum decrevimus: caeteri latrones aut prae-*

^f Fitzg. 200. Stra. 797.

^g Puff. L. of N. b. 8. c. 9. §. 6.

^h Puff. b. 8. c. 6. §. 8. and Barbeyr. *in loc.*

ⁱ *Ff.* 50. 16. 118.